

## SCHEDULE 1

*(introduced by section 13(2))*

### INCORPORATION OF WALES AUDIT OFFICE

#### PART 1

#### MEMBERSHIP AND STATUS

##### *Membership*

- 1 (1) The WAO is to have 9 members.
- (2) They are to be—
  - (a) 5 persons who are not employees of the WAO (“non-executive members”) (see Part 2 of this Schedule),
  - (b) the Auditor General (see Part 3 of this Schedule), and
  - (c) 3 employees of the WAO (“the employee members”) (see Parts 4 and 5 of this Schedule).

##### *Appointment of non-executive and employee members*

- 2 (1) The members of the WAO (other than the Auditor General) are to be appointed in accordance with the provisions of this Schedule.
- (2) All appointments must be on merit.
- (3) A person cannot be appointed as a member of the WAO if the person is disqualified from being appointed on any of the grounds specified in Part 6 of this Schedule.
- (4) A person ceases to be a member of the WAO if the person is disqualified on any of those grounds.

##### *Status*

- 3 (1) Neither the WAO nor any of its members is to be regarded—
  - (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) But members of the WAO are to be taken to be Crown servants for the purposes of the Official Secrets Act 1989.
- (3) The WAO’s property is not to be regarded as property of, or held on behalf of, the Crown.
- (4) This paragraph does not apply to the Auditor General (and for provisions about the status of the Auditor General, see section 6).

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## PART 2

### NON-EXECUTIVE MEMBERS

#### *Appointment of non-executive members*

- 4 (1) Non-executive members are to be appointed by the National Assembly.
- (2) Appointments made under sub-paragraph (1) must be based on the conclusions of a fair and open competition.

#### *Appointment of chair of the WAO*

- 5 (1) The chair of the WAO is to be appointed by the National Assembly from amongst the non-executive members.
- (2) But no appointment can be made until the First Minister has been consulted.
- (3) The National Assembly may extend an appointment under this paragraph in accordance with the procedure required for the original appointment.
- (4) An extension of an appointment counts as a separate appointment for the purposes of paragraphs 6 to 8.

#### *Period of appointment and re-appointment*

- 6 (1) An appointment under this Part of this Schedule is to be for a period of no more than 4 years.
- (2) A person may not be appointed under this Part of this Schedule more than twice.

#### *Remuneration arrangements*

- 7 (1) The National Assembly may make remuneration arrangements in relation to the person who chairs the WAO (subject to sub-paragraph (2) and paragraph 9).
- (2) But no arrangements can be made until the First Minister has been consulted.
- (3) Amounts payable by virtue of sub-paragraph (1) are to be charged on, and paid out of, the Welsh Consolidated Fund.
- (4) The National Assembly may make remuneration arrangements in relation to any other non-executive member.
- (5) Amounts payable under sub-paragraph (4) are to be paid by the WAO.
- (6) Remuneration arrangements under this paragraph—
- (a) may provide for a salary, allowances, gratuities, and other benefits to cover expenses properly and necessarily incurred, but not for a pension, and
  - (b) may include a formula or other mechanism for adjusting one or more of those elements from time to time.
- (7) But no element is to be performance-based.

### *Other terms of appointment*

- 8 (1) The National Assembly may determine other terms for an appointment under this Part of this Schedule (subject to paragraph 9).
- (2) Those terms may include restrictions on—
- (a) the offices or positions (including offices and positions to which persons may be appointed, or recommended or nominated for appointment, by or on behalf of the Crown, the National Assembly, or the National Assembly Commission)—
    - (i) that the non-executive member may hold while, or after ceasing to be, a member;
    - (ii) that the chair of the WAO may hold while, or after ceasing to be, chair, and
  - (b) the agreements or other arrangements (including agreements and arrangements with the Crown, the National Assembly or the National Assembly Commission or bodies or other persons acting on behalf of the Crown, the National Assembly or the National Assembly Commission)—
    - (i) to which the non-executive member may be a party while, or after ceasing to be, a member;
    - (ii) to which the chair of the WAO may be a party while, or after ceasing to be, chair.
- (3) But restrictions may only be imposed while a person is a non-executive member and for a maximum of 2 years afterwards, starting with the day on which the person ceases to be a non-executive member.

