

**To:** Public Accounts Committee

**From:** Legislation Office

**Meeting date:** 20 March 2012

## **DRAFT PUBLIC AUDIT (WALES) BILL**

### **Purpose**

1. To draw the attention of the Committee to the Draft Public Audit (Wales) Bill.
2. To invite the Committee to discuss and agree its approach to consideration of the Draft Bill.

### **Background**

3. The Draft Public Audit (Wales) Bill was published on 15 March 2012 by the Minister for Finance and Leader of the House. The public consultation on the draft Bill, lasting just over 8 weeks, closes on 15 May 2012.
4. Attached at Annexe A is a copy of the written statement from the Minister. Attached at Annexe B is a copy of the consultation document, and the Draft Bill is attached at Annexe C.

### **Approach to consideration of the Draft Bill**

5. Draft Bills are mechanisms used by Government to consult the wider public or particular interest groups on specific legislative proposals. There is no requirement in the Assembly's Standing Orders for committees to consider Draft Bills.
6. To date, the approach adopted by those committees that have resolved to consider legislative proposals within their subject areas has been to receive technical briefings on those proposals from the relevant government officials<sup>1</sup>.
7. These technical briefings have focussed on the consultation process, rather than the particular policy, in order to inform any subsequent, formal scrutiny of the relevant Bill (once introduced) without compromising that scrutiny.
8. If the Committee agrees to consider the Draft Public Audit (Wales) Bill, it seems reasonable to follow the approach taken by other committees, i.e. to receive a technical briefing from government officials. If Members are content with this, the clerks will make the necessary arrangements.

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<sup>1</sup> The Health and Social Care Committee has received technical briefings on the Organ and Tissue Donation White Paper and the Draft Food Hygiene Ratings (Wales) Bill. The subject matter of the Draft Bill was also relevant to the Enterprise and Business Committee and the Communities, Equality and Local Government Committee; some members of the Enterprise and Business Committee agreed to attend the meeting of the Health and Social Care Committee for the technical briefing.

9. In terms of timing, there are only two scheduled meetings of the Committee due to take place before the consultation on the Draft Bill closes. Depending on the business already programmed for those meetings, and subject to Members' agreement, it may be necessary to write to the Business Committee to request an additional meeting after the Easter recess.

**Action**

10. The Committee is invited to—

- i. note the written statement, consultation document and Draft Public Audit (Wales) Bill at Annexes A, B and C respectively;
- ii. discuss and agree the suggested approach to consideration of the Draft Bill, as outlined in paragraphs 8 and 9.



Llywodraeth Cymru  
Welsh Government

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## WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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Title: Consultation Paper – The draft Public Audit (Wales) Bill

Date: 15 March 2012

By: Jane Hutt, AM, Minister for Finance and Leader of the House

On 12 July 2011 the First Minister made a Statement on the Legislative Programme for the Welsh Government in which he announced the introduction of a Bill to establish arrangements for more effective accountability, governance and oversight of the Auditor General for Wales (AGW) and his Office.

Today (15 March 2012) I am issuing a consultation paper, seeking comments on a Draft Bill designed to achieve those aims and more.

The Draft Bill does not diminish the AGW's independence from the National Assembly for Wales or the Welsh Government. In fact, it safeguards that independence, while at the same time reforming and modernising the governance and accountability arrangements relating to the AGW and his office and establishing the Wales Audit Office (WAO) as a corporate body with a distinct and definitive legal status.

The new WAO would be responsible for the full range of corporate-type functions currently vested in the AGW. The policy intent is to ensure that such powers no longer rest solely in the hands of one individual.

The new WAO would comprise seven members, the majority (five) of which would be non-executive (or non-employee) members. The five non-executive members would be appointed, on merit following fair and open competition, by the Assembly's Public Accounts Committee (PAC). The Chair of the new WAO would be appointed, also on merit following fair and open competition, by the Assembly on a motion tabled by the PAC.

The AGW would automatically be a member of the new WAO, and its Chief Executive Officer. There would be one employee-member of the new WAO who would be appointed by the non-executive members.

The new WAO would be the employer and budget-holder. The WAO's entire budget estimate would be subject to the Assembly's Annual Budget Motion procedure with the PAC, as now, laying the estimate (with or without modifications) before the Assembly. The new WAO would also have responsibility for establishing a fee scheme, and would be responsible for the collection of fee income associated with the AGW's functions. It would be required (jointly with the AGW) to produce an annual plan setting out, the intended work programme, its cost and projected outcomes for each coming financial year, and would be required, at least twice a year, to make interim reports and an annual report to the PAC on the progress made against the plan.

The AGW would continue to be a corporation sole and would continue to retain responsibility for his or her audit, examination and inspection etc functions, funded by the new WAO on the basis of due regard to the annual plan of work, with the WAO releasing resources to the AGW provided the resources requested by the AGW were reasonable.

The Draft Bill would also clarify, simplify and consolidate, as far as is practicable, numerous provisions relating to the statutory functions of the AGW to provide a consistent body of law that would replace the fragmented nature of existing legislation developed over time.

The consultation will end on 15 May, after which responses will be considered. It is my intention to introduce the Bill prior to the National Assembly's Summer Recess.

( 521 words )



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## Consultation Document

# The Draft Public Audit (Wales) Bill

Date of issue: **15 March 2012**

Action required: Responses by **15 May 2012**

## Overview

The Welsh Government intends to introduce before the National Assembly for Wales the Public Audit (Wales) Bill. This consultation seeks responses to the proposed content of the Bill which will reform public audit arrangements in Wales; create a new body to be known as the Wales Audit Office; confer and consolidate financial audit and value for money functions; and for connected purposes. The intention of the Bill is to modernise the governance and accountability of the public audit service in Wales.

## How to respond

Closing date for responses is **15 May 2012**.

Responses can be submitted via the response form on our website:

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

Alternatively, please use the response form at Annex 3 of this consultation document to respond. These responses should be returned either electronically or by post to:

e-mail: [publicauditwalesbill@wales.gsi.gov.uk](mailto:publicauditwalesbill@wales.gsi.gov.uk)

Post:

Public Audit (Wales) Bill Team  
Welsh Government  
1st Floor North  
Cathays Park  
Cardiff  
CF10 3NQ

## Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

The consultation document can be accessed from the Welsh Government website at:

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

## Contact details

e-mail: [publicauditwalesbill@wales.gsi.gov.uk](mailto:publicauditwalesbill@wales.gsi.gov.uk)

Telephone: 029 2082 6270

## Data protection

**How the views and information you give us will be used.**

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full.

Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government.

This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

# **PROPOSALS FOR A PUBLIC AUDIT (WALES) BILL**

## **CONTENTS**

Foreword by the Minister for Finance and Leader of the House	1
Introduction	2
Background to the development of the Bill	3
Current Statutory Provision	4
Need for Legislation	6
Details of the draft Public Audit (Wales) Bill proposals	8
Part 1: National Public Audit Institutions	11
Part 2: Public Audit and Value for Money Functions	27
Part 3: Miscellaneous and General	44
Annex 1: Written Statement and Memorandum (October 2010)	48
Annex 2: Consultation Distribution List	55
Annex 3: Consultation Response Form	57

## **Foreword by the Minister for Finance and Leader of the House**

Good governance, accountability and openness are vital to the proper and effective conduct of our public services. The people of Wales have a right to expect the highest standards from those in public office and to see their expectations met and sustained. That is why I welcomed the First Minister's Statement last July on the Legislative Programme for the Welsh Government wherein he announced the introduction of a Bill to improve the Assembly's oversight of the Auditor General for Wales and to strengthen the accountability and transparency of that Office

The draft Bill proposes statutory arrangements that will deal effectively with those problems, while safeguarding the Auditor General's status and independence from the Assembly and the Welsh Government. The Bill will establish a new, corporate Wales Audit Office with seven members, five of which are to be appointed by the Assembly's Public Accounts Committee. The Auditor General will automatically be a member and the chief executive of the new body and there will be an employee member. The new Wales Audit Office will be responsible for the corporate functions currently vested in the Auditor General and will also have a duty to monitor, and a power to advise, him or her.

The draft Bill also proposes consolidating and simplifying, as far as practicable, numerous provisions relating to the statutory functions of the Auditor General to create a consistent body of law that will replace the scattered nature of existing legislation developed over time.

The consultation will end on 15 May. All responses will be considered and the draft Bill reviewed in the light of them. It is my intention to formally introduce a Bill in the Assembly prior to its Summer Recess.

JANE HUTT AM  
Minister for Finance and Leader of the House



## Introduction

1. On 12 July 2011, the First Minister made a Statement on the Welsh Government's Legislative Programme in which he announced the Welsh Government's intention to introduce a Bill, in the 2011-2012 session of the National Assembly for Wales (the Assembly), to establish arrangements for more effective accountability, governance and oversight of the Auditor General for Wales (AGW) and the AGW's Office.
2. The Welsh Government therefore intends to introduce a Bill to establish the Wales Audit Office (WAO) as a corporate body with a range of functions; to make provision about the AGW; to clarify legislation applicable to the AGW's financial audit and value for money etc, functions; and for connected purposes. This Bill will be called "The Public Audit (Wales) Bill".
3. The overarching purpose of the Bill is to provide for more open and effective governance of the AGW and the WAO while protecting and maintaining the AGW's operational audit independence from the Welsh Government and the Assembly
4. This consultation document explains the background to and reasons for the Bill and what the Welsh Government considers it should contain. A draft of the Bill can be found on the Welsh Government website at: <http://wales.gov.uk/consultations/improving/pawbill/?lang=en>. The Welsh Government wishes to know what individuals and organisations including those bodies currently audited or examined by the AGW think about the proposals in the draft Bill. This consultation document asks a number of questions on the content of the draft Bill on which comments would be welcome. Comments are also welcome on a suggestion that might warrant a further clause in the Bill in respect of sustainable development. The Welsh Government will then consider all the comments received and decide whether any amendments should be made to the draft Bill before it is introduced in the Assembly for scrutiny.

## Background to the Development of the Bill

5. For some time the Welsh Government and Assembly Members (AMs) have had concerns about the management, governance and accountability arrangements relating to the AGW and the AGW's Office.

6. The concerns include the ways in which the then AGW undertook aspects of his duties, the lack of robust external accountability and the way that the then AGW worked with other bodies and applied the public resources made available to him in support of his functions and the running of the WAO. In consequence, the Welsh Government began to explore the possibility of securing provision in a suitable UK Government Bill that would provide the Assembly with the legislative competence to introduce primary legislation, by an Act of the Assembly, enabling the Assembly to modernise and strengthen the governance and accountability arrangements for the AGW and the WAO. The Welsh Government's written statement and explanatory memorandum on its proposals to secure such provision were laid before to the Assembly 22 October 2010 (attached for information at Annex 1).

7. Subsequently, the legislative competence secured in the Budget Responsibility and National Audit Act 2011 (the 2011 Act), when read with the Assembly's existing audit etc competence provision in Schedule 7 to the Government of Wales Act 2006 (the 2006 Act), enable the Assembly to pass primary legislation to reform the governance and accountability arrangements for the AGW and the WAO.

8. While that work was in hand, there were continuing concerns expressed by the Welsh Government, the Public Accounts Committee of the Assembly (PAC) and AMs relating to the actions of the then AGW whilst in office. Concerns included failures to prepare accounts for the WAO that complied fully with the required financial reporting standards, issues of propriety, and failure to uphold high standards of governance.

9. In March 2011 the PAC published its report on "Accounting, Governance and Propriety Issues at the Wales Audit Office". That report made a number of recommendations and suggestions to improve the governance and accountability of the AGW through Assembly legislation.

10. The cross-party consensus for legislation in this area, the Labour Party's manifesto commitment to "*use our new powers to legislate for the Auditor General for Wales and the Wales Audit Office to be accountable to the National Assembly for Wales*" and the Assembly's power to make primary legislation led to a proposal for a Bill being included in the First Minister's legislative programme,.

## Current Statutory Position

11. Detailed provisions about the appointment and status of the AGW, the AGW's staff, financial affairs and general powers of the AGW are set out in Part 5 of and Schedule 8 to the 2006 Act. The office of the AGW is a corporation sole<sup>1</sup>. The WAO has no legal personality of its own, but is a collective term used to describe the AGW and the AGW's staff. The AGW is appointed by Her Majesty on the nomination of the Assembly. The tenure of the AGW is governed by paragraph 2 of Schedule 8 to the 2006 Act. There is no express statutory provision that governs either the length of the appointment or the number of times that a person may hold that office but such provision is made in the terms and conditions of the AGW's appointment.

12. The AGW appoints staff, sets their terms and conditions and has power to secure provision of services for assisting in the exercise of the AGW's functions. Sums required for these purposes and other expenses are paid from the AGW's budget, the estimate for which is considered by the PAC (which may modify it) in accordance with paragraph 12 of Schedule 8 to the 2006 Act. Then, under the Standing Orders of the Assembly, the estimate, modified or not, forms part of the overall budget motion moved annually in the Assembly (as required by section 125 of the 2006 Act).

13. The AGW is empowered in some cases, and required in others, to charge fees for auditing accounts and carrying out inspections and examinations, for example, into economy, efficiency and effectiveness. In addition to any funds made available in an Assembly budget motion by virtue of section 120(1) and (2) of the 2006 Act, certain provisions of enactments may authorise the AGW in some circumstances to retain receipts, for example, from fees charged for specific services. Where that is the case, for example, fees charged for the audits of local government bodies, the sums received by the AGW are retained and do not form part of the AGW's budget estimate, cannot be scrutinised by the PAC, and do not feature as a component in the Assembly's annual budget motion.

14. AGW also has power to borrow to meet a temporary excess of expenditure over income and is the Accounting Officer for the WAO.

15. In the exercise of his functions, the AGW is not subject to the direction or control of the Assembly or the Welsh Government. It is, therefore, of significant importance that the responsibilities conferred on the AGW and the business of his or her office should be conducted in an economic, efficient and effective way and that the systems of governance and internal controls operate to the highest standards.

16. The powers in the 2006 Act combined with those conferred on the Assembly by provisions in the Act 2011, which amended the Subjects in Heading 14 (public administration) of Schedule 7 to the 2006 Act to include the "Auditor General for Wales", enable the Assembly to pass legislation, by an Act of the Assembly, to modernise the governance and accountability arrangements relating to the WAO and the AGW. These powers do not allow the Assembly to make the AGW subject to the

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<sup>1</sup> A corporation sole is a technical legal concept. It is a corporate body/office which can hold property and which subsists even during occasions when there is no person holding that office (i.e. when the office is vacant).

direction or control of the Assembly or the Welsh Government. However, that restriction does not prevent the Assembly conferring functions relating to the AGW on an Assembly committee (new or existing) independent of the Welsh Government, and not chaired by an AM who is a member of a political group which has a government role in Wales.

## **Need For Legislation**

17. Arising from the concerns of Welsh Ministers, and AMs and evidence presented to the PAC, a number of weaknesses and failings relating to the actions of a former AGW whilst in office were identified.

## **Accounting Issues**

18. Under paragraph 13 of Schedule 8 to the 2006 Act the AGW is required to prepare annual accounts in accordance with directions given by the Treasury including compliance with its Financial Reporting Manual (FRM). Under paragraph 16 of Schedule 8 to the 2006 Act the AGW is the Accounting Officer, required to sign the accounts, take personal responsibility for their accuracy and compliance with the FRM. The AGW is also responsible for the financial management of the WAO including ensuring that transactions are regular, proper and that full regard is given to the need for value for money.

19. At the behest of the current AGW the Comptroller and Auditor General examined the accounts and accounting records of a former AGW and confirmed that for the five years 2005-2010 his accounts did not comply with the FRM. It was found that expenditure on early retirement settlements, his accrued pension entitlements and cash received from the public purse had not been fully accounted for, leading to difficulties in establishing how his expenditure and the expenditure of his office reconciled to the amounts authorised by the Assembly.

20. To avoid or at least substantially reduce the risk of this being repeated it is necessary to change the legislation transferring the budget (as determined by the Assembly) from the direct sole responsibility of the AGW (as now) to a corporate WAO. To that end a corporate WAO would fund the AGW's functions thereby providing the necessary separation of responsibilities, monitoring and oversight that is absent in the current arrangements.

## **Propriety Issues**

21. A former AGW engaged in criminal conduct using WAO computing equipment on both WAO and Assembly premises, pleaded guilty to the offences and was sentenced to eight months imprisonment in November 2010.

22. A report (January 2011) by the current AGW on the conduct of a former AGW alleges deliberate action on the part of the latter to conceal the true extent of an early retirement severance package for his Chief Operating Officer (COO) with reason to conclude that he wilfully excluded its nature and extent from his Audit Risk and Management Committee and senior AGW staff. The PAC concluded that he had misled the Assembly and that his actions, as the then AGW, amounted to misbehaviour for the purposes of paragraph 2(3) of Schedule 8 to the 2006 Act.

23. During the term of office of a former AGW it is alleged that he to have authorised c £77,000 expenditure on training an expenses for himself and his COO but without any business case, personal development plans or other reason to justify the payments. The PAC considered the amount of training and the lack of

justification did not represent value for money and that the main beneficiaries of the money spent were himself and COO.

24. To reduce the risk in the future that internal control systems could be overridden, the new legislation will provide for the WAO - rather than the AGW – to become the employer of all staff and for the WAO to have oversight responsibilities in respect of the AGW's functions. In addition, the corporate WAO would have other responsibilities, for example, procuring IT, staff training and other services which would remove or substantially reduce the opportunity for any AGW to act improperly.

## **Governance**

25. The current AGW recognised early in his tenure the governance and accountability weaknesses he inherited and has taken action to remedy those shortcomings by strengthening his internal control systems and putting in place a number of regular review processes. Although these changes are welcome, their effectiveness is not consistent with accepted best practice: the AGW's three advisory committees (audit risk and management; resources; and remuneration) have no legal basis and provide no guarantee of institutional continuity; and members of the advisory committees are appointed by the AGW (with input from a nominee of the Chair of the PAC).

26. To address those concerns relating to accounting, propriety and governance issues, to substantially reduce the prospect of their reoccurrence and to provide greater assurance to the Assembly, and the public, the Welsh Government proposes changes in this Bill which would:

- fulfil the commitments made in public statements to reform and modernise the governance of the AGW including the WAO;
- establish a new corporate WAO whose membership will comprise of a majority of non-executive members appointed by the PAC;
- set out a clear division of responsibilities between the functions of the new WAO and those of the new AGW;
- make the new WAO the budget-holder with its entire annual income and expenditure estimate subject to the approval of the Assembly;
- require the new WAO and the new AGW to agree an annual plan of work;
- require the new WAO to fund, on request, the new AGW's functions providing the requests are reasonable;
- place a duty on the new WAO to monitor and a power advise the new AGW;
- enable the WAO to create committees (and sub-committees) and delegate its functions to them;
- improve transparency and accountability;
- protect the new AGW's independence and status; and
- consolidate and simplify existing AGW related legislation.

## **Details of the Draft Public Audit (Wales) Bill Proposals**

### **Overview**

27. The overall intention of the Bill is to strengthen and improve the accountability and governance arrangements relating to the AGW, the WAO and, as appropriate, to consolidate, simplify and/or modify legislation applicable to the AGW's audit and value for money etc functions, whilst protecting the AGW's independence and status.

28. To achieve those objectives the Bill will transfer employer, financial and other administrative functions from the current AGW and vest them in the new WAO which will report to and be scrutinised by the PAC. In turn the PAC will report to the Assembly. The Bill will retain the AGW's independence from the Assembly and the Welsh Government and provide, as now, for the new AGW to be appointed by the Her Majesty on the recommendation of the Assembly and for the new AGW to continue as a corporation sole .

29. The main provisions in the Bill will include the establishment of the new WAO as a body corporate with 7 members. The majority will be non-executive members appointed by the Assembly's PAC on merit through open and fair competition. The new AGW will automatically be the chief executive officer and a member of the new WAO and there will be one employee member appointed by the non-executive members of the new WAO.

30. The new WAO will be responsible for all the corporate-type functions currently vested in the AGW, the intention being to ensure that such powers would no longer rest solely in the hands of one individual. The new WAO will: have a duty to monitor and a power to advise the new AGW; employ staff; secure the provision of services; and hold property for the purposes of carrying out its functions and those of the new AGW.

31. The new WAO and the new AGW will be required to prepare an annual income and expenditure estimate for approval, with or without modifications, by the PAC. The PAC will be required to lay the estimate (modified or not) before the Assembly. The new WAO will be the budget-holder and its entire budget estimate once laid before the Assembly will be subject to the Assembly's Annual Budget Motion procedure. The new WAO will also have responsibility for the charging and collection of fees income associated with the new AGW's functions.

32. The new WAO will also be required, together with the new AGW, to produce an annual plan and both parties must have due regard to it. The annual plan will set out the intended programme of work, its cost and projected outcomes for each coming financial year. At least twice a year, the new WAO and the new AGW will report on an interim basis to the PAC on the progress made against the plan.

33. The new AGW will have responsibility for his or her audit, examination and inspection etc functions. The new WAO will provide the resources for the new AGW to carry out his or her functions on the basis of due regard to the annual plan of work, and provided the requests for resources by the new AGW are reasonable.

34. The Draft Bill will also clarify, simplify and consolidate, as far as is practicable, the legislation relating to the AGW's audit, examination and inspection etc functions to provide a far more consistent body of law that would replace the fragmented statutory audit etc. provision that has developed over the years.

35. As with all draft legislation technical changes will still need to be made (e.g. moving provisions around, amendments for consistency) prior to the Bill being introduced in the Assembly.

36. The principal powers of the Assembly relied on for this Bill are as set out in Part 1 of Schedule 7 to the Government of Wales Act 2006, as replicated below.

Public administration

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Public Services Ombudsman for Wales. **[Auditor General for Wales.] Audit, examination, regulation and inspection** of auditable public authorities. Inquiries [in respect of matters in relation to which the Welsh Ministers, the First Minister or the Counsel General exercise functions]. Equal opportunities in relation to equal opportunity public authorities. Access to information held by open access public authorities.

The following are “auditable public authorities” and “equal opportunity public authorities”—

- a. the Assembly,
- b. the Assembly Commission,
- c. the Welsh Assembly Government,
- d. persons who exercise functions of a public nature and in respect of whom the Welsh Ministers exercise functions,
- e. persons who exercise functions of a public nature and at least half of the cost of whose functions in relation to Wales are funded (directly or indirectly) by the Welsh Ministers, and
- f. persons established by enactment and having power to issue a precept or levy.

The following are “open access public authorities”—

- a. the Assembly,
- b. the Assembly Commission,
- c. the Welsh Assembly Government, and
- d. authorities which are Welsh public authorities, within the meaning of the Freedom of Information Act 2000 (c 36).

Exception—

Regulation of the profession of auditor.

37. The Welsh Government will, during the consultation and before the Bill is introduced, engage with the Wales Office (and, if necessary, other UK Government departments) to discuss in detail whether all of the proposed provisions in the draft Bill are within the competence of the Assembly. The Welsh Government is of the view that there are respectable legal arguments that the draft Bill is within competence. The Welsh Government, however, welcomes views on this matter.



38. In some cases provisions of Assembly Bills require the consent of the Secretary of State in order to be within competence. In addition, the Secretary of State has power by order under section 150 of the 2006 Act to make provision consequential on Assembly Acts – e.g. to make changes to matters that are non-devolved that may be necessary in consequence of changes brought about by the Assembly Act in question relating to devolved matters.

39. There are a number of instances in existing legislation (that are being restated in this Bill) of criminal offences being created where it is a defence to the charge for the defendant to prove that he or she had reasonable excuse. To avoid any human rights issues in this Bill we have ensured that in each such case there is provision so that if the defendant adduces evidence of a reasonable excuse the burden will then shift to the prosecution to prove that the person did not have such an excuse. In other words the defendant will no longer have to prove that he or she had such an excuse; the defendant will only need to raise sufficient evidence of such an excuse for the burden then to fall on the state to disprove that.

40. This part of the consultation paper provides details of the proposals in the draft Public Audit (Wales) Bill and asks questions about some of its key provisions. It also seeks views on an additional matter that might be included in the Bill. A complete list of the questions is provided at the end of this document (Annex 3 on page 56). A full copy of the Draft Bill is available on the Welsh Government website at <http://wales.gov.uk/consultations/improving/pawbill/?lang=en>

41. The Bill is divided into Parts, then Chapters, then clauses. This part of the consultation paper follows the structure of the Draft Bill, but where a clause introduces a schedule, that schedule is considered under the relevant clause.

### **Clause 1: Overview**

42. This clause provides an overview of principal provisions of the Bill and is not intended to have any legal effect.

## **Part 1 - National Public Audit Institutions**

### **Chapter 1: Auditor General for Wales**

43. This Chapter sets out the arrangements for continuing the office of the Auditor General for Wales (the new AGW) and related matters including appointment, tenure; resignation or removal from office; the way in which a person to temporarily exercise the functions of an AGW is to be appointed; employment etc of a former AGW; the status of the new AGW; disqualification; and the arrangements for his/her remuneration.

44. Some of the existing provisions, notably in Schedule 8 to the Government of Wales Act 2006 (the 2006 Act), about the current AGW's appointment, tenure (but only in respect of the powers of Her Majesty to relieve or remove an AGW from office), independence and status cannot be changed as the legislative competence of the Assembly does not permit that. Where that is the case, the effect of the provisions in the 2006 Act have been restated in the Bill.

#### **Clause 2: Office of the Auditor General for Wales**

45. This clause provides for the office of the new AGW to continue and for the AGW's appointment to be made by Her Majesty on the nomination of the Assembly, provided the Assembly is satisfied that it has consulted such bodies that appear to represent the interests of local government bodies in Wales. The new AGW will hold office for 7 years and will not be eligible for reappointment.

<p><b>Question 1:</b> What are your views on the new AGW holding office for 7 years? Is this too long, too short or reasonable?</p>
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<p><b>Question 2:</b> Do you agree that a person can only be AGW once?</p>
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#### **Clause 3: Resignation or removal**

46. This clause sets out the process for the resignation or removal of the new AGW; it closely follows existing provisions in paragraph 2 of Schedule 8 to the 2006 Act.

#### **Clause 4: Employment etc. of former Auditor General**

47. This provision provides for restrictions on a person who ceases to hold the office of AGW. The restrictions relate to offices, employments and services that it is considered would be inappropriate for a person who has ceased to be the AGW to take up or provide. The aim is to avoid any possible conflict of interest or perception of such a conflict when the person is AGW – e.g. to avoid the situation where an AGW nearing the end of his or her term of office carries out his or her functions leniently in respect of a body to which he or she may be appointed upon ceasing to be AGW.

<p><b>Question 3:</b> What are your views on placing restrictions on the offices, employments and services a person can hold once they cease to be AGW?</p>
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**Question 4:** Do you agree that two years is an appropriate length of time to apply these restrictions?

**Clause 5: Status etc.**

48. The office of the new AGW is to continue as a corporation sole.

49. The new AGW is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown except that the new AGW is to be regarded as a Crown servant for the purposes of the Official Secrets Act 1989.

**Clause 6: Disqualification**

50. A person will be unable to be (or continue to be) the AGW if he or she holds a disqualifying office i.e. any office or position to which a person may be appointed or recommended or nominated for appointment by or on behalf of the Crown, the Assembly or the National Assembly for Wales Commission (the Assembly Commission); member of the Assembly, House of Commons or House of Lords, the Scottish Parliament, the Northern Ireland Assembly or an employee of the new WAO.

51. The purpose of these provisions is to maintain the independence of the new AGW in respect of the bodies that the new AGW audits or examines. It is also considered that being the new AGW and at the same time a member of any legislature in England, Wales, Scotland or Northern Ireland would not be appropriate.

**Clause 7: Remuneration**

52. Before the appointment of a new AGW is made, the remuneration arrangements relating to that appointment are to be settled by the PAC Chair after consulting the First Minister and the Chair of the Assembly Commission.

53. Consultation will enable the PAC Chair to obtain a wider view on the appropriateness of the proposed remuneration arrangements. The arrangements may cover salary and other benefits, including provision of and payments towards pension and may be revised from time to time, but they will not include any performance – based element. Amounts payable will be charged on the Welsh Consolidated Fund (WCF) i.e. paid from that Fund rather than from monies voted annually by the Assembly'. This is designed to further shield the independence of the office of AGW from overt political influence.

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

**Chapter 2: Wales Audit Office**

54. The overall purpose of Chapter 2 is to establish the new WAO as a corporate body, accountable to the PAC and the Assembly; for the new WAO to have a range of functions; and to provide for the effective governance of the new AGW.

## **Clause 8 and Schedule 1: Incorporation of the new WAO**

55. This clause and Schedule 1 will establish a body corporate, to be known as the Wales Audit Office (y Swyddfa Archwilio Cymru in Welsh), to exercise in relation to Wales the functions conferred on it by the proposals made in the Bill on introduction. The new WAO is not to be a Welsh Government Sponsored Body.

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

## **Schedule 1, paragraphs 1 and 3: Membership and Status**

56. The Welsh Government's intention in establishing the new WAO as a corporate body is that it should not be too large. The new WAO will have 7 members. They are to be 5 persons who are not employees of the new WAO ("the non-executive members"), the new AGW (who will automatically become a member) and 1 employee of the new WAO ("the employee member").

57. Neither the new WAO nor any of its members or employees of the new WAO are to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown, and the new WAO's property is not to be regarded as property of or held on behalf of the Crown. The exception to this is that members of the new WAO are to be regarded as Crown servants for the purposes of the Official Secrets Act 1989.

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

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

## **Schedule 1, paragraphs 2, 4 to 6: Appointment of non-executive members and the chair of the WAO and reappointments.**

58. The Assembly's PAC will appoint each non-executive member of the new WAO, on merit on the basis of fair and open competition (Schedule 1, paragraph 2)

59. An appointment will be for no more than 3 years and no one can be appointed as a member of the new WAO more than twice.

60. One of the non-executive members of the new WAO is to chair it. It will be for the PAC to table and move a motion for the appointment of the Chair of the new WAO in the Assembly and to do so the PAC must have consulted the Chair of the Assembly Commission and the First Minister. The purpose of consulting the Chair of the Assembly Commission is to obtain a range of views on a non-party political basis about the appointment; the purpose of consulting the First Minister is to obtain the Welsh Government's view on the same.

61. An appointment of a new WAO Chair is to be for 3 years and the same person cannot be appointed as Chair more than twice. An initial appointment as Chair of the

new WAO may be extended by the Assembly on a motion tabled and moved by the PAC Chair having consulted the Chair of the Assembly's Commission and the First Minister. An extension of an appointment will count as a separate appointment for the purposes of:

- the limit on the number of times a person may be appointed as Chair of the new WAO;
- remuneration arrangements; and
- the setting of terms and conditions, for example restrictions on the offices etc that may be held during and after holding office as a non-executive member of the new WAO.

62. The other non-executive members are to be appointed by the PAC following the procedures mentioned in paragraph 58 above. When there is a vacancy amongst the non-executive members the PAC will make the appointment(s) again on merit on the basis of fair and open competition.

63. A non-executive member is to hold and vacate office as a member or as Chair of the new WAO in accordance with the terms of his or her appointment.

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

**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.

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

#### **Schedule 1, paragraph 7: Non- executive members and Chair of WAO: Remuneration arrangements**

64. The PAC Chair, having consulted the Chair of the Assembly Commission and the First Minister, may make remuneration arrangements in relation to the Chair of the new WAO and the sums payable to that person are to be charged on and paid out of the WCF i.e. by the same method used for remunerating the new AGW (see paragraphs 52 and 53) and for the same reasons as stated there.

65. The PAC may make remuneration arrangements for any other non-executive member with the sums payable to those members paid by the new WAO.

66. The remuneration arrangements for the Chair and the other non-executive members of the new WAO may include provision for salaries, fees, travelling and subsistence and other allowances and benefits but no pension. To avoid any potential of compromising the independence of the new WAO Chair and the other non-executive members, no element of their remuneration arrangements is to be performance-based.

