



Northern Ireland
Assembly

Research and Information Service Research Briefing

03 December 2013

NIAR 849-13

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Accountability and Governance in the UK and Ireland's Audit Bodies

How does a legislature scrutinise the work of governmental auditing bodies? This Research Briefing is prepared for the Audit Committee to further enhance its understanding of the remit, governance structures and the prevailing parliamentary accountability mechanisms for the various audit offices of the United Kingdom and the Republic of Ireland. This briefing is for information purposes only; it does not constitute professional legal advice.

1 Introduction

Lord Sharman notes that the “*proper and productive use of public money is an indispensable element of any modern, well-managed and fully accountable democratic state.*”¹ The United Kingdom (UK) and the Republic of Ireland’s various audit bodies ensure these values are upheld: they scrutinise public spending on behalf of their respective legislatures, assist parliamentarians in holding departments to account and help public servants to improve performance and service delivery. But there must also be mechanisms in place for these bodies to be held to account by the legislature.

This briefing seeks to further enhance the Audit Committee’s (the Committee) understanding of the governance and accountability measures pertaining to the various audit bodies in the UK and the Republic of Ireland. Section 2 considers the key principle of the independence of the public sector auditor from the Executive and Section 3 details the general role of a public sector audit body. The paper further considers the auditing accountability framework of Northern Ireland, and then lays out the comparative arrangements for the equivalent bodies serving the UK Parliament, the Scottish Parliament, the Welsh Assembly and the Houses of the Oireachtas. The paper concludes highlighting potential issues for the Committee’s consideration.

This paper draws heavily upon two previous RaISe briefings (NIAR 905-12 and NIAR 180-13) and the information contained therein. This briefing is provided to the Audit Committee in support of its Assembly duties and is intended only to act as a guide and does not cover every situation that may arise. This briefing is for information purposes only and should not be relied upon as legal advice or a substitute for it.

2 The Independence of Supreme Audit Institutions

The auditors of government and public bodies in different countries are known by various titles. The term ‘Supreme Audit Institution’ (SAI) is used throughout the world to denote such bodies.² This section presents detail on the independence of the SAI from the executive arm of government. It provides contextual background about such bodies’ accountability to the legislature.

The primary function of the SAI is to certify the financial accounts of government bodies. In many countries, the SAI also carries out value-for-money assessments of government programmes. In the UK and many Westminster-style democracies, these focus on the economy, efficiency and effectiveness of public expenditure. The SAI is, however, prevented from questioning the merits of the policy objectives that underlie and give rise to expenditure.

Part of the role of the SAI is, therefore, to ensure that governments correctly report their finances and account for their expenditure. There may be occasions when

¹ <http://www.theguardian.com/commentisfree/2010/nov/04/pfi-contracts-cuts>

² The term SAI is adopted by the International Organisation of Supreme Audit Institutions (INTOSAI).

governments would prefer not to highlight the effectiveness or otherwise of their programmes, thus potentially providing an incentive to the executive arm of government to make the work of the SAI more difficult. A government could attempt to do this either by controlling an SAI's resources or by directing its work. It has been observed that:

*[SAI] judgements, whether these concern accounting treatments or value-for-money studies, will from time to time create serious tensions with government.*³

This is one of the reasons that considerable attention has been paid to the concept of independence by, among others, the International Organisation of Supreme Audit Institutions (INTOSAI).⁴

2.1 United Nations General Assembly Resolution A/66/209

On 22 December 2011, the 66th United Nations (UN) General Assembly adopted a resolution which emphasised the need for independence of the SAI from government. The UN recognised that:

*Supreme audit institutions can accomplish their tasks objectively and effectively only if they are independent of the audited entity and protected against outside influence.*⁵

The resolution called on UN Members States to recognise the work of INTOSAI, and to note the Mexico and Lima declarations, which are set out in the following section.

Issue for consideration: should the Audit Committee take steps to ensure that future budget exercises protect the statutory independence of the NIAO, in compliance with prevailing international agreements?

3 The role of the public sector auditor

The American *Institute of Internal Auditors* provides a general summary of the role of a public sector auditor. This can be found in the Institute's useful professional guidance document entitled *The Role of Auditing in Public Sector Governance*. Therein the Institute asserts:

Government auditing is the cornerstone of good public sector governance. By providing unbiased, objective assessments of whether public resources are

³ Heald, D (2009) 'Debate: Reforming the governance of the NAO' in Public Money and Management, March 2009 (see page 85)

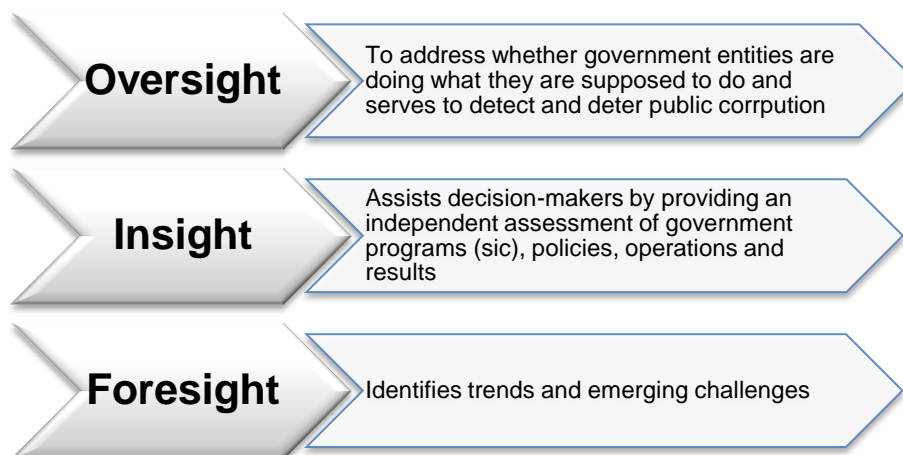
⁴ INTOSAI operates as an umbrella organisation for external government auditors

