

National Assembly for Wales
Finance Committee

Draft Public Audit (Amendment) (Wales) Bill

Consultation responses

March 2020



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

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** Cymraeg yn unig | Welsh only

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GIG
CYMRU
NHS
WALES

Bwrdd Iechyd Prifysgol
Hywel Dda
University Health Board

Ein cyf/Our ref: C428
Gofynnwch am/Please ask for: Rachel Davies
Rhif Ffôn /Telephone: 01267 239866
Dyddiad/Date: 13th January 2020

Swyddfeydd Corfforaethol, Adeilad Ystwyth
Hafan Derwen, Parc Dewi Sant, Heol Ffynnon Job
Caerfyrddin, Sir Gaerfyrddin, SA31 3BB

Corporate Offices, Ystwyth Building
Hafan Derwen, St David's Park, Job's Well Road,
Carmarthen, Carmarthenshire, SA31 3BB

Committee Clerk
Finance Committee
National Assembly for Wales
Cardiff
CF99 1NA

13 January 2020

Dear Committee Member

Many thanks for the opportunity to respond to the consultation document on the Draft Public Audit (Amendment) (Wales) Bill.

Following my attendance at the Finance Committee on 11 July 2019, I am pleased to have received your consultation document and note my responses on behalf of Hywel Dda University Health Board below.

Question 1: We agree with the proposal, recognising it is important to demonstrate that the provision of the WAO's services as a whole needs to demonstrate value for money in undertaking its duties. While we as a Health Board have not needed to escalate any decisions on fee setting arrangements, an escalation or dispute process on fees may be a prudent additional requirement.

Question 2: Yes, but consideration may need to be given to the response to Question 1.

Question 3: Agreed, again cognisant of the response to Question 1.

Question 4: Agreed, again please see the response to Question 1.

Question 5: Agreed.

Swyddfeydd Corfforaethol, Adeilad Ystwyth,
Hafan Derwen, Parc Dewi Sant, Heol Ffynnon Job,
Caerfyrddin, Sir Gaerfyrddin, SA31 3BB

Corporate Offices, Ystwyth Building,
Hafan Derwen, St David's Park, Job's Well Road,
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Cadeirydd /Chair
Miss Maria Battle

Prif Weithredwr/Chief Executive
Mr Steve Moore

Bwrdd Iechyd Prifysgol Hywel Dda yw enw gweithredol Bwrdd Iechyd Lleol Prifysgol Hywel Dda
Hywel Dda University Health Board is the operational name of Hywel Dda University Local Health Board

Mae Bwrdd Iechyd Prifysgol Hywel Dda yn amgylchedd di-fwg Hywel Dda University Health Board operates a smoke free environment



Question 6: We believe that the question is inconsistent with the proposal in the draft Bill. It is important that all Executive members be allowed to vote in a Board meeting. For instance, it would be improper if the Director of Finance of the WAO were not allowed to vote.

Question 7: Section 13 may require further guidance to be provided on the means by which an employee member is asked to excuse themselves from voting. While this may be usually non-contentious, there may be instances where the selection of an employee member who is asked not to vote could be itself challenging.

Question 8, 9, 10, 11, 12, 13, 14, 15: We have no issues to raise in relation to these questions.

Question 16 and 17: It may be prudent to provide guidance on who is required to assess acceptable performance for Board members and the Chair.

Question 18, 19, 20, 21, 22, 23: We have no issues to raise in relation to these questions.

Question 24: The questions relating to assessing central government bodies and overlapping laying requirements are not applicable to the NHS, and consequently we do not have an issue to raise. We do not have sufficient information to respond to the question on Welsh data matching powers and how these compare with those of other UK nations.

Question 25: We believe that the financial implications of these proposals for us as an audited entity will be marginal.

Question 26: We have no further observations to make.

I am very grateful for the opportunity to respond to your consultation document. Should you require further clarification, please do not hesitate to contact me directly.

Yours sincerely

Huw Thomas

Director of Finance



Arolygiaeth Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru
Her Majesty's Inspectorate for Education and Training in Wales

Ymateb i Ymgynghoriad / Consultation Response

Enw / Name:	Meilyr Rowlands
Rôl / Role:	Her Majesty's Chief Inspector of Education and Training in Wales
E-bost / Email:	ChiefInspector@estyn.gov.uk
Rhif Ffôn / Tel No:	02920 446 446
<hr/>	
Dyddiad / Date:	7 February 2020
Pwnc / Subject:	Consultation on the Draft Public Audit (Amendment) (Wales) Bill

Background information about Estyn

Estyn is the Office of Her Majesty's Inspectorate for Education and Training in Wales. As a Crown body, Estyn is independent of the Welsh Government.

Estyn's principal aim is to raise the standards and quality education and training in Wales. This is primarily set out in the Learning and Skills Act 2000 and the Education Act 2005. In exercising its functions, Estyn must give regard to the:

- Quality of education and training in Wales;
- Extent to which education and training meets the needs of learners;
- Educational standards achieved by education and training providers in Wales;
- Quality of leadership and management of those education and training providers;
- Spiritual, moral, social and cultural development of learners; and,
- Contribution made to the well-being of learners.

Estyn's remit includes (but is not exclusive to) nurseries and non-maintained settings, primary schools, secondary schools, independent schools, pupil referrals units, further education, adult community learning, local government education services, work-based learning, and teacher education and training.

