



House of Commons
Welsh Affairs Committee

Draft Public Audit (Wales) Bill

Fifth Report of Session 2002–03



House of Commons
Welsh Affairs Committee

Draft Public Audit (Wales) Bill

Fifth Report of Session 2002-03

*Report, together with formal minutes, oral and
written evidence*

*Ordered by The House of Commons
to be printed 2 July 2003*

The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales.)

Current membership

Mr Martyn Jones MP (*Labour, Clwyd South*) (Chairman)
Mr Martin Caton MP (*Labour, Gower*)
Mr Huw Edwards MP (*Labour, Monmouth*)
Dr Hywel Francis MP (*Labour, Aberavon*)
Ms Julie Morgan MP (*Labour, Cardiff North*)
Mr Albert Owen MP (*Labour, Ynys Môn*)
Mr Adam Price MP (*Plaid Cymru, Carmarthen East and Dinefwr*)
Mr Mark Prisk MP (*Conservative, Hertford and Stortford*)
Mr Bill Wiggin MP (*Conservative, Lemonister*)
Mrs Betty Williams MP (*Labour, Conwy*)
Mr Roger Williams MP (*Liberal Democrat, Brecon and Radnorshire*)

Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/welsh_affairs_committee.cfm. A list of Reports of the Committee in the present Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are James Davies (Clerk), Paul Derrett (Committee Assistant) and Sarah Colebrook (Secretary).

Contacts

All correspondence should be addressed to the Clerk of the Welsh Affairs Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 3264; the Committee's email address is welshcom@parliament.uk

Contents

Report	<i>Page</i>
Summary	3
1 Introduction	5
Publication of draft Bill	5
Our inquiry	5
2 General	5
Scope of Bill	5
Auditor General for Wales	6
Audit Commission in Wales	6
Effects of Bill	7
Process of legislation	7
3 The creation of a single audit body for Wales	8
Auditor General: functions and powers	9
4 Safeguarding the democratic accountability of local government	9
Background	9
Advisory Body	10
5 The audit process, co-operation and joint working	12
Background	12
Minimising the inspection burden on audited bodies	12
Joint reports	13
A role for the private sector	14
6 Transparency and consistency across the audit process	14
Disclosure of information	14
Audit access rights	15
Status quo	16
7 Changes in the audit arrangements for NHS bodies	16
Health audit	17
8 Staffing and Resources	17
Challenges	17
Costs	18
Organisation of new Office	18
Conclusions and recommendations	20
Formal minutes	23

Witnesses	24
List of written evidence	24
Reports from the Welsh Affairs Committee since 2001	25

Summary

The Draft Public Audit (Wales) Bill is the second draft Wales-only Bill the Committee has examined. The Committee shares the general welcome extended to the main purpose of the draft Bill to create a new Wales Audit Office under the Auditor General for Wales, to embrace local government and NHS bodies as well as the National Assembly for Wales and its sponsored bodies.

The Committee makes several recommendations designed to increase transparency and accountability, including

- consideration of a wide statutory duty to be placed on the Auditor General to have regard to the views of all appropriate professionals and relevant stakeholders on his forward programme for local government value for money audit (para 26)
- deletion of Clause 50 which unduly restricts disclosure of information by local government auditors (para 35)
- extension to local government auditors of the rights given by Clause 11 of the Bill to the Auditor General to follow public money to the end user, “making Welsh audit a beacon of good audit practice” (para 37)

The Committee expresses disappointment that the opportunity has not been taken to make the new arrangements for Welsh local government and NHS audit better than elsewhere in the United Kingdom rather than no worse (para 38): and some concern at the vagueness of the costs of the proposed establishment of the Wales Audit Office (para 42).

The Committee also calls for a duty on the Auditor General to promote cross-border studies, and their publication as joint reports (paras 29–31) and seeks clarification of several issues, including NHS performance audit arrangements, (para 40), arrangements between the Auditor General and the Assembly (para 44), and the proposed extension of the Auditor General’s powers (para 16).

1 Introduction

Publication of draft Bill

1. The Secretary of State for Wales published the draft Public Audit (Wales) Bill and accompanying explanatory notes on Thursday 3 April 2003.¹ The consultation period expired on 27 June. The draft Bill aims to consolidate the audit arrangements for public bodies in Wales, in a similar way to recent restructuring in Scotland and Northern Ireland.

Our inquiry

2. It is now standard practice for departmental Select Committees at Westminster to examine and report on draft legislation. They do this by seeking the views of stakeholders through oral evidence, and through examination of written memoranda, drawing where possible on responses to the relevant department's public consultation process. We have followed this procedure, adapted as necessary to take account of the involvement of the National Assembly for Wales. We understand that the National Assembly has set up an ad hoc Committee to examine and report on the draft Bill. This is the second time this Committee has conducted pre-legislative scrutiny of a draft Bill for Wales, following our examination in May and June 2002 of the draft NHS (Wales) Bill.²

3. Following an announcement by the Committee of its intention to conduct an inquiry into the Bill, we received written submissions from, among others, the Auditor General for Wales, the Audit Commission and the Welsh Local Government Association. We held three oral evidence sessions in June. The first was held at the National Assembly for Wales (NAW) in Cardiff when we took evidence from the Welsh Local Government Association; Professor Talbot, Professor of Public Policy and Management, University of Glamorgan; and Sue Essex, Assembly Minister for Finance, Local Government and Public Services. Our other sessions were held at Westminster when we took evidence from the Auditor General for Wales and the Audit Commission; and from Don Touhig MP, the Parliamentary Under-Secretary of State for the Wales Office. We are most grateful to all who gave evidence, and in particular to those who provided us with written memoranda to a tight deadline. The Committee also acknowledges the very considerable assistance received from the recently established Scrutiny Unit within the Committee Office.

