

National Assembly for Wales
Public Accounts Committee

Public Audit (Wales) Bill

Stage 1 Committee Report

November 2012



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Public Accounts Committee

The Committee was established on 22 June 2011. The role of the Public Accounts Committee is to ensure that proper and thorough scrutiny is given to Welsh Government expenditure. The specific functions of the Committee are set out in Standing Order 18. The Committee will consider reports prepared by the Auditor General for Wales on the accounts of the Welsh Government and other public bodies, and on the economy, efficiency and effectiveness with which resources were employed in the discharge of public functions. Their remit also includes specific statutory powers under the Government of Wales Act 2006 relating to the appointment of the Auditor General, his or her budget and the auditors of that office.

Current Committee membership



Darren Millar (Chair)
Welsh Conservatives
Clwyd West



Mohammad Asghar (Oscar)
Welsh Conservatives
South Wales East



Mike Hedges
Welsh Labour
Swansea East



Julie Morgan
Welsh Labour
Cardiff North



Gwyn R Price
Welsh Labour
Islwyn



Jenny Rathbone
Welsh Labour
Cardiff Central



Aled Roberts
Welsh Liberal Democrats
North Wales



**Jocelyn Davies
(October 2012 -)**
Plaid Cymru
South Wales East



**Lindsay Whittle
(June 2011 - October 2012)**
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Summary of Recommendations

The Committee's recommendations to the Welsh Government are listed below, in the order in which they appear in this Report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions:

General principles and the need for legislation

Recommendation 1. We recommend that the Assembly agrees the general principles of the Public Audit (Wales) Bill. (Paragraph 36)

Governance of the Wales Audit Office

Recommendation 2. We believe the AGW should have the discretion to delegate his or her statutory functions. The requirement in section 18(2) for WAO approval of AGW delegations has the potential to fetter that discretion and therefore the exercise of those functions. On this basis, we recommend that section 18(2) be removed from the Bill. (Paragraph 104)

Recommendation 3. We recommend that section 19 of the Bill be amended so that the AGW must agree to any arrangements made between the WAO and a relevant authority. (Paragraph 105)

Recommendation 4. We recommend that section 25 should be amended so that the AGW and WAO are required jointly to prepare an annual plan rather than being required to "agree" it. (Paragraph 108)

Recommendation 5. We recommend that the Bill be amended so as to remove section 26, which we consider to be unacceptable as it gives rise to the possibility that the Board could fetter the independent exercise of the AGW's statutory functions. We welcome the Minister's commitment to amend the Bill at stage 2 to remove section 26. (Paragraph 109)

Recommendation 6. We recommend that the Bill should be amended to include a requirement for a Code of Practice for the purposes of giving effect to section 8 and to manage the relationship between the AGW and the WAO Board. We recommend that such a Code should be prepared jointly by the AGW and the WAO Board and approved by the Assembly. (Paragraph 111)

Recommendation 7. We believe that any subsequent changes to the Code agreed between the AGW and the Board should be approved by the Assembly, and we recommend that the Bill should be amended to provide for this. (Paragraph 112)

Recommendation 8. We consider it is vital that the AGW is able to do whatever is necessary to ensure audits are carried out to the required professional standards, including the imposition of a quality assurance regime. We consider that section 9(2) could be construed as an impediment to this. We recommend that section 9(2) should be omitted from the Bill. (Paragraph 113)

The Wales Audit Office – Size and Composition of the Board

Recommendation 9. We recommend that the Bill be amended to provide for four executive members of the WAO Board; the AGW and three employee members. Of the three employee members, we recommend that two should be nominated by the AGW for approval by the non-executives and one should be elected by the staff of the WAO. (Paragraphs 141-142)

Recommendation 10. We further recommend that the Bill should be amended to give effect to the principle that the AGW and non-executives should agree on the appointment of the nominated employee members. One way to achieve this would be to amend Part 4 of Schedule 1 to the Bill to provide that, if the AGW's initial nomination is not accepted by the non-executive members, the AGW is required to make further nominations until appointments are made. (Paragraph 143)

Accountability of the AGW and WAO to the Assembly

Recommendation 11. Paragraph 30(6) of schedule 1 should be amended to confer the function currently vested in the Public Accounts Committee on the Assembly. We welcome the Minister's commitment to bring forward an amendment at stage 2 to give effect to this. (Paragraph 158)

Recommendation 12. We consider that the Assembly should be given a power to transfer the Public Accounts Committee's function of considering reports by the WAO's external auditor in section 143(1)(b) of the GOWA 2006 to another committee that might be established

under the provisions of Section 29, and we recommend the Bill be amended in order to achieve this. (Paragraph 159)

Other issues

Staff transfers

Recommendation 13. We consider that staff currently employed by the AGW should be transferred to the WAO on terms that are no less favourable than those that would apply under TUPE. To this end, we are very concerned that there is still a difference of opinion between the Minister and the AGW as to whether the Bill as drafted achieves this requirement. We urge the Minister and the Auditor General to resolve these differences before stage 2 commences, and we ask that the Minister and the AGW provide us with confirmation that those differences have been resolved as soon as possible. We further ask that the Minister brings forward any necessary amendments to the Bill in order to resolve this matter. (Paragraphs 176-177)

Recommendation 14. We consider that the requirement in the Bill for recruitment and selection procedures and terms of employment of WAO staff to be “broadly in line” with those applying to the Welsh Government might be difficult to achieve and unduly restrictive. We prefer the formulation in the Budget Responsibility and National Audit Act (BRANA) and we recommend the Bill be amended to follow this. (Paragraph 178)

Participation in the NFI

Recommendation 15. We consider it is imperative that the AGW should continue to be able to participate in the National Fraud Initiative. We are concerned that there continues to be a difference of opinion between the Auditor General and the Minister as to whether the changes made to the Public Audit (Wales) Act 2004 by paragraphs 59 to 65 of schedule 4 to the Bill would cause a problem in this respect. We urge the Minister and the Auditor General to resolve these differences before stage 2 commences and we ask that the Minister and the AGW provide us with confirmation as soon as possible that those differences have been resolved. (Paragraph 191-193)

Recommendation 16. We recommend that the Minister brings forward any necessary amendments to the Bill in order to put beyond doubt the ability of the AGW to continue to participate in the National Fraud Initiative. (Paragraph 194)

Taxation matters

Recommendation 17. We recommend that the Bill be amended to include provisions to mitigate any potential corporation and chargeable gains tax liabilities along the lines included within BRANA (paragraphs 2-4 of schedule 4) for the NAO. This will require the AGW to identify the relevant assets to be transferred to the WAO. We note that a requirement to do this was included in Schedule 4 to BRANA. However, if this is difficult to achieve for reasons of legislative competence, we urge the Minister to liaise with the UK Government to explore alternative means of overcoming this issue. (Paragraph 201)

Amendments to the Freedom of Information and Equality Acts

Recommendation 18. We consider that, for practical reasons, it would be preferable for the AGW and WAO to be treated as a single entity for the purposes of FOIA and Equality Act duties and we recommend that the AGW liaise with the Information Commissioner to see if this can be achieved. (Paragraph 208)

Financial implications of the Bill

Recommendation 19. We are content with the figures provided by the Minister, particularly as the AGW's estimate contains a number of contingencies that may not be needed. However, we consider that resolution of TUPE and taxation issues would go some way towards convergence of the Minister's and AGW's estimates and we urge the Minister, following further discussions with the AGW, to bring forward a revised schedule of costs in advance of stage 2. (Paragraph 220-221)

1. Introduction

Background

1. On 9 July 2012, the Minister for Finance and Leader of the House, Jane Hutt AM (“the Minister”), introduced the Public Audit (Wales) Bill¹ (“the Bill”) and made a statement² in plenary the following day.
2. At its meeting on 19 June 2012, the Assembly’s Business Committee agreed to refer the Bill to the Public Accounts Committee (“the Committee”) for consideration of the general principles (Stage 1), in accordance with Standing Order 26.9. The Business Committee agreed that the Committee should report to the Assembly by 23 November 2012.

Terms of Reference

3. The Committee agreed the following terms of reference for our Stage 1 scrutiny:

To consider the general principles of the Bill and the need for legislation to strengthen the accountability and governance arrangements relating to the Auditor General for Wales and Wales Audit Office, and other related matters, by reference to:

1. The individual provisions set out in the Bill—
 - Sections 2-12, relating to the Auditor General for Wales,
 - Section 13-28, relating to the Wales Audit Office and its relationship with the Auditor General, and
 - Sections 29-37, which make miscellaneous and general provision.
2. Any potential barriers to the implementation of these provisions and whether the Bill takes account of them.
3. The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill).

¹ Public Audit (Wales) Bill, available at:

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Id=4174>

² Record of Proceedings (ROP), 10 July 2012, available at:

<http://www.assemblywales.org/bus-home/bus-chamber-fourth-assembly-rop.htm?act=dis&id=236353&ds=7%2F2012#04>

(NB: unless otherwise stated, subsequent references in this report to ROP refer to the proceedings of the Public Accounts Committee)

4. The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Part 1, Section 5 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation).

The Committee's approach to evidence gathering

4. On 23 July 2012, the Committee launched a call for written evidence based on its agreed terms of reference. A list of those who responded is available at Annexe A.
5. The Committee also took oral evidence from a number of witnesses; a schedule of oral evidence sessions is attached at Annexe B.
6. In reporting on the Bill, the Committee has taken account of the views of all those who gave evidence to it and have sought to reflect the key issues raised in evidence.
7. The Committee would like to thank all those who took the time to respond to its call for evidence and assist with its work.

2. Background

The Assembly's legislative competence to make the Bill

8. The principal powers enabling the Assembly to make a Bill in relation to audit, examination, regulation and inspection of auditable public authorities and in relation to the Auditor General for Wales (AGW) are contained in section 108 of and Schedule 7 to the Government of Wales Act 2006 ("GOWA 2006").

