

Y Pwyllgor Cyfrifon Cyhoeddus
Bil Archwilio Cyhoeddus (Cymru)
Ymatebion i'r Ymgynghoriad
Medi 2012

.....

Public Accounts Committee

Public Audit (Wales) Bill

Consultation Responses
September 2012

**Bil Archwilio Cyhoeddus
(Cymru)**

Public Audit (Wales) Bill

Consultation Responses

Ymatebion i'r Ymgynghoriad

* Ar gael yn Gymraeg /Available in Welsh

PA 1	Ymddiriedolaeth Prawf Cymru	Wales Probation Trust
PA 2*	Swyddfa Archwilio Cymru	Wales Audit Office
PA 3	Prospect Wales	Prospect Wales
PA 4	Estyn	Estyn
PA 5	Undeb y Gwasanaethau Cyhoeddus a Masnachol	Public and Commercial Services Union
PA 6	Sefydliad Cyfrifwyr Siartredig Cymru a Lloegr	The Institute Of Chartered Accountants England And Wales
PA 7	Bwrdd Iechyd Hywel Dda	Hywel Dda Health Board
PA 8	Awdurdodau Tân ac Achub yng Nghymru	Fire and Rescue Authorities in Wales
PA 9	Cymdeithas Llywodraeth Leol Cymru	Welsh Local Government Association
PA 10	Yr Athro David Heald [i'w roi yma]	Professor David Heald
PA 11	Rheolwr ac Archwilydd Cyffredinol y DU [i'w roi yma]	UK Comptroller and Auditor General
PA 12	Cymdeithas y Cyfrifwyr Ardystiedig Siartredig	The Association of Chartered Certified Accountants
PA 13	Comisiwn Archwilio	Audit Commission

**Public Accounts Committee
Public Audit (Wales) Bill
PA1 - Wales Probation**

YMDDIRIEDOLAETH PRAWF CYMRU

Swyddfa Brawf, 33 Heol y Porth, Caerdydd. CF10 1JE

Ffon: 02920 232999 Ffacs: 02920 784991

WALES PROBATION TRUST

33 Westgate Street,

Cardiff.

CF101JE

Telephone Number 02920 232999

Fax Number: 02920 784991

**Prawf Cymru
Wales Probation**



CYFYNGEDIG / RESTRICTED

Fy Nghyf / Our Ref: SP/kn/mc

Ein Cyf / Your Ref:

3 Medi 2012 / 3 Sept 2012

Darren Millar AC / AM
Cadeirydd / Chair
Public Accounts Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

Dear Mr Millar,

Consultation on the Public Audit (Wales) Bill

Further to your letter dated 23rd July, please find below Wales Probation's responses to the above consultation:

Sections 2-12: relating to the Auditor General Wales

- It is noted that the proposed appointment would be for eight years. It would be helpful to clarify the formal review process during the eight year period.
- It is suggested that, when designing the Audit Code of Practice, consideration should be given to the balance between aligning the code with the strategic direction of the Welsh Public Sector and consistency with the wider UK code of practice.

Sections 13-28: relating to the Wales Audit Office and its relationship with the Auditor General

- Wales Probation fully accepts that there is a need for an approved scheme for charging fees (section 19). It is, however, also important that there is a transparent mechanism to ensure that the Wales Audit Office allocates the correct level of resources to a project to ensure it is efficient and cost effective (section 15).

YMDDIRIEDOLAETH PRAWF CYMRU WALES PROBATION TRUST

www.walesprobationtrust.gov.uk

- The deadline for the Wales Audit Office to lay their annual estimate before the National Assembly is at least five months before the beginning of the relevant financial year (section 20). It is of concern that this timescale does not fit the budget setting timescales of the majority of public sector organisations.
- With regard to the Annual Plan (section 25) it would be helpful to clarify how public sector organisations in Wales feed into the development of the plan and what risk measurement tool(s) will be used to inform the plan?
- It is suggested that there should be specific consideration given to ensuring that the Wales Audit Office has adequate skills over and above technical ones to address the challenges facing the Welsh public sector.

I hope these comments are helpful to you.

Yr eiddoch yn gywir / Yours sincerely,

Sarah Payne

A horizontal line drawn below the handwritten signature, indicating the end of the signature.

SARAH PAYNE
PRIF WEITHREDWR / CHIEF EXECUTIVE



Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 1 o 24

24 Cathedral Road / Heol y Gadeirlan
Cardiff / Caerdydd
CF11 9LJ
Tel / Ffôn: 029 20 320500
Fax / Ffacs: 029 20 320600
Email / Epost: wales@wao.gov.uk
www.wao.gov.uk

Mr Darren Millar AC
Cadeirydd y Pwyllgor Cyfrifon Cyhoeddus
Cynulliad Cenedlaethol Cymru
Bae Caerdydd
CF99 1NA

YMCHWILIAD Y PWYLLGOR CYFRIFON CYHOEDDUS I EGWYDDORION CYFFREDINOL BIL ARCHWILIO CYHOEDDUS (CYMRU)

1. Rwyf yn ddiolchgar iawn am wahoddiad y Pwyllgor i gyflwyno tystiolaeth i ategu ei ymchwiliad i egwyddorion Bil Archwilio Cyhoeddus (Cymru). Croesawaf fwrriad datganedig y Bil i roi sail statudol i drefniadau llywodraethu Swyddfa Archwilio Cymru. Fodd bynnag, mae gennyf rai pwyntiau sy'n peri pryder o ran cynigion Llywodraeth Cymru a nodaf y pwyntiau hynny isod. Atodaf hefyd sylwadau ar gymalau unigol yn atodiad A a chrynodeb o oblygiadau ariannol y Bil yn atodiad B. Rhydd atodiadau C a D sylwadau pellach ar fodolau llywodraethu. Gobeithio y bydd y deunydd hwn o gymorth i'r Pwyllgor wrth lunio ei adroddiad ar y Bil.

Byddai deddfwriaeth i atgyfnerthu trefniadau llywodraethu ac atebolrwydd Swyddfa Archwilio Cymru o fudd

2. Credaf y byddai deddfwriaeth i atgyfnerthu atebolrwydd a threfniadau llywodraethu swyddfa Archwilydd Cyffredinol Cymru (ACC) a Swyddfa Archwilio Cymru o fudd. Yn benodol, credaf ei bod yn briodol iawn sefydlu bwrdd statudol ar gyfer SAC, gan y bydd hyn yn galluogi i drefniadau llywodraethu cadarn gael eu rhoi ar waith o ran goruchwyllo Archwilydd Cyffredinol Cymru ac uwch reolwyr y sefydliad. Byddai hyn yn goresgyn prif ddiffyg y ddeddfwriaeth bresennol, sef er ei bod yn galluogi ACC i bennu trefniadau llywodraethu, megis pwyllgorau cynghori, ei bod hefyd yn galluogi ACC i roi'r gorau i'r trefniadau hynny neu eu diystyru.

Fodd bynnag, mae rhai problemau pwysig yn deillio o'r cynigion yn y Bil

3. Er bod y bwriadau bras sy'n sail i'r Bil yn gadarn, mae problemau sylweddol yn deillio o'r cynigion manwl. Yn anad dim, mae'r Bil yn darparu ar gyfer bwrdd SAC â swyddogaethau gweithredol o ran rhedeg y swyddfa archwilio, ond mae hefyd yn nodi mai aelodau anweithredol fydd y rhan fwyaf o aelodau'r bwrdd. Felly mae'r bwrdd arfaethedig yn yr agen rhwng dau amcan - goruchwyllo ACC (swyddogaeth bwrdd 'goruchwyllo') a rhedeg y Swyddfa Archwilio (swyddogaeth bwrdd 'gweithredol') - ac nid yw'n debygol o gyflawni'r naill na'r llall yn arbennig o effeithiol. Caiff

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 2 o 24

swyddogaethau goruchwyllo'r bwrdd arfaethedig eu peryglu hefyd oherwydd ei swyddogaethau gweithredol.

4. Er bod y cynigion yn debyg i ryw raddau i drefniadau Swyddfa Archwilio Genedlaethol y DU, ceir rhai gwahaniaethau sylweddol. Er enghraifft, gyda'r Swyddfa Archwilio Genedlaethol, mae cod statudol yn ymdrin â'r berthynas rhwng y Rheolwr ac Archwilydd Cyffredinol a bwrdd y Swyddfa Archwilio Genedlaethol. Mae'r cod hwn yn berthnasol i'r gwaith o baratoi strategaeth ac amcangyfrif o incwm a gwariant gan y Rheolwr ac Archwilydd Cyffredinol a bwrdd y Swyddfa Archwilio Genedlaethol, a gweithgareddau allweddol eraill, ac mae'n ofynnol er mwyn adlewyrchu annibyniaeth archwilio'r Rheolwr ac Archwilydd Cyffredinol. Mae bodolaeth y cod hwn yn arwydd o'r ffaith bod angen rheoli'r tensiwn y mae'r corff corfforaethol yn ei roi ar annibyniaeth y Rheolwr ac Archwilydd Cyffredinol. Nid oes darpariaeth gyfatebol ar gyfer cod o'r fath yn y Bil. Yn lle hynny, mae'r Bil yn rhagnodi gweithdrefnau ac yn rhoi swyddogaethau i fwrdd SAC sy'n tanseilio annibyniaeth archwilio ACC.
5. Yn ogystal, gall y darpariaethau yn y Bil ar gyfer trosglwyddo staff i'w cyflogi gan fwrdd SAC esgor ar anghydfodau cyfreithiol. Ac yn fwy cyffredinol, mae'r cynigion yn debygol o fod yn fwy costus na'r hynny a nodwyd ym Memorandwm Esboniadol y Llywodraeth.
6. Ystyriaf y materion hyn ymhellach isod, ynghyd â rhai awgrymiadau ar gyfer ymdrin â hwy naill ai drwy sicrhau bod bwrdd SAC yn canolbwyntio ar swyddogaethau goruchwyllo neu drwy lunio bwrdd gweithredol ac iddo aelodaeth fwy priodol.

Ni fydd gan y bwrdd fel y'i cynigiwyd yn y Bil ddigon o aelodau gweithredol i sicrhau y caiff ei swyddogaethau gweithredol eu cyflawni'n effeithiol.

7. Bwriedir i fwrdd SAC gynnwys aelodau "anweithredol" yn bennaf: pump o aelodau anweithredol yn erbyn ACC, gydag aelod sy'n gyflogai i "sicrhau bod profiad y cyflogai yn gallu llywio gweithgarwch a gweithrediadau'r Bwrdd" (Atodlen 1 (para 1)). Mae sawl problem yn deillio o hyn oherwydd er bod aelodaeth o'r fath o bosibl yn briodol ar gyfer bwrdd goruchwyllo, nod y Llywodraeth yw y bydd gan y bwrdd swyddogaethau gweithredol o ran rhedeg y sefydliad, megis cyflogi staff a chytuno ar y cynllun blynyddol. Fodd bynnag, mae'r aelodaeth arfaethedig yn golygu nad oes gan y bwrdd ddigon o aelodau gweithredol i sicrhau bod yr uwch reolwyr sy'n gyfrifol am roi penderfyniadau ar waith yn teimlo bod ganddynt berchenogaeth ystyrlon ddigonol o'r penderfyniadau hynny. Mae hyn yn wahanol i aelodaeth bwrdd y Swyddfa Archwilio Genedlaethol, sy'n cynnwys tri aelod sy'n gyflogaion, y gall y Rheolwr ac Archwilydd Cyffredinol, gan fod yn rhaid i'r Rheolwr ac Archwilydd Cyffredinol eu hargymell, sicrhau eu bod yn uwch reolwyr priodol.

Byddai bwrdd goruchwyllo yn opsiwn mwy cost-effeithiol, ac yn hwyluso proses gadarn o oruchwyllo'r Archwilydd Cyffredinol

8. Credaf y byddai'n well pe bai swyddogaethau'r bwrdd yn canolbwyntio ar swyddogaethau goruchwyllo, yn hytrach na phennu swyddogaethau rhedeg y sefydliad iddo hefyd. Byddai hyn yn rhoi cyfle i'r bwrdd ganolbwyntio ar ystyried pa un a oedd ACC yn rhedeg y sefydliad yn briodol a chynghori ACC a'r Cynulliad yn unol â hynny, yn hytrach na pheryglu'r rôl oruchwyllo bwysig honno drwy gymryd rhan mewn

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 3 o 24

penderfyniadau sy'n ymwneud â rhedeg y sefydliad. Fel y nodwyd yn atodiad C, gallai swyddogaethau'r bwrdd gynnwys cynghori'r Cynulliad Cenedlaethol wrth iddo ystyried adroddiadau amcangyfrif ac adroddiadau blynyddol ACC, a chyflwyno adroddiadau i'r Cynulliad Cenedlaethol yn ôl y galw ar unrhyw faterion sy'n peri pryder mewn perthynas ag ACC. Byddai hyn yn atgyfnerthu'r broses oruchwylio y tu hwnt i'r lefel a ddarperir gan gorff corfforaethol, a byddai'n helpu i liniaru'r baich goruchwylio manwl ar y Cynulliad Cenedlaethol.

9. Byddai canolbwyntio ar swyddogaethau goruchwylio hefyd fwy na thebyg yn opsiwn mwy fforddiadwy, gan na fyddai angen i ffioedd aelodau'r bwrdd gynnwys elfen i gydnabod eu cyfrifoldebau gwneud penderfyniadau. Ni fyddid yn mynd i rai costau sylweddol penodol sy'n deillio o weithredu, gan gynnwys costau trosglwyddo staff, asedau a rhwymedigaethau, ychwaith (gweler para B13 o atodiad B), a byddai'r broses weithredu yn symlach ac yn gyflymach i'w chyflawni na'r broses ar gyfer bwrdd corff corfforaethol.

Os caiff bwrdd gweithredol ei greu, yna bydd angen gwneud newidiadau sylweddol i'r Bil er mwyn sicrhau ei fod yn addas at y diben

10. Fodd bynnag, er mwyn gwireddu dewis Llywodraeth Cymru i gael bwrdd i redeg sefydliad archwilio Cymru, bydd angen gwneud newidiadau i'r Bil o ran aelodaeth y bwrdd er mwyn sicrhau ei fod yn addas at y diben. Yn arbennig, dylai bwrdd o'r fath gynnwys digon o aelodau gweithredol nid yn unig i lywio penderfyniadau ond hefyd i sicrhau bod y rhai sy'n gyfrifol am roi penderfyniadau ar waith yn teimlo bod ganddynt berchenogaeth ystyrlon ddigonol o'r penderfyniadau hynny. Byddai hefyd yn briodol gwneud newidiadau er mwyn ymdrin â rhai o'r risgiau a'r costau a all ddeillio o'r trefniadau cyflogi a throsglwyddo fel y'u drafftwyd ar hyn o bryd. Ceir rhagor o fanylion am drefniadau corff corfforaethol mwy ymarferol na'r rhai a nodir yn y Bil yn atodiad D. Fodd bynnag, mae'n debygol y bydd unrhyw opsiwn corff corfforaethol yn fwy costus na bwrdd goruchwylio gan y bydd angen talu cyfradd uwch i aelodau'r bwrdd i adlewyrchu'r cyfrifoldebau sy'n ymwneud â rhedeg y sefydliad ac o ganlyniad i gost trosglwyddo staff, asedau a rhwymedigaethau (gweler para B14 o atodiad B).

O dan y Bil, caiff annibyniaeth archwilio ei thanseilio gan allu'r bwrdd i wrthod rhaglen waith ACC, ac nid yw'r gofyniad ar gyfer cytuno o reidrwydd yn ymarferol

11. Mae hyder yn y broses archwilio yn dibynnu i raddau helaeth ar annibyniaeth yr archwilydd, ac mae annibyniaeth yn ofyniad allweddol o fewn safonau archwilio moesegol a phroffesiynol rhyngwladol a'r DU. Yn hanesyddol, adlewyrchwyd pwysigrwydd annibyniaeth archwilio o fewn statws cyfansoddiadol Archwilywr Cyffredinol yn nemocratiaethau'r gorllewin. Ymddengys fod Llywodraeth Cymru yn cydnabod fod hyn yn broblem yn rhai o nodweddion y Bil. Yng nghymal 26, maent wedi ceisio cyfyngu ar allu bwrdd SAC i ymyrryd ym mhenderfyniadau ACC am ei raglen waith drwy ddynodi mai dim ond os bydd y datganiad, neu ran ohono, yn "afresymol" y gall bwrdd SAC wrthod datganiad ACC am ei raglen waith. Yn anffodus, nid yw hyn yn diogelu annibyniaeth archwilio ACC yn ddigonol, gan fod y cymal yn dal i ganiatáu i fwrdd SAC wrthod barn ACC am ba faterion sy'n haeddu archwiliad.
12. Mae problemau hefyd yn deillio o gymal 26 yn yr ystyr ei fod yn nodi'r posibilrwydd o anghydfod heb roi ffordd o ddatrys yr anghydfod hwnnw. Ac eithrio cyfaddawdu, yr

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 4 o 24

unig ffordd realistig o ddatrys gwahaniaeth barn ar y rhaglen waith yw i'r ACC neu aelodau eraill o'r bwrdd ymddiswyddo. Nid yw'r awgrym y gellid datrys gwahaniaethau yn y llys, fel y cyflwynwyd gan Lywodraeth Cymru i'r Pwyllgor Cyfrifon Cyhoeddus ar 1 Mai 2012, yn gynnig ymarferol o ystyried yr achos cynhenid o wrthdaro buddiannau sy'n deillio o'r ffaith bod yn rhaid i ACC ddibynnu ar gyngor cyfreithiol sy'n gweithio o dan gontract i SAC.

13. Mae'r gofyniad penodol i gytuno ar y cynllun blynyddol cyffredinol o dan gymal 25 hefyd yn tanseilio annibyniaeth archwilio. Mae gofyn am gytundeb yn ei gwneud yn debygol y bydd angen cyfaddawdu, ac mae hyn yn peryglu annibyniaeth archwilio a barn Archwilydd Cyffredinol.
14. Gellid osgoi'r problemau hyn drwy fabwysiadu model bwrdd goruchwyllo. Fel arall, gellid eu rheoli'n well pe byddai'r Bil yn dilyn trefniadau'r Swyddfa Archwilio Genedlaethol yn agosach, yn arbennig pe bai'n ei gwneud yn ofynnol i baratoi cod i ddiogelu annibyniaeth ACC mewn perthynas â gweithgareddau gwneud penderfyniadau allweddol.

Caiff annibyniaeth archwilio ACC hefyd ei thanseilio gan allu'r bwrdd i lywio'r ffordd y caiff swyddogaethau ACC eu gweithredu

15. Er mwyn i ACC ddirprwyo ei waith neu ei gwaith, sy'n ymarferol angenrheidiol, o dan gymal 18(2) rhaid bod ganddo neu ganddi gynllun dirprwyo a gymeradwywyd gan fwrdd SAC. O ganlyniad, daw'r bwrdd yn rhan o'r broses o redeg y sefydliad, ac mae hyn yn gyfyngiad sylweddol posibl ar y ffordd y bydd ACC yn gweithredu ei swyddogaethau. Er enghraifft, gallai atal ACC rhag cymryd rhan yn y Fenter Twyll Genedlaethol ar gyfer y DU gyfan, ac ystyrir hyn ymhellach ym mharagraffau A37 i A41 yn atodiad A.
16. I'r gwrthwyneb, o dan gymal 19, rhoddir y pŵer i fwrdd SAC drefnu gyda chyrrff cyhoeddus i ACC ddarparu gwasanaethau i'r cyrrff hynny. Ond o dan y cymal hwn ni fydd angen cytundeb ACC—gall gweddiill y bwrdd bleidleisio yn erbyn ACC. Felly gallai'r cymal arwain at achosion sylweddol o wrthdaro buddiannau a fyddai'n tanseilio gwaith archwilio ACC. Er enghraifft, gallai bwrdd SAC drefnu, er gwaethaf gwrthwynebiad ACC, i ACC ddarparu gwasanaethau gweinyddu'r gyflogres i gorff a gaiff ei archwilio ganddo. Byddai hyn yn fater moesegol sylweddol ac yn mynd yn groes i safonau proffesiynol rhyngwladol gan y byddai ACC yn archwilio gwasanaethau y mae ef ei hun wedi'u darparu.
17. O dan gymal 21 a phara 20 o Atodlen 1, bwrdd SAC fydd cyflogwr holl staff SAC, ac mae cymalau 14 a 21 yn rhoi swyddogaethau eraill iddo megis "sicrhau" gwasanaethau. Mae hyn yn cyfyngu ymhellach ar allu ACC i fodloni gofynion proffesiynol. Yn benodol, ni fydd ACC (sef y person a fydd yn darparu barnau archwilio) yn gallu cyflogi unrhyw un yn uniongyrchol i asesu ansawdd staff a

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 5 o 24

gwasanaethau a ddarperir gan fwrdd SAC (caiff hyn ei wahardd gan gymal 9(2)), a gallai hyn ei atal rhag cydymffurfio â safonau proffesiynol rhyngwladol.¹.

18. Mae'n bosibl y gellid goresgyn y problemau sy'n gysylltiedig â sicrhau cymorth staff priodol i ACC i ryw raddau pe byddai'r bwrdd yn dirprwyo'r awdurdod i ACC, fel Prif Weithredwr y sefydliad, roi mesurau ar waith megis comisiynu arolygiadau sicrwydd ansawdd annibynnol. Fodd bynnag, gan mai ar ffurf drafft y mae'r Bil ar hyn o bryd, nid oes sicrwydd y ceir yr awdurdod angenrheidiol, ac mae hyn yn codi mater ehangach o ran diffyg cydbwysedd rhwng awdurdod a chyfrifoldeb ac atebolrwydd. ACC fydd yn gyfrifol yn y pen draw am ddarparu archwiliadau ac astudiaethau heb yr awdurdod llawn i gyflawni'r cyfrifoldebau hynny.

Nid yw'r Bil yn darparu digon o gamau diogelu sy'n cyfateb i TUPE i'r aelodau o staff sy'n trosglwyddo i'r SAC newydd, a gallai hyn arwain at anghydfodau cyfreithiol costus

19. Caiff staff a gyflogir gan ACC eu trosglwyddo i'w cyflogi gan fwrdd y SAC arfaethedig (para 5 o Atodlen 3). Nid yw'r cynllun trosglwyddo yn rhoi'r un diogelwch â rheoliadau TUPE (gweler para A33 o atodiad A), ac mae'n annhebygol y bydd rheoliadau TUPE eu hunain yn gymwys. Felly, ymddengys fod y Bil yn mynd yn groes i ddatganiad Llywodraeth Cymru ym mhara 242 o'i dogfen ymgynghori ar ei bil drafft dyddiedig 15 Mawrth 2012 sy'n nodi "yn ôl y ddarpariaeth hon, ni fydd trosglwyddo staff ar delerau llai ffafriol nag a fyddai o gymhwyso TUPE".
20. Yn ogystal, mae'r gofyniad i'r SAC arfaethedig sicrhau bod y telerau cyflogaeth yn cyfateb yn fras i delerau Llywodraeth Cymru (para 20 o Atodlen 1) yn creu tensiwn pe ceid nad yw telerau trosglwyddo unrhyw staff yn cyfateb yn fras i delerau Llywodraeth Cymru (gweler paragraffau A14 a A15 o atodiad A). Rydym wedi gofyn i Lywodraeth Cymru esbonio ei bwriadau yn y maes hwn. Fodd bynnag, ni waeth hynny, nid yw'r Bil fel y'i drafftwyd yn eglur yn hyn o beth, a gall hyn esgor ar anghydfodau cyfreithiol costus.

Mae cost y Bil fel y saif yn debygol o fod yn sylweddol uwch na'r amcangyfrif a nodir yn y memorandwm esboniadol


21. Bydd y corff corfforaethol a gyflwynwyd yn y Bil yn anochel yn mynd i gostau. Rwyf yn amcangyfrif y byddai'r costau sefydlu a'r costau trosiannol (gan gynnwys costau ACC y Bil ei hun) rhwng £180,000 a £350,000, a'r costau cylchol blynyddol parhaus rhwng £200,000 a £650,000, gyda rhywbeth yn agosach at y ffigur is yn fwy tebygol ond nid yw hynny'n sicr (gweler atodiad B am ragor o fanylion). Mae'r ffigurau uwch ar gyfer costau parhaus yn adlewyrchu'n bennaf y risgiau sy'n gysylltiedig ag anghydfodau, trethu treuliau teithio a chynhaliaeth, a'r angen posibl i sicrhau bod telerau cyflogaeth yn fwy cydnaws â thelerau Llywodraeth Cymru, sydd oll yn deillio o'r cynnig arfaethedig i drosglwyddo staff o gael eu cyflogi gan ACC i gael eu cyflogi gan fwrdd

¹ Y Safon Ryngwladol ar Reoli Ansawdd 1 (ISQC1) a'r Safon Ryngwladol ar Archwilio (ISA220), fel y'u cymhwyswyd drwy Nodyn Ymarfer 10

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 6 o 24

SAC. Mae cost y bwrdd ei hun o ran pethau fel ffioedd aelodau'r bwrdd hefyd yn debygol o fod yn uwch na'r hyn a nodwyd ym Memorandwm Esboniadol Llywodraeth Cymru.

22. Byddwn yn fwy na pharod i ddarparu rhagor o wybodaeth i'r Pwyllgor i ategu ei ymchwiliad er mwyn helpu i sicrhau y caiff y Bil ei ddatblygu'n ddeddfwriaeth sy'n addas at y diben.

Yn gywir 

HUW VAUGHAN THOMAS
ARCHWILYDD CYFFREDINOL CYMRU

Sylwadau ar ddarpariaethau unigol y Bil

Adrannau 2-12—Archwilydd Cyffredinol Cymru

- A1. Yn fy marn i, mae cymalau 2 i 7 yn gwneud darpariaeth synhwyrol i barhau â swydd ACC, a phenodi, ymddiswyddo, diswyddo, anghymhwysu ACC a chyfyngiadau ar gyflogaeth, statws a chydabyddiaeth ACC.
- A2. Mae cymal 8 yn darparu bod gan ACC ddisgresiwn llwyr ynglŷn â'r ffordd y caiff ei swyddogaethau eu harfer ac nad yw'n cael ei gyfarwyddo na'i reoli gan Gynulliad Cenedlaethol Cymru na Llywodraeth Cymru. Fy mhryder yw bod hon ychydig yn llai penodol na'r ddarpariaeth gyfatebol ar gyfer Rheolwr ac Archwilydd Cyffredinol y DU (adran 17 o Ddeddf Cyfrifoldeb am Gyllidebau ac Archwilio Cenedlaethol 2011—Deddf BRANA), sy'n ei gwneud yn glir bod gan y Rheolwr ac Archwilydd Cyffredinol ddisgresiwn llwyr ynghylch cyflawni swyddogaethau (nid dim ond y modd), gan gynnwys, yn arwyddocaol, ynghylch penderfynu a ddylid cynnal archwiliadau gwerth am arian:

17 How functions are to be exercised

(1) The Comptroller and Auditor General has complete discretion in the carrying out of the functions of that office, including in determining whether to carry out an examination under Part 2 of the National Audit Act 1983 and as to the manner in which any such examination is carried out.

