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Potential areas of work for the Audit Committee

Introduction

This Briefing Paper has been prepared to identify potential areas of work for the Assembly's Audit Committee. The research highlights three possible areas of focus, based on developments elsewhere in the UK and on issues which have arisen in the recent past in Northern Ireland. Brief details are given in relation to:

- The financial independence of the Northern Ireland Audit Office (NIAO) from the Northern Ireland Executive;
- The accountability of the NIAO of the Assembly; and,
- Reforms to the governance of the National Audit Office (NAO) and Welsh Audit Office (WAO).

1. The financial independence of the NIAO

It is a fundamental principle of public audit that the audit body must be independent of the bodies it audits. On 22 December 2011, the 66th United Nations (UN) General Assembly adopted a resolution which emphasised the need for independence of Supreme Audit Institutions (SAIs) 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.¹

The resolution called on UN Members States to recognise the work of the International Organisation of Supreme Audit Institutions (INTOSAI), and to note the *Mexico and Lima Declarations*, which are set out in the following section.

1.1. The Mexico and Lima Declarations

The *Mexico Declaration on SAI Independence* and the *Lima Declaration of Guidelines on Auditing Precepts* of the congress of INTOSAI both highlight independence as key to the work of public audit bodies.

The preamble to the *Lima Declaration* states:

It is indispensable that each country have a Supreme Audit Institution whose independence is guaranteed by law.²

In his foreword, the Secretary General of INTOSAI also emphasised the benefits of independence for safeguarding public trust in the state:

*Only an independent external government audit function – in conjunction with professional staff and methodologies – can guarantee an unbiased, reliable and objective reporting of audit findings. The independence of Supreme Audit Institutions is therefore of primary importance for the transparency of public administration. It furthermore **safeguards and sustains the efficiency of the control functions of Parliaments, thereby strengthening public trust in government institutions.**³*
[emphasis added]

¹ 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 (accessed 22 November 2012)

² INTOSAI (2009) 'Lima declaration and Mexico declaration' available online at: <http://www.intosai.org/uploads/englisch.pdf> (accessed 22 November 2012) (see page I-9)

³ INTOSAI (2009) 'Lima declaration and Mexico declaration' available online at: <http://www.intosai.org/uploads/englisch.pdf> (accessed 22 November 2012) (see page I-1)

There are benefits from this feature of audit for both the legislature and the executive. The *Mexico Declaration* describes the existence of an independent SAI as ‘*indispensable for a healthy democracy*’.⁴

Beyond the independence of the institution of the SAI, the *Lima Declaration* also focuses on the membership of the body, and requires that:

*...the procedures for removal from office also shall be embodied in the Constitution and may not impair the independence of the members.*⁵

This guarantee is to prevent governments from removing the head of the SAI (or others responsible for its decisions) if its reports highlight issues that are uncomfortable to them.

In addition to independence from the audited bodies, Principle 8 of the *Mexico Declaration* underlines the importance of the SAI’s financial independence from the Executive:

*SAIs should have available necessary and reasonable human, material, and monetary resources – **the Executive should not control or direct the access to these resources. SAIs manage their own budget and allocate it appropriately.***

The Legislature or one of its commissions is responsible for ensuring that SAIs have the proper resources to fulfil their mandate.

*SAIs have the right of direct appeal to the Legislature if the resources provided are insufficient to allow them to fulfil their mandate.*⁶ [emphasis added]

1.2. The statutory independence of the NIAO

Section 65(1) of the *Northern Ireland Act 1998* provides that the Comptroller and Auditor General for Northern Ireland is appointed as an Officer of the Assembly⁷ by the Queen on nomination by the Northern Ireland Assembly (i.e. not the Executive). Section 65(2) requires that a two-thirds majority of the Assembly is required to remove the incumbent from office.

