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**References:** IG/18/005/HVT/2856/SD  
**21 June 2018**

Annwyl Simon

### The Public Audit (Wales) Act 2013

Thank you for your letter of 17 April 2018 in which you ask for details of the specific legislative changes needed to address the complexity of fee arrangements and other problematic aspects of the Public Audit (Wales) Act 2013. You ask in particular for details of what amending legislation might look like and examples of areas of the 2013 Act beyond fees that might benefit from change. You also ask for details of the costs of the fee arrangements and the costs of the proposed changes.

We enclose an explanatory paper that sets out these specific matters, including a draft bill and explanatory notes. The draft bill and explanatory notes have been prepared by our external legal advisers, Bates Wells Braithwaite. For ease of reference, we have included in the explanatory paper a summary of the problems that the 2013 Act presents, including in respect of fees even though this was covered in some detail in the paper *The complex audit fee regime in Wales – a case for change*.

As the legislative changes needed are a matter of fairly limited amendment of the 2013 Act, and some similarly limited consequential amendments, the draft bill is short and rather technical in character. Consequently, in order to understand the effect of the provisions of the draft bill, we think it is best to read the draft bill in conjunction with the explanatory paper, rather than on its own. We should, however, say that the explanatory paper is not an Explanatory Memorandum as required by Standing Orders, though we would hope that much of the material might be useful in preparing such a document.

We should also mention that the matters that the draft bill addresses are confined to matters that are directly problematic to the WAO. We have not sought to address such matters as inconsistency between different pieces of legislation, e.g. the differences between the restriction periods in relation to subsequent office that apply to the Auditor General under the 2013 Act and those that are to apply to the Ombudsman under the Public Services Ombudsman (Wales) Bill. (In that example, restrictions on a former Auditor General apply for two years, while those applying to a former Ombudsman apply for between a year and a day and two years, depending on the date the person ceases to be the Ombudsman.) We imagine that the Committee may have other concerns that could be addressed in an amendment bill.

While it may seem fairly obvious, we should also mention for clarity that the draft bill and explanatory paper do not address changes in fee arrangements that do not require legislation. The main example that we have in mind is replacing cash audit fees for the Welsh Government, National Assembly for Wales Commission and the Public Services Ombudsman for Wales with notional fees, as set out in *The complex audit fee regime in Wales – a case for change*. That is a parallel administrative measure, which, because it does not affect the great majority of audited bodies and fee income, does not alter the need for legislation.

You ask specifically about the internal costs arising from the administration of process relating to section 23 of the Act, and about financial benefits that might result from changing the legislation. The explanatory paper includes details to address these points, but it may helpful if we draw out key points here.

Section 23 is general provision relating to fees, not just the “no more than full cost” rule (s23(5)(b)). It is not possible to precisely identify the full cost of the current fee arrangements; for example, while a portion of the WAO’s finance department’s costs will relate to fees, identifying that portion is a matter of estimation. Overall, we estimate the annual administrative cost of the current fee arrangements to be some £342,000.

Of the above figure, we estimate that between some £20,000 and £50,000 is attributable to the “no more than full cost” rule. We have provided this estimate as a range because it is extremely hard to identify the particular effort involved in monitoring and managing time for the purposes of the “no more than full cost” as opposed to other management purposes. But while there is uncertainty as to the amount, we are clear that the “no more than full cost” rule is an exacerbating factor that leads to additional cost.

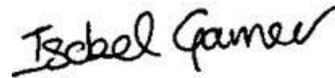
The financial benefits of amending the legislation are likely to mainly consist of the avoidance of the additional cost arising from the “no more than full cost” rule and avoiding the costs of preparing interim reports. There may also be a few thousand pounds each year on average in contributions to the Welsh Consolidated Fund arising from surpluses on agreement work. Altogether, we estimate that the financial benefits will be net savings to Welsh public finances of between £57,000 and £77,000.

We hope that this is helpful. We should be very happy to discuss the paper and the draft bill.

Yn gywir



**Huw Vaughan Thomas, CBE**  
**Auditor General for Wales**



**Isobel Garner**  
**Chair, Wales Audit Office**

# Proposals for a bill to amend the Public Audit (Wales) Act 2013

June 2018

## 1. Introduction

- 1.1 This paper sets out proposals for a short bill to amend the Public Audit (Wales) Act 2013 (“PAWA 2013”), so as to improve the efficiency of the administration of the Wales Audit Office (“WAO”). To provide context, it summarises problems that we face in the implementation of some of the Act’s provisions. In annexes we provide a draft bill, together with explanatory notes.
- 1.2 In essence, the proposed bill would revise WAO fee charging requirements, help decision-making by revising statutory quorum requirements and make progress reporting requirements more proportionate and streamlined.

