

Bill Summary **Public Audit (Wales) Bill**

August 2012

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Bill Summary Public Audit (Wales) Bill

August 2012

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Cynulliad
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Bill Summary – *Public Audit (Wales) Bill*

1. Introduction

Introduction date: 9 July 2012

Member in charge: Jane Hutt AM, Minister for Finance and Leader of the House.

Assembly Committee undertaking Stage 1 scrutiny of the Bill: Public Accounts Committee

Stage 1 reporting deadline: 23 November 2012

The Auditor General for Wales (“AGW”) is the public service watchdog for Wales and provides assurance as to the probity and propriety of some £14 billion of public expenditure. The AGW covers the audit of all sectors of government in Wales, except in relation to non-devolved sectors which are reserved to the UK Government. The AGW also appoints the external auditors of Welsh local government bodies, including unitary authorities, police, probation, fire and rescue authorities, national parks and community councils in Wales. As well as carrying out financial audit, the AGW examines how public bodies manage and spend public money, including achieving value for money in the delivery of public services.

The AGW and staff appointed by him are known as the Wales Audit Office (WAO). The office of AGW is a corporation sole – all functions are vested in the office holder including the power to appoint staff, hold property and enter into contracts. The WAO currently has no separate legal status from that of the AGW. The introduction of the *Public Audit (Wales) Bill*¹ (“the Bill”) comes on the back of a series of developments over the past few years which have damaged the reputation of the AGW and WAO, along with the confidence of the Assembly in the robustness of the governance arrangements for that office and hence the current audit structures in Wales. The Welsh Government believes that this Bill will address the “pressing need to establish a set of arrangements that will restore the confidence of the public and, critically, audited bodies in the activities of the AGW and WAO”.²

The Explanatory Memorandum (“EM”) states that subject to the approval of the Bill by the Assembly, the Welsh Government intends that these new arrangements come into force by 1 April 2014.³ This paper includes some historical background information about the audit regime in Wales since devolution; provides an

¹ *Public Audit (Wales) Bill* [as introduced]

² Welsh Government, *Explanatory Memorandum: Public Audit (Wales) Bill*, July 2012, paragraph 19

³ Ibid, paragraph 35

overview of the Bill's main objectives and provisions; and summarises some initial reactions.

2. Timeline⁴

Before the establishment of the Assembly, the audit of public bodies in Wales was the responsibility of the Comptroller and Auditor General (“C&AG”) who was supported in his or her duties by the National Audit Office (“NAO”). The legal basis for this was the *National Audit Act 1983*,⁵ which established the NAO headed by the C&AG who is an Officer of the House of Commons (this office has existed since 1866 and, prior to the 1983 Act, the staff supporting the C&AG were civil servants - the Exchequer and Audit Department). The main effect of the 1983 Act was to transfer the staff of that Department from the Civil Service to the employment of the C&AG and to enshrine in law the ability of the C&AG to undertake value for money examinations. That Act also created a statutory Public Accounts Commission (comprising a number of MPs) to approve the budget of the NAO, monitor its spending and appoint its auditor.

2.1. *Audit and the early years of devolution (1999 – 2005)*

The *Government of Wales Act 1998* (“the 1998 Act”), which established the Assembly in **May 1999**, also established the office of Auditor General for Wales (“AGW”). The AGW was appointed by the Queen on the nomination of the Secretary of State and paid for by the Assembly (as then constituted). The establishment of that office as a “corporation sole” ensured an automatic continuity in the exercise of the functions of that office on a change of office holder.

The AGW was independent of the Assembly and other audited bodies. The AGW audited the accounts of the Assembly and its sponsored and related bodies and also conducted value for money examinations. The Assembly’s Audit Committee (the precursor to the Assembly’s current Public Accounts Committee), considered the AGW’s reports, used them to question accounting officers and made its own recommendations for improvements in financial management and governance. The AGW was obliged to take account of the views of the Audit Committee when devising his forward programme of value for money studies.

The Audit Committee also had the role of overseeing the AGW’s finances. It therefore, unusually, had a dual role akin to that of both the House of Commons Committee of Public Accounts and the Public Accounts Commission.

