

## Y Pwyllgor Cyfrifon Cyhoeddus

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Lleoliad:  
Ystafell Bwyllgora 3 – y Senedd

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Dyddiad:  
Dydd Llun, 1 Hydref 2012

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Amser:  
14:10

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



I gael rhagor o wybodaeth, cysylltwch â:

Deddfwriaeth: Sarah Beasley  
Clerc y Pwyllgor  
029 2089 8032  
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### Agenda

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**1. Cyflwyniad, ymddiheuriadau a dirprwyon (14:10 – 14:15)**

**2. Bil Archwilio Cyhoeddus (Cymru): Cyfnod 1 – Tystiolaeth gan Sefydliad Cyfrifwyr Siartredig Cymru a Lloegr (ICAEW) (14:15 – 15:00)** (Tudalennau 1 – 6)

Vernon Soare, Cyfarwyddwr Gweithredol

**3. Bil Archwilio Cyhoeddus (Cymru): Cyfnod 1 – Tystiolaeth gan Prospect ac Undeb y Gwasanaethau Cyhoeddus a Masnachol (PCS) (15:00 – 15:50)** (Tudalennau 7 – 17)

Gareth Howells, Prospect

David Rees, Prospect

Ben Robertson, Undeb y PCS

**4. Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y canlynol: (15:55)**

Eitem 5

**5. Ystyried tystiolaeth ar Fil Archwilio Cyhoeddus (Cymru) (15:55 – 16:05)**

**6. Papurau i'w nodi (16:05)** (Tudalennau 18 – 20)

# Eitem 2



Our ref: ICAEW Rep 136/12

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

By Email: [PublicAccounts.Committee@Wales.gov.uk](mailto:PublicAccounts.Committee@Wales.gov.uk)

Dear Sarah,

## **PUBLIC AUDIT (WALES) BILL**

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

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

Yours sincerely

Sumita Shah  
Technical Manager, Public Sector

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ICAEW REPRESENTATION

**PUBLIC AUDIT (WALES) BILL**

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

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

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## INTRODUCTION

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

## WHO WE ARE

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

## MAJOR POINTS

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

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

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

#### **Maintaining auditor independence**

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

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

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

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

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

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

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

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

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

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

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

#### **Streamlining of audit provisions**

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

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10<sup>th</sup> September 2012  
GH/WAO/PAWB

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Workability of proposed governance structures**

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Staffing Issues**

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

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

We are disappointed that the Explanatory Memorandum provides no assurance on this matter and the lack of detail on staff transfer has already caused significant concern to our members. These concerns have been exacerbated by the fact that the previous statement, contained in Paragraph 242 of the consultation document, has not been met in the draft Bill, nor has the commitment been repeated in the Explanatory Memorandum: *"provision will be made so that the transfer of employment will be on no less favourable terms than would be the case if TUPE applied"*.

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

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

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

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

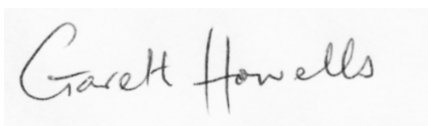
We are also concerned that the term 'broadly in line' is not defined and this leaves considerable scope for subjective judgement to be applied which is open to challenge. These matters could only be resolved through the courts or employment tribunals. We therefore consider that either the provision should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

### **Employee Member**

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

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

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

A handwritten signature in black ink that reads "Gareth Howells". The signature is written in a cursive style and is centered within a light gray rectangular box.

### **GARETH HOWELLS**

Negotiations Officer, Prospect Wales

September 2012

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

11 September 2012

Dear Mr Millar

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

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

### **Governance arrangements**

3. The WAO Board will have executive responsibility for running the WAO, including the employment of staff and the deployment of other resources. At the same time, it has important scrutiny and oversight functions, and a membership that seems more suited to a non-executive board. The functions of the board are not entirely clear, and we do not understand how it can ensure greater oversight of the Auditor General and the WAO in the form currently proposed. We have

several specific concerns about the proposals, which are set out below.

#### Independence of the Auditor General

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

#### Membership of the Board

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

#### Oversight and accountability of the new WAO

7. One of the principal intentions of the Bill is to hold the AGW to account for his management of the WAO. However, the Board's scrutiny functions are compromised by its executive powers. The Board cannot

credibly scrutinise its own decisions, which may include sensitive matters such as severance payments and staff training – exactly the issues that led to the governance failures that precipitated this Bill. It is quite possible that the non-executive members' appetite for critical scrutiny will diminish over time as they are implicated in decisions they themselves have taken and any unwelcome consequences of those decisions become apparent.

