

# Consideration of the consultation on the draft Public Audit (Amendment) (Wales) Bill

March 2021



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# Consideration of the consultation on the draft Public Audit (Amendment) (Wales) Bill

March 2021



# About the Committee

The Committee was established on 22 June 2016. Its remit can be found at: [www.senedd.wales/SeneddFinance](http://www.senedd.wales/SeneddFinance)

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## Committee Chair:



**Llyr Gruffydd MS**  
Plaid Cymru

## Current Committee membership:



**Alun Davies MS**  
Welsh Labour



**Siân Gwenllïan MS**  
Plaid Cymru



**Mike Hedges MS**  
Welsh Labour



**Mark Isherwood MS**  
Welsh Conservatives



**Rhianon Passmore MS**  
Welsh Labour



**Mark Reckless MS**  
Abolish the Welsh Assembly Party

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The following Member was also a member of the Committee during this inquiry.



**Nick Ramsay MS**  
Welsh Conservatives

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## Recommendations

**Recommendation 1.** The Committee recommends that a future committee of the Senedd should consider the post-legislative scrutiny work undertaken, with a view to introducing the draft Public Audit (Amendment) (Wales) Bill annexed to this report as soon as possible in the Sixth Senedd, subject to the consideration of outstanding issues, the formal views of the next Welsh Government and the development of an Explanatory Memorandum with a fully costed Regulatory Impact Assessment. .... Page 8

**Recommendation 2.** The Committee recommends that a future committee of the Sixth Senedd considers the disqualification provisions in relation to the Crown (paragraph 26 of Schedule 1 to the Public Audit (Wales) Act 2013) as part of any future work on the Public Audit (Amendment) (Wales) Bill. .... Page 40

**Recommendation 3.** The Committee recommends that a future committee of the Sixth Senedd considers the provisions relating to the payment of the Auditor General's expenses (section 7 and paragraph 13 of Schedule 1 to the Public Audit (Wales) Act 2013) as part of any future work on the Public Audit (Amendment) (Wales) Bill..... Page 41

## 1. Introduction

1. In 2019, the Finance Committee (the Committee) conducted post-legislative scrutiny of the Public Audit (Wales) Act 2013 (PAWA 2013) and considered the case for amending the legislation through its inquiry 'Consideration of proposals to amend the Public Audit (Wales) Act 2013'.

2. The Committee's post-legislative scrutiny focussed on two areas:

To explore issues raised by the Auditor General for Wales (Auditor General) and Wales Audit Office (WAO) in regard to the PAWA 2013, including:

- Fee charging;
- Quorum arrangements of the WAO Board;
- WAO reporting arrangements;
- Issues with laying and reporting accounts.

To consider to what extent other aspects of the PAWA 2013 may benefit from revision.

3. The Committee reported on its findings in December 2019 and subsequently consulted on a draft Public Audit (Amendment) Wales Bill. The consultation ran from 16 December 2019 to 7 February 2020.

4. The consultation, which sought views on the principles behind the proposed changes to PAWA 2013 and the drafting of corresponding provisions, comprised 26 questions across:

- Fee charging
- Agreement work
- Quorum arrangements
- Interim reports
- Laying reports and accounts
- Certification deadlines
- Appointment of the auditors of the WAO's accounts



- Appointment of the non-executive members of the WAO and the Chair of the WAO
- Requirement to consult on certain aspects of the appointment process
- Issues with wider public audit legislation in Wales
- Other matters (financial implications and general comments on the draft Bill)

5. The Committee received twelve responses to its consultation from:

Reference	Organisation
<a href="#">PAAW_01</a>	Hywel Dda University Health Board
<a href="#">PAAW_02</a>	Estyn
<a href="#">PAAW_03</a>	Assembly Commission ( <i>now the Senedd Commission</i> )
<a href="#">PAAW_04</a>	Local Democracy and Boundary Commission for Wales
<a href="#">PAAW_05</a>	Education Workforce Council
<a href="#">PAAW_06</a>	Wrexham County Borough Council
<a href="#">PAAW_07</a>	Public Services Ombudsman for Wales
<a href="#">PAAW_08</a>	Aneurin Bevan University Health Board
<a href="#">PAAW_09</a>	Betsi Cadwaladr University Health Board
<a href="#">PAAW_10</a>	Auditor General for Wales and Wales Audit Office
<a href="#">PAAW_11</a>	Conwy County Borough Council
<a href="#">PAAW_12</a>	Arts Council for Wales

6. This report should be read in conjunction with the Committee’s previous [report on its consideration of proposals to amend the Public Audit \(Wales\) Act 2013](#).<sup>1</sup> This report summarises stakeholders’ views on the draft Bill proposals and details further changes proposed by the Committee as a result of the consultation exercise. It also considers issues that have arisen since the consultation closed. Changes to the draft Bill and Explanatory Notes are shown in Annex A and B respectively.

<sup>1</sup> Where appropriate, references to the “National Assembly for Wales”, “Assembly” and “Assembly Commission” have been replaced with references to the “Senedd” and “Senedd Commission”, following the enactment of the [Senedd and Elections \(Wales\) Act 2020](#).

**7.** Given the limited time remaining in the Fifth Senedd and the ongoing coronavirus pandemic, the Committee has been unable to introduce the Bill. Whilst the Committee is aware that Welsh Government officials are discussing their concerns regarding the policy changes proposed in the draft Bill with WAO officials, the Welsh Government has not responded formally to the consultation.

**8.** On 10 March 2021, the Minister outlined the reasons for not responding formally to the consultation on the draft Bill:

“The reason why we were unable to respond to the consultation at the time was essentially a timing issue, because it was in that period when we were expecting to leave the EU, and all of our efforts were focused, then, on potentially preparing Wales for a 'no deal' scenario. So, unfortunately, it was related to timing, but there were meetings that took place to explore this issue further, and the Welsh Government did provide feedback to Audit Wales on the proposed changes, and I know officials had a number of opportunities to discuss the potential implications.

We're in agreement with some of the proposals, but did feel that further discussions were needed on a number of issues, and our concerns were shared with the committee, so that you were aware of them. We also expressed some doubt as to whether or not it would be possible to legislate during this current term of Government, just given all of the pressures of the other legislation, and of course this was before COVID came along as well. So, that essentially sets out where we are. We see merit in some of the proposals, but have some concern that there should be further discussions around, for example, the interim report, the laying of the Audit Wales accounts, and some of the other areas that were being proposed.”<sup>2</sup>

**Recommendation 1.** The Committee recommends that a future committee of the Senedd should consider the post-legislative scrutiny work undertaken, with a view to introducing the draft Public Audit (Amendment) (Wales) Bill annexed to this report as soon as possible in the Sixth Senedd, subject to the consideration of outstanding issues, the formal views of the next Welsh Government and the development of an Explanatory Memorandum with a fully costed Regulatory Impact Assessment.

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<sup>2</sup> Finance Committee, RoP, 10 March 2021, paragraphs 88-89

## 2. Fee charging

9. The current fee charging regime and issues identified with the PAWA 2013 provisions are discussed in Chapter 3 of the Committee’s report on the [Consideration of proposals to amend the Public Audit \(Wales\) Act 2013](#).

### Proposal

To amend the Public Audit (Wales) Act 2013 to:

- remove the requirement that fees must not exceed the full cost of the function to which they relate, and
- enable the Wales Audit Office to ensure that the sum of the fees charged for all of the work undertaken is broadly equivalent to all of its expenditure in connection with that work, taking one year with another.

To retain the requirement for fees to be paid by the body to which the function relates in order to ensure transparency for audited bodies, effective engagement in the audit and to maintain the relationship between the auditor and audited body.

## CONSULTATION QUESTIONS

### Question 1

**Do you agree that the Wales Audit Office should be given flexibility in how it charges and administers its fees by allowing it to broadly breakeven, taking one year with another?**

Response	Number
Yes	6
No	-
Neutral	3

10. Those who agreed with the proposal suggested that:

- it remained important that the WAO demonstrates value for money (Hywel Dda University Health Board (UHB))

- there was an obligation for public bodies to make efficiencies but that flexibility was important in order for public sector organisations to “balance their books” (Conwy County Borough Council (CBC) and Wrexham CBC)
- transparency of the new arrangements was essential (Betsi Cadwaladr UHB).

**11.** The Auditor General and WAO suggested that the new arrangements would remove a significant disincentive to improving audit efficiency and would allow a longer term approach to its workforce planning.

**12.** Those who expressed neither an obviously positive or negative opinion included the Local Democracy and Boundary Commission for Wales (LDBCW), which suggested that it had no objection unless there was a significant increase in fees, and that “broadly breakeven, taking one-year with another” needed to be defined more clearly (Aneurin Bevan UHB).

**13.** It was also mentioned that there should be a right to challenge fees (Wrexham CBC) and there may be a requirement for an escalation or dispute process around fees (Hywel Dda UHB).

## Question 2

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### If so, do you agree with the approach taken in sections 3 and 4 of the Draft Bill?

Response	Number
Yes	5
No	-
Neutral	3

**14.** Many of those responding referred to information provided as part of their answer to Question 1. Estyn noted that the change has been identified as potentially improving efficiency, but that “there needs to be appropriate scrutiny to provide assurance that the service provider is operating efficiently and effectively”.

**15.** The Auditor General and WAO suggested that the proposed provisions were stricter than their initial proposals, in that they do not allow aggregation between bodies. The Auditor General and WAO argued that retaining the requirement for fees to be paid by the body would prevent cross-subsidisation between bodies, and noted the drawback to this approach in their consultation response:

“Such cross-subsidisation would often be both fair and appropriate, such as where new audit techniques are being introduced. (The first bodies subject to such developments will often require more audit time than the later bodies. With the aggregation of costs restricted to each body, through no fault of their own, the first bodies will face higher fees than the later ones.)”<sup>3</sup>

**16.** To address this issue, the Auditor General and WAO suggested modifying the aggregation requirement in the legislation to allow expenditure funded from the Welsh Consolidated Fund (WCF) to be disregarded for the purpose of calculating fees. The view of the Auditor General and WAO is that, subject to the Committee’s approval, this could enable early implementation of new techniques to be funded by the WCF rather than being borne by the bodies first subject to such techniques. The Auditor General and WAO suggested it would also facilitate the continuation of other current subsidisation arrangements, for example, where the Committee has authorised WCF funding for the National Fraud Initiative (NFI) in order to encourage voluntary participation. This subsidisation allows the fee to audited bodies that participate in the NFI to do so with no fee.

**17.** The Committee considers that retaining the link between the body receiving services from the Auditor General/WAO and responsibility for paying for those services does not generally prevent subsidisation of workstreams. However, it does prevent subsidisation between such bodies (i.e. cross-subsidisation), in line with the Committee’s conclusion following its post-legislative scrutiny that this type of subsidisation should not be permitted. With the Senedd’s approval, the WAO already uses funds voted to it via the annual budget process to meet expenditure in appropriate cases, such as to subsidise early implementation of new techniques.

#### **Change to the draft Bill:**

Additional drafting has been inserted in section 4(4) of the draft bill to specifically provide that the WAO’s costs reimbursed from other sources are to be discounted when calculating fee liability to audited bodies, to provide clarity that the proposals do not preclude subsidisation from the WCF, or other sources, where appropriate and approved by the Senedd.

**18.** The Auditor General and WAO also raised some technical issues relating to the provisions concerning fee charging in the draft Bill.

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<sup>3</sup> Consultation response: [PAAW.10 – Auditor General for Wales and Wales Audit Office](#)

**19.** They noted that the Bill as drafted does not include certain other existing fee charging powers (outside of the PAWA 2013) within the new “broad equivalence” regime and recommended that those powers be incorporated within the scope of the new fee regime.

**Change to the draft Bill:**

Sections 3 and 4 of the draft Bill have been revised to require the statutory fee scheme (issued by the WAO under section 24 of the PAWA 2013) to include the concept of “broad equivalence” charging for all statutory fee charging powers, except agreement work, instead of limiting broad equivalence to the fee charging provisions in section 23 of the PAWA 2013.