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

**Schedule 1, paragraph 8: Non- executive members and WAO Chair: Other terms of appointment**

67. The PAC may determine other terms and conditions applicable to the non-executive members of the new WAO including its Chair. To avoid potential conflicts of interest or compromise, the terms may include restrictions on the offices and other positions they can hold or contractual and other arrangements they may wish to enter during their term of appointment, and for a period of up to two years after they cease to hold office.

**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?

**Schedule 1, paragraph 9: Non-executive member and WAO Chairs: Consultation**

68. Before setting the remuneration arrangements and any other terms of appointment, and with the purpose of obtaining broader insight to such terms, the PAC or its Chair (as the case may be) must consult any person with oversight of public appointments as the PAC or its Chair (as the case may be) considers appropriate.

**Schedule 1, paragraphs 10 and 11: Termination of appointments**

69. The Chair of the new WAO may resign from that office by giving written notice to the PAC Chair and that appointment ends when the resignation is accepted. Any other non-executive member of the new WAO may resign by giving written notice to the PAC and the appointment will cease when the resignation is accepted.

70. Paragraph 11 (1) sets out the circumstances under which the PAC may terminate the appointment of any non-executive member by giving the member written notice.

71. The Assembly may terminate the appointment of the Chair of the new WAO on a motion tabled and moved by the PAC Chair (having consulted the Chair of the Assembly Commission and the First Minister) if the new WAO Chair:

- has failed to comply with the terms of his/her appointment; or
- is unwilling to carry out the functions of the Chair of the new WAO.

72. The removal of the new WAO Chair from that office, on either or both of those grounds, will not automatically remove him or her from being a non-executive member of the new WAO

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

**Schedule 1, paragraph 12: Additional remuneration of the AGW**

73. The new WAO may make additional remuneration arrangements for the new AGW in respect of allowances and other benefits to cover expenses necessarily and properly incurred by the new AGW in his or her capacity as a member of and chief executive of the new WAO. Any such payments will be paid by the new WAO.

**Schedule 1, paragraphs 13 to 18: Employee member of the new WAO**

74. The employee-member is to be appointed by the non-executive members of the new WAO. The purpose of this appointment is to bring employee experience to the board of the new WAO.

75. Where there is a vacancy the new AGW must recommend a person for appointment to the non-executive members who must either appoint that person; or appoint another person of their choosing.

76. The non-executive members are to determine the terms of the employee member's appointment and may apply other terms including restrictions on offices or positions etc that the employee member may hold while in office or, for a maximum of 2 years after ceasing to be a member of the new WAO.

77. The non-executive members may make remuneration arrangements for the employee member but only in respect of allowances and other benefits necessarily and properly incurred as an employee member as he or she will continue to be paid as an employee of the new WAO. The employee member's term of office will not be regarded as a break in service of employment by the new WAO.

78. An employee member is to hold and vacate office in accordance with the terms of his or her appointment and will automatically cease to be an employee member of the new WAO if he or she resigns or ceases to be employed by the new WAO. The non-executive members may terminate the appointment of an employee member on the same grounds as those for the non-executive members (see paragraphs 69 to 71).

**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?

**Schedule 1, paragraph 19: Employees**

79. The new WAO is to have a power to employ and pay its staff (who will not be civil servants) on such terms as it may consider appropriate provided the recruitment and selection procedures of its staff and their employment terms are broadly in line with those of the members of staff of the Welsh Government (who are civil servants).

80. The WAO may include amongst its employees appropriately qualified auditors to assist the AGW with the exercise of his or her audit etc. functions.

81. Persons who wish to be (or continue to be) employees of the new WAO will not be able to also hold any office or position to which a person may be appointed or recommended or nominated for appointment, by or on behalf of the Crown or the Assembly or the Assembly Commission. The Welsh Government will ensure that it consults with the AGW and representatives of the employees of the AGW in order to reach a view as to whether these restrictions should apply to employees of the current AGW who transfer to and become employees of the new WAO if this Bill is enacted and comes into force.

82. Employees of the new WAO will not be regarded as the servants or agents of the Crown or enjoying any status, immunity or privilege of the Crown but will be taken as Crown servants for the purposes of the Official Secrets Act 1989.

<p><b>Question 16:</b> 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?</p>
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83. The new WAO will be required to make payments in respect of superannuation benefits and their associated administration costs.

#### **Schedule 1, paragraphs 20 to 22: Procedural Rules**

84. The new WAO must make internal rules to regulate its procedures. The rules must set a quorum for any meeting of the new WAO and must provide that in all circumstances a quorum cannot be met unless a majority of the members present are non-executive members. Subject to that, the rules may provide for different quorums to apply in different circumstances.

85. The new WAO may establish committees and sub-committees and make rules for regulating them. An employee of the new WAO, other than the employee member of the new WAO, may serve as a committee or sub-committee member. A person who is neither an employee member of the new WAO nor an employee of it may be a member of a committee or sub-committee of the new WAO but only if the committee or sub-committee does not have any functions of the new WAO delegated to it.

#### **Schedule 1, paragraphs 23 and 24: Powers and Validity**

86. The new WAO will be able to do anything (including holding and disposing of property, land and interests in land) which supports the carrying out of its functions (including its functions with respect to the new AGW) and the validity of anything done by it, its members or any committee or sub-committee of it will not be affected by any vacancy or a defective appointment.



**Schedule 1, paragraph 25: Delegation of Functions**

87. Subject to certain restrictions, the new WAO may delegate its functions to any of its members, employees or committees or persons providing services to the new WAO or for the new AGW. A committee of the new WAO may delegate any of its functions (including functions delegated to it) to a sub-committee. The delegation of a function does not affect the responsibility of the new WAO for the exercise of the function. The new WAO's functions that cannot be delegated are the:

- estimate of its income and expenditure for each financial year;
- appointment of a person to temporarily exercise the AGW's functions;
- making of rules for regulating its procedures;
- recommendation for the appointment of its auditor;
- preparation of its annual plan; and
- preparation of its interim and annual reports.

**Schedule 1, paragraph 26: Provision of Services**

88. The purpose of this paragraph is to ensure that the new WAO can buy in services that it may need and the expert audit etc services that the new AGW may need to carry out his or her functions. It enables the new WAO to provide services to and receive services from a relevant authority, as defined, and also enables the new WAO and a relevant authority, a qualified auditor or an accountancy body to make arrangements to co-operate with and give assistance to each other (including by and to the new AGW). The new WAO will be able to make such arrangements on terms agreed with suppliers but if the new WAO imposes a charge for its or the new AGW's services that charge may only be imposed in accordance with the scheme of charges under clause 22.

**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?

**Schedule 1, paragraph 27: WAO Accounts**

89. The PAC will have the power to appoint the new AGW or some other person as accounting officer for the new WAO. The accounting officer must for each financial year keep proper accounts and records, prepare and sign the statement of accounts of the new WAO in accordance with directions given by the Treasury. The Treasury directions may include directions to prepare accounts relating to the financial affairs and transactions of persons other than the new WAO and the person appointed as accounting officer will have such other functions as the PAC may decide.

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

### **Schedule 1, paragraphs 28 and 29: Audit of the WAO**

90. Subject to the approval of the PAC, the appointment, terms and conditions of the new WAO's auditor are to be determined by the new WAO. That is a departure from the present arrangements where the PAC is solely responsible for appointing the auditor of the current AGW and his office. By placing the new WAO on a statutory basis, giving it a corporate identity, vesting it with range of significant responsibilities in managing its own affairs, and making it accountable to the PAC and the Assembly, the revised approach is considered to be more suited to the proposals in this Bill.

91. The auditor must fulfil certain eligibility requirements and on appointment will be expected to follow the standards and principles of an expert provider of accounting and auditing services. The new WAO's accounts must be submitted to the auditor by the Chair of the WAO no later than 5 months after the end of the financial year to which they relate. On completing the audit, the auditor must certify the accounts and submit them, with the auditor's report on them, to the PAC and the PAC must lay them before the Assembly no later than 4 months after the accounts have been submitted. The auditor will also have the power to conduct economy, efficiency and effectiveness examinations with which the new AGW and/or the new WAO have used resources in discharging their functions and for the auditor to report findings to the PAC. In turn the PAC must lay any report on the result of the auditor's value for money examinations before the Assembly.

<p><b>Question 19:</b> Should the PAC approve the appointment, terms and conditions of the new WAO's auditor?</p>
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### **Schedule 1, paragraph 30: Documentary evidence**

92. The new WAO, rather than the new AGW, is to have a corporate seal, because it will be the new WAO that employs staff, holds property and secures the provision of services to enable the new AGW to exercise his/her functions. The application of the seal, so that documents may be received in evidence, is to be authenticated by a member of the new WAO or an authorised employee of the new WAO.

### **Clause 9: Efficiency**

93. The new WAO is to be under a duty to aim to carry out its functions efficiently and cost-effectively. While there is no mechanism for enforcement, cases of significant failure to comply could lead to a challenge by way of judicial review. In addition, exercising the duty would be a matter that the auditor of the new WAO may have regard to when examining the ways in which the new WAO has used its resources, and taken into account when the members of the new WAO are held to account by the PAC and/or the Assembly.

### **Clause 10: Expenditure**

94. At present the statutory process for establishing the estimate of the current AGW's income and expenses and the setting of that budget is set out in the 2006

Act. Under the Assembly's Standing Order 20, the estimate is laid before the Assembly (with or without modifications made by the PAC), considered, included in the Annual Budget Motion and then agreed by the Assembly (or not as the case may be). But under paragraph 9(3) and (4) of Schedule 8 to the 2006 Act, the current AGW may retain fees earned through the exercise of functions related to local government in Wales and apply the proceeds without the need for that to be covered in the Annual Budget Motion.

95. Paragraphs 12(5) and (6) of Schedule 8 to the 2006 Act prevent the PAC considering or modifying that part of the estimate of the current AGW which relates to income and expenses in respect of the audit etc. of local government bodies in Wales. The reason for this and also perhaps the paragraph 9 (3) and (4) provision, was to establish and maintain a degree of separation between, at the time, the advent of the Assembly under the Government of Wales Act 1998 and democratically elected local government. Thereafter, when local government audit was brought within the overall responsibility of the current AGW by the Public Audit (Wales) Act 2004, the concern may have been that the Assembly, as a statutory corporate body, consisted of both the 'legislature' and the 'executive'. Therefore, it was not seen as appropriate that the 'executive' could consider and modify the current AGW's estimate so far as that applied to his functions in respect of local government in Wales.

96. The intention of clause 10 and clauses 13 to 15 is that the responsibility for seeking and allocating resources enabling the new AGW to exercise his or her audit etc. functions are to be shared between the new AGW and the new WAO with the latter being the budget-holder for the purposes of its functions and those of the new AGW. The intention behind making the new WAO the budget-holder is to remove from the office of AGW sole responsibility for such matters and so address some of the weaknesses in the governance structure brought to light during and after the term of office of a former AGW. Furthermore, with the separation of legislature and executive under the 2006 Act, the PAC and the Assembly are to have full power to consider all of the estimate of the income and expenditure of the new WAO including the elements relating to local government. The provisions of Schedule 8 to the 2006 Act enabling the AGW to retain fee income in respect of much of the AGW's local government functions will be repealed. All fee income will be required to be paid back into the WCF except where the Assembly has agreed in the Annual Budget Motion that fee income may be retained by the new WAO and applied for specified purposes.

97. For each financial year the Chair of the new WAO and the new AGW are to jointly prepare an estimate of all the income and expenditure of the new WAO which must include, in particular, the resources needed for the new AGW's functions. The new WAO will be designated as a "relevant person" for the purposes of sections 125 to 128 of the 2006 Act (sums to be paid out of the WCF by budget resolution of the Assembly) instead of, as now, the AGW.

98. Clause 10 provides that the Chair of the new WAO and the new AGW must jointly submit an estimate for each financial year to the PAC at least 5 months before the start of the financial year to which it relates. The PAC is to review the estimate and lay it before the Assembly with any modifications the PAC considers

appropriate. Before laying an estimate before the Assembly with modifications the PAC will be required to consult the Chair of the new WAO and the new AGW and take into account any representations they may make. The estimate (modified or otherwise) will then form part of the Annual Budget Motion under Standing Order 20 of the Assembly's Standing Orders.

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

### **Clause 11: Borrowing**

99. The new WAO, rather than the new AGW, is to have a power to borrow money in sterling, by way of overdraft or otherwise, to be applied for the purpose of meeting a temporary excess of expenditure over sums available to meet it. The AGW is not to have the power to borrow money.

### **Clause 12: Annual Plan**

100. This clause proposes that the new WAO and the new AGW, before the beginning of each financial year, must agree an annual plan for that year. The annual plan is to set out the new AGW's and the new WAO's work programmes for the year, the budget available or expected to be available to the new WAO in year and how those resources are to be applied to their work programmes. The Annual Plan must also include the maximum amount of resources that it is expected will be allocated by the new WAO to the new AGW for the purpose of the new AGW's work programme. The clause also defines what the new AGW's and the new WAO's work programmes are to mean.

101. Because the Welsh Government does not wish there to be any incursion on the independence of the new AGW in respect of his or her complete discretion to exercise his or her functions, neither the Assembly nor the PAC is to have a role in approving the annual plan and there is a particular procedure (see below) for setting out in the annual plan the expected maximum amount of resources to be available to the new AGW. But the PAC will have a role in considering and, if it considers it appropriate, modifying the new WAO's and the new AGW's annual financial estimate and the new WAO's entire budget will be subject to approval in the Annual Budget Motion. The totality of the Assembly approved budget for the new WAO will underpin the programmes of work set out in the annual plan.

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

**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?

### **Clause 13: Annual Plan: resources to be allocated to the Auditor General**

102. This clause sets out the procedure for the new AGW and the new WAO to agree, in the annual plan, the anticipated maximum resources anticipated for

allocation to the new AGW. This procedure is designed to respect the independence of the new AGW so far as practicable within the new system for allocation of resources. The new AGW is to submit to the new WAO a statement setting out:

- his or her work programme for the year ;
- his or her estimate of the resources needed to carry out that work; and
- the maximum amount of resources that the new AGW anticipates will be required to do the work.

103. The new WAO may either agree the new AGW's statement and incorporate its content into the annual plan or reject the statement or any part of it. The new WAO may only reject the statement if it or any part of it is unreasonable, in which case the new WAO will ask the new AGW to submit an amended statement. The test of reasonableness is intended to be an objective test.

**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?

#### **Clause 14: Annual plan: National Assembly procedure**

104. This clause will provide that the new AGW and the Chair of the new WAO will be required to submit the plan to the PAC and lay it before the Assembly. The PAC is to be required to publish the annual plan.

#### **Clause 15: Annual Plan: Effect**

105. Neither the new WAO nor the new AGW are to be bound by the annual plan but they will each have a duty to have due regard to it in the carrying out of their functions including but not limited to the provision of resources to the new AGW under clause 16.

106. The annual plan is set before the beginning of the financial year and the intention is that it will not be amended. Reporting will be against the annual plan as set showing deviations from the plan (if any). As such it would be too rigid to bind the new WAO and new AGW to the plan but in all they do they must have due regard to their original annual plan of work for the financial year. Due regard means that they must give the annual plan the appropriate weight in all the circumstances. Consequently, if nothing changes the expectation will be that the plan will be followed. If an urgent matter arises that was not foreseen at the time of setting the annual plan then the new WAO and new AGW must have due regard to, the work programmes in the annual plan and the resources allocated for that, when deciding whether to deviate from the annual plan to deal with the urgent matter that has arisen.

#### **Clause 16: Provision of resources to the Auditor General**

107. This clause proposes that the new WAO, as the budget-holder, is to be responsible for providing resources to the new AGW so that he or she can carry out

his or her functions, in particular, employing staff to assist the new AGW; securing services from any person (e.g. external audit or tax services); holding property or documents or other data; and keeping records to assist the new AGW in carrying out his or her functions.

108. Resources will be released to the new AGW, on request, provided what is to be done and its cost are identified. The new WAO may only refuse a request if it is unreasonable and under clause 15, both parties are to have due regard to the anticipated maximum amount of available resources (for the new AGW's functions) as set by the annual plan, The test of reasonableness is intended to be an objective test.

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

### **Clause 17 and Schedule 2: Relationship with the Auditor General**

109. Clause 17(1) provides that the new AGW is to be the chief executive of the new WAO but not an employee of it. There is no specific provision in the Bill that gives the chief executive any additional powers or duties over and above being a member of the new WAO although it is possible that he or she could be given specific roles within the procedural rules of or delegations set by the new WAO.

### **Schedule 2, paragraph 1: WAO to monitor and provide advice**

110. A further element of the new governance and accountability arrangements for the new AGW is to ensure that the new WAO not only holds the budget and provides the resources for the new AGW but also monitors and advises the new AGW. To that end this paragraph will: place a duty on the new WAO, in such manner as it considers appropriate, to monitor the exercise of new AGW's functions; empower the new WAO to give advice to the new AGW on his or her functions; and place a duty on the new AGW to have regard to any such advice.

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

### **Schedule 2, paragraph 2: Delegation of the functions of the AGW to the WAO**

111. This paragraph is similar to paragraph 8 of Schedule 8 to the 2006 Act with some modifications. The provision will enable any function of the new AGW to be carried out by an employee of or person providing services to the new WAO (including those providing services for the new AGW), provided the employee or person is authorised to do so in a scheme of delegation made by the new AGW.

112. Any scheme of delegation can only be made or have effect if the new WAO approves it.

113. Any function of the new AGW may be carried out jointly with an employee or person (providing services to the WAO) authorised under a scheme but any

delegation does not stop the new AGW from doing anything personally nor does it affect the responsibility of the new AGW on whose behalf the function is carried out.

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

### **Schedule 2, paragraph 3: Reports**

114. One of the ways in which the new WAO and the new AGW are to be made more accountable to the Assembly and more transparent, is through the scrutiny of their actions in year and at the year-end. Clauses 12 to 15 set out the arrangements relating to the annual plan of the new AGW and the new WAO; Following on from that, the intention of paragraph 3 of Schedule 2 is for the PAC and the Assembly to receive these reports, and for the PAC to consider and report publically on them and, therefore, on the exercise of functions of the new AGW and the new WAO on a regular basis

115. The Chair of the new WAO and the new AGW must, as soon as practicable, after the end of each financial year, jointly prepare a report on the carrying out during that year of the functions of the new WAO and the new AGW. The intention is that the annual report will contain information on how far during the financial year there has been compliance with or divergence from the annual plan and use of resources. The annual report may also contain any other matters that the Chair of the new WAO and new AGW consider appropriate.

116. The Chair of the new WAO and new AGW will be required jointly to submit the annual report to the PAC which is to publish it and the new WAO and new AGW must lay it before the Assembly.

117. In addition, the Chair of the new WAO and the new AGW will have to jointly submit 'interim' reports to the PAC. These reports will cover the same matters as set out in paragraph xxx above save that they will cover progress made to the date against (and divergence (if any) from) the annual plan. The PAC is not to be under a duty to publish the interim reports but the new WAO and new AGW must lay interim reports before the Assembly.

118. Interim reports are to be submitted to the PAC twice within each financial year. It will be for the PAC to determine, from time to time, the dates by which such reports are to be submitted to it.

119. The PAC is to consider, in public session, each annual and interim report received by it and must as soon as reasonably practicable following receipt of such a report, lay a report before the Assembly setting out the PAC's findings in relation to it.

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

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

## **Schedule 2, paragraph 4: Documents and information**

120. This paragraph will provide that any document or information which a person must or may provide to the new AGW may also be provided to the new WAO. This is intended to support the responsibility to be placed on the new WAO to receive and hold documents and information for the new AGW and to maintain records. The paragraph will also provide that the new WAO is responsible for complying with the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.

## **Clause 17 and Part 2 of Schedule 2, paragraphs 5 to14: Exercise of the functions of the AGW temporarily by another person**

121. At present if there is a vacancy in the office of the current AGW or that person becomes incapable or unwilling to carry out the functions of the AGW, there is no provision for a person to be appointed temporarily to exercise the functions of an AGW. Instead reliance has hitherto been placed on an existing AGW to have authorised, under paragraph 8 of Schedule 8 to the 2006 Act, a member of his/her staff to exercise the AGW's functions. That is considered to be less than satisfactory so this clause and Part 2 of Schedule 2 set out certain circumstances in which the new WAO, with the express agreement of the Chair of the PAC, may designate an employee of the WAO to temporarily exercise the functions of the AGW. The circumstances are:

- the office of the current AGW is vacant;
- the appointed AGW is unwilling to discharge the functions of the office;
- the WAO and the PAC Chair consider that the appointed AGW is unable to discharge the functions of the office.

122. A designation in respect such a circumstance may last for a period of up to 6 months and with the agreement of the WAO and the PAC Chair a designation could be extend for a further period of up to 6 months. When a person is designated or the designation is extended, the WAO Chair will be required, in each case, to lay a statement before the Assembly giving the reason for the designation, the identity of the person designated, the length of time for which that person has been designated and that the PAC Chair is in agreement.

<p><b>Question 29:</b> Do you agree with the arrangements proposed for the designation of a person to temporarily exercise the functions of the AGW?</p>
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## **Clauses 18 to 22 – Fees**

### **Clause 18: General provision relating to fees**

123. The functions of the current AGW relating to charging fees in respect of audit and Vfm examinations etc. are to transfer to the new WAO because the new WAO will be the budget holder. Consequential amendments to existing legislation will be made to reflect this.



124. Clause 18 together with clauses 19 to 22 make provision about fees.

125. Where the current AGW has a power to charge provision is made so that the new WAO will have the power to charge. Where the current AGW has a duty to charge provision is made so that the new WAO has the duty to charge. However, the new WAO will in each case be able to charge up to but not exceeding the full cost of the service.

126. Fees may only be charged in accordance with the scheme provided for in clause 22.

### **Clause 19: Fees charged to local government bodies**

127. This clause enables the new WAO to make provision in respect of scales of fees that must be paid in respect of audit etc. of local government bodies and for fee charges above or below the prescribed fee(s) if the work done is more or less than anticipated. It also imposes a duty on the new WAO to charge for the new AGW's services under clause 73.

**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?

### **Clause 20: Fees for data matching**

128. This clause enables the new WAO to make provision in respect of scales of fees for data matching exercises and for fee charges above or below the prescribed fee(s) if the work done is more or less than anticipated.

### **Clause 21: Welsh Ministers' power to prescribe a scale of fees**

129. This clause enables the Welsh Ministers to prescribe a scale or scales of fees in place of those prescribed by the WAO under clause 19 or clause 20.

### **Clause 22: Scheme for charging fees**

130. This clause makes a significant change in respect of fees. As stated the new WAO may only charge fees in accordance with its fees scheme which must be approved by the PAC before it can be made.

## **Part 2 – Public Audit and Value for Money Functions**

### **Chapter 1 – Exercise of Functions**

#### **Clause 23: How functions are to be exercised**

131. This clause continues the independence of the new AGW. It provides for the new AGW to have complete discretion in the carrying out of any of his or her functions and that the new AGW is not to be subject to the direction or control of the Assembly or the Welsh Government. The discretion is subject to: the new AGW exercising his or her functions efficiently and cost-effectively; the new AGW having regard to expert professional accounting and auditing practices; the new AGW taking into account the views of the PAC; and the requirement on the new AGW to have due regard to advice given by the new WAO and to the annual plan.

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

#### **Clause 24: Supplementary powers**

132. The new AGW will be given a broad power to do things which support the carrying out of his or her functions.

133. As drafted, however, there is no reference to the new AGW being able to hold property (as land etc. will be held by the new WAO).

#### **Clause 25: Other powers**

134. Clause 25(1) to (3) enable Welsh Ministers, where they are entitled to appoint the auditor of the accounts of any person (other than the new AGW), to appoint the new AGW to be the auditor even where the new AGW would otherwise be ineligible to be the auditor. Before doing that the new WAO must be consulted by the Welsh Ministers who may make any appointment for a specific period or indefinitely. There is also provision so that the Welsh Ministers or a Minister of the Crown may make an agreement with any person so that the new AGW may audit that person's accounts or carry out value for money examinations (and make recommendations) into that person's use of resources and the way they have discharged their functions. Before entering into such an agreement there must be consultation with the new WAO.

135. The clause also sets out a power by which functions of the Comptroller and Auditor General (C&AG) (the UK Parliament's auditor) can be transferred by the Secretary of State to the new AGW in cases where a transfer of functions order under section 58 of the 2006 Act transfers functions of preparing accounts to the Welsh Ministers. Furthermore, where the Treasury designates Welsh Ministers for the purposes of the whole of government accounts, for the new AGW to be the auditor in that respect.

## **Clause 26: Transfer etc of functions of the Comptroller and Auditor General**

136. This clause sets out the arrangements whereby the Secretary of State can transfer the C&AG's functions in respect of public bodies with functions that relate exclusively to Wales (or an area of it) to the new AGW. Such provision could also be made in a transfer of functions order under section 58 of the 2006 Act.

## **Clause 27: Transfer etc of the functions of the Welsh Ministers**

137. This clause enables Welsh Ministers, with the consent the new AGW, to transfer any of their supervisory functions in respect of a public body or a registered social landlord to the new AGW or may provide for them to be exercised by the new AGW on behalf of the Welsh Ministers. Before giving any consent the new AGW must consult the new WAO. Sub-section (3) defines "supervisory functions" and any report prepared by the new AGW on them must be laid before the Assembly.

## **Chapter 2 – Welsh Ministers, National Assembly Commission and other Welsh Public Bodies**

138. The intention of Chapter 2, clauses 28 to 48 is to bring the provisions relating to the new AGW's audit of accounts, value for money (Vfm) examinations into one place in respect of the devolved public sector in Wales (other than local government which is dealt with separately in Chapter 3 of Part 2). In addition to that consolidation, the clauses are also designed to simplify, clarify and/or modify the existing legislation applicable to the current AGW's financial audit and Vfm functions etc. Much of the basis for those functions can be found in sections 131 to 142 of the 2006 Act and in sections 144 to 146A of and Schedule 17 to the Government of Wales Act 1998 (the 1998 Act). The intention is to repeal those provisions and restate or replace them with a new regime by the provisions in clauses 28 to 48. There are three reasons for that.

139. The first is that Schedule 17 has not been regularly updated and is already out of date: in a number of respects accounts and audit etc provisions have been created in separate enactments establishing bodies that are subject to the current AGW's remit. Secondly, the current provisions are based on a wide power for the Welsh Ministers to make provision about accounts and audit whereas the intention now is to have a single, standard provision applying to most audits and Vfm examinations carried out by the new AGW. Thirdly, section 144 of and Schedule 17 to the 1998 Act are not clear in their operation for the following reasons:

- Part 1 of Schedule 17 refers to bodies that are subject "generally" to "audit etc." provisions but there is no clear explanation of what "generally" means in that context;
- Part 2 of Schedule 17 refers to bodies that are "partially" subject to "audit etc." provisions which, again is not clear; and
- Part 3 of Schedule 17 refers to examinations in relation to the use of resources and although section 145 of the 1998 Act clearly envisages that this is the case, there is no clear provision in section 144 that enables provision to be made about economy, efficiency and effectiveness

examinations. Furthermore, it is not clear whether such an examination is limited to an analysis of the 'accounts' or whether the current AGW is required to look at the accounts and other matters in order to reach a view on Vfm.

140. The intention is, so far as practicable, to introduce a new audit provision and a new Vfm provision that will set out in each case the requirements relating to financial audit and Vfm examinations respectively and which will apply where a person or body is within the new AGW' remit (other than local government bodies which are dealt with separately in Chapter 3). In addition there will be a need to ensure that as matters change in the future, persons, bodies or offices can be added to the new regime or removed and where their description alters it can be amended. It is considered that the best way of achieving that is to have a list system with those on it subject to the single audit and single Vfm provisions.

141. The proposed streamlined provisions for financial audit and Vfm examinations would bring significant consistency in the requirements placed on all of the bodies subject to the new AGW's remit, so too the matters that the new AGW will have to consider and be satisfied about. The revised duties and powers would be the principal means by which any new bodies are brought within the new AGW's remit thereby avoiding any future financial audit and Vfm provisions being scattered about the legislation.

142. This new structure and the power in clause 46 to add to, remove from or alter the description of persons subject to the single audit and therefore the single Vfm regime is intended to be the principal means by which any new persons, bodies or offices are brought within the new AGW's remit thereby avoiding any future financial audit and Vfm provisions being scattered about the legislation.

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

## **Clauses 28 To 36 – Audit of Accounts and General Provisions Relating to Audit of Bodies under this Chapter**

### **Clause 28: Welsh Ministers**

143. This clause proposes the accounting and related requirements to be placed on the Welsh Ministers in accordance with directions given by the Treasury. The Welsh Ministers must:

- keep proper accounts and records in relation to them; and
- prepare a statement of accounts.

144. The statement of accounts must be submitted to the new AGW no later than the 30 November in the year following the financial year to which they relate and they must include details of the financial affairs and transactions of the Counsel General and the First Minister

### **Clause 29: National Assembly Commission**

145. This clause contains the accounting and related requirements to be placed on the Assembly Commission in accordance with directions given by the Treasury and by when, for each year, the Commission's statement of accounts must be submitted to the new AGW.

### **Clause 30: Other Welsh public bodies**

146. This clause is a key part of the proposed single financial audit provision. The other key elements of this new regime are in clauses 37, 38 and 39. It sets out the accounting and related requirements to be placed on a Welsh public body (see Table 1) in accordance with directions given to it by the directing authority. The directing authority is the Treasury, the Welsh Ministers or the Welsh Ministers with the consent of the Treasury as the case may be. The body's statement of accounts for each financial year must be submitted to the new AGW no later than the date of the corresponding entry for that body in column 3 of Table 1 and, where applicable, to the Welsh Ministers by the same date.

<b>Question 33:</b> What are your views on the proposals in clauses 28 to 30?
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### **Clause 31: Public bodies subject to audit under clause 30: limitations**

147. This clause will provide for limitations on the provisions of clause 30 in respect of charitable or non-charitable trusts (where a Welsh NHS body is a trustee) and the Forestry Commissioners.

### **Clause 32: Audit of summarised accounts of Welsh NHS bodies**

148. This clause generally replicates current legislation on Welsh NHS summarised accounts but does so in the context of the streamlined regime for audit etc. proposed in this Bill. Therefore clauses 38 and 39 will apply to these accounts as they apply in other cases (e.g. to public bodies listed in Table 1).

### **Clause 33: Audit of accounts of officers of Welsh NHS bodies**

149. This clause generally replicates current legislation in this respect but does so in the context of the streamlined regime for audit etc. proposed in this Bill. Therefore clauses 37, 38 and 39 will apply to these accounts as they apply in other cases (e.g. to public bodies listed in Table 1).

### **Clause 34: Audit of higher and further education corporations**

150. This clause brings the accounts and audit requirements in relation to higher education corporations in Wales (HECs) and further education corporations in Wales (FECs) more into line with the streamlined provisions set out in this Bill. However, neither a HEC nor a FEC will be required to submit its statement of accounts to the new AGW for audit purposes, but they may choose to do so. Should a HEC or FEC decide not to choose the new AGW, it must consult him or her and take into account his or her views before appointing a suitably qualified person to be its auditor.

151. At the request of the Higher Education Funding Council for Wales (HEFCW) the new AGW may give advice to it on any direction the HEFCW may wish to give to a HEC.

152. Clauses 37 and 38 will also apply to HECs and FECs and clause 39 will also apply if any HEC or FEC chooses the new AGW to be its auditor for any financial year.

### **Clause 35: Audit of further and higher education corporations: powers of the AGW**

153. This clause will enable the AGW, at the request of a FEC or HEC, to advise on the appointment of a its auditor, or to undertake the audit of a corporation's annual accounts.

<b>Question 34:</b> Should the new AGW be the statutory auditor of HECs and/or FECs?
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### **Clause 36: Meaning of further and higher education corporations**

154. This clause defines the meaning of a FEC and a HEC and associated references to the Education Acts.

### **Clause 37: Content of accounts and statement of accounts**

155. This clause will provide a single requirement that will apply to the accounts and statement of accounts of the Welsh Ministers, the Assembly Commission, other Welsh public bodies, FECs, HECs and officers of NHS bodies so that they are to give a true and fair account of the state of their affairs at the end of the financial year and of their income and expenditure in the financial year..

