



Llywodraeth Cymru
Welsh Government

PUBLIC AUDIT (WALES) BILL

Explanatory Memorandum
incorporating the
Regulatory Impact Assessment
and Explanatory Notes

July 2012

The Public Audit (Wales) Bill

Explanatory Memorandum to the Public Audit (Wales) Bill

This Explanatory Memorandum has been prepared by the Local Government and Communities Directorate of the Welsh Government and is laid before the National Assembly for Wales.

Member's Declaration

In my view the provisions of the Public Audit (Wales) Bill, introduced by me on 9 July 2012, would be within the legislative competence of the National Assembly for Wales.

Jane Hutt AM

Minister for Finance and Leader of the House
Assembly Member in charge of the Bill

9 July 2012

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PART 1 – OVERVIEW

1 Description

- 1 The Public Audit (Wales) Bill aims 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.
- 2 It will improve the National Assembly for Wales' oversight of the AGW and strengthen the accountability and transparency of that Office. The Bill, if enacted, will establish a new WAO, responsible for the corporate functions currently vested in the AGW. It will also have a duty to monitor, and a power to advise, him or her. The Bill also includes provisions that will make the AGW the statutory auditor of local government bodies in Wales.

2 Legislative background

- 3 The National Assembly for Wales (the Assembly) has the legislative competence to make provision in relation to “audit, examination, regulation and inspection of auditable public authorities” and in relation to “Auditor General for Wales” by virtue of section 108 of and Part 1 (Heading 14 (Public Administration)) of Schedule 7 to the Government of Wales Act 2006 (the 2006 Act).
- 4 Section 27 of, and Schedule 6 to, the Budget Responsibility and National Audit Act 2011, inserted into that Heading in Schedule 7 to the 2006 Act the subject “Auditor General for Wales”. It also made various changes to the general restrictions in Part 2 of that Schedule (including by making some exceptions to those restrictions) in order to provide the Assembly with the power to make provision in an Assembly Act linked to oversight of the AGW and the Wales Audit Office (WAO).
- 5 Heading 14 from Part 1 of Schedule 7 to the 2006 Act is reproduced below (the relevant Subjects of competence are highlighted):

Public administration

14 *Public Services Ombudsman for Wales, Auditor General for Wales, Audit, examination, regulation and inspection of auditable public authorities. Inquiries in respect of matters in relation to which the Welsh Ministers, the First Minister or the Counsel General exercise functions. Equal opportunities in relation to equal opportunity public authorities. Access to information held by open access public authorities.*

The following are “auditable public authorities” and “equal opportunity public authorities”—

- (a) the Assembly,*
- (b) the Assembly Commission,*
- (c) the Welsh Assembly Government,*
- (d) persons who exercise functions of a public nature and in respect of whom the Welsh Ministers exercise functions,*
- (e) persons who exercise functions of a public nature and at least half of the cost of whose functions in relation to Wales are funded (directly or indirectly) by the Welsh Ministers, and*
- (f) persons established by enactment and having power to issue a precept or levy.*

The following are “open access public authorities”—

- (a) the Assembly,*
- (b) the Assembly Commission,*
- (c) the Welsh Assembly Government, and*

(d) authorities which are Welsh public authorities, within the meaning of the Freedom of Information Act 2000 (c 36).

Exception—

Regulation of the profession of auditor.

- 6 The most relevant general restrictions, and exceptions to those restrictions (from Parts 2 and 3 of Schedule 7 to the 2006 Act) related to this Bill, are reproduced in the box below. Other general restrictions relevant to this Bill include the restriction on modifying etc. Minister of the Crown functions in paragraph 1 of Part 2 of Schedule 7 to the 2006 Act (which by virtue of section 158(1) of the 2006 Act includes Treasury functions) and the exception relating to modification of the functions of the Comptroller and Auditor General in paragraph 4 of that Part of that Schedule. Reliance is also placed, for the purposes of this Bill, on the exception in paragraph 8 of Part 3 of that Schedule relating to provisions that restate the law.

Enactments other than this Act

2

[(1)] A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, any of the provisions listed in the Table below—

TABLE

<i>Enactment</i>	<i>Provisions protected from modification</i>
European Communities Act 1972 (c 68)	The whole Act
Data Protection Act 1998 (c 29)	The whole Act
Government of Wales Act 1998 (c 38)	Sections 144(7), 145, 145A and 146A(1)
Human Rights Act 1998 (c 42)	The whole Act
Civil Contingencies Act 2004 (c 36)	The whole Act
Re-Use of Public Sector Information Regulations 2005 (SI 2005/1505)	The whole set of Regulations

[(2)] Sub-paragraph (1) does not apply to any provision making modifications, or conferring power by subordinate legislation to make modifications, of section 31(6) of the Data Protection Act 1998 so that it applies to complaints under an enactment relating to the provision of redress for negligence in connection with the diagnosis of illness or the care or treatment of any patient (in Wales or elsewhere) as part of the health service in Wales.]

[(3)] Sub-paragraph (1), so far as it applies in relation to sections 145,

145A and 146A(1) of the Government of Wales Act 1998, does not apply to a provision to which sub-paragraph (4) applies.

(4) This sub-paragraph applies to a provision of an Act of the Assembly which—

(a) is a provision relating to the oversight or supervision of the Auditor General or of the exercise of the Auditor General's functions,

(b) provides for the enforcement of a provision falling within paragraph (a) or is otherwise appropriate for making such a provision effective, or

(c) is otherwise incidental to, or consequential on, such a provision.]

(Government of Wales Act 2006)

5

(1) A provision of an Act of the Assembly cannot make modifications of, or confer power by subordinate legislation to make modifications of, provisions contained in this Act.

[(2) Sub-paragraph (1) does not apply to the following provisions—

(a) sections 20, 22, 24, 35(1), 36(1) to (5) and (7) to (11), 53, 54, 78, 146, 147, 148 and 156(2) to (5);

(b) paragraph 8(3) of Schedule 2;

[(c) any provision of Schedule 8, other than paragraphs 1(1) to (3), 2(2) to (4) and 3].]

(3) Sub-paragraph (1) does not apply to any provision—

(a) making modifications of so much of any enactment as is modified by this Act, or

(b) repealing so much of any provision of this Act as amends any enactment, if the provision ceases to have effect in consequence of any provision of, or made under, an Act of the Assembly.

[(4) Sub-paragraph (1) does not apply in relation to a provision to which paragraph 2(4) applies.

(5) But, subject to sub-paragraph (6), a provision to which paragraph 2(4) applies cannot modify, or confer power by subordinate legislation to modify, paragraph 3 of Schedule 8.

(6) Sub-paragraph (5) does not prevent the conferral of functions on a committee of the Assembly that—

- (a) does not consist of or include any of the following persons—
 - (i) the First Minister or any person designated to exercise functions of the First Minister,
 - (ii) a Welsh Minister appointed under section 48,
 - (iii) the Counsel General or any person designated to exercise the functions of the Counsel General, or
 - (iv) a Deputy Welsh Minister, and
- (b) is not chaired by an Assembly member who is a member of a political group with an executive role.]

3 Purpose and intended effect of the legislation

3.1 Background and current position

- 7 Detailed provisions about the appointment and status of the Auditor General for Wales (AGW), the AGW's staff, financial affairs and general powers of the AGW are set out in Part 5 of and Schedule 8 to the Government of Wales Act 2006 (the 2006 Act). The office of the AGW is a corporation sole. The Wales Audit Office (WAO) has no legal personality of its own, but is a collective term used to describe the AGW and the AGW's staff. The AGW is appointed by Her Majesty on the nomination of the National Assembly for Wales (the Assembly). The tenure of the AGW is governed by paragraph 2 of Schedule 8 to the 2006 Act. There is no express statutory provision that governs either the length of the appointment or the number of times that a person may hold that office but such provision is made in the terms and conditions of the AGW's appointment. The current AGW has been appointed for a term of 8 years.
- 8 The AGW appoints staff, sets their terms and conditions and has power to secure provision of services for assisting in the exercise of his or her functions. Funds required for these purposes and other expenses are paid from the AGW's budget, the estimate for which is considered by the Public Accounts Committee (PAC) of the Assembly (which may modify it) in accordance with paragraph 12 of Schedule 8 to the 2006 Act. Under the Standing Orders of the Assembly the estimate, modified or not, forms part of the overall budget motion moved annually in the Assembly (as required by section 125 of the 2006 Act).
- 9 The AGW is empowered in some cases, and required in others, to charge fees for auditing accounts and carrying out inspections and examinations, for example, into economy, efficiency and effectiveness. In addition to any funds made available in an Assembly budget motion by virtue of section 120(1) and (2) of the 2006 Act, certain provisions of enactments may authorise the AGW in some circumstances to retain receipts, for example, from fees charged for specific services. Where that is the case, for example, fees charged for the audits of local government bodies, the sums received by the AGW are retained and do not form part of the AGW's budget estimate, cannot be scrutinised by the PAC, and do not feature as a component in the Assembly's annual budget motion.
- 10 In the exercise of his functions, the AGW is not subject to the direction or control of the Assembly or the Welsh Government. It is, therefore, of significant importance that the responsibilities conferred on the AGW and the business of his or her office should be conducted in an economic, efficient and effective way and that the systems of governance and internal controls operate to the highest standards.
- 11 The Welsh Government and the Assembly had concerns about the management, governance and accountability arrangements relating to the AGW and his or her Office. These concerns arose principally from the way in which a previous AGW undertook aspects of his duties which highlighted a lack

of robust external accountability. In addition, concerns were raised as to the way in which the AGW worked with other bodies and applied the public resources made available to him in support of his functions and the running of the WAO.

- 12 In view of the vital role of the AGW in ensuring the highest standards of probity and propriety in the use of public funds across the public service in Wales, in 2008 the Welsh Government began to explore the possibility of strengthening the current regime and making it more transparent. It sought to secure an opportunity through a suitable UK Government Bill that would provide the Assembly with further legislative competence to introduce primary legislation that would enable the Assembly to modernise and strengthen the governance and accountability arrangements for the AGW and the WAO.
- 13 The PAC expressed its own concern relating to the actions of the then AGW whilst in office. These related to accounting matters, compliance with international financial reporting standards, issues of propriety, and a failure to uphold high standards of governance. On 29 March 2011, the PAC published its report on *Accounting, Governance and Propriety Issues at the Wales Audit Office*¹, in which those concerns were set out clearly.
- 14 Overall the main areas of concern are summarised below.