### *Consultation*

- 9 (1) No arrangements under paragraph 7 or determination under paragraph 8 may be made unless there has been consultation with an appropriate person with oversight of public appointments.
- (2) Consultation required under sub-paragraph (1) is in addition to the consultation required under paragraph 7(2).

### *Termination of appointments*

- 10 (1) The person who chairs the WAO may resign from the position of chair by giving written notice to the National Assembly.
- (2) A non-executive member may resign by giving written notice to the National Assembly.
- (3) The term of appointment of a person who resigns in accordance with sub-paragraphs (1) or (2) ends when the resignation is accepted.
- 11 (1) The National Assembly may terminate the appointment of a non-executive member by giving the member written notice if—
- (a) the member has been absent from meetings of the WAO without the WAO's permission for a period or periods totalling 3 months or more in any 12 month period,
  - (b) the member has become bankrupt or has made an arrangement with creditors,

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- (c) the member’s estate has been sequestrated in Scotland or the member has entered into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 as the debtor or has, under Scots law, made a composition or arrangement with, or granted a trust deed for, the member’s creditors,
  - (d) the member is unfit to continue the appointment because of misconduct,
  - (e) the member has failed to comply with the terms of the appointment, or
  - (f) the member is otherwise unable, unfit or unwilling to carry out the member’s functions.
- (2) If a non-executive member whose appointment is terminated under sub-paragraph (1) is the chair of the WAO, that person’s appointment as chair is also terminated.
- 12 (1) The National Assembly may terminate the appointment of a non-executive member as chair of the WAO.
- (2) But before an appointment can be terminated the First Minister must be consulted.
- (3) The National Assembly may terminate the appointment if the chair of the WAO—
- (a) has failed to comply with the terms of appointment, or
  - (b) is otherwise unwilling to carry out the functions of chairing the WAO.

### PART 3

#### AUDITOR GENERAL

##### *Additional remuneration of the Auditor General*

- 13 (1) The WAO may make provision for additional payments to be made to the Auditor General by way of allowances and other benefits to cover expenses properly and necessarily incurred by the Auditor General in his or her capacity as a member and chief executive of the WAO.
- (2) Payments made under sub-paragraph (1) may be made in addition to the remuneration payable to the Auditor General under section 7.
- (3) Amounts payable by virtue of sub-paragraph (1) are to be paid by the WAO.

### PART 4

#### EMPLOYEE MEMBERS

##### *Appointment*

- 14 The employee members are to comprise—
- (a) a person appointed in accordance with paragraph 15 (“the appointed member”), and
  - (b) 2 persons appointed in accordance with paragraph 16 (“the elected members”).

### *The appointed member*

- 15 (1) The Auditor General must recommend a person to the non-executive members for appointment under this paragraph.
- (2) The non-executive members must—
- (a) appoint that person, or
  - (b) require the Auditor General to recommend another person (in which event this sub-paragraph applies again and so on until someone is appointed).

### *The elected members*

- 16 (1) The WAO must conduct a ballot of its staff for the purpose of appointing a person or, as the case may be, persons under this paragraph.
- (2) The elected members are to be appointed by the non-executive members in accordance with the result of the ballot.
- (3) An appointment made under this paragraph is to be treated as an appointment on merit for the purposes of paragraph 2(2) (appointment of WAO members to be on merit).

