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Archwilydd Cyffredinol Cymru
Auditor General for Wales

Review of the Regulatory Impact Assessment of the Well-being of Future Generations (Wales) Bill



WALES AUDIT OFFICE
SWYDDFA ARCHWILIO CYMRU

I have prepared and published this report in accordance
with the Government of Wales Act 1998.

The team who delivered the work comprised John Dwight
under the direction of Matthew Mortlock.

Huw Vaughan Thomas
Auditor General for Wales
Wales Audit Office
24 Cathedral Road
Cardiff
CF11 9LJ

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Summary report

Summary

The context to, and scope of, our audit review

- 1 On 7 July 2014, the [then] Minister for Communities and Tackling Poverty introduced the Welsh Government's proposed Well-being of Future Generations (Wales) Bill (the Bill)¹. The stated general purpose of the proposed legislation is to 'ensure that the governance arrangements of public bodies for improving the well-being of Wales take the needs of future generations into account'. The Welsh Government's Policy Intent Statement² outlines the four core purposes of the Bill (Figure 1).

Figure 1 – Purposes of the Bill

- 1 To strengthen existing governance arrangements for improving the well-being of Wales in order to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs (the sustainable development principle). It identifies well-being goals, which specified public authorities are to seek to achieve in order to improve the well-being of Wales both now and in the future.
- 2 To set out how those authorities are to show that they are working towards the well-being goals. It also, through the introduction of national indicators, ensures that the difference being made to the well-being of Wales will be evaluated and measured.
- 3 To establish a Future Generations Commissioner for Wales to be an advocate for future generations who will advise and support Welsh public bodies in carrying out their duties under the Bill.
- 4 To put Local Service Boards (to be known as Public Services Boards) and well-being plans on a statutory basis and simplify current requirements as regards integrated community planning.

Source: Welsh Government, Policy Intent Statement, July 2014.

- 2 The origins of the Bill lie in the Welsh Government's commitment to legislate to embed sustainable development across government and across all devolved public bodies in the legislative programme announced by the First Minister in 2011 and then in the Programme for Government³. The scope of the proposed Bill covers the majority of, but not all, devolved public bodies⁴.

1 Welsh Government, *Well-being of Future Generations (Wales) Bill*, July 2014. Following changes in Ministerial portfolios in September 2014, responsibility for the Bill currently rests with the Minister for Natural Resources.

2 Welsh Government, *Well-being of Future Generations (Wales) Bill – Policy intent for regulations, directions and guidance*, July 2014.

3 Welsh Government, *Programme for Government*, September 2011.

4 Paragraph 56 of the Explanatory Memorandum says that the public bodies subject to the provisions in Parts 1 to 3 of the Bill have been identified based on the following criteria: being more than 50 per cent public funded; undertaking functions or activities that impact on the economic, social and environmental well-being of Wales or their local area; having strategic functions; being an 'auditable public authority' as defined in Schedule 7 of the Government of Wales Act 2006.

- 3 Under section 79 of the Government of Wales Act 2006, Welsh Ministers are already under a duty requiring them to make a scheme setting out how they propose, in the exercise of their functions, to promote sustainable development. Welsh Ministers are also required to publish an annual report on how the proposals in the scheme were implemented during the previous financial year. In addition, Welsh Ministers must report after every National Assembly for Wales election on how effective they have been (through the scheme) in promoting sustainable development.
- 4 Part 2 of the Explanatory Memorandum⁵ laid by the Welsh Government alongside the Bill provides a commentary on and analysis of estimated costs and benefits associated with the introduction of the Bill – the ‘Regulatory Impact Assessment’. During its recent stage 1 scrutiny of the Bill, the National Assembly’s Environment and Sustainability Committee took evidence on, among other things, the financial implications of the Bill.
- 5 In his evidence to the Environment and Sustainability Committee, the Auditor General raised a number of concerns about the costings set out in the Regulatory Impact Assessment. The Auditor General also noted the specific concern raised by the Chair of the Wales Audit Office in her evidence to the Committee that the cost estimate regarding the work of the Auditor General was not appropriate and probably understated.
- 6 Matters relating to the Auditor General’s role have since been the subject of separate discussions with the Welsh Government and are not the primary focus of this report. However, we have included within this report a letter from the Auditor General to the Chair of the Environment and Sustainability Committee that provides an update on those discussions, as at 25 November 2014 ([Appendix 3](#)).
- 7 Following the Auditor General’s appearance before the Environment and Sustainability Committee on 1 October 2014, the Committee requested that he undertake an audit in relation to the costing work underlying the Regulatory Impact Assessment. Subsequently, the National Assembly’s Public Accounts and Finance committees both endorsed that request⁶. On 14 October 2014, the Auditor General wrote to the Chair of the Environment and Sustainability Committee to confirm that he would undertake such a study under section 145A of the Government of Wales Act 1998.
- 8 On 28 November 2014, the Environment and Sustainability Committee published its own report following its stage 1 scrutiny of the Bill⁷. That report recommended that the Welsh Government should take note of the Auditor General’s work and update the Regulatory Impact Assessment based on its findings.

5 Welsh Government, *Well-being of Future Generations (Wales) Bill – Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes*, July 2014.

6 Following publication of the Bill, the Finance Committee requested some additional information from the Welsh Government in respect of the Regulatory Impact Assessment. The Finance Committee shared the *Welsh Government response* with the Environment and Sustainability Committee to inform its inquiry. We refer in the main body of this report to issues raised in that exchange of correspondence.

7 National Assembly for Wales Environment and Sustainability Committee, *Well-being of Future Generations (Wales) Bill Stage 1 Committee Report*, November 2014.

