

Consideration of proposals to amend the Public Audit (Wales) Act 2013

December 2019



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

An electronic copy of this document can be found on the National Assembly website: www.assembly.wales/SeneddFinance

Copies of this document can also be obtained in accessible formats including Braille, large print, audio or hard copy from:

Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: **0300 200 6565**

Email: **SeneddFinance@assembly.wales**

Twitter: **[@SeneddFinance](https://twitter.com/SeneddFinance)**

© National Assembly for Wales Commission Copyright 2019

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.

Consideration of proposals to amend the Public Audit (Wales) Act 2013

December 2019



About the Committee

The Committee was established on 22 June 2016. Its remit can be found at:
www.assembly.wales/SeneddFinance

Committee Chair:



Llyr Gruffydd AM
Plaid Cymru

Current Committee membership:



Rhun ap Iorwerth AM
Plaid Cymru



Alun Davies AM
Welsh Labour



Mike Hedges AM
Welsh Labour



Rhianon Passmore AM
Welsh Labour



Nick Ramsay AM
Welsh Conservatives



Mark Reckless AM
Brexit Party

Contents

Chair’s Foreword	5
Conclusions	6
1. Legislative background	9
2. Background	13
3. Fee charging	18
4. Agreement work	34
5. Quorum arrangements	40
6. Interim reports	48
7. Laying reports and accounts	53
8. Certification deadlines	56
9. Issues relating to the responsibilities of the National Assembly for Wales	61
10. Issues with wider public audit legislation in Wales	74
11. Non-statutory issues	88
Annex	93

Chair's Foreword

The Finance Committee agreed to undertake post-legislative scrutiny of the Public Audit (Wales) Act 2013 following repeated calls from the Wales Audit Office (WAO), and the previous and current Auditor Generals for Wales, to consider amending certain provisions of the Act.

We felt it was an appropriate time to review the operation of the legislation, five years after its enactment. Indeed, given the Committee's own role in overseeing aspects of the legislation, we welcomed the opportunity to reflect on the provisions placed on the Assembly.

As well as targeting the WAO and Auditor General for Wales, we were keen to engage with audit offices across the UK, the Welsh Government, professional audit bodies and organisations audited by the WAO. Whilst we heard that many aspects of the legislation work effectively, we were persuaded by the evidence received that certain provisions are overly complex, costly to administer or disproportionate.

We have concluded that revisions to the legislation are required in order to improve the efficiency of functions carried out by both the WAO and the Assembly. We will now consult on our proposals for legislative change, set out in the Committee's draft Bill accompanying this report.

It is our intention that, should the evidence we receive in response to this consultation support the legislative changes, the Committee will consider introducing a Committee Bill in this Assembly.

I would like to thank everybody who has given up their time to shape our post-legislative scrutiny of the Public Audit (Wales) Act 2013. The expertise and invaluable advice we have received has assisted us in developing the draft Bill and we now [invite further contributions](#) on our draft legislative proposals.

Llyr Gruffydd AM
Chair of the Finance Committee

Conclusions

Conclusion 1. The Committee supports revisions to the Public Audit (Wales) Act 2013 and will consult on a Draft Bill (see annex), with a view to introducing it in this Assembly..... Page 17

Conclusion 2. The Committee is persuaded by the evidence supporting revisions to the current fee charging provisions and proposes amending the Public Audit (Wales) Act 2013 to:..... Page 32

Conclusion 3. Whilst supportive of less rigid fee provisions, the Committee is mindful of the need for transparency and would expect the Wales Audit Office to clearly define the parameters of a more flexible fee charging regime for audited bodies and the Committee, as part of its annual fee scheme..... Page 32

Conclusion 4. The Committee believes that the requirement for fees to be paid by the body to which the function relates should be retained, in order to ensure transparency for audited bodies, effective engagement in the audit and to maintain the relationship between the auditor and audited body..... Page 33

Conclusion 5. The Committee supports the Auditor General for Wales and Wales Audit Office’s proposal to set its own terms and conditions for agreement work and earn additional reasonable fees to reinvest in the organisation or surrender to the Welsh Consolidated Fund, subject to sufficient safeguards being in place to protect its statutory work and prevent conflicts of interests. Page 38

Conclusion 6. The Committee proposes amending the Public Audit (Wales) Act 2013 to remove the link between agreement work and the fee scheme to allow the Wales Audit Office to set its own terms and conditions..... Page 39

Conclusion 7. As part of its oversight and governance role, the Committee will expect the WAO to keep it apprised of how the new quorum arrangements operate in practice. The Committee has concluded that the quorum requirement of a non-executive member majority should be retained in legislation to ensure independent oversight and provide constructive challenge to the executive directors. However, the Committee suggests that paragraph

28(3) of Schedule 1 of the Public Audit (Wales) Act 2013 is amended to allow executive members to remain at the meeting in a non-voting capacity when there is a not a majority of non-executive Members present..... Page 46

Conclusion 8. The Committee suggests that the requirement in paragraph 3(3) of Schedule 2 of the Public Audit (Wales) Act 2013, to produce an interim report at least once a year, is replaced with a provision requiring the production of an interim report (as currently defined) if requested by the Assembly..... Page 51

Conclusion 9. The Committee agrees that the provisions in the Public Audit (Wales) Act 2013 in relation to laying the annual report and accounts should be simplified to enable:..... Page 55

Conclusion 10. The Committee suggests that existing enactments that specify a four month deadline for the Auditor General for Wales to certify and lay a copy of an audited body's accounts and report should be amended to:..... Page 59

Conclusion 11. The Committee proposes amending the Public Audit (Wales) Act 2013 to allow the Wales Audit Office to appoint its external auditors, subject to the Assembly's approval of:..... Page 63

Conclusion 12. The Committee proposes amending the Public Audit (Wales) Act 2013 to allow the appointment of a serving non-executive member to be extended for a second term of up to four years. Page 67

Conclusion 13. The Committee has concluded that the requirements placed on the Assembly to consult: the First Minister on the appointment of the Chair of the Wales Audit Office; the remuneration arrangements for the Chair and the Auditor General for Wales; and the termination of the Chair's appointment should be removed in the interest of protecting the independence of those roles. Page 72

Conclusion 14. In the absence of the non-executive WAO Board appointments being regulated by the Commissioner for Public Appointments, the Committee has concluded that the requirement to consult "an appropriate person with oversight for public appointments" on remuneration arrangements and other terms of appointment for WAO non-executive members and the Chair should be

removed and replaced with a general provision permitting the Assembly to consult with any persons it deems appropriate..... Page 72

Conclusion 15. The Committee suggests that section 5(3) of the Public Audit (Wales) Act 2013 is amended to require the Assembly to publish a list of restricted offices, positions or arrangements, which a former Auditor General for Wales would need to consult with the Assembly before accepting or entering into after leaving office, only if any such restrictions are identified..... Page 72

Conclusion 16. The Committee is not minded to take forward proposals relating to wider public audit legislation in Wales in this Draft Bill, as this is a substantial piece of work, but it is willing to accept further evidence on these matters as part of its consultation on the Draft Bill.....Page 86

1. Legislative background

Legislation relating to the Auditor General for Wales and Wales Audit Office

The Government of Wales Act 1998

1. The Government of Wales Act 1998 (GOWA 1998) established the National Assembly for Wales (the Assembly) and the office of the Auditor General for Wales (AGW). **Under GOWA 1998, the AGW became the external auditor of the Assembly and its sponsored and related public bodies** (except for the annual audit of local NHS bodies and local authorities) and was empowered to undertake economy, efficiency and effectiveness examinations. At this point, the National Audit Office (NAO) undertook this work for the AGW on a statutory basis. The Audit Commission continued to appoint auditors of, and undertake studies of, NHS and local government bodies in Wales. Its work was extended when it acquired inspection powers under the Local Government Act 1999.

The Public Audit (Wales) Act 2004

2. The Public Audit (Wales) Act 2004 (PAWA 2004), which came into effect on 1 April 2005, **extended the AGW's remit to include the audit of NHS bodies in Wales and the local government audit and inspection functions previously exercised by the Audit Commission in Wales**. The PAWA 2004 also provided for the transfer of the NAO and the Audit Commission staff based in Wales to the AGW's employment to create the Wales Audit Office (WAO).

The Public Audit (Wales) Act 2013

3. In 2013 the Assembly passed the Public Audit (Wales) Act 2013 (PAWA 2013), which established new responsibilities for the AGW to directly audit the accounts of local government bodies in Wales. It also **established the WAO as a body corporate and prescribed governance arrangements for both the AGW and the WAO**, and the relationship between the two. The majority of the provisions of PAWA 2013 were commenced on 1 April 2014.

Development of the Public Audit (Wales) Act 2013

4. When the Public Audit (Wales) Bill (PAW Bill) was introduced, the (then) Minister for Finance and Leader of the House stated:

“The Bill fulfils a commitment made by the First Minister in his legislative statement in July last year to consider strengthening and improving the governance, accountability and oversight arrangements relating to the Auditor General for Wales. That commitment stemmed from the professional behaviour and practice of a former auditor general. The absence of clear governance and accountability was a significant contributory factor in allowing the then auditor general to override his office’s control systems. The resultant reputational damage caused by those activities to an important public office was considerable.”¹

5. The Explanatory Memorandum (EM) to the PAW Bill detailed the reason for its development:

“The Welsh Government and the Assembly had concerns about the management, governance and accountability arrangements relating to the AGW and his or her Office. These concerns arose principally from the way in which a previous AGW undertook aspects of his duties which highlighted a lack of robust external accountability. In addition, concerns were raised as to the way in which the AGW worked with other bodies and applied the public resources made available to him in support of his functions and the running of the WAO.”²

6. The Public Accounts Committee (PAC) of the Third Assembly reported³ on issues with a previous AGW and in the EM to the PAW Bill, the Welsh Government identified three main areas of concern:

¹ [Plenary, Record of Proceedings, 10 July 2012](#)

² [Public Audit \(Wales\) Bill, Explanatory Memorandum, paragraph 11](#)

³ [Public Accounts Committee: Accounting, governance and propriety issues at the Wales Audit Office, March 2011](#)

- **Accounting Issues:** The Welsh Government outlined a range of failures, including accounts not complying with the Financial Reporting Manual (FRoM); expenditure on early retirement settlements; pension entitlements; and other cash received from the public purse, which had not been fully accounted for.
- **Propriety Issues:** A report tabled by the AGW at the time (Huw Vaughan Thomas), for discussion at the PAC set out that his predecessor concealed information wilfully from his Audit Risk and Management Committee and senior AGW staff. In addition, in its 2011 report⁴ the PAC at the time concluded that the previous AGW had misled the Assembly and that his actions amounted to misbehaviour for the purposes of paragraph 2(3) of Schedule 8 to the 2006 Act (which provided for an AGW's removal from office in such circumstances).
- **Governance Structures:** The AGW's three advisory committees pre-PAWA 2013 (audit risk and management; resources; and remuneration) had no statutory basis. Members of those committees were appointed by the AGW (with input from a nominee of the Chair of the PAC).

7. The PAWA 2013 aimed to address the issues identified and respond to the recommendations of the PAC report, to reduce the prospect of similar difficulties occurring again and provide greater assurance to the Assembly and public. Separation of the duties of the AGW and WAO were seen by the Welsh Government as necessary to achieve those objectives. Therefore, the PAWA 2013 established a new WAO as a body corporate to undertake executive functions, such as being a budget holder, employing staff, and securing the provision of goods and services. It also transferred responsibility for the charging and collection of fee income associated with the AGW's functions to the WAO.

8. As well as strengthening and improving the accountability and governance arrangements relating to the AGW and the WAO, the PAW Bill also sought to protect the AGW's independence and objectivity. As such, the PAWA 2013

⁴ Public Accounts Committee: Accounting, governance and propriety issues at the Wales Audit Office, March 2011

contains various provisions setting out the relationship between the AGW and WAO and with other bodies.

Scrutiny of the Public Audit (Wales) Act 2013

9. The PAW Bill was scrutinised by the PAC of the Fourth Assembly. Its report on the scrutiny of the general principles noted that:

“The majority of respondents expressed support for the general principles of the Bill and the need for legislation in this area, although many had specific concerns about the key provisions in the Bill.”⁵

10. The report went on to say that those supporting the need for legislation said the PAW Bill would strengthen the accountability and governance arrangements for the AGW and WAO and would provide for the Assembly to have an increased role in scrutinising the AGW and WAO’s use of resources. The AGW at the time had concerns about the proposed governance model, including the size and composition of the WAO Board.⁶

11. During the Welsh Government’s consultation⁷ on the draft PAW Bill, responses that provided information on fees focused mainly on how those fees might be set, ensuring fees would be consulted on and whether the power/duty should exist within the legislation. One respondent (Estyn) suggested that costs should be met centrally, removing the need to charge fees. Similarly, the PAC’s consultation exercise during scrutiny of the PAW Bill did not raise specific concerns in this area.

12. The PAWA 2013 received Royal Assent on 29 April 2013.

⁵ Public Accounts Committee, Public Audit (Wales) Bill: Stage 1 Committee Report, November 2012, paragraph 22

⁶ Public Accounts Committee, Public Audit (Wales) Bill: Stage 1 Committee Report, November 2012, page 14

⁷ Consultation Documents available from the Welsh Government Publications Archive: Consultation Summary, Consultation Responses 1-15, Consultation Responses 16-31

2. Background

The role of the Finance Committee

13. The PAWA 2013 confers a number of functions on the Assembly. The functions relating to the oversight of the AGW and WAO have been delegated to the Finance Committee (the Committee). The Committee has considered the operation of the PAWA 2013 due to its role in overseeing aspects of the requirements of that legislation.

14. These responsibilities are set out in Standing Orders 18.10-118 and include exercising functions relating to:

- the estimate of income and expenses and supplementary budget motions for the WAO;
- advising the Assembly on the appointment and removal from office of the AGW or WAO Chair;
- the appointment and removal from office of the non-executive members of the WAO, and the designation of a temporary AGW;
- the remuneration arrangements and other terms of appointment in respect of the AGW, WAO Chair and other non-executive members of the WAO;
- approving the WAO's fee scheme;
- considering and reporting on the Annual Plan, Interim Report, Annual Report and Accounts;
- the appointment of the auditors of the WAO's accounts;
- consideration of reports prepared by the auditors of the WAO's accounts.

⁸ [Standing Orders of the National Assembly for Wales](#)

Scrutiny by the Finance Committee

Fourth Assembly

15. The WAO and the previous AGW began raising concerns regarding the PAWA 2013 with the Finance Committee of the Fourth Assembly, specifically in relation to the fee charging provisions. In November 2014, the previous AGW noted that it had “taken us quite a bit of time this last year to try to get an understanding of what was intended. I have a view that it is an unintended consequence of a drafting error”.⁹

16. The Fourth Assembly Finance Committee’s legacy report made the following recommendations:

Recommendation 24. The Committee recommends that the Public Audit (Wales) Act is amended to clarify the audit fee charging requirements, and in the meantime that the Wales Audit Office comes to a mutual understanding with organisations about what is required in terms of charging, subject to any relevant legal advice.

Recommendation 26. The Committee recommends that any future responsible committee undertakes a post legislative inquiry into the provisions of the Public Audit (Wales) Act and how these have worked in practice, with a view to making recommendations for improvement. The Committee believes the Public Audit (Wales) Act should be operational for five years before this review takes place.¹⁰

Fifth Assembly

17. During its annual scrutiny of the AGW and WAO in November 2017, the Committee considered a paper from the previous AGW and WAO “The complex public audit fee regime in Wales – a case for change”. This set out the previous AGW and WAO’s proposed solutions to issues with the fee regime. They

⁹ Fourth Assembly Finance Committee Record of Proceedings, 6 November 2014, paragraph 18

¹⁰ Fourth Assembly Finance Committee Legacy Report, March 2016, chapter 6

suggested the fee regime was “complicated, time consuming and confusing to many”¹¹.

18. The previous AGW and WAO subsequently provided the Committee with a draft Bill and Explanatory Notes / Memorandum on 21 June 2018.¹² This comprised a series of proposed amendments, principally to the PAWA 2013, to address the AGW and WAO’s concerns relating to that legislation, particularly in relation to fee charging.

The Committee’s approach

19. In January 2019, the Committee agreed to undertake post-legislative scrutiny and consider the case for amending the PAWA 2013, given that it had now been in operation for more than five years.

20. The Committee’s post-legislative scrutiny focussed on two areas:

- To explore issues raised by the AGW and WAO in regard to the PAWA 2013; including:
 - Fee charging;
 - Quorum arrangements of the WAO Board;
 - WAO reporting arrangements;
 - Issues with laying and reporting accounts.
- To consider to what extent other aspects of the PAWA 2013 may benefit from revision.

¹¹ The complex public audit fee regime in Wales – a case for change, October 2017, page 4

¹² Letter from the AGW and WAO, 21 June 2018

21. Evidence was requested from the AGW and WAO as well as other audit offices across the UK, the Welsh Government, professional audit bodies and organisations audited by the AGW. The Committee received six responses to the consultation and subsequently took oral evidence from the following witnesses:

Date	Name and Organisation
13 June 2019	Caroline Gardner, Auditor General for Scotland Diane McGiffen, Chief Operating Officer, Audit Scotland
11 July 2019	Alan Bermingham, Policy Manager, Governments, Chartered Institute for Public Finance and Accountancy
11 July 2019	Huw Thomas, Director of Finance, Hywel Dda University Health Board Lynne Hamilton, Director of Finance, Swansea Bay University Health Board John Rae, Director of Resources, Welsh Local Government Association
11 July 2019	Rebecca Evans AM, Minister for Finance and Trefnydd, Welsh Government Gawain Evans, Finance Director, Welsh Government
17 July 2019	Adrian Crompton, Auditor General for Wales Isobel Everett, Chair of the Wales Audit Office Martin Peters, Head of Law and Ethics, Wales Audit Office Steve O'Donoghue, Director of Finance, Wales Audit Office

22. The Committee also received a private briefing from Assembly Commission officials with overarching responsibility for delivering the duties placed on the Assembly by the PAWA 2013.

Committee view

23. In light of the evidence received during the course of its inquiry, the Committee believes the PAWA 2013 requires revisions in order to improve the efficiency of functions carried out by the WAO and the Assembly. The Committee's conclusions on each of the issues identified during its post-legislative scrutiny of the Act are explored in the remaining chapters of this report.

Conclusion 1. The Committee supports revisions to the Public Audit (Wales) Act 2013 and will consult on a Draft Bill (see annex), with a view to introducing it in this Assembly.

3. Fee charging

Current provisions

The PAWA 2013 established the WAO as a corporate body to monitor and advise the AGW, and to hold and provide resources required for the purposes of the AGW's functions. This included the WAO assuming responsibility for the charging and collection of fee income. The fee charging provisions are set out in sections 23-24 of the PAWA 2013.

Section 23 enables the WAO to charge fees for the audit and audit-related functions carried out by the AGW, and any services provided by the AGW. Fees may only be charged in accordance with a scheme for charging fees prepared by the WAO. The fees charged may not exceed the full cost of exercising the function to which the fee relates (the "no more than full cost" rule) and are payable to the WAO by the person to whom the function being exercised relates.

Section 24 requires the WAO's fee scheme to set out any prescribed amounts or scales of fees under enactments enabling it to charge fees, or the basis for calculating the fee in the absence of such a scale or amount. It also enables Welsh Ministers to prescribe certain scales of fees. The WAO must review its scheme at least once a year and lay its scheme before the Assembly for approval.

These provisions are in addition to existing arrangements, such as the requirement to set and consult on fee scales for the charging of fees to local authorities (section 20 of the PAWA 2004).