Accounting issues

- 15 As the Accounting Officer of the WAO the AGW is required to sign the accounts, take personal responsibility for their accuracy and compliance with the Financial Reporting Model (FRM). The AGW is also responsible for the financial management of the WAO including ensuring that transactions are regular, proper and that full regard is given to the need for value for money. There were a range of failures in this regard including accounts not complying with the FRM; expenditure on early retirement settlements; pension entitlements; and other cash received from the public purse had not been fully accounted for.

Propriety issues

- 16 A report tabled by the current AGW, for discussion at the PAC² sets out that a former AGW concealed information wilfully from his Audit Risk and Management Committee and senior AGW staff. In addition, in its 2011 report (see paragraph 13 above) the PAC concluded that a former AGW had misled the Assembly and that his actions amounted to misbehaviour for the purposes of paragraph 2(3) of Schedule 8 to the 2006 Act.

¹ http://www.assemblywales.org/report_on_governance_etc_at_the_wao_1.6_final-e.pdf

² "Due Diligence in the Wales Audit Office" (16 February 2011)

Governance structures

- 17 The AGW has three advisory committees: audit risk and management; resources; and remuneration. These have no legal basis and provide no guarantee of institutional continuity. Members of the three advisory committees are appointed by the AGW (with input from a nominee of the Chair of the PAC).
- 18 Early in his tenure the current AGW recognised the governance and accountability weaknesses he inherited and has taken action to remedy those shortcomings by strengthening his internal control systems and putting in place a number of regular review processes. Although these changes are welcome, their effectiveness is not consistent with accepted best practice because appointments to these advisory committees are entirely in the gift of the AGW, with no objective, independent and external appointments process.
- 19 Against this background, it is clear that the reputation of the AGW, along with the confidence of the Assembly, has been severely damaged. The Welsh Government has recognised for some time that, in view of the role of AGW in providing assurance as to the probity and propriety of some £14 billion of public expenditure in Wales, there is a pressing need to establish a set of arrangements that will restore the confidence of the public and, critically, audited bodies in the activities of the AGW and WAO.

3.2 Objectives

- 20 The intention of the Public Audit (Wales) Bill (the Bill) is to strengthen and improve the accountability and governance arrangements relating to the AGW and the WAO. However, in bringing forward this new set of arrangements, the Welsh Government is also acutely aware of the need to preserve and protect the independence and objectivity of the AGW. Meeting these objectives simultaneously is not straightforward, and in drafting the Bill the Welsh Government aimed to strike a reasonable balance between greater transparency in the deployment of public resources while ensuring that the AGW is not constrained in how he or she goes about his or her activities.
- 21 The Bill aims to:
 - a. address concerns relating to accounting, propriety and governance issues;
 - b. respond to the recommendations of the PAC report published in March 2011 (referenced in paragraph 13 of this Memorandum) to enhance oversight over the AGW;
 - c. substantially reduce the prospect of similar difficulties happening again; and
 - d. provide greater assurance to the Assembly and the public.
- 22 In order to achieve those objectives, the Government believes that the duties and responsibilities of the AGW and the WAO should be separated. Thus, the Bill will vest employer, financial and other administrative functions in the new WAO which, in conjunction with the AGW, will report to, and be scrutinised by, the Assembly. A fundamental principle which is established by the Bill is the

maintenance of the AGW's independence from the Assembly and the Welsh Government, and an express safeguard to provide the AGW with complete discretion in the manner of the exercise of audit etc functions. The Bill includes provision that will establish arrangements for the appointment, termination and tenure of the AGW, and provides, as now, for the AGW to be appointed by Her Majesty on the recommendation of the Assembly, and for the AGW to continue as a corporation sole. Corporation sole status means that the office can hold property (although the main property holding functions will now be vested in the WAO) and which subsists even when there is no person holding that office (ie. when the office is vacant) and means that there is automatic continuity in the exercise of the functions of that office.

3.3 A new Wales Audit Office

- 23 The Bill will establish a new WAO as a body corporate with seven members. Being defined as a body corporate will allow the WAO to undertake executive functions, such as being a budget holder, employing staff, and securing the provision of goods and services. The majority of members will be appointed by the Assembly on merit through open and fair competition. The new AGW will automatically be a member of and the chief executive officer of the new WAO, and there will be one employee member recommended by the AGW for appointment by the non-executive members of the board to ensure that employee experience is able to inform the Board's activities and actions.
- 24 The WAO will be responsible for all the corporate-type functions currently vested in the AGW. The intention is to ensure that such powers would no longer rest solely in the hands of one individual. The WAO will:
- a have a duty to monitor and a power to advise the new AGW;
 - b employ staff;
 - c secure the provision of services; and
 - d hold property for the purposes of carrying out its functions and those of the AGW.

3.4 Planning and reporting

- 25 The new WAO and the AGW will be required to prepare an annual income and expenditure estimate which will be laid before the Assembly. The Assembly may modify it should it choose to do so. The estimate (modified or not as the case may be) will be included in the Assembly's Annual Budget Motion which is tabled before the Assembly in accordance with its Standing Orders. The WAO will be the budget-holder and the entire budget estimate for that office will, therefore, be subject to the Assembly's Annual Budget Motion procedure.
- 26 The WAO will have responsibility for the charging and collection of fee income associated with the AGW's functions.
- 27 The WAO will also be required, together with the AGW, to produce an annual plan and both parties must have regard to it. The annual plan will set out the intended programmes of work for the WAO and the AGW, their costs, and

projected outcomes for each coming financial year. At least twice a year, the WAO and the AGW will report on an interim basis to the Assembly on the progress made against the plan.

- 28 The AGW will have responsibility for his or her audit, examination and inspection etc functions. The WAO will provide the resources for the AGW to carry out his or her functions on the basis of regard to the annual plan of work, provided the requests for resources by the AGW are reasonable.
- 29 Although neither is bound by the annual plan, they must have regard to it. This means that in exercising their functions (including as to the provision of resources required by the AGW) both the AGW and the WAO must give the annual plan the appropriate weight in all the circumstances. If other unforeseen work arises then the need for that work to be done (and the resource implications) must be properly balanced against the planned work and resources allocated for that.
- 30 The annual plan must include the maximum resources that it is anticipated will be allocated by the WAO to the AGW for the purpose of undertaking the AGW's programme of work.
- 31 The Bill is designed to ensure that it is the AGW who determines his or her own work programme (to maintain the independence of the AGW) and it is the AGW who determines the maximum amount of resources that will be needed to achieve that work. This is critical in terms of maintaining an appropriate balance between, on the one hand, establishing appropriate governance and oversight arrangements for the AGW and, on the other, maintaining the principle that the AGW's audit independence and discretion is not inappropriately fettered. This is achieved by giving the AGW the lead role in this respect with the WAO only being able to step in if the AGW's proposals are unreasonable. In this regard "unreasonable" is intended to have its ordinary meaning and the test is intended to be objective. This further protects the AGW because the test is not whether the WAO subjectively considers something to be unreasonable. Rather the test is whether, in all the circumstances, what is being proposed is, objectively tested, unreasonable.
- 32 The main focus and impact of the Bill will be on the AGW, the WAO and the Assembly, with some provisions directly impacting on arrangements for local government audit. The Bill makes provision to make the AGW the statutory auditor of local government bodies in Wales. At present the AGW is not directly responsible for the audit of local government bodies. Instead auditors are appointed by the AGW to perform those audits. This is considered to be anachronistic and, given that the current AGW has other functions in respect of local government bodies (eg. in relation to value for money), is responsible for auditing the Welsh Government, Welsh NHS bodies etc, and given the thrust of other proposals in the Bill, the time is right for the audit of local government bodies in Wales to be vested with the new AGW.
- 33 In addition, all auditable public bodies in Wales will benefit from the legislation as they will continue to receive a highly professional public audit service, but

will have clarity on who is directly responsible for the audit of their accounts. In addition the audit regime will be more transparent and openly accountable.

3.5 Detailed implementation and delivery plan for the Bill

34 The main features of the legislation are on the face of the Bill. However the Bill does provide the Welsh Ministers with powers to make subordinate legislation in certain areas. These regulation-making powers are summarised in section 5 of this Explanatory Memorandum.

35 Subject to the approval of the Bill by the Assembly and subsequent Royal Assent, it is intended that the new arrangements for the WAO and AGW will come into force by 1 April 2014. This date, which reflects the beginning of a new financial year (which is appropriate for the work and financial planning arrangements associated with the new AGW and WAO), will provide sufficient time to ensure that all of the governance and operational architecture, such as appointments to the WAO Board and its running in a shadow form, are in place before April 2014.

3.6 Territorial extent

36 The Bill applies mainly to Wales. There are a small number of provisions that will necessitate changes to legislation that extend beyond England and Wales and discussions are in hand with the Wales Office to ensure the Bill can be properly given effect in all relevant jurisdictions by means of a Section 150 Order under the 2006 Act. As an Assembly Act can only change the law of England and Wales and generally only applies in Wales a section 150 GOWA 2006 Order may be needed to ensure that where amendments are needed to UK wide legislation the relevant changes are made in the law of Northern Ireland and, as appropriate, Scotland. An example relates to the proposed amendments in this Bill to the Superannuation Act 1972.