2 General

Scope of Bill

4. The main focus of the draft Bill is on the consolidation of the audit arrangements for public bodies within Wales. Currently the audit and review of the National Assembly for Wales and its sponsored bodies is undertaken by the Auditor General for Wales, whilst

1 Draft Public Audit (Wales) Bill, Cm 5796

2 Third Report of Session 2001–02, *The draft NHS (Wales) Bill*, HC 959: Government response published as Fifth Special Report, HC 1215 of Session 2001–02

responsibility for the audit and review of Welsh local government bodies rests with the Audit Commission for England and Wales.

Auditor General for Wales

5. The office of Auditor General for Wales was created by Section 90 of the Government of Wales Act 1998. The Auditor General is appointed by Her Majesty and paid by the Assembly. The Assembly's Audit Committee fulfils a dual role of receiving and publishing his reports and following up their conclusions, and overseeing the expenditure of his office. The current UK Comptroller and Auditor General, Sir John Bourn, was appointed in June 1999 as the Auditor General for Wales; but there is no reason why this should be a permanent arrangement, as the memorandum from Sir John observed.³ Although completely independent of the Assembly and its Audit Committee, the Auditor General is obliged under statute to “take into account the views of the Audit Committee” as to the examinations he carries out on economy, efficiency and effectiveness of public bodies, and he has “a very close working relationship” with the Audit Committee.⁴

6. The Auditor General currently

- audits and certifies the accounts of the Assembly and its sponsored bodies;
- reports to the Assembly on any matters of importance which arise from the audit of accounts;
- undertakes value for money investigations which look at whether resources have been used economically, efficiently and effectively;
- has rights to inspect, and report to the Assembly on, the accounts of NHS bodies and further and higher education institutions, although he is not primary auditor of those bodies.

We understand that there are around 50 National Audit Office staff who support the Auditor General for Wales, based in Cardiff.

Audit Commission in Wales

7. The Audit Commission for England and Wales was established in 1983, to oversee local government financial audit. Over recent years it has taken on responsibility for performance audit, including Best Value inspections of local authorities, Comprehensive Performance Assessments of local authorities and broad studies across a number of authorities. The Commission is a body corporate of up to 20 members, appointed by Ministers, comprising those with expertise in local government, the NHS, academic disciplines and the accountancy profession. It is largely funded from fees charged to those it audits. It has a staff of around 2,300, including 1,500 in the Commission's audit agency, District Audit, and 450 in inspection, reporting to a Chief Executive known as the Controller of Audit.

3 Ev20, para 3

4 Qq 93,111 and Ev20, para 6

8. The Audit Commission in Wales is a recently established semi-independent office of the Audit Commission, with its own Director General. It has around 180 staff, with its headquarters in Cardiff and regional offices in Carmarthen and Deeside. The Audit Commission in Wales

- appoints external auditors to local government bodies and NHS bodies in Wales;
- ensures that appointed auditors comply with the Code of Audit Practice;
- carries out inspection of local government, including Best Value inspections of local authorities' best value performance plans and performance, known in Wales as the "Programme for Improvement", and joint inspections of Social Services with the Social Services Inspectorate for Wales and of education authorities with Estyn.

Effects of Bill

9. The draft Bill proposes to bring together the functions of the Auditor General in Wales and most of the functions of the Audit Commission in Wales into a single audit body to be known as the "Wales Audit Office" or "y Swyddfa Archwilio Cymru". The Auditor General for Wales would head the new body, which would be responsible for the financial audit and value for money audit of:

- The National Assembly for Wales and its sponsored bodies;
- Health bodies in Wales, primarily the NHS Trusts and Local Health Boards; and
- Local government bodies in Wales.

The length of the bill (70 clauses) is due to the fact that it mirrors much of the Audit Commission Act 1998. **We welcome this almost stand alone Welsh legislation which does not require significant cross-reference to other Acts of the UK Parliament.**

Process of legislation

10. Mr Touhig confirmed to us that he anticipated that the Bill would follow the pattern of the Health (Wales) Bill last year.⁵ We have therefore ensured that this Report is ready for the debate on the draft Bill in the Welsh Grand Committee, to be held in mid-July. With the commencement of the Parliamentary recess consideration will be given by Welsh and UK ministers to all the comments, and amendments made as appropriate, so that in October 2003 the Bill can be offered to the Legislative Programme Committee of the Cabinet ready to be presented as early as possible in the new session. It would then follow the standard legislative process in Westminster.

3 The creation of a single audit body for Wales

11. All of the key parties concerned with this draft Bill welcomed the overall aim of the Bill, which, as the Assembly Minister for Finance, Local Government and Public Services outlined, is “to create a more unified public accountability framework.”⁶ We also were confident that the status quo would not be suitable as a long-term measure. Scotland and Northern Ireland now have single audit bodies. We consider that, given the constitution and make-up of the Welsh public sector, such a body would also be appropriate for Wales. In particular we consider that having an identifiable Wales Audit Office is consistent with the spirit of devolution and should lead to enhanced clarity and accountability to the citizens in Wales.