Issue

24. The provisions contained in section 23 of the PAWA 2013 are the key element of the AGW and WAO's calls to alter the legislation. Namely, the provision which states that fees charged by the WAO:

“...may not exceed the full cost of exercising the function to which the fee relates.”¹³

25. The AGW and WAO cited two issues caused by this provision:

- “**may not exceed the full cost**” leads to issues where the WAO is required to refund overpayments if the cost of work it undertakes is lower than estimated; and
- “**function**” is not defined in the legislation and the AGW and WAO have interpreted this as relating to each activity they undertake e.g. a performance audit is a different function to an audit of accounts. This means costs cannot be offset in order to mitigate a potential refund.¹⁴

26. The AGW and WAO suggested that this terminology leads to an inefficient system of refunds and necessitates an administratively burdensome process. In their discussion paper “[Simplifying a Complex Fee Regime](#)”, they stated that the issuing of refunds and billing for additional fees at the same body was “commonly occurring”. They estimated that the additional administrative cost of operating the “no more than full cost” rule to be between £27,700 to £47,700 per annum. This relates to internal staffing costs to the WAO, including administering over/under payments, fee discussions with audited bodies and monitoring and managing time related to the “no more than full cost” rule.¹⁵

27. The AGW and WAO noted that the complexity of administration caused by the rule had led to more complaints about the amount of fees audited bodies are being charged and suggested that resolving these complaints takes a “considerable and often disproportionate” amount of time.¹⁶

28. They argued that the “no more than full cost” rule acts as a disincentive to undertake audit work more efficiently:

¹³ [Public Audit \(Wales\) Act 2013, section 23\(5\)\(b\)](#)

¹⁴ [Auditor General for Wales and Wales Audit Office: Proposals for a bill to amend the Public Audit \(Wales\) Act 2013, June 2018, Chapter 3](#)

¹⁵ [Auditor General for Wales and Wales Audit Office: Proposals for a bill to amend the Public Audit \(Wales\) Act 2013, June 2018, Table 2](#)

¹⁶ [Written evidence: Auditor General for Wales and Wales Audit Office](#)

“In short, the rule means that auditors do not benefit from any savings that can be made in audit activity. Indeed, at the individual level such savings may lead to personal loss (e.g. through loss of work), which dampens enthusiasm for efficiency. And the casting of the rule in terms of individual functions (i.e. particular statutory elements of work) at individual bodies, means that there is very extensive record keeping and reconciliation work to be done to ensure that we comply with the rule. This activity is inevitably at the expense of work that adds value.”¹⁷

29. Whilst acknowledging that it is difficult to identify, the AGW and WAO estimated that this disincentive may mean efficiencies in the region of £12,000 per annum are forgone.¹⁸

30. They also argued that operating the “no more than full cost” rule in respect of individual functions increases the administrative complexity, as several functions are generally undertaken at each body, leading to multiple instances where a fee may need to be refunded or increased:

“...the PAWA 2013 does not provide for offsetting, and there is a risk that as soon as it is apparent that a body has been charged more than the full cost of the relevant function, the fee could be held to be unlawful.”¹⁹

Comparison with other audit offices

31. The Comptroller and Auditor General for Northern Ireland outlined the regime in Northern Ireland:

“my Office charges for some but not all of its audit work. The audit fees, which are based on charge out rates calculated by my Office on

¹⁷ [Written evidence: Auditor General for Wales and Wales Audit Office](#)

¹⁸ [Auditor General for Wales and Wales Audit Office: Proposals for a bill to amend the Public Audit \(Wales\) Act 2013, June 2018, paragraph 5.6](#)

¹⁹ [Auditor General for Wales and Wales Audit Office: Proposals for a bill to amend the Public Audit \(Wales\) Act 2013, June 2018, paragraph 3.6](#)

an annual basis, are the actual costs for each of the audits, and are invoiced post-audit completion.”²⁰

32. The Comptroller and Auditor General also explained the mixture of notional and charged fees used in Northern Ireland, noting that some of this is prescribed within the legislation of individual bodies or is by agreement.²¹

33. Audit Scotland is subject to several statutory provisions in the setting of charges, which are set out in the Public Finance and Accountability (Scotland) Act 2000. Section 11(1) of that Act states that “Audit Scotland may impose reasonable charges in respect of the exercise of its functions in connection with” certain functions. Section 11(3) notes:

“In determining the amounts of those charges Audit Scotland must seek to ensure that the total sum received in respect of the charges is, taking one year with another, broadly equivalent to its expenditure...”²²

34. The Auditor General for Scotland described this duty:

“Audit Scotland has a statutory duty... to seek to broadly break even on audit work that is charged for, taking one year with another, either for each audit or for classes of audits. Audit Scotland treats each sector (e.g. local government, health) as a class of audits. Audit fees are set with the objective of recovering the full cost of audit work in each sector.”²³

35. The Auditor General for Scotland suggested that these principles work well, adding:

“...that gives us a mechanism that is close enough to balance what we’re spending on an audit and the income we raise from auditing that sector without having to get into very detailed micro-adjustments for individual bodies year on year that would consume a lot of resource

²⁰ Written evidence: Comptroller and Auditor General for Northern Ireland

²¹ Written evidence: Comptroller and Auditor General for Northern Ireland

²² Public Finance and Accountability (Scotland) Act 2000, Section 11(3)

²³ Written evidence: Auditor General for Scotland

for us for very little benefit for the individual bodies, given the scale of their audit fees.”²⁴

36. The Auditor General for Scotland described the flexibility that Scottish legislation has with the interpretation of the term “class” being taken to mean sectors, which allows the Auditor General for Scotland and Audit Scotland to pool fees across sectors:

“I completely recognise that there may be some large audited bodies in the central belt that are audited by one of the auditors with a lower daily rate, who would see a lower cost as a result of that. But the quid pro quo for that is that there would be other audits further away, with an auditor at the upper end of our range of costs, who would be paying more. We don’t think people should be paying more because of the way we choose to procure the audit. So, we pool costs in that way, and...we reconcile it at the end of each year and make sure the fees are set in the right place overall.”²⁵

37. In comparison, the pooling of costs in Wales is much more limited. Some costs are included in the WAO’s Estimate and accounted for in the funding scrutinised by the Committee and agreed by Assembly and then allocated from the Welsh Consolidated Fund (WCF). For example, travel costs are equalised across audited bodies (the estimated cost of this activity was £300,000 in 2019-20). WCF funding agreed through the Estimate process has also provided funding for preparatory work with audited bodies and for pilots of new ways of working. For example, the Assembly agreed funding for piloting of audit approaches to the Well-being of Future Generations (Wales) Act 2015 through the annual Estimate in 2016.

Proposed solution

The AGW and WAO have proposed a fee regime based around two main principles:

²⁴ Finance Committee, Record of Proceedings, 13 June 2019, paragraphs 298 and 304

²⁵ Finance Committee, Record of Proceedings, 13 June 2019, paragraph 312

- Broadly break even
- Taking one year with another

This would be similar in practice to the statutory requirements in Scotland.

They have suggested that the terminology in the PAWA 2013 be changed to:

“...the WAO must seek to ensure that the sum of the fees charged for all of the work undertaken under the enactments mentioned in subparagraph (a), taken together and taking one year with another, is broadly equivalent to all of its expenditure in connection with that work.”

In addition, the AGW and WAO have proposed removing the requirements for fees to be paid by the person to whom the function being exercised relates, this would potentially enable fees to be pooled costs across sectors.

Evidence

38. The AGW and WAO collated the view of stakeholders on their proposals for fee charging in their paper “the complex public audit fee regime in Wales – a case for change”. This noted that the majority of stakeholders were supportive of simplifying the fee regime – on the basis of assurances around any increase in charges. Respondents were supportive in order to minimise the costs of the service provided by the WAO and on the basis that fee rates must be as transparent as possible (with efficiency savings made wherever possible).

39. The Assembly Commission noted that some of the issues identified with fee charging would not apply to it, as the AGW and WAO only undertake financial audit work of the organisation. Nevertheless, the Assembly Commission indicated that the audit fee generated significant discussion at its Audit and Risk Assurance Committee and confirmed that it had seen some efficiencies and a slightly reduced fee in recent years, as well as some modest refunds.²⁶

40. The Assembly Commission believed clarity and transparency to be the most important aspects of any future fee charging regime. It identified “some

²⁶ Written evidence: Assembly Commission

frustrations in recent years in respect of delays of audit fee estimates being made available”, adding:

“As a client of the AGW and WAO we would welcome a regime which ensured that fee estimates could be communicated in a timely manner to us and that an overview of the calculation and methodology used to arrive at the proposed fee is properly explained by the relevant WAO Engagement Lead.”²⁷

41. The Welsh Local Government Association (WLGA) also echoed the importance of transparency in fees, stating that “for one or two authorities, the fee consultation is reported as being ‘pretty academic’”. The WLGA went on to say that authorities don’t feel they have much influence over fees.²⁸

42. The WLGA noted that it fully supports aligning the WAO’s fee structure to those of other parts of the UK, including the breakeven principle and allowing the WAO to “take one year with another”.²⁹

43. Professional audit bodies were also supportive of the AGW and WAO’s proposal. The Association of Chartered Certified Accountants (ACCA) stated:

“...we would support the WAO having greater flexibility in this area, perhaps across multiple audited periods, as there is in Scotland and England. There may also be benefit in exploring what happens when an audit issue is identified and needs to be pursued.”³⁰

44. The Chartered Institute of Public Finance and Accountancy (CIPFA) acknowledged that the “no more than full cost” rule is a constraining factor in the legislation:

“...what happens elsewhere is that it’s balanced over a number of years, so, over a couple of years at least, if they’ve put more effort into it one year, they’ll balance that out next year. What that does is give a bit of certainty, I suppose, to the body being audited about what the fees

²⁷ Written evidence: Assembly Commission

²⁸ Written evidence: Welsh Local Government Association

²⁹ Written evidence: Welsh Local Government Association

³⁰ Written evidence: Association of Chartered Certified Accountants

are, and eliminates a lot of the disputes and coming back and having to give small credits or increase the fees, which cause the audit office a lot of extra work. Really, you've got to ask what's the cost-benefit in doing that?"³¹

45. CIPFA also recognised that a more flexible fee regime would give the AGW and WAO an incentive to be more efficient in delivering audit work.³² However, the representative did not necessarily agree that the proposed flexibility would equate to significant savings in terms of recording WAO staff audit time:

"I still think that to set the fees in the first place and to get Assembly approval, they're going to have to look at their costs, look at the budget, look at the work plan they've got, and decide how they're going to recover those budgeted costs in that work plan. So, in that sense, there's going to be a fairly detailed analysis of who's doing what to arrive at the schedule of fees. So, in that sense, I don't necessarily see—. If there is some saving, it's small, it's not—. I can't see it."³³

46. The ACCA acknowledged that, whilst there is evidence of flat fee charging in the commercial sector, it is not widespread, and suggested that no longer keeping timesheets would hamper the WAO's discussions with audited bodies on refunds and additional charges.³⁴

47. The Committee questioned witnesses on the proposed removal of the requirement for fees to be payable to the WAO by the person to whom the function being exercised relates, in order to facilitate equalisation of costs among certain bodies.

48. The ACCA was supportive of the WAO being able to pool costs across sectors "provided costs were shared only across those audits where certain costs apply, and that there is transparency in the approach"³⁵.

³¹ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 27.

³² Finance Committee, Record of Proceedings, 11 July 2019, paragraph 52.

³³ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 64.

³⁴ Written evidence: Association of Chartered Certified Accountants

³⁵ Written evidence: Association of Chartered Certified Accountants

49. However, Hywel Dda University Health Board (UHB) and Swansea Bay UHB were concerned that a change of this nature could fundamentally alter the nature of the relationship between the auditor and the audited body. The Director of Finance representing Hywel Dda UHB said:

“I’d want to be very mindful of the potential for unintended consequences, because I think, having a fee where there is a possibility of additional fees being incurred if the audit isn’t conducted efficiently, is a helpful lever to make sure that there is an efficient audit process. And because of the level of scrutiny we have through audit committees, I would suggest that’s probably a helpful process, both for the audited body in terms of transparency and for the auditor in terms of ensuring that efficiency.”³⁶

50. Reflecting on the existing fee regime, the Minister for Finance and Trefnydd (the Minister) noted that the PAWA 2013 gives the WAO discretion to develop a scheme of fee charging related to its activities, albeit restricted to functions, and acknowledged the suggestions for improvement.³⁷ She added:

“In terms of the principle of setting fees to cover the full cost of public services, well, that is a basic principle in our ‘Managing Welsh Public Money’ document, and it’s intended to make sure that public organisations neither profit at the expense of consumers or make a loss that taxpayers would then have to subsidise. So, it is an important principle, I think, that should be retained within this area. But there’s no reason why the Wales Audit Office shouldn’t be looking, for example, to undertake some private sector work in order to have an income, as long as it doesn’t detract from its primary purpose.”³⁸

51. In responding to the previous AGW’s comments that the issues with the fee regime were an “unintended consequence of a drafting error”, the Minister told the Committee:

³⁶ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 161

³⁷ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 239

³⁸ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 240

“I’m not sure it would necessarily be an unintended consequence, I think it was probably a response to the specific circumstances at that time. But that said, I think that some of the changes now that have been proposed certainly make sense. So, there is no problem in principle, for example, with supporting the charging of the entity rather than functions. I think that there’s a lot of sense there, but we would obviously want to know a little bit more detail in terms of how that would work in practice.”³⁹

52. The Minister also referred to the proposal to allow the WAO to audit over more than one financial year:

“...we’ve already had that principle established within the NHS. They have a reporting period of balancing their budgets over three years...It would be, I think, for the Finance Committee to explore what you’d be happy with.”⁴⁰

53. The AGW and WAO outlined that they have received complaints about the fee regime from audited bodies.⁴¹ The AGW told the Committee that the complaints received during his first year in post [the current AGW started his term of office on 21 July 2018] had been made by small bodies, such as town and community councils.⁴² He continued:

“I guess where it interacts with the legislation is that—. I don’t want to underplay this; I appreciate for a small body on a very limited budget with very limited professional resource at their disposal, the audit fee is an issue. But the legislation drives us to investigate any such correspondence in considerable detail. So, I think in our submission to you, we gave an example where we deployed well over £1,000 of resource internally to respond to a piece of correspondence from a community council that resulted, at the end of it, in a refund of £6 or so, and that is not a sensible regime, I don’t think, for a national audit

³⁹ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 227

⁴⁰ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 229

⁴¹ Written evidence: Wales Audit Office and the Auditor General for Wales

⁴² Finance Committee, Record of Proceedings, 17 July 2019, paragraph 176

body like ours to be operating within. So, a handful of complaints, but I really wouldn't want to overlay them."⁴³

54. The WAO's Head of Law and Ethics confirmed that they had dealt with four complaints of that type in 2017-18 and, whilst complaints were small in number, the "no more than full cost" rule required the application of "very stringent investigations to relatively small issues".⁴⁴

55. Responding to evidence the Committee heard, that audited bodies are more interested in the level of the fee rather than the regime that governs the fee, the Chair of the WAO said:

"We agree that, for some audited bodies, the level of fee is concerning rather than a complaint. The current legislation acts as a disincentive for in-year audit efficiency, and we bear the direct pain of the administrative burden of this 'no more than full cost' rule, which is why we brought forward these proposals, because it would allow us to be more efficient and incentivise that in-year efficiency."⁴⁵

56. The AGW went on to illustrate how this disincentive to drive in-year efficiency impacts on the organisation's ability to work more flexibly:

"...our accounts work largely is fee funded, and much of our performance work is funded by the consolidated fund, where we have much more flexibility. I'm encouraging the organisation to see the synergies between those different parts of our work and bring them together to produce new and better audit products—for you in the Assembly, for the public at large. Administratively, when I try to take staff who are fee funded away from that work, or encourage them to be more efficient, to free up some of their time to deliver something new and fresh, we're left in this vicious circle. Because I can't take them off there, because then we don't earn the fee that keeps them in that role. So, over time, of course, you can smooth those things and find a more sensible balance, and that's the sort of change that would

⁴³ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 177.

⁴⁴ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 183.

⁴⁵ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 186.

be really beneficial for us. But at the moment we're locked into this straitjacket of the 'no more than cost' rule, keeping our resource locked in to particular areas of work, and not freeing it up, as I'd like to be able to do."⁴⁶

57. The Committee asked what mechanisms would be in place if the proposed change to legislation is made, such as to challenge fees in certain circumstances. The AGW assured the Committee "that the level of dialogue and transparency that we have at the moment will continue".⁴⁷ The WAO's Director of Finance explained:

"...we'll still set a fee scheme. That will be linked to the estimate that the committee discusses every October. The fee scheme and the estimate go hand in hand, so it sets our cost base for the year, based on the audits we see undertaken, and then the fee rates that we need to recover in order to cover our cost base. We'll still have the transparency in fee-setting discussions with audit committees linked to the audit plan that we'll have in place for each of those. I think a strength will be the fixed fee approach. So, instead of a fee that can vary during the year, audit bodies will have the certainty that this is the fee that we're going to charge them for the year."⁴⁸

58. When questioned about the intention of the proposed term "broadly break even", the AGW confirmed that this mirrored the wording in the Scottish equivalent legislation. The WAO's Head of Law and Ethics explained:

"...the idea is not to create a particular figure, because then you lose discretion as to what 'broadly' means. But it relates to taking one year with another, and essentially it puts beyond doubt that we don't have to aim for a spurious level of accuracy in setting our fees.

Clearly, at the end of the year, if we have over-recovered to a very great extent; the auditor will notice that and will take the view that actually—hopefully this won't come to pass—we've been setting the

⁴⁶ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 187

⁴⁷ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 191

⁴⁸ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 192

fees too high. So, that would be a reporting point that we would want to avoid. It doesn't affect the transparency, because we'd still be setting fees in advance and people would be open to discussion on them."⁴⁹

59. The WAO's Director of Finance told the Committee that 19 bodies had been refunded a total of £61,000 in 2017-18, with £271.51 being the lowest and £11,600 being the highest amounts refunded. He continued:

"And of all of the 19 cases, only four of them were above 5 per cent of the fee. So, the context is very narrow. We're not talking huge sums here. So, our suggestion to take one year with another is about just correcting it from the one year where we found that experience into the next year, where again the audited body can have that certainty that that's going to be their fee for that year, and we don't need to generate any more than the cost that is in our estimate."⁵⁰

60. The Committee questioned why it is necessary to remove the requirement for fees to be paid by the person to whom the function relates, given that there is a precedent for certain all-Wales costs to be included in the annual estimate and funded through the allocation from the WCF. The WAO's Head of Law and Ethics explained that:

"...in order to get closer to the Scottish model that we'd like—taking one year with another, probably breaking even—you have to take that 'by the person' out, because otherwise it just won't work."⁵¹

61. Responding to the suggestion that removing the requirement for fees to be paid by the person to whom the function relates would remove the financial incentive to negotiate fees, the AGW said:

"The level of noise in the system about the absolute level of fees that we charge seems very low to me. As I said at the start, I think there are significant gains at the margin if we can drive efficiencies in-year in

⁴⁹ Finance Committee, Record of Proceedings, 17 July 2019, paragraphs 202-203

⁵⁰ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 211

⁵¹ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 345

much of our fee-earning work in order to deliver valuable outputs to the Assembly and the wider public that are perfectly in keeping with the budget the Assembly approves. We would be reporting back to you annually on how we have been able to do that or not. So, I can see your argument, but I really don't think that the changes that we're suggesting to the legislation would take away the discipline of the current system and lead to any concerns from your perspective."⁵²

Committee view

62. The Committee acknowledges that the current fee regime has led to a complex process and system of fee charging, and considers that this could be simplified by allowing the AGW and WAO more flexibility in how it charges and administers its fees.

63. Having examined the options presented by the AGW and WAO, and the evidence from the other UK audit offices, the Committee agrees that allowing the WAO to broadly breakeven, taking one year with another, would provide that flexibility.

64. However, whilst the Committee accepts the need to legislate to facilitate flexibility in this area, it is mindful of the need to clearly define the broad parameters of what that flexibility would look like in practice. The Committee will expect the WAO to outline these principles for audited bodies, and the Committee, as part of its annual fee setting process.

