

## **Agenda – Finance Committee – Fifth Senedd**

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Meeting Venue:	For further information contact:
<b>Video Conference via Zoom</b>	<b>Bethan Davies</b>
Meeting date: 16 December 2020	Committee Clerk
Meeting time: 09.30	0300 200 6565
	<a href="mailto:Contact@senedd.wales">Contact@senedd.wales</a>

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In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health. This meeting will be broadcast live on [www.senedd.tv](http://www.senedd.tv)

- 1 Introductions, apologies, substitutions and declarations of interest**
  
- 2 Paper(s) to note**

(09:30) (Pages 1 – 3)

Minutes of the meeting held on 30 November 2020.

  - 2.1 PTN1 – Letter from the Minister for Health and Social Services to the Public Services Ombudsman for Wales: NHS complaints data – 26 November 2020**

(Pages 4 – 5)
  - 2.2 PTN2 – Letter from the Public Services Ombudsman for Wales to the Minister for Health and Social Services: NHS complaints data – 1 December 2020**

(Page 6)
  - 2.3 PTN3 – Letter from ColegauCymru: Furlough – 4 December 2020**

(Page 7)
  - 2.4 PTN4 – Letter from the Minister for Finance and Trefnydd to the Chair of the Legislation, Justice and Constitution Committee: Consultation on a revised Regulatory Impact Assessment (RIA) Code – 8 December 2020**

(Page 8)



**2.5 PTN5 – Letter from the Minister for Education to the Chair of Children, Young People and Education Committee: Curriculum and Assessment (Wales) Bill – General Principles debate – 9 December 2020**

(Page 9)

**3 Impact of the UK Government's Spending Review: Evidence session**

(09:30 – 10:30)

(Pages 10 – 39)

Rebecca Evans MS, Minister for Finance and Trefnydd

Andrew Jeffreys, Director Welsh, Treasury

Julian Revell, Head of Fiscal Analysis, Welsh Treasury

Sarah Govier, Head of Public Spending Policy

**Supporting papers:**

FIN(5)–25–20 P1 – Letter from the Chair to the Secretary of State for Wales:

UK Government Spending Review – 27 November 2020

FIN(5)–25–20 P2 – Letter from the Secretary of State for Wales: UK

Government Spending Review – 5 December 2020

FIN(5)–25–20 P3 – Letter from Farmers' Union of Wales – 4 December 2020

Research brief

**4 Motion under Standing Order 17.42 (ix) to resolve to exclude the public from the remainder of this meeting**

(10:30)

**5 Impact of the UK Government's Spending Review: Consideration of evidence**

(10:30 – 10:45)

**6 Inquiry into the implementation of the Wales Act 2014 and operation of the Fiscal Framework: Key issues**

(10:45 – 11:15)

(Pages 40 – 67)

**Supporting papers:**

FIN(5)–25–20 P4 Key Issues paper

## **7 Draft Public Audit (Amendment) (Wales) Bill: Consideration of consultation responses**

(11:15 – 11:45)

(Pages 68 – 197)

### **Supporting papers:**

FIN(5)-25-20 P5 – Cover paper: Draft Public Audit (Amendment) (Wales) Bill

FIN(5)-25-20 P6 – Consultation booklet

FIN(5)-25-20 P7 – Summary of consultation responses

FIN(5)-25-20 P8 – Welsh Government's concerns

FIN(5)-25-20 P9 – Audit Wales' response to the Welsh Government's concerns

FIN(5)-25-20 P10 – Draft Public Audit (Amendment) (Wales) Bill

FIN(5)-25-20 P11 – Letter from Head of Law and Ethics, Audit Wales – 7 February 2020

FIN(5)-25-20 P12 – How Audit Wales estimates have changed over time

## Concise Minutes – Finance Committee

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Meeting Venue:

This meeting can be viewed

Video conference via Zoom

on [Senedd TV](#) at:

Meeting date: Monday, 30 November  
2020

<http://senedd.tv/en/6561>

Meeting time: 14.30 – 15.55

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### Attendance

Category	Names
Assembly Members:	Llyr Gruffydd MS (Chair) Alun Davies MS Siân Gwenllïan MS Mike Hedges MS Rhianon Passmore MS Nick Ramsay MS Mark Reckless MS
Witnesses:	Matthew Jenkins, Welsh Government Anna Adams, Welsh Government Rebecca Evans MS, Minister for Finance and Trefnydd Andrew Jeffreys, Welsh Government Julian Revell, Welsh Government
Committee Staff:	Bethan Davies (Clerk) Leanne Hatcher (Second Clerk) Georgina Owen (Second Clerk)



	Mike Lewis (Deputy Clerk) Joanne McCarthy (Researcher) Christian Tipples (Researcher)
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## **1 Inter-Ministerial Group on Paying for Social Care – Technical briefing from Welsh Government officials**

1.1 The Committee received a technical briefing on the Inter-Ministerial Group on Paying for Social Care from Matthew Jenkins, Deputy Director, Partnership & Cooperation, Welsh Government; and Anna Adams, Deputy Director, Head of Tax Strategy Policy and Engagement, Welsh Government.

## **2 Introductions, apologies, substitutions and declarations of interest**

2.1 The Chair welcomed Members to the virtual meeting of the Finance Committee.

## **3 Paper(s) to note**

3.1 The papers were noted.

3.1 **PTN 1 – Letter from the Minister for Finance and Trefnydd: The Non-Domestic Rating (Multiplier) (Wales) Order 2020 – 11 November 2020**

3.2 **PTN 2 – Letter from the Auditor General for Wales: Code of Audit Practice – 18 November 2020**

3.3 **PTN 3 – Letter from the Deputy Minister and Chief Whip: Socio-economic Duty – 25 November 2020**

## **4 Inquiry into the implementation of the Wales Act 2014 and operation of the Fiscal Framework: Evidence session 9**

4.1 The Committee took evidence from Rebecca Evans MS, Minister for Finance and Trefnydd; Andrew Jeffreys, Director, Welsh Treasury; and Julian Revell, Head of Fiscal Analysis, Welsh Treasury on its inquiry into the implementation of the Wales Act 2014 and operation of the Fiscal Framework.

**5 Motion under Standing Order 17.42 (ix) to resolve to exclude the public from the remainder of this meeting and the meeting on 7 December**

5.1 The motion was agreed.

**6 Inquiry into the implementation of the Wales Act 2014 and operation of the Fiscal Framework: Consideration of evidence**

6.1 The Committee considered the evidence received.

**7 Report on Outturn 2019–20 – Welsh Government**

7.1 The Committee considered the Welsh Government's report on Outturn 2019–20.

**8 Role and Remits of Independent Fiscal Institutions – The Northern Ireland Assembly**

8.1 The Committee considered the letter and the accompanying research paper from the Northern Ireland Assembly.

# Agenda Item 2.1

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref VG/08940/20

Mr Nick Bennett  
Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae  
Pencoed  
CF35 5LJ

Marilyn.Morgan@ombudsman-wales.org.uk

26 November 2020

Dear Nick,

Thank you for your letter of 27 October. I am pleased that work to implement the recommendation for consistent and robust complaints data in NHS Wales, as set out in the Evans Review 'Using the Gift of Complaints', is nearing completion.

I understand you raised the need for consistent, robust complaints data in NHS Wales when you attended the 21 September meeting of the Senedd Equality, Local Government and Communities Committee and the 5 October meeting of the Senedd Finance Committee.

The Once for Wales Concerns Management System (OfWCMS) programme is being led by NHS Wales Shared Services Partnership (NWSSP) Legal and Risk Services. The aim of the programme is to achieve consistency in data management and work flow design in respect of how health bodies in Wales work across the concerns sector.

The OfWCMS programme team have been working with NHS Wales to develop a national NHS Wales complaints dataset. Workshops were held with representatives from concerns teams across NHS Wales. The workshops and data analysis highlighted wide variation in the interpretation of the Concerns, Complaints and Redress Arrangements (Wales) Regulations 2011. The workshops agreed a revised pro forma for recording and reporting complaints with supporting definitions and guidance in order to reduce variation in practice. The revised pro forma and definitions was used for health bodies to submit 2019-20 complaints data quarterly and is currently being used for 2020-21 quarterly complaints data. The data is validated by the OfWCMS programme team who continue to provide support to health bodies ensure the data is robust.

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[Correspondence.Vaughan.Gething@gov.wales](mailto:Correspondence.Vaughan.Gething@gov.wales)

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

We acknowledge it has taken longer than we would have hoped to fully implement the Evans Review recommendation relating to consistent complaints data, but, as a Government, we remain fully committed to ensuring that NHS Wales produces a consistent, comparable and robust dataset for complaints.

Welsh Government and NHS officials are best placed to explain in more detail the work that is being undertaken and the timescales for delivery of the programme. I have asked that they meet with you in the first instance. If you would find this useful please contact Teresa Bridge: [Teresa.Bridge@gov.wales](mailto:Teresa.Bridge@gov.wales).

Yours sincerely,

A handwritten signature in black ink that reads "Vaughan Gething". The signature is written in a cursive, flowing style.

**Vaughan Gething AS/MS**

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services

cc: Llyr Gruffydd MS, Chair - Finance Committee  
John Griffiths MS, Chair - Equality, Local Government & Communities



## Agenda Item 2.2

Our ref: NB/mm

Ask for: Nick Bennett

Your ref: VG/08940/20



01656 641152

Date: 1 December 2020



Marilyn.morgan@ombudsman.wales

Mr Vaughan Gething MS  
Minister for Health and Social Services  
Welsh Government

By Email Only:  
Correspondence.Vaughan.Gething@gov.wales

Dear Vaughan

### NHS Complaints data

Thank you for your letter dated 26 November 2020 setting out the aims of the Once for Wales Concerns Management System programme.

I would be delighted to meet with Welsh Government and NHS officials to hear about the work being undertaken and the timescales for delivery with a view to ensuring our CSA work complements their efforts. I will ask my EA, Marilyn to contact Teresa to make arrangements.

In the meantime, after what has been an extremely challenging year, may I take this opportunity to wish you and your colleagues all the best for Christmas and the New Year.

Yours sincerely

**Nick Bennett**  
Ombudsman

Copy: Llyr Gruffydd MS, Chair - Finance Committee

[SeneddFinance@senedd.wales](mailto:SeneddFinance@senedd.wales)

John Griffiths MS, Chair - Equality, Local Government & Communities

[SeneddCommunities@senedd.wales](mailto:SeneddCommunities@senedd.wales)

4 December 2020

Dear Colleague,

**ColegauCymru Furlough**

ColegauCymru will be implementing a period of full furlough for the whole team from **Thursday 10 December 2020 to Monday 18 January 2021**.

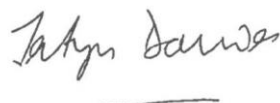
During this time ColegauCymru staff will be unable to work and will therefore not be carrying out their usual duties or responding to any enquiries received.