Policy Objectives of the Bill

9. The main policy objectives of the Bill are to strengthen and improve the accountability and governance arrangements relating to the AGW and the Wales Audit Office (WAO). In doing so however, the Explanatory Memorandum states that "the Welsh Government is also acutely aware of the need to preserve and protect the independence and objectivity of the AGW".³

10. According to the Explanatory Memorandum, these changes are necessary in order to address a series of concerns raised in relation to the AGW and the WAO which "arose principally from the way in which a previous AGW undertook aspects of his duties which highlighted a lack of robust external accountability".⁴ These concerns relate to the following:

- **Accounting issues:** The Explanatory Memorandum states that there has been a "range of failures"⁵ relating to the responsibilities of the AGW as the WAO's Accounting Officer. These included accounts not complying with the Financial Reporting Manual; expenditure on early retirement settlements; pension entitlements; and other cash received from the public purse which had not been fully accounted for.
- **Propriety issues:** A report tabled by the current AGW in February 2011 sets out that a former AGW concealed information wilfully from the WAO's Audit Risk and Management Committee and senior AGW staff. This information is in addition

³ Welsh Government, [Explanatory Memorandum – Public Audit \(Wales\) Bill](#), 9 July 2012, paragraph 20

⁴ Explanatory Memorandum, paragraph 11

⁵ Explanatory Memorandum, paragraph 15

to details included in a report published in March 2011 by the Assembly's Public Accounts Committee which concluded that a former AGW had misled the Assembly and that his actions amounted to misbehaviour.

- **Governance structures:** The AGW's advisory committees (audit risk and management, resources and remuneration) currently have no legal basis and appointments to these committees are entirely in the gift of the AGW, with no objective, independent and external appointments process. According to the Explanatory Memorandum this situation "is not consistent with accepted best practice".⁶

11. By addressing these issues, the Explanatory Memorandum states that the Bill aims to substantially reduce the prospect of similar difficulties happening again and to provide greater assurances to the Assembly and the public about the accountability of the AGW and WAO.

12. The Explanatory Memorandum further states that subject to the approval of the Bill by the Assembly, the Welsh Government intends that these new arrangements come into force by 1 April 2014.⁷

The Bill

13. To achieve the policy objectives outlined above, the Bill makes the following provisions across three Parts:

14. **Part 1** (sections 2 to 12) of the Bill relates to the office of the AGW and his or her general functions. It provides for the continuation of the office of AGW as a corporation sole and provides, as now, for the AGW to be appointed by the Queen on the nomination of the Assembly.

15. The Bill also includes provision that will establish arrangements for the appointment, termination and tenure of that office. In particular, the Bill states that an AGW may hold the office for a maximum of eight years and that a person may only hold the office once.

⁶ Explanatory Memorandum, paragraph 18

⁷ Explanatory Memorandum, paragraph 35

16. This part also expressly safeguards the AGW's independence from the Welsh Government and the Assembly by providing the AGW with complete discretion in the manner of the exercise of his/her functions. It also makes provision for the AGW to become the statutory auditor of local government bodies in Wales, as opposed to the present legislation which requires the AGW to appoint the statutory auditors and oversee their work.

17. **Part 2** (sections 13 to 28) provides for the establishment of the WAO as a body corporate consisting of seven members, with responsibility for providing resources for the exercise of the Auditor General's functions (Section 21). The Bill would thus formally separate the WAO's responsibilities from those of the AGW. Five of the WAO's members would be non-executives appointed by the Assembly on merit through open and fair competition whilst the remaining two board posts would be taken by the AGW (who will also be the WAO's Chief Executive) and an additional WAO employee member recommended by the AGW for appointment by the non-executive members.

18. The Explanatory Memorandum states that the WAO will be responsible for employer, financial and other administrative functions currently vested in the AGW, with the intention to ensure that such powers would no longer rest solely in the hands of one individual. In particular, the Bill provides the newly constituted WAO with the following responsibilities:

- to monitor and advise the AGW;
- to employ the WAO's staff;
- to secure the provision of services; and
- hold property for the purposes of carrying out its functions and those of the AGW.⁸

19. The Bill also requires both the AGW and WAO to prepare an annual income and expenditure estimate for consideration by the Assembly and inclusion in the Assembly's Annual Budget Motion.

20. In addition, the Bill requires the WAO, together with the AGW, to produce an annual plan which both parties must have regard to in the

⁸ Explanatory Memorandum, paragraph 22

exercise of their functions, that will set out the intended programmes of work for the WAO and the AGW, the resources available and how they will be used. The WAO and AGW are then required to report to the Assembly (one annual report and two interim reports) on the progress made against the plan.

21. **Part 3** (sections 29 to 37) includes general and consequential provisions relating to the functions of the Assembly which would allow it, by standing orders, to make provisions regarding the functions conferred on it in relation to the AGW and WAO by the Bill. This part also outlines the Bill's commencement provisions and procedures for making subordinate legislation.

3. General principles and the need for legislation

Evidence from respondents

22. The majority of respondents expressed support for the general principles of the Bill and the need for legislation in this area, although many had specific concerns about the key provisions in the Bill.

23. Those supporting the need for legislation said that the Bill would:

- strengthen the accountability and governance arrangements for the AGW and WAO;
- provide for the Assembly to have an increased role in scrutinising the AGW/WAO's use of resources.

24. One respondent argued that most of the issues the Bill seeks to address could be brought about without the need for legislation.

25. In his evidence, the AGW said that he welcomed the stated intention of the Bill to place the governance arrangements of the Wales Audit Office onto a statutory footing, but that he had some "points of concern regarding the Welsh Government's proposals" which, he said, "present some significant problems", particularly the proposed governance model, the size and composition of the board and the estimated costs of implementing the Bill.⁹

26. The Institute of Chartered Accountants in England and Wales (ICAEW) were similarly supportive of the general principles, saying "we support the need for legislation to put on to a sound footing practices that are currently in place in the sense of custom and practice", but they too expressed doubts with some of the provisions in the Bill, particularly in relation to the proposed governance model and its impact on auditor independence.¹⁰

27. Both Prospect and the Public and Commercial Services (PCS) Unions expressed support for the general principles of the Bill, with Prospect saying:

⁹ Written evidence, PA2

¹⁰ Written evidence, PA6 and RoP, paragraph 3, 1 October 2012

“We support the Bill’s intention to strengthen and improve the accountability and governance arrangements relating to the AGW and WAO.”¹¹

28. However, both had quite detailed comments to make about provisions in the Bill, with the PCS saying:

“We share the concerns raised by the AGW and others... we do not agree with some of the governance proposals, in particular the creation of an executive board”.¹²

29. Whilst Professor David Heald told us that he believed in “accountability, transparency and good governance in a public audit” office, he said that, in his opinion, the Bill was “fundamentally misguided” and argued that most of the issues the Bill seeks to address could be dealt with internally in the Wales Audit Office without the need for legislation.¹³

30. He argued that legislation would only be needed in order to establish a Welsh commission for public audit, similar to those in existence in the UK and Scottish Parliaments.¹⁴ This is covered in more detail in Part 6 of this report.

The draft Bill

31. The introduction of the Public Audit (Wales) Bill was preceded by the publication of a draft Bill and consultation document¹⁵ in March 2012. We considered the draft Bill and responded to the Minister’s consultation.¹⁶

32. Following this consultation, the Minister made a number of changes to the Bill as introduced, which we welcome, including:

- Conferring the functions relating to the supervision and oversight of the Auditor General and the WAO on the Assembly rather than the PAC. Section 29 would then allow the Assembly,

¹¹ RoP, paragraph 90, 1 October 2012

¹² RoP, paragraph 88, 1 October 2012

¹³ RoP, paragraph 3, 16 October 2012

¹⁴ Written evidence, PA10 and RoP, paragraphs 3 to 7, 16 October 2012

¹⁵ Welsh Government consultation on the Draft Public Audit (Wales) Bill

¹⁶ [Public Accounts Committee response to the Welsh Government consultation on the Draft Public Audit \(Wales\) Bill](#)

- through its standing orders, to decide how to exercise those functions (however, see ‘Our view’ in Part 6 below);
- Providing for the WAO’s external auditors to be appointed by the Assembly rather than the WAO Board;
 - Providing for the Auditor General’s tenure of office to be a non-renewable 8-year term of office, rather than 7 years (this accords with a previous PAC recommendation and would allow the present Auditor General to serve out his present contractual term); and
 - Strengthening the PAC’s powers to summon witnesses and call for documents.

33. However, the draft Bill also contained a number of much needed provisions that would have rationalised, consolidated and updated the existing plethora of accounting and audit legislation. These were excluded from the Bill that was formally introduced and the Minister explained that this was due to possible legislative competence issues. She said:

“... our proposals raised a number of competence matters that have to be resolved with the Wales Office and other UK Government departments. Our main aim has always been to address the concerns about governance, accountability and oversight, and in order to prevent any delay in achieving that aim, the Bill has undergone some restructuring to focus mainly on those matters. The substantial consolidation and simplification processes and provisions will be returned to once this Bill has been fully considered by the Assembly.”¹⁷

34. As part of her oral evidence, she clarified that the main outstanding issue in relation to competence in respect of the Bill as introduced was in respect of changes to the audit arrangements for Chief Constables in Wales. She confirmed that work was being undertaken with the Wales Office on this matter.¹⁸

¹⁷ Record of Proceedings (ROP), 10 July 2012, available at: <http://www.assemblywales.org/bus-home/bus-chamber-fourth-assembly-rop.htm?act=dis&id=236353&ds=7%2F2012#04>

¹⁸ RoP, paragraph 73, 24 September 2012

Our view

35. We acknowledge the broad support expressed by respondents for the principle of strengthening and improving the accountability and governance arrangements for the Wales Audit Office whilst maintaining the independence and objectivity of the AGW.

36. On this basis, **we recommend that the Assembly agrees the general principles of the Public Audit (Wales) Bill.**

37. In making this recommendation, we stress that the Auditor General is, and will continue to be, an independent statutory office holder who is *personally* responsible and accountable to the Assembly for the discharge of statutory functions, including the audit of accounts and programme of value for money studies. As such, the Auditor General must continue to have complete discretion as to the manner in which the functions of that office are exercised.

38. Whilst this is set out clearly in section 8, we consider that it would not be acceptable for the Bill to contain any other provision that could be used to fetter the Auditor General's independence. This issue is considered further in Part 4 of this report.

39. In relation to the provisions in the draft Bill that were excluded from the Bill as introduced, we note the Minister's evidence that this was for reasons of legislative competence.

40. Due to the importance of these provisions for rationalising, consolidating and updating existing accounting and audit legislation, we are keen to ensure that these issues of competence are resolved as quickly as possible so that they can be included in a suitable Bill to be brought forward during this Assembly.

4. Governance of the Wales Audit Office

Background

41. At present, the AGW is a corporation sole. In addition to the statutory audit functions, the office holder has powers to employ staff, enter into contracts and hold property. The present WAO is not a legal entity but is the name adopted to refer to the AGW and his staff.