Estyn may give advice to the Assembly on any matter connected to education and training in Wales. To achieve excellence for learners, Estyn has set three strategic objectives:

- Provide accountability to service users on the quality and standards of education and training in Wales;
- Inform the development of national policy by the Welsh Government;
- Build capacity for improvement of the education and training system in Wales.

This response is not confidential.

Question 1

Agree

Question 2

Agree.

We support a change that has been identified by the service provider as having the potential to improve efficiency and help avoid an escalation in fee rates, particularly at a time of public service budgetary constraint. Within a fee framework based on cost-recovery there needs to be appropriate scrutiny to provide assurance that the service provider is operating efficiently and effectively.

There is an expectation that the basis of fees (estimate of audit activities and rates applicable) will continue to be transparent and open to reasonable challenge.

Question 3

Agree

Board control over the level of agreement work will be important to ensure that the benefits of such work, e.g. organisational and staff development, are clearly identified and such work does not compromise core activities and statutory responsibilities.

Question 4

Agree

Question 5

Do not agree. The balance of membership appears to be appropriate but there is a case for flexibility regarding quorum requirements.

Question 6

Agree. This appears to be a pragmatic approach.

Question 7

Agree. This appears to be a pragmatic approach.

Question 8

Agree. The evidence on interest in the interim report suggest that it is an unnecessary burden and an avoidable cost on the public purse.

Question 9

Agree. This removes the obligation but provides an option for an interim report to be produced.

Question 10

Agree. Avoids duplication.

Question 11

Agree.

Question 12

Agree. It is unlikely that the current four month deadline will be exceeded in many cases and, in such cases, an explanation will be provided.

Question 13

Agree.

Question 14

Agree. Reduces complexity and should be more efficient process.

Question 15

Agree

Question 16

Agree. This arrangement provides flexibility to retain knowledge and expertise and can help to maintain stability of the board.

Question 17

Agree.

Question 18

Agree. Supports independence of the organisation.

Question 19

Agree. Appropriate to provide more flexibility.

Question 20

Agree. Appropriate to provide more flexibility.

Question 21

Agree.

Question 22

Agree

Question 23

Agree.

Question 24

No. We concur with the Finance Committee's view that this would necessitate a substantial piece of work. We suggest that the AGW continues the practice of giving a regulatory opinion, despite there being no explicit provisions in statute, and encourages all organisations in Wales that receive public funds to take part in the National Fraud Initiative.

Question 25

No financial implications are anticipated but a reduction in our annual audit fee would be highly welcomed.

Question 26

No.

Llyr Gruffydd AM
Chair of Finance Committee
National Assembly for Wales
Tŷ Hywel
Cardiff Bay
CF99 1NA

29 January 2020

Dear Llyr

Public Audit (Amendment) (Wales) Bill

I am writing in response to your letter dated 18 December 2019 advising the Commission that your Committee has published its report and is now consulting on a draft Public Audit (Amendment) (Wales) Bill.

Your letter notes that you would welcome the Commission's view on the draft Bill proposals.

We have previously compiled two responses to your Committee, dated **9 May 2019** and **27 June 2019**. Commission officials also provided evidence to your Committee on 17 July 2019 in a private session.

We have no further comment to provide on the matters already addressed within the two letters and during the evidence session.

Since July 2019, two additional matters have arisen, relating to the expenses paid to the Chair of the Wales Audit Office ("WAO") and the identification of expenses paid to the Auditor General Wales ("AGW") in his capacity as AGW and separately as Chief Executive of the WAO. Additional information is provided in Annex 1.

As ever, if there is any further information your Committee would like, please let me know.



Yours sincerely

Suzy Davies

Suzy Davies

cc Assembly Commissioners, Manon Antoniazzi, Nia Morgan



Annex 1

Note on expenses

Chair of the Wales Audit Office

1. Arrangements for remuneration for the Chair of the WAO ("the Chair") may be made by the Assembly, and those arrangements may make provision for "a salary, allowances, gratuities, and other benefits to cover expenses" (paragraph 7 of Schedule 1 to the 2013 Act). These amounts are to be charged to the Welsh Consolidated Fund (paragraph 7(3) of Schedule 1 to the 2013 Act).
2. During 2019-20, following a change by HMRC relating to the timing of the collection of tax on expenses, the Assembly Commission ("AC") and the Wales Audit Office ("WAO") took the opportunity to review the process of paying expenses to the Chair of the WAO. Options are currently being considered.
3. The Committee may wish to consider any changes and any requirements needed to ensure a continued level of transparency in the budgeting and reporting of these expenses.

Auditor General for Wales

4. Arrangements for remuneration for the AGW are to be made by the Assembly before a person is appointed as AGW. Those arrangements "may make provision for a salary, allowances, gratuities, arrangements for a pension and other benefits" (section 7 of the Public Audit (Wales) Act 2013 (2013 Act)). Those amounts are to be charged to the Welsh Consolidated Fund (section 7(6) of the 2013 Act).
5. Separately, the WAO "may make provision for additional payments to be made to the Auditor General by way of allowances and other benefits to cover expenses properly and necessarily incurred by the Auditor General in his or her capacity as a member and chief executive of the WAO" (paragraph 13 of Schedule 1 to the 2013 Act).
6. The distinction between remuneration payable whilst acting in the capacity as AGW and separately as chief executive and member of the WAO necessitates the AGW allocating particular items to the separate allowances so that only allowances arising from acting in the capacity as AGW are charged to the Welsh Consolidated Fund.