## 2. Background

- 2.1 Audit is essential to supporting democratic scrutiny of the use of public money. The WAO supports the Auditor General for Wales (“AGW”) in auditing Welsh public sector bodies. The efficient and effective operation of the WAO is therefore a significant factor in ensuring good scrutiny of public money and achieving good value for money across the Welsh public sector.
- 2.2 The Public Audit (Wales) Act 2013 (“PAWA 2013”) established the WAO as a corporate body in the form of a board to monitor and advise the AGW, and to hold and provide resources required by the AGW for the purposes of the AGW’s functions. The PAWA 2013 was intended to improve governance and accountability arrangements in respect of the AGW and the AGW’s office. (Prior to the PAWA 2013, the “Wales Audit Office” was a term to describe the AGW and the AGW’s staff; there was no legal entity by that name.) The Welsh Government deemed such changes as necessary in view of accounting and propriety issues that arose from the actions of a former AGW (in post 2005-2010), such as:
  - (a) expenditure on early retirement settlements not being fully accounted for;
  - (b) expenditure of some £77,000 on training for the then AGW and Chief Operating Officer without recorded justification.
- 2.3 A key effect of the PAWA 2013 was that it modified responsibility for the organisation’s resources by making it no longer the sole responsibility of the AGW and

placing it under the control of the new WAO (in the form of a board). This shift in responsibility included removing the AGW's powers and duties to charge fees and assigning such powers and duties to the WAO.

- 2.4 The PAWA 2013 also added additional constraints on the charging of fees by the WAO, including:
- (a) Making the expenditure of money obtained from fees (as well as supply from the Welsh Consolidated Fund) subject to the approval of the Assembly through a budget motion;
  - (b) Requiring the preparation of a fee scheme each year setting out in detail the statutory basis for the charging of fees, and requiring each such scheme to be approved by the Assembly;
  - (c) Prohibition of fees charged to any particular body exceeding the full cost of exercising the particular function undertaken at the body to which the fee relates (the "no more than full cost rule").
- 2.5 The constraints above added to pre-existing requirements, such as the requirement to set and consult on fee scales for the charging of fees to local authorities.
- 2.6 The PAWA 2013 was also intended to improve governance arrangements generally through the establishment of the WAO as a board and providing that board with certain functions. Key elements include:
- (a) The WAO being required to consist of a majority of non-executive members (individuals not employed by the WAO), with the Chair of the WAO required to be a non-executive—the WAO must have five non-executive members, with the other members being the AGW, an executive member nominated by the AGW, and two employees of the WAO elected by employees of the WAO;
  - (b) The WAO non-executives being appointed by the Assembly;
  - (c) The WAO having a duty to monitor the exercise of the AGW's functions, and a power to advise the AGW about those functions, with the AGW having a duty to have regard to any advice given;
  - (d) The WAO having a duty jointly with the AGW to prepare an annual plan setting out their respective work programmes;
  - (e) The WAO having a duty jointly with the AGW to prepare an annual estimate of income and expenses of the WAO, and to lay those estimates before the Assembly for approval;
  - (f) The Chair of the WAO having a duty jointly with the AGW to prepare and lay before the Assembly annual and interim reports on progress against the annual plan;

(g) The Chair of the WAO having a duty to submit the accounts of the WAO to the WAO's external auditor (which is appointed by the Assembly) for audit and laying before the Assembly.

- 2.7 Among the detailed requirements in respect of the WAO's functions, PAWA 2013 requires the WAO to make procedural rules for regulating its procedures. In doing so, the PAWA 2013 requires the rules to set a quorum that provides that in all circumstances a meeting must have a majority of non-executive members present.
- 2.8 In many respects, the PAWA 2013 follows the pattern of legislation that applies to the National Audit Office ("NAO") and Audit Scotland<sup>1</sup>. However, the strict "no more than full cost" rule does not apply to either. In the case of Audit Scotland, there is more tolerance built into the requirements. Charges must be "reasonable" and the "total sum received...taking one year with another" must be "broadly equivalent" to the expenditure in respect of the exercise of functions. In the case of the National Audit Office, no constraint applies other than fees must be in accordance with the fee scheme approved by the equivalent of the Assembly's Finance Committee, and, in the case of work undertaken by agreement, in accordance with the relevant agreement.
- 2.9 Similarly, other requirements of the PAWA 2013 are more extensive than those of the NAO and Audit Scotland equivalents. Neither the NAO nor Audit Scotland are required to produce interim reports. Likewise, there is no statutory quorum for Audit Scotland, and while there is reference to quorum in the legislation applying to the NAO, it is not so rigid in that the provision of a quorum rule is optional.

### **3. Summary of the problems arising from the Public Audit (Wales) Act 2013**

- 3.1 While in many respects the arrangements brought in by the PAWA 2013 have worked well, as set out below there are five problems that cause inefficiency, and these can only fully be addressed through legislation.

#### **The "no more than full cost" rule acts as a disincentive to improving audit efficiency, and is also complex to administer**

- 3.2 Where the WAO charges fees, it sets hourly fee rates at a level so as to only recover costs incurred. It then sets fees based on estimated staff time for each auditor role required to complete the work. This is done each year for each audited body. While the WAO seeks to make realistic estimates, inevitably there are variances between estimates and actuals.
- 3.3 The problem is, however, deeper than the challenge of making accurate estimates, as the "no more than full cost" rule acts as a disincentive to economy and efficiency. For example, an audit team might identify a way of delivering an audit with less work. This

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<sup>1</sup> For the NAO, see paragraph 8 of Schedule 3 to the Budget Responsibility and National Audit Act 2011. For Audit Scotland, see section 11 of the Public Finance and Accountability (Scotland) Act 2000.

might be because new automated systems enable a reduction in the amount of direct testing. However, the resulting reduction in work tends to create problems rather than benefits because, under the “no more than full cost” rule, the reduced cost of the audit must be refunded to the relevant audited body, but the option of laying auditors off to reflect the reduction in work in the short term is not practical. Even if laying off auditors were practical, this would not provide motivation for efficiency.