### **Clause 38: Directions relating to accounts and statement of accounts**

156. This clause proposes to empower directing authorities to issue, amend or revoke directions in relation to the accounts and statement of accounts of the Welsh Ministers, the Assembly Commission, other Welsh public bodies, FECs, HECs, Welsh Ministers in respect of NHS summarised accounts, officers of NHS bodies. Directions may include but are not limited to: financial transactions; information; presentation; preparation; and any additional information that may be required. Directions by the Treasury in respect of the Public Services Ombudsman for Wales may relate to the accounts and statement of accounts of persons other than the Ombudsman,

### **Clause 39: Functions of the Auditor General: audit of accounts**

157. This clause will place a requirement on the new AGW (subject to the limitations in clause 32) to examine and certify any statement of accounts submitted to him or her by the person or body subject to audit – i.e. the Welsh Ministers, the Assembly Commission, the public bodies in clause 30, the Welsh Ministers in

respect of NHS summarised accounts, officers of NHS bodies and with regard to FECs and HECs if the new AGW is chosen as their auditor for any financial year.

158. The clause will also require the new AGW to lay before the Assembly, no later than 4 months after the statement of accounts are submitted, a copy of the statement of accounts certified by the new AGW together with his or her report on them.

159. From an examination of the statement of accounts submitted, the new AGW will have to be satisfied that:

- expenditure incurred is lawful and authorised;
- money received has been spent on the intended purpose or purposes;
- they comply with all statutory provisions applicable to them; and
- proper practices have been observed in compiling them.

160. The new AGW must also consider whether the person or body subject to audit has made proper arrangements for securing value for money in the use of its resources.

#### **Clause 40: Functions of the Auditor General: economy, efficiency and effectiveness examinations**

161. This clause is the proposed single Vfm provision. It removes the uncertainties in the current legislation in Schedule 17 to the 1998 Act which have been described above. It will enable the new AGW to carry out Vfm examinations and make recommendations in respect of the economy, efficiency, and effectiveness with which a person listed in subsection (4) has discharged its functions or used its resources in so doing.

162. There is a power for the new AGW to carry out examination into (and make recommendations about) the provision of services by persons listed in subsection (4).

163. In carrying out such examinations and making recommendations the new AGW will not be entitled to question the merits of the policy objectives of the person who is the subject of the examination.

164. The clause will also provide for limitations on such examinations in respect of charitable or non-charitable trusts where a Welsh NHS body is a trustee and the Forestry Commissioners.

<b>Question 35:</b> What are your views on the proposals in clauses 40 to 42?
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#### **Clause 41: Additional persons subject to examination**

165. This provision will identify other persons, additional to those listed in clause 40 (4) (i.e. those who fall within the streamlined audit structure), who may in certain

circumstances be subject to an examination by the new AGW in respect of Vfm or service provision under the provisions in clause 40(1) .

**Clause 42: Education bodies subject to examination upon request**

166. This clause will provide for an education body in Table 2, at the request of its corresponding authority (listed in column 2 of the Table), to be subject to a Vfm examination by the new AGW under the provisions in clause 40(1),

167. The Welsh Government notes that the references to training provider and Training and Training Development Agency for Schools in section 145B of the 1998 Act (on which this provision is based) are to be repealed. Those repeals are not yet in force but the Welsh Government will take this into account when the Bill is introduced.

**Clause 43: Views of the Assembly's Public Accounts Committee**

168. This clause will require the new AGW to take into account the views of the PAC in deciding how a Vfm examination under clause 40 should be undertaken.

**Clause 44: Reports on examinations**

169. This provision will enable the new AGW in all cases to lay a report before the Assembly on the outcome of his or her Vfm examination including the new AGW's recommendations, if any, flowing from it.

**Clause 45: Reports in the public interest**

170. This clause will empower the new AGW to issue reports in the public interest and requires such reports to be laid before the Assembly.

171. Reports may include matters relating to the new AGW's financial audit functions in respect of Welsh public bodies set out in clauses 28, 29, 30, 32, 33 and 35 and/or the new AGW's Vfm examination functions as in clauses 40, 41 and 42. Therefore this power will apply to a wider range of persons than is currently the case.

**Clause 46: Amending the list of public bodies subject to audit or examination#**

172. This provision will enable Welsh Ministers, by order, to add or remove or alter the description of public bodies subject to the new AGW's financial audit under clause 30 (and, therefore also to Vfm examinations). Before any change the Welsh Ministers must consult the body and any others as the Ministers consider appropriate, but they may not remove the bodies listed in subsection (3) The power of the Welsh Ministers will be limited to provisions within the competence of the Assembly or to the situation where a person exercises functions or carries on activities with respect to matters that relate to the functions of the Welsh Government. The latter is to cover those things which are regarded as 'devolved' in Wales (and in respect of which the Welsh Ministers etc. have functions) but which do not fall within the current scope of the Assembly's legislative competence – e.g. building regulations.



173. An order under this provision may include any modification that the Ministers consider appropriate; examples of the sorts of permissible modifications are set out in subsection (5) and are related and are limited to matters about accounts, audit and Vfm. The modifications can include (but will not be limited to) matters relating to the body's accounts; preparation of its accounts; financial audit and Vfm examinations; accounts of subsidiaries; directions by Welsh Ministers; publication and inspection of documents; and the new AGW's rights of access to documents and information etc.. An order under this clause can relate to all or only some of the body's functions or funding – e.g. see the limitations in respect of how the Forestry Commissioners are dealt with in clause 31(2).

174. Any modifications to functions of the C&AG could only be made in such an order if the Secretary of State consents.

175. An order under this clause could not be made by the Welsh Ministers unless they first lay a draft of it before the Assembly for scrutiny and that draft is approved by a resolution of the Assembly.

176. Such an order can only make modifications to this Bill (or Act as it would be) if that is “in connection with, for the purpose of, or in consequence of” adding a person, removing them or altering their description in the list in Table 1 in clause 30 – e.g. bringing a person within the AGW's audit remit.

177. The Welsh Government intends “person” in subsection (1) to cover individuals, legal persons and bodies (e.g. corporate bodies) and office-holders whether that person is created by or has functions in legislation or under a prerogative instrument (e.g. Royal Charter).

<p><b>Question 36:</b> 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</p>
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#### **Clause 47: Power of Welsh Ministers to make provision about reports**

178. This clause will enable the Welsh Ministers to make provision by order about reports (e.g. annual reports) in respect of public bodies listed in Table 1 in clause 30. Certain bodies are excluded from this power – subsection (2).

### **Clause 48: Power to designate accounting officers**

179. This clause will enable the Welsh Ministers to make provision by order for the Permanent Secretary to the Welsh Government (as Principal Accounting Officer) to designate Accounting Officers (and their responsibilities) to public bodies listed in Table 1 in clause 30 or in respect of any person who could be added to that list by an order under clause 46. This can extend to the designation (and specification of responsibilities) of additional accounting officers but only by the Permanent Secretary or with his or her consent. This power does not extend to designating accounting officers in respect of the Welsh Ministers, National Assembly Commission or the bodies listed in clause 48(5). The requirements for accounting officers in respect of those bodies are already set out in legislation.

### **CHAPTER 3 – WELSH LOCAL GOVERNMENT**

180. Part of the intention behind the Bill's proposals is to consolidate, as far as practicable, the legislation relating to the current AGW and the audit, examination and inspection etc of devolved bodies in Wales. The aim of that, alongside the general policy of the Bill, is to make it easier for the reader to find the relevant provisions in the statute book whilst avoiding changes to existing enactments that would create more rather than less complexity. It is considered that one of the main sets of provisions that ought to be consolidated and modified are those in the 2004 Act. To that end Chapter 3, clauses 49 to 78 make provision about the accounts and audit of local government bodies in Wales and related matters, the broad intention being to repeal and restate, with some modifications, provisions in Part 2 of the 2004 Act in this Bill.

181. The Welsh Government is considering how inconsistencies between Chapter 3 and the rest of the Bill as currently drafted should be dealt with. For example, the Welsh Government has taken the view that in Chapter 2 "examination" can include "study" and that "carrying out" one or more examinations covers provisions that currently refer to "undertaking an examination" or "undertaking a programme of studies". However, there is some inconsistency because of that in the terminology between Chapter 2 and Chapter 3 and the Welsh Government will be considering this further before the Bill is introduced in the Assembly.

### **Clause 49: Local government bodies**

182. This clause updates and defines the meaning of "local government body", lists them and empowers the Welsh Ministers, by order, to add, omit or amend them.

183. The list of local government bodies in Wales is based on section 12 of the 2004 Act. That list has been amended by the Police and Social Responsibility Act 2011 but these amendments are not yet in force although the Welsh Government understands that they will be brought into force later this year. The current list in the Bill is drafted as if those amendments were in force but the Welsh Government will keep this under review and it may be that on introduction of the Bill in the Assembly the list will need to reflect section 12 of the 2004 Act without the amendments made by the 2011 Act.

184. The Welsh Government is considering whether the power to amend the list should replicate section 12(2) and (3) of the 2004 Act.

### **Clause 50: Audit of accounts of local government bodies**

185. This clause requires a local government body to prepare its annual accounts and for the new AGW to audit them.

186. At present the AGW is not directly responsible for the audit of local government bodies, instead those audits are performed by auditors appointed by the current AGW. This is considered to be anachronistic and, given that the current AGW has other functions (e.g. in relation to value for money) in respect of local government bodies, is responsible for auditing the Welsh Government, Welsh NHS bodies etc, and the thrust of other proposals in the Bill, the time is now right for the audit of local government bodies in Wales to be vested with the new AGW.

187. An audit of the accounts of a local government body in Wales will still be carried out in accordance with accounts and audit regulations – see later.

<p><b>Question 37:</b> Do you agree that the new AGW is to be the auditor of local government bodies in Wales?</p>
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### **Clause 51: General duties on audit of accounts**

188. This clause sets out the general duties of the new AGW in relation to what he or she must be satisfied with in respect of a financial audit of a local government body. This includes looking at the body's arrangements for securing value for money. In this respect a change is proposed so that the new AGW need only consider whether proper arrangements for securing Vfm are in place rather than placing the new AGW under a duty to satisfy himself or herself that there are proper arrangements. The focus is on audit in these provisions. A duty to "satisfy" is more onerous than one to "consider". Given that the new AGW will be the statutory auditor of local government bodies in Wales and will have available to him/her the ability to carry out fuller Vfm examinations or studies in respect of local government bodies in Wales it is felt appropriate that when carrying out a financial audit the new AGW is required only to "consider" whether the body has proper arrangements for securing Vfm in place.

<p><b>Question 38:</b> Do you agree with the general audit duties (including consideration of Vfm arrangements) to be placed on the new AGW?</p>
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### **Clauses 52 to 58: AGW reports and consideration of them**

189. These provisions largely restate the equivalent provisions in the 2004 Act.

190. A change is proposed, however, in respect of additional publicity for immediate and non-immediate reports (clauses 57 and 58). The change is to place the local government body under a duty to publish a copy of the report on its website (if it has one) – see clause 57(3)(c) and 58(2) respectively.

### **Clauses 59 to 61: Public inspection and objection etc and action by AGW**

191. These broadly restate the equivalent provisions in the 2004 Act

192. Clause 61 deals with the right of a local government elector to make objections at audit and the change that is proposed here is to enable objections to be made in writing as well as (as currently) in person.

### **Clauses 63 to 69: Prevention of unlawful expenditure**

193. These clauses restate equivalent provisions, sections 33 to 39 in the 2004 Act, with some minor modifications. For example, references to “auditor” in the 2004 provisions are now in this Bill to be references to the new AGW with any reference to an auditor sending a document to the new AGW not required.

194. In clause 64(8) there is a change so that expenses incurred in respect of advisory notices are to be recovered by the new WAO and not the new AGW.

195. In clause 67(2) and (3) a change has been made so that the new AGW is no longer directed by the Welsh Ministers. Instead it is felt more appropriate (given the new AGW’s complete discretion) that instead the new AGW can be requested to conduct an extraordinary order but may refuse to do so only if the request is unreasonable. The reasonableness test is intended to be objective.

### **Clauses 70 to 73: Value for money**

196. These provisions restate the equivalent provisions in the 2004 Act.

197. Clause 70(1)(a) does not refer to local government bodies in Wales that are best value authorities for the purpose of Part 1 of the Local Government Act 1999 because the Welsh Government understands that by the time this Bill is introduced, with the changes brought in by the Police and Social Responsibility Act 2011, there will no longer be any local government bodies in Wales falling within Part 1 of the 1999 Act.

<p><b>Question 39:</b> In relation to clause 70 – will something of significance be lost if the Bill on introduction does not include provision for “promoting” studies?</p>
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<p><b>Question 40:</b> In your view, is there any real difference in this respect between an “examination” and a “study”?</p>
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198. The draft Bill refers, in a number of places to the Audit Commission. The UK Government proposes to abolish that body. The Welsh Government will keep this situation under review so that the Bill makes appropriate references at the point that it is introduced in the Assembly.

### **Clauses 74 to 77: Performance standards**

199. These clauses restate sections 46 to 49 in the 2004 Act, with some modifications.

200. In clause 73 reference is made to an entity under the control of a local authority because of amendments made under provisions in the Local Government and Public Involvement in Health Act 2007 to the equivalent provisions in the 2004 Act. These provisions are not yet in force in the 2004 Act and the Welsh Government will keep this under review in preparation for the introduction of this Bill in the Assembly

### **Clause 78: Interpretation of Chapter 3**

201. This clause sets out the meaning of “local government elector” and the application of that definition to a National Park in Wales that is a local planning authority.

## **CHAPTER 4 – DATA MATCHING**

### **Clauses 79 to 85**

202. These clauses restate the provisions in Part 3A of the 2004 Act (as inserted by the Serious Crime Act 2007), with minor modifications.

### **Clauses 79 to 83**

203. These clauses relate to the power to conduct data matching exercises, the mandatory and voluntary provision of data, the disclosure of results and the publication of reports in respect of data matching exercises.

### **Clause 84: Code of data matching practice**

204. This clause provides that the new AGW is to prepare and keep under review a code of practice on data matching exercises. He or she must lay code before the Assembly and publish it. The new AGW and those participating in data matching exercises are required to have regard to the code.

### **Clause 85: Powers of the Secretary of State**

205. This clause enables the Secretary of State, by order, to amend the purposes of data matching in Wales, to add or omit a public body from the list at clause 80(2) and to modify the application of data matching provisions in Chapter 4 of this Bill to a body added to that list,

<p><b>Question 41:</b> 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?</p>
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<p><b>Question 42:</b> 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?</p>
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## **Chapter 5 – Functions of the AGW: Supplementary**

### **Clause 86: Certification of claims, returns etc**

206. This clause restates the equivalent provisions in Schedule 8 to the 2006 Act in respect of the new AGW's duty to certify certain claims, returns, accounts and calculations at the request of defined public sector bodies in Wales, any Minister of the Crown or public authority established by the EU Treaties or any enactment.

### **Clause 87: Code of audit practice**

207. At present, section 16 of the 2004 Act enables the AGW to prepare a code of audit practice which must be ratified by the Assembly in the first instance and is subject to annulment procedure by either House of the UK Parliament. The provision also states that Assembly cannot delegate the function of ratifying the Code although that provision is an irregular hangover from the time when under the 1998 Act the Assembly was a corporate body and able to delegate its functions to Ministers.

208. At the time of the 2004 Act the UK Parliament's role was considered necessary to satisfy or protect local government bodies in Wales (i.e. protection by one tier of democratically elected members from interference by the devolved executive which at that time was comprised within the corporate body that was the National Assembly for Wales under the 1998 Act). It is likely that the UK Parliament's role stemmed originally only from the 1998 Act when the Assembly was a corporate body and its 'executive' arm could have exerted undue influence over the content of the Code. It is now considered that with the legal separation of the Welsh Government and the Assembly there should be no function for the UK Parliament.

209. The intention of this clause is for the new AGW to have a duty rather than a power to prepare a Code setting out the embodiment of best professional practice in relation to standards, procedures and techniques to be adopted by him or her and those assisting him or her in the exercise of functions; and for the Code to set out how those practices are to be applied to all of the new AGW's financial audit and Vfm functions. The new AGW will also be required to consult such persons as he or she thinks fit before issuing the Code or any revision of it and this would include, for example, local government bodies in Wales or their representatives given that the code will apply also to the new AGW's functions under Part 2, Chapter 3 of this Bill. The new AGW must arrange for the Code to be published.

210. The new AGW and those assisting him or her in the exercise of functions will be bound by the Code and as the new AGW's independence is to be restated and bolstered by proposals in this Bill it is considered no longer appropriate for the Code to be subject to the Assembly's approval.

211. The Welsh Government will be considering (together with any consultation responses on the issue) whether the provisions of the Bill relating to making the code can be made more consistent with the similar provisions in relation to the code of data matching practice.

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

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

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

### **Clause 88: Rights to documents and information**

212. This clause will provide the new AGW with rights of access, at all reasonable times, to every document relating a public body which appears to the new AGW to be necessary for the purposes of carrying out his or her functions in respect of that body under Chapters 1 to 4 Part 2 of this Bill. The effect of the clause will be a single provision conferring wide rights on the new AGW to access documents and information etc, held by any public body within his or her audit remit and to follow public money wherever it goes.

213. The provision amalgamates the new AGW's powers of access to documents – i.e. principally those relating to the Welsh Government, NHS bodies, Welsh Government Sponsored bodies (currently in paragraph 17 of Schedule 8 to the 2006 Act) and that applying to local government bodies in Wales (currently in sections 52 and 53 of the 2004 Act).

214. Sub-sections (3) (a) and (b) will enable the new AGW to have access to documents in a financial chain relating to the use of public money, documents held or controlled by anyone who has received financial assistance from a Part 2 public body or who has supplied goods or services to the body under a contract, or who has been a sub-contractor in relation to such a contract. The aim of this provision is to ensure that the new AGW will have the widest power to examine regularity, propriety and the principles of Vfm as they apply to the use of public money at each stage of the expenditure chain. This is limited of course by subsection (1) in that the new AGW only has a right of access to, say, a document that is in the hands of a sole trader if that would be “necessary” for the exercise of the new AGW's financial audit or Vfm functions in respect of a person or body falling within the new AGW's remit.

215. Sub-section (2) (c) will empower the Welsh Ministers, by order, to extend the categories of documents that the new AGW can access if that ever is necessary

216. In addition to access to documents and rights, the new AGW will have under sub-sections (5) to (8), the right to require and receive any assistance, information and explanation he or she considers necessary to carry out his or her functions under Chapters 1 to 4 of Part 2 of this Bill from

- a public body subject to those in Part 2 of this Bill;
- a document to which the new AGW has a right of access; and

- a person who holds or controls such a document.

217. This power includes, for example, the provision of facilities to the new AGW – e.g. access to computers, telephones and in some cases access to computer hardware and software to enable the new AGW to access information that is relevant to an audit or examination he or she is conducting.

**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?

### **Clause 89: Rights to documents and information: offences**

218. This clause will set out the offences if the requirements of sub –section 88 (5) are not complied with

219. The significant change here is that this offence will apply not only where the new AGW exercises his or her right of access to documents and information in respect of local government bodies in Wales (as is the case now – see section 53 of the 2004 Act) but to *any* case where the new AGW exercises the new power.

**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?

### **Clause 90: References of matters related to social security to Secretary of State**

220. This clause restates section 51 of the 2004 Act and will empower the new AGW to refer to the Secretary of State (in practice the Secretary of State for Work and Pensions) matters arising from work undertaken under Chapter 3 of this Bill if he or she considers it relevant to the Secretary of State's functions in respect of social security. It also enables the new AGW to send a copy of any report made by him or her under section 52 which contains observations on the administration by a local authority in respect of housing benefit or council tax benefit.

221. The Welsh Government is aware of the UK Government's proposals to abolish council tax benefit and this matter will be monitored for the purpose of this Bill's introduction in the Assembly.

### **Clause 91: Benefit administration studies for Secretary of State**

222. This clause will restate section 45 of the 2004 Act and will enable the AGW, at the request of the Secretary of State, to carry out or assist the Secretary of State in conducting examinations designed to improve economy etc, and the quality of performance in the administration of housing benefit or council tax benefit functions by one or more local authorities in Wales. The new AGW will only be able to participate where the Secretary of State has agreed to pay the new WAO a reasonable fee in respect of any examination.



### **Clause 92: Restriction on disclosure of information**

223. This clause will restate section 54 of the 2004 Act and place restrictions on the disclosure of certain information relating to a particular body or person. The restrictions are to apply where information is acquired by the new AGW in the exercise of his or her functions under Chapter 3 of this Bill or Part 1 of the Local Government (Wales) Measure 2009 or in the course of an examination under clause 40 of this Bill in respect of a registered social landlord in Wales. The information is not to be disclosed unless it is in accordance with the exceptions listed in sub-sections (2), (3) and (4). Disclosing the information in contravention of section 92 will constitute an offence under sub-section (6).

### **Clause 93: Consent under clause 92**

224. This clause restates section 54ZA of the 2004 Act and will set out the steps that must be taken to in respect of obtaining consent under clause 92 (4).

### **Clause 94: Supply of benefit information by Secretary of State to Auditor General**

225. This clause restates section 55 of the 2004 Act and will enable the Secretary of State (in practice the Secretary of State for Work and Pensions) to supply the new AGW with information in respect of housing benefit and council tax benefit that he or she considers relevant to the new AGW's functions.

### **Clause 95: Documents relating to police authorities [police and crime commissioners and chief constables]**

226. This provision restates section 40 of the 2004 Act. That section is amended by the Police and Social Responsibility Act 2011 and the amendments are likely to come into force later this year. The amendments will replace the references to police authorities with references to, for example, police and crime commissioners. The clause in the Bill has been drafted to reflect these proposed changes.

227. Should the new AGW make a public interest report in respect of a police authority [police and crime commissioner or chief constables] for a police area in Wales then this clause will require him or her to send a copy of that report to the Secretary of State and the Welsh Ministers.

228. Where the new AGW has sent a document or a copy of a document to one or more police authorities, [police and crime commissioners or chief constables], the new AGW will be able to send a copy of the document to the Secretary of State and the Welsh Ministers.

### **Clause 96: Provision of information to Audit Commission**

229. This clause restates section 57 of the 2004 Act. Its purpose is to facilitate cross-border comparisons between bodies and sectors, with the aim of raising standards in both England and Wales. The clause requires the new AGW to provide the Audit Commission (AC), if it so requests, with information to enable it to make comparisons between local government bodies in Wales and other local government

bodies in respect of which the AC has functions under sections 33 and 34 of the Audit Commission Act 1998 (to undertake or promote studies for improving economy etc in services and studies on the impact of statutory provisions etc).

230. An equivalent duty is already placed on the Audit Commission in that Act.

### **Part 3 - Miscellaneous and General**

#### **Clause 97: Comptroller and Auditor General**

231. This provides for the Comptroller and Auditor General (C&AG) to consult the new AGW and take into account any relevant work being done or done by the new AGW before the C&AG carries out a Vfm examination under section 6 or 7 of the National Audit Act 1983.

#### **Clause 98: Indemnification**

232. This clause provides that any compensation to a third party for a breach of a duty (e.g. in contract or negligence) by the new AGW (and a former AGW appointed under this Bill), the new WAO (and its former or current members, employees or providers of services) is to be charged on and paid from the WCF, i.e., is not to be subject to the approval of the Assembly in a Budget resolution.

#### **Clause 99: Orders and regulations**

233. This clause makes further provision about Orders and regulations that may be made under the Bill's provisions. They are to be made by statutory instrument and will therefore also be subject to the Statutory Instruments Act 1946. Provision is made for orders and regulations to be subject to either affirmative Assembly procedure or negative Assembly procedure. Affirmative procedure means that the subordinate legislation cannot be made unless a draft of it is first laid before and then approved by the Assembly. Negative procedure means that the subordinate legislation can be made (and sometimes brought into force) but must be laid before the Assembly and the Assembly normally has 40 days in which it can decide to disagree to the subordinate legislation. If the Assembly disagrees by resolution to the subordinate legislation then it will generally cease to have any further effect.

234. In this Bill the Welsh Government has sought to keep the number of subordinate legislation making powers to the minimum. The vast majority of such powers in this Bill are restated from existing legislation and are not new.

235. The Welsh Government will be giving further consideration to whether the provisions can be rationalised to a greater extent. In drafting this Bill the Welsh Government has been aware of the concerns expressed by committees of the Assembly in respect of the balance of provisions on the face of primary legislation and those to be included in subordinate legislation at a later date.

236. In drafting this Bill (and when preparing the Bill for introduction in the Assembly) the Welsh Government has been and will continue to be very mindful of the necessity for members of the public and democratically elected members of the Assembly to be able to scrutinise *from the face of the Bill itself* all of the main structural and operative provisions. Furthermore, it is the Welsh Government's intention, so far as is reasonably practicable, to include, on introduction, on the face of the Bill all of the consequential, transitional and savings provisions that will be required to both primary and secondary legislation. If the Welsh Government seeks powers in this Bill on introduction to make subordinate legislation in respect of

consequential and transitional etc. provisions that will be on the basis of providing a safety net to ensure that unforeseen consequences etc. can be dealt with.

237. Furthermore, the Welsh Government is concerned to ensure that powers to make subordinate legislation that enable the Welsh Ministers to modify or repeal provisions of primary legislation are limited and targeted and go no wider than is reasonably necessary to fulfil the purpose of making sure that the intention of this Bill (if passed by the Assembly) can be carried fully into effect. To that end the Welsh Government will consider (with any consultation responses received) whether the provisions as drafted in this respect are satisfactory and whether an appropriate Assembly procedure has been applied to their exercise (see further below on clause 101).

#### **Clause 100: Directions**

238. This clause makes further provision in respect of the powers conferred in this Bill on Welsh Ministers etc. to issue directions. This provision enables flexibility so that a direction may accommodate different circumstances.

#### **Clause 101: Interpretation**

239. Definitions of terms used within the Bill are provided within this clause

240. As stated above the Welsh Government is concerned to ensure that powers to make subordinate legislation are targeted and appropriate. Therefore, during the consultation and in preparation for the introduction of the Bill in the Assembly the Welsh Government will be considering, in particular, (along with any consultation responses on this point) the definition of “enactment”. For example, it is not the intention of the Welsh Government to seek sweeping powers to amend the provisions in this Act although, of course, some ability to make targeted amendments of this Act will be needed in respect of the power under clause 46 of this Bill.

#### **Clause 102 and Schedule 4: Transitional and supplementary provisions**

241. Subject to the outcome of the consultation, the intention here is to set out, in a Schedule to the Bill, the transitional and savings provisions that will be required to move from the current position (e.g. where all functions are vested in the current AGW) to the new system where, for example, the corporate-type functions will pass to the new WAO. There will be provision, therefore, for functions to pass from the current AGW to the new WAO and the usual provisions relating to continuity in the exercise of those functions; for property, rights and liabilities to pass from the current AGW to the new WAO and for things that are done by the current AGW in the exercise of functions currently vested in the current AGW to be regarded as having been done by the new WAO once those functions transfer to the new WAO.

242. Staff of the current AGW will transfer to the employment of the new WAO and so too will contracts of employment so that, for example, in law the new WAO will become the employer of those staff. The transfer of staff will be in accordance with the Cabinet’s Office Statement of Practice on Staff Transfers and provision will be made so that the transfer of employment will be on no less favourable terms than

would be the case if TUPE applied. The Welsh Government will also liaise with the current AGW in respect of the pension rights of employees of the current AGW.

### **Clause 103 and Schedule 5: Repeals and consequential amendments**

243. This clause and Schedule 5 will on introduction of the Bill in the Assembly set out the repeals and consequential modifications to primary and secondary legislation to give effect to the final proposals for the Bill. These will, for example, simply ensure that there are references to the new AGW, or to the new WAO as appropriate, when reference was previously to the current AGW.

### **Clause 104: Commencement**

244. This provision relates to when the Act (if it is agreed by the National Assembly for Wales) will come into force. It is intended that the Bill once enacted will be fully in force by 1 April 2013 although some technical provisions may be brought into force upon Royal Assent]

### **Clause 105: Short title**

245. The short title of the Act is to be the “Public Audit (Wales) Act 2013”.

### **Sustainable Development**

246. Although there are no proposals on the face of this Bill relating to sustainable development, the Welsh Government’s “Programme for Government” (September 2011) contains a commitment to:

- legislate to make sustainable development the central organising principle of the Welsh Government and devolved public bodies in Wales; and
- create an independent sustainable development body for Wales.

247. Some public bodies in Wales already have statutory functions in relation to sustainable development. For example, the Environment Agency must comply with Welsh Ministers’ guidance about the contribution that the Agency must make towards attaining the objective of achieving sustainable development and local improvement authorities in Wales must set themselves continuous improvement objectives which can include objectives designed to contribute towards the achievement of sustainable development. Some public sector bodies in Wales have voluntarily signed the Sustainable Development Charter which commits them to making sustainable development the central organising principle in how they make decisions and carry out their work.

248. While there will be a public consultation later this year on proposals in legislation to strengthen the Welsh Government’s approach to sustainable development in the public sector in Wales, views are welcome now on whether the new AGW should have an express duty to examine sustainable development in the Welsh public sector, and on whether such a duty should be included in this Bill or the later in a Bill relating to sustainable development.

249. By way of illustration only, examinations by the new AGW might address matters such as the degree to which public bodies engage with people and communities in the decisions that affect them; the degree to which public bodies may have procedures in place to allow broader social, economic and environmental impacts to be identified in their decision making processes; and the identification of opportunities for public bodies to make a greater contribution to sustainable development.

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

**Question 49:** If you do not agree with the principle, please explain why

**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?

### **Timetable**

250. We would welcome comments on this consultation document until 15 May 2012. Following consideration of the consultation responses, a Bill will be introduced in the National Assembly for Wales by the Welsh Government during 2012

## BUDGET RESPONSIBILITY AND NATIONAL AUDIT BILL

### WRITTEN STATEMENT 22 October 2010

#### Jane Hutt, Minister for Business and Budget

The Budget Responsibility and National Audit Bill was introduced into the House of Lords on 21 October 2010.

The Assembly Government has taken the opportunity that this Bill presents to confer legislative competence on the National Assembly for Wales relating to the governance arrangements for the Auditor General for Wales.

The Bill contains provisions to:

- introduce a Charter for Budget Responsibility;
- publish Financial Statements and Budget Reports;
- establish the Office for Budgetary Responsibility;
- make provision for the Comptroller and Auditor General (C&AG);
- create a new corporate structure for the National Audit Office (NAO);
- amend Schedules 5 and 7 to the Government of Wales Act 2006 in relation to the Auditor General for Wales.

Subject to enactment, Schedule 6 of the Bill amends Schedules 5 and 7 to the Government of Wales Act 2006 (“the 2006 Act”) to confer legislative competence on the National Assembly for Wales in relation to the Auditor General for Wales (AGW). That competence will enable the Assembly to legislate, by Assembly Measure, or should the referendum produce a “yes” vote, by Assembly Act on the governance and accountability arrangements for the AGW.

*Paragraphs 2 to 4 of Schedule 6* amend Schedule 5 to the 2006 Act, which deals with the Assembly’s competence to pass legislation known as Assembly Measures under Part 3 of the 2006 Act.

*Paragraph 3 of Schedule 6* inserts a new Matter (14.1) in the Field of Public Administration in Part 1 of Schedule 5 to the 2006 Act. Part 1 sets out the “Matters” in relation to which the Assembly can legislate. The competence conferred by Matter 14.1 would enable an Assembly Measure to make certain kinds of provision in relation to the AGW, for example to put in place new governance arrangements for the AGW. The provision made by the Assembly could be similar to that set out elsewhere in Part 2 of the Bill in relation to the C&AG and the NAO.

