



## Wales Audit Office

### PAC(4) 01-13 – Paper 2

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Mr Darren Millar  
Chair, Public Accounts Committee  
National Assembly for Wales  
Cardiff Bay  
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21 December 2012

Dear Mr Millar

We are writing as branch representatives of the recognised trade unions in the Wales Audit Office, Prospect and PCS. Together, we represent around 75% of the Auditor General's staff.

We support the principles of the Public Audit (Wales) Bill and welcome the Public Accounts Committee's report on Stage 1 of the Bill. If adopted in full, we believe that the recommendations of the Committee's report will lead to substantial improvements in the Bill that would address most of the concerns that we raised in our response to the Committee's consultation on the Bill.

There is one issue that remains a major concern to us, however. The Bill as it stands does not provide the full protection that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE regulations) provides to most employees being transferred from one employer to another. Unfortunately, the TUPE regulations do not cover the proposed staff transfer from the AGW to the WAO because the transfer is part of a re-organisation of administrative services within the public sector. It is critical, therefore, that the legislation contains the same protections as TUPE to ensure that our members suffer no detriment from the transfer and are treated equally with the vast majority of employees in the UK who are covered by the regulations. We were pleased that the PAC took the same view in its recent report on Stage 1 of the Bill and recommended that the AGW and the Welsh Government reach an agreed position on the issue, whereby the Bill provided the same level of protection to the AGW's current staff as the TUPE regulations.

Schedule 3 of the Bill does include some of the relevant protections that are provided in TUPE. However, protection equivalent to four very important provisions of TUPE are missing from the Bill:

- a) Regulation 5 of TUPE for preserving collective agreements.
- b) Regulation 6 of TUPE for preserving trade union recognition.

- c) Regulation 7 of TUPE, which makes unfair any dismissal of an employee that is wholly or mainly by reason of the transfer or a reason connected to it.
- d) Regulation 4(4) of TUPE, which addresses variations in employment contracts.

The absence of these provisions is all the more surprising and troubling because the Government has given several public assurances that it intended to give the same level of protection to our members as the TUPE regulations. The Minister told your committee on 24 September and 22 October that the Bill would, if necessary, be amended to give effect to this intention.

However, we see from your website that the Minister wrote to you on 31 October saying:

*“it has always been the policy intention that principles of TUPE will be applied and that staff will be treated no less favourably as a result of the transfer. I consider that Schedule 3 of the Bill ensures that.”*

This is deeply troubling. By omitting the word “the” it appears that the Government may now intend not to apply some of the key principles of TUPE.

We have expressed our concerns on this matter to the Auditor General and have asked whether discussions between the Auditor General’s representatives and Welsh Government officials have resulted in the Government giving any assurance that it will make amendments to provide the missing protections. We understand that the Government has not given any such assurances. We also understand that the Government is adamant that existing provisions are acceptable and that no change is required.

A further source of concern is that the Minister said in evidence to your Committee on 22 October that:

*“It is our intention that the principles of the Transfer of Undertakings (Protection of Employment) Regulations 1981 be applied in line with the Cabinet Office’s ‘Staff Transfers in the Public Sector: Statement of Practice January 2000’.”*

We hope that the Minister intended to refer to the current regulations and guidance (the current regulations are dated 2006 and the guidance 2007). But, in any event, the Bill does not reflect the requirements of the Cabinet Office statement (COSOP), paragraph 19 of which states:

“Departments must therefore ensure that legislation effecting transfers of functions between public sector bodies makes provision for staff to transfer **and on a basis that follows the principles of TUPE along with appropriate arrangements to protect occupational pension, redundancy and severance terms.**” (our emphasis and underlining).

It is important that the principles of TUPE are reflected in the legislation. It is not enough just to say that COSOP applies. As its name indicates, COSOP is only a code of practice, not a legally binding document in its own right. Indeed, in any case, it is not the Government that will decide on our future terms and conditions but a future WAO board, so Government statements without legal force are of very limited value. Unless the draft legislation is amended, the Board would be able to terminate collective agreements, dismiss staff for a reason connected to the transfer and potentially make adverse changes to terms and conditions without the protections

that would apply to any organisation in the private sector. We find that completely unacceptable.

The current provisions in the Bill are clearly inadequate to cover the relevant regulations in TUPE. That much is evident simply by reading Schedule 3, paragraph 5 of the Bill against the relevant TUPE regulations. We do not understand how the Minister can give public assurances that staff will enjoy full TUPE-like protection and then refuse to bring the Government's bill into line with those very regulations. The reluctance to do so has raised fears among our members that the Government may privately actually wish to give the WAO Board the latitude to make detrimental changes to our employment in the future despite its statements to the contrary. Such perceptions undermine trust and confidence and are best avoided as we go through the transition to the new corporate WAO. Disputes would be less likely to occur if the existence of full TUPE-like protection is put beyond doubt in the legislation.

We should therefore be very grateful if you would table appropriate amendments to the Bill at Stage 2 so as to fully cover the four missing provisions we have outlined above. We note that the Government itself took this approach when transferring some of its own staff to the National Assembly for Wales Commission in 2007. The legislation replicated the relevant TUPE provisions<sup>1</sup> and we see no reason why the same cannot be done for the AGW's staff. We should be very happy to provide you with draft amendments.

We are not seeking any special or favourable treatment by asking for these amendments. We simply want the same protections that apply to other employees in similar situations. This is an issue of fundamental importance to us, and it would give us great confidence if the Assembly were to bring the Audit Bill into line with TUPE protection.

We do hope you and the other members of the PAC will be able to introduce appropriate amendments at Stage 2 of the Bill.

We would be happy to discuss this issue with you if that would be helpful.

Yours sincerely

**Ben Robertson**  
**Chair of the WAO branch of PCS**

**Jeremy Saunders**  
**Chair of the WAO branch of Prospect**

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<sup>1</sup> The National Assembly for Wales (Transfer of Staff to Assembly Commission Scheme) Order 2007, Statutory Instrument 2007 No. 1169.