**20.** The Auditor General and WAO queried whether the proposed provision at section 3 of the draft Bill, which provided that fees “may be aggregated and charged on the basis of broad equivalence” gave the WAO discretion as to the basis on which fees could be charged. The drafting intention in relation to this provision was in fact to provide the WAO with the statutory ability to aggregate fees for a particular body, as opposed to discretion on the basis for fee charging itself.

**Change to the draft Bill:**

The draft Bill now includes (at section 4(3)) a replacement provision that removes any reference to fee aggregation, on the basis that such aggregation would be a necessary step in administering a fee regime based on the concept of broad equivalence. The revised provision is therefore limited to requiring, in the statutory fee scheme, “provision that the WAO must charge fees on the basis of broad equivalence”.

**21.** The Auditor General and WAO also raised concerns that retaining the use of the term “function” in the terminology concerning fee charging in the draft Bill, rather than describing the ability to charge fees by reference to “work” undertaken, may not cover implied powers and duties, and additionally necessitate an ongoing need for detailed analysis of time spent on specific functions.

**22.** However, the Committee believes the terminology in the draft Bill referring to “functions” should be retained for the following reasons:

- The term “function” describes the Auditor General and WAO’s statutory remit, i.e. their respective legal powers and duties. If the Auditor General

or WAO undertake work considered to be part of their respective statutory functions by implication (that is, a necessary part of their respective remits which is not specifically provided for in legislation), then that work should be considered part of their functions.

- Should there be uncertainty as to whether a certain category of work is within the Auditor General or WAO's statutory remit, introducing the ability to charge for "work undertaken", instead of in relation to "functions exercised", would not resolve it. However, it would risk creating an undesirable situation whereby the WAO would be seeking to charge for "unlawful" work undertaken under a power which would (arguably) enable them to charge for that work.
- The concept of "functions" is inextricably linked to the Auditor General and WAO's statutory remit, as set out in section 25 of the PAWA 2013, which provides for the Auditor General and WAO to prepare an annual plan setting out work programmes at the beginning of each financial year. "Work programmes" in this context is defined in the PAWA 2013 by reference to their respective "functions".

**23.** Separately, the Committee has considered a minor technical amendment to the provisions of section 2 of the draft Bill (amending section 19 of the PAWA 2013) relating to fee charging for agreement work. As drafted, section 19 provides (at subsection (7)) that the WAO may make arrangements for work pursued under that section "on such terms, including terms about payment, as the WAO thinks fit".

**Change to the draft Bill:**

Due to the draft Bill having inserted a specific fee charging provision in section 19, the wording "including terms about payment" is deemed unnecessary and may cause uncertainty. Accordingly, section 2(4) the draft Bill now proposes to remove that wording from section 19(7) of the PAWA 2013.

**24.** Additionally, in the definition of "broad equivalence" in section 4, a change has been made to the draft Bill regarding the reference to WAO "expenditure".

**Change to the draft Bill:**

Section 4(4) of the draft Bill replaces the reference to WAO "expenditure" with a reference to the WAO's "direct and indirect costs" attributable to a body when calculating fees to be charged. The rationale for this amendment is that a

reference to “costs” impliedly excludes money reimbursed from other sources (such as subsidy from the Welsh Consolidated Fund), rather than expenditure, which simply means money out, whether or not it is balanced by money in.



### 3. Agreement work

**25.** The issue identified with the PAWA 2013 provision regarding agreement work is discussed in Chapter 4 of the Committee’s report on the [Consideration of proposals to amend the Public Audit \(Wales\) Act 2013](#).

#### Proposal

To amend the Public Audit (Wales) Act 2013 to remove the link between agreement work and the fee scheme to allow the Wales Audit Office to set its own terms and conditions. This would enable the Wales Audit Office to earn additional reasonable fees to reinvest in the organisation or surrender to the Welsh Consolidated Fund, subject to sufficient safeguards being in place to protect its statutory work and prevent conflicts of interests.

#### CONSULTATION QUESTIONS

#### Question 3

**Do you agree that the Wales Audit Office should be allowed to set its own terms and conditions for agreement work?**

Response	Number
Yes	7
No	1
Neutral	-

**26.** Those that responded positively did so on the basis that the change would benefit the Welsh public sector (Aneurin Bevan UHB), although Wrexham CBC suggested that it did not feel the amounts being discussed would be material in terms of Welsh public sector finances. Wrexham CBC also felt that there was no reason why the WAO should not be able to make a profit if work is won on a competitive basis. Conwy CBC was in agreement with the proposal if it enabled a reduction in “unnecessary bureaucracy and unnecessary costs”.

**27.** Estyn noted that Board control over the level of agreement work will be important to ensure the benefits are clearly identified and such work does not compromise core activities and statutory responsibilities.

**28.** The Arts Council for Wales did not agree with the proposal. It noted that there was a wider question as to “whether a resource-limited organisation that is publicly funded should be providing those services in the first place”. It went on to say that the “purpose of the Wales Audit Office is not to generate surpluses for the Welsh Government”.

#### **Question 4**

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**If so, do you agree with the approach taken in section 2 of the Draft Bill?**

<b>Response</b>	<b>Number</b>
Yes	6
No	1
Neutral	-

**29.** The Arts Council for Wales responded negatively to the provisions set out in Question 4, suggesting an assumption could be made that the full costing method was originally included to prevent such profit making activities. The six other responses to this question were positive, with no additional comments beyond the response to the Question 3.

No further changes are proposed to the draft Bill in relation to agreement work.

## 4. Quorum arrangements

**30.** The issues experienced with the current quorum provisions are outlined in Chapter 5 of the Committee’s report on the [Consideration of proposals to amend the Public Audit \(Wales\) Act 2013](#).

### Proposal

To retain the requirement for a non-executive member majority to ensure independent oversight and provide constructive challenge to the executive directors, but amend paragraph 28(3) of Schedule 1 of the Public Audit (Wales) Act 2013 to allow executive members to remain at the meeting in a non-voting capacity when there is not a majority of non-executive Members present.

## CONSULTATION QUESTIONS

### Question 5

**Do you agree that the current Wales Audit Office Board quorum requirement for a majority of non-executive members should be retained in legislation?**

Response	Number
Yes	4
No	3
Neutral	-

**31.** Four organisations responded positively to Question 5, suggesting this was the right approach. Of those that responded positively, Betsi Cadwaladr UHB suggested that the quorum requirement should be retained in legislation to ensure “independent oversight and provide constructive challenges to the executive directors”.

**32.** Estyn disagreed with the quorum requirement, suggesting that although the membership appeared to be right, there was “a case for flexibility regarding quorum requirements”. Conwy CBC noted that the current situation was “clearly” problematic and a more practical arrangement should be considered.

**33.** The Auditor General and WAO also disagreed with the quorum requirement, suggesting that including quorum in the legislation was not helpful. However, it

suggested the proposed change, to allow an observer, will make the quorum issue less problematic.

## Question 6

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**Do you agree that if the majority of members present at a meeting of the Wales Audit Office Board are not non-executive members, an executive member should be allowed to continue in a non-voting capacity in order to satisfy the quorum requirement?**

Response	Number
Yes	6
No	1
Neutral	-

**34.** Some of those that agreed suggested the approach was reasonable (Estyn and Aneurin Bevan UHB) and recognised the narrow majority on the Board (Betsi Cadwaladr UHB). While the Arts Council for Wales was broadly in agreement, it noted a practical consideration around conflict of interest.

**35.** Hywel Dda UHB was not in agreement with the proposal and suggested the question was inconsistent with the proposal in the draft Bill. It went on to note that it was “important that all Executive members be allowed to vote in a Board meeting”.

## Question 7

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**If so, do you agree with the approach taken in section 13 of the Draft Bill?**

Response	Number
Yes	4
No	-
Neutral	1

**36.** Those that agreed reiterated their responses to Questions 5 and 6. Hywel Dda UHB was neutral in its response, suggesting that this section of the draft Bill “may require further guidance to be provided on the means by which an employee member is asked to excuse themselves from voting”.

**37.** Whilst the Auditor General and WAO broadly agree with the solution proposed in the draft Bill, they have suggested technical amendments to put it

beyond doubt that the quorum requirement is relaxed in the circumstances where an employee member is attending WAO meetings in an observer role.

**38.** The Committee has decided to remove the concept of an “observer” in the draft Bill, as defining an “observer” in these circumstances could lead to difficulties and uncertainty, and replace it with reference to employee members not “voting”.

**Change to the draft Bill:**

The draft Bill now proposes (at section 13(2)) to allow the WAO to specify in its rules that employee member(s) present but “not voting” do not count as present for the purposes of the quorum. This would allow employee members to participate in meetings, provided those members do not take part in decision-making.

## 5. Interim Reports

**39.** The requirement to produce and interim report at least once a year is discussed in Chapter 6 of the Committee’s report on the Consideration of proposals to amend the Public Audit (Wales) Act 2013.

### Proposal

To replace the requirement in paragraph 3(3) of Schedule 2 of the Public Audit (Wales) Act 2013, to produce an interim report at least once a year, with a provision requiring the production of an interim report (as currently defined) if requested by the Senedd.

### CONSULTATION QUESTIONS

#### Question 8

**Do you agree that the Auditor General for Wales and the Chair of the Wales Audit Office should no longer be required to produce an interim report at least once a year, but a requirement to produce an interim report upon the Senedd’s request should be included in legislation?**

Response	Number
Yes	5
No	-
Neutral	3

**40.** Estyn suggested that the evidence on interest in the Interim Report demonstrated that it was an unnecessary burden and avoidable cost. Conwy CBC reiterated this view, as did Betsi Cadwaladr UHB, which suggested the requirement to produce an Interim Report appeared to be “disproportionately resource consuming”. Wrexham CBC agreed with the proposal, subject to adequate performance information being made available to allow an informed decision as to whether to request an Interim Report.

**41.** The Auditor General and WAO noted that they “cannot envisage a situation where we would not provide a report on request”.

**42.** Two responses made no comment. Aneurin Bevan UHB suggested that a report once a year seemed reasonable and outlined possible alternatives such as a highlight report.

### Question 9

**If so, do you agree with the approach taken in section 16 of the Draft Bill?**

Response	Number
Yes	5
No	-
Neutral	3

**43.** In terms of the relevant proposals within the draft Bill, five responses agreed with the approach. While the three neutral responses either raised no issue or referred to their previous answer in this section.

No further changes are proposed to the draft Bill in relation to interim reports.

## 6. Laying reports and accounts

44. The duplicate laying of the Auditor General and WAO’s annual report and accounts is discussed in Chapter 7 of the Committee’s report on the Consideration of proposals to amend the Public Audit (Wales) Act 2013.

### Proposal

To simplify the provisions in the Public Audit (Wales) Act 2013 to enable:

- the Auditor General for Wales and the Chair of the Wales Audit Office to provide the external auditor of the Wales Audit Office with their annual report no later than five months after the end of the financial year; and
- subsequently require the external auditor to lay the report as part of the laying of the annual accounts.

### CONSULTATION QUESTIONS

#### Question 10

**Do you agree that the requirement to lay the annual report (on the exercise of functions of the Auditor General for Wales and Wales Audit Office) in paragraph 3(1) of Schedule 2 of the Public Audit (Wales) Act 2013 should be amended to require the external auditor to lay the report as part of the laying of the annual report and accounts?**

Response	Number
Yes	5
No	-
Neutral	2

45. There were seven responses to Question 10. Five were positive, and while comments were limited, responses mentioned that the proposal avoids duplication. The remaining two responses were neutral and either stated that they had no issue with the proposals or that they did not seem “unreasonable”.



## Question 11

### If so, do you agree with the approach taken in section 15 of the Draft Bill?

Response	Number
Yes	5
No	-
Neutral	2

**46.** Responses to Question 11 either agreed or made no additional comments to those in the responses to Question 10.

No further changes are proposed to the draft Bill in relation to the laying of the Auditor General and WAO's annual report and accounts.

## 7. Certification deadlines

**47.** The requirement placed on the Auditor General to lay a copy of certain audited bodies' certified accounts and report no later than four months after they are submitted is discussed in Chapter 8 of the Committee's report on the [Consideration of proposals to amend the Public Audit \(Wales\) Act 2013](#).