⁵ UN Resolution A/66/209 available online at:

http://www.intosai.org/fileadmin/downloads/downloads/0_news/2012/UN_Resolution_A_66_209_E.pdf

responsibly and effectively managed to achieve intended results, auditors help government organisations achieve accountability and integrity, improve operations and instil confidence among citizens and stakeholders...⁶

The Institute's breakdown of a public sector auditor's role is outlined in the flowchart below:⁷



In sum, public audit promotes greater efficiency, accountability, effectiveness, transparency in the public sector. It also promotes efficient receipt and use of public resources to the benefit of citizens.⁸ It has also been observed that this function becomes more significant when the fiscal climate is challenging:

As a voice independent of the Executive, and a resource for Parliament to access, the role of the National Audit Office will become even more important during a period of macroeconomic difficulties and of public expenditure restrictions.⁹

4 Northern Ireland Context

The primary function of the Northern Ireland Audit Office (NIAO) is to ensure provision to the Assembly of effective audit services. In line with the principles outlined in Sections 2 and 3 of this paper, the NIAO is independent of the Executive. This section details: the Audit Office's Governance framework; its powers and responsibilities; and, the unique role the Assembly's Audit Committee in holding the NIAO to account.

⁶ www.theiaa.org/download.cfm?file=3512

⁷ *Ibid*

⁸ As recognised by the UN General Assembly in Resolution A/66/209 on 22 December 2011

⁹ Heald, D (2009) 'Debate: Reforming the governance of the NAO' in *Public Money and Management*, March 2009 (see page 85)

4.1 The Northern Ireland Audit Office (NIAO)

The NIAO is independent of government. It seeks to hold public bodies in Northern Ireland to account for the way in which they use public funds. The NIAO is headed by the Comptroller and Auditor General for Northern Ireland (C&AG). The Office's main activities are:¹⁰

- Financial audits;
- Value for money audits;
- Governance and fraud prevention advisory duties;
- Provision of support to the Northern Ireland Assembly and public through reporting; and,
- Exercising the Comptroller function authorising the issue of public funds from the Consolidated Fund for Northern Ireland.

4.2 Governance Framework

Section 65(1) of the *Northern Ireland Act 1998* (the *1998 Act*) sets out that the C&AG for Northern Ireland is appointed as an Officer of the Assembly¹¹ by the Crown on the nomination of the Assembly (i.e. not the Executive). Section 65(2) of the *1998 Act* requires a two-thirds majority vote of the Assembly to remove the incumbent from office.

The independence of the office to work in a self-determined manner is protected by Section 65(3):

*The Comptroller and Auditor General for Northern Ireland shall not, in the exercise of any of his functions, be subject to the direction or control of any Minister or Northern Ireland Department or of the Assembly.*¹²

This affirms the earlier statutory provision in the *Audit (Northern Ireland) Order 1987*. Article 3 of that Order states that the C&AG has '*complete discretion in the discharge of his functions.*'¹³

The first of those functions is specified in the *Exchequer and Audit Act (Northern Ireland) 1921*. Section 19 of that Act provides that the C&AG must examine the accounts of Northern Ireland departments and other publicly funded bodies.¹⁴

The power to conduct value-for-money inspections is provided in Part III of the *Audit (Northern Ireland) Order 1987*. Article 8(1) provides that:

¹⁰ Northern Ireland Audit Office. (2013). *Annual Report and Accounts*

¹¹ <http://www.niassembly.gov.uk/ABOUT-THE-ASSEMBLY/Corporate-Information/Secretariat/Principal-Officers-and-Officials/>

¹² <http://www.legislation.gov.uk/ukpga/1998/47/section/65>

¹³ <http://www.legislation.gov.uk/nisi/1987/460/article/3>

¹⁴ <http://www.legislation.gov.uk/apni/1921/2/section/19>

*The Comptroller and Auditor General for Northern Ireland may carry out examinations into the economy, efficiency and effectiveness with which any department, authority or other body [...] has used its resources in discharging its functions.*¹⁵

Article 11 further provides for the C&AG for Northern Ireland to report any findings of these examinations to the Assembly.

Aside from establishing the functions of the C&AG for Northern Ireland, legislation also provides for the financial independence of the SAI from the executive.

Section 66 of the *Northern Ireland Act 1998* establishes the mechanism by which the budget of the NIAO is to be prepared and brought to the Assembly's Audit Committee for Approval.¹⁶

This arrangement means that – unlike a government department's funding - the financial provision for the SAI is under the control of the legislative, rather than the executive arm of government. It is for the Audit Committee to agree the annual estimate of the use of resources by the NIAO and to lay that estimate before the Assembly.

Consequently, it appears that any change to the NIAO's prescribed roles, responsibilities and functions (as outlined above) would necessitate legislative amendment.

4.3 The NI Assembly Audit Committee

It is clear from the statutory provisions detailed above that the NIAO is legally independent of the Executive. It has the independence to conduct reviews and report to the Assembly, and there is a mechanism through the Audit Committee for the NIAO's budget to be agreed by the legislature.