Due to the nature of the time of year, we believe that the decision to furlough our staff over the generally quiet Christmas period means that the minimum disruption and inconvenience will be felt by our stakeholders. The period also covers a two-week window where ColegauCymru would ordinarily close its operation for the Christmas break.

From 18 January 2021, we will resume a limited service as we engage in a flexible furlough programme for the period up until 31 March 2021.

We sincerely apologise for any inconvenience that this may cause you and your organisation and encourage you to contact me with any concerns you may have at your earliest convenience.

Yours sincerely,



Iestyn Davies  
**Chief Executive**

Unit 7 Cae Gwyrdd  
Greenmeadow Springs  
Tongwynlais, Cardiff  
CF15 7AB

# Agenda Item 2.4

Rebecca Evans AS/MS  
Y Gweinidog Cyllid a'r Trefnydd  
Minister for Finance and Trefnydd



Llywodraeth Cymru  
Welsh Government

Our ref: MA-RE-4111-20

Mick Antoniw MS  
Chair of Legislation, Justice and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
CF99 1NA

08 December 2020

Dear Mick,

I am writing to inform you that a consultation on a revised Regulatory Impact Assessment (RIA) Code for Subordinate Legislation opened today. The consultation was published on the Welsh Government website (<https://gov.wales/consultations>).

As set out in the draft Code, the Welsh Ministers' policy remains to always carry out an RIA for relevant Welsh subordinate legislation subject to a small number of exceptions. Officials have reviewed and, where necessary, amended the exceptions (which describe situations in which no RIA would be required) to ensure the approach in the Code is clear and proportionate. In addition, a number of changes have been made to simplify the Code and to update terminology and references.

I have copied this letter to the Chair of Finance Committee and look forward to receiving the views of both Committees on the draft Code. The consultation closes on the 4<sup>th</sup> of March 2021.

Yours sincerely,

**Rebecca Evans AS/MS**  
Y Gweinidog Cyllid a'r Trefnydd  
Minister for Finance and Trefnydd

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Our ref: MA/KW/3976/20

Lynne Neagle MS  
Chair of Children, Young People and Education Committee

9 December 2020

Dear Lynne,

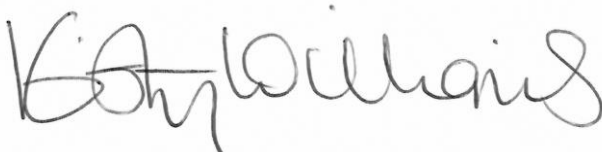
I would like to thank the Children, Young People and Education Committee for their scrutiny of the Curriculum and Assessment (Wales) Bill during Stage 1 and for the report which was published on 4 December 2020.

I will set out responses to the Committee's recommendations in Plenary during the General Principles debate.

During the debate I will also be setting out my response to the Finance Committee and the Legislation, Justice and Constitution Committee Stage 1 reports on the Bill. I have copied this letter to both Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Senedd process.

Yours sincerely



**Kirsty Williams AS/MS**  
Y Gweinidog Addysg  
Minister for Education

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Rt Hon Simon Hart MP  
Secretary of State for Wales

27 November 2020

Dear Secretary of State

### UK Government's Spending Review

Following the Chancellor of the Exchequer's delivery of the UK Government's Spending Review on 25 November, I am writing to you as Chair of the Welsh Parliament's Finance Committee to request an urgent update on the impact of the spending review in Wales.

In light of the spending review and the concerns expressed by the Welsh Government in its written response, the Finance Committee is particularly interested for an update on the following:

- a) **Agricultural sector** – The Welsh Government states that the Chancellor's proposed replacement for the EU Common Agricultural Policy funding appears to leave Welsh farmers and rural communities £137m short of the expected funding in 2021-22. We want to understand calculations that the UK Government has made regarding access to funding from on-going EU funding and how the total funding available compares to available funding in previous years.
- b) **Shared Prosperity Fund** – The Welsh Government states that UK Government will bypass the Welsh Government in allocating funding from the Shared Prosperity Fund and that the total fund for the whole of the UK is £220m in the next financial year. Wales currently receives £375m from the European Structural and Investment Programmes, so there appears to be a significant shortfall.
- c) The change in the Statement of Funding Policy comparability factor in relation to **transport spending from 80.9% to 36.6%**, mainly as a result of HS2.
- d) **Capital consequential for Wales** – The Welsh Government states that these are low compared to increases in UK capital investment as a whole set out in the Spending Review. In part, this is likely to be linked to HS2.



**Senedd Cymru**  
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 0300 200 6565

The Finance Committee will be inviting the Minister for Finance and Trefnydd to attend a meeting on 7 December to discuss the impacts of the spending review in Wales, so we would be very grateful if we could receive your response before this date.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Llyr', is centered within a light blue rectangular box.

**Llyr Gruffydd MS, Chair of the Finance Committee**

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.





**Rt Hon Simon Hart MP**  
Secretary of State for Wales  
Ysgrifennydd Gwladol Cymru

Our ref: 255SOS 20

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**Llyr Gruffydd MS**

Chair of the Welsh Parliament Finance Committee

Email: [SeneddFinance@senedd.wales](mailto:SeneddFinance@senedd.wales)

5<sup>th</sup> December 2020

*Deun hlyr,*

**UK Government's Spending Review**

Thank you for your letter of 27 November regarding the Spending review.

In relation to the Agricultural sector, the UK Government has provided certainty on future funding for agriculture in two ways. First, the Withdrawal Agreement states that the UK will continue to participate in all EU programmes financed by the Multiannual Financial Framework 2014-2020 until their closure. This ensures that there is continued access to EU funding for several rural programmes, including CAP Pillar 2, EMFF and ERDF until their completion. The UK Government stands by its commitment to guarantee to fund the tail of CAP Pillar 2 commitments that fall outside of the scope of the Withdrawal Agreement.

Second, we stood on a clear manifesto commitment to guarantee the current annual budget to farmers in every year of this Parliament. The quantification of the manifesto commitment sets the overall annual envelope at £337m for Wales.

Our manifesto commitment is being achieved through a combination of Exchequer funding and EU funding that will continue to be accessed for CAP Pillar 2 under the terms of the Withdrawal Agreement until those funds are exhausted. The amount of remaining EU funding varies across the four nations but HM Treasury have adopted a consistent approach, topping up EU receipts with Exchequer funding to the level of the manifesto commitment. This ensures that the commitment to guarantee the current annual budget is met in each nation.

In relation to the Shared Prosperity Fund, the UK Government will provide £220 million in 2021-22 to help local areas prepare for the introduction of the multi-year UK Shared Prosperity Fund. This funding will be additional to the significant tail-off of EU Structural Funds which will continue to flow into Wales next year. We anticipate that, all told, this will result in a significant increase in investment for Wales next year compared to its average yearly receipts from the previous seven years of Structural Funds.



In terms of delivery, we intend to work closely with both the Welsh Government and local communities to ensure that investment is effective in supporting people and businesses in Wales. That said, we remain in the midst of a global pandemic and the UK Government has a responsibility to people, businesses and communities in all four nations of the Union. It is therefore only right that we should be making decisions on strategic investment across the UK. We will be setting out further details on the UK Shared Prosperity Fund in a UK-wide investment framework which will be published in the Spring.

In relation to comparability factors for transport, the comparability factors are a representation of the extent to which departmental spending is in a reserved or devolved area. The decrease in the comparability factor in relation to transport is because of two main reasons. First, as a proportion of the Department for Transport's overall spending, the total amount of spending on programmes that the department has competency over in England and Wales has increased.

Since Spending review 2015, expenditure for heavy rail infrastructure, including HS2 has increased. All heavy rail infrastructure programmes in Wales are funded by the Department for Transport, unless other agreements exist. Due to the operation of the Barnett formula at Spending Review 2015, the Welsh Government has received substantial capital Barnett consequentials generated by HS2. As a result, the Welsh Government has around £170m in its 2020-21 capital budget related to HS2, which it will continue to receive every year in its capital baseline.

Second, since Spending Review 2015, Network Rail has been reclassified as a Central Government Body, and therefore is included as part of the Department for Transport. An agreement was reached between the Welsh Government and UK Government to devolve the core valley lines, with the line transferred on March 2020. This was under a fiscally neutral arrangement until 2023-24. Network Rail retains responsibility for the wider rail network in Wales, consequently it is right that the comparability factor for Network Rail remains at 0%.

Therefore, the change in comparability factor is not a result of any change in policy, but a reflection of the current spending of the Department for Transport, in line with the normal calculation of comparability factors.

In relation to capital consequentials for Wales, the consequentials generated by the Barnett formula are based on changes to UKG budgets, as set out in the revised Statement of Funding Policy and apply for both increases and decreases in funding.

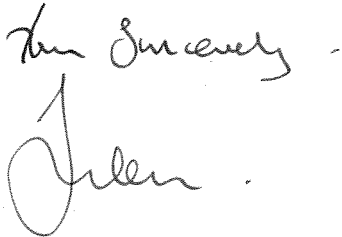


Our ref: 255SOS 20

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The Spending Review confirms an additional £1.3bn to the Welsh Government through the Barnett formula in 2021-22. The Welsh Government can choose to allocate this additional funding on capital investment if it wishes, this is on top of UK-wide capital spending that will benefit all four nations. The Welsh Government can also borrow for capital purposes to a cumulative maximum of £1bn.



**Rt Hon Simon Hart MP**  
Secretary of State for Wales  
Ysgrifennydd Gwladol Cymru



Dr N. I. D. Fenwick, Head of Policy, Farmers' Union of Wales, Llys Amaeth, Plas  
Gogerddan, Aberystwyth, Ceredigion, SY23 3BT  
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Llyr Gruffydd MS  
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4<sup>th</sup> December 2020

Annwyl Llyr

I understand that the Finance Committee is likely to hold an inquiry into the UK Government's Spending Review and its implications for Wales, including in terms of the funding announced for Welsh agriculture and rural development for the 2021-22 financial year.

As such, we would like to submit the below comments for consideration by the Committee, which we hope outlines why the FUW believe that the £242 million allocation for Welsh agriculture and rural development represents a cut to Welsh funding of around a third, and that the allocation is based on creative accounting and a disingenuous interpretation of the commitments made by numerous Secretaries of State and in the 2019 Conservative Manifesto.

Since we are currently in discussion with the Welsh Government regarding the specific implications of the cut, we are not in a position to speculate about what these may be. However, I can confirm that we have made it clear to the Welsh Government that cuts to the 2021-22 Basic Payment budget should not be made given the far-reaching consequences of these at a time when Welsh farm businesses are expected to be under major pressures as a result of the UK's departure from the EU, irrespective of whether a trade deal is agreed in the coming weeks.