- A3. Byddai'n well gennyf pe bai cymal 8 yn adlewyrchu rhywbeth tebyg i'r cyfeiriad at archwiliadau yn adran 17 o Ddeddf BRANA.
- A4. Mae Cymal 9(1) yn gwneud darpariaeth briodol ar gyfer pwerau atodol i ACC, ond mae cymal 9(2) yn gwahardd ACC rhag gwneud unrhyw beth y mae gan fwrdd SAC gyfrifoldeb amdano o dan gymal 21(2)(a) i (c), sy'n cynnwys cyflogi staff a sicrhau gwasanaethau. Gan nad yw'n glir beth yn union yw ystyr "cyflogi staff" a "sicrhau gwasanaethau" yn y cyd-destun hwn, gall hyn o bosibl danseilio gallu ACC i gyflawni swyddogaethau a ddirprwyir iddo gan fwrdd arfaethedig SAC (a ddirprwyir o dan bara 29 o Atodlen 1), a fyddai'n tanseilio ei swyddogaeth fel Prif Weithredwr. Er enghraifft, nid yw'n glir a fydd ACC yn gallu cyfarwyddo contractwyr i ymgymryd â thasgau ar adegau penodol neu derfynu eu contractau. Gall hyn fod yn rhwystr posibl arall i gyfranogiad ACC yn y Fenter Twyll Genedlaethol, fel y nodwyd ym mharagraffau A37 i A41 isod. Nid oes cymal sy'n cyfateb i gymal 9(2) yn neddfwriaeth y Swyddfa Archwilio Genedlaethol (Deddf BRANA 2011).
- A5. Mae cymal 10 yn ei gwneud yn ofynnol i ACC gyhoeddi cod ymarfer archwilio sy'n pennu'r ffordd y caiff swyddogaethau ACC eu cyflawni. Mae i god o'r fath gryn werth, gan y bydd yn rhoi sail i ACC sicrhau bod archwiliadau a gynhelir gan staff a chontractwyr o safon dda. Fodd

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 8 o 24

bynag, fel y'i drafftwyd, mae cwmpas arfaethedig y cod yn llawer rhy eang gan gwmpasu materion sydd ymhell y tu hwnt i ymarfer archwilio. Er enghraifft, mae'n cwmpasu rhoi cyngor a chymorth i landlordiaid cymdeithasol cofrestredig o dan adran 145D o Ddeddf Llywodraeth Cymru 1998. Nid oes angen i'r cwmpas fod mor eang ac mae'n debygol o arwain at greu cod helaeth a fydd yn fwy costus i'w baratoi a'i gynnal nag sydd ei angen, ac a all fod yn anodd ei ddilyn. Felly byddwn yn awgrymu y dylid diwygio'r cymal hwn a hepgor 10(2)(c)(ii) i (vi), 10(2)(d)(iii) a 10(2)(e)(i). Mae'r cyfeiriad olaf yn ymwneud â hawliau statudol ACC i gael mynediad at ddogfennau. Mae'r gofyniad i gynnwys rhagnodiad ynglŷn ag arfer hawliau o'r fath mewn cod ymarfer archwilio yn debygol o fod yn wrthgynhyrchiol gan y byddai'n eitem y gallai personau sy'n ceisio osgoi eu rhwymedigaethau o ran mynediad ei defnyddio i herio hawliau mynediad statudol ACC, gan beri oedi i archwiliadau a chynyddu eu cost o bosibl.

- A6. Mae cymal 11 yn gwneud ACC yn archwilydd cyrff llywodraeth leol yn lle archwilwyr penodedig. Ar hyn o bryd, mae presenoldeb dau archwilydd mewn llywodraeth leol yn arwain at ddryswch a rhwystredigaeth ymhlith y cyhoedd, ac felly dylai'r cymal hwn helpu i sicrhau mwy o eglurder.
- A7. Mae cymal 12 yn darparu, a hynny'n briodol, fod yn rhaid ymgynghori ag ACC cyn bod Gweinidogion Cymru yn trosglwyddo swyddogaethau gorchwyllo i ACC. Dylai helpu i atal swyddogaethau nad ydynt yn gyson ag annibyniaeth ACC rhag cael eu trosglwyddo.

Cymalau 13-28— Swyddfa Archwilio Cymru a'i pherthynas ag ACC

- A8. Mae cymal 13 yn sefydlu SAC newydd fel corff corfforaethol, a fydd yn gorff cyhoeddus ychwanegol wedi'i gyd-blethu ag ACC, a fydd yn parhau i fod yn gorff cyhoeddus. Mae cymal 13 yn cyflwyno Atodlen 1, sy'n manylu ar natur SAC, ac mae elfennau ohono yn achosi problemau.
- A9. Mae Atodlen 1 (para 1) yn rhoi aelodaeth "anweithredol" yn bennaf i fwrdd SAC. Mae sawl problem yn deillio o hyn oherwydd bwriedir i'r bwrdd fod yn gyfrifol am redeg y sefydliad (e.e., cyflogi staff ac ati, fel y nodwyd yng nghymal 21 a chytuno ar y cynllun blynyddol (cymalau 25 a 26)). Byddai'r aelodaeth arfaethedig yn golygu na fyddai gan y bwrdd ddigon o aelodau gweithredol i sicrhau bod uwch reolwyr sy'n gyfrifol am roi penderfyniadau ar waith yn cael digon o berchenogaeth yn y penderfyniadau hynny. (Ni fyddai aelodaeth y bwrdd yn achosi cymaint o broblem pe na bai gan y bwrdd swyddogaethau ynghylch rhedeg y sefydliad.)
- A10. O dan bara 1 o Atodlen 1 bydd un aelod yn un o gyflogeion SAC. Yn ôl nodiadau esboniadol Llywodraeth Cymru rôl y person hwn yw "sicrhau bod profiad y cyflogai yn gallu llywio gweithgarwch a gweithredoedd y bwrdd". Mae'r datganiad hwn, ynghyd â'r ddarpariaeth bod yn rhaid i'r aelod sy'n gyflogai gael ei benodi gan aelodau anweithredol, yn awgrymu efallai na fydd unrhyw uwch reolwr, gan gynnwys cyfarwyddwr cyllid, yn aelod o'r bwrdd.

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 9 o 24

Golyga hyn y byddai diffyg aelodau sy'n gyfrifol am roi penderfyniadau'r bwrdd ar waith, ar wahân i ACC, a fydd yn ymgymryd â rôl Prif Weithredwr. Mae hyn yn wahanol i aelodaeth bwrdd y Swyddfa Archwilio Genedlaethol, sy'n cynnwys tri aelod sy'n gyflogeion, y gall y Rheolwr ac Archwilydd Cyffredinol, gan fod yn rhaid i'r Rheolwr ac Archwilydd Cyffredinol eu hargymell, sicrhau eu bod yn uwch reolwyr priodol.

- A11. Nid yw'n eglur ychwaith sut y bydd aelodau anweithredol yn penodi'r aelod sy'n gyflogai "yn ôl teilyngdod", fel sy'n ofynnol o dan bara 2(2) o Atodlen 1. Gall diffyg eglurder ynglŷn â'r pwynt hwn arwain at anghydfod rhwng y bwrdd a gweithlu SAC, gan arwain at gostau, a cholli effeithlonrwydd ac effeithiolrwydd.
- A12. Os penderfynir cael bwrdd goruchwyllo, yna byddai'n briodol i'r ddeddfwriaeth roi meini prawf ar gyfer penodi'r aelod sy'n gyflogai i adlewyrchu buddiannau a phrofiad cyflogeion. Fodd bynnag, os penderfynir cael bwrdd â swyddogaethau gweithredol, awgrymwn y byddai'n well pe bai o leiaf ddau aelod sy'n gyflogai na ellid eu penodi ond drwy argymhelliad ACC. Byddai hyn yn ei gwneud yn bosibl i ACC sicrhau bod digon o reolwyr yn cael cynrychiolaeth ar y bwrdd, ond ar yr un pryd gadw'r mwyafrif o aelodau anweithredol.
- A13. O dan bara 20 o Atodlen 1 a chymal 21, bwrdd SAC fydd cyflogwr y staff, ac mae cymalau 14 a 21 yn rhoi swyddogaethau eraill iddo, gan gynnwys sicrhau gwasanaethau. Gan na fydd ACC (sef y person a fydd yn rhoi barn archwilio) yn gallu cyflogi unrhyw un yn uniongyrchol i asesu ansawdd staff a gwasanaethau a ddarperir gan fwrdd SAC (mae cymal 9(2) yn ei wahardd rhag gwneud hynny), gall hyn fod yn rhwystr posibl i gydymffurfio â safonau proffesiynol rhyngwladol². Ymhlith pethau eraill, mae'r safonau hynny yn ei gwneud yn ofynnol i ACC lunio polisïau a gweithdrefnau sy'n rhoi sicrwydd i ACC fod ganddo neu ganddi ddigon o bersonél sy'n meddu ar y cymhwysedd proffesiynol angenrheidiol ac ymrwymiad i egwyddorion moesegol. Gellid goresgyn hyn pe bai'r bwrdd yn dirprwyo'r awdurdod i gymryd camau megis contractio mewn arolygiadau sicrhau ansawdd annibynnol i ACC, fel prif weithredwr y sefydliad. Fodd bynnag, fel y mae'r Bil wedi'i ddrafftio ar hyn o bryd, nid yw'r awdurdod angenrheidiol wedi'i warantu am fod gan y Bwrdd ddisgresiwn llwyr yn ei gylch.
- A14. Mae para 20 o Atodlen 1 hefyd yn ei gwneud yn ofynnol i'r SAC arfaethedig sicrhau bod telerau cyflogaeth staff "yn cyfateb yn fras" i delerau aelodau o staff Llywodraeth Cymru. Ar wahân i'r cwestiwn a yw Llywodraeth Cymru yn gymharydd priodol (yn gyffredinol, mae gwaith SAC yn eithaf gwahanol i waith Llywodraeth Cymru), mae'r ddarpariaeth hon yn amwys ond yn ddigon rhagnodol i achosi problemau. Gan nad yw "yn cyfateb yn fras" wedi'i

² Y Safon Ryngwladol ar Reoli Ansawdd 1 (ISQC1) a'r Safon Ryngwladol ar Archwilio (ISA220), fel y'u cymhwyswyd drwy Nodyn Ymarfer 10

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 10 o 24

ddiffinio yn y Bil nac yn unman arall, bydd SAC yn wynebu ansicrwydd, a fyddai'n cael ei waethygu bob tro y newidiodd Llywodraeth Cymru ei thelerau. Yn benodol, byddai SAC yn agored i geisiadau posibl gan staff, undebau llafur neu grwpiau pwysu am adolygiad barnwrol. Gellid tybio bod i "yn cyfateb yn fras" yr ystyr y byddai person rhesymol yn ei phriodoli i'r ymadrodd, ac ar y sail honno credaf fod telerau presennol fy staff yn cyfateb yn fras i delerau Llywodraeth Cymru. Fodd bynnag, nid oes sicrwydd y byddai Barnwr yn dod i'r un casgliad.

- A15. Er mwyn mynd i'r afael â hyn, awgrymaf yn gryf, os bydd unrhyw ddarpariaeth "yn cyfateb yn fras", yna y dylai ddilyn y geiriad mwy pragmatig a nodir ym mhara 17 i Atodlen 2 i Ddeddf BRANA:

In determining the terms of employment of any staff, NAO must have regard to the desirability of keeping the terms broadly in line with those applying to civil servants.

(Ychwanegwyd y pwyslais)

Byddai hyn yn lleihau'r risg o adolygiad barnwrol a chostau i'r cyhoedd o ganlyniad i hynny.

- A16. Fel y nodwyd yn fy ymateb i'r ymgynghoriad ar y bil drafft, byddai'r darpariaethau anghymhwysu ar gyfer aelodau SAC (para 24 o Atodlen 1) yn fwy perthnasol pe baent yn cynnwys aelodau neu gyflogeion cyrff a archwilir gan ACC.
- A17. Ymddengys bod yr ymadrodd ym mhara 31(5) o Atodlen 1, "fel y gwêl y person hwnnw yn dda" mewn perthynas ag archwilydd cyfrifon SAC, yn rhoi gormod o ryddid a gall arwain at waith archwilio o ansawdd gwael.
- A18. I'r gwrthwyneb, dylai para 32(3) o Atodlen 1 gynnwys y geiriau "ym mhob ffordd berthnasol" ar ôl "yn fodlon" er mwyn sicrhau bod y ddeddfwriaeth yn darparu ar gyfer archwiliad y gellir ei gyflawni'n realistig sy'n unol â safonau archwilio proffesiynol.
- A19. O dan gymal 16 ACC fydd Prif Weithredwr SAC, mae para 1 o Atodlen 1 i'r Bil yn gwneud ACC yn aelod o fwrdd SAC, ac mae para 30 o Atodlen 1 yn gwneud ACC yn Swyddog Cyfrifyddu SAC. Felly bydd gan ACC bedair rôl allweddol: (a) fel Archwilydd Cyffredinol, y person sy'n gyfrifol yn y pen draw am gyflawni archwiliadau ac astudiaethau, (b) fel Swyddog Cyfrifyddu, yn gwarchod adnoddau'r sefydliad, (c) fel Prif Weithredwr, prif reolwr y sefydliad (d) fel aelod bwrdd, sy'n cymryd rhan yn nhrefnadau a phenderfyniadau'r Bwrdd. Nid oes unrhyw wrthdaro annatod rhwng rolau (a) i (c), ond maent yn achosi problemau o dan y trefniadau arfaethedig ar gyfer bwrdd gweithredol. O dan y trefniadau arfaethedig, mae ACC, fel Prif Weithredwr, yn ddarostyngedig i benderfyniadau'r bwrdd ynglŷn â'r rhaglen waith, ei hadnoddau a'r ffordd y caiff y sefydliad ei redeg yn gyffredinol. Felly, fel Prif Weithredwr, cyfyngir ar ei allu i gyflawni ei ofynion proffesiynol fel Archwilydd Cyffredinol

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 11 o 24

gan yr angen am gytundeb y bwrdd ar faterion rheoli allweddol, megis recriwtio a hyfforddi staff.

- A20. At hynny, ACC fydd yn gyfrifol yn y pen draw am gynnal archwiliadau ac astudiaethau heb yr awdurdod llawn i gyflawni'r cyfrifoldebau hynny. Mae'r cyfrifoldeb personol hwn yn y pen draw hefyd yn ymestyn i ofynion rheoleiddio, megis cydymffurfio â'r Ddeddf Diogelu Data, ac unwaith eto, heb awdurdod llawn.
- A21. Yn wahanol i'r Swyddfa Archwilio Genedlaethol, nid yw'r Bil yn darparu cod a all helpu i leddfu'r tensiynau annatod sy'n deillio o sefyllfa lle mae archwilydd cyffredinol yn rhan o fwrdd corff corfforaethol ac yn ddarostyngedig iddo. Mae para 10 o Atodlen 3 i Ddeddf BRANA yn darparu ar gyfer cod i ymdrin â'r berthynas rhwng y Rheolwr ac Archwilydd Cyffredinol a'r Swyddfa Archwilio Genedlaethol, ac mae'n ofynnol yn benodol i hwn adlewyrchu'r egwyddorion a nodwyd yn adran 17 o Ddeddf BRANA (gweler y dyfyniad yn A2 uchod), h.y. disgrisiwn llwyr y Rheolwr ac Archwilydd Cyffredinol ynghylch cyflawni swyddogaethau. Mae'r cod yn arwydd bod angen rheoli'r tensiwn y mae corff corfforaethol yn ei greu o ran annibyniaeth y Rheolwr ac Archwilydd Cyffredinol.
- A22. Mae cymal 16(2) yn cyflwyno Atodlen 2, y mae para 1 ohoni yn ei gwneud yn ofynnol i ACC a chadeirydd SAC baratoi adroddiadau blynyddol ac interim ar y cyd. Fel yn achos paratoi a gosod amcangyfrifon ar y cyd (cymal 20), gosod y cynllun blynyddol ar y cyd (cymal 27), a chyflwyno cyfrifon blynyddol gan y cadeirydd i'w harchwilio (para 32(1)(b) o Atodlen 1), mae paratoi adroddiadau ar y cyd yn tanseilio atebolrwydd personol clir ACC fel Swyddog Cyfrifyddu. Mae'r gofyniad ar gyfer adroddiadau interim hefyd yn debygol o gynnig gwerth gwael am arian. Dylai adroddiadau blynyddol fod yn ddigon i roi cyfrif am weithgareddau ACC a gweithgareddau ehangach y sefydliad. Mae adroddiadau interim gorfodol mynych yn annhebygol o gynnig y gwerth y byddai adroddiadau ad hoc i'r Cynulliad ynghylch materion sy'n achos pryder gan fwrdd goruchwyllo, fel y'i rhagwelwyd ym mharagraff C4.ii o Atodiad C, yn ei gynnig.
- A23. Mae cymal 18(2) yn ei gwneud yn ofynnol i unrhyw gynllun dirprwyo gan ACC gael ei gymeradwyo gan fwrdd SAC. Mae hyn yn gyfyngiad sylweddol ar y ffordd y mae ACC yn arfer ei swyddogaethau. Ymhlith pethau eraill, gall atal ACC rhag cymryd rhan ym Menter Twyll Genedlaethol y DU, a ystyrir ymhellach ym mharagraffau A37 i A41 isod.
- A24. Mae cymal 19 yn galluogi bwrdd SAC i drefnu â chyrrff cyhoeddus i ACC ddarparu gwasanaethau i'r cyrrff hynny. Ond o dan y cymal hwn ni fydd angen cytundeb ACC—gall gweddill y bwrdd bleidleisio yn erbyn ACC. Gallai'r cymal arwain at gryn wrthdaro buddiannau a fyddai'n tanseilio annibyniaeth archwilio ACC. Er enghraifft, gallai bwrdd SAC drefnu, er gwaethaf gwrthwynebiad ACC, i ACC ddarparu gwasanaethau gweinyddu'r gyflogres i gorff a gaiff ei archwilio ganddo. Byddai hyn yn fater moesegol sylweddol ac yn mynd yn groes i safonau proffesiynol rhyngwladol gan y byddai ACC yn archwilio gwasanaethau y mae ef ei hun wedi'u darparu.

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 12 o 24

- A25. Credaf hefyd y gellid ymestyn y diffiniad o “awdurdod perthnasol” yng nghymal 19 i gwmpasu, er enghraifft, asiantaethau datblygu rhyngwladol nad ydynt yn gyrrff cyhoeddus o dan gyfraith y DU.
- A26. Mae cymal 25 yn ei gwneud yn ofynnol i ACC a bwrdd SAC gytuno ar gynllun blynyddol y sefydliad. Felly mae rhaglen waith ACC, gan gynnwys yr astudiaethau y mae ACC yn bwriadu eu cynnal, yn amodol ar gytundeb bwrdd SAC. Mae hyn yn amharu ar annibyniaeth archwilio ACC drwy lesteirio ei allu i ddewis materion penodol i'w hystyried. Mae cymal 25 hefyd yn ei gwneud yn ofynnol i'r adnoddau sydd i'w neilltuo ar gyfer rhaglen waith ACC fod yn amodol ar gytundeb bwrdd SAC.
- A27. Yn gysylltiedig â chymal 25, mae cymal 26 yn ei gwneud yn ofynnol i gynllun a chyllid blynyddol ACC gydymffurfio â gweithdrefn lle mae'n rhaid i ACC gyflwyno datganiad o'i raglen waith ac amcangyfrif o'r uchafswm adnoddau sydd eu hangen ar ei chyfer i'r Bwrdd. Er yr ymddengys bod cymal 26 yn ceisio cyfyngu ar allu bwrdd SAC i ymyrryd ym mhenderfyniadau ACC am ei raglen waith drwy ddynodi mai dim ond os bydd y datganiad, neu ran ohono, yn “afresymol” y gall bwrdd SAC wrthod datganiad ACC am ei raglen waith, nid yw hyn yn diogelu annibyniaeth archwilio ACC yn ddigonol. Caniateir o hyd i fwrdd SAC wrthod barn ACC ynglŷn â'r hyn sy'n haeddu cael sylw. Mae hefyd yn anfodddhaol yn yr ystyr ei fod yn codi'r posibilrwydd o anghydfod heb roi modd i'w ddatrys.
- A28. Mae'r ddarpariaeth ar gyfer gwrthod datganiad o dan gymal 26 a'r gofyniad i gael cytundeb o dan gymal 25 ill dau yn awgrymu mai'r unig ffordd realistig o ddatrys gwahaniaeth barn ynglŷn â'r rhaglen waith, ac eithrio drwy gyfaddawdu, a fyddai yn achos ACC yn golygu peryglu annibyniaeth ei farn, yw i ACC neu aelodau eraill o'r bwrdd ymddiswyddo. Mae'r awgrym y gellid datrys gwahaniaeth barn mewn llys, fel y'i cynigiwyd gan Lywodraeth Cymru i'r Pwyllgor Cyfrifon Cyhoeddus ar 1 Mai 2012, yn anymarferol yn ôl pob tebyg oherwydd yr achos cynhenid o wrthdaro buddiannau sy'n deillio o'r ffaith bod yn rhaid i ACC ddibynnu ar gyngor cyfreithiol sy'n gweithio o dan gontract i SAC, sef y corff y byddai gan ACC anghydfod ag ef. Ar y gorau, mae mynd i gyfraith yn anymarferol ac yn gostus.

Cymalau 29 to 37—darpariaeth amrywiol a chyffredinol

- A29. Mae cymal 29 yn galluogi Cynulliad Cenedlaethol Cymru i benderfynu drwy Reolau Sefydlog sut y caiff ei swyddogaethau o dan y Bil eu harfer. Credaf fod hyn yn briodol gan ei fod yn helpu i ddileu'r lefel uchel o ragnodi gwaith y Pwyllgor a fu'n bresennol yn y Bil drafft.
- A30. Mae cymal 34 yn cyflwyno Atodlen 3, ac mae para 5 o Atodlen 3 yn darparu ar gyfer trosglwyddo staff o gyflogaeth ACC i gyflogaeth y SAC arfaethedig. Ni fyddai angen y darpariaethau hyn pe na bai'r SAC arfaethedig yn dod yn gyflogwr staff, ond, os bydd hynny yn digwydd, mae'n bwysig nodi eu bod yn cynnwys rhai problemau a all arwain at anghydfodau costus.

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 13 o 24

- A31. Mae para 5(2) o Atodlen 3 yn nodi bod contractau cyflogaeth yn trosglwyddo o ACC i'r SAC arfaethedig ac y byddant yn weithredol fel petaent wedi'u gwneud yn wreiddiol rhwng y cyflogai a'r SAC arfaethedig. Gellir dadlau bod hyn yn diogelu staff rhag newidiadau anffafriol yn eu contractau cyflogaeth i ryw raddau, oherwydd o dan gyfraith gwlad mae'n rhaid i'r cyflogai a'r cyflogwr gytuno ar unrhyw newidiadau i gontract cyflogaeth. (Ond nid yw'n cynnig yr un diogelwch ag a geir gan Reoliad 4(4) o TUPE.). Fodd bynnag, ar yr un pryd, mae para 20 o Atodlen 1 yn ei gwneud yn ofynnol i'r SAC arfaethedig sicrhau bod telerau cyflogaeth yn cyfateb yn fras i delerau Llywodraeth Cymru. Mae hyn yn creu tensiwn os na fydd unrhyw rai o delerau'r staff sy'n trosglwyddo yn cyfateb yn fras i delerau Llywodraeth Cymru, ac felly gallai'r darpariaethau beri anghydfod rhwng y sefydliad a'i staff.
- A32. Mae'n bosibl nad yw tensiwn o'r fath yn fwriadol. Bwriad Llywodraeth Cymru o bosibl yw mai dim ond i ddechreuwr newydd y bydd para 20(5) o Atodlen 1 yn gymwys, neu efallai ei bod o'r farn bod y telerau eisoes yn ddigon tebyg i osgoi unrhyw her gyfreithiol. Rydym wedi gofyn i Lywodraeth Cymru esbonio ei bwriadau yn y maes hwn. Fodd bynnag, ni waeth hynny, nid yw'r Bil fel y'i drafftwyd yn eglur yn hyn o beth, a gall hyn esgor ar anghydfodau cyfreithiol costus.
- A33. Mater arall sy'n codi o ran trosglwyddo staff yw nad yw'r Bil yn darparu darpariaethau sy'n debyg i TUPE y byddai disgwyl iddynt roi sicrwydd i'r staff. Mae'r Bil yn darparu'r hawl i aelodau o staff wrthwynebu cael eu trosglwyddo (para 5(4) a (5) o Atodlen 3) fel yn rheoliadau TUPE. Mae hyn yn adlewyrchu hawl sylfaenol i ddewis gweithio i gyflogwr penodol ai peidio, ond yn ymarferol nid yw fawr o werth i'r cyflogai na'r cyflogwr, gan nad yw'n ychwanegu dim o werth o ran yr hawl i ymddiswyddo. Nid yw'n helpu i sicrhau bod gan y sefydliad ddigon o staff â chymwysterau addas, ac nid yw'n helpu i leddfu ofnau staff ynglŷn â sicrwydd gwaith. Yn yr un modd, nid yw'r Bil yn cynnwys darpariaethau sy'n debyg i TUPE sy'n rhoi mwy o sicrwydd i staff, megis y rhai sy'n ymwneud â diogelu telerau ac amodau cyflogaeth, a diogelu staff rhag cael eu diswyddo. Ymddengys bod hynny'n mynd yn groes i ddatganiad Llywodraeth Cymru ym mhara 242 o'i dogfen ymgynghori ar y bil drafft dyddiedig 15 Mawrth 2012 sef "ni fydd trosglwyddo cyflogaeth ar delerau llai ffafriol nag a fyddai o gymhwysio TUPE".
- A34. Credaf y byddai'n fuddiol pe bai'r darpariaethau trosglwyddo yn Atodlen 3 yn cydnabod yn benodol mai o ganlyniad i ad-drefnu gweinyddol awdurdodau gweinyddol cyhoeddus mae'r trosglwyddo. Mae hyn yn bwysig er mwyn rhoi eglurder at ddibenion gweinyddu pensiynau wrth ymdrin â'r Adran Gwaith a Phensiynau a gweinyddwyr y cynllun pensiwn.
- A35. Yn yr un modd, byddai'n fuddiol pe bai para 5(2)(b) yn cael ei newid i gydnabod yn benodol gyfnodau o gyflogaeth a drosglwyddwyd yn y gorffennol. Nid yw'n amlwg o'r ddarpariaeth bresennol bod cyfnodau cyflogaeth staff a drosglwyddodd i ACC o'r Comisiwn Archwilio a'r Swyddfa Archwilio Genedlaethol yn 2005 yn cael eu trin fel cyflogaeth barhaus â'r SAC

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 14 o 24

newydd. Mae'r ansicrwydd hwn yn achos pryder i'r aelodau hyn o staff, sef mwyafrif o'r sefydliad presennol.

- A36. Mae cymal 35 yn cyflwyno Atodlen 4, mân ddiwygiadau a diwygiadau canlyniadol. Er eu bod yn ymdrin â manylion canlyniadol y prif ddarpariaethau a amlinellir uchod, mae rhai o'r rhain yn werth eu nodi'n benodol.