### Proposal

To amend enactments that specify a four month deadline for the Auditor General for Wales to certify and lay a copy of an audited body's accounts and report to:

- allow the Auditor General for Wales to lay a copy of the certified accounts and report after the four month deadline;
- require the Auditor General for Wales to explain to the Senedd why the four month deadline cannot be met; and
- require the Auditor General for Wales to lay the certified accounts and report as soon as reasonably practicable.

### CONSULTATION QUESTIONS

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#### Question 12

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**Do you agree that existing legislation requiring the Auditor General for Wales to certify and lay an audited body's accounts and report within four months should be amended to:**

- **allow the Auditor General for Wales to lay a copy of the certified accounts and report after the four month deadline,**
- **require the Auditor General for Wales to explain to the Senedd why the four month deadline cannot be met, and**
- **require the Auditor General for Wales to lay the certified accounts and report as soon as reasonably practicable?**

Response	Number
Yes	5
No	1
Neutral	2

**48.** Estyn suggested that the deadline was unlikely to be exceeded. Betsi Cadwaladr UHB noted that audited bodies needed to be given sufficient time to comment on audit findings. The Auditor General and WAO explained that the amended process was an emergency procedure and would not be used as a “ready excuse for delay”.

**49.** The two neutral responses either raised no issue or stated that they did not feel the proposal was unreasonable.

**50.** Wrexham CBC suggested that the information behind the proposal were not “valid enough reason for amending the four month target”.

### Question 13

**If so, do you agree with the approach taken in section 17 and Schedule 1 of the Draft Bill?**

Response	Number
Yes	5
No	-
Neutral	2

**51.** Those who agreed with the approach taken in the draft Bill did not provide comments beyond those included in their responses to Question 12.

**52.** Wrexham CBC agreed with the proposed drafting of the amendments in the draft Bill despite disagreeing with the proposal in Question 12.

**53.** Again, the two neutral responses either raised no issue or stated that they did not feel the proposal was unreasonable.

No further changes are proposed to the draft Bill in relation to the Auditor General laying copies of certain bodies’ certified accounts and reports.

## 8. Appointment of the auditors of the WAO's accounts

54. The provisions relating to the appointment of the auditors of the WAO's accounts is discussed in Chapter 9 of the Committee's report on the [Consideration of proposals to amend the Public Audit \(Wales\) Act 2013](#).

### Proposal

To amend the Public Audit (Wales) Act 2013 to allow the Wales Audit Office to appoint its external auditors, subject to the Senedd's approval of:

- the appointment,
- the terms of appointment, and
- the method of procurement.

### CONSULTATION QUESTIONS

#### Question 14

**Do you agree that engagement of the auditor of the Wales Audit Office should be a contractual matter between the Wales Audit Office and the auditor, with the appointment (and associated terms and conditions) being subject to the approval of the Senedd?**

Response	Number
Yes	6
No	-
Neutral	1

55. Six of the seven responses were positive, with responses noting reduced complexity and increased efficiency (Estyn and the Auditor General/WAO). One response was neutral but raised no issues.

## Question 15

**If so, do you agree with the approach taken in section 14 of the Draft Bill?**

Response	Number
Yes	5
No	-
Neutral	1

**56.** There was no additional information provided beyond the responses to Question 14.

No further changes are proposed to the draft Bill in relation to the appointment of the auditors of the WAO's accounts.

## 9. Appointment of non-executive members of the WAO and the Chair of the WAO

**57.** The provisions relating to the appointment of non-executive members and Chair of the WAO is discussed in Chapter 9 of the Committee’s report on the [Consideration of proposals to amend the Public Audit \(Wales\) Act 2013](#).

### Proposal

To amend the Public Audit (Wales) Act 2013 to allow the appointment of a serving non-executive member to be extended for a second term of up to four years, subject to acceptable performance.

### CONSULTATION QUESTIONS

#### Question 16

**Do you agree that the Public Audit (Wales) Act 2013 should be amended to allow the appointment of a serving non-executive member to be extended for a second term of up to four years, subject to acceptable performance?**

Response	Number
Yes	5
No	1
Neutral	1

**58.** Five of the seven responses were positive, with responses suggesting it would provide flexibility (Estyn) and that the current process was “unnecessarily onerous” (Auditor General and WAO). Others suggested that it would need to be on the basis of acceptable performance (Betsi Cadwaladr UHB) and that the approach should be reviewed if there is significant interest from external candidates (Conwy CBC).

**59.** The Arts Council for Wales disagreed with the proposal, suggesting there was “merit in having a competitive process every 4 years. This would ensure that the make-up of the panel remains fresh and reflective of a diverse and vibrant Wales”.

**60.** Hywel Dda UHB did not agree or disagree with the proposal, but suggested there would need to be guidance as to who is required to assess acceptable performance for the Board members.

## Question 17

**If so, do you agree with the approach taken in sections 7, 8 and 9 of the Draft Bill?**

Response	Number
Yes	4
No	1
Neutral	1

**61.** All respondents reiterated their responses to Question 16.

**62.** The draft Bill removed the requirement in the PAWA 2013 for WAO Board appointments being “based on the conclusions of fair and open competition”. This was to avoid the suggestion that statutory extensions of those appointments could be “caught” by that requirement and therefore unable to operate effectively. However, subsequent legal advice has cautioned that removal of provisions requiring fair and open competition could be reviewed as a “retrograde step” in terms of establishment of the WAO Board, and viewed in a negative light despite the actual policy intention.

**63.** The Committee has been advised that retention of the “fair and open competition” requirement would not prevent an extension of appointment of a serving non-executive member, on the basis that an extension would relate to an existing appointment as opposed to being a new appointment.

### **Change to the draft Bill:**

Section 7(3) of the draft Bill no longer removes the requirement for WAO Board appointments to be “based on the conclusion of fair and open competition”.

**64.** The Committee has also agreed to amend the WAO Board appointment provisions in section 7 of the draft Bill.

### **Change to the draft Bill:**

Section 7 of the draft Bill has been amended to:

- simplify the drafting to remove the limitation on number of appointments or extensions (but retaining the 8 year limit on maximum time that can be served on the board as a non-executive member);
- strengthen the prohibition on the Senedd's ability to make appointments or extensions which would have the effect of breaching the "no more than 8 years" rule, by providing that the Senedd "may" not breach that prohibition in place of "must" not which, in the view of the Committee, would make any such appointments invalid instead of unlawful.



## 10. Requirement to consult on certain aspects of the appointment process

**65.** The requirement to consult on certain aspects of the appointment process is discussed in Chapter 9 of the Committee's report on the [Consideration of proposals to amend the Public Audit \(Wales\) Act 2013](#).

### Proposals

To remove the requirements placed on the Senedd to consult the First Minister on:

- the appointment of the Chair of the Wales Audit Office [*paragraph 5(2) of Schedule 1*],
- the remuneration arrangements for the Chair [*paragraph 7(2) of Schedule 1*] and the Auditor General for Wales [*section 7(2)*], and
- the termination of the Chair's appointment [*paragraph 12(2) of Schedule 1*]

in the interest of protecting the independence of those roles.

To remove the requirement to consult "an appropriate person with oversight for public appointments" on remuneration arrangements and other terms of appointment for WAO non-executive members and the Chair [*paragraph 9(1) of Schedule 1*] and replace it with a general provision permitting the Senedd to consult with any persons it deems appropriate.

To amend section 5(3) of the Public Audit (Wales) Act 2013 to require the Senedd to publish a list of restricted offices, positions or arrangements, which a former Auditor General for Wales would need to consult with the Senedd before accepting or entering into after leaving office, only if any such restrictions are identified.

## CONSULTATION QUESTIONS

### Question 18

**Do you agree that the requirement for the Senedd to consult the First Minister on the following should be removed:**

- **the appointment of the Chair of the Wales Audit Office;**
- **the remuneration arrangements for the Chair and the Auditor General for Wales; and**
- **the termination of the Chair's appointment?**

Response	Number
Yes	5
No	1
Neutral	1

**66.** Estyn suggested that the changes supported the independence of the organisation. The Auditor General and WAO suggested that it removed the risk of the perception of an audited body having inappropriate influence over those with responsibility for monitoring and advising their auditor, as well as risking undermining the independence of the Auditor General.

**67.** The one neutral response raised no issues. However, the one negative response (the Arts Council for Wales) suggested that the current provisions were similar to those elsewhere and that a status quo with other audit arrangements throughout the UK should be maintained. For example the Budget Responsibility and National Audit Act 2011 requires that; before a person is appointed as Comptroller and Auditor General, remuneration arrangements are to be made in relation to the person jointly by the Prime Minister and the person who chairs the Committee of Public Accounts.

### Question 19

**Do you agree that the requirement for the Senedd to consult an appropriate person with oversight for public appointments on remuneration arrangements and other terms of appointment should be removed?**

Response	Number
Yes	4
No	1
Neutral	2

68. The four positive responses suggested that it was not clear who the current provisions related to (Auditor General and WAO) and that the proposed change provides more flexibility (Estyn).

69. The neutral responses identified no issues. However, the negative response (the Arts Council for Wales) referred to its response to Question 18.

### Question 20

**Do you agree that a general provision should be included, permitting the Senedd to consult with any persons it deems appropriate before exercising any functions in relation to the Auditor General for Wales or the Wales Audit Office?**

Response	Number
Yes	6
No	-
Neutral	1

70. Estyn noted that the provisions would provide increased flexibility.

71. The neutral response raised no issues.

### Question 21

**If so, do you agree with the approach taken in sections 6, 10 and 11 of the Draft Bill?**

Response	Number
Yes	4
No	1
Neutral	1

72. The responses did not provide additional detail to that included in the responses to the preceding questions in this section.

## Question 22

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**Do you agree that section 5(3) of the Public Audit (Wales) Act 2013 should be amended to require the Senedd to publish a list of restricted offices, positions or arrangements, which a former Auditor General for Wales would need to consult with the Senedd before accepting or entering into after leaving office, only if any such restrictions are identified?**

Response	Number
Yes	5
No	-
Neutral	2

73. No significant information was provided alongside responses.

## Question 23

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**If so, do you agree with the approach taken in section 5 of the Draft Bill?**

Response	Number
Yes	4
No	-
Neutral	2

74. Again, no significant information was provided alongside responses.

No further changes are proposed to the draft Bill in relation to requirement to consult on certain aspects of the appointment process.

## 11. Issues with wider public audit legislation in Wales

**75.** Chapter 10 of the Committee’s report on the [Consideration of proposals to amend the Public Audit \(Wales\) Act 2013](#) outlined issues with wider public audit legislation in Wales.

### Question 24

**Do you feel the Draft Bill should include provisions relating to:**

- **the lack of a value for money conclusion duty on the Auditor General for Wales and central government bodies;**
- **the absence of explicit provisions in statute for regularity opinions among many central government bodies;**
- **the overlapping laying requirements;**
- **Welsh data matching powers?**

Response	Number
Yes	4
No	2
Neutral	2

**76.** Four responses suggested that the Bill should include one or more provisions relating to the provisions detailed in Question 24.

**77.** The Auditor General and WAO suggested that all areas should be implemented, noting that while there was some incidental examination of value for money at bodies where there was no duty, this was not as thorough as it could be. They also noted that the absence of an explicit provision relating to regularity opinions meant a “fundamental element of Assembly control of central government expenditure is missing from statute in respect of some bodies”. They suggested that overlapping laying requirements were “not conducive to clarity of responsibility” and that data matching powers were falling behind.

**78.** Wrexham CBC agreed with the proposals, particularly extending data matching powers. Other responses noted that it was a substantial piece of work to resolve issues relating to value for money and regularity (Estyn).

**79.** Hywel Dda UHB responded neutrally, suggesting it had insufficient evidence on comparisons of data matching with other UK nations to respond to the question. LDBCW raised no objections to regularity opinions and value for money requirements being inserted into relevant legislation.

**80.** The Arts Council for Wales responded negatively, suggesting it would likely be “complex and time-consuming” to amend its Royal Charter. It also suggested that there were potentially other issues with such a change and its status as a charity. The Education Workforce Council also responded negatively and opposed such a change on the basis of the status of the organisation.

