

David Melding AM  
Chair  
Constitutional & Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

11 November 2015

## **Draft Wales Bill**

Dear David

I am writing with the Public Accounts Committee observations on the Draft Wales Bill which was considered at Committee on 3 November.

Whilst Members welcome a change from a conferred powers model of devolution to a reserved powers model, we are concerned that the legislative arrangements set out in the draft Bill would constrain the Assembly when legislating.

The Committee noted the 10 proposed tests for competence found in clause 3 of the Bill and noted that, while some of these tests exist currently, there are others that are new, or elements of those tests that are new, that do not flow inevitably from a reserves powers model and which would constrain the Assembly more than at present – for example the ‘new necessity tests’ – which in essence roll back competence. The Committee is not content with this potential reduction in the Assembly’s legislative competence.

Concern was also expressed about the definition of Welsh public authorities (Clause 218 of Schedule 7A) within the draft Bill. These provisions appear to present scope for discussion as to whether public bodies that could be considered integral parts of the Welsh public sector are excluded from the definition of ‘Welsh public authority’. Such an exclusion would seem to arise in the case of bodies with general or supplementary powers that are not confined to ‘only in relation to Wales’ and examples include local health boards and the Wales Audit



Office powers under the provision of services under section 19 of the Public Audit (Wales) Act 2013. The Committee feels that clarity would be desirable on this point.

With regard to the provisions of the draft Bill relating to the “audit” committee. The Committee agrees that the provision which requires the Assembly to have an audit committee should remain and also agree that arrangements for the Chair and membership of the audit committee should be within the competence of the Assembly, as proposed in the draft Bill. However, the Committee believes that the current restrictions on the Chair and membership of the Committee are appropriate and should remain.

The Committee notes that the draft Bill provides that the restrictions on the membership of a committee having oversight of the AGW/WAO remain unamendable. When Schedule 7 of GOWA was amended by the Budget Responsibility and National Audit Act in relation to oversight and supervision of the AGW, it inserted provisions relating to the membership and chairmanship of the committee to which such functions were delegated. Whilst we agree that the current arrangements for membership of the ‘oversight’ committee are appropriate, the Committee believes that there should be a consistent approach with regards to the treatment of the ‘oversight’ and audit committees and that both should be a matter for the Assembly to determine.

Section 136 of GOWA confers on the Comptroller and Auditor General the power to examine the use of resources (payments in and out of the Welsh Consolidated Fund) and report to the House of Commons. This provision was originally included in the Government of Wales Act 1998 as the Assembly was a single corporate body. Given the separation of the legislature and the executive in 2006, the fiscal powers contained in the Wales Act 2014 and the fact that these powers have never been used, there appears to be little justification for the retention of this power.

Yours sincerely,

**Darren Millar AM**

**Chair**

CC: Dame Rosemary Butler AM, Presiding Officer



Mr Darren Millar AM  
Chair of the Public Accounts Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff CF99 1NA

Date: 29 October 2015  
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Dear Darren

## **THE DRAFT WALES BILL**

Thank you for your letter of 20 October 2015 inviting me to comment on the draft Wales Bill.

It appears that the provisions currently contained in the 2006 Act that protect certain key aspects of existing legislation relating to the Auditor General's functions have been reproduced in the draft Bill, albeit in a re-arranged form. Those provisions protect the Auditor General's powers to undertake examinations and studies of the Welsh Government and related bodies, and the Auditor General's overall audit independence, and they are appropriate.

I do, however, have some general value for money-related concerns at the apparent effect of paragraph 218 of the new Schedule 7A and paragraph 8 of the new Schedule 7B proposed by the draft Bill. These provisions appear to present scope for argument as to whether public bodies that could be considered integral parts of the Welsh public sector are excluded from the definition of "Welsh public authority". Such an exclusion would seem to arise in the case of bodies with general or supplementary powers that are not confined to exercise "only in relation to Wales", which by virtue of subparagraphs 218(4) and (5) and subparagraphs 8(3) and (4) would seem to put the relevant bodies outside the definition. Examples of such powers may include the general powers of Local Health Boards (under paragraph 13 of Schedule 2 to the National Health Service (Wales) Act 2006, and the WAO's powers for the provision of services (under section 19 of the Public Audit (Wales) Act 2013). I think it would be desirable to have clarity on this point, as the present drafting seems to present potential for dispute and consequential expense.

Another matter that is of relevance to the Wales Audit Office and the Welsh public sector in general is that the draft Bill seems to raise a need for a consequential amendment to the Public Contracts Regulations 2015 so as to allow Welsh public bodies to continue to advertise their requirements on “Sell2Wales” instead of “Contracts Finder”. Regulation 1 of the 2015 Regulations provides that Part 4 of those Regulations (which concerns “Contracts Finder”) does not apply to bodies that wholly or mainly exercise “Welsh devolved functions”. However, “Welsh devolved functions” is defined in the Regulations as functions within the Assembly’s competence under section 108 of the Government of Wales Act 2006. If the exemption from using Contracts Finder is to continue to have effect, the reference to section 108 will need to change to section 108A.

I believe that the normal means for making such an amendment to regulations is by statutory instrument, for which there is provision in the draft Bill. The UK Government may already have such an amendment in mind, but in any case it may be helpful for the Welsh Government to keep this matter in view.

I should also mention that I am concerned at the draft Bill’s reduction in the protection of section 30 of the Government of Wales Act 2006. Under paragraph 7(2)(xv) of the new Schedule 7B, subsections (2) to (4) of section 30 of the 2006 Act are excluded from protection from modification by Assembly legislation. The effect of this is to allow the removal of the preclusion from PAC membership of Welsh Ministers and to allow the removal of the preclusion of a member of a government party from chairing the Committee. Such developments would not be conducive to good scrutiny and governance.

Given the Finance Committee’s functions relating to the Wales Audit Office, I am copying this letter to Jocelyn Davies AM.

Yours sincerely



**HUW VAUGHAN THOMAS**  
**AUDITOR GENERAL FOR WALES**

cc Ms Jocelyn Davies AM, Chair, Finance Committee