65. The Committee supports stakeholders' views that transparency in fee setting and charging must be at the heart of any fee process. The Committee understands the prospect of generating internal efficiencies in administration for the WAO, but improvements under a new regime should not stifle the ability of audited bodies to challenge and scrutinise their fees. Increased flexibility is not an opportunity for the generation of surpluses on statutory audit work and the WAO will need to establish a process that provides audited bodies with a clear understanding of fees charged.

⁵² Finance Committee, Record of Proceedings, 17 July 2019, paragraph 213

66. To demonstrate that a change in fee regime has been beneficial, the Committee will expect the WAO to demonstrate and quantify the cost savings from the implementation of any new scheme during the annual scrutiny sessions. The Committee would also expect the WAO to demonstrate any associated reduced call on the WCF or (with the agreement of the Assembly) how funds have been reinvested.

67. Whilst witnesses were supportive of flexibility in fee charging, evidence suggested that removing the requirement for fees to be paid by the body to which the function relates would not be desirable. The Committee is concerned that the removal of this requirement could lead to less transparency for audited bodies, increase the risk of an audited body engaging less effectively with the audit, and have a negative impact on the relationship between auditor and audited body. The Committee remains unconvinced that this change is necessary in light of the proposed increased flexibility in fee charging delivered by the removal of the “no more than full cost” rule. Furthermore, the Committee considers that the annual scrutiny of the Estimate provides an opportunity for the AGW and WAO to request resources to meet the costs of activities that may need to be pooled across bodies and believes that this mechanism provides a transparent and more appropriate approach.

Conclusion 2. The Committee is persuaded by the evidence supporting revisions to the current fee charging provisions and proposes amending the Public Audit (Wales) Act 2013 to:

- remove the requirement that fees must not exceed the full cost of the function to which they relate, and
- enable the Wales Audit Office to ensure that the sum of the fees charged for all of the work undertaken is broadly equivalent to all of its expenditure in connection with that work, taking one year with another.

Conclusion 3. Whilst supportive of less rigid fee provisions, the Committee is mindful of the need for transparency and would expect the Wales Audit Office to clearly define the parameters of a more flexible fee charging regime for audited bodies and the Committee, as part of its annual fee scheme.

Conclusion 4. The Committee believes that the requirement for fees to be paid by the body to which the function relates should be retained, in order to ensure transparency for audited bodies, effective engagement in the audit and to maintain the relationship between the auditor and audited body.

CONSULTATION QUESTIONS

Question 1

Do you agree that the Wales Audit Office should be given flexibility in how it charges and administers its fees by allowing it to broadly breakeven, taking one year with another?

Question 2

If so, do you agree with the approach taken in sections 3 and 4 of the Draft Bill?

4. Agreement work

Current provisions

Under section 19 of the PAWA 2013, the WAO may agree to arrange to provide professional, technical and administrative services to other public bodies, including bodies outside Wales (known as “agreement work”).

As outlined in the previous chapter, Section 23 of the PAWA 2013 enables the WAO to charge fees for the audits and audit-related functions carried out by the AGW, and any services provided by the AGW. Fees may only be charged in accordance with a scheme for charging fees prepared by the WAO. The fees charged may not exceed the full cost of exercising the function to which the fee relates (the “no more than full cost” rule) and are payable to the WAO by the person to whom the function being exercised relates.

Issue

68. Despite agreement work usually being obtained competitively, the “no more than full cost” rule requires that if the WAO makes a profit on this work it must refund that income to the client, which prevents Welsh public finances benefitting from any surpluses.

69. Examples of agreement work the WAO has been involved in include:

- Audit of the accounts for the Government of Anguilla
- Training support to the National Audit Office of Malta
- Capacity building and support to Montserrat

70. The AGW and WAO indicated that refunds given on agreement work had amounted to an annual average of £7,500 over the past four years.⁵³

⁵³ Auditor General for Wales and Wales Audit Office: Proposals for a bill to amend the Public Audit (Wales) Act 2013, June 2018, paragraph 5.7.

Proposed solution

Agreement work enables the WAO to earn additional fees that may be invested in the organisation or could be returned to the WCF.

The AGW and WAO propose removing the “no more than full cost” rule and the requirement to set out the fees for agreement work in the fee scheme. This would allow the WAO to set the terms and conditions of agreement work and would eliminate the requirement for a refund should this work be delivered for less than the value agreed with the customer, or if ‘profit’ were made on the fee.

Evidence

71. Whilst primarily an internal matter for the AGW and WAO, the views of stakeholders were sought as part of the AGW and WAO’s consultation on changes. Their paper “[the complex public audit fee regime in Wales – a case for change](#)” summarised the views of stakeholders. The paper noted that the majority of respondents were broadly supportive of simplification in this area. Stakeholders suggested that surpluses be reinvested to reduce the call on the WCF, and that work should potentially only be for activities outside Wales (in order to avoid cross-subsidisation of charges).

72. Audit Scotland’s Chief Operating Officer told the Committee that it undertakes audit work for other bodies on a basis of broadly recovering costs. She went on to note that it has “been an absolutely fantastic personal and organisational development opportunity for individuals, but also for us to learn from other organisations”.⁵⁴

73. The ACCA suggested that there is potential for confusion if the WAO has two charging regimes (one for statutory work and another for agreement work). It noted:

“The WAO would need controls in place to ensure that its statutory work retained primacy. Controls would be needed to mitigate risk from non-statutory audit work that is not covered by Parliamentary

⁵⁴ Finance Committee, Record of Proceedings, 13 June 2019, paragraphs 349 and 356

Privilege. We imagine those controls would include increased oversight from the Board (as with the NAO)."⁵⁵

74. Furthermore, the ACCA stated:

“In an audit environment where conflicts of interest, perceived as well as factual, are receiving increasing attention, this would be a move in the opposite direction. It could be argued that a move to allow the WAO to bid for non-statutory audit work should only be accompanied by opening up the market for the WAO’s statutory work.”⁵⁶

75. The ACCA also outlined the resources required to bid for work on a competitive basis and suggested that the WAO “will need to decide how much resource goes into competitive work and how much is reserved for its primary purpose”.⁵⁷

76. In contrast, the WLGA supported greater latitude for the WAO to determine the terms and conditions of agreement work and Health Boards suggested they were “relaxed” about the WAO carrying out more work in this area. However, this was on the basis of assurances around conflicts of interest and appropriate checks and balances being in place.⁵⁸

77. The Minister told the Committee that she had “no issue with the Wales Audit Office undertaking private work, as long as it doesn’t distract from their main core business in terms of public sector work”, citing the expertise developed within the organisation and its international reputation. The Minister also suggested that the Committee would need to consider how profits might be used, this could be used to reduce the call on the WCF or be returned to the WCF.⁵⁹

⁵⁵ Written evidence: Association of Chartered Certified Accountants

⁵⁶ Written evidence: Association of Chartered Certified Accountants

⁵⁷ Written evidence: Association of Chartered Certified Accountants

⁵⁸ Finance Committee, Record of Proceedings, 11 July 2019, paragraphs 173-174, 176 and 178

⁵⁹ Finance Committee, Record of Proceedings, 11 July 2019, paragraphs 295-296

78. When questioned on the appropriateness of generating profit on agreement work and what safeguards would be in place to mitigate against the risks of undertaking such work, the Chair of the WAO said:

“I’d like to emphasise that agreement work is very much at the margins of the work that the Wales Audit Office undertakes. And every year the board has to agree our approach to commissioned work, agreement work. One of our key tests is that it doesn’t compromise our core statutory work, and we keep a very tight cap on how much agreement work we’re prepared to tolerate. Agreement work is very beneficial because it provides great opportunities for our staff, both personal and professional development. And agreement work tends to be used when we have a capacity—so, not in our peak periods, but when we need to be able to provide worthwhile work for our staff.”⁶⁰

79. The Chair of the WAO reassured the Committee that there are a number of safeguards in place, including a risk assessment of each piece of work, and WAO Board approval for any work over the value of £50,000.⁶¹

80. In terms of any profit generated through agreement work, the AGW said:

“It depends on its scale and timing, obviously, but, yes, it would either be deployed by us on other matters within the ambit or, if we were unable to do that, just as we do with any other underspends at the moment, we’d return that to the fund.”⁶²

81. When asked whether the WAO Board would consider trying to generate a more substantial income stream from agreement work to reinvest in the organisation or give back to the WCF, the Chair of the WAO explained:

“We have debated that as a board when we get the annual commission strategy, and it is a fine line. At the moment, the board has decided that that is not in keeping with our organisational purpose, because we have debated pushing the boundaries and

⁶⁰ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 261

⁶¹ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 262

⁶² Finance Committee, Record of Proceedings, 17 July 2019, paragraph 276

getting in a lot of commissioned work, but at the moment we are taking the view that it is there primarily for professional and personal development and for the effective utilisation of staff. So, that's the view of the board at the moment, but it is at the margins."⁶³

Committee view

82. The Committee recognises the potential benefits that arise from allowing the WAO to set the terms and conditions of agreement work. In the context of constrained public spending, the opportunity to generate income to either limit the WAO's call on the WCF or for income to be surrendered to the WCF is an attractive prospect. The Committee also acknowledges the benefits afforded to WAO staff in terms of the opportunity to gain skills and experience of different working environments under these arrangements.

83. As the Committee does not view agreement work as a core activity of the WAO it would not want the pursuit of agreement work to impinge on the statutory responsibilities of the AGW and WAO. Whilst recognising the opportunity to generate income and bring back expertise, the Committee would not anticipate a significant increase in this type of work under a new fee regime. The Committee would also expect to see sufficient safeguards in place to prevent any conflicts of interest that may arise. In particular, the Committee would expect the WAO to demonstrate a separation between agreement work and its core statutory responsibilities and clearly evidence how any income (and profit) from agreement work is being used.

Conclusion 5. The Committee supports the Auditor General for Wales and Wales Audit Office's proposal to set its own terms and conditions for agreement work and earn additional reasonable fees to reinvest in the organisation or surrender to the Welsh Consolidated Fund, subject to sufficient safeguards being in place to protect its statutory work and prevent conflicts of interests.

⁶³ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 283

Conclusion 6. The Committee proposes amending the Public Audit (Wales) Act 2013 to remove the link between agreement work and the fee scheme to allow the Wales Audit Office to set its own terms and conditions.

CONSULTATION QUESTIONS

Question 3

Do you agree that the Wales Audit Office should be allowed to set its own terms and conditions for agreement work?

Question 4

If so, do you agree with the approach taken in section 2 of the Draft Bill?

5. Quorum arrangements

Current provisions

Schedule 1 of the PAWA 2013 requires the Board of the WAO to be made up of nine members:

- five persons who are not employees of the WAO (the non-executive members)
- the AGW, and
- three employees of the WAO (the employee members)

Paragraph 28(3) of Schedule 1 sets out a statutory requirement in relation to the quorum rules of the WAO, which states:

“...in all circumstances a quorum cannot be met unless a majority of the members present are non-executive members.”

Issue

84. The AGW and WAO suggest that the quorum provision is “problematic” as non-executives have a majority of one on the Board. This means any non-executive absence can lead to the Board being inquorate.⁶⁴

85. The notes accompanying the WAO’s proposed draft Bill outlined that six (21 per cent) of the 28 Board meetings held since the commencement of the PAWA 2013 had been inquorate. The paper also explained that when the Board is inquorate the elected employee members will “tend to recuse themselves, as they are not presenting matters for scrutiny or decision”⁶⁵. The WAO’s Head of Law and Ethics told the Committee that he did not believe the Board had held any votes and that decisions were “generally done by consensus”.⁶⁶

⁶⁴ Written evidence: Wales Audit Office and the Auditor General for Wales

⁶⁵ Letter from the AGW and WAO, 21 June 2018

⁶⁶ Finance Committee, Record of Proceedings, 5 July 2018, paragraph 219

86. In their consultation response to this inquiry, the AGW and WAO outlined that since that letter:

“...the problem has continued with one of the four WAO meetings being inquorate because of non-executive absence. In that case, one of the elected employee members left the meeting to enable a quorum to be reached. Given this unsatisfactory situation, we obtained independent legal advice, which confirmed that in the absence of amendment of the PAWA 2013, removal of employee members from meetings is required to prevent decisions being held to be invalid.”⁶⁷

87. The AGW and WAO have suggested that the final quorum included in the PAWA 2013 as passed does not take into account the elected employee members that were added to the Bill at amending stages.⁶⁸

Comparison with other audit offices

88. There is no statutory requirement that the Northern Ireland Audit Office (NIAO) Advisory Board meetings require a majority of non-executive members, although the Comptroller and Auditor General for Northern Ireland notes that the membership arrangements mean a meeting cannot take place with a majority of executives (as the Board only comprises two executives).⁶⁹

89. While noting that it is not a statutory Board as in Wales, the Comptroller and Auditor General outlined the recent proposals for the terms of reference of the NIAO Advisory Board, the new rules were proposed as:

“A minimum of two non-executives and one executive member of the Advisory Board must be present for the scheduled meeting to be deemed quorate. If appropriate, a meeting may be conducted by conference call. Non-executives members will have free and confidential access to the C&AG and may also meet informally without

⁶⁷ Written evidence: Wales Audit Office and the Auditor General for Wales

⁶⁸ Letter from the AGW and WAO, 21 June 2018

⁶⁹ Written evidence: Comptroller and Auditor General for Northern Ireland

executive members at any time outside of scheduled meetings. The Advisory Board may meet in private, if necessary.”⁷⁰

90. In Scotland, Board quorum is not set in legislation. The Chief Operating Officer for Audit Scotland noted some of the key considerations she felt were needed around the Board:

“I think that recognising the key interests of the auditor general and the Accounts Commission on the board is critical, and also having that balanced by independent membership—bringing additional skills and additional challenge to the board is helpful.”⁷¹

91. She went on to say:

“...with a small size of board, things are working well and there’s a lot of independence and rigour about the challenge and the relationship between the chair of the board, the auditor general, the chair of the Accounts Commission and other board members with the Scottish Commission for Public Audit ensures that links to Parliament, but also the independence from any individual component element of Parliament as well. So, there’s a lot to get right in that.”⁷²

92. Furthermore, she told the Committee that the Board had recently considered its quorum arrangements, aiming for more flexibility.⁷³ That review, published in June 2019, recommended a further Board review to determine whether there should be a requirement for a majority of independent members for the Board to be quorate.⁷⁴

⁷⁰ [Written evidence: Comptroller and Auditor General for Northern Ireland](#)

⁷¹ [Finance Committee, Record of Proceedings, 13 June 2019, paragraph 324](#)

⁷² [Finance Committee, Record of Proceedings, 13 June 2019, paragraph 325](#)

⁷³ [Finance Committee, Record of Proceedings, 13 June 2019, paragraph 334](#)

⁷⁴ [Scottish Commission for Public Audit, Report on the Review of the Audit Scotland Board and the Scottish Commission for Public Audit, 26 June 2019, Recommendation 1](#)

Proposed solution

The AGW and WAO suggest that the quorum requirements in the PAWA 2013 be removed.

There is no replacement suggested and this would therefore allow the WAO Board to establish its own quorum.

Evidence

93. When the Committee first considered the draft Bill in July 2018, the WAO's Head of Law and Ethics gave some indication of possible quorum options:

“I think that there are various options. One is to set quorum at the level so that the numbers are equal, so that there's no less a number of non-execs than execs, but I think there's also scope to explore this in terms of the actual nature of what we're so far calling 'executive members' but which aren't really of one class because they're not executive members in the usual sense.”⁷⁵

94. The Committee also discussed the possibility of adding a non-executive member to the Board, although the WAO's Head of Law and Ethics noted that this would lead to additional costs, and the possibility of reducing the number of directors present on the Board to a non-voting role. The AGW suggested that he needed another Director present in case he was absent.⁷⁶

95. The ACCA suggested that:

“The current Board structure, which is 5 non-executive and 4 WAO employees, could be made 6:3 with a non-executive majority which would arguably be more consistent with good practice where the Board's responsibilities are oversight in nature. More non-executives might also make it easier to be quorate.”⁷⁷

⁷⁵ Finance Committee, Record of Proceedings, 5 July 2018, paragraph 193

⁷⁶ Finance Committee, Record of Proceedings, 5 July 2018, paragraphs 199, 202, 204-205

⁷⁷ Written evidence: Association of Chartered Certified Accountants

96. The CIPFA representative suggested that the current Board structure reflected good practice, notwithstanding the quorum issues. He suggested that there was a difference between the way the WAO and NAO attempt to meet quorum. Where the WAO would, generally, ask executive members to leave, the NAO would “relegate somebody to an observer status”. This means they can contribute to discussions but are observers and cannot vote. He also suggested that elected employee members could be considered as a different “constituency” to executive and non-executive members.⁷⁸

97. The Minister acknowledged that there is an issue with the quorum requiring a majority of non-executive directors:

“The Wales Audit Office has clearly identified this as one of the areas in which improvements could be made. I know in the evidence paper that the Wales Audit Office provided to committee that it looked at the requirement for two elected members and recognised that that was a late amendment to the legislation in its passage through the Assembly, so the consequences of that might not have been fully explored or fully recognised—so suggests the Wales Audit Office, in any case. And it says that there was a debate about the possibility of creating constituencies, and that was where the interest was, rather than that quorum issue. So, again, this is something that I think is a very legitimate area for change.”⁷⁹

98. The Minister also suggested that the Committee may wish to consider the inclusion of a trade union representative on the Board, adding:

“I don’t think that we would be seeking to direct the role of the organisation, or its direction, just giving things that might be of interest to the committee, especially in the context of the social partnership that we’re trying to develop in Wales.”⁸⁰

⁷⁸ Finance Committee, Record of Proceedings, 11 July 2019, paragraphs 15-16

⁷⁹ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 249

⁸⁰ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 260

99. When asked to what extent a non-executive majority quorum requirement is appropriate for the WAO, the Chair of the WAO said:

“It’s very important that we do protect the majority of non-executive members for the quorum for decision making. However, the current legislation says that other members cannot be present, and that is the phrase. We’ve taken extensive legal advice and, currently, I can’t even have them in the room as observers—they actually have to leave. So, what we actually need to do is to take that specific quorum rule off the face of the Act. Then, we can devise pragmatical rules and place them in our procedural rules, but still on the diversity of contributions from all members of the WAO board, particularly the employee members, and, if necessary, make one of the employee members an observer for a meeting in order to preserve the majority. They wouldn’t have to leave the room, they can fully contribute, but the actual decision making, and, if necessary, voting, would preserve the majority of non-executive members. So, the Act needs to remove the ‘cannot be present’ and then pragmatic rules will be placed in our procedural rules.”⁸¹

100. The Committee challenged the AGW and WAO on the appropriateness of the Board designing its own quorum rules. The Chair of the WAO Board felt the Board should be entrusted because it has been appointed “to give you confidence in the governance of the WAO, and you’ve scrutinised that board through the estimate, the annual report and accounts, and our annual plan”.⁸²

101. The AGW also highlighted the Assembly’s desire to see a strong employee representation on the Board when it scrutinised the legislation’s passage, noting that the quorum rules lead to occasions when that input is diminished.⁸³

⁸¹ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 221

⁸² Finance Committee, Record of Proceedings, 17 July 2019, paragraph 250

⁸³ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 251

102. The WAO's Head of Law and Ethics confirmed that the quorum rules would need to be set out in the WAO's procedural rules, required by Part 7 of Schedule 1 of the PAWA 2013.⁸⁴

Committee view

103. Whilst the Committee acknowledges the quorum issues experienced by the Board, it is also mindful of the principles behind the current quorum arrangements. The Committee believes that setting out quorum requirements in the legislation governing the AGW and WAO is entirely appropriate. The Board's role as independent of the AGW is fundamental to providing rigour and scrutiny to the operation of audit in Wales, quorum must reflect and enable this.