12. Other audit models were considered to achieve this policy aim. The Regulatory Impact Assessment published with the draft Bill neither listed alternative possible models for a single audit body, nor considered the possibility of retaining the status quo. We understand that Assembly Ministers and officials did consider the various options at an earlier stage in the process. Sue Essex noted that consideration was given to three options: do nothing, the arrangements proposed and the Scottish model.⁷ Mr Touhig suggested that consideration had been given to a new body, rather than building on the existing Auditor General for Wales.⁸

13. Scottish public audit arrangements involve an Accounts Commission (which existed prior to devolution) having responsibility for local government audit, and an Auditor General being responsible for the audit of the remainder of the public sector. A single audit body, Audit Scotland, provides services to both the Commission and the Auditor General. According to the Assembly Minister the Scottish model was not copied as it was considered more appropriate to have a single organisation consistent with developments in Wales and to avoid possible areas of conflict in future.⁹ This was echoed by other witnesses. The Audit Commission agreed that “the strength of this solution is integration”¹⁰. **We therefore support the proposal to create a Wales Audit Office headed by the Auditor General for Wales, who would take on the functions currently exercised by the Audit Commission in Wales in addition to his current responsibilities. We note that all the key parties have accepted this in principle.**

14. Whilst we are content that the model proposed has achieved support from the organisations affected we would have liked to have seen more effort taken with the Regulatory Impact Assessment. This should, according to government guidance,¹¹ include an analysis of the range of options available and an *explicit* assessment of the risks associated with the proposals. **We recommend that in producing future Wales only draft**

6 Q50

7 Q52: also Q94

8 Q157

9 Q52

10 Q131

11 Cabinet Office, Better Policy Making: A Guide to Regulatory Impact Assessment

legislation more attention should be devoted to producing a robust and convincing Regulatory Impact Assessment.

15. We noted both with this draft Bill and during our examination of the draft National Health Service (Wales) Bill¹² how the devolved legislatures in the UK are finding different ways of meeting similar objectives. We were gratified to learn that during the process of drafting this Bill experience gained elsewhere in the UK informed the development of the proposals contained within it.¹³ **We are increasingly convinced of the case for some public mechanism to ensure that the full potential benefits are realised of the growing diversity of provision among the nations of the UK. Within the specific realm of public audit we are pleased to note that the national audit agencies have established the Public Audit Forum to provide a focus for forward thinking in relation to public audit.**

Auditor General: functions and powers

16. Part 1 of the draft Bill adds a number of functions to the Auditor General, including giving the Assembly power to transfer to him some of its supervisory functions. We note what seem to be two additional arrows in his armoury which have in part been copied over from local government audit practice – the “immediate report in the public interest on a matter coming to his notice in the course of an audit”, given in new section 96A of the Government of Wales Act to be inserted by Clause 2: and the undertaking of a study “designed to enable him to make recommendations for improving the financial or other management of any relevant body or bodies... or *any other study relating to the provision of services by any relevant body or bodies*” allowed for in new section 145A of the Government of Wales Act to be inserted by Clause 3. This last provision seems to carry audit some way beyond its normal reach. It would allow the Auditor General to undertake or promote any study, from the welfare of battery hens to the impact of military low flying. That may well be the intention of the Assembly, and of Wales Office Ministers. **We would welcome some further elucidation of the thinking behind the virtually unlimited scope of the studies potentially falling within the ambit of subsection (1) (b) of the proposed new section 145A to be inserted into the Government of Wales Act by Clause 3 of the draft Bill.**

4 Safeguarding the democratic accountability of local government

Background

17. Local government has different accountability arrangements to central government. Local authorities have a local electorate. Fire, police and national park authorities all have different accountability arrangements. Therefore one of the key considerations when drafting this Bill was that it should not undermine or weaken this system of local democratic accountability.¹⁴ It should not be possible for the Assembly to interfere with the

12 House of Commons Welsh Affairs Committee, Third Report of Session 2001-02, HC 959

13 Q52, Q159

14 Regulatory Impact Assessment, paragraph 12

audit of local government bodies. Likewise the Auditor General must be, and be seen to be, operationally independent of the Assembly, especially as the changes proposed will replace the oversight of local government audit work by a collegiate Commission with oversight by a single individual.

18. The Bill seeks to safeguard local government accountability in several ways:¹⁵

- the National Assembly’s Audit Committee would not be able to consider or modify the local government element of the Auditor General’s budget;
- the Auditor General would appoint the external auditors to local government bodies and regulate their work, but would not be able to appoint himself/herself. This contrasts with the audit arrangements for the Assembly and other public sector bodies – including NHS bodies – where the Auditor General is or will be the statutory appointed external auditor and has personal responsibility for the work; and
- appointed auditors and the Auditor General would not be required to lay audit reports on local government bodies before the Assembly. Such bodies remain accountable to their own electorates rather than to the Assembly. The Auditor General will be required to lay only an annual report on local government work before the Assembly.

19. The independence of the Auditor General for Wales is already protected in a number of ways:

- the Auditor General is a Crown appointment and is therefore totally independent of the Assembly; and
- the Assembly’s Audit Committee is required to consider the Auditor General’s annual estimate of income and expenses but can only modify that estimate after consulting the Secretary of State.

Advisory Body

20. The Audit Commission, which currently comprises 16 members, appointed by the Deputy Prime Minister and the Secretaries of State for Health and for Wales, is responsible for directing strategy and policy, and monitoring the management of the Audit Commission and the performance of its statutory functions. The Welsh Local Government Association and the Audit Commission raised concerns over the replacement of the Audit Commission with a single individual.