Until the coming into force of the *Public Audit (Wales) Act 2004*⁶ on 31 March 2005 (see paragraph 2.2 below) the AGW did not have responsibility for the audit of the accounts of local government and NHS bodies in Wales – these continued to fall within the jurisdiction of the Audit Commission.

⁴ Further historical background about the audit regime in Wales is available in the research paper [The Audit Regime in Wales 1999 – 2011](#) published in September 2011 by the Assembly’s Research Service.

⁵ [National Audit Act 1983](#) (Chapter 44)

⁶ [Public Audit \(Wales\) Act 2004](#) (Chapter 23)

Sir John Bourn was appointed as the first AGW on **1 June 1999**. He was also the UK C&AG at that time and was supported by staff from the NAO in Cardiff who provided professional, administrative and technical services. Following devolution, the office of the C&AG retained (and still has) responsibility for the audit of non-devolved UK government organisations operating in Wales.

2.2. Public Audit (Wales) Act 2004

In **April 2003** the UK Government consulted on a draft *Public Audit (Wales) Bill* which was considered by the Welsh Affairs Select Committee and by an Assembly Committee. The then Parliamentary Under-Secretary of State for Wales, Don Touhig MP, outlined the rationale for the legislation in a statement to the Assembly Committee:

The Public Audit (Wales) Bill is very much a logical progression of the devolutionary process. Since 1999 the Wales Office and the National Assembly have developed an agenda for the formulation and delivery of objectives and policies based on partnership with a whole range of public sector bodies. Many policy initiatives demonstrate a distinctive way of working that involve the Assembly; Assembly sponsored public bodies; the voluntary sector; and local government in active delivery of the objectives.

As the boundaries between policy implementation break down it is reasonable that the current division of responsibilities for public audit, in terms of safeguarding the taxpayers interest and assisting in achieving the best value for money possible should also be removed. A single public audit body for Wales will achieve this purpose. As the Committee will know Scotland and Northern Ireland have both adopted this approach.⁷

The subsequent *Public Audit (Wales) Act 2004*,⁸ which came into force on **1 April 2005**, conferred a number of new functions on the AGW. The most significant effect of the functions is that the AGW is now the statutory auditor of all NHS bodies in Wales, has responsibility for the appointment and oversight of auditors of local government bodies in Wales, and undertakes inspection work on local government bodies. The 2005 Act also transferred the NAO and Audit Commission staff in Wales to the AGW's employment to create a single public audit body for Wales – the Wales Audit Office (“WAO”) – headed by the AGW.

From **1 April 2005**, the AGW and WAO therefore had responsibility for:

- the financial and performance audits of the Assembly (as then constituted under the 1998 Act);
- the Assembly's then sponsored and related bodies;
- NHS bodies (primarily NHS Trusts and Local Health Boards); and
- local government bodies in Wales.

⁷ Written Statement by Mr Don Touhig MP, Parliamentary Under Secretary of State for Wales, [Public Audit \(Wales\) Bill Scrutiny Committee](#), 10 July 2003

⁸ [Public Audit \(Wales\) Act 2004](#) (Chapter 23)

On that date, Sir John Bourn stood down as Auditor General for Wales and was replaced by Jeremy Colman.

2.3. *Government of Wales Act 2006*

The *Government of Wales Act 2006*⁹ (“the 2006 Act”) reconstituted the Assembly as an unincorporated association of 60 AMs and created the Welsh Assembly Government (later renamed as the Welsh Government) as a separate legal entity.

The following changes were introduced to the audit regime in Wales by the 2006 Act, which came into effect after the Assembly elections in **May 2007**:

- It removed the role of the Secretary of State in advising Her Majesty on the appointment of the AGW and provided for the appointment to be made by the Queen on the nomination of the Assembly. The post is subject to dismissal by the Queen on the grounds of misbehaviour subject to a resolution passed by at least two thirds of all AMs.¹⁰
- It ensured that the AGW’s salary costs were a direct charge on the Welsh Consolidated Fund (established by the 2006 Act), rather than being dependent on an annual budget motion tabled by Welsh Ministers and approved by the Assembly.
- The 2006 Act also continued the requirement for the Assembly to establish an Audit Committee (now known as the Public Accounts Committee). Further details about the functions of the Committee are set out in the Assembly’s Standing Order 18.2.¹¹

As was the case with the 1998 Act, the 2006 Act enabled the C&AG to investigate devolved bodies in Wales, subject to consultation with the AGW.