The independence to work in a self-determined manner is protected by section 65(3):

⁴ INTOSAI (2009) ‘Lima declaration and Mexico declaration’ available online at: <http://www.intosai.org/uploads/englisich.pdf> (accessed 22 November 2012) (see page I-23)

⁵ INTOSAI (2009) ‘Lima declaration and Mexico declaration’ available online at: <http://www.intosai.org/uploads/englisich.pdf> (accessed 22 November 2012) (see page I-12)

⁶ INTOSAI (2009) ‘Lima declaration and Mexico declaration’ available online at: <http://www.intosai.org/uploads/englisich.pdf> (accessed 22 November 2012) (see page I-27)

⁷ <http://www.niassembly.gov.uk/ABOUT-THE-ASSEMBLY/Corporate-Information/Secretariat/Principal-Officers-and-Officials/>

*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.*⁸

This affirms the earlier statutory provision in the *Audit (Northern Ireland) Order 1987*. Article 3 of that Order states that the Comptroller and Auditor General for Northern Ireland has ‘*complete discretion in the discharge of his functions*’.⁹

The first of those functions is specified in the *Exchequer and Audit Act (Northern Ireland) 1921*. Section 19 of that Act provides that the Comptroller and Auditor General for Northern Ireland must examine the accounts of Northern Ireland departments and other publicly funded bodies.¹⁰

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:

*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.*¹¹

Article 11 further provides for the Comptroller and Auditor General for Northern Ireland to report any findings of the examinations to the Assembly.

Aside from establishing the functions of the Comptroller and Auditor General 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 Northern Ireland Audit Office is to be prepared and brought to the Assembly’s Audit Committee for approval.¹² 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.

1.3. What is the issue for the 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.

⁸ <http://www.legislation.gov.uk/ukpga/1998/47/section/65>

⁹ <http://www.legislation.gov.uk/nisi/1987/460/article/3>

¹⁰ <http://www.legislation.gov.uk/apni/1921/2/section/19>

¹¹ <http://www.legislation.gov.uk/nisi/1987/460/article/8>

¹² <http://www.legislation.gov.uk/ukpga/1998/47/section/66>

Section 66 of the *Northern Ireland Act 1998* provides for the establishment of the Audit Committee.¹³ 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:¹⁴

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.

This provision makes clear that it is the Audit Committee and not the Executive that is responsible for the NIAO's funding requirements. It follows that any changes to the NIAO's resource requirements must also be agreed by the Committee. This section of this Note addresses why this is a potential issue for consideration by the Audit Committee.

In the recent past, however, there have been some issues which have arisen about this financial independence *de facto*.

The Northern Ireland Executive has recently conducted a realignment exercise for its budgets for 2013-14 and 2014-15. The outcome was announced by the Minister for Finance and Personnel to the Assembly on 12 November 2012.¹⁵

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. **This reduction has not been agreed by the Audit Committee despite the statutory provisions set out above.**

The current 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 RalSe paper 04/11.¹⁶ 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 set out above.

Through the consultation process on the draft Budget, and the Assembly debates, the Executive's Final Budget 2011-15 showed a **smaller** reduction for the NIAO than had originally been proposed: the real-terms reduction for the NIAO in the final budget was

¹³ <http://www.legislation.gov.uk/ukpga/1998/47/section/66>

¹⁴ <http://www.legislation.gov.uk/nisi/1987/460/article/6>

¹⁵ Official report, 12 November 2012 <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-12-13/12-November-2012/#2>

¹⁶ <http://www.niassembly.gov.uk/Documents/RalSe/Publications/2011/Finance-and-Personnel/0411.pdf> (see section 5)

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 2011-15, 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.¹⁷

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

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.¹⁸

CFP is currently developing a Memorandum of Understanding in order to establish a framework for improved co-operation between the Executive and the Assembly in respect of budgetary matters. The Audit Committee had already indicated that it wishes to see such a Memorandum of Understanding provide for an appropriate mechanism for clarifying the independence of the Northern Ireland Audit Office and the role of the Audit Committee in this regard. The issue shall be discussed further at the Committee's meeting on 4 December.

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?

¹⁷ 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)

¹⁸ 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)

2. The accountability of the NIAO of the Assembly

Although the independence of the SAI is a fundamental principle, it is also important from a governance perspective that it is accountable to the legislature. This section looks at the accountability of SAIs to the respective legislatures for which they work.