**81.** The Committee previously agreed that it would not take forward proposals relating to wider public audit legislation but would accept further evidence on those matters as part of this consultation. Whilst the Committee notes that some consultees were supportive of the Bill including provisions relating to wider public audit legislation in Wales, respondents did not put forward any new evidence in support of these proposals.

## 12. Other matters

**82.** As part of the consultation exercise, the Committee sought views on the financial implications of the draft Bill as well as any general comments.

### Question 25

**Will any of the proposals included in the Draft Public Audit (Amendment) (Wales) Bill lead to any financial implications (for example, costs or benefits) for you or your organisation?**

**If you have identified financial implications for you or your organisation can you describe what these could be and provide an estimated cost (if possible).**

Response	Number
Yes	-
No	-
Neutral	7

**83.** There were seven responses to the question about the financial implications of the draft Bill, all have been classed as ‘neutral’ on the basis that they do not express a positive or negative opinion on the costs.

**84.** Generally, responses suggested the costs would be marginal (Hywel Dda UHB) or that they anticipated no impact (Estyn/Betsi Cadwaladr UHB). Some responses suggested it was unclear what the impact would be (Wrexham CBC).

**85.** The Arts Council suggested fees could potentially increase if offsetting between bodies was included.

**86.** As part of their response the Auditor General and WAO updated the cost assessment produced alongside their draft Bill ([June 2018](#)), noting that use of the term function means that there will be an “ongoing need for detailed analysis of time spent on specific functions” and that this will therefore reduce the cost savings originally estimated. They suggest the change could halve the savings from the original estimate, to £10,000 - £20,000 per annum, and suggest that most of its £5,000 estimated saving from June 2018 would remain. The estimate of contribution from surpluses on agreement work remains at £7,500 per annum.

**87.** In terms of Interim Reports, the Auditor General and WAO notes that the £20,000 saving attributed to no longer having to produce the report remains.

However, in years when the Committee requests such a report, the saving would not be realised.

**88.** Changes to the appointment arrangements for the auditors of the WAO were not included in the WAO's draft Bill proposals. It estimates that the inclusion of provisions relating to the WAO's auditors, as set out in the consultation, could lead to savings of "at least £2,000" for each appointment.

**89.** The Auditor General and WAO also estimate that there could be savings arising from changes to the appointment arrangements for non-executive members and the Chair of the WAO, but that "these savings are hard to quantify, as time is also inevitably spent on general liaison regarding the need to fill vacancies".

**90.** The Auditor General and WAO suggest that the ability to lay accounts after a four-month deadline will save £4,000 each occurrence and has assumed that this might occur once every eight years.

**91.** The Auditor General and WAO estimate implementation costs of "probably less than £1,000".

## **Question 26**

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### **Do you have any other observations or general comments on the Public Audit (Wales) Act 2013 or the Committee's Draft Public Audit (Amendment) (Wales) Bill?**

**92.** Aside from some comments on the terminology within the legislation from the Auditor General and WAO, there were no other observations made by those responding to this question.



## 13. Further issues identified

### Disqualification as a member, or employee, of the WAO

#### Current provisions

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**93.** Paragraph 26 of Schedule 1 to the PAWA 2013 sets out the grounds upon which a person cannot be appointed (or remain appointed) as a member or employee of the WAO.

**94.** The disqualification criteria listed in paragraph 26(3) includes:

“A person is disqualified from being a member or employee of the WAO if the person is...the holder of any other office or position to which a person may be appointed, or recommended or nominated for appointment, by or on behalf of...the Crown.”

#### Issue

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**95.** When recruiting to the WAO Board, it is necessary to consider the existing commitments of candidates alongside the disqualification provisions within the PAWA 2013. On occasion this has resulted in candidates being deemed ineligible for appointment, specifically in relation to appointments made by, or on behalf of, the Crown.

**96.** The Committee has received legal advice that:

- the “Crown” is a historical concept and that its meaning in modern legislation depends on the context in which it is used,
- generally, when referring to executive government a reference to the Crown includes the UK Government, and may include the devolved administrations,
- the effect of this provision is that holding an office to which a person is appointed by the UK Government, the Welsh Government, and potentially by the devolved administrations of Scotland and Northern Ireland, disqualifies that person from being a member of the WAO.

**97.** The Committee is concerned that the disqualification provision may impact on the ability of the Senedd to attract high quality candidates to serve on the WAO Board, given that the extent of the disqualification provision may be wider than necessary to protect the independence of the WAO Board.

**98.** However, in light of the complexities and the limited time remaining in the Fifth Senedd, the Committee suggests that this issue should be given further consideration by a future committee of the Sixth Senedd.

**Recommendation 2.** The Committee recommends that a future committee of the Sixth Senedd considers the disqualification provisions in relation to the Crown (paragraph 26 of Schedule 1 to the Public Audit (Wales) Act 2013) as part of any future work on the Public Audit (Amendment) (Wales) Bill.

## Expenses of the Auditor General for Wales

### Current provisions

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**99.** Section 7 of the PAWA 2013 requires arrangements for remuneration of the Auditor General to be made by the Senedd before a person is appointed. It permits payment of “a salary, allowances, gratuities, arrangements for a pension and other benefits”, and requires such amounts to be charged on, and paid out of, the Welsh Consolidated Fund. These arrangements are administered by the Senedd Commission.

**100.** Separately, paragraph 13 of Schedule 1 to the PAWA 2013 provides that the WAO “may make provision for additional payments to be made to the Auditor General by way of allowances and other benefits to cover expenses properly and necessarily incurred by the Auditor General in his or her capacity as a member and chief executive of the WAO”.

### Issue

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**101.** On 7 February 2020, the WAO raised an issue concerning the identification of expenses paid to the Auditor General in his capacity as Auditor General and, separately, as chief executive of the WAO.<sup>4</sup>

**102.** To date, the WAO has paid all travel and subsistence expenses of the Auditor General from its annual budget without direct charge on the WCF. The WAO is of the opinion that the provisions of the PAWA 2013 are not clear and, further, that it is “neither practical nor conceptually sound to attempt to separate the Auditor General’s expenses” between those incurred as Auditor General and separately as chief executive of the WAO.

**103.** The WAO invited the Committee to consider whether section 7 and paragraph 13 of Schedule 1 to the PAWA 2013 should be revised to provide greater

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<sup>4</sup> [Letter from the WAO, 7 February 2020](#)

clarity, but noted that the WAO does not consider the issue to be a high priority “provided that the Committee is content with the interpretation and approach taken by the WAO”.

**104.** Having reflected on the WAO’s current approach and sought legal advice, the Committee wrote to the WAO setting out its position:

“The WAO’s practice of paying all of the Auditor’s General expenses is therefore, in the Committee’s view, only compliant with the requirements of the 2013 Act to the extent that those expenses are attributable to the Auditor General’s functions as a member and chief executive of the WAO. If any such expenses relate (whether wholly or partly) to non-chief executive or member functions, such payments would not be in compliance with the requirements of the 2013 Act and may give rise to issues of irregularity.”<sup>5</sup>

**105.** The Committee has invited the WAO to reflect on its current practice of paying expenses to the Auditor General and consider the position with its auditors, if necessary. The Committee believes this issue requires further consideration.

**Recommendation 3.** The Committee recommends that a future committee of the Sixth Senedd considers the provisions relating to the payment of the Auditor General’s expenses (section 7 and paragraph 13 of Schedule 1 to the Public Audit (Wales) Act 2013) as part of any future work on the Public Audit (Amendment) (Wales) Bill.

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<sup>5</sup> [Letter to the WAO, 2 February 2021](#)

## 14. Other drafting changes

Part 2 of the Senedd and Elections (Wales) Act 2020 renamed the National Assembly for Wales, Acts of the Assembly and various associated bodies and offices, with effect from 6 May 2020. These changes occurred following the Committee's consultation on the draft Bill.

All references in the Bill to the National Assembly for Wales have been updated to Senedd Cymru in order to reflect the institution's change of name.

Additionally, the Committee has inserted a new section 18 and Schedule 2 to the Bill in order for certain references to the former names of Senedd Cymru and the Senedd Commission<sup>6</sup> in the PAWA 2013, and in other legislation proposed to be amended by Schedule 1 to the Bill, to be updated where appropriate. While specific updates are not required, the Committee considers that these changes will enhance the accessibility of that legislation.

The Committee has also amended Schedules 3 and 4 of the draft Bill, which deal with consequential amendments and transitional arrangements, to improve and simplify the drafting. There are no policy changes arising from these amendments.

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<sup>6</sup> Under section 150A(2) of the Government of Wales Act 2006, references in existing legislation to the National Assembly for Wales, the National Assembly for Wales Commission or Acts of the National Assembly for Wales are to be read as, or as including, the relevant names given by Part 2 of the Senedd and Elections (Wales) Act 2020.

## Draft Public Audit (Amendment) (Wales) Bill

[~~DRAFT~~POST CONSULTATION]

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# Draft Public Audit (Amendment) (Wales) Bill

[~~DRAFT~~POST CONSULTATION]

An Act of ~~the National Assembly for Wales~~ **Senedd Cymru** to amend the Public Audit (Wales) Act 2013 (anaw 3) in relation to the Auditor General for Wales and the Wales Audit Office and for connected purposes.

Having been passed by ~~the National Assembly for Wales~~ **Senedd Cymru** and having received the assent of Her Majesty, it is enacted as follows:

## PART 1

### INTRODUCTION

#### 1 Overview

The main provisions of this Act amend the Public Audit (Wales) Act 2013 (anaw 3) (the “2013 Act”) to—

- (a) remove the **general** prohibition on the Wales Audit Office (the “WAO”) charging fees that exceed the full cost of exercising the function to which the fee relates (sections ~~2 and 3~~);
- (b) require the WAO to include in a fees scheme a provision that seeks to ensure that the sum of the fees charged to each person for ~~work undertaken~~ **functions exercised** under specified enactments, taken together and taking one year with another, is broadly equivalent to all of its ~~expenditure~~ **costs** relating to that person ~~for that work~~ **in respect of those functions (excluding any costs reimbursed from other sources)** (sections ~~3 and 4~~);
- (c) require ~~the National Assembly~~ **Senedd Cymru (the “Senedd”)** to publish a list of offices, positions, agreements and other arrangements that require consultation before they are taken up or entered into by a former Auditor General only where the ~~National Assembly~~ **Senedd** has specified any office, position, agreement or arrangement (section 5);
- (d) remove or amend consultation requirements in relation to the appointment of the Auditor General and members of the WAO (including the chair) and add a discretion for the ~~National Assembly~~ **Senedd** to consult with persons it deems appropriate before exercising functions in relation to the Auditor General or the WAO (section 6);
- (e) make provision relating to the appointment, re-appointment and termination of appointment, as well as remuneration and terms of appointment, of members of the WAO (including the chair) (sections 7 to 12);

- (f) amend the quorum requirements in relation to WAO meetings (section 13);
- (g) make provision relating to the appointment of auditors of the WAO so that the WAO is required to appoint its auditors instead of the ~~National Assembly~~ Senedd (section 14);
- (h) co-ordinate the laying of the annual report on the exercise of functions of the Auditor General and the WAO with the laying of the audited accounts of the WAO (section 15);
- (i) remove the requirement for the Auditor General and the chair of the WAO to jointly prepare and lay interim reports before the ~~National Assembly~~ Senedd on the exercise of their functions (section 16);
- (j) make provision for the extension of reporting deadlines (section 17 and Schedule 1);
- (k) make amendments to the 2013 Act to update references to the former name of the Senedd (section 18 and Schedule 2).

## PART 2

### AMENDMENTS TO THE PUBLIC AUDIT (WALES) ACT 2013

#### 2 Fees for provision of services

- (1) Section 19 of the 2013 Act is amended as follows.
- (2) In subsection (5)(a), after “the Auditor General or the WAO” insert “(otherwise than by way of raising money by charging fees)”.
- (3) After subsection (6) insert –
- “ (6A) The WAO may charge a fee in relation to any services provided or functions exercised under this section.”
- (4) ~~In subsection (7), omit “, including terms about payment,”.~~
- (5) Omit subsection (8).