- 9 This report has been prepared by staff of the Wales Audit Office on behalf of the Auditor General and is based on our point in time review of the Welsh Government's initial Regulatory Impact Assessment as laid alongside the Bill when it was introduced in July 2014. We examined whether the Explanatory Memorandum (including the Regulatory Impact Assessment) provides a sound and clear assessment of the likely costs of the Bill.
- 10 **Appendix 1** sets out further details about the scope of our audit work and our audit methods. We refer throughout this report to public bodies. By this we mean those public bodies referenced in the Regulatory Impact Assessment that are affected by, but not always subject to, the Bill's various provisions.
- 11 The findings and conclusions in this report should be considered alongside the Explanatory Memorandum. We refer throughout this report to numbered tables and paragraphs from the Explanatory Memorandum and we have not repeated in this report the detail of the Regulatory Impact Assessment.
- 12 We have planned and delivered this audit work in a short timescale, recognising the limited overall timetable for the further consideration of the Bill by the National Assembly and its development by the Welsh Government. In particular, we intend this report to help inform the scheduled Assembly plenary debate on the Bill on 9 December 2014 alongside the recent report by the Environment and Sustainability Committee. During that debate, the Assembly will vote on the general principles of the Bill and its Financial Resolution. Where a Bill includes provisions that are likely to increase significantly expenditure payable from the Welsh Consolidated Fund, a Financial Resolution is required under Assembly Standing Orders before stage 2 proceedings can commence.
- 13 This is the first time that we have reviewed a Regulatory Impact Assessment for a piece of Welsh Government legislation. Owing to the necessarily restricted scope of our work determined by time constraints, we cannot comment on the extent to which the overall estimation and presentation of the costs in this case are any better or worse than for previous Welsh Government regulatory impact assessments.

Overall conclusion

- 14 The Auditor General recognised in his evidence to the Environment and Sustainability Committee that, as stated in paragraph 326 of the Explanatory Memorandum, it is not possible to quantify the costs and benefits of the activities that may result from the corporate objectives set by individual public bodies through the corporate planning framework that the Bill requires. However, he also considered it appropriate that the Explanatory Memorandum does attempt to set out an indicative cost for the administrative activities that will result from the Bill. The Welsh Government has made clear its belief that many of these costs should take the place of the costs of existing activities that are to be displaced or that, where additional, they may need to be absorbed within existing resources.

- 15 It is not the purpose of this report to present an alternative estimate of the likely costs of the Bill. The Welsh Government has already made clear its intention to update the Regulatory Impact Assessment to reflect any amendments to the Bill and to inform further National Assembly scrutiny as part of the established legislative process. The Welsh Government is already re-considering some of its assumptions that underpin the profiling of costs over the 2015-16 to 2019-20 period, in part to take account of the possible impact of local authority mergers.
- 16 We acknowledge that there are some inherent uncertainties about the likely costs of the Bill. For example, the extent to which the costs involved in discharging the Bill's functions in respect of corporate objective setting and reporting and the work of public service boards may add to or take the place of existing activity. This is likely to depend on how well current arrangements fit with the Bill's requirements.
- 17 Nevertheless, we have concluded that there are some weaknesses in the Welsh Government's estimation and presentation of the likely costs of the Bill. Although the Explanatory Memorandum provides an adequate description of the Bill's provisions, in our view the Regulatory Impact Assessment understates the costs of current arrangements and the likely additional costs of implementation and the Welsh Government's assumptions require further testing with the public bodies affected. In addition, the Regulatory Impact Assessment does not present clearly enough the Welsh Government's estimate of the additional cost of the Bill and we have identified some other general and specific weaknesses in matters of detail. The Welsh Government has accepted that its assumptions require further testing with the public bodies affected but does not accept that the current or additional costs set out in the Regulatory Impact Assessment are necessarily understated.
- 18 In relation to the Welsh Government's view that additional costs of the Bill may need to be absorbed within existing resources, as expressed during the Environment and Sustainability Committee's evidence session on 29 September 2014, we consider it unhelpful that the Regulatory Impact Assessment does not make this intention clear. The absorption of costs within existing resources is an opportunity cost, in terms of the other activity forgone. The intention to fund additional costs in this way should be explicit in the Regulatory Impact Assessment.
- 19 Some of the issues we highlight in this report have already featured in the evidence received by the Environment and Sustainability Committee and, in part, reflect some significant limitations in the extent of the Welsh Government's consultation with key stakeholders to inform the Regulatory Impact Assessment. As well as certain time constraints, it is clear that the Welsh Government was keen not to disclose in advance of the publication of the Bill specific details about its likely provisions as the basis for more informed discussion. Nevertheless, we would have

expected that some of the issues we have highlighted would have been addressed by the Welsh Government's own internal review of the Regulatory Impact Assessment prior to its publication.

Recommendations

- 20 It is for the Welsh Government, working with key stakeholders, to provide as robust an assessment as possible of the likely cost implications of the Bill. Our recommendations, and the findings and conclusions set out in the main body of this report, are intended to support that process.

Officers' cost rates and time commitments

R1 The Welsh Government should revisit all of the costings in the Regulatory Impact Assessment that are based on assumptions about officers' cost rates and time commitments. In so doing, the Welsh Government should:

- engage with Wales Audit Office staff to ensure that the costing assumptions reflect appropriate evidence from the Auditor General's February 2014 memorandum on senior management pay⁸;
- engage with the individual public bodies affected by the Bill to seek a view on whether assumptions about the numbers of officers involved, grade mix and related salary costs are realistic; and
- address some of the apparent inconsistencies in the way in which the cost of officer time has been calculated (the apportionment of daily rates and the allowance for employers' pension and national insurance contributions).

Presenting a clear overall analysis of estimated costs

R2 In updating the Regulatory Impact Assessment, the Welsh Government should present a clear single summary table of the indicative cost of the Bill as far as that can be ascertained. It should provide a clear overall analysis of the estimated costs showing how costs fall across the different policy intentions, different years and different public bodies. Where relevant, the Welsh Government should also identify in this analysis the range in estimated costs and present more consistently the comparison between the 'do nothing' and 'introduce legislation' options for each policy intention.

⁸ Auditor General for Wales, *Senior management pay across the Welsh public sector*, February 2014.

Assumptions about the extent to which the Bill will result in additional costs

R3 Supported by further consultation with the affected public bodies, the Welsh Government should re-visit its assumptions about the extent to which the activities required to implement the Bill may result in additional costs. The Welsh Government should invite public bodies and local service boards to assess current arrangements against the Bill's requirements and to identify the likely additional cost of meeting the Bill's requirements. Any such assessment should consider the extent to which public bodies may need to develop, and if necessary enhance, business planning and decision-making processes. The Welsh Government should also allow for the cost to public bodies of their engagement with the Commissioner and the Auditor General in the course of their work.