21. Both the Welsh Local Government Association and the Audit Commission suggested that the proposed arrangements could be strengthened by the creation of an “advisory board” to assist the Auditor General.¹⁶ The Welsh Local Government Association argued for the legislation to include this formal mechanism to ensure that the Auditor General considered the views of his stakeholders and could consult when “developing the scope and culture of the organisation and the direction of activity”.¹⁷ In addition the Association

15 Regulatory Impact Assessment, paragraph 12

16 Ev 2, paragraph 3: Ev34, para 21

17 Q3, Q27

thought that an advisory body would send a positive signal to the public.¹⁸ This view was echoed by Professor Talbot, who considered that “some sort of advisory body that was independently appointed would make a lot of sense in terms of providing public reassurance that the role of the new Auditor General would be sufficiently independent”.¹⁹

22. There was a consensus amongst the witnesses who supported the concept of an advisory body that such a body would have no powers.²⁰ Views differed somewhat regarding the exact make-up of the proposed body and whether it should include stakeholders or, as in Professor Talbot’s view, that it should “be as independent as possible”.²¹

23. The Auditor General was opposed to any change in the legislation which would impose an advisory board upon him.²² He raised a number of concerns about the proposal. In particular, he pointed out that, under the Government of Wales Act, the Auditor General is required to take account of the views of the Audit Committee in developing his forward work programme,²³ and that the role of that Committee might be undermined by the existence of an advisory body.²⁴ In addition the Auditor General, as a corporation sole, has ultimate responsibility for his actions, and these lines of responsibility could be confused through the formal establishment of “an extra piece of machinery”.²⁵ He also felt that bodies such as the Welsh Local Government Association should feel able to talk directly to the Auditor General rather than filtering their views through another group of people.²⁶

24. The background to the proposal seems to lie in some concern among local government bodies that the Auditor General may—

- a) be excessively influenced by coming from a background of audit of nationally funded bodies and so be less sympathetic to what are perceived as the more co-operative arrangements between district auditors and local government;
- b) regard his main line of accountability as running to the National Assembly, whose Audit Committee has a statutory function in national audit, and also has a crucial role in setting his budget;
- c) function less effectively as a single individual—“a corporation sole”—than does a collegiate body like the Audit Commission, with a number of specialised panels.

25. We agree that the Auditor General should be, and be seen to be, consulting actively with local government “clients” and other stakeholders on his forward programme. We do not consider it appropriate to attempt to impose in statute some watered-down Wales-only version of the existing Audit Commission. It would be a recipe for confusion. But we see

18 Q8

19 Q38

20 Q9, Q38, Q39, Q132

21 Q40

22 Q96

23 Q95

24 Q98

25 Q95

26 Q95

much merit in the Auditor General being under a parallel obligation to that imposed on him under Section 96(4) of the Government of Wales Act 1998, which directs him to take into account the views of the Audit Committee on value for money studies. His judgement as to the weight to be given to views expressed by local government and other stakeholders would be final. It would not hinder him or district auditors in the exercise of their functions: nor the right of direct access enjoyed by members of the public. It would be up to the Auditor General as to how best to fulfil his statutory duty to take such views into account, whether through an informal advisory body or through a number of bilateral contacts.

26. It may well be that the terms of subsection (5) of Clause 39 of the draft Bill, and subsection (4) of Clause 40, which oblige the Auditor General to consult representatives of local government bodies and their employees before undertaking a value for money study, are sufficient; but for the avoidance of doubt, this duty could usefully be extended to cover all non-financial local audit for which the Auditor General will be responsible. **We therefore recommend consideration of a wide statutory duty on the Auditor General to have regard to the views of all appropriate professionals and relevant stakeholders on his forward programme for local government economy, efficiency and effectiveness audits, and indeed on wider issues in local audit.**

5 The audit process, co-operation and joint working

Background

27. There are a number of other regulators and inspectors who operate in Wales, in addition to the public audit bodies, including Estyn, the Social Services Inspectorate, and the Care Standards Inspectorate. In addition, a Commission for Healthcare Audit and Inspection with responsibilities across England and Wales will be created through the Health and Social Care Bill, currently before Parliament. The Audit Commission will retain the ability to produce cross-border studies and Comprehensive Performance Assessments of all local councils. As the Audit Commission pointed out these “different auditors, inspectors and other regulators need to work closely in partnership to co-ordinate their programmes, information demands, visits and follow up to avoid duplication and minimise the burden of regulation.”²⁷ The Director, NHS Wales wrote that the audit burden would be “rationalised” by the creation of a single audit body, and expected the Wales Audit Office to work “very closely” with the Health Inspection Wales Unit.²⁸

Minimising the inspection burden on audited bodies

28. The draft Bill would enable the Wales Audit Office to collaborate with other auditors and inspectorates both within Wales and on a cross-border basis. The key parties all endorse the principle of such co-operation and the continued production of cross-border

27 Ev35, paragraph 24

28 Ev53, paras 7,9

comparative reports. In particular the Welsh Local Government Association considered that the continuation of comparative England and Wales studies was “almost an imperative.”²⁹ However they also expressed concerns that the partnership approach and relationships built up with the Audit Commission might be lost, and that local government might have to bear higher costs.³⁰

