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STATUTORY INSTRUMENTS

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**2003 No. 418 (N.I. 5)**

**The Audit and Accountability (Northern Ireland) Order 2003**

- - - - - 27th February 2003

*Introductory*

**Title and commencement**

- 1.—(1) This Order may be cited as the Audit and Accountability (Northern Ireland) Order 2003.
- (2) Article 8 comes into operation one week after the day on which this Order is made and the remaining provisions of this Order come into operation on 1st April 2003 (“the commencement date”).
- (3) Articles 3 and 4 do not apply in relation to—
- (a) the audit of accounts for a financial year beginning before the commencement date; or
  - (b) an examination under Article 8 or 9 of the Audit (Northern Ireland) Order 1987 (NI 5) beginning before that date.
- (4) Article 5 (with Schedule 1) and Article 6 do not apply in relation to accounts for a financial year beginning before the commencement date.
- (5) Nothing in Article 7 affects the validity of anything done before the commencement date by a local government auditor appointed under section 74 of the Local Government Act (Northern Ireland) 1972 (as heretofore in force); and anything so done shall have effect as if done by a local government auditor within the meaning of that section (as substituted by Article 7).
- (5) References in this Article to provisions of this Order include references to related amendments and repeals in Schedules 2 and 3.

**Interpretation**

- 2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.
- (2) In this Order—
- “accounts” includes a statement of accounts;
  - “audit”, in relation to accounts, means examine, certify and report on the accounts;
  - “the Comptroller and Auditor General” (except in Article 4(3)(b)) means the Comptroller and Auditor General for Northern Ireland;
  - “the Department” means the Department of Finance and Personnel;
  - “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c.33).

*Status: Point in time view as at 06/04/2008.*

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### *Access to information for purposes of audit or examination*

#### **Access to information for purposes of audit or examination by Comptroller and Auditor General**

- 3.—(1) This Article applies in relation to—
- (a) the audit of the accounts of any body for any year which is carried out by the Comptroller and Auditor General under a statutory provision; and
  - (b) an examination carried out by the Comptroller and Auditor General in respect of a body under Article 8 or 9 of the Audit (Northern Ireland) Order 1987 (NI 5) (examination into economy, efficiency and effectiveness).
- (2) For the purposes of such an audit or examination—
- (a) the Comptroller and Auditor General shall have a right of access to any relevant documents; and
  - (b) a person who holds, has control of or is accountable for any of those documents shall give the Comptroller and Auditor General any assistance, information or explanation which he requires in relation to any of those documents.
- (3) In relation to the audit of the accounts of any body for a year, “relevant documents” are documents which relate to the accounts of the body for that year and are held or controlled—
- (a) by the body itself;
  - (b) in pursuance of arrangements made by the body for the compiling or handling of any of its financial records;
  - (c) by a person who at any time in that year has received financial assistance from the body by means of—
    - (i) a grant;
    - (ii) a loan;
    - (iii) a guarantee; or
    - (iv) the taking of an interest in any property or body corporate; or
  - (d) by a person who at any time in that year—
    - (i) has supplied goods or services to the body in pursuance of a contract with the body; or
    - (ii) has been a sub-contractor in relation to such a contract.
- (4) In relation to an examination carried out in respect of a body, “relevant documents” are documents which relate to the use of resources by the body in discharging its functions and are held or controlled—
- (a) by the body itself;
  - (b) in pursuance of arrangements made by the body for the compiling or handling of any of its financial records;
  - (c) by a person who at any time has received financial assistance from the body by means of—
    - (i) a grant;
    - (ii) a loan;
    - (iii) a guarantee; or
    - (iv) the taking of an interest in any property or body corporate; or
  - (d) by a person who at any time—

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(i) has supplied goods or services to the body in pursuance of a contract with the body;  
or

(ii) has been a sub-contractor in relation to such a contract.

(5) The Department may by order provide for this Article to apply in relation to documents (in addition to relevant documents)—

(a) of a specified description; or

(b) which are held or controlled either by a person of a specified kind or in specified circumstances.

(6) An order under paragraph (5) may apply—

(a) in respect of audits or examinations or both;

(b) in respect of any particular body or bodies or in respect of all bodies generally.

(7) In determining whether and if so how to exercise its powers under paragraph (5), the Department shall have regard to any views expressed by the Public Accounts Committee of the Assembly.

(8) An order under paragraph (5) shall not be made unless—

(a) the Department has consulted the Comptroller and Auditor General; and

(b) a draft of the order has been laid before, and approved by resolution of the Assembly.