42. Under the provisions in the Bill¹⁹, the AGW would continue as a corporation sole with the office holder having personal responsibility for forming audit judgements, opinions on accounts and producing audit reports. However, the WAO would be reconstituted as a statutory corporation with an appointed Board. The WAO would be responsible for providing resources for the exercise of the Auditor General's functions. As such, the WAO, rather than the AGW, would employ staff, hold property and enter into contracts.

Evidence from respondents

Governance Model

43. Most of the evidence we have received has centred on the provisions in the Bill that would reconstitute the WAO as a corporate entity separate from that of the Auditor General.

44. The majority of respondents expressed support for the principle of placing the governance arrangements for the WAO on a statutory footing via the creation of a WAO Board in the Bill. However, views varied about whether such a Board should be executive, supervisory or advisory in nature.

45. Whilst some respondents indicated they were content with the executive board model proposed in the Bill, most of those who commented on this point indicated that they would prefer provision for a supervisory or advisory board with strong powers to advise and monitor (including powers to require attendance of the AGW and officials and the production of documents) as well as the power to express its concerns to the Assembly at any time and a duty to prepare an annual report on its work.

¹⁹ Section 13 and Schedule 1, part 1 of the Public Audit (Wales) Bill

46. In commenting on the executive board model proposed in the Bill, the main issue highlighted by witnesses was the need to strengthen the arrangements for accountability of the WAO whilst at the same time preserving the independence and objectivity of the AGW.

47. Most evidence in this regard centred on sections 25 (Annual Plan) and 26 (Annual Plan: resources to be allocated to the Auditor General) of the Bill. There were serious concerns expressed by witnesses that the requirements in these (and related) sections could have the unintended effect of the Board being able to compromise the Auditor General's independence. In turn, this could have the perverse effect of diluting rather than strengthening the AGW's accountability to the Assembly.

48. In relation to the proposed governance model, the Audit Commission were of the view that:

“Establishing the Wales Audit Office as a body corporate is in line with good corporate governance principles and will enhance the accountability of the AGW by making him or her subject to an appropriate level of oversight by a board.”²⁰

49. However, they highlighted the need for consideration to be given to:

“...the balance between executive and supervisory functions...The independence of the AGW should also be safeguarded and so it is reasonable for the AGW to report his or her proposed work programme and budget to the board but the deployment of resources in support of the work programme should be a matter for the AGW. There is a risk that the AGW's operational independence could be threatened if he or she is not ultimately responsible for the deployment of resources.”²¹

50. In his evidence, the AGW stated:

“I think it is highly appropriate to establish a board for the WAO on a statutory basis, as this will enable the firm institution of

²⁰ Written evidence, PA13

²¹ *ibid.*

governance arrangements to provide oversight of the AGW and senior management of the organisation. This would overcome the principal weakness of the current legislation, which is that while it enables the AGW to establish governance arrangements, such as advisory committees, it also enables the AGW to abandon or bypass them.”²²

51. However, he went on to say that the proposals in the Bill “present some significant problems”:

“Most fundamentally, the Bill provides for a WAO board with executive functions of running the audit office, while at the same time specifying that the board will consist predominantly of non-executive members. The proposed board therefore falls between two objectives—oversight of the AGW (the function of a “supervisory” board) and running the Audit Office (the function of an “executive” board)—and is likely to serve neither particularly effectively. The oversight functions of the proposed board will also be compromised by its executive functions.”²³

52. He emphasised this point in his oral evidence, saying:

“...the Bill’s objective for providing a better statutory basis for governance is right. It could be relatively easily achieved by providing for a supervisory board; one that is focused on the oversight functions rather than compromising it by exercising the executive functions. It is not only practical and affordable, but the best way forward.”²⁴

53. However, he went on to say:

“I have no objection to an executive board, if it was properly constructed. This Bill fails to deliver either. As a result, it runs a number of risks in terms of fettering judgment—not least in the extent to which my work needs to be agreed with the board. I am suggesting that the model that is provided with the

²² Written evidence, PA2

²³ *ibid.*

²⁴ RoP, paragraph 144, 24 September 2012

NAO [National Audit Office] is one solution, and it has been shown to work.”²⁵

54. The ICAEW were also very critical of the governance arrangements proposed in the Bill. They said:

“The model proposed by the Welsh Government is not reflected anywhere else within the UK. Indeed, ICAEW’s view is that it undermines the foundation of independent public audit. We are concerned that the previous experiences could unintentionally be leading to creation of legislation which will reduce the AGW’s direct accountability to the National Assembly. Our recommendation, therefore, is that the Board’s role needs to be one of oversight rather than one of management to allow the AGW to determine the scope of work and how it should be carried out.”²⁶

55. The criticisms of the ICAEW focussed on the issue of maintaining auditor independence. On this point, they stated that “the Bill does not actually improve accountability and governance and does not protect the independence and objectivity of the AGW.” They argued that the functions assigned to the Board in the Bill would mean that “the WAO board is in the driving seat” in a number of key respects. They went on to say:

“...both accountability and independence are compromised as the Board is effectively ultimately:

- in control of AGW’s work programme;
- in control of AGW’s ability to delegate functions; and
- in some important respects (eg, provision of services) can make decisions without the AGW’s agreement.”²⁷

56. The Association of Chartered Certified Accountants (ACCA) told us that they “endorse the Institute of Chartered Accountants of England and Wales (ICAEW) concern that the legislation doesn’t quite

²⁵ RoP, paragraph 157, 24 September 2012

²⁶ Written evidence, PA6

²⁷ *ibid.*

go far enough to protect auditor independence.” On this point, they said:

“[Sections] 25 and 26 seem to suggest that the Board can directly intervene on the AGW work programme. In our view the Board’s role should be one of oversight and not one of management – the auditor general should be free to determine the scope of work and how it should be performed.”²⁸

57. Both PCS and Prospect were critical of the governance model proposed in the Bill. In their evidence, PCS stated:

“We do not agree with some of the governance proposals, in particular the creation of an executive board for the WAO and the separation of the WAO from the AGW’s functions.”²⁹

58. They went on:

“A much simpler solution, and one that ensures genuine accountability, would be to have a supervisory and advisory board, with the AGW retaining executive responsibility.”³⁰

59. Prospect told us:

“The difficulty in terms of accountability is that this Bill restricts [the AGW’s] freedom to act. We want to see the Bill enabling him to act as he sees fit, while at the same time being subject to scrutiny. The model has a board that has both executive and scrutiny functions. We believe that the model should separate the two concepts out: the board should be about ensuring that the auditor general is accountable for the exercise of his independent authority.”³¹

60. The WLGA stated that they “welcome the move to establish a board for the WAO on a statutory basis”, saying that this would “bolster the current governance arrangements”.³²

61. However, they argued that:

²⁸ Written evidence, PA12

²⁹ RoP, paragraph 88, 1 October 2012

³⁰ RoP, paragraph 96, 1 October 2012

³¹ RoP, paragraph 94, 1 October 2012

³² Written evidence, PA9

“...the Bill provides for a board that is tautological in nature. The proposed board seems to have two objectives: oversight of the AGW and managing the Audit Office. It is likely the latter ‘executive’ functions will clash with its ‘oversight’ functions.”³³

62. The WLGA argue that “focussing on the supervisory role would allow the board to concentrate on considering whether the AGW was running the organisation properly.” They also suggested that a supervisory board would not have the financial implications of the proposed executive board.³⁴

63. In his evidence, Professor David Heald was also very critical of the arrangements in the Bill which, he argued, “confuses governance with executive functions, and oversight with advice.” He said:

“I could understand a proposal to abolish the corporation sole status of the AGW (though I would oppose it), but putting a corporate board on top is not strengthening governance but weakening it. In this case, two mechanisms are not better than one but risk the dilution of accountability.”³⁵

64. He went on:

“The whole point about public audit is that its independence is fundamentally important. If you establish a corporate structure with powers to control resources available to the auditor general, you run the danger of damaging that audit independence... I would be worried about whether tensions were building up between the board and the Auditor General for Wales. The chair of the board and the auditor general would not particularly want to share those with the committee, and then you would get a crisis.”³⁶

65. In Professor Heald’s view, “if the WAO is to have a board, this should be advisory, with executive authority in the hands of the AGW and oversight exercised by the Assembly. Advice should be given careful consideration, but the decision-making authority, together with

³³ Written evidence, PA9

³⁴ *ibid.*

³⁵ Written evidence, PA10

³⁶ RoP, paragraphs 19 to 20, 16 October 2012

accountability for decisions, should rest unambiguously with the AGW.”³⁷

Code of Practice, including Dispute Resolution

66. Related to the concerns with the executive model proposed in the Bill, in particular the requirement in section 25 for the AGW and WAO to agree the AGW’s work programme and resources and the implications of this for auditor independence, many respondents commented on the Code of Practice provided for in the Budget Responsibility and National Audit Act 2011 (BRANA) and the lack of equivalent provision in the Bill.

67. In his evidence, the Comptroller and Auditor General (C&AG) stated that one of the key differences between the Bill and BRANA is the “Code of Practice dealing with the relationship between the C&AG and NAO: under Schedule 3 clause 10 of BRANA, the C&AG and NAO are required to jointly prepare a code of practice dealing with the relationship between the NAO and C&AG, a provision on which the ... Bill is silent.”³⁸

68. He went on to say that the primary driver for the Code of Practice was to ensure that the C&AG was not fettered in delivering his role, and that the existence of the code made the exercising of his different roles “pretty easy, for the most part”. He added that a supervisory body model could work, but that with a corporate body model, a code of practice is “mutually protective” and makes clear what is expected of everyone.³⁹

69. Further to this, the C&AG stated that he felt the Bill was “too fuzzy” in terms of how it would deal with any disputes and that the Code of Practice provided a good foundation to ensure that there were no disputes between the Auditor General and the Board.⁴⁰

70. In his evidence, the AGW discussed the arrangements in place for the NAO, and in particular, the Code of the Practice in BRANA:

³⁷ Written evidence, PA10

³⁸ Written evidence, PA11

³⁹ RoP, paragraphs 109, 114 to 118, 16 October 2012

⁴⁰ RoP, paragraphs 125 and 131, 16 October 2012

“While the proposals [in the Bill] have some similarities with the UK National Audit Office’s arrangements, there are substantial differences. For example, with the NAO, a statutory code deals with the relationship between the Comptroller & Auditor General (C&AG) and NAO board... The existence of this code is an indication of the need to manage the tension that the corporate body places on the C&AG’s independence.”⁴¹