Paragraph 4 of Schedule 6 amends Part 2 of Schedule 5 to the 2006 Act, which sets out restrictions on the Assembly’s competence to pass Assembly Measures. The amendments provide for exceptions to the prohibitions on Assembly Measures being

able to modify certain provisions of the Government of Wales Act 1998 (“the 1998 Act”) and the 2006 Act, and will enable those Acts to be amended by Assembly Measure if the purpose of the amendment is about putting in place arrangements relating to governance of the AGW. The amendments also include provisions to protect the AGW’s independence from the Assembly and Welsh Assembly Government.

*Paragraphs 5 to 7 of Schedule 6* amend Schedule 7 to the 2006 Act, which deals with the Assembly’s competence to pass legislation known as Assembly Acts under Part 4 of the 2006 Act. Under sections 103 and 105 of the 2006 Act, the “Assembly Act provisions” enabling the Assembly to pass Assembly Acts can only be brought into force if the majority of those voting in a referendum held throughout Wales vote in favour. The purpose of the amendments made to Schedule 7 to the 2006 Act by *paragraphs 5 to 7* is to ensure that, if the Assembly Act provisions came into force, the Assembly would not lose any of the competence which it will have as a result of the amendments made to Schedule 5 by *paragraphs 2 to 4*.

*Paragraph 6 of Schedule 6* amends Part 1 of Schedule 7 to the 2006 Act, which sets out the subjects to which provisions of Assembly Acts may relate, by inserting in paragraph 14 a new subject “Auditor General for Wales”. Paragraph 14 already includes the subject “Audit, examination, regulation and inspection of auditable public authorities”. The new subject together with that existing competence would enable an Assembly Act to make similar types of provision in relation to the AGW as matter 14.1 in Schedule 5.

*Paragraph 7 of Schedule 6* amends Part 2 of Schedule 7 to the 2006 Act, which sets out restrictions on the Assembly’s competence to pass Assembly Acts. The amendments provide for exceptions to the prohibitions on Assembly Acts being able to modify certain provisions of the 1998 and 2006 Acts. These exceptions will enable an Assembly Act to modify most of the provisions of Schedule 8 to the 2006 Act, which deals with the office of AGW, and will enable an Assembly Act to modify other provisions of the 1998 and 2006 Acts if the purpose of the amendment relates to the oversight or supervision of the AGW. The amendments made by *paragraph 7(3)* also include provisions to protect the AGW’s independence from the Assembly and Welsh Assembly Government.

The 2006 Act provides that neither an Assembly Measure nor an Assembly Act can modify functions of the Comptroller and Auditor General unless the Secretary of State consents. *Part 2* of the Bill transfers certain functions carried out by the C&AG to the National Audit Office and *paragraphs 26 to 28 of Schedule 5* to the Bill will extend the restrictions in the 2006 Act to the functions of the new NAO. In consequence, the Assembly will not be able to modify the NAO’s functions without the agreement of the Secretary of State.

An Explanatory Memorandum setting out the background and context to the measure-making powers we are seeking has been laid before the National Assembly for Wales.



## **WELSH ASSEMBLY GOVERNMENT MEMORANDUM ON POWERS CONFERRING LEGISLATIVE COMPETENCE ON THE NATIONAL ASSEMBLY FOR WALES**

### **Introduction**

1. This memorandum sets out the background and context relevant to clause 27 of, and Schedule 6 to, the Budget Responsibility and National Audit Bill, conferring legislative competence on the National Assembly for Wales (“the NAW”) in relation to the governance arrangements for the Auditor General for Wales (“the AGW”). The AGW and the AGW’s staff are known as the Wales Audit Office (WAO).

### **Background**

2. Part 3 of the Government of Wales Act 2006 (c.32) (“the 2006 Act”) gives the NAW the power to pass legislation known as Assembly Measures.

3. The NAW may pass Measures in relation to the “Matters” which are listed in 20 “Fields” in Part 1 of Schedule 5 to the 2006 Act. Additions to the Assembly’s legislative competence are made by adding new Matters to the Fields in Part 1 of Schedule 5. The 2006 Act includes a power to add new matters by Order in Council, and matters may also be added by provisions in Acts of Parliament, which are referred to as “framework powers”. Assembly Measures can make any provision that can be made by an Act of Parliament in relation to those Matters, subject to certain restrictions contained in the 2006 Act.

4. Schedule 6 to the Bill grants the NAW law-making powers by inserting a new Matter (Matter 14.1) in Field 14 (Public Administration) of Schedule 5. The purpose of Matter 14.1 is to enable the NAW to put in place new governance arrangements for the AGW (which may be similar to those that the Bill proposes for the Comptroller and Auditor General and the National Audit Office) whilst respecting the operational independence of the AGW. Schedule 6 would also amend paragraphs 3 and 6 in Part 2 of Schedule 5 (which sets out general restrictions on the NAW’s legislative competence) to enable the NAW to modify certain provisions of the Government of Wales Act 1998 (“the 1998 Act”) and provisions of the 2006 Act relating to the AGW.

5. Part 4 of the 2006 Act includes provision which would enable the NAW to pass legislation known as Acts of the Assembly (the “Assembly Act provisions”) if the majority of those voting in a referendum in Wales vote in favour (and the Welsh Ministers make an order commencing the provisions). Schedule 7 to the 2006 Act sets out the subjects in relation to which the NAW may pass Acts, and the exceptions from those subjects. Schedule 6 amends paragraph 14 in Part 1 of Schedule 7 to insert “the Auditor General for Wales” as a new subject, and amends the restrictions in paragraphs 2 and 5 in Part 2 of Schedule 7 to enable the NAW to modify the 1998 and 2006 Acts. That will add to the competence already stated there – i.e. “Audit, examination, regulation and inspection of auditable public authorities”.

## Context

6. The Public Audit (Wales) Act 2004 ('the 2004 Act') created a single public audit body for Wales, covering the Assembly Government, its sponsored bodies, local government and the NHS in Wales. As a result, the AGW performs a role equivalent to that of both the Comptroller and Auditor General and the Audit Commission in England but with some important differences. There is no direct 'devolved' equivalent to the Public Accounts Commission in Wales, although the NAW is required by the 2006 Act to have an Audit Committee (now known as the Public Accounts Committee). The 2006 Act continued the office of the AGW with minor modifications including new functions reflecting changes in the devolution settlement, such as granting approvals to draw from the Welsh Consolidated Fund and auditing the accounts of the NAW Commission.

7. Detailed provisions about the appointment and status of the AGW, the AGW's staff, financial affairs and general powers of the AGW are set out in Schedule 8 to and, in relation to financial matters, Part 5 of the 2006 Act. The office of the AGW is a corporation sole. The "Wales Audit Office" has no legal personality of its own, but is a collective term used to describe the AGW and the AGW's staff.

8. The AGW is appointed by Her Majesty on the nomination of the NAW. The tenure of the AGW is governed by paragraph 2 of Schedule 8 to the 2006 Act. There is no express statutory provision that governs either the length of the appointment or the number of times that a person may hold that office but such provision is made in the terms and conditions of the AGW's appointment.

9. In the exercise of his functions, the AGW is not subject to the direction or control of the NAW or the Assembly Government. The AGW is not an officer of the NAW in the way that the Comptroller and Auditor General is an officer of the House of Commons.

10. The AGW appoints staff, sets their terms and conditions and has power to secure provision of services for assisting in the exercise of the AGW's functions. Sums required for these purposes and other expenses are paid from the AGW's budget, the estimate for which is considered (and possibly modified by) the NAW's Public Accounts Committee in accordance with paragraph 12 of Schedule 8 to the 2006 Act and which forms part of the overall budget motion moved annually in the NAW (as required by section 125 of the 2006 Act).

11. The AGW is empowered in some cases, and required in others, to charge fees for auditing accounts and carrying out inspections and examinations, for example, into economy, efficiency and effectiveness. In addition to any funds made available in a NAW budget resolution by virtue of section 120(1) and (2) of the 2006 Act, certain provisions of enactments may authorise the AGW in some circumstances to retain receipts, for example, from fees charged for specified purposes. The AGW also has power to borrow to meet a temporary excess of expenditure over income.

12. The AGW is the Accounting Officer for the Wales Audit Office. The NAW appoints the auditor of the accounts of the AGW and sets the terms and conditions

of that appointment. The AGW is required to pay that auditor such remuneration as is provided for in the terms of appointment. The auditor of the AGW certifies the AGW's accounts and lays them with the auditor's report before the NAW. That auditor may also carry out examinations into the economy, efficiency and effectiveness with which the AGW has used resources in the exercise of his functions and the auditor may lay any report on such an examination before the NAW.

13. The AGW has appointed an Audit and Risk Management Committee, comprising independent members, which advises the AGW on the management of risk, control and governance.

14. There is a need to put in place enhanced governance and accountability arrangements for the operation of the AGW. To this end, the Public Accounts Committee of the NAW, which has an oversight role, has agreed to undertake a review of the governance of the AGW. The Committee has established formal terms of reference for such a review and is currently considering the best way to take this work forward. The review will include consideration of the International Peer Review of the WAO (commissioned by the AGW at the start of 2009, published on 8 October 2009 and an update on progress published on 7 October 2010). The Peer Review expressed the view that "there is scope to enhance and strengthen the governance of the Wales Audit Office without restricting the AGW's crucial independence to examine whatever subjects he chooses, and to make independent audit judgments on them free from political interference" (Recommendations, paragraph 8).

15. The legislative competence conferred by the proposed amendments would enable the NAW to pass legislation modernising the governance and accountability arrangements of the AGW. It would not allow the NAW to make the AGW subject to the direction or control of the NAW or the Assembly Government. However, that restriction would not prevent the NAW conferring functions relating to the AGW on a NAW committee (new or existing) independent of the Welsh Assembly Government and not chaired by an Assembly Member who is a member of a political group with an executive role.

### **Scope of Proposed Powers**

16. The proposed competence would provide the NAW with law-making powers to modernise the governance and accountability arrangements for the AGW, subject to certain restrictions to ensure that the AGW continues to have operational independence in the carrying out of his functions.

17. The powers being sought would create a new Matter 14.1, in the public administration field in Schedule 5, enabling the NAW to pass legislation in relation to:

- the AGW's terms and conditions of employment relating to tenure and remuneration
- the number of times that an individual may be appointed to the office of the AGW;

- restrictions on the other offices and positions that may be held by an AGW
- the activities of a former AGW;
- requiring the AGW to aim to carry out AGW functions in an efficient and cost effective manner and to have regard to the standards and principles expected of an expert accountant or auditor;
- the authorisation of persons to exercise the functions of the AGW or on the AGW's behalf;
- the oversight or supervision of the AGW or the AGW's functions;
- the provision or use of resources in support of the AGW's functions including the employment and use of staff; procurement and use of services; the holding of documents or information; and the keeping of records;
- the charging of fees and other amounts relating to the AGW's functions or to auditors appointed by the AGW (such as auditors which the AGW appoints under section 13(2) of the Public Audit (Wales) Act 2004 to audit the accounts of local government bodies in Wales); and
- the restatement of any law relating to the AGW.

18. Matter 14.1 would enable the NAW to make changes in the governance arrangements for the AGW, which could be similar to those which are set out in Part 2 of the Bill in relation to the Comptroller and Auditor General and the National Audit Office. For example, the provision which might be made by a Measure relating to matter 14.1 could include establishing the Wales Audit Office with functions relating to the oversight or support of the AGW, and specifying the number of members, their roles and terms of appointment. However, the nature of any changes would be for the NAW to determine.

19. Paragraph 4 of Schedule 6 to the Bill also amends paragraphs 3 and 6 in Part 2 of Schedule 5 to the 2006 Act ("Exceptions to Matters and General Restrictions"). Part 2 of Schedule 5 includes restrictions on the provision which can be made in an Assembly Measure. If a provision of a Measure breaches any of them, it is outside of the NAW's legislative competence and is not law. The restrictions are subject to exceptions set out in Part 3 of Schedule 5.

20. Paragraph 4 makes changes to paragraphs 3 and 6 of Part 2 of Schedule 5 to the 2006 Act which would apply to any provision that may flow from new Matter 14.1 (as described in new paragraph 3(3) of Part 2 of Schedule 5). In relation to such a provision, paragraph 4(2) disapplies paragraph 3 of Part 2 of Schedule 5 (which protects certain other enactments against amendment) insofar as it relates to certain provisions of the Government of Wales Act 1998, and paragraph 4(3) disapplies paragraph 6(1) of Part 2 (which provides that an Assembly Measure cannot modify provisions in the 2006 Act). The effect is that such a provision may amend the 2006 Act and the specified provisions of the 1998 Act provided that the purpose of the provision relates to the things listed in Matter 14.1 (or, for example, is consequential on or incidental to such provision).

21. However, paragraph 4(3) of Schedule 6 to the Bill goes on to provide that such a provision may not amend paragraph 3 of Schedule 8 to the 2006 Act, which protects the independence and status of the AGW. It also provides that a provision to which new paragraph 3(3) applies (i.e. a provision flowing from Matter 14.1) may only give a role to a NAW committee which excludes from its membership the First Minister, the Welsh Ministers, their Deputies and the Counsel General (or anyone acting as such); and which is not chaired by an Assembly Member who is a member of a political group with an executive role. In other words, a Measure may only give a role relating to the AGW and which affects the independence of the AGW to the NAW Public Accounts Committee or another committee which is independent of the Assembly Government.

22. Paragraph 6 of Schedule 6 to the Bill would amend Part 1 of Schedule 7 to the 2006 Act, which sets out the subjects to which provisions of Assembly Acts may relate, to insert a new subject "Auditor General for Wales" in paragraph 14 (public administration). Paragraph 14 already includes the subject "Audit, examination, regulation and inspection of auditable public authorities", which would cover parts of the subject-matter of matter 14.1 in Schedule 5. The new subject would ensure that an Assembly Act could make similar types of provision in relation to the AGW as matter 14.1 in Schedule 5. However, it is worded differently in view of the subjects already included in Schedule 7 and the more general drafting style of that Schedule.

23. Paragraph 7 of Schedule 6 to the Bill also amends Part 2 of Schedule 7 to the 2006 Act, which sets out restrictions on the NAW's competence to pass Assembly Acts. The amendments provide for exceptions to the prohibitions on Assembly Acts being able to modify certain provisions of the 1998 and 2006 Acts, set out in paragraphs 2 and 5 of Part 2<sup>2</sup>. These exceptions will enable an Assembly Act to modify Schedule 8 to the 2006 Act, which deals with the office of the AGW, and will enable an Assembly Act to modify other provisions of the 1998 and 2006 Acts if the purpose of the amendment relates to the oversight or supervision of the AGW. Like the amendments to Schedule 5, these amendments include provisions to protect the AGW's independence from the NAW and Welsh Assembly Government (see paragraph 21 above).

24. The purpose of the amendments to Schedule 7 to the 2006 Act is to ensure that, if the Assembly Act provisions were to come into force, the NAW would not lose any of the legislative competence conferred by matter 14.1 in Schedule 5.

### **Geographical limits**

25. Section 94 of the 2006 Act provides that a provision of an Assembly Measure is outside the NAW's legislative competence if it applies otherwise than in relation to Wales or confers, imposes, modifies or removes functions exercisable otherwise than in relation to Wales (or gives power to do so). Section 108 makes equivalent provision in relation to Assembly Acts. There are limited exceptions for certain kinds of ancillary provision, for example provision appropriate to make the provisions of the

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<sup>2</sup> The amendments in paragraph 7(2) and (3)(a) of Schedule 6 to the Bill have been drafted to take account of other amendments to paragraphs 2 and 5 in Schedule 7 to the 2006 Act which would be made by articles 10 and 11 of the draft National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010.

Measure or Act effective, provision enabling the provisions of the Measure or Act to be enforced and to make consequential amendments to other legislation.

26. The limitations relating to functions other than in relation to Wales mean that the NAW would generally not be able by Measure or Act to confer functions which did not relate to Wales. The functions of the AGW relate to Wales and to Welsh public bodies.

### **Restrictions on modifying and conferring functions**

27. By virtue of paragraph 1 of Part 2 of Schedule 5 to the 2006 Act, and paragraph 7 of Part 3 of that Schedule, the NAW may not by Measure alter or remove functions of a Minister of the Crown without the consent of the relevant Secretary of State (and may not create new Minister of the Crown functions at all). Similarly, by virtue of paragraphs 1 and 6 in Parts 2 and 3 of Schedule 7, an Assembly Act may not modify or remove pre-commencement functions<sup>3</sup> of a Minister of the Crown without the Secretary of State's consent unless the provision is incidental to or consequential on another provision contained in the Assembly Act; and an Assembly Act cannot confer or impose a function on a Minister of the Crown without the Secretary of State's consent. The proposed provisions themselves do not modify or remove any functions of a Minister of the Crown. In relation to any future proposals for Assembly Measures or Acts that may impact on Minister of the Crown functions, the appropriate UK Government Departments would first be consulted and agreement sought before any change to, or modification of, those functions could be made.

28. By virtue of paragraph 5 of Part 2 of Schedule 5, and paragraph 8 of Part 3 of that Schedule, a provision of an Assembly Measure cannot modify functions of the Comptroller and Auditor General unless the Secretary of State consents. Paragraphs 4 and 7 in Parts 2 and 3 of Schedule 7 impose the same restriction on Assembly Acts. Paragraphs 26-28 of Schedule 5 to the Bill will extend these provisions of the 2006 Act to functions of the new National Audit Office. This consequential amendment reflects the fact that, if Part 2 of the Bill is enacted, certain functions currently carried out by the Comptroller and Auditor General will in future be carried out by the National Audit Office. The NAW will not be able to modify those functions without the agreement of the Secretary of State.

### **October 2010**

The Bill and accompanying explanatory notes can be accessed at <http://services.parliament.uk/bills/2010-11/budgetresponsibilityandnationalaudit.html>

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<sup>3</sup> Pre-commencement function" means a function which is exercisable by a Minister of the Crown before the day on which the Assembly Act provisions come into force – see paragraph 1(3) of part 2 of Schedule 7 to GOWA 2006.

**Draft Public Audit (Wales) Bill****(Draft) Consultation Distribution List**

Chief Executives of County and County Borough Councils in Wales;  
 Chief Executive of the Welsh Local Government Association;  
 Chief Executives of National Park Authorities in Wales;  
 Chief Executives of Port Health Authorities in Wales;  
 Chief Fire Officers of Fire and Rescue Services in Wales;  
 Chief Executives of Police Authorities in Wales;  
 Chief Executive of the Wales Probation Trust;  
 Chief Executives of Health Boards and Trusts in Wales;  
 The Older People's Commissioner for Wales;  
 The Children's Commissioner for Wales;  
 The Public Services Ombudsman for Wales;  
 Chief Executive Countryside Council for Wales;  
 Secretary Local Government Boundary Commission for Wales;  
 Secretary Boundary Commission for Wales;  
 Chief Executive Sport Wales;  
 Director Forestry Commission Wales;  
 Chief Executive Arts Council of Wales;  
 Chief Executive General Teaching Council for Wales;  
 Director General National Museum of Wales;  
 Librarian National Library of Wales;  
 Chief Executive Welsh Language Board/The Welsh Language Commissioner;  
 Accounting Officer Welsh Levy Board;  
 Secretary Royal Commission on Ancient and Historical Monuments in Wales;  
 Director Wales Centre for Health;  
 Chief Executive Care Council for Wales;  
 Director General Higher Education Funding Council for Wales;  
 Chairs of Further and Higher Education Governing Bodies;  
 Chief Executive of One Voice Wales;  
 The Auditor General for Wales;  
 Chief Executive of the Financial Reporting Council;  
 Comptroller and Auditor General;  
 Auditor General Scotland;  
 Comptroller and Auditor General of Northern Ireland;  
 Chief Executive Audit Commission;  
 Director NHS Confederation Wales;  
 The Chief Inspector of Education and Training in Wales;  
 Chief Executive Healthcare Inspectorate Wales;  
 Chief Inspector of Care and Social Services in Wales;  
 Secretary National Assembly Commission;  
 Assembly Members;  
 The Wales Office;  
 Her Majesty's Treasury;  
 Ministry of Justice;  
 Department of Work and Pensions;  
 Department of Communities and Local Government;

Home Office;  
Scottish Government;  
Northern Ireland Assembly;  
Chartered Institute of Public Finance and Accountancy;  
Head of the Association of Chartered Certified Accountants Wales;  
The Institute of Chartered Accountants for England and Wales, Director for Wales;  
Chartered Institute of Management Accountants.



**Proposals for a Public Audit (Wales) Bill**

**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](mailto:publicauditwalesbill@wales.gsi.gov.uk)

Postal responses should be sent to:  
 Public Audit (Wales) Bill Team  
 Welsh Government  
 1<sup>st</sup> Floor North  
 Cathays Park  
 Cardiff  
 CF10 3NQ

Telephone contact for enquiries: 029 2082 6270

Your name:

Organisation (if applicable):

Email address:

Telephone number:

Your address:

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

--

Question 2: Do you agree that a person can only be AGW once?			
Yes		No	

Please expand on your answer			
------------------------------	--	--	--

--

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?			

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			

Question 5: Do you consider the procedure for settling the remuneration arrangements fair?			
Yes		No	
Please expand on your answer			

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

Question 7: Do you agree that the membership of the new WAO should comprise 7 members?			
Yes		No	
Please expand on your answer			

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

--

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

--

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	
-----	--	----	--

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

Yes		No	
-----	--	----	--

Please expand on your answer

--

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

--

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?

--

Question 14: Are there any 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?

--

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		No	
-----	--	----	--

Please expand on your answer.

--

<p>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?</p>

<p>Question 18: Should the PAC have a duty to appoint the accounting officer to the new WAO?</p>				
<table border="1"> <tr> <td>Yes</td> <td></td> <td>No</td> <td></td> </tr> </table>	Yes		No	
Yes		No		
<p>Please expand on your answer</p>    				

<p>Question 19: Should the PAC approve the appointment and terms and conditions of the new WAO's auditor?</p>				
<table border="1"> <tr> <td>Yes</td> <td></td> <td>No</td> <td></td> </tr> </table>	Yes		No	
Yes		No		
<p>Please expand on your answer</p>    				

<p>Question 20: Do you agree with the proposal that the PAC considers the estimate and that it forms part of the Annual Budget Motion?</p>				
<table border="1"> <tr> <td>Yes</td> <td></td> <td>No</td> <td></td> </tr> </table>	Yes		No	
Yes		No		
<p>Please expand on your answer</p>    				

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

<p>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?</p>

<p>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?</p>

<p>Question 24: Do you consider the approach to the release of resources for the new AGW's functions to be appropriate?</p>				
<table border="1"> <tr> <td>Yes</td> <td></td> <td>No</td> <td></td> </tr> </table>	Yes		No	
Yes		No		
<p>Please expand on your answer</p>    				

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

<p>Question 26: Should the new WAO approve the new AGW's scheme of delegation?</p>				
<table border="1"> <tr> <td>Yes</td> <td></td> <td>No</td> <td></td> </tr> </table>	Yes		No	
Yes		No		
<p>Please expand on your answer</p>    				

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

--

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

--

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

Yes		No	
-----	--	----	--

Any comments? If you answered no, please provide reasons for your answer.

--

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		No	
-----	--	----	--

Any comments? If you answered no, please provide reasons for your answer.

--

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

--

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			

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

Question 34: Should the new AGW be the statutory auditor of HECs and/or FECs?			
Yes		No	
Please expand on your answer			

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

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



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			

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			

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?			

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

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			

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			

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

Question 44: Should there be a duty on the new AGW to lay his/her code of audit practice before the Assembly?			
Yes		No	
Please expand on your answer			

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		No	
Please expand on your answer			

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?

--

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		No	
-----	--	----	--

Please expand on your answer

--

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

Yes		No	
-----	--	----	--

Question 49: If you do not agree with the principle, please explain why.

--

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?

--

**ACCOMPANYING DOCUMENTS**

**Explanatory Notes and an Explanatory Memorandum are printed separately.**

# Public Audit (Wales) Bill

[CONSULTATION DRAFT]

## CONTENTS

*Introduction*

1 Overview

### **PART 1**

#### **NATIONAL PUBLIC AUDIT INSTITUTIONS**

##### **CHAPTER 1**

###### **AUDITOR GENERAL FOR WALES**

2 Office of Auditor General for Wales  
3 Resignation or removal  
4 Employment etc of former Auditor General  
5 Status etc  
6 Disqualification  
7 Remuneration

##### **CHAPTER 2**

###### **WALES AUDIT OFFICE**

*General*

8 Incorporation of Wales Audit Office  
9 Efficiency  
10 Expenditure  
11 Borrowing

*Annual plan*

12 Annual plan  
13 Annual plan: resources to be allocated to the Auditor General  
14 Annual plan: National Assembly procedure  
15 Annual plan: effect

*Auditor General*

- 16 Provision of resources to the Auditor General
- 17 Relationship with the Auditor General

*Fees*

- 18 General provision relating to fees
- 19 Fees charged to local government bodies
- 20 Fees for data matching
- 21 Welsh Ministers' power to prescribe a scale of fees
- 22 Scheme for charging fees

**PART 2****PUBLIC AUDIT AND VALUE FOR MONEY FUNCTIONS****CHAPTER 1****EXERCISE OF FUNCTIONS**

- 23 How functions etc are to be exercised
- 24 Supplementary powers
- 25 Other powers
- 26 Transfer etc of functions of the Comptroller and Auditor General
- 27 Transfer etc of the functions of the Welsh Ministers

**CHAPTER 2****WELSH MINISTERS, NATIONAL ASSEMBLY COMMISSION AND OTHER WELSH PUBLIC BODIES***Audit of accounts*

- 28 Welsh Ministers
- 29 National Assembly Commission
- 30 Other Welsh public bodies subject to audit
- 31 Public bodies subject to audit under section 30: limitations
- 32 Audit of summarised accounts of Welsh NHS bodies
- 33 Audit of accounts of officers of Welsh NHS bodies
- 34 Audit of higher and further education corporations
- 35 Audit of further and higher education corporations: powers of Auditor General
- 36 Meaning of further education corporation and higher education corporation

*General provisions relating to audit of bodies under this Chapter*

- 37 Content of accounts and statement of accounts
- 38 Directions relating to accounts and statement of accounts
- 39 Functions of the Auditor General: audit of accounts

*Value for money examinations*

- 40 Functions of the Auditor General: economy, efficiency and effectiveness examinations
- 41 Additional persons subject to examination
- 42 Education bodies subject to examination upon request

*General provisions relating to examinations*

- 43 Views of National Assembly Public Accounts Committee
- 44 Reports on examinations
- 45 Reports in the public interest

*Modifying the bodies subject to audit and examination*

- 46 Amending the list of public bodies subject to audit or examination
- 47 Power of the Welsh Ministers to make provision about reports
- 48 Power to designate accounting officers

**CHAPTER 3****WELSH LOCAL GOVERNMENT***Meaning of "local government body"*

- 49 Local government bodies

*Audit of accounts*

- 50 Audit of accounts of local government bodies
- 51 General duties on audit of accounts

*Auditor General reports and recommendations*

- 52 Immediate and other reports in public interest
- 53 General report
- 54 Consideration of reports in public interest
- 55 Procedure for consideration of reports and recommendations
- 56 Publicity for meetings under section 55
- 57 Additional publicity for immediate reports
- 58 Additional publicity for non-immediate reports

*Public inspection etc and action by Auditor General*

- 59 Inspection of statements of accounts and Auditor General reports
- 60 Inspection of documents and questions at audit
- 61 Right to make objections at audit
- 62 Declaration that item of account is unlawful

*Prevention of unlawful expenditure*

- 63 Advisory notices
- 64 Effect of an advisory notice
- 65 Advisory notices: legal actions
- 66 Power of Auditor General to make a claim for judicial review
- 67 Extraordinary audit
- 68 Audit of accounts of officers
- 69 Accounts and audit regulations

*Value for money studies*

- 70 Studies for improving economy etc in services
- 71 Studies on impact of statutory provisions etc
- 72 Co-operation with Audit Commission
- 73 Studies at request of local government bodies

*Performance standards*

- 74 Performance standards: relevant bodies
- 75 Publication of information as to standards of performance
- 76 Permitted methods of publishing information under section 75
- 77 Directions under section 75 relating to publication of information
- 78 Interpretation of Chapter 3

**CHAPTER 4****DATA MATCHING**

- 79 Power to conduct data matching exercises
- 80 Mandatory provision of data
- 81 Voluntary provision of data
- 82 Disclosure of results of data matching etc
- 83 Publication
- 84 Code of data matching practice
- 85 Powers of Secretary of State

**CHAPTER 5****FUNCTIONS OF THE AUDITOR GENERAL: SUPPLEMENTARY**

- 86 Certification of claims, returns etc
- 87 Code of audit practice
- 88 Rights to documents and information etc
- 89 Rights to documents and information: offences
- 90 References of matters related to social security to Secretary of State
- 91 Benefit administration studies for Secretary of State
- 92 Restriction on disclosure of information
- 93 Consent under section 92
- 94 Supply of benefit information by the Secretary of State to the Auditor General

- 95 Documents relating to police authorities [police and crime commissioners and chief constables]  
96 Provision of information to Audit Commission

### **PART 3**

#### MISCELLANEOUS AND GENERAL

- 97 Comptroller and Auditor General  
98 Indemnification  
99 Orders and regulations  
100 Directions  
101 Interpretation  
102 Transitional and supplementary provisions  
103 Repeals and minor and consequential amendments  
104 Commencement  
105 Short title

Schedule 1 – Incorporation of Wales Audit Office

- Part 1 – Membership and status
- Part 2 – Non-executive members
- Part 3 – Auditor General
- Part 4 – Employee member
- Part 5 – Employees
- Part 6 – Procedural rules
- Part 7 – Other matters

Schedule 2 – Relationship between the Auditor General and the WAO

- Part 1 – Co-operation in the exercise of functions
- Part 2 – Temporary exercise of the functions of Auditor General by another person



# Public Audit (Wales) Bill

[CONSULTATION DRAFT]

A Bill of the National Assembly for Wales to make provision reforming audit arrangements in Wales; continuing the office of Auditor General for Wales and creating a new body to be known as the Wales Audit Office; conferring and consolidating audit functions; and for connected purposes.

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

## *Introduction*

### 1 **Overview**

The main provisions of this Act—

- 10 (a) prescribe that the office of Auditor General for Wales is to continue upon the terms set out in Part 1, Chapter 1;
- (b) create a new corporate body called the Wales Audit Office and confer functions upon it (Part 1, Chapter 2 and Schedules 1 and 2);
- 15 (c) prescribe governance arrangements for the Auditor General for Wales and Wales Audit Office, including arrangements for oversight of the Auditor General by the Wales Audit Office, and other provisions regarding the relationship between the two (Part 1, Chapter 2 and Schedules 1 and 2);
- (d) prescribe how the functions of the Auditor General for Wales are to be exercised, and confer powers upon him or her that enable them to be exercised and enable co-operation between the Auditor General and other relevant persons (Part 2, Chapters 1 and 5);
- 20 (e) confer functions upon the Auditor General for Wales, including—
  - 25 (i) auditing the accounts of the Welsh Ministers, National Assembly Commission and certain other Welsh public bodies, and examining the economy, efficiency and effectiveness with which they discharge their functions (Part 2, Chapter 2);
  - (ii) consolidating existing functions relating to the audit of accounts of local government bodies in Wales, and examining the economy, efficiency and effectiveness with which they discharge their functions (Part 2, Chapter 3);
  - 30 (iii) consolidating existing functions relating to conducting data matching exercises for the purposes of assisting the prevention and detection of fraud in Wales (Part 2, Chapter 4)
- (f) provide mechanisms for the Auditor General for Wales to provide advice, report on, and make recommendations, in relation to matters which arise during the course of the exercise of his or her functions (Part 2);
- 35 (g) prescribe that the Auditor General for Wales must issue a code of audit practice

(Part 2, Chapter 5) and code of data matching practice (Part 2, Chapter 4).