104. The Committee received evidence which suggests that the current Board structure represents good practice, notwithstanding the issues with quorum. The Committee does not view the creation of an additional non-executive role as cost-effective.

105. The Committee is disappointed to learn that an elected employee member is required to leave an inquorate Board meeting in order to preserve a non-executive member majority and believes that the legislation is unduly strict in this regard. The Committee believes that this should be resolved by enabling any executive member to recuse themselves without leaving the meeting, to reflect the practice at the NAO.

Conclusion 7. As part of its oversight and governance role, the Committee will expect the WAO to keep it apprised of how the new quorum arrangements operate in practice. The Committee has concluded that the quorum requirement of a non-executive member majority should be retained in legislation to ensure independent oversight and provide constructive challenge to the executive directors. However, the Committee suggests that paragraph 28(3) of Schedule 1 of the Public Audit (Wales) Act 2013 is amended to allow executive members to remain at the meeting in a non-voting capacity when there is not a majority of non-executive Members present.

⁸⁴ [Finance Committee, Record of Proceedings, 17 July 2019, paragraph 257.](#)

CONSULTATION QUESTIONS

Question 5

Do you agree that the current Wales Audit Office Board quorum requirement for a majority of non-executive members should be retained in legislation?

Question 6

Do you agree that if the majority of members present at a meeting of the Wales Audit Office Board are not non-executive members, an executive member should be allowed to continue in a non-voting capacity in order to satisfy the quorum requirement?

Question 7

If so, do you agree with the approach taken in section 13 of the Draft Bill?

6. Interim reports

Current provision

The PAWA 2013 requires the AGW and the Chair of the WAO to jointly prepare an interim report at least once a year (paragraph 3(3) of Schedule 2).

Paragraph 3(4) states:

“An interim report must include (amongst other things) an assessment of the extent to which –

(a) the exercise of the functions of the Auditor General and the WAO has been consistent with the annual plan prepared for the year under section 25;

(b) progress has been made to achieve the priorities set out in the plan.”

The Assembly may also require the AGW and Chair of the WAO to produce additional interim reports at any time during a financial year.

Issue

106. The previous AGW outlined in his letter to the Committee in June 2018⁸⁵ that there is little Assembly or public interest in interim reports. In March 2018, WAO Board member, Alison Gerrard detailed issues around producing interim reports and their value, suggesting that the process was “disproportionately resource consuming”. She went on to say:

“...each report costs about £20,000 to produce, and we do feel that actually isn’t a really good use of public money, because there doesn’t actually seem to be a major amount of interest in them. Certainly, when we’ve prepared them for the Assembly, they’ve generally been noted but there has been no real in-depth discussion. When we put them on our website, in 2015-16, I think we had 12 page visits. It was slightly better the following year with 37, but actually that includes

⁸⁵ Letter from the AGW and WAO, 21 June 2018

internal hits as well, so that probably isn't public interest. So, it is quite a lot of money for a low level of interest."⁸⁶

107. In its consultation response to the Committee's inquiry, the AGW and WAO stated that a further interim report was published in October 2018, which received 66 page visits in the fortnight following publication, and that they "continue to consider the requirement disproportionate".⁸⁷

Comparison with other audit offices

108. The Comptroller and Auditor General for Northern Ireland confirmed that there is no statutory requirement on his office to produce interim reports.⁸⁸

109. The Auditor General for Scotland noted that she and Audit Scotland are not required to produce interim reports, although they have an agreement to attend the Scottish Commission for Public Audit (SCPA) at least twice a year.⁸⁹

Proposed solution

The AGW and WAO suggest that the requirements for interim reports should be removed.

110. The previous AGW suggested in July 2018 that the Committee would still be able to require the Accounting Officer of the WAO (the AGW) to produce an interim report:

"It does seem to me that I cannot conceive of an accounting officer refusing a request from the Finance Committee to deliver a report. That seems to me...outside the accounting officer's memorandum."⁹⁰

111. The WAO estimated that removing the requirement to produce interim reports would lead to cost avoidance of £20,000. This is primarily based on staff

⁸⁶ Finance Committee, Record of Proceedings, 15 March 2018, paragraph 140

⁸⁷ Written evidence: Auditor General for Wales and Wales Audit Office

⁸⁸ Written evidence: Comptroller and Auditor General for Northern Ireland

⁸⁹ Finance Committee, Record of Proceedings, 13 June 2019, paragraph 345

⁹⁰ Finance Committee, Record of Proceedings, 5 July 2018, paragraph 223

time for research and drafting, senior management review, Board review, translation and publishing.⁹¹

Evidence

112. The ACCA suggested that interim reports are useful for informing parliamentary oversight (as well as being a useful discipline for the WAO), but noted that if they are not used by the relevant parliament the requirement could be removed.⁹²

113. CIPFA told the Committee that “in terms of the ongoing scrutiny of their work, it seems proportionate enough to me to want an interim view on how they’re doing”.⁹³

114. The Minister confirmed:

“The Welsh Government, like the Finance Committee, merely notes the interim reports. So, we would have no concerns about that particular aspect being removed.”⁹⁴

115. The AGW agreed with the views of the previous AGW and gave the Committee his assurance that, if the statutory requirement were removed, he would provide the information if requested:

“My view is that the interim report is not particularly valuable for you as a committee in holding us to account. It generates an administrative burden on us, and I think that’s wasteful. But I see myself as an officer of this Parliament, and I can’t contemplate not furnishing you or other committees with information that you require to help assess our work.”⁹⁵

⁹¹ Auditor General for Wales and Wales Audit Office: Proposals for a bill to amend the Public Audit (Wales) Act 2013, June 2018, paragraph 3.16

⁹² Written evidence: Association of Chartered Certified Accountants

⁹³ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 66

⁹⁴ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 280

⁹⁵ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 290

116. The AGW added that if a subsequent AGW were less reasonable, the Committee has “formidable powers to command documentation and information”.⁹⁶

Committee view

117. The Committee accepts the AGW and WAO’s view that the requirement to produce an interim report annually is disproportionately time and resource consuming and notes the low level of interest evidenced by the number of website visits to the interim report webpage. The Committee considers the interim report as part of its annual scrutiny and, whilst the interim report is considered informative, the timing and focus of that scrutiny generally means the other documents are considered in more detail. Similarly, the Welsh Government confirmed that it simply notes the interim report.

118. On balance, the Committee accepts that the drawbacks of no longer requiring an interim report are outweighed by the efficiency savings identified. However, whilst the Committee is aware of its ability to request information and evidence from the AGW and WAO, it considers that there is value in preserving in legislation the requirement to produce an interim report upon the Assembly’s request. The Committee would not anticipate requesting an interim report as a matter of course.

Conclusion 8. The Committee suggests that the requirement in paragraph 3(3) of Schedule 2 of the Public Audit (Wales) Act 2013, to produce an interim report at least once a year, is replaced with a provision requiring the production of an interim report (as currently defined) if requested by the Assembly.

CONSULTATION QUESTIONS

Question 8

Do you agree that the Auditor General for Wales and the Chair of the Wales Audit Office should no longer be required to produce an interim report at least

⁹⁶ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 292

once a year, but a requirement to produce an interim report upon the Assembly's request should be included in legislation?

Question 9

If so, do you agree with the approach taken in section 16 of the Draft Bill?

7. Laying reports and accounts

Current provision

Paragraph 33 of Schedule 1 to the PAWA 2013 requires the AGW to prepare the statements of accounts of the WAO and to include additional information as directed by the Treasury (and in accordance with the Treasury's Financial Reporting Manual⁹⁷ (the "FReM")). The FReM also requires an annual report to accompany the accounts.

Paragraph 35(2)(b) of Schedule 1 requires the external auditors to lay a certified copy of the accounts (accompanied by the auditor's report) before the Assembly.

Paragraph 3(1) of Schedule 2 to the PAWA 2013 requires the AGW and Chair of the WAO to prepare an annual report on the exercise during the year of the functions of the AGW and the WAO.

Paragraph 3(6) of Schedule 2 requires the AGW and Chair of the WAO to jointly lay the annual report before the Assembly as soon as practicable after the end of a financial year.

Issue

119. The previous AGW highlighted that overlapping requirements cause confusion and leads to a lack of clarity in terms of laying the documents before the Assembly.⁹⁸

120. WAO Board Member, Alison Gerrard explained:

"The requirement at the moment is for the auditor general and the WAO to report on our performance, which has to be laid. We also have to produce a similar report as part of our accounts, as part of the Treasury requirements and the FReM—to actually produce an annual report. The way we get around that is actually to produce one report,

⁹⁷ HM Treasury, Financial Reporting Manual

⁹⁸ Letter from the AGW and WAO, 21 June 2018

but actually, we lay it twice. So, it's laid once by the auditor general and the chair, and secondly, then, by our external auditors—both laying the same report. So, just in terms of bureaucracy, if we could just simplify that requirement, that would also be helpful.”⁹⁹

Comparison with other audit offices

121. The Comptroller and Auditor General for Northern Ireland noted that there is no requirement for him or the chairperson to lay an annual report and that responsibility lays with the Department of Finance. He explained:

“This is an anachronism and an area where our own legislation needs tidied up, as I should be able to lay my Office’s audited accounts in the NI Assembly, rather than being dependent upon the Department of Finance.”¹⁰⁰

Proposed solution

The AGW and WAO propose streamlining arrangements by:

1. requiring the AGW and the Chair of the WAO to provide the external auditor of the WAO with their annual report no later than five months after the end of the financial year; and
2. requiring the external auditor to lay the report as part of the laying of the annual accounts.

122. The WAO’s Head of Law and Ethics clarified that a five month deadline is included to align the annual report with the deadline that applies to the accounts.¹⁰¹

123. The current external auditors of the WAO, RSM UK Audit LLP has raised no objections to the proposed solution.¹⁰²

⁹⁹ Finance Committee, Record of Proceedings, 15 March 2018, paragraph 142

¹⁰⁰ Written evidence: Comptroller and Auditor General for Northern Ireland

¹⁰¹ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 294

¹⁰² Correspondence with RSM UK Audit LLP, 10 October 2019 and 16 October 2019

Committee view

124. The Committee notes that the duplicate laying of the AGW and WAO's annual report and accounts by the AGW/WAO and its external auditors is administrative in nature. Nevertheless, the Committee supports simplifying the current system, via a minor change to the statutory requirements for laying the annual report and accounts.

Conclusion 9. The Committee agrees that the provisions in the Public Audit (Wales) Act 2013 in relation to laying the annual report and accounts should be simplified to enable:

- the Auditor General for Wales and the Chair of the Wales Audit Office to provide the external auditor of the Wales Audit Office with their annual report no later than five months after the end of the financial year; and
- subsequently require the external auditor to lay the report as part of the laying of the annual accounts.

CONSULTATION QUESTIONS

Question 10

Do you agree that the requirement to lay the annual report (on the exercise of functions of the Auditor General for Wales and Wales Audit Office) in paragraph 3(1) of Schedule 2 of the Public Audit (Wales) Act 2013 should be amended to require the external auditor to lay the report as part of the laying of the annual report and accounts?

Question 11

If so, do you agree with the approach taken in section 15 of the Draft Bill?

8. Certification deadlines

Current provisions

Section 10 of the PAWA 2013 requires the AGW to issue a Code of Audit Practice prescribing the way in which specified functions of the AGW are to be carried out.

A number of enactments require the AGW to lay a copy of an audited body's certified accounts and report no later than four months after they are submitted.

Issue

125. The AGW's Code of Audit Practice requires the AGW to provide audited bodies and third parties with an opportunity to comment on audit findings (albeit the content and requirements of that Code is determined by the AGW).¹⁰³

126. The statutory requirement to lay a copy of certain audited bodies' certified accounts and report no later than four months after they are submitted may conflict with the Code of Audit Practice, if the AGW needs to give relevant parties sufficient time to respond to audit findings.

Evidence

127. The Committee has explored issues relating to the four month deadline for laying accounts through its examination of the delay in the laying of Natural Resources Wales Accounts 2015-16.¹⁰⁴ Following issues with that organisation's accounts, the previous AGW concluded:

“Unfortunately, I have concluded that it is not possible to meet this deadline without incurring a significant risk to fairness to third parties. My audit has encountered some significant issues concerning contracts entered into by NRW, and it is necessary in order to be fair to

¹⁰³ [Code of Audit Practice of the Auditor General for Wales, May 2018, page 23](#)

¹⁰⁴ [Finance Committee, Report into the delay in the laying of Natural Resources Wales Annual Accounts 2015-16 by the Auditor General for Wales, May 2017](#)

those concerned outside NRW (as well as NRW) that I provide reasonable opportunity to comment on my findings in line with the principles of natural justice.”¹⁰⁵

128. In the previous AGW’s report contained within NRW’s accounts 2015-16, he stated:

“I am advised by my legal adviser that given the conflicting statutory duties, it was appropriate to give more prominence to the requirements of the 2013 Act and the Code, and I have therefore completed my audit accordingly. It was important to complete the investigatory process properly, including seeking comments from the audited body and relevant third parties to satisfy the requirements of the Code and also to ensure that the audit conclusions are sufficiently rigorous.”¹⁰⁶

129. It is unclear what mechanisms are available in existing legislation should there be requirement to delay the laying of accounts and the procedure for doing so is not set out in legislation. Equally, legislation does not set out punitive action should this event occur or how a deadline may be varied.

130. During the passage of the Public Services Ombudsman (Wales) Act 2019 (PSOW Act), the Assembly agreed an amendment to address the conflicting requirements placed on the AGW. If it is not reasonably practicable for the AGW to lay a copy of the Ombudsman’s certified accounts and report before the Assembly within four months, paragraph 18 of Schedule 1 allows the AGW to lay a copy of the certified accounts and report after the four month deadline. In doing so, the AGW must explain to the Assembly why the four month deadline cannot be met and proceed to lay the certified accounts and report as soon as reasonably practicable.

131. The Minister said that she would expect all public bodies in Wales to submit accounts that were sufficiently robust to enable the AGW and his team to lay a copy with the Assembly within four months. The Minister is concerned that if this

¹⁰⁵ Letter to the Public Accounts Committee, 14 December 2016

¹⁰⁶ Natural Resources Wales: Annual Report and Accounts 2015-16, page 44

does not happen the information in the accounts becomes “less relevant the longer the period between year end and publication”.¹⁰⁷

132. However, the Minister did accept that there may be circumstances where delays occur and is content for more flexibility in those arrangements. As a minimum the Minister would expect the relevant Accounting Officer to appear before the PAC in such circumstances.¹⁰⁸

133. The WAO’s Head of Law and Ethics referred to the mitigating clause inserted in the PSOW Act as a “really good solution”.¹⁰⁹

Proposed solution

If it is not reasonably practicable for the AGW to lay a copy of certain audited bodies’ certified accounts and report before the Assembly within four months, the relevant enactment should be amended to allow the AGW to lay a copy of the certified accounts and report after the four month deadline. This would include a requirement for the AGW to explain to the Assembly why the four month deadline cannot be met and proceed to lay the certified accounts and report as soon as reasonably practicable.

134. The following audits are subject to the four month rule:

- Children’s Commissioner for Wales
- Education Workforce Council
- Estyn
- Future Generations Commissioner
- Health Education and Improvement Wales
- Local Democracy and Boundary Commission for Wales
- Local Health Boards

¹⁰⁷ Letter from the Minister for Finance and Trefnydd, 27 June 2019.

¹⁰⁸ Letter from the Minister for Finance and Trefnydd, 27 June 2019.

¹⁰⁹ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 337.

- NHS trusts
- National Assembly for Wales Commission
- Natural Resources Wales
- Older People's Commissioner
- Qualifications Wales
- Social Care Wales
- Welsh Consolidated Fund
- Welsh Language Commissioner
- Welsh Government
- Welsh Revenue Authority
- Welsh Revenue Authority Tax Statement
- Whole of Government of Wales account

Committee view

135. In light of the provisions included in the PSOW Act to allow the AGW an extension to the reporting deadline, the Committee proposes that the same provision should also be included in the remaining enactments to ensure that there is a consistent mechanism to deal with the conflicting requirements.

Conclusion 10. The Committee suggests that existing enactments that specify a four month deadline for the Auditor General for Wales to certify and lay a copy of an audited body's accounts and report should be amended to:

- allow the Auditor General for Wales to lay a copy of the certified accounts and report after the four month deadline;
- require the Auditor General for Wales to explain to the Assembly why the four month deadline cannot be met; and

- require the Auditor General for Wales to lay the certified accounts and report as soon as reasonably practicable.

CONSULTATION QUESTIONS

Question 12

Do you agree that existing legislation requiring the Auditor General for Wales to certify and lay an audited body's accounts and report within four months should be amended to:

- allow the Auditor General for Wales to lay a copy of the certified accounts and report after the four month deadline,
- require the Auditor General for Wales to explain to the Assembly why the four month deadline cannot be met, and
- require the Auditor General for Wales to lay the certified accounts and report as soon as reasonably practicable?

Question 13

If so, do you agree with the approach taken in section 17 and Schedule 1 of the Draft Bill?

9. Issues relating to the responsibilities of the National Assembly for Wales

Appointment of the auditors of the WAO's accounts

Current provision

Paragraph 34(1) of Schedule 1 to the PAWA 2013 requires the Assembly to appoint a person as auditor of the WAO's accounts, and to determine the person's term of appointment.

Paragraph 34(2) permits the WAO to recommend a person for appointment.

The Assembly's Standing Orders delegate responsibility for the appointment of the auditors of the WAO's accounts to the Finance Committee.¹¹⁰

Issue

136. The Committee has appointed auditors twice since the PAWA 2013 was enacted (in December 2014 and October 2018). On each occasion the Committee has authorised the WAO to undertake a procurement exercise and put forward the successful tenderer for approval and appointment by the Assembly, with oversight of the process being delegated to Assembly Commission officials.

137. However, the AGW and WAO have suggested that significant contractual complications arise because the appointing authority (the Assembly) and the client (the WAO) are different bodies. This necessitates the preparation of tripartite contractual arrangements, including a side agreement to cover, for example, the provision of indemnity should the WAO fail to pay the auditor's remuneration.¹¹¹

¹¹⁰ [Standing Orders of the National Assembly for Wales, Standing Order 18.10\(vi\)](#).

¹¹¹ [Written evidence: Wales Audit Office and the Auditor General for Wales](#)

Evidence

138. In its consultation response to this inquiry, the Assembly Commission noted:

“...the Assembly Commission’s Procurement Team has provided assurance over the process of the last two tenders in relation to the appointment of WAO auditors. This process has not proved to be too onerous or time consuming in terms of workload for the Procurement team.”¹¹²

139. The Assembly Commission’s subsequent letter to the Committee highlighted that the Legal Services team was required to undertake “significant work in relation to the appointment of the auditors of the WAO”. This was due to the tripartite nature of the arrangement and included, for the 2018 appointment process, specialist external legal advice valued at £19,500.¹¹³

140. The letter also acknowledged that there could be merit in considering whether the PAWA 2013 would benefit from revision to simplify the arrangements for appointment of the WAO’s auditors.¹¹⁴

Proposed solution

The AGW and WAO suggest that a sensible approach would be to make provision for the engagement of the auditor of the WAO to be a contractual matter between the WAO and the auditor (including terms of appointment and monitoring of performance), but with the appointment being subject to the approval of the Assembly.

141. The current external auditors of the WAO, RSM UK Audit LLP has raised no objections to the proposed solution.¹¹⁵

¹¹² [Written evidence: Assembly Commission](#)

¹¹³ [Letter from the Assembly Commission, 27 June 2019](#)

¹¹⁴ [Letter from the Assembly Commission, 27 June 2019](#)

¹¹⁵ [Correspondence with RSM UK Audit LLP, 10 October 2019](#) and [16 October 2019](#)

Committee view

142. The current tripartite contractual arrangements between the WAO, the Assembly Commission and the appointed auditors are complex. This has led to significant expenditure on legal advice which is not considered to be the best use of public funds. The Committee understands the principles behind the legislative provisions and believes it is proper and necessary that the Assembly, through the Committee, has a relationship with, and scrutinises and approves the appointment of, the auditors of the WAO.