(9) This Article applies in relation to—

(a) the audit of the accounts of a person holding a statutory office as it applies in relation to the audit of the accounts of a body; and

(b) an examination carried out in respect of such a person as it applies in relation to an examination carried out in respect of a body.

(10) In this Article and Article 4—

“document” includes anything in which information is recorded in any form;

“examination” means an examination under Article 8 or 9 of the Audit (Northern Ireland) Order 1987 (NI 5).

#### **Modifications etc. (not altering text)**

**C1** Art. 3 applied by 2000 (c. 32), s. 29(3) (as substituted (12.4.2010) by by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 5, **Sch. 3 para. 56(b)** (with arts. 28-31)); S.I. 2010/977, **art. 1(2)**

**C2** Art. 3 applied by 2000 (c. 32), s. 30(4) (as substituted (12.4.2010) by by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 5, **Sch. 3 para. 57(5)** (with arts. 28-31)); S.I. 2010/977, **art. 1(2)**

#### **Access to documents of third parties: restrictions and exclusions**

**4.—(1)** The Comptroller and Auditor General shall not for the purposes of any audit or examination exercise any right conferred by Article 3 in relation to a person mentioned in paragraph (3)(c) or (d) or (as the case may be) (4)(c) or (d) of that Article unless he determines—

(a) that it is necessary to do so for the proper conduct of the audit or examination; and

(b) that, in the circumstances of the case, it is reasonable to do so.

(2) Paragraphs (3)(c) and (4)(c) of Article 3 do not apply in relation to any payment made to an individual under—

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- (a) any legislation to which section 87 of the Northern Ireland Act 1998 (c.47) applies for the time being (social security, child benefit and pensions legislation);
  - (b) the Employment and Training Act (Northern Ireland) 1950 (c.29); or
  - (c) any other statutory provision prescribed by order made by the Department subject to negative resolution.
- (3) Paragraphs (3)(c) and (d) and (4)(c) and (d) of Article 3 do not authorise access to the documents held or controlled by—
- (a) any department or Minister of the Government of the United Kingdom; or
  - (b) any other body whose accounts are required under any statutory provision to be audited by the Comptroller and Auditor General appointed under section 6 of the Exchequer and Audit Departments Act 1866 (c.39).

### *[<sup>F1</sup>Data matching*

**F1** Arts. 4A-4H and preceding cross-heading inserted (1.3.2008 for preceding cross-heading and Art. 4G(1)(3)(4) otherwise 6.4.2008) by [Serious Crime Act 2007 \(c. 27\)](#), ss. 73, 94(1), [Sch. 7 para. 6](#); [S.I. 2008/219, art. 3\(j\)](#); [S.I. 2008/755, art. 16\(a\)](#)

#### **Power to conduct data matching exercises**

**4A.**—(1) The Comptroller and Auditor General may conduct data matching exercises or arrange for them to be conducted on his behalf.

(2) A data matching exercise is an exercise involving the comparison of sets of data to determine how far they match (including the identification of any patterns and trends).

(3) The power in paragraph (1) is exercisable for the purpose of assisting in the prevention and detection of fraud.

(4) That assistance may, but need not, form part of an audit.

(5) A data matching exercise may not be used to identify patterns and trends in an individual's characteristics or behaviour which suggest nothing more than his potential to commit fraud in the future.

(6) In Articles 4B to 4H, reference to a data matching exercise is to an exercise conducted or arranged to be conducted under this Article.

#### **Mandatory provision of data**

**4B.**—(1) The Comptroller and Auditor General may require—

- (a) any body mentioned in paragraph (2); and
- (b) any officer or member of such a body,

to provide the Comptroller and Auditor General or a person acting on his behalf with such data (and in such form) as the Comptroller and Auditor General or that person may reasonably require for the purpose of conducting data matching exercises.

(2) The bodies are—

- (a) any body (including a holder of a statutory office) whose accounts are required to be audited by the Comptroller and Auditor General, other than a body whose accounts are required to be so audited by virtue of section 55 of the Northern Ireland Act 1998 (c. 47);
- (b) any body whose accounts are required to be audited by a local government auditor.

(3) A person who without reasonable excuse fails to comply with a requirement of the Comptroller and Auditor General under paragraph (1)(b) is guilty of an offence and liable on summary conviction—

- (a) to a fine not exceeding level 3 on the standard scale; and
- (b) to an additional fine not exceeding £20 for each day on which the offence continues after conviction for that offence.

(4) If an officer or member of a body is convicted of an offence under paragraph (3), any expenses incurred by the Comptroller and Auditor General in connection with proceedings for the offence, so far as not recovered from any other source, are recoverable from that body.