7. In previous financial year and during 2019-20, all expenses paid to the AGW have been made by the WAO. No expenses have been charged on the WCF via the Assembly Commission. All expenses are treated by the AGW and the WAO as being incurred by the AGW in his capacity as a member and chief executive of the WAO.
8. The Committee may wish to consider the current treatment of expenses and consider the requirement, within the Act, to differentiate between expenses incurred by the AGW in his capacity as AGW and separately as chief executive of the WAO.



I am responding to the consultation on the Draft Public Audit (Amendment) (Wales) Bill on behalf of the Members of the Local Democracy and Boundary Commission for Wales.

Question 1 - Do you agree that the Wales Audit Office should be given flexibility in how it charges and administers its fees by allowing it to broadly breakeven, taking one year with another?

The Commission has no objection to the proposed change unless it results in a significant increase in audit fees.

Question 24 - Do you feel the Draft Bill should include provisions relating to:

- the lack of a value for money conclusion duty on the Auditor General for Wales and central government bodies;
- the absence of explicit provisions in statute for regularity opinions among many central government bodies;

The Commission has no objection to the proposed changes to include provision within the Local Government (Democracy) (Wales) Act 2013 for a regularity opinion and to a duty to be satisfied as to the arrangements for securing value for money.

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National Assembly for Wales
Cardiff Bay
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3rd February 2020

Dear Sir/Madam

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

We are writing in response to the above National Assembly consultation.

Role of our organisation

The Education Workforce Council (EWC) is an independent regulator, established by the Education (Wales) Act 2014. We came into being on 1 April 2015 and work with education professionals, in teaching and support roles, from the foundation phase through to further education, youth work and work-based learning. The EWC's role as a regulator and strategic leader in the education sector in Wales and the obligations that we have to registrants, learners, parents and the public is formally prescribed within the Education (Wales) Act 2014.

Proposed amendments in relation to the WAO functions and responsibilities

We have no comments to make in relation to the consultation questions contained within sections 1-9 of the consultation document.

Section 10: Issues with wider public audit legislation in Wales

EWC are listed under paragraph 64 as one of the bodies where legislation would need to be amended to include a provision for the requirement to have a regularity opinion from the Auditor General for Wales (AGW) as part of our annual audit opinion. Even though there is no explicit provision for this opinion in legislation, this is already provided by the AGW on an annual basis as part of the EWC annual audit opinion and is included in our audit Annual Report and Accounts.

EWC **would not** support for legislation to be amended to include this requirement for the following reasons:

The EWC is an independent professional body. It is not a Welsh Government sponsored body, does not have a sponsoring department within government and does not receive an annual remit letter. The Council's primary role is to regulate the education workforce professions in Wales. This regulatory model, like most other professions is one of "self-regulation" rather than one which is controlled and funded by central government.

The Council sets its own strategic / operational plans and its own budget. The Welsh Government does not exercise any control of the day to day running of the EWC in discharging its statutory functions and EWC resources are not 'voted' through the National Assembly.

Finally, EWC is currently challenging our public body classification with Welsh Government and the ONS. Therefore whilst this challenge is ongoing, it would be improper for any changes to our legislation to be made.

Yours sincerely,

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

Hayden Llewellyn
Chief Executive

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

Question 1

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

Yes, but only subject to the prior agreement of the fee structure and basis for charging together with ongoing monitoring of costs incurred. The WAO must continue to manage its costs effectively and should look to obtain value for money wherever possible whilst still maintaining the quality of its services. Local authorities must be given a clear description of the work to be undertaken in advance of the work starting including outcomes, outputs, including KPIs and the method of service delivery i.e. staff to be used. Local authorities should retain the right to challenge fees and where objectives etc. have not been met then a reimbursement / reduction in fees should be allowed as with any other service contract.

Question 2

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

Yes

Question 3

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

Yes. The examples quoted here equate to £30,000 over the four year period so are not material in the scope of benefiting the Welsh public sector to any great extent. However, the requirement to give a refund to the client as a result of the “no more than full cost rule” needs to be removed especially if the contract was won in a competitive exercise.

Question 4

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

Yes

Question 8

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

Yes subject to adequate performance information being made available to the Assembly to allow it to make an informed decision as to whether to request the WAO to produce an Interim Report.

Question 9

Yes

Question 12

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

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

No. The document does not provide a valid enough reason for amending the four month target

Question 13

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

Yes

Question 24

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

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

Yes, especially in relation to Welsh data matching powers

Question 25

Will any of the proposals included in the Draft Public Audit (Amendment) (Wales) Bill lead to any financial implications (for example, costs or benefits) for you or your organisation?

If you have identified financial implications for you or your organisation can you describe what these could be and provide an estimated cost (if possible).

It is unclear at this stage whether there would be any additional costs and the final outcome would probably be dependent upon how Question 1 is implemented.

**Response by the Public Services Ombudsman for Wales
to the Finance Committee's
consultation on the draft Public Audit (Amendment) (Wales) Bill**

I am pleased to have the opportunity to respond to the Finance Committee's consultation on the draft Public Audit (Amendment) (Wales) Bill.