It first addresses the issue of *why* it is important that the SAI is accountable for expenditure. Ultimately, this is the question of 'who watches the watchman'? This question came to public attention in 2007 following a scandal which is detailed in section 2.2. The need for propriety in the SAI is addressed first.

2.1. The INTOSAI declarations

The *Lima and Mexico Declarations* mentioned in section 1.1 of this paper underline the importance of integrity in the SAI. In particular, the *Mexico Declaration* states that:

SAIs should not be involved or be seen to be involved, in any manner, whatsoever, in the management of the organizations that they audit.

Further, for the purposes of ensuring that conflicts of interest do not arise between auditor and client:

SAIs should ensure that their personnel do not develop too close a relationship with the entities they audit, so they remain objective and appear objective.¹⁹

Having said that, a close working relationship between auditor and client is necessary:

[The] SAI should have full discretion in the discharge of their responsibilities, they should cooperate with governments or public entities that strive to improve the use and management of public funds.²⁰

These statements highlight the fine line that the SAI must tread between working closely with government clients to enable better financial governance in the public sector, and getting too close. This tension became public in the scandal detailed in section 2.2 below. It also perhaps points at another tension in public audit; there is some conflict between 'independence' and 'accountability'.

This tension was identified in a study *Parliament's Watchdogs: At The Crossroads* by Gay and Winerobe in 2008. In the foreword to that study, Dr Tony Wright MP wrote:

How we regulate effectively and ethically the way we are governed is not a second-order matter. And the extent to which this regulation is anchored

¹⁹ INTOSAI (2009) 'Lima declaration and Mexico declaration' available online at: <http://www.intosai.org/uploads/englisch.pdf> (accessed 22 November 2012) (see page I-25)

²⁰ INTOSAI (2009) 'Lima declaration and Mexico declaration' available online at: <http://www.intosai.org/uploads/englisch.pdf> (accessed 22 November 2012) (see page I-26)

*firmly in the representative institution of a parliament will be a measure of its democratic accountability.*²¹

According to the authors of the study, the model for ‘constitutional watchdogs’ ‘emphasises independence from the executive, rather than sustained scrutiny and accountability.’²² As the following section demonstrates, perhaps this emphasis has not always been quite right – indeed, events have shown that more emphasis was required upon accountability.

2.2. The Sir John Bourn expenses scandal

Sir John Bourn held the post of Comptroller and Auditor General and head of the National Audit Office (NAO) for 20 years. Towards the end of his tenure, he was subject to hostile coverage of his expenses and acceptance of hospitality in *Private Eye*.

A report in *The Guardian* illustrated why this was an issue of public concern:

*Sir John is the chief investigator into Whitehall waste and extravagance. But his travel and entertainment records [...] revealed he spent £365,000 on foreign visits in three years, in some cases flying first class with his wife. Over the same period he ran up a meal account approaching £27,000 including lunches and dinners at the Ritz, Savoy and Dorchester.*²³

A *Private Eye* special report asserted that part of the problem revealed by the issue of Bourn’s expenses was, in fact, the level of autonomy granted to the Comptroller and Auditor General by statute:

*The absolute autonomy given to the C&AG was designed to distance him from the government he would hold to account. But, on the heroic assumption that the incumbent would be forever inscrutable, the National Audit Office Act 1983 also made him **the least accountable public servant in Britain.***²⁴ [emphasis added]

In fact, it was not only the issue of expenditure, but also of the NAO’s relationship with officials that gave rise to concern:

In 1994 the Economist reported disquiet among MPs on the public accounts committee that Bourn’s office was working too closely with

²¹ Gay and Winerobe (2008) ‘Parliament’s Watchdogs: At The Crossroads’ available online at: <http://www.ucl.ac.uk/spp/publications/unit-publications/144.pdf> (accessed 22 November 2012) (see page 5)

²² Gay and Winerobe (2008) ‘Parliament’s Watchdogs: At The Crossroads’ available online at: <http://www.ucl.ac.uk/spp/publications/unit-publications/144.pdf> (accessed 22 November 2012) (see page 12)

²³ Branigan, T in *The Guardian*, Friday 26 October 2007, ‘Big-spending cost watchdog to retire’ available online at: <http://www.guardian.co.uk/politics/2007/oct/26/uk.Whitehall> (accessed 22 November 2012)

²⁴ Brooks, R in *Private Eye*, Issue 1218, 5 September 2008, ‘The Bourn Complicity’ (see page 17)

*Whitehall. The approach, confided one senior civil servant, was “not to rock too many government boats”.*²⁵

This scandal prompted a review of the governance of the NAO, which is discussed further in section 3 of this paper.

