

Rt Hon Stephen Crabb MP
Secretary of State for Wales
1 Caspian Point
Cardiff Bay
CF10 4DQ

Your ref:
Our ref: PO/RB/ER

9 November 2015

Dear Stephen

Draft Wales Bill

I have now had the opportunity to consider the draft Wales Bill. There is much to welcome in the draft Bill in relation to devolving competence over our internal and electoral arrangements. However, as you are aware, I believe that the proposed reserved powers model requires improvement if it is to be the lasting settlement that the Assembly needs. I am committed to continuing to work constructively with you to strengthen the Bill.

I have noted your letter of 5 November and will respond in more detail in due course. In the meantime, my evidence to the Welsh Affairs Committee and Constitutional and Legislative Affairs Committee provides suggestions for improvements of the draft Bill.

Finance, accountability and audit provisions

One new area I raise in my evidence is that of the Assembly's powers in relation to the finance, accountability and audit provisions contained in Part 5 of the GOWA 2006. I would appreciate it if the issues covered here could be addressed as part of our on-going collaboration during the pre-legislative scrutiny period, and be considered in time for introduction of the Wales Bill in 2016.

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Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh

Rationale for changes to financial provisions

Existing finance and accountability provisions for the Welsh Government and Assembly Commission are mainly set out in Part 5 of the GOWA, with some also contained in the GOWA 1998, Public Audit (Wales) Act 2013 and Wales Act 2014. As the Assembly did not have legislative competence prior to the GOWA 2006 (and only limited competence prior to the 2011 referendum), these provisions no longer reflect the maturity of the Assembly and are somewhat prescriptive – setting out detailed arrangements for approving budgets, appointing accounting officers, preparing and auditing accounts. To further complicate the situation, provisions setting out accounting and audit requirements for other public bodies are set out in various enactments. There is a lack of consistency due to them being drafted at different points in time, over which period terminology and best practice has evolved.

The prescriptive nature of the current provisions has made it difficult to keep pace with best practice.¹ The existing provisions were designed solely for the authorisation of resources allocated by Treasury – given the fiscal devolution provided for in the Wales Act 2014, they are likely to lose currency going forward.

This situation in Wales is in stark contrast to the situation in Scotland, where the Parliament has had competence to legislate on such matters from the outset, and passed the Public Finance and Accountability (Scotland) Act 2000 to provide for a comprehensive and coherent financial framework.

In line with the findings of the Silk Commission, it is my view that the Assembly should have maximum flexibility to legislate for finance and accountability provisions, subject to some basic safeguards [to be provided for or retained] in Westminster legislation. The Assembly's Finance Committee has also recommended this², and the Welsh Government's response was positive towards this recommendation.³ If this was the case, then an early candidate for Assembly legislation might be a Bill to modernise the budget process, and create common up-to-date accounting and audit

¹ As articulated in the Finance Committee's report on [Best Practice Budget Process Part 2 - Planning and implementing new budget procedures, March 2015](#)

² [Welsh Government response to Finance Committee Report: Best Practice Budget Process part 2 – Planning and implementing new budget procedures \(Response to recommendation 12\)](#)

³ Finance Committee, [Best Practice Budget Process Part 2 - Planning and implementing new budget procedures, March 2015](#)

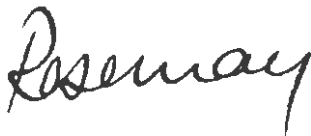
provisions for all Welsh public bodies. Currently the Assembly does not have competence to pass such legislation.⁴

I believe that the Wales Bill presents the ideal opportunity to amend the existing prescriptive financial provisions and allow the Assembly to legislate holistically to determine its own financial arrangements via financial framework legislation.

The following annexes set out my preferred approach to this. Annex A provides details of safeguards which should remain in Westminster legislation, and provision which should be made in an Assembly financial framework Bill should competence be granted. Annex B sets out the detailed changes I would wish to see incorporated in the draft Wales Bill in relation to finance, accountability and audit provisions.

I hope you shall consider this and support further discussions between our officials on the matter.

Best wishes,



Dame Rosemary Butler AM
Presiding Officer

cc Rt Hon Carwyn Jones AM, First Minister
Jane Hutt AM, Minister for Finance
Jocelyn Davies AM, Chair, Finance Committee
Darren Millar AM, Chair, Public Accounts Committee
Huw Vaughan Thomas, Auditor General for Wales
Andrew R T Davies AM, Leader, Welsh Conservatives
Kirsty Williams AM, Leader, Welsh Liberal Democrats
Leanne Wood AM, Leader, Plaid Cymru

⁴ The Wales Act 2014 gave the Assembly power to determine its own budgetary procedures (amending Schedule 7 of GOWA 2006 to enable modification of sections 125-128). However, this does not allow modification or provision of the wider financial framework.

