

SCHEDULE 3

TRANSITIONAL, SUPPLEMENTARY AND SAVING PROVISIONS

PART 3

TRANSFER OF FUNCTIONS ETC

Transfer of staff

- 5 (1) On the appointed day the members of the staff of the Auditor General are transferred to the employment of the WAO.
- (2) For any purpose relating to a person who becomes an employee of the WAO by virtue of sub-paragraph (1)—
- (a) that person’s contract of employment—
 - (i) is not terminated by the transfer, and
 - (ii) has effect from the appointed day as if originally made between that person and the WAO;
 - (b) a period of employment as a member of the staff of the Auditor General immediately before the appointed day—
 - (i) is to be treated as a period of employment with the WAO, and
 - (ii) is to be treated as continuous employment as a member of the staff of the WAO for the purposes of section 218(3) of the Employment Rights Act 1996.
- (3) Without prejudice to sub-paragraph (2), where a person becomes an employee of the WAO by virtue of sub-paragraph (1)—
- (a) all property, rights and liabilities which the Auditor General has under or in relation to the contract of employment of that person are transferred to the WAO, and
 - (b) anything done before the appointed day by or in relation to the Auditor General in respect of the person or the contract is to be treated from that day as having been done by or in relation to the WAO.
- (4) A contract of employment (or rights, powers, duties and liabilities under or in connection with it) is not transferred under this paragraph if the employee objects to the transfer and informs the Auditor General or the WAO of that objection.
- (5) If the employee informs the Auditor General or the WAO of an objection under sub-paragraph (4)—
- (a) the contract of employment is terminated immediately before the appointed day, but
 - (b) the employee is not treated, for any purpose, as having been dismissed by the Auditor General.
- (6) Nothing in this paragraph affects any right of a person to terminate his or her contract of employment if (apart from the change of employer) a substantial change is made to the person’s detriment in his or her working conditions.
- (7) In this paragraph “the appointed day” means the day on which this paragraph comes into force.

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Variation of employment contracts

- 6 (1) This paragraph applies where there is a purported variation of the employment contract of—
- (a) an employee of the Auditor General;
 - (b) an employee of the WAO whose employment transferred under paragraph 5.
- (2) The variation is void if the sole or principal reason for varying the contract is—
- (a) the transfer mentioned in paragraph 5(1), or
 - (b) a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce.
- (3) Nothing in this paragraph prevents a variation if the sole or principal reason for the variation is—
- (a) a reason connected with the transfer that is an economic, technical or organisational reason entailing changes in the workforce, or
 - (b) a reason unconnected with the transfer.

Collective agreements

- 7 (1) This paragraph applies where a collective agreement made by or on behalf of the Auditor General satisfies the conditions specified in sub-paragraph (2).
- (2) The conditions are that the agreement—
- (a) existed at the time of the transfer mentioned in paragraph 5(1),
 - (b) was made with a trade union recognised by the Auditor General, and
 - (c) applied in respect of an employee whose employment transferred under paragraph 5(1) (“a transferred employee”).
- (3) After the transfer mentioned in paragraph 5(1)—
- (a) the agreement, in its application to a transferred employee, is to have effect as if made with the trade union by or on behalf of the WAO, and
 - (b) anything done before the transfer under or in connection with the agreement in respect of a transferred employee by or in relation to the Auditor General is to be treated as having been done by or in relation to the WAO.
- (4) Nothing in this paragraph prejudices the application of sections 179 and 180 of the 1992 Act (collective agreements presumed to be unenforceable in specified circumstances) to the agreement.
- (5) In this paragraph—
- “collective agreement” has the same meaning as in the 1992 Act,
 - “recognised” has the meaning given in section 178(3) of the 1992 Act,
 - “trade union” has the same meaning as in the 1992 Act, and
 - “1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992.

Trade union recognition

- 8 (1) Where before the transfer mentioned in paragraph 5(1) an independent trade union was recognised by the Auditor General to any extent in relation to any employee whose employment transferred, after the transfer—

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- (a) that union is to be treated as having been recognised by the WAO to the same extent in relation to those employees, and
- (b) any agreement for recognition may be varied or rescinded accordingly.

(2) In this paragraph—

“independent trade union” has the meaning given in section 5 of the 1992 Act,

“recognised” has the meaning given in section 178(3) of the 1992 Act, and

“1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992.

Dismissal in relation to transfer

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- (1) Sub-paragraphs (2) and (3) apply—
 - (a) to an employee of the Auditor General;
 - (b) to an employee of the WAO whose employment transferred under paragraph 5.
 - (2) If an employee to whom this sub-paragraph applies is dismissed, that employee is to be treated as unfairly dismissed for the purposes of Part X of the Employment Rights Act 1996 if the sole or principal reason for the dismissal is—
 - (a) the transfer mentioned in paragraph 5(1), or
 - (b) a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce.
 - (3) If an employee to whom this sub-paragraph applies is dismissed, the reason for that dismissal is to be treated for the purposes of sections 98(1) and 135 of the Employment Rights Act 1996 (reason for dismissal) as having been for redundancy if the sole or principal reason for the dismissal is a reason connected with the transfer mentioned in paragraph 5(1) that is an economic, technical or organisational reason entailing changes in the workforce.
 - (4) Sub-paragraph (3) does not prejudice the application of section 98(4) of the Employment Rights Act 1996 (test of fair dismissal).
 - (5) But sub-paragraph (2) does not apply if the application of section 94 of the Employment Rights Act 1996 (right not to be unfairly dismissed) to the dismissal is excluded by or under any provision of that Act, the Employment Tribunals Act 1996 or the Trade Union and Labour Relations (Consolidation) Act 1992.