2.3. What is the issue for the Audit Committee?

The need for accountability to the legislature is clearly established in the preceding sections of this paper. This section explains why this may be an issue for the Audit Committee.

Some questions have previously been raised about the accountability of the NIAO : in particular in relation to questions about its expenditure on consultancy. The precise issue is whether it is appropriate for an Executive Minister to answer Assembly Questions about the NIAO, given that body’s statutory independence from government.

The Assembly Question recently at issue was AQO 1437/11-15:

1. To ask the Minister of Finance and Personnel how much the Northern Ireland Audit Office has spent on external consultants in each of the last three financial years.

The Minister of Finance provided the following written response:

*2. Unfortunately I am not in a position to provide details of the external consultancy projects undertaken by the Northern Ireland Audit Office. As Members will be aware my Department requests returns from all Departments on an annual basis as recommended by the Public Accounts Committee. This information is then collated and published in DFP’s Annual Compliance Report on the Use of External Consultants. My Department not only requests this information from the 12 Ministerial Departments, but also the other non-ministerial Departments, that is: the Food Standards Agency; the Utility Regulator; The Northern Ireland Assembly Commission; the Assembly Ombudsman and Northern Ireland Commissioner for Complaints; and the Northern Ireland Audit Office. **Unfortunately on each occasion when the Northern Ireland Audit Office has been asked for details of its external consultancy projects it has declined to provide it.** I fully understand that the Audit Office is not bound by the Executive’s controls and I completely respect its independence, however I don’t believe that making this information available would compromise the Audit Office’s independence, but rather it would demonstrate openness and transparency.²⁶[emphasis added]*

²⁵ Brooks, R in Private Eye, Issue 1218, 5 September 2008, ‘The Bourn Complicity’ (see page 17-18)

²⁶ <http://aims.niassembly.gov.uk/questions/printquestionssummary.aspx?docid=127808>

In the words of one expert: '*independence in auditing is invaluable but fragile*'.²⁷

Because the head of the SAI has a privileged constitutional position, independence is crucial; but this must be balanced by accountability.

The Audit Committee has supported the NIAO in its position of not providing information about its performance to DFP for monitoring purposes. It has also taken steps to ensure a degree of accountability to the Assembly and its Members, from the NIAO in respect of its performance. The Comptroller and Auditor General has said that he is content to answer questions from Members in respect of the NIAO's performance.²⁸

However, 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. The accountability mechanisms in other legislatures are included in Appendix 1.

Issue for consideration: should the Audit Committee take further steps to ensure that there is a clear mechanism for accountability of the NIAO to the Assembly?

²⁷ Heald, D (2008) 'A reform too far' in *Public Finance* available online at: <http://www.publicfinance.co.uk/features/2008/a-reform-too-far-by-david-heald/> (accessed 22 November 2012)

²⁸ Information provided by Audit Committee Clerk

3. Reforms to governance of the NAO and WAO

One way in which the Audit Committee could consider approaching the two issues raised in sections 1 and 2 of this paper would be to review the governance arrangements for the NIAO prescribed in the *Audit (Northern Ireland) Order 1987*..

The scandal described in section 2.2. prompted a review of the governance of the NAO at Westminster. The result has been reform to the governance structures; the Welsh Assembly has also been reviewing the governance of the WAO during its consideration of the *Public Audit (Wales) Bill* . This section of the paper looks at these reforms to inform the Audit Committee's consideration of these developments and its forward work planning.

