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Annwyl Llyr

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

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

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

Yn gywir

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

### **Q1. Do you agree that the Wales Audit Office should be given flexibility in how it charges and administers its fees by allowing it to broadly breakeven, taking one year with another?**

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

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

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

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

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

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

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

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

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

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

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

**Q6. Do you agree that if the majority of members present at a meeting of the Wales Audit Office Board are not non-executive members, an executive member should be allowed to continue in a non-voting capacity in order to satisfy the quorum requirement?**

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

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

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

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

**Q8. Do you agree that the Auditor General for Wales and the Chair of the Wales Audit Office should no longer be required to produce an interim report at least once a year, but a requirement to produce an interim report upon the Assembly’s request should be included in legislation?**

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

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

Yes. Section 16 seems appropriate.

**Q10. Do you agree that the requirement to lay the annual report (on the exercise of functions of the Auditor General for Wales and Wales Audit Office) in paragraph 3(1) of Schedule 2 of the Public Audit (Wales) Act 2013 should be amended to require the external auditor to lay the report as part of the laying of the annual report and accounts?**

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

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

Yes. Section 15 seems appropriate.

**Q12. Do you agree that existing legislation requiring the Auditor General for Wales to certify and lay an audited body's accounts and report within four months should be amended to:**

- allow the Auditor General for Wales to lay a copy of the certified accounts and report after the four month deadline,
- require the Auditor General for Wales to explain to the Assembly why the four month deadline cannot be met, and
- require the Auditor General for Wales to lay the certified accounts and report as soon as reasonably practicable?

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

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

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

**Q14. Do you agree that engagement of the auditor of the Wales Audit Office should be a contractual matter between the Wales Audit Office and the auditor, with the appointment (and associated terms and conditions) being subject to the approval of the Assembly?**

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

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

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

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

**Q16. Do you agree that the Public Audit (Wales) Act 2013 should be amended to allow the appointment of a serving non-executive member to be extended for a second term of up to four years, subject to acceptable performance?**

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

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

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

**Q18. Do you agree that the requirement for the Assembly to consult the First Minister on the following should be removed:**

- the appointment of the Chair of the Wales Audit Office;
- the remuneration arrangements for the Chair and the Auditor General for Wales; and
- the termination of the Chair's appointment?

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

**Q19. Do you agree that the requirement for the Assembly to consult an appropriate person with oversight for public appointments on remuneration arrangements and other terms of appointment should be removed?**

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

**Q20. Do you agree that a general provision should be included, permitting the Assembly to consult with any persons it deems appropriate before exercising any functions in relation to the Auditor General for Wales or the Wales Audit Office?**

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

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

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

**Q22. Do you agree that section 5(3) of the Public Audit (Wales) Act 2013 should be amended to require the Assembly to publish a list of restricted offices, positions or arrangements, which a former Auditor General for**

**Wales would need to consult with the Assembly before accepting or entering into after leaving office, only if any such restrictions are identified?**

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

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

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

**Q24. Do you feel the Draft Bill should include provisions relating to:**

- **the lack of a value for money conclusion duty on the Auditor General for Wales and central government bodies;**
- **the absence of explicit provisions in statute for regularity opinions among many central government bodies;**
- **the overlapping laying requirements;**
- **Welsh data matching powers?**

Yes, in all four cases:

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

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

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

this is a separate requirement from responsibility for:

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

(see paragraph 3.3.3 of Managing Welsh Public Money).

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

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

**Q25. Will any of the proposals included in the Draft Public Audit (Amendment) (Wales) Bill lead to any financial implications (for example, costs or benefits) for you or your organisation? If you have identified financial implications for you or your organisation can you describe what these could be and provide an estimated cost (if possible).**

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

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

**Q26. Do you have any other observations or general comments on the Public Audit (Wales) Act 2013 or the Committee’s Draft Public Audit (Amendment) (Wales) Bill?**

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

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