Planning and reporting arrangements for individual public bodies and the proposed public service boards

R4 The Welsh Government should give further consideration to the way in which the assessment and profiling of costs in relation to the Bill's planning and reporting requirements align with each other and with other extant requirements, such as the Local Government (Wales) Measure 2009⁹ and the NHS Wales Planning Framework¹⁰.

Monitoring and assessing the extent to which well-being objectives are being met

R5 Building on recent discussions (Appendix 3), the Welsh Government should give further consideration to the cost implications of the respective roles of the Auditor General, the Commissioner and the Welsh Government with regard to monitoring and assessing the extent to which well-being objectives set by public bodies are being met.

⁹ National Assembly for Wales, *Local Government (Wales) Measure 2009*, June 2009.

¹⁰ Welsh Government, *NHS Planning Framework 2015-16*, October 2014.

Other issues highlighted in this report

- R6 The Welsh Government should present a longer-term view of the likely costs of the Bill over the period it expects the Bill's requirements to apply, recognising the long-term principle inherent in the Bill itself and reflecting relevant HM Treasury Green Book guidance.
- R7 The Welsh Government should ensure that the bases of all of the assumptions and calculations in the updated Regulatory Impact Assessment are made clear and that the Regulatory Impact Assessment is subject to robust internal review.
- R8 The Welsh Government should seek to address where possible the other points of detail that we have highlighted in this report when updating the Regulatory Impact Assessment.

Future regulatory impact assessments

- R9 The Welsh Government should review and strengthen its overall arrangements for the development and internal review of future regulatory impact assessments. This exercise should consider the protocols for engaging with key stakeholders during the development of regulatory impact assessments.

Part 1

The Explanatory Memorandum provides an adequate description of the Bill's provisions but, in our view, the Regulatory Impact Assessment understates the costs of current arrangements and the likely additional costs of implementation and the Welsh Government's assumptions require further testing with the public bodies affected

- 1.1 As a starting point for our work, we have considered at a high level whether the Explanatory Memorandum fulfils its core purpose of setting out clearly what the Bill is intended to achieve, how it seeks to achieve that purpose and the likely related costs and benefits.
- 1.2 The Explanatory Memorandum is generally effective in explaining the key concepts of the common aim¹¹ and the sustainable development principle¹². It provides a reasonable explanation of the main features of the Bill designed to ‘strengthen existing governance systems for improving the well-being of Wales’. It also provides detailed explanation of the underpinning knowledge, experience and consultation process used to inform the development and drafting of the Bill.
- 1.3 Importantly, the Explanatory Memorandum explains how the Welsh Government has sought to apply the key concept of results based accountability to the development of the Bill. It sets out that public bodies will be required to ‘work together to improve the well-being of Wales by seeking to achieve a suite of statutory well-being goals’ (paragraph 46).
- 1.4 Chapter 8 of the Explanatory Memorandum emphasises that ‘viewing the goals as an integrated set is critical to their achievement’. The report of the *Commission on Public Service Governance and Delivery*¹³ and the work of the Auditor General and others, highlight the continuing problems associated with silo working and the difficulty of planning and delivering in an integrated way. The Welsh Government has allowed for certain narrowly focused and short-term transitional arrangements, such as for the production of guidance, recruitment of the Future Generations Commissioner and the setting up of their office. But, in our view, the Regulatory Impact Assessment understates the investment of time, effort and other resources that is likely to be required to implement the Bill’s requirements. The Welsh Government has accepted that its assumptions require further testing with the public bodies affected but does not accept that the current or additional costs set out in the Regulatory Impact Assessment are necessarily understated.
- 1.5 In particular, the Regulatory Impact Assessment takes little account of any additional time and effort that may be required for public bodies to develop, and if necessary enhance, business planning and decision-making processes to help maximise their contribution to the well-being goals. Nor does it make any allowance for staff training or for the time that may be spent by public bodies engaging with the Commissioner and the Auditor General in the discharge of their responsibilities. We recognise that the work of the Commissioner, which is costed separately in the Regulatory Impact Assessment, may contribute to training, awareness raising and cultural change. However, the Commissioner’s contribution is not the totality of that development work.

¹¹ To improve the economic, social and environmental well-being of Wales, in accordance with the sustainable development principle.

¹² Seeking to ensure the needs of the present are met without compromising the ability of future generations to meet their own needs.

¹³ Commission on Public Service Governance and Delivery, *Full Report*, January 2014.

- 1.6 To take one example, the Regulatory Impact Assessment estimates that the common current corporate objective setting and reporting arrangements would cost public bodies around £7.9 million over the period 2015-16 to 2019-20¹⁴. The Regulatory Impact Assessment bases this estimate on the mid-point of a range in costs that it presents for different groupings of public bodies, with the exception that it does not present a range for the Welsh Government itself¹⁵. As we explain later in this report, some of the assumptions that underpin this current cost estimate do not appear to be well founded and result in the understatement of costs.
- 1.7 Taking the top end of the range of costs presented in the Regulatory Impact Assessment, and applying the same range to the Welsh Government's costs, would have added £2.0 million to the estimated current cost of corporate objective setting and reporting. As a minimum, and leaving aside any consideration of the possible impact of local government mergers, we consider it is reasonable to assume that the impact of the Bill's corporate planning and reporting requirements on the relevant public bodies might present an additional cost at least equivalent to this £2.0 million figure over the 2015-16 to 2019-20 period. That is, a 25 per cent increase on the estimated cost of current arrangements. This is a cost that the Welsh Government is expecting public bodies to absorb, but which still represents an opportunity cost.
- 1.8 Increasing the capacity of the Commissioner's office to support the implementation of the Bill might offset some of this opportunity cost but would present additional costs in respect of the Commissioner's functions. We also recognise that the impact on different public bodies will depend on the alignment of current arrangements with those required by the Bill. However, our audit work suggests that there are still significant shortcomings in public bodies' longer-term decision-making and strategic planning.
- 1.9 Paragraph 105 of the Explanatory Memorandum states that 'it is not intended that public bodies set separate well-being objectives which relate solely to the well-being goals in addition to their existing objectives, rather that the requirements of the Bill are incorporated into existing corporate governance and business planning processes'. The Auditor General has noted in his evidence to the Environment and Sustainability Committee his view that, for local government (and other improvement authorities), there is an inherent conflict between the requirements of the Local Government (Wales) Measure 2009 and the proposed requirements of the Bill. Specifically:
- a The 2009 Measure places sustainability as one of seven aspects¹⁶, whereas the Bill establishes sustainable development as the central organising principle.