29. However neither the Auditor General for Wales³¹ nor the Audit Commission³² anticipated any major changes in how local government was audited, or the imposition of additional burdens upon the bodies being audited. The Auditor General for Wales was content that the Bill prescribed sufficient co-ordination between the various audit bodies³³ and declared his intention to “run the arrangements in Wales which properly respected that spirit of partnership³⁴ and to establish proper relationships and sufficient co-ordination with other audit bodies to avoid duplication.”³⁵ **We agree that the Bill contains broadly the right balance of enabling measures and requirements for proper co-ordination and co-operation between auditors and inspectors across Wales and with cross-border bodies. Within this framework we would also expect the various audit and inspection agencies to organise their work in such a way so as to avoid duplication of effort and to minimise the overall burden on the bodies being audited or inspected.**

30. We were much struck by the positive desire for a continuation of cross-border and cross-cutting studies. The Minister confirmed from his experience the value of such studies.³⁶ The Director, NHS Wales wrote that it was “vital that cross-border comparisons are available to the NHS Wales department and the Assembly.”³⁷ The Auditor General saw joint reports as “very much the way forward” and sagely instanced the value of information from Scotland and Northern Ireland being included.³⁸ He suggested in written evidence that the “provisions could possibly be strengthened to encourage and promote cross-border comparative studies with other public sector auditors and inspectorates operating in the United Kingdom”.³⁹ **We recommend consideration of a general statutory duty on the Auditor General to promote cross-border studies, including co-operation with the other devolved institutions and their public audit authorities; and to consult those bodies, in particular the Comptroller and Auditor General and the Audit Commission, when drawing up forward work programmes.**

Joint reports

31. Paragraphs 3(7) and 4(4) of Schedule 2 to the draft Bill will remove the Audit Commission’s power to undertake studies on Welsh local government unless such studies

29 Q3

30 Q3

31 Q100, Q102

32 Q139

33 Q101

34 Q102

35 Q101

36 Qq173-5

37 Ev53, para 7

38 Qq 111-113

39 Ev 22, para 17

are being undertaken throughout England and Wales, such as the Comprehensive Performance Assessment of local councils. In practice, the Wales Audit Office would be required to collaborate with the Commission, provide much of the material and undertake the fieldwork for such studies. We consider that the Wales Audit Office should be given the credit for its share of the work. **We therefore recommend that the relevant Schedule be amended so that the Auditor General and the Audit Commission are required to cooperate in planning and undertaking such studies and that the resulting reports be produced jointly by both organisations.**

A role for the private sector

32. Under current audit arrangements the Audit Commission can appoint auditors to local government from across the private sector, as well as from their own agency, District Audit. This arrangement will continue under the draft Bill. Currently three of 22 local authorities in Wales have private sector auditors, according to Mr Powell, National Assembly Compliance Officer.⁴⁰ The Auditor General’s written evidence noted that the expansion of his role to cover NHS audit and possibly other public bodies pointed to the need for “an expanded role for private sector firms”.⁴¹ **In the long run it is beneficial for the audited bodies and for the integrity of the audit process that effective use is made of the private sector. The creation of the Wales Audit Office offers an opportunity for ground-breaking and creative mixtures of public and private sector audit.**

6 Transparency and consistency across the audit process

Disclosure of information

33. Clause 50, repeating Section 49 of the Audit Commission Act 1998, seeks to restrict the Auditor General or appointed auditors from disclosing information obtained in the course of local government audits except in certain circumstances. No such provision currently exists for other parts of the public sector. Noting that his practice to date had been to report on irregularities where it was in the public interest, as in the case of irregular or unacceptable departure settlements, the Auditor General has asked for the clause to be deleted.⁴²

34. The Welsh Local Government Association and the Audit Commission both argued for retention of the clause to “protect the integrity of the audit process”, mainly because of the risk of material being put into the public domain before it had been checked for factual accuracy with the persons or organisations concerned and to preserve the separate institutional mandate of local government.⁴³ The only time it has been invoked in living memory was apparently over the Westminster City Council inquiry. The Auditor General told us that he would wish to extend to the local government sector his current practice for

40 Q167

41 Ev 22, para 22

42 Ev23, paras 33-35

43 Qq15-24, Qq141-2

clearing reports prior to publication. This involves exposing the relevant sections of draft reports to named individuals and organisations in order to ensure that the final versions and the audit conclusions and recommendations are based on factually accurate information.⁴⁴ The Welsh Local Government Association was also keen that these arrangements be extended to local government.⁴⁵

35. We are confident that the staff of the Wales Audit Office and appointed auditors will treat information gained in the course of their work in a proper and professional manner and with due discretion. The presumption should be one of openness and transparency across government. Having different levels of disclosure set in statute is not consistent with the Assembly objective of “openness, accountability and transparency”⁴⁶ referred to by the Minister. Consistent with this objective would be to safeguard local government through an extension of the current Assembly body clearance procedures operated by the Auditor General. **We recommend that Clause 50 should be deleted from the draft Bill. The Auditor General for Wales must ensure that a suitable protocol is developed for the clearance of the factual content of local audit reports, in consultation with the bodies or individuals concerned.**

Audit access rights

36. Clause 11, which deals with the Auditor General’s access rights to books and records, follows the recommendations made by Lord Sharman in his report “Holding to Account: the Review of Audit and Accountability for Central Government”. In particular we endorse the principle that the Auditor General should be able to follow public money to end users such as contractors and grant recipients to ensure that it has been applied to the intended purposes and with due regard to the need to secure value for money.⁴⁷

