AUDIT COMMITTEE

Room 276
Parliament Buildings
Email: committee.audit@niassembly.gov.uk

Mr Matthew O'Toole MLA
Chairperson
Committee for Finance
By email : committee.finance@niassembly.gov

24 September 2025

Dear Matthew

Clause 20 of the Administrative and Financial Provisions Bill

I am writing to you on behalf of the Audit Committee, to advise you of the outcome of its consideration of Clause 20 of the Administrative and Financial Provisions Bill (the Bill) which proposes to transfer legal responsibility for the appointment of external auditors to the Northern Ireland Audit Office (NIAO) from the Department of Finance (DoF) to the Audit Committee. You may recall that the Committee for Finance requested that the Audit Committee undertake scrutiny of this Clause in correspondence dated 24 June 2025.

Having considered the proposal carefully, including seeking legal advice, the Audit Committee agreed that it would not be content for the power to appoint an external auditor to the NIAO to transfer from the DoF to the Audit Committee, without significant engagement and consideration of how it would be supported to meet this proposed legal duty effectively.

The Committee agreed that it would reconsider whether it agrees with its predecessor Committee, that the power should sit with the Audit Committee, once a way forward on the practical arrangements has been identified and formally agreed. The Committee noted that agreement on a way forward was likely to require consultation on options, legal advice and potentially amendment(s) to the Bill, depending on the preferred way forward. These are issues which should ideally have been resolved prior to the Bill's introduction in the Assembly.

I have provided a summary of the Committee's consideration and some suggested next steps for the Committee for Finance to consider as it progresses through the Committee Stage of the Bill.

Background to proposed transfer

The proposed legislative change in responsibility for appointing external auditors to the NIAO from DoF to the Audit Committee is in line with a legacy recommendation made by the previous Audit Committee in its [Review of the Governance and Accountability Arrangements for the Northern Ireland Audit Office and the Northern Ireland Public Services Ombudsman] (see pages 38-39).

> *'Recommendation 16 - The appointment of an external auditor for the NIAO becomes a responsibility of the Assembly Audit Committee, to bring it into line with its peers, and that the DoF legislates to effect this change.'*

The former Audit Committee had considered that this recommendation would bring Northern Ireland into line with the practice in other UK jurisdictions and provide the public with assurance of stewardship by the NIAO. NIAO and DoF were supportive of this recommendation.

The former Committee's legacy recommendation was made in the context of other recommendations for wider reform of the governance arrangements for NIAO. While recommendation 16 was not subject to any wider reform taking place first, this is important background, the relevance of which is set out later.

While the former Committee did not explore the practical outworkings of its recommendation, it is important to note that the former Minister of Finance had stated:

'My department, therefore, working together with the Assembly/Committee support, would propose to take forward work to make this change once time permits. In the meantime, my officials will consider the most appropriate vehicle to take forward the necessary legislative changes and will liaise with the Clerk of the Audit Committee.' Pg 39

It is unfortunate that DoF did not ultimately engage with the Assembly or the Committee prior to introducing the Bill so any potential issues in the proposed approach could have been resolved.

Committee Consideration

As a first step the Committee wrote to the NIAO and has received confirmation that it remains supportive of the transfer of the power. In addition, the NIAO offered its assistance to the Audit Committee in whatever way is helpful.

The Committee Clerk requested legal advice on behalf of the Committee and further information on the current arrangements for identifying and appointing external auditors to the NIAO from DoF.

The Committee noted that transferring the power to appoint an External Auditor for NIAO to the Assembly Audit Committee, under the Bill as drafted, also has the effect of requiring the Committee to determine the remuneration and other terms and conditions of the external auditor.

The Committee was concerned that the practical outworkings of the transfer of power mean that auditors would have to be identified through public procurement and that a multi-year contract (which could span more than one mandate) would need to be awarded and managed.