### *Terms of appointment*

- 17 (1) The terms of the employee members' appointment are to be determined by the non-executive members.
- (2) The terms may include remuneration arrangements which—
- (a) may provide for allowances, gratuities, and other benefits to cover expenses properly and necessarily incurred by the person in the capacity of member of the WAO, and
  - (b) may include a formula or other mechanism for adjusting one or more of those elements from time to time.
- (3) The remuneration arrangements may not provide for payment of a salary or, subject to sub-paragraph (5), a pension.
- (4) Amounts payable by virtue of sub-paragraph (2) are to be paid by the WAO.
- (5) If an employee member (“E”) is a participant in a pension scheme under the terms of E's employment with the WAO, the remuneration arrangements must (without affecting the continuity of that employment) provide for E's service as an employee member to be treated for the purposes of the scheme as service as an employee of the WAO.

### *Other terms of appointment*

- 18 (1) The non-executive members may determine other terms for an appointment of an employee member.
- (2) Those terms may include restrictions on—
- (a) the offices or positions (including offices and positions to which persons may be appointed, or recommended or nominated for appointment, by or on behalf of the Crown, the National Assembly, or the National Assembly

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Commission) that the employee member may hold while, or after ceasing to be, a member;

- (b) the agreements or other arrangements (including agreements and arrangements with the Crown, the National Assembly or the National Assembly Commission or bodies or other persons acting on behalf of the Crown, the National Assembly or the National Assembly Commission) to which the employee member may be a party while, or after ceasing to be, a member.

- (3) But restrictions may only be imposed while a person is an employee member and for a maximum of 2 years afterwards, starting with the day on which the person ceases to be an employee member.

#### *Termination of appointments*

- 19 The appointment of an employee member terminates—
- (a) if the terms of appointment provide for it to expire at the end of a period, at the end of that period, and
  - (b) in any event, when the member ceases to be an employee of the WAO.
- 20 (1) An employee member may resign by giving written notice to the non-executive members.
- (2) The appointment is terminated upon acceptance of the resignation by the non-executive members.
- 21 The non-executive members may terminate the appointment of an employee member by giving the member written notice if—
- (a) the member has been absent from meetings of the WAO without the WAO's permission for a period or periods totalling 3 months or more in any 12 month period,
  - (b) the member has become bankrupt or has made an arrangement with creditors,
  - (c) the member's estate has been sequestrated in Scotland or the member has entered into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 as the debtor or has, under Scots law, made a composition or arrangement with, or granted a trust deed for, the member's creditors,
  - (d) the member is unfit to continue the appointment because of misconduct,
  - (e) the member has failed to comply with the terms of the appointment, or
  - (f) the member is otherwise unable, unfit or unwilling to carry out the member's functions.

## **PART 5**

### EMPLOYEES

#### *Appointment*

- 22 (1) The WAO may employ staff.

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- (2) A person cannot be appointed as a member of staff of the WAO if the person is disqualified from being appointed on any of the grounds specified in Part 6 of this Schedule.
- (3) A person ceases to be a member of staff of the WAO if the person is disqualified on any of those grounds.
- (4) Staff of the WAO are to be employed on such terms as the WAO may determine.
- (5) A person who is an employee of the WAO may not hold any office or position to which a person may be appointed, or recommended or nominated for appointment, by or on behalf of the Crown, the National Assembly or the National Assembly Commission.

#### *Status*

- 23 A member of the staff of the WAO is not to be regarded—
- (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown.
- 24 But a member of the staff of the WAO is to be taken to be a Crown servant for the purposes of the Official Secrets Act 1989.

#### *Remuneration arrangements*

- 25 (1) The WAO must pay employees such remuneration as may be provided for by or under the terms of their employment.
- (2) The WAO must make payments to the Minister for the Civil Service, at such times as the Minister may determine, of such amounts as may be so determined in respect of—
- (a) the provision of pensions, allowances, gratuities or other benefits by virtue of section 1 of the Superannuation Act 1972 to or in respect of any persons who are or have been members of the staff of the WAO, and
  - (b) the expenses incurred in administering those pensions, allowances, gratuities or other benefits.

