

24 Heol y Gadeirlan / Cathedral Road
Caerdydd / Cardiff CF11 9LJ
Ffôn / Tel: 029 20 320500
info@audit.wales / post@archwilio.cymru
www.audit.wales / www.archwilio.cymru

Mr Darren Millar AM
Chair of the Public Accounts Committee
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

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Dear Darren

THE DRAFT WALES BILL

Thank you for your letter of 20 October 2015 inviting me to comment on the draft Wales Bill.

It appears that the provisions currently contained in the 2006 Act that protect certain key aspects of existing legislation relating to the Auditor General's functions have been reproduced in the draft Bill, albeit in a re-arranged form. Those provisions protect the Auditor General's powers to undertake examinations and studies of the Welsh Government and related bodies, and the Auditor General's overall audit independence, and they are appropriate.

I do, however, have some general value for money-related concerns at the apparent effect of paragraph 218 of the new Schedule 7A and paragraph 8 of the new Schedule 7B proposed by the draft Bill. These provisions appear to present scope for argument as to whether public bodies that could be considered integral parts of the Welsh public sector are excluded from the definition of "Welsh public authority". Such an exclusion would seem to arise in the case of bodies with general or supplementary powers that are not confined to exercise "only in relation to Wales", which by virtue of subparagraphs 218(4) and (5) and subparagraphs 8(3) and (4) would seem to put the relevant bodies outside the definition. Examples of such powers may include the general powers of Local Health Boards (under paragraph 13 of Schedule 2 to the National Health Service (Wales) Act 2006, and the WAO's powers for the provision of services (under section 19 of the Public Audit (Wales) Act 2013). I think it would be desirable to have clarity on this point, as the present drafting seems to present potential for dispute and consequential expense.

Another matter that is of relevance to the Wales Audit Office and the Welsh public sector in general is that the draft Bill seems to raise a need for a consequential amendment to the Public Contracts Regulations 2015 so as to allow Welsh public bodies to continue to advertise their requirements on “Sell2Wales” instead of “Contracts Finder”. Regulation 1 of the 2015 Regulations provides that Part 4 of those Regulations (which concerns “Contracts Finder”) does not apply to bodies that wholly or mainly exercise “Welsh devolved functions”. However, “Welsh devolved functions” is defined in the Regulations as functions within the Assembly’s competence under section 108 of the Government of Wales Act 2006. If the exemption from using Contracts Finder is to continue to have effect, the reference to section 108 will need to change to section 108A.

I believe that the normal means for making such an amendment to regulations is by statutory instrument, for which there is provision in the draft Bill. The UK Government may already have such an amendment in mind, but in any case it may be helpful for the Welsh Government to keep this matter in view.

I should also mention that I am concerned at the draft Bill’s reduction in the protection of section 30 of the Government of Wales Act 2006. Under paragraph 7(2)(xv) of the new Schedule 7B, subsections (2) to (4) of section 30 of the 2006 Act are excluded from protection from modification by Assembly legislation. The effect of this is to allow the removal of the preclusion from PAC membership of Welsh Ministers and to allow the removal of the preclusion of a member of a government party from chairing the Committee. Such developments would not be conducive to good scrutiny and governance.

Given the Finance Committee’s functions relating to the Wales Audit Office, I am copying this letter to Jocelyn Davies AM.

Yours sincerely



HUW VAUGHAN THOMAS
AUDITOR GENERAL FOR WALES

cc Ms Jocelyn Davies AM, Chair, Finance Committee