4 Consultation

- 37 The Welsh Government published its consultation paper on the Public Audit (Wales) Bill on 15 March 2012, and requested that consultees respond by 15 May 2012. The consultation was sent directly to the organisations specified below at annex B. The consultation paper was also published on the Welsh Government's web site³, and was available as a hard copy upon request.
- 38 There were 31 responses to the consultation, from a broad cross-section of institutions and organisations, and one member of the public. Respondents are listed below:

Public Accounts Committee (PAC)

Local Government Bodies (12)

Brecon Beacons National Park
Bridgend County Borough Council
Conway CBC
Flintshire CBC
Mid and West Wales Fire and Rescue Service
National Parks Wales
Neath Port Talbot CBC
Powys CC (Sustainable Development Co-ordinator)
South Wales Fire and Rescue Service
Vale of Glamorgan CBC
Wrexham CBC
WLGA

Other public service bodies (4)

Countryside Council for Wales
Commissioner for Sustainable Futures
Environment Agency (Wales)
Local Government Boundary Commission (Wales)

Education institutions (5)

Cardiff Metropolitan University
Estyn
Glyndwr University, Wrexham
Higher Education Funding Council for Wales
University of Glamorgan

Audit/Accountancy bodies (5)

Association of Chartered Certified Accountants (ACCA)
Audit Commission
Chartered Institute of Public Finance Accountants (CIPFA)
Institute of Chartered Accountants in England and Wales (ICAEW)
Price Waterhouse Coopers (PwC)

³ <http://wales.gov.uk/consultations/improving/pawbill/?lang=en&status=closed>

AGW and Staff Trades Unions (2)

Auditor General for Wales (AGW)

Prospect and the Public and Commercial Services Union (PCS)

Other (2)

World Wildlife Fund (Cymru)

Penny Gripper

ANALYSIS OF CONSULTATION RESPONSES

Summary

39 The substantive responses, around two-thirds, were almost unanimously in favour of strengthening the governance and accountability of the Auditor General for Wales (AGW), although there were mixed and divergent views on how that could and should be achieved. Overall, there was a majority in favour of a corporate WAO. Of the rest, around one third focussed on single interest matters ie, sustainable development, and whether the AGW should be the statutory auditor of Further and Higher Education Corporations, offering few or no comments on the main proposals for the Bill. All responses on consolidating and simplifying the current legislation were supportive. There was a noticeable balance in favour of introducing sustainable development provisions in the Bill.

PAC letter

40 In general, the Committee welcomes the proposals in the draft Bill and accepts its principal aim of strengthening governance and accountability. It seeks the rationale for giving it the oversight role and an explanation why the level of such responsibility is so detailed. It also wishes to know: why a corporate WAO is preferred to an advisory/supervisory Board model; the other options considered in determining the size of the WAO; how the proposed funding arrangements would operate in practice whilst ensuring the AGW's operational audit independence; what might happen should the AGW and the WAO fail to agree an annual plan; and the reason for changing the way the external auditor of the WAO is to be appointed? The Committee considers its power to call witnesses is restrictive and that should be addressed in the Bill.

Local government bodies, including the WLGA (12)

41 Seven LGBs supported the creation of a corporate WAO of which 6 supported the oversight functions of the PAC; 4 offered no comment; the WLGA considered the WAO provisions burdensome and the PAC function to be over-prescribed.

42 There was no firm consensus on the tenure of an AGW appointment but most considered 7 years to be reasonable; some thought the role should attract performance criteria, likewise for appointments and re-appointments to the WAO. Several thought the one employee member of the WAO should be appointed by open competition. One respondent made a case for appointing WAO members for 4 years with the option of renewal for another 4 years. With

one dissenter, restrictions post appointments were accepted. There was unease over fees with a wish for benchmarking, better consultation and penalties for the AGW missing agreed performance targets. With one exception, responses favoured the AGW becoming the auditor of Local Government Bodies.

Other public service bodies (PSB) (4)

- 43 One Public Service Body seemed in favour of a corporate WAO; one made no comment whatsoever; 3 commented only – and favourably - on including sustainable development provisions in the Bill.

Education Institutions (5)

- 44 Two institutions supported the creation of a corporate WAO and supported the oversight functions of the PAC; 3 made no comment.
- 45 Estyn considered there should be a protocol for appointments to the WAO; a performance review mechanism; offered a range of grounds for the removal from office of WAO members; and thought one interim, half-yearly report sufficient.
- 46 All institutions considered the AGW should not be the statutory auditor of Further and Higher Education Corporations.

Audit/Accountancy bodies (5)

- 47 Three bodies supported a corporate WAO with the PAC having the oversight role; 2 bodies supported a supervisory board.
- 48 There was some worry over the burdens to be placed on both the WAO and the PAC which might hinder the AGW's operational audit independence. More employee members could be beneficial and reasons for removal from office of the AGW and the WAO chair should include ill health.

AGW and staff Trade Unions (2)

- 49 The AGW opposed the proposals, considered the PAC oversight role to be over-prescribed, the composition of the WAO to be unbalanced, and preferred a Supervisory Board with no executive functions: the AGW staff's trades unions (Prospect and PCS) mainly concur with the AGW's views.
- 50 The main points in the AGW's detailed response were: the corporate governance proposals were over-prescriptive, unbalanced, unworkable and not appropriate. The PAC's oversight role would impair its ability to scrutinise Welsh Government expenditure: there should be a more proportionate oversight regime vested elsewhere (by the Assembly), thereby enabling the PAC to continue its primary role of holding the Welsh Government to account. Proposals for a corporate WAO with executive functions were too interventionist and would lead to inappropriate fettering of the AGW's

independence. The AGW should continue to have sole responsibility for all executive functions with a statutory Supervisory Board created to monitor and advise him. If a corporate WAO was to be established, with a stronger executive base, planning and resources arrangements must ensure the AGW's independence.

Other (2)

- 51 A member of the public supported the creation of a corporate WAO and favoured the PAC having the oversight functions. A charity commented only – and favourably - on including sustainable development provisions in the Bill.
- 52 The individual considered a WAO membership of 7 to be too small to exercise executive functions; that tenure of appointments should be staggered to avoid gaps; was unhappy with the AGW recommending the appointment of the employee member; thought restrictions post appointment should be permanent and that the combined functions of AGW/CEO should be separate posts with the CEO being the Accounting Officer.

5 Powers to make subordinate legislation

53 The Bill contains provisions to make subordinate legislation. Table 1 sets out in, relation to each provision:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;
- the appropriateness of the delegated power;
- the applied procedure (affirmative, negative, no procedure) if any.

Table 1: Summary of powers to make subordinate legislation

Clause	Power conferred on	Form	Appropriateness of delegated power	Procedure	Reason for procedure
Clause 19(7)	Welsh Ministers	Order by Statutory Instrument	Suitable for order making powers as the provision enables Welsh Ministers to add a body of accountants to the approved list of those able to co-operate with, and provide assistance to, and receive assistance from, the WAO/AGW	Negative procedure	This Order will prescribe matters of detail which may change from time to time.
Clause 34(2)	Welsh Ministers	Order by Statutory Instrument	Suitable for order making powers as the provision enables the Welsh Ministers, by order, to make further transitional, transitory or saving etc. provisions in connection with or to give full effect to the Bill when enacted.	Negative procedure, unless Clause 31(2) is relevant, in which case the affirmative procedure will apply	The power has the potential to amend both this Act, other Acts of the UK Parliament and Acts and Measures of the Assembly as well as prerogative instruments (as the case may be).
Clause 36(2)	Welsh Ministers	Order by Statutory Instrument	This provision is required because	No procedure when an Order	This is normal for

Instrument	the Bill does not come fully into force upon receiving Royal Assent but is to be implemented by Welsh Ministers	under Clause 36 is directly linked to commencement of provisions.	commencement where they simply bring the provisions into force
		But if the power to make an Order under Clause 36 is combined with the power to make an Order under Clause 34 then the instrument will be subject to the procedure that applies in respect of Clause 34.	

54 In addition to the powers outlined in Table 1, the Bill makes amendments to the Public Audit (Wales) Act 2004 to make it clear on the face of the Bill that the power to make subordinate legislation is now vested in Welsh Ministers, and makes provision for the use of the relevant Assembly procedure rather than placing reliance on Schedule 11 to the Government of Wales Act 2006. As an example paragraph 41 of Schedule 4 amends section 39 of the Public Audit (Wales) Act 2004. This requires a resultant change to section 58 of that Act, which is achieved by paragraph 55 of Schedule 4 to the Bill.

6 Regulatory Impact Assessment (RIA)

- 55 A Regulatory Impact Assessment has been completed in accordance with Standing Order 26.6(vi) for the proposed Bill and follows in Part 2 of this Explanatory Memorandum. It includes a cost-benefit assessment.
- 56 A report from the AGW on the appropriateness of charging expenditure on the Welsh Consolidated Fund from provisions in this Bill, under The National Assembly's Standing Order 26.6(viii), is attached at Annex 3.

PART 2 – REGULATORY IMPACT ASSESSMENT

7 Options

57 This Regulatory Impact Assessment presents four options in relation to the policy objectives of the Bill. Each option is analysed in terms of how far it would achieve the Welsh Government's objectives, along with the associated risks, costs and benefits.

58 The options are:

- a Option 1 – do nothing (maintain the current arrangements)
- b Option 2 – allow the Auditor General for Wales (AGW) to strengthen internal control arrangements
- c Option 3 – National Assembly for Wales (the Assembly) to create a statutory advisory board
- d Option 4 – To legislate to establish new statutory oversight and governance arrangements for the AGW and the Wales Audit Office (WAO)

Option 1 – Do nothing (maintain the current arrangements)

59 Under this option the current governance and oversight arrangements for the AGW will remain in place.

60 Currently the AGW appoints staff, sets their terms and conditions and has power to secure provision of services for assisting in the exercise of his or her functions. Funds required for these purposes and other expenses are paid from the AGW's budget, the estimate for which is considered by the Public Accounts Committee (PAC) of the Assembly (which may modify it) in accordance with paragraph 12 of Schedule 8 to the Government of Wales Act 2006 (the 2006 Act). Under the Standing Orders of the Assembly the estimate, modified or not, forms part of the overall budget motion moved annually in the Assembly (as required by section 125 of the 2006 Act).

Option 2 – Allow AGW to strengthen internal control arrangements

61 This option allows the current AGW to continue to strengthen the WAO's corporate governance through arrangements proposed to the PAC on 7 October 2010 and which are now in place. Those arrangements included the establishment of three WAO committees (Remuneration, Resources, and Audit and Risk Management) each comprising four suitably qualified non-executive members recruited using public appointments' principles.

62 In addition to the oversight undertaken by the Assembly as described under Option 1, this option would also propose that a strategic review of the WAO's operations be undertaken by the Chairs of the three committees and the AGW's Executive Committee every six months.

- 63 Further an annual WAO governance conference, bringing together the outcomes of the strategic reviews and an analysis of the WAO and AGW's work plan, would be held, resulting in a Governance Report which would be submitted to the PAC and/or Assembly for consideration.