- 3.4 Managing variations in workload using agency staff has generally not proved to be cost-effective, as hourly fee rates are high and lack of continuity reduces effectiveness. While it is sometimes possible to apply saved auditor time to other fee-earning audit work, overall this is not the case, as the volume of fee-earning audits is essentially fixed. The saved time could be applied to non-fee earning work, such as value for money study work—there is somewhat more scope for an expansion in study work as it is largely discretionary. However, such additional study work would be unfunded, as study work is not fee funded but funded by supply (resources from the Welsh Consolidated Fund voted by the Assembly through budget motions). Obtaining additional supply requires the submission of a supplementary estimate to the Assembly, and is a significantly time-consuming process in itself.
- 3.5 The “no more than full cost” rule is also complex to administer generally. As fees to bodies are subject to the “no more than full cost” rule in respect of individual functions, and several functions are undertaken at each body (see Box 1 below), it is not uncommon for a body to be due a refund in respect of one or more functions, yet the overall cost of work at the body exceeds the aggregate fee. The exact outturn of cost often takes many months to emerge, as the work in respect of a particular year of account may extend well into the fourth quarter of the following year or even beyond.

**Box 1: The problem of relating fees to functions**

The Auditor General undertakes several functions (powers or duties) at each audited body.

To take a simple example, the Auditor General must examine (audit) the accounts of an NHS body, such as a local health board, under section 61(a) of the Public Audit (Wales) Act 2004. In addition, under s61(3)(a) of the 2004 Act, the Auditor General must in examining the accounts, “satisfy himself...that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it”. This is the “regularity opinion”, and it is another one of the functions undertaken. Furthermore, under s61(3)(b) of the 2004 Act, the Auditor General must in examining the accounts, “satisfy himself...that the body to which the accounts relate has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources”. This is the “vfm conclusion” and it is a yet a further function. (Work to support the vfm conclusion is generally referred to as “local performance audit work”.)

If the local health board requires a grant claim to be certified, the duty to certify is another function (undertaken under paragraph 20 of Schedule 8 to the Government of Wales Act 2006).

The “no more than full cost” rule set out in section 23 of the Public Audit (Wales) Act 2013 means that as an underspend in undertaking one function cannot be used to fund an overspend in undertaking another, there can be no cross-subsidy between functions.

The situation with local government bodies is more complex than in the NHS, as there are many more functions exercised at each body, though not all will be exercised in the same year.

- 3.6 To a somewhat limited extent, these variations can be managed over time by “offsetting” (netting off refunds in respect of one function against additional fees due where cost exceeds estimate in respect of another function, or the same function in the next year). However, the PAWA 2013 does not provide for offsetting, and there is a risk that as soon as it is apparent that a body has been charged more than the full cost of the relevant function, the fee could be held to be unlawful. This contrasts, for example, with the offsetting permitted in the case of Audit Scotland where the “total sum received...taking one year with another” needs only be “broadly equivalent” to the expenditure in respect of the exercise of functions.

**The application of the no more than full cost rule to work done outside the Welsh public sector prevents the WAO contributing to the Welsh public finances**

- 3.7 Under section 19 of the PAWA 2013, the WAO may agree to arrange to provide professional, technical and administrative services to other public bodies, including bodies outside Wales. Many such services are provided to public bodies outside Wales, as professional standards (the IFAC Ethical Standard issued for the UK by the Financial Reporting Council) prohibits the provision of many non-audit services to audited bodies. For example, the WAO has recently provided assistance to the National Audit Office of Kosovo to develop its local government audit work, and to the National Audit Office Malta for the training of performance auditors. A potential line of significant future work is the provision of EU Agricultural Fund grant certification work. Over the past decade, the WAO has established leading expertise for such work. With the UK leaving the EU, such grant certification work to EU rules is likely to be no longer required in Wales, but there is likely to be a market for the expertise in EU states.
- 3.8 The fees for such services are, however, subject to the “no more than full cost rule”. This means that despite such work usually being obtained on the basis of a competitive tender, any surplus of income over expenditure must be refunded. This prevents the Welsh public finances benefitting from surpluses made on agreement work.

## **The statutory non-executive majority quorum requirement makes the WAO excessively prone to being inquorate, so hampering decision-making**