Yours sincerely

Nicholas Fenwick  
**Head of Policy**

# FARMERS' UNION OF WALES ANALYSIS AND OBSERVATIONS ON CUTS TO WELSH AGRICULTURAL AND RURAL DEVELOPMENT FUNDING FOR THE FINANCIAL YEAR 2021-2022 ANNOUNCED IN THE 25<sup>th</sup> NOVEMBER 2020 SPENDING REVIEW

4<sup>th</sup> December 2020

1. Leaders of the Brexit campaign promised that leaving the EU would not lead to reduced funding for farming and rural areas.
2. During the Second reading of the 2017-2019 Agriculture Bill, the then Secretary of State for Environment, Food and Rural Affairs, Michael Gove, stated that agricultural funding would not be Barnettised and that the settlement which allocates money to Wales on rural and agricultural criteria will be maintained.
3. The then Secretary of State for Wales, Alun Cairns, reinforced that commitment on the 11<sup>th</sup> October 2018.
4. The 2019 Conservative Manifesto stated *"...we will guarantee the current annual [Common Agricultural Policy (CAP)] budget to farmers in every year of the next Parliament."*
5. The EU CAP budget for Wales, for the period 2014-2020, confirmed on 8<sup>th</sup> November 2013 by the then Secretary of State for Environment Owen Paterson was *"...a pillar 1 (direct payment) allocation of around €2,245 million, and pillar 2 allocation of around €355 million."*<sup>1</sup>
6. This is a total of €2.6 billion over the seven year (2014-2020) CAP budgetary period – an average of £331 million a year based on the £0.89/€ exchange rate fixed by the UK Government.
7. On 25<sup>th</sup> November 2020 the UK Government announced that Wales' 2021-2022 financial year allocation for agriculture and rural development would be £242 million - £89 million (27%) less than the average annual EU CAP allocation for the period 2014-2020.
8. The £242 million figure for the 2021-2022 financial year is £95 million (28%) less than the £337 million received in the 2019 funding 'baseline' defined by the UK Government to calculate Wales' allocation.
9. The UK Government maintains that the total budget available to Wales in 2021-2022 should be judged to be the sum of the £242 million announced on 25<sup>th</sup> November 2020 and the £95 million in unspent EU funding from the 2014-2020 funding period.
10. Under the EU's 'N+3' rule, the Welsh Government is entitled to spend money from the 2014-2020 Rural Development Programme budget in the three years after the end of the budgetary period to which the money 'belongs'.

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<sup>1</sup> <https://www.gov.uk/government/news/uk-cap-allocations-announced>

11. The FUW maintains that since the £95 million is part of the 2014-2020 EU budget, it should not be used as part of the UK Government's 2021-2022 calculation.
12. The average annual EU CAP budget for Wales for the 2014-2020 period was £286 million (Pillar 1) plus £45 million (Pillar 2).
13. 15% of the £286 million Pillar 1 budget is transferred annually to Pillar 2 under the 'Pillar transfer' mechanism, reducing the annual amount paid to farmers through Direct (Pillar 1) Payments to £243, and increasing the average annual EU funding for Pillar 2 (Rural Development) to around £90 million.
14. On 30<sup>th</sup> December 2019, the UK Government announced £243 million would be made available for Welsh Direct payments in 2020.
15. The *total* CAP replacement funding of £242 million for the 2021-2022 financial year announced by the UK Government on 25<sup>th</sup> November 2020 is therefore £1 million *below* the 2020-2021 Direct Payment budget announced by the UK Government on 30<sup>th</sup> December 2019 – and takes no account of the EU annual Pillar 2 funding allocation.
16. While the UK Government announced £243 million in funding for the 2020 Basic (farm) Payment on 30<sup>th</sup> December 2019, they made no reference to the circa £42 million usually transferred annually to the Pillar 2 (Rural Development) budget.
17. Given that the 15% Pillar transfer is regarded as being available in the year after which it is applied, there is effectively an additional £42 million 'missing' from the £242 million 2021-2022 financial year allocation announced by the UK Government on 25<sup>th</sup> November 2020 – bringing the total reduction in Wales' 2021-2022 allocation to around £137 million (41%) less than had been anticipated, based on successive promises and the 2019 Conservative Manifesto.
18. The UK Government has pointed out in correspondence to the Welsh Government and FUW that the total EU CAP budget for the period 2021-2027 is €344 billion - €39 billion (10%) less than the €383 billion allocated for the 2014-2020 budgetary period, arguing that this would equate to a £34 million reduction in Wales' annual allocation if the UK was still a member of the EU.
19. One of the reasons that the EU CAP budget has been reduced is because the UK has left the EU and will therefore no longer contribute substantially to the EU budget - so the overall EU 2021-2027 budget is lower than would have been the case if the UK was a member of the EU.
20. However, the number of countries eligible to receive funds from the CAP has also been reduced, as the UK is no longer a member, and the UK previously received around 8% of the EU CAP budget – so the use of the new EU CAP budget in justifications for UK budgets is invalid.

21. Notwithstanding this, if Wales was still eligible to receive the same percentage of the *new* EU (€344 billion) budget as under the 2014-2020 CAP, Wales' share in 2021-2022 would on average be £298 million per year - £56 million (23%) more than was announced by the UK Government on 25<sup>th</sup> November 2020.
22. While the FUW has labelled Wales' replacement CAP fund allocation as a '*Brexit betrayal*', the Welsh Conservatives have claimed that the Welsh Government has pulled the wool "*...over the Farming Unions [sic] eyes*" and believe that unspent funds from the 2014-2020 CAP budget should be included in the funding calculation.
23. Given that the same funding formula has been applied in England, Scotland and Northern Ireland, the FUW is not alone in believing that the 2021-2022 funding allocations are hundreds of millions below what they should be, based on successive assurances by Secretaries of State and what was stated in the 2019 Conservative Manifesto commitment; those who share the FUW's belief include the Welsh Government, the Scottish Government, the Northern Ireland Executive, NFU Cymru and NFU Scotland.

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

# Agenda Item 6

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

# Agenda Item 7

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted



# **Draft Public Audit (Amendment) (Wales) Bill**

## Consultation responses

March 2020



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](http://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**

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## Cynnws | Contents

\* Saesneg yn unig | English only

\*\* Cymraeg yn unig | Welsh only

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PAAW 01*	Bwrdd Iechyd Prifysgol Hywel Dda	Hywel Dda University Health Board
PAAW 02	Estyn	Estyn
PAAW 03	Comisiwn y Cynulliad	Assembly Commission
PAAW 04*	Comisiwn Ffiniau a Democratiaeth Leol Cymru	Local Democracy and Boundary Commission for Wales
PAAW 05*	Cyngor y Gweithlu Addysg	Education Workforce Council
PAAW 06*	Cyngor Bwrdeistref Sirol Wrecsam	Wrexham County Borough Council
PAAW 07	Ombwdsmon Gwasanaethau Cyhoeddus Cymru	Public Services Ombudsman for Wales
PAAW 08*	Bwrdd Iechyd Prifysgol Aneurin Bevan	Aneurin Bevan University Health Board
PAAW 09*	Bwrdd Iechyd Prifysgol Betsi Cadwaladr	Betsi Cadwaladr University Health Board
PAAW 10	Swyddfa Archwilio Cymru	Wales Audit Office
PAAW 11*	Cyngor Bwrdeistref Sirol Conwy	Conwy County Borough Council
PAAW 12	Cyngor Celfyddydau Cyru	Arts Council of Wales





**GIG**  
CYMRU  
**NHS**  
WALES

Bwrdd Iechyd Prifysgol  
Hywel Dda  
University Health Board

Ein cyf/Our ref: C428  
Gofynnwch am/Please ask for: Rachel Davies  
Rhif Ffôn /Telephone: 01267 239866  
Dyddiad/Date: 13<sup>th</sup> January 2020

Swyddfeydd Corfforaethol, Adeilad Ystwyth  
Hafan Derwen, Parc Dewi Sant, Heol Ffynnon Job  
Caerfyrddin, Sir Gaerfyrddin, SA31 3BB

Corporate Offices, Ystwyth Building  
Hafan Derwen, St David's Park, Job's Well Road,  
Carmarthen, Carmarthenshire, SA31 3BB

Committee Clerk  
Finance Committee  
National Assembly for Wales  
Cardiff  
CF99 1NA

13 January 2020

Dear Committee Member

Many thanks for the opportunity to respond to the consultation document on the Draft Public Audit (Amendment) (Wales) Bill.

Following my attendance at the Finance Committee on 11 July 2019, I am pleased to have received your consultation document and note my responses on behalf of Hywel Dda University Health Board below.

Question 1: We agree with the proposal, recognising it is important to demonstrate that the provision of the WAO's services as a whole needs to demonstrate value for money in undertaking its duties. While we as a Health Board have not needed to escalate any decisions on fee setting arrangements, an escalation or dispute process on fees may be a prudent additional requirement.

Question 2: Yes, but consideration may need to be given to the response to Question 1.

Question 3: Agreed, again cognisant of the response to Question 1.

Question 4: Agreed, again please see the response to Question 1.

Question 5: Agreed.

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Swyddfeydd Corfforaethol, Adeilad Ystwyth,  
Hafan Derwen, Parc Dewi Sant, Heol Ffynnon Job,  
Caerfyrddin, Sir Gaerfyrddin, SA31 3BB

Corporate Offices, Ystwyth Building,  
Hafan Derwen, St David's Park, Job's Well Road,  
Carmarthen, Carmarthenshire, SA31 3BB

Cadeirydd /Chair  
**Miss Maria Battle**

Prif Weithredwr/Chief Executive  
**Mr Steve Moore**

Bwrdd Iechyd Prifysgol Hywel Dda yw enw gweithredol Bwrdd Iechyd Lleol Prifysgol Hywel Dda  
Hywel Dda University Health Board is the operational name of Hywel Dda University Local Health Board

Mae Bwrdd Iechyd Prifysgol Hywel Dda yn amgylchedd di-fwg Hywel Dda University Health Board operates a smoke free environment



Question 6: We believe that the question is inconsistent with the proposal in the draft Bill. It is important that all Executive members be allowed to vote in a Board meeting. For instance, it would be improper if the Director of Finance of the WAO were not allowed to vote.

Question 7: Section 13 may require further guidance to be provided on the means by which an employee member is asked to excuse themselves from voting. While this may be usually non-contentious, there may be instances where the selection of an employee member who is asked not to vote could be itself challenging.

Question 8, 9, 10, 11, 12, 13, 14, 15: We have no issues to raise in relation to these questions.

Question 16 and 17: It may be prudent to provide guidance on who is required to assess acceptable performance for Board members and the Chair.

Question 18, 19, 20, 21, 22, 23: We have no issues to raise in relation to these questions.

Question 24: The questions relating to assessing central government bodies and overlapping laying requirements are not applicable to the NHS, and consequently we do not have an issue to raise. We do not have sufficient information to respond to the question on Welsh data matching powers and how these compare with those of other UK nations.

Question 25: We believe that the financial implications of these proposals for us as an audited entity will be marginal.

Question 26: We have no further observations to make.