Option 3 – The Assembly to create a statutory advisory board

- 64 This option would require an Assembly Bill (brought forward by an Assembly Committee, the Assembly Commission or the Welsh Government) to amend the 2006 Act in order to provide the Assembly with powers to appoint a Board (or Panel) to advise the Assembly on any matter relating to the functions of the AGW.
- 65 The Board, once appointed by the Assembly, could have functions that include oversight of the work of the AGW, the preparation of reports to the Assembly, and making recommendations on the efficiency and effectiveness of the AGW and his or her staff.
- 66 The legislation could include a requirement for the AGW and the Advisory Board to co-operate, for example by providing the Board access to the AGW's staff and papers to allow detailed, in-depth analysis of the AGW's work and effective scrutiny of his or her use of resources and the outcomes achieved.
- 67 In this option the Assembly could also retain its oversight functions as described in Option 1.

Option 4 – To legislate on establishing oversight and governance arrangements for the AGW and the WAO

- 68 Under this option an Assembly Bill (brought forward by the Welsh Government) would make provision for the oversight or supervision of the AGW with provisions to ensure protection of the AGW's independence from the Assembly and the Welsh Government, and complete discretion in the manner of the exercise of audit etc judgements.
- 69 A new corporate body, the WAO, would be created with a range of duties and powers in relation to itself and the AGW, accountable to the Assembly and independent of the Welsh Government. Most of the AGW's current administration and housekeeping-type functions would transfer to the new WAO, while explicit provisions would protect and safeguard the AGW's operational audit etc. independence and status.
- 70 The new WAO would comprise a chair and four members, appointed by the Assembly using appropriate and transparent public appointments procedures, plus the AGW (as chief executive officer) and a staff (or employee) member.
- 71 The new WAO's main functions would be to monitor, oversee and advise the AGW; prepare financial estimates (with the AGW) for approval (with or without modification by the Assembly); employ all staff; hold property; set and charge

fees for audits etc carried out by the AGW; provide resources in support of the AGW's functions; prepare (with the AGW) strategic and annual plans that would be laid before, and considered by, the Assembly (independently of the Welsh Government); and submit an annual report to the Assembly for its consideration.

- 72 The WAO, as the new governing body for an organisation of some 300 staff and an annual budget of over £24 million, would be separate from the Welsh Government whilst accountable to the Assembly. The choice as to whether the oversight functions are exercised by a Committee of the Assembly, by a Commission of the Assembly (comprising Assembly Members) or by some other mechanism would be a matter for the Assembly.
- 73 This is the preferred option of the Welsh Government, and these arrangements are provided for in the Public Audit (Wales) Bill.

8 Costs and benefits

- 74 This section contains a cost benefit analysis of the options detailed in section 7. All costs are estimates and are subject to variation depending on decisions taken in relation to the implementation of the Bill, if enacted. For example, the costs to the Assembly of scrutinising the AGW and WAO will depend on the approach to oversight which the Assembly determines is appropriate. Similarly, there is an element of choice as to whether the costs indicated should be regarded as additional or should be treated on the basis that existing resources could be reprioritised or that funding could be released through savings elsewhere. Further detail and sensitivity analyses can be provided if required: the figures given here err on the side of caution. Day rates, where given, are based on the rates for comparable functions undertaken through public appointments and include VAT and expenses.

Option 1 – Do nothing (maintain the current arrangements)

Costs

- 75 Under this option, the current processes and practices will continue as now. It is therefore estimated that there will be no additional expenditure over and above that already planned and provided for in baseline budgets. Given that there would be no change in approach, structures or processes, there will be no transitional costs arising.
- 76 The Auditor General for Wales' (AGW) current budget is £24.2 million a year. It is for the AGW to decide on the resource he or she applies to internal control and governance. The estimated costs of these arrangements, based on the 2010-11 Statement of Accounts, are £36,650 a year.
- 77 The AGW is required to have his or her accounts audited by an external auditor. Latest available figures for that external audit are £25,000 for the 2010-11 financial year.
- 78 The Public Accounts Committee (PAC) of the National Assembly for Wales (the Assembly) currently schedules one session per year to consider the AGW's financial estimates and to conduct overall oversight of the AGW. It is difficult to estimate the cost of that one meeting, or the part of the session that is taken up by activities relating to the AGW. The cost is met from the budget assigned to the Assembly Commission.
- 79 The Welsh Government places an annual Budget Motion (initially in draft and then in final form) before the Assembly (part of which includes the AGW's financial estimate and the potential call of that Office on the Welsh Consolidated Fund). This is subject to debate in Plenary. It is difficult to approximate the cost of that debate, which is nevertheless met from the budget assigned to the Assembly Commission. In any event only a fraction of this cost would be attributable to consideration of the AGW's financial estimate.

Benefits

- 80 There would be no extra financial cost with this option. However, there would also be no benefit either as the conditions that allowed the previous issues to occur would remain unchanged. Similarly, as the current internal governance arrangements for the AGW and his or her Office would continue to apply, there remains the risk that the failures of governance could be repeated. Consequently, there would be no action to meet the recommendations of the PAC report referred to in paragraph 13 of this Memorandum, or to ameliorate the damage to confidence in the WAO and office of the AGW. There is clearly a reputational risk to the AGW, and to the Assembly in that lack of effective oversight and the ability to effectively hold the AGW to account could be seen a sign of process, accountability, and democratic weakness.
- 81 It follows that this option would offer no benefit to the Assembly, auditable public bodies in Wales or to the Welsh public who rely on the AGW to represent their interests in the audit of public bodies in Wales.

Option 2 – Allow AGW to strengthen internal control arrangements

- 82 The Government considers that there would be costs associated with the establishment of strengthened internal control arrangements additional to those identified in option 1. Some would be transitional costs of establishing new arrangements, and some would recur each year. The costs would fall to the AGW and would be borne from within the agreed budget.

Transitional costs

- 83 The transitional costs to the AGW of establishing enhanced internal control mechanisms would be the staff costs associated with establishing new procedures and implementing new arrangements. We would estimate this to require no more than 40 person days at £250 per day. These resources would be provided from within the AGW's existing staff and agreed budgets.

Average annual costs

- 84 The annual cost of supporting the strengthened internal control arrangements set out above is estimated to be in the region of £60,000 compared to current costs of £36,650. These costs would be associated with the staff time in preparing, producing considering the additional reports (approximately £3,000 per report) and of preparing and implementing the governance conference (approximately £5,000). The full cost of these arrangements would be met by the AGW from within his or her annual agreed budget.
- 85 If the PAC or the Assembly decide to consider the governance report, there would be similar, un-quantifiable costs to those described in paragraph 78 and 79 above, associated with this, assuming consideration took place within a normal Committee or Plenary session. Any such costs would be met from the budget assigned to the Assembly Commission.

Benefits

- 86 This option would be likely to improve internal accountability, and require the AGW to report to the PAC and/or Assembly on internal control matters, in addition to the current annual interrogation of his or her financial estimates and operational outcomes.
- 87 However, while these enhanced governance arrangements would be welcome, and provide some assurance beyond that offered by Option 1, the implementation, management and ultimately the effectiveness of those arrangements would be entirely within the control of the AGW. It would not provide any enhanced external scrutiny or accountability of the AGW him or herself. Furthermore, it leaves the statutory position of the AGW with regard to staffing untouched, and therefore would not address the Welsh Government's principal requirement, set out in the *Programme for Government*, to legislate for the Auditor General for Wales and the Wales Audit Office to be accountable to the Assembly by establishing independent external governance arrangements for the AGW and his or her Office.

Option 3 – The Assembly to create a statutory advisory board

- 88 The Welsh Government considers that there would be costs associated with this option additional to those identified in the costs outlined in option 1. Some would be transitional costs of establishing new arrangements, and some would recur each year. The costs would fall to the AGW and to the Assembly.

Transitional costs

- 89 In addition to the costs associated with preparing, consulting upon and making an Assembly Act to give the Assembly the necessary powers to create a statutory board, there would also be a cost to the Assembly in establishing the Board. It is estimated these costs would be approximately £20,000 arising mainly from the need to advertise the posts and to undertake the competitive appointments process.

Average annual cost

- 90 The estimated full-year cost of supporting the Board's work and meeting its operating costs would clearly depend on its size and the frequency of meetings. Assuming a daily rate of £300, given that Board Members in this option would not have the same level of responsibility as those set out in paragraph 78, hence the lower rate, and board members working two days a month, together with the costs of secretariat and technical support, the costs might be in the range of approximately £50,000 a year. These costs would be additional to the current internal control costs of the AGW and would be borne by the WAO.
- 91 The Assembly may chose to increase or decrease the amount of time it schedules in Committee or Plenary each financial year to consider general oversight of the AGW, and/or to enable consideration of the Board's advice. It

is difficult to estimate any changes in cost arising from activities relating to the AGW under this option, as this will depend on the level of scrutiny the Assembly considers appropriate to undertake. The cost would be met from the budget assigned to the Assembly Commission.

- 92 There is likely to be ongoing costs to the Assembly of recruiting or replacing Board members should they choose to leave or reach the end of their tenure. These costs are estimated as £5,000 per member, based on the current costs of similar appointments. At a minimum it could be expected that each Member will need to be replaced (or reappointed as the case may be) every 4 years. This is slightly longer than the current tenure of Board members (which is 3 years) but provides an equitable basis to the costings in option 4 which are predicated on the proposals regarding tenure in the Public Audit (Wales) Bill.

Benefits

- 93 This option has distinct benefits and goes some way to meeting the Welsh Government's policy aims. Legislation would be used to create an independent Board remitted to advise the AGW, with that Board accountable to the Assembly. Public accountability of the AGW would be enhanced and some challenge brought to bear on the AGW. This would however be limited to an advisory capacity.
- 94 However, it would leave all the AGW's functions as they are at present, with no opportunity for the Board to do more than advise the AGW, and bring issues on which it had concerns to the attention of the PAC. This approach would therefore not achieve the desired significant improvement in the oversight and governance of the AGW and WAO.

Option 4 – To legislate to establish oversight and governance arrangements for the AGW and the WAO

- 95 The Government considers that there would be costs associated with this option additional to those identified in the costs outlined in option 1. Some would be transitional costs of establishing new arrangements, and some would recur each year. The costs would fall to the new WAO and to the Assembly.

Transitional costs

- 96 Under this option (and in accordance with the provisions of the Public Audit (Wales) Bill) there will be some costs incurred by the Assembly in advertising the posts of Chair and Board members, using an open, transparent and competitive public appointment process to fill those posts. The estimated costs for this are £20,000.

