

Dyddiad: Dydd Iau 22 Ionawr 2004
Lleoliad: Ystafell Bwyllgora 1, Cynulliad Cenedlaethol Cymru
Teitl: Mesur Archwilio Cyhoeddus (Cymru)

Diben

1. Mae'r papur hwn yn nodi'r prif newidiadau sydd wedi'u gwneud i'r Mesur a gyhoeddwyd ar ôl ymgynghori ar y Mesur drafft yn ystod haf y llynedd, gan roi sylw arbennig i argymhellion pwyllgor ad hoc blaenorol y Pwyllgor, sef Pwyllgor Mesur Archwilio Cyhoeddus (Cymru).

Y cefndir

2. Anfonwyd [adroddiad Pwyllgor Mesur Archwilio Cyhoeddus \(Cymru\)](#) at y Gweinidog dros Gyllid, Llywodraeth Leol a Gwasanaethau Cyhoeddus ar 17 Gorffennaf 2003 a chafodd ei drafod gan y Cynulliad yn y Cyfarfod Llawn ar 24 Medi.

3. Ymatebodd y Gweinidog i'r adroddiad mewn llythyr at Janet Davies AC, a fu'n Gadeirydd y Pwyllgor. Ceir copi o'r llythyr yn Atodiad 1.

4. Cyflwynwyd y Mesur i Dy'r Arglwyddi ar 9 Rhagfyr a chaiff ei ystyried gan Uwch Bwyllgor Cymreig ddiwedd Chwefror.

Pwyllgor Mesur Archwilio Cyhoeddus (Cymru) (2004)

5. Sefydlwyd y Pwyllgor gan y Cynulliad ar 13 Ionawr 2004. Dyma'i gylch gorchwyl:

- ◇ Ystyried Mesur Archwilio Cyhoeddus (Cymru) fel y'i cyflwynwyd i'r Senedd ar 27 Tachwedd 2003;
- ◇ Ystyried llythyr y Gweinidog dros Gyllid, Llywodraeth Leol a Gwasanaethau Cyhoeddus, dyddiedig 1 Rhagfyr, sy'n nodi ymateb Llywodraeth y DU i argymhellion Pwyllgor Mesur Archwilio Cyhoeddus (Cymru) ar Fesur Archwilio Cyhoeddus drafft (Cymru);
- ◇ Rhoi adroddiad i'r Cynulliad erbyn 6 Chwefror ar ei gasgliadau

Bydd y Pwyllgor yn dod i ben ar 27 Chwefror.

Mesur Archwilio Cyhoeddus Cymru

Y prif newidiadau i'r Mesur a gyhoeddwyd o'i gymharu â'r drafft yw'r rheini y mae'r Llywodraeth wedi'u derbyn o'r adroddiadau craffu ar y Mesur drafft gan Bwyllgor Mesur Archwilio Cyhoeddus (Cymru) y Cynulliad a Phwyllgor Materion Cymreig Ty'r Cyffredin.

Mae Atodiad 2 yn rhoi manylion y saith gwelliant a argymhellwyd gan y Pwyllgor blaenorol, mae'n nodi a yw Llywodraeth y DU wedi'u derbyn ai peidio a, lle y maent wedi'u derbyn, mae'n nodi rhif y cymal perthnasol yn y Mesur a Gyhoeddwyd. Roedd tri o'r argymhellion sydd ar ôl yn ymwneud yn uniongyrchol â'r Mesur drafft ac mae'r rhain hefyd yn cael eu trafod yn Atodiad 2.

Gwasanaethau'r Pwyllgorau ac Ymchwil yr Aelodau
Ionawr 2004

December 2003

Dear Janet Davies AM

PUBLIC AUDIT (WALES) BILL

I am pleased to be able to tell you that the Queen's Speech to Parliament on 26 November made provision for the Public Audit (Wales) Bill's inclusion in the U.K. Government's legislative programme for 2003-04. The Bill was introduced to Parliament in the House of Lords on 27 November and published on the 28th. I am now in a position therefore to convey to you the U.K. Government's response to the recommendations of the Assembly Bill Scrutiny Committee report published on 22 July, and endorsed by the National Assembly in plenary on 24 September.