- 3.9 Paragraph 28(3) of Schedule 1 to the PAWA 2013 contains a requirement that “in all circumstances a quorum cannot be met unless a majority of the members present are non-executive members”.
- 3.10 This is problematic because of the size and composition of the WAO. Para 1 of Schedule 1 to the PAWA 2013 sets out that the WAO is to have nine members: five who are not employees of the WAO (“non-executive members”), the AGW and three employees of the WAO (“employee members”). Consequently, if any non-executive member is absent, and there is no absence on the part of the AGW or employee members, then the WAO is inquorate. Non-executive member absence easily arises for reasons such as sickness or travel disruption, with the potential for delays in decision-making. Of 28 board meetings since the commencement of the PAWA 2013, six (21%) have been inquorate because of the absence or resignation of non-executive members.
- 3.11 It appears that paragraph 28(3) of Schedule 1 to the PAWA 2013 does not take account of the fact that under paragraph 16 of Schedule 1 to the PAWA 2013, two of the three employee members are appointed on the basis of a ballot of all staff (the “elected members”). (The requirement for two elected members was a late amendment to the legislation on passage through the Assembly, so the consequences may not have been fully recognised. While there was debate about the possibility of creating “constituencies”, there was no coverage of the effect on quorum.) The elected members are by the nature of their appointment not executive members in the usual sense; they are not members of the board by virtue of being senior executive management of the organisation. They are not responsible for presenting matters for scrutiny or decision.
- 3.12 There is clearly much merit in having a majority of non-executive members; it enables a high degree of scrutiny of the management of the organisation so helping ensure that significant management decisions are appropriate. However, with paragraph 28(3) as it is, the rigidity of the arrangements prevent them being sufficiently robust to be workable in day-to-day real world conditions, as can be seen from the proportion of WAO meetings that have been inquorate. We would also suggest that in essence quorum is a practical matter for the board, rather than a matter that should be enshrined in legislation.
- 3.13 The existing statutory quorum also risks a potential reduction in the contribution of the elected employee members. When the WAO is inquorate, the elected members tend to recuse themselves, as they are not presenting matters for scrutiny or decision. While this is helpful in enabling quorum to be met, it means the voting power of the ordinary employee is reduced by 50% in response to a non-executive absence of 20%, although invariably decision-making is by consensus rather than a vote. Nevertheless,

this effect puts the full contribution of employee members at risk, which could, for example, lead to poorer consideration of issues affecting employees, such as equality matters in respect of employee terms and conditions.

### **The requirement for interim reports is disproportionately resource-consuming**

3.14 Paragraph 3 of Schedule 2 to the PAWA 2013 requires the AGW and the Chair of the WAO to jointly prepare an interim report on the exercise of the functions of the AGW and the WAO.

3.15 There is, however, little Assembly or public interest in such reports. For example, in both November 2016 and November 2017, the Finance Committee, which is the Assembly Committee charged with considering such reports under Assembly Standing Orders, merely noted the interim report as a paper. There was no Committee discussion of the report. Furthermore, website statistics indicate little wider interest in the interim reports. For example, the 2015-16 interim report received 9 page visits in the fortnight following publication, compared with 81 page visits in the equivalent time span for the 2015-16 annual report.

3.16 The WAO estimates that each interim report costs some £20,000 to prepare over and above the ongoing internal reporting to the WAO on progress against the annual plan. The cost of such reports therefore seems to be disproportionate to the use made of them. It is also worth noting that there appears to be no other Welsh or UK public body that is subject to the requirement of preparing interim reports on the exercise of functions.

### **There are overlapping annual reporting requirements, causing confusion and undermining transparency**

3.17 Paragraph 33 of Schedule 1 to the PAWA 2013 requires the AGW to prepare the statements of accounts of the WAO and to include additional information as directed by Treasury. The Treasury's accounts direction requires the AGW, like other central government bodies, to prepare accounts in accordance with the Treasury's Financial Reporting Manual<sup>2</sup> (the "FReM"). The FReM also requires an annual report to accompany the accounts, including a "performance section", the purpose of which is to "provide information on the entity, its main objectives and strategies". The FReM also sets out that external auditors (i.e. *not* the AGW in this case) review the performance report for consistency with other information in the financial statements. This reflects the professional standard (ISA 720<sup>3</sup>) that requires the

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<sup>2</sup> Financial Reporting Manual, HM Treasury, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/669344/2017-18\\_Government\\_Financial\\_Reporting\\_Manual.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/669344/2017-18_Government_Financial_Reporting_Manual.pdf)

<sup>3</sup> International Standard on Auditing 720, issued by the Financial Reporting Council, [https://www.frc.org.uk/getattachment/11b5e047-a2d7-4674-8281-cc57ec3d5e66/ISA-\(UK\)-720-Revised-June-2016\\_final.pdf](https://www.frc.org.uk/getattachment/11b5e047-a2d7-4674-8281-cc57ec3d5e66/ISA-(UK)-720-Revised-June-2016_final.pdf)

external auditor to consider whether the annual report is consistent with the accounts.

- 3.18 At the same time, paragraph 3 of Schedule 2 to the PAWA 2013 requires the AGW and the Chair of the WAO to prepare an annual report on the exercise each year of the functions of the AGW and the WAO. This requirement overlaps substantially with the requirements of the FReM. In practice, therefore, like other public bodies subject to such overlapping requirements, the AGW and Chair of the WAO jointly produce one “annual report and accounts” document, rather than an annual report on the discharge of functions and an annual report and accounts.
- 3.19 However, this leads to a lack of clarity in terms of the laying of documents before the Assembly. Paragraph 3(6)(a) of Schedule 2 and paragraph 35(2)(b) of Schedule 1 each require reports to be laid before the Assembly. However, in the case of paragraph 3(6)(a) of Schedule 2, it is the AGW and Chair of the WAO who are required to jointly lay the report, and in the case of paragraph 35(2)(b) of Schedule 1, it is the external auditor of the WAO who is required to lay a certified copy of the accounts (which under Treasury direction is accompanied by an annual report). In practice, this is resolved by laying the same document twice (though only one copy appears on the Assembly’s website), once by the external auditor and once by the AGW and the Chair of the WAO. Clearly, it is unsatisfactory that the legislation leads to such duplication, and it is not conducive to clarity of responsibility.

