

**Y Pwyllgor Cyfrifon Cyhoeddus  
Public Accounts Committee**

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Minister for Finance and Leader of  
the House  
Welsh Government  
Cathays Park  
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9 May 2012

Dear

**Draft Public Audit (Wales) Bill – consultation response**

As you will be aware, we received a technical briefing from your officials on the draft Bill on 1 May 2012. Members found this session very useful.

Following the briefing, we discussed the main themes in the draft Bill without examining the sections in detail. Members agreed that I should write to you outlining our collective thoughts at this stage. I would like to preface this by stating that our thoughts are based on a high level consideration of the draft Bill and the technical briefing and do not prejudice or pre-empt any detailed consideration of the Bill by us, once it is introduced.

In general, we welcome the draft Bill, particularly those aspects outlined in paragraphs 1 to 8 below, and accept its principal aim of strengthening the governance framework for the Wales Audit Office and its accountability to the Assembly.

**Wales Audit Office (WAO) finances**

1. We note that the draft Bill removes the existing bar on the Committee considering and amending the local government element of the WAO's annual estimate, and simplifies the provisions for charging fees for audit and other work. We welcome these changes in principle.

**Local government audit**

2. We note that the draft Bill restates existing legislation relating to the audit of local government bodies with modifications, the most

significant modification being that the Auditor General would become the auditor of all local government bodies.

3. We consider this approach would help provide a measure of consistency across the Welsh public sector and we welcome this in principle.

### **Rationalisation of non-local government accounting and audit provisions**

4. We note that the draft Bill updates and consolidates existing audit and accounting provisions. We welcome these proposals, in principle.

### **Tenure of office of Auditor General for Wales**

5. We note that the draft Bill specifies that future Auditors General should serve a 7-year non-renewable term of office.
6. You will be aware that, when appointing the present office holder, the Committee decided to limit the term to 8 years, which would not be renewable. This followed decisions by the House of Commons Public Accounts Commission and the Scottish Commission for Public Audit that future Auditors General in their respective jurisdictions should serve time-limited, non-renewable terms. In both cases, this has now been provided for in legislation.
7. We welcome the proposal for a single, non-renewable term of office for the Auditor General to be enshrined in statute.
8. We further note that the draft Bill proposes a number of restrictions on employments and offices that may be held by a former Auditor General, and that these restrictions are in line with recent UK legislation for the Comptroller and Auditor General. We welcome these proposals in principle.

The following paragraphs outline those areas of the draft Bill in respect of which we would welcome further information and/or clarification.

### **Accountability of the Wales Audit Office to the Assembly**

9. Our first point relates to the **dual role of the Public Accounts Committee** (PAC) provided for in the draft Bill, i.e. holding the Welsh Government and other public bodies to account on matters of financial management, and considering and approving the Auditor General's annual estimate.
10. As you will be aware, the first of these roles is common to all Public Accounts Committees in parliamentary jurisdictions that

follow the Westminster model. In this respect, the PAC is effectively a “customer” of the WAO, as its reports are the starting point for the Committee’s work, and the Auditor General and his staff act as “advisers” to the Committee.

11. However, the Committee also has a second role of examining the Auditor General’s estimate and overseeing the finances of this office, as set out in paragraphs 12 and 16 of Schedule 8 to the Government of Wales Act 2006 (the 2006 Act). This role is more unusual in that the Auditor General, as the Accounting Officer for the WAO, is on the receiving end of the PAC’s scrutiny. In most other legislatures, this role is undertaken by a separate commission (comprising elected members) or committee in order to minimise the potential for tension and conflict between the Auditor General and the PAC and to help maintain the essential working relationship that is needed in respect of the PAC’s primary role of holding accounting officers to account.
12. PAC has this dual role by virtue of the 2006 Act and, until the passing of the Budget Responsibility and National Audit Act 2011 and the March 2011 referendum, the Assembly did not have the legislative competence to change this arrangement. As the Assembly now has this competence, it would seem reasonable to include a provision in the Bill that would allow the Assembly to decide (e.g. via its standing orders) how it should undertake its duty to examine the WAO’s budget and hold it to account.
13. Given that the oversight of the audit office in other legislatures is usually not undertaken by its PAC, we would be grateful if you would set out your rationale for not including a provision in the Bill that would allow the Assembly to decide how to undertake this oversight function in respect of the Wales Audit Office. What alternative options were explored in coming to this policy decision?
14. Our second point relates to the **level of prescription in the draft Bill about the PAC’s oversight functions**, for example, paragraphs 3(6) and (7) of Schedule 2 which would require the Committee to consider interim and annual reports from the Auditor General and WAO on progress against their annual plan in open session, and prepare its own report recording its findings. Such detailed provision is unusual, as parliamentary committees should have the freedom to make their own decisions as to the level and extent of scrutiny and the reporting of their findings. We would be grateful if you could explain why you felt it necessary to make such detailed provision on the face of the draft Bill? For the avoidance of doubt, we would have raised this query even if the oversight functions were to be transferred to another organ of the Assembly.