37. This clause does not apply to local government audit, where the existing clauses follow the relevant sections of the Audit Commission Act 1998. These have for some time past represented an improvement on the Auditor General’s existing access rights: but we consider that the yet better provisions contained within Clause 11, which are clear and unambiguous, should apply across the Welsh public sector. Professor Talbot was adamant that “for far too long in the UK we have had standards operating at national and central government levels and local government which are different from one another and in my view there is no justification for that.”⁴⁸ We are pleased that this has been accepted by all concerned including the Welsh Local Government Association and the Minister.⁴⁹ **We recommend that the Bill is amended accordingly so that the Clause 11 access rights apply across central and local government in Wales, making Welsh audit a beacon of good audit practice.**

44 Qq103–4

45 Q15

46 Q158

47 Q106

48 Q43

49 Q26

Status quo

38. A number of other issues were raised in written or oral evidence including –

- *Fee scales*: the power given in Clause 20 to the Assembly to prescribe fee scales overriding those set by the Auditor General.⁵⁰
- *The Code of Audit Practice*: the fact that Clause 16 requires the Auditor General merely to consult the Assembly (and local authority associations) on the Code, rather than requiring affirmative approval by Parliament.⁵¹
- *The arrangements for publication of local government audit reports*⁵²
- *The definition of terms* such as “documents”.

The answers to most of the minor but by no means insignificant issues raised tended to be that they reflected the status quo in local government audit, and in particular the 1998 Act.⁵³ **We find it rather disappointing that the opportunity—one not likely to recur for some years— has not been taken to make the new arrangements for Welsh local government and NHS audit better than that elsewhere in the United Kingdom, rather than no worse. It is not too late. We hope that our colleagues in the National Assembly will take the opportunity to put forward ideas as to how to produce something better than the status quo.**

7 Changes in the audit arrangements for NHS bodies

39. Part 3 of the Bill adds the financial audit responsibilities for Welsh NHS bodies to the remit of the Auditor General. Under current arrangements the accounts of NHS bodies are audited by auditors appointed by the Audit Commission although the Auditor General for Wales does have the right to inspect and report to the Assembly on these accounts. The NHS in Wales is ultimately accountable to the Assembly. The Director, NHS Wales expressed support for the proposed rationalisation of the accountability framework.⁵⁴ **Whilst the draft Bill proposes a significant change from the current arrangements for the audit of NHS bodies we are content that, as the NHS is accountable to the Assembly in the same way as other Assembly bodies, the audit arrangements should be consistent across these bodies. In addition these proposals would seem to remove the possibility of duplication and overlap of audit responsibilities.**

50 Qq 63,65,110

51 eg Ev2:Qq 107,146

52 Q176

53 eg Qq18:178

54 Ev53, paras 1,3

Health audit

40. The Bill’s provisions for health audit have been criticised as lacking in clarity. The Audit Commission’s written evidence suggested that it would as a result “be more difficult to carry out and charge for performance audit work as part of the annual audit work at health bodies... the Bill is not conducive to achieving a risk-based integrated local audit with fees charged at the local level”.⁵⁵ The Auditor General also raised the question of the scope of audit of NHS bodies and the liability to fees.⁵⁶ Evidence from a former head of VFM audit in Wales emphasised the importance of being able to improve health VFM studies and provide positive advice.⁵⁷ In practice, separation of value for money studies at local health bodies from the process of annual audit is not desirable. Plainly the proposed Commission for Healthcare Audit and Inspection (CHAI) and the Health Inspection Unit for Wales have a role here: and the question of how far NHS bodies should pay to be subject to performance audit is a moot one. **We would welcome clarification of the intended structure of performance audit of local health bodies, and hope that this may be of particular interest to our colleagues in the Assembly.**

8 Staffing and Resources

Challenges

41. The 50 National Audit Office staff currently seconded to the Auditor General for Wales, and the 180 or so Audit Commission staff currently based in Wales under the auspices of the Audit Commission in Wales are to be merged to form a new entity, the Wales Audit Office. The Auditor General acknowledged the challenges associated with the “need to integrate staff drawn from two organisations with different backgrounds, organisational structures, customer focus and reporting lines”, and the need to ensure that people were not disadvantaged by the new arrangements, for example on pension arrangements.⁵⁸ The staff of the new organisation will require common terms and conditions of service, which experience of such mergers suggest can present difficulties. There is also the issue of the extent to which Wales Audit Office staff may wish to pursue a career in the National Audit Office or the Audit Commission rather than exclusively in Wales. A Joint Steering Committee has been set up, under Sir John Bourn: Mr Clive Grace, the Director General of the Audit Commission in Wales, told us that

“what is particularly heartening is the strength of shared commitment and the degree of collaboration which is taking place between myself and my senior colleagues, and Ian Summers and his senior colleagues in the NAO so, although it is bound to be a bit turbulent as we go along and there will be a lot to do, we think it is very positive indeed”.⁵⁹

55 Ev34, para 19

56 Ev24, Annex A, para 6

57 Ev52

58 Ev21, para 11; Q119

59 Q151

As Sir John Bourn noted, similar challenges were faced in Scotland in the creation of Audit Scotland.⁶⁰ **We are reassured at the extent to which the management of the two audit bodies involved are already seeking solutions to the challenges involved in the creation of a new Wales Audit Office.**

Costs

42. The new office will require some central functions, such as finance, IT and personnel, hitherto provided by “parent” bodies.⁶¹ They may also buy in training. Set against these recurrent costs should be some savings from eventual co-location of offices. The Regulatory Impact Assessment states that