Diwygiadau i Baru Data (y Fenter Twyll Genedlaethol)

- A37. Mae para 59 o Atodlen 4 i'r Bil yn diwygio adran 64A(1) o Ddeddf Archwilio Cyhoeddus (Cymru) 2004 er mwyn dileu darpariaeth lle y gall ACC drefnu i bersonau gynnal ymarfer paru data ar ei ran. (Ac mae paragraffau 60 i 62 yn dileu'r darpariaethau cysylltiedig yn Rhan 3A o Ddeddf Archwilio Cyhoeddus (Cymru) 2004, a thrwy hynny atal cyrff rhag darparu gwybodaeth i berson sy'n gweithredu ar ran ACC.) Atgyfnerthir hyn gan y gwaharddiad yng nghymal 9(2) ar ACC i wneud unrhyw beth a allai ddod yn gyfrifoldeb SAC. Pryderaf mai effaith ymarferol hyn fydd rhoi terfyn ar gyfranogiad ACC yn y Fenter Twyll Genedlaethol o bosibl, oherwydd dim ond os gall ACC benodi'r un darparwr gwasanaeth ag a benodir gan asiantaethau archwilio eraill y DU i ymgymryd â'r gwaith prosesu data angenrheidiol ar ei ran y bydd yn ymarferol i ACC gyfranogi. Arweiniodd yr ymarfer diweddaraf at nodi twyll a gordaliadau gwerth £6 miliwn yng Nghymru, felly byddai'n resyn pe na bai modd cyfranogi mwyach. Cynhelir y prif ymarfer bob dwy flynedd.
- A38. Gall cymal 18 o'r Bil oresgyn hyn gan ei fod yn galluogi ACC i ddirprwyo ei swyddogaethau i gcontractwyr i'r SAC gorfforaethol arfaethedig, ar yr amod y caiff cynllun ei gymeradwyo gan SAC. Fodd bynnag, mae cymeradwyaeth y SAC arfaethedig yn golygu bod cyfranogiad ACC yn y Fenter Twyll Genedlaethol yn amodol ar gytundeb bwrdd SAC. Yn fy marn i, gallai hyn amharu ar annibyniaeth ACC mewn ffordd ddifrifol a gallai beryglu ymarfer paru data ar sail y DU gyfan i drechu twyll.
- A39. Fodd bynnag, nid yw'n glir a fyddai dirprwyo swyddogaethau paru data ACC i gcontractwr i'r SAC gorfforaethol arfaethedig yn bodloni gofynion y ddeddfwriaeth ar baru data (Rhan 3A o Ddeddf 2004) a deddfwriaeth arall (gan gynnwys Deddf Diogelu Data 1998). Rwyf wedi cael cadarnhad o'r diffyg eglurder hwn mewn cyngor cyfreithiol annibynnol. Mae paru data yn faes sensitif iawn sy'n tueddu i ddenu heriau cyfreithiol. Felly mae angen i'r ddeddfwriaeth fod yn glir iawn er mwyn sicrhau nad yw'r gwaith yn mynd yn groes i ddeddfwriaeth diogelu data, yn enwedig lle mae cyrff nad ydynt yn rhan o'r sector cyhoeddus dan sylw.
- A40. Fel y saif, mae Rhan 3A o Ddeddf 2004 yn benodol iawn yn yr ystyr mai dim ond i ACC neu berson sy'n gweithredu ar ei ran y caniateir datgelu gwybodaeth sydd ei hangen i baru data. Gall llys ddehongli bod dileu'r ddarpariaeth am wybodaeth i'w datgelu i berson sy'n gweithredu ar ran ACC, fel y'i cynigiwyd yn y Bil, yn cael yr union effaith honno. Mae'n eithaf tebygol nad ystyrid y byddai cyfeirio at allu ACC i ddirprwyo ei swyddogaethau o dan gymal 18 o'r Bil yn bodloni gofynion penodol Rhan 3A o Ddeddf 2004 ar ôl i'r ddarpariaeth i ACC

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 15 o 24

drefnu i waith paru data gael ei gynnal ar ei ran gael ei dileu o'r Ddeddf honno. O gymharu â darpariaethau diwygiedig Deddf 2004 â'r darpariaethau cyfatebol, er enghraifft, yn Neddf Cyllid Cyhoeddus ac Atebolrwydd (yr Alban) 2000 awgrymir na chaniateir i wybodaeth gael ei darparu i bersonau sy'n gweithredu ar ran ACC. Gallai unrhyw un a oedd am osgoi cwmpas y Fenter Twyll Genedlaethol ddadlau hefyd mai ar ran y SAC gorfforaethol yn hytrach nag ACC y byddai'r darparwr gwasanaeth sy'n cael ei gontractio i'r SAC gorfforaethol yn gweithredu.

- A41. Mae problem debyg yn codi o ran canlyniadau paru data: efallai na fyddai'r cyrff archwilio sy'n cymryd rhan yn gallu rhannu'n gyfreithlon ganlyniadau â chontractwr sy'n gweithredu ar ran SAC. Byddai'n anodd iawn ceisio mynd i'r afael â'r broblem hon drwy ddiwygiadau gyda'r nod o ddisodli ACC gan y SAC gorfforaethol yn y corff ehangach o ddeddfwriaeth sy'n ymwneud â pharu data, gan y byddai angen diwygiadau o'r fath yn neddfwriaeth y DU, yr Alban a Gogledd Iwerddon. Er mwyn osgoi colli gwaith paru data yng Nghymru byddwn yn awgrymu hepgor paragraffau 59 i 62 o Atodlen 4 i'r Bil a hepgor neu ddiwygio cymal 9(2).

Diwygio Deddf Cydraddoldeb 2010

- A42. Mae para 88 o Atodlen 4 i'r Bil yn diwygio Rhan 2 o Atodlen 19 i Ddeddf Cydraddoldeb 2010, sy'n enghraifft o'r ffordd mae'r Bil yn arwain at ehangu'r gofynion rheoleiddio presennol am ei fod yn creu corff cyhoeddus ychwanegol (y SAC arfaethedig) ochr yn ochr ag ACC. Effaith para 88 yw ychwanegu'r SAC gorfforaethol arfaethedig, yn ogystal ag ACC, at y rhestr o gyrff sydd wedi'u dynodi'n awdurdodau cyhoeddus o dan Ddeddf 2010. Mae hyn yn golygu y byddai'r SAC gorfforaethol ac ACC fel ei gilydd yn ddarostyngedig i ofynion Rheoliadau Deddf Cydraddoldeb 2010 (Dyletswyddau Statudol) (Cymru) 2011. Effaith ymarferol hyn yw ei gwneud yn ofynnol i'r SAC gorfforaethol ac ACC baratoi a chyflwyno adroddiad cynnydd ar gynllun cydraddoldeb strategol. Byddai'n rhaid i'r naill a'r llall hefyd ymgysylltu â phersonau sy'n cynrychioli buddiannau personau â nodweddion gwarchoddedig o ran ystod o ddyletswyddau, megis cynnal asesiadau effaith cydraddoldeb o gynlluniau gwaith. Er y gellid rhannu rhywfaint o'r gwaith hwn rhwng y SAC gorfforaethol ac ACC o bosibl, mae'r diwygiad hwn yn debygol o arwain at gynyddu cost y trefniadau sydd eu hangen i fodloni deddfwriaeth ym maes cydraddoldeb.

Diwygio Deddf Rhyddid Gwybodaeth 2000

- A43. Mae effaith debyg yn codi o bara 16 i Atodlen 4 i'r Bil. Mae hwn yn gwneud SAC yn gorff cyhoeddus sy'n ddarostyngedig i'r Ddeddf Rhyddid Gwybodaeth. Mae hynny yn ddo'i hun yn briodol, ond mae'n golygu i bob diben y bydd sefydliad archwilio cyhoeddus Cymru yn cael dos dwbl o reoleiddio gan y bydd angen i ACC a'r SAC arfaethedig baratoi a chynnal cynlluniau cyhoeddi, a fydd yn galw am ddefnyddio mwy o arian cyhoeddus, hyd yn oed os gellir cytuno ar gynlluniau ar y cyd.
- A44. O ran y Ddeddf Rhyddid Gwybodaeth, mae creu ail gorff cyhoeddus o fewn yr un sefydliad sydd â swyddogaethau dal gwybodaeth (cymal 21(2)(d) ac (e)) hefyd yn debygol o arwain at ddryswch o ran pa gorff sy'n dal y wybodaeth benodol a geisir. Er enghraifft, ni fyddai'n

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 16 o 24

amlwg yn achos rhywun sy'n anfon cais i SAC am gopi o adroddiad drafft astudiaeth gan ACC (gan dybio bod ACC wedi paratoi adroddiad o'r fath ond nad yw wedi'i ddarparu i gyd-aelodau o'r Bwrdd) p'un a fyddai'n gywir i SAC ymateb i'r ceisydd i ddweud nad yw'n dal yr adroddiad drafft. Yn ymarferol, bydd y drafft yn debygol o fod ym meddiant cyflogeion SAC, ond ni fyddai hynny yn ddo'i hun yn debygol o arwain at dybiaeth bod SAC yn ei ddal. Gellid hefyd ddadlau bod ACC fel Prif Weithredwr ac aelod o fwrdd SAC yn rhan o SAC, ond mae hyn yn mynd yn groes i'r cysyniad o ACC fel awdurdod cyhoeddus ar wahân o dan y Ddeddf Rhyddid Gwybodaeth. At ei gilydd, mae cryn le i greu dryswch a'r posibilrwydd o apeliadau costus i'r Comisiynydd Gwybodaeth a'r Tribiwnlys.

- A45. Mae'r diwygiadau hyn mewn perthynas â materion rheoleiddio (paragraffau 16 ac 88 o Atodlen 4) yn codi materion ehangach o ran y baich rheoleiddio cynyddol sy'n deillio o symud o un corff cyhoeddus i ddau. Yn ogystal â'r diwygiadau penodol, bydd rhwymedigaethau dyblyg eraill yn codi'n awtomatig o greu corff corfforaethol ochr yn ochr ag ACC. Er enghraifft, bydd angen i'r SAC arfaethedig gofrestru â'r Comisiynydd Gwybodaeth o dan Ddeddf Diogelu Data 1998, ond bydd hyn ochr yn ochr â chofrestriad presennol ACC ei hun.
- A46. Mater cysylltiedig arall yw y bydd ACC yn parhau i fod yn ddarostyngedig i alwadau rheoleiddio ar adnoddau, megis paratoi cynllun cydraddoldeb strategol, ond ni fydd ganddo ei adnoddau ei hun i fodloni'r gofynion statudol hynny. O dan gymal 18, ni fydd ACC yn gallu dirprwyo'r gwaith y mae angen ei wneud i gydymffurfio â gofynion o'r fath oni bai bod y SAC gorfforaethol yn cymeradwyo dirprwyo o'r fath. Felly dim ond os caniateir hynny gan fwrdd y SAC arfaethedig y bydd modd i ACC gydymffurfio.

Priodoldeb y pwerau yn y Bil i Weinidogion Cymru wneud is-ddeddfwriaeth.

- A47. Mae'r tair darpariaeth ar gyfer gwneud is-ddeddfwriaeth—cymal 19(7) (cymeradwyo cyrff cyfrifwyr i ddarparu gwasanaethau), cymal 34(2) (darpariaeth etc atodol) a chymal 36(2) (cychwyn)—oll yn briodol. Fodd bynnag, gan mai diben sylfaenol ACC yw cyflwyno adroddiadau i'r cyhoedd a'i gynrychiolwyr ar y ffordd y mae'r llywodraeth yn defnyddio adnoddau, byddai'n well o safbwynt sicrhau annibyniaeth ac effeithiolrwydd archwilio pe bai'r pwerau hyn yn nwylo Cynulliad Cenedlaethol Cymru yn hytrach na Gweinidogion Cymru.

Goblygiadau ariannol y Bil

- B1. Mae'r asesiad effaith a baratowyd gan Lywodraeth Cymru bron yn sicr yn tanamcangyfrif cost gweithredu'r Bil yn sylweddol. Dylwn hefyd nodi nad yw Llywodraeth Cymru wedi gofyn am unrhyw sylwadau gennyf am ei hamcangyfrifon o gostau.
- B2. Mae asesiad effaith Llywodraeth Cymru yn tybio bod aelodau'r bwrdd yn cael tâl o £24,000 y flwyddyn, a £30,000 yn achos y Cadeirydd, ond byddant yn cael y cyfrifoldeb am redeg sefydliad gyda chyllideb o tua £24 miliwn heb bresenoldeb gweithredol sylweddol (ac eithrio ACC) ar y bwrdd. Rwyf yn amcangyfrif y byddai angen i'r ffioedd fod rhyw 50 y cant yn uwch na'r hyn a nodwyd gan Lywodraeth Cymru (h.y. £600 a £750 y diwrnod i aelodau anweithredol a'r cadeirydd yn y drefn honno), a hynny er mwyn gallu denu ymgeiswyr addas sy'n barod i ymgymryd â rôl sy'n golygu cytuno ar gynllun blynyddol y sefydliad, a gwrthod datganiad ACC am raglen waith ac adnoddau o bosibl, cytuno ar ddirprwyo swyddogaethau ACC ac ysgwyddo cyfrifoldeb uniongyrchol dros gyflogi staff, ynghyd â'r holl gyfrifoldebau cyfreithiol sydd ynghlwm wrth y rolau hynny. Byddai angen gwneud taliadau mewn perthynas ag Yswiriant Gwladol a theithio a chynhaliaeth hefyd, a all ychwanegu tua 20 y cant arall at y ffioedd sylfaenol.
- B3. Credaf hefyd fod amcangyfrif Llywodraeth Cymru o gyfraniad o bum diwrnod y mis ar gyfer y rolau hyn braidd yn isel. Hefyd, mae'n debygol y byddai angen i'r Bwrdd gyfethol aelodau annibynnol ar gyfer ei bwyllgor archwilio. Byddai angen rhoi cydnabyddiaeth i aelodau cyfetholedig, ac rwyf yn amcangyfrif y bydd hyn yn costio tua £10,000 gan gynnwys Yswiriant Gwladol a theithio a chynhaliaeth.
- B4. Mae amcangyfrif Llywodraeth Cymru o gost cymorth i fwrdd corff corfforaethol (£29,000) hefyd yn debygol o fod yn rhy isel. Nid yn unig bydd angen ysgrifenyddiaeth sy'n rhoi cymorth gweinyddol ar fwrdd o'r fath, ond mae'n debygol hefyd y bydd angen cryn dipyn o gyngor cyfreithiol a thechnegol arbenigol parhaus ar arfer ei swyddogaethau'n briodol. Rwyf yn amcangyfrif y bydd costau cyflogaeth ysgrifenyddiaeth tua £60,000 (gan gynnwys Yswiriant Gwladol ac ati) ac y bydd angen cyngor cyfreithiol gwerth tua £10,000 y flwyddyn.
- B5. Nid yw Llywodraeth Cymru wedi cynnwys unrhyw symiau ar gyfer costau i ACC sy'n gysylltiedig ag ymdrin â'r broses ddeddfwriaethol mewn amser staff a chael cyngor cyfreithiol, sef o leiaf £30,000 yn ôl fy amcangyfrif i. Yn ddiau, bydd yn mynd i'w chostau ei hun mewn perthynas â'r ddeddfwriaeth, ond nid wyf mewn sefyllfa i roi amcangyfrif o gostau o'r fath.

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 18 o 24

- B6. Nid yw Llywodraeth Cymru wedi cynnwys unrhyw symiau ar gyfer cost gweithredu'r ddeddfwriaeth ychwaith. Bydd hyn yn cynnwys amser staff SAC a chostau cyfreithiol sy'n gysylltiedig ag ymdrin â'r cynllun trosglwyddo, diwygio'r cod ymarfer archwilio (sy'n ofynnol o dan gymal 10), diwygio neu baratoi polisïau technegol ac adnoddau dynol newydd ar gyfer y SAC newydd, creu rheolau sefydlog ar gyfer y bwrdd newydd (sy'n ofynnol o dan bara 25 o Atodlen 1), a materion eraill megis sicrhau cydymffurfiaeth ACC a'r SAC arfaethedig â deddfwriaeth ym maes cydraddoldeb (gweler paragraff A42 uchod). Rwyf yn amcangyfrif y bydd yr eitemau hyn yn costio tua £200,000.
- B7. Mae'n bosibl y bydd rhai costau sy'n gysylltiedig â threth hefyd. Yn wahanol i Ddeddf BRANA 2011, nid yw'r Bil yn diogelu rhag Treth Gorfforaeth na rhwymedigaethau Treth Enillion Cyfalaf sy'n deillio o drosglwyddo asedau. Rwyf wedi codi'r mater hwn gyda Chyllid a Thollau Ei Mawrhydi ond nid wyf wedi cael awgrym eto sut y bydd yn ymdrin â'r Bil fel y saif, ac felly ni allaf roi amcangyfrif o'r rhwymedigaeth debygol.
- B8. Yn yr un modd, os na fydd Cyllid a Thollau Ei Mawrhydi yn cytuno ar oddefeb â'r SAC arfaethedig o ran trethu taliadau treuliau teithio a chynhaliaeth staff yr eir iddynt mewn perthynas â gwaith i ACC (yn hytrach na SAC), yna bydd rhwymedigaeth dreth ychwanegol. Lle mae un person cyfreithiol yn talu treuliau i'w staff ac mae'r aelodau hynny o staff yn ymgymryd â gwaith dros berson cyfreithiol arall, gallai'r treuliau hynny ddod yn drethadwy yn nwylo'r rhai sy'n eu derbyn. Os nad yw Cyllid a Thollau Ei Mawrhydi yn cytuno ar oddefeb, o dan reolau treth y DU, byddai'n rhaid i'r staff dalu'r dreth ei hun, na fyddai'n unol â thelerau Llywodraeth Cymru ac felly yn achos anghydfod costus o bosibl. Er mwyn datrys yr anghydfod efallai y byddai'n rhaid i Gyllid a Thollau Ei Mawrhydi gytuno i SAC dalu'r dreth ar ran y staff. Rwyf yn obeithiol y byddai Cyllid a Thollau Ei Mawrhydi yn cytuno ar oddefeb o'r fath, ac mae'n anodd iawn nodi'r gost bosibl gydag unrhyw sicrwydd, ond mae'n bosibl y bydd cost ychwanegol o hyd at £380,000 i SAC yn codi.
- B9. Onid ymdrinnir â'r tensiynau yn narpariaethau'r Bil sy'n ymwneud â chyflogaeth (gweler para 20 o gorff fy llythyr a pharagraffau A14 a A15 o atodiad A), efallai y bydd yn rhaid mynd i gostau ychwanegol o ran amser staff a gwasanaethau cyfreithiol oherwydd yr angen i ymdrin ag anghydfodau ynglŷn â thelerau. Mae'n anodd amcangyfrif costau anghydfodau o'r fath i sicrwydd, ond ni fyddai'n afrealistig rhagweld dau neu dri anghydfod yn codi, gyda phob un yn costio tua £20,000 o ran amser staff a chostau cyfreithiol.
- B10. Mae'n bosibl hefyd y bydd y gofyniad i delerau fod "yn cyfateb yn fras" i delerau Llywodraeth Cymru yn arwain at gostau ychwanegol sylweddol pe bai Barnwr yn dyfarnu, yn groes i'm barn i, fod y telerau presennol eisoes yn cyfateb yn fras i'w gilydd. Yn niffyg Dyfarniad o'r fath, fodd bynnag, nid wyf mewn sefyllfa i amcangyfrif effaith y gofyniad i sicrhau bod telerau yn cyfateb yn fras i delerau Llywodraeth Cymru.
- B11. At ei gilydd, rwyf yn amcangyfrif mai cost gychwynnol y Bil fel y saif yw rhwng £180,00 a £350,000. Rwyf yn amcangyfrif bod y gost gyfredol rhwng £200,00 a £650,000, gyda

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 19 o 24

rhywbeth yn nes at y ffigur isaf yn fwy tebygol ond nid yw hynny'n sicr (gweler tabl y crynodeb isod). Bydd angen i bob cynnydd yn sylfaen gost SAC gael ei ariannu drwy ryw fath o gyfuniad o gynnydd mewn ffioedd archwilio, arbedion effeithlonrwydd a thaliadau a godir ar Gronfa Gyfunol Cymru (drwy'r amcangyfrif blyneddol).

Crynodeb o amcangyfrifon cost

Eitemau untro

Eitem	Swm Amcangyfrifedig Is £000	Swm Amcangyfrifedig Uwch £000
Cost y broses ddeddfwriaethol (SAC yn unig)	30	40
Gweithredu	150	250
Anghydfodau	0	60
Cyfanswm	180	350

Eitemau cylchol

Eitem	Swm Amcangyfrifedig Is £000	Swm Amcangyfrifedig Uwch £000
Ffioedd, treuliau ac YG aelodau'r Bwrdd	155	185
Ffioedd, treuliau ac YG aelodau wedi'u cyfethol	5	15
Ysgrifenyddiaeth y Bwrdd	40	70
Trethu teithio a chynhaliaeth	0	380
Cyfanswm	200	650

- B12. Yn ogystal, os bydd y Bil yn atal ACC rhag cymryd rhan yn y Fenter Twyll Genedlaethol, fel y disgrifir ym mharagraffau A37 i A41 uchod, yna bydd hyn yn golygu cost i drethdalwyr yn nhermau cynilion coll gwerth tua £3 miliwn bob blwyddyn.

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 20 o 24

- B13. Pe câi'r Bil ei newid er mwyn darparu bwrdd goruchwyllo, byddai'r costau cychwynnol yn debygol o fod yn sylweddol is, yn enwedig gan na fyddai angen trosglwyddo unrhyw staff, asedau na rhwymedigaethau a byddai'r risg bosibl o anghydfodau yn cael ei dileu. Yn yr un modd, ar sail barhaus, mae'r gost yn debygol iawn o gyfateb i'r swm amcangyfrifedig is, sef £200,000, gan na fydd angen i ffioedd aelodau'r bwrdd adlewyrchu cyfrifoldebau gwneud penderfyniadau busnes a chyflogaeth, a chan na fydd angen trosglwyddo staff i'w cyflogi gan y bwrdd, caiff y risg y bydd costau ychwanegol yn deillio o ofyniad i gysoni telerau ei dileu.
- B14. Pe câi'r Bil ei newid i ddarparu corff corfforaethol mwy addas at y diben (gweler atodiad D), yna er y byddai costau parhaus yn debygol o fod rhwng £200,000 a £650,000 y flwyddyn o hyd, byddai'r costau sefydlu cychwynnol yn debygol o fod ar begwn isaf yr amrediad o £180,000 i £350,000, a hynny am y byddai'r risg o anghydfodau yn gysylltiedig ag aelodau o staff yn is gan na fyddai'n ofynnol i'r Bwrdd sicrhau bod telerau staff SAC yn gyson â thelerau Llywodraeth Cymru, fel y nodwyd yn atodiad D, ac y byddai staff yn cael eu trosglwyddo o dan ddarpariaethau tebycach i TUPE, gan leihau'r tebygolrwydd y bydd anghydfodau yn codi. Mae'n bosibl y byddai materion gweithredu eraill, fel drafftio neu ddiwygio polisïau adnoddau dynol, hefyd rywfaint yn symlach ac felly yn llai costus.

Amlinelliad o nodweddion bwrdd goruchwyllo

- C1. Er mwyn helpu i sicrhau eu hannibyniaeth a'u haddasrwydd cyffredinol ar gyfer cyflawni rôl graffu oruchwyllo, awgrymaf y dylai'r Cynulliad Cenedlaethol benodi'r saith aelod o'r bwrdd, felly hefyd yr aelodau anweithredol o dan Atodlen 1 o'r Bil. Yn yr un modd, dylai'r Cynulliad Cenedlaethol bennu telerau ac amodau swydd yr aelodau.
- C2. Er mwyn sicrhau bod y bwrdd mor wrthrychol â phosibl ac egluro atebolrwydd ACC cystal â phosibl, awgrymaf na ddylai ACC fod yn aelod o'r bwrdd. Ar yr un pryd, gellir ymestyn amrywiaeth yr aelodau er mwyn rhoi cyfle i fwy o randdeiliaid gyfrannu.
- C3. Awgrymaf y dylai fod gan y bwrdd bwerau statudol i wneud y canlynol:
- i. monitro a chynghori ACC o ran gweithredu swyddogaethau ACC (fel y nodir yng nghymal 17 o'r Bil);
 - ii. ei gwneud yn ofynnol i ACC ac unigolion eraill (staff, cyflenwyr ac archwilwyr ACC) ddarparu gwybodaeth ac esboniad o'r ffordd y caiff swyddogaethau ACC eu cyflawni;
 - iii. nodi, mewn perthynas â swyddogaethau ACC, y mathau o wybodaeth y dylid eu cynnwys mewn adroddiad gan ACC i gyd-fynd â chyfrifon blynyddol cyhoeddus ACC
 - iv. cynghori'r Cynulliad Cenedlaethol i'w helpu i ystyried amcangyfrif ac adroddiad blynyddol ACC;
 - v. ei gwneud yn ofynnol i archwilydd allanol ACC ymchwilio i unrhyw faterion sy'n peri pryder.
- C4. Dylai'r bwrdd hefyd fod yn gyfrifol am y dyletswyddau canlynol:
- i. sefydlu pwyllgorau archwilio a chydabyddiaeth;
 - ii. cyflwyno adroddiadau i'r Cynulliad Cenedlaethol am unrhyw faterion sy'n peri pryder mewn perthynas ag ACC.
- C5. Hoffwn awgrymu hefyd y dylid grymuso'r Cynulliad Cenedlaethol i wneud cais i archwilydd allanol ACC ystyried unrhyw faterion sy'n peri pryder y dygir sylw y Pwyllgor Cyfrifon Cyhoeddus atynt gan y Bwrdd.

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 22 o 24

- C6. Er mwyn sicrhau bod y Bwrdd mor wrthrychol â phosibl a bod atebolrwydd ACC mor eglur â phosibl, ni ddylai fod gan y Bwrdd swyddogaethau gweithredol, megis cytuno ar gynllun blynyddol ACC, gwrthod rhaglen waith ACC, codi a phennu ffioedd, a chyflogi staff. Yn yr un modd, ni ddylai'r bwrdd na'i gadeirydd feddu ar swyddogaethau sy'n golygu eu bod yn chwarae rhan sylweddol yn y broses o baratoi a chyflwyno amcangyfrifon o incwm a threuliau, cyflwyno'r cynllun blynyddol, cyflwyno'r cyfrifon i'w harchwilio na pharatoi adroddiadau blynyddol. ACC ddylai fod yn gyfrifol am bob un o'r swyddogaethau hyn. Ac yn unol â hyn, dylai ACC weithredu fel Swyddog Cyfrifyddu'r sefydliad.
- C7. Gellid ariannu'r bwrdd yn briodol drwy ei amcangyfrif unigol ei hun, neu efallai yn fwy pragmatig, drwy linell unigol wedi'i neilltuo o fewn yr amcangyfrif blynyddol a gyflwynir gan ACC (ond nas pennir gan ACC) i'r Cynulliad Cenedlaethol ei ystyried.