#### 3 General provision relating to fees

- (1) Section 23 of the 2013 Act is amended as follows.
- (2) In subsection (3), omit paragraph (d).
- (3) In subsection (5), ~~for~~omit paragraph (b). ~~substitute –~~
- ~~“(b) may be aggregated and charged on the basis of broad equivalence (see subsection (6)).”~~
- ~~(4) After subsection (5) insert –~~



~~“(6) In this Act, broad equivalence means that the WAO must seek to ensure that the sum of fees charged under this section for any functions exercised in relation to a person under the enactments mentioned in section 24(2)(a), taken together and taking one year with another, is broadly equivalent to all of its expenditure attributable to that person in connection with those functions.”~~

#### 4 Scheme for charging of fees

- (1) Section 24 of the 2013 Act is amended as follows.
- (2) In subsection (2)(a), at the end insert “and which may only be charged in accordance with this scheme”.

- (3) After subsection (2)(d) insert –

“(e) provision that the WAO must charge fees on the basis of broad equivalence.”

- (4) After subsection (8) insert –

“(9) In this Act, broad equivalence means that the WAO must seek to ensure that the sum of fees charged for any functions exercised in relation to a person under the enactments referred to in subsection (2) (a), taken together and taking one year with another, is broadly equivalent to all of its direct and indirect costs attributable to that person in connection with those functions.

(10) But in calculating costs attributable to a person for the purposes of subsection (9), the WAO must not include any costs which are reimbursed from other sources (including from the Welsh Consolidated Fund).”

#### 5 Employment etc. of former Auditor General and remuneration

- (1) The 2013 Act is amended as follows.
- (2) In section 5(3) –
  - (a) in paragraph (a), at the end insert “(if any)”;
  - (b) in paragraph (b), at the end insert “(if any)”.
- (3) In section 7(3)(b) omit “from time to time”.

#### 6 Consultation requirements

- (1) The 2013 Act is amended as follows.
- (2) In section 7, omit subsection (2).
- (3) In section 28, after subsection (3) insert –

“(4) The ~~National Assembly~~Senedd may consult with the persons (if any) it deems appropriate before exercising any functions in relation to the Auditor General or the WAO.”

(4) In Schedule 1 –

- (a) in paragraph 5, omit sub-paragraph (2);
- (b) in paragraph 7, omit sub-paragraph (2);
- (c) omit paragraph 9;
- (d) in paragraph 12, omit sub-paragraph (2).

## 7 Appointment of non-executive members of the WAO

(1) Paragraph 4 of Schedule 1 to the 2013 Act is amended as follows.

(2) ~~In sub-paragraph (1), at the end insert “for a period of no more than 4 years”.~~

(3) ~~For~~After sub-paragraph (2) ~~substitute~~insert –

~~“(2) Appointments made under sub-paragraph (1) must be for a period of no more than 4 years.~~

~~(3) A person must not be appointed under sub-paragraph (1) more than twice.~~

(43) The ~~National Assembly~~Senedd may extend an appointment made under sub-paragraph (1) for a period of no more than 4 years.

~~(5) But the National Assembly must not extend an appointment under sub-paragraph (4) if that non-executive member –~~

~~— (a) has been appointed under sub-paragraph (1) more than once, or~~

~~— (b) has previously received an extension of appointment under sub-paragraph (4).~~

(64) ~~But the~~ National Assembly~~the~~ Senedd ~~must~~may not make an appointment under sub-paragraph (1) or extend an appointment ~~made~~ under sub-paragraph (43) ~~— or —~~(4) if that appointment or extension (as the case may be) would result in a ~~person~~non-executive member serving longer than 8 years (whether consecutively or otherwise).”

## 8 Appointment of the chair of the WAO

(1) Paragraph 5 of Schedule 1 to the 2013 Act is amended as follows.

(2) For sub-paragraphs (3) and (4) substitute –

“(3) The ~~National Assembly~~Senedd may extend an appointment under this paragraph.

(4) The period of appointment under this paragraph (including any extension) must not exceed the person’s remaining period of office as a non-executive member.”

**9 Period of appointment and re-appointment**

In Schedule 1 to the 2013 Act, omit paragraph 6.

**10 Remuneration arrangements for the WAO**

(1) The 2013 Act is amended as follows.

(2) In paragraph 7 of Schedule 1 –

(a) in sub-paragraph (1), omit “(subject to sub-paragraph (2) and paragraph 9)”

(b) in sub-paragraph (6)(b), omit “from time to time”;

(c) after sub-paragraph (7) insert –

“(8) The ~~National Assembly~~**Senedd** may amend remuneration arrangements made under this paragraph.”

(3) In paragraph 17(2)(b) of Schedule 1, omit “from time to time”.

(4) In paragraph 11(b) of Schedule 2, omit “from time to time”.

**11 Terms of appointment**

(1) Paragraph 8 of Schedule 1 to the 2013 Act is amended as follows.

(2) In sub-paragraph (1), omit “(subject to paragraph 9)”.

(3) After sub-paragraph (3) insert –

“(4) The ~~National Assembly~~**Senedd** may amend terms of appointment determined under this paragraph.”

**12 Termination of appointments**

(1) Schedule 1 to the 2013 Act is amended as follows.

(2) In paragraph 10(3), for “accepted” substitute “received”.

(3) In paragraph 12(3)(b), after “otherwise” insert “unable, unfit or”.

**13 Quorum for WAO meetings**

(1) Paragraph 28 of Schedule 1 to the 2013 Act is amended as follows.

(2) After sub-paragraph (3), insert –

“(4) ~~But heTthe~~ rules may provide that ~~in the event that the majority of members present are not non-executive members, the chair may request the employee members to nominate an employee member who will take on an observer role for the remainder of a meeting or until such time as the quorum is restored by the arrival of an additional non-executive member~~ employee members present at a meeting but not voting do not count as being present for the purpose of the quorum.”

**14 WAO accounts and auditors of the WAO**

- (1) Schedule 1 to the 2013 Act is amended as follows.
- (2) In paragraph 33(6), omit “from time to time”.
- (3) In paragraph 34, for sub-paragraphs (1) and (2) substitute—
  - 5 “(1) The WAO must appoint a person as auditor of the WAO’s accounts.
  - 7 (2) The **National Assembly’s Senedd’s** approval is required for—
    - (a) the appointment of a person as auditor,
    - (b) the terms of the auditor’s appointment, and
    - (c) the method of procurement of an auditor by the WAO.”

**10 | 15 Laying of reports etc. before the **National Assembly Senedd****

- (1) The 2013 Act is amended as follows.
- (2) In paragraph 35(2)(b) of Schedule 1, after “report on it” insert “and the annual report provided by the Auditor General and the chair of the WAO in accordance with paragraph 3 of Schedule 2”.
- 15 (3) In paragraph 3(6) of Schedule 2, for sub-paragraph (a) substitute—
  - “ (a) provide the annual report as soon as practicable to the auditor appointed under paragraph 34 of Schedule 1 and in any event no later than 5 months after the end of the financial year to which the annual report relates;”

**20 16 Interim reports**

- (1) Paragraph 3 of Schedule 2 to the 2013 Act is amended as follows.
- (2) In sub-paragraph (3), for “At least once during each financial year” substitute “If requested by the **National Assembly Senedd** at any time during a financial year”.
- (3) Omit sub-paragraph (5).
- 25 (4) In sub-paragraph (6)(b), after “lay” insert “any”.
- (5) In sub-paragraph (6)(b), omit “from time to time”.

**PART 3****GENERAL****17 Laying deadlines for certified accounts**

- 30 Schedule 1 makes amendments to existing legislation relating to laying of certified accounts and reports.

**18 Renaming provisions**

- (1) The 2013 Act is amended as follows.
- (2) In section 32 (interpretation) –
  - (a) omit the definitions of “National Assembly”, “National Assembly Commission” and “Welsh Government”; and
  - (b) at the appropriate place, insert ““Senedd” means Senedd Cymru;”.
- (3) Schedule 2 makes amendments to the 2013 Act relating to the former names of the Senedd and Senedd Commission.

**1819 Consequential amendments**

Schedule 23 makes consequential amendments.

**1920 Transitional arrangements**

- (1) Schedule 34 makes transitional arrangements.
- (2) The Welsh Ministers may by order make such transitional, transitory or saving provision as they think appropriate in connection with the commencement of this Act.
- (3) A power of the Welsh Ministers to make an order under this Act is exercisable by statutory instrument.
- (4) A statutory instrument containing an order under this Act is subject to annulment in pursuance of a resolution of the ~~National Assembly~~ Senedd.
- (5) Nothing in Schedule 34 limits the power conferred by subsection (2); and such an order may, amongst other things, make modifications of that Schedule.

**2021 Short title and coming into force**

- (1) This Act comes into force at the end of the period of [two months] beginning with the day on which this Act receives Royal Assent.
- (2) The short title of this Act is the Public Audit (Amendment) (Wales) Act 202[ ].

SCHEDULE 1  
(introduced by section 17)

ACCOUNTS REPORTING AND LAYING DEADLINES

*Children's Commissioner for Wales*

- 5 1 Paragraph 9 of Schedule 2 to the Care Standards Act 2000 (c. 14) is amended as follows.
- 2 ~~At the beginning of~~In sub-paragraph (2)(b),—
- 3 (a) ~~at the beginning~~ insert “(subject to sub-paragraph (2A))”;
- 4 (b) for “the Assembly” substitute “Senedd Cymru”.
- 5 After sub-paragraph (2), insert—
- 10 “(2A) The Auditor General for Wales may lay a copy of the certified accounts and report before ~~the Assembly~~Senedd Cymru after the four-month deadline mentioned in sub-paragraph (2)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.
- 15 (2B) Where sub-paragraph (2A) applies, the Auditor General for Wales must—
- 16 (a) before the four-month deadline mentioned in sub-paragraph (2)(b), lay before ~~the Assembly~~Senedd Cymru a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before ~~the Assembly~~Senedd Cymru before that deadline, and
- 20 (b) lay a copy of the certified accounts and report before ~~the Assembly~~Senedd Cymru as soon as reasonably practicable after that deadline.”
- 25

*Education Workforce Council*

- 4 Paragraph 21 of Schedule 1 to the Education (Wales) Act 2014 (anaw 5) is amended as follows.
- 5 ~~At the beginning of~~In sub-paragraph (4)(b),—
- 30 (a) ~~at the beginning~~ insert “(subject to sub-paragraph (4A))”;
- 31 (b) for “the National Assembly for Wales” substitute “Senedd Cymru”.
- 6 After sub-paragraph (4), insert—
- 35 “(4A) The Auditor General for Wales may lay a copy of the certified accounts and report before ~~the Assembly~~Senedd Cymru after the four-month deadline mentioned in sub-paragraph (4)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

(4B) Where sub-paragraph (4A) applies, the Auditor General for Wales must—

- (a) before the four-month deadline mentioned in sub-paragraph (4)(b), lay before ~~the Assembly~~ *Senedd Cymru* a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before ~~the Assembly~~ *Senedd Cymru* before that deadline, and
- (b) lay a copy of the certified accounts and report before ~~the Assembly~~ *Senedd Cymru* as soon as reasonably practicable after that deadline.”

### *Estyn*

Paragraph 6 of Schedule 6 to the Government of Wales Act 1998 (c. 38) is amended as follows.

~~At the beginning of~~ In sub-paragraph (2)(b)—

- (a) ~~at the beginning~~ insert “(subject to sub-paragraph (2A))”;
- (b) ~~for “Assembly”~~ substitute “*Senedd Cymru*”.

After sub-paragraph (2), insert—

“(2A) The Auditor General for Wales may lay a copy of the certified accounts and report before ~~the Assembly~~ *Senedd Cymru* after the four-month deadline mentioned in sub-paragraph (2)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

(2B) Where sub-paragraph (2A) applies, the Auditor General for Wales must—

- (a) before the four-month deadline mentioned in sub-paragraph (2)(b), lay before ~~the Assembly~~ *Senedd Cymru* a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before ~~the Assembly~~ *Senedd Cymru* before that deadline, and
- (b) lay a copy of the certified accounts and report before ~~the Assembly~~ *Senedd Cymru* as soon as reasonably practicable after that deadline.”