#### **4. How the problems arising from the Public Audit (Wales) Act 2013 could be addressed with legislation**

- 4.1 The five problems set out above could be addressed by legislation as follows. The draft bill at annex 2 embodies these suggestions. The overall intention is not to roll-back the overall system of checks and safeguards of the PAWA 2013, but to improve the economy, efficiency and effectiveness of the WAO by addressing the specific problems outlined above.

##### **The complexity and disincentive to efficiency of the “no more than full cost” rule**

- 4.2 This draft bill’s provisions would replace the “no more than full cost” rule, and the strict requirement for fees to be paid by the particular body that the function relates to, with a new requirement for the fee scheme prepared under section 24 of the PAWA 2013 to require the WAO to set fees so as to broadly breakeven. In particular, under the new provisions, the WAO must seek to ensure that the total sum of the fees charged for all work undertaken (except agreement work), taking one year with another, is broadly equivalent to the expenditure in connection with that work.
- 4.3 In short, the new provision will still require the WAO to seek to break even in terms of setting fees overall, but, by enabling the WAO to consider fees taking one year with another, it allows sufficient flexibility to accommodate differences between estimated

and actual costs without requiring additional invoices to be raised or refunds to be given, or complex offsetting arrangements. In applying the requirement to break even in the round rather than in respect of each particular function at each particular body, it also allows suitable flexibility, so that, for example, the first body subject to a new audit test does not face higher fees than others because of the additional costs that arise from initial implementation.

- 4.4 By providing a greater degree of tolerance, the changes would bring the requirements that apply to the WAO more closely into line with those that apply to Audit Scotland.

#### **The “no more than full cost” rule preventing the WAO from contributing to the Welsh public finances**

- 4.5 Section 3 of the draft bill would amend section 19 of the PAWA 2013 so as to release the WAO from the requirement to set fees for agreement work in accordance with a fee scheme (prepared under section 24 of the PAWA 2013). This would enable the WAO to charge fees for agreement work, such as audit services provided to overseas public authorities, at levels that lead to a surplus of income over expenditure and so provide a net positive contribution to the Welsh public finances. Under the existing requirement for all the WAO’s expenditure to be authorised by a budget motion, the surplus income could only either be used for a purpose approved by the Assembly or surrendered to the Welsh Consolidated Fund.

#### **The statutory quorum requirement making the WAO prone to being inquorate**

- 4.6 The draft bill would remove the requirement of the PAWA 2013 for the procedural rules of the WAO to provide that in all circumstances a quorum cannot be met unless a majority of the members present are non-executive members. This would allow the WAO to set more manageable quorum rules that would help ensure timely and effective board-level decision-making. It would also take account of the fact that the two elected employee members are not executive members in the usual sense. This would help ensure that the contribution of the elected employee members is maintained at an appropriate level and reduces the risk of poorer consideration of issues affecting employees, such as equality matters.

#### **The disproportionate requirement of interim reports**

- 4.7 The draft bill’s provisions would remove the requirement for the Auditor General and the Chair of the WAO to jointly prepare and lay interim reports on the exercise of functions. It would not affect the requirement for the Auditor General and the Chair of the WAO to jointly prepare annual reports on the exercise of functions. The draft bill would therefore enable a proportionate volume of reporting that matches the Assembly’s justifiable level of interest and capacity for considering reports.

## **Streamlining preparation and laying of annual reports**

- 4.8 The draft bill streamlines arrangements for the laying of the annual report on the exercise of functions. It does this by requiring the Auditor General and the Chair of the WAO to provide the external auditor of the WAO with their annual reports, and requiring the external auditor to lay those reports as part and parcel of the laying of the annual accounts.

## **5. The costs of the problems and the costs and benefits of the solutions**

- 5.1 Overall, the draft bill's provisions would incur a very small amount of initial implementation expenditure. The provisions would not lead to any additional ongoing expenditure but would lead to ongoing cost savings due to the removal of the requirement for interim reports, increased economy and efficiency in undertaking audit work and reduced fee administration. Increased efficiency and effectiveness would also arise in respect of board decision-making by reducing instances of quorum not being met and helping ensure appropriate levels of contribution of elected members.

### **The overall administrative cost of the current fee arrangements**

- 5.2 It is not possible to precisely identify the full cost of the current fee arrangements. We estimate that the resources involved include up to 30% of the WAO's finance department's time and varying amounts of time among other staff. The time and tasks involved include:
- (a) annual consultation on and preparation of fee scales and the fee scheme;
  - (b) communications staff time spent in translating and publishing fee consultations and fee schemes each year;
  - (c) several hours each year of engagement directors' and other staff time taken up in discussion of fees with audited bodies;
  - (d) detailed time recording by staff—the completion of electronic timesheets;
  - (e) maintenance of the time recording system;
  - (f) monitoring and managing time spent on functions against budget.
- 5.3 In addition to staff time, a further relevant resource is the cost of the time recording system, for which the relevant cost is some £30,000 a year<sup>4</sup> in terms of licences.
- 5.4 However, not all the time and other resources mentioned above are necessarily attributable entirely to the current fee arrangements. For example, even if the

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<sup>4</sup> Our current system is part of comprehensive audit documentation system, so the licence cost of that system is not a fair reflection of the cost of the time-recording system. We understand, however, that a licence for such a system for an office of our size would be in excess of £30,000 a year.

organisation were funded entirely by supply rather than in large part by fees, we would still want to have a time recording system, as it is a means of managing professional staff that are engaged in a range of tasks that differ in size and complexity. Our estimates of the time and cost that can reasonably be attributed to administration of fee arrangements are summarised in the table 1 below.