¹⁴ Based on Table 14 in the Regulatory Impact Assessment, this £7.9 million figure combines the estimate for the Welsh Government under 'setting corporate objectives' and 'annual report on corporate objectives' with the total figures for the other specified public bodies and including the reporting requirements on town and community councils (explained in paragraphs 384 to 385).

¹⁵ Tables 3 to 9 set out the range in estimated costs for the other specified public bodies, based on the mid-point +/- 25 per cent.

¹⁶ In setting 'improvement objectives', improvement authorities must frame them in terms of at least one of the following aspects: strategic effectiveness; service quality; service availability; fairness; sustainability; efficiency; and innovation.

- b The 2009 Measure requires that improvement authorities set improvement objectives relating to at least one of any of the seven improvement aspects, as the focus for improvement for each financial year. The Bill on the other hand requires public bodies to set well-being objectives to maximise their contribution to the well-being goals in accordance with the sustainable development principle. Well-being objectives under the Bill are not set with reference to each financial year, but rather the Bill permits a long-term approach.
- 1.10 The incompatibility of the requirements of the 2009 Measure and the proposed requirements of the Bill raise the risk that duplicate processes will emerge at additional cost. Alternatively, improvement authorities may have to invest more time and effort to reconcile the two. As this risk has not been acknowledged, the potential cost is not acknowledged either. The Welsh Government has not included any provision in the Bill to modify part 1 of the 2009 Measure so as to reconcile its requirements with those of the Bill.

Part 2

The Regulatory Impact Assessment does not present clearly enough the Welsh Government's estimate of the additional cost of the Bill

- 2.1 The Regulatory Impact Assessment organises its analysis of the costs and benefits of the Bill around the four key policy intentions:
- a to improve governance arrangements to improve the well-being and sustainable development of Wales;
 - b to embed sustainable development within the specified public bodies;
 - c to support the change and safeguard the interest of future generations; and
 - d to reform integrated community planning.
- 2.2 These four policy intentions align, broadly, with the four core purposes of the Bill (Figure 1 on page 5 of this report). In summary, key provisions of the Bill include:
- a requiring specified public bodies to set, publish and report on well-being objectives that contribute to the achievement of each of the six well-being goals¹⁷ set in the Bill and to do so in a manner that is consistent with the sustainable development principle;
 - b establishing the post and office of a Future Generations Commissioner to replace the current, non-statutory, Commissioner for Sustainable Futures; and
 - c replacing current local service board arrangements with statutory public service boards, with those new boards being required to undertake a local well-being assessment and to prepare, publish and report on a local well-being plan.
- 2.3 The Regulatory Impact Assessment considers together the first two of the policy intentions and, for each policy intention, attempts to compare the costs of the ‘do nothing’ option with the costs of the ‘introduce legislation’ option. The Regulatory Impact Assessment also considers disbanding the role of the Commissioner for Sustainable Futures, in effect bringing other costs associated with supporting sustainable development into the Welsh Government. In addition, the Regulatory Impact Assessment discusses but rules out the prospect of removing local community planning duties entirely and does not, therefore, cost that option.
- 2.4 A key weakness in the presentation of the Regulatory Impact Assessment is that it does not bring together an overall analysis of the total costs associated with the Bill across all four policy intentions, or the total additional costs when compared with the ‘do nothing’ option. Such an analysis would have enabled the Welsh Government to explain more clearly how the total additional costs fall across the different policy intentions, across different years, and across different public bodies. An overall analysis could also have brought together information about the possible range in the estimated costs.

¹⁷ A prosperous Wales; a resilient Wales; a healthier Wales; a more equal Wales; a Wales of cohesive communities; a Wales of vibrant culture and thriving Welsh language.

- 2.5 In addition, differences in the way that the respective costs of the 'do nothing' and 'introduce legislation' options are presented and compared make the Regulatory Impact Assessment difficult to follow. The Regulatory Impact Assessment is also difficult to follow because it does not provide references for the sources of figures in its tables and, in some cases, the text identifies costs that are not explicitly included in the tables.
- 2.6 The National Assembly's Research Service has presented the total additional cost of the Bill as £5,015,274 over the period 2015-16 to 2019-20¹⁸. We have checked and reconciled that overall figure with our own analysis, based on the figures as set out in the Regulatory Impact Assessment and without seeking to correct any inaccuracies in the presentation of those figures, examples of which we describe in Part 3 of this report.
- 2.7 The Research Service provided a breakdown of the additional cost across the different policy intentions and the Environment and Sustainability Committee has drawn on that analysis in its own report. The Research Service noted that £332,000 of the total additional cost was for transitional activity in 2015-16 and 2016-17, with the remaining £4.7 million being recurring costs.
- 2.8 **Figure 2** presents the estimated additional cost of the Bill based on how these costs fall to different public bodies. In summary:
- a The additional costs for the Welsh Government largely reflect the establishment and operations of the Future Generations Commissioner and his/her office.
 - b The additional costs for the specified (and other) public bodies include costs relating to attendance at public service boards, scrutiny reviews of area well-being plans and, for some, representation on the new Commissioner's Advisory Panel (assuming that members of the Panel will meet their own costs).
 - c The additional costs for the Auditor General relate to the preparation for and conduct of audit review work. In her evidence to the Environment and Sustainability Committee, the Chair of the Wales Audit Office expressed concern that the cost estimate relating to the work of the Auditor General was not appropriate and probably understated. The figures presented in the Regulatory Impact Assessment reflect estimates provided by Wales Audit Office staff early in the process of the Bill's development (at the White Paper stage). As already noted, matters relating to the Auditor General's role have been the subject of separate discussions with the Welsh Government (**Appendix 3**), and are not the primary focus of this report.

