

Proposals for a Public Audit (Wales) Bill

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Consultation Response Form

Please return this form to reach the Welsh Government no later than 15 May 2012.

The email address for responses or queries is:

publicauditwalesbill@wales.gsi.gov.uk

Postal responses should be sent to::

Public Audit (Wales) Bill Team

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Telephone contact for enquiries: 029 2082 6270

Alternatively, responses can be submitted via an online response form available at:

English: <http://wales.gov.uk/consultations/improving/pawbill/?lang=en>

Welsh: <http://wales.gov.uk/consultations/improving/pawbill/?lang=cy>

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Question1 : What are your views on the new AGW holding office for 7 years?
Is this too long, too short or reasonable?

The Comptroller and Auditor General's term is 10 years and the recently appointed Auditor General for Scotland has been appointed on a fixed term of 8 years. We agree that the Auditor General for Wales (AGW) should also have a fixed term appointment but consider that a term in the range 8 to 10 years would be more consistent with similar posts.

Question 2: Do you agree that a person can only be AGW once?

Yes

No

Please expand on your answer

A single term of appropriate length should offer sufficient stability and certainty of appointment to support independence.

Question 3: What are your views on placing restrictions on the offices, employments and services a person can hold once they cease to be AGW?

There is a case for placing reasonable restrictions on the offices, employments and services a person can hold once they cease to be AGW.

Question 4: Do you agree that two years is an appropriate length of time to apply these restrictions?

Yes

No

Please expand on your answer

The purpose of any reasonable restrictions is to minimise the risk of an actual or perceived threat to independence arising from the prospect of gaining employment or other benefits after holding office. A two year period seems reasonable to minimise the risk of this threat arising.

Question 5: Do you consider the procedure for settling the remuneration arrangements fair?

Yes

No

Please expand on your answer

We have not answered this question because we do not believe it is a matter on which we can comment.

Question 6: What are your views on the establishment of the Wales Audit Office as a body corporate?

Establishing the Wales Audit Office as a body corporate is in line with good corporate governance principles and will enhance the accountability of the AGW by making him or her subject to an appropriate level of oversight by a board. However, the detailed arrangements that are proposed are complicated and care will be needed to define clearly the respective responsibilities of the AGW and the WAO board. In particular, we think that further consideration needs to be given to the balance between executive and supervisory functions, so as to safeguard the operational independence of the AGW.

Question 7: Do you agree that the membership of the new WAO should comprise 7 members?

Yes

No

Please expand on your answer

While this is primarily a matter for agreement in Wales, we agree that the WAO board should not be too large.

Question 8: What are your views on the composition of the new WAO?

Further clarity is needed on the role of the board and the balance between supervisory and executive functions as these will determine the mix of skills needed.

Members of the board should be selected for the relevance of their experience, knowledge and skills rather than as representatives of particular interests. Selection criteria will be needed to ensure that an appropriate mix of public sector and professional experience is brought to the board. Members should also act in their individual capacity.

Question 9: Do you agree with the appointment and re-appointment provisions for the Chair and other non-executive members of the new WAO?

Yes

No

Please expand on your answer

Yes, but this is primarily a matter for agreement in Wales. We would, however, suggest that to ensure continuity of membership consideration should be given to staggering appointments.

Question 10: Do you consider the non-executive members' initial term of office of up to three years to be sufficient? If not please give reasons.

Yes

No

This seems reasonable for an initial term for a non-executive member.

Question 11: Should non-executive members including the Chair be eligible to serve more than two terms?

Yes

No

Please expand on your answer

A maximum of two terms would seem sensible to reduce the risk of the actual or perceived threat of non-executives becoming too close to the organisation. Non-executives need to maintain the independence of thought and challenge that is needed to support good corporate governance.

Question 12: What are your views on the remuneration arrangements for the Chair and the other non-executive members of the new WAO?