143. The Committee considers that the intent of the provisions in the PAWA 2013 can be achieved through a new process that allows the WAO to directly appoint its external auditors, whilst maintaining a role for the Assembly in approving that appointment and agreeing the associated terms and conditions and process by which the WAO procures its auditors.

144. In practice, this revised approach would have only a limited impact on the current process, in that the Assembly Commission would no longer be a party to the contractual arrangements between the WAO and its auditors. However, the revised approach should enable time and cost savings to both the WAO and Assembly Commission.

Conclusion 11. The Committee proposes amending the Public Audit (Wales) Act 2013 to allow the Wales Audit Office to appoint its external auditors, subject to the Assembly's approval of:

- the appointment,
- the terms of appointment, and
- the method of procurement.

CONSULTATION QUESTIONS

Question 14

Do you agree that engagement of the auditor of the Wales Audit Office should be a contractual matter between the Wales Audit Office and the auditor, with

the appointment (and associated terms and conditions) being subject to the approval of the Assembly?

Question 15

If so, do you agree with the approach taken in section 14 of the Draft Bill?

Appointment of non-executive members of the WAO and the Chair of the WAO

Current provision

Parts 1 and 2 of Schedule 1 to the PAWA 2013 requires the Assembly to appoint five non-executive members of the WAO, based on the conclusion of fair and open competition.

An appointment as non-executive member is for a maximum of four years and a person cannot be appointed more than twice (paragraph 6 of Schedule 1).

Paragraph 5 of Schedule 1 of the PAWA 2013 requires the Chair of the WAO to be appointed from amongst the non-executive members. The Assembly may extend an appointment, which counts as a separate appointment for the purposes of the permissible number of appointments stipulated in paragraph 6 of Schedule 1.

Issue

145. If non-executive members wish to be re-appointed for a second term of office (non-executives may serve two terms of up to four years), incumbents are required to submit to a full competition process alongside external candidates, whereas an incumbent Chair's appointment can be extended by the Assembly for a second term. However, the Chair (in the Chair's capacity as a non-executive member) is also subject to the general re-appointment provisions for non-executive members. The structuring of these provisions therefore creates scope for the requirements relating to the re-appointment of the Chair to be interpreted in alternative ways.

Comparison with other audit offices

146. The Chief Operating Officer for Audit Scotland explained that the Scottish Commission for Public Audit (SCPA), which is responsible for making the appointments for the non-executive members of Audit Scotland’s Board, was in the process of reviewing its arrangements.¹¹⁶

147. As part of its review, the SCPA considered the role of existing independent Board members participating in future appointment processes. The review noted that, whilst the Public Finance and Accountability (Scotland) Act 2000 (PFA Act) makes clear that the three independent members are appointed by the SCPA, this does not preclude Board members participating in earlier parts of the recruitment process.¹¹⁷

148. The review recommended that Board members should continue contributing to appointment processes by having the opportunity to comment on draft role specifications and adverts prior to final drafts being approved by the SCPA. However, the SCPA concluded:

“Whilst some SCPA members recognised that there may be some potential benefits of Board members participating in the recruitment of independent Board members, all considered this would be contrary to established practice for parliamentary appointments which reflects the terms of the PFA Act. There was unanimous agreement that the next Board Chair should be appointed by the SCPA only.”¹¹⁸

Evidence

149. In relation to recruiting non-executive members of the WAO, the AGW and WAO stated:

“This raises a question about the role that an incumbent Chair might play in the process for appointing and re-appointing non-executive

¹¹⁶ Finance Committee, Record of Proceedings, 13 June 2019, paragraph 323

¹¹⁷ Scottish Commission for Public Audit, Report on the Review of the Audit Scotland Board and the Scottish Commission for Public Audit, 26 June 2019, paragraph 43

¹¹⁸ Scottish Commission for Public Audit, Report on the Review of the Audit Scotland Board and the Scottish Commission for Public Audit, 26 June 2019, paragraph 46

members of the WAO. The views of the Chair of a board as to the skills needed, particularly in terms of the balance of complementary skills, are an important factor in ensuring the maintenance of a well-functioning board.”¹¹⁹

150. However, the evidence goes on to say:

“...we are pleased that a pragmatic approach has been taken -- involving the Chair in the selection process while protecting the independence of the Committee and Assembly in taking decisions on appointment.”¹²⁰

151. This was reiterated by the Chair of the WAO:

“The recruitment: it’s vital that this process is led and overseen by the Finance Committee, but, as you know, the legislation doesn’t recognise the role of the WAO chair at the moment.”¹²¹

152. In terms of the re-appointment of non-executive members, the Assembly Commission noted:

“There could be merit in considering whether it would be appropriate for the relevant provisions of the 2013 Act to be clarified in respect of current Board members wishing to serve a second consecutive term of office.”¹²²

153. The Assembly Commission also noted that “there is scope within the 2013 Act for alternative interpretation of the provisions regarding an extension of the appointment of the Chair of the WAO”.¹²³

Committee view

154. Having undertaken a number of recruitment exercises since the inception of the PAWA 2013, the Committee believes that the current provisions relating to

¹¹⁹ [Written evidence: Wales Audit Office and the Auditor General for Wales](#)

¹²⁰ [Written evidence: Wales Audit Office and the Auditor General for Wales](#)

¹²¹ [Finance Committee, Record of Proceedings, 17 July 2019, paragraph 312](#)

¹²² [Letter from the Assembly Commission, 27 June 2019](#)

¹²³ [Letter from the Assembly Commission, 27 June 2019](#)

the appointment and re-appointment of non-executive members of the WAO and Chair of the WAO should be simplified.

155. The Committee believes the legislation should be clarified to ensure that the provision enabling the Chair's appointment to be extended for a second term of up to four years is also available to the non-executive members, subject to acceptable performance.

156. Whilst the Committee believes that each non-executive member (including the Chair) should be afforded the opportunity to extend their term of office for a second four year term without undertaking a full recruitment process, any extension of an appointment should be subject to the person's effective performance and subject to considerations regarding the stability of the Board . As the Board's success relies on the expertise and experience of its membership, the Assembly may need to consider staggering the length of appointment periods, or not renewing some appointments, in order to facilitate new members gaining knowledge prior to experienced members departing.

157. Whilst the Committee recognises the value of the Chair's input in the appointment of non-executive members of the Board, it is not persuaded of the need to formalise the Chair's involvement in legislation.

Conclusion 12. The Committee proposes amending the Public Audit (Wales) Act 2013 to allow the appointment of a serving non-executive member to be extended for a second term of up to four years.

CONSULTATION QUESTIONS

Question 16

Do you agree that the Public Audit (Wales) Act 2013 should be amended to allow the appointment of a serving non-executive member to be extended for a second term of up to four years?

Question 17

If so, do you agree with the approach taken in sections 7, 8 and 9 of the Draft Bill?

Requirement to consult on certain aspects of the appointment process

Current provisions

Section 7(2) of the PAWA 2013 requires the Assembly to consult the First Minister before setting remuneration arrangements for the AGW.

Schedule 1 of the PAWA 2013 requires the Assembly to consult the First Minister on the appointment (paragraph 5(2)), proposed remuneration arrangements (paragraph 7(2)) and any proposed termination of appointment (paragraph 12(2), of the Chair.

Paragraph 9(1) of Schedule 1 to the PAWA 2013 requires the Assembly to consult with “an appropriate person with oversight for public appointments” on the remuneration arrangements and other terms of appointment for non-executive members (including the Chair).

Section 5(3) of the PAWA 2013 requires the Assembly to publish a list of restricted offices, positions or arrangements which a former AGW would need to consult with the Assembly before accepting or entering into after leaving office.

Consultation with the First Minister

158. In response to a consultation undertaken by the PAC in the Fourth Assembly (the responsible committee at that time) with the previous First

Minister on the appointment of the Chair of the WAO in 2013, the First Minister stated that he had “no comment on the recommended candidate”.¹²⁴

159. When consulted on the remuneration arrangements for the non-executive members and Chair when the WAO Board was established in 2013, the previous First Minister “felt the remuneration proposed for Chair and Members was reasonable”.¹²⁵

160. Prior to the recruitment of the current AGW, the Committee consulted the previous First Minister on the proposed remuneration arrangements for the post in August 2017. In response, the First Minister confirmed that he was content with the proposed remuneration arrangements.

Consultation with an appropriate person with oversight for public appointments

161. The Explanatory Memorandum accompanying the PAW Bill did not identify the “appropriate person with oversight for public appointments”.¹²⁶ In 2013 the PAC (the responsible committee at the time) determined that it was reasonable to consult the Public Appointments Unit within the Welsh Government. This followed confirmation by the office of the Commissioner for Public Appointments that the appointments in question were not regulated by the Commissioner.¹²⁷

162. Each time the Assembly has appointed or reappointed non-executive members it has consulted the Welsh Government’s Director of Governance, as an appropriate person with oversight for public appointments, and received no objections.

¹²⁴ Public Accounts Committee (Fourth Assembly), Appointment of the non-executive Members and Chair of the Wales Audit Office Board, October 2013, paragraph 38

¹²⁵ Public Accounts Committee (Fourth Assembly), Appointment of the non-executive Members and Chair of the Wales Audit Office Board, October 2013, paragraph 22

¹²⁶ Public Audit (Wales) Bill, Explanatory Memorandum

¹²⁷ Public Accounts Committee (Fourth Assembly), Appointment of the non-executive Members and Chair of the Wales Audit Office Board, October 2013, paragraph 21

Restricted offices under section 5(3)

163. The Committee considered the requirement to publish a list of restricted offices under section 5(3) of the PAWA 2013 in 2017, prior to the appointment of the current AGW, and resolved not to specify any requirements. However, to comply with the legislation, which states a list must be published, the Committee published a document confirming that there are no such restrictions.

Evidence

164. When asked whether the requirement to consult the First Minister on matters of appointment and remuneration of the Chair is appropriate, the Minister told the Committee:

“I think that that is a particular area where it might be best for the First Minister not to have a role in the appointment of a chair, for example, because I think that we’ve established an important principle about the independence of the organisation, and I think we’d be comfortable if the requirement was not there.”¹²⁸

165. The Assembly Commission also questioned whether the requirements to consult on remuneration arrangements and other terms of appointment for non-executive members were appropriate and noted the practical issues relating to identifying an appropriate person with oversight of public appointments:

“[Assembly] Commission officials have encountered difficulties in establishing a suitable consultee in order to comply with this statutory requirement. The Committee may therefore wish to consider whether the requirement should be revised, or removed altogether.”¹²⁹

166. Responding to a question on the appropriateness of the consultation provisions in the PAWA 2013, the WAO’s Head of Law and Ethics said:

¹²⁸ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 254

¹²⁹ Letter from the Assembly Commission, 27 June 2019

“The consultation provisions don’t seem entirely appropriate. I don’t think it’s inappropriate for the Assembly to undertake consultation and research. I think it’s perfectly capable of doing that, when needed, without requiring something on the face of statute. But what strikes me as rather unusual is that the First Minister is, essentially, part of an audited body and is having a say, uniquely among audited bodies, in the appointment of the chair who oversees the auditor.”¹³⁰

167. In relation to the publication of a document confirming that the Assembly has not specified any restricted offices, positions or arrangements under section 5(3), the Assembly Commission suggested:

“The Committee may therefore wish to consider the merits of making the publication requirement optional, to avoid needing to publish a similar document of limited value in the future.”¹³¹

Committee view

168. The Committee is of the view that the requirements to consult are onerous and not entirely appropriate. In the case of the requirement to consult the First Minister, it is not clear what this consultation achieves and the Committee also questions the appropriateness of a body audited by the WAO having such a direct input to the appointment process of the Chair. The Minister also expressed this view, suggesting that it may be more appropriate to remove the provisions to consult the First Minister.

169. Following confirmation from the office of the Commissioner for Public Appointments in 2013, that the appointments in question are not regulated by the Commissioner, the Committee has sought to consult with the Public Appointments Unit within the Welsh Government in order to satisfy the requirement to consult “an appropriate person with oversight for public appointments”. However, the Committee does not believe this to be the intention of the provisions and questions the appropriateness of consulting officials at a body audited by the WAO. In the absence of an appropriate person

¹³⁰ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 317.

¹³¹ Letter from the Assembly Commission, 27 June 2019.

with oversight for public appointments, the Committee proposes removing this specific requirement from the legislation.

170. It is clear from the most recent recruitment process for the AGW that the requirement to publish a list of restricted offices, positions or arrangements under section 5(3) can result in unnecessary administration of those arrangements. Whilst the Committee may wish to specify restrictions in future, when it does not identify any restrictions it seems illogical to publish a document which does not contain any information.

Conclusion 13. The Committee has concluded that the requirements placed on the Assembly to consult: the First Minister on the appointment of the Chair of the Wales Audit Office; the remuneration arrangements for the Chair and the Auditor General for Wales; and the termination of the Chair's appointment should be removed in the interest of protecting the independence of those roles.

Conclusion 14. In the absence of the non-executive WAO Board appointments being regulated by the Commissioner for Public Appointments, the Committee has concluded that the requirement to consult "an appropriate person with oversight for public appointments" on remuneration arrangements and other terms of appointment for WAO non-executive members and the Chair should be removed and replaced with a general provision permitting the Assembly to consult with any persons it deems appropriate.

Conclusion 15. The Committee suggests that section 5(3) of the Public Audit (Wales) Act 2013 is amended to require the Assembly to publish a list of restricted offices, positions or arrangements, which a former Auditor General for Wales would need to consult with the Assembly before accepting or entering into after leaving office, only if any such restrictions are identified.

CONSULTATION QUESTIONS

Question 18

Do you agree that the requirement for the Assembly to consult the First Minister on the following should be removed:

- the appointment of the Chair of the Wales Audit Office;
- the remuneration arrangements for the Chair and the Auditor General for Wales; and
- the termination of the Chair's appointment

Question 19

Do you agree that the requirement for the Assembly to consult an appropriate person with oversight for public appointments on remuneration arrangements and other terms of appointment should be removed?

Question 20

Do you agree that a general provision should be included, permitting the Assembly to consult with any persons it deems appropriate before exercising any functions in relation to the Auditor General for Wales or the Wales Audit Office?

Question 21

If so, do you agree with the approach taken in sections 6, 10 and 11 of the Draft Bill?

Question 22

Do you agree that section 5(3) of the Public Audit (Wales) Act 2013 should be amended to require the Assembly to publish a list of restricted offices, positions or arrangements, which a former Auditor General for Wales would need to consult with the Assembly before accepting or entering into after leaving office, only if any such restrictions are identified?

Question 23

If so, do you agree with the approach taken in 5 of the Draft Bill?

10. Issues with wider public audit legislation in Wales

The lack of a value for money conclusion duty on the AGW and central government bodies

Background

171. The PAWA 2004 requires the AGW to be satisfied that a local government (section 17(2)(d)) or health body (section 61(3)(b)) has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources (commonly referred to as a ‘value for money conclusion or opinion’). In contrast, there is no such requirement in relation to central government bodies (the Welsh Government, Welsh Government Sponsored Bodies and certain other bodies such as the Assembly Commission).

172. The Government of Wales Act 2006 (GOWA 2006), states for Welsh Ministers:

The Auditor General **may** carry out examinations into the economy, efficiency and effectiveness with which the Welsh Ministers and the Counsel General have used their resources in discharging their functions.¹³²

173. This is similar to wording for the Assembly Commission.¹³³

174. Where the AGW is required to provide a value for money conclusion, he **must** assess whether the audited body has put in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

Issue

175. The previous AGW suggested that the absence of a requirement “means that scrutiny of central government bodies is generally somewhat less extensive than that of the NHS and local government” and that “discretionary

¹³² Government of Wales Act 2006, section 135(1).

¹³³ Government of Wales Act 2006, section 140(1)

consideration is more open to challenge than consideration done in the course of a statutory duty”.¹³⁴

Evidence

176. The WAO’s Head of Law and Ethics told the Committee:

“Unlike the NHS and local government, there is no requirement as part of the audit to come to a VFM conclusion—that’s being satisfied that there are appropriate arrangements for securing economy, efficiency and effectiveness. That strikes us as rather undesirable in that it means that there is, essentially, a lower standard applied in central Government than in the NHS and local government.”¹³⁵

177. CIPFA suggested that the legislation could be strengthened in terms of more responsibility for value for money conclusions in central government bodies:

“There probably are more points where it [audit legislation in Wales] might be strengthened rather than streamlined. An example of that is in relation to the area of value for money. It doesn’t appear in the Welsh legislation that the audit office have much responsibility for central Government bodies in that regard. They do in terms of health and local government, and I suppose from an outsider’s point of view, a taxpayer/stakeholder, if you’ve got whatever it is—£20 billion or £30 billion—coming into the Welsh consolidated fund and then being allocated out by the Welsh Government and the Assembly, yet there isn’t a value-for-money remit for the audit office over that, that seems strange.”¹³⁶

178. This point was also made by the WLGA:

“One gap in the current arrangements is that while the WAO looks at value for money and performance across the health and local government sectors, there are currently no arrangements for the WAO

¹³⁴ Letter from the Auditor General for Wales, 5 April 2017.

¹³⁵ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 330.

¹³⁶ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 25.

to do the same for central government bodies. This is something that should be remedied."¹³⁷

Potential solution

179. The previous AGW outlined that for Welsh Ministers and the Assembly Commission, GOWA 2006 would need to be amended to insert provisions relating to a duty to be satisfied as to the arrangements for securing value for money. For Welsh Government sponsored bodies, similar amendments would be required to a range of legislation, including:

- The Care Standards Act 2000;
- The Commissioner for Older People (Wales) Act 2006;
- The Government of Wales Act 1998 (for Estyn);
- The Well-being of Future Generations (Wales) Act 2015;
- The Further & Higher Education Act 1992;
- The Local Government (Democracy) (Wales) Act 2013;
- The Museums and Galleries Act 1992;
- The Natural Resources Body for Wales (Establishment) Order 2012;
- The Qualifications Wales Act 2015;
- The Welsh Language (Wales) Measure 2011;
- The Royal Charters of the Arts Council and the Sports Council.¹³⁸

¹³⁷ [Written evidence: Welsh Local Government Association](#)

¹³⁸ [Letter from the Auditor General for Wales, 5 April 2017](#)

The absence of explicit provisions in statute for regularity opinions among many central government bodies

Background

180. A regularity opinion is an opinion as to whether public money is being or has been used for approved purposes and the financial transactions recorded in the financial statements conform to the authorities which govern them. This is undertaken as part of the audit of accounts.

181. The AGW's Code of Audit Practice outlines the basis of a regularity opinion:

“Where bodies are subject to scrutiny by the National Assembly by virtue of their accounts (or their parent body’s accounts) being laid before the Assembly, my auditors must design and undertake audit work on my behalf so as to address the concept of regularity and to allow me to provide an opinion on the regularity of the transactions to which the accounts relate. Regularity, as set out in ‘Practice Note 10: Audit of financial statements of public sector bodies in the United Kingdom’ issued by the Public Audit Forum and endorsed by the Financial Reporting Council, is the concept that transactions that are reflected in the financial statements of an audited entity must be in accordance with the relevant framework of authorities. Such frameworks include

- a authorising legislation;
- b parliamentary, including National Assembly, authorities, such as budget motions passed by the National Assembly; and
- c administrative authorities, such as delegations, and guidance, such as the Welsh Government’s publication ‘Managing Welsh Public Money’.”¹³⁹

¹³⁹ Code of Audit Practice of the Auditor General for Wales, May 2018, page 16

182. The Code of Audit Practice goes on to outline the importance of the regularity opinion to the “democratic control of public finances”.¹⁴⁰

183. For example, the Certificate and Independent Auditor’s Report of the AGW to the Assembly, contained in the National Assembly for Wales Assembly Commission Annual Report and Accounts 2018-19, includes an “Opinion on regularity”, which states:

“In my opinion, in all material respects, the expenditure and income in the financial statements have been applied to the purposes intended by the National Assembly for Wales and the financial transactions recorded in the financial statements conform to the authorities which govern them.”¹⁴¹

Issue

184. There are a number of organisations within the Welsh public sector where there is no explicit provision for a regularity opinion.