Amlinelliad o drefniadau mwy ymarferol ar gyfer corff corfforaethol

- D1. Rwyf yn gadarn o'r farn y dylai ACC allu pennu ei raglen waith, ac eithrio o bosibl waith atodol, yn annibynnol. Er mwyn gwneud hyn, bydd angen:
- i. diddymu'r ddarpariaeth yng nghymal 26 i fwrdd SAC wrthod datganiad ACC o'i raglen waith a'i adnoddau;
 - ii. diddymu'r ddarpariaeth i fwrdd SAC gytuno i'r cynllun blynyddol (h.y. diwygio cymal 25(1)) (ond byddai'r gofyniad i ystyried cyngor y bwrdd wrth lunio'r cynllun a'r amcangyfrif yn parhau).
- D2. Dylai ACC allu dirprwyo ei swyddogaethau statudol, ac eithrio o bosibl mewn perthynas â gwaith atodol, i staff a chontractwyr heb fod angen cael cymeradwyaeth bwrdd SAC (h.y. dylid hepgor cymal 18(2)).
- D3. Dylai fod yn ofynnol i unrhyw drefniadau i ACC ddarparu gwasanaethau, os bydd bwrdd SAC yn gwneud trefniadau o'r fath, gael eu gwneud gyda chymeradwyaeth ACC. (Gellid cyflawni hyn drwy ddiwygio cymal 19). Mae angen hyn er mwyn atal ACC rhag bod yn ddarostyngedig i drefniadau sy'n peryglu annibyniaeth ACC, e.e. cytundeb i ACC ddarparu swyddogaeth cyflogres corff a archwilir.
- D4. Dylid sicrhau bod aelodaeth SAC yn fwy cytbwys gan gynnwys aelodau o blith y rheolwyr yn ogystal ag ACC. Gellid gwneud hyn drwy ei gwneud yn ofynnol cael o leiaf ddau aelod sy'n gyflogeion, gyda'r ddau yn cael eu henwebu gan ACC. (Hynny yw, dylid diwygio para 1 o Atodlen 1 er mwyn newid aelodaeth y bwrdd a dylid newid para 14 o Atodlen 1 er mwyn sicrhau mai dim ond aelodau sy'n gyflogeion a gaiff eu henwebu gan ACC y gall aelodau anweithredol eu penodi). Fodd bynnag, rhaid cynnal yr egwyddor mai aelodau anweithredol fydd y rhan fwyaf o'r bwrdd.
- D5. Os mai bwrdd SAC fydd cyflogwr y staff, yna er mwyn osgoi cysylltiadau diwydiannol gwael ac ymgyfreitha costus:
- i. ni ddylai SAC fod yn ddarostyngedig i unrhyw ofynion "cysoni" o ran telerau cyflogaeth, ac ni ddylai ychwaith fod yn ofynnol iddi, wrth bennu telerau cyflogaeth, ystyried dymunoldeb cadw'r telerau yn gyffredinol gyson â'r rheini sy'n berthnasol i staff Llywodraeth Cymru (h.y. dylid sicrhau bod para 20(5) o Atodlen 1 i'r Bil yn llawer tebycach i bara 17 o Atodlen 2 o ddeddf BRANA 2011);

Dyddiad: 5 Medi 2012
Ein cyf: HVT/1718/fgb
Tudalen: 24 o 24

- ii. dylai'r darpariaethau trosglwyddo staff (para 5 o Atodlen 3 i'r Bil) ddarparu mwy o gamau diogelu tebyg i TUPE sy'n rhoi sicrwydd i staff, yn enwedig o ran diogelu telerau fel y nodir o dan Reoliad 4(4) o TUPE.
- D6. Er mwyn sicrhau y gall ACC gymryd rhan yn y Fenter Twyll Genedlaethol, dylid hepgor y cynnig i ddiwygio Rhan 3A o Ddeddf Archwilio Cyhoeddus (Cymru) 2004 drwy baragraffau 59 i 62 o Atodlen 4 i'r Bil, sy'n atal ACC rhag trefnu i bobl gynnal ymarferion paru data ar ei ran. Bydd angen hepgor neu ddiwygio cymal 9(2) hefyd er mwyn peidio â mynd yn groes i hyn.



Date: 5 September 2012
Our ref: HVT/1718/fgb
Page: 1 of 24

24 Cathedral Road / Heol y Gadeiriau
Cardiff / Caerdydd
CF11 9LJ
Tel / Ffôn: 029 20 320500
Fax / Ffacs: 029 20 320600
Email / Epost: wales@wao.gov.uk
www.wao.gov.uk

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

PAC INQUIRY INTO THE GENERAL PRINCIPLES OF THE PUBLIC AUDIT (WALES) BILL

1. I am very grateful for the Committee's invitation to provide evidence to support its inquiry into the principles of the Public Audit (Wales) Bill. I welcome the stated intention of the Bill to place the governance arrangements of the Wales Audit Office onto a statutory footing. I do, however, have some points of concern regarding the Welsh Government's proposals, which I set out below. I also attach comments on individual clauses at annex A and a summary of the financial implications of the Bill at annex B. Annexes C and D provide further comments in respect of governance models. I hope that this material will be of assistance to the Committee in drawing up its report on the Bill.

Legislation to strengthen the governance and accountability of the Wales Audit Office would be beneficial

2. I believe that it would be beneficial to have legislation to strengthen the accountability and governance arrangements relating to the office of AGW and the Wales Audit Office. In particular, I think it is highly appropriate to establish a board for the WAO on a statutory basis, as this will enable the firm institution of governance arrangements to provide oversight of the AGW and senior management of the organisation. This would overcome the principal weakness of the current legislation, which is that while it enables the AGW to establish governance arrangements, such as advisory committees, it also enables the AGW to abandon or bypass them.

The proposals in the Bill, however, present some significant problems

3. While the broad intentions behind the Bill are sound, the detailed proposals are rather problematic. Most fundamentally, the Bill provides for a WAO board with executive functions of running the audit office, while at the same time specifying that the board will consist predominantly of non-executive members. The proposed board therefore falls between two objectives—oversight of the AGW (the function of a 'supervisory' board)

and running the Audit Office (the function of an ‘executive’ board)—and is likely to serve neither particularly effectively. The oversight functions of the proposed board will also be compromised by its executive functions.

4. While the proposals have some similarities with the UK National Audit Office’s arrangements, there are substantial differences. For example, with the NAO, a statutory code deals with the relationship between the Comptroller & Auditor General (C&AG) and NAO board. This code applies to the preparation of a strategy and estimate of income and expenditure by the C&AG and NAO board, and other key activities, and it is required to reflect the C&AG’s audit independence. The existence of this code is an indication of the need to manage the tension that the corporate body places on the C&AG’s independence. There is no equivalent provision for such a code in the Bill. Instead, the Bill prescribes procedures and gives the WAO board functions that undermine the audit independence of the AGW.
5. In addition, the provisions in the Bill for the transfer of staff to employment by the WAO board may sow the seeds for legal disputes. And more widely, the proposals are likely to be more expensive than as set out in the Government’s Explanatory Memorandum.
6. I explore these issues further below, along with some suggestions for addressing them either by making the WAO board focus on supervisory functions or by making it an executive board with a more appropriate composition.

The board as proposed in the Bill will not have enough executive members to ensure effective exercise of its executive functions

7. The WAO board is to have a composition that is predominantly “non-executive”: 5 non-executives versus the AGW, with an employee member to “ensure that employee experience is able to inform the board’s activities and actions” (Schedule 1 (para 1)). This is highly problematic because while such composition might be appropriate for a supervisory board, the Government intends that the board has executive functions of running the organisation, such as employing staff and agreeing the annual plan. The proposed composition, however, means that the board does not have a sufficient number of executive members to ensure that senior managers responsible for implementing decisions have a meaningful share of ownership in those decisions. This contrasts with the composition of the NAO board, which has three employee members, who, as they must be recommended by the C&AG, the C&AG may ensure are appropriate senior managers.

A supervisory-type board would be a more cost-effective option, allowing robust oversight of the Auditor General

8. I believe that it would be best if the board’s functions were focused on supervisory functions, rather than also having functions of running the organisation. This would allow the board to concentrate on considering whether the AGW was running the organisation properly and advising the AGW and the Assembly accordingly, rather than being compromised in that important oversight role by taking part in decisions on the running

of the organisation. As set out in annex C, the board's functions could include advising the National Assembly in support of its consideration of the AGW's estimate and annual reporting, and reporting as and when required to the National Assembly on any matters of concern regarding the AGW. This would strengthen oversight beyond the level provided by a corporate body, and it would help alleviate the detailed oversight burden on the National Assembly.

9. Focusing on supervisory functions would also probably be a more affordable option, as the board members' fees would not need to include a component to recognise their decision-making responsibilities. Certain significant costs arising from implementation, including the costs of transferring staff, assets and liabilities, would also not be incurred (see para B13 of annex B), and implementation would be more straightforward and quicker to achieve than with a corporate body board.

If an executive board is to be implemented, then significant changes to the Bill are needed to make it fit for purpose

10. If, however, the Welsh Government's preference to have a board to run Wales' audit organisation is to prevail, changes will be needed in the Bill in relation to the composition of the board to make it fit for purpose. In particular, such a board should have sufficient executive members not just to inform decisions but also to ensure that those responsible for implementing decisions have a meaningful share of ownership in those decisions. It would also be appropriate to make changes to address some of the risks and costs that may arise from the employment and transfer arrangements as currently drafted. Further details of more workable corporate body arrangements than those set out in the Bill are at annex D. It is, however, likely that any corporate body option will be more expensive than a supervisory board because of the need to pay board members a greater rate to reflect responsibilities relating to the running of the organisation and because of the expense of implementing a transfer of staff, assets and liabilities (see para B14 of annex B).

Under the Bill, audit independence will be undermined by the board's ability to reject the AGW's work programme, while the requirement for agreement is potentially unworkable

11. Confidence in auditing rests to a great degree on the independence of the auditor, and independence is a key requirement of international and UK ethical and professional auditing standards. Historically, the importance of audit independence has been reflected in the constitutional position of Auditors General in western democracies. The Welsh Government appears to recognise that this is an issue in some features of the Bill. At clause 26 they have sought to temper the WAO board's ability to interfere in the AGW's judgements about his work programme by stipulating that the WAO board is only able to reject the AGW's statement of his work programme if the statement, or a part of it, is "unreasonable". Unfortunately, this is not adequate protection of the AGW's audit independence, as the clause still allows the WAO board to reject the AGW's judgement of what matters merit examination.

12. Clause 26 is also problematic in that it raises the prospect of dispute without providing a means of resolution. Other than compromise, the only realistic means of resolving a difference of opinion on the work programme is the resignation of either the AGW or other members of the board. The suggestion that differences could be resolved in court, as put forward by the Welsh Government to PAC on 1 May 2012, is not a practical proposition because of the innate conflict of interest that stems from AGW having to rely on legal advice contracted to the WAO.
13. The specific requirement for agreement of the overall annual plan under clause 25 also undermines audit independence. Requiring agreement makes it likely that there will be a need for compromise, and this compromises the audit independence and judgement of an Auditor General.
14. These problems could be avoided through adopting the model of a supervisory board. Alternatively, they could be better managed if the Bill followed the NAO arrangements more closely, particularly if it required a code to protect the AGW's independence in key decision-making activities.

The audit independence of the AGW will also be undermined by the board's ability to shape the exercise of the AGW's functions

15. For the AGW to delegate his or her work, which is a practical necessity, under clause 18(2) he or she must have a scheme of delegation approved by the WAO board. This brings the board into the details of the running of the organisation, and is a significant potential constraint on the way the AGW exercises his or her functions. It could, for example, prevent the AGW participating in the UK-wide National Fraud Initiative, and this is explored further in paragraphs A37 to A41 in annex A.
16. Conversely, under clause 19, the WAO board is given the power to arrange with public bodies for the AGW to provide services to those bodies. But this clause does not require the AGW's agreement—AGW may be outvoted by the rest of the board. The clause could therefore lead to significant conflicts of interest that would undermine the AGW's audit work. For example, the WAO board could arrange, despite the AGW's opposition, for the AGW to provide the payroll administration of a body that he audits. This would be a major ethical issue and would contravene international professional standards as it would involve the AGW auditing services that he himself has provided.
17. Under clause 21 and para 20 of Schedule 1 the WAO board is to be the employer of all WAO staff, and clauses 14 and 21 give it other functions such as "securing" services. This further constrains the AGW's ability to meet professional requirements. In particular, the AGW (who is the person who will provide audit opinions) will not be able to employ anyone directly to assess the quality of staff and services provided by the

WAO board (this is precluded by clause 9(2)), and this is a potential barrier to compliance with international professional standards¹.

18. The problems of ensuring appropriate staff support for the AGW might to some degree be overcome if the board delegated to the AGW, as Chief Executive of the organisation, the authority to institute measures such as engaging independent quality assurance inspections. As the Bill is currently drafted, however, the necessary authority is not guaranteed, and this raises a wider issue of a lack of balance of authority with responsibility and accountability. The AGW will bear the ultimate responsibility of delivering audits and studies without the full authority to meet those responsibilities.

The Bill does not provide adequate TUPE- equivalent safeguards for the staff transferring to the new WAO, and this may lead to expensive legal disputes

19. Staff employed by the AGW are to be transferred to employment by the proposed WAO board (para 5 of Schedule 3). The transfer scheme does not provide the same protection as the TUPE regulations (see para A33 of annex A), and it is unlikely that the TUPE regulations themselves apply. The Bill therefore seems to be at odds with the Welsh Government's statement in para 242 of its consultation document on its draft bill of 15 March 2012 that "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".
20. In addition, the requirement for the proposed WAO to ensure that terms of employment are broadly in line with those of the Welsh Government (para 20 of Schedule 1) creates a tension if any terms of transferring staff are found not to be broadly in line with Welsh Government terms (see paras A14 and A15 of annex A). We have asked the Welsh Government for clarification of its intentions in this area. In any event, however, the Bill as drafted is not clear on this matter, and this may be a recipe for expensive legal dispute.

The cost of the Bill as it stands is likely to be significantly higher than that estimated in the explanatory memorandum

21. The corporate body put forward in the Bill will inevitably incur costs. I estimate that the set-up and transitional costs (including the AGW's costs of the Bill itself) would lie between £180,000 and £350,000, and that the ongoing annual recurring cost lies between £200,000 and £650,000, with something nearer the lower figure more likely but not guaranteed (see annex B for further details). The higher ongoing cost figures largely reflect the risks of disputes, taxation of travel and subsistence expenses, and the possible need to bring employment terms closer in line with Welsh Government terms, all of which stem from the proposed transfer of staff from employment by the AGW to employment by the WAO board. The cost of the board itself in terms of such things as

¹ International Standard on Quality Control 1 (ISQC1) and International Standard on Auditing (ISA220), as applied through Practice Note 10

Date: 5 September 2012
Our ref: HVT/1718/fgb
Page: 6 of 24

board members' fees is also likely to be higher than as set out in the Welsh Government's Explanatory Memorandum.

22. I should be very happy to provide further information to the Committee to support its inquiry so as to help ensure that the Bill develops into legislation that is fit for purpose.

A handwritten signature in black ink, appearing to read 'Huw', followed by a stylized signature that likely represents 'Huw Vaughan Thomas'.

HUW VAUGHAN THOMAS
AUDITOR GENERAL FOR WALES

Comments on individual provisions of the Bill

Sections 2-12—the Auditor General for Wales

- A1. In my view clauses 2 to 7 make sensible provision for the continuation of the office of the AGW, and the appointment, resignation, removal, disqualification, restrictions on subsequent employment, status and remuneration of the AGW.
- A2. Clause 8 provides that the AGW has complete discretion as to the manner in which his or her functions are exercised and is not subject to the direction or control of the National Assembly or Welsh Government. My concern is that this is a shade less explicit than the equivalent provision for the UK's Comptroller & Auditor General (C&AG) (section 17 of the Budget Responsibility and National Audit Act 2011—the BRANA Act), which makes clear that the C&AG has complete discretion in the carrying out of functions (not just the manner), including, significantly, in determining whether to carry out value for money examinations:
- 17 How functions are to be exercised*
- (1) The Comptroller and Auditor General has complete discretion in the carrying out of the functions of that office, including in determining whether to carry out an examination under Part 2 of the National Audit Act 1983 and as to the manner in which any such examination is carried out.*
- A3. I should prefer clause 8 to reflect something like the reference to examinations in section 17 of the BRANA Act.
- A4. Clause 9(1) makes appropriate provision for supplementary powers for the AGW, but clause 9(2) prohibits the AGW from doing anything that is the responsibility of the WAO board under clause 21(2)(a) to (c), which includes employing staff and securing services. As it is not clear what exactly “employing staff” and “securing services” mean in this context, this potentially undermines the ability of the AGW to perform functions delegated to him by the proposed WAO board (delegated under para 29 of Schedule 1), which would undermine his position as Chief Executive. For example, it is not clear whether the AGW will be able to instruct contractors to undertake tasks at particular times or else have their contracts terminated. This is a further potential impediment to AGW's participation in the National Fraud Initiative, as set out in paragraphs A37 to A41 below. There is no equivalent of clause 9(2) in the NAO's legislation (the BRANA Act 2011).
- A5. Clause 10 requires the AGW to issue a code of audit practice prescribing the way in which the functions of the AGW are to be carried out. Such a code has considerable merit, as it provides a basis for the AGW to ensure audits are undertaken by staff and contractors to a good standard. However, as drafted, the proposed scope of the code is excessively wide and covers matters that go well beyond audit practice. For example, it covers the provision of

advice and assistance to registered social landlords under section 145D of the Government of Wales Act 1998. This unnecessarily wide scope is likely to lead to a voluminous code that will be more expensive than necessary to prepare and maintain, and which may be hard to follow. I would therefore suggest that the clause is amended so as to omit 10(2)(c)(ii) to (vi), 10(2)(d)(iii) and 10(2)(e)(i). The last reference concerns the AGW's statutory rights of access to documents. The requirement to include prescription covering the exercise of such rights in a code of audit practice is likely to be counterproductive as it would be an item on which persons seeking to avoid their access obligations could try to challenge the AGW's statutory access rights, potentially delaying audits and increasing their cost.

- A6. Clause 11 makes the AGW the auditor of local government bodies in place of appointed auditors. At the moment, the presence of two auditors in local government leads to confusion and frustration among the public, and so this clause should helpfully enable greater clarity.
- A7. Clause 12 appropriately provides for the AGW to be consulted before Welsh Ministers transfer supervisory functions to the AGW. This should help prevent functions that are incompatible with the AGW's independence being transferred.

Clauses 13-28— the Wales Audit Office and its relationship with the AGW

- A8. Clause 13 establishes a new WAO as a corporate body, which is to be an additional public body intertwined with the AGW, who will continue to be a public body. Clause 13 introduces Schedule 1, which details the nature of the WAO, and elements of this are problematic.
- A9. Schedule 1 (para 1) gives the WAO board a composition that is predominantly “non-executive”. This is problematic because the board is to have functions of running the organisation (e.g., employing staff etc, as set out in clause 21 and agreeing the annual plan (clauses 25 and 26)). The proposed composition would mean that the board did not have a sufficient number of executive members to ensure senior managers charged with implementing decisions had a sufficient share of ownership in those decisions. (The board composition would not be so problematic if the board were not to have functions relating to the running of the organisation.)
- A10. Under para 1 of Schedule 1 one member is to be an employee of the WAO. The Welsh Government's explanatory notes indicate that this person is “to ensure that employee experience is able to inform the board's activities and actions.” This statement, together with the provision that the employee member is to be appointed by the non-executive members, indicates that there may well be no senior management member, such as a director of finance, on the board. This means that other than the AGW, who is to be the Chief Executive, there would be a lack of members with responsibility for implementing the board's decisions. This contrasts with the composition of the NAO board, which has three

employee members, who, as they must be recommended by the C&AG, the C&AG may ensure are appropriate senior managers.

- A11. It is also not clear how the employee member is to be appointed by the non-executive members “on merit”, as required by para 2(2) of Sch 1. The lack of clarity on this point may lead to disputes between the board and the WAO workforce, causing expense, and loss of efficiency and effectiveness.
- A12. If a supervisory board is to be pursued, then it would be appropriate for the legislation to provide criteria for the basis of the appointment of the employee member to reflect employees’ interests and experience. If, however, a board with executive functions is to be pursued, I would suggest that it would be preferable for there to be at least two employee members who would only be appointable if recommended by the AGW. This would enable the AGW to ensure sufficient management representation on the board, while maintaining a non-executive majority.
- A13. Para 20 of Schedule 1 and clause 21 make the WAO board the employer of staff, and clauses 14 and 21 give it other functions, including securing services. As the AGW (who is the person who will provide audit opinions) will not be able to employ anyone directly to assess the quality of staff and services provided by the WAO board (this is precluded by clause 9(2)), this is a potential barrier to compliance with international professional standards². Those standards require, among other things, the AGW to establish policies and procedures to provide the AGW with assurance that he or she has sufficient personnel with the necessary professional competence and commitment to ethical principles. This might be overcome if the board were to delegate to the AGW, as chief executive of the organisation, the authority to institute measures such as contracting in independent quality assurance inspections. As the Bill is currently drafted, however, the necessary authority is not guaranteed because it is entirely at the discretion of the Board.
- A14. Para 20 of Schedule 1 also requires that the proposed WAO ensures that staff terms of employment are “broadly in line” with those of the members of staff of the Welsh Government. Aside from the question of whether the Welsh Government is an appropriate comparator (generally, the work of the WAO is quite different from the work of the Welsh Government), this provision is ambiguous but still prescriptive enough to cause problems. As “broadly in line” is not defined in the Bill or anywhere else, it leaves the WAO open to ongoing uncertainty, which would be exacerbated every time the Welsh Government changed its terms. In particular, the WAO would be exposed to potential judicial review claims from staff, trade unions or pressure groups. It might be assumed that “broadly in line”

² International Standard on Quality Control 1 (ISQC1) and International Standard on Auditing (ISA220), as applied through Practice Note 10

has the meaning that a reasonable person would give the phrase, and on that basis I believe the existing terms of my staff are broadly in line with those of the Welsh Government. However, there is no guarantee that a Judge would be of the same view.

- A15. To address this, I strongly suggest that if there is to be any “broadly in line” provision, then it should follow the more pragmatic wording set out in para 17 of Sch 2 to the BRANA Act 2011:

In determining the terms of employment of any staff, NAO must have regard to the desirability of keeping the terms broadly in line with those applying to civil servants.

(Emphasis added)

This would much reduce the risk of judicial review and consequent public expense.

- A16. As noted in my response to the consultation on the draft bill, the disqualification provisions for members of the WAO (para 24 of Schedule 1) would be made more relevant by including members or employees of bodies audited by the AGW.
- A17. The phrase in para 31(5) of Schedule 1, “as that person considers appropriate” in relation to the auditor of the WAO’s accounts, seems to provide too much latitude and may result in poor quality audit.
- A18. Conversely, para 32(3) of Sch 1 should have the words “in all material respects” added after “satisfied” so as to ensure that the legislation provides for a realistically achievable audit that is in line with professional auditing standards.
- A19. Clause 16 makes the AGW the Chief Executive of the WAO, para 1 of Sch 1 to the Bill makes the AGW a WAO board member, and para 30 of Sch 1 makes the AGW the Accounting Officer of the WAO. The AGW therefore holds four key roles: (a) as Auditor General, the person who is ultimately responsible for delivering audits and studies, (b) as Accounting Officer, the steward of the organisation’s resources, (c) as Chief Executive, the chief manager of the organisation and (d) as board member, a participant in board discussion and decisions. There is no innate contradiction between roles (a) to (c), but there are problems with them in the proposed executive board set-up. Under the proposed set-up, the AGW, as Chief Executive is subject to the decisions of the board regarding the work programme, its resourcing and the general running of the organisation. Therefore, as Chief Executive, his ability to meet his professional requirements as Auditor General is constrained by the need for board agreement on key management issues, such as the recruitment and training of staff.
- A20. Furthermore, the AGW will bear the ultimate responsibility of delivering audits and studies without the full authority to meet those responsibilities. This ultimate personal responsibility

also extends to regulatory requirements, such as compliance with the Data Protection Act, and again with the same lack of full authority.

- A21. Unlike with the NAO, the Bill does not provide a code that may help ameliorate the innate tensions arising from having an auditor general within and subject to a corporate body board. Para 10 of Sch 3 to the BRANA Act provides for a code to deal with the relationship between the C&AG and the NAO, and this is specifically required to reflect the principles set out in section 17 of the BRANA Act (see quote at A2 above), i.e. the C&AG's complete discretion in the carrying out of functions. The code is an indication of the need to manage the tension that the corporate body places on the C&AG's independence.
- A22. Clause 16(2) introduces Schedule 2, para 1 of which requires AGW and the chair of the WAO to jointly prepare annual and interim reports. As with the joint preparation and laying of estimates (clause 20), joint laying of the annual plan (clause 27), and the chair's submission of annual accounts for audit (para 32(1)(b) of Schedule 1), joint preparation of reports undermines the AGW's clear personal accountability as Accounting Officer. The requirement for interim reports is also likely to be poor value for money. Annual reports should be sufficient to provide account of the AGW's and wider organisation's activities. Frequent set-piece interim reporting is unlikely to provide the value that would be provided by the ad hoc reporting to the Assembly of issues of concern by a supervisory board, as envisaged in paragraph C4.ii of annex C.
- A23. Clause 18(2) requires any scheme of delegation of the AGW to be approved by the WAO board. This is a significant constraint on the way the AGW exercises his or her functions. Among other things, it may prevent the AGW participating in the UK-wide National Fraud Initiative, which is explored further in paragraphs A37 to A41 below.
- A24. Clause 19 enables the WAO board to arrange with public bodies for the AGW to provide services to those bodies. But this clause does not require the AGW's agreement—the AGW may be outvoted by the rest of the board. The clause could lead to significant conflicts of interest that would undermine the AGW's audit independence. For example, the WAO board could arrange, despite the AGW's opposition, for the AGW to provide the payroll administration of a body that he or she audits. This would be a significant ethical issue and would conflict with international standards as it would involve the AGW auditing services that he has himself provided.
- A25. I also think the definition of "relevant authority" in clause 19 could be expanded so as to cover, for example, international development agencies that are not public bodies under UK law.
- A26. Clause 25 requires the organisation's annual plan to be agreed between the AGW and the WAO board. The AGW's work programme, including the studies that the AGW plans to undertake, is therefore subject to the WAO board's agreement. This infringes the AGW's

audit independence by fettering his judgement to select particular issues for examination. Clause 25 also requires that the resources to be allocated to the AGW's work programme are subject to the WAO board's agreement.