3.1. Reform of the NAO

David Heald (Professor of Accountancy at Aberdeen University and specialist adviser to the Public Accounts Commission which oversees the NAO from 2002 to 2008) has echoed the point made in *Private Eye* above: that the legislation providing for the NAO gave rise to governance problems:

*The landmark National Audit Act 1983 contained a fatal flaw: it did not set a term limit or a retirement age for the C&AG. [...] Sir John Bourn held the post for 20 years, until the age of 73, and could have stayed longer had it not been for Private Eye's hostile coverage of his expenses and acceptance of hospitality. **This excessively long tenure meant that his Deputy and Assistant Auditor Generals had all been appointed by him and might also have left before him.** This contributed to his domination of the NAO and to the failure of the Senior Management Board to function corporately; the operational activities of the NAO were in practice managed by the Management Committee chaired by the Deputy C&AG.²⁹ [emphasis added]*

In recent years the governance of public audit at the UK level has been overhauled. The NAO now has a Board and a Chair. A maximum tenure of ten years for the Comptroller and Auditor General (C&AG) has been introduced. The Chair and (majority) non-executive directors of the NAO Board can serve for no more than three years. The Board also has a veto over the C&AG's nominations for executive members of the Board.

These changes in Westminster are designed to mitigate against further scandals. The reforms to the governance of the NAO were preceded by a formal review by John Tiner.³⁰ The Public Accounts Commission adopted the Tiner recommendations, prompting the Commission's specialist adviser to resign. He believed that it had drawn

²⁹ Heald, D (2009) 'Debate: Reforming the governance of the NAO' in *Public Money and Management*, March 2009

³⁰ See Public Accounts Commission 14th Report, available online at:

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpacom/328/32802.htm> (accessed 4 May 2012)

the wrong lessons from the end of Sir John Bourn's period as C&AG.³¹ Indeed, in recent evidence to the Public Accounts Committee in Wales he commented on the proposed changes to WAO governance, saying:

*I think that the Bill as it stands is fundamentally misguided. It reflects what happened in the United Kingdom Parliament, where they used a sledgehammer to crack a nut.*³²

Having said this, the current UK C&AG also recently gave evidence to the Public Accounts Committee in Wales. In summary, he expressed a view that the reformed arrangements at the UK level were working well.

In his evidence he commented on the legislation, and the code of practice, under which he operates, and in particular whether the new arrangements fettered his independence and discretion:

*It is clear to me that they have not been fettered [...], but that is because the code of practice and the legislation both set out not to fetter them as a clear primary objective. As far as I am concerned, they have achieved it. If I ever think that there is any risk of my discretion being fettered, I am swift to protect its boundary.*³³

3.2. The Public Audit (Wales) Bill

The *Public Audit (Wales) Bill* is currently proceeding through the National Assembly for Wales.³⁴

The Explanatory Memorandum 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

³¹ 'The architecture and governance of UK public audit' lecture given by David Heald at University of Ulster 15 March 2011

³² Official Report, 16 October 2012, available online at:

<http://www.senedd.assemblywales.org/documents/s11097/16%20October%202012.pdf> (accessed 22 November 2012)(see page 3)

³³ Official Report, 16 October 2012, available online at:

<http://www.senedd.assemblywales.org/documents/s11097/16%20October%202012.pdf> (accessed 22 November 2012)(see page 22)

³⁴ See <http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?IId=4174> for details on the Bill

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.³⁵

The Bill 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.³⁶

The Bill essentially proposes similar (though not exactly the same) arrangements for public audit in Wales as to those now in place at the UK level. If the Bill is passed without amendment:

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

It is noticeable that the motivation for reform in Wales is not dissimilar from at the UK level: there were difficulties in the individual appointed as Auditor General and a loss of trust, rather than a general problem with accountability of the office *per se*.

The Northern Ireland Assembly's Audit Committee may be interested to note that the Public Accounts Committee in Wales has recently published its report on Stage 1 on the Bill.³⁷ Whilst the Public Accounts Committee in Wales has recommended that the Assembly agrees the general principles of the Bill, it has made several

³⁵ <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)

³⁶ http://www.assemblywales.org/report_on_governance_etc_at_the_wao_1.6_final-e.pdf

³⁷ In the National Assembly for Wales, a stage 1 committee report addresses the principles of the Bill, rather than clause by clause scrutiny – this comes later in the process.

recommendations for amendments. These recommendations relate to the Bill's provisions concerning:

- The governance of the WAO;
- The size and composition of the WAO's Board;
- The accountability of the Auditor General for Wales and the WAO to the Assembly; and,
- Other matters such as staff transfers, and taxation.³⁸

3.3. What is the issue for the Audit Committee?

The governance of the NAO has relatively recently been changed. In Wales there is reform under way. In Scotland, the SAI (Audit Scotland) has a board with a majority of non-executive members who are appointed by the Scottish Parliament and an external auditor 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.

