



House of Commons
Welsh Affairs Committee

**The Government
Response to the Fifth
Report of the
Committee Session
2002–03: The Draft
Audit (Wales) Bill**

**First Special Report of Session 2003–
04**

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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.)

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Committee staff

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

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First Special Report

The Committee published its Fifth Report of Session 2002–2003 on 10 July 2003. The response from the Wales Office was received on 28 November 2003 and is published as the Appendix to this Report.

Appendix

Introduction

This is the Government's response to the Select Committee's report on the Draft Public Audit (Wales) Bill.

Background

The Committee's scrutiny of the Draft Public Audit (Wales) Bill is the second Wales only Bill to be the subject of such scrutiny: the first being the Health (Wales) Act.

The Committee's scrutiny took place in parallel with scrutiny of the Draft Bill by the National Assembly for Wales and public consultation undertaken by the Secretary of State for Wales.

The Government's response to each of the Committee's conclusions and recommendations is set out below.

- a) **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)**

The Government welcomes the Committee's support.

- b) **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).**

The Government notes the Committee's view. Apart from the Public Audit Forum there is extensive co-operation between public audit bodies on both a United Kingdom and international level. Professional guidance for public sector auditors in the U.K is formulated and disseminated by the Auditing Practices Board. The Auditor General for Wales also participates in international audit fora such as the European Organisation of Supreme Audit Institutions (EUROSAI) and the International Organisation of Supreme Audit Institutions (INTOSAI) which discuss and promulgate best practice. The Government agrees that such co-operation is very beneficial and the proposals set out in the Public Audit (Wales) Bill would facilitate this.

- c) **We find it rather disappointing that the opportunity—one not likely to recur for some years—has not been taken to make the new arrangement 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)**

The Government and the National Assembly for Wales are of the view that the provisions in the draft Bill relating to joint working and closer strategic collaboration will facilitate a major improvement in the audit system in Wales. In the light of the recommendations arising from pre-legislative scrutiny and public consultation, the Government has sought legal advice and is satisfied that the Auditor General's power to access documents and information extend to documents and/or information held in electronic/digital form.

It will also provide for greater democratic accountability in the introduction of a revised Code of Audit Practice for Wales by requiring it to be approved by the National Assembly for Wales in the first instance, followed by negative resolution procedures in the UK Parliament. The Bill will also take account of other technical amendments proposed during consultation. It will be open to the Auditor General for Wales to agree protocols with local government in Wales for the clearance of draft reports, along the lines of those already in place for central government organisations in Wales. The existing power for an appointed auditor to publish a report without full agreement if he considered it to be in the public interest to do so would remain.

The provision in Clause 20 of the draft Bill that enables the National Assembly to prescribe a scale or scales of fees in respect of local government bodies is a power already available to the Assembly under the Audit Commission Act 1998. It is very much a fail-safe provision in the event of the Auditor General (and currently the Audit Commission) failing to agree. The Government considers it prudent for the power to remain.

These are all issues to which the Committee refers in reaching its conclusion in paragraph 38 of its Report.

- d) **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)**

The Government has given very careful consideration to this recommendation. Clause 50 makes provision for restrictions on the disclosure of information held by the Auditor General or an appointed auditor in respect of local government, except in specified circumstances. It is consistent with the existing provisions of section 49 of the Audit Commission Act 1998. Both Clause 50 and section 49 include provision for criminal sanctions against a person who may disclose information in contravention of the legislation. If Clause 50 were to be deleted and the Public Audit (Wales) Bill enacted, section 49 of the Audit Commission Act would remain in force in respect of England. As a consequence there would be potential for the disclosure of the same information being treated inconsistently for the purposes of the criminal law in Wales and England. The Government is of the view that such a situation would be inappropriate and that any future

consideration of the disclosure issue should be on an England and Wales basis. For this reason it does not propose to delete the provision from the draft Bill.

- e) 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)**

The Government accepts this recommendation. The Government proposes to bring the provisions of Clause 11 more in line with section 6 of the Audit Commission Act 1998 (which are somewhat wider in scope), whilst at the same time maintaining clearly, on the face of the draft Bill, that the Auditor General's access powers enables him or her to trace public money down the chain to the end user. The Government also proposes to amend Clause 18 of the draft Bill to ensure that the Auditor General has common access powers in relation to local government bodies in Wales. Equivalent rights of access will apply across both the central and local government sectors.

- f) 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)**

The Government accepts this recommendation in part. Clause 39 already imposes a duty on the Auditor General to consult associations of local government bodies and associations of employees on value for money studies. The draft Bill will also be amended to impose a mutual duty of consultation and co-operation on the Auditor General for Wales and the Audit Commission in respect of the discharge of their local government functions. The Government considers that a wider statutory duty to consult would lack focus and some clarity. The National Assembly for Wales is giving consideration to establishing a non-statutory advisory mechanism that would be beneficial, particularly in advising on policy aspects in the formulation of value for money studies. The Government endorses this approach.

- g) 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)**

The Government agrees with this point. The Bill already seeks to achieve this through imposing a duty on the Auditor General to co-operate and consult in relevant areas of their functions. The creation of the new body for Wales will enable better co-operation between auditors and inspectors across Wales.