I am very grateful for the opportunity to respond to your consultation document. Should you require further clarification, please do not hesitate to contact me directly.

Yours sincerely

Huw Thomas

Director of Finance



Arolygiaeth Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru

Her Majesty's Inspectorate for Education and Training in Wales

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**Ymateb i Ymgynghoriad / Consultation Response**


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<b>Enw / Name:</b>	Meilyr Rowlands
<b>Rôl / Role:</b>	Her Majesty's Chief Inspector of Education and Training in Wales
<b>E-bost / Email:</b>	<a href="mailto:ChiefInspector@estyn.gov.uk">ChiefInspector@estyn.gov.uk</a>
<b>Rhif Ffôn / Tel No:</b>	02920 446 446
<b>Dyddiad / Date:</b>	7 February 2020
<b>Pwnc / Subject:</b>	Consultation on the Draft Public Audit (Amendment) (Wales) Bill

**Background information about Estyn**

Estyn is the Office of Her Majesty's Inspectorate for Education and Training in Wales. As a Crown body, Estyn is independent of the Welsh Government.

Estyn's principal aim is to raise the standards and quality education and training in Wales. This is primarily set out in the Learning and Skills Act 2000 and the Education Act 2005. In exercising its functions, Estyn must give regard to the:

- Quality of education and training in Wales;
- Extent to which education and training meets the needs of learners;
- Educational standards achieved by education and training providers in Wales;
- Quality of leadership and management of those education and training providers;
- Spiritual, moral, social and cultural development of learners; and,
- Contribution made to the well-being of learners.

Estyn's remit includes (but is not exclusive to) nurseries and non-maintained settings, primary schools, secondary schools, independent schools, pupil referrals units, further education, adult community learning, local government education services, work-based learning, and teacher education and training.

Estyn may give advice to the Assembly on any matter connected to education and training in Wales. To achieve excellence for learners, Estyn has set three strategic objectives:

- Provide accountability to service users on the quality and standards of education and training in Wales;
- Inform the development of national policy by the Welsh Government;
- Build capacity for improvement of the education and training system in Wales.

This response is not confidential.

Question 1

Agree

Question 2

Agree.

We support a change that has been identified by the service provider as having the potential to improve efficiency and help avoid an escalation in fee rates, particularly at a time of public service budgetary constraint. Within a fee framework based on cost-recovery there needs to be appropriate scrutiny to provide assurance that the service provider is operating efficiently and effectively.

There is an expectation that the basis of fees (estimate of audit activities and rates applicable) will continue to be transparent and open to reasonable challenge.

Question 3

Agree

Board control over the level of agreement work will be important to ensure that the benefits of such work, e.g. organisational and staff development, are clearly identified and such work does not compromise core activities and statutory responsibilities.

Question 4

Agree

Question 5

Do not agree. The balance of membership appears to be appropriate but there is a case for flexibility regarding quorum requirements.

Question 6

Agree. This appears to be a pragmatic approach.

Question 7

Agree. This appears to be a pragmatic approach.

Question 8



Agree. The evidence on interest in the interim report suggest that it is an unnecessary burden and an avoidable cost on the public purse.

Question 9

Agree. This removes the obligation but provides an option for an interim report to be produced.

Question 10

Agree. Avoids duplication.

Question 11

Agree.

Question 12

Agree. It is unlikely that the current four month deadline will be exceeded in many cases and, in such cases, an explanation will be provided.

Question 13

Agree.

Question 14

Agree. Reduces complexity and should be more efficient process.

Question 15

Agree

Question 16

Agree. This arrangement provides flexibility to retain knowledge and expertise and can help to maintain stability of the board.

Question 17

Agree.

Question 18

Agree. Supports independence of the organisation.

Question 19

Agree. Appropriate to provide more flexibility.

Question 20

Agree. Appropriate to provide more flexibility.

Question 21

Agree.

Question 22

Agree

Question 23

Agree.

Question 24

No. We concur with the Finance Committee's view that this would necessitate a substantial piece of work. We suggest that the AGW continues the practice of giving a regulatory opinion, despite there being no explicit provisions in statute, and encourages all organisations in Wales that receive public funds to take part in the National Fraud Initiative.

Question 25

No financial implications are anticipated but a reduction in our annual audit fee would be highly welcomed.

Question 26

No.

Llyr Gruffydd AM  
Chair of Finance Committee  
National Assembly for Wales  
Tŷ Hywel  
Cardiff Bay  
CF99 1NA

29 January 2020

Dear Llyr

### **Public Audit (Amendment) (Wales) Bill**

I am writing in response to your letter dated 18 December 2019 advising the Commission that your Committee has published its report and is now consulting on a draft Public Audit (Amendment) (Wales) Bill.

Your letter notes that you would welcome the Commission's view on the draft Bill proposals.

We have previously compiled two responses to your Committee, dated **9 May 2019** and **27 June 2019**. Commission officials also provided evidence to your Committee on 17 July 2019 in a private session.

We have no further comment to provide on the matters already addressed within the two letters and during the evidence session.

Since July 2019, two additional matters have arisen, relating to the expenses paid to the Chair of the Wales Audit Office ("WAO") and the identification of expenses paid to the Auditor General Wales ("AGW") in his capacity as AGW and separately as Chief Executive of the WAO. Additional information is provided in Annex 1.

As ever, if there is any further information your Committee would like, please let me know.



Yours sincerely

*Suzy Davies*

Suzy Davies

cc Assembly Commissioners, Manon Antoniazzi, Nia Morgan



## **Annex 1**

### **Note on expenses**

#### **Chair of the Wales Audit Office**

1. Arrangements for remuneration for the Chair of the WAO ("the Chair") may be made by the Assembly, and those arrangements may make provision for "a salary, allowances, gratuities, and other benefits to cover expenses" (paragraph 7 of Schedule 1 to the 2013 Act). These amounts are to be charged to the Welsh Consolidated Fund (paragraph 7(3) of Schedule 1 to the 2013 Act).
2. During 2019-20, following a change by HMRC relating to the timing of the collection of tax on expenses, the Assembly Commission ("AC") and the Wales Audit Office ("WAO") took the opportunity to review the process of paying expenses to the Chair of the WAO. Options are currently being considered.
3. The Committee may wish to consider any changes and any requirements needed to ensure a continued level of transparency in the budgeting and reporting of these expenses.

#### **Auditor General for Wales**

4. Arrangements for remuneration for the AGW are to be made by the Assembly before a person is appointed as AGW. Those arrangements "may make provision for a salary, allowances, gratuities, arrangements for a pension and other benefits" (section 7 of the Public Audit (Wales) Act 2013 (2013 Act)). Those amounts are to be charged to the Welsh Consolidated Fund (section 7(6) of the 2013 Act).
5. Separately, the WAO "may make provision for additional payments to be made to the Auditor General by way of allowances and other benefits to cover expenses properly and necessarily incurred by the Auditor General in his or her capacity as a member and chief executive of the WAO" (paragraph 13 of Schedule 1 to the 2013 Act).
6. The distinction between remuneration payable whilst acting in the capacity as AGW and separately as chief executive and member of the WAO necessitates the AGW allocating particular items to the separate allowances so that only allowances arising from acting in the capacity as AGW are charged to the Welsh Consolidated Fund.



7. In previous financial year and during 2019-20, all expenses paid to the AGW have been made by the WAO. No expenses have been charged on the WCF via the Assembly Commission. All expenses are treated by the AGW and the WAO as being incurred by the AGW in his capacity as a member and chief executive of the WAO.
8. The Committee may wish to consider the current treatment of expenses and consider the requirement, within the Act, to differentiate between expenses incurred by the AGW in his capacity as AGW and separately as chief executive of the WAO.



I am responding to the consultation on the Draft Public Audit (Amendment) (Wales) Bill on behalf of the Members of the Local Democracy and Boundary Commission for Wales.

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?

The Commission has no objection to the proposed change unless it results in a significant increase in audit fees.

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 Commission has no objection to the proposed changes to include provision within the Local Government (Democracy) (Wales) Act 2013 for a regularity opinion and to a duty to be satisfied as to the arrangements for securing value for money.

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Committee Clerk  
Finance Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

3<sup>rd</sup> February 2020

Dear Sir/Madam

### **Consultation on the Draft Public Audit (Amendment) (Wales) Bill**

We are writing in response to the above National Assembly consultation.

#### **Role of our organisation**

The Education Workforce Council (EWC) is an independent regulator, established by the Education (Wales) Act 2014. We came into being on 1 April 2015 and work with education professionals, in teaching and support roles, from the foundation phase through to further education, youth work and work-based learning. The EWC's role as a regulator and strategic leader in the education sector in Wales and the obligations that we have to registrants, learners, parents and the public is formally prescribed within the Education (Wales) Act 2014.

#### **Proposed amendments in relation to the WAO functions and responsibilities**

We have no comments to make in relation to the consultation questions contained within sections 1-9 of the consultation document.

#### **Section 10: Issues with wider public audit legislation in Wales**

EWC are listed under paragraph 64 as one of the bodies where legislation would need to be amended to include a provision for the requirement to have a regularity opinion from the Auditor General for Wales (AGW) as part of our annual audit opinion. Even though there is no explicit provision for this opinion in legislation, this is already provided by the AGW on an annual basis as part of the EWC annual audit opinion and is included in our audit Annual Report and Accounts.

EWC **would not** support for legislation to be amended to include this requirement for the following reasons:

The EWC is an independent professional body. It is not a Welsh Government sponsored body, does not have a sponsoring department within government and does not receive an annual remit letter. The Council's primary role is to regulate the education workforce professions in Wales. This regulatory model, like most other professions is one of "self-regulation" rather than one which is controlled and funded by central government.



The Council sets its own strategic / operational plans and its own budget. The Welsh Government does not exercise any control of the day to day running of the EWC in discharging its statutory functions and EWC resources are not 'voted' through the National Assembly.

Finally, EWC is currently challenging our public body classification with Welsh Government and the ONS. Therefore whilst this challenge is ongoing, it would be improper for any changes to our legislation to be made.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Hayden Llewellyn', written in a cursive style.

Hayden Llewellyn  
Chief Executive

## Consultation on the Draft Public Audit (Amendment) (Wales) Bill

### 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?

Yes, but only subject to the prior agreement of the fee structure and basis for charging together with ongoing monitoring of costs incurred. The WAO must continue to manage its costs effectively and should look to obtain value for money wherever possible whilst still maintaining the quality of its services. Local authorities must be given a clear description of the work to be undertaken in advance of the work starting including outcomes, outputs, including KPIs and the method of service delivery i.e. staff to be used. Local authorities should retain the right to challenge fees and where objectives etc. have not been met then a reimbursement / reduction in fees should be allowed as with any other service contract.

### Question 2

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

Yes

### Question 3

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

Yes. The examples quoted here equate to £30,000 over the four year period so are not material in the scope of benefiting the Welsh public sector to any great extent. However, the requirement to give a refund to the client as a result of the “no more than full cost rule” needs to be removed especially if the contract was won in a competitive exercise.