The Committee noted that (it would seem) that the contracting parties would be the NIAO and its external auditors and that under the current arrangements, contract management sits with the NIAO. This would seem appropriate, particularly given that it would be for the NIAO to meet the costs of services; and given that management of contracts is not a role for Assembly Committees. The Committee is content that this does not affect Committee oversight, since the external auditor must in any case report on the accounts of the NIAO to the Assembly and may also carry out economy, efficiency and effectiveness examinations of the use of resources by the NIAO.

However, the Audit Committee agreed that it does not have the capacity or resources to undertake procurement exercises to identify external auditors for appointment.

The Committee considered that the role of appointment of external auditors is a role which could and should sit separately to a role where it would be a contracting authority undertaking the process of procurement. The detail of this needs to be further understood and resolved so that the Committee could, upon receiving appropriate authoritative and professional advice, appoint the auditors, or approve the appointment of auditors, without undertaking the procurement exercises itself, and without entering into a contract.

Therefore, the Committee considered what options might provide a way forward in terms of identifying which organisation(s) would be best placed, having undertaken public procurement, to provide advice and support to the Audit Committee on its appointment of external auditors to the NIAO.

Option 1 – NIAO to advise the Audit Committee

The Committee considered if it would be appropriate for the NIAO to provide advice on the appointment of its external auditors. This would, on first consideration, seem to be the optimal approach, given that in other UK jurisdictions, the Committee in each legislature appoints the external auditors to audit offices, and that this is on the advice of the audit offices.

The Committee understands however that the specific governance arrangements in Northern Ireland mean that it would not be appropriate for NIAO to have a role in supporting the Audit Committee in this way. The legal position in that regard is complex, and the Committee for Finance may wish to seek its own advice. In summary however the Committee understands that the position in Northern Ireland is that NIAO has no ‘distinct corporate personality’. The Comptroller & Auditor General (C&AG) is a Corporation Sole and the NIAO is the C&AG along with her staff. While it has an ‘advisory board’, this has no statutory basis or legal powers. This contrasts with the position in England, Scotland and Wales which have seen significant change in recent decades. The new audit models are characterised by a statutory corporate body of which the C&AG (or equivalent) is a one member, <u>with (importantly) a majority of non-executive members appointed by the relevant legislature. This key difference is particularly relevant in ensuring sufficient independence of the advice being provided.</u>

Option 2 – DoF to advise the Audit Committee

The Committee considered if it would be appropriate for the DoF to retain its well-established role in relation to the procurement, identifying an external auditor for the approval of the Committee. The Committee noted that this would require consultation with DoF and an amendment to the Bill. While this approach may not, on first consideration, seem any different to doing nothing, it would have the benefit of transferring legislative responsibility to the Audit Committee to appoint the external auditors, replacing the current ex statutory arrangement that the appointment is made by DoF after endorsement by the Audit Committee.

Option 3 – Assembly Commission to advise the Audit Committee

A third option considered by the Committee was that the Assembly Commission could, having undertaken procurement exercises, provide advice to the Audit Committee on the appointment of external auditors which would allow the Committee to appoint the external auditors without entering into a contract. Again, the Assembly Commission would need to be consulted on this option to understand its appropriateness and feasibility.

Option 4 – Power to appoint external auditors to transfer to the Assembly Commission

The Committee considered if it would be appropriate for the power to appoint external auditors to the NIAO to be transferred to the Assembly Commission and not to the Audit Committee. It noted that, while possible in principle, this may not be desirable since NIAO is the auditor for the Commission (in the same way as it is the auditor for DoF). This approach would also not be in line with the position elsewhere in the UK, where it is always elected members which appoint the external auditor to the audit body.

In addition to the options above which explore how the Audit Committee might be supported in meeting the proposed legal duty, the Committee also considered a 'do nothing' and a 'longer term' option.