### *Future Generations Commissioner*

Paragraph 21 of Schedule 2 to the Well-being of Future Generations (Wales) Act 2015 (anaw 2) is amended as follows.

~~At the beginning of~~ In sub-paragraph (2)(b)—

- (a) ~~at the beginning~~ insert “(subject to sub-paragraph (2A))”;
- (b) ~~for “the National Assembly”~~ substitute “*Senedd Cymru*”.

12 After sub-paragraph (2), insert –

“(2A) The Auditor General may lay a copy of the certified accounts and report before ~~the National Assembly~~ *Senedd Cymru* after the four-month deadline mentioned in sub-paragraph (2)(b) where it is not reasonably practicable for the Auditor General to meet that deadline.

(2B) Where sub-paragraph (2A) applies, the Auditor General must –

(a) before the four-month deadline mentioned in sub-paragraph (2)(b), lay before ~~the National Assembly~~ *Senedd Cymru* a statement explaining why it is not reasonably practicable for the Auditor General to lay a copy of the certified accounts and report before ~~the National Assembly~~ *Senedd Cymru* before that deadline, and

(b) lay a copy of the certified accounts and report before ~~the National Assembly~~ *Senedd Cymru* as soon as reasonably practicable after that deadline.”

*Health Education & Improvement Wales, Local Health Boards and NHS trusts*

13 Section 61 of the Public Audit (Wales) Act 2004 (c. 23) is amended as follows.

14 ~~At the beginning of~~ *In* subsection (2)(b), –

(a) ~~at the beginning~~ insert “(subject to subsection (2A))”;

(b) for “the National Assembly for Wales” substitute “*Senedd Cymru*”.

15 After subsection (2), insert –

“(2A) The Auditor General for Wales may lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~ *Senedd Cymru* after the four-month deadline mentioned in ~~sub-paragraph~~ *subsection* (2)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

(2B) Where subsection (2A) applies, the Auditor General for Wales must –

(a) before the four-month deadline mentioned in subsection (2)(b), lay before ~~the National Assembly for Wales~~ *Senedd Cymru* a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~ *Senedd Cymru* before that deadline, and

(b) lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~ *Senedd Cymru* as soon as reasonably practicable after that deadline.”



*Local Democracy and Boundary Commission for Wales*

16 Section 19 of the Local Government (Democracy) (Wales) Act 2013 (anaw 4) is amended as follows.

17 ~~At the beginning of~~In subsection (4)(b),—

5 (a) ~~at the beginning~~ insert “(subject to subsection (4A))”;

(b) for “the National Assembly for Wales” substitute “Senedd Cymru”.

18 After subsection (4), insert—

10 “(4A) The Auditor General for Wales may lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~~~Senedd Cymru~~ after the ~~four-4~~ month deadline mentioned in ~~sub-paragraph~~subsection (4)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

(4B) Where subsection (4A) applies, the Auditor General for Wales must—

15 (a) before the ~~four-4~~ month deadline mentioned in subsection (4)(b), lay before ~~the National Assembly for Wales~~~~Senedd Cymru~~ a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~~~Senedd Cymru~~ before that deadline, and

20 (b) lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~~~Senedd Cymru~~ as soon as reasonably practicable after that deadline.”

~~*National Assembly for Wales*~~*Senedd Commission*

19 Section 137 of the Government of Wales Act 2006 (c. 32) is amended as follows.

25 20 At the beginning of subsection (5)(b), insert “(subject to subsection (5A))”.

21 After subsection (5), insert—

30 “(5A) The Auditor General may lay a copy of the certified accounts and report before the ~~Assembly~~~~Senedd~~ after the four-month deadline mentioned in subsection (5)(b) where it is not reasonably practicable for the Auditor General to meet that deadline.

(5B) Where subsection (5A) applies, the Auditor General must—

35 (a) before the four-month deadline mentioned in subsection (5)(b), lay before the ~~Assembly~~~~Senedd~~ a statement explaining why it is not reasonably practicable for the Auditor General to lay a copy of the certified accounts and report before the ~~Assembly~~~~Senedd~~ before that deadline, and

(b) lay a copy of the certified accounts and report before the ~~Assembly~~~~Senedd~~ as soon as reasonably practicable after that deadline.”

*Natural Resources Wales*

22 Paragraph 23 of Schedule 1 to the Natural Resources Body for Wales (Establishment)  
Order 2012 (S.I. 2012/1903 (W. 230)) is amended as follows.

23 ~~At the beginning of~~In sub-paragraph (5)(c),—

5 (a) ~~at the beginning~~ insert “(subject to sub-paragraph (6))”;

(b) for “the National Assembly for Wales” substitute “Senedd Cymru”.

24 After sub-paragraph (5), insert—

10 “(6) The Auditor General for Wales may lay a copy of the certified  
accounts and report before ~~the National Assembly for Wales~~~~Senedd~~  
~~Cymru~~ after the ~~four~~4 month deadline mentioned in sub-paragraph  
(5)(c) where it is not reasonably practicable for the Auditor General  
for Wales to meet that deadline.

(7) Where sub-paragraph (6) applies, the Auditor General for Wales  
must—

15 (a) before the ~~four~~4 month deadline mentioned in sub-paragraph  
(5)(c), lay before ~~the National Assembly for Wales~~~~Senedd~~  
~~Cymru~~ a statement explaining why it is not reasonably  
practicable for the Auditor General for Wales to lay a copy of  
the certified accounts and report before ~~the National Assembly~~  
20 ~~for Wales~~~~Senedd Cymru~~ before that deadline, and

(b) lay a copy of the certified accounts and report before ~~the~~  
~~National Assembly for Wales~~~~Senedd Cymru~~ as soon as  
reasonably practicable after that deadline.”

*Older People’s Commissioner*

25 25 Paragraph 12 of Schedule 1 to the Commissioner for Older People (Wales) Act 2006 (c. 30)  
is amended as follows.

26 ~~At the beginning of~~In sub-paragraph (2)(b),—

(a) ~~at the beginning~~ insert “(subject to sub-paragraph (2A))”;

(b) for “the Assembly” substitute “Senedd Cymru”.

30 27 After sub-paragraph (2), insert—

35 “(2A) The Auditor General for Wales may lay a copy of the certified  
accounts and report before ~~the Assembly~~~~Senedd Cymru~~ after the four-  
month deadline mentioned in sub-paragraph (2)(b) where it is not  
reasonably practicable for the Auditor General for Wales to meet that  
deadline.

(2B) Where sub-paragraph (2A) applies, the Auditor General for Wales  
must—

- (a) before the four-month deadline mentioned in sub-paragraph (2)(b), lay before ~~the Assembly~~*Senedd Cymru* a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before ~~the Assembly~~*Senedd Cymru* before that deadline, and
- (b) lay a copy of the certified accounts and report before ~~the Assembly~~*Senedd Cymru* as soon as reasonably practicable after that deadline.”

#### 10 Qualifications Wales

28 Paragraph 33 of Schedule 1 to the Qualifications Wales Act 2015 (anaw 5) is amended as follows.

29 ~~At the beginning of~~*In* sub-paragraph (2)(b);—

(a) *at the beginning* insert “(subject to sub-paragraph (3))”;

(b) for “the National Assembly for Wales” substitute “*Senedd Cymru*”.

30 After sub-paragraph (2), insert—

“(3) The Auditor General may lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~*Senedd Cymru* after the ~~four~~*4* month deadline mentioned in sub-paragraph (2)(b) where it is not reasonably practicable for the Auditor General to meet that deadline.

(4) Where sub-paragraph (3) applies, the Auditor General must—

(a) before the ~~four~~*4* month deadline mentioned in sub-paragraph (2)(b), lay before ~~the National Assembly for Wales~~*Senedd Cymru* a statement explaining why it is not reasonably practicable for the Auditor General to lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~*Senedd Cymru* before that deadline, and

(b) lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~*Senedd Cymru* as soon as reasonably practicable after that deadline.”

#### Social Care Wales

31 Paragraph 16 of Schedule 2 to the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) is amended as follows.

32 ~~At the beginning of~~*In* sub-paragraph (4)(b);—

(a) *at the beginning* insert “(subject to sub-paragraph (5))”;

(b) for “the National Assembly for Wales” substitute “*Senedd Cymru*”.

33 After sub-paragraph (4), insert—

“(5) The Auditor General for Wales may lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~ *Senedd Cymru* after the ~~four~~ 4 month deadline mentioned in sub-paragraph (4)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

(6) Where sub-paragraph (5) applies, the Auditor General for Wales must—

(a) before the ~~four~~ 4 month deadline mentioned in sub-paragraph (4)(b), lay before ~~the National Assembly for Wales~~ *Senedd Cymru* a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~ *Senedd Cymru* before that deadline, and

(b) lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~ *Senedd Cymru* as soon as reasonably practicable after that deadline.”

#### *Welsh Consolidated Fund*

34 Section 132 of the Government of Wales Act 2006 is amended as follows.

35 At the beginning of subsection (5)(b), insert “(subject to subsection (5A))”.

36 After subsection (5), insert—

“(5A) The Auditor General may lay a copy of the certified accounts and report before the *Assembly* *Senedd* after the four-month deadline mentioned in subsection (5)(b) where it is not reasonably practicable for the Auditor General to meet that deadline.

(5B) Where subsection (5A) applies, the Auditor General must—

(a) before the four-month deadline mentioned in subsection (5)(b), lay before the *Assembly* *Senedd* a statement explaining why it is not reasonably practicable for the Auditor General to lay a copy of the certified accounts and report before the *Assembly* *Senedd* before that deadline, and

(b) lay a copy of the certified accounts and report before the *Assembly* *Senedd* as soon as reasonably practicable after that deadline.”

#### *Welsh Language Commissioner*

37 Paragraph 19 of Schedule 1 to the Welsh Language (Wales) Measure 2011 (nawm 1) is amended as follows.

38 ~~At the beginning of~~ In sub-paragraph (2)(b),—

(a) ~~at the beginning~~ insert “(subject to sub-paragraph (2A))”;

(b) for “the National Assembly for Wales” substitute “*Senedd Cymru*”.

39 After sub-paragraph (2), insert –

“(2A) The Auditor General for Wales may lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~ **Senedd Cymru** after the four-month deadline mentioned in sub-paragraph (2) (b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

(2B) Where sub-paragraph (2A) applies, the Auditor General for Wales must –

(a) before the four-month deadline mentioned in sub-paragraph (2)(b), lay before ~~the National Assembly for Wales~~ **Senedd Cymru** a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~ **Senedd Cymru** before that deadline, and

(b) lay a copy of the certified accounts and report before ~~the National Assembly for Wales~~ **Senedd Cymru** as soon as reasonably practicable after that deadline.”

#### *Welsh Ministers*

40 Section 131 of the Government of Wales Act 2006 is amended as follows.

41 At the beginning of subsection (6)(b), insert “(subject to subsection (6A))”.

42 After subsection (6), insert –

“(6A) The Auditor General may lay a copy of the certified accounts and report before the **Assembly** **Senedd** after the four-month deadline mentioned in subsection (6)(b) where it is not reasonably practicable for the Auditor General to meet that deadline.

(6B) Where subsection (6A) applies, the Auditor General must –

(a) before the four-month deadline mentioned in subsection (6)(b), lay before the **Assembly** **Senedd** a statement explaining why it is not reasonably practicable for the Auditor General to lay a copy of the certified accounts and report before the **Assembly** **Senedd** before that deadline, and

(b) lay a copy of the certified accounts and report before the **Assembly** **Senedd** as soon as reasonably practicable after that deadline.”

#### *Welsh Revenue Authority*

43 Section 31 of the Tax Collection and Management (Wales) Act 2016 (anaw 6) is amended as follows.

44 ~~At the beginning of~~ In subsection (2)(b), –

(a) ~~at the beginning~~ insert “(subject to subsection (2A))”;

(b) for “the National Assembly for Wales” substitute “Senedd Cymru”.

