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Dear Mr Gruffydd,

### Consultation on the Draft Public Audit (Amendment) (Wales) Bill

Further to the response of the Auditor General and the Wales Audit Office to the Committee's consultation on its Draft Public Audit (Amendment) (Wales) Bill, I am writing to make you aware of an additional issue relating to the Public Audit (Wales) Act 2013, as detailed below. As this is a rather technical matter concerning the clarity of provisions relating to the payment of the Auditor General's travel and subsistence expenses, it is perhaps best raised separately.

1. Section 7 of the 2013 Act provides for payment of "a salary, allowances, gratuities, arrangements for a pension and other benefits", and that such amounts are charged on, and paid out of, the Welsh Consolidated Fund (WCF). The Act does not, however, specify who should administer such payments. As the WCF does not have a payroll facility, in line with pre-2013 Act practice, the Assembly Commission administers payment of the Auditor General's salary and pension contributions, but not travel and subsistence expenses. We do not consider that it is entirely clear that section 7 would cover the payment of travel and subsistence, though that seems probable.
2. However, paragraph 13 of Schedule 1 to the Act in itself clearly provides for the WAO to pay "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." As far as we can tell, there is no provision within or in relation to that paragraph for such payments to be charged on the WCF. To date the WAO has, accordingly, paid the travel and subsistence expenses of the Auditor General without direct charge on the WCF.
3. A question has now arisen of whether the legislation requires the expenses of the Auditor General to be separated between those incurred in his capacity as a member and chief executive of the WAO and those incurred undertaking

other functions of the Auditor General. And if such a separation is required, a further question arises of whether expenses incurred undertaking other Auditor General functions (i.e. not as a member and chief executive of the WAO) are to be paid under section 7 the Act and charged on the WCF as part of remuneration arrangements made by the Assembly.

4. Our view is that the provisions of the Act are not clear. We also consider that it is neither practical nor conceptually sound to attempt to separate the Auditor General's expenses between those incurred as a member and chief executive of the WAO, and those incurred pursuant to his other Auditor General functions. This is because the Auditor General is a member and the chief executive of the WAO by virtue of his holding the office of Auditor General (section 16 of the 2013 Act), and the Auditor General's connection with the WAO is intrinsic to securing the resources that he requires to exercise audit functions. The Auditor General therefore performs WAO member, chief executive and Auditor General roles concurrently and largely inextricably, so generally expenses related to those roles cannot be separated other than with an arbitrary split.
5. Even if there were a conceptually sound means of separating expenses, applying it in practice would be onerous administration without any benefit. There would be no increase in transparency. If anything, splitting the expenses would cause confusion and so reduce transparency. (As required by HM Treasury's Financial Reporting Manual the aggregate expenses are disclosed in the annual report and accounts of the WAO. Also, the WAO publishes details of the Auditor General's expenses on an ongoing quarterly basis as part of its guide to the Freedom of Information Act 2000 publication scheme.)
6. Given the above, the Committee may wish to consider whether section 7 and paragraph 13 of Schedule 1 to the 2013 Act should be revised to provide greater clarity. We consider that this is not a high priority, provided the Committee is content with the interpretation and approach taken by the WAO.

I should be happy to discuss.

Yours sincerely,



Martin Peters

Head of Law & Ethics