2.4. *Developments at the Wales Audit Office since 2007*

In **October 2009**, the Assembly’s Public Accounts Committee planned to launch an inquiry into governance arrangements at the WAO. However, this was deferred following the then AGW’s decision to commission his own [International Peer Review](#).¹² This found that there was scope to strengthen and enhance the governance arrangements and offered two alternative arrangements for a WAO “board structure”. The review rejected the idea of establishing the WAO as a corporate body along the new NAO lines (see paragraph 2.5 on developments in England since 2005) as being inappropriate for Wales. It stated that:

⁹ [Government of Wales Act 2006](#) (Chapter 32)

¹⁰ Thomas, A. “Parliamentary Officers’ in Wales”, chapter in Gay, O and Winetrobe B, *Parliament’s Watchdogs: At the Crossroads*, Constitution Unit/Study of Parliament Group, 2008

¹¹ National Assembly for Wales, [Standing Orders](#), July 2011

¹² Wales Audit Office, [International Peer Review](#), 8 October 2009

The creation of corporate structures around an Auditor General who himself is a corporation sole poses risks. The creation of an independent Chair could confuse the accountability of the Auditor General as a corporation sole accountable to the National Assembly. Particular circumstances in England led to the new arrangements and the same factors are not at issue in Wales.¹³

On **3 February 2010** the then AGW, Jeremy Colman resigned unexpectedly and was replaced on an interim basis by Gillian Body. It subsequently emerged that he was being investigated by the police for downloading child pornography on to his work computer. He was later charged and found guilty and was sentenced to an eight month prison term.¹⁴

A new permanent AGW, Huw Vaughan Thomas, was appointed and took up his role on **1 October 2010**. Before taking up his appointment Mr Thomas reviewed the WAO's governance arrangements with senior WAO staff and the interim AGW. He concluded that:

I consider the current Wales Audit Office governance arrangements to be flawed and to lack the necessary checks and balances that would need to exist in well-run private or public sector organisations.

Improvements are urgently needed, to make the Wales Audit Office more open and accountable. Independent non-executive oversight of how the Wales Audit Office is run must be expanded including scrutiny of Remuneration, Human Resources, Finance, and Information Technology activity in addition to the existing Audit and Risk Management oversight.¹⁵

New arrangements proposed as a result by the AGW included:

- establishing three new non-executive committees to exercise oversight of Resources (HR, IT and Finance), Remuneration, and Audit and Risk Management.
- at six monthly intervals, the Chairs of these three Committees will meet with the AGW and the WAO Executive Committee to review planned, and actual, delivery for the previous six month period.
- holding an annual governance conference to discuss future priorities and activities of the WAO. These will be attended by all non-executive members, key stakeholders and experts from outside Wales who are unconnected with the bodies audited by the Wales Audit Office.

¹³ National Assembly for Wales, Public Accounts Committee, [Accounting, governance and propriety issues at the Wales Audit Office](#), March 2011

¹⁴ BBC News, [Ex-Wales auditor jailed for child image offences](#), 19 November 2010

¹⁵ Auditor General for Wales, [Proposed new governance arrangements for the Wales Audit Office - Briefing paper for the Public Accounts Committee](#), 7 October 2010

- producing an annual governance report to be presented to the Assembly's Public Accounts Committee for consideration.¹⁶

The newly appointed AGW further explained that:

In addition to the six-monthly reviews, there will be an annual Wales Audit Office Governance Conference. All nonexecutive members and Wales Audit Office Partners will attend together with key stakeholders, and experts from outside Wales/unconnected with the bodies audited by the Wales Audit Office, which will provide an opportunity for a broadly based and two-way dialogue on the future priorities for, and the activities of, the Wales Audit Office.