“At this stage it is difficult to provide any definite estimate of costs and savings..... It is not anticipated that such costs would exceed £500,000 at the very most”.⁶²

Sir John Bourn told us that he was anxious that the office should be set up “in the most economic way”, and that the estimate was an appropriate ballpark figure.⁶³ We were however surprised that he had not been party to exactly how the Assembly and the Wales Office came to the figure of £500,000, and that a realistic estimate for the cost of the office has yet to be established.⁶⁴ The Assembly will no doubt be scrutinising these costs.⁶⁵ So will local authorities, who have an understandable concern that the cost of the new audit and inspection regime which is passed on to them as a charge should be no greater than at present. **We have to express some concern that there is as yet no realistic published estimate of set-up costs, nor of recurrent costs or savings, arising from the proposed establishment of the Wales Audit Office: this would seem to be exactly the sort of failing for which auditors are rightly swift to criticise other organisations. We hope that the House, and of course the Assembly, is given a clearer idea of costs when the Bill is introduced in the autumn, and that the Assembly might pursue this point in its forthcoming scrutiny of the Bill.**

Organisation of new Office

43. Part 1 of the draft Bill includes a number of provisions designed to reflect the greater scale and increased ambit of the responsibilities of the Auditor General: and in due course the likelihood that the office will be held separately from that of Comptroller and Auditor General.

- Clause 6 allows the Auditor General to borrow by way of *overdraft* or otherwise;
- Clause 7 inserts a new section 93A into the Government of Wales Act to provide for a more complex pattern of *fee charging*;

60 Q119

61 Q183: Ev21, para 12

62 RIA, page 86 of Cm 5796

63 Qq 124-125

64 Ev21, para 13

65 Q187

- Clause 8, not referred to in the Explanatory Notes, gives the Auditor General’s duly authenticated seal the necessary force to enable it to be used in, for example, *property transactions*, for which the mere status of corporation sole is deemed insufficient;⁶⁶
- Clause 9 (3), also not referred to in the Explanatory Notes, apparently provides for the Auditor General to make *pension payments* to the Treasury for his staff;
- Clause 10 makes the Auditor General the Accounting Officer for the Wales Audit Office.

We recommend that the Explanatory Notes be revised to include reference to Clause 8, and to the implications of Clause 9(3) .

44. The only provision in this group of clauses to which we draw the attention of the House is Clause 9, and specifically subsection (2) and the linked repeal provisions in Schedule 4. These provisions give the Auditor General freedom to “appoint such staff or secure the provision of such services as he considers necessary for assisting him in the exercise of his functions”.⁶⁷ The prohibition on the mutual provision of services between staff of the Auditor General and the Assembly currently contained in subsection 92(3) of the Government of Wales Act - no doubt inserted in 1998 for good reason – is removed. It may well be that this is simply intended to allow joint working with inspectoral bodies who are technically NAW staff: and to allow for technical (eg translation) or other administrative support for the Auditor General. The Explanatory Notes boldly affirm – “Extra-statutory protocols within the Wales Audit Office will be adequate to ensure that no conflict of interest may arise”.⁶⁸ **We seek a justification in response to this Report of the repeal contained in Clause 9 (2) of the draft Bill of the existing statutory prohibition of mutual staff or service support between the Auditor General and the National Assembly.**

66 Q97: Q190

67 Section 92(2) of the 1998 Government of Wales Act as it would be if amended

68 Para 27, page 59 of Cm 5796

Conclusions and recommendations

Principle of draft Bill

1. We support the proposal to create a Wales Audit Office headed by the Auditor General for Wales, who would take on the functions currently exercised by the Audit Commission in Wales in addition to his current responsibilities. We note that all the key parties have accepted this in principle. (Paragraph 13)

Learning from Diversity

2. We are increasingly convinced of the case for some public mechanism to ensure that the full potential benefits are realised of the growing diversity of provision among the nations of the UK. Within the specific realm of public audit we are pleased to note that the national audit agencies have established the Public Audit Forum to provide a focus for forward thinking in relation to public audit. (Paragraph 15)

Improvement on status quo

3. We find it rather disappointing that the opportunity—one not likely to recur for some years— has not been taken to make the new arrangements for Welsh local government and NHS audit better than that elsewhere in the United Kingdom, rather than no worse. It is not too late. We hope that our colleagues in the National Assembly will take the opportunity to put forward ideas as to how to produce something better than the status quo. (Paragraph 38)

Restriction on disclosure of information

4. We recommend that Clause 50 should be deleted from the draft Bill. The Auditor General for Wales must ensure that a suitable protocol is developed for the clearance of the factual content of local audit reports, in consultation with the bodies or individuals concerned. (Paragraph 35)

Auditors Pursuit of Public Money

5. We recommend that the Bill is amended so that the Clause 11 access rights apply across central and local government in Wales, making Welsh audit a beacon of good audit practice. (Paragraph 37)

Advice to Auditor General on local government audit

6. We therefore recommend consideration of a wide statutory duty on the Auditor General to have regard to the views of all appropriate professionals and relevant stakeholders on his forward programme for local government economy, efficiency and effectiveness audits, and indeed on wider issues in local audit. (Paragraph 26)