We have not answered this question because we do not believe it is a matter on which we can comment.

Question 13: What are your views the PAC being able to place restrictions on the Chair and the non-executive members of the WAO during their term of office and afterwards for a period of up to two years? Do you consider two years enough?

The purpose of any reasonable restrictions is to minimise the risk of an actual or perceived threat to independence arising from the prospect of gaining benefits after holding office. A two year period seems reasonable to minimise the risk of this threat arising.

Question 14: Are there any other grounds on which non-executive members or the Chair should be removed from office?

We have not identified other grounds on which non-executive members or the Chair should be removed from office.

Question 15: What are your views on the appointment of an employee-member of the new WAO? Do you agree with the proposed way in which this person is to be appointed?

It is not clear what the role of the employee-member of the WAO will be. Will this be a senior executive or a staff representative? We are unclear why there needs to be an employee-member because the WAO board can invite employees to attend meetings to provide advice as required.

Any post-employment restrictions placed on an employee-member need to be proportionate to the seniority of the employee (but as noted above it is not clear how senior these members would be). Care will be needed to ensure that any restrictions are not unreasonably restrictive, and so non-executive members would need to act on relevant legal advice.

Question 16: Do you agree that the recruitment and selection procedures and employment terms for WAO staff should broadly follow those of the staff of the Welsh Government?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
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Please expand on your answer.

Yes, but we acknowledge this is primarily a matter for agreement in Wales. In our view the recruitment and selection procedures and employment terms of the WAO, as a public body, should be broadly consistent with similarly qualified employees of other public bodies.

Question 17: What are your views on the powers under Schedule 1, paragraph 26 in relation to the provision of services. Are these powers wide enough? What else should be added?

We have not identified any powers that should be added.

Question 18: Should the PAC have a duty to appoint the accounting officer to the new WAO?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
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Please expand on your answer

The legislation (not PAC) should make the Auditor General (AG) the Accounting Officer of the new WAO, by virtue of the office, but it may also be worth requiring the AG to nominate a deputy Accounting Officer in the event that the AG is unable to act in this capacity - see response to q 29.

Question 19: Should the PAC approve the appointment and terms and conditions of the new WAO's auditor?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
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Please expand on your answer

To safeguard the auditor's independence, PAC should make the appointment itself, rather than just approve the appointment terms .

Question 20: Do you agree with the proposal that the PAC considers the estimate and that it forms part of the Annual Budget Motion?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
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Please expand on your answer

To safeguard the operational independence of the AGW, this should be the function of the PAC and not the Welsh Government or its officials.

Question 21: What are your views on the PAC having a power to scrutinise and/or approve the annual plan with or without modifications?

While PAC should be able to question and challenge the AGW it should be the AGW's responsibility to determine his or her work programme. There could, therefore, be a requirement to consult PAC but it should be the AGW's plan. There is a risk that the AGW's operational independence could be threatened if he or she is not ultimately responsible for the plan.

Question 22: What are your views on the PAC being empowered to lay the annual plan before the Assembly, and the Assembly being enabled to approve it with or without modifications?

PAC should be able to debate but not modify the plan. There is a risk that the AGW's independence could be threatened if he or she is not ultimately responsible for the plan albeit after appropriate consultation.

Question 23: What are your views on the proposed method of determining the anticipated maximum amount of resources to be allocated to the new AGW by the new WAO?

As noted in response to question 7, it will be important to reach an appropriate balance between supervisory and executive functions. The independence of the AGW should also be safeguarded and so it is reasonable for the AGW to report his or her proposed work programme and budget to the board but the deployment of resources in support of the work programme should be a matter for the AGW. There is a risk that the AGW's operational independence could be threatened if he or she is not ultimately responsible for the deployment of resources.

Question 24: Do you consider the approach to the release of resources for the new AGW's functions to be appropriate?