Average annual costs

- 97 Based on daily rates of £400 a day for members and £500 per day for the Chair, and assuming members are required to work an average of five days a month, and including the costs of secretariat and technical support, the full year

costs are estimated to be approximately £155,000 a year. Those sums would support the remuneration, gratuities and other allowances of the Chair of the WAO and the four WAO members. The cost of administrative support for the WAO would be borne by the WAO itself, which is funded to some extent from the Welsh Consolidated Fund, but receives the majority of its funding from fee income.

- 98 The Assembly could incur some additional costs arising from its enhanced oversight of the AGW and the WAO and the need to put in place appropriate arrangements to undertake this task. The estimated cost for this will depend on the nature of the oversight the Assembly undertakes and the arrangements it makes to support this. Any cost would be met from the budget assigned to the Assembly Commission.

Benefits

- 99 These arrangements would establish robust and effective accountability and governance arrangements for the AGW and the WAO, based in legislation. They would provide the Assembly with an enhanced ability to exercise appropriate oversight over the AGW and WAO without impinging on the AGW's independence and status.
- 100 This approach would fulfil the *Programme for Government* commitment, respond to the recommendations in the PAC Report *Accounting, Governance and Propriety Issues at the Wales Audit Office*, and the responses to the public consultation, all of which support reforming and modernising the governance of the AGW and his or her Office. It would also provide the maximum response to establishing full and effective levels of confidence in the WAO and AGW.

Costs of the options considered (£000)

	Option 1	Option 2	Option 3	Option 4
Preparation of accounts	25.0	25.0	25.0	25.0
Current support costs	37.0	37.0	0.0	0.0
PAC/other oversight costs	0.0	0.0	0.0	0.0
Board arrangements	0.0	23.0	50.0	155.0
Sub total	62.0	85.0	75.0	180.0
Transitional	0.0	10.0	20.0	20.0
Total	62.0	95.0	95.0	200.0

9 Summary and preferred option

- 101 Welsh Government policy, the report of the Public Accounts Committee (*“Accounting, Governance and Propriety Issues at the Wales Audit Office”*) and the responses from consultees all indicate that change is necessary to strengthen governance and accountability of the Auditor General for Wales (AGW) and the Wales Audit Office (WAO), and to restore confidence.
- 102 On this basis, the Welsh Government considers that Option 4 (to legislate on establishing oversight and governance arrangements) offers the best way forward as it will provide robust and effective oversight of the AGW, allows for transparency and public accountability of the AGW’s actions, while at the same time preserving the independence of that Office in undertaking audit functions and making professional judgements.
- 103 It is anticipated that the cost implications of the Public Audit (Wales) Bill and the benefits it is designed to deliver (as set out above) will be low relative to the overall resources available to the AGW and the WAO in undertaking their functions. The additional annual cost of Option 4 of £155,000 equates to 0.64% of the AGW’s current budget of £24.2 million. This is considered to provide a cost-effective oversight function that provides appropriate challenge to the AGW, and establishes effective public accountability.
- 104 The costs to the National Assembly for Wales, both transitional and recurring, are judged to be proportionate in supporting the enhanced governance arrangements that will reduce the likelihood of financial and reputation costs being incurred in dealing with the outcome of poor governance.

10 Competition Assessment

- 105 The competition filter is required to be completed if the Bill affects business, charities and/or the voluntary sector. The provisions in the Bill will not affect business, charities and/or the voluntary sector. There is therefore no need for the competition filter to be applied in this case.

11 Post-implementation review

- 106 The Bill, if enacted, will be implemented by Local Government and Communities Directorate, working closely with the Assembly and key stakeholders. The approach to reviewing and developing the new arrangements will be agreed as part of the implementation process.

Annex A - Explanatory Notes

- 1 These Explanatory Notes relate to the Public Audit (Wales) Bill as laid before the National Assembly for Wales on 9 July 2012.
- 2 They have been prepared by the Local Government and Communities Directorate of the Welsh Government to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the National Assembly for Wales.
- 3 The Explanatory Notes need to be read in conjunction with the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision or part of a provision does not seem to require any explanation or comment, none is given.

List of terms and abbreviations used in the Explanatory Notes

- 4 The following terms and abbreviations are used in the Explanatory Notes:

The Assembly – the National Assembly for Wales

The Assembly Commission – the National Assembly for Wales Commission

The Bill – the Public Audit (Wales) Bill

The 2006 Act – the Government of Wales Act 2006

AGW – the Auditor General for Wales

WAO – the Wales Audit Office

WCF – the Welsh Consolidated Fund

Overview of the Bill

- 5 The Bill comprises 37 clauses, and 4 Schedules. As set out in Clause 1 (which is not intended to have any legal effect) of the Bill, the main provisions –
 - prescribe the office of AGW is to continue;
 - create a new corporate body, the WAO, and confer functions upon it;
 - prescribe the governance arrangements for both the AGW and the WAO, and make provision for the relationship between the two;
 - prescribe how the functions of the AGW are to be exercised and makes the AGW the auditor of local government bodies in Wales.

Part 1: Auditor General for Wales

Clause 2 – Office of Auditor General for Wales

- 6 This clause establishes that the office of the AGW continues. Before the enactment of this Bill the office of AGW is established under Schedule 8 to the 2006 Act. After enactment of this Bill the office of AGW will be established under clause 2. By referring to the office of AGW continuing the effect is that there is no break in the continuity of that office or in the exercise of the functions of that office. Under clause 2(2) Her Majesty is to appoint an

individual to that office on the nomination of the Assembly. Appointment to the office is for a maximum of 8 years; a person may only hold the office of AGW once.

- 7 The Assembly must be satisfied that reasonable consultation with those bodies representing the interests of local government bodies in Wales has been undertaken, before making a nomination to Her Majesty as to the person who should be appointed as AGW.

Clause 3 – Resignation or removal

- 8 The AGW holds office until the end of the term for which they have been appointed (which can be up to 8 years from appointment, see clause 2) unless:
 - they are relieved of the appointment by Her Majesty at their request (namely, they resign);
 - they are relieved of the appointment because Her Majesty is satisfied that they are no longer capable of performing the duties because of medical reasons and are also incapable for such reasons of requesting that they be relieved of office;
 - they are removed from post by Her Majesty because of misbehaviour.
- 9 Removal from post on the grounds of misbehaviour is done only on the recommendation of the Assembly. Such a recommendation can only be made if at least two-thirds of all Assembly Members vote in favour of such action.

Clause 4 – Disqualification

- 10 This clause sets out the grounds which would disqualify a person from being AGW. The grounds relate to being a member of a legislature within the United Kingdom, an employee of the WAO, or holder of any other office or position appointed by the Crown, the Assembly or the Assembly Commission.

Clause 5 – Employment etc of former Auditor General

- 11 This clause prescribes the restrictions around future employment, office-holding or provision of services that will apply to persons who have been appointed as the AGW under this Bill but no longer hold this office. The restrictions only apply for two years beginning on the day the person ceases to hold office. The aim is to avoid any possible conflict of interest or perception of such a conflict when the person is AGW – e.g. to avoid the situation where an AGW nearing the end of his or her term of office carries out his or her functions leniently in respect of a body to which he or she may be appointed upon ceasing to be AGW.

Clause 7 – Remuneration

- 12 The Assembly is required to make remuneration arrangements for an AGW appointed under this Bill (prior to the appointment of the AGW), and such arrangements may include salary, allowances, gratuities, pension

arrangements and other benefits. In all cases these arrangements (or elements therein) cannot be performance-based.

- 13 In determining the arrangements the Assembly is required to consult with the First Minister.
- 14 Amounts payable will be charged on the WCF, this means that payment will be directly from that Fund rather than from monies voted annually by the Assembly. This is designed to further protect the independence of the AGW.
- 15 Note also paragraph 13 of Schedule 1 to the Bill, and paragraph 1 of Schedule 3 to the Bill – see below.

Clause 8 – How functions are to be exercised

- 16 This clause maintains and enhances the independence of the AGW in the exercise of his or her functions – the functions of the office are not subject to the direction or control of the Assembly or the Welsh Government and there is new provision to make clear that the AGW has complete discretion in the manner in which he or she exercises audit related functions.
- 17 However this is subject to the following. The AGW must seek to perform his or her functions efficiently, and in a cost-effective manner. They must also have regard to the standards and principles of professional practice in relation to auditing and accounting. The AGW must have regard to advice provided by the WAO and provided that the AGW does have regard to that advice the AGW has complete discretion in the exercise of his or her audit related functions.

Clause 9 – Supplementary powers

- 18 Clause 9 provides the AGW with a general power to do anything which facilitates, or is incidental or conducive to, the exercise of his or her functions. This general power does not extend however to functions which are or could become the responsibility of the WAO under this Bill, including borrowing money. In this respect see, in particular clause 9(2).

Clause 10 – Code of audit practice

- 19 The AGW must issue a code of practice which embodies the best professional practice to be adopted in the carrying out of functions by the AGW –
 - relating to the examining of accounts (including of local government bodies in Wales);
 - relating to the carrying out, undertaking or promoting value for money studies or examinations;
 - as provided for in various provisions of the Government of Wales Act 1998, the Public Audit (Wales) Act 2004 and Schedule 8 to the Government of Wales Act 2006.

- 20 In preparing the Code the AGW is required to consult those persons he or she thinks appropriate. When the Code is made, and published, the AGW must comply with it.

Clause 11 – Audit of local government bodies

- 21 The purpose of clause 11 is to change who will be the auditor of local government bodies in Wales. Under the current provisions of section 13 of the Public Audit (Wales) Act 2004, the auditors of local government bodies are persons appointed by the (current) AGW. By virtue of the amendment to that Act made by clause 11 of this Bill, the auditor will be the AGW. This clause needs to be read with paragraph 2 of Schedule 3 to this Bill – see below.
- 22 At present the AGW is not directly responsible for the audit of local government bodies, instead auditors are appointed by the AGW to perform those audits. This is considered to be anachronistic and, given that the current AGW has other functions in respect of local government bodies (for example in relation to value for money), is responsible for auditing the Welsh Government, Welsh NHS bodies and others, and given the thrust of other proposals in the Bill, it is deemed appropriate for the audit of local government bodies in Wales to be vested with the AGW.
- 23 Section 16 of the Local Government (Wales) Measure 2009 currently provides that ‘relevant regulators’ (for the purposes of that Measure) include an auditor appointed under current section 13 of the Public Audit (Wales) Act 2004. Because of the amendments made by clause 11(1) of this Bill, a consequential amendment is required to the 2009 Measure as there will no longer be auditors appointed by the AGW in this context. This is achieved by clause 11(2) of the Bill.