- A27. Related to clause 25, clause 26 requires the AGW's annual plan and funding to be subject to a procedure under which the AGW must submit to the board a statement of his or her work programme and an estimate of the maximum amount of resources required for it. While clause 26 seems to attempt to temper the WAO board's ability to interfere in the AGW's judgements about his work programme by saying that the WAO board may only reject a statement if it, or a part of it, is "unreasonable", this does not represent adequate protection of the AGW's audit independence. It still allows the WAO board to reject the AGW's judgement of what matters merit examination. It is also unsatisfactory in that it raises the prospect of dispute without providing a means of resolution.
- A28. The provision for rejection under clause 26 and the requirement for agreement under clause 25 both indicate that the only realistic means of resolving a difference of opinion on the work programme, other than compromise, which in the case of the AGW would mean compromising the independence of his or her judgement, is resignation of either the AGW or other members of the board. The suggestion that differences could be resolved in court, as put forward by the Welsh Government to PAC on 1 May 2012, is probably unworkable because of the innate conflict of interest that stems from AGW having to rely on legal advice contracted to the WAO, which is the body with which the AGW would be in dispute. At best, resort to court action is impractical and expensive.

Clauses 29 to 37—miscellaneous and general provision

- A29. Clause 29 enables the National Assembly to determine through Standing Orders how its functions under the Bill are to be exercised. I think this is appropriate as it helps remove the high degree of prescription of the Committee's work that was present in the draft Bill.
- A30. Clause 34 introduces Schedule 3, and para 5 of Schedule 3 provides for the transfer of staff from employment by the AGW to employment by the proposed WAO. These provisions would not be necessary if the proposed WAO were not to become the employer of staff, but if that is to proceed, it is important to note that they contain some problems that may lead to expensive disputes.
- A31. Para 5(2) of Sch 3 sets out that contracts of employment transfer from the AGW to the proposed WAO and will have effect as if originally made between the employee and the proposed WAO. It is arguable that this provides staff with some protection from adverse variations in their employment contracts, as under common law any changes in an employment contract must be agreed by both employee and employer. (But it falls short of the protection provided by Regulation 4(4) of TUPE.) At the same time, however, para 20 of Schedule 1 requires the proposed WAO to ensure that terms of employment are broadly in

line with those of the Welsh Government. This creates a tension if any terms of transferring staff are not broadly in line with Welsh Government terms, and the provisions may therefore set the new organisation on course for dispute with its staff.

- A32. Such tension may not be intended. The Welsh Government may intend para 20(5) of Schedule 1 to only apply to new starters, or be of the view that terms are already sufficiently in line to avoid any legal challenge. We have asked the Welsh Government for clarification of its intentions in this area. In any event, however, the Bill as drafted is not clear on this matter, and this may be a recipe for expensive legal dispute.
- A33. Another transfer issue is that the Bill does not provide the TUPE-like provisions that would be expected to give reassurance to staff. The Bill does provide the right for members of staff to object to their transfer (para 5(4) and (5) of Sch 3) as in the TUPE regulations. This reflects a fundamental right to choose whether to work for a particular employer, but it is one of little practical value to either employee or employer, as it adds nothing substantive to the right to resign. It does not help ensure that the organisation has adequate numbers of suitably qualified staff, and it does not help alleviate staff fears about job security. In the same vein, the Bill does not include TUPE-like provisions that are more reassuring to staff, such as those relating to protection of terms and conditions of employment, and protection from dismissal. This seems to be at odds with the Welsh Government's statement in para 242 of its consultation document on the draft bill of 15 March 2012 that "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".
- A34. I think it would be helpful if the transfer provisions in Schedule 3 explicitly recognised that the transfer was the result of administrative reorganisation of public administrative authorities. This is important to provide clarity for pension administration purposes in dealings with both the Department for Work and Pensions and the pension scheme administrators.
- A35. Similarly, it would be helpful if para 5(2)(b) were changed so as to explicitly recognise previously transferred periods of employment. It is not clear from the existing provision that periods of employment of staff that transferred to AGW from the Audit Commission and NAO in 2005 are to be treated as continuous employment with the new WAO. This uncertainty is a cause for concern for such staff, who make up a majority of the current organisation.
- A36. Clause 35 introduces Schedule 4, minor and consequential amendments. While generally dealing with the consequential details of the main provisions outlined above, some of these are worth noting in particular.

- A37. Para 59 of Schedule 4 to the Bill amends section 64A(1) of the Public Audit (Wales) Act 2004 so as to remove provision for the AGW to arrange for persons to conduct data matching exercises on his behalf. (And paras 60 to 62 remove related provisions in Part 3A of the Public Audit (Wales) Act 2004, with the effect of preventing bodies providing information to a person acting on behalf of the AGW.) This is reinforced by the prohibition in clause 9(2) on the AGW doing anything that could become the responsibility of the WAO. My particular concern is that the practical effect of this may be to end the AGW's participation in the National Fraud Initiative (NFI), as such participation is only practicable if the AGW can engage the same service provider as that engaged by other UK audit agencies to undertake the data processing required on his or her behalf. The most recent NFI exercise resulted in the identification of £6 million of fraud and overpayments in Wales, so the loss of this participation would be most regrettable. The main NFI exercise is conducted once every two years.
- A38. Clause 18 of the Bill may overcome this as it enables the AGW to delegate his functions to contractors to the proposed corporate WAO, subject to approval of a scheme approved by the WAO. However, approval by the proposed WAO means that the AGW's participation in the NFI is subject to the agreement of the WAO board. In my view, this represents a serious potential infringement of the AGW's independence and a potential threat to the UK-wide approach to data matching to tackle fraud.
- A39. It is not clear, however, that AGW's delegation of his data matching functions to a contractor of the proposed corporate WAO would meet the requirements of the data matching legislation (Part 3A of the 2004 Act) and other legislation (including the Data Protection Act 1998). This lack of clarity has been confirmed to me by independent legal advice. Data matching is a very sensitive area that tends to attract legal challenge. The legislation therefore needs to be very clear so as to ensure that the work does not fall foul of data protection law, particularly where non-public sector bodies are involved.
- A40. As it stands, Part 3A of the 2004 Act is very specific in only permitting the information needed for matching to be disclosed to the AGW or a person acting on his behalf. Removing the provision for information to be disclosed to a person acting on behalf of the AGW, as proposed in the Bill, may be interpreted by a court as having precisely that effect. It is quite likely that citing the ability of the AGW to delegate his functions under clause 18 of the Bill would not be held to meet the specific requirements of Part 3A of the 2004 Act once the provision for AGW to arrange for data matching to be conducted on his behalf has been removed from that Act. Comparing the revised provisions of the 2004 Act against their equivalents in, for example, the Public Finance and Accountability (Scotland) Act 2000 would indicate that no provision of information to persons acting on behalf of the AGW is permitted. It could also be argued by anyone wanting to escape the scope of NFI that the service provider being contracted to the corporate WAO would be acting on behalf of the corporate WAO rather than the AGW.

- A41. A similar problem arises in terms of the results of data matching: the other participating audit bodies may not legally be able to share results with a contractor acting for the corporate WAO. It would be particularly awkward to try and address this problem through amendments aimed at substituting the corporate WAO for the AGW in the wider body of data matching legislation, as such amendments would be required to UK, Scottish and Northern Irish legislation. To avoid the loss of data matching in Wales, I would suggest the omission of paras 59 to 62 of Sch 4 to the Bill and omission or amendment of clause 9(2).

Amendment to the Equality Act 2010

- A42. Para 88 of Schedule 4 to the Bill amends Part 2 of Schedule 19 to the Equality Act 2010, which provides an example of how the Bill leads to an expansion of existing regulatory requirements because it creates an additional public body (the proposed WAO) alongside the AGW. The effect of para 88 is to add the proposed corporate WAO, in addition to the AGW, to the list of bodies designated as public authorities under the 2010 Act. This has the consequence of making both the corporate WAO and the AGW subject to the requirements of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011. The practical effect of this is to require the corporate WAO and the AGW each to prepare and report progress on a strategic equality plan. They will also each have to engage with persons representing the interests of persons with protected characteristics regarding a range of duties, such as undertaking equality impact assessments of work plans. While it might be possible to share some of this work between the corporate WAO and the AGW, this amendment is likely to lead to an increase in the cost of arrangements needed to meet equality legislation.

Amendment of the Freedom of Information Act 2000

- A43. A similar effect arises from para 16 of Sch 4 to the Bill. This makes the proposed WAO a public body subject to the Freedom of Information Act. That in itself is appropriate, but it does effectively mean that Wales' public audit institution is subject to a double dose of regulation as both the AGW and the proposed WAO will need to prepare and maintain publication schemes, which, even if joint schemes can be agreed, will be an additional call on public money.
- A44. In terms of FOIA, the creation of a second public body within the same organisation with functions of holding information (clause 21(2)(d) and (e)) is also likely to lead to confusion as to which body holds particular requested information. For example, it would not be clear in the case of someone who sends a request to the WAO for a copy of a draft AGW study report (assuming AGW has prepared such a report but not provided it to Board colleagues) whether it would be correct for the WAO to respond to the requester to say that it does not hold the draft report. Practically, the draft is likely to be in the possession of WAO employees, but that alone would be unlikely to lead it being deemed to be held by the WAO. It might also be argued that the AGW as Chief Executive and board member of the WAO is part of the WAO, but this runs counter to the concept of the AGW being a separate public

authority under FOIA. Altogether, there is considerable scope for confusion and potentially expensive appeals to the Information Commissioner and Tribunal.

- A45. These amendments in respect of regulatory matters (paras 16 and 88 of Sch 4) raise wider issues regarding the increased burden of regulation that arises from moving from one public body to two. In addition to the specific amendments, other duplicate obligations will arise automatically from the creation of a corporate body alongside the AGW. For example, the proposed WAO will need to register with the Information Commissioner under the Data Protection Act 1998, but this will be alongside the AGW's own existing registration.
- A46. Another related issue is that the AGW will continue to be subject to regulatory calls on resources, such as the preparation of a strategic equality plan, but will not have his own resources to meet those statutory requirements. Under clause 18, the AGW will not be able to delegate the work necessary to achieve compliance with such requirements unless that delegation is approved by the corporate WAO. The AGW's compliance will therefore only be achieved if permitted by the proposed WAO board.

The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation

- A47. The three provisions for making subordinate legislation—clause 19(7) (approving bodies of accountants for the provision of services), clause 34(2) (supplementary etc provision) and clause 36(2) (commencement)—are all appropriate. However, as the AGW's quintessential purpose is reporting to the public and its representatives on government's use of resources, it would be preferable from the point of view of ensuring independence and audit effectiveness if these powers lay with the National Assembly rather than the Welsh Ministers.

The financial implications of the Bill

- B1. The impact assessment provided by the Welsh Government almost certainly significantly underestimates the cost of implementing the Bill. I should also note that the Welsh Government has not requested any comment from me regarding its costings.
- B2. The Welsh Government's impact assessment assumes that board members are paid £24,000 a year, and £30,000 in case of the Chair, yet they are to have the responsibility of running an organisation with a budget of some £24 million without a substantial executive presence (other than the AGW) on the board. I estimate that the fees would need to be somewhere in the region of 50 per cent higher than those identified by the Welsh Government (i.e. £600 and £750 a day for non-executive members and chair respectively). This would be in order to attract suitable candidates prepared to have a role that involves agreeing the organisation's annual plan, potentially rejecting the AGW's statement of work programme and resources, agreeing the delegation of the AGW's functions and having direct responsibility for employing staff, with all the legal responsibilities that those roles involve. There would also need to be payments in respect of National Insurance and travel and subsistence, which may add something of the order of a further 20 per cent to the base fees.
- B3. I also suspect that the Welsh Government's estimate of five days a month of input for such roles is on the low side. Also, the Board is likely to need to two co-opt independent members for its audit committee. Co-opted members will require remuneration, and I estimate that this will amount to some £10,000 including National Insurance and travel and subsistence.
- B4. The Welsh Government's estimate of the cost of support for the board of a corporate body (£29,000) is also likely to be too low. Such a board will need not only a secretariat providing administrative support, but it is also likely to require a substantial level of ongoing expert legal and technical advice on the proper exercise of its functions. I estimate that the secretariat employment costs will be in the region of £60,000 (including National Insurance etc) and that legal advice amounting to some £10,000 a year will be needed.
- B5. The Welsh Government has not included any amounts for the cost to the AGW of dealing with the legislative process in staff time and of obtaining external legal advice, which I estimate to be at least £30,000. No doubt it also has its own costs arising from pursuing the legislation, but I am not in a position to provide an estimate of such costs.
- B6. The Welsh Government has also not included any amounts for the cost of implementing the legislation. This will include WAO staff time and legal costs of dealing with the transfer scheme, revising the code of audit practice (required by clause 10), revising or producing new internal technical and HR policies for the new WAO, the creation of standing orders for the new board (required by para 25 of Sch 1), and other matters such as ensuring

compliance of both the AGW and the proposed WAO with equality legislation (see paragraph A42 above). I estimate that the cost of these items will be around £200,000.

- B7. There may also be some tax-related costs. Unlike the BRANA Act 2011, the Bill provides no protection from Corporation Tax and Capital Gains Tax liabilities arising from the transfer of assets. I have raised this issue with HMRC but do not yet have an indication of the likely approach to be taken by HMRC with the Bill as it stands, and I cannot therefore give an estimate of likely liability.
- B8. Similarly, if HMRC do not agree a dispensation with the proposed WAO in respect of the taxation of staff travel and subsistence expense payments incurred in respect of work for the AGW (rather than for WAO), then there will be an additional tax liability. Where one legal person pays expenses to its staff and those staff undertake work for another legal person, those expenses could become taxable in the hands of the recipients. In the absence of any agreed HMRC dispensation, under UK tax rules this would need to be met by staff personally, which would be out of line with Welsh Government terms and so a potential source of expensive dispute. Resolution might involve HMRC agreeing to WAO paying the tax for staff. I am hopeful that HMRC would agree to such a dispensation, and it is very difficult to identify the potential cost with any certainty, but it is possible that an additional cost to the WAO of up to £380,000 may arise.
- B9. Unless the tensions in the employment provisions of the Bill are satisfactorily addressed (see para 20 of the body of my letter and paras A14 and A15 of annex A), additional costs for staff time and legal services may be incurred due to the need to deal with disputes regarding terms. It is difficult to estimate the costs of such disputes with any certainty, but it would not be unrealistic to envisage two or three disputes arising, with each costing around £20,000 in staff time and legal costs.
- B10. The requirement for terms to be “broadly in line” with those of the Welsh Government may also incur significant additional costs if a Judge were to determine, contrary to my view, that existing terms are already broadly in line. In the absence of any such Judgment, however, I am not in a position to estimate the effect of the requirement to ensure terms are broadly in line with those of the Welsh Government.
- B11. Altogether, I estimate that the initial cost of the Bill as it stands lies between £180,000 and £350,000. I estimate that the ongoing cost lies between £200,000 and £650,000, with something nearer the lower figure more likely but not guaranteed (see summary table below). All increases in the cost base of the WAO will need to be financed by some combination of audit fee increases, efficiency savings and charges on the Welsh Consolidated Fund (via the annual estimate).

Summary of cost estimates

One-off items

Item	Lower Estimated Amount £000	Upper Estimated Amount £000
Cost of legislative process (WAO only)	30	40
Implementation	150	250
Disputes	0	60
Total	180	350

Recurring items

Item	Lower Estimated Amount £000	Upper Estimated Amount £000
Board members' fees, expenses and NI	155	185
Co-opted members fees, expenses and NI	5	15
Board secretariat	40	70
Travel and subsistence taxation	0	380
Total	200	650

- B12. In addition, if the Bill prevents the AGW from participating in the National Fraud Initiative, as described in paragraphs A37 to A41 above, then this will have a cost to the taxpayer of lost savings amounting to some £3 million every year.
- B13. If the Bill were changed so as to provide a supervisory board, initial costs would be likely to be significantly lower, especially as no transfers of staff, assets or liabilities would be needed and the attendant risk of disputes would be removed. Similarly, on an ongoing basis, the cost is very likely to be at the lower estimated amount of £200,000, as board members' fees will not need to reflect business decision-making and employment responsibilities, and the

absence of a transfer of staff to the employment by the board will remove the risk of additional costs from a requirement to harmonise terms.

- B14. If the Bill were changed so as to provide a more fit for purpose corporate body (see annex D), then while ongoing costs would still be likely to be in the range of £200,000 and £650,000 a year, initial set up costs would be likely to be at the lower end of the range of £180,000 to £350,000. This would be because, as set out in annex D, the risk of staff-related disputes would be lower because the Board would not face a requirement to ensure WAO staff terms were in line with Welsh Government terms, and staff would be transferred under more TUPE-like provisions, reducing the scope for dispute. Other implementation matters, such as drafting or revising HR policies, may also be somewhat more straightforward and therefore incur less expense.

Outline of the features of a supervisory board

- C1. I suggest that to help ensure their independence and overall suitability for carrying out a supervisory scrutiny role, the seven members of the board should be appointed by the National Assembly, as with the non-executive members under Schedule 1 of the Bill. Similarly, the National Assembly should determine the members' terms and conditions of office.
- C2. To maximise board objectivity and clarity of accountability of the AGW, I suggest that the AGW should not be a board member. At the same time, the range of membership may be enhanced so as to allow a greater range of stakeholder input.
- C3. I suggest that the board should have statutory powers to:
- i. monitor and advise the AGW regarding the exercise of the AGW's functions (as in clause 17 of the Bill);
 - ii. require information and explanation from the AGW and other persons (AGW staff, suppliers and auditor) regarding the exercise of the AGW's functions;
 - iii. specify, in relation to the AGW's functions, the types of information that should be included in a report from the AGW to accompany the AGW's published annual accounts
 - iv. advise the National Assembly in support of its consideration of the AGW's estimate and annual report;
 - v. require the external auditor of the AGW to examine any matters of concern.
- C4. The board should also have duties to:
- i. establish audit and remuneration committees;
 - ii. report to the National Assembly any matters of concern regarding the AGW.
- C5. I would also suggest that the National Assembly should be empowered to request the external auditor of the AGW to examine any matters of concern brought to the PAC's attention by the Board.
- C6. To maximise the Board's objectivity and the clarity of accountability of the AGW, the Board should not have executive functions, such as agreeing the AGW's annual plan, rejecting the AGW's work programme, charging and setting fees, and employing staff. Similarly, the board or its chair should not have functions of being substantively involved in preparing and laying estimates of income and expenses, laying the annual plan, submitting accounts for audit and

Date: 5 September 2012
Our ref: HVT/1718/fgb
Page: 22 of 24

preparing annual reports. All such functions should lie with the AGW. And in keeping with this, the AGW should be Accounting Officer for the organisation.

- C7. The board could be appropriately funded through its own separate estimate, or perhaps more pragmatically through a separate ring-fenced line within the annual estimate submitted by the AGW (but not determined by the AGW) to the National Assembly for its consideration.

Outline of more workable corporate body arrangements

- D1. I am firmly of the view that the AGW should be able to set his work programme, other than perhaps for ancillary work, independently. For this, there needs to be:
- i. removal of the clause 26 provision for the WAO board to reject the AGW's statement of work programme and resources;
 - ii. removal of the provision for the agreement of the annual plan by the WAO board (i.e. amend clause 25(1)) (but the requirement to take account of the advice of the board in setting the plan and estimate would remain).
- D2. The AGW should be able to delegate his statutory functions, other than perhaps in respect of ancillary work, to staff and contractors without needing to obtain the approval of the WAO board (i.e. clause 18(2) should be omitted).
- D3. Any arrangement for the AGW to provide services should, if the WAO board is to make such arrangements, be required to be made with the AGW's approval. (This could be achieved by amending clause 19.) This is necessary to prevent the AGW being subject to arrangements that compromise the AGW's independence, e.g. an agreement for the AGW to provide the payroll function for an audited body.
- D4. The WAO composition should be made more balanced so that there are some management members in addition to the AGW. This could be done by requiring at least two employee members, each to be nominated by the AGW. (In other words, para 1 of Sch 1 should be amended so as to change the board composition and para 14 of Sch 1 should be changed so that non-executives may only appoint employee members nominated by the AGW). However, the principle that non-executives will comprise the majority of the board must be maintained.
- D5. If the WAO board is to be the employee of staff, then for the sake of avoiding poor industrial relations and expensive litigation:
- i. the WAO should either not be subject to any "in line" requirements in respect of terms of employment, or else be required, in determining the terms of employment, to have regard to the desirability of keeping the terms broadly in line with those applying to staff of the Welsh Government (i.e. para 20(5) of Sch 1 to the Bill should be made much more like para 17 of Sch 2 to the BRANA act 2011);

Date: 5 September 2012
Our ref: HVT/1718/fgb
Page: 24 of 24

- ii. the staff transfer provisions (para 5 of Sch 3 to the Bill) should provide more TUPE-like protections that are reassuring for staff, especially in respect of protection of terms as under Regulation 4(4) of TUPE.
- D6. To protect AGW's participation in NFI, the amendment of Part 3A of the Public Audit (Wales) Act 2004 by paras 59 to 62 of Sch 4 to the Bill, which prevents AGW from arranging persons to conduct data matching exercises on his behalf, should be omitted. Clause 9(2) will also need to be omitted or amended so as not to contradict this.

10th September 2012
GH/WAO/PAWB

Public Accounts Committee - invitation to provide evidence on the Public Audit (Wales) Bill – Response of Prospect Wales

Prospect is an independent trade union representing over 120,000 members in the public and private sectors. Our members work in a range of jobs in both sectors in a variety of different areas, including aviation, agriculture, communications, defence, energy, environment, heritage, industry and scientific research.

We are the largest trade union in the Wales Audit office (WAO), representing staff in all areas of the organisation.

We are grateful for the invitation of the Public Accounts Committee to provide evidence to support the work of the Committee in scrutinising the Public Audit (Wales) Bill.

Over several years Prospect has called for the governance arrangements of the Wales Audit Office to be improved and for more effective measures to be introduced to hold the Auditor General to account. These calls were prompted by Prospect's long-standing concerns regarding the actions and behaviours of the former Auditor General for Wales and the former Chief Operating Officer, and the lack of formal legislative measures to hold these individuals to account.

We know our concerns were shared within the Assembly, and we believe the proposed legislation has cross party support within both the Assembly and Westminster.

We welcomed the appointment of the current Auditor General and believe that he has sought to engage constructively with staff and their representatives since his appointment.

We also welcomed the decision of the current Auditor General to voluntarily introduce improved governance and accountability measures. Nevertheless, the effectiveness of these measures is wholly dependent on each appointee to the role of Auditor General being prepared to comply with the measures. We therefore support the intention to legislate to *"strengthen and improve the accountability and governance arrangements*

relating to the Auditor General for Wales (AGW) and the Wales Audit Office (WAO) whilst protecting the AGW's independence and objectivity."

There are many elements of the proposed legislation which we support and welcome in principle. These include:

- The establishment of a statutory Board to provide independent and objective oversight and scrutiny of the Wales Audit Office and Auditor General. We consider that providing for a statutory Board with non-executive functions would have the potential to provide improved overview of public audit on a permanent basis. However, we have some concerns that the functions and membership of the Board as detailed in the Bill are not conducive to safeguarding the independence of audit and improving accountability.
- The proposals for the National Assembly and its Committees to have an increased role in scrutinising the way in which the Auditor General and Wales Audit Office have used their resources.
- The proposal for an employee member to sit on the Board. However, we have some concerns regarding the proposal as worded in the Bill.
- The proposal that the Auditor General should become the auditor of local government bodies. The current arrangement, whereby the Auditor General appoints auditors, does not provide for consistency of approach in the delivery of audit and weakens accountability as the Auditor General can distance himself from responsibility for the delivery of the audit functions.

Whilst there is much in the proposed legislation which we support, we have some fundamental concerns regarding some of the provisions. These are as follows:

- The workability of proposed governance structures;
- staffing issues; and
- The role of the employee member.

Our concerns in each of these areas are set out below:

Workability of proposed governance structures

We see sound governance as very much in our members' interests. The Auditor General's staff have suffered as a direct result of poor governance and the unethical behaviour of some of those who led the organisation during the tenure of the former Auditor General.

We fully support, therefore, the stated intention of the Bill to *"strengthen and improve the accountability and governance arrangements relating to the Auditor General for Wales (AGW) and the Wales Audit Office (WAO) whilst protecting the AGW's independence and objectivity."*

Achieving this aim is not straightforward, as any accountability arrangements have to recognise that the Auditor General has the authority and resources to perform his/her statutory functions with objectivity and independence. The Auditor General must have the freedom to take what actions he/she considers necessary and to reach what judgements he/she considers correct. Whilst this freedom is a pre-requisite of independent audit, the Auditor General can still be held to account for his/her actions by implementing statutory overview and scrutiny arrangements whereby the Auditor General

can be required to justify his/her actions and to account for the exercise of his/her functions.

However, the proposals as set out in the Bill for the creation of a new corporate body with a statutory Board, do not effectively reconcile the need for audit independence and the need for real accountability. The proposals have the perverse effect of undermining both the independence and the accountability of the Auditor General. The fundamental problem with the proposed arrangements lies with the functions of the proposed Board itself provided within the Bill.

The Bill proposes that the Board would have both executive and non-executive functions. The Board would be the employer of staff. The Auditor General would have to agree his own work programme with the Board (**Clause 25**) and the Board would effectively control the resources required by the Auditor General to deliver his/her functions (**Clause 26**). The Bill contains no effective recourse for the Auditor General if the Board rejects his/her request for the resources he considers necessary and/or the Board rejects his/her annual work programme. The Auditor General's freedom to undertake his/her audit functions independently would therefore be significantly undermined. The model would not lead to greater accountability as the Auditor General, if challenged on the way in which he/she had delivered his/her functions, would be able to argue that his/her ability to deliver effectively had been undermined by the decisions of the Board (the same Board tasked with the non-executive overview of the Auditor General).

The proposal to create a Board with both executive functions and non-executive functions for scrutinising and providing overview of the exercise of the Auditor General's functions will have the unintended consequence of creating an inherent conflict of interest for the Board itself. The Board will potentially have to scrutinise matters which have arisen due to executive decisions made by it.

We consider that the creation of a Board to exercise non-executive supervisory, scrutiny, overview and advisory functions with regards to public audit in Wales could provide strong and effective accountability, as long as the Board was invested with sufficient authority to:

- obtain whatever information it considers necessary to hold to account;
- require auditors to account for their actions and the use they have made of public resources; and
- Report findings and conclusions to the National Assembly for Wales and its Committees.

The membership of the proposed Board is essentially a non-executive membership. The Auditor General is the only executive member proposed for the Board. The composition of the proposed Board is far better suited to a Board with non-executive functions. It would be highly unusual for a Board with an essentially non-executive membership to be expected to exercise executive functions. We consider that it would be preferable for both the functions and membership of the Board to be non-executive. The Auditor General would therefore not be a member of the Board but would be required to attend Board meetings when asked to do so by the Board.

We acknowledge that some public bodies in Wales have boards which exercise both executive and non-executive functions. Where this is the case (e.g. in the NHS), the boards of these organisations do not face the complexity of holding other statutory, independent entities to account. Moreover, the membership of these boards provides a

balance of executive and non-executive members to reflect the joint executive and non-executive functions of the board.

If it is decided to create the Wales Audit Office as a corporate body controlling audit resources and employing audit staff, we consider the draft legislation should be amended to safeguard the independence of the Auditor General. This could be achieved by the inclusion of additional provisions within the Bill which enable the Auditor General to procure the resources he/she considers are required to undertake his/her functions, should these resources not be provided by the Board of the Wales Audit Office. Furthermore, the Auditor General should have the freedom to undertake whatever audit activities in Wales he/she considers necessary, without the agreement of the Wales Audit Office Board. If the Auditor General decides to act without agreement of the Wales Audit Office Board, the legislation could require the Auditor General to account directly to the Public Accounts Committee for these decisions.