This will result in a Governance Report which will be presented to the PAC for consideration.¹⁷

Further controversy relating to the AGW and the WAO came to light in **December 2010** when reports appeared about a severance package agreed between Mr Colman and the then Chief Operating Officer of the WAO, Anthony Snow.¹⁸ In response, the Assembly's Public Accounts Committee decided to hold an inquiry on the issue and in particular to "look into the manner in which the severance package had been agreed and the extent to which its nature and cost had been clearly and accurately reflected in the Auditor General's accounts in accordance with relevant financial reporting standards".¹⁹

The Public Accounts Committee's subsequent **March 2011 [report](#)** explained the current position in respect of audit governance in Wales and the case for change:

Under the Act, the office of Auditor General for Wales is a "corporation sole". The Wales Audit Office consists of the Auditor General and his/her staff but it is not a body corporate and unlike, say, a health body or an Assembly Government sponsored body does not have an appointed board. In the case of the Wales Audit Office, all of the functions are vested in the Auditor General who is charged with the governance of his office.

This arrangement reflects the well-established fact that audit judgements are best made by an individual rather than a board and that that individual is best placed to decide on how an individual audit assignment should be resourced and executed. Other bodies such as the Ombudsman, Children's Commissioner and Older People's Commissioner are similarly established as corporations" sole for similar reasons.

We fully agree that the Auditor General must be unfettered as to the exercise of his or her statutory functions so that audit judgements are and are seen to be independent and objective. However, recent events have shown that abuse of that position can have disastrous consequences. We therefore conclude that the governance arrangements for the Wales Audit Office and its accountability to the Assembly need to be strengthened.²⁰

¹⁶ Wales Audit Office, [New Auditor General to 'shake up' Wales Audit Office Governance](#), Press Release, 8 October 2010

¹⁷ Op cit. AGW 7 October 2010

¹⁸ See BBC News, [Ex-auditor Jeremy Colman's £750k pay-off 'secret'](#), 8 December 2010

¹⁹ National Assembly for Wales, Public Accounts Committee, [Accounting, governance and propriety issues at the Wales Audit Office](#), March 2011

²⁰ Ibid

The Report also suggested the following issues for consideration by a future Public Accounts Committee:

- placing the arrangements for the AGW's remuneration and term of office on a statutory basis; and
- the establishment of an Independent Advisory Board to oversee the governance arrangements for the WAO that Board would be appointed by and therefore be answerable to the Assembly.²¹

2.5. Developments in England since 2007

Developments in relation to the audit regime in Wales have taken place in parallel to the following developments of note in England.

In **November 2007**, the House of Commons Public Accounts Commission decided to review the corporate governance arrangements of the NAO to ensure that they conform to best practice. This followed controversy about the travel expenses incurred by Sir John Bourn, the previous AGW and then current C&AG, which led to him announcing his retirement in **October 2007**.²² John Tiner was tasked with conducting the Public Accounts Commission's review and a report based on his findings ("the Tiner Report") was published in **January 2008**. The report stated that:

The current C&AG has put in place a number of governance processes, but in their effectiveness these fall short of what is currently best practice, even when taking into account the unique role of the Office. In the exercise of his responsibilities the C&AG must, in my view, rely not only on the powers given to him by Parliament, but also on the moral authority which comes from the National Audit Office (NAO) maintaining the highest standards of governance.²³

The report also stressed the importance of maintaining the independence of the office while ensuring that systems of governance and internal controls are consistent with best practice. The report as a result proposed significant changes to the then governance structure of the NAO. It did not however make any comment on whether these proposals had any application in the devolved administrations.²⁴ The Public Accounts Commission published its response to the Tiner Report in **March 2008**.²⁵

Provisions to put new governance systems in place in relation to the NAO and the C&AG in light of the Tiner Report and Public Accounts Commission were included

²¹ National Assembly for Wales, Public Accounts Committee, *Accounting, governance and propriety issues at the Wales Audit Office*, March 2011

²² Daily Telegraph, *How unsackable Sir John Bourn sealed his fate*, 29 October 2007

²³ Ibid.

²⁴ Ibid.

²⁵ HC Public Accounts Commission, *Response to the Tiner Report on Corporate Governance of the National Audit Office*, 15th Report 2007-8, March 2008.

in the *Constitutional Reform and Governance Bill*²⁶, which was introduced by the then UK Government on **20 July 2009**.

During the ensuing legislative process, the UK Government tabled an amendment with the aim of granting legislative powers to the Assembly in respect of the Auditor General for Wales.²⁷ Although the amendment was agreed and the new clause added to the Bill at Committee Stage on **4 November 2009**, it and the UK audit clauses, were subsequently removed from the Bill following “wash-up” discussions between parties ahead of the dissolution of parliament on **12 April 2010**.