**Table 1: Estimates of annual overall administrative costs of the current fee arrangements**

Description	Total estimated amount (£)
Finance department administration, including calculation of fee rates and fees, keeping records, including of work done, raising invoices, debt management, preparation and administration of consultations on of fee scales and fee schemes 30% of Finance department time (£220,000)	66,000
Auditor time spent in fee estimation, internal moderation and discussion of consultation documents and responses (16.5 days at £500 including oncosts <sup>5</sup> )	8,250
Engagement directors' discussions of fees with individual audited bodies: 74 discussions at an average of 1.5 hours, i.e. some 15 days at £500 a day	7,500
Communications staff time producing fee consultation documents and fee scheme (8 days at £250 a day)	2,000
Recording time for the purposes of fees etc (175 staff at 1/4hr a week for 52 weeks a year: 325 days at £400 a day)	130,000
Monitoring and managing time for fee-funded projects (246 days at £500)	123,000
Time spent managing timesheet system for fees (allocating jobcodes etc) 10 days at £500	5,000
Total	341,750

### The administrative cost of the “no more than full cost” rule

5.5 Not all the cost of fee administration is attributable to the problem of the “no more than full cost” rule; the majority of fee administration would be incurred with any fee arrangements. Our estimates of the time and cost that can be attributed to the

<sup>5</sup> Staff costs are based on the estimated actual staff salary for the grade concerned, with oncosts for employer national insurance and pension contributions. The daily rates for cost estimates are different to charge-out rates because overheads, such as accommodation costs, are not included. Using charge-out rates would overstate costs because of over-recovery of overheads.

problem of the “no more than full cost rule” are summarised in the table below. Estimating the amount of management time spent on monitoring for the purposes of the “no more than full cost rule” is particularly difficult. We have therefore given this a range. The effect on fee discussions is also very difficult to quantify, but some reduction of time seems likely, though the overall amount will only amount to a few thousand pounds worth of staff time.

**Table 2: Estimates of costs attributable to the “no more than full cost” rule**

Description	£
Finance department work in respect of under and overpayments vis a vis functions: 74 major bodies at an average of 2.5 hours each a year, i.e. some 26 days at £200 a day (incl oncosts)	5,200
Engagement directors’ and audit managers’ discussions of fees with individual audited bodies: 74 discussions at average of 0.5 hours, i.e. some 5 days at £500 a day	2,500
Particular effort in respect of monitoring and managing time for the purposes of the “no more than full cost rule” (between 40 and 80 days at £500 a day)	20,000 to 40,000
Total	27,700 to 47,700

**The cost of the “no more than full cost” rule in terms of disincentive to improving audit efficiency**

5.6 It is difficult to provide an estimate of the cost of the “no more than full cost” in terms of disincentive to improving audit efficiency other than in the form of an educated guess. With perhaps one in ten audits involving foregone efficiencies of five days of work, additional costs in the region of some £12,000 may be being incurred each year. Such foregone efficiencies may include, for example, missing opportunities to take advantage of automation, and maintaining excessively high standards of documentation.

**The opportunity cost of the “no more than full cost” rule preventing WAO contributing surpluses on agreement work to the Welsh public finances**

5.7 Over the past four years, refunds given on agreement work have amounted on average to some £7,500. While there is no certainty that future surpluses will be at this level, this is the best available indication of such surpluses.

### **The cost of interim reports**

- 5.8 Producing an interim report each year costs some £20,000, including staff time spent in research and drafting, senior management review, board review, translation and publishing.

### **The cost of inquoracy**

- 5.9 The potential for WAO meetings to become inquorate can cause delay in decision-making, but the financial effect is very small.

### **The cost of confusion arising from overlapping annual reporting requirements**

- 5.10 Resolving the confusion arising from overlapping annual reporting and laying requirements required a small amount of work on the commencement of the 2013 Act in 2014. While non-recurring in the case of the WAO, similar queries from some audited bodies arise from time to time.

### **The cost of implementing the draft bill's provisions**

- 5.11 A change in fee rules would require some revision of finance team procedures and instructions. We estimate that these changes would take at most a day at cost of about £400. Similarly, a change in respect of the statutory quorum rule would require revision of the board's rules, which would be a minor adjustment at minimal cost. We do not see any costs arising on an ongoing basis.

### **Summary of estimated financial costs and benefits of the draft bill provisions**

- 5.12 We summarise our estimates of costs and benefits of the draft bill provisions in table 3 below.