Annex A: Preferred approach to finance provisions in legislation

Basic safeguards required in Westminster legislation.

As indicated in my letter, Westminster legislation should set out the minimum requirements for Welsh legislation in respect of financial provisions. In my view, such minimum requirements should include:

- a) Arrangements for the appointment, removal and operational independence of the Auditor General for Wales.
- b) Requirement for a Welsh Consolidated Fund, from which funds can only be issued in accordance with legislation or Assembly approval, with credits being granted by the Auditor General for Wales.
- c) Requirements for Assembly legislation to provide for the authorisation of the use of resources, designation of accounting officers, preparation and audit of accounts and value for money audit examinations (including provision for the audit arrangements for the Wales Audit Office).
- d) For the laying before the Assembly of accounts and reports prepared under (c) and for the Assembly to publish such accounts and reports.

Financial provisions to be included in Assembly legislation

Subject to the actual content of Westminster legislation, ideally the Assembly would have competence to pass an overarching Public Finance and Accountability (Wales) Act which could repeal and replace the provisions set out in the table below. In summary, and for illustrative purposes only such an Act could include:

- a) The requirement for an annual budget act to authorise taxation, borrowing and use of resources - along the lines suggested by the Finance Committee. Provision would also be required for in-year changes and a default position in the event that there is no budget authorised prior to the beginning of the financial year.
- b) Provision for the designation of principal and additional accounting officers. The Treasury/Audit Committee role in specifying the duty of the Principal Accounting Officer (PAO) duties for the Welsh Government, Assembly Commission, Public Services Ombudsman, Wales Audit Office and independent commissioners could be replaced with statutory duties similar to those set out in s.14-18 to the Public Finance and Accountability (Scotland) Act 2000.

- c) Provision for the Welsh Government PAO to designate the Accounting Officers of other bodies it finances – primarily NHS bodies and sponsored bodies – and to specify their duties.
- d) Provision relating to the operation of the WCF, (including a requirement for credits to be sanctioned by the Auditor General), the preparation of its annual accounts by Welsh Ministers and their audit by the Auditor General.
- e) Provision for public bodies (to be listed in a schedule which can be updated as necessary) to prepare accounts in a form directed by Welsh Ministers – taking account of any relevant guidance issued by HM Treasury. Provision for those accounts to then be audited by the Auditor General and laid before the Assembly.⁵
- f) Powers of the Auditor General to conduct economy, efficiency and effectiveness examinations to be consolidated and cover all bodies in (e) and any body – or class of bodies – whose income from public funds is more than 25 per cent of its total. This could also be done by a list periodically updated by Order.
- g) Preserving the Auditor General’s rights to documents and information.

Standing Orders of the Assembly could set out more detailed arrangements relating to financial provisions – for example the handling of Budget Bills and a requirement that they can only be introduced by a Welsh Minister.

⁵ Public Audit (Wales) Act 2013 already provides arrangements for audit of the Wales Audit Office.

Annex B: Suggested changes to financial provisions

We note that provisions related to budget procedures (sections 125-128 of GOWA 2006) have already been dealt with via the Wales Act 2014, and so these are not included in the following table.

However, we would suggest that paragraphs 7(5) and (6) of Schedule 7B to the draft Wales Bill are not needed under a reserved powers model and would be better if replaced by a general provision that would prevent resources from being used by Welsh Ministers and other “relevant persons” listed in Section 124(3) unless authorised by the Assembly - as noted in the table below.

