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STATUTORY INSTRUMENTS

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**2005 No. 1018**

**PUBLIC AUDIT, ENGLAND AND WALES  
FREEDOM OF INFORMATION**

**The Public Audit (Wales) Act 2004 (Relaxation  
of Restriction on Disclosure) Order 2005**

*Made - - - - 23rd March 2005*

*Coming into force in accordance with article 1*

Whereas a draft of this Order has been approved by resolution of each House of Parliament in pursuance of section 54(8) of the Public Audit (Wales) Act 2004<sup>(1)</sup> (“the Act”);

Whereas section 49 of the Audit Commission Act 1998<sup>(2)</sup> has been amended, in the Session after that in which the Act was passed, by the Freedom of Information (Removal and Relaxation of Statutory Prohibitions on Disclosure of Information) Order 2004<sup>(3)</sup> (“the Freedom of Information Order”);

Whereas the Secretary of State thinks that the amendments to be made by this Order will have the same effect as the amendments to section 49 of the Audit Commission Act 1998 made by the Freedom of Information Order;

Whereas the Secretary of State is satisfied that this Order does not have the effect of imposing any further restriction on the disclosure of information under section 54 of the Act;

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by subsections (6) and (7) of section 54 of the Act, hereby makes the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as The Public Audit (Wales) Act 2004 (Relaxation of Restriction on Disclosure) Order 2005.

(2) This Order shall come into force immediately before subsections (1) and (2) of section 54 of the Act come into force.

(3) In this Order, “the Act” means the Public Audit (Wales) Act 2004.

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(1) [2004 c. 23](#)  
(2) [1998 c. 18](#)  
(3) [S.I.2004/3363](#)

## Amendments to the Act

2.—(1) Section 54 of the Act is amended as follows—

(2) In subsection (2), omit paragraph (f).

(3) After subsection (2), insert –

“(2A) Subsection (2) does not apply in relation to disclosure by a person who is, or acts on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000 (c. 36).”.

(4) After section 54 of the Act, insert –

### “Disclosure of information by or on behalf of public authorities

**54A.**—(1) This section applies if information relating to a particular body or other person is obtained by the Auditor General for Wales or an auditor, or by a person acting on behalf of the Auditor General for Wales or an auditor—

- (a) pursuant to a provision of this Part or of Part 1 of the Local Government Act 1999 (c. 27), or
- (b) in the course of an audit, study or inspection under a provision of this Part, section 145C of the Government of Wales Act 1998 (c. 38) or Part 1 of the Local Government Act 1999.

(2) A person who is, or acts on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000 (c. 36), may disclose any such information –

- (a) in the circumstances in which he would (but for section 54(2A)) be authorised to do so under section 54(2);
- (b) in accordance with section 145C(5) or (8) of the Government of Wales Act 1998; or
- (c) in any other circumstances, except where such a disclosure would, or would be likely to, prejudice the effective performance by such a person of a function imposed or conferred on the person by or under an enactment.

(3) A person mentioned in subsection (2) who discloses any such information otherwise than as authorised by subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum.”

23rd March 2005

*Peter Hain*  
Secretary of State for Wales

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Section 54 of the Public Audit (Wales) Act 2004 (“the Act”) contains restrictions on disclosure of information. It is a criminal offence to breach those restrictions. The restrictions closely reflect the provisions of section 49 of the Audit Commission Act 1998 (“the Audit Commission Act”), thus maintaining consistency between England and Wales as regards criminal sanctions imposed by primary legislation.

Section 54(6) - (8) gives the Secretary of State the power to amend or repeal the preceding provisions of the section. The power can be used only if section 49 of the Audit Commission Act has already been amended or repealed, and only for the purpose of making equivalent changes to section 54 of the Act. It cannot be used to impose any further restriction on the disclosure of information under section 54.

Section 49 of the Audit Commission Act has been amended, since the Act was passed, by the Freedom of Information (Removal and Relaxation of Statutory Prohibitions on Disclosure of Information) Order 2004 (“the Freedom of Information Order”). Article 2 of the present Order amends section 54 of the Act in a manner which has the same effect as the amendments to section 49 of the Audit Commission Act.

Article 2(3) removes public authorities (within the meaning of the Freedom of Information Act 2000), or persons acting on their behalf, from the ambit of the restriction on the disclosure of information contained in section 54. Article 2(4) then inserts a new section 54A into the Act, dealing with the disclosure of information by or on behalf of such public authorities.

Like section 54, the new section applies only to information obtained by the Auditor General for Wales, or an auditor (as defined in section 59(2) of the Act), pursuant to a provision of Part 2 of the Act (local government bodies in Wales) or Part 1 of the Local Government Act 1999 (Best Value), or in the course of an audit, study or inspection under any of those provisions or under section 145C of the Government of Wales Act 1998 (studies relating to registered social landlords). The new section 54A(2)(a) and (b) preserves the ability of public authorities within the meaning of the Freedom of Information Act 2000 (“FOI Act public authorities”), and persons acting on their behalf, to disclose such information in the circumstances in which they were, before the making of this Order, able to disclose it by virtue of section 54(2). In addition, section 54A(2)(c) allows disclosure, by FOI Act public authorities and persons acting on their behalf, in any other circumstances, except where disclosure would or would be likely to prejudice the performance by any such person of their statutory functions.

If an FOI Act public authority (or person acting on its behalf) discloses information in circumstances not authorised by paragraphs (a) – (c) of that section 54A(2), that person is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum.