

# **PUBLIC AUDIT (WALES) ACT 2013**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Introduction***

#### ***Section 1 – Overview***

4. The Bill comprises 36 sections and 4 Schedules. As set out in section 1 (which is not intended to have any legal effect) of the Bill, the main provisions –
  - prescribe the office of the Auditor General for Wales (AGW) is to continue;
  - create a new corporate body, the Wales Audit Office (WAO), and confer functions upon it;
  - prescribe the governance arrangements for both the AGW and the WAO, and make provision for the relationship between the two;
  - prescribe how the functions of the AGW are to be exercised and makes the AGW the auditor of local government bodies in Wales.

#### **Part 1: Auditor General for Wales**

#### ***Section 2 – Office of Auditor General for Wales***

5. This section provides for the office of the AGW to continue. At present, the office of AGW is established under Schedule 8 to the Government of Wales Act 2006. By reference to the office of AGW continuing, the effect is that there is no break in the continuity of that office or in the exercise of the functions of that office. Under section 2(2) Her Majesty is to appoint an individual to that office on the nomination of the National Assembly for Wales ('the Assembly'). Appointment to the office is for a maximum of 8 years; a person may only hold the office of AGW once.
6. Before making a nomination to Her Majesty as to the person who should be appointed as AGW, the Assembly must be satisfied reasonable consultation with those bodies representing the interests of local government bodies in Wales has been undertaken.

#### ***Section 3 – Resignation or removal***

7. The AGW holds office until the end of the term for which he or she has been appointed (which can be up to 8 years from appointment, see section 2) unless the AGW is:
  - relieved of the appointment by Her Majesty at the AGW's request;
  - relieved of the appointment because Her Majesty is satisfied that the AGW is no longer capable of performing the duties because of medical reasons; and is also incapable for such reasons of requesting he or she be relieved of office;
  - removed from post by Her Majesty because of misbehaviour.

8. Removal from post on the grounds of misbehaviour is done only on the recommendation of the Assembly. Such a recommendation can only be made if at least two-thirds of all Assembly Members vote in favour of such action.

#### ***Section 4 – Disqualification***

9. This section sets out the grounds which would disqualify a person from being the AGW. The grounds relate to being a member of a legislature within the United Kingdom, an employee of the WAO, or holder of any other office or position appointed by the Crown, the Assembly or the Assembly Commission.

#### ***Section 5 – Employment etc of former Auditor General***

10. This section prescribes the restrictions around future employment, office-holding or provision of services that will apply to persons who have been appointed as the AGW under this Act but who no longer hold the office. The restrictions apply for two years beginning on the day the person ceases to hold office. The aim is to avoid any possible conflict of interest or perception of such a conflict when the person is AGW – e.g. to avoid the situation where an AGW nearing the end of his or her term of office carries out his or her functions leniently in respect of a body to which he or she may be appointed upon ceasing to be AGW.

#### ***Section 7 – Remuneration***

11. The Assembly is required to make remuneration arrangements for an AGW appointed under this Act (prior to the appointment of the AGW), and such arrangements may include salary, allowances, gratuities, pension arrangements and other benefits. In all cases these arrangements (or elements therein) cannot be performance-based.
12. In determining the arrangements the Assembly is required to consult with the First Minister.
13. Amounts payable will be charged on the Welsh Consolidated Fund (WCF), which means that payment will be directly from that Fund rather than from monies voted annually by the Assembly. This is designed to further protect the independence of the AGW.
14. Note also paragraph 13 of Schedule 1 and paragraph 1 of Schedule 3 to the Act – see below.

#### ***Section 8 – How functions are to be exercised***

15. This section maintains and enhances the independence of the AGW in the exercise of his or her functions – the functions of the office are not subject to the direction or control of the Assembly or the Welsh Government and there is new provision to make clear that the AGW has complete discretion in the manner in which he or she exercises audit related functions.
16. However this is subject to the following. The AGW must seek to perform his or her functions efficiently, and in a cost-effective manner. The AGW must also have regard to the standards and principles of professional practice in relation to auditing and accounting. The AGW must have regard to advice provided by the WAO and provided the AGW has regard to that advice the AGW has complete discretion in the exercise of his or her audit related functions.

#### ***Section 9 – Supplementary powers***

17. This section provides the AGW with a general power to do anything which facilitates, or is incidental or conducive to, the exercise of his or her functions. The general power does not extend however to functions which are or could become the responsibility of the WAO under this Act.

### ***Section 10 – Code of audit practice***

18. The AGW must issue a code of practice which embodies the best professional practice to be adopted in the carrying out of his or her functions relating to the:
- examining of any accounts (including of local government bodies in Wales) or statement of accounts in accordance with any enactment;
  - carrying out, undertaking or promoting value for money studies or examinations; and
  - as provided for in various provisions of the Government of Wales Act 1998, the Public Audit (Wales) Act 2004 and Schedule 8 to the Government of Wales Act 2006.
19. In preparing the Code the AGW must consult those persons he or she thinks appropriate. When the Code is made and published, the AGW must comply with it.

### ***Section 11 – Audit of local government bodies***

20. This provides for the AGW to be the statutory auditor of the accounts of all local government bodies in Wales. Section 11 should be read with paragraph 2 of Schedule 3 to the Act – see below.
21. At present the AGW is not empowered to audit the accounts of local government bodies. Instead auditors are appointed by the AGW to perform those audits. Given the AGW has other functions in respect of local government bodies (for example in relation to value for money), is responsible for auditing the Welsh Government, Welsh NHS bodies and others, and the thrust of other proposals in the Act, it is considered appropriate for the audit of local government bodies in Wales to be vested with the AGW.
22. Section 16 of the Local Government (Wales) Measure 2009 provides that ‘relevant regulators’ include an auditor appointed under section 13 of the Public Audit (Wales) Act 2004. Because of the amendments made by section 11(1) of this Act, a consequential amendment is required to the 2009 Measure as there will no longer be auditors appointed by the AGW in this context. That is achieved by section 11(2) of the Act.

### ***Section 12 – Transfer etc of supervisory functions of Welsh Ministers: consultation***

23. Under section 146A of the Government of Wales Act 1998 certain functions of the Welsh Ministers may, by order, be transferred to or exercised on their behalf by the AGW. Such transfer, or exercise, can only be with the consent of the AGW.
24. [Section 12](#) of the Act amends section 146A of the 1998 Act so as to require the Welsh Ministers to consult with the WAO before making such an order. The requirement for the AGW to consent to the transfer or exercise of such functions remains unchanged.

## **Part 2: The Wales Audit Office and its relationship with the Auditor General**

### ***Section 13 - Incorporation of Wales Audit Office***

25. [Section 13](#) establishes a new corporate body called the Wales Audit Office (the WAO). This section also gives effect to Schedule 1 which contains provision about the incorporation of the WAO.

### ***Section 14 and 15 – Powers and Efficiency***

26. [Section 14](#) provides that the WAO may do anything that facilitates or is incidental or conducive to the exercise of its functions, but the WAO (by virtue of section 15) must aim to carry out its functions efficiently and cost-effectively.

### ***Section 16 – Relationship with the Auditor General***

27. **Section 16** provides that the AGW is the chief executive of the WAO, but not an employee of it. This section also gives effect to Schedule 2 (Relationship between the Auditor General and the WAO).

### ***Section 17 – WAO to monitor and provide advice***

28. The WAO must monitor and may advise the AGW in respect of his or her functions; the AGW is under a duty (section 17(3)) to have regard to any such advice.

### ***Section 18 – Delegation and joint exercise of functions of the Auditor General***

29. **Section 18** enables the functions of the AGW to be carried out by an employee of the WAO or a person providing services to the WAO (for example, those who are contracted to provide audit support services to the AGW), provided the employee or person is authorised to do so in a scheme of delegation and agrees to comply with the AGW's code of audit practice (see section 10(1)). A scheme of delegation will be prepared by the AGW and will describe the conditions of that scheme. Where functions are carried out under the scheme of delegation, the responsibility for them remains with the AGW.
30. The scheme of delegation must be prepared by the AGW (and none other) who must consult the WAO in preparing or revising that scheme.

### ***Section 19 – Provision of services***

31. **Section 19** enables the WAO to make arrangements to receive administrative, professional or technical services that it or the AGW may need to carry out their respective functions, for example the provision of expert audit services relating to tax. It also enables the WAO to make arrangements with a 'relevant authority' (as defined in section 19(9)) so that the WAO or AGW can provide those services to a relevant authority, or to exercise the functions of that authority.
32. 'Relevant authority' includes local authorities (in Wales and in England), other public authorities and government departments.
33. The WAO is able to make the arrangements on terms, including relating to payment. If the terms include fees payable to the WAO (for example, for the provision of services by the AGW to a relevant authority), these must be in accordance with the scheme of charges prepared under section 24 (see below).

### ***Section 20 – Expenditure***

34. The AGW and the WAO must jointly prepare an estimate for each financial year (to year ending 31 March) of all of the income and expenditure of the WAO, including in particular the resources needed for the exercise of the AGW's functions. The estimate must be laid before the Assembly for examination and possible modification. The estimate must be laid at least 5 months before the start of the financial year to which it relates.
35. Modifications by the Assembly to the estimate may only be made if the AGW and WAO have been consulted, and any views made by them taken into account.
36. The estimate (modified or otherwise) will be included in the Assembly's Budget Motion under the Standing Orders of the Assembly. The estimate must cover all income and expenditure elements including those relating to the audit of local government bodies and all estimated fees income. (Paragraph 75 of Schedule 4 to this Act repeals paragraph 9(4) of Schedule 8 to the Government of Wales Act 2006 – power for the AGW to retain certain fees income).

### ***Section 21 – Provision of resources for Auditor General’s functions***

37. **Section 21** requires the WAO, as the budget-holder, to provide resources to the AGW as required by the AGW so he or she can carry out his or her functions. The resources are, in particular, -
- staff to assist the AGW;
  - services from any person (for example, external audit or other audit services principally under section 19);
  - holding property, documents or other information; and
  - keeping records relating to the functions of the AGW.

### ***Section 22 – Borrowing***

38. This section enables the WAO to borrow money, by way of an overdraft or otherwise, to meet a temporary excess of expenditure. A power to borrow is not available to the AGW.

### ***Section 23 and 24 – relating to Fees***

39. **Section 23** enables the WAO to charge fees for audits and audit-related functions carried out by the AGW, and any services provided by the AGW, in accordance with a scheme for charging fees prepared by the WAO. The fees charged may not exceed the full cost of providing the services in question and are payable to the WAO.
40. Under section 24 the WAO’s scheme must identify the enactments enabling it to charge a fee in accordance with any prescribed amount or any scale of fees as the case may be. But where an enactment makes no provision for a scale or an amount, the WAO must identify its basis for calculating the fee. This section also provides for the Welsh Ministers to prescribe certain scales of fees and where that is so, the WAO must comply with the scales prescribed. The WAO must review its scheme at least once in every calendar year and lay its scheme (and any revision of it) before the Assembly for approval. The scheme takes effect when approved by the Assembly following which the WAO must publish it.

### ***Section 25 to 27 – relating to the Annual Plan***

41. The AGW and the WAO must jointly prepare an annual plan. The annual plan must set out the planned work for both the AGW and the WAO; the resources available, and which may become available to the WAO; and how those resources are to be used to achieve their planned work (section 25 (2)).
42. The annual plan must also include the maximum resources that it is anticipated will be allocated by the WAO to the AGW for the purpose of undertaking the AGW’s programme of work (section 25(2)(f)).
43. Although neither the AGW nor WAO are bound by the annual plan, they must have regard to it (section 27). That means in exercising their functions (including the provision of resources required by the AGW) both the AGW and the WAO must give the annual plan the appropriate weight in all the circumstances. If other unforeseen work arises then the need for that work to be done (and its resource implications) must be properly balanced against the planned work (and resources allocated for that).
44. The annual plan must be jointly prepared by the AGW and the WAO before the start of the financial year in which that work is to be carried out (section 25(1)). Once prepared it must be laid before the Assembly (section 26) and the Assembly will be under a duty to publish it by virtue of section 144 of the Government of Wales Act 2006 (as amended by paragraph 73 of Schedule 4 to this Act).

### **Part 3: Miscellaneous and general**

#### ***Section 28 – Functions of the National Assembly***

45. This section provides authority for the Assembly to make provision (within its Standing Orders) as to how the functions set out in this Act falling to the Assembly (other than its functions of approving legislation) are to be exercised. The intention is that relying on this provision the Assembly could make provision in its Standing Orders so that one or more of its committees could exercise those functions relating to the oversight and supervision of the AGW. For example, the Assembly could provide that the function of appointing the non-executive members of the WAO will be exercised by a committee of the Assembly rather than by the Assembly acting in Plenary session.

#### ***Section 29 – Indemnification***

46. **Section 29** provides that any compensation to a third party for a breach of a duty (for example in contract or negligence) by an AGW appointed under this Act, a person providing services to the AGW or WAO (for example under section 19), the WAO's former or current members or employees is to be charged on and paid from the WCF (as such it is not to be subject to the approval of the Assembly in a Budget resolution). See also paragraph 13 of Schedule 3 to the Act.

#### ***Section 30 – Orders***

47. This section makes general provision about other powers in the Act that enable subordinate legislation to be made (namely orders). Such legislation is to be made by statutory instrument. Subsections (2) and (3) establish the Assembly procedure for making those orders. Subsection (4) is a technical provision which ensures the powers in the Act to make such subordinate legislation are wide enough to make certain types of provision such as supplemental provisions.

#### ***Section 31 – Directions***

48. **Section 31** makes general provision in respect of the powers in the Act to issue directions.

#### ***Section 32 – Interpretation***

49. This section provides the meaning of various terms used throughout the Act

#### ***Section 33 – Transitional, supplementary and saving provisions etc***

50. **Section 33(1)** gives effect to Schedule 3 to the Act which sets out the principal transitional etc. provisions.
51. **Section 33(2)** enables the Welsh Ministers, by order, to make further transitional, transitory or saving etc. provisions in connection with the coming into force of the Act or to give full effect to the Act when enacted.
52. **Section 33(4)** enables an order under subsection (2) to modify the transitional etc. provisions set out in Schedule 3. This provision is a safety net provision to ensure adjustments can be made to the detailed provisions set out in Schedule 3 should the circumstances at the time the Act comes into force dictate.

#### ***Section 34 – Minor and consequential amendments***

53. **Section 34** gives effect to Schedule 4 (minor and consequential amendments).

## ***Schedule 1 – Incorporation of Wales Audit Office***

### ***Paragraph 1 – Membership***

54. This paragraph establishes that the WAO will have 9 members, comprising 5 who are not employees of the WAO (known as ‘non-executive members’), the AGW, and 3 employees of the WAO (known as ‘employee members’).

### ***Paragraph 2 – Appointment of non-executive and employee members***

55. The appointments of the non-executive and employee members of the WAO are to be made on merit, and a person cannot be appointed (or remain appointed) if they are disqualified on the grounds set out in paragraph 26 of Schedule 1 – see below.

### ***Paragraph 4 – Appointment of non-executive members***

56. It is for the Assembly to appoint the non-executive members of the WAO, on the basis of a fair and open competition.

### ***Paragraph 5 – Appointment of chair of the WAO***

57. One of the 5 non-executive members of the WAO is to be appointed as the Chair of the WAO by the Assembly. Before making such an appointment, there must be consultation with the First Minister. There may be consultation with other persons as appropriate.
58. A person cannot be appointed as Chair more than twice.

### ***Paragraph 6 – Period of appointment and re-appointment***

59. Appointment of the non-executive members and Chair of the WAO is for a maximum of 4 years, and a person cannot be appointed more than twice to these offices.

### ***Paragraph 7 – Remuneration arrangements***

60. The Assembly may make remuneration arrangements for the Chair of the WAO and the other non-executive members, and such arrangements may include salary, allowances, gratuities, and other benefits (but not pension arrangements). In all cases these arrangements (or elements therein) must not be performance-based.
61. Before the arrangements for the Chair can be made, there must be consultation with the First Minister (paragraph 7(2)). There must also be consultation with an appropriate person with oversight of public appointments (paragraph 9). There may be consultation with other persons as appropriate.
62. The amounts payable for the Chair of the WAO will be charged on the WCF; the amounts payable for the other non-executive members will be met by the WAO.

### ***Paragraphs 8 and 9 – Other terms of appointment***

63. The Assembly may determine other terms and conditions applicable to the non-executive members of the WAO including the Chair. These agreements or arrangements may include restrictions on the offices and other positions a non-executive member may hold for a period of up to two years after these cease to hold office (paragraph 8)
64. Before making a determination on such terms and conditions there must be consultation with an appropriate person with oversight of public appointments the Assembly considers appropriate (paragraph 9).

### ***Paragraphs 10 to 12 – Termination of appointments***

65. The Chair and non-executive members of the WAO may resign their offices at any time by giving written notice to the Assembly (paragraph 10).

66. The Assembly may terminate the appointment of a non-executive member of the WAO on the grounds set out in paragraph 11(1). The Assembly may terminate the appointment of the Chair of the WAO (on the grounds set out in paragraph 12(3)), but only after there has been consultation with the First Minister. There may be consultation with other persons also. Termination of the appointment of Chair does not automatically remove him or her from being a non-executive member of the WAO. If the person who is the Chair is subject to termination as a non-executive member then he or she will also lose office as Chair.

### ***Paragraph 13 – Additional remuneration of the Auditor General***

67. In addition to the arrangements made by the Assembly for remuneration of the AGW (see section 7), the WAO may also make provision for additional payments to be made to the AGW to cover expenses incurred by that person as a member of and chief executive of the WAO. Such payments are to be made by the WAO.

### ***Paragraphs 14 to 16 – Appointment of employee members***

68. The employee members are to comprise:
- one person who the AGW must recommend for appointment to the non-executive members of the WAO – the appointed member. The non-executive members must then appoint that person, or require the AGW to recommend another person and so on until someone is appointed; and
  - two persons elected through majority votes by a ballot of the staff of the WAO - the elected members.

### ***Paragraph 17 – Terms of appointment***

69. The terms of appointment of the employee members must be made by the non-executive members, and may include remuneration arrangements for allowances, gratuities, and other benefits to cover expenses. Such payments are to be made by the WAO. The employee members will continue to receive their salary as employees of the WAO. There is to be no provision for a pension as employee member but if the persons who are members have a pension as a result of being an employee of the WAO then their service as employee members will also count towards that pension entitlement.
70. An employee member's term of office will not be regarded as a break in service of employment by the new WAO.

### ***Paragraph 18 – Other terms of appointment***

71. The non-executive members may determine other terms of appointment applicable to the appointment of the employee members; such terms may include restrictions on the offices and other positions the employee members may hold during their appointment and for a period of up to two years after they cease to hold that office.

### ***Paragraphs 19 to 21 – Termination of appointments***

72. An employee member may resign from that office (but remain an employee of the WAO) at any time by giving written notice to the non-executive members (paragraph 20). Their appointment would also cease at the end of any period of appointment set in their terms of appointment, or if they ceased to be an employee of the WAO.
73. **Paragraph 21** of Schedule 1 also provides the process and grounds for the termination of the appointment by the non-executive members.



***Paragraphs 22 to 25 – relating to appointment, status and remuneration***

74. The WAO has, by virtue of paragraph 22, powers to employ and remunerate staff on such terms as it considers appropriate.
75. The WAO will be required to make payments in respect of superannuation benefits and their associated administration costs (paragraph 25(2)).

***Paragraph 26 – Disqualification as member of, or employee of, the WAO***

76. This paragraph prescribes the grounds upon which a person cannot be appointed (or remain appointed) as a member or employee of the WAO.
77. [Paragraph 26\(4\)](#) is needed to ensure that the AGW is not disqualified from being a member of the WAO given that the AGW is appointed by Her Majesty on the nomination of the Assembly.

***Paragraphs 27 to 30 – relating to Procedural Rules***

78. The WAO must make internal rules to regulate its procedures (paragraph 27). The rules must provide for a quorum for any meetings of the WAO (paragraph 28), may provide for setting up of committees of the WAO, and any sub-committees, including provision for regulating the procedures of the committees and sub-committees (paragraph 29) and must include provisions about the conduct of ballots for the purpose of appointing the elected employee members (paragraph 30).
79. See also paragraph 3 of Schedule 3 to the Act which enables the Chair of the WAO to make temporary rules for the determination of the business of the WAO pending the making of the first set of formal rules.

***Paragraph 32 – Delegation of functions***

80. With certain exceptions (as set out in paragraph 32(5)) the WAO may delegate any of its functions to members, employees or committees (including sub-committees) of the WAO, or to persons providing services to the WAO. The delegation of a function does not affect the responsibility of the new WAO for the exercise of the function.

***Paragraph 33 – WAO accounts***

81. This paragraph establishes the AGW as the accounting officer for the WAO. The responsibilities of the accounting officer are set by virtue of paragraph 33(2) to (6).

***Paragraphs 34 and 35 – Audit etc of the WAO***

82. The National Assembly is required to appoint an auditor of the WAO's accounts, and to establish the terms of appointment for that auditor. The WAO may recommend a person for appointment and must pay the auditor the remuneration provided for in the appointment.
83. The auditor will examine and certify the statement of accounts (prepared by the AGW as accounting officer of the WAO), which are to be submitted to the auditor by the Chair of the WAO no later than 5 months after the end of the financial year. Once the statement of accounts has been audited and is certified, the auditor must lay the accounts (as certified) and his or her report on them before the Assembly.
84. Amongst other matters, paragraph 35 empowers the auditor to gather information (including documents) necessary for the purpose of auditing the accounts.
85. [Paragraph 35](#) also enables the auditor to carry out economy, efficiency and effectiveness examinations in relation to the use of resources by the AGW and the WAO in the discharge of their functions; confers power on the auditor to gather information

(including documents) for that purpose and provides that in connection with these examinations the auditor may lay a report on the findings before the Assembly.

## ***Schedule 2 – Relationship between the Auditor General and the Wao***

### ***Paragraph 1 – Preparation and approval***

86. The WAO and the AGW must jointly prepare a code of practice dealing with the relationship between them. In doing so they must reflect the principle in which the AGW has the complete discretion as to the manner in which the functions of his or her office are exercised under section 8(1) and 8(2) of this Act. The code must be reviewed regularly and revised as appropriate. The code, and any revision to it, must be laid before the Assembly and approved by it. The WAO and the AGW must comply with the code and must arrange for it to be published.

### ***Paragraph 2 – Content***

87. The code must include provisions about how the WAO is to monitor and advise the AGW and provision about standards for corporate governance. Paragraph 2 also provides that the code may include any other matter relevant to the relationship between the WAO and the AGW.

### ***Paragraph 3 – Reports***

88. Sections 25 to 27 of the Act set out the arrangements relating to the annual plan of the AGW and the WAO. Paragraph 3 sets out the arrangements for an annual report on the exercise of the functions, which includes (amongst other matters) an assessment of the extent to which the priorities of the annual plan were achieved. In addition to the annual report, the AGW and the Chair of the WAO must also prepare at least one interim report during each financial year on the exercise of their functions and must include an assessment of the extent to which the priorities of the annual plan have been achieved. The number of any other interim reports to be prepared within a financial year is to be decided by the Assembly.
89. The interim and annual reports must be laid before the Assembly – the latter as soon as practicable after the end of the financial year, and the former on dates to be decided by the Assembly.

### ***Paragraph 4 – Documents and information***

90. This paragraph provides that any document or information which a person must or may provide to the AGW may be provided to the WAO. This supports the responsibility placed on the WAO to receive and hold documents and information for the new AGW and to maintain records (under section 21).

### ***Paragraphs 5 to 14 – Temporary exercise of the functions of Auditor General by another person***

91. Paragraphs 5 and 6 set out the circumstances for designation of a person to temporarily exercise the functions of the AGW in place of the AGW. Any temporary designation is to be made by the WAO, with the agreement of the Assembly. A temporary designation cannot exceed 6 months but may be extended once (with the agreement of the Assembly) for a further 6 months.
92. Any temporary designation must be of a person employed by the WAO, who would continue to be employed by the WAO on the same terms (paragraphs 9 and 10). Additional terms, including remuneration, may be agreed by the WAO and the Assembly but those remuneration terms must not include an additional salary or pension.

### ***Schedule 3 – Transitional, Supplementary and Saving Provisions***

#### ***Paragraph 1 – Previous Auditor General to continue to be Auditor General***

93. **Paragraph 1** means that if a person holds office as AGW on the ‘appointed day’ that person will be treated on and after that day as if he or she had been appointed under Part 1 of the Act. This will ensure continuity between the existing statutory regime and the new statutory regime under this Act so far as the AGW is concerned.
94. The term ‘appointed day’ is defined in paragraph 1(5) and means the day on which this paragraph comes into effect.
95. **Paragraph 1(2)(b)** provides that if there is a serving AGW on the appointed day that person’s term of office will be 8 years, less any amount of time he or she was AGW before the appointed day. The effect of this is that if a person is the AGW before the appointed day and continues to hold that office on the appointed day, then he or she will be treated as being the AGW as if appointed under this Act. If a person’s terms of office is 8 years (as the Act provides) but he or she has already served 2 years in office, then on the appointed day that person’s term of office as AGW will be reduced to 6 years.
96. **Paragraph 1(3)** provides that in such a case the remuneration arrangements under section 7 of the Act are to be made by the Assembly (following consultation with the First Minister). This must be done before the appointed day. This will ensure that the person holding office as AGW will hold it on the terms and conditions, including as to remuneration, set in accordance with the provisions of this Act.

#### ***Paragraph 2 – Savings for auditors appointed under section 13 of the Public Audit (Wales) Act 2004***

97. This paragraph provides that an appointment made by the AGW of an auditor of local government bodies in Wales (in accordance with current section 13 of the Public Audit (Wales) Act 2004 ), will continue until the end of the period of appointment, rather than ending when the relevant provisions of this Act come into effect. Also preserved is the operational effect of appointment, including the scheme for fees which may be charged and the gathering and holding of relevant information; this ensures that work being done by the auditors appointed by the AGW can continue under the existing provisions of the 2004 Act, within the terms of their appointment.

#### ***Paragraph 4 – WAO’s procedural rules before rules are made under paragraph 27 of Schedule 1***

98. The first formal procedural rules are to be made by the WAO (under paragraph 27 of Schedule 1 to this Act). Before those rules are made there will be no rules in place to govern the order of business of the WAO. Therefore, this paragraph provides that business (including making the first set of rules) will be conducted in accordance with procedures set by the Chair of the WAO. Once the first formal procedural rules are made, WAO business will then be conducted in accordance with those rules.

#### ***Paragraph 5 – Transfer of staff***

99. Because the Act will transfer the responsibilities for the employment of staff from the current AGW to the new WAO, paragraph 5 gives effect to the transfer of employment rights and liabilities of those staff.

#### ***Paragraph 6 – Variation of employment contracts***

100. This paragraph prevents the employment contracts of employees of the AGW, whose employment transfers to the WAO, from being changed where the sole or principal reason for the change is the transfer or a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes to the workforce.

### ***Paragraph 7 and 8 – Collective agreements and Trade union recognition***

101. Paragraph 7 provides for collective agreements, made between a recognised trade union and the AGW in relation to any employee whose employment transfers from the AGW, to transfer to the WAO. Paragraph 8 provides for the WAO to continue recognising any independent trade union recognised by the AGW before the transfer. The paragraphs ensure that collective agreements and trades union recognition continue to exist as if having been made and recognised by the WAO.

### ***Paragraph 9 - Dismissal in relation to transfer***

102. This paragraph protects an employee of the AGW whose employment transfers to the WAO from unfair dismissal where the sole or principal reason for the dismissal is the transfer or a reason connected with the transfer that is not an economic, technical or organisational reason entailing changes in the workforce. It also provides that where an employee is dismissed for those reasons, the dismissal will be treated as having been for redundancy.

### ***Paragraphs 10 and 11 – Transfer of other property, rights and liabilities***

103. Paragraphs 10 and 11 make provision as to the transfer of property, rights and liabilities from the current AGW to the new WAO. This reflects the transfer of certain functions of the AGW to the new WAO.

### ***Paragraph 12 – Criminal liability of the Auditor General***

104. In connection with paragraph 7 of this Schedule (relating to the transfer of the property, rights or liabilities that are transferred to the WAO), paragraph 12 provides for any criminal liability that may have been incurred by the AGW in connection to those property, rights or liabilities is to transfer from the AGW to the WAO.

### ***Paragraph 13 - Indemnification***

105. Paragraph 13(1) makes provision to apply section 29 to liabilities arising before, or arising in relation to an act or omission occurring before, section 29 comes into force. Section 29 provides that any amount payable by an indemnified person in consequence of a liability for a breach of duty is to be charged on, and paid out of, the WCF.
106. Paragraph 13(2) and (3) makes provision that where a sum would have been payable by a former Auditor General under paragraph 9(1) of Schedule 8 to the Government of Wales Act 2006 that paragraph is to continue to have effect as if the repeal (Schedule 4, paragraph 79(2)) had not come into force.

### ***Schedule 4 – Minor and Consequential Amendments***

107. This Schedule sets out the repeals and consequential modifications to primary legislation to give effect to the Act. They ensure (for example) there are references to the new WAO as appropriate in legislation where previously the reference had only been to the AGW.
108. Consequential amendments and repeals are made to the –
- Superannuation Act 1972;
  - Finance Act 1989;
  - Social Security Administration Act 1992;
  - Education Act 1997;
  - Government of Wales Act 1998;

*These notes refer to the Public Audit (Wales) Act 2013  
(c.3) which received Royal Assent on 29 April 2013*

- Local Government Act 1999;
- Freedom of Information Act 2000;
- Public Audit (Wales) Act 2004;
- Government of Wales Act 2006;
- Companies Act 2006;
- Local Government (Wales) Measure 2009;
- Local Democracy, Economic Development and Construction Act 2009; and
- Equality Act 2010.