71. He went on:

“The other thing that I would say is that codes have a distinct advantage: they are not on the face of primary legislation and they can therefore be updated more easily. They still have a statutory basis, but they can be updated more easily than if they had a formal primary legislative basis.”⁴²

72. On the question of disputes between the AGW and the Board over matters relating to the work programme and resources, the AGW commented on the Minister’s evidence to us that, in the event that such a dispute could not be resolved, “we would expect that the members of the WAO and AGW would have to consider their position” or be subject to judicial review.⁴³ He said:

“I do not think that the first option is terribly helpful in terms of getting studies done and ensuring public scrutiny of public expenditure, and neither is the second option. In fact, I do not think that the second option is practical at all, because it is usual to take legal advice before going to court, but the AGW is reliant in terms of services, which encompass legal services, on what is provided by the WAO board... So, no, within the Bill as it stands, there is no suitable dispute resolution mechanism.”⁴⁴

73. In the AGW’s opinion:

“... if you wish to go down the corporate executive model, then something that is closer to BRANA is desirable. Part of the advantage of that is the code, which is intended to reflect the comptroller and auditor general’s discretion—how the auditor’s

⁴¹ Written evidence, PA2

⁴² RoP, paragraph 182, 24 September 2012

⁴³ RoP, paragraphs 93 and 97, 24 September 2012

⁴⁴ RoP, paragraph 174, 24 September 2012

audit independence is being safeguarded—and to ensure that the board’s decision-making does not stray into those areas.⁴⁵

74. In relation to the resolution of any disputes between the auditor and the Board, the ICAEW said they would be “in favour” of provision for a statutory code “because it would take away a lot of uncertainty and could deal with some of the potential ambiguities in a more measured way before they become a practical problem... Interestingly ... the [NAO] code is quite short, but I think it is a very clear document and we would be in favour of a similar document operating here.”⁴⁶

75. Both Unions were similarly supportive of making provision in the Bill for a Code of Practice, which PCS said “would regulate in a little more detail some of the ambiguities that are in the Bill at the moment: exactly what powers would be delegated; how the auditor general would retain his or her independence in terms of audit judgment and the selection of topics to audit; and so on...”⁴⁷

76. Professor David Heald agreed that “...if you are to continue with the present model, you will need a statutory code of practice...”⁴⁸

Quality Assurance – Compliance with International Auditing Standards

77. Related to the issue of auditor independence, the ICAEW expressed concern as to whether the Board might be able to compromise the AGW’s ability to put adequate quality assurance arrangements in place, as required by International Auditing Standards. In their opinion, this would be unacceptable in any event but specifically it might have the effect of barring the AGW from auditing public sector companies under the Companies Act 2006.

78. On this point, the ICAEW stated:

“... a corporate body with decision-making abilities on the procurement of services as set out in the Bill may compromise the AGW’s ability to engage independent monitoring and review function of the activities of the WAO. Such monitoring is a key

⁴⁵ RoP, paragraph 182, 24 September 2012

⁴⁶ RoP, paragraph 33, 1 October 2012

⁴⁷ RoP, paragraph 109, 1 October 2012

⁴⁸ RoP, paragraph 22, 16 October 2012

measure to help ensure that the WAO meets professional standards. We would hope that any WAO board would agree with the AGW that such monitoring was appropriate and would secure the services accordingly, but it is not satisfactory that the corporate body board should be put in a position to intervene on the matter.”⁴⁹

79. They went on:

“As currently drafted, if, in future, the Auditor General for Wales was requested to carry out audits of public sector companies here in Wales, it is our view that the current proposals in the Bill would not satisfy the requirements of the Companies Act because, under the current proposed model, the Auditor General for Wales’s ability to discharge the audit of that company under the Companies Act would not comply with the ethical code of practice or the requirement in the Act to be seen to be an independent auditor in that situation.”⁵⁰

80. On this point, the Minister wrote to the Committee to reassure us that sections 8, 18, 20 and 25 of the Bill provide for compliance with International Auditing Standards.⁵¹

81. However, the AGW responded to this, saying:

“I certainly do not think it is the case that the [sections] ensure that the Auditor General is able to put in place arrangements to secure compliance with International Auditing Standards.”⁵²

82. He went on:

“The key point is that whatever delegations are necessary to make such arrangements are subject to the approval of the WAO. There is therefore no guarantee that the Auditor General will actually be able to make such arrangements, as the necessary delegations will be subject to the WAO’s approval.”⁵³

⁴⁹ Written evidence, PA6

⁵⁰ *ibid.*

⁵¹ [Letter from the Minister, 31 October 2012](#)

⁵² [Letter from the Auditor General for Wales, 7 November 2012](#)

⁵³ *ibid.*

Evidence from the Minister

Governance Model

83. Given the evidence we had heard in support of a supervisory board model for a future Wales Audit Office, we asked the Minister why she did not support such a model. She stated:

“One of the issues with an advisory or supervisory board is that it would not have any executive functions. That is the key point. With no executive functions, it could leave all the auditor general’s existing administrative financial functions solely in the hands of one person. That is with all of the risks that we had in the past, which could be present again...”⁵⁴

84. She continued:

“I appreciate fully what the current Auditor General for Wales has done since his appointment, in terms of recognising the governance and accountability weaknesses that he inherited. However, the governance that we seek is for the future auditor general. We believe that the Bill remedies governance weaknesses. The Wales Audit Office would have the duty to monitor and the power to advise the Auditor General for Wales. It would have powers to establish committees or sub-committees relating to the governance of its affairs and those relating to Auditor General for Wales matters. The Wales Audit Office would be able to provide greater and regular assurances to the Assembly and others on risk management, internal control and governance.”⁵⁵

85. Responding to the concerns expressed in evidence about the potential for certain provisions in the Bill to compromise the AGW’s independence, the Minister said she wished to provide some reassurance on this point:

“The auditor general would have complete discretion regarding the manner in which the functions of the office were exercised. It would be the duty of the Wales Audit Office ... to provide the resources for those functions to be carried out. Most of those

⁵⁴ RoP, paragraph 257, 22 October 2012

⁵⁵ RoP, paragraph 257, 22 October 2012

resources would relate to the cost of employees to assist the auditor general. So, as the budget holder, it would be appropriate for the Wales Audit Office, with the auditor general as the chief executive and accounting officer, to consider and approve the scheme of delegation.”⁵⁶

86. She continued:

“However, complete discretion is placed on the auditor general by section 8 and a duty is placed on the WAO to provide necessary resources under section 21. Also, the auditor general must have regard to standards and principles in terms of expert professional providers, and the WAO is under a duty, under section 25(2)(d), to support the auditor general’s quality control functions. So, throughout the Bill, we have sought to ensure that the auditor general has that independence, discretion and authority to deliver with the support of the Wales Audit Office.”⁵⁷

87. However, the Minister told us that she had asked her officials to prepare “suitable amendments” to the Bill in order to address what she said were the “two most pressing matters [arising from the evidence] relating to the Bill’s continuing protection of the auditor general’s independence alongside a corporate Wales Audit Office.”⁵⁸

88. On this point, the Minister referred to sections 25(1) and 26 of the Bill, saying:

“To explain those amendments with regard to crucial arrangements for the annual plan and resources allocated to the auditor general, section 25, relating to the annual plan, currently requires the auditor general and the WAO to agree an annual plan for each financial year. I have been asked what might happen should the auditor general and the WAO not agree a plan. I remain firmly of the view that such non-agreement is a remote possibility, but I have asked officials to look at section 26, which deals with the annual plan resources

⁵⁶ RoP, paragraph 266, 22 October 2012

⁵⁷ *ibid.*

⁵⁸ RoP, paragraphs 239 and 240, 22 October 2012

to be allocated to the auditor general. I have asked my officials to consider striking out the whole of section 26.”⁵⁹

Code of Practice, including Dispute Resolution

89. In relation to the evidence about a Code of Practice, during her first evidence session, the Minister said that she had considered making provision in the Bill for a code similar to that in Schedule 3 to BRANA but that she “did not feel that it was appropriate or necessary. Indeed, we thought it might be too prescriptive.”⁶⁰

90. In her later evidence, however, she said that she had given further consideration to the matter of a code, but that she had tried to cover many of the provisions of BRANA in the Bill to make “a more streamlined, simple and straightforward piece of legislation”. On this point, she said:

“... going back to the Budget Responsibility and National Audit Act 2011, its code includes details of how financial estimates would be prepared and how resources could be provided for the auditor general. In Wales, sections 20, 21 and 25 of the Bill address that, as do section 18 on the scheme of delegation and sections 23 and 24 on fees. So, there is quite a lot on the face of the Bill and Schedule 2 lays that out.”⁶¹

91. She went on:

“If you feel that it would be helpful if we were to bring forward a Government amendment on this, then we could look at areas that are not covered and at whether we need to express them in a code as well as on the face of the Bill. However, it is something that needs work...”⁶²

92. She confirmed that she had asked her officials to consider an amendment at stage 2 to make provision for a statutory code to define the relationship between the AGW and the WAO in order to address some of the concerns expressed in evidence.⁶³

⁵⁹ RoP, paragraph 261, 22 October 2012

⁶⁰ RoP, paragraph 95, 24 September 2012

⁶¹ RoP, paragraphs 267 and 278 to 280, 22 October 2012

⁶² RoP, paragraph 279, 22 October 2012

⁶³ RoP, paragraphs 267 and 278, 22 October 2012

Quality Assurance – Compliance with International Auditing Standards

93. In relation to concerns about the ability of the AGW to participate in a robust quality assurance scheme, and in addition to the correspondence from the Minister referred to in paragraph 80, the Minister said:

“We believe that the auditor general is independent, and if he or she ever has to carry out audits of public sector companies, his or her independent status would enable compliance with the Companies Act. That is the assurance that we have had.”⁶⁴

Our view

94. The relationship between the Auditor General and the WAO Board is different from the conventional relationship between a board and its chief executive. Under the conventional relationship, the chief executive would be appointed by the board and accountable to it for the management of the organisation and the delivery of its strategy. However, the Auditor General has a personal responsibility for the discharge of functions conferred on that office holder.

95. Furthermore the Auditor General is appointed on the nomination of the Assembly, can only be removed from office by the Assembly and is accountable to the Assembly. The office holder has a vital responsibility for providing independent assurance about the spending of public money. To do that job properly he or she must, within the overall resource envelope approved by the Assembly, be given the freedom to exercise his or her statutory functions as he or she sees fit. That includes deciding on the content of the work programme (after taking account of the views of PAC and others), the scoping of studies and the resourcing of audit assignments.