185. The previous AGW suggested that the absence of explicit provisions in statute for regularity opinions among many central government bodies means that a fundamental element of Assembly control of central government expenditure is missing from statute in respect of such bodies. He highlighted that “one of the key functions of the National Assembly is the approval, following scrutiny, of budget motions to authorise government’s use of resources”.¹⁴²

186. He went on to say that to complete the cycle of control, it is necessary that the Assembly receives reports on whether the resources it has voted have been used in accordance with its intentions. He also confirmed that regularity opinions are provided in respect of all sponsored bodies, despite the omissions from the PAWA 2004.¹⁴³

187. He noted that he has continued the Comptroller and Auditor General’s practice of providing regularity opinions in respect of all sponsored bodies

¹⁴⁰ Code of Audit Practice of the Auditor General for Wales, May 2018, page 16

¹⁴¹ National Assembly for Wales Assembly Commission Annual Report and Accounts 2018-19

¹⁴² Letter from the Auditor General for Wales, 5 April 2017

¹⁴³ Letter from the Auditor General for Wales, 5 April 2017

despite the omissions because it is “clearly required” for reasons identified in his letter¹⁴⁴ (and outlined above) and is required to comply with professional standards.

Affected bodies

188. The previous AGW identified the bodies that are affected:

- the Care Council for Wales;
- the Education Workforce Council;
- the Higher Education Funding Council for Wales;
- the Local Democracy and Boundary Commission for Wales;
- the National Library for Wales;
- the National Museums and Galleries for Wales;
- Natural Resources Wales;
- Qualifications Wales.¹⁴⁵

189. The Arts Council and Sports Council are also affected as relevant provisions are not included in the Royal Charters that established them.¹⁴⁶

Potential solution

190. Similar to the solution relating to value for money conclusions, the legislation outlined above would need to be amended with the relevant provisions inserted.

Overlapping laying requirements

191. The previous AGW highlighted overlapping legislative requirements for bodies and the AGW to lay annual reports, which may lead to the need for the

¹⁴⁴ Letter from the Auditor General for Wales, 5 April 2017.

¹⁴⁵ Letter from the Auditor General for Wales, 5 April 2017.

¹⁴⁶ Letter from the Auditor General for Wales, 5 April 2017.

same document to be laid multiple times.¹⁴⁷ This is similar to the issues identified in Chapter 7 in relation to the AGW and WAO's own accounts and annual reports.

Limitations on Welsh data matching powers

Background

192. The WAO participates in the National Fraud Initiative (NFI), a biennial data-matching exercise that helps detect and prevent fraud and overpayments from the public purse across the UK. The AGW has outlined that the NFI estimated the annual loss to fraud against the public sector in the UK amounted to £662 million (excluding tax fraud).¹⁴⁸

193. The AGW and WAO outlined in the National Fraud Initiative 2018-19: Data Specifications that:

“The National Fraud Initiative (NFI) is a data matching exercise. It has been run every two years since 1996 and, to date, has been used to identify fraud and overpayments totalling £1.69 billion across the UK.”¹⁴⁹

194. The AGW describes data matching in his Code of Data Matching Practice:

“Data matching involves comparing sets of data, such as the payroll or benefits records of one body against other records held by the same or another body to see how far they match. This allows potentially fraudulent claims and payments to be identified. Where a match is found, it may indicate that there is an inconsistency which requires further investigation; it is not necessarily evidence of fraud. Where no match is found, the data matching powers will have no material effect on those concerned. In the NFI, participating bodies receive a report of matches that identify inconsistencies in the data held and may be indicative of fraud. Participating bodies should follow up and investigate such matches, to detect instances of fraud, over and under

¹⁴⁷ Letter from the Auditor General for Wales, 5 April 2017.

¹⁴⁸ National Fraud Initiative in Wales Report - 1 April 2016 to 31 March 2018, page 6.

¹⁴⁹ National Fraud Initiative 2018-19 Data Specifications, August 2018.

payments and other errors, and where appropriate take remedial action and/or update their records accordingly.”¹⁵⁰

Data

195. The NFI matches data across organisations and systems to help public bodies identify potentially fraudulent or erroneous claims and transactions. The data considered in the 2018-19 data matching exercise includes:

- Payroll;
- Insurance;
- Licenses;
- Pensions;
- Private Supported Care Home Patients;
- Transport/Concessionary Travel;
- Trade Creditors History;
- Trade Creditors Standing;
- Personal Budgets;
- Council Tax;
- Electoral Register;
- Council Tax Reduction Scheme.

196. The NFI in Wales – Report 1 April 2016 to 31 March 2018 outlines that the latest exercise detected and prevented fraud and overpayments against public bodies in Wales of over £5.4 million (compared to £4.4 million in the previous exercise).

¹⁵⁰ Code of Data Matching Practice, November 2018

197. Examples of the types of issues uncovered through the NFI are included in table 1:

Table 1: examples of the types of issue that the NFI has uncovered

Datasets matched	Issues uncovered
Housing benefit to housing-benefit claims	Individuals who are claiming housing benefit at more than one property.
Housing benefit, housing rent and payroll records to immigration data	Individuals employed or in receipt of public benefits who have no entitlement to live or work in the UK.
Council tax single person discount (CTSPD) to electoral register	Individuals falsely claiming to be the sole adult occupant of a property in order to receive a 25 per cent discount on their council tax bill.
Payments to residential care home to deceased persons' records.	Ongoing payments to residential care home residents after the resident has died.
Creditor payments to creditor payments	Public bodies have paid twice for the same goods or service following the receipt of duplicate invoices.
Blue-badge holder records to deceased persons' records	Improper use of blue badges, where a permit holder has died, but the local authority has not have been notified.

Source: AGW and WAO NFI in Wales – Report 1 April 2016 to 31 March 2018 (October 2018)

198. Further information on issues uncovered and case studies are recorded in the NFI in that report.

Participants

199. Forty-seven Welsh public sector bodies participated in the most recent NFI exercise (1 April 2016 to 31 March 2018). Mandatory participants include:

- Local authorities;
- Police authorities;
- Fire authorities;

- NHS bodies.

200. The Welsh Government, some Welsh Government Sponsored bodies and the WAO participated in the NFI on a voluntary basis. The payroll details of the vast majority of public sector staff and their external auditors are included within NFI for data matching to detect and prevent fraud.

201. The Assembly agrees funding for the NFI as part of the funding the AGW and WAO receive from the WCF as outlined in their annual Estimate and Fee Scheme (the most recent available is the Estimate for 2020-21). This means that participants are not charged for their involvement, something the AGW and WAO have noted in their estimate as welcomed by those participants.

Current provisions

202. Section 64A of the Public Audit (Wales) Act 2004 sets out the AGW's power to conduct data matching exercises, it states:

- (1) "The Auditor General for Wales may conduct data matching exercises.
- (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 subsection (1) is exercisable for the purpose of assisting in the prevention and detection of fraud in or with respect to Wales.
- (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 the following provisions of this Part, reference to a data matching exercise is to an exercise conducted or arranged to be conducted under this section."

203. The legislation includes further provisions in respect of data matching, including:

- Section 64B, Mandatory provision of data;
- Section 64C, Voluntary provision of data;
- Section 64D, Disclosure of results of data matching;
- Section 64E, Publication;
- Section 64F, Fees for data matching;
- Section 64G Code of data matching practice.

Issue

204. The previous AGW indicated that his data matching powers were now lagging behind those of counterparts in Scotland, England and Northern Ireland. He suggested that the permitted purpose of data-matching (associated with the NFI) should be extended to match the powers of English bodies, which are able to assist in the prevention and detection of crime other than fraud; the apprehension and prosecution of offenders; the prevention and detection of errors and inaccuracies; and, the recovery of debt owing to public bodies. He also suggested that the provisions should be extended for potential mandatory participants, so that all bodies audited by the AGW are covered.¹⁵¹

205. The AGW and WAO outline three risks associated with the data-matching powers as they stand:

- “it not being possible to run complete UK-wide data matching exercises in Wales;
- the potential financial benefits of data matching to identify errors and inaccuracies, and assist debt recovery will not be available to Wales;

¹⁵¹ Letter from the Auditor General for Wales, 5 April 2017.

- the potential to achieve additional savings through the inclusion of new mandatory participants not being realised.”¹⁵²

Legislation in the rest of the UK

206. The Public Finance and Accountability (Scotland) Act 2000 provides for similar powers to PAWA 2004, but also allows for data matching to be undertaken for the purposes of assisting in the prevention and detection of crime other than fraud, and for assisting in the apprehension and prosecution of offenders.

207. The Local Audit and Accountability Act 2014 in England contains provision for the purposes of data matching exercises to be extended by regulations so as to cover assisting:

- the prevention and detection of crime other than fraud,
- the apprehension and prosecution of offenders,
- the prevention and detection of errors and inaccuracies, and
- the recovery of debt owing to public bodies.

208. The Northern Ireland legislation is similar to that applying to English bodies but does not include the prevention and detection of errors and inaccuracies. Regarding the legislation in Northern Ireland, the previous AGW noted:

“It is, however, the strongest in the UK in terms of requiring bodies to participate in data matching exercises, as it enables the Comptroller & Auditor General Northern Ireland to require any body audited by him (other than designated “North/South co-operation implementation” bodies) or a local government auditor to provide information for matching rather than that power applying just to a defined list of bodies. For Wales, the list of such mandatory participants is inadequate, as it is limited to local government and health bodies.”¹⁵³

¹⁵² Written evidence: Wales Audit Office and the Auditor General for Wales

¹⁵³ Letter from the Auditor General for Wales, 5 April 2017.

209. The UK Government currently has a delegated power, under section 64H(1) of the Public Audit (Wales) Act 2004, to amend that Act by order to add to the AGW's data matching remit any of the following specified purposes:

- a. to assist in the prevention and detection of crime (other than fraud) in or with respect to Wales;
- b. to assist in the apprehension and prosecution of offenders in or with respect to Wales;
- c. to assist in the recovery of debt owing to Welsh public bodies.

210. The UK Government may further, by order under that section (64H(3)), add a Welsh public body (as defined in section 12(3)) to the list of bodies in section 64B(2) of the Act (i.e. local government and NHS bodies) in respect of which the AGW may require the provision of data to him for matching purposes.

Committee view

211. Whilst the Committee acknowledges the Auditor General for Wales and Wales Audit Office proposals in relation to other areas of audit legislation, the issues identified are included in a broad range of legislation and go beyond the terms of reference for the Committee's post-legislative scrutiny of the Public Audit (Wales) Act 2013.

Conclusion 16. The Committee is not minded to take forward proposals relating to wider public audit legislation in Wales in this Draft Bill, as this is a substantial piece of work, but it is willing to accept further evidence on these matters as part of its consultation on the Draft Bill.

CONSULTATION QUESTION

Question 24

Do you feel the Draft Bill should include provisions relating to:

- the lack of a value for money conclusion duty on the Auditor General for Wales and central government bodies;

- the absence of explicit provisions in statute for regularity opinions among many central government bodies;
- the overlapping laying requirements;
- Welsh data matching powers?

OTHER MATTERS

Question 25

Will any of the proposals included in the Draft Public Audit (Amendment) (Wales) Bill lead to any financial implications (for example, costs or benefits) for you or your organisation?

If you have identified financial implications for you or your organisation can you describe what these could be and provide an estimated cost (if possible).

Question 26

Do you have any other observations or general comments on the Public Audit (Wales) Act 2013 or the Committee's Draft Public Audit (Amendment) (Wales) Bill?

11. Non-statutory issues

Circulation of fee money amongst central government and NHS bodies

212. The letter from the AGW and WAO¹⁵⁴ in 2018 included a proposal that the audit fee for directly funded bodies (the Welsh Government, the Assembly Commission and the Public Services Ombudsman for Wales) is replaced with notional fees provided to those bodies.

213. The proposal would alter the fee charging process so that the WAO received more funding from the WCF, as opposed to receiving fees from certain bodies. As this proposal would not be a statutory change it was not included in the draft Bill presented to the Committee.

214. The proposal was first included in the AGW and WAO's discussion paper¹⁵⁵ and the subsequent report "the complex public audit fee regime in Wales – a case for change"¹⁵⁶, which collated the views of stakeholders on moving to a notional fee regime for certain bodies. The report noted that:

"Although the majority of stakeholders were supportive of our preferred solution, importantly two of the larger stakeholder organisations, the Welsh Government and Natural Resources Wales, were not. The Welsh Government's response said that without maintaining a clear link between audit work and audit costs incurred, there is less of an incentive for the public sector to pursue change."¹⁵⁷

215. Other stakeholder responses suggested there may be increased complication from this system, that it would need to be cost neutral when implemented and that there would be a gap in terms of challenging the audit

¹⁵⁴ [Letter from the AGW and WAO, 21 June 2018](#)

¹⁵⁵ [Wales Audit Office: Discussion paper - Simplifying a Complex Fee Regime, June 2017](#)

¹⁵⁶ [Wales Audit Office: The complex public audit fee regime in Wales – a case for change, October 2017](#)

¹⁵⁷ [Wales Audit Office: The complex public audit fee regime in Wales – a case for change, October 2017, paragraph 38](#)

fee. There were also concerns that savings may be minimal and that adjustments to grant-in-aid may go beyond the value of the fee.¹⁵⁸

216. The AGW and WAO subsequently indicated that this proposal was being reconsidered:

“We have been looking at piloting the arrangement with the Public Services Ombudsman for Wales but have found that the approach would merely shift the administrative burden from the WAO to the Ombudsman in terms of making the necessary accounting adjustments. We will therefore be reconsidering whether to proceed with this proposal, which in any case would address only a fraction of the administrative burden that we face as most audited bodies are not directly-funded.”¹⁵⁹

Evidence

217. The Committee explored with stakeholders the option of implementing a notional audit fee model for centrally funded bodies, as utilised in other audit offices in the UK.

218. The ACCA was supportive of notional fees, noting that the “primary concern should be the quality of financial information published by bodies subject to audit”.¹⁶⁰ The WLGA was also supportive of notional fees for bodies funded directly from the WCF.¹⁶¹

219. The Director of Finance representing Hywel Dda University Health Board told the Committee that he was not sure what would be gained from a notional fee structure as “the transactional cost of paying real fees to the auditor isn't significant”.¹⁶²

¹⁵⁸ [Wales Audit Office: The complex public audit fee regime in Wales – a case for change, October 2017, paragraph 39](#)

¹⁵⁹ [Written evidence: Wales Audit Office and the Auditor General for Wales](#)

¹⁶⁰ [Written evidence: Association of Chartered Certified Accountants](#)

¹⁶¹ [Written evidence: Welsh Local Government Association](#)

¹⁶² [Finance Committee, Record of Proceedings, 11 July 2019, paragraph 167](#)

220. The Director of Finance representing Swansea Bay University Health Board continued:

“I would have concerns that the notional fee might risk breaking that transparency between the plan and the cost. And I think if that model were to be pursued, I think we would need an awful lot more information about how it was actually going to be operationalised and what it meant for corporate governance and financial governance if it were implemented.”¹⁶³

221. Whilst the CIPFA acknowledged that a notional fee approach “does drive a small amount of efficiency in the process”, the representative added:

“I wouldn’t over-egg them, though, and say that they’re massive savings because it’s saving some transactional work. So, there will be savings, but it’s more important to ensure that your audit scrutiny is there because it’s, as I say, still a valid charge to a revenue budget. So, it shouldn’t detract from that.”¹⁶⁴

222. The Minister did not support a move to notional fees for audit work, citing four reasons why the process of agreeing fees is important:

- Supports development of the audit plan. The client is clear about both the activities and resources being deployed by the auditors;
- Helps the client organization demonstrate value for money;
- Supports the WAO to better plan the use of resources and where delays occur recover the necessary additional costs;
- Helps those bodies being audited to be more disciplined in their audits; direct hard charging provides an incentive to deal with audits effectively.¹⁶⁵

¹⁶³ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 168

¹⁶⁴ Finance Committee, Record of Proceedings, 11 July 2019, paragraphs 37 and 39

¹⁶⁵ Letter from the Minister for Finance and Trefnydd, 27 June 2019

223. Whilst the Welsh Government accepts that there may be an administrative burden to recovering fees from clients, the Minister believes the discipline of agreeing and recovering fees “out-weighs any disadvantage”.¹⁶⁶

224. The Minister reiterated the Welsh Government’s view when she appeared before the Committee:

“...the issue of notional charging, which was the only area really where we had a difference of views, I think, has been resolved in the sense that the Wales Audit Office now has looked at the experience of Scotland and Northern Ireland and decided that it’s not something that they particularly would wish now to pursue, mostly because it would just serve to shift the administrative burden from the WAO to the audited bodies.”¹⁶⁷

225. When the Committee asked the AGW and WAO why the proposed move to a notional fee system for centrally funded bodies was being reconsidered, the WAO’s Director of Finance explained:

“Our original proposal was based on the legislation in Scotland and England and Northern Ireland, but I think we hadn’t fully appreciated the complexity and difficulties we’d face in moving from where we are now, with hard fee charging in Wales, to one of notional fee charging, whereas, in the other parts of the UK, they had notional fee charges from the outset. As you heard from the other directors of finance last week, processing an invoice is not a big deal to them, but, if we changed to notional fee charging, they would have to do journal entries to create a notional charge and a notional credit on their balance sheet, and, as soon as we realised that, we thought it’s worth a rethink and pulling back from that proposal.”¹⁶⁸

¹⁶⁶ Letter from the Minister for Finance and Trefnydd, 27 June 2019.

¹⁶⁷ Finance Committee, Record of Proceedings, 11 July 2019, paragraph 227.

¹⁶⁸ Finance Committee, Record of Proceedings, 17 July 2019, paragraph 341.

Committee view

226. The Committee notes that the AGW and WAO have reconsidered their proposals to replace the audit fee for centrally funded bodies with notional fees, having identified that this would simply transfer the administrative burden from the WAO to the centrally funded body.

Draft Public Audit (Amendment) (Wales) Bill

[FOR CONSULTATION]

CONTENTS

PART 1

INTRODUCTION

- 1 Overview

PART 2

AMENDMENTS TO THE PUBLIC AUDIT (WALES) ACT 2013

- 2 Fees for provision of services
- 3 General provision relating to fees
- 4 Scheme for charging of fees
- 5 Employment etc. of former Auditor General and remuneration
- 6 Consultation requirements
- 7 Appointment of non-executive members of the WAO
- 8 Appointment of the chair of the WAO
- 9 Period of appointment and re-appointment
- 10 Remuneration arrangements for the WAO
- 11 Terms of appointment
- 12 Termination of appointments
- 13 Quorum for WAO meetings
- 14 WAO accounts and auditors of the WAO
- 15 Laying of reports etc. before the National Assembly
- 16 Interim reports

PART 3

GENERAL

- 17 Laying deadlines for certified accounts
- 18 Consequential amendments
- 19 Transitional arrangements
- 20 Short title and coming into force

Schedule 1 – Accounts reporting and laying deadlines

Schedule 2 – Consequential amendments

Schedule 3 – Transitional arrangements

Draft Public Audit (Amendment) (Wales) Bill

[FOR CONSULTATION]

An Act of the National Assembly for Wales to amend the Public Audit (Wales) Act 2013 (anaw 3) in relation to the Auditor General for Wales and the Wales Audit Office and for connected purposes.

Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:

PART 1

INTRODUCTION

1 Overview

The main provisions of this Act amend the Public Audit (Wales) Act 2013 (anaw 3) (the “2013 Act”) to—

- (a) remove the prohibition on the Wales Audit Office (the “WAO”) charging fees that exceed the full cost of exercising the function to which the fee relates (section 2);
- (b) require the WAO to include in a fees scheme a provision that seeks to ensure that the sum of the fees charged to each person for work undertaken under specified enactments, taken together and taking one year with another, is broadly equivalent to all of its expenditure relating to that person for that work (sections 3 and 4);
- (c) require the National Assembly to publish a list of offices, positions, agreements and other arrangements that require consultation before they are taken up or entered into by a former Auditor General only where the National Assembly has specified any office, position, agreement or arrangement (section 5);
- (d) remove or amend consultation requirements in relation to the appointment of the Auditor General and members of the WAO (including the chair) and add a discretion for the National Assembly to consult with persons it deems appropriate before exercising functions in relation to the Auditor General or the WAO (section 6);
- (e) make provision relating to the appointment, re-appointment and termination of appointment, as well as remuneration and terms of appointment, of members of the WAO (including the chair) (sections 7 to 12);
- (f) amend the quorum requirements in relation to WAO meetings (section 13);

- (g) make provision relating to the appointment of auditors of the WAO so that the WAO is required to appoint its auditors instead of the National Assembly (section 14);
- (h) co-ordinate the laying of the annual report on the exercise of functions of the Auditor General and the WAO with the laying of the audited accounts of the WAO (section 15);
- (i) remove the requirement for the Auditor General and the chair of the WAO to jointly prepare and lay interim reports before the National Assembly on the exercise of their functions (section 16);
- (j) make provision for the extension of reporting deadlines (section 17 and Schedule 1).

PART 2

AMENDMENTS TO THE PUBLIC AUDIT (WALES) ACT 2013

2 Fees for provision of services

- (1) Section 19 of the 2013 Act is amended as follows.
- (2) In subsection (5)(a), after “the Auditor General or the WAO” insert “(otherwise than by way of raising money by charging fees)”.
- (3) After subsection (6) insert –
- “(6A) The WAO may charge a fee in relation to any services provided or functions exercised under this section.”
- (4) Omit subsection (8).

3 General provision relating to fees

- (1) Section 23 of the 2013 Act is amended as follows.
- (2) In subsection (3), omit paragraph (d).
- (3) In subsection (5), for paragraph (b) substitute –
- “(b) may be aggregated and charged on the basis of broad equivalence (see subsection (6))”.
- (4) After subsection (5) insert –
- “(6) In this Act, broad equivalence means that the WAO must seek to ensure that the sum of fees charged under this section for any functions exercised in relation to a person under the enactments mentioned in section 24(2)(a), taken together and taking one year with another, is broadly equivalent to all of its expenditure attributable to that person in connection with those functions.”

4 Scheme for charging of fees

- (1) Section 24 of the 2013 Act is amended as follows.
- (2) In subsection (2)(a), at the end insert “and which may only be charged in accordance with this scheme”.

5 Employment etc. of former Auditor General and remuneration

- (1) The 2013 Act is amended as follows.
- (2) In section 5(3) –
 - (a) in paragraph (a), at the end insert “(if any)”;
 - (b) in paragraph (b), at the end insert “(if any)”.
- (3) In section 7(3)(b) omit “from time to time”.

6 Consultation requirements

- (1) The 2013 Act is amended as follows.
- (2) In section 7, omit subsection (2).
- (3) In section 28, after subsection (3) insert –
 - “ (4) The National Assembly may consult with the persons (if any) it deems appropriate before exercising any functions in relation to the Auditor General or the WAO.”
- (4) In Schedule 1 –
 - (a) in paragraph 5, omit sub-paragraph (2);
 - (b) in paragraph 7, omit sub-paragraph (2);
 - (c) omit paragraph 9;
 - (d) in paragraph 12, omit sub-paragraph (2).

7 Appointment of non-executive members of the WAO

- (1) Paragraph 4 of Schedule 1 to the 2013 Act is amended as follows.
- (2) For sub-paragraph (2) substitute –
 - “ (2) Appointments made under sub-paragraph (1) must be for a period of no more than 4 years.
 - (3) A person must not be appointed under sub-paragraph (1) more than twice.
 - (4) The National Assembly may extend an appointment made under sub-paragraph (1) for a period of no more than 4 years.
 - (5) But the National Assembly must not extend an appointment under sub-paragraph (4) if that non-executive member –
 - (a) has been appointed under sub-paragraph (1) more than once,
 - or

(b) has previously received an extension of appointment under sub-paragraph (4).

(6) The National Assembly must not make or extend an appointment made under sub-paragraph (1) or (4) if that would result in a person serving longer than 8 years."

8 Appointment of the chair of the WAO

(1) Paragraph 5 of Schedule 1 to the 2013 Act is amended as follows.

(2) For sub-paragraphs (3) and (4) substitute –

"(3) The National Assembly may extend an appointment under this paragraph.

(4) The period of appointment under this paragraph (including any extension) must not exceed the person's remaining period of office as a non-executive member."

9 Period of appointment and re-appointment

In Schedule 1 to the 2013 Act, omit paragraph 6.

10 Remuneration arrangements for the WAO

(1) The 2013 Act is amended as follows.

(2) In paragraph 7 of Schedule 1 –

(a) in sub-paragraph (1), omit "(subject to sub-paragraph (2) and paragraph 9)";

(b) in sub-paragraph (6)(b), omit "from time to time";

(c) after sub-paragraph (7) insert –

"(8) The National Assembly may amend remuneration arrangements made under this paragraph."

(3) In paragraph 17(2)(b) of Schedule 1, omit "from time to time".

(4) In paragraph 11(b) of Schedule 2, omit "from time to time".

11 Terms of appointment

(1) Paragraph 8 of Schedule 1 to the 2013 Act is amended as follows.

(2) In sub-paragraph (1), omit "(subject to paragraph 9)".

(3) After sub-paragraph (3) insert –

"(4) The National Assembly may amend terms of appointment determined under this paragraph."

12 Termination of appointments

(1) Schedule 1 to the 2013 Act is amended as follows.

(2) In paragraph 10(3), for "accepted" substitute "received".

- (3) In paragraph 12(3)(b), after “otherwise” insert “unable, unfit or”.

13 Quorum for WAO meetings

- (1) Paragraph 28 of Schedule 1 to the 2013 Act is amended as follows.

- (2) After sub-paragraph (3), insert—

5 “(4) The rules may provide that in the event that the majority of members present are not non-executive members, the chair may request the employee members to nominate an employee member who will take on an observer role for the remainder of a meeting or until such time as the quorum is restored by the arrival of an additional non-
10 executive member.”

14 WAO accounts and auditors of the WAO

- (1) Schedule 1 to the 2013 Act is amended as follows.

- (2) In paragraph 33(6), omit “from time to time”.

- (3) In paragraph 34, for sub-paragraphs (1) and (2) substitute—

15 “(1) The WAO must appoint a person as auditor of the WAO’s accounts.

(2) The National Assembly’s approval is required for—

(a) the appointment of a person as auditor,

(b) the terms of the auditor’s appointment, and

(c) the method of procurement of an auditor by the WAO.”

20 15 Laying of reports etc. before the National Assembly

- (1) The 2013 Act is amended as follows.

- (2) In paragraph 35(2)(b) of Schedule 1, after “report on it” insert “and the annual report provided by the Auditor General and the chair of the WAO in accordance with paragraph 3 of Schedule 2”.

- 25 (3) In paragraph 3(6) of Schedule 2, for sub-paragraph (a) substitute—

“(a) provide the annual report as soon as practicable to the auditor appointed under paragraph 34 of Schedule 1 and in any event no later than 5 months after the end of the financial year to which the annual report relates;”

30 16 Interim reports

- (1) Paragraph 3 of Schedule 2 to the 2013 Act is amended as follows.

- (2) In sub-paragraph (3), for “At least once during each financial year” substitute “If requested by the National Assembly at any time during a financial year”.

- (3) Omit sub-paragraph (5).

- (4) In sub-paragraph (6)(b), after “lay” insert “any”.
- (5) In sub-paragraph (6)(b), omit “from time to time”.

PART 3

GENERAL

5 **17 Laying deadlines for certified accounts**

Schedule 1 makes amendments to existing legislation relating to laying of certified accounts and reports.

18 Consequential amendments

Schedule 2 makes consequential amendments.

10 **19 Transitional arrangements**

- (1) Schedule 3 makes transitional arrangements.
- (2) The Welsh Ministers may by order make such transitional, transitory or saving provision as they think appropriate in connection with the commencement of this Act.
- (3) A power of the Welsh Ministers to make an order under this Act is exercisable by
15 statutory instrument.
- (4) A statutory instrument containing an order under this Act is subject to annulment in pursuance of a resolution of the National Assembly.
- (5) Nothing in Schedule 3 limits the power conferred by subsection (2); and such an order may, amongst other things, make modifications of that Schedule.

20 **20 Short title and coming into force**

- (1) This Act comes into force at the end of the period of [two months] beginning with the day on which this Act receives Royal Assent.
- (2) The short title of this Act is the Public Audit (Amendment) (Wales) Act 20[].

SCHEDULE 1
(introduced by section 17)

ACCOUNTS REPORTING AND LAYING DEADLINES

Children's Commissioner for Wales

- 5 1 Paragraph 9 of Schedule 2 to the Care Standards Act 2000 (c. 14) is amended as follows.
- 2 At the beginning of sub-paragraph (2)(b), insert "(subject to sub-paragraph (2A))".
- 3 After sub-paragraph (2), insert—
- “(2A) The Auditor General for Wales may lay a copy of the certified
10 accounts and report before the Assembly after the four-month
deadline mentioned in sub-paragraph (2)(b) where it is not reasonably
practicable for the Auditor General for Wales to meet that deadline.
- (2B) Where sub-paragraph (2A) applies, the Auditor General for Wales
must—
- (a) before the four-month deadline mentioned in sub-paragraph
15 (2)(b), lay before the Assembly a statement explaining why it is
not reasonably practicable for the Auditor General for Wales to
lay a copy of the certified accounts and report before the
Assembly before that deadline, and
- (b) lay a copy of the certified accounts and report before the
20 Assembly as soon as reasonably practicable after that
deadline.”

Education Workforce Council

- 4 Paragraph 21 of Schedule 1 to the Education (Wales) Act 2014 (anaw 5) is amended as
follows.
- 25 5 At the beginning of sub-paragraph (4)(b), insert "(subject to sub-paragraph (4A))".
- 6 After sub-paragraph (4), insert—
- “(4A) The Auditor General for Wales may lay a copy of the certified
30 accounts and report before the Assembly after the four-month
deadline mentioned in sub-paragraph (4)(b) where it is not reasonably
practicable for the Auditor General for Wales to meet that deadline.
- (4B) Where sub-paragraph (4A) applies, the Auditor General for Wales
must—
- (a) before the four-month deadline mentioned in sub-paragraph
35 (4)(b), lay before the Assembly a statement explaining why it is
not reasonably practicable for the Auditor General for Wales to
lay a copy of the certified accounts and report before the
Assembly before that deadline, and

- (b) lay a copy of the certified accounts and report before the Assembly as soon as reasonably practicable after that deadline.”

Estyn

5 7 Paragraph 6 of Schedule 6 to the Government of Wales Act 1998 (c. 38) is amended as follows.

8 At the beginning of sub-paragraph (2)(b), insert “(subject to sub-paragraph (2A))”.

9 After sub-paragraph (2), insert—

10 “(2A) The Auditor General for Wales may lay a copy of the certified accounts and report before the Assembly after the four-month deadline mentioned in sub-paragraph (2)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

(2B) Where sub-paragraph (2A) applies, the Auditor General for Wales must—

15 (a) before the four-month deadline mentioned in sub-paragraph (2)(b), lay before the Assembly a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before the Assembly before that deadline, and

20 (b) lay a copy of the certified accounts and report before the Assembly as soon as reasonably practicable after that deadline.”

Future Generations Commissioner

10 Paragraph 21 of Schedule 2 to the Well-being of Future Generations (Wales) Act 2015
25 (anaw 2) is amended as follows.

11 At the beginning of sub-paragraph (2)(b), insert “(subject to sub-paragraph (2A))”.

12 After sub-paragraph (2), insert—

30 “(2A) The Auditor General may lay a copy of the certified accounts and report before the National Assembly after the four-month deadline mentioned in sub-paragraph (2)(b) where it is not reasonably practicable for the Auditor General to meet that deadline.

(2B) Where sub-paragraph (2A) applies, the Auditor General must—

35 (a) before the four-month deadline mentioned in sub-paragraph (2)(b), lay before the National Assembly a statement explaining why it is not reasonably practicable for the Auditor General to lay a copy of the certified accounts and report before the National Assembly before that deadline, and

- (b) lay a copy of the certified accounts and report before the National Assembly as soon as reasonably practicable after that deadline.”

Health Education & Improvement Wales, Local Health Boards and NHS trusts

- 5 13 Section 61 of the Public Audit (Wales) Act 2004 (c. 23) is amended as follows.
- 14 At the beginning of subsection (2)(b), insert “(subject to subsection (2A))”.
- 15 After subsection (2), insert—
- 10 “(2A) The Auditor General for Wales may lay a copy of the certified accounts and report before the National Assembly for Wales after the four-month deadline mentioned in sub-paragraph (2)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.
- (2B) Where subsection (2A) applies, the Auditor General for Wales must—
- 15 (a) before the four-month deadline mentioned in subsection (2)(b), lay before the National Assembly for Wales a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before the National Assembly for Wales before that deadline, and
- 20 (b) lay a copy of the certified accounts and report before the National Assembly for Wales as soon as reasonably practicable after that deadline.”

Local Democracy and Boundary Commission for Wales

- 16 Section 19 of the Local Government (Democracy) (Wales) Act 2013 (anaw 4) is amended
- 25 as follows.
- 17 At the beginning of subsection (4)(b), insert “(subject to subsection (4A))”.
- 18 After subsection 4, insert—
- 30 “(4A) The Auditor General for Wales may lay a copy of the certified accounts and report before the National Assembly for Wales after the four-month deadline mentioned in sub-paragraph (4)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.
- (4B) Where subsection (4A) applies, the Auditor General for Wales must—

- 5
- (a) before the four-month deadline mentioned in subsection (4)(b), lay before the National Assembly for Wales a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before the National Assembly for Wales before that deadline, and
 - (b) lay a copy of the certified accounts and report before the National Assembly for Wales as soon as reasonably practicable after that deadline."

10 *National Assembly for Wales Commission*

19 Section 137 of the Government of Wales Act 2006 (c. 32) is amended as follows.

20 At the beginning of subsection (5)(b), insert "(subject to subsection (5A))".

21 After subsection 5, insert—

15 "(5A) The Auditor General may lay a copy of the certified accounts and report before the Assembly after the four-month deadline mentioned in subsection (5)(b) where it is not reasonably practicable for the Auditor General to meet that deadline.

(5B) Where subsection (5A) applies, the Auditor General must—

- 20
- (a) before the four-month deadline mentioned in subsection (5)(b), lay before the Assembly a statement explaining why it is not reasonably practicable for the Auditor General to lay a copy of the certified accounts and report before the Assembly before that deadline, and
 - (b) lay a copy of the certified accounts and report before the Assembly as soon as reasonably practicable after that deadline."
- 25

Natural Resources Wales

22 Paragraph 23 of Schedule 1 to the Natural Resources Body for Wales (Establishment) Order 2012 (S.I. 2012/1903 (W. 230)) is amended as follows.

30 23 At the beginning of sub-paragraph (5)(c), insert "(subject to sub-paragraph (6))".

24 After sub-paragraph (5), insert—

35 "(6) The Auditor General for Wales may lay a copy of the certified accounts and report before the National Assembly for Wales after the four-month deadline mentioned in sub-paragraph (5)(c) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

(7) Where sub-paragraph (6) applies, the Auditor General for Wales must—

- 5
- (a) before the four-month deadline mentioned in sub-paragraph (5)(c), lay before the National Assembly for Wales a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before the National Assembly for Wales before that deadline, and
 - (b) lay a copy of the certified accounts and report before the National Assembly for Wales as soon as reasonably practicable after that deadline."

10 *Older People's Commissioner*

25 Paragraph 12 of Schedule 1 to the Commissioner for Older People (Wales) Act 2006 (c. 30) is amended as follows.

26 At the beginning of sub-paragraph (2)(b), insert "(subject to sub-paragraph (2A))".

27 After sub-paragraph (2), insert—

15 "(2A) The Auditor General for Wales may lay a copy of the certified accounts and report before the Assembly after the four-month deadline mentioned in sub-paragraph (2)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

20 (2B) Where sub-paragraph (2A) applies, the Auditor General for Wales must—

- 25
- (a) before the four-month deadline mentioned in sub-paragraph (2)(b), lay before the Assembly a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before the Assembly before that deadline, and
 - (b) lay a copy of the certified accounts and report before the Assembly as soon as reasonably practicable after that deadline."

Qualifications Wales

30 28 Paragraph 33 of Schedule 1 to the Qualifications Wales Act 2015 (anaw 5) is amended as follows.

29 At the beginning of sub-paragraph (2)(b), insert "(subject to sub-paragraph (3))".

30 After sub-paragraph (2), insert—

35 "(3) The Auditor General may lay a copy of the certified accounts and report before the National Assembly for Wales after the four-month deadline mentioned in sub-paragraph (2)(b) where it is not reasonably practicable for the Auditor General to meet that deadline.

(4) Where sub-paragraph (3) applies, the Auditor General must—

- 5
- (a) before the four-month deadline mentioned in sub-paragraph (2)(b), lay before the National Assembly for Wales a statement explaining why it is not reasonably practicable for the Auditor General to lay a copy of the certified accounts and report before the National Assembly for Wales before that deadline, and
 - (b) lay a copy of the certified accounts and report before the National Assembly for Wales as soon as reasonably practicable after that deadline."

10 *Social Care Wales*

31 Paragraph 16 of Schedule 2 to the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) is amended as follows.

32 At the beginning of sub-paragraph (4)(b), insert "(subject to sub-paragraph (5))".

33 After sub-paragraph (4), insert—

15 "(5) The Auditor General for Wales may lay a copy of the certified accounts and report before the National Assembly for Wales after the four-month deadline mentioned in sub-paragraph (4)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

20 (6) Where sub-paragraph (5) applies, the Auditor General for Wales must—

- 25
- (a) before the four-month deadline mentioned in sub-paragraph (4)(b), lay before the National Assembly for Wales a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before the National Assembly for Wales before that deadline, and
 - (b) lay a copy of the certified accounts and report before the National Assembly for Wales as soon as reasonably practicable after that deadline."
- 30

Welsh Consolidated Fund

34 Section 132 of the Government of Wales Act 2006 is amended as follows.

35 At the beginning of subsection (5)(b), insert "(subject to subsection (5A))".

36 After subsection (5), insert—

35 "(5A) The Auditor General may lay a copy of the certified accounts and report before the Assembly after the four-month deadline mentioned in subsection (5)(b) where it is not reasonably practicable for the Auditor General to meet that deadline.

(5B) Where subsection (5A) applies, the Auditor General must—

- 5
- (a) before the four-month deadline mentioned in subsection (5)(b), lay before the Assembly a statement explaining why it is not reasonably practicable for the Auditor General to lay a copy of the certified accounts and report before the Assembly before that deadline, and
 - (b) lay a copy of the certified accounts and report before the Assembly as soon as reasonably practicable after that deadline."

Welsh Language Commissioner

10 37 Paragraph 19 of Schedule 1 to the Welsh Language (Wales) Measure 2011 (nawm 1) is amended as follows.