### Question 4

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

Yes

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

Yes subject to adequate performance information being made available to the Assembly to allow it to make an informed decision as to whether to request the WAO to produce an Interim Report.

#### Question 9

Yes

#### 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?

**No. The document does not provide a valid enough reason for amending the four month target**

#### Question 13

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

Yes

#### 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?

**Yes, especially in relation to Welsh data matching powers**

#### 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).

**It is unclear at this stage whether there would be any additional costs and the final outcome would probably be dependent upon how Question 1 is implemented.**

**Response by the Public Services Ombudsman for Wales  
to the Finance Committee's  
consultation on the draft Public Audit (Amendment) (Wales) Bill**

I am pleased to have the opportunity to respond to the Finance Committee's consultation on the draft Public Audit (Amendment) (Wales) Bill.

As Public Services Ombudsman for Wales (PSOW), I investigate complaints made by members of the public who have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction, which essentially includes all organisations that deliver public services devolved to Wales. These include:

- local government (both county and community councils)
- the National Health Service (including GPs and dentists)
- registered social landlords (housing associations)
- the Welsh Government, together with its sponsored bodies.

I am also able to consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of privately funded healthcare.

**General comments**

I broadly support the proposals outlined in the consultation document. Whilst it would not be appropriate for me to express an opinion on the governance arrangements of the Wales Audit Office (WAO), I certainly see the benefits of enabling the WAO to adopt a more flexible approach to fee charging and agreement work. I particularly welcome the proposals for changing the requirements placed on the Assembly by the current legislation to consult the First Minister on:

- the appointment of the Chair of the WAO;
- the remuneration arrangements for the Chair and the Auditor General for Wales (AGW); and
- the termination of the Chair's appointment.

I believe that the proposed change will enhance independence of the roles concerned and is appropriate given the close accountability relationship between the AGW and the National Assembly for Wales.

**Closing remarks**

I trust that you will find my comments useful. Should you wish to discuss any of my points further, please do not hesitate to contact Ania Rolewska, my Head of Policy ([ania.rolewska@ombudsman.wales](mailto:ania.rolewska@ombudsman.wales)).



**Nick Bennett**  
**Public Services Ombudsman for Wales**  
**February 2020**

\*\*\*\*\*

Consultation on the Draft Public Audit (Amendment) (Wales) Bill – Aneurin Bevan University Health Board response.

Email to: [seneddfinance@assembly.wales](mailto:seneddfinance@assembly.wales).

Question	Question	Response
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?	We do not support cross subsidisation between bodies. No more than full cost should be charged to a body as a whole and refunds, if appropriate should be given. “Broadly breakeven, taking one year with another” should be defined more closely.
2	If so, do you agree with the approach taken in sections 3 and 4 of the Draft Bill?	See above
3	Do you agree that the Wales Audit Office should be allowed to set its own terms and conditions for agreement work?	We see no reasons why full cost plus a surplus margin should not be charged to bodies outside Wales and these surpluses used to benefit the public sector in Wales.
4	If so, do you agree with the approach taken in section 2 of the Draft Bill?	See above
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?	Yes
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?	This appears a reasonable response
7	If so, do you agree with the approach taken in section 13 of the Draft Bill?	As above
8	Do you agree that the Auditor General for Wales and the Chair of the Wales Audit	Good practice should be followed. A report once a year does seem reasonable. Perhaps ways

	Office should no longer be required to produce an interim report at least once a year, but a requirement to produce an interim report upon the Assembly's request should be included in legislation?	could be looked at how to do this more cheaply, using a highlight report etc.
9	If so, do you agree with the approach taken in section 16 of the Draft Bill?	See above
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?	This doesn't seem unreasonable
11	If so, do you agree with the approach taken in section 15 of the Draft Bill?	See above
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: <ul style="list-style-type: none"> <li>▪ allow the Auditor General for Wales to lay a copy of the certified accounts and report after the four month deadline,</li> <li>▪ require the Auditor General for Wales to explain to the Assembly why the four month deadline cannot be met, and</li> <li>▪ require the Auditor General for Wales to lay the certified accounts and report as soon as reasonably practicable?</li> </ul>	This doesn't seem unreasonable
13	If so, do you agree with the approach taken in section 17 and Schedule 1 of the Draft Bill?	See above
14	Do you agree that engagement of the auditor of the Wales Audit Office should be a contractual matter between the Wales Audit	Yes



	Office and the auditor, with the appointment (and associated terms and conditions) being subject to the approval of the Assembly?	
15	If so, do you agree with the approach taken in section 14 of the Draft Bill?	See above
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, subject to acceptable performance?	Yes
17	If so, do you agree with the approach taken in sections 7, 8 and 9 of the Draft Bill?	See above
18	Do you agree that the requirement for the Assembly to consult the First Minister on the following should be removed: <ul style="list-style-type: none"> <li>▪ the appointment of the Chair of the Wales Audit Office;</li> <li>▪ the remuneration arrangements for the Chair and the Auditor General for Wales; and</li> <li>▪ the termination of the Chair's appointment?</li> </ul>	Yes
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?	No strong view
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?	Yes
21	If so, do you agree with the approach taken in sections 6, 10 and 11 of the Draft Bill?	See above
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	No strong view

	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?	
23	If so, do you agree with the approach taken in section 5 of the Draft Bill?	See above
24	Do you feel the Draft Bill should include provisions relating to: <ul style="list-style-type: none"> <li>▪ the lack of a value for money conclusion duty on the Auditor General for Wales and central government bodies;</li> <li>▪ the absence of explicit provisions in statute for regularity opinions among many central government bodies;</li> <li>▪ the overlapping laying requirements;</li> <li>▪ Welsh data matching powers?</li> </ul>	Yes
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)?	Potentially if the provision to remove the full cost recovery per organisation is removed.
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?	No

## **Consultation Document – Draft Public Audit (Amendment) (Wales) Bill**

### **Proposal**

To amend 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.

To retain the requirement for fees to be paid by the body to which the function relates in order to ensure transparency for audited bodies, effective engagement in the audit and to maintain the relationship between the auditor and audited body.

### **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?

*Whilst the Health Board broadly agrees with the proposed changes in how Wales Audit Office charges and administers fees, transparency of any new arrangements will be essential for audited bodies.*

### **Question 2**

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

*The Health Board agrees with the approach taken in sections 2 and 4 of the Draft Bill*

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### **Proposal**

To amend the Public Audit (Wales) Act 2013 to remove the link between agreement work and the fee scheme to allow Wales Audit office to set its own terms and conditions. This would enable the Wales Audit Office to 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.

### **Question 3**

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

*The Health Board agrees that the Wales Audit Office should be able to set its own terms and conditions for services provided to other public bodies including bodies outside of Wales (“agreement work”) rather than exercising the “no more than full cost rule”.*

#### **Question 4**

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

*The Health Board agrees with the approach taken in section 2 of the Draft Bill*

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#### **Proposal**

To retain the requirement for a non-executive member majority to ensure independent oversight and provide constructive challenge to the executive directors, but amend paragraph 28(3) of Schedule 1 of the Public Audit (Wales) Act 2013 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.

#### **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?

*The Health Board agrees that the quorum requirement for a majority of non-executive members should be retained in legislation to ensure independent oversight and provide constructive challenges to the executive directors*

#### **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?

*The Health Board recognises the problem that the quorum provision can cause as non-executive members only have a majority of one on the board and agrees with the proposal that, where necessary, an executive member should adopt a non-voting role in order to satisfy the quorum requirement and allow meetings to proceed.*

#### **Question 7**

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

*The Health Board agrees with the approach taken in section 13 of the Draft Bill*

## **Proposal**

To replace 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, with a provision requiring the production of an interim report (as currently defined) if requested by the Assembly.

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

*The Health Board recognises that the routine production of interim reports appears to be disproportionately resource consuming and agrees that this requirement should cease as the Assembly can request that the AGW and Chair of the WAO produce interim reports at any time during a financial year.*

### **Question 9**

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

*The Health Board agrees with the approach taken in section 16 of the Draft Bill*

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## **Proposal**

To simplify the provisions in the Public Audit (Wales) Act 2013 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.

### **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?

*The Health Board agrees with the proposal from the Wales Audit Office for their annual report to be laid by their external auditor as part of the laying of their annual report and accounts.*

### **Question 11**

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

*The Health Board agrees with the approach taken in section 15 of the Draft Bill*

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### **Proposal**

To amend 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 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 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?

*The Health Board agrees with the proposal to amend the deadline for certifying and laying accounts where the AGW needs to provide the audited body with sufficient time to comment on audit findings.*

### **Question 13**

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

*The Health Board agrees with the approach taken in section 17 and Schedule 1 of the Draft Bill*

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## Proposal

To amend 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.

## Question 14

Do you agree that engagement of the auditor of the Wales Audit Office should be 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?

*The Health Board agrees with proposals to simplify the appointment process for appointment of the auditors of the Wales Audit Office accounts.*

## Question 15

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

*The Health Board agrees with the approach taken in section 14 of the Draft Bill*

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## Proposal

To amend 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, subject to acceptable performance.

## 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, subject to acceptable performance?

*The Health Board agrees with the proposal that, subject to acceptable performance, the Assembly should be able to reappoint serving non-executive directors of the Wales Audit Office for a second term of office.*

## Question 17

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

*The Health Board agrees with the approach taken in sections 7 8 and 9 of the Draft Bill*

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## Proposals

To remove 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

in the interest of protecting the independence of those roles.

To remove 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 and replace it with a general provision permitting the Assembly to consult with any persons it deems appropriate.

To amend section 5(3) of the Public Audit (Wales) Act 2013 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 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?

*The Health Board agrees with the proposal from the AGW, WAO, Assembly Commission and Welsh Government that the requirement to consult the First Minister on matters of appointments and remuneration should be removed.*

### 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?

*The Health Board agrees with the proposal to replace the requirement to consult an appropriate person with oversight for public appointments with a general provision permitting the Assembly to consult with persons that it deems appropriate.*



## 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?

*As per response to question 19 above*

## Question 21

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

*The Health Board agrees 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?

*The Health Board agrees with the proposal that a list of restricted offices should only be published when, and if, any such restrictions are identified.*

## Question 23

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

*The Health Board agrees with the approach taken in section 5 of the Draft Bill*

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## Other Questions

### 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?

*The Health Board does not anticipate that there will be any financial implications arising from the proposals included in the Draft Public Audit (Amendment) (Wales) Bill.*

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?