96. There must be no possibility of the AGW’s independence being fettered as a result of any legislative provisions in respect of the governance of the WAO.

97. We have considered carefully the views of a number of witnesses that a simpler model of imposing a statutory, Assembly appointed

⁶⁴ RoP, paragraph 282, 22 October 2012

supervisory board over the existing structure would be a more straightforward option to that proposed in the Bill.

98. We consider that a supervisory board, if properly constituted, would certainly go a long way towards addressing the problems of the past and, as such a Board would have no executive functions, it could not fetter the AGW's independence. Also, there would be no issues arising from the transfer of staff to a new corporate entity.

99. However, we accept that the Minister's proposal to reconstitute the WAO as a corporate body with an appointed board could be made to work, provided that it operated along the lines of the model recently introduced for the UK NAO. We consider this approach would necessitate a number of changes to the Bill to prevent any possibility of the Board fettering the AGW's independence and our support for the corporate body model proposed in the Bill is predicated on these changes being made.

100. In particular, changes will be needed to clearly distinguish between those matters which should be the responsibility of the Auditor General alone and those where the WAO Board could have a legitimate role.

101. Furthermore, we believe that the role of the WAO Board should primarily be to provide advice to the Auditor General and to ensure that appropriate governance arrangements are in place for the organisation. It should not be given any powers that could be used to modify or veto the Auditor General's statutory work programme and associated resource requirement.

102. Related to this, we consider the AGW must be free to ensure that he or she is able to comply with best practice including International Auditing Standards. In this context, we note the ICAEW's view that the Bill as introduced might prevent the AGW from being able to audit public sector companies in future as there would be the possibility of the WAO Board having too much say in matters relating to the AGW's personal statutory functions.

103. Therefore, we strongly recommend that the Minister makes the following amendments to the Bill at Stage 2.

Recommended amendments for Stage 2

104. We believe the AGW should have the discretion to delegate his or her statutory functions. The requirement in section 18(2) for WAO approval of AGW delegations has the potential to fetter that discretion and therefore the exercise of those functions. On this basis, we recommend that section 18(2) be removed from the Bill.

105. In relation to the provision of services, we do not believe it would be appropriate for the WAO to agree to an arrangement with a relevant authority that could compromise the exercise of the AGW's audit functions. On this basis, **we recommend that section 19 of the Bill be amended so that the AGW must agree to any arrangements made between the WAO and a relevant authority.**

106. In relation to the annual plan (section 25), we believe that such a plan should clearly distinguish between matters that are for the Auditor General alone, including the work programme and resources needed where s/he undertakes work required by statute and matters where the Board has a legitimate role (e.g. acquisition of property, IT and certain other WAO administrative expenses, and possibly audit work undertaken by agreement).

107. In respect of the statutory audit work, the AGW has a personal responsibility and accountability to the Assembly for the discharge of those functions. This work should be foremost in the allocation of the WAO's resources and the Board should not be able to fetter it in any way.

108. Therefore we recommend that section 25 should be amended so that the AGW and WAO are required jointly to prepare an annual plan rather than being required to "agree" it.

109. Further to this, and in relation to the allocation of resources to the AGW, **we recommend that the Bill be amended so as to remove section 26, which we consider to be unacceptable as it gives rise to the possibility that the Board could fetter the independent exercise of the AGW's statutory functions.** It also raises the possibility of a dispute without acceptable means of resolution. **We welcome the Minister's commitment to amend the Bill at stage 2 to remove section 26.**

110. In relation to the provision for a Code of Practice, we agree with the evidence provided by many of the witnesses that such a code would help to clarify the respective roles of the AGW and the WAO Board and thus give effect to section 8 of the Bill.

111. On this basis, we recommend that the Bill should be amended to include a requirement for a Code of Practice for the purposes of giving effect to section 8 and to manage the relationship between the AGW and the WAO Board. We recommend that such a code should be prepared jointly by the AGW and the WAO Board and approved by the Assembly.

112. Further to this, we believe that any subsequent changes to the Code agreed between the AGW and the Board should be approved by the Assembly, and we recommend that the Bill should be amended to provide for this.

113. Finally, we consider it is vital that the AGW is able to do whatever is necessary to ensure audits are carried out to the required professional standards, including the imposition of a quality assurance regime. We consider that section 9(2) could be construed as an impediment to this. Furthermore, we consider this section is unnecessary because the AGW's existing powers to appoint staff and secure services, etc, are to be repealed. On this basis, we recommend that section 9(2) should be omitted from the Bill.

5. The Wales Audit Office – size and composition of the Board

Background

114. Part 1 of Schedule 1 to the Bill provides for the membership of the WAO to comprise 7 members; 5 non-executive members, the Auditor General and one employee member of the WAO.

115. In relation to the employee member, Part 4 of Schedule 1 provides that the employee member is to be nominated by the AGW and that the Board must either appoint that person or appoint another person of their choosing.

Evidence from respondents

116. The evidence we received suggested that the provisions in the Bill relating to the size and composition of the WAO Board were not appropriate. Whilst there was general agreement that the non-executive members should be in the majority on the Board, a number of respondents said they thought there should be provision for more executive members. Some respondents also raised concerns about the role and appointment process for the employee member.

117. The AGW stated that the composition of the Board proposed in the Bill was “highly problematic” for a Board with executive functions. He argued that such a Board:

“...does not have sufficient number of executive members to ensure that senior managers responsible for implementing decisions have a meaningful share of ownership in those decisions. This contrasts with the composition of the NAO board, which has three employee members, who, as they must be recommended by the C&AG, the C&AG may ensure are appropriate senior managers.”⁶⁵

118. He argued that the composition of the WAO Board should be “more balanced”, with “some management members in addition to the AGW”. He suggested:

⁶⁵ Written evidence, PA2

“This could be done by requiring at least two employee members, each to be nominated by the AGW. (In other words, para 1 of Sch 1 should be amended so as to change the board composition and para 14 of Sch 1 should be changed so that non-executives may only appoint employee members nominated by the AGW)...”⁶⁶

119. The ICAEW also expressed concern with the proposed balance of the Board, stating:

“The problem that we see with the board membership model, as it is proposed, is that it is overwhelmingly non-executive, and therefore we believe that there is not the right balance on that board in terms of the accountability in making the organisation work.”⁶⁷

120. Hywel Dda Health Board expressed similar concerns that there were insufficient executive members on the Board and also suggested that “other WAO staff with responsibility for standards and performance should also be part of the board.”⁶⁸

121. As part of his evidence, the Comptroller and Auditor General gave us some insight into the arrangements in place in the NAO. He said under the board membership of the NAO (which has nine members), “most of the leadership of the NAO is represented at the Board” and that this was “helpful”⁶⁹.

122. He said that, in his opinion, there should be a “good number” of executive members of the Board, as these members were able to provide the non-executives with information as to the day-to-day operations of the NAO, but agreed with other respondents that the Board should have a majority of non-executive members.⁷⁰

123. When asked to comment on the membership of the Board as proposed in the Bill, he said that it “sounds out of balance”:

⁶⁶ Written evidence, PA2

⁶⁷ RoP, paragraph 62, 1 October 2012

⁶⁸ Written evidence, PA7

⁶⁹ RoP, paragraph 111, 16 October 2012

⁷⁰ RoP, paragraph 145, 16 October 2012

“It is not the absolute size of the board, but to have that many non-execs and a very small executive representation will mean that the auditor general will be reporting all the time... I would say that the number of your board members should be as close to even as you can get while giving the non-execs a majority. That is just normal good practice.”⁷¹

124. He went on to note that other members of his leadership team who were not Board members were invited to attend Board meetings from time to time by the Chair and that he thought this “generally results in the relationship between the executive and non-executive members being better than it would be otherwise.”⁷²

125. In relation to the role of the employee member of the Board, the C&AG said:

“The problem with having an employee on the board is the question of who are they speaking for? Are they speaking about employment conditions? If so, you would get something from them. However, you could equally do that by inviting someone to do it occasionally, rather than have them sitting through every board meeting, because I suspect that you are not going to be talking about that every time. To be absolutely honest, it sounds a little clunky to me, in getting good, continuous debate. However, I understand that the intention is good, but I probably would not make that a permanent feature, personally.”⁷³

126. The PCS said they considered it essential that an executive board had a greater proportion of executive members, who would need to be senior managers within the WAO, in order to bring sufficient managerial knowledge and experience to the Board.⁷⁴ They argued that a better balance could be achieved with two or three executive members, in addition to the AGW, while still maintaining a majority of non-executive members.⁷⁵

⁷¹ RoP, Paragraph 151, 16 October 2012

⁷² RoP, paragraph 146, 16 October 2012

⁷³ RoP, paragraph 154, 16 October 2012

⁷⁴ Written evidence, PA5 and RoP, paragraph 142, 1 October 2012

⁷⁵ Written evidence, PA5

127. In relation to the employee member, they said they thought such a member “would be better placed on a supervisory or advisory board” and did not believe an employee representative should take part in executive decision-making as this could compromise their position as a representative of the workforce. Instead, they suggested that an employee member could act as an observer on an executive Board.⁷⁶

128. Prospect made a similar point, arguing that the composition of the proposed Board was better suited to a Board with non-executive functions. They welcomed the proposal to have an employee member on the new Board, however they said they believed the proposed appointment procedures were inappropriate if the purpose of the employee member was to represent employee experience. They considered it more appropriate for the employee representative to be a nominated trade union representative or someone elected by the staff.⁷⁷

129. In his written evidence, Professor Heald said that “employee representation on an executive Board that exercises control over the AGW is entirely inappropriate” arguing that such a Board member would be “seriously conflicted: for example, in relation to industrial relations and human resources issues ... and to future reductions in workload and employment.”⁷⁸

130. He expanded on this point in oral evidence, saying, in relation to an elected employee Board member:

“I ...think that that person will be in an exceptionally difficult position... because there will be a question about that person being there in a representational role, to represent the employees as stakeholders, while, at the same time, having collective responsibility as a member of a board with executive functions. So, I think that that arrangement will build tensions and problems.”⁷⁹

131. In relation to the composition of the Board, Professor Heald said:

⁷⁶ Written evidence, PA5 and RoP, paragraph 142, 1 October 2012

⁷⁷ Written evidence, PA3

⁷⁸ Written evidence, PA10

⁷⁹ RoP, paragraph 83, 16 October 2012

“What has been proposed in the Bill, namely five non-executives, one employee, and the auditor general, is a strange composition for an executive board...”⁸⁰