The clauses in the Bill relating to the NAO and the C&AG were reintroduced however following the General Election by the UK Government as part of the *Budget Responsibility and National Audit Act 2011*²⁸ which was introduced on **21 October 2010**. The Act also amended Schedule 7 to the 2006 Act which, together with the affirmative vote in the March 2011 referendum had the effect of conferring full legislative competence on the Assembly in relation to the AGW.

The Department for Communities and Local Government issued a consultation on the draft *Local Audit Bill* on **6 July 2012**.²⁹ The draft Bill sets out the proposed new audit framework for local public bodies, the process for the appointment of auditors, and the regulatory framework for local public audit in England. The consultation closes on **31 August 2012**.

2.6. Draft Public Audit (Wales) Bill

Details about a *Wales Audit Office Bill* were initially included in the First Minister’s statement on the Welsh Government’s five year legislative programme issued on the **12 July 2011**. In relation to the Bill, the First Minister stated that:

We want a strong public service ethos in Wales, and one that is not prevented from delivering good quality services by unnecessary bureaucracy or governmental control ... we will therefore bring forward a draft Wales Audit Office Bill, with the aim of strengthening the Wales Audit Office’s governance and accountability arrangements without restricting the Auditor General for Wales’s crucial independence to examine whatever subjects he or she chooses. Provisions in the Bill will establish the Wales Audit Office as a body corporate, with the majority of non-executive members appointed by public appointments procedures, including pre-appointment hearings in the Assembly. The Bill will also set out the relationship between the Wales Audit Office and the Auditor General for Wales, who will become the accounting officer for the Wales Audit Office. The Auditor General for Wales, whose terms and conditions of service will be set by the Assembly, on the recommendation

²⁶ [Constitutional Reform and Governance Bill 2007](#)

²⁷ Welsh Government, [Constitutional Reform and Governance Bill: Welsh Assembly Government Memorandum on Framework powers conferring Legislative Competence on the National Assembly for Wales](#), October 2009.

²⁸ [Budget Responsibility and National Audit Act 2011](#) (Chapter 4)

²⁹ Department for Communities and Local Government, [Draft Local Audit Bill: Consultation](#), 6 July 2012

of the Public Accounts Committee and independently of the Welsh Government, will become the chief executive officer of the Wales Audit Office.³⁰

A **consultation** on the **draft Public Audit (Wales) Bill** was subsequently held by the Welsh Government between **15 March 2012** and **15 May 2012**, ahead of the Bill's formal introduction on **9 July 2012**.

³⁰ National Assembly for Wales, **RoP: Plenary**, 12 July 2011

3. The Bill

3.1. Policy objectives

The main policy objectives of the Bill as introduced on 9 July 2012 are to strengthen and improve the accountability and governance arrangements of the AGW and the WAO. In doing so however, the EM states that “the Welsh Government is also acutely aware of the need to preserve and protect the independence and objectivity of the AGW”.³¹

According to the EM, these changes are necessary in order to address a series of concerns raised in relation to the AGW and the WAO which “arose principally from the way in which a previous AGW undertook aspects of his duties which highlighted a lack of robust external accountability”.³² These concerns relate to the following:

- **Accounting issues:** The EM states that there has been a “range of failures”³³ relating to the responsibilities of the AGW as the WAO’s Accounting Officer. These included accounts not complying with the Financial Reporting Model; expenditure on early retirement settlements; pension entitlements; and other cash received from the public purse which had not been fully accounted for.
- **Propriety issues:** A report tabled by the current AGW in February 2011 sets out that a former AGW concealed information wilfully from the WAO’s Audit Risk and Management Committee and senior AGW staff. This information is in addition to details included in a report published in March 2011 by the Assembly’s Public Accounts Committee which concluded that a former AGW had misled the Assembly and that his actions amounted to misbehaviour.
- **Governance structures:** The AGW’s advisory committees (audit risk and management, resources and remuneration) currently have no legal basis and appointments to these committees are entirely in the gift of the AGW, with no objective, independent and external appointments process. According to the EM this situation “is not consistent with accepted best practice”.³⁴

By addressing these issues, the EM states that the Bill aims to substantially reduce the prospect of similar difficulties happening again and to provide greater assurances to the Assembly and the public about the accountability of the AGW and WAO.