45 After subsection (2), insert –

5 “(2A) The Auditor General for Wales may lay a copy of the certified accounts and Tax Statement and reports on them before ~~the National Assembly for Wales~~ *Senedd Cymru* after the ~~four~~4 month deadline mentioned in subsection (2)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

(2B) Where subsection (2A) applies, the Auditor General for Wales must –

10 (a) before the ~~four~~4 month deadline mentioned in subsection (2)(b), lay before ~~the National Assembly for Wales~~ *Senedd Cymru* a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and Tax Statement and reports on them before ~~the National Assembly for Wales~~ *Senedd Cymru* before that deadline, and

15 (b) lay a copy of the certified accounts and Tax Statement and reports on them before ~~the National Assembly for Wales~~ *Senedd Cymru* as soon as reasonably practicable after that deadline.”

#### *Whole of Government of Wales account*

20 46 Section 142 of the Government of Wales Act 2006 is amended as follows.

47 At the beginning of subsection (2)(b), insert “(subject to subsection (2A))”.

48 After subsection (2), insert –

25 “(2A) The Auditor General may lay a copy of the certified accounts and report before the ~~Assembly~~ *Senedd* after the four-month deadline mentioned in subsection (2)(b) where it is not reasonably practicable for the Auditor General to meet that deadline.

(2B) Where subsection (2A) applies, the Auditor General must –

30 (a) before the four-month deadline mentioned in subsection (2)(b), lay before the ~~Assembly~~ *Senedd* a statement explaining why it is not reasonably practicable for the Auditor General to lay a copy of the certified accounts and report before the ~~Assembly~~ *Senedd* before that deadline, and

35 (b) lay a copy of the certified accounts and report before the ~~Assembly~~ *Senedd* as soon as reasonably practicable after that deadline.”

SCHEDULE 2  
(introduced by section 18)

RENAMING PROVISIONS

- 1 Subject to paragraph 2, the provisions of the 2013 Act are amended as follows –
- 5 (a) for “National Assembly”, in each place where it appears, substitute “Senedd”;
- (b) for “Assembly”, in each place where it appears, substitute “Senedd”.
- 2 The following provisions of the 2013 Act are not amended by paragraph 1 –
- (a) the long title and words of enactment;
- (b) references to Assembly Measures in section 32;
- 10 (c) Schedule 3;
- (d) Schedule 4.
- 3 In this Schedule, references to “provisions” includes section titles.

**SCHEDULE 3**  
*(introduced by section 19)*

**CONSEQUENTIAL AMENDMENTS**

*Education Act 1997 (c. 44)*

- 5 1 In subsection (6) of section 41A of the Education Act 1997, omit the words from “(which” to the end of that subsection.

*Government of Wales Act 1998 (c. 38)*

- 2 The Government of Wales Act 1998 is amended as follows.
- 3 In section 145C(3), omit the words “(which may not exceed the full cost incurred in  
10 undertaking the programme),”.
- 4 In section 145D, omit subsection (2A).

*Public Audit (Wales) Act 2004 (c.23)*

- 5 The Public Audit (Wales) Act 2004 is amended as follows.
- 6 In section 20, omit subsection (5A).
- 15 7 In subsection 45(8), omit the words from “(but” to the end of that subsection.
- 8 In section 64F, omit subsection (10).
- 9 In section 67A, omit subsection (3).

~~*Government of Wales Act 2006 (c. 32)*~~

~~10 — In section 144(2) of the Government of Wales Act 2006, omit paragraph (g).~~

20 *Local Government (Wales) Measure 2009 (nawm 2)*

- ~~11~~10 In section 27 of the Local Government (Wales) Measure 2009, omit subsection (4A).

*Local Democracy, Economic Development and Construction Act 2009 (c. 20)*

- ~~12~~11 In subsection (4A) of section 50 of the Local Democracy, Economic Development and Construction Act 2009, omit the words from “But” to the end of that subsection.



SCHEDULE 34  
(introduced by section 1920)

TRANSITIONAL ARRANGEMENTS

*Fees for provision of services*

- 5 | 1 (1) This paragraph applies ~~whereto~~ any arrangements ~~are~~ made between the WAO and a relevant authority under section 19 of the 2013 Act ~~which are subsisting~~ immediately before the coming into force of section 2 (fees for provision of services).
- ~~(2) An arrangement made between the WAO and a relevant authority has effect until the arrangement comes to an end (subject to any earlier termination).~~
- 10 | (32) The 2013 Act applies with the following modifications ~~in relation to an arrangement continued by sub-paragraph (2) –~~
- (a) section 19 of the 2013 Act has effect as if it had not been amended by this Act, and
  - (b) sections 23 and 24 of the 2013 Act have effect as if they had not been amended by this Act.

15 | *Scheme for charging of fees*

- 2 | (1) This paragraph applies ~~where~~ to the scheme for charging fees ~~approved by the Senedd~~ under section 24 of the 2013 Act ~~which~~ has effect immediately before the coming into force of section 4 (scheme for charging of fees).
- ~~(2) A scheme continues to have effect until a new scheme comes into effect.~~
- 20 | (32) The 2013 Act applies with the following modifications ~~in relation to a scheme continued by sub-paragraph (2) –~~
- (a) section 24 of the 2013 Act has effect as if it had not been amended by this Act, ~~and~~
  - (b) sections 19 and 23 of the 2013 Act have effect as if they had not been amended by this Act, ~~and~~
  - 25 | (c) section 19 and Schedule 3 do not have effect.

*Auditors of the WAO*

- 3 | (1) This paragraph applies ~~where~~ an appointment of a person ~~as~~ to the current auditor appointed by the Senedd ~~in relation to the accounts of the WAO~~ has effect under paragraph 34 of Schedule 1 to the 2013 Act ~~immediately~~ before the coming into force of section 14 (WAO accounts and auditors of the WAO).
- 30 | (2) ~~The appointment of a person as an auditor of the WAO continues to have effect until the end of the period for which the appointment was made (subject to any earlier termination)~~ Paragraph 34 of Schedule 1 to the 2013 Act has effect as if it had not been amended by this Act.

# Annex B: Draft Explanatory Notes (post-consultation)

## Draft Public Audit (Amendment) (Wales) Bill

### Explanatory Notes

#### INTRODUCTION

These Explanatory Notes relate to the [Draft] Public Audit (Amendment) (Wales) Act 2020[ ] which was passed by ~~the National Assembly for Wales~~ Senedd Cymru on [ ] and received Royal Assent on [ ]. They have been prepared in order to assist the reader of the Act. The Explanatory Notes should be read in conjunction with the Act but are not part of it.

The following terms and abbreviations are used in the Explanatory Notes –

**2013 Act** – the Public Audit (Wales) Act 2013 anaw 3

**The National Assembly** ~~Senedd~~ – ~~the National Assembly for Wales~~ Senedd Cymru

**AGW** – the Auditor General for Wales

**WAO** – the Wales Audit Office

#### PART 1 INTRODUCTION

##### Section 1 – Overview

The Act comprises ~~2021~~ 2021 sections and ~~34~~ 34 schedules. As set out in section 1 (which is not intended to have any legal effect), the provisions –

- remove the general prohibition on the WAO charging fees that exceed the full cost of exercising the function to which the fee relates (sections 2 and 3);
- require the WAO to include in a fees scheme a provision that seeks to ensure that the sum of the fees charged to each person for work undertaken functions exercised under specified enactments, taken together and taking one year with another, is broadly equivalent to all of its expenditure costs relating to that person for that work in respect of those functions (excluding any costs reimbursed from other sources) (sections ~~3 and 4~~ 3 and 4);
- require the National Assembly Senedd to publish a list of offices, positions, agreements and other arrangements that require consultation before they are taken up or entered into by a former Auditor General AGW only where the National Assembly Senedd has specified any office, position, agreement or arrangement (section 5);
- remove or amend consultation requirements in relation to the appointment of the Auditor General AGW and members of the WAO (including the chair) and add a discretion for the National Assembly Senedd to consult with persons it deems appropriate before exercising functions in relation to the Auditor General AGW or the WAO (section 6);
- make provision relating to the appointment, re-appointment and termination of appointment, as well as remuneration and terms of appointment, of members of the WAO (including the chair) (sections 7 – 12);

- amend the quorum requirements in relation to WAO meetings [\(section 13\)](#);
- make provision relating to the appointment of auditors of the WAO so that the WAO is required to appoint its auditors instead of the [National Assembly Senedd \(section 14\)](#);
- co-ordinate the laying of the annual report on the exercise of functions of the [Auditor General AGW](#) and the WAO with the laying of the audited accounts of the WAO [\(section 15\)](#);
- remove the requirement for the [Auditor General AGW](#) and the chair of the WAO to jointly prepare and lay interim reports before the [National Assembly Senedd](#) on the exercise of their functions [\(section 16\)](#);
- [make provision for the extension of reporting deadlines \(section 17 and Schedule 1\)](#);
- [make amendments to the 2013 Act to update references to the former names of the Senedd and Senedd Commission \(section 18 and Schedule 2\)](#).

## **PART 2 AMENDMENTS TO THE PUBLIC AUDIT (WALES) ACT 2013**

### **Section 2 - Fees for provision of services**

This section amends section 19 of the 2013 Act.

Subsection (2) amends section 19(5)(a) of the 2013 Act to clarify that the potential to raise funds is not regarded in itself to facilitate, or be conducive to, the exercise of the functions of the AGW or the WAO.

Subsection (3) enables the WAO to continue to charge fees for the provision of services or functions exercised by agreement under section 19 of the 2013 Act. As section 3 (see below) removes the charging of fees for work under section 19 of the 2013 Act, subsection (3) is a necessary replacement provision for the charging of fees.

Subsection (4) [amends section 19\(7\) of the 2013 Act to remove superfluous provision relating to the permissibility of arrangements made under this section including terms about payment. As subsection \(3\) inserts a new express power for the WAO to charge a fee in relation to services provided or functions exercised under section 19 of the 2013 Act, this clarification is unnecessary.](#)

[Subsection \(5\)](#) releases the WAO from the obligation to set fees for such work in accordance with a fee scheme (prepared under section 24 of the 2013 Act).

### **Section 3 - General provision relating to fees**

This section removes the prohibition on fees charged under those enactments listed in section 23(3) of the 2013 Act from exceeding the full cost of the function to which they relate ~~and replaces it with the concept of "broad equivalence"~~.

Subsection (2) repeals the power to charge fees for work under section 19 of the 2013 Act from section 23 of the 2013 Act. As explained above, section 2 of the Act replaces this provision with an equivalent power in section 19 of the 2013 Act. The net effect of these changes relating to fees charged under section 19 of the 2013 Act is that they may be set at a level above the related expenditure.

Subsection (3) ~~omits the restriction on fees charged under section 23 of the 2013 Act which provides that such fees may not exceed the full cost of exercising the function to which the fee relates. This requirement in respect of charging fees is replaced by the new concept of “broad equivalence” (see section 4 below).~~ introduces the “broad equivalence” basis used for calculating fees and subsection (4) provides for a definition of “broad equivalence” to be inserted into the 2013 Act. ~~Broad equivalence means that the WAO must seek to ensure that the sum of the fees charged to any person for all of the work undertaken under the enactments listed in section 24(1) of the 2013 Act, taken together and taking one year with another, is broadly equivalent to all of its expenditure in connection with that work attributable to that person.~~

#### **Section 4 - Scheme for charging of fees**

This section amends section 24 of the 2013 Act. ~~The amendment are necessary to reflect the changes to fees made by section 2 and 3.~~

Subsection (2) reflects that, following the amendments made by sections 2, ~~and 3~~ and this section 4, fees for work under section 19 of the 2013 Act are not subject to the requirement that fees do not exceed cost and the requirements of the fee scheme prepared under section 24 of the 2013 Act.

Subsection (3) introduces the “broad equivalence” basis used for calculating fees and requires that the fee scheme includes provision that the WAO must charge fees on that basis.

Subsection (4) provides for a definition of “broad equivalence” to be inserted into the 2013 Act by inserting new subsections 24(9) and (10) into the 2013 Act.:

As provided in new subsection (9), broad equivalence means that the WAO must seek to ensure that the sum of the fees charged for any functions exercised in relation to a person under the enactments listed in section 24(1) of the 2013 Act, taken together and taking one year with another, is broadly equivalent to all of its costs attributable to that person in connection with those functions.