As Public Services Ombudsman for Wales (PSOW), I investigate complaints made by members of the public who have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction, which essentially includes all organisations that deliver public services devolved to Wales. These include:

- local government (both county and community councils)
- the National Health Service (including GPs and dentists)
- registered social landlords (housing associations)
- the Welsh Government, together with its sponsored bodies.

I am also able to consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of privately funded healthcare.

General comments

I broadly support the proposals outlined in the consultation document. Whilst it would not be appropriate for me to express an opinion on the governance arrangements of the Wales Audit Office (WAO), I certainly see the benefits of enabling the WAO to adopt a more flexible approach to fee charging and agreement work. I particularly welcome the proposals for changing the requirements placed on the Assembly by the current legislation to consult the First Minister on:

- the appointment of the Chair of the WAO;
- the remuneration arrangements for the Chair and the Auditor General for Wales (AGW); and
- the termination of the Chair's appointment.

I believe that the proposed change will enhance independence of the roles concerned and is appropriate given the close accountability relationship between the AGW and the National Assembly for Wales.

Closing remarks

I trust that you will find my comments useful. Should you wish to discuss any of my points further, please do not hesitate to contact Ania Rolewska, my Head of Policy (ania.rolewska@ombudsman.wales).



Nick Bennett
Public Services Ombudsman for Wales
February 2020

Consultation on the Draft Public Audit (Amendment) (Wales) Bill – Aneurin Bevan University Health Board response.

Email to: seneddfinance@assembly.wales.

Question	Question	Response
1	Do you agree that the Wales Audit Office should be given flexibility in how it charges and administers its fees by allowing it to broadly breakeven, taking one year with another?	We do not support cross subsidisation between bodies. No more than full cost should be charged to a body as a whole and refunds, if appropriate should be given. “Broadly breakeven, taking one year with another” should be defined more closely.
2	If so, do you agree with the approach taken in sections 3 and 4 of the Draft Bill?	See above
3	Do you agree that the Wales Audit Office should be allowed to set its own terms and conditions for agreement work?	We see no reasons why full cost plus a surplus margin should not be charged to bodies outside Wales and these surpluses used to benefit the public sector in Wales.
4	If so, do you agree with the approach taken in section 2 of the Draft Bill?	See above
5	Do you agree that the current Wales Audit Office Board quorum requirement for a majority of non-executive members should be retained in legislation?	Yes
6	Do you agree that if the majority of members present at a meeting of the Wales Audit Office Board are not non-executive members, an executive member should be allowed to continue in a non-voting capacity in order to satisfy the quorum requirement?	This appears a reasonable response
7	If so, do you agree with the approach taken in section 13 of the Draft Bill?	As above
8	Do you agree that the Auditor General for Wales and the Chair of the Wales Audit	Good practice should be followed. A report once a year does seem reasonable. Perhaps ways

	Office should no longer be required to produce an interim report at least once a year, but a requirement to produce an interim report upon the Assembly's request should be included in legislation?	could be looked at how to do this more cheaply, using a highlight report etc.
9	If so, do you agree with the approach taken in section 16 of the Draft Bill?	See above
10	Do you agree that the requirement to lay the annual report (on the exercise of functions of the Auditor General for Wales and Wales Audit Office) in paragraph 3(1) of Schedule 2 of the Public Audit (Wales) Act 2013 should be amended to require the external auditor to lay the report as part of the laying of the annual report and accounts?	This doesn't seem unreasonable
11	If so, do you agree with the approach taken in section 15 of the Draft Bill?	See above
12	Do you agree that existing legislation requiring the Auditor General for Wales to certify and lay an audited body's accounts and report within four months should be amended to: <ul style="list-style-type: none"> ▪ allow the Auditor General for Wales to lay a copy of the certified accounts and report after the four month deadline, ▪ require the Auditor General for Wales to explain to the Assembly why the four month deadline cannot be met, and ▪ require the Auditor General for Wales to lay the certified accounts and report as soon as reasonably practicable? 	This doesn't seem unreasonable
13	If so, do you agree with the approach taken in section 17 and Schedule 1 of the Draft Bill?	See above
14	Do you agree that engagement of the auditor of the Wales Audit Office should be a contractual matter between the Wales Audit	Yes

	Office and the auditor, with the appointment (and associated terms and conditions) being subject to the approval of the Assembly?	
15	If so, do you agree with the approach taken in section 14 of the Draft Bill?	See above
16	Do you agree that the Public Audit (Wales) Act 2013 should be amended to allow the appointment of a serving non-executive member to be extended for a second term of up to four years, subject to acceptable performance?	Yes
17	If so, do you agree with the approach taken in sections 7, 8 and 9 of the Draft Bill?	See above
18	Do you agree that the requirement for the Assembly to consult the First Minister on the following should be removed: <ul style="list-style-type: none"> ▪ the appointment of the Chair of the Wales Audit Office; ▪ the remuneration arrangements for the Chair and the Auditor General for Wales; and ▪ the termination of the Chair's appointment? 	Yes
19	Do you agree that the requirement for the Assembly to consult an appropriate person with oversight for public appointments on remuneration arrangements and other terms of appointment should be removed?	No strong view
20	Do you agree that a general provision should be included, permitting the Assembly to consult with any persons it deems appropriate before exercising any functions in relation to the Auditor General for Wales or the Wales Audit Office?	Yes
21	If so, do you agree with the approach taken in sections 6, 10 and 11 of the Draft Bill?	See above
22	Do you agree that section 5(3) of the Public Audit (Wales) Act 2013 should be amended to require the Assembly to publish a list of	No strong view