The report contained 12 recommendations, 7 of which represent suggested amendments. I have dealt with each recommendation in order

- i. The Bill should amend section 90 of the Government of Wales Act to provide that the Auditor General for Wales should be appointed after consultation with the Assembly. The amendment should include the provision that the Assembly debates the appointment on a motion proposed by the First Minister and agreed with the Chair of the Audit Committee.

An amendment has not been made. The Auditor General is appointed by Her Majesty under section 90(3) of the Government of Wales Act. In practice the National Assembly is consulted on the appointment of the Auditor General and it would be open to the Assembly to debate the appointment of the Auditor General in plenary on a motion as recommended, as part of that consultation process without an amendment to the Government of Wales Act 1998. In view of the proposed extension of the Auditor General's functions under the Bill to include audit arrangements for Local Government it would also be appropriate for the Welsh Local Government Association to be party to the consultation process.

- ii. The provisions of clause 11 should be extended to enable the Auditor General to track public money passing from local government to end-users.

This recommendation has been accepted and the Bill has been amended to ensure that comparable rights of access apply to both the central and local government sectors. This has been done by bringing the provisions of clause 11 more in line with those of section 6 of the Audit Commission Act 1998 (which are somewhat wider in scope), whilst at the same time maintaining clearly, on the face of the Bill, the principle that the Auditor General's access powers enable him or her to trace public money down the chain to the end user. The other rights of access provisions in the Bill have been amended to ensure consistency.

- iii. Clause 16 should be amended to require that the Code of Practice prepared or revised under clause 16(1) should be debated by the Assembly.

This recommendation has been accepted and Incorporated into the Bill with an amendment to clause 16 to provide for the ratification of any Wales only Code of Audit Practice for Local Government by the National Assembly for Wales in the first instance. The Bill also makes provision, following Assembly ratification, for the Code to be submitted to the scrutiny of the United Kingdom Parliament by negative resolution procedures. Under the existing provisions of the Audit Commission Act 1998, approval of the England and Wales Code of Audit Practice is by affirmative resolution in the U.K. Parliament.

- iv. Clause 50 should be deleted.

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

I propose to press for further consideration of this issue on a cross-border basis outside the context of the Audit Bill.

- v. Schedule 3 para 3 should be strengthened to protect the pension rights of the staff of both organisations.

The principle of the protection of pension rights is accepted but it is not considered appropriate to deal with this on the face of the Bill.

More detailed information is required about the actual pension arrangements of staff within the National Audit Office and the Audit Commission, as part of the process which has already started to prepare for the creation of the Wales Audit Office, before such an amendment could safely be made. Those arrangements could cover a range of possibilities, all of which might require different legislative provision. Moreover, it may be necessary to make the kind of detailed provision, which is not suited to primary legislation.

Both the Audit Commission and the National Audit Office are working closely on this issue. Schedule 3 makes provision for the preparation of statutory transfer schemes that will define the property, rights and liabilities that are to be subject to transfer. The transfer schemes will deal with the terms and conditions of transferring staff and paragraph 3 to the Schedule provides that the terms and conditions of employment must be no less favourable (taken as a whole) than the terms and conditions pertaining immediately before the transfer. On the basis of this on-going work it would appear to be more prudent to deal with pension issues in the transfer scheme than on the face of the Bill. The statutory transfer schemes to be made by the Secretary of State will require the consent of the Assembly.

- vi. Schedule 3 para 4 should be amended to give staff the option of remaining with their current employer, without detriment to their current terms and conditions of service, after the transfer date.