³¹ Welsh Government, *Explanatory Memorandum: Public Audit (Wales) Bill*, July 2012, paragraph 20

³² Ibid, paragraph 11

³³ Ibid, paragraph 15

³⁴ Ibid, paragraph 18

3.2. Provisions

To achieve the policy objectives outlined above, the Bill includes the following provisions across three Parts:

Part 1 (Sections 2 to 12) of the Bill relates to the office of the AGW and his or her general functions. It provides for the continuation of the office of AGW as a “corporation sole” and provides, as now, for the AGW to be appointed by the Queen on the recommendation of the Assembly.

The Bill also includes provision that will establish arrangements for the appointment, termination and tenure of that office. In particular, the Bill states that an AGW may hold the office for a maximum of eight years and that a person may only hold the office once.

This part also expressly safeguards the AGW’s independence from the Welsh Government and the Assembly by providing the AGW with complete discretion in the manner of the exercise of its functions. It also provides for the AGW to be the statutory auditor of local government bodies in Wales rather than the appointer of local government auditors.

Part 2 (Sections 13 to 28) establishes the WAO as a body corporate consisting of seven members, and thus formally separates its responsibilities from the AGW. Five of the WAO’s members will be appointed by the Assembly on merit through open and fair competition whilst the remaining two board posts will be taken by the AGW (who will also be the WAO’s chief executive officer) and an additional WAO employee member recommended by the AGW for appointment.

The Bill states that the WAO will be responsible for all the corporate-type functions currently vested in the AGW, with the intention to ensure that such powers would no longer rest solely in the hands of one individual. In particular, the Bill provides the newly constituted WAO with the following responsibilities:

- to monitor and a power to advise the AGW;
- to employ the WAO’s staff;
- to secure the provision of services; and
- hold property for the purposes of carrying out its functions and those of the AGW.

The Bill also requires both the AGW and WAO to prepare an annual income and expenditure estimate which must be laid before the Assembly and included in the Assembly’s Annual Budget Motion.

In addition, the Bill requires the WAO, together with the AGW, to produce an annual plan which both parties must have regard to that will set out the intended programmes of work for the WAO and the AGW, their costs, and projected

outcomes for each coming financial year. The WAO and AGW are then required to report to the Assembly on an interim basis twice a year on the progress made against the plan. The Bill will also require the AGW and WAO to produce an annual report to the Assembly.

Part 3 (sections 29 to 37) includes general and consequential provisions relating to the functions of the Assembly which allows it by standing orders to make provisions regarding the functions conferred on it in relation to the AGW and WAO by the Bill. This part also outlines the Bill's commencement provisions and procedures for making subordinate legislation.

3.3. Differences between the Bill as introduced and the draft Bill

The Bill as introduced has been changed significantly to the draft version of the Bill which was consulted upon by the Welsh Government between 15 March and 15 May 2012. A total of 31 responses were received to the consultation and an analysis of the responses received is included in Chapter 4 of the EM.

The main changes made to the Bill as introduced are summarised below:

- Provisions that would have restated existing legislation relating to the audit of local government bodies has been removed, apart from those provisions included in Section 11 of the Bill which appoints the AGW as the statutory auditor of local government bodies rather than requiring the AGW to appoint other individuals or firms.
- Provisions that would have updated and consolidated existing audit and accounting provisions have been removed from the Bill as introduced.
- The draft Bill contained a provision specifying that future AGWs should serve a seven year non-renewable term of office. This has now been changed to an eight year non-renewable term in the Bill as introduced.
- The draft Bill included a number of provisions that would have given the Assembly's Public Accounts Committee additional responsibilities in respect of the oversight and scrutiny of the WAO and AGW. Following concerns raised by the Public Accounts Committee and respondents to the consultation on the draft Bill, the Bill as introduced will now confer oversight functions of the AGW on the Assembly as a whole, as opposed to just the Public Accounts Committee as specified in the draft Bill. The Assembly will be given a power to decide (via Standing Orders) how its oversight functions of the WAO and AGW are to be exercised.