¹⁸ National Assembly for Wales Research Service, *Bill Summary – the Well-being of Future Generations (Wales) Bill*, October 2014.

Figure 2 – Welsh Government estimates of the additional costs of the Bill, 2015-16 to 2019-20 (£s)

Relevant authorities	2015-16	2016-17	2017-18	2018-19	2019-20	Total
Welsh Government	855,520	684,551	687,351	709,351	709,351	3,646,124
Specified (and other) public bodies ¹	13,650	155,750	145,250	145,250	145,250	605,150
Auditor General	122,000	252,000	130,000	130,000	130,000	764,000
Total	991,170	1,092,301	962,601	984,601	984,601	5,015,274

Note

1 Additional costs that fall to other public bodies not subject to the corporate objective setting and reporting requirements of the Bill include costs to the other commissioners in Wales of their membership of the Advisory Panel for the new Future Generations Commissioner and, for certain other public bodies, additional involvement in integrated community planning.

Source: Wales Audit Office analysis of figures presented in the Welsh Government's, 'Explanatory Memorandum – Well-being of Future Generations (Wales) Bill', July 2014.

Part 3

There are some weaknesses in the detail of the Welsh Government's presentation and estimation of the costs of the Bill and in the underpinning evidence

- 3.1 In reviewing the detail of the Regulatory Impact Assessment, we have focused on the two main options – to ‘do nothing’ or to ‘introduce legislation’. We have sought to identify and highlight in this report the key issues arising from our review. However, in the limited time available to us we have not undertaken a forensic line-by-line examination of the Regulatory Impact Assessment.
- 3.2 Considering the Regulatory Impact Assessment as a whole, we have firstly set out some general findings and observations that cut across the different policy intentions. For example, we have identified certain inconsistencies in approach and areas where the costings do not appear to reflect fully principles set out in the Welsh Government’s *Guidance on undertaking Regulatory Impact Assessments for Assembly Bills*. The Welsh Government finalised that guidance in July 2014, but we understand that it had been available to officials in draft form during the preparation of the Regulatory Impact Assessment. Much of the work to develop the likely costs of corporate objective setting and reporting was carried out towards the end of the process of developing the Bill ([Appendix 2](#)).
- 3.3 We have set out our general findings and observations under the following themes:
- a costs of employment (salary, employers’ pension and national insurance contributions, other costs);
 - b converting office time into costs;
 - c timescales and allowing for changes in the value of money over time;
 - d distinguishing between different sized public bodies; and
 - e presenting and selecting from a range in estimated costs.
- 3.4 We have then set out a range of other findings and observations in respect of:
- a corporate objective setting and reporting by individual public bodies;
 - b integrated community planning, through local service boards/public service boards;
 - c timescales for the setting of and reporting on corporate objectives by specified public bodies and integrated community planning; and
 - d proposals for the Future Generations Commissioner.
- 3.5 Where the Welsh Government is reflecting in the Regulatory Impact Assessment its own internal costs, whether for the ‘do nothing’ or ‘introduce legislation’ option, we have largely taken those estimates at face value. The Welsh Government does not operate a formal time-recording system. The officials developing the Regulatory Impact Assessment drew on information supplied by other colleagues to inform these estimates.

- 3.6 However, we have considered the way in which the Welsh Government has calculated the cost of officer time and we have questioned certain assumptions where the Welsh Government has indicated that there will be no additional costs in respect of certain activities.

General findings and observations

Costs of employment (salary, employers' pension and national insurance contributions, other costs)

- 3.7 In setting out officer costs for Welsh Government officials, for example in Tables 2, 10 and 15 of the Explanatory Memorandum, the Regulatory Impact Assessment takes into account employers' pension and national insurance contributions. This is in keeping with the approach recommended by the Welsh Government's internal guidance, and it is in any event necessary in order to identify the full cost of officials' time. Welsh Government annual grade costs have been used in the same way to estimate staff costs for the new commissioner's office (Table 22).
- 3.8 While they are presented as salary, most but not all of the estimated costs in the Regulatory Impact Assessment relating to officers from other specified public bodies are also based on assumptions about equivalent Welsh Government grades. The salary figures quoted would therefore include an allowance for employers' pension and national insurance contributions. In his evidence to the Environment and Sustainability Committee, the Auditor General questioned the basis of some of these salary estimates, suggesting that actual salary costs in at least some cases would be higher¹⁹. The validity of some of these estimates is further called into question if they do in fact represent more than just basic salary, which they should.
- 3.9 The Welsh Government's guidance also recommends taking into account other costs of employment, such as the apportionment of office running costs and IT costs. In our view, however, this is not necessarily appropriate, as it rests on an assumption that such costs are directly proportionate to employee numbers, rather than essentially fixed over the medium-term, as they are in reality. We consider that it is better to identify costs such as those for accommodation and IT systems separately wherever possible. We therefore consider that the Welsh Government took an appropriate approach in not including such costs as employment overheads in the case of the estimated costs for the office of the new Commissioner, and instead recognising them separately as part of the annual office costs set out in Table 23.

¹⁹ For further details, see paragraph 3.28 of this report.

Converting officer time into costs

- 3.10 The way in which the Regulatory Impact Assessment converts officer time into an estimated cost and presents that information is inconsistent and not always clearly explained. While the net impact of these differences may be relatively minor, the presentation is, therefore, potentially confusing and not easy to interpret. For example:
- a Tables 3 to 9 show time in days and the estimates of total costs are based on a daily rate that divides the quoted annual salary figure across 223 working days (allowing for non-working time through annual leave and public holidays). The Regulatory Impact Assessment does not make clear the approach taken.
 - b Tables 10 and 11 estimate the time taken for related activities in months rather than days, with the estimated costs based on a 52-week, 260 working day year.
 - c Table 15 presents time in days for one activity and weeks for another. The calculations appear again to be based on a daily rate calculated for a 260 working day year. The costs for the production of the required report on future trends are based on assumptions about the percentage of the working week that three officers at different grades would spend working on this report over a period of six to eight weeks. This analysis could have been presented more simply as a range of working days for each officer, as is the case in the presentation of Tables 3 to 9.
 - d The Welsh Government's working papers suggest that the figures presented in Table 25 are based on the assumption of a 36.2 hour working week. Earlier tables, for example Table 11, suggest the Welsh Government was working to a core assumption of a 37-hour working week.
 - e Throughout the analysis for policy intention 4 (integrated community planning) the Regulatory Impact Assessment calculates costings based on the estimated time commitment by dividing the quoted annual salary figures across 220 working days. Again, the Regulatory Impact Assessment does not make clear the approach taken. In addition, the basis for the different annual salary figures applied to 'analysts' from NHS bodies (£38,700) and those from police authorities and local authorities (£51,900) is not explained (Tables 27-28 and Tables 38-39).