Staffing Issues

The following comments are predicated on the basis that there will be a transfer of staff from the employment of the Auditor General for Wales to an incorporated Wales Audit Office.

The draft provisions of the Bill do not provide the protection for staff that we wish to see in a statutory transfer. Schedule 3, Part 5(2) offers less protection than would be the case under the Transfer of Undertakings (Protection of Employment) [TUPE] Regulations.

We are disappointed that the Explanatory Memorandum provides no assurance on this matter and the lack of detail on staff transfer has already caused significant concern to our members. These concerns have been exacerbated by the fact that the previous statement, contained in Paragraph 242 of the consultation document, has not been met in the draft Bill, nor has the commitment been repeated in the Explanatory Memorandum: *"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"*.

In order for staff to be reassured we consider it would be helpful if the following clarifications were included in the Bill, with specific provisions as appropriate:

- That the transfer will be explicitly classified as a *'Machinery of Government'* transfer;
- Any transfer will be on no less favourable terms than would be the case if TUPE applied; and
- any periods of employment for staff previously employed by the Audit Commission and National Audit Office who transferred to the employment of the Auditor General under previous statutory transfers will be included for continuity of employment purposes. This is not apparent from Schedule 3, Paragraph 5(2)

There appears to be a conflict in the draft legislation between Schedule 3, paragraph 5(2) and paragraph 20(5) of Schedule 1 which requires the Wales Audit Office to ensure that terms of employment are *"broadly in line"* with those of the Welsh Government. It is unclear at what point staff terms of employment must be broadly in line with the Welsh Government. We are unclear whether this means that from the first day of the Wales Audit Office staff terms would be required to be amended to comply with this provision or whether terms must be brought broadly into line over a period of time; or whether this will only apply to new staff of the Wales Audit Office who were not part of the

statutory transfer. The lack of clarity on these matters is a cause of anxiety to our members.

We are also concerned that the term 'broadly in line' is not defined and this leaves considerable scope for subjective judgement to be applied which is open to challenge. These matters could only be resolved through the courts or employment tribunals. We therefore consider that either the provision should be removed or statutory guidance on its application be provided. If the provision is to remain, we consider that it would be more appropriate to provide for broad alignment to National Assembly terms in order to emphasise the independence of the audit function from the Government.

Employee Member

We welcome the proposal to have an employee member on the new Board. We consider that an employee representative who is able to represent the views of the workforce could make a valuable contribution in providing perspective and understanding of issues affecting the organisation.

However, we have some concerns regarding the proposal as drafted. Neither the Bill nor the Explanatory Memorandum provide sufficient information on the role that the employee member is expected to perform. If the purpose of the employee member is to represent employee experience, the proposed appointment procedures are inappropriate. It would be crucial that the workforce considers that the employee representative is representative of the staff body. This is unlikely to be the case if the individual is nominated by the Auditor General and approved by the Board. We consider it would be more appropriate for the employee representative to be a nominated trade union representative or someone elected by the staff.

The draft Bill requires the employee representative to be appointed on merit. If the purpose of the role is to represent the staff experience, we are unclear of any objective criteria which could be used to assess this, other than that the majority of employees had elected the individual to represent their experience.



GARETH HOWELLS

Negotiations Officer, Prospect Wales

September 2012

Sarah Sargent
Deputy Clerk
Public Accounts Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

29 August 2012

Dear Sarah

Consultation on the Public Audit (Wales) Bill

I refer to the letter of 23 July 2012 sent by Darren Millar AM regarding the above matter.

Estyn has reviewed the latest draft of the above bill and the accompanying explanatory documents. We note that a number of the comments within our written response to the consultation on the initial draft bill appear to have been addressed within the latest draft of the bill.

I have nothing further to add to our initial response but I am grateful to have been given the opportunity to contribute further.

Yours sincerely



Ann Keane

Her Majesty's Chief Inspector of
Education and Training in Wales

**Public Accounts Committee
Public Audit (Wales) Bill
PA5 - Public and Commercial Services Union**



PCS Cymru / Wales
2nd Floor, Transport House
1 Cathedral Road
Cardiff
CF11 9SD

Tel: 029 2066 6363
Fax: 029 2066 6501

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

11 September 2012

Dear Mr Millar

Public Accounts Committee - invitation to provide evidence on the Public Audit (Wales) Bill

1. Thank you for the invitation of the Public Accounts Committee to provide evidence to support the work of the Committee in scrutinising the Public Audit (Wales) Bill. I am responding on behalf of the WAO branch of the Public and Commercial Services Union (PCS), which has agreed this letter.
2. PCS agrees with the Government's view that the governance arrangements of the WAO need to be strengthened, and that the creation of a single board to oversee the work of the AGW is the best way of doing this. We agree with the objectives of the Bill as stated in paragraph 21 of the Explanatory Memorandum, and we welcome many of the provisions contained in the Bill. However, we have serious doubts that the governance proposals in the Bill are the best way of meeting its stated aims. We also have concerns about the transfer provisions and the requirement for the WAO's staff's terms and conditions to be broadly in line with those of the Welsh Government.

Governance arrangements

3. The WAO Board will have executive responsibility for running the WAO, including the employment of staff and the deployment of other resources. At the same time, it has important scrutiny and oversight functions, and a membership that seems more suited to a non-

executive board. The functions of the board are not entirely clear, and we do not understand how it can ensure greater oversight of the Auditor General and the WAO in the form currently proposed. We have several specific concerns about the proposals, which are set out below.

Independence of the Auditor General

4. The Board will need to approve the AGW's annual plan, as well as its own, creating a potential threat to the Auditor General's independence and a conflict of interest for the Auditor General. We do not understand how these plans will differ when the WAO's resources are deployed almost exclusively in the service of the AGW's statutory duties. The content of the respective plans is not made clear in the Bill and there is a risk that the WAO may seek undue influence over the AGW's programme of work to the detriment of the Bill's avowed intention of preserving the Auditor General's independence.
5. The WAO and AGW are required to agree a joint financial estimate, creating a further risk to the AGW's independence, in particular in terms of his or her requirement for sufficient, adequately trained staff to undertake audits. The Bill does not say how any conflicts are to be resolved. This is a worrying omission as any legal proceedings would be highly damaging to the reputation of public audit in Wales and would be debilitating for the WAO as an organisation. Any conflict would cause considerable difficulty for our members as they would face divided loyalties: employees of the WAO but serving the AGW, the one in dispute with the other. We suggest that the Auditor General has the final say on the Estimate laid before the Assembly in the event of a dispute, but the Board then has the option of raising its concerns formally with the National Assembly before the latter votes on the annual budget motion.

Membership of the Board

6. The Board will be overwhelmingly non-executive: five of the seven members will come from outside the organisation and will have limited experience of the WAO. However, they will have important executive functions. We consider it essential that an executive board has a greater proportion of executive members, who would need to be senior managers within the WAO, in order to bring sufficient managerial experience to the Board. A much better balance could be achieved with two or three executive members, in addition to the AGW, while still maintaining a majority of non-executive members.

Oversight and accountability of the new WAO

7. One of the principal intentions of the Bill is to hold the AGW to account for his management of the WAO. However, the Board's scrutiny functions are compromised by its executive powers. The Board cannot credibly scrutinise its own decisions, which may include sensitive matters such as severance payments and staff training – exactly the issues that led to the governance failures that precipitated this Bill. It is quite possible that the non-executive members' appetite for critical scrutiny will diminish over time as they are implicated in decisions they themselves have taken and any unwelcome consequences of those decisions become apparent.
8. The Bill does not establish any reliable mechanisms for the WAO itself to be scrutinised. It is not reasonable to expect the PAC or another Assembly committee to exercise the in-depth scrutiny currently provided by the three existing governance committees (Audit and Risk Management, Remuneration and Resources). The Bill does not require these committees to be retained or to report the outcome of their work to the Assembly. Far from improving the supervision and oversight of the WAO, the Bill diminishes it.
9. In our view, the proposed relationship between the AGW and the WAO is fraught and potentially untenable. We recognise that the intention is to ensure that the AGW is held to account for the exercise of his/her functions as AGW. We consider that this can best be achieved by legislating for the creation of a non-executive board exercising solely advisory, supervisory and scrutiny functions, but not executive decision-making, such as agreement of work programmes.
10. We would expect the Board to provide wide-ranging advice to the AGW and strong, independent and comprehensive scrutiny of the WAO's operations; it should not be seen as a soft option. We believe this option would provide more robust oversight of the WAO; the Government offers no rationale for its assertions to the contrary (paragraph 94 of the Explanatory Memorandum). A single, non-executive board would remove conflicts of interest and would be cleaner, simpler and (according to the Government's own impact assessment) considerably less expensive than the Government's preferred option of an executive board.

Staff related matters

Transfer provisions

11. We welcomed the commitment in paragraph 242 of the consultation document that any transfer of staff would be in accordance with the Cabinet's Office Statement of Practice on Staff Transfers and that provision would be made so that the transfer of employment would be on no less favourable terms than would be the case if TUPE applied. We are therefore disappointed and concerned that the Bill does not

make good on this commitment. The transfer provisions in Schedule 3, Part 3 do not include provisions that replicate the TUPE regulations, which prevent adverse alterations to an employee's terms and conditions that are connected to a transfer between one organisation and another. We believe that these provisions should be added and the transfer should be treated explicitly as a "machinery of government" transfer.

12. We also request that paragraph 5(2)(b)(ii) of Schedule 3 of the Bill makes clear that an employee's continuous service includes not just service with the AGW, but also service with the WAO's predecessor organisations (the Audit Commission and the National Audit Office) that was transferred into the WAO when it was created on 1 April 2005. This is an important addition because many of our members have the majority of their service in these predecessor organisations.

Terms and conditions to be "broadly in line" with the Welsh Government

13. Paragraph 31 of Schedule 1 of the Bill requires the WAO's staff's terms of employment to be "broadly in line with those members of the staff of the Welsh Government." We agree that it is important for the employment practices, terms and conditions for staff to be firmly rooted in public sector norms and standards. Fair and open competition using objective criteria must be the basis for staff selection, within the framework of a robust equal opportunities policy. In terms of pay, we accept the principle that the WAO should have due regard to appropriate comparators in the public sector. However, we have two important reservations about the proposed link with the Welsh Government:

- a) It is essential that the auditor of public bodies is independent, and seen to be independent, of the organisations audited. For this reason we consider it inappropriate to link terms and conditions explicitly to the Welsh Government, especially as this organisation is such an important recipient of audit scrutiny. It would be very difficult to undertake a value for money study on a certain aspect of the Welsh Government's employment practices, for example its recruitment and selection procedures, if the auditor was required to follow those procedures. The conflict of interest is self-evident.
- b) There is an implicit assumption that the Welsh Government's practices are the best benchmark for public audit. However, the nature of the Welsh Government's work is quite different from the WAO's. The staff of the WAO have a much higher proportion of specialist and relatively senior staff who travel much more extensively than the typical civil servant at the Welsh Government. There needs therefore to be sufficient flexibility to respond to market conditions and, crucially, to create grading structures and pay scales that meet audit requirements rather than those of

another organisation. For this reason, it is essential that any “broadly in line” wording does not require close alignment to any single aspect of the Welsh Government’s (or any other organisation’s) employment practices and organisational structures.

14. The term “broadly in line” is so vague as to make enforcement difficult. Furthermore, it creates a potential conflict with the transfer provisions in Schedule 3, Part 3 that require employees’ existing terms to be transferred to the new WAO. We consider that a provision along the lines of that in paragraph 17(2) of Schedule 2 of the Budget Responsibility and National Audit Act 2011 – to “have regard to the desirability of keeping the terms broadly in line with those applying to civil servants ” – would be a sufficient safeguard. We consider that if a comparator for audit staff is to be included in the legislation, it would be more appropriate to use the National Assembly for Wales rather than the Welsh Government. This link would ensure that the terms and conditions of the staff are broadly in line with those of staff working for the body that funds the auditor and to which it is ultimately accountable. Furthermore, it would demonstrate audit independence from the Welsh Government.

Employee representative

15. PCS welcomes the principle of having an employee representative as a member of a non-executive advisory board, and we consider that the ability to represent employee experience and views at Board meetings would be valuable. We welcome the principle of an employee representative if that is the intention of the proposals. We note that this is now considered good practice, and we understand that all Health Boards in Wales have one. But this would only be appropriate if the Board was supervisory in nature. We do not think an employee representative should take part in executive decision making since this would compromise their position as a representative of the workforce.
16. We do not have fixed views on how employee members should be appointed, but the proposed method is not conducive to the selection of an employee representative. The WAO’s employees would need the major say in who that person should be, and we do not understand how the non-executive members could assess applications “on merit” when the criterion is “employee experience.” Our preference is that the employee representative should be elected by the staff.
17. The arrangements proposed in the consultation are more suitable for the appointment of executive members. The AGW would clearly need a major role in determining which of the WAO’s senior managers should be members.

We look forward to giving oral evidence on the Bill on 1st October.

Yours sincerely

Sian Wiblin
PCS Negotiations Officer, Wales
On behalf of the Branch Executive Committee, Wales Audit Office

Public Accounts Committee

Public Audit (Wales) Bill

PA6 - The Institute Of Chartered Accountants England And Wales



Our ref: ICAEW Rep 136/12

Sarah Sargent,
Deputy Clerk
Public Accounts Committee
National Assembly for Wales
Cardiff Bay, CF99 1NA.

By Email: PublicAccounts.Committee@Wales.gov.uk

Dear Sarah,

PUBLIC AUDIT (WALES) BILL

ICAEW is pleased to respond to your request for written evidence on the Public Audit (Wales) Bill.
Our submission is attached.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

Sumita Shah

Sumita Shah
Technical Manager, Public Sector

T +44 (0)20 7920 8516

E sumita.shah@icaew.com



ICAEW REPRESENTATION

PUBLIC AUDIT (WALES) BILL

The Welsh Government's Public Accounts Committee's scrutiny of the Public Audit (Wales) Bill published in July 2012

Written evidence submitted on 17 September 2012 by ICAEW to the Welsh Government's Public Accounts Committee

Contents	Paragraph
Introduction	1
Who we are	2
Major points	7

INTRODUCTION

1. We are writing to provide evidence to the Public Accounts Committee in response to its inquiry on the *Public Audit (Wales) Bill* published by the Welsh Government in July 2012, a copy of which is available from this [link](#).

WHO WE ARE

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
4. ICAEW is recognised internationally as a leading authority on audit and assurance. It is responsible for formulating ICAEW policy on audit and assurance issues, and makes submissions to standard setters and other external bodies. It provides an extensive range of services to its members, providing practical assistance in dealing with common audit and assurance problems.
5. ICAEW is an active member of Business Wales and the Council for Economic Renewal, and most of our 3,000 members in Wales either advise or run small or medium sized businesses; in fact, evidence suggests that over 80% of businesses in Wales use the services of a chartered accountant. By drawing on their collective experience, ICAEW is well placed to act as a barometer for the views of the private sector. ICAEW members in Wales have actively engaged with the Welsh Government on all business issues and have responded to relevant consultations in this regard. In addition, ICAEW has a number of member firms who carry out audit within the public sector in Wales, either on a sub-contract basis to the Wales Audit Office (WAO) or as appointed auditors to public bodies. A number of our members also work within the public sector or have public sector clients.
6. The Wales Audit Office (WAO) is currently considering augmenting its existing quality assurance processes with a further level of independent review sourced externally from ICAEW. This further level of independent review by ICAEW would consist of an annual quality assurance review of a sample of financial audits undertaken by WAO staff, together with a review of relevant whole of office procedures.

MAJOR POINTS

7. ICAEW provided comments on the draft bill. We note that there has been an attempt to take on board some of our comments, for example, we note that the bill now provides for oversight of the Auditor General for Wales (AGW) and WAO to be undertaken by the National Assembly rather than being prescribed to the Assembly's Public Accounts Committee as previously proposed under the draft bill. This is a welcome development.
8. However, ICAEW is of the view that the amendments from the draft bill to the Bill do not go far enough to meet our concerns. The revised proposals do not maintain auditor independence which is vital to the role of the AGW. The model proposed by the Welsh Government is not reflected anywhere else within the UK. Indeed, ICAEW's view is that it undermines the foundation of independent public audit. We are concerned that the previous experiences could

unintentionally be leading to creation of legislation which will reduce the AGW's direct accountability to the National Assembly. Our recommendation, therefore, is that the Board's role needs to be one of oversight rather than one of management to allow the AGW to determine the scope of work and how it should be carried out. This is explained further in our response (paragraphs 10 to 19).

9. ICAEW is of the view that the Bill misses an opportunity to streamline and strengthen the Welsh public audit regime (paragraphs 20 to 21).

Maintaining auditor independence

10. In paragraph 20 of the Explanatory Memorandum, we note that the objectives of the Bill are *'to strengthen and improve the accountability and governance arrangements relating to the Auditor General for Wales (AGW)'* and *'the need to preserve and protect the independence and objectivity of the AGW'*. ICAEW's view is that the Bill does not actually improve accountability and governance and does not protect the independence and objectivity of the AGW.

11. The Bill, like the draft Bill, continues to provide for a WAO Board with functions for managing the audit office, while at the same time it has a composition of almost entirely non-executive members (parts 1 to 4 of Schedule 1) , which is more appropriate for a supervisory board (which is focused on oversight). However, much of the Board's prescribed role is in relation to the management of the organisation (clauses 20 to 26 and part 5 of Schedule 1).

12. The functions assigned to the Board in the Bill are a little less extensive than those assigned in the draft Bill, but the WAO board is in the driving seat in the following key respects which may then compromise the AGW's independence:

- 12.1. Clauses 25 and 26 require the AGW's work programme and estimate of the maximum resources that may be required, to be agreed by the Board.

- 12.2. Clause 26 appears to try to set parameters for the agreement of the AGW's work programme. This may be intended to limit the Board's ability to intervene in the AGW's judgement about the work programme by saying that the WAO board may only reject a statement if it, or part of it, is 'unreasonable'. This is not, in our view, adequate protection of the AGW's independence as it allows the WAO board to reject the AGW's judgement on what merits examination. It is also not clear how the WAO board's intervention set out in clause 26 is intended to relate to the AGW's and WAO's joint preparation of an estimate of income and expenses, which is laid before and considered by the Assembly under clause 20.

- 12.3. Clause 18 (2) requires any scheme of delegation of the AGW to be approved by the WAO board, potentially limiting his ability to require staff to undertake work that he considers necessary.

- 12.4. Clause 19 enables the WAO board to require the AGW to provide professional services to public bodies but without requiring the AGW's agreement. This may cause the AGW to be put in the position of auditing a professional service that he has provided, which would compromise his independence.

13. In ICAEW's view, both accountability and independence are compromised as the Board is effectively ultimately:

- 13.1. in control of AGW's work programme;

- 13.2. in control of AGW's ability to delegate functions; and

- 13.3. in some important respects (eg, provision of services) can make decisions without the AGW's agreement.
14. This model proposed by the Government reduces direct accountability to Government as the decision-making of the AGW is diluted if the Board is required to agree and approve the programme and resources.
 15. In the private sector, accountancy firms (who would carry out audits of companies) would not have this level of intervention in their work-programmes or resources. If the WAO adopted the proposed supervisory board structure, the AGW, who has the power to carry out audits of public sector companies, would not satisfy the requirements of the Companies Act. And indeed, the Financial Reporting Council, which carries out an oversight role over firms' audit work of companies under the Companies Act and would therefore have an independent supervisory role over the AGW, were he to carry out audits of public sector companies, would have objections to an auditor's independence being compromised in this way.
 16. In the public sector, in relation to the UK, and in Scotland and Northern Ireland, the Auditors General do not have this level of corporate intervention in their work-programmes.
 17. We agree that there needs to be oversight of the running of the WAO and its operational aspects, but it does not make sense to dilute the AGW's accountability to the Assembly by introducing a corporate body that is able to limit his ability to meet his responsibilities in the way that is being proposed.
 18. Maintaining auditor independence is vital and because of that, and given our concerns about the reduced accountability, our recommendation is that the Board's role should be one of overseeing what the AGW does, providing advice and, if necessary, reporting concerns to the National Assembly. It should not have any role in determining the scope of work or how it should be carried out, as such roles will undermine the AGW's accountability to the National Assembly.
 19. We would also highlight that a corporate body with decision-making abilities on the procurement of services as set out in the Bill may compromise the AGW's ability to engage independent monitoring and review function of the activities of the WAO (see paragraph 6). Such monitoring is a key measure to help ensure that the WAO meets professional standards. We would hope that any WAO board would agree with the AGW that such monitoring was appropriate and would secure the services accordingly, but it is not satisfactory that the corporate body board should be put in a position to intervene on the matter.

Streamlining of audit provisions

20. Our understanding of the proposals in the draft bill was that it intended to streamline and strengthen the audit provisions for much of the Welsh public sector. We are disappointed to note that this proposal has not been pursued. This would have been an opportunity to bring greater consistency in public audit, for example, by specifying the same requirements across the Welsh Government and its sponsored and related bodies for the consideration of:
 - 20.1. whether bodies have made appropriate arrangements for securing economy, efficiency and effectiveness; and
 - 20.2. the regularity (lawfulness) of expenditure.
21. The explanatory memorandum indicates that these proposals have been omitted due to legislative competence issues. We are unclear, however, as to why this is the case, as such rationalisation does not seem to impinge on devolution issues in any way that could not be addressed by restating UK (eg, Treasury) functions. It may be helpful for the Welsh Government to explore these issues further with the UK Government before finalising the drafting of this legislation.

E sumita.shah@icaew.com

Copyright © ICAEW 2012
All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

icaew.com



Ein cyf/Our ref:	KM/kjm	Hafan Derwen, Parc Dewi Sant Heol Jobswell, Caerfyrddin, Sir Gaerfyrddin, SA31 3BB
Gofynnwch am/Please ask for:	Karen Miles	
Rhif Ffôn /Telephone::	01267 239698	
E-bost/E-mail:	Karenj.morris@wales.nhs.uk	Hafan Derwen St David's Park Jobs Well Road Carmarthen, Carmarthenshire SA31 3BB
Date:	17 September 2012	

Sarah Sargent, Deputy Clerk
Public Accounts Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Dear Ms Sargent

Consultation on the Public Audit (Wales) Bill

I am writing to make comments on the above Bill which is designed to strengthen and improve the accountability and governance arrangements relating to the Auditor General for Wales (AGW) and the Wales Audit Office (WAO).

Hywel Dda LHB supports the content of the Bill, in particular schedule 1 which sets out details of the incorporation of the Wales Audit Office and the appointment of non executive members to form a Board. It is noted, however, that:-

- **Board Membership** – There are no executive board members except for the Auditor General. This means that non executive members are effectively relying on the views of one individual from WAO. Is this what was intended? Other WAO staff with responsibility for standards and performance should also be a part of the board
- **Transparency** – In order to restore confidence in both the post of Auditor General and in the operation of the WAO, there should be a requirement for Board meetings to be held in public

Yours sincerely

Karen Miles
Director of Finance & Economic Reform



Gwasanaeth Tân ac Achub
Fire and Rescue Service

Simon A Smith
Prif Swyddog Tân / Chief Fire Officer

20 September 2012

Sarah Sargent, Deputy Clerk
Public Accounts Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Dear Sir/Madam

On behalf of the three Fire and Rescue Authorities in Wales, I wish to respond to the consultation on the Public Audit (Wales) Bill.

Having reviewed the document, we welcome the strengthening of the governance framework and the associated increased accountability of the Auditor General and Wales Audit Office that this legislation brings. The accounting and auditing aspects are acceptable to all three fire and rescue authorities, however, we would like to make the following observations:

We have concerns about how attractive a 7 year non-renewable term of office for the Auditor General for Wales might be to candidates. Our preference would be to have the option of a renewable contract if the postholder is deemed to be of a high calibre.

In the same manner we have concerns about the restrictions on other posts following appointment. This might mean that careers may be ended once an individual has been appointed to the Auditor General for Wales post.

We have no issue with the dual role of the Public Accounts Committee and its monitoring role. We have concerns about the Corporate Wales Audit Office (6 people - 5 non-executive members and the Auditor General for Wales) appointing the Wales Audit Office representative onto the Board. This will effectively be the deputy to the Auditor General for Wales but employed by the Wales Audit Office, they will hold the budget, whilst the Auditor General for Wales will agree the work plan with the Public Accounts Committee. This may be restrictive for the Auditor General for Wales and we are uncertain about whether or not this can work. Our preference would be for the Accounting Officer role to be undertaken by the Auditor General for Wales rather than by the Wales Audit Office. It should be the Auditor General for Wales' responsibility to agree the budget allocation, however this would require some flexibility.

1 / 2

In terms of appointments, we are of the view that the:

- Public Accounts Committee/National Assembly should appoint the Auditor General for Wales, not the Wales Audit Office.
- Public Accounts Committee should appoint the Auditor of the Wales Audit Office, not the Wales Audit Office or the Auditor General for Wales.

The Auditor General for Wales should be able to select staff with specific expertise as well as staff from the Wales Audit Office to undertake audits or other financial or value for money audits as necessary.

The Secretary of State's power under clause 85 should be subject to a requirement to consult with or obtain consent from Welsh Ministers where it affects devolved matters in Wales.

We are of the opinion that there should be a requirement for some scrutiny and debate on the Auditor General for Wales's code of audit practice in the case that the National Assembly is no longer empowered to approve it.

Thank you for the opportunity to comment on the Bill.

Yours faithfully

A handwritten signature in black ink that reads "Dawn Docx". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Dawn Docx
Deputy Chief Fire Officer
North Wales Fire and Rescue Service

**Public Accounts Committee
Public Audit (Wales) Bill
PA9 - Welsh Local Government Association**



Our Ref/Ein Cyf: ST/JR
Your Ref/Eich Cyf:
Date/Dyddiad: 26 Sept 2012
Please ask for/Gofynnwch am: Steve Thomas
Direct line/Llinell uniongyrchol: 029 2046 8610
Email/Ebost: steve.thomas@wlga.gov.uk

Mr Darren Millar AM
Chair Public Accounts Committee
Welsh Government
1st Floor North
Cathays Park
Cardiff
CF10 3NQ

Dear Mr Millar,

Consultation on the Public Audit (Wales) Bill

Thank you for the opportunity in allowing us to respond to the Stage 1 consultation on the Public Audit (Wales) Bill. The Association has already commented on the Welsh Government consultation and in that we recognised the essential role that Public Audit plays in holding government and public services to account. Over the past decades Public Audit has moved beyond issues of legality and propriety to emphasise performance and improvement.

It is of course vital that the governance arrangements around the Wales Audit Office (WAO) and the Auditor-General for Wales (AGW) are as clear and as transparent as possible so that we avoid some of the well documented issues that have arisen in recent years.

Overall we believe it is a step forward to have legislation that underpins the accountability and governance arrangements relating to the office of AGW and the WAO. We welcome the move to establish a board for the WAO on a statutory basis. This will establish oversight of the AGW and senior management and bolsters the current governance arrangements. However there are still key weaknesses in the proposals in terms of detail and how far they go.