### **Voluntary provision of data**

**4C.**—(1) If the Comptroller and Auditor General thinks it appropriate to conduct a data matching exercise using data held by or on behalf of a body or person not subject to Article 4B, the data may be disclosed to the Comptroller and Auditor General or a person acting on his behalf.

(2) A disclosure under paragraph (1) does not breach—

- (a) any obligation of confidence owed by a person making the disclosure; or
- (b) any other restriction on the disclosure of information (however imposed).

(3) But nothing in this Article authorises a disclosure which—

- (a) contravenes the Data Protection Act 1998 (c. 29); or
- (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).

(4) Data may not be disclosed under paragraph (1) if the data comprise or include patient data.

(5) “Patient data” means data relating to an individual which are held for any of the following purposes and from which the individual can be identified—

- (a) preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of health and social care services;
- (b) informing individuals about their physical or mental health or condition, the diagnosis of their condition or their care and treatment.

(6) This Article does not limit the circumstances in which data may be disclosed apart from this Article.

(7) Data matching exercises may include data provided by a body or person outside Northern Ireland.

### **Disclosure of results of data matching etc**

**4D.**—(1) This Article applies to the following information—

- (a) information relating to a particular body or person obtained by or on behalf of the Comptroller and Auditor General for the purpose of conducting a data matching exercise;
- (b) the results of any such exercise.

(2) Information to which this Article applies may be disclosed by or on behalf of the Comptroller and Auditor General if the disclosure is—

- (a) for or in connection with a purpose for which the data matching exercise is conducted;
- (b) to a body mentioned in paragraph (3) (or a related party) for or in connection with a function of that body corresponding or similar to the audit functions of the Comptroller and Auditor General or a local government auditor under any statutory provision or the data matching functions of the Comptroller and Auditor General under Article 4A; or

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- (c) in pursuance of a duty imposed by or under a statutory provision.
- (3) The bodies are—
- (a) the Audit Commission for Local Authorities and the National Health Service in England;
  - (b) the Auditor General for Wales;
  - (c) the Auditor General for Scotland;
  - (d) the Accounts Commission for Scotland;
  - (e) Audit Scotland.
- (4) “Related party”, in relation to a body mentioned in paragraph (3), means—
- (a) a body or person acting on its behalf;
  - (b) a body whose accounts are required to be audited by it or by a person appointed by it;
  - (c) a person appointed by it to audit those accounts.
- (5) If the data used for a data matching exercise include patient data—
- (a) paragraph (2)(a) applies only so far as the purpose for which the disclosure is made relates to a relevant NHS body;
  - (b) paragraph (2)(b) applies only so far as the function for or in connection with which the disclosure is made relates to such a body.
- (6) In paragraph (5)—
- (a) “patient data” has the same meaning as in Article 4C;
  - (b) “relevant NHS body” means—
    - (i) a body to which Article 90 of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14) applies;
    - (ii) a health service body as defined in section 53(1) of the Audit Commission Act 1998 (c. 18);
    - (iii) a Welsh NHS body as defined in section 60 of the Public Audit (Wales) Act 2004 (c. 23);
    - (iv) an NHS body as defined in section 22(1) of the Community Care and Health (Scotland) Act 2002 (asp 5).
- (7) Information disclosed under paragraph (2) may not be further disclosed except—
- (a) for or in connection with the purpose for which it was disclosed under sub-paragraph (a) or the function for which it was disclosed under sub-paragraph (b) of that paragraph;
  - (b) for the investigation or prosecution of an offence (so far as the disclosure does not fall within sub-paragraph (a)); or
  - (c) in pursuance of a duty imposed by or under a statutory provision.
- (8) Except as authorised by paragraphs (2) and (7), a person who discloses information to which this Article applies is guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both; or
  - (b) on summary conviction, to imprisonment for a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both.
- (9) Article 27 of the Local Government (Northern Ireland) Order 2005 (NI 18) does not apply to information to which this Article applies.
- (10) In this Article “body” includes office.

## **Publication**

**4E.**—(1) Nothing in Article 4D prevents the Comptroller and Auditor General from publishing a report on a data matching exercise (including on the results of the exercise).

(2) But the report may not include information relating to a particular body or person if—

- (a) the body or person is the subject of any data included in the data matching exercise;
- (b) the body or person can be identified from the information; and
- (c) the information is not otherwise in the public domain.

(3) A report published under this Article may be published in such manner as the Comptroller and Auditor General considers appropriate for bringing it to the attention of those members of the public who may be interested.

(4) This Article does not affect any powers of the Comptroller and Auditor General or a local government auditor where the data matching exercise in question forms part of an audit carried out by either of them.

