

PUBLIC AUDIT (WALES) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 3 – Transitional, Supplementary and Saving Provisions

Paragraph 1 – Previous Auditor General to continue to be Auditor General

93. **Paragraph 1** means that if a person holds office as AGW on the ‘appointed day’ that person will be treated on and after that day as if he or she had been appointed under Part 1 of the Act. This will ensure continuity between the existing statutory regime and the new statutory regime under this Act so far as the AGW is concerned.
94. The term ‘appointed day’ is defined in paragraph 1(5) and means the day on which this paragraph comes into effect.
95. **Paragraph 1(2)(b)** provides that if there is a serving AGW on the appointed day that person’s term of office will be 8 years, less any amount of time he or she was AGW before the appointed day. The effect of this is that if a person is the AGW before the appointed day and continues to hold that office on the appointed day, then he or she will be treated as being the AGW as if appointed under this Act. If a person’s terms of office is 8 years (as the Act provides) but he or she has already served 2 years in office, then on the appointed day that person’s term of office as AGW will be reduced to 6 years.
96. **Paragraph 1(3)** provides that in such a case the remuneration arrangements under section 7 of the Act are to be made by the Assembly (following consultation with the First Minister). This must be done before the appointed day. This will ensure that the person holding office as AGW will hold it on the terms and conditions, including as to remuneration, set in accordance with the provisions of this Act.

Paragraph 2 – Savings for auditors appointed under section 13 of the Public Audit (Wales) Act 2004

97. This paragraph provides that an appointment made by the AGW of an auditor of local government bodies in Wales (in accordance with current section 13 of the Public Audit (Wales) Act 2004), will continue until the end of the period of appointment, rather than ending when the relevant provisions of this Act come into effect. Also preserved is the operational effect of appointment, including the scheme for fees which may be charged and the gathering and holding of relevant information; this ensures that work being done by the auditors appointed by the AGW can continue under the existing provisions of the 2004 Act, within the terms of their appointment.

Paragraph 4 – WAO’s procedural rules before rules are made under paragraph 27 of Schedule 1

98. The first formal procedural rules are to be made by the WAO (under paragraph 27 of Schedule 1 to this Act). Before those rules are made there will be no rules in place to govern the order of business of the WAO. Therefore, this paragraph provides that business (including making the first set of rules) will be conducted in accordance with

procedures set by the Chair of the WAO. Once the first formal procedural rules are made, WAO business will then be conducted in accordance with those rules.

Paragraph 5 – Transfer of staff

99. Because the Act will transfer the responsibilities for the employment of staff from the current AGW to the new WAO, paragraph 5 gives effect to the transfer of employment rights and liabilities of those staff.

Paragraph 6 – Variation of employment contracts

100. This paragraph prevents the employment contracts of employees of the AGW, whose employment transfers to the WAO, from being changed where the sole or principal reason for the change is the transfer or a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes to the workforce.

Paragraph 7 and 8 – Collective agreements and Trade union recognition

101. **Paragraph 7** provides for collective agreements, made between a recognised trade union and the AGW in relation to any employee whose employment transfers from the AGW, to transfer to the WAO. **Paragraph 8** provides for the WAO to continue recognising any independent trade union recognised by the AGW before the transfer. The paragraphs ensure that collective agreements and trades union recognition continue to exist as if having been made and recognised by the WAO.

Paragraph 9 - Dismissal in relation to transfer

102. This paragraph protects an employee of the AGW whose employment transfers to the WAO from unfair dismissal where the sole or principal reason for the dismissal is the transfer or a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce. It also provides that where an employee is dismissed for those reasons, the dismissal will be treated as having been for redundancy.

Paragraphs 10 and 11 – Transfer of other property, rights and liabilities

103. **Paragraphs 10 and 11** make provision as to the transfer of property, rights and liabilities from the current AGW to the new WAO. This reflects the transfer of certain functions of the AGW to the new WAO.

Paragraph 12 – Criminal liability of the Auditor General

104. In connection with paragraph 7 of this Schedule (relating to the transfer of the property, rights or liabilities that are transferred to the WAO), paragraph 12 provides for any criminal liability that may have been incurred by the AGW in connection to those property, rights or liabilities is to transfer from the AGW to the WAO.

Paragraph 13 - Indemnification

105. **Paragraph 13(1)** makes provision to apply section 29 to liabilities arising before, or arising in relation to an act or omission occurring before, section 29 comes into force. Section 29 provides that any amount payable by an indemnified person in consequence of a liability for a breach of duty is to be charged on, and paid out of, the WCF.
106. **Paragraph 13(2) and (3)** makes provision that where a sum would have been payable by a former Auditor General under paragraph 9(1) of Schedule 8 to the Government of Wales Act 2006 that paragraph is to continue to have effect as if the repeal (Schedule 4, paragraph 79(2)) had not come into force.