## PART 1

### National Public Audit Institutions

#### CHAPTER 1

##### Auditor General for Wales

5

#### **2 Office of Auditor General for Wales**

- (1) The office of Auditor General for Wales (the “Auditor General”) is to continue.
- (2) It is for Her Majesty to appoint a person to be Auditor General on the nomination of the National Assembly.
- 10 (3) No nomination is to be made until the National Assembly is satisfied that reasonable consultation has been undertaken with such bodies as appear to the Assembly to represent the interests of local government bodies in Wales.
- (4) The person appointed holds office for 7 years.
- (5) The person may not be appointed again.
- 15 (6) The validity of any act of a person appointed as Auditor General is not affected by any defect in the person’s nomination or appointment.

#### **3 Resignation or removal**

- (1) A person appointed as Auditor General holds office until the end of the period for which the person was appointed.
- 20 (2) But this is subject to subsections (3) and (4).
- (3) Her Majesty may relieve a person from office before the end of the period for which the person was appointed –
  - (a) at the person’s request, or
  - (b) on Her Majesty being satisfied that the person is incapable for medical reasons of performing the duties of the office and of requesting to be relieved of it.
- 25 (4) Her Majesty may remove a person from office before the end of the period for which the person was appointed on the making of a recommendation, on the ground of the person’s misbehaviour, that Her Majesty should do so.
- (5) A recommendation for the removal of a person from office may not be made unless –
  - 30 (a) the National Assembly has resolved that the recommendation should be made, and
  - (b) the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.

35

#### **4 Employment etc of former Auditor General**

- (1) This section applies to a person who was appointed as Auditor General under this Part but who no longer holds that office.
- (2) Before –
- 5 (a) taking up an office or position of a description specified by the National Assembly's Public Accounts Committee, or
- (b) entering into an agreement or other arrangement of a description specified by the Committee,
- the person must consult the Committee and any person specified by the Committee.
- (3) The National Assembly's Public Accounts Committee must publish a list of –
- 10 (a) the offices and positions specified by the Committee for the purposes of subsection (2)(a);
- (b) the agreements or other arrangements specified by the Committee for the purposes of subsection (2)(b).
- (4) Subsections (5) and (6) apply for a period of 2 years starting on the day the person ceased to be Auditor General.
- 15 (5) The person must not –
- (a) hold an office or position to which a person may be appointed, or recommended or nominated for appointment, by or on behalf of –
- 20 (i) the Crown,
- (ii) the National Assembly, or
- (iii) the National Assembly Commission.
- (b) be a member, director, officer or employee of a body or other person in respect of which the Auditor General exercises functions under Part 2.
- (6) The person must not, in any capacity, provide services to –
- 25 (a) the Crown or any body or other person acting on behalf of the Crown,
- (b) the National Assembly or any body or other person acting on behalf of the Assembly,
- (c) the National Assembly Commission or any body or other person acting on behalf of the Commission, or
- 30 (d) a body or other person in respect of which the Auditor General exercises functions under Part 2.
- (7) But subsections (5) and (6) do not prevent a person from holding any of the following offices –
- (a) Comptroller and Auditor General;
- 35 (b) Auditor General for Scotland;
- (c) Comptroller and Auditor General for Northern Ireland.

## 5 Status etc

- (1) The Auditor General continues by that name to be a corporation sole.

- (2) The Auditor General is not to be regarded as holding office under Her Majesty or as exercising any functions on behalf of the Crown.

But the Auditor General is to be taken to be a Crown servant for the purposes of the Official Secrets Act 1989.

## 5 6 Disqualification

- (1) A person cannot be appointed as Auditor General if the person is disqualified on the grounds specified in subsection (3).

- (2) A person ceases to be Auditor General if the person is disqualified on the grounds specified in subsection (3).

- 10 (3) A person is disqualified from being Auditor General if a person –

(a) is a Member of the National Assembly;

(b) holds any other office or position to which a person may be appointed, or recommended or nominated for appointment, by or on behalf of –

(i) the Crown;

15 (ii) the National Assembly; or

(iii) the National Assembly Commission;

(c) is a Member of the House of Commons or House of Lords;

(d) is a Member of the Scottish Parliament;

(e) is a Member of the Northern Ireland Assembly;

20 (f) is an employee of the Wales Audit Office.

## 7 Remuneration

- (1) Before a person is appointed as Auditor General, remuneration arrangements are to be made in respect of that person by the person who chairs the National Assembly's Public Accounts Committee.

- 25 (2) But before making these arrangements the person who chairs the National Assembly's Public Accounts Committee must consult the First Minister and the person who chairs the National Assembly Commission.

- (3) The remuneration arrangements –

30 (a) may make provision for a salary, allowances, gratuities and other benefits, and arrangements for a pension, and

(b) may include a formula or other mechanism for adjusting one or more of those elements from time to time.

- (4) But no element is to be performance-based.

- 35 (5) The National Assembly Commission must make payments to the Minister for the Civil Service, at such times as the Minister may determine, of such amounts as may be so determined in respect of –

(a) the provision of pensions, allowances, gratuities or other benefits by virtue of section 1 of the Superannuation Act 1972 to, or in respect of, any person who holds

or has ceased to hold office as Auditor General, and

(b) the expenses incurred in administering those pensions, allowances, gratuities or other benefits.

(6) Amounts payable by virtue of this section are to be charged on, and paid out of, the Welsh Consolidated Fund.

## CHAPTER 2

### Wales Audit Office

#### *General*

#### **8 Incorporation of Wales Audit Office**

(1) There is to be a body corporate called the Wales Audit Office (the “WAO”).

(2) Schedule 1 contains provision about the WAO.

#### **9 Efficiency**

The WAO must aim to carry out its functions efficiently and cost-effectively.

#### **10 Expenditure**

(1) For each financial year the Auditor General and the WAO must jointly –

(a) prepare an estimate of the income and expenses of the WAO, and

(b) submit the estimate to the National Assembly’s Public Accounts Committee.

(2) Each estimate must cover (amongst other things) the resources required for the purposes of section 16 (which requires the WAO to provide resources to the Auditor General).

(3) Each estimate must be submitted to the National Assembly’s Public Accounts Committee at least five months before the beginning of the financial year to which it relates.

(4) The National Assembly’s Public Accounts Committee must –

(a) examine each estimate submitted to it, and

(b) lay the estimate before the National Assembly with any modifications which the Committee considers appropriate.

(5) Before laying an estimate before the National Assembly with modifications, the National Assembly’s Public Accounts Committee must –

(a) consult the Auditor General and the WAO, and

(b) take into account any representations that either may make.

#### **11 Borrowing**

The WAO may borrow sums in sterling (by way of overdraft or otherwise) to be applied for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet it.

*Annual plan***12 Annual plan**

(1) Before the beginning of each financial year, the Auditor General and the WAO must agree upon an annual plan for that year.

5 (2) The annual plan must set out the following for the financial year –

(a) the Auditor General’s work programme;

(b) the WAO’s work programme;

(c) the resources available, and which may become available, to the WAO;

10 (d) how the resources available are to be used in order to undertake the Auditor General’s programme;

(e) how the resources available are to be used in order to undertake the WAO’s programme;

15 (f) the maximum amount of the resources available that it is anticipated will be allocated by the WAO to the Auditor General for the purpose of undertaking the Auditor General’s programme.

(3) In this Chapter –

“Auditor General’s work programme” means the Auditor General’s priorities for the year in exercising his or her functions under Part 2 of this Act;

20 “WAO’s work programme” means the WAO’s priorities for the year in exercising its functions under this Act.

**13 Annual plan: resources to be allocated to the Auditor General**

25 (1) Subsections (2) to (4) sets out the procedure for the Auditor General and WAO to agree on the maximum amount of resources that it is anticipated will be allocated to the Auditor General, to be included in the annual plan.

(2) The Auditor General must submit to the WAO a statement for a financial year setting out the following –

(a) the Auditor General’s work programme;

30 (b) an estimate of the maximum amount of the resources required to undertake the programme.

(3) The WAO may either –

(a) agree the statement and incorporate the content into the annual plan, or

(b) reject the statement, or part of it, and ask the Auditor General to reconsider and submit an amended statement or an amended part of it.

35 (4) But the WAO may only reject the statement if it is unreasonable, or if any part of it is unreasonable.

**14 Annual plan: National Assembly procedure**

(1) The Auditor General and the person who chairs the WAO must –

- (a) submit the annual plan to the National Assembly's Public Accounts Committee; and
  - (b) lay the plan before the National Assembly.
- (2) The National Assembly's Public Accounts Committee must publish the annual plan as soon as is reasonably practicable after it is submitted to it.

### 15 Annual plan: effect

The Auditor General and the WAO are not to be bound by the annual plan, but they must have due regard to it in the exercise of their functions, including (but not limited to) in relation to the provision of resources by the WAO to the Auditor General under section 16.

#### *Auditor General*

### 16 Provision of resources to the Auditor General

- (1) The WAO must provide resources for the exercise of the Auditor General's functions as required by the Auditor General.
- (2) In particular, the WAO is responsible for –
- (a) employing staff to assist in the exercise of those functions,
  - (b) securing services from any person for the purposes of those functions,
  - (c) holding property for the purposes of exercising those functions,
  - (d) holding documents or information acquired or generated in the course of, or otherwise for the purposes of, those functions (see paragraph 4 of Schedule 2), and
  - (e) keeping records in relation to those functions, as required by the Auditor General.
- (3) But the obligation on the WAO to provide resources to the Auditor General is subject to subsections (4) to (6).
- (4) During any financial year the Auditor General may make one or more requests for resources from the WAO.
- (5) A request for resources must specify –
- (a) the purpose or purposes for which resources are required, and
  - (b) an estimate of the resources required for that purpose or those purposes.
- (6) The WAO may only refuse a request if the purpose or purposes specified, or the estimate of the resources required for that purpose or those purposes, are unreasonable.

### 17 Relationship with the Auditor General

- (1) The Auditor General is to be the chief executive (but not an employee) of the WAO.
- (2) Schedule 2 contains further provision about the relationship between the WAO and the Auditor General.

#### *Fees*

### 18 General provision relating to fees

- (1) The WAO may, in accordance with a scheme prepared under section 22, charge a fee in relation to the exercise by the Auditor General of the following functions –
- (a) an examination, certification or report under an agreement made under section 25(3) (agreements between a person and either the Welsh Ministers or a Minister of the Crown for the Auditor General to exercise functions in relation to that person);
  - (b) an examination and certification of a person's accounts under section 39 (accounts submitted by the Welsh Ministers, the National Assembly Commission, a public body under section 30, an officer of a Welsh NHS body, and higher and further education corporations);
  - (c) an examination of a person under section 40 (which relates to the economy, efficiency and effectiveness with which a person discharges functions) undertaken at the person's request (but for an education body listed in section 42, see subsection (2)(a));
  - (d) arrangements for the provision of services under paragraph 26 of Schedule 1.
- (2) The WAO must, in accordance with a scheme prepared under section 22, charge a fee in relation to the exercise by the Auditor General of the following functions –
- (a) an examination under section 40 into an education body listed in section 42;
  - (b) certification of claims, returns etc under section 86;
  - (c) conducting, or assisting the Secretary of State in conducting, a benefit administration study under section 91.
- (3) Fees charged under this section are payable to the WAO by the person to whom the functions of the Auditor General being exercised relates.
- (4) A fee charged under this section may not exceed the full cost of exercising the functions.

## 19 Fees charged to local government bodies

- (1) The WAO must, in accordance with a scheme prepared under section 22, charge a fee in respect of functions exercised by the Auditor General in auditing a local government body's accounts under Chapter 3 of Part 2 and undertaking or promoting a study upon the request of a local government body under section 73.
- (2) The WAO must prescribe a scale or scales of fees in relation to the exercise of those functions.
- (3) Before prescribing a scale or scales of fees the WAO must consult –
- (a) any associations of local authorities in Wales which appear to the WAO to be concerned;
  - (b) such other persons as the WAO thinks fit.
- (4) A local government body must, subject to subsection (5), pay to the WAO the fee applicable in respect of a function exercised in accordance with the appropriate scale.
- (5) If it appears to the WAO that the work involved in exercising a particular function is or was substantially more or less than that envisaged by the appropriate scale, the WAO may charge a fee which is larger or smaller than that referred to in subsection (4).



**20 Fees for data matching**

- (1) The WAO may, in accordance with a scheme prepared under section 22, charge a fee in respect of a data matching exercise undertaken by the Auditor General under Chapter 4 of Part 2.
- 5 (2) The WAO must prescribe a scale or scales of fees in respect of the data matching exercises.
- (3) Before prescribing a scale or scales of fees, the WAO must consult –
- (a) the bodies mentioned in section 80(2), and
  - (b) such other persons as the WAO thinks fit.
- 10 (4) A body required under section 80(1) to provide data for a data matching exercise must pay to the WAO the fee applicable in respect of that exercise in accordance with the appropriate scale.
- (5) But if it appears to the WAO that the work involved in the exercise was substantially more or less than that envisaged by the appropriate scale, the WAO may charge a fee which is larger or smaller than that referred to in subsection (4).
- 15 (6) In addition to the power under subsection (1), the WAO may charge a fee to any other person providing data for, or receiving the results of, a data matching exercise (such fee to be payable in accordance with terms agreed between the WAO and that person).

**21 Welsh Ministers' power to prescribe a scale of fees**

- 20 (1) The Welsh Ministers may, by regulations, prescribe a scale or scales of fees to have effect instead of a scale or scales prescribed by the WAO under section 20.
- (2) A scale of fees prescribed under subsection (1) has effect for the period specified in relation to it in the regulations.
- (3) Subsection (4) applies if –
- 25 (a) a scale of fees is prescribed under subsection (1) in place of a scale prescribed by the WAO, and
  - (b) the scale prescribed by the WAO would otherwise be the appropriate scale for the purposes of section 20.
- (4) The references to the appropriate scale in section 20 are to be read as references to the scale prescribed under subsection (1).
- 30 (5) Before making regulations under subsection (1) the Welsh Ministers must consult –
- (a) the WAO, and
  - (b) such other persons as they think fit.

**22 Scheme for charging fees**

- 35 (1) Fees payable under sections 18 to 20 may only be charged in accordance with a scheme prepared by the WAO.
- (2) A scheme may include different provision for different cases or classes of case.
- (3) In relation to fees payable under section 19 or section 20 –

- (a) the scheme must include the scale or scales of fees prescribed under section 19 or section 20, and
- (b) if the Welsh Ministers prescribe a fee under section 21, the WAO must revise the scheme to insert the fee prescribed by the Welsh Ministers instead of the corresponding fee prescribed under section 20.

(4) The WAO must –

- (a) submit the scheme to the National Assembly’s Public Accounts Committee for its approval, and
- (b) publish the scheme if approved.

(5) The WAO must review the scheme at least once in a calendar year.

(6) The WAO may revise or remake the scheme, but any revision or remake of the scheme is subject to the approval of the National Assembly’s Public Accounts Committee, and the scheme must be published as revised or remade.

But a revision made only to insert a scale of fees prescribed by the Welsh Ministers under section 21 does not require approval.

(7) The National Assembly’s Public Accounts Committee must lay the scheme (as revised or remade where applicable) before the National Assembly.

(8) Fees and other amounts received by the Auditor General must be paid to the WAO.

## PART 2

### PUBLIC AUDIT AND VALUE FOR MONEY FUNCTIONS

#### CHAPTER 1

##### EXERCISE OF FUNCTIONS

#### 23 How functions etc are to be exercised

(1) The Auditor General has complete discretion in the exercise of his or her functions, and is not subject to the direction or control of the National Assembly or the Welsh Government.

(2) But this discretion is subject to subsections (3) to (6).

(3) The Auditor General must aim to carry out his or her functions efficiently and cost-effectively.

(4) The Auditor General must, as he or she considers appropriate, have regard to the standards and principles that an expert professional provider of accounting or auditing services would be expected to follow.

(5) The Auditor General must take into account the views of the National Assembly’s Public Accounts Committee in the circumstances prescribed by –

- (a) sections 25(4) (the examinations into economy, efficiency and effectiveness of the discharge of functions etc that the Auditor General should undertake pursuant to agreements entered into by the Welsh Ministers or a Minister of the Crown),

(b) section 43 (how examinations into the economy, efficiency and effectiveness of the discharge of functions etc are carried out under section 40).

- (6) The Auditor General must have due regard to advice given to him or her by the WAO (see paragraph 1 of Schedule 2) and to the annual plan that he or she agrees with the WAO (see section 15).

## 24 Supplementary powers

The Auditor General may do anything calculated to facilitate, or which is incidental or conducive to, the carrying out of his or her functions.

## 25 Other powers

- (1) Where –

- (a) the Welsh Ministers are entitled to appoint the auditor of the accounts of any person (other than the Auditor General), and  
 (b) the Auditor General would not otherwise be eligible to be appointed as auditor of those accounts,

the Welsh Ministers may appoint the Auditor General to be auditor of those accounts.

But before doing so the Welsh Ministers must consult the WAO.

- (2) If in such a case the auditor is to be appointed annually, the Welsh Ministers may appoint the Auditor General –

- (a) for a year,  
 (b) for two or more years, or  
 (c) indefinitely until further exercise of the power of appointment.

- (3) If provision is made for the Auditor General to do so by an agreement entered into by a person with either the Welsh Ministers or a Minister of the Crown, the Auditor General may –

- (a) examine, certify or report on the person's accounts, or  
 (b) carry out examinations into, and (if the Auditor General chooses) make recommendations in respect of, the economy, efficiency and effectiveness with which a person –  
 (i) has discharged its functions, or  
 (ii) has used its resources in discharging its functions.

But before entering into an agreement the Welsh Ministers or a Minister of the Crown (as the case may be) must consult the WAO.

- (4) In determining how to exercise functions under subsection (3)(b) the Auditor General must take into account the views of the National Assembly's Public Accounts Committee as to the examinations which the Auditor General should carry out under that subsection.

- (5) If an Order in Council under section 58 (transfer of ministerial functions) of the Government of Wales Act 2006 transfers a function of preparing accounts to the Welsh Ministers, the Secretary of State may by order provide for the transfer to the Auditor General of any function of the Comptroller and Auditor General in relation to those

accounts.

- (6) An order made by the Secretary of State under subsection (5) may –
- (a) make different provisions for different cases or classes of case, or for different purposes,
  - (b) be exercised so as to make provision which applies generally or subject to specified exemptions or exceptions or only in relation to specific cases or classes of case,
  - (c) make supplementary, incidental, consequential, transitory, transitional or saving provision,
  - (d) make such modifications of –
    - (i) any enactment or prerogative instrument, or
    - (ii) any other instrument or document,
 as the Secretary of State considers appropriate in connection with the provision made by the order.
- (7) An Order in Council under section 58 of the Government of Wales Act 2006 may include any provision that may be included in an order made by the Secretary of State under subsection (5).
- (8) If the Treasury designates the Welsh Ministers in respect of a financial year for the purposes of section 10 (whole of government accounts) of the Government Resources and Accounts Act 2000, the Auditor General must carry out the audit required by subsection (2)(c) of that section.
- (9) Where the Treasury makes arrangements with the Welsh Ministers under subsection (8) of that section, the Auditor General must carry out the audit required by paragraph (c) of that subsection.
- (10) No order under subsection (5) which contains provisions in the form of amendments or repeals of enactments contained in an Act is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.
- (11) A statutory instrument containing an order under subsection (5) is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

## **26 Transfer etc of functions of the Comptroller and Auditor General**

- (1) The Secretary of State may by order provide for any function of the Comptroller and Auditor General, so far as relating to a public body falling within subsection (2), to be transferred to, or become a function also of, the Auditor General.
- (2) The public bodies falling within this subsection are any public body whose functions relate exclusively to Wales or an area of Wales.
- (3) But public bodies under subsection (2) do not include –
  - (a) the Auditor General;
  - (b) Her Majesty's Chief Inspector of Education and Training in Wales;

(c) the Public Services Ombudsman for Wales;

(d) a county council, a county borough council or a community council.

(4) An order under subsection (1) may contain appropriate consequential, incidental, supplementary or transitional provisions or savings (including provisions in the form of amendments or repeals of enactments).

(5) No order under subsection (1) which contains provisions in the form of amendments or repeals of enactments contained in an Act is to be made unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

(6) A statutory instrument containing an order under subsection (1) is (unless a draft of the statutory instrument has been approved by a resolution of each House of Parliament) subject to annulment in pursuance of a resolution of either House of Parliament.

(7) An Order in Council under section 58 (transfer of ministerial functions) of the Government of Wales Act 2006 may include any provision that may be included in an order made by the Secretary of State under subsection (1).

## **27 Transfer etc of the functions of the Welsh Ministers**

(1) The Welsh Ministers may, with the consent of the Auditor General, by order provide for any of their supervisory functions in respect of a public body or a registered social landlord—

(a) to be exercised on their behalf by the Auditor General, or

(b) to be transferred to the Auditor General.

(2) But before giving consent under subsection (1) the Auditor General must consult the WAO.

(3) In this section “supervisory functions” means functions of examining, inspecting, reviewing or studying the financial or other management of a public body or registered social landlord, or the way in which it discharges any of its functions.

(4) The Auditor General may prepare a report on his or her exercise, generally or in respect of a specific public body or registered social landlord or a specific matter, of any function transferred to him or her by an order under subsection (1)(b).

(5) The Auditor General must lay before the National Assembly any report prepared by him or her under subsection (4).

(6) An order under subsection (1) may make amendments or repeals of enactments.

## **CHAPTER 2**

### **WELSH MINISTERS, NATIONAL ASSEMBLY COMMISSION AND OTHER WELSH PUBLIC BODIES**

#### *Audit of accounts*

## **28 Welsh Ministers**

(1) The Welsh Ministers must for each financial year, in accordance with directions given to

them by the Treasury –

- (a) keep proper accounts and proper records in relation to them, and
- (b) prepare a statement of accounts.

5 (2) The statement of accounts for each financial year must be submitted to the Auditor General no later than 30 November in the following financial year.

(3) The accounts and statement of accounts must include details of the financial affairs and transactions of the Counsel General and the First Minister.

10 (4) Subsection (5) applies where, by virtue of any enactment other than this section, the Welsh Ministers are under an obligation to prepare accounts or a statement of accounts dealing with any matters.

(5) If it appears to the Treasury that the matters referred to in subsection (4) fall to be dealt with in accounts or statement of accounts prepared by the Welsh Ministers in accordance with this section, the Treasury may relieve the Welsh Ministers of the other obligation for or in respect of such periods as the Treasury may direct.

15 (6) Directions which the Treasury may give under subsection (1) include directions to include in the accounts and statement of accounts details of the financial affairs and transactions of persons other than the Welsh Ministers.

## 29 National Assembly Commission

20 (1) The National Assembly Commission must for each financial year, in accordance with directions given to it by the Treasury –

- (a) keep proper accounts and proper records in relation to them, and
- (b) prepare a statement of accounts.

(2) The statement of accounts for each financial year must be submitted to the Auditor General no later than 30 November in the following financial year.

25 (3) Directions which the Treasury may give under subsection (1) include directions to include in the accounts and statement of accounts details of the financial affairs and transactions of persons other than the National Assembly Commission.

## 30 Other Welsh public bodies subject to audit

(1) A public body listed in column (1) of Table 1 must for each financial year –

- (a) keep proper accounts and proper records in relation to them, and
- (b) prepare a statement of accounts,

in accordance with directions given to it by the directing authority.

35 (2) The directing authority in respect of a public body listed in column (1) of Table 1 is the authority which appears in the corresponding entry for that body in column (2) of the Table.

(3) Where the Welsh Ministers are the directing authority, they must obtain the consent of the Treasury before giving directions to a body listed in column (1) of Table 1 where that is specified in the corresponding entry for that body in column (2).

(4) A statement of accounts prepared by a public body under this section must be

submitted –

(a) to the Auditor General, and

(b) where specified in the corresponding entry for that body in column (4) of Table 1, to the Welsh Ministers.

(5) A statement of accounts must be submitted by a public body no later than the date specified in the corresponding entry for that body in column (3) of Table 1 in the financial year following that to which the statement relates.

(6) In this Chapter, “a Welsh NHS body” means –

(a) a Local Health Board;

(b) an NHS trust all or most of whose hospitals, establishments and facilities are situated in Wales;

(c) a Special Health Authority performing functions only or mainly in respect of Wales.

**Table 1**

<b>(1) Public body</b>	<b>(2) Directing authority</b>	<b>(3) Date of submission of statement of accounts</b>	<b>(4) Requirement to submit statement of accounts to Welsh Ministers</b>
The Public Services Ombudsman for Wales	Treasury	30 November	No
The Commissioner for Older People in Wales	Welsh Ministers with the consent of the Treasury	30 November	Yes
The Children’s Commissioner for Wales	Welsh Ministers with the consent of the Treasury	31 August	Yes
The Local Government Boundary Commission for Wales	Welsh Ministers	31 August	Yes
Her Majesty’s Chief Inspector for Education and Training in Wales	Treasury	30 November	Yes
The Forestry Commissioners	Treasury	30 November	Yes
The Countryside Council for Wales	Welsh Ministers with the consent of the Treasury	30 November	Yes
The General Teaching Council for Wales	Welsh Ministers	31 August	Yes

	(1) Public body	(2) Directing authority	(3) Date of submission of statement of accounts	(4) Requirement to submit statement of accounts to Welsh Ministers
5	The Higher Education Funding Council for Wales	Welsh Ministers with the consent of the Treasury	31 August	Yes
10	The National Library of Wales	Welsh Ministers with the consent of the Treasury	31 August	Yes
	The National Museum of Wales	Welsh Ministers with the consent of the Treasury	31 August	Yes
15	The Welsh levy board	Welsh Ministers	30 November	Yes
	A Welsh NHS body	Welsh Ministers with the consent of the Treasury	31 August	Yes
20	The Welsh Language Commissioner	Welsh Ministers with the consent of the Treasury	31 August	Yes
	The Care Council for Wales	Welsh Ministers	30 November	Yes
25	The Wales Centre for Health	Welsh Ministers	30 November	Yes
	The Sports Council for Wales	Welsh Ministers	31 August	Yes
30	The Royal Commission on Ancient and Historical Monuments in Wales	Welsh Ministers	31 August	Yes

### 31 Public bodies subject to audit under section 30: limitations

(1) The obligations on a Welsh NHS body in section 30 do not extend to accounts relating to charitable or non-charitable trusts for which that body is a trustee.

(2) The obligations on the Forestry Commissioners in section 30 extend only –

(a) to accounts relating to sums received by them under section 105 of the Government of Wales Act 1998;

(b) in respect of transactions carried out by them in the exercise of any of their functions in relation to Wales.

### 32 Audit of summarised accounts of Welsh NHS bodies



- (1) This section applies to a Welsh NHS body that is not a Special Health Authority.
- (2) The Welsh Ministers must prepare summarised accounts in relation to such a body for each financial year.
- (3) The obligation to prepare summarised accounts for a body does not extend to accounts relating to charitable or non-charitable trusts for which that body is a trustee.
- (4) Summarised accounts must be prepared in accordance with directions given by the Treasury.
- (5) Summarised accounts for each financial year must be submitted by the Welsh Ministers to the Auditor General no later than 30 November in the following financial year.
- (6) This section has effect subject to any provision made under section 14(1) of the Government Resources and Accounts Act 2000 (power to disapply this section in relation to specified bodies and years).

### **33 Audit of accounts of officers of Welsh NHS bodies**

- (1) This section applies where an officer of a Welsh NHS body receives money or other property –
  - (a) on behalf of that body, or
  - (b) which he or she ought to account to that body.
- (2) An officer of a Welsh NHS body must for each financial year –
  - (a) keep proper accounts and proper records in relation to them, and
  - (b) prepare a statement of accounts,in accordance with directions given to him or her by the Welsh Ministers.
- (3) A statement of accounts prepared under this section must be submitted by an officer of a Welsh NHS body to the Auditor General.
- (4) A statement of accounts for each financial year must be submitted no later than 31 August in the following financial year.

### **34 Audit of higher and further education corporations**

- (1) A higher education corporation and a further education corporation in Wales must, for each financial year –
  - (a) keep proper accounts and proper records in relation to them, and
  - (b) prepare a statement of accounts,in accordance with directions given to it by the directing authority.
- (2) The directing authority for a higher education corporation is the Higher Education Funding Council for Wales.
- (3) The directing authority for a further education corporation is the Welsh Ministers.
- (4) A higher education corporation or further education corporation is not obliged to submit its statement of accounts to the Auditor General to be audited.
- (5) But it may choose to do so.
- (6) If a higher education corporation or further education corporation chooses to submit its

statement of accounts for a financial year to the Auditor General it must do so no later than 31 August in the following financial year.

(7) If a higher education corporation or further education corporation chooses not to submit its statement of accounts to the Auditor General, it must, for each financial year, appoint another person as auditor.

(8) Before appointing another person as auditor under subsection (7) a corporation must consult, and take into account any advice given by, the Auditor General.

(9) A person appointed as auditor under subsection (7) must be –

(a) an individual, or firm, eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006;

(b) a member of the Chartered Institute of Public Finance and Accountancy; or

(c) a firm each of the members of which is a member of that institute.

(10) The Auditor General may, at the request of the Higher Education Funding Council for Wales, give the council advice in connection with the discharge of the council's function of giving directions to higher education corporations under subsection (2).

### 35 Audit of further and higher education corporations: powers of Auditor General

The Auditor General may, at the request of a further or higher education corporation in Wales –

(a) advise it in connection with the appointment of persons to audit its accounts, or

(b) audit its accounts for a financial year.

### 36 Meaning of further education corporation and higher education corporation

(1) In this Chapter –

(a) “further education corporation” and “higher education corporation” have the same meaning as in the Further and Higher Education Act 1992;

(b) references to the accounts of a higher education corporation include references to a statement of accounts prepared by the corporation under section 124B of the Education Reform Act 1988 or paragraph 18 of Schedule 7 to that Act.

(2) Sections 34 and 35 must be construed as one with the Education Act 1996; and references in any enactment to the Education Acts include these sections.

*General provisions relating to audit of bodies under this Chapter*

### 37 Content of accounts and statement of accounts

(1) This section applies to accounts or a statement of accounts prepared by –

(a) the Welsh Ministers under section 28;

(b) the National Assembly Commission under section 29;

(c) a public body under section 30;

(d) an officer of a Welsh NHS body under section 33;

(e) a higher education corporation or a further education corporation under section

34.

- (2) Accounts and statements of accounts must give a true and fair account of—
- (a) the state of the person's affairs at the end of the financial year, and
  - (b) the person's income and expenditure in the financial year.

5 **38 Directions relating to accounts and statement of accounts**

- (1) This section applies to directions given by—
- (a) the Treasury under sections 28, 29 or 32;
  - (b) a directing authority under section 30;
  - (c) the Welsh Ministers under section 33;
  - 10 (d) the Higher Education Funding Council for Wales or the Welsh Ministers under section 34.
- (2) Directions may include (amongst other things) requirements as to—
- (a) the financial affairs and transactions to which the accounts or statement of accounts are to relate,
  - 15 (b) the information to be contained in the accounts or statement of accounts and the manner in which it is to be presented,
  - (c) the methods and principles in accordance with which the accounts or statement of accounts are to be prepared, and
  - 20 (d) the additional information (if any) that is to accompany the accounts or statement of accounts.
- (3) In the case of the Public Services Ombudsman for Wales, directions which the Treasury may give under section 30 include directions to include in the accounts and statement of accounts details of the financial affairs and transactions of persons other than the Public Services Ombudsman for Wales.

25 **39 Functions of the Auditor General: audit of accounts**

- (1) This section applies to a statement of accounts submitted to the Auditor General by—
- (a) the Welsh Ministers under section 28;
  - (b) the National Assembly Commission under section 29;
  - (c) a public body under section 30;
  - 30 (d) an officer of a Welsh NHS body under section 33;
  - (e) a higher education corporation or a further education corporation under section 34 (where it chooses to do so).
- (2) This section also applies to summarised accounts submitted to the Auditor General under section 32 (and references in subsections (3) to (5) to "a statement of accounts" are to be interpreted as including summarised accounts).
- 35 (3) The Auditor General must—
- (a) examine, certify and report on a statement of accounts submitted to him or her,

(b) provide a copy of the statement of accounts as certified by him or her together with his or her report on it to the person who submitted the statement of accounts, and

(c) no later than four months after a statement of accounts is submitted, lay before the National Assembly a copy of the statement of accounts as certified by him or her together with his or her report on them.