Table 1: Suggested changes to GOWA 2006 financial provisions

GOWA 2006	Suggested action	Scotland
Section 30(1) Audit Committee and Section 143 Audit Committee reports	Bring within competence: see note below	Section 70 Scotland Act 1998 sets out that Standing Orders provide for parliamentary consideration of accounts and audit reports.
Section 118 (2): Grants and Section 120 (1): Destination of receipts	Amend: These sections should remain in Westminster legislation, but could be combined with the requirement that Welsh Ministers, Assembly Commission and other direct funded bodies grants/receipts should be paid into the Welsh Consolidated Fund – subject to any provision of an Assembly Act for disposal of/accounting for such sums. I would also request that the Assembly should be able to add to the list of “relevant persons” in Section 120(1) but not permitted to delete any of the existing four entries.	Some provision in Section 64 Scotland Act 1998.
Section 119: Statement of estimated payments	Repeal: this was appropriate prior to the advent of resource budgeting, but is now of little relevance. In fact, I believe the Welsh Government now provides the Wales Office with the relevant information.	No similar provision.
Section 124: Payments out of Welsh Consolidated Fund	Amend: This section needs to remain in Westminster legislation, but could be simplified and remove references to budget resolutions (Sections 125 to 128). It could also include an overriding requirement that sums paid out of	Similar provision made in Section 65 Scotland Act 1998.

	<p>the Fund should not be applied for any purpose other than that for which they were charged/paid out.</p> <p>I would also request that the Assembly should be able to add to the list of "relevant persons" in Section 124(3) but not permitted to delete any of the existing four entries.</p>	
Sections 129-130 Approvals to draw and payments in error	Bring within competence: The Assembly should be able to amend these provisions - subject to the protection of Section 124 being retained in Westminster legislation.	Section 65 of Scotland Act 1998 contains limited provision regarding approvals to draw.
<p>Sections 131-134, 137-139 and 141-142: Provisions for the, appointment of accounting officers and preparation and audit of accounts for Welsh Ministers, Assembly Commission and a whole of government account.</p> <p>Sections 135 and 140 provide for audit functions of the Auditor General in relation to the Welsh Ministers and Assembly Commission (and 145 to 145D of GOWA 1998)*</p>	<p>Bring within competence: Schedule 7B does not allow for the Assembly to amend these provisions.</p> <p>The Assembly should be able to pass legislation in respect of the preparation of accounts, their audit by the Auditor General, value for money investigations by the Auditor General, and the accountability of public bodies to the Assembly in respect of financial management -subject to basic minimum Westminster safeguards (as above).</p> <p>There are inconsistencies in this regard that need to be addressed in the draft Bill as the Assembly will be able to legislate on accounting and audit provisions for public bodies other than the Welsh Ministers and Assembly Commission and able to amend the Auditor General's value for money provisions for some bodies but not others*. This is restrictive as it presents the Assembly from legislating to create a common set of value for money audit provisions which could be applied to all devolved public bodies.</p> <p>See also note below on provision for accounting officers.</p>	Section 70 of Scotland Act 1998 allows Scottish legislation to provide for financial control, accounts and audit.
Section 136: Examinations by Comptroller and Auditor General	Section 136 (and references in Sections 6-9 of the National Audit Act 1983) - allows the Comptroller and Auditor General access to devolved Welsh public bodies for the purposes of reporting to the UK Parliament on the use of resources by public bodies in Wales. They are a long-stop and have not been used to date. No	No equivalent provision

	such provisions exist in Scotland or Northern Ireland and it could be argued that they are no longer needed in Wales now that the Welsh Government and Assembly are legally separate. (See note below).	
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- a. Also paragraph 8 of schedule 6 to GOWA 1998, paragraph 11 of schedule 2 to the Care Standards Act 2000, paragraph 19 of schedule 1 to the Public Services Ombudsman Act 2005, and paragraph 13 of schedule 1 to the Commissioner for Older People (Wales) Act 2006. Assembly legislation has also include such provision for bodies established since 2006 (e.g. the Welsh Language Commissioner).

Provision for Audit Committee (Sections 30 and 143 of GOWA 2006)

The requirement for the Assembly to have an ‘audit’ committee – i.e. a committee with a ‘public accounts’ function – is enshrined in section 30(1) of GOWA 2006. The draft Bill provides competence to amend section 30(2) – (4) regarding the composition of such a committee. The remit of this committee is to consider accounts and reports of the Auditor General, take evidence from accounting officer and report to the Assembly, as set out in section 143 of GOWA 2006.

Paragraph 7 of Schedule 7B to the draft Wales Bill does not permit the Assembly to amend or repeal Sections 30(1) or 143. Thus, it must continue to have such a committee with its existing functions. However, paragraph 5(6) of Schedule 7B retains the provision that allows the Assembly to confer functions – for example supervising the Auditor General on a committee other than the audit committee – but restrictions on the composition of that committee remain.

This appears to be inconsistent and also to go against the doctrine of a reserved powers model, as the limited powers available to the Assembly seem to be of a conferred nature. For example, the Assembly may in future wish to establish a Welsh Commission for Public Audit along the lines of those in existence in Westminster and Scotland, but would not be able to do so under these proposals.