Clause 12 – Transfer of Welsh Minister functions - consultation

- 24 Under section 146A of the Government of Wales Act 1998 certain functions of the Welsh Ministers may, by order, be transferred to or exercised on their behalf by the AGW. Such transfer, or exercise, can only be with the consent of the AGW.
- 25 Clause 12 of this Bill amends section 146A of that Act so as to require the Welsh Ministers to consult with the WAO before making such an order. The requirement for the AGW to consent to the transfer or exercise of such functions remains unchanged.

Part 2: The Wales Audit Office and its relationship with the Auditor General

Clauses 13 to 15 – relating to the Wales Audit Office

- 26 Clause 13 establishes that there will be a new body called the Wales Audit Office (the WAO). This clause also gives effect to Schedule 1 (which contains provision about the WAO).

- 27 Clause 14 provides that the WAO may do anything that facilitates or is incidental or conducive to the exercise of its functions, but the WAO (by virtue of clause 15) must aim to carry out its functions efficiently and cost-effectively.

Clause 16 – Relationship with the Auditor General

- 28 Clause 16 provides that the AGW is the chief executive of the WAO, but not an employee of it. This clause also gives effect to Schedule 2 (Relationship between the Auditor General and the WAO).

Clause 17 – WAO to monitor and provide advice

- 29 The WAO monitors and advises the AGW in respect of his or her functions; the AGW is under a duty (clause 17(3)) to have regard to any such advice.

Clause 18 – Delegation and joint exercise of functions of the Auditor General

- 30 Clause 18 enables the functions of the AGW to be carried out by an employee of the WAO or a person providing services to the WAO (for example, those who are contracted to provide audit support services to the AGW), provided that the employee or person is authorised to do so in a scheme of delegation. Where functions are carried out under the scheme of delegation, the responsibility for the function remains with the AGW.

- 31 The scheme of delegation must be prepared by the AGW (who cannot delegate this function), and must be approved by the WAO. The approval of the WAO will be needed as it will be, for example, the employer of staff.

Clause 19 – Provision of services

- 32 Clause 19 enables the WAO to make arrangements to receive (including under payment) administrative, professional or technical services that it or the AGW may need to carry out their respective functions. It also enables the WAO to make arrangements with a 'relevant authority' so that the WAO or AGW can provide those services to a relevant authority, or to exercise the functions of that authority. Clause 19 could be relied on to secure the provision of expert external audit services (for example, relating to tax); these could be provided by a person to whom the AGW can then delegate his or her functions.

- 33 'Relevant authority' is defined at clause 19(7) and includes local authorities (in Wales and in England), other public authorities and government departments.

- 34 The WAO will be able to make the arrangements on terms, including relating to payment, put in place under this clause. If the terms include fees payable to the WAO (for example, for the provision of services by the AGW to a relevant authority), these must be in accordance with the scheme of charges prepared under clause 24 (see below).

Clause 20 – Expenditure

- 35 The AGW and the WAO must jointly prepare an estimate for each financial year (to year ending 31 March) of all of the income and expenditure of the WAO, including in particular the resources needed for the exercise of the AGW's functions. The estimate must be laid before the Assembly for examination and possible modification. The estimate must be laid at least 5 months before the start of the financial year to which it relates.
- 36 Modifications by the Assembly to the estimate may only be made if the AGW and WAO have been consulted, and any views made by them taken into account.
- 37 The full estimate (modified or otherwise) will be included in the Assembly's Budget Motion under the Standing Orders of the Assembly. This full estimate must now include all elements, including that relating to audit of local government bodies. There will also no longer be any statutory authorisation to retain fee incomes as currently (see paragraph 9(4) of Schedule 8 to the Government of Wales Act 2006 which Schedule 4 to this Bill will repeal), and therefore all of these matters must be accounted for within the estimate and consequently also the Annual Budget Motion.

Clause 21 – Provision of resources for Auditor General's functions

- 38 Clause 21 recognises the WAO, as the budget-holder. It is responsible for providing resources to the AGW as required by the AGW so that he or she can carry out his or her functions. The resources are, in particular, -
- staff to assist the AGW
 - services from any person (for example, external audit or tax services principally under clause 19)
 - holding property, documents or other information, and
 - keeping records relating to the functions of the AGW.
- 39 In order to fully understand clause 21 it must be read with clauses 25 to 28 (inclusive) of the Bill relating to the annual plan of work and resources – see below.

Clause 22 – Borrowing

- 40 As the budget holder the WAO has the power to borrow money, by way of an overdraft or otherwise, to meet a temporary excess of expenditure. A power to borrow is not available to the AGW.

Clauses 23 and 24 – relating to fees

- 41 Any income (fees or otherwise) received by the AGW must be passed to the WAO, as the budget holder (clause 23) and cannot be retained by the AGW.

- 42 The charging of fees by the WAO in relation to the exercise of functions by the WAO or the AGW must be in accordance with a scheme prepared by the WAO under clause 24. In any case any fee charged by the WAO can only cover the costs of exercising the functions (there cannot be an element of profit within them).
- 43 Clause 24(4)(c) requires the WAO to lay the prepared scheme before the Assembly for approval. Subject to the approval of the Assembly, the WAO must publish the scheme.
- 44 The scheme must be reviewed at least once a year by the WAO. If the scheme is revised or remade then it must be laid before the Assembly for approval except where subsection (7) applies – i.e. where Welsh Ministers use certain powers to prescribe scales of fees to replace WAO scales.

Clauses 25 to 28 – relating to the annual plan of work and resources

- 45 The AGW and the WAO must agree an annual plan. The annual plan will set out the planned work for both the AGW and the WAO, and required resources to achieve that planned work (clause 25).
- 46 Although neither are bound by the annual plan, they must have regard to it (clause 28). This means that in exercising their functions (including as to the provision of resources required by the AGW) both the AGW and the WAO must give the annual plan the appropriate weight in all the circumstances. If other unforeseen work arises then the need for that work to be done (and the resource implications) must be properly balanced against the planned work (and resources allocated for that).
- 47 The annual plan must be agreed by the AGW and the WAO before the start of the financial year in which that work is to be carried out (clause 25(1)). Once prepared it must be laid before the Assembly (clause 27) and the Assembly will be under a duty to publish it by virtue of section 144 of the 2006 Act (as amended by this Bill).
- 48 The annual plan must include the maximum resources that it is anticipated will be allocated by the WAO to the AGW for the purpose of undertaking the AGW's programme of work (clause 25(2)(f)). Clause 26 is the mechanism by which the anticipated maximum resources needed for the AGW's planned work programme for the year are included in the annual plan.
- 49 Clause 26 is designed to ensure that it is the AGW who determines his or her own work programme (to maintain the independence of the AGW) and it is the AGW who determines the maximum amount of resources that will be needed to achieve that work. Clause 26 is, therefore, a critical provision in terms of maintaining an appropriate balance between, on the one hand, establishing appropriate governance and oversight arrangements for the AGW and, on the other, maintaining the principle that the AGW's audit independence and discretion is not inappropriately fettered. Clause 26 does this by giving the AGW the lead role in this respect with the WAO only being able to step in if the

AGW's proposals are unreasonable. In this regard "unreasonable" is intended to have its ordinary meaning and the test is intended to be objective. This further protects the AGW because the test is not whether the WAO subjectively considers something to be unreasonable. Rather the test is whether, in all the circumstances, what is being proposed is, objectively tested, unreasonable.

Part 3: Miscellaneous and general

Clause 29 – Functions of the National Assembly

50 This clause provides authority for the Assembly to make provision (within its Standing Orders) as to how the functions set out in this Bill falling to the Assembly (other than its functions of approving legislation) are to be exercised. The intention is that relying on this provision the Assembly could make provision in its standing orders so that one (or more of its committees) could exercise those functions relating to the oversight and supervision of the AGW. For example, the Assembly could provide that the function of appointing the non-executive members of the WAO will be exercised by a committee of the Assembly rather than by the Assembly acting in Plenary session.

Clause 30 – Indemnification

51 Clause 30 provides that any compensation to a third party for a breach of a duty (for example in contract or negligence) by an AGW appointed under this Bill, a person providing services to the AGW or WAO (for example under clause 19), the WAO's former or current members, employees is to be charged on and paid from the WCF (as such it is not to be subject to the approval of the Assembly in a Budget resolution). See also paragraph 8 of Schedule 3 to this Bill.

Clause 31 – Orders

52 This clause makes general provision about other powers in the Bill that enable subordinate legislation to be made (namely orders). Such legislation is to be made by statutory instrument. Sub-sections (2) and (3) establish the Assembly procedure for making those orders. Subsection (4) is a technical provision which ensures that the powers in the Bill to make such subordinate legislation are wide enough to make certain types of provision such as supplemental provisions.

Clause 32 – Directions

53 Clause 32 makes general provision in respect of the powers in the Bill to issue directions.

Clause 33 – Interpretation

54 This clause provides the meaning of various terms used throughout the Bill.

Clause 34 – Transitional, supplementary and saving provisions etc

- 55 Clause 34(1) gives effect to Schedule 3 (transitional etc provisions) which is where the principal transitional etc. provisions are to be found.
- 56 Subsection (2) enables the Welsh Ministers, by order, to make further transitional, transitory or saving etc. provisions in connection with the coming into force of the Bill or to give full effect to the Bill when enacted.
- 57 It is recognised that the matters with which this Bill are concerned are accommodated within existing (and often complex) legislative schemes set out in a raft of other legislation. It is further recognised that this legislative landscape will also change over time as further Acts of the Assembly or Parliament, as the case may be, are made. Therefore the power of the Welsh Ministers to make an order under clause 34(2) includes powers to amend, repeal or revoke other enactments or prerogative instruments. This power is limited as it can only be used in connection with, or to give full effect to, this Bill. The power cannot be used for other purposes.
- 58 Clause 34(4) enables an order under subsection (2) to modify the transitional etc. provisions set out in Schedule 3. This provision is a safety net provision to ensure that adjustments can be made to the detailed provisions set out in Schedule 3 should the circumstances at the time that this Bill comes into force dictate.