*The Health Board does not have any other observations or general comments to make on the Public Audit (Wales) Act 2013 or the Committee's Draft Public Audit (amendment) (Wales) Bill.*



WALES AUDIT OFFICE  
SWYDDFA ARCHWILIO CYMRU

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Annwyl Llyr

### Consultation on Draft Public Audit (Amendment) (Wales) Bill

Thank you for your letter of 18 December 2019 informing us that the Committee has published its report on its post-legislative scrutiny of the Public Audit (Wales) Act 2013 (PAWA 2013). We very much welcome the Committee's conclusion that the PAWA 2013 requires revision, and we are very grateful that the Committee has produced a draft bill for consultation.

We attach our responses to your consultation questions, which we hope are helpful. We should be very happy to discuss these matters further.

Yn gywir

**Adrian Crompton**  
**Auditor General for Wales**

**Isobel Everett**  
**Chair, Wales Audit Office**

## **Annex: Response to consultation on draft Public Audit (Amendment) (Wales) Bill**

### **Q1. 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?**

- (a) Yes. Replacing the current strict “no more than full cost” rule in section 23 of the Public Audit (Wales) Act 2013 with the flexibility to breakeven taking one year with another removes a significant disincentive to improving audit efficiency. As mentioned in our letter of 3 May 2018, the no more than full cost rule means that any savings achieved from greater efficiency must be refunded in-year, thus preventing re-assignment of auditor resource to the delivery of other work. With a requirement to broadly breakeven across years, rather than exactly in respect of each function at each body each year, savings may be retained in the short-term to allow further development of audit approaches and value added in other areas. The ability to take a slightly longer-term approach would allow changes in the size and skill sets of the workforce to be achieved in a more measured and planned way and minimise the risk of expensive redundancy measures.
- (b) In terms of the complexity of administration caused by the rule, as we outlined in our letter of 3 May 2018, the no more than full cost rule leads to administrative cost for the WAO and audited bodies in processing small adjustments and to complaints about variations in fees from year to year. Such complaints take a considerable and disproportionate amount of time to deal with. Taking one year with another will enable a degree of smoothing between years so reducing the amount of variation in fees. This should lead to fewer complaints and also bring the benefit to audited bodies of having more predictable fees, so helping them budget more effectively.

### **Q2. If so, do you agree with the approach taken in sections 3 and 4 of the Draft Bill?**

- (a) We think the overall approach is helpful in tackling some of the problems caused by the current no more than full cost rule but would suggest that there are some issues to iron out.
- (b) The broad equivalence provision in the Draft Bill is stricter than the approach that we suggested in June 2018 in that it requires aggregation in respect of specified functions at each body rather than in respect of work across all bodies. (It is also stricter than the Scottish legislation, where the aggregation boundary is “classes of case”, which is interpreted as each sector rather than individual bodies.) This will prevent cross-subsidisation between bodies. Such cross-subsidisation would often be both fair and appropriate, such as where new audit techniques are being introduced. (The first bodies subject to such developments will often require more audit time than the later bodies. With the

aggregation of costs restricted to each body, through no fault of their own, the first bodies will face higher fees than the later ones.)

- (c) We note that page 5 of the consultation documents sets out the Committee's view 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..." We understand that aggregation in respect of each body is necessary to support such a payment requirement and see the merits of this view. Nonetheless, we think that those merits do not outweigh the benefits of greater simplicity and fairness of our June 2018 proposals.
- (d) On further consideration of this issue, we are of the view that fairness, and to some degree complexity, may be sufficiently addressed by modifying the aggregation requirement so that expenditure funded by supply from the Welsh Consolidated Fund (WCF) in relation to work at a body be disregarded for the purpose of calculating fees. Subject of course to Assembly approval, this would enable early implementation of new techniques to be funded by the WCF rather than being borne by the bodies first subject to such techniques. It would also enable the continuation of, for example, our current approach of encouraging voluntary participation in data matching by setting a nil fee.
- (e) We also have the following concerns regarding sections 3 and 4 of the Draft Bill, which we hope can be addressed in refining the provisions:
  - i. Section 23 of the 2013 Act, as it would be amended by the Draft Bill, appears to only apply to the powers and duties to charge that are expressly referenced in that section (in subsections (3) and (4)). But the new subsection (6) effectively refers to all those enactments under which the WAO may charge a fee (see section 24(2)(a)), which is wider than the section 23 powers to charge). This seems to leave some important fees, such as local government audit fees, outside the scope of section 23. For consistency and to avoid unnecessary complexity, we would like all fees (other than agreement work fees) to be covered by the broad equivalence requirement.
  - ii. Section 3 of the Draft Bill would amend section 23(5)(b) of the 2013 Act so that it provides that fees "may be aggregated and charged on the basis of broad equivalence (see subsection (6))". The new sub-section (6) then provides that "the WAO must seek to ensure that sum of fees charged" are charged on the basis of broad equivalence. We are not clear whether there is intended to be discretion as to the basis on which fees are charged, e.g. that the WAO may charge fees for individual functions without regard to broad equivalence.
  - iii. In our June 2018 suggestion, we used the term "*work*", but the current Draft Bill uses the word "*functions*". We are concerned that "*functions*" may not cover implied powers and duties. This may not be the case, but we would welcome clarification.

**Q3. Do you agree that the Wales Audit Office should be allowed to set its own terms and conditions for agreement work?**

Yes. As set out in the consultation document, the current constraint of the no more than full cost rule means that the WAO is unable to retain surpluses arising from agreement work. Such surpluses may neither be used for funding mainstream activities and development, nor even surrendered to the Welsh Consolidated Fund. The result is foregone opportunities (albeit fairly small ones) for contributing to the Welsh public finances. In addition, the need to administer refunds is an additional task that provides little or no benefit to Welsh public bodies.

**Q4. If so, do you agree with the approach taken in section 2 of the Draft Bill?**

Yes. The section 2 provisions seem to effectively and appropriately remove the constraint of the no more than full cost rule in respect of agreement work.

**Q5. Do you agree that the current Wales Audit Office Board quorum requirement for a majority of non-executive members should be retained in legislation?**

No. We do not think that having this requirement in legislation is necessary or helpful. As noted in the consultation paper, the statutory non-executive majority quorum requirement makes the WAO prone to being inquorate. However, with changes in the provisions to allow an employee member (including an elected employee member) to remain in attendance as an observer, we consider retaining the quorum requirement should be less problematic than it has been to date.

**Q6. 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?**

Yes. This would help address the current problem that the contribution of employee members, including elected members, is reduced by the statutory non-executive majority rule when a non-executive is unable to attend. As we said in our letter of 3 May 2018, this problem is at odds with the Government's stated support for elected employee members.

**Q7. If so, do you agree with the approach taken in section 13 of the Draft Bill?**

Broadly, yes. While it is helpful that the Explanatory Notes say that an employee member would not need to leave a meeting to make it quorate, we do, however,

have a couple of queries about the clarity of the draft provisions. We think it may be helpful if the existing paragraph 28(3) of Schedule 1 to the 2013 Act were amended to recognise that it is subject to the new paragraph 28(4) and to deem that an employee member attending as an observer is not “present” for the purpose of determining whether quorum is met.

**Q8. 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 once a year, but a requirement to produce an interim report upon the Assembly’s request should be included in legislation?**

Yes. We do not think it is necessary to make provision in legislation for any interim reports. We cannot envisage a situation where we would not provide a report on request (and, in extremis, section 37 of the Government of Wales Act 2006 gives the Assembly a power to call for information), and we consider that provision for reporting on request, rather than at least once a year, is a sensible development. As we set out in our 3 May 2018 letter, the limited consideration of interim reports indicates that the requirement to produce them at least once a year is disproportionate.

**Q9. If so, do you agree with the approach taken in section 16 of the Draft Bill?**

Yes. Section 16 seems appropriate.

**Q10. 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?**

Yes. This is a sensible solution to the rather unsatisfactory situation where, because of parallel statutory reporting requirements, the same report must be laid twice: once by the Auditor General jointly with the Chair of the WAO, and once by the external auditor of the WAO. Such duplication and complexity are not conducive to clarity of responsibility.

**Q11. If so, do you agree with the approach taken in section 15 of the Draft Bill?**

Yes. Section 15 seems appropriate.

**Q12. 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?

Yes. Providing for such an emergency procedure will allow sufficient opportunity for bodies and third parties to respond to criticism in reports on accounts before they are laid and published (i.e. natural justice), without a breach of the statutory deadline. This will not be an easy and ready excuse for delay, as the Auditor General will need to explain in each case why the deadline cannot be met.

**Q13. If so, do you agree with the approach taken in section 17 and Schedule 1 of the Draft Bill?**

Yes. The provisions of the Draft Bill would seem to put the above proposal satisfactorily into effect.

**Q14. 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?**

- (a) Yes. Having a contract between the Wales Audit Office and its auditor helpfully simplifies arrangements by making obligations direct. Currently, a side-letter agreement is necessary to protect the Assembly Commission for claims from its contractor (the auditor), for example, for a failure on the part of the Wales Audit Office to pay audit fees. Similarly, such an arrangement is necessary to protect the Wales Audit Office from damage (e.g. to IT systems) caused by the Assembly's appointment of a careless auditor. Making such arrangements adds significant complexity, which is an additional burden on the Assembly Commission's and the WAO's procurement staff.
- (b) Making the appointment subject to the approval of the Assembly should help ensure with that the WAO does not contract with an unsuitable auditor, such as



one that is not suitably qualified or resourced. Such an approval arrangement retains this advantage of appointment by the Assembly (and contract with the Assembly Commission), without continuing the disadvantage of the need for a side-letter agreement.

**Q15. If so, do you agree with the approach taken in section 14 of the Draft Bill?**

Yes. Section 14 of the Draft Bill seems to put the above proposal satisfactorily into effect.

**Q16. 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, subject to acceptable performance?**

Yes. This would be sensible streamlining and rationalising of the appointment arrangements. The current requirement for incumbent non-executives to be subject to a full competition process in order to serve a second term is unnecessarily onerous for both the non-executives and the Assembly. It also tends to detract from having an appropriate level of continuity on the board.

**Q17. If so, do you agree with the approach taken in sections 7, 8 and 9 of the Draft Bill?**

Yes. Sections 7, 8 and 9 of the Draft Bill seem to put the appointment reform proposals satisfactorily into effect.

**Q18. 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?

Yes, we agree that these requirements to consult the First Minister on the appointment, remuneration and termination of the Chair of the Wales Audit Office should be removed. The requirements risk a perception, if not the actual danger, of an audited body having inappropriate influence in the selection of a key person responsible for monitoring and advising their auditor. Similarly, the ability to influence the remuneration of the Auditor General risks undermining the independence of the Auditor General.

**Q19. 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?**

Yes, we agree that this requirement should be removed. It is not clear who an appropriate person with oversight for public appointments is in relation to remuneration and other terms of appointment of non-executive members of the Wales Audit Office and the Auditor General.

**Q20. 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?**

Yes. Such provision should put beyond doubt that the Assembly may engage with persons with relevant knowledge and experience to assist the Assembly. For example, it would make clear that the Chair of the WAO may assist with views regarding the performance and balance of skills of existing non-executives. This should be helpful in enabling the Assembly to appoint a coherent WAO board, with members with complementary skills, so helping ensure its effectiveness.