## **Governance and Constitution of the Wales Audit Office**

15. Our first point here relates to the **constitution of the WAO** as provided for in the draft Bill. We note that the draft Bill proposes two separate legal entities: the Auditor General as, at present, a corporation sole and the new WAO as a statutory corporation headed by a Board which would provide the Auditor General with audit services. It appears to us that, under these arrangements, the Auditor General would, in the first capacity, be a “commissioner” of audit services from the new WAO and, in addition, the Chief Executive and Board member of the body providing those services. As a corporation sole, the Auditor General would lose his present powers to appoint staff, hold property, enter into contracts etc. as these would pass to the new WAO, which would also control the budget.
16. We note that this model closely follows that of the National Audit Office although that arrangement is new, having only been enacted in 2011. Most other audit offices in parliamentary jurisdictions that follow the Westminster model comprise staff employed by a corporation sole or equivalent rather than by a corporate body comprising an appointed Board. The exception is Audit Scotland which serves both the Auditor General for Scotland and the Accounts Commission – a situation which does not apply in Wales.
17. We would like to know what consideration was given to alternative options, including the Advisory/Supervisory Board model proposed by the previous PAC in its report of March 2011, and why the model set out in the draft Bill was chosen.
18. Secondly, in relation to the **composition of the Board**, we note the proposal for the new WAO to have an appointed Board comprising five non-executive members, the Auditor General and one executive (staff) member. What other options were considered in determining the size of the Board and how the staff member will be chosen?
19. Thirdly, we would like some further information as to how the funding arrangements for the services provided by the WAO on behalf of the Auditor General would operate in practice. In particular, we wish to ensure that that the Auditor General’s operational independence and objectivity cannot be fettered by the withholding of funds. In this respect, section 12 requires the Auditor General and the WAO to agree an annual plan. What would happen if they are unable to agree? Also, whilst noting that the WAO may only refuse a request for resources from the Auditor General if it is unreasonable, we are concerned as to what would happen if there was a disagreement. For example, would the WAO

Board be able to use this mechanism to limit the scope of a proposed study? We were told during the technical briefing that ultimately the Auditor General could take legal action against the WAO if he disagreed with its decision to refuse resources. Naturally, this would be highly undesirable but also impractical if the Auditor General (as a corporation sole) does not have access to separate funds for such purposes.

### **External Audit of the WAO**

20. We note the draft Bill makes provision for the Board of the new WAO to be responsible for appointing its external auditors, subject to the agreement of the PAC. What consideration was given to continuing the present arrangements whereby the Assembly appoints the external auditor for the WAO, usually on a motion from the PAC Chair, and what was the rationale for changing this arrangement?

### **Ability of the PAC to call witnesses**

21. We consider the current power, provided for in section 37(1) of the 2006 Act, to be unduly restrictive. It does not permit the PAC to compel a witness to give evidence in relation to, for example, the governance of the Wales Audit Office itself or the use of resources by auditable bodies other than those which are under the supervision of Welsh Ministers (for example the Public Services Ombudsman). We believe this could be addressed in the Bill, and would welcome your views on this matter.

I look forward to hearing from you in due course.

Yours sincerely

**Darren Millar AM**  
**Chair**