Clause 35 – Minor and consequential amendments

- 59 Clause 35 gives effect to Schedule 4 (minor and consequential amendments).

SCHEDULE 1 – INCORPORATION OF WALES AUDIT OFFICE

Part 1: Membership and status

Paragraph 1 – Membership

- 60 This paragraph establishes that the WAO will have 7 members, comprising 5 who are not employees of the WAO (known as ‘non-executive members’), the AGW, and 1 employee of the WAO (known as the ‘employee member’).

Paragraph 2 – Appointment of non-executive and employee member

- 61 The appointments of the non-executive and employee members of the WAO are to be made on merit, and a person cannot be appointed (or remain appointed) if they are disqualified on the grounds set out in Part 6 of Schedule 1 – see below.

Part 2: Non-executive members

Paragraph 4 – Appointment of non-executive members

62 It is for the Assembly to appoint the non-executive members of the WAO, on the basis of a fair and open competition.

Paragraph 5 – Appointment of chair of the WAO

63 One of the 5 non-executive members of the WAO is to be appointed as the Chair of the WAO, by the Assembly. Before making such an appointment, there must be consultation with the First Minister. There may be consultation with other persons as appropriate.

64 A person cannot be appointed as Chair more than twice.

Paragraph 6 – Period of appointment and re-appointment

65 Appointment of the non-executive members and Chair of the WAO is for a maximum of 4 years, and a person cannot be appointed more than twice to these offices.

Paragraph 7 – Remuneration arrangements

66 The Assembly may make remuneration arrangements for the Chair of the WAO and the other non-executive members, and such arrangements may include salary, allowances, gratuities, and other benefits (but not pension arrangements). In all cases these arrangements (or elements therein) must not be performance-based.

67 Before the arrangements for the Chair can be made, there must be consultation with the First Minister (paragraph 7(2)). There must also be consultation with an appropriate person with oversight of public appointments (paragraph 9). There may be consultation with other persons as appropriate.

68 The amounts payable for the Chair of the WAO will be charged on the WCF; the amounts payable for the other non-executive members will be met by the WAO.

Paragraph 8 – Other terms of appointment

69 The Assembly may determine other terms and conditions applicable to the non-executive members of the WAO, including the Chair. These agreements or arrangements may include restrictions on the offices and other positions a non-executive member may hold for a period of up to two years after these cease to hold office.

70 Before making a determination on such terms and conditions there must be consultation with an appropriate person with oversight of public appointments the Assembly considers appropriate (paragraph 9).

Paragraphs 10 to 12 – Termination of appointments

- 71 The Chair and non-executive members of the WAO may resign their offices at any time by giving written notice to the Assembly (paragraph 10).
- 72 The Assembly may terminate the appointment of a non-executive member of the WAO on the grounds set out in paragraph 11(1). The Assembly may terminate the appointment of the Chair of the WAO (on the grounds set out in paragraph 12(3)), but only after there has been consultation with the First Minister. There may be consultation with other persons also. Termination of the appointment of Chair does not automatically remove him or her from being a non-executive member of the WAO. If the person who is the Chair is subject to termination as a non-executive member then he or she will also lose office as Chair.

Part 3: Auditor General

Paragraph 13 – Additional remuneration of the Auditor General

- 73 In addition to the arrangements made by the Assembly for remuneration of the AGW (see clause 7), the WAO may also make provision for additional payments to be made to the AGW to cover expenses incurred by that person as a member of and chief executive of the WAO. Such payments are to be made by the WAO.

Part 4: Employee member

Paragraph 14 – Appointment

- 74 Whenever there is a vacancy in the office of employee member of the WAO, the AGW must recommend a person to the non-executive members. The non-executive members must then appoint that person, or another of their own choosing.

Paragraph 15 – Terms of appointment

- 75 The terms of appointment of the employee member must be made by the non-executive members, and may include remuneration arrangements for allowances, gratuities, and other benefits to cover expenses. Such payments are to be made by the WAO. The employee member will continue to receive his or her salary as an employee of the WAO. There is to be no provision for a pension as employee member but if the person who is that member has a pension as a result of being an employee of the WAO then the person's service as employee member will also count towards that pension entitlement.
- 76 The employee member's term of office will not be regarded as a break in service of employment by the new WAO.

Paragraph 16 – Other terms of appointment

- 77 The non-executive members may determine other terms of appointment applicable to the appointment of the employee member; such terms may include restrictions on the offices and other positions the employee member may hold during that appointment and for a period of up to two years after they cease to hold that office.

Paragraphs 17 to 19 – Termination of appointments

- 78 The employee member may resign from that office (but remain an employee of the WAO) at any time by giving written notice to the non-executive members (paragraph 18). Their appointment would also cease at the end of any period of appointment set in their terms of appointment, or if they ceased to be an employee of the WAO.
- 79 Paragraph 19 of Schedule 1 also provides the process and grounds for the termination of the appointment by the non-executive members.

Part 5: Employees

Paragraphs 20 to 23 – relating to appointment, status and remuneration

- 80 The WAO has, by virtue of paragraph 20 of Schedule 1, powers to employ and remunerate staff on such terms as it considers appropriate, provided the procedures for recruitment and selection and the terms of employment are broadly in line with those of the staff of the Welsh Government (the latter being civil servants).
- 81 The WAO will be required to make payments in respect of superannuation benefits and their associated administration costs (paragraph 23(2)).

Part 6: Disqualification as member of, or employee of, the WAO

- 82 Part 6 of Schedule 1 prescribes the grounds upon which a person cannot be appointed (or remain appointed) as a member or employee of the WAO.
- 83 Paragraph 24(4) is needed to ensure that the AGW is not disqualified from being a member of the WAO given that the AGW is appointed by Her Majesty on the nomination of the Assembly.

Part 7: Procedural rules

- 84 The WAO must make internal rules to regulate its procedures (paragraph 25). The rules must provide for a quorum for any meetings of the WAO (paragraph 26), and may provide for setting up of committees of the WAO, and any sub-committees, including provision for regulating the procedures of the committees and sub-committees (paragraph 27).

- 85 Note also paragraph 3 of Schedule 3 of the Bill which enables the Chair of the WAO to make rules for the determination of the business of the WAO pending the making of the first set of formal rules.

Part 8: Other matters

Paragraph 29 – Delegation of functions

- 86 With certain exceptions (as set out in paragraph 29(5) of Schedule 1) the WAO may delegate any of its functions to members, employees or committees (including sub-committees) of the WAO, or to persons providing services to the WAO. The delegation of a function does not affect the responsibility of the new WAO for the exercise of the function.

Paragraph 30 – WAO accounts

- 87 This paragraph establishes that the AGW is the accounting officer for the WAO. The responsibilities of the accounting officer are set by virtue of paragraph 30(2), (5) and (6).

Paragraphs 31 and 32 – Audit etc of the WAO

- 88 The National Assembly is required to appoint an auditor of the WAO's accounts, and to establish the terms of appointment for that auditor. The WAO may recommend a person for appointment, but in any case must pay the auditor the remuneration provided for in the appointment.
- 89 The auditor will examine and certify the statement of accounts (prepared by the AGW as accounting officer of the WAO under paragraph 30), which are to be submitted to the auditor by the Chair of the WAO no later than 5 months after the end of the financial year. Once the statement of accounts has been audited and is certified, the auditor must lay the accounts (as certified) and his or her report on them before the Assembly.
- 90 Amongst other matters paragraph 32 makes provision as to the powers of the auditor to gather information (including documents) necessary for the purpose of auditing the accounts.
- 91 Paragraph 32 also enables the auditor to carry out economy, efficiency and effectiveness examinations in relation to the use of resources by the AGW and the WAO in the discharge of their functions; confers power on the auditor to gather information (including documents) for that purpose and provides that in connection with these examinations the auditor may lay a report on the findings before the Assembly.

SCHEDULE 2 – RELATIONSHIP BETWEEN THE AUDITOR GENERAL AND THE WAO

Part 1: Reports and documents

Paragraph 1 – Reports

- 92 Clauses 25 to 28 set out the arrangements relating to the annual plan of the AGW and the WAO. Paragraph 1 of Schedule 2 to the Bill sets out the arrangements for an annual report on the exercise of the functions, which includes (amongst other matters) an assessment of the extent to which the priorities of the annual plan were achieved.
- 93 In addition to the annual report, the AGW and the Chair of the WAO must also prepare two interim reports each financial year on the exercise of their functions and must include an assessment of the extent to which the priorities of the annual plan have been achieved.
- 94 The interim and annual reports must be laid before the Assembly – the latter as soon as practicable after the end of the financial year, and the former on dates to be decided by the Assembly.

Paragraph 2 – Documents and information

- 95 Paragraph 2 of this Schedule provides that any document or information which a person must or may provide to the AGW may be provided to the WAO. This supports the responsibility placed on the WAO to receive and hold documents and information for the new AGW and to maintain records (under clause 21 of the Bill).

Part 2: Temporary exercise of the functions of Auditor General by another person

Paragraphs 3 to 12 – Temporary exercise of the functions of the Auditor General by another person

- 96 Paragraph 4 sets out the circumstances in which a designation of a person to temporarily exercise the functions of the AGW in place of the AGW may take place. Such a temporary designation is made by the WAO, with the agreement of the Assembly, and cannot exceed 6 months in duration in respect of the circumstance that triggers the designation. The temporary designation may be extended once in respect of that circumstance by the WAO (with the agreement of the Assembly) for a further 6 months.
- 97 Any such temporary designation must be of a person employed by the WAO, who would continue to be employed by the WAO on the same terms (paragraphs 6 and 7). Additional terms, including remuneration, may be agreed by the WAO and the Assembly but those remuneration terms must not include an additional salary or pension.