I would like to see Schedule 7B amended so that the Assembly can amend sections 30(1) and 143 of the GOWA 2006 (as well as section 144(7) of the GOWA 1998).⁶ By way of a safeguard, the Bill could contain a general (unamendable) provision requiring Assembly legislation or Standing Orders

⁶ Sections 143(2) of the 2006 Act and Section 144(7) of the 1998 Act allow the audit committee to take evidence on behalf of the House of Commons Committee of Public Accounts if requested and to report back. Such inter-parliamentary co-operation should not require such specific provision. Paragraph 7(6) of Schedule 6 to the 1998 Act, paragraph 10(5) of Schedule 2 to the Care Standards Act 2000, paragraph 18(5) of Schedule 1 to the Public Services Ombudsman (Wales) and paragraph 11(5) of Schedule 1 to the Commissioner for Older People (Wales) Act 2006 all contain similar provisions but there is no restriction on their amendment in Schedule 7B to the draft Bill.

to provide for the consideration of accounts and reports laid by the Auditor General and the auditor of the Wales Audit Office.

Provision for Accounting Officers

I believe that the Assembly should be able to modify/repeal any provision for functions, currently exercised by the Treasury, in relation to designating accounting officers, specifying responsibilities of accounting officers and giving directions in respect of the preparation of accounts (e.g. sections 131 to 134 and sections 137 to 139). This is notwithstanding any general restriction on the Assembly amending or repealing functions of Ministers of the Crown without consent.

The reason for this request is that we are seeking parity with Scotland in this regard where such functions are exercised locally rather than by the Treasury. In the future, we would envisage, in the main, that such Treasury functions would be exercised by the Treasury function within the Welsh Government.

Functions of the Comptroller and Auditor General

Since 1999, the Comptroller and Auditor General (C&AG) has had the power to examine the use of resources by Welsh public bodies. This is in contrast to the position in Scotland where the C&AG's powers were disapplied from the outset of devolution.

The GOWA 1998 originally established the National Assembly for Wales as a body corporate responsible for the exercise of executive functions. The executive was not legally separate from the legislature as is the case today. Therefore, in law, the 60 Members were still corporately responsible for government functions and the Assembly was therefore holding itself to account.

In the 'Westminster' model, the Auditor General is appointed or nominated by, and their funding is determined by, the legislature. However, given that accepted Principles of Public Audit prevent audited bodies from appointing their own auditor, this was not possible under the GOWA 1998 arrangements. Thus, provision was made for the AGW to be appointed by Her Majesty on advice of the Secretary of State. The Assembly provided funding for the AGW, but the C&AG was given access rights to the Assembly and other Welsh public bodies as a safeguard.⁷ Another reason for giving the

⁷ For example, if the Assembly tried to fetter the exercise of the AGW's functions (e.g. by cutting the AGW's budget) it would have been possible for the C&AG to step in.

C&AG access rights was the narrow referendum result in 1997 and the need to give Parliament assurances on financial management.

Our understanding is that the C&AG's powers have not been used to date. Arguably they could have been removed when the executive and the legislature were legally separated by the GOWA 2006.⁸ However, changes made to the devolution settlement in Wales by the 2006 and 2014 Acts and the further changes to be made in the forthcoming Wales Bill suggest that reasons for giving the C&AG these reserve powers are no longer applicable.

We would therefore request that the Wales Bill should be amended to place Wales on parity with Scotland. This would mean the Bill would need to repeal the following provisions:

- Section 136 of GOWA 2006;
- Section 145(6) and Schedule 6 paragraph 9 of GOWA 1998;
- Schedule 1 paragraph 20 of Public Services Ombudsman Act 2005;
- Schedule 2, paragraph 12 of Care Standards Act 2000;
- Schedule 1 paragraph 14 of Commissioner for Older People (Wales) Act 2006; and
- relevant entries in Sections 6, 8 and 9 of National Audit Act 1983. It would also be necessary to specifically disapply Sections 6 and 7 of the 1983 Act to Welsh public bodies as was done in Scotland by the Scotland Act 1998, Schedule 8 paragraph 20.

⁸ GOWA 2006 Act did change the appointment arrangements for the AGW in recognition of the fact that the Assembly is no longer a corporate body that exercises government functions – the AGW is now appointed by Her Majesty on the nomination of the Assembly.