Detailed provisions in respect of terms and conditions of employment are also best dealt with under the statutory transfer schemes. Such an amendment on the face of the Bill could mean that employees who may be unwilling to work for the single audit body, or to take up an equivalent post in the parent organisation, could require the National Audit Office or Audit Commission to provide them with a Cardiff-based post when there is no operational justification.

- vii. Terminology in the Bill should be gender-neutral.

The UK Government remains of the view that a move to gender-neutral drafting would have to be taken for Westminster legislation as a whole. It is of the view that the drafting of U.K. Government legislation does cover both genders, by virtue of the Interpretation Act 1978.

- viii. Concluded that an Advisory Body could undermine the Auditor General's independence and his relationship with the Audit Committee of the Assembly.

This recommendation has been accepted. No statutory provision will be made for an advisory body. I am giving consideration to a non-statutory advisory mechanism to assist and advise the Auditor General.

- ix. The Bill need not be amended to require clearance of Draft Reports on Local Government by relevant local government organisations.

This recommendation has been noted. The clearance of draft reports can be arranged through protocol as in the case with central government. Auditors appointed to audit local government accounts in Wales would retain power in the Bill to prepare and publish reports in the public interest.

- x. The Committee recommends that the technical drafting points raised by the Audit Commission be considered by the Government in the final drafting of the Bill.

This recommendation has been noted and agreed. The Audit Commission's views on technical points have been considered and the majority of them have been accepted and incorporated in the Bill where applicable.

- xi. Running costs of the new organisation should be monitored closely and steps taken to ensure that there were not significant, consequential costs to local government.

This recommendation has been noted, This will be a matter for the Auditor General and the National Assembly under existing funding arrangements. Consultation on and the setting of audit fees for local government bodies will be a matter for the Auditor General and Local government in Wales.

- xii. Senior management, in both the National Audit Office and Audit Commission, should facilitate early and full consultation with staff about the transfer arrangements and terms and conditions of all employees.

This recommendation has been noted. It is the intention of both the National Audit Office and the Audit Commission to involve staff in these discussions at the earliest appropriate opportunity now the Bill has been introduced. These discussions will inform the statutory transfer schemes to be prepared under Schedule 3 of the Bill.

I am copying this letter to all members of the Scrutiny Committee and I am arranging for a copy to be placed in the Library of the Assembly.

Yours

Sue Essex AM

The Seven Amendments to the Draft Bill Recommended by the Public Audit (Wales) Bill Committee

- i. **The Bill should amend s90 of the Government of Wales Act 1998 to provide that the Auditor General for Wales should be appointed after consultation with the National Assembly for Wales. The amendment should include the provision that the Assembly debate the appointment on a motion proposed by the First Minister and agreed with the Chair of the Audit Committee.**

Response of the Welsh Assembly Government:

An amendment has not been made. The Auditor General is appointed by Her Majesty under section 90(3) of the Government of Wales Act. In practice the National Assembly is consulted on the appointment of the Auditor General and it would be open to the Assembly to debate the appointment of the Auditor General in plenary on a motion as recommended, as part of that consultation process without an amendment to the Government of Wales Act 1998. In view of the proposed extension of the Auditor General's functions under the Bill to include audit arrangements for Local Government it would also be appropriate for the Welsh Local Government Association to be party to the consultation process.

- ii. **The provisions of Clause 11 should be extended to enable the Auditor General to track public money passing from local government to end users, such as contractors and grant recipients, to ensure that it has been properly and appropriately spent.**

Response of the Welsh Assembly Government:

This recommendation has been accepted and the Bill has been amended to ensure that comparable rights of access apply to both the central and local government sectors. This has been done by bringing the provisions of clause 11 more in line with those of section 6 of the Audit Commission Act 1998 (which are somewhat wider in scope), whilst at the same time maintaining clearly, on the face of the Bill, the principle that the Auditor General's access powers enable him or her to trace public money down the chain to the end user. The other rights of access provisions in the Bill have been amended to ensure consistency.