	restricted offices, positions or arrangements, which a former Auditor General for Wales would need to consult with the Assembly before accepting or entering into after leaving office, only if any such restrictions are identified?	
23	If so, do you agree with the approach taken in section 5 of the Draft Bill?	See above
24	Do you feel the Draft Bill should include provisions relating to: <ul style="list-style-type: none"> ▪ the lack of a value for money conclusion duty on the Auditor General for Wales and central government bodies; ▪ the absence of explicit provisions in statute for regularity opinions among many central government bodies; ▪ the overlapping laying requirements; ▪ Welsh data matching powers? 	Yes
25	Will any of the proposals included in the Draft Public Audit (Amendment) (Wales) Bill lead to any financial implications (for example, costs or benefits) for you or your organisation? If you have identified financial implications for you or your organisation can you describe what these could be and provide an estimated cost (if possible)?	Potentially if the provision to remove the full cost recovery per organisation is removed.
26	Do you have any other observations or general comments on the Public Audit (Wales) Act 2013 or the Committee's Draft Public Audit (Amendment) (Wales) Bill?	No

Consultation Document – Draft Public Audit (Amendment) (Wales) Bill

Proposal

To amend the Public Audit (Wales) Act 2013 to:

- remove the requirement that fees must not exceed the full cost of the function to which they relate, and
- enable the Wales Audit Office to ensure that the sum of the fees charged for all of the work undertaken is broadly equivalent to all of its expenditure in connection with that work, taking one year with another.

To retain the requirement for fees to be paid by the body to which the function relates in order to ensure transparency for audited bodies, effective engagement in the audit and to maintain the relationship between the auditor and audited body.

Question 1

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

Whilst the Health Board broadly agrees with the proposed changes in how Wales Audit Office charges and administers fees, transparency of any new arrangements will be essential for audited bodies.

Question 2

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

The Health Board agrees with the approach taken in sections 2 and 4 of the Draft Bill

Proposal

To amend the Public Audit (Wales) Act 2013 to remove the link between agreement work and the fee scheme to allow Wales Audit office to set its own terms and conditions. This would enable the Wales Audit Office to earn additional reasonable fees to reinvest in the organisation or surrender to the Welsh Consolidated Fund, subject to sufficient safeguards being in place to protect its statutory work and prevent conflicts of interests.

Question 3

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

The Health Board agrees that the Wales Audit Office should be able to set its own terms and conditions for services provided to other public bodies including bodies outside of Wales (“agreement work”) rather than exercising the “no more than full cost rule”.

Question 4

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

The Health Board agrees with the approach taken in section 2 of the Draft Bill

Proposal

To retain the requirement for a non-executive member majority to ensure independent oversight and provide constructive challenge to the executive directors, but amend paragraph 28(3) of Schedule 1 of the Public Audit (Wales) Act 2013 to allow executive members to remain at the meeting in a non-voting capacity when there is not a majority of non-executive Members present.

Question 5

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

The Health Board agrees that the quorum requirement for a majority of non-executive members should be retained in legislation to ensure independent oversight and provide constructive challenges to the executive directors

Question 6

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

The Health Board recognises the problem that the quorum provision can cause as non-executive members only have a majority of one on the board and agrees with the proposal that, where necessary, an executive member should adopt a non-voting role in order to satisfy the quorum requirement and allow meetings to proceed.

Question 7

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

The Health Board agrees with the approach taken in section 13 of the Draft Bill

Proposal

To replace the requirement in paragraph 3(3) of Schedule 2 of the Public Audit (Wales) Act 2013, to produce an interim report at least once a year, with a provision requiring the production of an interim report (as currently defined) if requested by the Assembly.

Question 8

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

The Health Board recognises that the routine production of interim reports appears to be disproportionately resource consuming and agrees that this requirement should cease as the Assembly can request that the AGW and Chair of the WAO produce interim reports at any time during a financial year.

Question 9

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

The Health Board agrees with the approach taken in section 16 of the Draft Bill

Proposal

To simplify the provisions in the Public Audit (Wales) Act 2013 to enable:

- the Auditor General for Wales and the Chair of the Wales Audit Office to provide the external auditor of the Wales Audit Office with their annual report no later than five months after the end of the financial year; and
- subsequently require the external auditor to lay the report as part of the laying of the annual accounts.

Question 10

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

The Health Board agrees with the proposal from the Wales Audit Office for their annual report to be laid by their external auditor as part of the laying of their annual report and accounts.

Question 11

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

The Health Board agrees with the approach taken in section 15 of the Draft Bill

Proposal

To amend enactments that specify a four month deadline for the Auditor General for Wales to certify and lay a copy of an audited body's accounts and report to:

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

Question 12

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

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

The Health Board agrees with the proposal to amend the deadline for certifying and laying accounts where the AGW needs to provide the audited body with sufficient time to comment on audit findings.