**Table 3: Summary of estimated costs and benefits of the draft bill provisions**

Description	£
One-off transition costs	1,000
Annual direct cost of the draft bill's provisions	Nil
Annual indirect cost of the draft bill's provisions	Nil
Annual compliance cost of the draft bill's provisions	Nil
Total annual cost of the draft bill's provisions	Nil
Administrative cost of the "no more than full cost" rule avoided	(27,700 to 47,700)
Contributions from surpluses on agreement work	(7,500)
Cost of interim reports avoided	(20,000)
Net annual cost (saving) of the draft bill	(55,200 to 75,200)
<u>Summary of hard to quantify and non-cash costs and benefits</u>	
<p>Removal of disincentive to undertake audit work more economically or more efficiently</p> <p>Simplifying board decision-operations, reducing instances of quorum not being met and helping ensure appropriate level of contribution of elected members, which would be conducive to, among other things, thorough consideration of equality issues in respect of staff terms and conditions</p> <p>Improved efficiency and clarity in preparing and laying annual reports</p>	

## **Draft Public Audit (Amendment) (Wales) Bill**

### **Explanatory Notes**

#### **Introduction**

These explanatory notes relate to the draft Public Audit (Amendment) (Wales) Bill. They have been prepared in order to assist the reader in understanding the draft Bill. They do not form part of the draft Bill, but they should be read in conjunction with the draft Bill. They are not, and are not meant to be, a comprehensive description of the draft Bill.

#### **Section 1 – Overview**

This section sets out an overview of the [draft Bill].

#### **Section 2 – Fees for the provision of services**

This section amends section 19 of the PAWA 2013 so as to enable the Wales Audit Office (“WAO”) to continue to charge fees for services or functions exercised by agreement under section 19 of the PAWA 2013 while releasing it from the obligation to set fees for such work in accordance with a fee scheme (prepared under section 24 of the PAWA 2013). As section 3 of the [draft bill] removes from section 23(3)(d) of the PAWA 2013 provision for the charging of fees for work under section 19 of the PAWA 2013, a replacement provision for the charging of fees is necessary, and this is provided by section 2.

#### **Section 3 – General provision relating to fees**

This section removes the prohibition on fees charged under those enactments listed in section 23(3) of the PAWA 2013 from exceeding the full cost of the function to which they relate. This section also removes the requirement for fees to be paid by the particular body that the function relates to.

Section 3 repeals the power to charge fees for work under section 19 of the PAWA 2013 from section 23 of the PAWA 2013. However, as explained above, section 2 replaces this provision with an equivalent power in section 19 of the PAWA 2013. The net effect of these changes to fees charged under section 19 of the PAWA 2013 is that they may be set at a level above the related expenditure.

#### **Section 4 – Scheme for charging fees**

Section 4(2) reflects that, following the amendments made by sections 2 and 3, fees for work under section 19 of the PAWA 2013 are not subject to the requirement that fees do not exceed cost and the requirements of the fee scheme prepared under section 24 of the PAWA 2013.

Section 4(3) amends section 24(2) of the PAWA 2013 to introduce a new requirement for the fee scheme prepared under section 24 to include provision that the WAO must seek to ensure that the sum of the fees charged for all of the work undertaken under the enactments listed in section 24(1), taken together and taking one year with another, is broadly equivalent to all of its expenditure in

connection with that work. This new requirement is to take the place of the prohibition on fees exceeding the full cost of the function to which they relate, which is to be removed by section 3.

#### **Section 5 – Quorum for WAO meetings**

This section removes the requirement in paragraph 28(3) of Schedule 1 to the PAWA 2013 for the procedural rules of the WAO to provide that in all circumstances a quorum cannot be met unless a majority of the members present are non-executive members.

#### **Section 6 – Interim reports**

This section removes the requirements for the Auditor General and the Chair of the WAO to jointly prepare interim reports on the exercise of functions, and to lay these before the Assembly, as currently provided for by sub-paragraphs (3) to (5) of paragraph 3 of Schedule 2 to the PAWA 2013.

#### **Section 7 – Laying of reports etc. before the Assembly**

This section amends paragraph 3(6) of Schedule 2 to the PAWA 2013, to require the Auditor General and the Chair of the WAO to provide the WAO annual report, as soon as practicable to the auditor appointed under paragraph 34 of Schedule 1 and in any event no later than 5 months after the end of the financial year to which the annual report relates. This section also amends paragraph 35 of Schedule 1 to the PAWA 2013 so that the auditor of the WAO must lay the annual report, which is provided by the Auditor General and the Chair of the WAO in accordance with paragraph 3 of Schedule 2 to the PAWA 2013, before the National Assembly at the same time as laying the statement of accounts and any report.

#### **Section 8 and Schedule 1 – Consequential amendments**

Section 8 of the [draft Bill] gives effect to the consequential amendments made in Schedule 1. Those amendments relate to various fee charging powers to be found in enactments other than section 23(b) of the PAWA 2013 and related prohibitions on fees exceeding the full cost of the functions to which they relate. The amendments remove these prohibitions in line with the changes to sections 23 and 24 of the PAWA 2013 made by this [Bill].

#### **Section 9 – Short title and commencement**

Section 9 provides for all the provisions of the [draft Bill] to come into force on the day after the day the [draft Bill] receives Royal Assent. It also provides that the short title of the [draft Bill] is the Public Audit (Amendment) Wales Act 2018.