132. He went on to say that, for an executive board, he thought “the balance in the UK is a much better balance—the 5:4 balance—but the numbers might be too big in the context of Wales.”⁸¹

Evidence from the Minister

133. In relation to the size of the Board, the Minister said she had considered nine members to be too many and five members to be too few, “so we have a bit of a pitch between the two.”⁸²

134. The Minister also said that having “co-opted senior staff members for particular issues or items, or for a period of time” was an option that would be open to the Board.⁸³

135. Regarding the balance of executive and non-executive members, the Minister’s official said:

“... there is nothing in the legislation that would prevent that board from inviting executives from the WAO—the director of finance, for example, or the human resources director—to sit alongside that board on a regular basis, either for specific issues or as attendees of the board.”⁸⁴

136. In relation to the method of appointment of the employee member, the Minister said:

“Election has been considered—election by the WAO staff themselves. There could be an appointment by the WAO non-executive members only, or you could have some other form of competition for WAO staff to put themselves forward for

⁸⁰ RoP, paragraph 28, 16 October 2012

⁸¹ RoP, paragraph 75, 16 October 2012

⁸² RoP, paragraph 109, 24 September 2012, and RoP, paragraph 290, 22 October 2012

⁸³ RoP, paragraphs 299 and 300, 22 October 2012

⁸⁴ RoP, paragraph 112, 24 September 2012

consideration... I have asked officials to consider options and work up some policy proposals.”⁸⁵

137. In relation to the role of the employee member, the Minister confirmed that they would be “a corporate member of the board” with the same responsibilities as the other board members.⁸⁶

138. Responding to the concerns of some witnesses that it would be difficult for the employee member to be involved in certain decisions, particularly relating to staffing matters, the Minister said:

“There are matters that the employee representative could be exempted from engaging with, which could include some staff matters. Once again, that needs to be considered carefully with staff representatives as well as trade union representatives ... All members of the WAO, including the employee representative, will have executive functions, so it is a key point in terms of any concerns regarding matters that they feel it would be difficult for them to be involved in.”⁸⁷

139. Although her official subsequently emphasised that “one of the key principles of having a staff member on the board is that there is a consistency and a coherence of their representation throughout the process. Moving away from that might... risk that you would lose that consistency and, with that, you might lose some of the confidence in that staff member being able to play a full role on the board.”⁸⁸

Our view

140. In relation to the size and composition of the Board, we consider that the ratio of executive to non-executive members proposed in the Bill does not strike the right balance.

141. Whilst we agree with the Minister and witnesses that the non-executive members should hold the majority position on the Board, **we recommend that the Bill be amended to provide for four executive**

⁸⁵ RoP, paragraph 116, 24 September 2012 and RoP, paragraph 292, 22 October 2012

⁸⁶ RoP, paragraphs 120, 24 September 2012

⁸⁷ RoP, paragraph 294, 22 October 2012

⁸⁸ RoP, paragraphs 300, 22 October 2012

members of the WAO Board; the AGW and three employee members.

142. Of the three employee members, we recommend that two should be nominated by the AGW for approval by the non-executives and one should be elected by the staff of the WAO.

143. We further recommend that the Bill should be amended to give effect to the principle that the AGW and non-executives should agree on the appointment of the nominated employee members. One way to achieve this would be to amend Part 4 of Schedule 1 to the Bill to provide that, if the AGW's initial nomination is not accepted by the non-executive members, the AGW is required to make further nominations until appointments are made.

144. Finally, whilst not a matter for the Bill, we would expect the Board's standing orders to be drafted in such a way so as to put in place arrangements to manage any conflict issues. The standing orders could also provide for other matters such as the ad-hoc attendance of relevant WAO officials at meetings of the Board at the request of its members.

6. Accountability of the AGW and WAO to the Assembly

Background

145. Section 29 of the Bill makes provision for the Assembly to decide how it should exercise the functions conferred on it by the Bill which deal with supervising or holding the WAO to account. This largely addresses one of the key concerns made by the Committee following the publication of the original draft Bill.

146. However, paragraph 30(6) of Schedule 1 to the Bill still requires the Public Accounts Committee, rather than the Assembly, to specify the responsibilities of the Auditor General as the WAO's Accounting Officer.

147. In addition, section 143 of the Government of Wales Act 2006 (as amended) confers certain functions on the Public Accounts Committee. These functions relate to consideration of matters raised by the WAO's external auditors in relation to the WAO's accounts and value for money studies on the WAO.

Evidence from respondents

148. In their evidence, the ICAEW noted that the Bill provides for the oversight of the AGW and WAO to be undertaken by the National Assembly rather than by the Public Accounts Committee, as proposed in the draft Bill. They said they considered this to be a "welcome development".⁸⁹

149. Professor Heald agreed that "the accountability of the AGW should run directly to the Assembly" and explained:

"There is this fundamental point that public audit should belong to the legislature. It is symbolic rather than a matter of great importance, but it is signalling the fact that the prime responsibility and route of accountability of the auditor general is actually to the Assembly, not to the Government."⁹⁰

⁸⁹ Written evidence, PA6

⁹⁰ RoP, paragraph 17, 16 October 2012

150. He went on to propose that, rather than agreeing the Bill, the Assembly should instead agree a more limited Bill which included provision for the establishment of a Welsh Commission for Public Audit “which might include a minority of external persons with relevant governance and financial knowledge and experience. There should be some overlap of membership with the Committee but those AMs should not dominate.”⁹¹

151. He said that “there is an advantage to having a statutory body for two or three reasons. One reason is that it will probably not suffer the turnover of membership during a term of the Assembly that can happen to select committees. At Westminster and in Scotland, the statutory body does not fall at dissolution; it continues...It would also flag up the separation of the client role from the oversight role.”⁹²

152. He said he understood that “the small size of the Assembly at 60 Assembly Members (AMs) may have been a reason for not establishing a separate oversight body in Wales. However, the roles of client and oversight body that the Public Accounts Committee must presently fulfil can be incompatible.”⁹³

Evidence from the Minister

153. In relation to the accountability of the AGW and WAO to the Assembly, the Minister said she was “fully persuaded that it should be the Assembly through Standing Orders, rather than the PAC, that should determine how the oversight functions that fall to the Assembly under the Bill should be carried out.” She said that section 29 provided for this.⁹⁴

154. However, she acknowledged that, as currently drafted, paragraph 30(6) of Schedule 1 to the Bill placed duties on the Public Accounts Committee in relation to specifying other responsibilities of the Auditor General as the WAO’s accounting officer.⁹⁵

⁹¹ Written evidence, PA10

⁹² RoP, paragraph 7, 16 October 2012

⁹³ Written evidence, PA10

⁹⁴ RoP, paragraph 249, 22 October 2012

⁹⁵ *ibid.*

155. She said it was her intention to “bring forward an amendment at Stage 2 to make this provision compatible with section 29.”⁹⁶

156. In relation to the suggestion for a Welsh Commission for Public Audit, the Minister said that she had “an open mind” but that “if the Assembly considers that this is desirable, then section 29 provides for you to establish a sub-committee, which could include external members with the relevant expertise.”⁹⁷

Our view

157. We welcome the intention behind section 29 of the Bill that functions relating to the oversight and finances of the AGW/WAO should be conferred on the Assembly rather than the Public Accounts Committee and that the Assembly should decide the vehicle for exercising those functions. However, we consider that two further changes need to be made to the Bill in order to fully achieve this.

158. First, **paragraph 30(6) of schedule 1 should be amended to confer the function currently vested on the Public Accounts Committee on the Assembly. We welcome the Minister’s commitment to bring forward an amendment at stage 2 to give effect to this.**

159. Secondly, **we consider that the Assembly should be given a power to transfer the Public Accounts Committee’s function of considering reports by the WAO’s external auditor in section 143(1)(b) of the GOWA 2006 to another committee that might be established under the provisions of Section 29, and we recommend the Bill be amended in order to achieve this.**

160. We note the evidence suggesting that a Welsh Commission for Public Audit could be established to oversee the work of the AGW and WAO, but we are not persuaded by it. We consider that, as is the case with many other legislatures (for example, Northern Ireland, New Zealand and South Africa), a properly supported committee of the Assembly would be just as effective in practice. Such a committee could be established by virtue of section 29 and we consider that this would be a more flexible arrangement as its terms of reference could

⁹⁶ RoP, paragraph 249, 22 October 2012

⁹⁷ RoP, paragraph 251, 22 October 2012

be amended from time to time to give it other appropriate responsibilities.

7. Other issues – Staff transfers, participation in the NFI, taxation matters, and FOI and Equality Acts

Transfer of Staff – application of TUPE regulations

Background

161. Schedule 3, Part 3, paragraph 5(1) of the Bill states:

On the appointed day the members of the staff of the Auditor General are transferred to the employment of the WAO.

162. Schedule 1, Part 5, paragraph 20(5) states:

But the WAO must ensure that –

- (a) the procedures for the recruitment and selection of persons as members of the staff of the WAO are broadly in line with those applying to the recruitment and selection of persons as members of the staff of the Welsh Government, and
- (b) their terms of employment are broadly in line with those of the members of the staff of the Welsh Government.