(4) The Auditor General must, in particular, be satisfied from an examination of the statement of accounts submitted to him or her –

(a) that the expenditure to which the statement of accounts relate has been incurred lawfully and in accordance with the authority which governs it,

(b) that money received by the body to which the statement of accounts relates for a particular purpose or particular purposes has not been expended otherwise than for that purpose or those purposes,

(c) that the statement of accounts comply with the requirements of all statutory provisions applicable to the accounts or statement of accounts, and

(d) that proper practices have been observed in the compilation of the statement of accounts.

(5) The Auditor General must also consider whether the public body to which the statement of accounts relates has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

#### *Value for money examinations*

#### **40 Functions of the Auditor General: economy, efficiency and effectiveness examinations**

(1) The Auditor General may carry out examinations into, and (if the Auditor General chooses) make recommendations in respect of, the economy, efficiency and effectiveness with which a person listed in subsection (4) –

(a) has discharged its functions, or

(b) has used its resources in discharging its functions.

(2) The Auditor General may also carry out examinations into, and (if the Auditor General chooses) make recommendations in relation to, the provision of services by a person listed in subsection (4).

(3) But in carrying out examinations and making recommendations under subsection (1) or (2) the Auditor General is not entitled to question the merits of the policy objectives of the person.

(4) The persons subject to examination under subsections (1) and (2) are –

(a) the Welsh Ministers (including the Counsel General and the First Minister);

(b) the National Assembly Commission;

(c) a public body listed in column (1) of Table 1 in section 30 (as it may be amended from time to time);

(d) the additional persons listed in section 41;

(e) the education bodies listed in section 47, but only where the Auditor General is

requested to carry out an examination in a way specified by that section.

- (5) A Welsh NHS body is not subject to examination under subsection (4)(c) in so far as it exercises functions by virtue of being a trustee of a charitable or non-charitable trust.
- (6) The Forestry Commissioners are subject to examination under subsection (4)(c) only in relation to –
- (a) the use of sums received by them under section 105 of the Government of Wales Act 1998;
  - (b) the exercise of any of their functions in relation to Wales.

#### 41 Additional persons subject to examination

- (1) The additional persons subject to examination under section 40 are –
- (a) a person (other than a local government body and an officer of a Welsh NHS body) who prepares accounts or statements of accounts falling to be examined by the Auditor General in accordance with any provision of an enactment;
  - (b) a person (other than a local government body) in relation to whom, by virtue of a provision of any enactment, the Auditor General carries out examinations relating to the economy, efficiency and effectiveness with which that person has used its resources in discharging its functions;
  - (c) a person (other than a registered social landlord) in respect of whom the Auditor General has functions by virtue of provision made under section 27 (transfer etc of the functions of the Welsh Ministers);
  - (d) a registered social landlord, but only where the Welsh Ministers and the Auditor General have agreed that one or more registered social landlords should be subject to examination;
  - (e) the Environment Agency but only in respect of –
    - (i) sums received by the Agency from the Welsh Ministers;
    - (ii) functions exercisable in relation to Wales;
    - (iii) functions exercisable in relation to a cross-border body in relation to which the Welsh Ministers have environmental functions;
    - (iv) functions exercisable in relation to an English border area in relation to which the Welsh Ministers have environmental functions.
- (2) The Auditor General may disclose to the Welsh Ministers information obtained by him or her in the course of an examination of a registered social landlord.
- (3) In this section –

“cross-border body” means any body (including a government department) or undertaker exercising functions or carrying on activity, in or with respect Wales (or any part of Wales) and anywhere else;

“English border area” means a part of England adjoining Wales (but not the whole of England);

“environmental functions” means functions in a field in which the Environment Agency has functions.

**42 Education bodies subject to examination upon request**

The education bodies in Wales subject to examination under section 40 are those listed in the first column of Table 2, but only where the Auditor General is requested to carry out an examination by the body itself or by the authority listed in the corresponding entry in the second column of Table 2.

**Table 2**

	<b>Education body</b>	<b>Requesting authority</b>
	An institution within the higher education sector	The Higher Education Funding Council for Wales
10	The governing body of a higher education institution	The Higher Education Funding Council for Wales
	The governing body of an institution that receives payment under section 86 of the Education Act 2005	The Higher Education Funding Council for Wales
15	A training provider that receives financial support under section 78 of the Education Act 2005 from the Training and Development Agency for Schools (except where that financial support is wholly derived from grants made to the Agency by the Secretary of State).	The Training and Development Agency for Schools
20	An institution within the further education sector	The Welsh Ministers
	The governing body of a further education institution	The Welsh Ministers

*General provisions relating to examinations***43 Views of National Assembly Public Accounts Committee**

In determining how to undertake an examination under section 40 the Auditor General must take into account the views of the National Assembly's Public Accounts Committee.

**44 Reports on examinations**

The Auditor General may lay before the National Assembly a report of –

- (a) the results of any examination carried out under section 40, and
- (b) the Auditor General's recommendations (if any) that follow from the examination.

**45 Reports in the public interest**

- (1) If the Auditor General thinks that it would be in the public interest to bring to the public's attention a matter coming to the Auditor General's notice in the course of the exercise of his or her functions under this Chapter, the Auditor General may prepare a report on that matter.

- (2) The Auditor General must, as soon as practicable after preparing a report, lay the report before the National Assembly.

*Modifying the bodies subject to audit and examination*

**46 Amending the list of public bodies subject to audit or examination**

- 5 (1) The Welsh Ministers may by order amend the list of public bodies in column (1) of Table 1 in section 30 by –
- (a) adding a person or omitting a public body;
  - (b) altering the description of a public body.
- 10 (2) Before making an order under subsection (1) the Welsh Ministers must consult with that body and with any other persons the Welsh Ministers consider appropriate.
- (3) The following public bodies cannot be omitted from the list of bodies subject to audit or examination –
- (a) the Public Services Ombudsman for Wales;
  - (b) the Commissioner for Older People in Wales;
  - 15 (c) the Children’s Commissioner for Wales;
  - (d) Her Majesty’s Chief Inspector for Education and Training in Wales;
  - (e) the Welsh Language Commissioner.
- (4) An order made under subsection (1) may –
- (a) contain modifications that the Welsh Ministers consider appropriate;
  - 20 (b) be made in relation to all or some of the person or body’s functions, activities or funding;
  - (c) be made in relation to one or more persons or bodies, or one or more classes of persons or bodies.
- (5) “Modifications” under subsection (4)(a) include (but are not limited to) –
- 25 (a) imposing, varying or removing requirements in respect of accounts (including statements of accounts) or the audit or examination of a statement of accounts;
  - (b) imposing, varying or removing requirements in respect of an examination into, the economy, efficiency and effectiveness with which a person discharges functions or uses resources in discharging functions;
  - 30 (c) preparation by a person of accounts extending to financial affairs and transactions of any undertaking (as defined in section 1161(1) of the Companies Act 2006) of which the person is (or, if it were an undertaking so defined, would be) a parent undertaking (within the meaning of section 1162 of that Act);
  - (d) the giving of (or amending or revoking) directions by the Welsh Ministers;
  - 35 (e) the publication and public inspection of documents (including reports);
  - (f) modifying the Auditor General’s right of access to documents and information under section 88.
- (6) The Welsh Ministers’ power under subsection (1) is limited to provisions –

- (a) which would be within the legislative competence of the National Assembly, or
- (b) that concern a person who exercises functions or carries out activities with respect to matters in relation to which the Welsh Ministers, First Minister or Counsel General exercise functions.

- 5 (7) An order under subsection (1) may only remove or restrict any function of the Comptroller and Auditor General if the Secretary of State consents.
- (8) The Welsh Ministers may make such other modifications of any provisions of this Act as they think appropriate in connection with, for the purpose of, or in consequence of, the exercise of the power in subsection (1).
- 10 (9) A change in the name of a public body in relation which the Auditor General exercises functions under this Chapter does not effect the operation of this Act in relation to the body.

#### 47 Power of the Welsh Ministers to make provision about reports

- 15 (1) The Welsh Ministers may by order make provision about reports made by a public body listed in column (1) of Table 1 in section 30 on its exercise of its functions.
- (2) But this power does not extend to making provisions about reports made by –
- (a) the Public Services Ombudsman for Wales;
  - (b) the Commissioner for Older People in Wales;
  - (c) the Children’s Commissioner for Wales;
  - 20 (d) Her Majesty’s Chief Inspector for Education and Training in Wales;
  - (e) the Welsh Language Commissioner.

#### 48 Power to designate accounting officers

- 25 (1) The Welsh Ministers may by order make provision for the Permanent Secretary to the Welsh Government to designate accounting officers of any of the following bodies, and to specify the officer’s responsibilities –
- (a) a public body listed in column (1) of Table 1 in section 30;
  - (b) a public body which could, by virtue of section 46, be added to the list in column (1) of Table 1 in section 30 (whether or not that body has been added).
- (2) The power to designate accounting officers includes power for the Permanent Secretary to designate additional accounting officers of a public body and to specify their responsibilities.
- 30 (3) An order may enable a person that is designated as the accounting officer of a public body to designate additional accounting officers of the body and to specify their responsibilities.
- 35 (4) But a designated accounting officer’s ability to designate additional accounting officers and specify their responsibilities must be made subject to obtaining the consent of the Permanent Secretary.
- (5) But this power does not extend to making provisions designating an accounting officer of –



- (a) the Public Services Ombudsman for Wales;
- (b) the Commissioner for Older People in Wales;
- (c) the Children’s Commissioner for Wales;
- (d) Her Majesty’s Chief Inspector for Education and Training in Wales;
- 5 (e) the Welsh Language Commissioner.
- (6) If requested to do so by the House of Commons Committee of Public Accounts, the National Assembly’s Public Accounts Committee may –
- (a) take evidence on behalf of the House of Commons Committee of Public Accounts from a person designated by virtue of this section as an accounting officer (including an additional accounting officer designated under subsection (1)) of a public body, and
- 10 (b) report to the House of Commons Committee of Public Accounts and transmit to that Committee any evidence so taken.
- (7) The “Permanent Secretary to the Welsh Government” means the person appointed in accordance with section 52 of the Government of Wales Act 2006 to be the head of the staff of the Welsh Government (whether or not that person is known by the title of Permanent Secretary to the Welsh Government).
- 15

### CHAPTER 3

#### WELSH LOCAL GOVERNMENT

#### *Meaning of “local government body”*

20

#### **49 Local government bodies**

- (1) In this Part, “local government body” means any of the following –
- (a) a local authority;
- (b) a committee of a local authority (including a joint committee of two or more authorities);
- 25 (c) a port health authority for a port health district wholly in Wales;
- (d) a National Park authority for a National Park in Wales;
- (e) a conservation board established by order of the Welsh Ministers under section 86 of the Countryside and Rights of Way Act 2000;
- 30 (f) [a police and crime commissioner for a police area in Wales];
- (g) [a chief constable of a police force maintained under section 2 of the Police Act 1996 for a police area in Wales];
- (h) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies;
- 35 (i) an internal drainage board for an internal drainage district wholly in Wales;
- (j) a Welsh probation trust (as defined by paragraph 13(6) of Schedule 1 to the Offender Management Act 2007).

- (2) The Welsh Ministers may by order amend the list of bodies in subsection (1) by –
- (a) adding a public body whose functions –
    - (i) relate exclusively to Wales or an area of Wales, and
    - (ii) relate to matters which fall within the legislative competence of the National Assembly;
  - (b) omitting a body;
  - (c) altering the description of a body.
- (3) A change in the name of a body listed in subsection (1) does not effect the operation of this Act in relation to the body.

*Audit of accounts*

**50 Audit of accounts of local government bodies**

- (1) A local government body must make up its accounts each year to 31 March (or such other date as the Welsh Ministers may generally or in any special case direct).
- (2) The Auditor General must audit a local government body's accounts in accordance with this Chapter.

**51 General duties on audit of accounts**

- (1) This section applies in relation to the audit of a local government body's accounts under this Chapter.
- (2) The Auditor General must –
- (a) satisfy himself or herself of the following –
    - (i) that the accounts are prepared in accordance with regulations under section 69;
    - (ii) that they comply with the requirements of all other statutory provisions applicable to the accounts;
    - (iii) that proper practices have been observed in the compilation of the accounts;
    - (iv) that the body, if required to publish information in pursuance of a direction under section 75 (performance information) has made such arrangements for collecting and recording the information and for publishing it as are required for the performance of its duties under that section.
  - (b) consider whether the body has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

*Auditor General reports and recommendations*

**52 Immediate and other reports in public interest**

- (1) In auditing accounts of a local government body under this Chapter, the Auditor General must consider whether, in the public interest, he or she should make a report on any matter which comes to his or her notice in the course of the audit, in order for it to be –

- (a) considered by the body, or
- (b) brought to the attention of the public.

- 5
- (2) If the Auditor General considers that, in the public interest, a report should be made, he or she must consider whether the public interest requires the matter to be made the subject of an immediate report.
- (3) If the Auditor General considers that the public interest requires the matter to be made the subject of an immediate report, he or she must make the report immediately.
- 10
- (4) If the Auditor General considers that the public interest does not require the matter to be made the subject of an immediate report, he or she must make the report at the conclusion of the audit.
- (5) In a case within subsection (3), the Auditor General must send the report to the body immediately after making it.
- 15
- (6) In a case within subsection (4), the Auditor General must send the report to the body before the end of the period of 14 days starting with the day on which he or she concludes the audit.

### 53 General report

- 20
- (1) This section applies if the Auditor General has concluded an audit of a local government body's accounts under this Chapter.
- (2) If a statement of accounts is required to be prepared by regulations under section 69 (accounts and audit regulations), the Auditor General must enter on the statement –
- (a) a certificate that the audit has been completed in accordance with this Chapter, and
  - (b) his or her opinion on the statement.
- 25
- (3) In any other case, the Auditor General must enter on the accounts –
- (a) a certificate that the audit has been completed in accordance with this Chapter, and
  - (b) his or her opinion on the accounts.
- 30
- (4) But if the Auditor General makes a report under section 52 (immediate and other reports in public interest) at the conclusion of the audit, the Auditor General may include the certificate and opinion referred to in subsections (2) and (3) in the report instead of making an entry on the statement or accounts.

### 54 Consideration of reports in public interest

- 35
- (1) This section applies if the Auditor General makes a report under section 52 (immediate and other reports in public interest) on a matter which comes to his or her notice in the course of the audit of the accounts of a local government body.
- (2) The body must take the report into consideration –
- (a) as soon as practicable after receiving it, if the body is a body mentioned in subsection (3);
  - (b) in accordance with section 55 (procedure for consideration of reports and

recommendations), in any other case.

(3) The bodies referred to in subsection (2)(a) are –

- (a) a port health authority;
- (b) a conservation board;
- (c) an internal drainage board;
- (d) a probation trust.

(4) The agenda supplied to members of the body for a meeting of the body at which the report is to be considered must be accompanied by the report.

(5) Subsection (6) applies to these powers –

- (a) the power under section 1(4)(b) of the Public Bodies (Admission to Meetings) Act 1960 to exclude items from the agenda of a meeting supplied under that section (supply of agenda etc to newspapers);
- (b) the power under section 100B(2) of the Local Government Act 1972 to –
  - (i) exclude the whole report or any part of a report open to inspection under section 100B(1) of that Act (copies of agenda to be open to public inspection),
  - (ii) exclude the whole report or any part of a report to be open to the public under section 100B(6) of that Act (public access to agenda and reports before meetings), or
  - (iii) exclude the whole report or any part of a report to be supplied under section 100B(7) of that Act (supply of agenda etc to newspapers).

(6) The powers mentioned in subsection (5) do not include power to exclude the report mentioned in subsection (4) (or any part of it).

(7) Part 5A of the Local Government Act 1972 has effect in relation to the report mentioned in subsection (4) as if section 100C(1)(d) (public access to copies of reports for 6 years after meeting) of that Act were not limited to so much of the report as relates to an item during which the meeting was open to the public.

## 55 Procedure for consideration of reports and recommendations

(1) This section applies if a local government body is required under section 54(2)(b) to take a report into consideration in accordance with this section.

(2) This section also applies if the Auditor General in auditing any accounts of a local government body –

- (a) sends to the body a written recommendation, and
- (b) states in the document containing the recommendation that, in his or her opinion, the recommendation should be considered in accordance with this section.

(3) But subsection (2) does not apply if the body is –

- (a) a port health authority;
- (b) a conservation board;
- (c) an internal drainage board;

(d) a probation trust.

(4) If this section applies, the body must consider the report or recommendation at a meeting held by it before the end of the period of one month starting with the day on which the Auditor General sends the report or recommendation to it.

5 (5) At the meeting, the body must decide –

(a) if a report under section 52 (immediate and other reports in public interest) is considered at the meeting, whether the report requires it to take any action;

(b) if a recommendation within subsection (2) is considered at the meeting, whether the recommendation is to be accepted;

10 (c) what action (if any) to take in response to the report or recommendation.

(6) The Auditor General may extend the period of one month mentioned in subsection (4) in relation to a report or recommendation if he or she is satisfied that it is reasonable to allow the body more time to comply with its duties under subsections (4) and (5) in relation to the report or recommendation.

15 (7) A period may be extended under subsection (6) more than once.

(8) Nothing in section 101 of the Local Government Act 1972 (delegation of functions) applies to a duty imposed on a body by this section.

(9) This section does not affect any duties (so far as they relate to the subject-matter of a report or recommendation) imposed by or under –

20 (a) this Act;

(b) sections 114 to 116 (reports by chief finance officers) of the Local Government Finance Act 1988 ;

(c) section 5 (functions of monitoring officers) of the Local Government and Housing Act 1989;

25 (d) any other enactment.

## 56 Publicity for meetings under section 55

(1) This section applies if a local government body is required under section 55(4) to hold a meeting.

30 (2) The meeting may be held on a particular day only if, at least seven clear days before that day, a notice complying with subsection (3) has been published in a newspaper circulating in the area of the body.

(3) A notice complies with this subsection if it –

(a) states the time and place of the meeting,

35 (b) indicates that the meeting is to be held to consider a report or recommendation of the Auditor General (as the case may be), and

(c) describes the subject-matter of the report or recommendation.

(4) As soon as practicable after the meeting, the body must –

(a) ensure that the Auditor General is notified of the decisions made by the body under section 55(5),

- (b) obtain the approval of the Auditor General to a written summary of those decisions (“the approved summary”), and
- (c) ensure that a notice containing the approved summary is published in one or more newspapers circulating in the area of the body.
- 5 (5) The approved summary need not summarise any decision made at the meeting while the public were excluded –
- (a) under section 100A(2) (confidential information) of the Local Government Act 1972;
- 10 (b) in pursuance of a resolution under section 100A(4) (exempt information) of that Act;
- (c) in pursuance of a resolution under section 1(2) (protection of public interest) of the Public Bodies (Admission to Meetings) Act 1960.
- (6) But if sections 100C and 100D (availability for inspection after meeting of minutes, background papers and other documents) of the Local Government Act 1972 apply in relation to the meeting, the approved summary must indicate the documents in relation to the meeting which are open for inspection under those sections.
- 15 (7) This section does not affect any provisions made in relation to meetings of a body by section 54(4) to (7) or by or under –
- (a) the Local Government Act 1972;
- 20 (b) the Public Bodies (Admission to Meetings) Act 1960;
- (c) any other enactment.

### 57 Additional publicity for immediate reports

- (1) This section applies where under section 52(5) the Auditor General has sent a report made under section 52(3) to a local government body.
- 25 (2) From the time when the report is received by the body any member of the public may –
- (a) inspect the report at all reasonable times without payment;
- (b) make a copy of the report or any part of it at all reasonable times without payment;
- 30 (c) require the body to supply him or her, on payment of a reasonable sum, with a copy of the report or any part of it.
- (3) On receiving a report sent to it under section 52(5) a body must immediately –
- (a) ensure that a notice is published in one or more newspapers circulating in the area of the body,
- (b) supply a copy of the report to every member of the body, and
- 35 (c) publish a copy of the report on its website, if it has one.
- (4) The notice published under subsection (3) must –
- (a) identify the subject-matter of the report, and
- (b) state that any member of the public may inspect the report and make a copy of it or any part of it between such times and at such place or places as are specified in

the notice.

- (5) The Auditor General may –
- (a) notify any person that the report has been made;
  - (b) supply a copy of the report or of any part of it to any person.
- 5 (6) It is an offence for a person who has custody of a report made under section 52(3) –
- (a) to obstruct a person in the exercise of a right conferred by subsection (2)(a) or (b),  
or
  - (b) to refuse to comply with a requirement under subsection (2)(c).
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a  
10 fine not exceeding level 3 on the standard scale.
- (8) A body commits an offence if it fails to comply with a requirement of subsection (3).
- (9) A body guilty of an offence under subsection (8) is liable on summary conviction to a fine  
not exceeding level 3 on the standard scale.
- (10) Nothing in this section affects the operation of section 54(4) to (7).

15 **58 Additional publicity for non-immediate reports**

- (1) This section applies where under section 52(6) the Auditor General has sent a report  
made under section 52(4) to a local government body.
- (2) The body must publish a copy of the report on its website, if it has one.
- (3) The Auditor General may –
- 20 (a) notify any person that a report has been made;
  - (b) publish the report;
  - (c) supply a copy of the report or any part of it to any person.
- (4) From the time when the report is sent to the body –
- (a) the Auditor General must ensure that any member of the public may –
    - 25 (i) inspect the report at all reasonable times without payment;
    - (ii) make a copy of the report or any part of it at all reasonable times without  
payment;
  - (b) any member of the public may require the Auditor General to supply him or her  
on payment of a reasonable sum with a copy of the report or any part of it.

30 *Public inspection etc and action by Auditor General*

**59 Inspection of statements of accounts and Auditor General reports**

- (1) A local government elector for the area of a local government body may –
- 35 (a) at all reasonable times and without payment inspect and make a copy of any  
statement of accounts prepared by the body under regulations made under section  
69;
  - (b) at all reasonable times and without payment inspect and make a copy of any  
report (other than a report under section 52(3)) made to the body by the Auditor

General;

(c) require a copy of a statement or report falling within paragraph (a) or (b) to be delivered to him or her on payment of a reasonable sum for each copy.

(2) It is an offence for a person who has custody of a document falling within paragraph (a) or (b) of subsection (1) –

(a) to obstruct a person in the exercise of a right under this section to inspect or make a copy of the document, or

(b) to refuse to supply a copy of the document to a person entitled to the copy under subsection (1)(c).

(3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) In this section references to a copy of a document include a copy of any part of it.

## 60 Inspection of documents and questions at audit

(1) At an audit of accounts under this Chapter, a member of the public with an interest may –

(a) inspect the accounts to be audited and all books, deeds, contracts, bills, vouchers and receipts relating to them;

(b) make a copy of all or any part of the accounts and of any of the other documents mentioned in paragraph (a).

(2) At the request of a local government elector for any area to which accounts to be audited under this Chapter relate, the Auditor General must give the elector, or a representative of the elector, an opportunity to question the Auditor General about the accounts.

(3) But nothing in this section entitles a person –

(a) to inspect any accounts or other document relating to a body to the extent that the accounts contain, or the document contains, personal information;

(b) to require any personal information to be disclosed by the Auditor General in answer to any question.

(4) In subsection (3) “personal information” means information relating to an individual which is available to the local government body for reasons connected with either of these –

(a) the fact that the individual holds or has held an office or employment under the body;

(b) the fact that payments or other benefits are or have been made or provided to the individual by the body in respect of an office or employment under another person.

(5) For the purposes of subsection (4) payments made or benefits provided to an individual in respect of an office or employment include any payment made or benefit provided to an individual in respect of him or her ceasing to hold the office or employment.

## 61 Right to make objections at audit



- (1) A local government elector for an area to which an audit of accounts relate, or a representative of the elector, may make objections as to—
- (a) any matter in respect of which the Auditor General has a power to apply for a declaration under section 62 (declaration that item of account is unlawful);
- 5 (b) any other matter in respect of which the Auditor General has the power to make a report under section 52 (immediate and other reports in public interest).
- (2) An objection may be made—
- (a) in writing to the Auditor General, or
- (b) before the Auditor General at an audit of accounts .
- 10 (3) A local government elector, or a representative of the elector, proposing to make an objection before the Auditor General at an audit of accounts must—
- (a) give written notice to the Auditor General of the proposed objection and the grounds on which it is to be made, and
- 15 (b) at the same time, send a copy of the notice to the body whose accounts are being audited.
- (4) If a local government elector, or a representative of an elector, who has given notice of a proposed objection does not appear at the audit of accounts, the Auditor General may treat the notice as an objection in writing for the purposes of this section.

## 62 Declaration that item of account is unlawful

- 20 (1) Where it appears to the Auditor General in carrying out an audit under this Chapter that an item of account is contrary to law, the Auditor General may apply to the court for a declaration that the item is contrary to law.
- (2) On an application under this section the court may make or refuse to make the declaration applied for.
- 25 (3) If the court makes the declaration applied for it may also order rectification of the accounts.
- (4) If the Auditor General decides not to make an application for a declaration under this section in relation to an item of account, the Auditor General must notify a person who has made an objection under section 61(1)(a) in relation to the item of account of his or
- 30 her decision.
- (5) Subsection (4) does not apply if the person who has made the objection has failed to comply with section 61(2).
- (6) A person notified of the Auditor General's decision under subsection (4) may require the Auditor General to state in writing the reasons for the decision before the end of the
- 35 permitted period, which is 14 days starting with the day on which the person is notified of the decision.
- (7) A person who receives reasons for the Auditor General's decision under subsection (6) may appeal to the court against the decision before the end of the permitted period, which is 28 days starting with the day on which the person receives the reasons.
- 40 (8) On an appeal under subsection (7) the court has the same powers in relation to the item of account as it would have if the Auditor General had applied to the court for a

declaration under subsection (1) in relation to the item of account.

- (9) On an application or appeal under this section relating to the accounts of a body, the court may make such order as it thinks fit for the payment by the body of expenses incurred in connection with the application or appeal by –
- 5 (a) the Auditor General;
- (b) the person by whom the appeal is brought.
- (10) The High Court and the county courts have jurisdiction for the purposes of this section.

*Prevention of unlawful expenditure*

**63 Advisory notices**

- 10 (1) The Auditor General may issue a notice under this section (an “advisory notice”) if he or she has reason to believe that one or more of the following requirements are met.
- (2) The requirements are that –
- 15 (a) a local government body or an officer of the body is about to make or has made a decision which involves or would involve the body incurring expenditure which is unlawful;
- (b) a local government body or an officer of the body is about to take or has begun to take a course of action which, if pursued to its conclusion, would be unlawful and likely to cause a loss or deficiency;
- 20 (c) a local government body or an officer of the body is about to enter an item of account, the entry of which is unlawful.
- (3) For the purposes of this section and section 64 (effect of an advisory notice) the actions of any of these are to be treated as the actions of a body –
- (a) a committee or sub-committee of the body;
- (b) a person (other than an officer of the body) authorised to act on behalf of the body.
- 25 (4) An advisory notice is a notice which meets these requirements –
- (a) it is addressed to the body or officer;
- (b) it specifies which of the requirements specified in subsection (2) is met and the decision, course of action or item of account to which the notice relates;
- 30 (c) it specifies that the notice will take effect on the day a copy of it is served on the person to whom it is addressed;
- (d) it requires the body or officer to give the Auditor General not less than the specified period of notice in writing of the intention of the body or officer to –
- 35 (i) make or implement the decision to which the notice relates,
- (ii) take or continue to take the course of action to which the notice relates, or
- (iii) enter the item of account to which the notice relates.
- (5) For the purposes of subsection (4)(d) the specified period of notice is the period (not exceeding 21 days) specified in the advisory notice.
- (6) A copy of an advisory notice –

- (a) must be served on the body to which, or to an officer of which, it is addressed;
- (b) if the notice is addressed to an officer, must be served on the officer;
- (c) may be served on any other person considered appropriate by the Auditor General.

- 5 (7) The Auditor General must before the end of the required period serve a statement of reasons for the belief referred to in subsection (1) on –
- (a) the body, and
  - (b) if the advisory notice is addressed to an officer of the body, the officer.
- 10 (8) The required period for the purposes of subsection (7) is 7 days starting on the day on which a copy of the advisory notice was served on the body or officer that it addresses.
- (9) A document to be served on an officer of a body under this section must be served on the officer by addressing it to the officer and –
- (a) delivering it to him or her at an office of the body at which he or she is employed,
  - (b) leaving it at such an office, or
  - 15 (c) sending it by post to such an office.
- (10) An advisory notice may at any time be withdrawn by the Auditor General.
- (11) The Auditor General must give notice in writing of a withdrawal to any body, officer or other person on whom a copy of the advisory notice was served under subsection (6).

#### 64 Effect of an advisory notice

- 20 (1) Subsections (2) to (4) apply while an advisory notice has effect.
- (2) If the advisory notice relates to a decision, it is not lawful for the body concerned or an officer of the body to make or implement the decision unless and until the conditions set out in subsection (5) are met.
- 25 (3) If the advisory notice relates to a course of action, it is not lawful for the body concerned or an officer of the body to take or continue to take the course of action unless and until the conditions set out in subsection (5) are met.
- (4) If the advisory notice relates to an item of account, it is not lawful for the body concerned or an officer of the body to enter the item of account unless and until the conditions set out in subsection (5) are met.
- 30 (5) The conditions are –
- (a) that the body has considered the consequences of doing the thing mentioned in whichever of subsections (2) to (4) is applicable, in light of the advisory notice and the statement under section 63(7);
  - (b) that the body or officer has given the Auditor General the period of notice in writing required by the advisory notice under section 63(4)(d); and
  - 35 (c) that that period has expired.
- (6) An advisory notice takes effect on the day on which a copy of the notice is served on the body or officer that it addresses.
- (7) An advisory notice ceases to have effect –

(a) if a statement of reasons is not served in accordance with section 63(7), at the end of the period specified in section 63(8);

(b) in any other case, when it is withdrawn under section 63(10).

(8) The WAO may recover from the body concerned any expenses reasonably incurred by the Auditor General in or in connection with the issue of an advisory notice.

(9) In this section “the body concerned”, in relation to an advisory notice, means the body to which, or to an officer of which, the notice is addressed.

## 65 Advisory notices: legal actions

(1) The following subsection applies if—

(a) before an advisory notice is served, a body enters into a contract to dispose of or acquire an interest in land, and

(b) before the disposal or acquisition is completed, an advisory notice takes effect as a result of which it is unlawful for the body to complete the disposal or acquisition.

(2) The existence of the advisory notice does not prejudice any remedy in damages which may be available to any person as a result of the body’s failure to complete the contract.

(3) No action lies against the Auditor General in respect of loss or damage alleged to have been caused as a result of an advisory notice which was issued in good faith.

*[saving required for section 35(3) PAWA]*

## 66 Power of Auditor General to make a claim for judicial review

(1) The Auditor General may make a claim for judicial review with respect to a decision of a local government body or a failure of the body to act, if it is reasonable to believe that the decision or failure to act would have an effect on the body’s accounts.

(2) This is subject to section 31(3) (no claim for judicial review without permission of court) of the Senior Courts Act 1981.

(3) The existence of the powers conferred on the Auditor General under this Chapter is not a ground for refusing—

(a) a claim falling within subsection (1), or

(b) an application for permission to make a claim falling within subsection (1).

(4) On a claim by the Auditor General for judicial review with respect to a decision of a body or a failure of a body to act, the court may make any order it thinks fit for the payment by the body of expenses incurred by the Auditor General in connection with the claim.

## 67 Extraordinary audit

(1) The Auditor General may hold an extraordinary audit of the accounts of a local government body if—

(a) the Auditor General thinks it would be desirable, or

(b) an application for an extraordinary audit of the body’s accounts is made by a local government elector for the area of the body.