4. Financial implications

According to the EM, the preferred option within the Bill will give rise to transitional costs of around £20,000 and annual costs of just over £150,000. These costs would fall on the WAO and the Assembly and are set out below:

4.1. *Transitional costs*

- **Advertising the posts of the WAO Chair and four board members:** £20,000 (one-off cost). This cost would fall on the Assembly;

4.2. *Average annual costs*

- **WAO board running costs:** £155,000 a year. This includes the remuneration, gratuities and other allowances of the Chair and the four WAO members; along with the costs of secretariat and technical support. The EM states that this cost would be borne by the WAO and would amount to 0.64 per cent of the AGW's current budget, which is funded by a combination of the Welsh Consolidated Fund and fee income.
- **Enhanced oversight role of the Assembly:** The Assembly will need to place appropriate arrangements to undertake its enhanced oversight of the AGW and WAO. It is for the Assembly to decide whether this is achieved through an existing committee, a new committee or commission. Costs will be dependent on how the Assembly decide to achieve this.

There are likely to be on-going costs to the Assembly of recruiting or replacing Board members should they choose to leave or reach the end of their tenure. These costs would be likely to be in the region of £5,000 per member, it is not clear if these are included in the above figures, so could add around £5,000 per year to the above cost.

4.3. *Current costs*

There would also be the existing running costs associated with the AGW, which currently has an annual budget of £24.2 million. The EM provides the following breakdown of these costs in relation to areas which are covered by the Bill:

- **Internal cost and governance:** £36,650 a year as at 2010-11;
- **External audit:** £25,000 a year as at 2010-11;
- **Public Accounts Committee evidence sessions:** cost of one meeting (assigned from the Assembly Commission's budget).

The EM also states that the Bill, once enacted, will be implemented by the Local Government and Communities Directorate.

5. Reactions

The Minister for Finance and the Leader of the House, Jane Hutt AM, made a legislative statement on the Bill to plenary on 10 July 2012. In introducing the Bill she stated that:

... the Bill addresses concerns relating to accounting, governance and propriety matters, responds to the recommendations in the Assembly's Public Accounts Committee report published in March 2011 by enhancing the oversight of the auditor general, substantially reduces the likelihood of past difficulties arising again, and provides greater assurance to the Assembly and the public. The audit of public money is a vital function, and those who are audited, fellow Members of this Senedd and, above all, the public must have confidence in the function. This Bill will support the AGW in delivering that.³⁵

The Minister also explained why provisions to consolidate, simplify and modify the existing audit legislation in Wales which were initially contained in the draft Bill were removed prior to the Bill's formal introduction:

... our proposals raised a number of competence matters that have to be resolved with the Wales Office and other UK Government departments. Our main aim has always been to address the concerns about governance, accountability and oversight, and in order to prevent any delay in achieving that aim, the Bill has undergone some restructuring to focus mainly on those matters. The substantial consolidation and simplification processes and provisions will be returned to once this Bill has been fully considered by the Assembly.³⁶

In response to the Minister's statement, the Chair of the Assembly's Public Accounts Committee, Darren Millar AM, welcomed the Bill and made the following comments in relation to the Committee's consideration of the Bill at Stage 1:

The crucial provisions in the Bill are the sections that deal with the reconstitution of the WAO as a corporate body. The Public Accounts Committee will be particularly interested in learning how this will work in practice, and the views of those who want to give evidence ... We will also be interested in how the new WAO board will be appointed and how its members will be selected ... The committee will undertake the majority of its work on this Bill in the autumn term ... We hope to publish our report in November.³⁷

Mr Millar also asked the Minister to clarify when the Government would be returning to the consolidation and simplification issues that were contained in the draft Bill:

Minister, can you give us an indication today of the timescale by which you expect to resolve the competence matters in relation to the UK Government that you referred to in your statement?³⁸

In response, the Minister stated that:

³⁵ National Assembly for Wales, *RoP: Plenary*, 10 July 2012

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

In terms of the decisions that we made, it is important to look at the issues of competence. I respect the role of the Wales Office in that regard, and that of other UK Government departments. As I said in my statement, we need to return to those substantial consolidation and simplification provisions. We need to progress the Bill, but the work will be ongoing in terms of coming back to the Assembly on these issues. There are a couple of matters that we need to discuss and I am sure that those responsibilities with regard to competence will arise during the scrutiny process. I am clear about the areas where we are now confident in terms of the competence that we hold and are responsible for.³⁹