Under current proposals, the Bill provides for a board that is tautological in nature. The proposed board seems to have two objectives: oversight of the AGW and managing the Audit Office. It is likely the latter 'executive' functions will clash with its 'oversight functions'.

In our detailed response to Welsh Government we referred to a supervisory model. Our view is that it is likely that a supervisory model would not have the financial implications that are implied under

Steve Thomas CBE
Chief Executive
Prif Weithredwr

Welsh Local Government
Association
Local Government House
Drake Walk
CARDIFF CF10 4LG
Tel: 029 2046 8600
Fax: 029 2046 8601

Cymdeithas Llywodraeth
Leol Cymru
Tŷ Llywodraeth Leol
Rhodfa Drake
CAERDYDD CF10 4LG
Ffôn: 029 2046 8600
Ffacs: 029 2046 8601

www.wlga.gov.uk

the current proposals. Focussing on the supervisory role would allow the board to concentrate on considering whether the AGW was running the organisation properly.

In summary, while the firmer statutory footing is desirable we believe that the provisions, as drafted, seem burdensome to the effective running of the WAO and the independence of the AGW. Local government values the ability of the AGW to speak without fear or favour and his independence is a fundamental public good.

I trust this is helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Steve Thomas', written in a cursive style.

Steve Thomas CBE

Chief Executive / Prif Weithredwr

THE PUBLIC AUDIT (WALES) BILL

Memorandum by Professor David Heald to the Public Accounts Committee

INTRODUCTION

1. I am grateful to the Committee for the opportunity to submit written evidence and then give oral evidence. Introducing myself, I am Professor of Accountancy at the University of Aberdeen Business School, with a longstanding research interest in public expenditure, public sector accounting and auditing. My practical engagement with these matters includes being:
 - specialist adviser on government accounting to the Treasury Committee of the House of Commons (1989-2010)
 - member of the Financial Issues Advisory Group which proposed the financial arrangements that were later enacted as the *Public Finance and Accountability (Scotland) Act 2000* (1998)
 - specialist adviser to The Public Accounts Commission of the House of Commons (TPAC) (2002-08)
 - member of the Audit Commission’s Technical Advisory Group (2003-2010)
 - independent member of the Financial Reporting Advisory Board to HM Treasury, on the nomination of the UK Government’s Chief Economic Adviser (2004-09)
2. It is relevant to the present matter that I resigned as specialist adviser to TPAC in July 2008, so that I could publicly oppose the corporate model for the National Audit Office (NAO) that had resulted from the Tiner Report (2008). My criticisms of the audit governance arrangements that were later enacted by the *Budget Responsibility and National Audit Act 2011* are expounded in Heald (2008, 2009). I later gave written and oral evidence to the Communities and Local Government Committee of the House of Commons, opposing the abolition of the Audit Commission and the complete outsourcing of local government and National Health Service (NHS) audits in England (Heald, 2011).
3. I lack personal knowledge of Welsh public affairs and of the difficulties that have led to the provisions in the *Public Audit (Wales) Bill*. I am therefore heavily dependent on my

reading of publicly available material. However, there are generic issues about public audit arrangements that deserve consideration by the Committee. My concern is that the Bill proposes a permanent structural solution to a temporary conduct problem, for which there are proportionate remedies. ‘Something has to be done’ often leads to policy and institutional design mistakes.

THE CHALLENGES OF PUBLIC AUDIT

4. Public audit constitutes a difficult arena because it extends much further than the financial certification audit also undertaken in the private sector. Judgements about ‘regularity and propriety’ and Value for Money (VfM) are central to the substance of modern public audit. VfM audit inevitably touches sensitive nerves in the triangular relationship between Legislature, Government and Audit Office. While VfM does not question policy, the line between what is policy and what is implementation is inevitably blurred. The issue of *cost effectiveness* (does the policy achieve declared objectives?) sits alongside that of *worth-whileness* (which is of fundamental interest to legislators and their electors but which Audit Offices address with difficulty). VfM audit comes behind policy implementation, so there is always the danger of wisdom derived from hindsight. Moreover, media and political attention will inevitably focus on criticisms, disregarding successes, thus creating an aura of negativity. Public audit is a delicate plant which has to be carefully nurtured.
5. In this difficult context, the actual and perceived independence of an Auditor General are fundamental safeguards. In his/her work, an Auditor General must have independence not only from the Government but also from the Legislature because reports may include criticism of expenditure programmes and organisations that have strong support in the Legislature. There should be an open appointments procedure, a fixed term of between seven and ten years, restrictions on subsequent employment to the extent that the law allows, and a well-defined procedure for removal from office.
6. Auditors General are ‘Officers of Parliament’, constitutional watchdogs of fundamental importance to democratic government (Gay and Winetrobe, 2008; Gay, 2011). The need to protect independence makes this role an isolating experience, thereby emphasising the importance of support arrangements that do not impinge on professional judgement.

7. In governance terms, the accountability of the Auditor General for Wales (AGW) should be to the Assembly as a whole, not to the Government or the governing majority. My reading of documentation in relation to the *Public Audit (Wales) Bill* is that the Government is in the driving seat, not the Assembly (Welsh Government, 2012, para 40). This is dangerous because Governments, at both ministerial and civil service levels, have incentives to constrain the operations of public audit.

PROBLEMS AT THE WALES AUDIT OFFICE

8. The reputation of the Wales Audit Office (WAO) was damaged by the events of 2010 and 2011 (Public Accounts Committee, 2011). My reading persuades me that it would be wrong to attribute all the responsibility for this damage to the criminal conduct and managerial style of Mr Jeremy Colman, AGW from April 2005 to February 2010.
9. Among the points that emerge from the publicly available documentation are the following:
 - (a) Mr Colman's term of office was extended in May 2009 so that he would serve an eight-year term, an indication of Assembly confidence in his record-to-date as the first full-time AGW
 - (b) The International Peer Review (Gardner et al, 2009) gave a generally positive appraisal of the professional work of the WAO in October 2009, four and a half years after its creation. However, in both explicit and coded language, it noted dysfunctional relationships among senior management and an unsatisfactory human resources and industrial relations climate. While highlighting multiple challenges ahead, it rejected adoption of the corporate model then newly adopted by the NAO ahead of legislation. It recorded strong stakeholder support for the WAO, in marked contrast to stakeholder responses to the announced demise of the Audit Commission
 - (c) The Internal Audit report (Wales Audit Office, 2011) on the conduct in office of Mr Colman is written in a hostile tone, criticising many aspects of his managerial style but making no reference to the context within which he was operating. In light of the signals about conflict among senior management contained in the International Peer Review (Gardner et al, 2009), it is regrettable that this report was not externally commissioned

(d) The National Audit Office (2010) report on the WAO accounts from 2005-06 to 2009-10 makes dismal reading. This led to restatements in the 2010-11 accounts and a report to the Assembly by the Auditor General for Scotland (AGS) (Black, 2011). While in no way excusing the egregious accounting and disclosure deficiencies at the WAO, the audit fees to a private firm in those years were minimal: £8,000 (2005-06); £9,000 (2006-07); £9,000 (2007-08); £10,000 (2008-09); and £13,000 (2009-10). Not only are there exaggerated expectations of what financial certification audit can achieve but also top-tier audit firms do not bid for such work because they have, or may bid for, contracts with Audit Offices as outsourced audit suppliers. There are dangers in audits of Audit Offices being undertaken by audit firms without extensive experience of the specific requirements of HM Treasury's Financial Reporting Manual. Audits of each other by Auditors General might be seen as a round robin. Robust internal review, including the technical department of an Audit Office, is therefore imperative: material errors once made will later lead to reputation-shredding restatements of accounts.

10. On the basis of my reading, I conclude that:

- (a) the integration of NAO in Wales and Audit Commission in Wales was problematic; to what extent difficulties were ones of managerial and employee culture, professional judgement or incompatible personalities is something on which others might advise the Committee. The legacy of entitlements from previous employment will have complicated changes in senior management, not least in that departures would be expensive and controversial. Whereas Audit Scotland and the AGS were established in 1999,¹ when there was a halo around devolution, the WAO and full-time AGW were not created until 2005; this may have been a complicating factor. Hopefully, the present AGW will be able to resolve legacy issues
- (b) the impression is given of a large amount of time being spent on the internal machinery of public audit, possibly to the detriment of the delivery of public audit

¹ The AGS is an office holder of the Scottish Parliament, appointed by Her Majesty, but not a corporation sole. Audit Scotland is a corporate body, whose statutorily defined membership is: the AGS; the Chairman of the Accounts Commission; and three other members appointed jointly by the AGS and the Chairman of the Accounts Commission (*Public Finance and Accountability (Scotland) Act*, Section 10(2)).

- (c) proportionate internal governance mechanisms for the WAO are available, rendering the corporate model unnecessary as well as inappropriate
- (d) Assembly oversight of the AGW and WAO should be strengthened.

PROPORTIONATE REMEDIES

11. The independence of the AGW, in fact and in appearance, from the Government and the Assembly, is vital. The incumbent has three roles: corporation sole as AGW; Chief Executive of the WAO; and Accounting Officer. There are tensions between these roles which the incumbent must manage. In his written and oral evidence, the AGW has documented the ambiguities, tensions and inflexibilities that would arise from the proposed corporate board structure (Thomas, 2012). The arrangement confuses governance with executive functions, and oversight with advice. I could understand a proposal to abolish the corporation sole status of the AGW (though I would oppose it), but putting a corporate board on top is not strengthening governance but weakening it. In this case, two mechanisms are not better than one but risk the dilution of accountability.² Boards can be oversight, executive or advisory. If the WAO is to have a board, this should be advisory, with executive authority in the hands of the AGW and oversight exercised by the Assembly (see paragraph 14 below). Advice should be given careful consideration, but the decision-making authority, together with accountability for decisions, should rest unambiguously with the AGW.
12. I support what is labelled as Option 2 (Allow AGW to strengthen internal control arrangements) in the *Explanatory Memorandum* (Welsh Government, 2012). Although events make this a difficult point to sustain in public debate, the internal management of the WAO should be his/her responsibility. An Audit Office in a parliamentary democracy is not like a normal public sector service delivery organisation because of the paramount importance of protecting audit independence in relation to financial certification, regularity and propriety, and VfM. The roles of monitoring and advising do not mix. In my view, the proposals which the AGW put to the Committee on 7 October 2010 largely address the identified deficiencies (Wales Audit Office, 2010a,b).

² In the case of the corporate NAO, Schedule 3 of the *Budget Responsibility and National Audit Act 2011* governs the relationship between the NAO and the Comptroller and Auditor General. This requires a Code of Practice (National Audit Office, 2012).

There is an update in the 2011-12 Wales Audit Office (2012, pp. 64-65) Report and Accounts.

13. The AGW should have a fixed, non-renewable term and there should be a clearly specified mechanism for removal from office for misconduct or under-performance. This power must be exercised by the Assembly as a whole and be subject to a strong super-majority requirement that protects the incumbent from removal by the Government of the day. In the bi-cameral UK Parliament, the requirement is a resolution of both Houses and in the unicameral Scottish Parliament, elected on proportional representation, a two-thirds majority of all members. Given that conflicts between the Government of the day and the AGW can be predicted, such protection is essential. Within the assurances provided by the statutory framework and oversight arrangements, the Assembly should trust or remove the AGW.
14. The accountability of the AGW should run directly to the Assembly. There is a distinction between the oversight role (exercised at Westminster by TPAC) and the client role (the Westminster Public Accounts Committee (PAC) is the principal client of the NAO). During my 2002-08 specialist advisership, I felt that TPAC, whose active members were often also PAC members, tended to blur its oversight role with the more familiar client role. However, I agreed with the procedure through which TPAC approved the Corporate Plan and Estimates, and then the Chairman of TPAC presented the NAO's Estimate to Parliament and answered Parliamentary Questions. The Scottish Parliament follows the Westminster arrangement, with oversight being by the statutory Scottish Commission for Public Audit consisting of Members of the Scottish Parliament. I understand that the small size of the Assembly at 60 Assembly Members (AMs) may have been a reason for not establishing a separate oversight body in Wales. However, the roles of client and oversight body that the Public Accounts Committee must presently fulfil can be incompatible. I therefore propose the establishment of a Welsh Commission for Public Audit, which might include a minority of external persons with relevant governance and financial knowledge and experience.³ There

³ The post of Comptroller and Auditor General of Northern Ireland was established by the *Government of Ireland Act 1920*. The present arrangements are described at <http://www.niauditoffice.gov.uk/index/about-niao/governance-of-niao.htm>. There is an Advisory Board whose role is 'providing objective and impartial advice to the C&AG to assist him in the discharge of his functions'. In the Northern Ireland Assembly, the client role is performed by the Public Accounts Committee and the oversight role is performed by the Audit Committee.

should be some overlap of membership with the Committee but those AMs should not dominate.

SPECIFIC POINTS ABOUT THE MODEL OF THE CORPORATE BOARD

15. The Government is placing too much confidence in reasonableness as a mechanism for resolving disagreements and conflicts between the AGW and the WAO. This is not something that could credibly be tested in the courts and, if it were, it would inflict reputational damage, provoke media mockery, and probably lead to resignations. Conflict might arise over:

- how much VfM audit and performance measurement to undertake (note the drastic curtailment for local authorities and the NHS in England)
- which areas of public expenditure should receive priority for VfM
- resource requirements
- the extent of reliance on outsourced audit providers, rather than the use of WAO employees (note the abolition of the Audit Commission and the outsourcing of its audit functions)

Instead of speaking his or her mind to the Committee, the AGW might have to defend unsatisfactory compromises. This would be done in the knowledge that disagreements might leak to the media or be disclosed through Freedom of Information (FOI) requests.

16. I have no knowledge of how the NAO arrangements are working. However, I would point to the proximity factor that affects public audit in the smaller polities of the Devolved Administrations, where there is more intense Legislature-Audit Office interaction than at Westminster. This intensifies the danger of compromising the AGW's independence, or of such perceptions arising. In a small country like Wales, suitable candidates for Non-Executive roles will be well-known and could become subject to media, governmental or political pressure.

17. Employee representation on an executive Board which exercises control over the AGW is entirely inappropriate. There are specific issues in the context of an Audit Office that do not apply to a normal public service delivery organisation. Such a Board member would also be seriously conflicted: for example, in relation to the industrial relations and human resources issues identified as problematic by the International Peer Review (Gardner et al, 2009), and to future reductions in workload and employment. If there

were leaks from the Board or ‘inspired’ FOI requests, suspicion might be pointed at the employee director.

18. In his written and oral evidence the AGW (Thomas, 2012) has raised a number of practical obstacles to the implementation of the corporate board proposal (eg HM Revenue & Customs treatment of travel and subsistence expenses and the legal basis on which staff transfers would take place from the AGW to the corporate WAO). The resolution of these issues would have significant impacts on transition costs. Indeed, even without legislative change, legacy entitlements of staff from predecessor organisations will constrain the managerial freedom of the AGW. This might cause future controversy because of ‘pay-offs’, the amounts of which would be beyond the control of the AGW and WAO.

CONCLUSION

19. The International Peer Review (Gardner et al, 2009, p. 7) wrote of the WAO being at a watershed, in part due to expected reductions in financial audit work as machinery of government changes reduced the number of audited bodies. The reality has proved much more difficult.
20. Media criticism of the expenses of the then UK Comptroller and Auditor General were the trigger for the corporate model being applied to the NAO. Rolling out a corporate model is a readily available option and the *Budget Responsibility and National Audit Act 2011* constitutes a precedent. In my view, this model is inappropriate for Wales.
21. Auditors should not expect to be popular, especially public sector auditors whose remit extends to VfM and organisational performance at a time when UK fiscal austerity is putting downward pressure on Welsh public expenditure. Public sector organisations are inevitably exposed to media and political attacks on, for example, salaries and expenses. Good housekeeping is desirable for its own sake and imperative for reputation because of easy media headlines about ‘public sector fat cats’. However, the point needs to be made that the full-year salary of the present AGW in 2011-12 was £150,000 (Wales Audit Office, 2012, pp. 56), about 20% of the mean salary of a Big 4 audit partner.

22. Rather than going ahead with this Bill, the Assembly should pass a limited measure which includes the establishment of a Welsh Commission for Public Audit. Legislation would not be required to establish an Advisory Board to advise the AGW in the discharge of his/her responsibilities, but it could be given a statutory basis. In the context of public audit arrangements, the AGW and WAO remain in the early years of their existence. The overriding need is to provide the AGW with the support he/she needs while being clear that this does not dilute either his/her independence of professional judgement or personal accountability to the Assembly for the performance of the WAO.

Aberdeen, 2 October 2012

References

- Black, R.W. (2011) 'Report of the Auditor General for Scotland to the National Assembly for Wales, in Wales Audit Office', *Auditor General's Annual Report and Accounts 2010-11*, Cardiff, Wales Audit Office, pp. 93-96.
- Budget Responsibility and National Audit Act 2011*, Chapter 4, available at: <http://www.legislation.gov.uk/ukpga/2011/4/contents/enacted>.
- Gardner, C, Sir Alistair Graham, R. Praat, J. Purcell and P. Boeding (2009) *International Peer Review: Wales Audit Office*, 8 October, Cardiff, Wales Audit Office.
- Gay, O. (2011) *Officers of Parliament: Recent Developments*, Standard Note SN/PC/04720, London, House of Commons Library.
- Gay, O. and B.K. Winetrobe (2008) *Parliament's Watchdogs: At the Crossroads*, London, Constitution Unit, University College London, for the UK Study of Parliament Group.
- Heald, D.A. (2008) 'A reform too far', *Public Finance*, 21-27 November, pp. 22-23.
- Heald, D.A. (2009) 'Reforming the governance of the NAO', *Public Money & Management*, Vol. 29(2), pp. 83-85.
- Heald, D.A. (2011) 'The implications for public audit of the abolition of the Audit Commission', in Communities and Local Government Committee, *Audit and Inspection of Local Authorities*, Fourth Report of Session 2010-12, Volume 1, HC 763, London, The Stationery Office, pp. 124-27 (supporting oral evidence on 7 February 2011 is at pp. Ev 1-15).
- National Audit Office (2010) *Report to the Auditor General for Wales: Review of the Wales Audit Office Accounts 2005-10*, Report by the Comptroller and Auditor General, November, London, National Audit Office.
- National Audit Office (2012) *Code of Practice Dealing with the Relationship between the National Audit Office and the Comptroller and Auditor General*, London, National Audit Office.
- Public Accounts Committee (2011) *Accounting, Governance and Propriety Issues at the Wales Audit Office*, March, Cardiff, National Assembly for Wales.
- Public Audit (Wales) Bill* [as introduced], 9 July, Cardiff, National Assembly for Wales.
- Public Finance and Accountability (Scotland) Act 2000*, asp 1, available at: <http://www.legislation.gov.uk/asp/2000/1/contents>

- Thomas, H. V. (2012) *PAC Inquiry into the General Principles of the Public Audit (Wales) Bill*, Letter dated 5 September to Mr Darren Millar AM, Chair, Public Accounts Committee, Cardiff, Wales Audit Office, mimeo (supported by oral evidence on Monday 24 September).
- Tiner, J. (2008) 'Review of the National Audit Office's Corporate Governance', The Public Accounts Commission, *Review of the National Audit Office's Corporate Governance*, Fourteenth Report, HC 328 of Session 2007–08, London, The Stationery Office, Appendix, pp. 1–20.
- Wales Audit Office (2010a) *Proposed New Governance Arrangements for the Wales Audit Office – Briefing Paper for the Public Accounts Committee*, 7 October, Cardiff, Wales Audit Office.
- Wales Audit Office (2010b) *International Peer Review of the Wales Audit Office – Update to the Public Accounts Committee*, 7 October, Cardiff, Wales Audit Office.
- Wales Audit Office (2011) *Review of the Former Auditor General for Wales, Mr Jeremy Colman's, Conduct in Office*, 8 February, Cardiff, Wales Audit Office.
- Wales Audit Office (2012) *Auditor General's Annual Report and Accounts 2011-12*, Cardiff, Wales Audit Office.
- Welsh Government (2012) *Public Audit (Wales) Bill: Explanatory Memorandum Incorporating the Regulatory Impact Assessment and Explanatory Notes*, July, Cardiff, Welsh Government.

Submission to the Wales Public Accounts Committee from the C&AG

Public Audit (Wales) Bill

October 2012

Introduction

1 The session on 16 October provides the Committee with the opportunity to explore the practicalities of implementing the governance reforms proposed by the Public Audit (Wales) Bill, hereafter 'the Bill,' with me and to obtain my perspective on how these have worked in practice, based on my experience of implementing similar reforms under the Budget Responsibility and National Audit Act 2011.

2 This paper explains the way the arrangements implemented under the Budget Responsibility and National Audit Act (BRANA), with respect to the Comptroller and Auditor General and the National Audit Office work in practice, and provides a summary of the differences between the BRANA and the Bill.

Budget Responsibility & National Audit Act 2011

3 The Budget Responsibility and National Audit Act (BRANA), which received Royal Assent in March 2011, makes provision about the Comptroller and Auditor General (C&AG), establishes the National Audit Office (NAO) as a body corporate and sets out the relationship between the C&AG and NAO. The Act took full effect from 1 April 2012, setting the NAO's governance on a statutory basis.

4 The Act reflects the unique statutory position of the NAO, balancing the need for appropriate controls and oversight, while preserving the independence of the Comptroller and Auditor General.

5 The key requirements of the Act are:

- the C&AG to be appointed by letters patent for a fixed, non-renewable, term of 10 years;
- the NAO Chair to be appointed by letters patent for a term of up to three years, renewable once;

- the composition of the NAO Board, and the requirement for non-executive members to be appointed by The Public Accounts Commission (TPAC);
- creating the NAO as a corporate entity for the first time; and
- making provision for the role of the NAO Board.

The Role of the NAO Board

6 The Board's role is defined by the Act, and given practical application through the Code of Practice. Further information on the provisions of the Code of Practice can be found below.

7 The Board has five non-executive members and four executive members. Non-executive members are appointed for a fixed term, agreed by TPAC. The C&AG is a permanent member of the Board and the other Executive members are appointed for a fixed term by the non-executive members, upon the C&AG's recommendation.

8 There is a clear division of responsibility between the Chairman and the C&AG; the Chairman is responsible for the leadership and effective working of the Board and the C&AG is the Chief Executive of the NAO and is responsible for developing and implementing the NAO strategy.

9 The NAO Board agrees the strategy and resource estimate of the NAO, and submits them to TPAC for approval; it also provides support and independent advice to the C&AG in exercising his functions and overseeing the management of NAO resources.

10 In practical terms the Board:

- provides effective challenge in driving improvements in the NAO's operations, and brings increased rigour and discipline in decision making;
- provides support to the C&AG and other members of the Leadership Team; and
- brings insight from the wider experience of the non-executive members to inform the thinking of the NAO and support improvement.

11 The Board is supported by two committees, both of which consist solely of non-executive members:

12 ***Audit Committee*** - The Audit Committee, as part of its work on risk management and internal controls considers the governance of the NAO, informed by the Board's annual assessment of its own performance.

13 ***Remuneration Committee*** - The Remuneration Committee has a formal role in determining the executive Board members remuneration, except for that of the C&AG which is determined by the Prime Minister and Chair of the Committee of Public Accounts. It also advises on remuneration and reward issues for the wider NAO.

Provisions of BRANA & the Code of Practice

14 BRANA sets out at a high level the role of the Board and the relationship between the Board and the C&AG. The Act requires that the NAO prepare a Code of Practice, approved by TPAC, setting out in more detail the relationship between the C&AG and the NAO Board. The aim of both documents is to protect the audit independence of the C&AG while establishing the remit of the Board in the following areas:

- **The NAO Strategy:** the C&AG prepares the strategy, which the Board considers and approves, subject to any modifications it considers appropriate. The strategy is submitted to TPAC jointly by the C&AG and Board Chairman. The strategy contains a bid for the resources required.
- **The Work Programme:** The C&AG prepares a programme of statutory work (C&AG approved services) for each financial year. The Board considers this programme, and may offer advice on the balance of the programme, but decisions on the final programme will be taken by the C&AG. The NAO Board is not able to amend the budget set out by the C&AG for the services carried out by the C&AG under his statutory responsibilities.
- **The NAO approved services (previously the non-statutory work programme):** the Board has more authority regarding the programme of NAO approved services. The C&AG develops a programme of work which the Board then considers, making any additions or removing any items it deems appropriate, before approving the programme and resources required.
- **The Estimate:** for each financial year the C&AG will determine the budget required for the programme of statutory work as a prior claim on the overall resource envelope approved by TPAC as part of the strategy.
- The C&AG also makes proposals to resource the programme of NAO approved services, which the Board considers, making any amendments it deems appropriate. The C&AG has the discretion to decline to carry out a particular piece of work within the programme of NAO approved services when he considers the budget approved by the Board to be insufficient.
- **Monitoring the carrying out of the C&AG's functions:** the Board is responsible for monitoring the delivery of the approved work programme, and outturn against approved budgets. The Board may provide advice to the C&AG. To support it in this responsibility the Board receives regular management information from the NAO, and an annual report from the NAO's external auditor.

Key differences between the Bill and BRANA

15 Annex 1 below sets out a detailed comparison between the draft Bill under scrutiny by the Committee and provisions set out under BRANA.

16 The key differences identified are:

- **Tenure:** The tenure of the C&AG is 10 years, whereas the Bill proposes a maximum tenure for the Auditor General for Wales (AGW) of 8 years (both non-renewable).

4 Submission to the Wales Public Accounts Committee from the C&AG | Public Audit (Wales) Bill

- **AGW Code of Audit Practice:** The AGW must issue a *Code of Audit Practice* prescribing the way in which his functions are to be carried out. There is no equivalent requirement placed on the C&AG.
- **Regard to proposals made by the Public Accounts Committee:** Under Clause 18 of BRANA, in determining whether to carry out a Value for Money examination, the C&AG must *have regard to* proposals made by the Committee of Public Accounts. There is no equivalent clause in the draft Bill under scrutiny.
- **Audit of Local Government Bodies:** Clause 11 of the Bill provides that the AGW must audit the accounts of local government bodies in Wales. In respect of local public bodies in England, this is currently the remit of the Audit Commission. The current draft Local Audit Bill, published 6 July 2012, proposes that the audit of local public bodies in England will, going forward, be undertaken by private sector auditors in line with a Code of Audit Practice issued by the C&AG which shall *prescribe the way in which local auditors are to carry out their functions*.
- **Oversight:** under BRANA, the Public Accounts Commission performs key oversight functions such as the appointment and removal of non-executive Board members, approval of the scheme relating to the charging of fees, specifying what offices or positions a former Comptroller and Auditor General must consult with the Commission on prior to taking up, review and approval of the NAO's estimate of resources and approval of the NAO and C&AG's strategy. BRANA also specifies areas where the Chair of the Committee of Public Accounts has a role, for example his/her agreement is required in order to appoint the C&AG. Under the proposed Bill, the oversight of the WAO and AGW is performed by the National Assembly.
- **Code of Practice dealing with the relationship between the C&AG and NAO:** under Schedule 3 clause 10 of BRANA, the C&AG and NAO are required to jointly prepare a code of practice dealing with the relationship between the NAO and C&AG, a provision on which the draft Bill is silent.

