

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

## Public Audit (Wales) Bill

October 2012

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### Introduction

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

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

### Budget Responsibility & National Audit Act 2011

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

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

**5** The key requirements of the Act are:

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

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

### **The Role of the NAO Board**

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

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

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

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

**10** In practical terms the Board:

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

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

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

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

## Provisions of BRANA & the Code of Practice

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

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

## Key differences between the Bill and BRANA

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

16 The key differences identified are:

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

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

**ANNEX 1**

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

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

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

**Figure 1**

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

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

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

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

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Schedule 1 of the Bill sets out the membership of the WAO: 7 members of whom 5 are non-executives (including the Chair), the AGW and one executive member.

The Chair and other non-executives are appointed by the National Assembly. The National Assembly must first consult the First Minister before appointing the Chair.

The National Assembly may make remuneration arrangements for the Chair and non-executives but no element of these arrangements may be performance based.

Non-executives are appointed for a maximum of 4 years, and cannot be re-appointed more than once. Restrictions may be imposed on the non-executives in terms of other offices or positions held, including for a maximum of two years after ceasing to be a non-executive member of WAO.

The National Assembly may terminate the appointment of a non-executive member if, for example, they have been absent for more than three months, are unfit or have failed to comply with the terms of their appointment. Before terminating the appointment of the Chair, the First Minister must be consulted. The National Assembly may terminate the appointment of the Chair if he/she has failed to comply with the terms of appointment, or is unwilling to carry out the functions of the Chair.

Executive members are appointed by the non-executives on the recommendation of the AGW, or if not, another person of the non-executives' choosing.

Schedule 2 of BRANA specifies that the NAO is to have 9 members of whom 5 are non-executives (including the Chair), the C&AG and three NAO employees.

The Chair is appointed by Her Majesty exercisable on an address of the House of Commons, the motion for which must be moved by the Prime Minister. To do so the Prime Minister must have the agreement of the Chair of the Committee of Public Accounts. Other non-executives are appointed by the Public Accounts Commission.

The Prime Minister and Chair of the Committee of Public Accounts may jointly make remuneration arrangements for the NAO's Chair. The Public Accounts Commission may make arrangements for the remuneration of other non-executive members.

Non executives are appointed for a maximum 3 year term, and cannot be re-appointed more than once. Restrictions may be imposed on non-executives whilst holding office and afterwards, with no maximum time limit imposed by the legislation.

Her Majesty may terminate the Chair's appointment on an address of both Houses of Parliament. The Public Accounts Commission may terminate the appointment of other non-executives if, for example, they have been absent for more than three months, are unfit or failed to comply with the terms of their appointment.

Part 3: the WAO may pay the AGW additional payments of allowances or other benefits to cover expenses properly and necessarily incurred in his/her capacity as a member and Chief Executive of WAO.

Not specifically mentioned in the legislation.

Part 5 covers employees of WAO and sets out that an individual may not be an employee if disqualified from appointment under Part 6. The Part includes requirements for recruitment and specifies that appointment procedures and the terms of employment should be broadly in line with members of staff of the Welsh Government and that employees of WAO may not hold any office or position appointed by, or on behalf of the Crown, National Assembly or National Assembly Commission.

Part 5 to Schedule 2 simply states that the NAO may employ staff, that terms of appointment should be broadly in line with those applying to civil servants and that employees may not hold any office or position appointed by, or on behalf of the Crown.

Part 7, Procedural rules, sets out that WAO must make rules for the purpose of regulating the WAO's procedure, quorum for meetings and that

Part 6, Procedural rules, is very similar to Part 7 of the Public Audit (Wales) Bill. The only difference is that there is no explicit mention of the power for the

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

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