Aled Roberts AM welcomed the Bill on behalf of the Welsh Liberal Democrats, but also raised issues in relation to those provisions that were removed from the Bill for reasons relating to legislative competence:

This is of course a smaller Bill than was originally envisaged. I understand the points that you make with regard to competence in respect of the UK Government and the stance that has been taken by the Wales Office. Could you confirm whether the discussions with regard to the sections that have not been included in this Bill are already under way? Are you, at this stage, able to give any indication as to when you are likely to be able to return with the further Bill that is referred to in the briefing papers, in respect of those sections that have not been able to be pursued in this Bill?⁴⁰

In response, the Minister provided the following answer:

Detailed discussions are needed to decide the extent to which the Government of Wales Act 2006 permits provisions to be modified. There are also provisions modifying, for example, the functions of a Minister of the Crown and the Treasury, and amendments to the draft Bill in relation to the UK-wide extent and application of the legislation, given that Assembly Acts can only technically have legal effect to change the law of England and Wales. Therefore, further discussion is needed on these matters with the UK Government, and I will be negotiating with the Secretary of State for Wales and with other UK Government departments on how we may best handle those issues.⁴¹

Mike Hedges AM also welcomed the Bill but sought clarification on the following issues:

First, can you confirm that the Bill will ensure that nothing and no-one will interfere with the auditor general's independence in relation to audit matters? That is a key point: no-one should be able to interfere with what the auditor general does ...

Secondly, as a worst case scenario, let us say that the auditor general has been in post for eight years and a new auditor general has been appointed, but there is a three-month gap between the current auditor general finishing in the role and the date that the new auditor general can start, having given due notice to his authority. Would it be possible to extend the current auditor general's role for that period of three months, or would you have to appoint an independent auditor general for those three months, prior to the new auditor general taking up the post?⁴²

³⁹ National Assembly for Wales, *RoP: Plenary*, 10 July 2012

⁴⁰ *Ibid*

⁴¹ *Ibid*

⁴² *Ibid*

The Minister stated that:

It is important that we should look at the issue of maintaining the auditor general's independence. The work programme of the auditor general will be determined by the auditor general, who must aim to carry out his or her functions efficiently and cost-effectively ... If you look at section 26, it is designed to ensure that it is the Auditor General for Wales who determines his or her own work programme to maintain the independence of the office, and it is the auditor general who determines the maximum amount of resources that will be needed for that work. That section is critical to maintaining an appropriate balance between establishing appropriate governance on the one hand and oversight arrangements on the other, maintaining the principle of the auditor general's audit independence.

I am sure that the committee will want to look at that issue in terms of whether there needs to be any change or amendment to the carry forward, and the three months that you suggest between one appointment and the next.⁴³

Speaking on behalf of Plaid Cymru, Lindsay Whittle AM, also asked a series of questions to the Minister in relation to the functions of the WAO and AGW as set out in the Bill:

My first question is this: the annual plan will be laid before the Assembly, which has a duty to publish it, but will the Assembly have any powers to recommend any amendments to the plan? Secondly, you mention that the auditor general will determine the maximum amount of resources needed to carry out the work, but it is the Wales Audit Office that has the final say. What happens if there is a conflict there and who would resolve that? Thirdly, how will the Wales Audit Office account for the cost-effectiveness of the auditor general's work, and will that be done on an annual basis?⁴⁴

In response, the Minister made the following comments:

I have responded to Mike Hedges on the issue of the independence of the auditor general and the ability to have that flexibility in terms of the annual work programme in particular. However, we have to recognise in terms of the resources that are needed that there will be a financial estimate of the cost of the annual plan. A budget will be available to the Wales Audit Office and the Auditor General for Wales, so it is important that the annual plan shows how that budget is to be allocated between the two, and to ensure that the two bodies—one responsible for the oversight and supervision of the auditor general—have checks and balances in the process without curtailing the discretion of the Wales Audit Office to, for example, question or reject the auditor general's statement on his or her work programme. These are matters and details that I am sure you will explore during Stage 1 scrutiny.⁴⁵

⁴³ National Assembly for Wales, *RoP: Plenary*, 10 July 2012

⁴⁴ Ibid

⁴⁵ Ibid