- h) 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)

The Government accepts this recommendation in part. The draft Bill will impose a mutual duty of consultation and co-operation between the Auditor General for Wales and the Audit Commission; Commission for HealthCare Audit and Inspection; and the National Assembly with regard to their respective functions. The Government of Wales Act 1998 provides for consultation and co-operation between the Auditor General and the Comptroller and Auditor General. The Government's view is that a general statutory duty particularly in relation to joint working and joint reporting could have a restrictive rather than a facilitative effect. For instance, the flexibility to adjust forward programmes to meet unforeseen circumstance could be diminished and a study may not be able to proceed until both or all parties were in a position to proceed. A key aim of the Bill is to facilitate and promote greater cross-border co-operation. The provisions in Clauses 1, 2 and 3 will encourage collaborative working. The Government is confident that the Bill would facilitate further the good practice already in place.

It would be best if bodies have discretion to organise their priorities but the Government would expect that, in drawing up their respective programmes, they consult and identify all opportunities for working together and benefiting from each other's work. Joint reviews are already an established feature of audit and inspection work in Wales, particularly with respect to social services. Secondment of staff between bodies to facilitate co-operation is also a growing practice.

- i) 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)**

The Government does not accept this recommendation. For the reasons set out above in relation to the above recommendation the Government is of the view that a prescriptive approach based on a duty to co-operate and only work jointly could have a restrictive effect.

- j) 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)**

The Government welcomes the Committee's view. This will be an operational matter for the Auditor General but there is general agreement that a 'mixed' audit economy is beneficial to the process. The Audit Commission already makes significant use of private sector auditors. The Auditor General already has the power to contract with them and Clause 2 of the Bill gives him significant scope for mutual assistance and co-operation with the accountancy profession.

- k) 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)**

Health sector value for money studies within Wales would be undertaken by the Auditor General and his staff. The Auditor General already has value for money powers in respect of the Health sector under the Government of Wales Act 1998. The function of conducting reviews of, and investigations into, the provision of health care by Welsh NHS bodies will be undertaken by the Assembly, through Healthcare Inspectorate Wales (HIW). HIW is a new internal unit to be set up by the Assembly under Section 63 of the Government of Wales Act 1998, and through which the Assembly will exercise its new health inspection powers in the Health and Social Care (Community Health and Standards) Act 2003.

The Commission for Healthcare Audit and Inspection (CHAI), will have responsibility, amongst other matters, for conducting reviews of the overall provision of particular kinds of healthcare by and for NHS bodies across England and Wales. CHAI, in carrying out its reviews and investigations, must be particularly concerned (amongst other matters) with the economy and efficiency of the provision of health care. CHAI would be able to commission other public authorities, including the Audit Commission to undertake its work, or may co-operate with such authorities. The draft Bill establishes a mutual duty of consultation and co-operation on the Auditor General for Wales, CHAI and the Healthcare Inspectorate Wales in order to secure the efficient and effective discharge of their functions.

The Government proposes that the funding of value for money studies in the health sector will be brought into line with those for the Assembly and its ASPBs. It would be covered in the annual estimate of income and expenditure the Auditor General is required to submit to the Audit Committee and the amount of money that the Assembly votes to the AGW to undertake his/her value for money programme. In this way the AGW's ability to undertake work as he sees fit is not fettered by questions of affordability.

The Auditor General for Wales will have the power to charge for statutory financial audits and value for money studies specifically requested by bodies. In the light of consultation the Government proposes to amend the Bill to facilitate the conduct of integrated local audits (combined financial and value for money audits) in respect of individual health organisations. Integrated local audits are currently undertaken by the Audit Commission. The Bill would enable the Auditor General to charge a fee for such audits.

1) 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)

Clause 3 enables the Auditor General to undertake or promote comparative and forward-looking value for money studies in the non-local government sector which would enable him or her to make recommendations across sectors with a view to improving value for money. The power is consistent with the Audit Commission's existing value for money study power under section 33 of the Audit Commission Act, which would also be available to the Auditor General in respect of local government under Clause 39 of the draft Bill.

The Auditor General's existing value for money powers relate to how the Assembly and its funded bodies have used resources and do not extend to cross-sectoral studies. The new power would for instance, enable the Auditor General to combine consideration of the

value for money aspects of a body of work or an initiative for which one or more administrative groups within the National Assembly and one or more Assembly sponsored bodies have responsibility in one exercise and make forward-looking recommendations. The studies would not extend beyond normal performance audit functions but recommendations arising from them would be valuable in informing future policy development.

m) 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)

The Government accepts this recommendation. The regulatory impact assessment for the Draft Public Audit (Wales) Bill will be updated as additional information becomes available.

n) 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)

Assembly Government officials, together with the NAO and Audit Commission, are working to refine the estimated figure of £500,000 for the transitional and set-up costs. Key elements of such costs will be in the areas of the provision of central services, such as personnel and finance; essential IT compatibility; and essential retraining to get the body up and running. The regulatory impact assessment for the Bill will be updated to reflect work in progress.

o) We recommend that the Explanatory Notes be revised to include reference to Clause 8, and to the implications of Clause 9(3). (Paragraph 43)

The Government accepts this recommendation. The Explanatory Note will be revised as suggested.

p) 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)

The original purpose of Section 92(3) of the Government of Wales Act 1998 was to ensure no conflict of interest or perceived reduction in the Auditor General's independence. It is no longer considered necessary either by the Auditor General or the National Assembly as these issues can be dealt with by formal protocols. NAO staff are formally seconded to other public sector organisations, including the Assembly. These secondments strengthen mutual understanding and enable the sharing of expertise (such as in the preparation of accruals accounting). By way of example, under existing conventions a member of NAO

staff will not assume audit duties in respect of the body to which he or she has been seconded until at least 3 years have elapsed.

Conclusion

The Government welcomes this Report, which plays a valuable part in the pre-legislative scrutiny process.