SCHEDULE 3 – TRANSITIONAL, SUPPLEMENTARY AND SAVING PROVISIONS

Part 1 – The Auditor General

Paragraph 1 – Previous Auditor General to continue to be Auditor General

- 98 Paragraph 1 means that if a person holds office as AGW on the ‘appointed day’ that person will be treated on and after that day as if he or she had been appointed under Part 1 of the Bill. This will ensure continuity between the existing statutory regime and the new statutory regime under this Bill so far as the AGW is concerned.
- 99 The term ‘appointed day’ is defined in paragraph 1(5) and means the day on which this paragraph comes into effect.
- 100 Paragraph 1(3) provides that in such a case the remuneration arrangements under clause 7 of the Bill are to be made by the Assembly (following consultation with the First Minister). This must be done before the appointed day. This will ensure that the person holding office as AGW will hold it on the terms and conditions, including as to remuneration, set in accordance with the provisions of this Bill.
- 101 Because the Bill provides that the term of office of an AGW appointed under this Bill is 8 years, paragraph 1(2)(b) provides that if there is a serving AGW on the appointed day that person’s term of office will be 8 years less any amount of time that he or she was AGW before the appointed day. The effect of this is that if Person A is the AGW before the appointed day and continues to hold that office on the appointed day, then Person A will be treated as being the AGW as if appointed under this Bill. If Person A’s terms of office is 8 years (as the Bill also provides) but Person A has already served 2 years in office then on the appointed day that person’s term of office as AGW under the Bill will be reduced to 6 years.

Paragraph 2 – Savings for auditors appointed under section 13 of the Public Audit (Wales) Act 2004

- 102 As a result of the changes made to section 13 of the Public Audit (Wales) Act 2004 by virtue of clause 11 of this Bill, paragraph 2 in Schedule 3 of the Bill is required.
- 103 This paragraph provides that an appointment made by the AGW of an auditor of local government bodies (in accordance with current section 13 of the 2004 Act), will continue until the end of the period of appointment, rather than ending when the relevant provisions of this Bill come into effect. Also preserved is the operational effect of appointment, including the scheme for fees which may be charged and the gathering and holding of relevant information; this ensures that work being done by the auditors appointed by the AGW can continue under the existing provisions of the 2004 Act, within the terms of the appointment.

Part 2 – The WAO

Paragraph 3 – WAO’s procedural rules before rules are made under paragraph 24 of Schedule 1

104 The first formal procedural rules are to be made by the WAO (under paragraph 25 of Schedule 1 of the Bill). Before those rules are made there will be no rules in place to govern the order of business of the WAO. Therefore, this paragraph provides that business (including making the first set of rules) will be conducted in accordance with procedures set by the Chair of the WAO. Once the first rules are made the business will then be conducted in accordance with the provision made in those rules.

Part 3 – Transfer of functions etc

Paragraph 4 – Transfer of staff

105 Because the Bill will transfer the responsibilities for the employment of staff from the current AGW to the new WAO, paragraph 4 gives effect to the transfer of employment rights and liabilities of those staff.

Paragraphs 5 and 6 – Transfer of other property, rights and liabilities

106 Similarly, paragraphs 5 and 6 make provision as to the transfer of property, rights and liabilities from the current AGW to the new WAO. This reflects the transfer of certain functions of the AGW to the new WAO.

Paragraph 7 – Criminal liability of the Auditor General

107 In connection with paragraph 5 (relating to the transfer of the property, rights or liabilities that are transferred to the WAO), paragraph 7 provides for the transfer of any criminal liability that may have been incurred by the AGW in connection to those property, rights or liabilities to the WAO.

SCHEDULE 4 – CONSEQUENTIAL AMENDMENTS AND REPEALS

108 This Schedule sets out the repeals and consequential modifications to primary legislation to give effect to the Bill. These ensure (for example) that there are references to the new WAO as appropriate in legislation where previously the reference had only been to the AGW.

109 Consequential amendments and repeals are made to the –

- Superannuation Act 1972;
- Finance Act 1989;
- Social Security Administration Act 1992;
- Education Act 1997;
- Government of Wales Act 1998;
- Local Government Act 1999;
- Freedom of Information Act 2000;
- Public Audit (Wales) Act 2004;

- Government of Wales Act 2006
- Companies Act 2006;
- Local Government (Wales) Measure 2009;
- Local Democracy, Economic Development and Construction Act 2009;
and
- Equality Act 2010.

ANNEX B – Consultation Distribution List

Chief Executives of County and County Borough Councils in Wales;
Chief Executive of the Welsh Local Government Association;
Chief Executives of National Park Authorities in Wales;
Chief Executives of Port Health Authorities in Wales;
Chief Fire Officers of Fire and Rescue Services in Wales;
Chief Executives of Police Authorities in Wales/Chief Constables in Wales;
Chief Executive of the Wales Probation Trust;
Chief Executives of Health Boards and Trusts in Wales;
The Older People’s Commissioner for Wales;
The Children’s Commissioner for Wales;
The Public Services Ombudsman for Wales;
Chief Executive Countryside Council for Wales;
Secretary Local Government Boundary Commission for Wales;
Secretary Boundary Commission for Wales;
Chief Executive Sport Wales;
Director Forestry Commission Wales;
Chief Executive Arts Council of Wales;
Chief Executive General Teaching Council for Wales;
Director General National Museum of Wales;
Librarian National Library of Wales;
Chief Executive Welsh Language Board/The Welsh Language Commissioner;
Accounting Officer Welsh Levy Board;
Secretary Royal Commission on Ancient and Historical Monuments in Wales;
Director Wales Centre for Health;
Chief Executive Care Council for Wales;
Director General Higher Education Funding Council for Wales;
Chairs of Further and Higher Education Governing Bodies;
Chief Executive of One Voice Wales;
The Auditor General for Wales;
Chief Executive of the Financial Reporting Council;
Comptroller and Auditor General;

Auditor General Scotland;
Comptroller and Auditor General of Northern Ireland;
Chief Executive Audit Commission;
Director NHS Confederation Wales;
The Chief Inspector of Education and Training in Wales;
Chief Executive Healthcare Inspectorate Wales;
Chief Inspector of Care and Social Services in Wales;
Secretary National Assembly Commission;
Assembly Members;
The Wales Office;
Her Majesty's Treasury;
Ministry of Justice;
Department of Work and Pensions;
Department of Communities and Local Government;
Home Office;
Scottish Government;
Northern Ireland Assembly;
Chartered Institute of Public Finance and Accountancy;
Head of the Association of Chartered Certified Accountants Wales;
The Institute of Chartered Accountants for England and Wales, Director for Wales;
Chartered Institute of Management Accountants.

ANNEX C – Report of Auditor General for Wales (Standing Order 26.6(viii))

Report of the Auditor General for Wales on whether charges on the Welsh Consolidated Fund provided in the Public Audit (Wales) Bill are appropriate

As the Bill contains provisions for charging expenditure on the Welsh Consolidated Fund (the Fund), Standing Order 26(6)(viii) of the National Assembly for Wales requires the Explanatory Memorandum to the Bill to incorporate a report by the Auditor General setting out his or her views on whether it is appropriate for such charges to be made on the Fund. I am making this report in accordance with that requirement having been shown what the Welsh Government informs me are the relevant provisions:

- a) clause 7, Remuneration;
- b) clause 30, Indemnification;
- c) Schedule 1, paragraph 7, Remuneration of the Chair of the WAO;
- d) Schedule 3, paragraph 6, Transfer of other property, rights and liabilities;
- e) Schedule 3 paragraph 9, Indemnification.

I have not had sight of the whole Bill or its Explanatory Memorandum, so my report is confined to the provisions listed above and my interpretation of their effects and purposes, informed to some extent on remuneration and indemnification by the Welsh Government's consultation document on the draft Bill.

In making this report, I should also make clear that I have confined myself to consideration of whether it is appropriate for those charges to be made directly on the Fund under the Bill's provisions rather than through the normal supply provisions set out in Part 5 of the Government of Wales Act 2006. I am not covering in this report the merits of the wider policy objectives underlying such provisions, as I consider that to do so could be an inappropriate avenue of influence on the Assembly's consideration of the Bill.

Under the 2006 Act, which sets out the finance arrangements for the Welsh Ministers and other relevant persons, it is the norm that sums may only be paid out of the Fund on the authority of a Budget resolution passed by the Assembly. Direct charges are an exception to this norm, and, in order to maintain the integrity of the Budget resolution arrangements, such exceptions should only be provided where there are particular circumstances that make the Budget resolution procedure inappropriate. Such circumstances include the need to avoid political influence over the operation of constitutional offices—clearly the independence of such offices should not be undermined by party-political influence. Another relevant circumstance is the need to provide ensured financing for things such as statutory compensation arrangements—such arrangements would be incomplete if their financing is not ensured.

Clause 7 provides for the remuneration of the Auditor General to be charged directly on the Fund. As such, it appears in essence to be a restatement of paragraph 6(5) of Schedule 8 to the 2006 Act, and I gather that that provision was made so as to avoid political influence over the office of Auditor General through variation of the Auditor General's remuneration. Given that reason, I consider the charging of the Auditor General's remuneration on the Fund to be appropriate.

Clause 30 provides for amounts payable by indemnified persons, such as an Auditor General, to be charged on the Fund. This appears in essence to be a restatement and expansion of paragraph 9(1) of Schedule 8 to the 2006 Act, with extension to the new WAO. I gather that the 2006 Act provision was made so as to ensure financing of the indemnity provided by the paragraph. Given that reason, I consider it appropriate for sums payable under the indemnity to be charged on the Fund.

Schedule 1, paragraph 7 provides for the remuneration of the proposed Chair of the proposed corporate body WAO. I gather from the Welsh Government's consultation document on the draft provision (paragraph 7 of Schedule 1 of the draft Bill dated 15 March 2012), which this provision appears in essence to restate, that the reason for charging such remuneration directly on the Fund is to "shield the independence of the office of AGW from overt political influence". I consider that avoiding political influence over the Auditor General, and for that matter over the proposed Chair of the WAO, to be a reason that makes direct charge of remuneration on the Fund appropriate.

Schedule 3, paragraph 6 provides for compensation in relation to the proposed transfer of property, rights and liabilities from the Auditor General to a corporate WAO. Paragraph 6(8) provides for such compensation to be charged on the Fund. Such charging ensures financing of the compensation provision, and I therefore consider that it is appropriate.

Schedule 3, paragraph 9 provides continuity in coverage of the indemnity provisions mentioned above in relation to clause 30. For the reasons set out above, I consider it appropriate for sums payable under the indemnity to be charged on the Fund.

Huw Vaughan Thomas
Auditor General for Wales
June 2012