Section 66 of the *Northern Ireland Act* provides for the establishment of the Audit Committee (the Committee).¹⁷ The Committee's functions under Article 6(2) of the *Audit (Northern Ireland) Order 1987* (as amended) - are to consider and agree – possibly with modifications – the resource requirements of the NIAO:¹⁸

The Comptroller and Auditor General shall for each financial year prepare an estimate of the use of resources (within the meaning of the Government Resources and Accounts Act (Northern Ireland) 2001) by the Northern Ireland Audit Office; and that estimate with such modifications, if any, as may be agreed between the committee established under section 66 of the Northern Ireland Act 1998 and the Comptroller and Auditor General shall be laid by that committee before the Assembly.

¹⁵ <http://www.legislation.gov.uk/nisi/1987/460/article/8>

¹⁶ <http://www.legislation.gov.uk/ukpga/1998/47/section/66>

¹⁷ <http://www.legislation.gov.uk/ukpga/1987/47/section/66>

¹⁸ <http://www.legislation.gov.uk/nisi/1987/460/article/6>

This provision makes clear that it is the Committee and not the Executive that is responsible for the NIAO's funding requirements. It follows that any changes to the NIAO's resource requirement must also be agreed by the Committee.

In advance of considering the annual estimate, the Audit Committee meets to consider a draft corporate plan for the NIAO. The plan sets out: the NIAO's key strategic aims for the next three year period; the delivery strategy; the resources required by the NIAO to do so; and, associated performance metrics.¹⁹

In carrying out these functions, the Committee has regard to the advice of the Assembly's Public Accounts Committee (PAC) and DFP.²⁰

The Committee is a Standing Committee of the Assembly and has 5 members, including a Chairperson and Deputy. It is responsible for tabling any motion for a resolution of the Assembly relating to the salary payable under Article 4(1) of the *Audit (Northern Ireland) Order 1987* to the holder of the office of the C&AG. The Committee's Chairperson also has a lead role in the recruitment of the C&AG

4.4 Accountability and Assembly Procedure

Members may wish to note that the Assembly's Standing Order 19(1) provides that:

(1) *A member may ask questions of –*

(a) *A Minister, on matters relating to the Minister's official responsibilities*

(b) *A member representing the Assembly Commission on matters relating to the Commission's official responsibilities*²¹

This might suggest that the Assembly Question at issue (AQW 1437/11-15 in relation to the NIAO's expenditure on consultancy) could in any case be ruled inadmissible.²²

The absence of a specific mechanism in the Assembly for MLAs' questions about the running, or cost, of the SAI to be handled in a manner consistent with that constitutional position is potentially an issue for the Audit Committee to consider.

Issue for consideration: should the Audit Committee take further steps to ensure that there is a clear mechanism for MLAs to question the NIAO about its operations or cost?

4.5 Issues arising relating to NIAO's financial independence

In the recent past, some issues have arisen about the *de facto* financial independence of the NIAO.

¹⁹ <http://www.niassembly.gov.uk/Assembly-Business/Committees/Audit/Reports/Report-on-the-Estimate-of-the-Northern-Ireland-Audit-Office-2013-14/>

²⁰ *Ibid*

²¹ <http://www.niassembly.gov.uk/Assembly-Business/Standing-Orders/Standing-Orders/#19>

²² NIAR 905-12

A notable example emanated from the Executive's recent budgetary realignment exercise for 2013-14 and 2014-15, which contained a reduction to the NIAO's budget that had not been agreed to by the Audit Committee, despite the statutory provisions set out above.

The outcome of the review was announced by the Minister for Finance and Personnel to the Assembly on 12 November 2012.²³

The Minister's statement was accompanied by tables showing adjusted budget allocations for each of the Northern Ireland Civil Service (NICS) departments and for non-ministerial departments (which includes the NIAO). Supporting figures supplied by DFP to the NIAO show a reduction of £167,000 in the NIAO resource budget for both 2013-14 and 2014-15, despite not having been agreed to by the Audit Committee and despite the important constitutional principle underpinning the statutory provision for agreeing the resources of the NIAO.

The aforementioned scenario is reminiscent of the controversy that surrounded the NIAO budget when the Executive published its draft Budget 2011-15. This was discussed in some detail in RaISe paper 04/11.²⁴ In summary, the issue was that the Executive included in its draft Budget reductions in the NIAO's resources that had not been agreed by the Audit Committee, despite the statutory provisions already mentioned.

Through the consultation process on the draft Budget, and the Assembly debates, the Executive's final Budget 2011-2015 showed a smaller reduction for the NIAO than had originally been proposed: the real-terms reduction for the NIAO in the final budget was 20% over the four-year period, compared with the 25.7% that was originally proposed. This reduction was – in percentage terms – greater than that allocated for all other NICS and non-ministerial departments, with the exception of the Department for Regional Development.