Timescales and allowing for changes in the value of money over time

- 3.11 The Regulatory Impact Assessment considers one five-year period: 2015-16 to 2019-20. The Bill, however, does not include a sunset clause to repeal its provisions at the end of 2019-20 and is clearly intended to be extant in the long-term. To give a full view of the costs of the Bill, the Regulatory Impact Assessment should consider costs in the long-term (for however long the Welsh Government expects the Bill's provisions to be extant). The omission of such a long-term consideration does not appear to be in keeping with the substance of the Bill, notably the requirement that public bodies should take account of the long-term.
- 3.12 The Welsh Government's guidance indicates that if policy proposals involve recurring costs these costs will need to be discounted, or adjusted to Net Present Value (a standard means of allowing for the reduced value of future streams of money). Such treatment allows costs and benefits arising at different times to be compared on a consistent basis and is particularly important with a long-term analysis. The costs presented in the Regulatory Impact Assessment are presented as current costs, with no consideration given to either inflation or discounting. In some cases the cost estimates are based on costs incurred in previous years without price increases being taken into account. For example, at least some of the costs to the Welsh Government of supporting Ministers in setting corporate objectives are based on costs that appear to have been incurred in 2011 (Table 1).
- 3.13 The Regulatory Impact Assessment does not explain the approach taken. However, we note that the Welsh Government's guidance on regulatory impact assessments states that the appropriate appraisal period for each policy should be determined at an early stage. This appraisal period should cover the expected life of the policy. The guidance indicates that where the appropriate appraisal period is not immediately obvious then a 5 or 10-year period would typically be used. We consider that, given the long-term nature of the Bill, and in line with the principles in HM Treasury's 'Green Book'²⁰, the Welsh Government should set out costs over the period it expects the Bill's requirements to apply.

Distinguishing between different sized public bodies

- 3.14 In setting out the costs of time required to set and report against corporate objectives (policy intentions 1 and 2), the Regulatory Impact Assessment distinguishes between the three largest local authorities based on population and the 19 other local authorities. The Regulatory Impact Assessment then adopts different costing assumptions for the two groups.

²⁰ HM Treasury, *The Green Book: Appraisal and Evaluation in Central Government*, 2003 (updated 2011).

- 3.15 Regardless of the accuracy or otherwise of the Welsh Government's estimates, differentiating the cost of these activities to take account of public bodies' size and complexity seems appropriate. However, the Welsh Government could have gone further. We note for example that the Independent Remuneration Panel for Wales places local authorities in three bands covering the three largest, a second group of 12 and a third group of seven. There is also a case for distinguishing between the seven health boards and two NHS trusts²¹ covered by the Bill on the basis of size and complexity.
- 3.16 We would also observe that, while there may be costs associated with integrated community planning (policy intention 4) that are common across Wales, citizen engagement activity in larger local authority areas (by population and/or geography) may need to be more resource intensive to ensure representative coverage.

Presenting and selecting from a range in estimated costs

- 3.17 The Regulatory Impact Assessment presents an estimated range in costs for some but not all areas. Some costs may be better evidenced than others. However, we consider that it would have been appropriate to set out a range in cost estimates for certain other activities. In particular, to present a range of estimates for activities related to integrated community planning (policy intention 4) to reflect the approach adopted for corporate objective setting and reporting requirements (under policy intentions 1 and 2).
- 3.18 We note that the Regulatory Impact Assessment takes forward the mid-point figure from the range in Tables 3 to 9 to inform the overall costing for corporate objective setting and reporting (Table 14). This contrasts with Table 22, from which the Regulatory Impact Assessment takes forward the higher of the two estimates of staff costs for the office of the new Commissioner. While Table 24 does not itself make this clear, paragraphs 443 to 444 explain that the Regulatory Impact Assessment takes forward the lower of the range in costs estimated for the advisory panel that it is proposed will support the new Commissioner.

²¹ As currently proposed, the requirements of the Bill would not apply to the Welsh Ambulance Services NHS Trust.

Corporate objective setting and reporting by individual public bodies

3.19 The Regulatory Impact Assessment has, for the first time within a National Assembly legislative process, tried to identify the costs of corporate objective setting and annual reporting in any detail. We note, for example, that this contrasts with the lack of any published analysis to determine the likely impact of the Local Government (Wales) Measure 2009. Indeed, it is worth noting that in the period 2010-11 to 2013-14, the Welsh Government paid some £5.9 million to the Wales Audit Office to help fund work done in accordance with the 2009 Measure but the Regulatory Impact Assessment for the 2009 Measure stated:

'The draft Measure is concerned with the structures of business and strategic planning, governance, accountability and reporting by local authorities and other public bodies. The provisions of the proposed Measure do not give rise to any administrative, compliance or other costs'

The supporting research commissioned by the Welsh Government

- 3.20 As referenced in the Regulatory Impact Assessment, the Welsh Government contracted with PricewaterhouseCoopers (PwC) to support its assessment of the administrative impact of the Bill. The cost of that work to the Welsh Government was £24,950 exclusive of VAT. We have not considered the Welsh Government's procurement and contract management arrangements.
- 3.21 When it set out the proposed specification for potential bidders in October 2013, the Welsh Government was hoping that the work would be completed before the end of January 2014. The Welsh Government received two bids and awarded the contract to PwC on 14 November 2013.
- 3.22 We understand that there were difficulties setting up some of the fieldwork for the project, with the last of the Welsh Government-arranged stakeholder workshops held in early March 2014. PwC provided the Welsh Government with an initial draft report in mid-March 2014, with a final version presented in early May 2014²².
- 3.23 The specification for the work undertaken by PwC was issued at a time when the Welsh Government still envisaged that the provisions of the Bill would apply to 'strategic (high level) decisions'. The specification indicated that the appointed contractor would be expected to consider options relating to applying the duty not only to these strategic decisions but also to all decisions. In drafting the Bill, the Welsh Government moved away from this focus on the language of 'strategic decisions' to focus instead on corporate objective setting. The Welsh Government discussed and agreed with PwC changes to the scope of its work.