## **Fees for data matching**

**4F.**—(1) The Comptroller and Auditor General may charge a fee to any body required under Article 4B(1) to provide data for a data matching exercise.

(2) But a body whose functions are discharged on behalf of the Crown may not be charged a fee under paragraph (1) except with the consent of the Department.

(3) In addition to the power under paragraph (1), the Comptroller and Auditor General may charge a fee to any other body or person providing data for or receiving the results of a data matching exercise, such fee to be payable in accordance with terms agreed between the Comptroller and Auditor General and that body or person.

(4) Any fee received by the Comptroller and Auditor General by virtue of this Article is to be paid by him into the Consolidated Fund.

## **Code of data matching practice**

**4G.**—(1) The Comptroller and Auditor General must prepare, and keep under review, a code of practice with respect to data matching exercises.

(2) Regard must be had to the code in conducting and participating in any such exercise.

(3) Before preparing or altering the code, the Comptroller and Auditor General must consult the bodies mentioned in Article 4B(2), the Information Commissioner and such other bodies or persons as he thinks fit.

(4) The Comptroller and Auditor General must—

- (a) send a copy of the code, and of any alterations made to the code, to the Department and the Department must lay the copy before the Assembly; and
- (b) from time to time publish the code as for the time being in force.

## **Powers of the Department**

**4H.**—(1) The Department may by order amend Articles 4A to 4G—

- (a) to add any purpose mentioned in paragraph (2) to the purposes for which data matching exercises may be conducted;
- (b) to modify the application of those Articles in relation to a purpose so added.

(2) The purposes which may be added are—

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- (a) to assist in the prevention and detection of crime (other than fraud);
  - (b) to assist in the apprehension and prosecution of offenders;
  - (c) to assist in the recovery of debt owing to public bodies.
- (3) The Department may by order amend Articles 4A to 4G—
- (a) to add a public body to the list of bodies in Article 4B(2);
  - (b) to modify the application of those Articles in relation to a body so added;
  - (c) to remove a body from that list.
- (4) An order under this Article may include such incidental, consequential, supplemental or transitional provision as the Department thinks fit.
- (5) An order under this Article is subject to affirmative resolution.
- (6) In this Article “public body” means a body or person whose functions—
- (a) are functions of a public nature; or
  - (b) include functions of that nature,
- but, in the latter case, the body or person is a public body to the extent only of those functions.]

### *Reorganisation of audit arrangements*

#### **Additional bodies whose annual accounts are to be subject to audit by the Comptroller and Auditor General**

5.—(1) The Comptroller and Auditor General shall examine, certify and report on the annual statement of accounts of the following bodies—

- (a) the Council for Catholic Maintained Schools;
- (b) Enterprise Ulster;
- (c) the Fire Authority for Northern Ireland;
- (d) the Fisheries Conservancy Board for Northern Ireland;
- (e) the General Consumer Council for Northern Ireland;
- (f) the Governors of the Armagh Observatory and Planetarium;
- (g) the Health and Safety Executive for Northern Ireland;
- (h) industrial training boards;
- (i) the Labour Relations Agency;
- (j) the Laganside Corporation;
- (k) the Livestock and Meat Commission for Northern Ireland;
- (l) the Mental Health Commission for Northern Ireland;
- (m) the Northern Ireland Housing Executive.

#### *Para. (2)—Amendments*

(3) The Department may by order provide for the accounts of any other body to be audited by the Comptroller and Auditor General.

- (4) An order under paragraph (3)—
- (a) may be made in relation to a body only if it appears to the Department that the body exercises functions of a public nature or is entirely or substantially funded from public money; and
  - (b) may make such supplementary or consequential provision (including provision amending a statutory provision) as the Department thinks necessary or expedient.



(5) In determining whether and if so how to exercise its powers under paragraph (3), the Department shall have regard to any views expressed by the Public Accounts Committee of the Assembly.

(6) An order under paragraph (3) shall not be made unless—

- (a) the Department has consulted the Comptroller and Auditor General; and
- (b) a draft of the order has been laid before, and approved by resolution of, the Assembly.

### **Reorganisation of health and personal social services audit**

**6.** For Articles 90 to 92A of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14) (accounts and audit of health and personal social services bodies) there shall be substituted—

#### **“Accounts and audit: health and personal social services bodies**

**90.**—(1) Each body to which this Article applies shall—

- (a) keep proper accounts and proper records in relation to the accounts; and
- (b) prepare a statement of accounts in respect of each financial year.