## **PART 6**

### **DISQUALIFICATION AS MEMBER OF, OR EMPLOYEE OF, THE WAO**

- 26 (1) A person cannot be appointed as a member or employee of the WAO if the person is disqualified on any of the grounds specified in sub-paragraph (3).
- (2) A person ceases to be a member or employee of the WAO if the person is disqualified on any of the grounds specified in sub-paragraph (3).
- (3) A person is disqualified from being a member or employee of the WAO if the person is—
- (a) a Member of the National Assembly;
  - (b) the holder of any other office or position to which a person may be appointed, or recommended or nominated for appointment, by or on behalf of—
    - (i) the Crown,
    - (ii) the National Assembly, or

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- (iii) the National Assembly Commission;
  - (c) a Member of the House of Commons or House of Lords;
  - (d) a Member of the Scottish Parliament; or
  - (e) a Member of the Northern Ireland Assembly.
- (4) Sub-paragraph (3)(b) is to be disregarded in the case of the Auditor General.

## PART 7

### PROCEDURAL RULES

#### *General*

- 27 The WAO must make rules for the purpose of regulating the WAO's procedure.

#### *Quorum for WAO meetings*

- 28 (1) The rules must provide for a quorum for any meetings of the WAO (including meetings of committees or sub-committees set up under paragraph 29).
- (2) The rules may provide that different quorums may apply in different circumstances (for example, in relation to particular meetings or for particular purposes).
- (3) The rules must provide that in all circumstances a quorum cannot be met unless a majority of the members present are non-executive members.

#### *Committees*

- 29 (1) The rules may include—
- (a) provision for the setting up of committees of the WAO and for those committees to set up sub-committees, and
  - (b) provision regulating the procedures of those committees and sub-committees.
- (2) An employee of the WAO who is not an employee member may be a member of a committee or sub-committee.
- (3) A person who is neither a member of the WAO nor an employee of the WAO may be a member of a committee or sub-committee, provided that no functions of the WAO are delegated to the committee or sub-committee (see paragraph 32).

#### *Ballots*

- 30 The rules must include provision about the conduct of ballots for the purpose of appointing employee members (see paragraph 16).



## PART 8

### OTHER MATTERS

#### *Validity*

- 31 The validity of anything done by the WAO (including anything done by its non-executive members, the employee members, any committee or sub-committee and by any employee of the WAO) is not affected by—
- (a) a vacancy, or
  - (b) a defective appointment.

#### *Delegation of functions*

- 32 (1) The WAO may delegate any of its functions to—
- (a) any of its members, employees or committees, or
  - (b) a person who provides services to the WAO.
- (2) A committee may delegate functions (including functions delegated to it) to a sub-committee.
- (3) The delegation of a function does not prevent the WAO or the committee (as the case may be) from carrying out the function itself.
- (4) The delegation of a function does not affect the WAO's or the committee's responsibility for the function (as the case may be).
- (5) Functions under the following provisions may not be delegated—
- (a) section 20(1)(a) (estimating the income and expenses of the WAO for each financial year);
  - (b) section 25(1) (preparing an annual plan for each financial year with the Auditor General);
  - (c) paragraph 27 of Part 7 of this Schedule (making rules for the purpose of regulating the WAO's procedure);
  - (d) paragraph 34(2) of Part 8 of this Schedule (recommending a person to audit the accounts of the WAO, etc);
  - (e) paragraph 3 of Part 2 of Schedule 2 (jointly preparing a report or an interim report each financial year on the exercise of the functions of the Auditor General and the WAO);
  - (f) paragraph 5 of Part 3 of Schedule 2 (designating another person to temporarily exercise the functions of the Auditor General).