8. The Bill does not establish any reliable mechanisms for the WAO itself to be scrutinised. It is not reasonable to expect the PAC or another Assembly committee to exercise the in-depth scrutiny currently provided by the three existing governance committees (Audit and Risk Management, Remuneration and Resources). The Bill does not require these committees to be retained or to report the outcome of their work to the Assembly. Far from improving the supervision and oversight of the WAO, the Bill diminishes it.
9. In our view, the proposed relationship between the AGW and the WAO is fraught and potentially untenable. We recognise that the intention is to ensure that the AGW is held to account for the exercise of his/her functions as AGW. We consider that this can best be achieved by legislating for the creation of a non-executive board exercising solely advisory, supervisory and scrutiny functions, but not executive decision-making, such as agreement of work programmes.
10. We would expect the Board to provide wide-ranging advice to the AGW and strong, independent and comprehensive scrutiny of the WAO's operations; it should not be seen as a soft option. We believe this option would provide more robust oversight of the WAO; the Government offers no rationale for its assertions to the contrary (paragraph 94 of the Explanatory Memorandum). A single, non-executive board would remove conflicts of interest and would be cleaner, simpler and (according to the Government's own impact assessment) considerably less expensive than the Government's preferred option of an executive board.

## **Staff related matters**

### Transfer provisions

11. We welcomed the commitment in paragraph 242 of the consultation document that any transfer of staff would be in accordance with the Cabinet's Office Statement of Practice on Staff Transfers and that provision would be made so that the transfer of employment would be on no less favourable terms than would be the case if TUPE applied. We are therefore disappointed and concerned that the Bill does not make good on this commitment. The transfer provisions in Schedule 3, Part 3 do not include provisions that replicate the TUPE regulations, which prevent adverse alterations to an employee's terms and

conditions that are connected to a transfer between one organisation and another. We believe that these provisions should be added and the transfer should be treated explicitly as a “machinery of government” transfer.

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

*Terms and conditions to be “broadly in line” with the Welsh Government*

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

- a) It is essential that the auditor of public bodies is independent, and seen to be independent, of the organisations audited. For this reason we consider it inappropriate to link terms and conditions explicitly to the Welsh Government, especially as this organisation is such an important recipient of audit scrutiny. It would be very difficult to undertake a value for money study on a certain aspect of the Welsh Government’s employment practices, for example its recruitment and selection procedures, if the auditor was required to follow those procedures. The conflict of interest is self-evident.
- b) There is an implicit assumption that the Welsh Government’s practices are the best benchmark for public audit. However, the nature of the Welsh Government’s work is quite different from the WAO’s. The staff of the WAO have a much higher proportion of specialist and relatively senior staff who travel much more extensively than the typical civil servant at the Welsh Government. There needs therefore to be sufficient flexibility to respond to market conditions and, crucially, to create grading structures and pay scales that meet audit requirements rather than those of another organisation. For this reason, it is essential that any “broadly in line” wording does not require close alignment to any



single aspect of the Welsh Government's (or any other organisation's) employment practices and organisational structures.

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

#### Employee representative

15. PCS welcomes the principle of having an employee representative as a member of a non-executive advisory board, and we consider that the ability to represent employee experience and views at Board meetings would be valuable. We welcome the principle of an employee representative if that is the intention of the proposals. We note that this is now considered good practice, and we understand that all Health Boards in Wales have one. But this would only be appropriate if the Board was supervisory in nature. We do not think an employee representative should take part in executive decision making since this would compromise their position as a representative of the workforce.

16. We do not have fixed views on how employee members should be appointed, but the proposed method is not conducive to the selection of an employee representative. The WAO's employees would need the major say in who that person should be, and we do not understand how the non-executive members could assess applications "on merit" when the criterion is "employee experience." Our preference is that the employee representative should be elected by the staff.

17. The arrangements proposed in the consultation are more suitable for the appointment of executive members. The AGW would clearly need a major role in determining which of the WAO's senior managers should be members.

We look forward to giving oral evidence on the Bill on 1<sup>st</sup> October.

Yours sincerely

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

## Y Pwyllgor Cyfrifon Cyhoeddus

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Lleoliad: **Ystafell Bwyllgora 3 - y Senedd**

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Dyddiad: **Dydd Llun, 24 Medi 2012**

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Amser: **14:00 - 16:55**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



Gellir gwyllo'r cyfarfod ar Senedd TV yn:  
[http://www.senedd.tv/archiveplayer.jsf?v=cy\\_400000\\_24\\_09\\_2012&t=0&l=cy](http://www.senedd.tv/archiveplayer.jsf?v=cy_400000_24_09_2012&t=0&l=cy)

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### Cofnodion Cryno:

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#### Aelodau'r Cynulliad:

**Darren Millar (Cadeirydd)**  
**Mohammad Asghar (Oscar) AC**  
**Mike Hedges**  
**Julie Morgan**  
**Gwyn R Price**  
**Jenny Rathbone**  
**Lindsay Whittle**

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#### Tystion:

**Huw Vaughan Thomas, Archwilydd Cyffredinol Cymru, Swyddfa Archwilio Cymru**  
**Stephen Martin, Swyddfa Archwilio Cymru**  
**Jane Hutt, y Gweinidog Cyllid ac Arweinydd y Tŷ**  
**Reg Kilpatrick, Cyfarwyddwr, Local Government and Public Service**  
**Nicola Charles, Llywodraeth Cymru**  
**Mike Usher, Swyddfa Archwilio Cymru**  
**Martin Peters, Swyddfa Archwilio Cymru**

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#### Staff y Pwyllgor:

**Tom Jackson (Clerc)**  
**Sarah Beasley (Clerc)**  
**Daniel Collier (Dirprwy Clerc)**  
**Sarah Sargent (Dirprwy Clerc)**  
**Joanest Jackson (Cynghorydd Cyfreithiol)**

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### 1. Cyflwyniad, ymddiheuriadau a dirprwyon

- 1.1 Croesawodd y Cadeirydd yr Aelodau a'r cyhoedd i'r cyfarfod.
- 1.2 Cafwyd ymddiheuriadau gan Aled Roberts.

## **2. Sesiwn friffio gan Archwilydd Cyffredinol Cymru ar adroddiad Swyddfa Archwilio Cymru 'Cyrhaeddiad addysgol plant a phobl ifanc sy'n derbyn gofal'**

2.1 Bu i'r Cadeirydd wahodd Archwilydd Cyffredinol Cymru i friffio'r Pwyllgor ar ei adroddiad 'Cyrhaeddiad addysgol plant a phobl ifanc sy'n derbyn gofal'.

### **Pwynt gweithredu:**

Cytunodd Archwilydd Cyffredinol Cymru i ddarparu:

- Rhagor o fanylion am y model a ddefnyddiwyd gan Lywodraeth yr Alban wrth helpu plant a phobl ifanc sy'n derbyn gofal i gael mynediad at addysg uwch.

## **3. Cynnig o dan Reol Sefydlog 17.42 i benderfynu gwahardd y cyhoedd o'r cyfarfod ar gyfer y canlynol:**

4 a 7.

## **4. Opsiynau ar gyfer ymdrin â 'Cyrhaeddiad addysgol plant a phobl ifanc sy'n derbyn gofal'**

4.1 Cytunodd y pwyllgor i ysgrifennu at Gadeirydd y Pwyllgor Plant a Phobl Ifanc i ystyried canfyddiadau adroddiad Archwilydd Cyffredinol Cymru fel rhan o'i waith craffu ar ddeddfwriaeth sydd ar y gweill ynghylch gofal.

## **5. Bil Archwilio Cyhoeddus (Cymru) – Tystiolaeth gan y Gweinidog Cyllid ac Arweinydd y Tŷ**

5.1 Clywodd y pwyllgor dystiolaeth gan Jane Hutt, y Gweinidog Cyllid ac Arweinydd y Tŷ, sef yr Aelod sy'n gyfrifol am y Bil; Reg Kilpatrick, Cyfarwyddwr Llywodraeth Leol a Gwasanaethau Cyhoeddus, Llywodraeth Cymru; a Nicola Charles, Gwasanaeth Cyfreithiol, Llywodraeth Cymru.

## **6. Bil Archwilio Cyhoeddus (Cymru) – Tystiolaeth gan Archwilydd Cyffredinol Cymru**

6.1 Clywodd y pwyllgor dystiolaeth gan Huw Vaughan Thomas, Archwilydd Cyffredinol Cymru; Mike Usher, Cyfarwyddwr y Grŵp – Archwilio Ariannol, Swyddfa Archwilio Cymru; a Martin Peters, Rheolwr Cydymffurfiaeth, Swyddfa Archwilio Cymru.

### **Pwynt Gweithredu:**

6.2 Cytunodd Archwilydd Cyffredinol Cymru i ddarparu nodyn atodol i'r pwyllgor ar:

- ei amcangyfrif o oblygiadau ariannol y Bil,
- a'i bryderon yn ymwneud â threfniadau Rheoliadau Trosglwyddo Ymgymeriadau ar gyfer trosglwyddo staff i'r Swyddfa Archwilio Cymru newydd a sefydlir gan y Bil.

## **7. Ystyried tystiolaeth ar Fil Archwilio Cyhoeddus (Cymru)**

7.1 Ystyriodd y pwyllgor y dystiolaeth a roddwyd gan y Gweinidog Cyllid ac Arweinydd y Tŷ ac Archwilydd Cyffredinol Cymru fel rhan o waith craffu Cyfnod 1 ar Fil Archwilio Cyhoeddus (Cymru).

## **8. Papurau i'w nodi**

8.1 Nododd y pwyllgor gofnodion y cyfarfod ar 17 Gorffennaf 012.