

Response to the consultation 'Draft Public Audit (Amendment) (Wales) Bill' dated
18 December 2019



Organisation: Arts Council of Wales

Contact: Rebecca Nelson, Director of Finance and Business Services

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About our organisation

Established by Royal Charter on 30 March 1994, the Arts Council of Wales exists to support and develop the arts in Wales for the benefit of people throughout Wales, and to support Welsh arts internationally.

We are a Welsh Government Sponsored Body, a National Lottery distributor and a registered charity (number 1034245).

Our Royal Charter sets our objectives. They are to:

- Develop and improve the knowledge, understanding and practice of the arts;
- Increase the accessibility of the arts to the public;
- Work through the Welsh and English languages; and
- Work with other public bodies in Wales, and with other Arts Councils in the UK, to achieve these aims.

Consultation Questions

Question 1

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.

As a public sector body, audited by the Wales Audit Office, we welcome the focus on fees and value for money. We note some of the complexities outlined in the consultation.

The spirit of the Wales Audit Office is that it is not a profit making organisation. At the same time we recognise that it needs to embody a high regulatory standard of audit quality, as expected by the Financial Reporting Council of other auditing bodies (or private audit firms).

The consultation outlines the proposal to remove the requirements for fees to be capped at full cost and endorses that total fees charged across Wales is 'broadly equivalent to all of its expenditure in relation to that work'.

At an individual audited body level there is a concern about how transparent the 'offsetting' of audit costs across Wales is, and how fair this system would be in its impact on individual audited bodies. The challenge here is whether this change would militate against the efficient organisation. In other words, a smooth trouble-free audit of a well-managed organisation could end up in subsidising an inefficient organisation with a problematic and time-consuming audit.

Question 2

If so, do you agree with the approach taken in section 3 and 4 of the draft bill?

See comments above.

Question 3

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

We note that under section 19 of the Public Audit Wales Audit 2013, the WAO can agree to provide services to other public bodies outside Wales, including recently audits in the Caribbean and Mediterranean.

The wider question here is whether a resource-limited organisation that is publicly funded should be providing those services in the first place.

Furthermore, this section discusses making a surplus with the ambition to ‘earn additional reasonable fees to reinvest in the organisation or surrender to the Welsh Consolidated Fund’. Again, we would suggest that the purpose of the Wales Audit Office is not to generate surpluses for the Welsh Government. Whether right or wrong, an assumption could be made here that the full costing method was originally included into the legislation precisely to prevent such profit making activities.

Question 4

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

See comments above.

Question 5

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

Agreed.

Question 6

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 requirements?

We are broadly in agreement with this proposal but advise some practical consideration needs to be taken when issues arise that may raise a potential conflict of interest. remuneration and pay would be an obvious example.

Question 8

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?

We have no comment in respect of this proposal.

Question 9

If so, do you agree with the approach taken in section 16 of the Draft bill?

See answer in Question 8.

Question 10

Do you agree that the requirement to lay the annual report (on the exercise of function 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?

Agreed.

Question 11

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

Agreed.

Question 12

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 report as soon as reasonably practicable?*
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Agreed.

Question 13

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

See our comment in respect of Question 12.

Question 14

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?

Agreed.

Question 15

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

Agreed.

Question 16

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?

We recognise the challenges outlined in the consultation regarding the Chair and the fact that the Chair's post can be extended, he/she would need to reapply for a second term.

Nevertheless, we still think that there is merit in having a competitive process every 4 years. This would ensure that the make-up of the panel remains fresh and reflective of a diverse and vibrant Wales.

Question 17

If so, do you agree with the approach taken in section 7, 8 and 9 of the Draft Bill?

See above.

Question 18

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 Audit General for Wales;*
 - *The termination of the Chair's appointment*
-

We draw the Committee's attention to the fact that, similar provisions are incorporated into the Budget Responsibility and National Audit Act 2011, which is relevant to the Comptroller and Auditor General of the National Audit Office:

"Remuneration arrangements

(1) Before a person is appointed as Comptroller and Auditor General, remuneration arrangements are to be made in relation to the person jointly by the Prime Minister and the person who chairs the Committee of Public Accounts."

Remaining with the status quo arrangements would ensure a consistent approach nationally. In addition, as the Auditor General is appointed by HM Queen, it seems logical that the First Minister should undertake the appointment duties.

Question 19

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

Please see our answer to Question 18.

Question 20

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?

Agreed.

Question 21

If so, do you agree with the approach taken in section 6, 10 and 11 of the Draft Bill?

Please see our answer to Question 18.

Question 22

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 Audit 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?

Agreed.

Question 23

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

Agreed.