Question 13

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

The Health Board agrees with the approach taken in section 17 and Schedule 1 of the Draft Bill

Proposal

To amend the Public Audit (Wales) Act 2013 to allow the Wales Audit Office to appoint its external auditors, subject to the Assembly's approval of:

- the appointment,
- the terms of appointment, and
- the method of procurement.

Question 14

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

The Health Board agrees with proposals to simplify the appointment process for appointment of the auditors of the Wales Audit Office accounts.

Question 15

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

The Health Board agrees with the approach taken in section 14 of the Draft Bill

Proposal

To amend the Public Audit (Wales) Act 2013 to allow the appointment of a serving non-executive member to be extended for a second term of up to four years, subject to acceptable performance.

Question 16

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

The Health Board agrees with the proposal that, subject to acceptable performance, the Assembly should be able to reappoint serving non-executive directors of the Wales Audit Office for a second term of office.

Question 17

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

The Health Board agrees with the approach taken in sections 7 8 and 9 of the Draft Bill

Proposals

To remove the requirements placed on the Assembly to consult the First Minister on:

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

in the interest of protecting the independence of those roles.

To remove the requirement to consult "an appropriate person with oversight for public appointments" on remuneration arrangements and other terms of appointment for WAO non-executive members and the Chair and replace it with a general provision permitting the Assembly to consult with any persons it deems appropriate.

To amend section 5(3) of the Public Audit (Wales) Act 2013 to require the Assembly to publish a list of restricted offices, positions or arrangements, which a former Auditor General for Wales would need to consult with the Assembly before accepting or entering into after leaving office, only if any such restrictions are identified.

Question 18

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

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

The Health Board agrees with the proposal from the AGW, WAO, Assembly Commission and Welsh Government that the requirement to consult the First Minister on matters of appointments and remuneration should be removed.

Question 19

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

The Health Board agrees with the proposal to replace the requirement to consult an appropriate person with oversight for public appointments with a general provision permitting the Assembly to consult with persons that it deems appropriate.

Question 20

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

As per response to question 19 above

Question 21

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

The Health Board agrees with the approach taken in sections 6, 10 and 11 of the Draft Bill

Question 22

Do you agree that section 5(3) of the Public Audit (Wales) Act 2013 should be amended to require the Assembly to publish a list of restricted offices, positions or arrangements, which a former Auditor General for Wales would need to consult with the Assembly before accepting or entering into after leaving office, only if any such restrictions are identified?

The Health Board agrees with the proposal that a list of restricted offices should only be published when, and if, any such restrictions are identified.

Question 23

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

The Health Board agrees with the approach taken in section 5 of the Draft Bill

Other Questions

Question 25

Will any of the proposals included in the Draft Public Audit (Amendment) (Wales) Bill lead to any financial implications (for example, costs or benefits) for you or your organisation?

The Health Board does not anticipate that there will be any financial implications arising from the proposals included in the Draft Public Audit (Amendment) (Wales) Bill.

If you have identified financial implications for you or your organisation can you describe what these could be and provide an estimated cost (if possible).

Question 26

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

The Health Board does not have any other observations or general comments to make on the Public Audit (Wales) Act 2013 or the Committee's Draft Public Audit (amendment) (Wales) Bill.



WALES AUDIT OFFICE
SWYDDFA ARCHWILIO CYMRU

Wales Audit Office / Swyddfa Archwilio Cymru

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Date issued: 7 February 2020

Annwyl Llyr

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

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

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

Yn gywir

Adrian Crompton
Auditor General for Wales

Isobel Everett
Chair, Wales Audit Office

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Yes. Section 16 seems appropriate.

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

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

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

Yes. Section 15 seems appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Yes, in all four cases:

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

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

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

this is a separate requirement from responsibility for:

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

(see paragraph 3.3.3 of Managing Welsh Public Money).

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

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

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

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

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

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

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

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

National Assembly for Wales
Finance Committee

Consultation Document

Draft Public Audit (Amendment) (Wales) Bill

Date of issue: 18 December 2019

Closing date: 7 February 2020

Conwy County Borough Council's Response – February 2020

Consultation Question	Yes / No	Commentary
FEE CHARGING		
Proposal:		
<p>To amend the Public Audit (Wales) Act 2013 to: - remove the requirement that fees must not exceed the full cost of the function to which they relate, and - enable the Wales Audit Office to ensure that the sum of the fees charged for all of the work undertaken is broadly equivalent to all of its expenditure in connection with that work, taking one year with another. To retain the requirement for fees to be paid by the body to which the function relates in order to ensure transparency for audited bodies, effective engagement in the audit and to maintain the relationship between the auditor and audited body.</p>		
<p>1. Do you agree that the Wales Audit Office should be given flexibility in how it charges and administers its fees by allowing it to broadly breakeven, taking one year with another?</p>	<p>Yes</p>	<p>All public sector organisations need flexibility to enable them to balance their books. However this has to be balanced with an obligation to make efficiencies, and not to pass this cost onto other public sector organisations who are facing year on year budget cuts.</p>
<p>2. If so, do you agree with the approach taken in sections 3 and 4 of the Draft Bill?</p>	<p>Yes</p>	<p>It will be of great importance to consult on the fees.</p>
AGREEMENT WORK		
Proposal:		
<p>To amend the Public Audit (Wales) Act 2013 to remove the link between agreement work and the fee scheme to allow the Wales Audit Office to set its own terms and conditions. This would enable the Wales Audit Office to earn</p>		
<p>3. Do you agree that the Wales Audit Office should be allowed to set its own terms and conditions for agreement work?</p>	<p>Yes</p>	<p>If this enables a reduction in unnecessary bureaucracy and unnecessary costs.</p>
<p>4. If so, do you agree with the approach taken in section 2 of the Draft Bill?</p>		
QUORUM ARRANGEMENTS		
Proposal:		
<p>To retain the requirement for a non-executive member majority to ensure independent oversight and provide constructive challenge to the executive directors, but amend paragraph 28(3) of Schedule 1 of the Public Audit (Wales) Act 2013 to allow executive members to remain at the meeting in a non-voting capacity when there is not a majority of non-executive Members present.</p>		

