

National Assembly for Wales
Constitutional and Legislative
Affairs Committee

Report on the Public Audit (Wales) Bill

November 2012



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Constitutional and Legislative Affairs Committee

The Constitutional and Legislative Affairs Committee was established on 15 June 2011 with a remit to carry out the functions and exercise the powers of the responsible committee set out in Standing Orders. This includes being able to consider and report on any legislative matter of a general nature within or relating to the competence of the Assembly or the Welsh Ministers.

Current Committee membership



David Melding (Chair)
Deputy Presiding Officer
Welsh Conservatives
South Wales Central



Suzy Davies
Welsh Conservatives
South Wales West



Julie James
Welsh Labour
Swansea West



Eluned Parrott
Welsh Liberal Democrats
South Wales Central



Simon Thomas
Plaid Cymru
Mid and West Wales

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1. Introduction

1. On 9 July 2012, the Minister for Finance and Leader of the House Jane Hutt AM, introduced the Public Audit (Wales) Bill (“the Bill”) and accompanying Explanatory Memorandum.¹
2. The National Assembly’s Business Committee referred the Bill to the Public Accounts Committee for consideration on 19 June 2012, setting the deadline of 23 November 2012 for Stage 1 consideration.
3. The Constitutional and Legislative Affairs Committee considered the Bill at its meeting on 8 October 2012.

The Committee’s remit

4. The Constitutional and Legislative Affairs Committee’s (“the Committee”) remit is to carry out the functions of the responsible committee set out in Standing Order 21² and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or Welsh Ministers.
5. Within this, the Committee considers the political and legal importance and technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and reports on whether the Assembly should pay special attention to the instruments on a range of grounds set out in Standing Order 21.
6. The Committee also considers and reports on the appropriateness of provisions in Assembly Bills and UK Parliament Bills that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General.

¹ Welsh Government, *Public Audit (Wales) Bill, Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes*, July 2012

² National Assembly for Wales, *Standing Orders of the National Assembly for Wales*, October 2012
http://www.assemblywales.org/clean_sos.pdf

2. Background

7. The Explanatory Memorandum accompanying the Bill explains that the 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.”³

8. It also states that the Bill:

“... 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.”⁴

9. In terms of the National Assembly’s legislative competence to make the Bill, the Explanatory Memorandum states that:

“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).

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

³ Explanatory Memorandum, paragraph 1

⁴ Explanatory Memorandum, paragraph 2

power to make provision in an Assembly Act linked to oversight of the AGW and the Wales Audit Office (WAO).”⁵

⁵ Explanatory Memorandum, paragraphs 3 and 4

3. Powers to make subordinate legislation

Orders

10. The Bill confers powers on Welsh Ministers to make orders as described below.

Section 19(7) - Provision of services

11. Under this section arrangements may be made for the receipt of administrative, professional or technical services that the Wales Audit Office or the Auditor General for Wales may require to carry out their respective functions. These arrangements may be made, amongst other things, with an approved European body of accountants.

“Approved European body of accountants” is defined as a body of accountants established in the United Kingdom or another EEA state and approved for the time being by the Welsh Ministers by order.

Our view

12. These are administrative functions and the negative procedure, as provided for in Section 31(3) of the Bill, is considered appropriate.

Section 34 - Transitional, supplementary and saving provisions etc

13. This section enables the Welsh Ministers to make such supplementary, transitional, transitory, consequential, saving, incidental or other provision as they think fit in connection with or to give full effect to the Bill.

14. The power includes amendment, repeal and revocation of any enactment (defined in section 33 as any enactment including the Bill, any other Act of the Assembly or Assembly Measure or subordinate legislation made under an Act of the Assembly, an Assembly Measure or otherwise).

Our view

15. Given the nature of the power, the affirmative procedure, as provided for in section 31(2) of the Bill, is considered appropriate.

Section 36 – Commencement

16. Except for sections 31, 36 and 37, the Bill will be commenced by order made by the Welsh Ministers and no procedure is prescribed for the making of a commencement order.

Our view

17. It is standard practice that no procedure is prescribed for commencement orders and we are therefore content with this approach.

Regulations

18. The Bill does not contain any regulation making powers.

19. However, paragraph 41 of Schedule 4 to the Bill makes a technical amendment to section 39 (accounts and audit regulations) of the *Public Audit (Wales) Act 2004*. Amongst other things, it expressly confers the *existing* regulation making power (relating to the keeping of accounts etc by local authorities) on the Welsh Ministers rather than on the Assembly. A consequential amendment is made to section 39(5) (costs incurred in connection with an offence under the regulations), which, for the existing reference to “an auditor”, substitutes a reference to the “Auditor General for Wales or the Wales Audit Office”.

Our view

20. We have no comments on the technical amendment to section 39 of the *Public Audit (Wales) Act 2004*.

4. Legislative Competence

Consideration

21. We wrote to the Minister on 8 October 2012 to seek confirmation that she was not aware of any concerns or issues relating to the legislative competence of the Assembly in relation to any provisions of the Bill.

22. In her response, on 25 October 2012, the Minister said:

“...as I mentioned in my evidence to the Public Accounts Committee on 24 September, there is one issue which relates to whether the Assembly has legislative competence to make provision to change the audit arrangements for Chief Constables in Wales. We are in ongoing discussions with the Wales Office regarding this matter.”

Our view

23. We note the Minister’s comments.

24. **We recommend that the Minister explains, during the Stage 1 debate on the general principles of the Bill, the outcome of her discussions with the Wales Office about whether the Assembly has legislative competence in respect of the audit arrangements for Chief Constables in Wales.**

List of written evidence

The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at www.assemblywales.org

Paper	Reference
Public Audit (Wales) Bill	CLA(4)-20-12(p1)
Explanatory Memorandum	CLA(4)-20-12(p2)
Legal Advisers' Report	CLA(4)-20-12(p3)
Letter from the Chair to the Minister for Finance and Leader of the House Jane Hutt AM, 8 October 2012	CLA(4)-23-12(p4)
Letter from the Minister for Finance and Leader of the House, Jane Hutt AM to the Chair, 25 October 2012	CLA(4)-23-12(p5)