#### *WAO accounts*

- 33 (1) The Auditor General is to be the accounting officer for the WAO.
- (2) The accounting officer must, for each financial year, in accordance with directions given by the Treasury—
- (a) keep proper accounts and proper records in relation to them, and
  - (b) prepare a statement of accounts.
- (3) A statement of accounts must give a true and fair view of—
- (a) the state of the WAO's affairs at the end of the financial year, and

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- (b) the WAO's income and expenditure in the financial year.
- (4) The directions which the Treasury may give include (but are not limited to) directions as to—
  - (a) the financial affairs and transactions to which the accounts or statement of accounts are to relate;
  - (b) the information to be contained in the accounts and the manner in which the accounts are to be presented;
  - (c) the methods and principles in accordance with which the accounts are to be prepared;
  - (d) the additional information (if any) that is to accompany the accounts or statement of accounts.
- (5) The directions which the Treasury may give may also include directions to prepare accounts relating to financial affairs and transactions of persons other than the WAO.
- (6) The accounting officer for the WAO has, in relation to the accounts and finances of the WAO, such other responsibilities which are from time to time specified by the National Assembly.

*Audit etc of the WAO*

- 34 (1) It is for the National Assembly to appoint a person as auditor of the WAO's accounts, and to determine that person's terms of appointment.
- (2) The WAO may recommend a person for the purposes of sub-paragraph (1).
- (3) A person is eligible for appointment only if the person is a qualified auditor as defined in section 19.
- (4) If a person appointed as the auditor ceases to be a qualified auditor, the person ceases to be the auditor.
- (5) The person appointed as auditor must have regard to the standards and principles that an expert professional provider of accounting or auditing services would be expected to follow.
- (6) The WAO must pay the auditor such remuneration as may be provided for by or under the terms of the auditor's appointment.
- 35 (1) A statement of accounts prepared under paragraph 33 must be—
  - (a) signed by the accounting officer of the WAO, and
  - (b) submitted by the chair of the WAO to the auditor appointed under paragraph 34,
 no later than 5 months after the end of the financial year to which the statement relates.
- (2) The auditor must—
  - (a) examine and certify any statement of accounts received under sub-paragraph (1), and
  - (b) lay the statement of accounts as certified by him or her, together with his or her report on it, before the National Assembly.
- (3) The auditor must, in particular, be satisfied from an examination of the statement of accounts—

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- (a) that the expenditure to which the statement relates has been incurred lawfully and in accordance with the authority which governs it;
  - (b) that money to which the statement relates, received by the WAO for a particular purpose or particular purposes, has not been expended otherwise than for that purpose or those purposes;
  - (c) that the statement complies with the requirements of any enactment applicable to the accounts or statement;
  - (d) that proper practices have been observed in the compilation of the statement.
- (4) The auditor has a right of access at all reasonable times to every document which appears to the auditor to be necessary for the purposes of the audit of the accounts.
- (5) The auditor may—
- (a) require any person holding or accountable for such document to provide any assistance, information or explanation which the auditor reasonably thinks necessary for those purposes;
  - (b) require a relevant person to provide the auditor, at times specified by the auditor, with accounts of such of the transactions of the relevant person as the auditor may specify.
- (6) A “relevant person” means—
- (a) the Auditor General,
  - (b) the WAO, or
  - (c) any person to whose financial affairs and transactions the accounts relate in consequence of paragraph 33(5).
- (7) The auditor may—
- (a) carry out examinations into the economy, efficiency and effectiveness with which the Auditor General has used resources in discharging the Auditor General’s functions;
  - (b) carry out examinations into the economy, efficiency and effectiveness with which the WAO has used resources in discharging the WAO’s functions;
  - (c) lay a report of the results of any such examinations before the National Assembly.
- (8) For the purposes of carrying out such examinations, the auditor—
- (a) has a right of access at all reasonable times to every document in the possession, or under the control, of the Auditor General or the WAO which the auditor reasonably requires for those purposes;
  - (b) may require any person holding or accountable for any of those documents to provide any assistance, information or explanation which the auditor reasonably thinks necessary for those purposes.

#### *Documentary evidence*

- 36 (1) The application of the WAO’s seal is to be authenticated by the signature of—
- (a) a member of the WAO, or
  - (b) an employee of the WAO authorised (whether generally or specifically) for that purpose by the WAO.
- (2) A document purporting to be duly executed under the WAO’s seal or signed on its behalf—

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- (a) is to be received in evidence, and
- (b) is to be taken to be executed or signed in that way, unless the contrary is proved.