Question 24

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

- *The lack of 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?*
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In order to include a regularity opinion for central government bodies, the consultation is proposing additional legislative changes to the relevant Acts (as outlined on page 29 of the consultation). In paragraph 65 of the consultation, it is noted that “The Arts Council and Sports Council are also affected as relevant provisions are not included in the Royal Charters that established them.”

The complication here for the Arts Council of Wales is that to amend our Royal Charter, there would need to be approval of HM The Queen and the Privy Council. This is a complex and time-consuming process. We would therefore wish to draw to your attention that there are a number of additional practical hurdles in respect of this proposal.

In addition, the Arts Council of Wales’ audit opinion is addressed to the Trustees, as we are a charity and regulated by the Charity Commission. Even though much of our funding comes from taxpayers via Welsh Government, our Trustees are bound to act independently - see Charity Commission publication [RR7](#) (Independence of Charities from the State). The Auditor General for Wales reporting to Welsh Government instead of, or as well as, the Trustees is incompatible with Charity Commission guidelines and potentially charity law.

A practical alternative to changing the legislation for all entities included in page 29 of the consultation, would be for the Wales Audit Office to undertake ‘agreed-upon-procedures’, an alternative form of audit work used commonly in other areas of audit work, in respect of regularity and the use of public funds.

In terms of the overlapping laying of requirements (as outlined on page 31), we wish to draw your attention to the following point not included in the consultation document.

In addition to receipt of grant in aid from Welsh Government, the Arts Council of Wales is a National Lottery distributor. Under the National Lottery Act 1993, we prepare financial statements relating to our Lottery activity. Our accounts for our Grant in Aid are laid before the Assembly and audited by the Wales Audit Office. However, our accounts for lottery are audited by the Wales Audit Office on a sub-contracted basis from the National Audit Office and then laid before UK Parliament, with a copy (not formally laid) at the National Assembly.

Our Scottish counterpart, Creative Scotland, lays its Lottery accounts at Parliament. The difference in their case is that the Auditor General for Scotland audits both sets of accounts without reference to the C&AG. Our preference for consistency purposes would be for both sets of our accounts to be audited by the Wales Audit Office and signed by the Auditor General for Wales, as is the Scottish model. We would welcome the opportunity for this process to consider whether such amendments are feasible.

Question 25

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).

We note the following potential financial implication for the Arts Council of Wales:

- Increase in audit fees – as outlined in our response to Question 1, as a highly efficient audited body we have concerns we may see an increase in fees to offset those organisations with problematic and time-consuming audits;
- Any changes to the Royal Charter will require additional time, resource and legal advice which would be very costly to our organisation;
- Amendment the audit requirement to ensure our Lottery accounts are audited by the Wales Audit Office instead of the National Audit Office would be of financial benefit in terms of time and resource to both us as an Arts Council and the Wales Audit Office as auditors.

Question 26

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?

No further comments. We are happy to be contacted directly for any further information or clarification of our responses.

Appendix 1

The principles and purpose of Royal Charter status

Royal Charters, granted by the sovereign on the advice of the Privy Council, have a history dating back to the 13th century. The Arts Council of Wales' Royal Charter status is not just a matter of arcane constitutional curiosity. Its origins are in the legal establishment of fundamental principles that underpin the way that a Royal Charter body operates.

Their original purpose was to create public or private corporations and to define their privileges and purpose. Charters are normally reserved for bodies that work in the public interest and which can demonstrate pre-eminence, stability and permanence in their particular field.

The importance of the Royal Charter to the Arts Council is the protection that it is designed to offer. A Royal Charter is an instrument of incorporation, granted by The Queen, which confers independent legal personality on an organisation. It defines its objectives, constitution and powers to govern its own affairs.

The key principle outlined above is “independent legal personality”.

Enshrined within this independent legal status are the defining principles of artistic freedom and freedom of expression.

The Human Rights Act 1998 (incorporating Article 10 of the European Convention on Human Rights) provides that everyone has the right to freedom of expression, though this right brings duties and responsibilities. Public authorities, including the Welsh Government, may not act in any way incompatible with this.

Royal Charter status protects these freedoms.

Appendix 2



Wed 05/02/2020 08:52

Finance Committee | Y Pwyllgor Cyllid <SeneddFinance@Assembly.Wales>

RE: (All_Ext) - FW: Ymgynghoriad ar y Bil Archwilio Cyhoeddus (Diwygio) (Cymru) drafft / Consultation on the Draft Public Audit (Amendment) (Wales) Bill

To Rebecca Nelson

Cc Finance Committee | Y Pwyllgor Cyllid

Hi Rebecca,

We are happy to extend the deadline for you, we look forward to receiving your response next week.

Best Wishes



Rachel Powell

Swyddog Cefnogi Pwyllgor, Y Pwyllgor Cyllid, Cynulliad Cenedlaethol Cymru
Committee Support Officer, Finance Committee, National Assembly for Wales

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