Co-ordination and co-operation

7. We agree that the Bill contains broadly the right balance of enabling measures and requirements for proper co-ordination and co-operation between auditors and inspectors across Wales and with cross-border bodies. Within this framework we would also expect the various audit and inspection agencies to organise their work in such a way so as to avoid duplication of effort and to minimise the overall burden on the bodies being audited or inspected. (Paragraph 29)
8. We recommend consideration of a general statutory duty on the Auditor General to promote cross-border studies, including co-operation with the other devolved institutions and their public audit authorities; and to consult those bodies, in particular the Comptroller and Auditor General and the Audit Commission, when drawing up forward work programmes. (Paragraph 30)
9. We therefore recommend that the relevant Schedule be amended so that the Auditor General and the Audit Commission are required to co-operate in planning and undertaking studies and that the resulting reports be produced jointly by both organisations. (Paragraph 31)

Use of private sector

10. In the long run it is beneficial for the audited bodies and for the integrity of the audit process that effective use is made of the private sector. The creation of the Wales Audit Office offers an opportunity for ground-breaking and creative mixtures of public and private sector audit. (Paragraph 32)

Performance audit of local health bodies

11. We would welcome clarification of the intended structure of performance audit of local health bodies, and hope that this may be of particular interest to our colleagues in the Assembly. (Paragraph 40)

Scope of Auditor General powers

12. We would welcome some further elucidation of the thinking behind the virtually unlimited scope of the studies potentially falling within the ambit of subsection (1) (b) of the proposed new section 145A to be inserted into the Government of Wales Act by Clause 3 of the draft Bill. (Paragraph 16)

Regulatory Impact Assessment

13. We recommend that in producing future Wales only draft legislation more attention should be devoted to producing a robust and convincing Regulatory Impact Assessment. (Paragraph 14)

Costs of proposals

14. We have to express some concern that there is as yet no realistic published estimate of set-up costs, nor of recurrent costs or savings, arising from the proposed establishment of the Wales Audit Office: this would seem to be exactly the sort of failing for which auditors are rightly swift to criticise other organisations. We hope that the House, and of course the Assembly, is given a clearer idea of costs when the Bill is introduced in the autumn, and that the Assembly might pursue this point in its forthcoming scrutiny of the Bill. (Paragraph 42)

Wales Audit Office

15. We recommend that the Explanatory Notes be revised to include reference to Clause 8, and to the implications of Clause 9(3) . (Paragraph 43)
16. We seek a justification in response to this Report of the repeal contained in Clause 9 (2) of the draft Bill of the existing statutory prohibition of mutual staff or service support between the Auditor General and the National Assembly. (Paragraph 44)

Formal minutes

Wednesday 2 July 2003

Members present:

Mr Martyn Jones, in the Chair

Mr Martin Caton
Mr Huw Edwards
Mr Hywel Francis
Ms Julie Morgan

Mr Adam Price
Mrs Betty Williams

The Committee deliberated.

Draft Report (Draft Public Audit Wales Bill), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 44 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Fifth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

[Adjourned till Thursday 10 July at 9.30am

Witnesses

Monday 9 June 2003

Page

Sir Harry Jones, Sandy Blair, Will Godfrey, and Councillor Russell Goodway, Welsh Local Government Association. Ev 3

Professor Colin Talbot, University of Glamorgan School of Humanities and Social Sciences. Ev 9

Sue Essex AM, David Powell and Kate Cassidy, Welsh Assembly Government Ev 12

Wednesday 11 June 2003

Sir John Bourn KCB, Auditor General for Wales and **Ian Summers,** National Audit Office Ev 25

James Strachan, Clive Grace and Martin Evans, Audit Commission Ev 40

Wednesday 18 June 2003

Don Touhig MP, Parliamentary Under-Secretary of State for Wales, Department for Constitutional Affairs and **David Powell** Ev 46

List of written evidence

1	Welsh Local Government Association	Ev 1
2	Auditor General for Wales	Ev 20
3	Audit Commission in Wales	Ev 32
4	Dr Gillian Wade, Celtic Dimensions	Ev 52
5	NHS Wales	Ev 53

Reports from the Welsh Affairs Committee since 2001

The following reports have been produced by the Welsh Affairs Committee in the 2001 Parliament.

Session 2002–03

First Special Report	Government Response to the First Report of Session 2002-03, Broadband in Wales	HC 413
Second Special Report	Government Response to the Second Report of Session 2002–03, Transport in Wales	HC 580
First Report	Broadband in Wales	HC 95
Second Report	Transport in Wales	HC 205
Third Report	Work of the Committee in 2002	HC 263
Fourth Report	The Primary Legislative Process as it affects Wales	HC 79

Session 2001–02

First Special Report	Government Response to the First Report of Session 2000–01, Wales in the World	HC 270
Second Special Report	Response of the National Assembly for Wales to the First Report of Session 2000–01, Wales in the World	HC 311
Third Special Report	Response of the National Assembly for Wales to the Third Report of Session 1999–2000, Social Exclusion in Wales	HC 604
Fourth Special Report	Response of the Government and the Welsh Assembly Government to the Second Report of the Committee of Session 2001–02, objective 1: European Funding for Wales	HC 1169
Fifth Special Report	The draft National Health Service (Wales) Bill: Response of the Government to the Third Report of the Committee of Session 2001–02	HC 1215
First Report	The Children’s Society in Wales	HC 525
Second Report	Objective 1 European Funding for Wales	HC 520
Third Report	The Draft National Health Service (Wales) Bill	HC 959
Fourth Report	The Children’s Society in Wales: Responses from the Government and The Charity Commission to the First Report of the Committee of Session 2001–02	HC 989
Minutes of Evidence	The Wales Office Departmental Report 2002:	HC 1216
	Minutes of Proceeding Session 2001-02	HC 1341