38 At the beginning of sub-paragraph (2)(b), insert "(subject to sub-paragraph (2A))".

39 After sub-paragraph (2), insert—

15 "(2A) The Auditor General for Wales may lay a copy of the certified accounts and report before the National Assembly for Wales after the four-month deadline mentioned in sub-paragraph (2)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

20 (2B) Where sub-paragraph (2A) applies, the Auditor General for Wales must—

- 25
- (a) before the four-month deadline mentioned in sub-paragraph (2)(b), lay before the National Assembly for Wales a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before the National Assembly for Wales before that deadline, and
 - (b) lay a copy of the certified accounts and report before the National Assembly for Wales as soon as reasonably practicable after that deadline."

30 *Welsh Ministers*

40 Section 131 of the Government of Wales Act 2006 is amended as follows.

41 At the beginning of subsection (6)(b), insert "(subject to subsection (6A))".

42 After subsection (6), insert—

35 "(6A) The Auditor General may lay a copy of the certified accounts and report before the Assembly after the four-month deadline mentioned in subsection (6)(b) where it is not reasonably practicable for the Auditor General to meet that deadline.

(6B) Where subsection (6A) applies, the Auditor General must—

- 5
- (a) before the four-month deadline mentioned in subsection (6)(b), lay before the Assembly a statement explaining why it is not reasonably practicable for the Auditor General to lay a copy of the certified accounts and report before the Assembly before that deadline, and
 - (b) lay a copy of the certified accounts and report before the Assembly as soon as reasonably practicable after that deadline."

Welsh Revenue Authority

10 43 Section 31 of the Tax Collection and Management (Wales) Act 2016 (anaw 6) is amended as follows.

44 At the beginning of subsection (2)(b), insert "(subject to subsection (2A))".

45 After subsection (2), insert –

15 "(2A) The Auditor General for Wales may lay a copy of the certified accounts and Tax Statement and reports on them before the National Assembly for Wales after the four-month deadline mentioned in subsection (2)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

(2B) Where subsection (2A) applies, the Auditor General for Wales must –

- 20
- (a) before the four-month deadline mentioned in subsection (2)(b), lay before the National Assembly for Wales a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and Tax Statement and reports on them before the National Assembly for Wales before that deadline, and
 - (b) lay a copy of the certified accounts and Tax Statement and reports on them before the National Assembly for Wales as soon as reasonably practicable after that deadline."
- 25

Whole of Government of Wales account

30 46 Section 142 of the Government of Wales Act 2006 is amended as follows.

47 At the beginning of subsection (2)(b), insert "(subject to subsection (2A))".

48 After subsection (2), insert –

35 "(2A) The Auditor General may lay a copy of the certified accounts and report before the Assembly after the four-month deadline mentioned in subsection (2)(b) where it is not reasonably practicable for the Auditor General to meet that deadline.

(2B) Where subsection (2A) applies, the Auditor General must –

5

- (a) before the four-month deadline mentioned in subsection (2)(b), lay before the Assembly a statement explaining why it is not reasonably practicable for the Auditor General to lay a copy of the certified accounts and report before the Assembly before that deadline, and
- (b) lay a copy of the certified accounts and report before the Assembly as soon as reasonably practicable after that deadline.”

SCHEDULE 2
(introduced by section 18)

CONSEQUENTIAL AMENDMENTS

Education Act 1997 (c. 44)

- 5 1 In subsection (6) of section 41A of the Education Act 1997, omit the words from “(which”
to the end of that subsection.

Government of Wales Act 1998 (c. 38)

- 2 The Government of Wales Act 1998 is amended as follows.
3 In section 145C(3), omit the words “(which may not exceed the full cost incurred in
10 undertaking the programme),”.
4 In section 145D, omit subsection (2A).

Public Audit (Wales) Act 2004 (c.23)

- 5 The Public Audit (Wales) Act 2004 is amended as follows.
6 In section 20, omit subsection (5A).
15 7 In subsection 45(8), omit the words from “(but” to the end of that subsection.
8 In section 64F, omit subsection (10).
9 In section 67A, omit subsection (3).

Government of Wales Act 2006 (c. 32)

- 10 In section 144(2) of the Government of Wales Act 2006, omit paragraph (g).

20 *Local Government (Wales) Measure 2009 (nawm 2)*

- 11 In section 27 of the Local Government (Wales) Measure 2009, omit subsection (4A).

Local Democracy, Economic Development and Construction Act 2009 (c. 20)

- 12 In subsection (4A) of section 50 of the Local Democracy, Economic Development and
Construction Act 2009, omit the words from “But” to the end of that subsection.

SCHEDULE 3
(introduced by section 19)

TRANSITIONAL ARRANGEMENTS

Fees for provision of services

- 5 1 (1) This paragraph applies where arrangements are made between the WAO and a relevant authority under section 19 of the 2013 Act immediately before the coming into force of section 2 (fees for provision of services).
- (2) An arrangement made between the WAO and a relevant authority has effect until the arrangement comes to an end (subject to any earlier termination).
- 10 (3) The 2013 Act applies with the following modifications in relation to an arrangement continued by sub-paragraph (2) –
- (a) section 19 of the 2013 Act has effect as if it had not been amended by this Act, and
 - (b) sections 23 and 24 of the 2013 Act have effect as if they had not been amended by this Act.

15 *Scheme for charging of fees*

- 2 (1) This paragraph applies where a scheme for charging fees under section 24 of the 2013 Act has effect immediately before the coming into force of section 4 (scheme for charging of fees).
- (2) A scheme continues to have effect until a new scheme comes into effect.
- 20 (3) The 2013 Act applies with the following modifications in relation to a scheme continued by sub-paragraph (2) –
- (a) section 24 of the 2013 Act has effect as if it had not been amended by this Act, and
 - (b) sections 19 and 23 of the 2013 Act have effect as if they had not been amended by this Act.

25 *Auditors of the WAO*

- 3 (1) This paragraph applies where an appointment of a person as an auditor in relation to the accounts of the WAO has effect under paragraph 34 of Schedule 1 to the 2013 Act immediately before the coming into force of section 14 (WAO accounts and auditors of the WAO).
- 30 (2) The appointment of a person as an auditor of the WAO continues to have effect until the end of the period for which the appointment was made (subject to any earlier termination).

Draft Public Audit (Amendment) (Wales) Bill

Explanatory Notes

INTRODUCTION

These Explanatory Notes relate to the [Draft] Public Audit (Amendment) (Wales) Act 2020 which was passed by the National Assembly for Wales on [] and received Royal Assent on []. They have been prepared in order to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

The following terms and abbreviations are used in the Explanatory Notes –

2013 Act – the Public Audit (Wales) Act 2013

The National Assembly – the National Assembly for Wales

AGW – the Auditor General for Wales

WAO – the Wales Audit Office

PART 1 INTRODUCTION

Section 1 – Overview

The Act comprises 20 sections and 3 schedules. As set out in section 1 (which is not intended to have any legal effect), the provisions –

- remove the prohibition on the WAO charging fees that exceed the full cost of exercising the function to which the fee relates;
- require the WAO to include in a fees scheme a provision that seeks to ensure that the sum of the fees charged to each person for work undertaken under specified enactments, taken together and taking one year with another, is broadly equivalent to all of its expenditure relating to that person for that work (sections 3 and 4);
- require the National Assembly to publish a list of offices, positions, agreements and other arrangements that require consultation before they are taken up or entered into by a former Auditor General only where the National Assembly has specified any office, position, agreement or arrangement;
- remove or amend consultation requirements in relation to the appointment of the Auditor General and members of the WAO (including the chair) and add a discretion for the National Assembly to consult with persons it deems appropriate before exercising functions in relation to the Auditor General or the WAO;
- make provision relating to the appointment, re-appointment and termination of appointment, as well as remuneration and terms of appointment, of members of the WAO (including the chair);
- amend the quorum requirements in relation to WAO meetings;
- make provision relating to the appointment of auditors of the WAO so that the WAO is required to appoint its auditors instead of the National Assembly;

- co-ordinate the laying of the annual report on the exercise of functions of the Auditor General and the WAO with the laying of the audited accounts of the WAO;
- remove the requirement for the Auditor General and the chair of the WAO to jointly prepare and lay interim reports before the National Assembly on the exercise of their functions;
- make provision for the extension of reporting deadlines.

PART 2 AMENDMENTS TO THE PUBLIC AUDIT (WALES) ACT 2013

Section 2 - Fees for provision of services

This section amends section 19 of the 2013 Act.

Subsection (2) amends section 19(5)(a) of the 2013 Act to clarify that the potential to raise funds is not regarded in itself to facilitate, or be conducive to, the exercise of the functions of the AGW or the WAO.

Subsection (3) enables the WAO to continue to charge fees for the provision of services or functions exercised by agreement under section 19 of the 2013 Act. As section 3 (see below) removes the charging of fees for work under section 19 of the 2013 Act, subsection (3) is a necessary replacement provision for the charging of fees.

Subsection (4) releases the WAO from the obligation to set fees for such work in accordance with a fee scheme (prepared under section 24 of the 2013 Act).

Section 3 - General provision relating to fees

This section removes the prohibition on fees charged under those enactments listed in section 23(3) of the 2013 Act from exceeding the full cost of the function to which they relate and replaces it with the concept of “broad equivalence”.

Subsection (2) repeals the power to charge fees for work under section 19 of the 2013 Act from section 23 of the 2013 Act. As explained above, section 2 of the Act replaces this provision with an equivalent power in section 19 of the 2013 Act. The net effect of these changes relating to fees charged under section 19 of the 2013 Act is that they may be set at a level above the related expenditure.

Subsection (3) introduces the “broad equivalence” basis used for calculating fees and subsection (4) provides for a definition of “broad equivalence” to be inserted into the 2013 Act. Broad equivalence means that the WAO must seek to ensure that the sum of the fees charged to any person for all of the work undertaken under the enactments listed in section 24(1) of the 2013 Act, taken together and taking one year with another, is broadly equivalent to all of its expenditure in connection with that work attributable to that person.

Section 4 - Scheme for charging of fees

This section amends section 24 of the 2013 Act. The amendments are necessary to reflect the changes to fees made by sections 2 and 3.

Subsection (2) reflects that, following the amendments made by sections 2 and 3, fees for work under section 19 of the 2013 Act are not subject to the requirement that fees do not exceed cost and the requirements of the fee scheme prepared under section 24 of the 2013 Act.

Section 5 - Employment etc of former Auditor General and remuneration

This section amends section 5 of the 2013 Act in relation to the mandatory obligation to publish a list of offices, positions, agreements and arrangements specified by the National Assembly under section 5(2) of the 2013 Act, and to remove ambulatory wording.

Section 5(3) of the 2013 Act requires the National Assembly to publish a list of offices, positions, agreements and arrangements in respect of which a former Auditor General must consult any person specified by the National Assembly prior to taking up or entering into, as the case may be. The National Assembly has a discretion when considering whether to specify an office, position, agreement or arrangement and it can therefore be the case that there are no such specified offices, positions, agreements and arrangements. Subsection (2) inserts wording to section 5(3)(a) and (b) of the 2013 Act in order to clarify that a list must be published where an office, position, agreement or arrangement has been specified by the National Assembly. The effect is that the National Assembly is not required to publish a list if it has not specified an office, position, agreement or arrangement for the purposes of section 5(2) of the 2013 Act.

Subsection (3) removes an ambulatory reference that is not considered necessary.

Section 6 - Consultation requirements

This section makes various amendments in relation to consultation requirements under the 2013 Act.

Subsections (2), (4)(a), (4)(b) and (4)(d) remove obligations on the National Assembly to consult the First Minister before:

- making remuneration arrangements for the AGW;
- appointing a chair of the WAO;
- making remuneration arrangements for the chair of the WAO; and
- terminating appointment of a chair of the WAO.

These amendments seek to strengthen the independence of the AGW and the WAO.

Subsections (3) and (4)(c) replace a requirement for the National Assembly to consult with “an appropriate person with oversight of public appointments” before determining terms and conditions, including remuneration, of non-executive members of the WAO with provision confirming that the National Assembly may consult with any persons it deems appropriate when exercising any functions in relation to the AGW or the WAO.

Sections 7 to 12 - Appointments to the board of the WAO

These sections amend Part 2 of Schedule 1 to the 2013 Act relating to the appointment of non-executive members of the WAO.

Section 7 amends paragraph 4 of Schedule 1 to the 2013 Act. It provides that the National Assembly may extend the appointment of a serving non-executive member for up to one further term, subject to the existing restriction (formerly contained in paragraph 6 of Schedule 1 to the 2013 Act) that no person may serve more than a maximum of eight years as a non-executive member. The requirement that an appointment of a non-executive member must be based on a fair and open competition has been removed from paragraph 4. This allows an extension of the appointment without needing to undertake a fair and open competition before determining whether to extend a non-executive member’s appointment.

Section 8 clarifies that if the National Assembly extends an appointment of the chair, the period of extension must not exceed the chair’s remaining term of office as a non-executive member of the Board.

Section 9 omits paragraph 6 of Schedule 1 to the 2013 Act, the provisions of which have been substantively re-enacted in the amended paragraph 4 of Schedule 1 to the 2013 Act.

Sections 10 and 11 Act amend paragraphs 10 and 11 of Schedule 1 to the 2013 Act. Subsection (2)(a) removes reference to redundant provisions that have been deleted by the Act. Subsections (2)(b), (3) and (4) remove ambulatory references that are not considered necessary. Subsection 2(c) provides that the National Assembly may amend the remuneration arrangements for non-executive members (which includes the chair). This allows the National Assembly to revise such arrangements in circumstances where it may decide to extend those appointments in accordance with amended paragraphs 4 and 5 of Schedule 1 of the 2013 Act.

Section 12 makes amendments to the termination of appointments provisions contained in paragraphs 10 and 12 of Schedule 1 to the 2013 Act. Subsection (2) provides that a resignation is effective when received. Subsection (3) provides that the circumstances in which the National Assembly may terminate the appointment of the chair of the WAO include where the chair is unable or unfit to carry out the functions of that office, in addition to where the chair has failed to comply with terms of appointment or is otherwise unwilling to continue.

Section 13 – Quorum for WAO meetings

Section 13 modifies paragraph 28 of Schedule 1 to the 2013 Act in order to provide for the possibility of rules which permit the chair to request that the employee members nominate an employee member to take on an observer role if the majority of members present at a meeting of the WAO are not non-executive members. The effect of this provision is to provide for a mechanism which allows a meeting of the WAO to continue if that meeting is not otherwise quorate because there is not a majority of non-executive members, as required by paragraph 28(3) of Schedule 1 to the 2013 Act. The provision also has the effect of not requiring an employee member to leave a meeting of the WAO in order for the meeting to be quorate.

Section 14 – WAO accounts and auditors of the WAO

Section 14 amends paragraphs 33 and 34 of Schedule 1 to the 2013 Act. Subsection (2) removes an ambulatory reference that is not considered necessary. Subsections (3) and (4) require the WAO to appoint a person as auditor of its accounts in place of the National Assembly being required to do so, but retains oversight and scrutiny by the National Assembly in relation to the auditor by requiring the National Assembly's approval of the appointment, associated terms of appointment and the method of procurement of the auditor.

Section 15 – Laying of reports etc. before the National Assembly

Section 15 amends provisions of the 2013 Act in relation to the laying of reports before the National Assembly.

Subsection (2) amends paragraph 35 of Schedule 1 to the 2013 Act so that the auditor of the WAO must lay the annual report, which is provided by the AGW and the chair of the WAO in accordance with paragraph 3 of Schedule 2 to the 2013 Act, before the National Assembly at the same time as laying the statement of accounts and any report.

Subsection (3) amends paragraph 3(6) of Schedule 2 to the 2013 Act, to require the AGW and the chair of the WAO to provide the WAO annual report, as soon as practicable to the auditor appointed under paragraph 34 of Schedule 1 to the 2013 Act and in any event no later than 5 months after the end of the financial year to which the annual report relates. The effect of this provision is to avoid duplicated laying obligations.

Section 16 – Interim reports

Section 16 amends the requirements for the AGW and the chair of the WAO to jointly prepare interim reports on the exercise of functions at least once during each financial year to a requirement to prepare such reports only when requested to do so by the National Assembly.

PART 3 GENERAL

Section 17 - Laying deadlines for certified accounts

Section 17 gives effect to Schedule 1 (account reporting deadlines), which sets out amendments to existing legislation relating to laying of certified accounts and reports.

Section 18 - Consequential amendments

Section 18 gives effect to Schedule 2 (consequential amendments), which makes consequential amendments.

Section 19 - Transitional arrangements

Section 19(1) gives effect to Schedule 3 (transitional arrangements), which sets out the principal transitional provisions.

Section 33(2) enables the Welsh Ministers, by order, to make further transitional, transitory or saving provision as they think appropriate in connection with the commencement of the Act.

Section 20 - Short title and commencement

Section 20 provides for all the provisions of the Act to come into force [two months] after the day the Act receives Royal Assent. It also provides that the short title of the Act is the Public Audit (Amendment) Wales Act 20[].

SCHEDULE 1 - ACCOUNTS REPORTING AND LAYING DEADLINES

This Schedule sets out amendments to legislation containing deadlines for laying accounts before the National Assembly. In relation to the Welsh Revenue Authority, these provisions apply to the Tax Statement in addition to the certified accounts and reports. In each case, the AGW may lay a copy of the certified accounts and report before the National Assembly after the deadline specified under the relevant legislation where it is not reasonably practicable for the AGW to meet the specified deadline. Where the AGW seeks to rely on that provision and lay a copy of the certified accounts and report after the specified deadline, the AGW must lay before the National Assembly a statement explaining why it is not reasonably practicable for the AGW to lay a copy of the certified accounts and report before the specified deadline. The AGW must lay a copy of the certified accounts and report before the National Assembly as soon as reasonably practicable after that deadline.

The effect of these provisions is to provide flexibility in the event that the strict statutory requirements are breached in order for the AGW to comply with

auditing professional standards (i.e. in circumstances where the relevant audited body should be given an opportunity to comment on audit findings prior to publication).

Amendments are made in relation to the Welsh Consolidated Fund and the whole of Government of Wales account, as well as to the laying deadlines for the following audited bodies–

- Children’s Commissioner for Wales;
- Education Workforce Council;
- Estyn;
- Future Generations Commissioner;
- Health Education & Improvement Wales;
- Local Health Boards;
- NHS trusts;
- Local Democracy and Boundary Commission for Wales;
- National Assembly for Wales Commission;
- Natural Resources Wales;
- Older People’s Commissioner;
- Qualifications Wales;
- Social Care Wales;
- Welsh Language Commissioner;
- Welsh Ministers; and
- Welsh Revenue Authority.

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS

This Schedule sets out the consequential amendments to primary legislation to give effect to the Act. Those amendments relate to various fee charging powers to be found in enactments other than section 23(b) of the 2013 Act and related prohibitions on fees exceeding the full cost of the functions to which they relate. The amendments remove these prohibitions in line with the changes to sections 23 and 24 of the 2013 Act.

Consequential amendments are made to the–

- Education Act 1997;
- Government of Wales Act 1998;
- Public Audit (Wales) Act 2004;
- Government of Wales Act 2006;
- Local Government (Wales) Measure 2009;
- Local Democracy, Economic Development and Construction Act 2009.

SCHEDULE 3 - TRANSITIONAL ARRANGEMENTS

Paragraph 1 - Fees for provision of services

Paragraph 1 means that if arrangements are in place between the WAO and a relevant authority under section 19 of the 2013 Act on the date on which the amendments to the 2013 Act come into force, those arrangements will continue

to be governed by the provisions in force prior to the amendments coming into force.

Paragraph 2 - Scheme for charging of fees

Paragraph 2 means that if a scheme for charging fees under section 24 of the 2013 Act has effect on the date on which the amendments to the 2013 Act come into force, that scheme will continue until a new scheme comes into effect.

Paragraph 3 - Auditors of the WAO

Paragraph 3 means that where an appointment of a person as an auditor in relation to the accounts of the WAO has effect on the date on which the amendments to the 2013 Act come into force, that appointment will continue to be governed by the provisions in force prior to the amendments coming into force.