Transfer of other property, rights and liabilities

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- (1) On the transfer day, the property, rights and liabilities to which the Auditor General is entitled or subject in connection with any transferred function are transferred to and vest in the WAO.
 - (2) Sub-paragraph (1) operates in relation to property, rights and liabilities—
 - (a) whether or not they would otherwise be capable of being transferred;
 - (b) irrespective of any kind of requirement for consent that would otherwise apply.
 - (3) Anything (including legal proceedings) which relates to—
 - (a) any transferred function, or

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- (b) any property, rights or liabilities transferred by virtue of sub-paragraph (1) in connection with any transferred function,
and which is in the process of being done by or in relation to the Auditor General immediately before the transfer day may be continued on or after that day by or in relation to the WAO.
- (4) Anything which was done by or in relation to the Auditor General for the purposes of or in connection with—
- (a) any transferred function, or
 (b) any property, rights or liabilities transferred by virtue of sub-paragraph (1) in connection with any transferred function,
and which is in effect immediately before the transfer day has effect on or after that day as if done by or in relation to the WAO.
- (5) In any instruments, contracts or legal proceedings which relate to—
- (a) any transferred function, or
 (b) any property, rights or liabilities transferred by virtue of sub-paragraph (1) in connection with any transferred function,
and which are made or commenced before the transfer day, a reference to the Auditor General is to be treated on or after that day as a reference to, or as including a reference to, the WAO.
- (6) This paragraph does not apply in relation to rights and liabilities under a contract of employment as a member of the staff of the Auditor General transferred to the WAO by virtue of paragraph 5.
- (7) In this paragraph—
- “transferred function” (*“swyddogaeth a drosglwyddir”*) means a function—
- (a) conferred or imposed on the WAO by a provision of this Act which re-enacts (with or without modifications) a provision of any enactment which conferred or imposed the same or substantially the same function on the Auditor General, or
 (b) conferred or imposed on the WAO by any enactment in consequence of the amendment of that enactment by or under this Act;
- “transfer day” (*“diwrnod trosglwyddo”*), in relation to a transferred function, means the day when the function first became exercisable by the WAO.
- 11 (1) A certificate issued by the Welsh Ministers that property has been transferred by virtue of paragraph 10(1) is conclusive evidence of the transfer.
- (2) Paragraph 10 has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property, rights or liabilities.
- (3) A right of pre-emption, right of return or other similar right does not operate or become exercisable as a result of any transfer of property or rights by virtue of paragraph 10(1).
- (4) Any such right has effect in the case of any such transfer as if the transferee were the same person in law as the transferor and no transfer of the property or rights had taken place.

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- (5) Such compensation as is just is to be paid to any person in respect of any such right which would, apart from sub-paragraph (3), have operated in favour of or become exercisable by that person but which, in consequence of the operation of that sub-paragraph, cannot subsequently operate in favour or become exercisable by that person.
- (6) But no compensation is to be paid under sub-paragraph (5) to the Auditor General, to the WAO, or to a former Auditor General.
- (7) Compensation payable by virtue of sub-paragraph (5) is to be paid by the WAO.
- (8) Any amount paid under sub-paragraph (7) is to be charged on and paid out of the Welsh Consolidated Fund.
- (9) Sub-paragraphs (2) to (8) apply in relation to the creation of rights or interests, or the doing of anything else, in relation to property as they apply in relation to a transfer of property, and references to the transferor and transferee are to be read accordingly.
- (10) In this paragraph “right of return” means any right under a provision for the return or reversion of property in specified circumstances.

Criminal liability of the Auditor General

- 12 (1) To the extent that any criminal liability incurred by the Auditor General is connected with property, rights or liabilities transferred to the WAO by virtue of paragraph 10, that criminal liability is transferred to the WAO.
- (2) Paragraph 10(3) to (5) applies in relation to criminal liability transferred by virtue of this paragraph as it applies to a liability transferred by virtue of paragraph 10(1).

Indemnification

- 13 (1) The liabilities covered by section 29 include—
 - (a) liabilities that arise before the coming into force of that section, and
 - (b) liabilities that arise in relation to any act or omission occurring before the coming into force of that section.
- (2) Sub-paragraph (3) applies where—
 - (a) a sum becomes payable by a former Auditor General appointed before the coming into force of section 2, and
 - (b) that sum would have been charged on the Welsh Consolidated Fund under paragraph 9(1) of Schedule 8 to the Government of Wales Act 2006 prior to the repeal of that paragraph by this Act.
- (3) Paragraph 9(1) of Schedule 8 to the Government of Wales Act 2006 continues to have effect with respect that person and that sum as if that repeal had not come into force.