Consultation Question	Yes / No	Commentary
5. Do you agree that the current Wales Audit Office Board quorum requirement for a majority of non-executive members should be retained in legislation?	No	Clearly this is proving problematic and therefore more practical arrangements should be considered.
6. Do you agree that if the majority of members present at a meeting of the Wales Audit Office Board are not non-executive members, an executive member should be allowed to continue in a non-voting capacity in order to satisfy the quorum requirement?6.	yes	
7. If so, do you agree with the approach taken in section 13 of the Draft Bill?		
INTERIM REPORTS Proposal: To replace the requirement in paragraph 3(3) of Schedule 2 of the Public Audit (Wales) Act 2013, to produce an interim report at least once a year, with a provision requiring the production of an interim report (as currently defined) if requested by the Assembly.		
8. Do you agree that the Auditor General for Wales and the Chair of the Wales Audit Office should no longer be required to produce an interim report at least once a year, but a requirement to produce an interim report upon the Assembly's request should be included in legislation?	Yes	It is clear that it is not being widely read and therefore adding little value.
9. If so, do you agree with the approach taken in section 16 of the Draft Bill?	yes	
LAYING REPORTS AND ACCOUNTS Proposal: To simplify the provisions in the Public Audit (Wales) Act 2013 to enable: - the Auditor General for Wales and the Chair of the Wales Audit Office to provide the external auditor of the Wales Audit Office with their annual report no later than five months after the end of the financial year; and - subsequently require the external auditor to lay the report as part of the laying of the annual accounts.		
10. Do you agree that the requirement to lay the annual report (on the exercise of functions of the Auditor General for Wales and Wales Audit Office) in paragraph 3(1) of Schedule 2 of the Public Audit (Wales)	Yes	It is also important that all public accountability reports also have an accessible summary version for the general public.

Consultation Question	Yes / No	Commentary
Act 2013 should be amended to require the external auditor to lay the report as part of the laying of the annual report and accounts?		
11. If so, do you agree with the approach taken in section 15 of the Draft Bill?	yes	
CERTIFICATION DEADLINES Proposal: To amend enactments that specify a four month deadline for the Auditor General for Wales to certify and lay a copy of an audited body's accounts and report to: - allow the Auditor General for Wales to lay a copy of the certified accounts and report after the four month deadline; - require the Auditor General for Wales to explain to the Assembly why the four month deadline cannot be met; and - require the Auditor General for Wales to lay the certified accounts and report as soon as reasonably practicable.		
12. Do you agree that existing legislation requiring the Auditor General for Wales to certify and lay an audited body's accounts and report within four months should be amended to: ▪ allow the Auditor General for Wales to lay a copy of the certified accounts and report after the four month deadline, ▪ require the Auditor General for Wales to explain to the Assembly why the four month deadline cannot be met, and ▪ require the Auditor General for Wales to lay the certified accounts and report as soon as reasonably practicable?	yes	
13. If so, do you agree with the approach taken in section 17 and Schedule 1 of the Draft Bill?		
APPOINTMENT OF THE AUDITORS OF THE WAO'S ACCOUNTS Proposal: To amend the Public Audit (Wales) Act 2013 to allow the Wales Audit Office to appoint its external auditors, subject to the Assembly's approval of: - the appointment, - the terms and the method of procurement.		
14. Do you agree that engagement of the auditor of the Wales Audit Office should be a contractual matter between the Wales Audit Office	yes	