This issue caused the Committee for Finance and Personnel (CFP) at that time some concern. In its report on the draft Budget 2011-2015, CFP stated:

*The Committee wishes to reiterate the serious concerns that have been raised already regarding the basis for the excessive cuts which the draft Budget proposes in the resource allocations for the NI Assembly and NI Audit Office (NIAO) and the potential for this to impair the effectiveness of both of these independent scrutiny bodies. Given that lean times require stronger not weaker scrutiny, the Committee expects to see this issue resolved in the final draft Budget.*²⁵

Later in the same report, CFP also noted evidence from the Audit Committee:

²³ Official report, 12 November 2012 <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/12-November-2012/#2>

²⁴ <http://www.niassembly.gov.uk/Documents/RaISe/Publications/2011/Finance-and-Personnel/0411.pdf> (see section 5)

²⁵ CFP (2010) 'Report on the Executive's Draft Budget 2011-15' available online at: http://archive.niassembly.gov.uk/finance/2007mandate/reports/Report_44_09_10R_vol1.html (see paragraph 18)

Evidence presented to the Committee by the [...] Audit Committee indicated that this posed a real threat to the future effectiveness of the Assembly and its independent scrutineer, the NIAO. Such concern, in terms of the impact on NIAO, was also highlighted in correspondence received from the PAC.²⁶

The Audit Committee had indicated that it wishes to see a Memorandum of Understanding that would provide an appropriate mechanism for clarifying the independence of the NIAO and the role of the Audit Committee in this regard.²⁷

Issue for Consideration: To what extent should the Committee regard itself as the 'parliamentary champion' of the Northern Ireland Audit Office?²⁸

5 Comparative Context

This section engages in a comparative analysis of the public audit frameworks in place for the UK, Scotland, Wales and the Republic of Ireland. It discusses the governance and funding frameworks for each body, the concomitant parliamentary committees tasked with scrutinising the SAI and any other accountability mechanisms that may be in place.

5.1 The National Audit Office (UK Government)

The National Audit Office (NAO) assists Parliament to hold the government to account for the way that public money is spent. It is totally independent of government.

As the auditor of central government expenditure, the National Audit Office is the principal state audit body of the UK and retains responsibility for audit matters 'reserved' to the UK Government post-devolution vis-à-vis Northern Ireland.

5.1.1 The NAO's Governance Framework

The *Budget Responsibility and National Audit Act 2011* modernised the NAO's governance arrangements and is now an important statute in relation to the NAO's operation. It received Royal Assent on 24 March 2011 and took full effect from 1 April 2012. Simply stated, it did the following:

- Established the NAO as a corporate entity, with a statutory board;
- Requires that the Comptroller and Auditor General (UK C&AG) and Chairman be appointed by Her Majesty the Queen, on the advice of the Prime Minister upon an address to Parliament;

²⁶ CFP (2010) 'Report on the Executive's Draft Budget 2011-15' available online at:

http://archive.niassembly.gov.uk/finance/2007mandate/reports/Report_44_09_10R_vol1.html (see paragraph 91)

²⁷ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/05-November-2013/>

²⁸ Gay, O. and Winetrobe, B. 2003. *Parliamentary audit scrutiny*. London: Constitution Unit, University College, London.

- Set out that the Public Accounts Commission is formally responsible for non-executive members of the National Audit Office Board and the external auditor of the NAO; and,
- Requires the NAO Board to agree to a Code of Practice, setting out in detail how the relationship between the NAO Board and UK C&AG will work; this Code must be approved by the Public Accounts Commission

Scrutiny Point: Should any of the changes brought in by the *2011 Act* regarding the National Audit Office's governance (and not already in place in Northern Ireland) be applied in Northern Ireland?

5.1.2 *The Public Accounts Commission (TPAC)*

The role of the Public Accounts Commission (the Commission) is defined by the *National Audit Act 1983* and the *Budget Responsibility and National Audit Act 2011*. The Commission's principal duties under the legislation are:

- To examine the NAO Estimate and lay it before the House of Commons;
- To consider reports from the appointed auditor of the NAO;
- To appoint non-executive members of the NAO Board; and,
- To report from time to time (these reports may be detailed examinations of certain issues or short updates as to the Commission's work).

The Commission comprises of nine Members of Parliament, including the Leader of the House of Commons and the Chair of the Public Accounts Select Committee, who serve *ex officio*. TPAC is structured as a committee, but its continuity, even during the prorogation or dissolution of Parliaments, is assured by the following distinctive statutory provisions:²⁹

- The other seven members, none of whom may be Ministers, are appointed by the House of Commons;
- Members must hold their position for the duration of the Parliament in which they were nominated or appointed;
- On dissolution of Parliament, the Chairman of the PAC shall continue in office as a member of TPAC; and,
- On dissolution of Parliament, the members of the Commission, other than the *ex officio* members, shall continue in office until members are nominated or appointed in their place.

²⁹ National Audit Act 1983 (Schedule 1) available online at <http://www.legislation.gov.uk/ukpga/1983/44/schedule/1>

TPAC also considers reports from the appointed auditor of the NAO and appoints non-executive members of the NAO board.³⁰ TPAC has three main functions under the *National Audit Act 1983*.³¹ These are listed below:

- To examine the NAO estimates proposed by C&AG and lay them before the HOC;
- To appoint the accounting officer for NAO; and,
- To appoint an auditor for NAO

The Commission meets twice a year; once to consider the NAO's three year strategy (typically in the autumn), and once to consider the NAO's estimate (in early spring).

5.1.3 Reform of TPAC and NAO

The *National Audit Act 1983* did not set a term limit or a retirement age for the C&AG. From 1988 to 2008 the position was held by Sir John Bourn. During his twenty year tenure he appointed all of the senior management for NAO. This may have contributed to his domination of NAO, and to the subsequent lack of openness around expenses and hospitality, which ultimately resulted in his downfall³² and initiated subsequent reform.

5.1.4 The Tiner Review

Following Sir John Bourn leaving office (aged seventy three), TPAC commissioned a review of NAO corporate governance. The review was conducted by the former Chief Executive of the Financial Services Authority Sir John Tiner, and was published on 6 February 2008. Tiner proposed a restructuring of NAO and recommended a corporate structure with a part-time Chairman and the C&AG as Chief Executive.