Yes

No

Please expand on your answer

As noted in response to question 7, it will be important to reach an appropriate balance between supervisory and executive functions. It is reasonable for the AGW to report his or her proposed work programme and budget to the board but the deployment of resources in support of the work programme should be a matter for the AGW. There is a risk that the AGW's operational independence could be threatened if he or she is not ultimately responsible for the deployment of resources.

Question 25: What are your views on the new WAO monitoring and advising the new AGW?

The role of the WAO board should be to hold the AGW to account, and to advise and, where appropriate, challenge the AGW. However, the AGW must retain operational independence.

Question 26: Should the new WAO approve the new AGW's scheme of delegation?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
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Please expand on your answer

We think it is appropriate for the AGW to report his or her scheme of delegation to the WAO board but the AGW must retain operational independence.

Question 27: What are your views on the new AGW and the new WAO being required to prepare interim and annual reports?

It seems reasonable to prepare an annual report but there is a need to consider carefully the purpose and frequency of other reporting. In our view there is no need for legislation to be prescriptive about the nature and frequency of in-year reporting as this should be based on operational requirements and organisational capacity.

Question 28: What are your views on the PAC having a scrutiny role in relation to these reports?

In our view there is no need for legislation to be prescriptive about the nature and frequency of reporting and the role of PAC in this. This is a matter for the AGW and PAC to agree based on operational requirements and capacity.

Question 29: Do you agree with the arrangements proposed for the designation of a person to temporarily exercise the functions of the AGW?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
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Any comments? If you answered no, please provide reasons for your answer.

It is sensible to have arrangements for designating someone to act as the AGW if required.

Question 30: Should the new WAO be under a duty and/or power to charge fees in respect of any audit, examination by the new AGW in respect of local government bodies in Wales?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
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Any comments? If you answered no, please provide reasons for your answer.

Charging to recover full costs is a good discipline that supports transparency and we agree that it is appropriate for this to be a duty rather than a power. We note that the duty would apply to the WAO rather than the AGW (presumably as a consequence of the WAO holding the budget). However, we think the respective roles and responsibilities of the WAO board and the AGW should be looked at again to ensure that an appropriate balance is struck between the need to safeguard the operational independence of the AGW and the ability of the WAO Board effectively to hold the AGW to account.

Question 31: Please detail any other matters you think should be included in the list of exceptions in clause 23(2)

We have not identified any other matters that should be included but we suggest that clause 23(6) may need to be reconsidered in the light of any further considerations about the respective roles of the AGW and the WAO board.

Question 32: Do you agree, in principle, with streamlining the provisions relating to the new AGW's financial audit and Vfm functions?

Yes



No



Please expand on your answer

The proposed streamlining is sensible.

Question 33: What are your views on the proposals in clauses 28 to 30?

These proposals generally seem sensible.

Question 34: Should the new AGW be the statutory auditor of HECs and/or FECs?

Yes



No



Please expand on your answer

It is appropriate for HECs and FECs to be subject to independently appointed auditors. It therefore make sense for the AGW to be the statutory auditor of HECs and FECs in Wales.

Question 35: What are your views on the proposals in clauses 40 to 42?

Although these proposals are generally sensible we do not understand why registered social landlords (clause 41(d)) or education bodies (clause 42) should be treated differently to other local bodies that receive substantial public funding.

Question 36: Please details any bodies or offices established under prerogative instruments such as Royal Warrants or Charters that you think should be included in the list in Table 1 in clause 30

We have not answered this question because we do not believe it is a matter on which we can comment.

Question 37: Do you agree that the new AGW is to be the auditor of local government bodies in Wales?

Yes



No



Please expand on your answer

In our view, the case for having separate arrangements for different parts of the public sector that are accountable to their own electorates has been overstated and we agree with the rationale for proposing the AGW as the auditor of local government bodies in Wales.

Question 38: Do you agree with the general audit duties (including consideration of Vfm arrangements) to be placed on the new AGW?