Consultation Question	Yes / No	Commentary
and the auditor, with the appointment (and associated terms and conditions) being subject to the approval of the Assembly?		
15. If so, do you agree with the approach taken in section 14 of the Draft Bill?		
APPOINTMENT OF NOJ-EXECUTIVE MEMBERS OF THE WAO AND THE CHAIR OF THE WAO Proposal: To amend the Public Audit (Wales) Act 2013 to allow the appointment of a serving non-executive member to be extended for a second term of up to four years, subject to acceptable performance.		
16. Do you agree that the Public Audit (Wales) Act 2013 should be amended to allow the appointment of a serving non-executive member to be extended for a second term of up to four years, subject to acceptable performance?	yes	This should be reviewed however, if there is significant interest from external candidates who wish to be considered for a position on the Board.
17. If so, do you agree with the approach taken in sections 7, 8 and 9 of the Draft Bill?		
REQUIREMENT TO CONSULT ON CERTAIN ASPECTS OF THE APPOINTMENT PROCESS Proposal: To remove the requirements placed on the Assembly to consult the First Minister on: - the appointment of the Chair of the Wales Audit Office, - the remuneration arrangements for the Chair and the Auditor General for Wales, and - the termination of the Chair's appointment in the interest of protecting the independence of those roles. To remove the requirement to consult "an appropriate person with oversight for public appointments" on remuneration arrangements and other terms of appointment for WAO non-executive members and the Chair and replace it with a general provision permitting the Assembly to consult with any persons it deems appropriate. To amend section 5(3) of the Public Audit (Wales) Act 2013 to require the Assembly to publish a list of restricted offices, positions or arrangements, which a former Auditor General for Wales would need to consult with the Assembly before accepting or entering into after leaving office, only if any such restrictions are identified.		
18. Do you agree that the requirement for the Assembly to consult the First Minister on the following should be removed: ▪ the appointment of the Chair of the Wales Audit Office; ▪ the remuneration	yes	

Consultation Question	Yes / No	Commentary
arrangements for the Chair and the Auditor General for Wales; and ▪ the termination of the Chair's appointment?		
19. Do you agree that the requirement for the Assembly to consult an appropriate person with oversight for public appointments on remuneration arrangements and other terms of appointment should be removed?	yes	
20. Do you agree that a general provision should be included, permitting the Assembly to consult with any persons it deems appropriate before exercising any functions in relation to the Auditor General for Wales or the Wales Audit Office?	yes	
21. If so, do you agree with the approach taken in sections 6, 10 and 11 of the Draft Bill?		
22. Do you agree that section 5(3) of the Public Audit (Wales) Act 2013 should be amended to require the Assembly to publish a list of restricted offices, positions or arrangements, which a former Auditor General for Wales would need to consult with the Assembly before accepting or entering into after leaving office, only if any such restrictions are identified?	yes	
23. If so, do you agree with the approach taken in section 5 of the Draft Bill?		

Consultation Question	Yes / No	Commentary
ISSUES WITH THE WIDER PUBLIC AUDIT LEGISLATION IN WALES		
<p>24. Do you feel the Draft Bill should include provisions relating to: ▪ the lack of a value for money conclusion duty on the Auditor General for Wales and central government bodies; ▪ the absence of explicit provisions in statute for regularity opinions among many central government bodies; ▪ the overlapping laying requirements; ▪ Welsh data matching powers?</p>		
Other Matters		
<p>25. Will any of the proposals included in the Draft Public Audit (Amendment) (Wales) Bill lead to any financial implications (for example, costs or benefits) for you or your organisation? If you have identified financial implications for you or your organisation can you describe what these could be and provide an estimated cost (if possible).</p>		
<p>26. Do you have any other observations or general comments on the Public Audit (Wales) Act 2013 or the Committee's Draft Public Audit (Amendment) (Wales) Bill?</p>		

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

[REDACTED]

Organisation: Arts Council of Wales

Contact: Rebecca Nelson, Director of Finance and Business Services

Email: rebecca.nelson@arts.wales

About our organisation

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

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

Our Royal Charter sets our objectives. They are to:

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

Consultation Questions

Question 1

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

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

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

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

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

Question 2

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

See comments above.

Question 3

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

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

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

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

Question 4

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

See comments above.

Question 5

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

Agreed.

Question 6

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

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

Question 8

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

We have no comment in respect of this proposal.

Question 9

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

See answer in Question 8.

Question 10

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

Agreed.

Question 11

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

Agreed.

Question 12

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

- *Allow the Auditor General for Wales to lay a copy of the certified accounts and report after the four month deadline;*

- *Require the Auditor General for Wales to explain to the Assembly why the four month deadline cannot be met; and*
 - *Require the Auditor General for Wales to lay the certified accounts report as soon as reasonably practicable?*
-

Agreed.

Question 13

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

See our comment in respect of Question 12.

Question 14

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

Agreed.

Question 15

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

Agreed.

Question 16

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

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

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

Question 17

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

See above.

Question 18

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

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

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

"Remuneration arrangements

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

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

Question 19

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

Please see our answer to Question 18.

Question 20

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

Agreed.

Question 21

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

Please see our answer to Question 18.

Question 22

Do you agree that section 5(3) of the Public Audit (Wales) Act 2013 should be amended to require the Assembly to publish a list of restricted offices, positions or arrangements, which a former Auditor General for Wales would need to consult with the Assembly before accepting or entering into after leaving office, only if any such restrictions are identified?

Agreed.

Question 23

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

Agreed.

Question 24

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

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

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

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

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

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

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

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

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

Question 25

Will any of the proposals included in the Draft Public Audit (Amendment)(Wales) Bill lead to any financial implications (for example, costs or benefits) for you or your organisation?

If you have identified financial implications for you or your organisation can you describe what these could be and provide an estimated cost (if possible).

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

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

Question 26

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

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

Appendix 1

The principles and purpose of Royal Charter status

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

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

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

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

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

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

Royal Charter status protects these freedoms.

Appendix 2



Wed 05/02/2020 08:52

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

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

To Rebecca Nelson

Cc Finance Committee | Y Pwyllgor Cyllid

Hi Rebecca,

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

Best Wishes



Rachel Powell

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

0300 200 7258