See **Clause 11** in the published Bill.

- iii. **Clause 16 should be amended to require that the Code of Practice prepared or revised under Clause 16(1) should be debated by the National Assembly.**

Response of the Welsh Assembly Government:

This recommendation has been accepted and incorporated into the Bill with an amendment to clause 16 to provide for the ratification of any Wales only Code of

negative resolution procedures. Under the existing provisions of the Audit Commission Act 1998, approval of the England and Wales Code of Audit Practice is by affirmative resolution in the U.K. Parliament.

See **Clause 16(4)** in the published Bill

iv. Clause 50 should be deleted.

Response of the Welsh Assembly Government:

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

The Minister proposes to press for further consideration of this issue on a cross-border basis outside the context of the Audit Bill.

v. Schedule 3 para 3 should be strengthened to protect the pension rights of the staff of both organisations

Response of the Welsh Assembly Government:

Not accepted. The principle of the protection of pension rights is accepted but it is not considered appropriate to deal with this on the face of the Bill.

More detailed information is required about the actual pension arrangements of staff within the National Audit Office and the Audit Commission, as part of the process which has already started to prepare for the creation of the Wales Audit Office, before such an amendment could safely be made. Those arrangements could cover a range of possibilities, all of which might require different legislative provision. Moreover, it may be necessary to make the kind of detailed provision, which is not suited to primary legislation.

Both the Audit Commission and the National Audit Office are working closely on this issue. Schedule 3 makes provision for the preparation of statutory transfer schemes that will define the property, rights and liabilities that are to be subject to transfer. The transfer schemes will deal with the terms and conditions of transferring staff and paragraph 3 to the Schedule provides that the terms and conditions of employment must be no less favourable (taken as a whole) than the terms and conditions pertaining immediately before the transfer. On the basis of this on-going work it would appear to be more prudent to deal with pension issues in the transfer scheme than on the face of the Bill. The statutory transfer schemes to be made by the Secretary of State will require the consent of the Assembly.

- vi. **Schedule 3 para 4 should be amended to give staff the option of remaining with their current employer, without detriment to their current terms and conditions of service, after the transfer date.**

Response of the Welsh Assembly Government:

Not accepted. Detailed provisions in respect of terms and conditions of employment are also best dealt with under the statutory transfer schemes. Such an amendment on the face of the Bill could mean that employees who may be unwilling to work for the single audit body, or to take up an equivalent post in the parent organisation, could require the National Audit Office or Audit Commission to provide them with a Cardiff-based post when there is no operational justification.

- vii. **Terminology in the Bill should be gender neutral..**

Response of the Welsh Assembly Government:

Not accepted. *The UK. Government remains of the view that a move to gender-neutral drafting would have to be taken for Westminster legislation as a whole. It is of the view that the drafting of U.K. Government legislation does cover both genders, by virtue of the Interpretation Act 1978.*

Other Recommendations Relating to the Draft Bill

i. Proposals for an Advisory Body

The Committee concluded that an advisory body could undermine the Auditor General's independence and his relationship with the Audit Committee of the National Assembly.

Response of the Welsh Assembly Government:

This recommendation has been accepted. No statutory provision will be made for an advisory body. The Minister is considering a non-statutory advisory mechanism to assist and advise the Auditor General.

Clearance of Draft Reports on Local Government

The Committee did not recommend that the Bill be amended to require clearance.

Response of the Welsh Assembly Government:

This recommendation has been noted. The clearance of draft reports can be arranged through protocol as in the case with central government. Auditors appointed to audit local government accounts in Wales would retain the power in the Bill to prepare and publish reports in the public interest.

Technical Points Raised by the Audit Commission

The Committee recommends that these issues be considered by the Government in the final drafting of the bill.

Response of the Welsh Assembly Government:

This recommendation has been noted and agreed. The Audit Commission's views on technical points have been considered and the majority of them have been accepted and incorporated in the bill where applicable.