163. References to ‘TUPE’ are to the Transfer of Undertakings (Protection of Employment) Regulations 1981.

Evidence from respondents

164. In his evidence, the AGW told us that he had “very real concerns” in terms of the arrangements for the transfer of staff to the new WAO.⁹⁸

165. He said that, in his view, the transfer scheme in the Bill “does not provide the same protection as the TUPE regulations” and that he did not think that TUPE regulations would apply to the transfer because of

⁹⁸ RoP, paragraph 225, 24 September 2012

an “exception to the protective operation of the TUPE Regulations established by the 1996 European Court of Justice case *Henke*.”⁹⁹

166. He explained:

“The basic principle of *Henke* is that the Directive (and hence TUPE) does not apply where there is no “business” transferred and all that is transferred is administrative functions. As the effect of the Bill is the transfer of administrative functions, rather than business, so the attendant transfer of staff will not be a TUPE Regulations-protected transfer.”¹⁰⁰

167. On this basis, the AGW argued that “it [the Bill] does not provide any assurance as to employment continuity to a staff member, and neither does it provide any assurance to an auditor general that there will be sufficient staff to do the work.”¹⁰¹

168. He also highlighted the difference in wording between the Bill and BRANA:

“Instead of ‘broadly in line’, the BRANA Act has the better formulation, which is ‘has regard to’. That is exactly the wording used in quite a lot of public appointments by Westminster, where people are appointed and their salaries determined with ‘regard to’. That allows that degree of interpretation to take place, whereas what [is] suggested here is ‘broadly in line’. That is an important difference.”¹⁰²

169. On 7 November, the AGW wrote to us to express his continuing concerns, and those of his staff, with the proposed transfer arrangements. He said that, despite the Minister’s reassurances in evidence to the Committee:

“...the fact remains that the transfer provisions in Schedule 3 of the Bill are not sufficient as they stand.”¹⁰³

170. Both Prospect and PCS expressed similar concerns in their respective evidence about a lack of TUPE application. Prospect

⁹⁹ Written evidence, PA2

¹⁰⁰ [Letter from the Auditor General for Wales, 9 October 2012](#)

¹⁰¹ RoP, paragraph 226, 24 September 2012

¹⁰² RoP, paragraph 234, 24 September 2012

¹⁰³ [Letter from the Auditor General for Wales, 7 November 2012](#)

explained that their concerns were based on problems that had arisen in relation to transfer and pension arrangements when the Wales Audit Office was established in 2005.¹⁰⁴

171. They said:

“Under a TUPE transfer, changes could not be made as a result of the transfer. The problem is that, without those TUPE terms being stated in the legislation, staff are left in the position that their terms and conditions could be changed as a result of the transfer. It is true that, in any new organisation, the terms and conditions of staff could be changed by negotiation, but those changes are not on the basis of the transfer itself.”¹⁰⁵

172. Further to this, the PCS stated:

“We do not think the term ‘broadly in line’ should be in the Bill. We would rather see something a little more flexible: the Budget Responsibility and National Audit Act 2011 included the need to have due regard to the desirability of, which sounds a bit convoluted, but something like ‘due regard’ would be better. We accept that the WAO has to operate within public sector norms and standards, but I do not think that tying us to a particular organisation...”¹⁰⁶

Evidence from the Minister

173. During our first evidence session with the Minister, she stated that she had asked her officials to review the TUPE provisions in the Bill to “ensure they are complete and can achieve the aim of protecting staff on their transfer to the new WAO.”¹⁰⁷

174. In correspondence, the Minister confirmed that:

“... the Welsh Government’s view is that the transfer falls within one of the exceptions to the TUPE regulations.”¹⁰⁸

175. She went on:

¹⁰⁴ RoP, paragraph 163, 1 October 2012

¹⁰⁵ RoP, Paragraph 153, 1 October 2012

¹⁰⁶ RoP, paragraph 171, 1 October 2012

¹⁰⁷ RoP, paragraph 122, 24 September 2012

¹⁰⁸ [Letter from the Minister, 31 October 2012](#)

“However it has always been the policy intention that principles of TUPE will be applied and that staff will be treated no less favourably as a result of the transfer. I consider that Schedule 3 of the Bill ensures that. It provides for continuity of employment in that staff transferring will be treated as if they had always been employed by the new WAO. Those employees will continue to be employed on their current terms and conditions and will not be adversely affected by the transfer.”¹⁰⁹

Our view

176. We consider that staff currently employed by the AGW should be transferred to the WAO on terms that are no less favourable than those that would apply under TUPE. To this end, we are very concerned that there is still a difference of opinion between the Minister and the AGW as to whether the Bill as drafted achieves this requirement.

177. We urge the Minister and the Auditor General to resolve these differences before stage 2 commences, and we ask that the Minister and the AGW provide us with confirmation that those differences have been resolved as soon as possible. We further ask that the Minister brings forward any necessary amendments to the Bill in order to resolve this matter.

178. In respect of paragraph 20(5) of schedule 1, we note that WAO staff are not civil servants and, as such, have different terms and conditions of service. On this basis, **we consider that the requirement in the Bill for recruitment and selection procedures and terms of employment of WAO staff to be “broadly in line” with those applying to the Welsh Government might be difficult to achieve and unduly restrictive. We prefer the formulation in the Budget Responsibility and National Audit Act (BRANA) and we recommend the Bill be amended to follow this.**

¹⁰⁹ [Letter from the Minister, 31 October 2012](#)

Participation in the National Fraud Initiative (NFI)

Background

179. Paragraphs 59 to 65 of schedule 4 amend sections 64A to 64F of the Public Audit (Wales) Act 2004 to reflect the new arrangements whereby the WAO will be providing services to the AGW.

180. These sections in the 2004 Act enable the Auditor General to participate in the UK wide National Fraud Initiative which involves the collection and analysis of data from a number of public bodies with a view to identifying any suspected fraud. The analysis is popularly known as “data matching”.

181. The changes in paragraphs 59 to 61 of schedule 4 involve deleting the provisions which permit a “person acting on behalf of the Auditor General” to collect data from public bodies on behalf of the Auditor General substituting instead the “Wales Audit Office”.

Evidence from respondents

182. In his written evidence, the AGW expressed concern that the practical effect of the above provisions would be to end the AGW’s participation in the National Fraud Initiative (NFI) as, he argued, such participation is only practicable if the AGW can engage the same service provider as that engaged by other UK audit agencies to undertake the data processing required on his or her behalf.¹¹⁰

183. He went on to say:

“The most recent NFI exercise resulted in the identification of £6 million of fraud and overpayments in Wales, so the loss of this participation would be most regrettable...”¹¹¹

184. In order to avoid the loss of data matching in Wales, the AGW proposed the omission of paragraphs 59 to 62 of Schedule 4 to the Bill and the omission or amendment of [section] 9(2). See also our more general view on section 9(2) in paragraph 113 above.”¹¹²

185. Further to this, in his letter of 7 November 2012, the AGW stated:

¹¹⁰ Written evidence, PA2

¹¹¹ *ibid.*

¹¹² Written evidence, PA2

“It might be thought that [section] 18 of the Bill would overcome this on the grounds that the [section] enables the Auditor General to delegate his functions to contractors engaged by the proposed corporate WAO, subject to approval by the WAO of a scheme of delegation. However, aside from the possibility that the WAO might not approve the necessary delegation, I am advised that such a delegation may not meet the requirements of the Data Protection Act 1998 in terms of allowing bodies to provide personal information to a contractor working on behalf of the AGW. It is important to remember that the requirements of the Data Protection Act must be met for data matching to proceed.”¹¹³

186. He went on to highlight that the Public Audit (Wales) Act 2004 Act is very specific in allowing information needed for matching to be disclosed to the Auditor General *or a person acting on his behalf*. He pointed out that this wording is reflected in the equivalent provisions in UK, Scottish and Northern Irish legislation.¹¹⁴

187. He went on to say that:

“Removing the explicit provision for information to be disclosed to a person acting on behalf of the Auditor General, as proposed in the Bill, risks a court interpreting this as removing the ability of bodies to provide information to persons acting on the Auditor General’s behalf. Citing the ability of the Auditor General to delegate his functions under [section] 18 of the Bill may well not be sufficient to satisfy a court that the requirements of the Data Protection Act are met.”¹¹⁵

188. Finally, he stated that he has not had sight of any professional advice from the Minister to confirm that the Bill would not prevent or inhibit the AGW’s participation in the NFI.¹¹⁶

¹¹³ [Letter from the Auditor General for Wales, 7 November 2012](#)

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ *ibid.*

Evidence from the Minister

189. In her initial evidence, the Minister told us there had been “close working” between her officials and the UK Department for Communities and Local Government, as well as the Westminster PAC. She said that contact had also been made with the AGW’s compliance officer and that work was being undertaken to clarify the issues in relation to the AGW’s participation in the NFI.¹¹⁷

190. In later correspondence, the Minister stated:

“I can confirm that there is nothing in the Bill that will prevent or inhibit the AGW from participating in the National Fraud Initiative. [Section] 18 will enable the AGW to delegate any of his or her functions. The effect of a delegation will be that staff or contractors will be able to exercise the same functions as the AGW, including those in Part 3A of the Public Audit (Wales) Act 2004.”¹¹⁸

Our view

191. We consider it is imperative that the AGW should continue to be able to participate in the National Fraud Initiative.

192. To this end, we are concerned that there continues to be a difference of opinion between the Auditor General and the Minister as to whether the changes made to the Public Audit (Wales) Act 2004 by paragraphs 59 to 65 of schedule 4 to the Bill would cause a problem in this respect.

193. We urge the Minister and the Auditor General to resolve these differences before stage 2 commences and we ask that the Minister and the AGW provide us with confirmation as soon as possible that those differences have been resolved.

194. Further to this, we recommend that the Minister brings forward any necessary amendments to the Bill in order to put beyond doubt the ability of the AGW to continue to participate in the National Fraud Initiative.

¹¹⁷ RoP, paragraphs 134 and 136, 24 September 2012

¹¹⁸ [Letter from the Minister, 31 October 2012](#)

Taxation Matters

Evidence from respondents

195. In his written evidence, the AGW stated that there may be some tax-related costs associated with the implementation of the Bill:

“Unlike the BRANA Act 2011, the Bill provides no protection from Corporation Tax and Capital [Chargeable] Gains Tax liabilities arising from the transfer of assets. I have raised this issue with HMRC but do not yet have an indication of the likely approach to be taken by HMRC with the Bill as it stands, and I cannot therefore give an estimate of likely liability.”¹¹⁹

196. He went on to set out the potential difficulties in relation to taxation of staff travel and subsistence payments:

“Because the WAO employs the staff and allocates them to me as AGW to carry out the work, we have two corporate bodies, and there is a risk that the travel and subsistence will, as a result, be taxed because it is applied by one body of services to another body. We are trying to bottom that out [with HMRC].”¹²⁰

197. The AGW said he was hopeful that HMRC would agree a dispensation with the proposed WAO in respect of the taxation of staff travel and subsistence expense payments incurred in respect of work for the AGW, rather than for WAO, but that, in his view, it was possible that these potential liabilities could result in an additional cost to the WAO of up to £380,000.”¹²¹

198. He went on:

“In the absence of any agreed HMRC dispensation, under UK tax rules this would need to be met by staff personally, which would be out of line with Welsh Government terms and so a potential source of expensive dispute. Resolution might involve HMRC agreeing to WAO paying the tax for staff.”¹²²

¹¹⁹ Written evidence, PA2

¹²⁰ RoP, paragraph 220, 24 September 2012

¹²¹ Written evidence, PA2

¹²² *ibid.*

Evidence from the Minister

199. We questioned the Minister about the possibility for additional tax liabilities as a result of the Bill. She told us that her officials were obtaining specialist legal advice and that she would provide us with more information as soon as she had clarified the position.¹²³

Our view

200. Our agreement to the establishment of the WAO as a separate corporate entity is given on the basis that these taxation issues will be resolved without the creation of additional financial liabilities. To this end, we note that the equivalent legislation establishing the NAO as a corporate entity contained provisions to prevent any corporation and chargeable gains tax liabilities from arising.