A summary of Tiner's main proposals are listed below:³⁴

- NAO should be made a corporate body with governing board of non-executive directors;
- Governing board should set strategy and oversee the work of the C&AG;
- Board should oversee systems of governance and internal controls;
- C&AG should become Chief Executive;
- Chief Executive should have complete discretion on audit judgements;

³⁰ TPAC available at: <http://www.parliament.uk/business/committees/committees-a-z/other-committees/public-accounts-commission/>

³¹ HoC The Public Accounts Commission: Seventeenth Report 2012 available online at: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpacomm/805/80502.htm>

³² Heald, D (2009) 'Debate: Reforming the Governance of the NAO in Public Money & Management', *March 2009*

³⁴ HoC The Public Accounts Commission: Fourteenth Report 2008 available online at: <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpacomm/328/32802.htm>

- Both Chairman and Chief executive appointed by the Queen on a motion from HOC;
- Chairman and non-executives should be appointed for a term of three years renewable once; and
- Chief Executive should be appointed for a fixed term of 8 years, **which cannot be renewed.**

5.1.5 *Budget Responsibility and National Audit Act 2011*

As outlined at the beginning of this section, the *Budget Responsibility and National Audit Act 2011* (the *2011 Act*) now governs public audit at a national level. This change is partially a result of the Tiner review, which led TPAC to make a number of recommendations that were subsequently incorporated into the *2011 Act*.

The NAO was established as a corporate body directed by a board of four executive members, with the C&AG as Chief Executive and five non-executive members, including a Chairman. The Board sets the strategic direction for the NAO.

The C&AG is now limited to a tenure of ten years, instead of an unlimited term. His independence is ensured by remaining as an Officer of the HOC. The C&AG also retains powers of discretion on audit judgements and statutory functions:

*To ensure that all revenues and other public money payable into the Consolidated Fund (the Government's current account) are duly paid over, and that all issues are authorised by statute.*³⁵

The governance reforms of the NAO initiated by the TPAC should ensure that the overall domination of the NAO by the C&AG never occurs again. The *Budget Responsibility and National Audit Act 2011* requires a code of practice³⁶ to govern the relationship between the C&AG and the NAO board. This mechanism preserves the independence of the C&AG. The TPAC now appoint the non-executive members of the NAO board.

This addresses the succession issue that the *National Audit Act 1983* failed to. Under Section 23 of the *Budget Responsibility and National Audit Act 2011*, the NAO estimate submitted to the TPAC must be prepared **jointly** by the C&AG and the Chairman of the NAO. This protects the C&AG from any allegations of monopolising control of the office.

³⁵ The Comptroller Function available online at:
http://www.nao.org.uk/sectors/central_finance_and_treasury/the_comptroller_function.aspx

³⁶ Code of Practice between NAO board and the C&AG available at:
http://www.nao.org.uk/freedom_of_information/publication_scheme/idoc.ashx?docid=f45bb888-dbc7-4a0d-9a9e-9c87851796f0&version=-1

5.1.6 *Accountability Mechanisms*

In line with central government departments, Members may wish to note that the NAO has a transparency page which details organisational structure, senior staff remuneration and travel and hospitality expenditure.³⁷

This latter heading makes a voluntary disclosure of the expenditure incurred from NAO funds on travel and subsistence, and the provision and receipt of hospitality by the C&AG and the Senior Management of the Office.

Finally, the NAO also discloses payments to suppliers over £500.

5.1.7 *Parliamentary Accountability*

The House of Commons rules on parliamentary questions provide that questions must:

*Relate to a matter for which the Minister addressed is responsible as a Minister (it may not, for example ask about: activities in a Minister's capacity as party leader or member; reports or research by independent organisations, no matter how pertinent; or matters which are the statutory responsibility of the devolved administrations).*³⁸

No Minister has responsibility for the NAO. It is, therefore, the Chairperson of the Public Accounts Commission who answers any Parliamentary Questions about NAO expenditure:³⁹

*The C&AG's decisions to incur expenditure from the resource budget are not subject to approval by staff of the National Audit Office, of which the C&AG is the head, nor by the Treasury. They do however come within the purview of this Commission.*⁴⁰

It is the responsibility of the NAO Board to set the overall strategy for the NAO, and the Public Accounts Commission has a role in overseeing the strategy. There is therefore a link of accountability to the legislature.

5.2 **Scotland**

Public sector auditing in Scotland is part of the remit of two closely aligned bodies, namely Audit Scotland and the Accounts Commission.

³⁷ See: http://www.nao.org.uk/about_us/structure__governance/transparency.aspx

³⁸ House of Commons Information Office (2010) 'Parliamentary Questions' available online at: <http://www.parliament.uk/documents/commons-information-office/p01.pdf>

³⁹ Personal communication from Clerk to the Audit Committee

⁴⁰ The Public Accounts Commission, 13th Report (2007) available online at: <http://www.publications.parliament.uk/pa/cm200607/cmpacomm/915/915.pdf>

5.2.1 Audit Scotland

Audit Scotland was set up by statute in April 2000 and provides services to the Accounts Commission and to the Auditor General, the Scottish Parliament's watchdog for ensuring propriety in the spending of public funds. Some audits are also undertaken by private firms.

Audit Scotland has two main roles:

1. To carry out audits of particular public sector bodies to ensure the highest standards of financial management and governance; and,
2. To carry out performance audits to ensure best possible value for money.

Audit Scotland audits about 200 organisation including 72 Scottish Government bodies, 23 NHS Bodies, 32 councils, 45 joint boards and committees (including police and fire and rescue services), 38 further education colleges and the government-owned utility Scottish Water. It reports openly in the public interest and copies of reports are on its website. Audit Scotland levies charges on local government bodies for audits undertaken on behalf the Accounts Commission.