Option 5 – Do Nothing

The "do nothing' option would mean that the power to appoint external auditors to the NIAO would remain with the DoF at this time. The Committee noted that this may be appropriate given that the current governance arrangements for NIAO mean that the full alignment with other UK Jurisdictions, as was intended by its processor committee, cannot be achieved as intended at this time. It may also be an appropriate option should it not be possible to reach agreement on the various issues on time for Consideration Stage of the Bill. The Committee further noted that a new contract is not required until September 2028 so there may be time to revisit the transfer of power, should there be another legislative vehicle to do so.

Option 6 – Longer Term Change to Governance Arrangements for NIAO

This longer-term option (which could be pursued in combination with the ‘do nothing’) is for the Audit Committee to consider the legacy recommendations of its predecessor committee in relation to changing the governance arrangements of NIAO, through legislation. Specifically, this would mean formally separating the NIAO from the C&AG, establishing it as a body corporate with a statutory board, with the majority its members being independent and appointed by the Audit Committee. Depending on the committee’s deliberations, this change could be taken forward but would take a significant amount of time and it should be noted that it would not be feasible to complete the process this mandate.

On a final point, the Committee is aware that Clause 20 is subject to a commencement clause; however, it does not consider that this should be relied upon to delay introduction of the transfer of power, given the significant issues set out above.

Suggested next steps

The Committee considers that the following next steps may be appropriate for the Finance Committee to consider, taking its own legal advice where necessary.

The Audit Committee suggests that the Committee for Finance consider the following:

(1) In relation to *Option 2 above (DoF to advise the Audit Committee)* – consult with DoF that the Bill be amended so DoF would retain its existing role in relation to procurement, with the Audit Committee approving the appointment on the advice of DoF. All normal contract management arrangements, including agreement of the work programme, payment of the actual audit costs incurred, etc., would continue to fall to the NIAO. This would have the benefit of transferring legislative responsibility to the Audit Committee to appoint the external auditors to NIAO, replacing the current ex statutory arrangement that the appointment is made by DoF after endorsement by the Audit Committee.

The Committee for Finance could state that the arrangement could be subject to review in the context of any future wider reform of the governance arrangements of the NIAO. (See Option 6 for explanation).

(2) In relation to *Option 3 above (Assembly Commission to advise the Audit Committee)* – consult with the Assembly Commission that it would undertake the procurement exercises necessary to identify external auditors to the NIAO for appointment by the Audit Committee in the future, and without the Audit Committee entering into a contract[1] . All normal

[1] It needs to be further understood whether the Bill would need to be amended so that the Commission entered the contract and not the Committee.

contract management arrangements, including agreement of the work programme, payment of the actual audit costs incurred, etc., would (as is currently the case) fall to the NIAO.

The Committee for Finance could state that the arrangement could be subject to review in the context of any future wider reform of the governance arrangements of the NIAO (see Option 6 for explanation).

(3) The Committee for Finance may also consider that *Option 5 - "do nothing"* is appropriate given the issues to be resolved and the timescales for its consideration of the Bill, and that in any case, full alignment with other UK jurisdictions, as intended by the former audit committee, is not possible at this time.

(4) The Committee for Finance could consider endorsing *Option 6 (Consideration of Longer-Term Change to Governance Arrangements for NIAO)* which would involve the Audit Committee reviewing the legacy recommendations of its predecessor committee, in relation to the NIAO being formally separated from the C&AG, and being established as a body corporate in the form of a statutory board, with the majority of its members being independent and appointed by the Audit Committee. This is a longer-term option which would require legislative change and would therefore not be realistic this mandate. Nevertheless, this would be the best option to provide full alignment with the position in the other UK jurisdictions, which was the intention of the former Audit Committee when it recommended that the power to appoint external auditors to NIAO sits most appropriately with the Assembly/Audit Committee.

The Audit Committee would be grateful to be consulted and informed as the Committee for Finance reaches its position on the Clause. The Audit Committee Clerk is available to liaise with the Clerk to the Finance Committee to provide further background information if required.

Yours sincerely,

Alan Chambers
Chairperson