ANNEX 1

Comparison between the reforms implemented in respect of the NAO and C&AG and those proposed for Wales

Figure 1 below provides a summary of the similarity and differences between the provisions as set out in the draft Bill, currently under scrutiny by the Committee, and those set out under BRANA which took full effect from the 1 April this year.

Overall, there is much in common between BRANA and the provisions of the draft Bill, however there are also some notable differences, as set out below.

Figure 1

Comparison between the provisions of the Public Audit (Wales) Bill and BRANA

Summary of the provision per Public Audit (Wales) Bill	Summary of the provision per Budget Responsibility and National Audit Act 2011
<p>Clause 2: the Auditor General for Wales (AGW) is appointed by Her Majesty on the nomination of the National Assembly. No nomination is to be made unless the National Assembly is satisfied that appropriate consultation has taken place with such bodies as represent the interests of local government in Wales.</p>	<p>Clause 11: the C&AG is appointed by Her Majesty on a motion made by the Prime Minister who must have the agreement of the Chair of the Committee of Public Accounts.</p> <p>There is no reference to consultation with other parties.</p>
<p>Clause 2: the person appointed holds office for up to 8 years and may not be re-appointed.</p>	<p>Clause 11: the person appointed holds office for 10 years and may not be re-appointed.</p>
<p>Clause 3: A person appointed as AGW may be removed from office by Her Majesty at the AGW's request, on the grounds of medical incapacity, or on the grounds of misbehaviour if recommended by a vote of the National Assembly.</p>	<p>Clause 14: the C&AG may resign from office or be removed by Her Majesty on an address of both Houses of Parliament.</p>
<p>Clause 4: The AGW may not be a member of any legislature in the UK nor hold any office appointed by or on behalf of the Crown, National Assembly or National Assembly Commission.</p>	<p>Clause 12: The C&AG is an officer of the House of Commons, may not be a member of the House of Lords and may not hold any office appointed by or on behalf of the Crown</p>
<p>Clause 5: A former AGW must consult with such person specified by the National Assembly before taking up a position of a description specified by the National Assembly.</p>	<p>Clause 15: A former C&AG must consult with such person as specified by TPAC on taking up an appointment or position of a description as specified by TPAC.</p>
<p>For 2 years after ceasing to be AGW: the former AGW may not hold a position appointed by or on behalf of the Crown, National Assembly or National Assembly Commission; and they may also not provide services to the Crown, National Assembly, National Assembly Commission, or a statutory auditee of the AGW.</p>	<p>For 2 years after ceasing to be C&AG, the C&AG may not hold an office appointed by or on behalf of the Crown, nor be a member/director, officer or employee of a body whose accounts are required under statute to be audited by the C&AG or open to inspection by the C&AG.</p>
<p>Clause 6: the AGW continues to be a corporation sole.</p>	<p>Clause 12: the C&AG continues to be a corporation sole.</p>

6 Submission to the Wales Public Accounts Committee from the C&AG | Public Audit (Wales) Bill

<p>Clause 7: the remuneration arrangements for the AGW are made by the National Assembly, who must first consult the First Minister. No element is to be performance based. The AGW's remuneration is to be charged on the Welsh Consolidated Fund.</p>	<p>Clause 13: Remuneration arrangements are made jointly between the Prime Minister and the Chair of the Committee of Public Accounts. No element is to be performance based. The C&AG's remuneration is to be charged on the Consolidated Fund.</p>
<p>Clause 8: the AGW has complete discretion as to the manner in which the functions of his/her office are exercised and is not subject to the direction or control of the National Assembly or the Welsh Government. However, the AGW must aim to carry out his duties efficiently and cost-effectively and with regard to the standards and principles that an expert provider of accounting or auditing services would be expected to follow.</p>	<p>Clause 17: the C&AG has complete discretion in the carrying out the functions of his/her office, including determining whether to carry out a value for money examination and the manner in which such examination is to be carried out. However, the C&AG must aim to carry out his duties efficiently and cost-effectively and with regard to the standards and principles that an expert provider of accounting or auditing services would be expected to follow.</p>
<p>Clause 9: the AGW may do anything conducive to, incidental to, or to facilitate the carrying out of any of his/her functions.</p>	<p>Clause 16: the C&AG may provide services to any person in any place within or outside of the UK under agreements or arrangements entered into by the C&AG. Schedule 3 (3) requires NAO approval for these.</p>
<p>However the AGW may not do anything which is, or could become, the responsibility of the WAO.</p>	<p>No equivalent requirement.</p>
<p>Clause 10: Code of audit practice – the AGW must issue a code of audit practice prescribing the way in which his/her functions are to be carried out.</p>	<p>No equivalent requirement.</p>
<p>No equivalent requirement.</p>	<p>Clause 18: In determining whether to carry out a vfm examination the C&AG must <i>have regard to</i> proposals made by the Committee of Public Accounts.</p>
<p>Clause 11: the AGW must audit the accounts of local government bodies in Wales.</p>	<p>No equivalent clause. In England this is currently the remit of the Audit Commission. The current draft Local Audit Bill proposes that the audit of local bodies in England is to be undertaken by private sector auditors in line with a Code of Audit Practice issued by the C&AG.</p>
<p>Part 2, relationship between the Wales Audit Office (WAO) and AGW - Clauses 13, 14 and 15: establishes the WAO as a body corporate, provides powers for the WAO to do anything to facilitate or which is incidental or conducive to the exercise of any of its functions, and states that the WAO must aim to carry out its functions efficiently and cost-effectively.</p>	<p>Part 2, National audit – clauses 20 to 23: establishes the National Audit Office as a body corporate, states that the NAO must aim to carry out its functions efficiently and cost effectively and sets out that the NAO's expenditure is to be funded from Parliament.</p>
<p>Clause 16 states that the AGW is to be the Chief Executive, but not an employee, of the WAO.</p>	<p>Schedule 2, Part 3 (11) states that the C&AG is to be the Chief Executive, but not an employee, of the NAO.</p>
<p>Clause 17 sets out the relationship between the AGW and WAO. It specifies that the WAO must monitor the exercise of the AGW's functions and may provide advice where appropriate, to which the AGW must have regard.</p>	<p>Schedule 3 (clauses 4 and 5) sets out the same in respect of the NAO and C&AG.</p>
<p>Clause 19 provides that arrangements may be made between the WAO and a public body for the</p>	<p>Whilst the C&AG may provide services to any person, in any place, by agreement (clause 16).</p>

7 Submission to the Wales Public Accounts Committee from the C&AG | Public Audit (Wales) Bill

<p>exercise by the WAO, or by the AGW, of functions of the public body (including a Minister of the Crown or government department). This also includes the provision of administrative, technical or professional services to, or for the purposes of the functions of the relevant public body by the AGW.</p> <p>(Clause 26, mentioned below, sets out that the AGW must prepare and submit an Annual plan to the WAO of the AGW's (entire) work programme and resources estimate. The WAO may approve or reject it on the basis of unreasonableness)</p>	<p>There is no equivalent provision in BRANA for the NAO or C&AG to exercise any of the functions of another public body.</p> <p>However, work performed under this category must be approved by the NAO – Schedule 3 clause 3 (referred to as NAO-approved services)</p> <p>NAO approval applies to the non-statutory work of the C&AG as opposed to all of it.</p>
<p>Clause 20 specifies the preparation of an estimate of the income and expenses of the WAO and the submission to, and oversight by the National Assembly. Consultation with the AGW and WAO is required before modification of the Estimate by the Assembly.</p> <p>Clause 21 specifies that the WAO must provide resources to the AGW for the exercise of his/her functions. Clause 18 provides that the AGW has the power to delegate his/her functions but the scheme of delegation must be approved by the WAO.</p> <p>Clause 30 provides for the indemnification of the AGW and WAO against a liability in consequence of breach of duty.</p>	<p>Clause 23 specifies the submission to, and oversight by the Public Accounts Commission of the estimate of NAO's use of resources. No consultation is required under statute in respect of modifications the Commission sees appropriate to make. The Commission must have regard to any advice given to it by the Treasury or Committee of Public Accounts.</p> <p>Schedule 3, clause 2 specifies that the NAO must provide resources for the C&AG's functions.</p> <p>Powers to delegate the C&AG's functions are granted by sch 3, clause 6, subject to approval of the scheme of delegation by the Public Accounts Commission.</p> <p>Clause 24 indemnifies the C&AG and NAO against a liability in consequence of breach of duty.</p>
<p>Clause 24 Scheme for charging fees – fees received by the AGW must be paid to the WAO. The WAO may charge fees in accordance with a scheme approved by the National Assembly. The requirements set out in this clause are more prescriptive than those set out in BRANA, including for example a requirement to list the enactments under which the WAO may charge a fee.</p>	<p>Schedule 3 clause 8 allows the NAO to charge fees in accordance with a scheme approved by the Public Accounts Commission. Any fees received by the C&AG must be paid to the NAO.</p>
<p>Clauses 25-28, Annual Plan, requires that an annual plan be agreed between the AGW and WAO each financial year covering the planned work programme for the AGW and the WAO as well as the planned use of resources, including the maximum amount available for the AGW's programme. This must be laid before the National Assembly.</p> <p>Clause 26 of the Bill states that the AGW must submit an Annual Plan to the WAO setting out the AGW's (entire) work programme and an estimate of the maximum amount of resources required to undertake it. The WAO may reject the statement if all or part of it is considered <i>unreasonable</i>.</p> <p>Whilst the WAO and AGW are not bound by the plan, they must have regard to it.</p>	<p>Schedule 3, clause 1 sets out the requirement for the NAO and C&AG to jointly prepare a strategy for the national audit functions, to be reviewed annually, that sets out the use of resources for the national audit functions and the maximum available for the exercise of the C&AG's functions. The strategy must be jointly submitted by the C&AG and NAO Chair to the Public Accounts Commission for approval.</p> <p>There is no equivalent provision under BRANA where the NAO could reject the C&AG's statutory work programme, or the maximum resources required, on the basis of unreasonableness.</p> <p>The NAO and C&AG must each give effect to the strategy.</p>

8 Submission to the Wales Public Accounts Committee from the C&AG | Public Audit (Wales) Bill

<p>Schedule 1 of the Bill sets out the membership of the WAO: 7 members of whom 5 are non-executives (including the Chair), the AGW and one executive member.</p> <p>The Chair and other non-executives are appointed by the National Assembly. The National Assembly must first consult the First Minister before appointing the Chair.</p> <p>The National Assembly may make remuneration arrangements for the Chair and non-executives but no element of these arrangements may be performance based.</p> <p>Non-executives are appointed for a maximum of 4 years, and cannot be re-appointed more than once. Restrictions may be imposed on the non-executives in terms of other offices or positions held, including for a maximum of two years after ceasing to be a non-executive member of WAO.</p> <p>The National Assembly may terminate the appointment of a non-executive member if, for example, they have been absent for more than three months, are unfit or have failed to comply with the terms of their appointment. Before terminating the appointment of the Chair, the First Minister must be consulted. The National Assembly may terminate the appointment of the Chair if he/she has failed to comply with the terms of appointment, or is unwilling to carry out the functions of the Chair.</p> <p>Executive members are appointed by the non-executives on the recommendation of the AGW, or if not, another person of the non-executives' choosing.</p>	<p>Schedule 2 of BRANA specifies that the NAO is to have 9 members of whom 5 are non-executives (including the Chair), the C&AG and three NAO employees.</p> <p>The Chair is appointed by Her Majesty exercisable on an address of the House of Commons, the motion for which must be moved by the Prime Minister. To do so the Prime Minister must have the agreement of the Chair of the Committee of Public Accounts. Other non-executives are appointed by the Public Accounts Commission.</p> <p>The Prime Minister and Chair of the Committee of Public Accounts may jointly make remuneration arrangements for the NAO's Chair. The Public Accounts Commission may make arrangements for the remuneration of other non-executive members.</p> <p>Non executives are appointed for a maximum 3 year term, and cannot be re-appointed more than once. Restrictions may be imposed on non-executives whilst holding office and afterwards, with no maximum time limit imposed by the legislation.</p> <p>Her Majesty may terminate the Chair's appointment on an address of both Houses of Parliament. The Public Accounts Commission may terminate the appointment of other non-executives if, for example, they have been absent for more than three months, are unfit or failed to comply with the terms of their appointment.</p>
<p>Part 3: the WAO may pay the AGW additional payments of allowances or other benefits to cover expenses properly and necessarily incurred in his/her capacity as a member and Chief Executive of WAO.</p>	<p>Not specifically mentioned in the legislation.</p>
<p>Part 5 covers employees of WAO and sets out that an individual may not be an employee if disqualified from appointment under Part 6. The Part includes requirements for recruitment and specifies that appointment procedures and the terms of employment should be broadly in line with members of staff of the Welsh Government and that employees of WAO may not hold any office or position appointed by, or on behalf of the Crown, National Assembly or National Assembly Commission.</p>	<p>Part 5 to Schedule 2 simply states that the NAO may employ staff, that terms of appointment should be broadly in line with those applying to civil servants and that employees may not hold any office or position appointed by, or on behalf of the Crown.</p>
<p>Part 7, Procedural rules, sets out that WAO must make rules for the purpose of regulating the WAO's procedure, quorum for meetings and that</p>	<p>Part 6, Procedural rules, is very similar to Part 7 of the Public Audit (Wales) Bill. The only difference is that there is no explicit mention of the power for the</p>

9 Submission to the Wales Public Accounts Committee from the C&AG | Public Audit (Wales) Bill

the rules may include provision for the setting up of committees. There is also the power to apply different quorums for different circumstances.	rules to provide for different quorums for different situations.
Schedule 2, Part 1, requires the WAO and AGW to jointly prepare two interim and one annual report on the exercise of the functions of the AGW and WAO. These must be laid before the National Assembly.	Schedule 3: the C&AG and NAO must jointly prepare and review an annual strategy on the national audit functions for approval by the Public Accounts Commission. There is no specific requirement for interim reports.
Part 2 of Schedule makes provision for the WAO to designate, with the agreement of the National Assembly, an individual to temporarily exercise the functions of the AGW if the situation is vacant, the AGW is unwilling or unable to discharge the functions of his/her office, or on the grounds of misbehaviour. The individual temporarily designated must be an employee of WAO and the designation may not exceed six months, but could be extended for a further six months.	Under schedule 3 clause 7, if the Speaker of the House of Commons certifies to that House that, in the view of the Speaker, the C&AG is seriously impaired from carrying out the functions of his office due to ill-health, then, the NAO, with the agreement of the Public Accounts Commission, may authorise an employee of NAO to carry out the C&AG's functions for not more than six months.
No equivalent requirement.	Schedule 3, clause 10, requires the NAO and C&AG to jointly prepare a code of practice dealing with the relationship between NAO and the C&AG.

Sarah Sargent
Deputy Clerk
Public Accounts Committee
National Assembly for Wales
Cardiff bay
CF99 1NA

By Email: PublicAccounts.Committee@Wales.gov.uk

24 October 2012

Dear Sarah,

Public Audit (Wales) Bill

Firstly, please accept my sincere apologies for not being able to attend the hearing on 6 November due to a clash with another select committee hearing. However, on behalf of ACCA (The Association of Chartered Certified Accountants) I welcome the opportunity to submit a response on the Public Audit (Wales) Bill.

ACCA is the global body for professional accountants. We aim to offer business-relevant, first-choice qualifications to people of application, ability and ambition around the world who seek a rewarding career in accountancy, finance and management. We support our 147,000 members and 424,000 students throughout their careers, providing services through a network of 83 offices and centres. A significant proportion of our members also work within the public sector.

In our response to the public (Wales) draft Bill consultation in May 2012 we set out that we were generally supportive of the changes set out in the draft Bill as they would bring about stronger governance and will help strengthen Assembly oversight. We agreed with the rationale for oversight by the PAC of the Auditor General for Wales (AGW), but believed that the proposals set out could potentially over burden the PAC with detailed business planning arrangements at the expense of concentrating on the scrutiny of Welsh public expenditure. We are pleased to note that the Bill now provides for oversight to be undertaken by the National Assembly rather than being prescribed by the PAC.

We also endorse the Institute of Chartered Accountants of England and Wales (ICAEW) concern that the legislation doesn't quite go far enough to protect auditor independence. Clauses 25 and 26 seem to suggest that the Board can directly intervene on the AGW work programme. In our view the Board's role

should be one of oversight and not one of management – the auditor general should be free to determine the scope of work and how it should be performed.

In comparison, England has a separate Public Accounts Commission to deal with NAO business planning, resourcing and oversight which means that the Westminster PAC is better placed to concentrate on holding Government to account. This arrangement also ensures that business planning arrangements do not impinge on the Auditor General's statutory functions and preserves auditor independence

I hope you find the above observations useful. If you would like to discuss any of the above further please contact Gillian Fawcett (Head of Public Sector) on 02070595674 or e-mail: gillian.fawcett@accaglobal.com



Gillian Fawcett
Head of Public Sector

Proposals for a Public Audit (Wales) Bill

Please press 'Tab' key to take you to the next point

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

Postal responses should be sent to::

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

Telephone contact for enquiries: 029 2082 6270

Alternatively, responses can be submitted via an online response form available at:

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

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

Your name: Martin Evans

Organisation (if applicable): Audit Commission

Email address: m-evans@audit-commission.gov.uk

Telephone number: 0844 798 2351

Your address: Audit Commission, Millbank Tower, Millbank, London, SW1P 4HQ

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

The Comptroller and Auditor General's term is 10 years and the recently appointed Auditor General for Scotland has been appointed on a fixed term of 8 years. We agree that the Auditor General for Wales (AGW) should also have a fixed term appointment but consider that a term in the range 8 to 10 years would be more consistent with similar posts.

Question 2: Do you agree that a person can only be AGW once?

Yes

No

Please expand on your answer

A single term of appropriate length should offer sufficient stability and certainty of appointment to support independence.

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?

There is a case for placing reasonable 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

The purpose of any reasonable restrictions is to minimise the risk of an actual or perceived threat to independence arising from the prospect of gaining employment or other benefits after holding office. A two year period seems reasonable to minimise the risk of this threat arising.

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

Yes

No

Please expand on your answer

We have not answered this question because we do not believe it is a matter on which we can comment.

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

Establishing the Wales Audit Office as a body corporate is in line with good corporate governance principles and will enhance the accountability of the AGW by making him or her subject to an appropriate level of oversight by a board. However, the detailed arrangements that are proposed are complicated and care will be needed to define clearly the respective responsibilities of the AGW and the WAO board. In particular, we think that further consideration needs to be given to the balance between executive and supervisory functions, so as to safeguard the operational independence of the AGW.

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

Yes

No

Please expand on your answer

While this is primarily a matter for agreement in Wales, we agree that the WAO board should not be too large.

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

Further clarity is needed on the role of the board and the balance between supervisory and executive functions as these will determine the mix of skills needed.

Members of the board should be selected for the relevance of their experience, knowledge and skills rather than as representatives of particular interests. Selection criteria will be needed to ensure that an appropriate mix of public sector and professional experience is brought to the board. Members should also act in their individual capacity.

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

Yes, but this is primarily a matter for agreement in Wales. We would, however, suggest that to ensure continuity of membership consideration should be given to staggering appointments.

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

This seems reasonable for an initial term for a non-executive member.

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

Yes

No

Please expand on your answer

A maximum of two terms would seem sensible to reduce the risk of the actual or perceived threat of non-executives becoming too close to the organisation. Non-executives need to maintain the independence of thought and challenge that is needed to support good corporate governance.

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

We have not answered this question because we do not believe it is a matter on which we can comment.

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?

The purpose of any reasonable restrictions is to minimise the risk of an actual or perceived threat to independence arising from the prospect of gaining benefits after holding office. A two year period seems reasonable to minimise the risk of this threat arising.

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

We have not identified 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?

It is not clear what the role of the employee-member of the WAO will be. Will this be a senior executive or a staff representative? We are unclear why there needs to be an employee-member because the WAO board can invite employees to attend meetings to provide advice as required.

Any post-employment restrictions placed on an employee-member need to be proportionate to the seniority of the employee (but as noted above it is not clear how senior these members would be). Care will be needed to ensure that any restrictions are not unreasonably restrictive, and so non-executive members would need to act on relevant legal advice.

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	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
-----	-------------------------------------	----	--------------------------

Please expand on your answer.

Yes, but we acknowledge this is primarily a matter for agreement in Wales. In our view the recruitment and selection procedures and employment terms of the WAO, as a public body, should be broadly consistent with similarly qualified employees of other public bodies.

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?

We have not identified any powers that should be added.

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

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
-----	--------------------------	----	-------------------------------------

Please expand on your answer

The legislation (not PAC) should make the Auditor General (AG) the Accounting Officer of the new WAO, by virtue of the office, but it may also be worth requiring the AG to nominate a deputy Accounting Officer in the event that the AG is unable to act in this capacity - see response to q 29.

Question 19: Should the PAC approve the appointment and terms and conditions of the new WAO's auditor?

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
-----	--------------------------	----	-------------------------------------

Please expand on your answer

To safeguard the auditor's independence, PAC should make the appointment itself, rather than just approve the appointment terms .

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

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
-----	-------------------------------------	----	--------------------------

Please expand on your answer

To safeguard the operational independence of the AGW, this should be the function of the PAC and not the Welsh Government or its officials.

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

While PAC should be able to question and challenge the AGW it should be the AGW's responsibility to determine his or her work programme. There could, therefore, be a requirement to consult PAC but it should be the AGW's plan. There is a risk that the AGW's operational independence could be threatened if he or she is not ultimately responsible for the plan.

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?

PAC should be able to debate but not modify the plan. There is a risk that the AGW's independence could be threatened if he or she is not ultimately responsible for the plan albeit after appropriate consultation.

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?

As noted in response to question 7, it will be important to reach an appropriate balance between supervisory and executive functions. The independence of the AGW should also be safeguarded and so it is reasonable for the AGW to report his or her proposed work programme and budget to the board but the deployment of resources in support of the work programme should be a matter for the AGW. There is a risk that the AGW's operational independence could be threatened if he or she is not ultimately responsible for the deployment of resources.

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

Yes

No

Please expand on your answer

As noted in response to question 7, it will be important to reach an appropriate balance between supervisory and executive functions. It is reasonable for the AGW to report his or her proposed work programme and budget to the board but the deployment of resources in support of the work programme should be a matter for the AGW. There is a risk that the AGW's operational independence could be threatened if he or she is not ultimately responsible for the deployment of resources.

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

The role of the WAO board should be to hold the AGW to account, and to advise and, where appropriate, challenge the AGW. However, the AGW must retain operational independence.

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

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
-----	--------------------------	----	-------------------------------------

Please expand on your answer

We think it is appropriate for the AGW to report his or her scheme of delegation to the WAO board but the AGW must retain operational independence.

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

It seems reasonable to prepare an annual report but there is a need to consider carefully the purpose and frequency of other reporting. In our view there is no need for legislation to be prescriptive about the nature and frequency of in-year reporting as this should be based on operational requirements and organisational capacity.

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

In our view there is no need for legislation to be prescriptive about the nature and frequency of reporting and the role of PAC in this. This is a matter for the AGW and PAC to agree based on operational requirements and capacity.

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

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
-----	-------------------------------------	----	--------------------------

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

It is sensible to have arrangements for designating someone to act as the AGW if required.

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	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
-----	-------------------------------------	----	--------------------------

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

Charging to recover full costs is a good discipline that supports transparency and we agree that it is appropriate for this to be a duty rather than a power. We note that the duty would apply to the WAO rather than the AGW (presumably as a consequence of the WAO holding the budget). However, we think the respective roles and responsibilities of the WAO board and the AGW should be looked at again to ensure that an appropriate balance is struck between the need to safeguard the operational independence of the AGW and the ability of the WAO Board effectively to hold the AGW to account.

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

We have not identified any other matters that should be included but we suggest that clause 23(6) may need to be reconsidered in the light of any further considerations about the respective roles of the AGW and the WAO board.

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

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
-----	-------------------------------------	----	--------------------------

Please expand on your answer

The proposed streamlining is sensible.

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

These proposals generally seem sensible.

Question 34: Should the new AGW be the statutory auditor of HECs and/or FECs?

Yes



No



Please expand on your answer

It is appropriate for HECs and FECs to be subject to independently appointed auditors. It therefore make sense for the AGW to be the statutory auditor of HECs and FECs in Wales.

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

Although these proposals are generally sensible we do not understand why registered social landlords (clause 41(d)) or education bodies (clause 42) should be treated differently to other local bodies that receive substantial public funding.

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

We have not answered this question because we do not believe it is a matter on which we can comment.

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

In our view, the case for having separate arrangements for different parts of the public sector that are accountable to their own electorates has been overstated and we agree with the rationale for proposing the AGW as the auditor of local government bodies in Wales.

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

We note the proposal to change the duty 'to be satisfied' that there are proper arrangements to a new duty 'to consider' whether there are proper arrangements. The existing wording is onerous and the proposed change may allow for more flexibility in the ways in which auditors would fulfil this duty. However, as now, it will be very important to define clearly in the Code of Audit Practice the scope of auditors' work, the criteria that they would apply in fulfilling this duty, and how and to whom they should report the results of any work in relation to this duty.

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?

No. We do not think anything significant will be lost by not including a provision for promoting studies. The proposal to make the AGW the auditor of local government bodies makes such a provision unnecessary.

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

No. There is no real difference between these in practice and neither term is used in professional requirements outside this legislative framework.

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

In our view there should be a separate code for data matching. The data matching code, which relates to the use of sensitive personal information, is relevant to different stakeholders including the Information Commissioner and may need to be updated more frequently than a code of audit practice and so should be subject to separate scrutiny arrangements. It is also important that the code for data matching is consistent with the equivalent codes in England and Scotland.

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

We have not answered this question because we do not believe it is a matter on which we can comment.

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

If the Assembly does not approve the code of audit practice there should be a duty to lay the code (see question 44) to ensure that it has sufficient status and authority.

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

Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Please expand on your answer			
<p>We think there should be a duty on the AGW to lay the code but there is no need for it be subject to approval - see previous question.</p> <p>Given the proposal to change the statutory duty 'to be satisfied that' to a new duty 'to consider whether' there are proper arrangements to secure value for money the code will need to set out how this duty will be discharged and reported (see also our response to question 38). The Assembly would have a justifiable interest in knowing how this revised duty will be carried out.</p>			

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	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Please expand on your answer			
<p>There is no need for a requirement. Given that the AGW will have both audit and certification functions it may be appropriate to enable the AGW to include provisions on certification work in a code but only at the AGW's discretion. The AGW would still be able to issue guidance on certification work in other ways.</p> <p>We also query the need for the code to cover access rights if these are set out in legislation.</p>			

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?

It seems sensible to have a single provision covering rights of access.

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

We have not answered this question because we do not believe it is a matter on which we can comment.

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.

There is no need for an express duty to carry out sustainable development examinations. In our view these could be carried out under the general provisions relating to examinations. Identifying particular themes on the face of the legislation for examinations is unnecessary and risks fettering the discretion of the AGW to determine his or her work programme. However, if it is felt that there should be an express duty this should be to 'consider' carrying out sustainable development examinations.

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?

Please see our previous response.