²² PricewaterhouseCoopers, *Welsh Government – Future Generations Bill: Administrative Impact Appraisal*, May 2014. The Explanatory Memorandum directs the reader to the final report. However, the web-link in the Explanatory Memorandum relates to some general information about the Bill and not to the PwC report itself.

3.24 PwC's report provides evidence relevant to the corporate objective setting and reporting provisions in the Bill and in respect of integrated community planning, including certain case studies. The report's findings are based on PwC's work with a sample of stakeholders. However, as the Explanatory Memorandum notes, the PwC work was not able to provide a quantified assessment of the likely costs involved with the Bill, in part because public bodies had difficulty measuring their maturity in terms of how far they complied currently. The PwC report concludes that: *'Overall the findings suggested that the negative administrative impacts of implementing the requirements of the FGB would be negligible in comparison to the potential opportunities and benefits that could be derived from implementing the proposed duties of the Bill'*.

The Welsh Government's estimates of time and cost

3.25 In sharing their draft report with the Welsh Government, PwC suggested that the Welsh Government might consider engaging further with stakeholders to provide a clearer assessment of the likely administrative impact of the Bill. As part of its work, PwC had prepared for the Welsh Government a maturity matrix assessment tool for possible future development and application. Even though PwC's report quoted certain cost figures, PwC had emphasised to the Welsh Government that these were based on stakeholder feedback and merited further scrutiny.

3.26 Welsh Government officials were hopeful that the consultancy work would provide a clear quantification of the likely administrative impact of the Bill to support their development of the Regulatory Impact Assessment. We understand that, following receipt of the PwC report, Welsh Government officials devised their own estimates of the time that it would take other specified public bodies to undertake the necessary corporate objective setting and reporting activity based on the Welsh Government's own arrangements (specifically, the development of and reporting on the Programme for Government).

3.27 The Regulatory Impact Assessment indicates that the PwC research informed the approach that the Welsh Government applied in developing those estimates, which show the range in possible costs for individual public bodies (Tables 3 to 9). For example, Table 3 estimates that, for a large local authority, the process of setting corporate objectives will take between 7.5 and 12.5 days for each director and head of service, between 3.75 and 6.25 days for each operational manager and between 15 and 25 days for administrative support. The Welsh Government did not undertake any further consultation with public bodies to inform these estimates. The letter from the Minister for Natural Resources to the Finance Committee in September 2014 indicates that time constraints prevented any further consultation before the scrutiny process began.

- 3.28 We consider that the estimates presented for the costs of corporate objective setting and reporting across specified public bodies would have benefitted significantly from further consideration and testing with the public bodies affected. Based on our review of the information presented in the Regulatory Impact Assessment, we would note that:
- a These figures make no allowance for member/non-executive involvement in the process of corporate objective setting and reporting. Nor do they appear to include any allowance for the involvement of the Chief Executive or equivalent head of each public body. Similarly, we note that the Welsh Government costs for the running of its sustainable development branch do not include any allowance for director/director general level oversight (Table 2).
 - b Many of the salary figures quoted in Tables 3 to 9 are substantially understated when compared with evidence that supported the Auditor General's February 2014 memorandum on *Senior management pay across the Welsh public sector*. We consider that many of the figures used in Tables 3 to 9 are likely instead to be well in excess of £100,000, particularly when taking into account other on-costs²³. We also consider that some of the figures for the number of directors are under-stated. For example, the memorandum on senior management pay identified 63 directors across the seven local health boards, an average of nine compared to the five presented for health boards and NHS trusts in Table 5. We do not have sufficient data available to us to form a clear view on the numbers of officers below director level who might be involved in corporate planning and reporting.
- 3.29 While the estimated costs for corporate objective setting and reporting under the 'do nothing' option are unlikely to reflect fully the current position, the 'introduce legislation' option assumes that the provisions of the Bill will change public bodies' approach rather than resulting in additional costs. The Regulatory Impact Assessment identifies some additional costs under policy intentions 1 and 2, estimated at £665,000 in total between 2015-16 and 2019-20 from total costs of £9,949,200. However, these costs only fall to the Welsh Government and the Auditor General.
- 3.30 As already noted in paragraphs 1.5 to 1.10 of this report, we question the Welsh Government's assumption that there will be no additional costs to the specified public bodies in relation to corporate objective setting and reporting and its assertion that processes of business planning will not be directly affected. We recognise that the extent of additional work required may vary depending on the alignment of current arrangements with the requirements of the Bill and that the separately costed work of the Commissioner will contribute to training, awareness raising and cultural change.

²³ As noted in paragraph 3.8 of this report, these salary rates have been based on Welsh Government grades, including an allowance for employers' pension and national insurance contributions.

- 3.31 Our other observations about the estimates for corporate objective setting and reporting include:
- a The costs of current corporate objective setting for the specified public bodies other than the Welsh Government do not appear to recognise explicitly any costs associated with the publication of these objectives (Tables 3 to 9). Table 1 includes such costs for the Welsh Government.
 - b Under the Bill, the specified public bodies are required to publish a statement explaining their well-being objectives. While not stated explicitly, we assume that the cost of staff time in this regard may have been included in the time estimates for corporate objective setting in Tables 3 to 9. However, the Regulatory Impact Assessment does not take account of any costs associated with the preparation of public materials by other bodies, whether for the 'do nothing' or 'introduce legislation' options.
 - c Table 13 concerns the production of the sustainable development annual report and includes a cost of £1,550 for 'supporting the Commissioner'. These costs are also covered as part of the overall costs relating to the Commissioner under policy intention 3 (Table 18), and appear therefore to be double counted in determining the overall costs of the current arrangements.
 - d Welsh Government costs in Table 14 include current cost estimates of £22,100 for sustainable development annual reporting and £348,700 for annual reporting against corporate objectives. These annual costs have been included for the period 2016-17 to 2019-20 but should also have been included for 2015-16.
 - e Paragraph 373 identifies the £10,000 cost of producing guidance for the Bill. The Regulatory Impact Assessment says that this cost would be met as part of existing sustainable development branch costs that are covered in Table 2. What this estimate does not appear to allow for is any input from other Welsh Government departments, for example to support the alignment of that guidance with other existing and relevant guidance that falls within their area of responsibility.
 - f Paragraphs 373-374 assume that there will not be any additional costs associated with developing a set of national measures of progress for achieving the shared long-term well-being goals for Wales and for updating national measures of progress. It seems unlikely that the Regulatory Impact Assessment reflects fully the additional work that may be required in this respect. We note the commentary and recommendations in the Environment and Sustainability Committee's report about the development of the national indicators and the possible associated cost implications.