201. On this basis, **we recommend that the Bill be amended to include provisions to mitigate any potential corporation and chargeable gains tax liabilities along the lines included within BRANA (paragraphs 2-4 of schedule 4) for the NAO. This will require the AGW to identify the relevant assets to be transferred to the WAO. We note that a requirement to do this was included in Schedule 4 to BRANA. However, if this is difficult to achieve for reasons of legislative competence, we urge the Minister to liaise with the UK Government to explore alternative means of overcoming this issue.**

Amendments to the Freedom of Information and Equality Acts

202. In his evidence, the AGW referred to paragraph 88 of Schedule 4 to the Bill, which amends Part 2 of Schedule 19 to the Equality Act 2012. He quoted this as “an example of how the Bill leads to an expansion of existing regulatory requirements because it creates an additional public body (the proposed WAO) alongside the AGW.”¹²⁴

203. He said:

“The effect of para 88 is to add the proposed corporate WAO, in addition to the AGW, to the list of bodies designated as public authorities under the 2010 Act. This has the

¹²³ [Letter from the Minister, 31 October 2012](#)

¹²⁴ Written evidence, PA2

consequence of making both the corporate WAO and the AGW subject to the requirements of the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.”¹²⁵

204. He went on:

“The practical effect of this is to require the corporate WAO and the AGW each to prepare and report progress on a strategic equality plan. They will also each have to engage with persons representing the interests of persons with protected characteristics regarding a range of duties, such as undertaking equality impact assessments of work plans. While it might be possible to share some of this work between the corporate WAO and the AGW, this amendment is likely to lead to an increase in the cost of arrangements needed to meet equality legislation.”¹²⁶

205. He said that paragraph 16 of Schedule 4 to the Bill gave rise to a similar effect in that it would make the proposed WAO a public body subject to the Freedom of Information Act which, he argued, would effectively mean “that Wales’ public audit institution is subject to a double dose of regulation as both the AGW and the proposed WAO will need to prepare and maintain publication schemes, which, even if joint schemes can be agreed, will be an additional call on public money.”¹²⁷

206. He also said that, in terms of the Freedom of Information Act, “the creation of a second public body within the same organisation with functions of holding information is also likely to lead to confusion as to which body holds particular requested information... Altogether, there is considerable scope for confusion and potentially expensive appeals to the Information Commissioner and Tribunal.”¹²⁸

Our view

207. We note that, under paragraphs 16 and 88 of Schedule 4 to the Bill, duties will be imposed on the WAO in relation to the Freedom of Information Act 2000 (FOIA) and the Equality Act 2010. These duties will be in addition to those already in place for the AGW under those

¹²⁵ Written evidence, PA2

¹²⁶ *ibid.*

¹²⁷ *ibid.*

¹²⁸ *ibid.*

enactments. We are advised that equivalent duties apply to both the C&AG and the NAO. Whilst we do not consider these duties to be problematic in themselves, they could duplicate unnecessarily the existing duties of the AGW under those enactments.

208. Therefore, we consider that, for practical reasons, it would be preferable for the AGW and WAO to be treated as a single entity for the purposes of FOIA and Equality Act duties and we recommend that the AGW liaise with the Information Commissioner to see if this can be achieved.

8. Financial Implications of the Bill

Background

209. A Regulatory Impact Assessment is provided at Part 2 of the Explanatory Memorandum and includes a cost-benefit assessment of the options for delivery of the Bill's policy objectives.

Evidence from respondents

210. In his evidence, the Auditor General stated that "the cost of the Bill as it stands is likely to be significantly higher than that estimated in the explanatory memorandum". He said:

"The corporate body put forward in the Bill will inevitably incur costs. I estimate that the set-up and transitional costs (including the AGW's costs of the Bill itself) would lie between £180,000 and £350,000, and that the on-going annual recurring cost lies between £200,000 and £650,000, with something nearer the lower figure more likely but not guaranteed..."¹²⁹

211. He went on:

"The higher on-going cost figures largely reflect the risks of disputes, taxation of travel and subsistence expenses, and the possible need to bring employment terms closer in line with Welsh Government terms, all of which stem from the proposed transfer of staff from employment by the AGW to employment by the WAO board. The cost of the board itself in terms of such things as board members' fees is also likely to be higher than as set out in the Welsh Government's Explanatory Memorandum."¹³⁰

212. He noted that the Welsh Government had not requested any comment from him regarding its costings."¹³¹

¹²⁹ Written evidence, PA2

¹³⁰ *ibid.*

¹³¹ *ibid.*

213. Following his oral evidence session, he provided us with a supplementary note containing more specific detail on his estimates.¹³²

Evidence from the Minister

214. The Minister's Regulatory Impact Assessment states that the implementation of the Bill would give rise to transitional costs of around £20,000 and annual costs of around £155,000. These costs would fall on the Wales Audit Office and the Assembly as set out below—

- **Transitional costs:** around £20,000 to advertise the posts of the WAO Chair and four board members. This would be a one-off cost and would fall on the Assembly;
- **Average annual costs:** around £155,000 per year to cover the running costs of the board. The EM states that this would include the remuneration, gratuities and other allowances of the Chair and four board members, along with the costs of secretariat and technical support. This would be borne by the WAO and would amount to 0.64% of the AGW's current budget, which is funded by a combination of the Welsh Consolidated Fund and fee income;
- **Enhanced oversight role of the Assembly:** no estimate provided. The EM states that the Assembly may incur some additional costs arising from its enhanced oversight of the AGW and WAO. It further states that these costs will be dependent on the nature of the oversight the Assembly undertakes and the arrangements it makes to support this. Any costs would be met from the budget assigned to the Assembly Commission.

215. These costs would be in addition to the existing running costs associated with the AGW, who currently has an annual budget of £24.2 million. The Explanatory Memorandum provides a breakdown of the existing costs in relation to areas that are covered by the Bill—

- **Internal cost and governance:** £36,650 per year (as at 2010-11)
- **External audit** (preparation of accounts): £25,000 per year (as at 2010-11)

¹³² [Letter from the Auditor General for Wales, 12 October 2012](#)

- **Public Accounts Committee evidence session:** cost of one meeting (assigned from the Assembly Commission's budget).

216. In her evidence, the Minister told us that she had estimated the costs of the Bill "based on current costs of appointments to organisations in the public sector in Wales."¹³³

217. She went on to say that she regarded her cost estimates of "around £70,000 in the transitional year, 2012-13, and around £150,000 per year thereafter" as "reasonable and proportionate".¹³⁴

218. She went on:

"We have looked at the costs of the UK National Audit Office... The figures for it for 2011-12 were £130,000 to £155,000. So, they are not strictly comparable but broadly in line with our full-year estimate."¹³⁵

Our view

219. We note the differences in the cost estimates provided by the Minister and the AGW, in particular that the AGW's estimate is significantly higher. We note the AGW's reasons for this and we agree that there is potential for increased costs in the event that matters relating to TUPE and taxation are not resolved.

220. However, we note the Minister's evidence that she has based her estimates on the costs of the UK National Audit Office, and on this basis, we are content with the figures provided by the Minister, particularly as the AGW's estimate contains a number of contingencies that may not be needed.

221. However, we consider that resolution of TUPE and taxation issues would go some way towards convergence of the two estimates and we urge the Minister, following further discussions with the AGW, to bring forward a revised schedule of costs in advance of stage 2.

¹³³ RoP, paragraph 263, 22 October 2012

¹³⁴ *ibid.*

¹³⁵ *ibid.*

Annexe A: Witnesses

222. The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at:

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Ild=1311>

<i>24 September 2012</i>	
<i>Jane Hutt AM</i>	<i>Member in Charge Minister for Finance and Leader of the House</i>
<i>Huw Vaughan Thomas</i>	<i>Auditor General for Wales</i>
<i>Mike Usher</i>	<i>Group Director - Financial Audit, Wales Audit Office</i>
<i>Martin Peters</i>	<i>Compliance Manager, Wales Audit Office</i>
<i>1 October 2012</i>	
<i>Vernon Soare</i>	<i>Executive Director Institute of Chartered Accountants in England and Wales (ICAEW)</i>
<i>Gareth Howells</i>	<i>Prospect</i>
<i>David Rees</i>	<i>Prospect</i>
<i>Ben Robertson</i>	<i>Public and Commercial Services (PCS) Union</i>
<i>16 October 2012</i>	
<i>Professor David Heald</i>	
<i>Amyas Morse</i>	<i>UK Comptroller and Auditor General</i>
<i>22 October 2012</i>	
<i>Martin Evans</i>	<i>Audit Commission</i>
<i>Jane Hutt AM</i>	<i>Member in Charge Minister for Finance and Leader of the House</i>

Annexe B: List of written evidence

223. The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at:

<http://www.senedd.assemblywales.org/mgIssueHistoryHome.aspx?Ild=4174>

<i>Name / Organisation</i>	<i>Reference</i>
<i>Wales Probation Trust</i>	<i>PA 1</i>
<i>Wales Audit Office</i>	<i>PA 2</i>
<i>Prospect</i>	<i>PA 3</i>
<i>Estyn</i>	<i>PA 4</i>
<i>Public and Commercial Services Union</i>	<i>PA 5</i>
<i>The Institute Of Chartered Accountants England And Wales</i>	<i>PA 6</i>
<i>Hywel Dda Health Board</i>	<i>PA 7</i>
<i>Fire and Rescue Authorities in Wales</i>	<i>PA 8</i>
<i>Welsh Local Government Association</i>	<i>PA 9</i>
<i>Professor David Heald</i>	<i>PA 10</i>
<i>UK Comptroller and Auditor General</i>	<i>PA 11</i>
<i>The Association of Chartered Certified Accountants</i>	<i>PA12</i>
<i>Audit Commission</i>	<i>PA13</i>

Supplementary evidence received:

[9 October 2012 - Letter to the Chair from the Auditor General for Wales regarding TUPE](#)

[12 October 2012 - Letter to the Chair from the Auditor General for Wales regarding Estimate of Cost](#)

[31 October 2012 - Letter to the Chair from the Minister for Finance and Leader of the House: additional information](#)

[7 November 2012 - Letter to the Chair from the Auditor General for Wales regarding Issues arising from the Minister for Finance's letter to the Committee of 31 October 2012](#)