None of these arrangements resemble the current architecture of public audit in Northern Ireland. The arrangements were also different *prior* to the reforms being commenced.

Issue for consideration: should the Audit Committee consider a review of the governance of the NIAO? Would a review be a suitable vehicle for addressing the issues highlighted in sections 1 and 2 of this paper?

³⁸ NAW Public Accounts Committee (2012) 'Public Audit (Wales) Bill Stage 1 Committee Report' available online at: <http://www.senedd.assemblywales.org/documents/s11820/Committee%20Stage%201%20Report.pdf> (accessed 27 November 2012)

4. Concluding remarks

This Briefing Paper has highlighted two issues for the Audit Committee to consider whether some form of action is required. Information on recent reforms to the NAO and WAO has also been presented as a third issue for consideration.

Ultimately, the Audit Committee may decide to address some, all or none of these issues. It is arguable that all three might be tackled through a review of governance. However, it is equally possible that a review of the NIAO's governance and the architecture of public audit in Northern Ireland would not necessarily of itself address the issue of financial independence.

Equally, the issue of accountability to the Assembly might quite plausibly be tackled without any great changes to governance structures. For example, it may be possible for changes to the Assembly's Standing Orders to accommodate a mechanism for improved accountability.

Alternatively, Northern Ireland's C&AG could, for example, undertake to answer questions from MLAs and agree to publish responses on the NIAO website. This approach is taken by the WAO, for example, through its Disclosure Log – see section A.6. in the Appendix. Such an approach might have the desired effect of increased accountability and transparency without necessitating legislative changes.

Appendix 1: Accountability mechanisms in the legislatures of the UK and Ireland

The information presented in this paper has established the context for accountability of the SAI to the legislature. This Appendix describes the processes for providing accountability of the SAI in Westminster, the devolved administrations and the Oireachtas. The particular focus is upon the answering of parliamentary questions in relation to the administration of the SAI.

A.1. The UK Parliament

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).*³⁹

No Minister has responsibility for the National Audit Office. It is, therefore, the Chairperson of the Public Accounts Commission who would answer any Parliamentary Questions about expenditure by the NAO:⁴⁰

*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.*⁴¹

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.

A.2. The Scottish Parliament

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.*⁴²

³⁹ House of Commons Information Office (2010) 'Parliamentary Questions' available online at:

<http://www.parliament.uk/documents/commons-information-office/p01.pdf> (accessed 10 May 2012)(see page 3)

⁴⁰ Personal communication from Clerk to the Audit Committee

⁴¹ The Public Accounts Commission, 13th Report (2007) available online at:

<http://www.publications.parliament.uk/pa/cm200607/cmpacomm/915/915.pdf> (accessed 30 April 2012) (see page 3)

⁴² See <http://www.scottish.parliament.uk/parliamentarybusiness/26507.aspx> (accessed 01 May 2012)

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 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.⁴³

A.3. The National Assembly for Wales

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 Jane Hutt (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.

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.*⁴⁴

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 helpful.⁴⁵

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.⁴⁶

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)).⁴⁷[emphasis added]*

⁴³ Source: personal communication with Chamber Office official.

⁴⁴ 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> (accessed 26 April 2012) (refer to 3pm onwards)

⁴⁵ Personal communication from Clerk to the Audit Committee

⁴⁶ 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> (accessed 26 April 2012)

⁴⁷ National Assembly for Wales Standing Orders (Nov 2011) available online at http://www.assemblywales.org/november_2011_branded_tracked_sos-e.pdf (accessed 10 May 2012) (SO 12.54)

A.4. The Oireachtas

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).⁴⁸

The Comptroller & Auditor General is a constitutional officer of the State (Article 33 of Irish Constitution). As such, no Government Minister is responsible for the Office of the Comptroller & Auditor General.