**Q21. If so, do you agree with the approach taken in sections 6, 10 and 11 of the Draft Bill?**

Yes. Sections 6, 10 and 11 of the Draft Bill seem to put the above rationalisation of consultation requirements satisfactorily into effect.

**Q22. 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?**

Yes, we agree that the publication of a list of offices, positions and arrangements that a former Auditor General would need to consult on should only be required where such offices are identified. The listing of restricted offices and activities set out in section 5(5) to (7) of the 2013 Act is so extensive that it is hard to see further listing being necessary.

**Q23. If so, do you agree with the approach taken in section 5 of the Draft Bill?**

Yes. Section 5 of the Draft Bill seems to provide sensible rationalisation of the requirements of the 2013 Act.

**Q24. 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?**

Yes, in all four cases:

- (a) **The lack of a value for money conclusion duty in central government bodies**—as set out in the consultation document, the absence of such a duty means that scrutiny of central government bodies is generally somewhat less extensive than that of the NHS and local government. It may be helpful if we add that while the adequacy of some arrangements for securing value for money is incidentally examined as part of the audit of accounts, such as the adequacy of payroll controls, others, such as the robustness of procurement arrangements, will only be examined if a specific study is undertaken, or particular regularity concerns arise that overlap with value for money arrangements, such as lack of lawful process. This means that there are gaps in the consideration of arrangements for securing value for money in central government.
- (b) It should be noted that while there are overlaps between regularity requirements and value for money requirements, these requirements are

not one and the same. The requirement for the Auditor General to provide a regularity opinion does not provide a value for money conclusion. While Managing Welsh Public Money and Accounting Officer memoranda include a requirement for Accounting Officers to take personal responsibility for:

*“Value for money, ensuring that the organisation’s procurement, projects and processes are systematically evaluated and assessed to provide confidence about suitability, effectiveness, prudence, quality, good value judged for the public sector as a whole”,*

this is a separate requirement from responsibility for:

*“Regularity and propriety...including seeking approval for any expenditure outside the normal delegations or potentially outside the relevant ambit...”*

(see paragraph 3.3.3 of Managing Welsh Public Money).

- (c) Accordingly, a body’s failure to show systematic evaluation of the effectiveness of expenditure, could not of itself lead to a qualified regularity opinion, but it might in some circumstances, e.g. with large projects, be a value for money conclusion matter.
- (d) It is also worth noting that as control assessment as part of the audit of accounts provides much relevant evidence for a value for money conclusion, and as the Auditor General’s approach to the conclusion is risk-based, the amount of additional work required to provide it is quite limited, provided generally good arrangements are in place. This is particularly the case for small and specific-purpose bodies. Sustainability examinations (under section 15 of the Well-being of Future Generations (Wales) Act 2015), where applicable, also provide relevant evidence for a value for money opinion further reducing the need for additional work to support the conclusion.
- (e) **The absence of explicit provision in statute for regularity opinions among many central government bodies**—as set out in the consultation document, this means that a fundamental element of Assembly control of central government expenditure is missing from statute in respect of some bodies. While it is the Auditor General’s practice to provide a regularity opinion on all central government accounts, even where statute omits the relevant provisions, this inconsistency in legislation is not helpful, as it leads to confusion and the risk of challenge where he gives an adverse opinion. While probably not likely, such challenge could be very expensive in terms of staff time and legal costs.
- (f) **Overlapping laying requirements**—this is essentially the same unsatisfactory situation mentioned at Q10 (that because of parallel statutory reporting requirements the same report must be laid twice) but for various central government bodies in place of the WAO. The duplication and complexity are not conducive to clarity of responsibility.

- (g) **Welsh data matching powers falling behind**—as noted in the consultation document, this presents risk of:
- (i) it not being possible to run complete UK-wide data matching exercises in Wales;
  - (ii) the potential financial benefits of data matching to identify errors and inaccuracies, and assist debt recovery not being available to Wales;
  - (iii) the potential to achieve additional savings through the inclusion of new mandatory participants not being realised.
- (h) While it is very difficult to put a firm figure on the financial scale of these risks, an educated guess is that they will amount to several million pounds a year. Also lagging behind in these areas could encourage criminal or other unhelpful behaviour, particularly as some financial support, such as for students, is more generous in Wales than England.

**Q25. 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).**

- (a) Yes. We fear that the continued reference to “functions” in section 23 of the 2013 Act, and the discrepancy that the Draft Bill would introduce between sections 23 and 24 (see Q3), will mean that there is still an ongoing need for detailed analysis of time spent on specific functions. It is difficult to predict quite the effect these provisions will have, but we think that they will reduce the cost savings we estimated in 2018 (see tables 2 and 3 of our June 2018 paper).
- (b) Assuming that the Draft Bill will be revised to provide consistency between sections 23 and 24, aggregation will provide useful tolerance that will enable less effort in monitoring and managing time—perhaps halving the amount, leading to savings of £10,000 to £20,000 a year. Similarly, tolerance should enable somewhat less effort to be required of engagement directors and audit managers in discussions of fees, but not so much as we estimated in 2018. It should, however, enable most administration in respect of overpayments to be avoided, so the majority of our 2018 estimate of some £5,000 saving in finance department time should hold.
- (c) In summary, in respect of costs related to the fee provisions, we estimate savings of £15,000 to £25,000 a year instead of some £28,000 to £48,000 a year.
- (d) Our estimate of contribution from surpluses on agreement work (permitted by the amendments provided by section 2 of the Draft Bill) remains £7,500.

- (e) The different approach in the Draft Bill to interim reports also affects our 2018 estimates in terms of the cost of interim reports avoided (i.e. a saving of £20,000 a year). The annual saving will be lost each time the Committee requests a report. We cannot predict the frequency, but if, say, the Committee requested a report every other year, the saving will drop to £10,000. If, however, such requests were every eight years, the saving figure would be an annual average of some £17,500.
- (f) We think there will be savings in respect of process for the appointment of the auditor of the WAO of at least £2,000 for each appointment after allowing for having to prepare documents for Assembly approval in respect the procurement process and each appointment. As appointments are usually for four years, the annual average saving will be £500. (This is in addition to the overall savings we identified in June 2018 because we did not cover this in our specific drafting suggestions.)
- (g) There may also be some savings for the WAO, as well as the Commission, arising from the revision of the WAO member appointment provisions—particularly appointment of the Chair. These savings are hard to quantify, as time is also inevitably spent on general liaison regarding the need to fill vacancies.
- (h) The laying deadlines amendments of section 17 of the Draft Bill, should lead to savings each time a very significant issue arises on an audit for which additional time is needed. Experience of needing to deal with such an issue indicates avoidable expenditure (i.e. savings) of some £4,000 per case after allowing for the additional work associated with laying an explanation. On the assumption that such cases arise once every eight years, we estimate an annual average saving of £500.
- (i) Providing that the Draft Bill will be revised to provide consistency between sections 23 and 24, we estimate one-off implementation costs for the WAO will amount to probably less than £1,000. This will chiefly be time for changes to finance team procedures and instructions for staff.
- (j) On the basis of the above, we estimate overall annual savings of some £40,000 to £50,000 should arise from the Draft Bill.

**Q26. 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?**

Section 1(b) of the Draft Bill refers to “work” (which is our preference), but this does not match sections 3 and 4, which refer to “functions”. Section 1(b) also refers to requiring the WAO “to include in a fees scheme a provision that seeks to ensure...[broad equivalence]” (which is again our preference as it enables ready coverage of all fees other than agreement work fees). However, such

provision is made in section 3 rather than be required to be included in a scheme.

National Assembly for Wales  
**Finance Committee**

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# Consultation Document

## Draft Public Audit (Amendment) (Wales) Bill

Date of issue: 18 December 2019

Closing date: 7 February 2020



Consultation Question	Yes / No	Commentary
<b>FEE CHARGING</b>		
<b>Proposal:</b> To amend 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. To retain the requirement for fees to be paid by the body to which the function relates in order to ensure transparency for audited bodies, effective engagement in the audit and to maintain the relationship between the auditor and audited body.		
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?	Yes	All public sector organisations need flexibility to enable them to balance their books. However this has to be balanced with an obligation to make efficiencies, and not to pass this cost onto other public sector organisations who are facing year on year budget cuts.
2. If so, do you agree with the approach taken in sections 3 and 4 of the Draft Bill?	Yes	It will be of great importance to consult on the fees.
<b>AGREEMENT WORK</b>		
<b>Proposal:</b> To amend 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. This would enable the Wales Audit Office to earn		
3. Do you agree that the Wales Audit Office should be allowed to set its own terms and conditions for agreement work?	Yes	If this enables a reduction in unnecessary bureaucracy and unnecessary costs.
4. If so, do you agree with the approach taken in section 2 of the Draft Bill?		
<b>QUORUM ARRANGEMENTS</b>		
<b>Proposal:</b> To retain the requirement for a non-executive member majority to ensure independent oversight and provide constructive challenge to the executive directors, but amend paragraph 28(3) of Schedule 1 of the Public Audit (Wales) Act 2013 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.		

Consultation Question	Yes / No	Commentary
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?	No	Clearly this is proving problematic and therefore more practical arrangements should be considered.
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?6.	yes	
7. If so, do you agree with the approach taken in section 13 of the Draft Bill?		
<b>INTERIM REPORTS</b> <b>Proposal:</b> To replace 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, with a provision requiring the production of an interim report (as currently defined) if requested by the Assembly.		
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 once a year, but a requirement to produce an interim report upon the Assembly's request should be included in legislation?	Yes	It is clear that it is not being widely read and therefore adding little value.
9. If so, do you agree with the approach taken in section 16 of the Draft Bill?	yes	
<b>LAYING REPORTS AND ACCOUNTS</b> <b>Proposal:</b> To simplify the provisions in the Public Audit (Wales) Act 2013 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.		
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)	Yes	It is also important that all public accountability reports also have an accessible summary version for the general public.