As determined in the *2000 Act*, Audit Scotland's accountable officer is answerable to the Scottish Parliament. This individual is responsible for ensuring both the propriety and regularity of the finances of Audit Scotland, and economic, efficient and effective use of the organisation's resources.

5.2.2 The Scottish Auditor General

The post of Auditor General for Scotland was created under *the Scotland Act 1998*, prior to devolution in 2000. The appointment is made by the Crown.

Under the terms of the *Public Finance and Accountability (Scotland) Act 2000* (the 2000 Act), the Auditor General for Scotland is responsible for auditing the accounts of most central government bodies in Scotland and some local spending bodies. The legislation requires the Auditor General to submit reports on the findings of audit work to the Scottish Parliament's Public Audit Committee, for its consideration.

5.2.3 The Accounts Commission

The Accounts Commission is independent of both devolved and local government and is responsible for securing the audit of the 32 local councils and 34 joint boards. The Commission is empowered to report, including making recommendations to the Scottish ministers, as well as to audit bodies, and to hold hearings.

5.2.4 Public Audit Committee (Scottish Parliament)

The Scottish Parliament's Public Audit Committee⁴¹ (one of the Parliament's mandatory committees) holds to account those public bodies which fall within the audit remit of the Auditor General. The Audit Committee conducts its own investigations, on the basis of reports from the Auditor General, with a depth and frequency that has strengthened accountability and scrutiny under the Scottish Parliament.

Its remit is to consider and report on any accounts laid before the Holyrood Parliament, any report laid before or made to the Parliament by the Auditor General for Scotland, and any other document laid before the Parliament or referred to it by the Parliamentary Bureau or by the Auditor General for Scotland, which concerns financial control, accounting and auditing of public expenditure

It fits into the generality of Audit Committees, especially those based on a 'Westminster model', and those which have a narrow 'audit' remit rather than one with other financial functionalities.⁴²

5.2.5 Accountability Mechanisms

The *Public Services Reform (Scotland) Act 2010* requires Audit Scotland to publish certain information.⁴³ On its website, it publishes expenditure in relation to: overseas travel; hospitality and entertainment (given); external consultancy; public relations; payments which have a value in excess of £25,000; the number of individuals within the organisation that receive remuneration in excess of £150k; sustainable economic growth; and, its improvement in efficiency, effectiveness and economy.

In addition, Audit Scotland publishes information on expenses and hospitality and gifts (received).⁴⁴

5.2.6 Parliamentary Accountability

Rule 13.3.3.b of the Scottish Parliament's Standing Orders require that Parliamentary Questions must:

*...relate to a matter for which the First Minister, the Scottish Ministers or the Scottish Law Officers have general responsibility.*⁴⁵

Questions that relate to the expenditure of Audit Scotland, therefore, would be ruled as inadmissible. Members may wish to note that Scottish Parliamentary officials advised

⁴¹ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29860.aspx>

⁴² Gay, O. and Winetrobe, B. 2003. *Parliamentary audit scrutiny*. London: Constitution Unit, University College, London.

⁴³ <http://www.legislation.gov.uk/asp/2010/8/section/31>

⁴⁴ <http://www.audit-scotland.gov.uk/about/as/expenses.php>

⁴⁵ See <http://www.scottish.parliament.uk/parliamentarybusiness/26507.aspx>

that a question would not be rejected outright, but that they would work with the Member to attempt to rephrase the question in a way that would be admissible.⁴⁶

5.3 Wales

The Wales Audit Office was established by the National Assembly for Wales on April 1 2005 following the passage of the *Public Audit (Wales) Act 2004*. It has overall responsibility for auditing on behalf of the Auditor General for Wales.

Until 1 April 2005, Wales did not have its own national audit body, with post-devolution auditing still undertaken by the National Audit Office and the Audit Commission. The WAO's staff was transferred to the new body in 2005, following a merger of the NAO in Wales and the Audit Commission in Wales.

This gave Wales, like Scotland, a single audit and inspection body covering all sectors of government, except in relation to non-devolved matters which are reserved to the UK government.

The law which created the Wales Audit Office also expanded the powers of the Auditor General to examine private sector companies where public money has been received.

5.3.1 *The Auditor General for Wales*

The Wales Audit Office publishes reports on behalf of the Auditor General who is appointed by the Crown in accordance with the provisions of Section 90 of the *Government of Wales Act 2006*. It is independent; reports to the National Assembly for Wales; and is held accountable by the Public Accounts Committee of the National Assembly in terms of its work and financial management.

5.3.2 *Governance Structures following The Public Audit (Wales) Act 2013*

The *Public Audit (Wales) Act 2013* (the *2013 Act*) seeks to provide more open and effective governance of the Auditor General for Wales (AGW), while protecting the AGW's independence from the Welsh Government and the National Assembly for Wales.⁴⁷

The passing of the *2013 Act* fulfills a commitment made by Welsh Ministers to strengthen and improve the governance, accountability and oversight arrangements relating to the Auditor General for Wales, following concerns about the professional behaviour and practice of a former Auditor General.

⁴⁶ Source: personal communication with Chamber Office official.