(2) The Welsh Ministers may request that the Auditor General to hold an extraordinary audit

of the accounts of a local government body if it appears to them to be desirable in the public interest for an extraordinary audit of the body's accounts to be held.

- (3) The Auditor General must comply with the request, unless the request is unreasonable.
- (4) These provisions apply to an extraordinary audit under this section as they apply to an ordinary audit under this Chapter –
- (a) section 51 (general duties on audit of accounts);
  - (b) sections 88 (rights of Auditor General to documents and information) and 16 (Auditor General rights to document and information: offences);
  - (c) sections 52 to 58 (Auditor General reports and recommendations);
  - (d) sections 61 (right to make objections at audit) and 62 (declaration that item of account is unlawful).
- (5) An extraordinary audit of a body's accounts may be held under this section only if 3 clear days' notice in writing of the audit is given to the body.
- (6) The expenditure incurred in holding an extraordinary audit of a body's accounts under this section must be met in the first instance by the Auditor General.
- (7) The WAO may recover all or part of the expenditure from the body.

#### **68 Audit of accounts of officers**

- (1) This section applies if an officer of a local government body receives money or other property –
- (a) on behalf of the body, or
  - (b) for which the officer ought to account to the body.
- (2) The auditor of the body's accounts must audit the officer's accounts.
- (3) These provisions apply with the necessary modifications to the accounts and audit –
- (a) section 19;
  - (b) section 21
  - (c) section 50(1);
  - (d) sections 51 to 54;
  - (e) sections 57 to 62;
  - (f) section 67;
  - (g) section 69.

#### **69 Accounts and audit regulations**

- (1) The Welsh Ministers may, by regulations applying to local government bodies, make provision with respect to –
- (a) keeping accounts;
  - (b) the form, preparation and certification of accounts and of statements of accounts;
  - (c) the deposit of the accounts of a body at the offices of the body or at another place;
  - (d) the publication of information relating to accounts and the publication of

statements of accounts;

- (e) the exercise of any rights of objection or inspection conferred by section 59, 60 or 61 and the steps to be taken by a body for informing local government electors for the area of the body of those rights.

- 5 (2) Before making any regulations the Welsh Ministers must consult—
- (a) the Auditor General,
- (b) any associations of local authorities in Wales which appear to them to be concerned, and
- (c) any bodies of accountants which appear to them to be appropriate.
- 10 (3) A person commits an offence if—
- (a) without reasonable excuse the person contravenes a provision of regulations under this section, and
- (b) the regulations declare that contravention of the provision is an offence.
- (4) If a person charged with an offence under subsection (3) adduces evidence of reasonable  
15 excuse for the failure, it is for the prosecution to prove that the person did not have such an excuse.
- (5) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) Subsection (7) applies if—
- 20 (a) a person is convicted of committing an offence under subsection (3) in relation to a body, and
- (b) expenses are incurred by the Auditor General in connection with proceedings for the offence.
- (7) The expenses may be recovered from the convicted person or the body, to the extent that  
25 they are not recovered from any other source.

*Value for money studies*

**70 Studies for improving economy etc in services**

- (1) The Auditor General must for each financial year undertake or promote studies designed to enable him or her to make recommendations—
- 30 (a) for improving economy, efficiency and effectiveness in the discharge of the functions of Welsh improvement authorities for the purposes of Part 1 of the Local Government (Wales) Measure 2009;
- (b) for improving economy, efficiency and effectiveness in the provision of services provided by other local government bodies;
- 35 (c) for improving the financial or other management of local government bodies.
- (2) The studies which the Auditor General is required to undertake or promote under subsection (1) include (but are not limited to)—
- (a) studies designed to enable the Auditor General to determine what directions he should give under section 75;

- (b) studies of information published in pursuance of section 75 which are designed to enable the Auditor General to determine, in relation to each financial year, what comparative information to publish about the standards of performance achieved by bodies which are relevant bodies for the purposes of that section.
- 5 (3) The Auditor General may undertake or promote other studies, and make recommendations, relating to the provision of services by local government bodies.
- (4) Where the Auditor General undertakes or promotes a study under this section, he or she must publish or otherwise make available –
- 10 (a) the results of the study, and  
(b) any recommendations made.
- (5) The Auditor General may fulfil his or her obligation under subsection (4) by laying a report containing the results of the study and any recommendations made before the National Assembly.
- 15 (6) Before undertaking or promoting a study under this section, other than a study of a kind mentioned in paragraph (a) or (b) of subsection (2), the Auditor General must consult –
- (a) any associations of local government bodies which appear to the Auditor General to be concerned, and  
(b) any associations of employees which appear to the Auditor General to be appropriate.
- 20 (7) The Auditor General and the Welsh Ministers must co-operate with each other with respect to the exercise of their respective functions under this section and sections 94 and 95 (reviews, investigations and studies by the Welsh Ministers) of the Health and Social Care (Community Health and Standards) Act 2003.
- 25 (8) In this section “Welsh improvement authority” has the meaning given in section 1 of the Local Government (Wales) Measure 2009.

## 71 Studies on impact of statutory provisions etc

- (1) The Auditor General must undertake or promote studies designed to enable him or her to prepare reports about the impact on economy, efficiency and effectiveness in the discharge of the functions of a local government body of –
- 30 (a) the operation of any statutory provisions, or  
(b) any directions or guidance given by the Welsh Ministers (whether or not under a statutory provision).
- (2) The Auditor General must from time to time lay before the National Assembly a report of any matters which, in his or her opinion –
- 35 (a) arise out of studies under this section, and  
(b) ought to be drawn to the attention of the National Assembly.
- (3) Before undertaking or promoting a study under this section, the Auditor General must consult –
- 40 (a) any associations of local government bodies which appear to the Auditor General to be concerned, and

(b) any associations of employees which appear to the Auditor General to be appropriate.

- (4) The Auditor General and the Welsh Ministers must co-operate with each other with respect to the exercise of their respective functions under this section and section 95(2) (studies by the Welsh Ministers on impact of statutory provisions) of the Health and Social Care (Community Health and Standards) Act 2003 .

## 72 Co-operation with Audit Commission

The Auditor General must co-operate with the Audit Commission where it seems to the Auditor General appropriate to do so for the efficient and effective discharge of functions under sections 70 (studies for improving economy etc in services) and 71 (studies on impact of statutory provisions etc).

## 73 Studies at request of local government bodies

- (1) The Auditor General may, at the request of a local government body, undertake or promote studies designed to enable the Auditor General to make recommendations for improving economy, efficiency and effectiveness in the discharge of the functions of the body.
- (2) Before making the request the body must consult any associations of employees which appear to it to be appropriate.

### *Performance standards*

## 74 Performance standards: relevant bodies

- (1) Each of these local government bodies is a relevant body for the purposes of sections 75 to 77 –
- (a) a local authority;
  - (b) a committee of a local authority (including a joint committee of two or more local authorities);
  - (c) a National Park authority for a National Park in Wales;
  - (d) [police and crime commissioner] for a police area in Wales;
  - (e) a fire and rescue authority in Wales constituted by a scheme under section 2 (power to create combined fire and rescue authorities) of the Fire and Rescue Services Act 2004 or a scheme to which section 4 (combined authorities under the Fire Services Act 1947) of that Act applies.
- (2) The Welsh Ministers may by order provide for sections 75 to 77 to have effect as if any other local government body were a relevant body for the purposes of those sections.
- (3) In this section “local authority” does not include a community council.

## 75 Publication of information as to standards of performance

- (1) The Auditor General must give any directions which he or she thinks fit for requiring relevant bodies to publish the information mentioned in subsection (2).
- (2) The information is information relating to their activities in a financial year which will, in



the opinion of the Auditor General, facilitate the making of appropriate comparisons –

- (a) between the standards of performance achieved by different relevant bodies in the financial year, or
- (b) between the standards of performance achieved by relevant bodies in different financial years.

(3) The comparisons are to be made by reference to the criteria of cost, economy, efficiency and effectiveness.

(4) If a relevant body is required by a direction under this section to publish information in relation to a financial year, it must –

- (a) make arrangements for collecting and recording the information which secure that the information is available for publication and (so far as practicable) that everything published in pursuance of the direction is accurate and complete,
- (b) publish the information in accordance with the direction and in a method permitted under section 102 before the end of the period of 9 months starting immediately after the end of the financial year, and
- (c) keep a document containing any information published in pursuance of the direction available for inspection by local government electors for its area.

(5) The Welsh Ministers may by order vary the period specified in subsection (4)(b).

(6) The period specified in an order under subsection (5) must not be longer than 9 months starting immediately after the end of the financial year in question.

(7) A local government elector for the area of a relevant body may –

- (a) at all reasonable times and without payment, inspect and make copies of the whole or any part of a document kept available for inspection by the body under subsection (4)(c);
- (b) require copies of the whole or part of any such document to be delivered to him or her on payment of a reasonable sum for each copy.

(8) It is an offence for person who has custody of a document kept available for inspection under subsection (4)(c) –

- (a) to obstruct a person in the exercise of his or her rights under subsection (7), or
- (b) to refuse to comply with a requirement under subsection (7)(b).

(9) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## 76 Permitted methods of publishing information under section 75

(1) The permitted methods of publication referred to in section 75(4)(b) are these.

(2) The relevant body may publish the information in a newspaper which is –

- (a) printed for sale, and
- (b) circulating in its area.

(3) If the relevant body ensures that the distribution condition is met with respect to the information, it may publish the information in a newspaper or periodical publication

which—

- (a) is produced and distributed by another person (other than [an entity under the control of a local authority]), and
- (b) is free of charge to the recipient.

5 (4) A relevant body ensures that the distribution condition is met with respect to information if—

- (a) in any case, the body takes all reasonable steps to secure that a copy of a publication containing the information is distributed to each dwelling house in its area;
- 10 (b) in a case where the body considers that the information is of concern to persons carrying on business in its area, the body takes such steps as it considers reasonable and practicable to secure that a copy of a publication containing the information is also distributed to business premises in its area.

15 (5) [In subsection (3) “an entity under the control of a local authority” has the meaning given for the purposes of that subsection by order under section 218 of the Local Government and Public Involvement in Health Act 2007.]

(6) [But the Welsh Ministers may direct that an entity, or entities of a particular description, are to be treated as not being under the control of a local authority for the purposes of subsection (3).]

20 (7) [A direction under subsection (6) may be given so as to apply—

- (a) for a period specified in the direction; or
- (b) subject to conditions so specified.]

(8) [In subsection (6) “entity” means any entity, whether or not a legal person.]

#### 77 **Directions under section 75 relating to publication of information**

25 (1) A direction under section 75 requiring the publication of information must—

- (a) identify the financial year or years in relation to which the information is to be published,
- (b) specify or describe the activities to which the information is to relate, and
- 30 (c) make provision about the matters to be contained in the information and about the form in which it is to be published.

(2) A direction under section 75 may be given so as to apply either to all relevant bodies or to all relevant bodies of a description specified in the direction.

35 (3) Before giving a direction under section 75 which imposes a new requirement on a relevant body about the publication of any information, the Auditor General must consult—

- (a) any associations of relevant bodies he or she thinks fit, and
- (b) any other persons he or she thinks fit.

40 (4) A direction under section 75 imposing a new requirement on a relevant body about the publication of any information must not be given later than the 31 December in the financial year which precedes the relevant financial year.

- (5) The relevant financial year is the financial year in relation to which the information is to be published.
- (6) If the Auditor General gives a direction under section 75 he or she must –
- 5 (a) publish the direction in the manner he or she considers appropriate for bringing it to the attention of members of the public, and
- (b) send a copy of the direction to every relevant body on which duties are imposed by virtue of the direction.
- (7) References in this section to the imposition of a new requirement on a relevant body about the publication of information are to –
- 10 (a) the imposition of a requirement by the first direction under section 75 to apply to the body;
- (b) any subsequent extension of or addition to –
- 15 (i) the matters to be contained in the information which the body is required to publish in relation to a financial year in pursuance of directions under section 75, or
- (ii) the activities to which any such information is to relate.

### 78 Interpretation of Chapter 3

- (1) In this Chapter, “local government elector” means a person registered as a local government elector in the register of electors in accordance with the provisions of the Representation of the People Acts.
- 20 (2) A reference in this Chapter to a local government elector for an area, in relation to a National Park authority which is a local planning authority for a National Park, is to a local government elector for any area the whole or part of which is included in the area of the Park.

## CHAPTER 4

### Data matching

### 79 Power to conduct data matching exercises

- (1) The Auditor General may conduct data matching exercises or arrange for them to be conducted on his or her behalf.
- 30 (2) A data matching exercise is an exercise involving the comparison of sets of data to determine how far they match (including the identification of any patterns and trends).
- (3) The power in subsection (1) is exercisable for the purpose of assisting in the prevention and detection of fraud in or with respect to Wales.
- (4) That assistance may, but need not, form part of an audit.
- 35 (5) A data matching exercise may not be used to identify patterns and trends in an individual’s characteristics or behaviour which suggest nothing more than his or her potential to commit fraud in the future.
- (6) In the following provisions of this Chapter, reference to a data matching exercise is to an

exercise conducted or arranged to be conducted under this section.

## 80 Mandatory provision of data

(1) The Auditor General may require –

- (a) any body mentioned in subsection (2), and
- (b) any officer or member of such a body,

to provide the Auditor General or a person acting on his or her behalf with such data (and in such form) as the Auditor General or that person may reasonably require for the purpose of conducting data matching exercises.

(2) The bodies are –

- (a) a local government body in Wales (as defined in section 49);
- (b) a Welsh NHS body (as defined in section 30).

(3) A person who without reasonable excuse fails to comply with a requirement of the Auditor General under subsection (1) is guilty of an offence and liable on summary conviction –

- (a) to a fine not exceeding level 3 on the standard scale, and
- (b) to an additional fine not exceeding £20 for each day on which the offence continues after conviction for that offence.

(4) If a person charged with an offence under subsection (3) adduces evidence of reasonable excuse for the failure, it is for the prosecution to prove that the person did not have such an excuse.

(5) If an officer or member of a body is convicted of an offence under subsection (3), any expenses incurred by the Auditor General in connection with proceedings for the offence, so far as not recovered from any other source, are recoverable from that body.

## 81 Voluntary provision of data

(1) If the Auditor General thinks it appropriate to conduct a data matching exercise using data held by or on behalf of a body or person not subject to section 80, the data may be disclosed to the Auditor General or a person acting on his or her behalf.

(2) A disclosure under subsection (1) does not breach –

- (a) any obligation of confidence owed by a person making the disclosure, or
- (b) any other restriction on the disclosure of information (however imposed).

(3) But nothing in this section authorises a disclosure which –

- (a) contravenes the Data Protection Act 1998, or
- (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.

(4) Data may not be disclosed under subsection (1) if the data comprise or include patient data.

(5) “Patient data” means data relating to an individual which are held for medical purposes (within the meaning of section 251 of the National Health Service Act 2006) and from which the individual can be identified.

- (6) This section does not limit the circumstances in which data may be disclosed apart from this section.
- (7) Data matching exercises may include data provided by a body or person outside England and Wales.

5 **82 Disclosure of results of data matching etc**

- (1) This section applies to the following information –
- (a) information relating to a particular body or person obtained by or on behalf of the Auditor General for the purpose of conducting a data matching exercise,
  - (b) the results of any such exercise.
- 10 (2) Information to which this section applies may be disclosed by or on behalf of the Auditor General if the disclosure is –
- (a) for or in connection with a purpose for which the data matching exercise is conducted,
  - 15 (b) to a body mentioned in subsection (3) (or a related party) for or in connection with a function of that body corresponding or similar to the functions of the Auditor General under Chapter 2 or 3 of this Part, or
  - (c) in pursuance of a duty imposed by or under a statutory provision.
- (3) The bodies are –
- (a) the Audit Commission,
  - 20 (b) the Auditor General for Scotland,
  - (c) the Accounts Commission for Scotland,
  - (d) Audit Scotland,
  - (e) the Comptroller and Auditor General for Northern Ireland,
  - 25 (f) a person designated as a local government auditor under Article 4 of the Local Government (Northern Ireland) Order 2005.
- (4) “Related party”, in relation to a body mentioned in subsection (3), means –
- (a) a body or person acting on its behalf,
  - (b) a body whose accounts are required to be audited by it or by a person appointed by it,
  - 30 (c) a person appointed by it to audit those accounts.
- (5) If the data used for a data matching exercise include patient data –
- (a) subsection (2)(a) applies only so far as the purpose for which the disclosure is made relates to a relevant NHS body,
  - (b) subsection (2)(b) applies only so far as the function for or in connection with which the disclosure is made relates to such a body.
  - 35 (6) In subsection (5) –
    - (a) “patient data” has the same meaning as in section 81(5),
    - (b) “relevant NHS body” means –

- (i) a Welsh NHS body as defined in section 30,
- (ii) a health service body as defined in section 53(1) of the Audit Commission Act 1998,
- (iii) an NHS body as defined in section 22(1) of the Community Care and Health (Scotland) Act 2002,
- (iv) a body to which Article 90 of the Health and Personal Social Services (Northern Ireland) Order 1972 applies.

(7) Information disclosed under subsection (2) may not be further disclosed except—

- (a) for or in connection with the purpose for which it was disclosed under paragraph (a) or the function for which it was disclosed under paragraph (b) of that subsection,
- (b) for the investigation or prosecution of an offence (so far as the disclosure does not fall within paragraph (a)), or
- (c) in pursuance of a duty imposed by or under a statutory provision.

(8) Except as authorised by subsections (2) and (7), a person who discloses information to which this section applies is guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.

(9) Section 92 (restriction on disclosure of information) does not apply to information to which this section applies.

### 83 Publication

(1) Nothing in section 82 prevents the Auditor General from publishing a report on a data matching exercise (including on the results of the exercise).

(2) But the report may not include information relating to a particular body or person if—

- (a) the body or person is the subject of any data included in the data matching exercise,
- (b) the body or person can be identified from the information, and
- (c) the information is not otherwise in the public domain.

(3) A report published under this section may be published in any manner which the Auditor General considers appropriate for bringing it to the attention of those members of the public who may be interested.

(4) This section does not affect any powers of an auditor or the Auditor General where the data matching exercise in question forms part of an audit under Chapter 2 or 3 of this Part.

### 84 Code of data matching practice

(1) The Auditor General must prepare, and keep under review, a code of practice with respect to data matching exercises.

- (2) Regard must be had to the code in conducting and participating in any such exercise.
- (3) A code prepared under this section may make different provision for different cases or classes of case.
- (4) The Auditor General may from time to time revise a code prepared under this section.
- 5 (5) Before preparing or revising the code, the Auditor General must consult the bodies mentioned in section 80(2), the Information Commissioner and such other bodies or persons as the Auditor General thinks fit.
- (6) The Auditor General must—
- 10 (a) lay a copy of the code, and of any revisions made to the code, before the National Assembly, and
- (b) from time to time publish the code as for the time being in force.

## 85 Powers of Secretary of State

- (1) The Secretary of State may by order amend this Chapter—
- 15 (a) to add any purpose mentioned in subsection (2) to the purposes for which data matching exercises may be conducted,
- (b) to modify the application of this Chapter in relation to a purpose so added.
- (2) The purposes which may be added are—
- (a) to assist in the prevention and detection of crime (other than fraud) in or with respect to Wales,
- 20 (b) to assist in the apprehension and prosecution of offenders in or with respect to Wales,
- (c) to assist in the recovery of debt owing to public bodies whose functions relate exclusively to Wales, or an area of Wales.
- (3) The Secretary of State may by order amend this Chapter—
- 25 (a) to add a public body whose functions relate exclusively to Wales or an area of Wales to the list of bodies in section 80(2),
- (b) to modify the application of this Chapter in relation to a body so added,
- (c) to omit a body from that list.
- (4) Before making an order under this section, the Secretary of State must consult the Auditor General.
- 30 (5) An order under this section—
- (a) is to be made by statutory instrument, and
- (b) may include such incidental, consequential, supplemental or transitional provision as the Secretary of State thinks fit.
- 35 (6) No order under this section may be made unless a draft of the statutory instrument has been laid before, and approved by a resolution of, each House of Parliament.

## CHAPTER 5

## FUNCTIONS OF THE AUDITOR GENERAL: SUPPLEMENTARY

**86 Certification of claims, returns etc**

- (1) The Auditor General must, if so required by a relevant body, make arrangements for –
- (a) certifying any claim or return in respect of a grant made, or subsidy paid to, that body by the Welsh Ministers, any Minister of the Crown or any public authority,
  - (b) certifying any account submitted by that body to the Welsh Ministers, any Minister of the Crown or any public authority with a view to obtaining payment under a contract between that body and the Welsh Ministers, the Minister of the Crown or the public authority,
  - (c) certifying that body's calculation under paragraph 5(6)(a) of Schedule 8 to the Local Government Finance Act 1988 of the amount of its non-domestic rating contribution for a financial year, and for certifying the amount calculated, or
  - (d) certifying any return by that body which, by or under any enactment, is required or authorised to be certified by the body's auditor or under arrangements made by the Auditor General.

- (2) In this section –

“public authority” means a body established by or under the EU Treaties or any enactment, and

“relevant body” means at any time a body whose accounts, or statements of accounts, are subject to audit under Part 2 of this Act.

**87 Code of audit practice**

- (1) The Auditor General must issue a code of audit practice prescribing the way in which he or she is to carry out functions under Chapters 1, 2 and 3 of this Part and similar functions under any other enactment.
- (2) The Auditor General must comply with the code.
- (3) A code issued under this section must embody what appears to the Auditor General to be the best professional practice with respect to the standards, procedures and techniques to be adopted.
- (4) A code issued under this section may make different provision for different cases or classes of case.
- (5) Before issuing a code under this section the Auditor General must consult such persons as he or she thinks appropriate.
- (6) The Auditor General must arrange for any code issued under this section to be published.
- (7) The Auditor General may from time to time revise a code previously issued under this section; and subsections (3) to (6) apply to a revised code as they apply to a code as first prepared.

**88 Rights to documents and information etc**



- (1) The Auditor General has a right of access at all reasonable times to every document relating to a public body which appears to the Auditor General to be necessary for the purposes of exercising his or her functions in respect of that body under Chapters 1 to 4 of this Part.
- 5 (2) For the purposes of this section a “public body” includes a person who enters into an agreement with the Welsh Ministers or a Minister of the Crown under section 25(3).
- (3) The documents to which the right applies include (but are not limited to) the following –
- 10 (a) a document which is held or controlled by a person who has received financial assistance from the body by means of a grant, loan or guarantee or as a result of the taking of an interest in any property or body corporate;
- (b) a document which is held or controlled by a person who has supplied goods or services to the body in pursuance of a contract to which the body was party or who has supplied goods or services in pursuance of a relevant sub-contract;
- (c) a document of a description specified in an order made by the Welsh Ministers.
- 15 (4) For the purposes of subsection (3)(c) a contract is a relevant sub-contract if its performance fulfils, or contributes to the fulfilment of, an obligation to supply goods or services to the body in another contract.
- (5) The Auditor General may require a person whom he or she thinks has information of the kind mentioned in subsection (6) –
- 20 (a) to give any assistance, information and explanation which the Auditor General thinks necessary for the purposes of his or her functions under Chapters 1 to 4 of this Part;
- (b) to attend before him or her in person to –
- 25 (i) give the assistance, information or explanation, or
- (ii) produce any document which is held or controlled by the person and to which the right conferred by subsection (1) applies.
- (6) The information is information which relates to –
- 30 (a) a public body (including a registered social landlord) that is subject to the provisions of Chapters 1 to 4 of this Part;
- (b) a document to which the right conferred by subsection (1) applies;
- (c) a person who holds or controls such a document.
- (7) The Auditor General may for the purpose of exercising his or her functions in respect of a public body under Chapters 1 to 4 of this Part require a public body to produce its accounts (including accounts for specific transactions).
- 35 (8) A public body must provide the Auditor General with every facility and all information which he or she may reasonably need for the purposes of exercising functions in respect of the body under Chapters 1 to 4 of this Part.
- (9) Before making an order under subsection (3) the Welsh Ministers must consult –
- 40 (a) the Auditor General,
- (b) such persons as appear to them to be appropriate.

**89 Rights to documents and information: offences**

- (1) A person who without reasonable excuse fails to comply with a requirement imposed by the Auditor General under section 88(5) commits an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction—
- 5 (a) to a fine not exceeding level 3 on the standard scale, and
- (b) to an additional fine not exceeding £20 for each day on which the offence continues after the person has been convicted of it.
- (3) If a person charged with an offence under subsection (1) adduces evidence of reasonable excuse for the failure, it is for the prosecution to prove that the person did not have such
- 10 an excuse.
- (4) Subsection (5) applies if—
- (a) a person is convicted of an offence under subsection (1), and
- (b) expenses are incurred by the Auditor General in connection with proceedings for the offence.
- 15 (5) The expenses may be recovered from the convicted person or an appropriate person, to the extent that they are not recovered from any other source.
- (6) An appropriate person is a person who controlled the document referred to in section 88(6) at the time the requirement was imposed.
- (7) No contravention by the Crown of subsection (1) makes the Crown criminally liable.
- 20 (8) But subsection (7) does not affect the criminal liability of persons in the service of the Crown.

**90 References of matters related to social security to Secretary of State**

- (1) The Auditor General may refer to the Secretary of State any matter arising from the exercise of functions under Chapter 3 if it appears that the matter may be relevant for the
- 25 purposes of any of the functions of the Secretary of State relating to social security.
- (2) The Auditor General may send to the Secretary of State a copy of any report made by him or her under section 52 which contains observations on the administration by a local authority of housing benefit or council tax benefit.

**91 Benefit administration studies for Secretary of State**

- (1) The Auditor General may, at the request of the Secretary of State, conduct, or assist the Secretary of State in conducting, benefit administration studies.
- (2) Benefit administration studies are studies designed to enable recommendations to be made for improving economy, efficiency, and effectiveness and quality of performance in the discharge by one or more local authorities in Wales of functions relating to the
- 35 administration of housing benefit or council tax benefit (or both).
- (3) Any information obtained in the course of a benefit administration study may be disclosed by the Auditor General to the Secretary of State for the purposes of any functions of the Secretary of State which are connected with housing benefit or council tax benefit.

- (4) The Auditor General must send to the Secretary of State a copy of a report of a benefit administration study carried out by the Auditor General.
- (5) The Secretary of State or the Auditor General may send a copy of a report of a benefit administration study to any local authority to which the study relates.
- 5 (6) The Secretary of State may publish a report of a benefit administration study in conjunction with the Auditor General.
- (7) The Auditor General may conduct, or assist the Secretary of State in conducting, a benefit administration study only if the Secretary of State has made arrangements for the payment to the WAO of a fee in respect of the study.
- 10 (8) The amount of the fee must be a reasonable amount agreed between the Secretary of State and the WAO.
- (9) A fee payable under this section must be charged in accordance with the scheme for charging fees under section 22.

## 92 Restriction on disclosure of information

- 15 (1) This section applies if information relating to a particular body or person is obtained by the Auditor General, or by a person acting on behalf of the Auditor General—
- (a) under Chapter 3 of Part 2 of this Act, or Part 1 of the Local Government (Wales) Measure 2009, or
- 20 (b) in the course of an examination under section 40 in respect of a registered social landlord.
- (2) The information must not be disclosed except in accordance with any of the following—
- (a) with the consent of the body or person to whom the information relates;
- (b) for the purposes of any functions of the Auditor General under Chapter 3 of Part 2 of this Act, or Part 1 of the Local Government (Wales) Measure 2009;
- 25 (c) for the purposes of the functions of the Secretary of State relating to social security;
- (d) for the purposes of the functions of the Public Services Ombudsman for Wales under Part 3 of the Local Government Act 2000;
- (e) for the purposes of any functions of the Welsh Ministers which are connected with the discharge of social services functions by local authorities in Wales;
- 30 (f) for the purposes of any criminal investigation which is being or may be carried out, whether in the United Kingdom or elsewhere;
- (g) for the purposes of any criminal proceedings which have been or may be initiated, whether in the United Kingdom or elsewhere;
- (h) for the purposes of the initiation or bringing to an end of any such investigation or
- 35 proceedings;
- (i) for the purpose of facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end.

In sub-paragraph (e) “social services functions” has the same meaning as in the Local Authority Social Services Act 1970.

- 40 (3) A person who is, or acts on behalf of a person who is, a public authority for the purposes

of the Freedom of Information Act 2000, may also disclose such information –

- (a) in accordance with sections 41(2) or 45; or
- (b) in any other circumstances, except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the person by or under an enactment.

(4) A person who does not fall within subsection (3) may also disclose such information in accordance with consent given by the Auditor General.

(5) Section 93 makes further provision about consent for the purposes of subsection (2).

(6) A person commits an offence if he or she discloses information in contravention of this section.

(7) A person guilty of an offence is liable on summary conviction to a fine not exceeding the statutory maximum.

### **93 Consent under section 92**

(1) Consent for the purposes of section 92(4) must be obtained in accordance with this section.

(2) A person requesting consent (“the applicant”) must make a request for consent which –

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence,
- (c) describes the information in relation to which consent is requested, and
- (d) identifies the person to whom the information will be disclosed.

(3) Consent must be given except where the disclosure would, or would be likely to, prejudice the effective performance of a function imposed or conferred on the Auditor General by or under an enactment.

(4) Consent may be given or refused orally or in writing; but where it is given or refused orally the consent or refusal must be confirmed in writing.

(5) A refusal (or, where the refusal is oral, the confirmation of the refusal) must contain the reasons for the refusal.

(6) A person to whom a request for consent is made must give or refuse consent not later than the twentieth working day following the day on which the request is received.

(7) “Working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

### **94 Supply of benefit information by the Secretary of State to the Auditor General**

(1) The Secretary of State may supply to the Auditor General any information held by the Secretary of State which –

- (a) relates to housing benefit or council tax benefit, and
- (b) appears to the Secretary of State to be relevant to the exercise of any function of the Auditor General.

**95 Documents relating to *police authorities* [police and crime commissioners and chief constables]**

- (1) If the Auditor General makes a report under section 52(5) or (6) and the report relates to a *police authority for* [police and crime commissioner for, or the chief constable of a police force maintained under section 2 of the Police Act 1996 for,] a police area in Wales, he or she must send a copy of the report to the Secretary of State and the Welsh Ministers.
- (2) If the Auditor General has sent a document (or a copy of a document) relating to one or more *police authorities for* [police and crime commissioners for] police areas in Wales to a *police authority* [police and crime commissioner] for a police area in Wales, he or she may send a copy of the document to the Secretary of State and the Welsh Ministers.
- [(3) If the Auditor General has sent a document (or a copy of a document) relating to one or more chief constables of police forces maintained under section 2 of the Police Act 1996 for a police area in Wales, the Auditor General may send a copy of the document to the the Secretary of State and the Welsh Ministers.]

**96 Provision of information to Audit Commission**

- (1) The Auditor General must, on request, provide the Audit Commission with any information it may reasonably require for the purpose of making comparisons, in the discharge of its functions under sections 33 and 34 of the Audit Commission Act 1998, between local government bodies in Wales and other local government bodies.
- (2) In this section –
- (a) “local government bodies in Wales” has the same meaning as “local government body” in section 49(1);
- (b) “other local government bodies” has the same meaning as “local government body” in section 53(1) of the Audit Commission Act 1998.

**PART 3**

Miscellaneous and general

**97 Comptroller and Auditor General**

The Comptroller and Auditor General must –

- (a) consult the Auditor General, and
- (b) take into account any relevant work done or being done by the Auditor General,

before the Comptroller and Auditor General carries out an examination under section 6 or 7 of the National Audit Act 1983 (economy etc examinations) in respect of a person who is subject to examination under Chapters 2 or 3 of Part 2 of this Act.

**98 Indemnification**

- (1) There is to be charged on and paid out of the Welsh Consolidated Fund any amount payable by an indemnified person in consequence of any liability for breach of duty (whether under a contract or otherwise) incurred by an indemnified person in exercising functions under this Act.