New subsection (10) provides that, in calculating costs attributable to a person for the purposes of subsection (9), the WAO must not include any costs which are reimbursed from other sources, including from the Welsh Consolidated Fund.

#### **Section 5 - Employment etc of former Auditor General and remuneration**

This section amends section 5 of the 2013 Act in relation to the mandatory obligation to publish a list of offices, positions, agreements and arrangements

specified by the [National Assembly Senedd](#) under section 5(2) of the 2013 Act, and to remove ambulatory wording.

Section 5(3) of the 2013 Act requires the [National Assembly Senedd](#) to publish a list of offices, positions, agreements and arrangements in respect of which a former Auditor General must consult any person specified by the [National Assembly Senedd](#) prior to taking up or entering into, as the case may be. The [National Assembly Senedd](#) has a discretion when considering whether to specify an office, position, agreement or arrangement and it can therefore be the case that there are no such specified offices, positions, agreements and arrangements. Subsection (2) inserts wording to section 5(3)(a) and (b) of the 2013 Act in order to clarify that a list must be published where an office, position, agreement or arrangement has been specified by the [National Assembly Senedd](#). The effect is that the [National Assembly Senedd](#) is not required to publish a list if it has not specified an office, position, agreement or arrangement for the purposes of section 5(2) of the 2013 Act.

Subsection (3) removes an ambulatory reference that is not considered necessary.

## **Section 6 - Consultation requirements**

This section makes various amendments in relation to consultation requirements under the 2013 Act.

Subsections (2), (4)(a), (4)(b) and (4)(d) remove obligations on the [National Assembly Senedd](#) to consult the First Minister before:

- making remuneration arrangements for the AGW;
- appointing a chair of the WAO;
- making remuneration arrangements for the chair of the WAO; and
- terminating appointment of a chair of the WAO.

These amendments seek to strengthen the independence of the AGW and the WAO.

Subsections (3) and (4)(c) replace a requirement for the [National Assembly Senedd](#) to consult with “an appropriate person with oversight of public appointments” before determining terms and conditions, including remuneration, of non-executive members of the WAO with provision confirming that the [National Assembly Senedd](#) may consult with any persons it deems appropriate when exercising any functions in relation to the AGW or the WAO.

## **Sections 7 to 12 - Appointments to the board of the WAO**

These sections amend Part 2 of Schedule 1 to the 2013 Act relating to the appointment of non-executive members of the WAO.

Section 7 amends paragraph 4 of Schedule 1 to the 2013 Act. It provides that the National Assembly Senedd may extend the appointment of a serving non-executive member for up to ~~one further term~~ four years per extension, subject to the existing restriction (formerly contained in paragraph 6 of Schedule 1 to the 2013 Act) that no person may serve more than a maximum of eight years as a non-executive member. ~~The requirement that an appointment of a non-executive member must be based on a fair and open competition has been removed from paragraph 4. This allows an extension of the appointment without needing to undertake a fair and open competition before determining whether to extend a non-executive member's appointment.~~

Section 8 clarifies that if the National Assembly Senedd extends an appointment of the chair, the period of extension must not exceed the chair's remaining term of office as a non-executive member of the Board.

Section 9 omits paragraph 6 of Schedule 1 to the 2013 Act, the provisions of which have been substantively re-enacted in the amended paragraph 4 of Schedule 1 to the 2013 Act.

Sections 10 and 11 ~~Act~~ amend paragraphs ~~10-7~~ and ~~11-17~~ of Schedule 1 and paragraph 11 of Schedule 2 to the 2013 Act. Subsection (2)(a) removes reference to redundant provisions that have been deleted by the Act. Subsections (2)(b), (3) and (4) remove ambulatory references that are not considered necessary. Subsection 2(c) provides that the National Assembly Senedd may amend the remuneration arrangements for non-executive members (which includes the chair). This allows the National Assembly Senedd to revise such arrangements in circumstances where it may decide to extend those appointments in accordance with amended paragraphs 4 and 5 of Schedule 1 of the 2013 Act.

Section 12 makes amendments to the termination of appointments provisions contained in paragraphs 10 and 12 of Schedule 1 to the 2013 Act. Subsection (2) provides that a resignation is effective when received. Subsection (3) provides that the circumstances in which the National Assembly Senedd may terminate the appointment of the chair of the WAO include where the chair is unable or unfit to carry out the functions of that office, in addition to where the chair has failed to comply with terms of appointment or is otherwise unwilling to continue.

### **Section 13 – Quorum for WAO meetings**

Section 13 modifies paragraph 28 of Schedule 1 to the 2013 Act in order to ~~provide for the possibility of rules which permit the chair to request that the employee members nominate an employee member to take on an observer role if the majority of members present at a meeting of the WAO are not non-executive members~~ permit the WAO's procedural rules to specify that employee members present at a meeting but not voting do not count as being present for the purpose of the quorum. The effect of this provision is to provide for a mechanism which allows a meeting of the WAO to continue if that meeting is not otherwise quorate because there is not a majority of non-executive members, as required by paragraph 28(3) of Schedule 1 to the 2013 Act. The

provision also has the effect of not requiring an employee member to leave a meeting of the WAO in order for the meeting to be quorate.

#### **Section 14 - WAO accounts and auditors of the WAO**

Section 14 amends paragraphs 33 and 34 of Schedule 1 to the 2013 Act. Subsection (2) removes an ambulatory reference that is not considered necessary. Subsections (3) and (4) require the WAO to appoint a person as auditor of its accounts in place of the [National Assembly Senedd](#) being required to do so, but retains oversight and scrutiny by the [National Assembly Senedd](#) in relation to the auditor by requiring the [National Assembly Senedd](#)'s approval of the appointment, associated terms of appointment and the method of procurement of the auditor.

#### **Section 15 - Laying of reports etc. before the [National Assembly Senedd](#)**

Section 15 amends provisions of the 2013 Act in relation to the laying of reports before the [National Assembly Senedd](#).

Subsection (2) amends paragraph 35 of Schedule 1 to the 2013 Act so that the auditor of the WAO must lay the annual report, which is provided by the AGW and the chair of the WAO in accordance with paragraph 3 of Schedule 2 to the 2013 Act, before the [National Assembly Senedd](#) at the same time as laying the statement of accounts and any report.

Subsection (3) amends paragraph 3(6) of Schedule 2 to the 2013 Act, to require the AGW and the chair of the WAO to provide the WAO annual report, as soon as practicable to the auditor appointed under paragraph 34 of Schedule 1 to the 2013 Act and in any event no later than 5 months after the end of the financial year to which the annual report relates. The effect of this provision is to avoid duplicated laying obligations.

#### **Section 16 - Interim reports**

Section 16 amends the requirements for the AGW and the chair of the WAO to jointly prepare interim reports on the exercise of functions at least once during each financial year to a requirement to prepare such reports only when requested to do so by the [National Assembly Senedd](#).

### **PART 3 GENERAL**

#### **Section 17 - Laying deadlines for certified accounts**

Section 17 gives effect to Schedule 1 (account reporting deadlines), which sets out amendments to existing legislation relating to laying of certified accounts and reports.

## **Section 18 - Consequential amendments Renaming provisions**

Section 18 gives effect to Schedule 2 (renaming provisions), which makes a number of textual amendments to the 2013 Act to reflect name changes made by Part 2 of the Senedd and Elections (Wales) Act 2020 anaw 1.

Subsection (2) replaces definitions in section 32 (Interpretation) of the 2013 Act as a consequence of the renaming, and additionally removes a superfluous definition of “Welsh Government”.

## **Section ~~18~~19 - Consequential amendments**

Section ~~18~~19 gives effect to Schedule ~~23~~ (consequential amendments), which makes consequential amendments.

## **Section ~~19~~20 - Transitional arrangements**

Section ~~19~~20(1) gives effect to Schedule ~~34~~ (transitional arrangements), which sets out the principal transitional provisions.

Section ~~33~~20(2) enables the Welsh Ministers, by order, to make further transitional, transitory or saving provision as they think appropriate in connection with the commencement of the Act.

## **Section ~~20~~21 - Short title and commencement**

Section ~~20~~21 provides for all the provisions of the Act to come into force [two months] after the day the Act receives Royal Assent. It also provides that the short title of the Act is the Public Audit (Amendment) Wales Act 20~~2~~[ ].

## **SCHEDULE 1 - ACCOUNTS REPORTING AND LAYING DEADLINES**

This Schedule sets out amendments to legislation containing deadlines for laying accounts before the National AssemblySenedd. In relation to the Welsh Revenue Authority, these provisions apply to the Tax Statement in addition to the certified accounts and reports. In each case, the AGW may lay a copy of the certified accounts and report before the National AssemblySenedd after the deadline specified under the relevant legislation where it is not reasonably practicable for the AGW to meet the specified deadline. Where the AGW seeks to rely on that provision and lay a copy of the certified accounts and report after the specified deadline, the AGW must lay before the National AssemblySenedd a statement explaining why it is not reasonably practicable for the AGW to lay a copy of the certified accounts and report before the specified deadline. The AGW must lay a copy of the certified accounts and report before the National AssemblySenedd as soon as reasonably practicable after that deadline.



The effect of these provisions is to provide flexibility in the event that the strict statutory requirements are breached in order for the AGW to comply with auditing professional standards (i.e. in circumstances where the relevant audited body should be given an opportunity to comment on audit findings prior to publication).

Amendments are made in relation to the Welsh Consolidated Fund and the whole of Government of Wales account, as well as to the laying deadlines for the following audited bodies–

- Children’s Commissioner for Wales;
- Education Workforce Council;
- Estyn;
- Future Generations Commissioner;
- Health Education & Improvement Wales;
- Local Health Boards;
- NHS trusts;
- Local Democracy and Boundary Commission for Wales;
- ~~National Assembly for Wales~~Senedd Commission;
- Natural Resources Wales;
- Older People’s Commissioner;
- Qualifications Wales;
- Social Care Wales;
- Welsh Language Commissioner;
- Welsh Ministers; and
- Welsh Revenue Authority.

## **SCHEDULE 2 - RENAMING PROVISIONS**

This Schedule updates various references in the 2013 Act to reflect that the:

- National Assembly for Wales was renamed Senedd Cymru/the Welsh Parliament; and
- National Assembly for Wales Commission was renamed Senedd Commission.

by Part 2 of the Senedd and Elections (Wales) Act 2020 anaw 1.

## **SCHEDULE 23 - CONSEQUENTIAL AMENDMENTS**

This Schedule sets out the consequential amendments to primary legislation to give effect to the Act. Those amendments relate to various fee charging powers to be found in enactments other than section 23(b) of the 2013 Act and related prohibitions on fees exceeding the full cost of the functions to which they relate. The amendments remove these prohibitions in line with the changes to sections 23 and 24 of the 2013 Act.

Consequential amendments are made to the–

- Education Act 1997;
- Government of Wales Act 1998;

- Public Audit (Wales) Act 2004;
- ~~Government of Wales Act 2006;~~
- Local Government (Wales) Measure 2009;
- Local Democracy, Economic Development and Construction Act 2009.

## **SCHEDULE ~~34~~ - TRANSITIONAL ARRANGEMENTS**

### **Paragraph 1 - Fees for provision of services**

Paragraph 1 means that if arrangements are in place between the WAO and a relevant authority under section 19 of the 2013 Act on the date on which the amendments to the 2013 Act come into force, those arrangements will continue to be governed by the provisions in force prior to the amendments coming into force.

### **Paragraph 2 - Scheme for charging of fees**

Paragraph 2 means that if a scheme for charging fees under section 24 of the 2013 Act has effect on the date on which the amendments to the 2013 Act come into force, that scheme will continue until a new scheme comes into effect.

### **Paragraph 3 - Auditors of the WAO**

Paragraph 3 means that where an appointment of a person as an auditor in relation to the accounts of the WAO has effect on the date on which the amendments to the 2013 Act come into force, that appointment will continue to be governed by the provisions in force prior to the amendments coming into force.