⁴⁷ <http://www.senedd.assemblywales.org/documents/g1035/Public%20reports%20pack%20Tuesday%2001-May-2012%2009.15%20Public%20Accounts%20Committee.pdf?T=10>

The Explanatory Memorandum to the Bill explains the background to and intention of the Bill:

The Welsh Government and the Assembly had concerns about the management, governance and accountability arrangements relating to the AGW and his or her Office. These concerns arose principally from the way in which a previous AGW undertook aspects of his duties which highlighted a lack of robust external accountability. In addition, concerns were raised as to the way in which the AGW worked with other bodies and applied the public resources made available to him in support of his functions and the running of the WAO.

In view of the vital role of the AGW in ensuring the highest standards of probity and propriety in the use of public funds across the public service in Wales, in 2008 the Welsh Government began to explore the possibility of strengthening the current regime and making it more transparent. It sought to secure an opportunity through a suitable UK Government Bill that would provide the Assembly with further legislative competence to introduce primary legislation that would enable the Assembly to modernise and strengthen the governance and accountability arrangements for the AGW and the WAO.⁴⁸

The 2013 Act was introduced – at least in part – in response to a highly critical report by the Public Accounts Committee in Wales:

Unfortunately, the good reputation of the Wales Audit Office and the exceptionally good work that has and continues to be produced by its staff has been overshadowed over the past year by the actions of Jeremy Colman, the former Auditor General for Wales, and others. Aside from Mr Colman's conviction for making and possessing indecent images (child pornography) whilst in office, we have been obliged to consider other aspects of his conduct, failures to prepare accounts for the Wales Audit Office that comply fully with the required financial reporting standards, issues of propriety, and failure to uphold the high standards of governance that the National Assembly for Wales (The Assembly) and the public have a right to expect from such an organisation. These serious governance failures have led to reputational damage being inflicted on the office of Auditor General and the Wales Audit Office, and, more broadly, can only have undermined confidence in the public sector in Wales.⁴⁹

The 2013 Act essentially introduced similar (though not exactly the same) arrangements for public audit in Wales as to those now in place at the UK level. Now:

- The WAO has become a corporate body; and,

⁴⁸ <http://www.assemblywales.org/bus-home/bus-business-fourth-assembly-laid-docs/pri-ld8977-em-e.pdf?langoption=3&ttl=PRI-LD8977-EM%20-%20Public%20Audit%20%28Wales%29%20Bill%20-%20Explanatory%20Memorandum> (page 10)

⁴⁹ http://www.assemblywales.org/report_on_governance_etc_at_the_wao_1.6_final-e.pdf

- The WAO Board is constituted of a chairperson appointed by the Assembly; the Auditor General; 5 non-executive members; and, one employee of the WAO.

5.3.3 Welsh Assembly Public Accounts Committee

The Welsh Assembly Public Accounts Committee was established on 22 June 2011. Its role is to give proper and thorough scrutiny Welsh Assembly Government expenditure. Under the Assembly's Standing Order 18⁵⁰, it considers reports prepared by the Auditor General for Wales on the accounts of the Welsh Government and associated bodies.

Its remit also includes specific statutory powers under the *Government of Wales Act 2006* relating to the appointment of the Auditor General, his or her budget and the auditors of that office.⁵¹

5.3.4 Parliamentary Accountability

The most recent precedent from the National Assembly for Wales implies that questions about the Welsh Audit Office (WAO) are not a matter for Welsh Ministers, but rather for the Assembly itself.

On 29 June 2010, a Member put a question to the then Minister for Finance about the management of the WAO. The Presiding Officer intervened and said that:

*If any statement is to be made about governance in relation to the Wales Audit Office and this Assembly it will be made by me. It is not a matter for the Minister.*⁵²

The Minister concurred, and stated:

*That was the very point that I was going to make in response—this is a matter for the Assembly and the Public Accounts Committee.*⁵³

An official from the National Assembly for Wales has noted that it is, however, not clear exactly what “for the Assembly” means in this context; although the emphasis by the Minister on the role of the PAC may be helpful⁵⁴ in bringing to a conclusion this issue in future.

⁵⁰ www.assemblywales.org/merged_standing_orders_15.03.11-e.pdf

⁵¹ <http://www.senedd.assemblywales.org/mgCommitteeDetails.aspx?ID=230>

⁵² The Record 29 June 2010 available online at: <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=189108&ds=6%2F2010#4>

⁵³ The Record 29 June 2010 available online at: <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=189108&ds=6%2F2010#4>

⁵⁴ Personal communication from Clerk to the Audit Committee

Where questions to a Government Minister have been allowed in relation to the WAO, it has been in connection with a particular report that the WAO has produced.⁵⁵ Standing Order 12.54 states that:

*Members may table oral questions to the First Minister, to each Welsh Minister or to the Counsel General, **about any matters relating to his or her responsibilities** (except that oral questions may be tabled to the Minister with responsibility for government business only about matters relating to his or her responsibilities other than for government business (if any)).⁵⁶ [Emphasis added]*

5.3.5 Further Accountability Measures

Since 2010, the WAO website has published hospitality and expenses for the Auditor General and managing partners.⁵⁷

Its Disclosure Log provides information about expenditures such as WAO expenditure on translation, and other responses to information requests that are of wider public interest.⁵⁸ There does not appear to be the same level of disclosure on expenditures as provided by the NAO and Audit Scotland.