Yes



No



Please expand on your answer

We note the proposal to change the duty 'to be satisfied' that there are proper arrangements to a new duty 'to consider' whether there are proper arrangements. The existing wording is onerous and the proposed change may allow for more flexibility in the ways in which auditors would fulfil this duty. However, as now, it will be very important to define clearly in the Code of Audit Practice the scope of auditors' work, the criteria that they would apply in fulfilling this duty, and how and to whom they should report the results of any work in relation to this duty.

Question 39: In relation to clause 70 – will something of significance be lost if the Bill on introduction does not include provision for “promoting” studies?

No. We do not think anything significant will be lost by not including a provision for promoting studies. The proposal to make the AGW the auditor of local government bodies makes such a provision unnecessary.

Question 40: In your view, is there any real difference in this respect between an “examination” and a “study”?

No. There is no real difference between these in practice and neither term is used in professional requirements outside this legislative framework.

Question 41: Should there be a separate code for data matching or would it be more appropriate as a section within the Code of Audit Practice described at clause 87?

Yes

No

Please expand on your answer

In our view there should be a separate code for data matching. The data matching code, which relates to the use of sensitive personal information, is relevant to different stakeholders including the Information Commissioner and may need to be updated more frequently than a code of audit practice and so should be subject to separate scrutiny arrangements. It is also important that the code for data matching is consistent with the equivalent codes in England and Scotland.

Question 42: Should the Secretary of State's power under clause 85 be subject to a requirement to consult with or obtain the consent of the Welsh Ministers where it affects devolved matters in Wales?

Yes

No

Please expand on your answer

We have not answered this question because we do not believe it is a matter on which we can comment.

Question 43: What are your views on the Assembly no longer being empowered to approve the new AGW's code of audit practise?

If the Assembly does not approve the code of audit practice there should be a duty to lay the code (see question 44) to ensure that it has sufficient status and authority.

Question 44: Should there be a duty on the new AGW to lay his/her code of audit practice before the Assembly?

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Please expand on your answer			
<p>We think there should be a duty on the AGW to lay the code but there is no need for it be subject to approval - see previous question.</p> <p>Given the proposal to change the statutory duty 'to be satisfied that' to a new duty 'to consider whether' there are proper arrangements to secure value for money the code will need to set out how this duty will be discharged and reported (see also our response to question 38). The Assembly would have a justifiable interest in knowing how this revised duty will be carried out.</p>			

Question 45: Should the code apply to the new AGW's certification etc. functions under clause 86 and/or the new AGW's right of access to documents etc. under clauses 88 and 89?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Please expand on your answer			
<p>There is no need for a requirement. Given that the AGW will have both audit and certification functions it may be appropriate to enable the AGW to include provisions on certification work in a code but only at the AGW's discretion. The AGW would still be able to issue guidance on certification work in other ways.</p> <p>We also query the need for the code to cover access rights if these are set out in legislation.</p>			

Question 46: What are your views on there be a single provision covering the new AGW's rights of access to documents and information within the public sector?

It seems sensible to have a single provision covering rights of access.

Question 47: Should the offence provision apply in any case where the new AGW exercises the power to access documents etc. and not only in local government cases?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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Please expand on your answer

We have not answered this question because we do not believe it is a matter on which we can comment.

Question 48: In principle, should the new AGW have an express duty to carry out sustainable development examinations?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
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Question 49: If you do not agree with the principle, please explain why.

There is no need for an express duty to carry out sustainable development examinations. In our view these could be carried out under the general provisions relating to examinations. Identifying particular themes on the face of the legislation for examinations is unnecessary and risks fettering the discretion of the AGW to determine his or her work programme. However, if it is felt that there should be an express duty this should be to 'consider' carrying out sustainable development examinations.

Question 50: If you do agree with the principle, do you think that the duty should be proposed in this Bill or later in legislation relating specifically to sustainable development?

Please see our previous response.