(2) The statement of accounts shall—

- (a) be in such form; and
- (b) contain such information,

as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) Each body to which this Article applies shall, within such period after the end of each financial year as the Department may direct, send copies of the statement of accounts relating to that year to—

- (a) the Department; and
- (b) the Comptroller and Auditor General for Northern Ireland.

(4) The Comptroller and Auditor General shall—

- (a) examine, certify and report on every statement of accounts sent to him under this Article; and
- (b) send a copy of his report to the Department.

(5) The Department shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.

(6) This Article applies to—

- (a) Health and Social Services Boards;
- (b) the Agency;
- (c) special agencies; and
- (d) HSS trusts.

#### **Accounts of endowments and other property held on trust**

**91.**—(1) Each body to which this Article applies shall—

- (a) keep proper accounts of endowments and other property held on trust by the body and proper records in relation to the accounts; and
- (b) prepare a statement of those accounts in respect of each financial year.

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(2) The statement of accounts shall—

- (a) be in such form; and
- (b) contain such information,

as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) Each body to which this Article applies shall, within such period after the end of each financial year as the Department may direct, send copies of the statement of accounts relating to that year to—

- (a) the Department; and
- (b) the Comptroller and Auditor General for Northern Ireland.

(4) The Comptroller and Auditor General shall—

- (a) examine, certify and report on every statement of accounts sent to him under this Article; and
- (b) send a copy of his report to the Department.

(5) The Department shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.

(6) This Article applies to—

- (a) Health and Social Services Boards;
- (b) special agencies;
- (c) HSS trusts; and
- (d) the trustees for an HSS trust appointed in pursuance of Article 16 of the 1991 Order.”.

**Reorganisation of local government audit**

7. <sup>F2</sup>.....

**F2** Art. 7 repealed (1.4.2006) by [Local Government \(Northern Ireland\) Order 2005 \(S.I. 2005/1968 \(N.I. 18\)\)](#), arts. 1(2), 28(8), Sch. 1; [S.R. 2006/151](#), [art. 2](#), Sch. (with art. 4)

**Transfer of staff to Northern Ireland Audit Office**

8.—(1) This Article applies to any person who immediately before the transfer date—

- (a) is employed by the Department of the Environment wholly or mainly for the purposes of section 74 of the Local Government Act (Northern Ireland) 1972 (c.9) and is designated by an order made by that Department for the purposes of this Article; or
- (b) is employed by the Department of Health, Social Services and Public Safety wholly or mainly for the purposes of Article 90 or 91 of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14) and is designated by an order made by that Department for the purposes of this Article.

(2) A contract of employment between a person to whom this Article applies and the relevant employer shall have effect from the transfer date as if originally made between that person and the Comptroller and Auditor General.

(3) Without prejudice to paragraph (2)—

- (a) all the relevant employer's rights, powers, duties and liabilities under or in connection with the contract shall by virtue of this Article be transferred to the Comptroller and Auditor General on the transfer date; and
- (b) anything done before that date by or in relation to the relevant employer in respect of that contract or the employee shall be deemed from that date to have been done by or in relation to the Comptroller and Auditor General.

(4) Paragraphs (2) and (3) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs the relevant employer that he objects to the transfer.

(5) Where an employee objects as mentioned in paragraph (4), his contract of employment with the relevant employer is terminated immediately before the transfer date, but he shall not be treated, for any purpose, as having been dismissed by the relevant employer.

(6) This Article does not prejudice any right of the employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions, but no such right shall arise by reason only of the change of employer effected by this Article unless the employee shows that, in all the circumstances, the change is a significant change and to his detriment.

(7) An order under paragraph (1) may designate a person either individually or as a member of a class or description of employees.

(8) Before making any order under paragraph (1) the relevant employer shall consult—

- (a) in the case of an order designating a person individually, that person; and
- (b) in the case of an order designating a class or description of employees, such persons as appear to the relevant employer to be representative of the class or description of employees concerned.

(9) The Statutory Rules (Northern Ireland) Order 1979 (NI 12) shall not apply to any order made under paragraph (1).

(10) This Article applies to a person who is employed in the civil service of Northern Ireland otherwise than under a contract of employment as if the terms and conditions of his employment constituted a contract of employment.

(11) In this Article—

“relevant employer”

- (a) in relation to a person to whom this Article applies by virtue of paragraph (1)(a), means the Department of the Environment; and
- (b) in relation to a person to whom this Article applies by virtue of paragraph (1)(b), means the Department of Health, Social Services and Public Safety;

“the transfer date” means 1st April 2003.

*Article 9—Amendments and repeals*

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*Schedule 1—Amendments*

*Schedule 2—Amendments*

*Schedule 3—Repeals*

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