- (2) The liability must not be to another indemnified person.
- (3) The following are indemnified persons –
- (a) the Auditor General;
  - (b) a former Auditor General appointed under this Act;
  - (c) the WAO;
  - (d) a former or current member of the WAO;
  - (e) a former or current employee of the WAO;
  - (f) a person who is providing, or has provided, services to the Auditor General under arrangements made by the WAO.

## 10 99 Orders and regulations

- (1) A power of the Welsh Ministers to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) A statutory instrument containing any of the following (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly –
- (a) an order under section 27(1) (transfer of Welsh Ministers' supervisory functions in respect of a public body or a registered social landlord);
  - (b) an order under section 46(1)(a) adding or removing a public body subject to audit or examination) apart from an order containing provision under that section all of which is of the kind referred to in subsection (4);
  - (c) an order under section 47(1) (power of the Welsh Ministers to make provision about reports);
  - (d) regulations under section 48(1) (provision for the Permanent Secretary to the Welsh Government to designate accounting officers);
  - (e) an order under section 49(2) (amendment of definition of "local government body"), apart from an order containing provision under that section all of which is of the kind referred to in subsection (4);
  - (f) regulations under section 69(1) (provision about the accounts and audit of local government bodies);
  - (g) an order under section 74(2) (allowing sections 75 to 77 to have effect as if any other local government body were a relevant body for the purposes of those sections);
  - (h) an order under section 75(5) (varying the period within which a relevant body must publish information relating to their activities in a financial year);
  - (i) an order under section 88(3) (specifying a description of document to which the Auditor General has a right of access).
- (3) Any other statutory instrument containing an order or regulations under this Act, apart from an instrument containing only an order under section 104 (commencement), is subject to annulment in pursuance of a resolution of the National Assembly.
- (4) The provision mentioned in paragraphs (b) and (e) of subsection (2) is provision

amending a reference to a person in consequence of a change in that person's name.

(5) Any power of the Welsh Ministers to make an order or regulations under this Act includes power –

- (a) to make different provision for different cases or classes of case, or different purposes;
- (b) to make provision generally or subject to specific exemptions or exceptions, or in relation to specific cases or classes of case;
- (c) to make such supplementary, transitional, transitory, consequential, saving, incidental and other provision as the Welsh Ministers think necessary or appropriate.

## 100 Directions

(1) Any direction given under this Act –

- (a) may be varied or revoked by a later direction;
- (b) must be given in writing;
- (c) may make provision generally or in relation to specific cases or classes of case; and
- (d) may make different provision for different cases or classes of case, or different purposes.

(2) Subsection (1) does not limit the powers under this Act to give directions.

## 101 Interpretation

In this Act –

“Auditor General” (*“Archwilydd Cyffredinol”*) means the Auditor General for Wales (see Chapter 1 of Part 1);

“enactment” (*“deddfiad”*) includes –

- (a) an enactment whenever passed or made,
- (b) an enactment contained in this Act, and
- (c) provision contained in subordinate legislation (within the meaning of the Interpretation Act 1978);

“financial year” (*“blwyddyn ariannol”*) means the 12 months ending with 31 March;

“local authority” (*“awdurdod lleol”*) means a county council, county borough council or community council in Wales;

“local government body” (*“corff llywodraeth leol”*) has the meaning given in section 49;

“local government elector” (*“etholwr llywodraeth leol”*) means a person registered as a local government elector in the register of electors in accordance with the provisions of the Representation of the People Acts;

“National Assembly” (*“Cynulliad Cenedlaethol”*) means the National Assembly for Wales;

“National Assembly Commission” (*“Comisiwn y Cynulliad Cenedlaethol”*) means

the National Assembly for Wales Commission.

“National Assembly’s Public Accounts Committee” (*“Pwyllgor Cyfrifon Cyhoeddus y Cynulliad Cenedlaethol”*) means the committee referred to as the “Audit Committee” in section 30 of the Government of Wales Act 2006;

5 “statutory provision” (*“darpariaeth statudol”*) means a provision contained in or having effect under an enactment;

“patient data” (*“data claf”*) has the meaning given in section 81;

“Permanent Secretary to the Welsh Government” (*“Ygrifennydd Parhaol Llywodraeth Cymru”*) has the meaning given in section 76(7);

10 “public body” (*“corff cyhoeddus”*) means any person or office which—

- (a) exercises functions of a public nature,
- (b) is entirely or substantially funded from public money, or
- (c) is listed in column (1) of Table 1 in section 30;

15 “registered social landlord” (*“landlord cymdeithasol cofrestredig”*) means a body registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996;

“WAO” (*“SAC”*) means the Wales Audit Office (see Chapter 2 of Part 1);

“Welsh NHS body” (*“corff GIG Cymru”*) has the meaning given in section 30;

“Welsh Government” (*“Llywodraeth Cymru”*) means the Welsh Assembly Government.

## 20 102 Transitional and supplementary provisions

- (1) Schedule [3] (transitional provisions) has effect.
- (2) The Welsh Ministers may, by order, make such supplementary, transitional, transitory, consequential, saving, incidental and other provision as they think appropriate in connection with, or to give full effect to, this Act.
- 25 (3) The provision that may be made under subsection (2) includes, but is not limited to, amendments, repeals and revocations of any enactment.
- (4) The amendments, repeals and revocations that may be made by virtue of subsection (3) are in addition to those made by or which may be made under any other provision of this Act.

## 30 103 Repeals and minor and consequential amendments

Schedule [4] (minor and consequential amendments and repeals) has effect.

## 104 Commencement

*To be completed*

## 105 Short title

35 The short title of this Act is the Public Audit (Wales) Act 2013.



## SCHEDULE 1

(Section 8(2))

## INCORPORATION OF WALES AUDIT OFFICE

## PART 1

## MEMBERSHIP AND STATUS

5

*Membership*

1 (1) The WAO is to have 7 members.

(2) They are to be –

10

(a) 5 persons who are not employees of the WAO (“non-executive members”) (see Part 2 of this Schedule),

(b) the Auditor General (see Part 3 of this Schedule), and

(c) one employee of the WAO (“employee member”) (see Parts 4 and 5 of this Schedule).

*Appointment*

15

2 (1) The members of the WAO are to be appointed as follows.

(2) The non-executive members are to be appointed by the National Assembly’s Public Accounts Committee (see paragraph 4).

(3) It is for the National Assembly to appoint one of the non-executive members as chair of the WAO (see paragraph 5).

20

(4) The Auditor General is appointed in accordance with section 2.

(5) The employee member is to be appointed by the non-executive members (see paragraph 13).

(6) All appointments must be on merit.

*Status*

25

3 (1) Neither the WAO nor any of its members is to be regarded –

(a) as the servant or agent of the Crown, or

(b) as enjoying any status, immunity or privilege of the Crown.

But members of the WAO are to be taken to be Crown servants for the purposes of the Official Secrets Act 1989.

30

(2) The WAO’s property is not to be regarded as property of, or held on behalf of, the Crown.

## PART 2

## NON-EXECUTIVE MEMBERS

*Appointment of non-executive members*

- 4 (1) Non-executive members are to be appointed by the National Assembly's Public Accounts  
5 Committee.
- (2) Appointments made under sub-paragraph (1) must be based on the conclusions of a fair  
and open competition.

*Appointment of chair of the WAO*

- 5 (1) The chair of the WAO is to be appointed by the National Assembly from amongst the  
10 non-executive members as follows.
- (2) It is for the National Assembly's Public Accounts Committee to table and move a motion  
to appoint a person as chair, having consulted the First Minister and the person who  
chairs the National Assembly Commission.
- 15 (3) The National Assembly may extend an appointment under this paragraph under the  
same procedure required for the original appointment.
- (4) An extension of an appointment counts as a separate appointment for the purposes of  
paragraphs 6 to 8.

*Period of appointment and re-appointment*

- 6 (1) An appointment under this Part of this Schedule is to be for a period of no more than 3  
20 years.
- (2) A person may not be appointed under this Part of this Schedule more than twice.

*Remuneration arrangements*

- 7 (1) The person who chairs the National Assembly's Public Accounts Committee may make  
25 remuneration arrangements in relation to the person who chairs the WAO, having  
consulted the First Minister and the person who chairs the National Assembly  
Commission.
- (2) Amounts payable under sub-paragraph (1) are to be charged on, and paid out of, the  
Welsh Consolidated Fund.
- 30 (3) The National Assembly's Public Accounts Committee may make remuneration  
arrangements in relation to any other non-executive member.
- (4) Amounts payable under sub-paragraph (3) are to be paid by the WAO.
- (5) Remuneration arrangements under this paragraph—
- (a) may make provision for a salary, allowances, gratuities, and other benefits to  
cover expenses properly and necessarily incurred, but not for a pension, and
- 35 (b) may include a formula or other mechanism for adjusting one or more of those  
elements from time to time.

- (6) But no element is to be performance based.

*Other terms of appointment*

- 8 (1) The National Assembly's Public Accounts Committee may determine other terms for an appointment under this Part of this Schedule.
- 5 (2) These terms may include restrictions on –
- (a) the offices or positions (including offices and positions to which persons may be appointed, or recommended or nominated for appointment, by or on behalf of the Crown, the National Assembly, or the National Assembly Commission) that the non-executive member may hold while, or after ceasing to be, a member; and
- 10 (b) the agreements or other arrangements (including agreements and arrangements with the Crown, the National Assembly or the National Assembly Commission or bodies or other persons acting on behalf of the Crown, the National Assembly or the National Assembly Commission) to which the non-executive member may be a party while, or after ceasing to be, a member.
- 15 (3) But restrictions may only be imposed while a person is a non-executive member and for a maximum of 2 years afterwards, starting on the day a person ceases to be a non-executive member.

*Consultation*

- 9 Before making any arrangements under paragraph 7 or a determination under paragraph 8, the person who chairs the National Assembly's Public Accounts Committee or the Committee itself, (as the case may be) must consult any person with oversight of public appointments whom the Committee or the person who chairs it (as the case may be) consider it appropriate to consult.

*Termination of appointments*

- 25 10 (1) The person who chairs the WAO may resign by giving written notice to the person who chairs the National Assembly's Public Accounts Committee.
- (2) Any other non-executive member may resign by giving written notice to the National Assembly's Public Accounts Committee.
- 30 (3) The term of appointment of a person who resigns in accordance with sub-paragraphs (1) or (2) ends when the resignation is accepted.
- 11 (1) The National Assembly's Public Accounts Committee may terminate the appointment of any non-executive member by giving the member written notice if –
- (a) the member has been absent from meetings of the WAO without the WAO's permission for a total period of 3 months or more in any 12 month period,
- 35 (b) the member has become bankrupt or has made an arrangement with creditors,
- (c) the member's estate has been sequestrated in Scotland or the member has entered into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 as the debtor or has, under Scots law, made a composition or arrangement with, or granted a trust deed for, the member's

creditors,

- (d) the member is unfit to continue the appointment because of misconduct,
- (e) the member has failed to comply with the terms of the appointment, or
- (f) the member is otherwise unable, unfit or unwilling to carry out the member's functions.

(2) The National Assembly may terminate the appointment of a non-executive member as chair of the WAO upon a motion tabled and moved by the person who chairs the National Assembly's Public Accounts Committee

(3) Before tabling a motion the person who chairs the National Assembly's Public Accounts Committee must consult the First Minister and the person who chairs the National Assembly Commission.

(4) The National Assembly may terminate the appointment on the following grounds –

- (a) the person has failed to comply with the terms of appointment, or
- (b) the person is otherwise unwilling to carry out the functions of chairing the WAO.

### PART 3

#### AUDITOR GENERAL

##### *Additional remuneration of the Auditor General*

(1) The WAO may make provision for additional payments to be made to the Auditor General in respect of allowances and other benefits to cover expenses properly and necessarily incurred by the Auditor General in his or her capacity as member of, and Chief Executive of, the WAO.

(2) Payments made under sub-paragraph (1) may be made in addition to the remuneration payable to the Auditor General under section 7.

(3) Amounts payable under sub-paragraph (1) are to be paid by the WAO.

### PART 4

#### EMPLOYEE MEMBER

##### *Appointment*

(1) An employee member is to be appointed by the non-executive members as follows.

(2) If there is a vacancy, the Auditor General must recommend a person to the non-executive members for appointment.

(3) The non-executive members must –

- (a) appoint that person, or
- (b) appoint another person of their choosing.

##### *Terms of appointment*

(1) The terms of an employee member's appointment are to be determined by the non-

executive members.

- (2) The terms may include remuneration arrangements which—
- (a) may make provision for allowances, gratuities, and other benefits to cover expenses properly and necessarily incurred by the person in the capacity of member of the WAO, and
- (b) may include a formula or other mechanism for adjusting one or more of those elements from time to time.
- (3) The remuneration arrangements may not provide for payment of a salary or, subject to sub-paragraph (5), a pension.
- (4) Amounts payable under sub-paragraph (2) are to be paid by the WAO.
- (5) If the employee (“A”) is a participant in a pension scheme under the terms of A’s employment with the WAO, the remuneration arrangements must (without affecting the continuity of that employment) make provisions for A’s service as an employee member to be treated for the purposes of the scheme as service as an employee of the WAO.

15 *Other terms of appointment*

- 15 (1) The non-executive members may determine other terms for an appointment under this Part of this Schedule.
- (2) These terms may include restrictions on—
- (a) the offices or positions (including offices and positions to which persons may be appointed, or recommended or nominated for appointment, by or on behalf of the Crown, the National Assembly, or the National Assembly Commission) that the employee member may hold while, or after ceasing to be, a member, and
- (b) the agreements or other arrangements (including agreements and arrangements with the Crown, the National Assembly or the National Assembly Commission or bodies or other persons acting on behalf of the Crown, the National Assembly or the National Assembly Commission) to which the employee member may be a party while, or after ceasing to be, a member.
- (3) But restrictions may only be imposed while a person is an employee member and for a maximum of 2 years afterwards, starting on the day a person ceases to be an employee member.

*Termination of appointments*

- 16 The appointment of an employee member terminates—
- (a) if the terms of the member’s appointment provide for it to expire at the end of a period, at the end of that period, and
- (b) in any event, when the member ceases to be an employee of the WAO.
- 17 An employee member may resign by giving written notice to the non-executive members. The appointment of the employee member is terminated upon acceptance of the resignation by the non-executive members.
- 18 The non-executive members may terminate the appointment of an employee member by

giving the member written notice if –

- (a) the member has been absent from meetings of the WAO without the WAO's permission for a total of 3 months or more in any 12 month period,
- (b) the member has become bankrupt or has made an arrangement with creditors,
- 5 (c) the member's estate has been sequestrated in Scotland or the member has entered into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 as the debtor or has, under Scots law, made a composition or arrangement with, or granted a trust deed for, the member's creditors,
- 10 (d) the member is unfit to continue the appointment because of misconduct,
- (e) the member has failed to comply with the terms of the appointment, or
- (f) the member is otherwise unable, unfit or unwilling to carry out the member's functions.

## PART 5

### EMPLOYEES

- 15 (1) The WAO may employ staff.
- (2) Staff of the WAO are to be employed on such terms as the WAO may determine.
- (3) But the WAO must ensure that –
  - 20 (a) the procedures for the recruitment and selection of persons as members of the staff of the WAO are broadly in line with those applying to the recruitment and selection of persons as members of the staff of the Welsh Government, and
  - (b) the terms of employment are broadly in line with those of the members of the staff of the Welsh Government.
- (4) The WAO must pay the staff such remuneration as may be provided for by or under the terms of their employment.
- 25 (5) A person who is an employee of the WAO may not hold any office or position to which a person may be appointed, or recommended or nominated for appointment, by or on behalf of –
  - (a) the Crown;
  - 30 (b) the National Assembly; or
  - (c) the National Assembly Commission.
- (6) In Schedule 1 to the Superannuation Act 1972 (offices to which section 1 of that Act applies), in the appropriate place in the list of "Other bodies" insert –
 

"Employment as a member of the staff of the Wales Audit Office".
- 35 (7) The WAO must make payments to the Minister for the Civil Service, at such times as the Minister may determine, of such amounts as may be so determined in respect of –
  - (a) the provision of pensions, allowances, gratuities or other benefits by virtue of section 1 of the Superannuation Act 1972 to or in respect of any persons who are or have been members of the staff of the WAO, and

(b) the expenses incurred in administering those pensions, allowances, gratuities or other benefits.

(8) A member of the staff of the WAO is not to be regarded –

(a) as the servant or agent of the Crown, or

(b) as enjoying any status, immunity or privilege of the Crown.

But a member of the staff of the WAO is to be taken to be a Crown servant for the purposes of the Official Secrets Act 1989.

## PART 6

### PROCEDURAL RULES

#### 10 *General*

20 The WAO must make rules for the purpose of regulating the WAO's procedure.

#### *Quorum for WAO meetings*

21 (1) The rules must provide for a quorum for any meetings of the WAO (including meetings of committees or sub-committees set up under paragraph 22).

15 (2) The rules may provide that different quorums may apply in different circumstances (for example, in relation to particular meetings or for particular purposes).

(3) The rules must provide that in all circumstances a quorum cannot be met unless a majority of the members present are non-executive members.

#### *Committees*

20 22 (1) The rules may include –

(a) provision for the setting up of committees of the WAO and for those committees to set up sub-committees, and

(b) provision regulating the procedures of those committees and sub-committees.

25 (2) An employee of the WAO who is not an employee member may be a member of a committee or sub-committee.

(3) A person who is neither a member of the WAO nor an employee of the WAO may be a member of a committee or sub-committee, provided that no functions of the WAO are delegated to the committee or sub-committee (see paragraph 25).

## PART 7

### OTHER MATTERS

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#### *Powers*

23 The WAO may do anything (including acquiring or disposing of any property or rights) which is calculated to facilitate, or which is incidental or conducive to, the exercise of any of its functions.

*Validity*

24 The validity of anything done by the WAO (including anything done by its non-executive members, employee members or any committee or sub-committee) is not affected by –

- (a) a vacancy, or
- 5 (b) a defective appointment.

*Delegation of functions*

25 (1) The WAO may delegate its functions to –

- (a) any of its members, employees or committees, or
- (b) a person who provides services to the WAO.

10 (2) A committee may delegate functions (including functions delegated to it) to a sub-committee.

(3) The delegation of a function does not prevent the WAO or the committee (as the case may be) from carrying out the function itself.

15 (4) The delegation of a function under sub-paragraph (1) does not affect the WAO's responsibility for the function.

(5) Functions under the following provisions may not be delegated –

- (a) section 10(1)(a) (estimating the income and expenses of the WAO for each financial year);
- 20 (b) section 12(1) (agreeing an annual plan for each financial year with the Auditor General);
- (c) paragraph 20 of Part 6 of this Schedule (making rules for the purpose of regulating the WAO's procedure);
- (d) paragraph 28(1) of Part 7 of this Schedule (appointing a person as auditor of the accounts of the WAO);
- 25 (e) paragraph 3 of Part 1 of Schedule 2 (jointly preparing a report or an interim report each financial year on the exercise of the functions of the Auditor General and the WAO);
- (f) paragraph 5 of Part 2 of Schedule 2 (designating another person to temporarily exercise the functions of the Auditor General).

30 *Provision of services.*

26 (1) Arrangements may be made between the WAO and a relevant authority –

- (a) for any function of the authority to be exercised by the WAO or by an employee of the WAO,
- (b) for any function of the authority to be exercised by the Auditor General,
- 35 (c) for administrative, professional or technical services to be provided –
  - (i) to (or for the purposes of) the authority by the WAO,
  - (ii) by, or on behalf of, the authority to the WAO,



- (iii) by, or on behalf of, the authority to the Auditor General,
- (d) for administrative, professional or technical services to be provided to (or for the purposes of) the authority by the Auditor General.
- (2) Any arrangements for a function of a relevant authority to be exercised by the WAO or an employee of the WAO under sub-paragraph (1)(a), or by the Auditor General under sub-paragraph (1)(b), do not affect the relevant authority's responsibility for that function.
- (3) If the condition in sub-paragraph is met, the WAO and –
- (a) a relevant authority,
- (b) a qualified auditor, or
- (c) an accountancy body,
- may make arrangements to co-operate with, and give assistance to, each other.
- (4) If the condition in sub-paragraph (5) is met, the WAO and –
- (a) a relevant authority,
- (b) a qualified auditor, or
- (c) an accountancy body,
- may make arrangements for that authority, auditor or body and the Auditor General to co-operate with, and give assistance to, each other.
- (5) The condition is that –
- (a) the WAO considers that to do so would facilitate, or be conducive to, the exercise of the functions of the Auditor General or the WAO, and
- (b) the relevant authority, qualified auditor or accountancy body in question considers that to do so would facilitate, or be conducive to, the exercise of the functions of that authority, person or body.
- (6) The WAO may make arrangements under this paragraph on such terms, including terms about payment, as the WAO thinks fit.
- But conditions as to payment to the WAO must be made in accordance with the scheme for charging fees made under section 22.
- (7) In this paragraph –
- “accountancy body” means –
- (a) a body which is a recognised supervisory body for the purposes of Part 42 of the Companies Act 2006, or
- (b) an approved European body of accountants;
- “qualified auditor” means a person who is –
- (a) eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006, or
- (b) a member of an approved European body of accountants;
- “approved European body of accountants” means a body of accountants which –
- (a) is established in the United Kingdom or another EEA state, and

(b) is for the time being approved by the Welsh Ministers by order,  
“relevant authority” means any Minister of the Crown or government department, any public authority (including any local authority) or the holder of any public office.

5 *WAO accounts*

- 27 (1) The National Assembly’s Public Accounts Committee must appoint the Auditor General or some other appropriate person as accounting officer for the WAO.
- (2) The person appointed as accounting officer of the WAO must, for each financial year, in accordance with directions given to him or her by the Treasury –
- 10 (a) keep proper accounts and proper records in relation to them, and  
(b) prepare a statement of accounts.
- (3) A statement of accounts must give a true and fair account of –
- (a) the state of the WAO’s affairs at the end of the financial year, and  
(b) the WAO’s income and expenditure in the financial year.
- 15 (4) The directions which the Treasury may give include (but are not limited to) directions as to –
- (a) the financial affairs and transactions to which the accounts or statement of accounts are to relate,  
(b) the information to be contained in the accounts and the manner in which the  
20 accounts are to be presented,  
(c) the methods and principles in accordance with which the accounts are to be prepared, and  
(d) the additional information (if any) that is to accompany the accounts or statement of accounts.
- 25 (5) The directions which the Treasury may give may also include directions to prepare accounts relating to financial affairs and transactions of persons other than the WAO.
- (6) The accounting officer for the WAO has, in relation to the accounts and finances of the WAO, such other responsibilities which are from time to time specified by the National Assembly’s Public Accounts Committee.

30 *Audit of the WAO*

- 28 (1) The WAO must, with the agreement of the National Assembly’s Public Accounts Committee, appoint a person as auditor of its accounts.
- (2) A person is eligible for appointment only if the person is a qualified auditor as defined in paragraph 26.
- 35 (3) If a person appointed as the auditor ceases to be a person who could be so appointed, the person ceases to be the auditor.
- (4) The person appointed as auditor must, as that person considers appropriate, have regard to the standards and principles that an expert professional provider of accounting or auditing services would be expected to follow.

- (5) The auditor is to be appointed on such terms as the WAO may determine, but the terms of appointment must be agreed by the National Assembly's Public Accounts Committee.
- (6) The WAO must pay the auditor such remuneration as may be provided for by or under the terms of the auditor's appointment.

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29 (1) The statement of accounts which the accounting officer of the WAO is required to prepare under paragraph 27 for a financial year must be signed by the accounting officer and submitted by the chair of the WAO to the auditor appointed under paragraph 28 no later than 5 months after the end of that financial year.

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- (2) The auditor must –
- (a) examine and certify any statement of accounts submitted to him or her, and
  - (b) submit a copy of the statement of accounts as certified by him or her together with his or her report on them to the National Assembly's Public Accounts Committee.

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(3) The auditor must, in particular, be satisfied from an examination of the statement of accounts submitted to him or her –

- (a) that the expenditure to which the statement of accounts relate has been incurred lawfully and in accordance with the authority which governs it,
- (b) that money received by the WAO to which the statement of accounts relates for a particular purpose or particular purposes has not been expended otherwise than for that purpose or those purposes,
- (c) that the statement of accounts comply with the requirements of all statutory provisions applicable to the accounts or statement of accounts, and
- (d) that proper practices have been observed in the compilation of the statement of accounts.

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(4) The auditor has a right of access at all reasonable times to every document which appears to the auditor to be necessary for the purposes of the audit of the accounts.

(5) The auditor may –

- (a) require any person holding or accountable for any of those documents to provide any assistance, information or explanation which the auditor reasonably thinks necessary for those purposes, and
- (b) require a relevant person to provide the auditor, at times specified by the auditor, with accounts of such of the transactions of the relevant person as the auditor may specify.

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(6) A "relevant person" means –

- (a) the Auditor General,
- (b) the WAO, or
- (c) any person to whose financial affairs and transactions the accounts relate in consequence of paragraph 27(5).

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(7) The auditor may –

- (a) carry out examinations into the economy, efficiency and effectiveness with which

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the Auditor General has used resources in discharging the Auditor General's functions,

- (b) carry out examinations into the economy, efficiency and effectiveness with which the WAO has used resources in discharging the WAO's functions, and
- (c) submit to the National Assembly's Public Accounts Committee a report of the results of any such examinations.

(8) For the purposes of carrying out such examinations, the auditor –

- (a) has a right of access at all reasonable times to every document in the possession, or under the control, of the Auditor General or the WAO which the auditor reasonably requires for that purpose, and
- (b) may require any person holding or accountable for any of those documents to provide any assistance, information or explanation which the auditor reasonably thinks necessary for that purpose.

(9) The National Assembly's Public Accounts Committee must lay the following before the National Assembly –

- (a) a copy of the statement of accounts prepared by the accounting officer of the WAO as certified by the auditor, and the auditor's report on them submitted to the committee under sub-paragraph (2)(b), and
- (b) a report on the result of examinations on economy, efficiency and effectiveness submitted to the Committee under sub-paragraph (7)(a).

#### *Documentary evidence*

(1) The application of the WAO's seal is to be authenticated by the signature of –

- (a) a member of the WAO, or
- (b) an employee of the WAO authorised (whether generally or specifically) for that purpose by the WAO.

(2) A document purporting to be duly executed under the WAO's seal, or signed on its behalf –

- (a) is to be received in evidence, and
- (b) is to be taken to be executed or signed in that way, unless the contrary is proved.

SCHEDULE 2  
(Section 17(2))

RELATIONSHIP BETWEEN THE AUDITOR GENERAL AND THE WAO

PART 1

CO-OPERATION IN THE EXERCISE OF FUNCTIONS

*WAO to monitor and provide advice.*

- 1 (1) The WAO must, in such manner as it considers appropriate, monitor the exercise of the Auditor General's functions.
- 10 (2) The WAO may provide advice to the Auditor General about the Auditor General's functions.
- (3) The Auditor General must have regard to any advice given.

*Delegation of the functions of the Auditor General to the WAO*

- 2 (1) Any function of the Auditor General may be delegated to—
- 15 (a) an employee of the WAO,
- (b) a person who provides services to the WAO, or
- (c) an employee of the WAO and a person who provides services to the WAO acting jointly.
- (2) But a function may only be delegated if the employee or other person is authorised (or in the case of sub-paragraph (1)(c) both are authorised) to exercise functions of the Auditor General under a scheme prepared by the Auditor General, and approved by the WAO.
- 20 (3) The Auditor General may review and revise or remake the scheme at any time, but any revision or remake must be approved by the WAO.
- (4) A scheme may include different provision for different cases or classes of case.
- (5) Any function of the Auditor General may be exercised jointly by the Auditor General and an employee or other person authorised under the scheme.
- 25 (6) A delegation does not prevent the Auditor General from doing anything personally.
- (7) A provision made under sub-paragraph (1) for the delegation of a function, or under sub-paragraph (5) for the joint exercise of a function, does not affect the responsibility of the Auditor General's responsibility for that function .
- 30 (8) The function of preparing a scheme under this paragraph may not be delegated.

*Reports.*

- 3 (1) The Auditor General and the chair of the WAO must for each financial year jointly prepare an annual report on the exercise during the year of the functions of the Auditor General and the WAO.
- 35 (2) An annual report must include (but is not limited to) an assessment of the extent to which the exercise of the functions of the Auditor General and the WAO has been consistent with the annual plan agreed for the year under section 11, and the extent to which the

priorities set out in the plan were achieved.

(3) In addition to an annual report, the Auditor General and the chair of the WAO, must also jointly prepare interim reports on two occasions during a financial year on the exercise of the functions of the Auditor General and the WAO.

(4) An interim report must include (but is not limited to) an assessment of the extent to which the exercise of the functions of the Auditor General and the WAO has been consistent with the annual plan agreed for the year under section 11, and the extent to which progress has been made to achieve the priorities set out in the plan.

(5) The Auditor General and the person who chairs the WAO must jointly –

(a) submit the annual report to the National Assembly's Public Accounts Committee as soon as practicable after the end of a financial year,

(b) submit the interim reports to the National Assembly's Public Accounts Committee on dates to be determined by the Committee, and

(c) lay the reports before the National Assembly.

(6) The National Assembly's Public Accounts Committee must –

(a) consider (in public) a report submitted to the Committee and prepare a report recording its findings in relation to it, and

(b) lay its report before the National Assembly as soon as practicable after the report to which it relates is submitted.

(7) The National Assembly's Public Accounts Committee must publish an annual report within three months of it being submitted to it.

(This does not apply to an interim report).

#### *Documents and information.*

(1) Any document or information which a person is required to provide, or may provide, to the Auditor General, may be provided to the WAO (either by that person or by the Auditor General).

(2) For the purposes of section 3(2) of the Freedom of Information Act 2000 and regulation 3(2) of the Environmental Information Regulations 2004 (or any regulations replacing those regulations), any document or information held by the WAO as mentioned in section 16(2)(d) is treated as held by the WAO on its own behalf.

## PART 2

### TEMPORARY EXERCISE OF THE FUNCTIONS OF AUDITOR GENERAL BY ANOTHER PERSON

The WAO, with the agreement of the person who chairs the National Assembly's Public Accounts Committee, may designate a person to exercise the functions of Auditor General temporarily in place of the Auditor General ("a temporary designation").

A temporary designation may occur only in the following circumstances –

(a) the office of Auditor General is vacant;

(b) the Auditor General is unwilling to discharge the functions of the office; or

(c) the WAO and the person who chairs the National Assembly's Public Accounts Committee consider that the Auditor General is unable to discharge the functions

of the office.

- 7 The functions of the Auditor General referred to in paragraph 5 include (amongst other things) –
- 5 (a) being the chief executive of the WAO (see section 17),
- (b) being the accounting officer of the WAO (see paragraph 27(1) of Part 7 of Schedule 1), and
- (c) the power to delegate under paragraph 2 of Schedule 2.
- 8 A person who is designated to exercise functions must be an employee of the WAO.
- 9 A person who is designated to exercise functions will continue to be employed by the  
10 WAO on the same terms.
- 10 But that person will be designated to exercise functions on such additional terms (including terms as to remuneration) as are agreed by the WAO and the person who chairs the National Assembly's Public Accounts Committee.
- 11 A temporary designation can only be made in relation to a circumstance referred to in  
15 paragraph 6 for up to 6 months.
- 12 But a temporary designation may be extended once by the WAO, with the agreement of the person who chairs the National Assembly's Public Accounts Committee, for up to a further 6 months.
- 13 Where a person is designated under paragraph 5, the person who chairs the WAO must  
20 lay a statement before the National Assembly which sets out –
- (a) that a person has been so designated and the reason why;
- (b) the identity of the person designated;
- (c) the period for which the person has been designated; and
- 25 (d) that the person who chairs the National Assembly's Public Accounts Committee has agreed to the designation as required by paragraph 5.
- 14 Where the period for which a person is designated is extended under paragraph 12, the person who chairs the WAO must lay a further statement before the National Assembly setting out –
- 30 (a) the extended period for which the person has been designated;
- (b) the reasons for extending the period; and
- (c) that the person who chairs the National Assembly's Public Accounts Committee has agreed to the extension as required by paragraph 12.