

## Public Audit (Wales) Bill: Summary of changes made at Stage 2

### Introduction

This document sets out the main changes made to the **Public Audit (Wales) Bill** (“the Bill”) during Stage 2 proceedings.

### Background

The Bill was introduced by the Minister for Finance and Leader of the House, Jane Hutt AM, on **9 July 2012** and subsequently referred by the Business Committee to the **Public Accounts Committee** (“the committee”) for Stage 1 scrutiny.

The committee published its Stage 1 report in **November 2012**. The Constitutional and Legislative Affairs Committee published its **report** on the Bill’s subordinate legislation provisions in the same month. The Bill was approved unanimously at Stage 1 by the Assembly following a debate on its general principles in Plenary on **4 December 2012**.

Stage 2 commenced on 5 December. A total of 48 amendments were tabled (including two amendments to amendments, and 35 amendments tabled by the Welsh Government). The committee met to consider and dispose of the amendments on **28 January 2013**.

Further information about the Bill (as introduced) is available in a **Bill Summary** prepared by the Research Service.

### Amendments passed at Stage 2

A total of 38 amendments were agreed by the committee during Stage 2 proceedings. All of the Welsh Government’s amendments were agreed except for one, which fell (amendment 12 relating to employee members). Four non-Government amendments were agreed (including two that were amendments to Government amendments), four were withdrawn, and three were not moved. A further two non-Government amendments were withdrawn in advance of the meeting. The most significant changes made to the Bill are summarised below:

#### Scheme of delegation

- Amendments 1 and 2 removed the power of the Wales Audit Office (“WAO”) to approve the Auditor General for Wales’s (“AGW”) scheme of delegation or any revision of the scheme. The change means that the preparation of the scheme and any revision to it lies solely in the hands of the AGW, subject to consultation with the WAO.
- Amendment 3 required the AGW to consult with the WAO in preparing or revising a scheme. The WAO is the budget holder and employer of the staff who will be acting under the AGW’s delegation, and its views must be taken into account in developing the scheme, although the final arrangements will still come within the AGW’s discretion.

These changes followed recommendation 2 made by the committee in its Stage 1 report.

#### The provision of services

- Amendments 4 and 5 placed a duty on the WAO to consult with the AGW before entering into arrangements, and to take account of the Public Accounts Committee’s concerns about the quality assurance of those who would be exercising functions on the AGW’s behalf. The effect is that a person cannot exercise functions on behalf of the AGW unless that function is authorised and delegated by the AGW.

This followed recommendation 3 of the committee's Stage 1 report.

### The joint preparation of the Annual Plan

- Amendment 6 required the AGW and WAO jointly to prepare the annual plan, drawn up before each financial year, setting out the work programme, the resources and the use of those resources for the coming year.
- Amendment 7 removed the power given to the WAO under section 26 to reject the AGW's proposed work programme.

These changes followed recommendations 4 and 5 of the committee's Stage 1 report.

### Oversight arrangements

- Amendments 8, 23 and 24 were consequential in nature to make the oversight arrangements for the AGW and the corporate WAO consistent throughout the Bill. The determination of the oversight arrangements now rests with the Assembly, rather than the Public Accounts Committee.

### The composition of the WAO board

- Amendments 9, 9A, 10, 10A, 11, 12, 46, 13, 14, 15, 16, 17, 18, 20, 21 and 22 related to the composition of the WAO board, and addressed recommendations 9 and 10 of the committee's Stage 1 report. Many were of a consequential nature. Of the nine members of the WAO board, three will now be employee members to be appointed by the non-executive members (one through nomination by the AGW and two through staff ballot, conducted by the WAO).

### The employment of WAO staff

- Amendment 19 addressed recommendation 14 of the committee's Stage 1 report, removing the requirement in the Bill for the WAO to bring the recruitment and selection procedures and the terms of employment of WAO staff broadly in line with those of the Welsh Government. This means that the WAO is able to employ staff on its own terms.

### The transfer of staff to WAO

- Amendment 45 provided protection from unfair dismissal for staff transferring to the WAO, and the Minister stated that it was drafted to be slightly more favourable than the equivalent provision under the *Transfer of Undertakings (Protection of Employment) Regulations 2006* ("TUPE").

### Delegations

- Amendment 26 updates the *Government of Wales Act 1998* (as amended by the *Public Audit (Wales) Act 2004*) to ensure that, where it makes reference to a person acting on behalf of the auditor general, it includes an individual given authority to act on behalf of the auditor general by virtue of section 18 of the Bill.

### Freedom of Information Act 2000

- Amendment 43 makes the AGW the "qualified person" under section 36 of the *Freedom of Information Act 2000*, although section 21 of the Bill still provides for the WAO to be responsible for holding information acquired by the AGW.

### Data Matching

- Amendments 27, 28, 29, 30, 31, 32 and 33 were tabled following concerns raised by the committee that certain provisions might impede the AGW's ability to carry out a data-matching exercise. The Bill as introduced removed references to persons acting on behalf of the AGW and data-matching provisions in the *Public Audit (Wales) Act 2004*. The Government felt that the words were unnecessary

as any person acting by virtue of a delegation under s.18 could exercise the AGW's powers in relation to data matching, but the committee felt that their omission could raise doubts as to whether that person could exercise the same powers as the AGW. The amendments, therefore, were to remove any doubt.

## Commitments made by the Minister

During Stage 2 proceedings, the Minister made commitments to consider and discuss issues raised by the following amendments ahead of the Stage 3 debate. Details of these amendments are included below:

### The provision of services

- Amendment 44 was tabled by Aled Roberts AM, based on the committee's recommendation 3 in the Stage 1 report, in essence expressing concerns about the balance between the AGW and the WAO. The Minister asked the Member not to move the amendment on the understanding that the Government would table an amendment at Stage 3 to include further safeguards.

### The preparation of Interim Reports

- Jocelyn Davies AM tabled amendments 40 and 41, seeking to remove the requirement to produce two interim reports in addition to the annual report, which was considered overly burdensome. Amendment 40 was withdrawn and amendment 41 not moved on the understanding that the Minister would table an amendment at Stage 3 stating that 'at least one' interim report must be produced.

## The transfer of staff to the WAO

- Jocelyn Davies AM's amendments 35 and 36, relating to TUPE protection for staff transferring to the new organisation, were withdrawn and not moved (respectively) on the strength of the Minister's reiteration of her commitment to table three amendments at Stage 3 to deal with variations in employment contracts, trade union recognition, and preserving collective agreements.

## Next steps

An **amended version of the Bill** has been prepared by the Legislation Office.

Stage 3 began on 29 January 2013 (the day after Stage 2 proceedings were completed). Members have until 6pm on 26 February 2013 to table further amendments through the Legislation Office ([legislationoffice@wales.gov.uk](mailto:legislationoffice@wales.gov.uk)). Stage 3 proceedings will take place in Plenary on 5 March 2013.

## Further information

For further information on the Bill, please contact the Legislation Clerk, Sarah Beasley ([sarah.beasley@wales.gov.uk](mailto:sarah.beasley@wales.gov.uk)), on extension 8032.