5.4 Office of the Comptroller and Auditor General (Republic of Ireland)

In the Republic of Ireland, the Comptroller and Auditor General (the Comptroller) audits all accounts of monies administered by, or under the Authority of, the Oireachtas. Through the Comptroller function, the Office of the Comptroller and Auditor General (the Office) also controls all disbursements from the Exchequer. The Office's stated role is:

To independently examine and report to Dáil Éireann on whether public funds and resources are used in accordance with the law, managed to good effect and properly accounted for.⁵⁹

5.4.1 Governance Arrangements

The Comptroller is a Constitutional Officer who holds his or her office under Article 33 of *Bunreacht na hÉireann* (The Irish Constitution). The office-holder is appointed by the

⁵⁵ See, for example, The Record, 11 November 2009, available online at: <http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=152010&ds=11%2F2009#q1>

⁵⁶ National Assembly for Wales Standing Orders (Nov 2011) available online at http://www.assemblywales.org/november_2011_branded_tracked_sos-e.pdf (SO 12.54)

⁵⁷ <http://www.wao.gov.uk/aboutus/3235.asp>

⁵⁸ <http://www.wao.gov.uk/aboutus/3260.asp>

⁵⁹ http://www.audgen.gov.ie/viewdoc.asp?fn=/documents/aboutus/Mission_EN.htm

President under the Dáil's nomination, and has the same security of tenure as that possessed by High Court Judges.⁶⁰

Subject to Article 33, the Comptroller's position and functions are regulated principally by the Comptroller and Auditor General legislation dating from 1866-1998.⁶¹

The *Comptroller and Auditor General Act 1993*⁶² (the *1993 Act*) is a 'crucial' piece of legislation. It consolidated many of the statutory provisions which governed the office, principally the *Exchequer and Audit Departments Act (1866)*. The Dáil Committee of Public Accounts helped establish consensus on the desirability for reform.

As well as closing crucial loopholes, the *1993 Act* empowered the Comptroller to conduct Value for Money (VFM) audits, including comparative studies across the public sector. Two of the Republic of Ireland's leading political scientists posit that the consequential embarrassment experienced by public institutions that were deemed to have failed to use public funds prudently has created an important 'exemplary function' to the Office, 'providing an incentive for other public sector institutions to handle state funds with due care so as to avoid criticism in the future.'⁶³

The Appropriation Account of the Office is audited on behalf of the Comptroller by a firm of auditors appointed under Section 13 of the *Comptroller and Auditor General (Amendment) Act, 1993*.

5.4.2 Parliamentary Accountability

The Comptroller's relationship with the Dáil is essentially a reporting one. All reports of the Comptroller are presented to Dáil Éireann and are examined on behalf of the Dáil by the Committee of Public Accounts.

Section 8 of the *1993 Act* provides that the Comptroller may carry out an inspection of the accounts, books and records of a body that receives more than half of its funding from State sources, to address certain specified concerns. Commercial State-Sponsored Bodies do not fall within the remit of the Comptroller, nor is the Office responsible for the audit of the accounts of Local Government.

5.4.3 The Committee of Public Accounts

The Committee of Public Accounts (CPA) plays a key role in the process of public accountability with the Comptroller attending meetings of the CPA as a permanent witness. It utilises Auditor General's reports in its scrutiny function; and examines and

⁶⁰ Forde, M. 2011. *Constitutional law in Ireland*.

⁶¹ *Ibid*

⁶² Coakley, J. and Gallagher, M. 2005. *Politics in the Republic of Ireland*

⁶³ *Ibid*

reports to Dáil Éireann on its review of accounts audited by the Comptroller and his or her reports on them. As is usual in similar systems, the CPA had no remit to question government policy

These include the appropriation accounts of government departments and offices and the accounts of Health Boards and Vocational Education Committees as well as the financial statements of non-commercial state-sponsored bodies.

The CPA also examines other statutory reports of the Comptroller, including examinations of economy, efficiency and effectiveness evaluation (VFM) of departments and state agencies or other reports made under the Comptroller *and Auditor General (Amendment) Act, 1993*.

The Standing Orders of the Dáil (No. 34) state that:

Questions addressed to a member of the Government must relate to public affairs connected with his or her Department, or to matters of administration for which he or she is officially responsible (including bodies under the aegis of his or her Department in respect of Government policy).⁶⁴

As the Comptroller is a Constitutional Officer, no Government Minister is responsible for his office. This means Parliamentary Questions to individual Ministers in relation to the way that the Comptroller and the Office undertakes work are inappropriate. Questions are restricted to include queries relating to the contents of particular reports wherein relevant Ministers are asked "the actions they will take further to the Report of the C&AG into."⁶⁵

⁶⁴ Dáil Éireann Standing Orders (2011) online at:
<http://www.oireachtas.ie/viewdoc.asp?DocID=17757&CatID=5&StartDate=01%20January%202011&OrderAscending=0>
(see page 12)

⁶⁵ Personal communication from Oireachtas official

6 Conclusions

In summary, the governance of the NAO changed relatively recently. In Scotland, the SAI (SAI) has a board with a majority of non-executive members who are appointed by the Scottish Parliament and an external auditor is also appointed by Parliament. In addition, the Auditor General is accountable to a Commission of members of the Scottish Parliament for the budget requirements, use of resources and business performance of Audit Scotland. In Wales, the *Public Audit (Wales) Act 2013* fulfills the Welsh Ministerial commitment to strengthen and improve the governance of that office. None of these arrangements resemble the current architecture of public audit in Northern Ireland.

Issue for Consideration: Is there merit in the Audit Committee considering a review of the governance of the NIAO in line with recent changes elsewhere in the UK?

This briefing has discussed the various governance and accountability arrangements for those organisations that assist parliamentarians in holding the Executive to account. It is evident that some key differences exist across different jurisdictions. This paper highlights potential issues for consideration which arise from these differences, to facilitate the Audit Committee's discussion in this area.