Consultation Question	Yes / No	Commentary
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?		
11. If so, do you agree with the approach taken in section 15 of the Draft Bill?	yes	
<b>CERTIFICATION DEADLINES</b> <b>Proposal:</b> To amend 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 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.		
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?	yes	
13. If so, do you agree with the approach taken in section 17 and Schedule 1 of the Draft Bill?		
<b>APPOINTMENT OF THE AUDITORS OF THE WAO'S ACCOUNTS</b> <b>Proposal:</b> To amend 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 and the method of procurement.		
14. Do you agree that engagement of the auditor of the Wales Audit Office should be a contractual matter between the Wales Audit Office	yes	

Consultation Question	Yes / No	Commentary
and the auditor, with the appointment (and associated terms and conditions) being subject to the approval of the Assembly?		
15. If so, do you agree with the approach taken in section 14 of the Draft Bill?		
<p><b>APPOINTMENT OF NOJ-EXECUTIVE MEMBERS OF THE WAO AND THE CHAIR OF THE WAO</b></p> <p><b>Proposal:</b> To amend 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, subject to acceptable performance.</p>		
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, subject to acceptable performance?	yes	This should be reviewed however, if there is significant interest from external candidates who wish to be considered for a position on the Board.
17. If so, do you agree with the approach taken in sections 7, 8 and 9 of the Draft Bill?		
<p><b>REQUIREMENT TO CONSULT ON CERTAIN ASPECTS OF THE APPOINTMENT PROCESS</b></p> <p><b>Proposal:</b> To remove 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 in the interest of protecting the independence of those roles.</p> <p>To remove 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 and replace it with a general provision permitting the Assembly to consult with any persons it deems appropriate.</p> <p>To amend section 5(3) of the Public Audit (Wales) Act 2013 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.</p>		
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	yes	

Consultation Question	Yes / No	Commentary
arrangements for the Chair and the Auditor General for Wales; and ▪ the termination of the Chair's appointment?		
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?	yes	
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?	yes	
21. If so, do you agree with the approach taken in sections 6, 10 and 11 of the Draft Bill?		
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?	yes	
23. If so, do you agree with the approach taken in section 5 of the Draft Bill?		

Consultation Question	Yes / No	Commentary
<b>ISSUES WITH THE WIDER PUBLIC AUDIT LEGISLATION IN WALES</b>		
<p>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?</p>		
<b>Other Matters</b>		
<p>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).</p>		
<p>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?</p>		

Response to the consultation 'Draft Public Audit (Amendment) (Wales) Bill' dated  
18 December 2019

[Redacted]

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Organisation: Arts Council of Wales

Contact: Rebecca Nelson, Director of Finance and Business Services

Email: [rebecca.nelson@arts.wales](mailto:rebecca.nelson@arts.wales)

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### About our organisation

Established by Royal Charter on 30 March 1994, the Arts Council of Wales exists to support and develop the arts in Wales for the benefit of people throughout Wales, and to support Welsh arts internationally.

We are a Welsh Government Sponsored Body, a National Lottery distributor and a registered charity (number 1034245).

Our Royal Charter sets our objectives. They are to:

- Develop and improve the knowledge, understanding and practice of the arts;
- Increase the accessibility of the arts to the public;
- Work through the Welsh and English languages; and
- Work with other public bodies in Wales, and with other Arts Councils in the UK, to achieve these aims.

## 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.*

---

As a public sector body, audited by the Wales Audit Office, we welcome the focus on fees and value for money. We note some of the complexities outlined in the consultation.

The spirit of the Wales Audit Office is that it is not a profit making organisation. At the same time we recognise that it needs to embody a high regulatory standard of audit quality, as expected by the Financial Reporting Council of other auditing bodies (or private audit firms).

The consultation outlines the proposal to remove the requirements for fees to be capped at full cost and endorses that total fees charged across Wales is 'broadly equivalent to all of its expenditure in relation to that work'.

At an individual audited body level there is a concern about how transparent the 'offsetting' of audit costs across Wales is, and how fair this system would be in its impact on individual audited bodies. The challenge here is whether this change would militate against the efficient organisation. In other words, a smooth trouble-free audit of a well-managed organisation could end up in subsidising an inefficient organisation with a problematic and time-consuming audit.

### Question 2

*If so, do you agree with the approach taken in section 3 and 4 of the draft bill?*

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See comments above.

### Question 3

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

---

We note that under section 19 of the Public Audit Wales Audit 2013, the WAO can agree to provide services to other public bodies outside Wales, including recently audits in the Caribbean and Mediterranean.



The wider question here is whether a resource-limited organisation that is publicly funded should be providing those services in the first place.

Furthermore, this section discusses making a surplus with the ambition to ‘earn additional reasonable fees to reinvest in the organisation or surrender to the Welsh Consolidated Fund’. Again, we would suggest that the purpose of the Wales Audit Office is not to generate surpluses for the Welsh Government. Whether right or wrong, an assumption could be made here that the full costing method was originally included into the legislation precisely to prevent such profit making activities.

#### Question 4

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

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See comments above.

#### 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?*

---

Agreed.

#### 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 requirements?*

---

We are broadly in agreement with this proposal but advise some practical consideration needs to be taken when issues arise that may raise a potential conflict of interest. remuneration and pay would be an obvious example.

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

---

We have no comment in respect of this proposal.

### Question 9

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

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See answer in Question 8.

### Question 10

*Do you agree that the requirement to lay the annual report (on the exercise of function 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?*

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Agreed.

### Question 11

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

---

Agreed.

### 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 report as soon as reasonably practicable?*
- 

Agreed.

### Question 13

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

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See our comment in respect of Question 12.

### 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?*

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Agreed.

### Question 15

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

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Agreed.

### 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, subject to acceptable performance?*

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We recognise the challenges outlined in the consultation regarding the Chair and the fact that the Chair's post can be extended, he/she would need to reapply for a second term.

Nevertheless, we still think that there is merit in having a competitive process every 4 years. This would ensure that the make-up of the panel remains fresh and reflective of a diverse and vibrant Wales.

### Question 17

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

---

See above.

### 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 Audit General for Wales;*
  - *The termination of the Chair's appointment*
- 

We draw the Committee's attention to the fact that, similar provisions are incorporated into the Budget Responsibility and National Audit Act 2011, which is relevant to the Comptroller and Auditor General of the National Audit Office:

"Remuneration arrangements

(1) Before a person is appointed as Comptroller and Auditor General, remuneration arrangements are to be made in relation to the person jointly by the Prime Minister and the person who chairs the Committee of Public Accounts."

Remaining with the status quo arrangements would ensure a consistent approach nationally. In addition, as the Auditor General is appointed by HM Queen, it seems logical that the First Minister should undertake the appointment duties.

### Question 19

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

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Please see our answer to Question 18.

### 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?*

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Agreed.

### Question 21

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

---

Please see our answer to Question 18.

### 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?*

---

Agreed.

### Question 23

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

---

Agreed.

## Question 24

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

- *The lack of 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?*
- 

In order to include a regularity opinion for central government bodies, the consultation is proposing additional legislative changes to the relevant Acts (as outlined on page 29 of the consultation). In paragraph 65 of the consultation, it is noted that “The Arts Council and Sports Council are also affected as relevant provisions are not included in the Royal Charters that established them.”

The complication here for the Arts Council of Wales is that to amend our Royal Charter, there would need to be approval of HM The Queen and the Privy Council. This is a complex and time-consuming process. We would therefore wish to draw to your attention that there are a number of additional practical hurdles in respect of this proposal.

In addition, the Arts Council of Wales’ audit opinion is addressed to the Trustees, as we are a charity and regulated by the Charity Commission. Even though much of our funding comes from taxpayers via Welsh Government, our Trustees are bound to act independently - see Charity Commission publication [RR7](#) (Independence of Charities from the State). The Auditor General for Wales reporting to Welsh Government instead of, or as well as, the Trustees is incompatible with Charity Commission guidelines and potentially charity law.

A practical alternative to changing the legislation for all entities included in page 29 of the consultation, would be for the Wales Audit Office to undertake ‘agreed-upon-procedures’, an alternative form of audit work used commonly in other areas of audit work, in respect of regularity and the use of public funds.

In terms of the overlapping laying of requirements (as outlined on page 31), we wish to draw your attention to the following point not included in the consultation document.

In addition to receipt of grant in aid from Welsh Government, the Arts Council of Wales is a National Lottery distributor. Under the National Lottery Act 1993, we prepare financial statements relating to our Lottery activity. Our accounts for our Grant in Aid are laid before the Assembly and audited by the Wales Audit Office. However, our accounts for lottery are audited by the Wales Audit Office on a sub-contracted basis from the National Audit Office and then laid before UK Parliament, with a copy (not formally laid) at the National Assembly.

Our Scottish counterpart, Creative Scotland, lays its Lottery accounts at Parliament. The difference in their case is that the Auditor General for Scotland audits both sets of accounts without reference to the C&AG. Our preference for consistency purposes would be for both sets of our accounts to be audited by the Wales Audit Office and signed by the Auditor General for Wales, as is the Scottish model. We would welcome the opportunity for this process to consider whether such amendments are feasible.

## 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).*

---

We note the following potential financial implication for the Arts Council of Wales:

- Increase in audit fees – as outlined in our response to Question 1, as a highly efficient audited body we have concerns we may see an increase in fees to offset those organisations with problematic and time-consuming audits;
- Any changes to the Royal Charter will require additional time, resource and legal advice which would be very costly to our organisation;
- Amendment the audit requirement to ensure our Lottery accounts are audited by the Wales Audit Office instead of the National Audit Office would be of financial benefit in terms of time and resource to both us as an Arts Council and the Wales Audit Office as auditors.

## 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?*

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No further comments. We are happy to be contacted directly for any further information or clarification of our responses.



## Appendix 1

### The principles and purpose of Royal Charter status

Royal Charters, granted by the sovereign on the advice of the Privy Council, have a history dating back to the 13th century. The Arts Council of Wales' Royal Charter status is not just a matter of arcane constitutional curiosity. Its origins are in the legal establishment of fundamental principles that underpin the way that a Royal Charter body operates.

Their original purpose was to create public or private corporations and to define their privileges and purpose. Charters are normally reserved for bodies that work in the public interest and which can demonstrate pre-eminence, stability and permanence in their particular field.

The importance of the Royal Charter to the Arts Council is the protection that it is designed to offer. A Royal Charter is an instrument of incorporation, granted by The Queen, which confers independent legal personality on an organisation. It defines its objectives, constitution and powers to govern its own affairs.

The key principle outlined above is “independent legal personality”.

Enshrined within this independent legal status are the defining principles of artistic freedom and freedom of expression.

The Human Rights Act 1998 (incorporating Article 10 of the European Convention on Human Rights) provides that everyone has the right to freedom of expression, though this right brings duties and responsibilities. Public authorities, including the Welsh Government, may not act in any way incompatible with this.

Royal Charter status protects these freedoms.

## Appendix 2



Wed 05/02/2020 08:52

Finance Committee | Y Pwyllgor Cyllid <SeneddFinance@Assembly.Wales>

RE: (All\_Ext) - FW: Ymgynghoriad ar y Bil Archwilio Cyhoeddus (Diwygio) (Cymru) drafft / Consultation on the Draft Public Audit (Amendment) (Wales) Bill

To Rebecca Nelson

Cc Finance Committee | Y Pwyllgor Cyllid

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Hi Rebecca,

We are happy to extend the deadline for you, we look forward to receiving your response next week.

Best Wishes



**Rachel Powell**

**Swyddog Cefnogi Pwyllgor, Y Pwyllgor Cyllid**, Cynulliad Cenedlaethol Cymru  
**Committee Support Officer, Finance Committee**, National Assembly for Wales

0300 200 7258

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