This means Parliamentary Questions to individual Ministers in relation to the way that the Comptroller & Auditor General (or his office) undertakes his work are not in order. The only questions in relation to his activities that tend to be allowed are when direct reference is made to a particular reports he has launched and the relevant Ministers are asked "the actions they will take further to the Report of the C&AG into...".⁴⁹

A.5. Northern Ireland Assembly Standing Orders

Members may wish to note that Standing Order 19(1) already provides that:

1. (1) A member may ask questions of –
 2. (a) a Minister, **on matters relating to the Minister's official responsibilities;**
 3. (b) a member representing the Assembly Commission, on matters relating to the Commission's official responsibilities.⁵⁰

This might suggest that the Assembly Question at issue (AQO 1437/11-15 in relation to the NIAO's expenditure on consultancy – refer to the Introduction) could in any case have been ruled inadmissible.

A.6. Publication of information by the SAI

Another consideration that may be relevant in the particular circumstances of the Assembly Question that gave rise to this research is whether the appropriate information can be gained through other means.

The Scottish Parliament's *Guidance on Parliamentary Questions* states that:

⁴⁸ Dáil Eireann Standing Orders (2011) online at: <http://www.oireachtas.ie/viewdoc.asp?DocID=17757&CatID=5&StartDate=01%20January%202011&OrderAscending=0> (accessed 26 April 2012) (see page 12)

⁴⁹ Personal communication from Oireachtas official

⁵⁰ <http://www.niassembly.gov.uk/Assembly-Business/Standing-Orders/Standing-Orders/#19>

*Where specific responsibility for a matter lies with a public body whose powers, remit and funding are within the general responsibility of the Scottish Executive, such as a local authority, NHS board, executive agency or non-departmental public body (e.g. Scottish Fisheries Protection Agency, Scottish Enterprise), **Members should consider whether the information could be more appropriately obtained by writing directly to the body in question.** If questions relate to operational matters solely within such bodies' responsibilities, clerks may suggest to Members that they write directly to the body concerned.⁵¹[emphasis added]*

An alternative to information entering the public domain through elected representatives requesting it, is for bodies to publish relevant information themselves. This approach may have the benefit of adding transparency.

NAO

Members may also wish to note that the NAO website has a transparency page which details organisational structure; senior staff remuneration; and, travel and hospitality expenditure.⁵²

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.

Audit Scotland

The *Public Services Reform (Scotland) Act 2010* requires Audit Scotland to publish certain information.⁵³ 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).⁵⁴

⁵¹ Scottish Parliament (2011) 'Guidance on Parliamentary Questions' available online at:

[http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/PQ_Guidance_2007_4th_edition_\(published_may_2011\).pdf](http://www.scottish.parliament.uk/Parliamentaryprocedureandguidance/PQ_Guidance_2007_4th_edition_(published_may_2011).pdf) (accessed 01 May 2012) (see page 5)

⁵² See: http://www.nao.org.uk/about_us/structure_governance/transparency.aspx

⁵³ <http://www.legislation.gov.uk/asp/2010/8/section/31>

⁵⁴ <http://www.audit-scotland.gov.uk/about/as/expenses.php>

WAO

The WAO website publishes hospitality and expenses for the Auditor General and managing partners.⁵⁵

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.⁵⁶ There is not, however, the same level of disclosure on expenditures as provided by the NAO and Audit Scotland.

Office of the Comptroller and Auditor General

The Office of the Comptroller and Auditor General publishes the travel and hospitality expenses of the C&AG and senior managers on its website.⁵⁷ No further expenditure information is provided beyond the Annual Report and Accounts.

⁵⁵ <http://www.wao.gov.uk/aboutus/3235.asp>

⁵⁶ <http://www.wao.gov.uk/aboutus/3260.asp>

⁵⁷ <http://audgen.gov.ie/ViewDoc.asp?fn=%2Fdocuments%2Fabout%2Faboutus.htm&m=1>