# **Public Audit (Amendment) (Wales) Bill**

**[DRAFT]**

**CONTENTS**

**[TO INSERT]**

# Public Audit (Amendment) (Wales) Bill

[DRAFT]

1 An Act of the National Assembly for Wales to make provision in relation to the charging of  
2 fees by the Wales Audit Office; to make provision in relation to the quorum for meetings of  
3 the Wales Audit Office; to make provision in relation to the reporting requirements of the  
4 Auditor General and chair of the Wales Audit Office; and for connected purposes.

5 **Having been passed by the National Assembly for Wales and having received the assent**  
6 **of Her Majesty, it is enacted as follows:**

7

8

## *Introduction*

### 9 **1 Overview**

10 (1) The main provisions of this Act amend the Public Audit (Wales) Act 2013 so as  
11 to—

12

13 (a) remove the prohibition on the Wales Audit Office (the “WAO”) charging  
14 fees that exceed the full cost of exercising the function to which the fee  
15 relates;

16

17 (b) require the WAO to include in a fees scheme a provision that seeks to  
18 ensure that the sum of the fees charged for work undertaken under  
19 specified enactments, taken together and taking one year with another, is  
20 broadly equivalent to all of its expenditure in connection with that work;

21

22 (c) remove the requirement that the rules in relation to quoracy for WAO  
23 meetings cannot be met unless there is a majority of non-executive  
24 members;

25

26 (d) remove the requirement for the Auditor General and the chair of the  
27 WAO to jointly prepare and lay interim reports before the National  
28 Assembly on the exercise of their functions;

29

30 (e) co-ordinate the laying of the annual report on the exercise of functions of  
31 the Auditor General and the WAO with the laying of the audited accounts  
32 of the WAO.

33

### 34 *Amendments to the Public Audit (Wales) Act 2013*

### 35 **2 Fees for provision of services**

36 (1) Section 19 of the Public Audit (Wales) Act 2013 is amended as follows.

37 (2) After subsection (6) insert—

38 “(6A) The WAO may charge a fee in relation to any services provided or  
39 functions exercised under this section.”.

40 (3) Omit subsection (8).

41

42 **3 General provision relating to fees**

43 (1) Section 23 of the Public Audit (Wales) Act 2013 is amended as follows.

44 (2) Omit paragraph (d) of subsection (3).

45 (3) Omit paragraphs (b) and (c) of subsection (5).

46

47 **4 Scheme for charging of fees**

48 (1) Section 24 of the Public Audit (Wales) Act 2013 is amended as follows.

49 (2) In subsection (2)(a) at the end insert “and which may only be charged in  
50 accordance with this scheme”.

51 (3) In subsection (2) after paragraph (d) insert—

52 “(e) provision that the WAO must seek to ensure that the sum of the fees  
53 charged for all of the work undertaken under the enactments mentioned  
54 in subparagraph (a), taken together and taking one year with another, is  
55 broadly equivalent to all of its expenditure in connection with that  
56 work.”.

57

58 **5 Quorum for WAO meetings**

59 (1) Paragraph 28 of Schedule 1 of the Public Audit (Wales) Act 2013 is amended as  
60 follows.

61 (2) Omit sub-paragraph (3).

62

63 **6 Interim reports**

64 (1) Paragraph 3 of Schedule 2 of the Public Audit (Wales) Act 2013 is amended as  
65 follows.

66 (2) Omit sub-paragraphs (3) – (5) and 6(b).

67

68

69 **7 Laying of reports etc. before Assembly**

70 (1) The Public Audit (Wales) Act 2013 is amended as follows.

71 (2) In paragraph 35 of Schedule 1, in sub-paragraph (2)(b) after “report on it”  
72 insert—

73 “and the annual report provided by the Auditor General and the chair of the  
74 WAO in accordance with paragraph 3 of Schedule 2”.



88 **SCHEDULE 1**89 *(Introduced by section 10)*90 **CONSEQUENTIAL AMENDMENTS**

91

92 *Education Act 1997 (c. 44)*

93 1 In subsection (6) of section 41A of the Education Act 1997 omit the words from  
94 “(which” to the end of that subsection.

95

96 *Government of Wales Act 1998 (c. 38)*

97 2 (1) The Government of Wales Act 1998 is amended as follows.

98 (2) In subsection 145C(3) omit the words “(which may not exceed the full cost  
99 incurred in undertaking the programme)”.

100 (3) In section 145D, omit subsection (2A).

101

102 *Public Audit (Wales) Act 2004 (c.23)*

103 3 (1) The Public Audit (Wales) Act 2004 is amended as follows.

104 (2) In section 20, omit subsection (5A).

105 (3) In subsection 45(8), omit the words from “(but” to the end of that subsection.

106 (4) In section 64F, omit subsection (10).

107 (5) In section 67A, omit subsection (3).

108

109 *Government of Wales Act 2006 (c. 32)*

110 4 In subsection 144(2) of the Government of Wales Act 2006, omit subparagraph (g).

111

112 *Local Government (Wales) Measure 2009 (nawm 2)*

113 5 In section 27 of the Local Government (Wales) Measure 2009, omit subsection (4A).

114

115 *Local Democracy, Economic Development and Construction Act 2009 (c. 20)*

116 6 In subsection (4A) of section 50 of the Local Democracy, Economic Development and  
117 Construction Act 2009, omit the words from “But” to the end of that subsection.