- g Paragraphs 384-385 assume that there will not be any additional costs to town and community councils because the requirement for them to report progress against their local well-being plan would replace current annual reporting arrangements. There are not currently any formal annual reporting arrangements for town and community councils other than through the production of annual accounts. We consider that, by their nature, the reporting arrangements envisaged by the Bill would result in additional costs for town and community councils.
- h Paragraph 385 notes that the duties will only apply to town and community councils with a gross income of at least of £200,000 for each of the three preceding years. In costing the 'introduce legislation' option, the Regulatory Impact Assessment assumes that the Bill would apply to 73 town and community councils. The actual number covered by the Bill is likely to be lower. The Regulatory Impact Assessment indicates that the figure of 73 is based on the Auditor General's September 2013 report on financial management and governance across town and community councils²⁴. However, we acknowledge that there were errors in the original presentation of the Auditor General's report. The report has been corrected and now identifies that there were 49 councils with an annual income of £200,000 or more in 2011-12.
- i Finally, the Government of Wales Act 2006 places a duty on Welsh Ministers to publish a report assessing how effective they have been, through their sustainable development scheme, in promoting sustainable development. Under the 'do nothing' option, Table 14 estimates the cost of this exercise at £25,000, with the next review due in 2016-17. The 'introduce legislation' option appears to assume that the performance of this duty can be subsumed within other activities, such as the Welsh Ministers' annual reporting on progress towards their well-being objectives, and it excludes the costs (Table 17). Our view is that the duties under the Government of Wales Act 2006 remain in place, and cannot readily be met through other activities without additional work, so these costs should have been included in the 'introduce legislation' option. However, we note that the Welsh Government is now seeking legislative competence for the National Assembly to amend the relevant section (79) of the Government of Wales Act 2006.

²⁴ Auditor General for Wales, *Improving Financial Management and Governance: Issues from the Audit of Community Council Accounts 2011-12*, September 2013.

Integrated community planning, through local service boards/ public service boards

3.32 Under policy intention 4, the Regulatory Impact Assessment assesses the current costs of:

- a attendance at local service board meetings;
- b partnership support (based primarily on grants provided to local authorities);
- c preparing a strategic needs assessment once every five years, and updating this in the intervening years;
- d preparing a single integrated plan and reporting against this on an annual basis;
- e citizen engagement, in detail once every five years with a lower level of engagement in the intervening four years;
- f scrutiny of local service boards (including committee chair and elected member costs); and
- g Welsh Government support for local service boards and integrated planning (over and above attendance at local service board meetings).

3.33 In the 'introduce legislation' option, where statutory Public Service Boards are established, paragraph 514 shows that the main additional costs relate to:

- a transitional costs that fall to the Welsh Government in 2015-16 to prepare a code of practice and statutory guidance for public service boards and to engage with them in the early stages of implementation;
- b costs for statutory partners and invited participants where they do not currently attend all local service boards;
- c other costs for the expected additional contribution required from Natural Resources Wales to integrated community planning arrangements; and
- d additional costs for local authority scrutiny of public service boards.

Attendance at local service board meetings and involvement in other aspects of integrated community planning

- 3.34 The analysis of the costs associated with attendance at local service board meetings is based on estimates provided by Welsh Government officials who attend local service board meetings. These figures are not based on direct consultation with local service board members, although Natural Resources Wales did supply some relevant information to inform the review undertaken by PwC.
- 3.35 The Regulatory Impact Assessment sets out an estimate based on an average of six meetings per year, each lasting two hours. As noted by the Auditor General in his evidence to the Environment and Sustainability Committee, we would question whether this average figure is truly representative of local service board arrangements and would note that there is no allowance in the cost estimates for any overheads, such as preparation and travel time.
- 3.36 Some of the costs of local service board attendance quoted in Table 25 are based on equivalent Welsh Government pay grades and, as noted in [paragraph 3.8](#) of this report, include allowance for employers' pension and national insurance contributions. However, some of these costs are based on salary rates only for 2012-13, drawing on figures reported in the Auditor General's February 2014 memorandum on senior management pay. For those figures that are based on the Auditor General's memorandum we would make the following observations:
- a The average salary of £164,000 presented for a local health board's Director of Public Health is based on the figures reported by the Auditor General for the chief executives of all ten NHS bodies in Wales, including the Welsh Ambulance Services NHS Trust, which is not a specified public body. On that basis the salary rate is likely to be overstated, notwithstanding that the average local health board chief executive salary reported by the Auditor General was around £178,600.
 - b The average salary of £112,500 for a police chief superintendent appears to be based on the mid-point of the middle range of salaries presented in the Auditor General's memorandum for the offices of police chief constables.
 - c The average salary of £92,000 for a deputy chief fire officer is based on the average of the median rate of senior officer pay (excluding the chief fire officer) in the Auditor General's memorandum. For the deputy chief fire officer, it might have been reasonable to take the highest rate of senior officer pay instead, which would have given an average of £96,800.

- 3.37 Table 26 shows the extent to which various individuals would be expected to be involved in attending local service boards. We have not checked the accuracy of these assumptions. However, we are aware that during the development of the Regulatory Impact Assessment, Natural Resources Wales had provided information to PwC and the Welsh Government to indicate that it was involved currently in eight local service boards, not the 10 identified in Table 26. As a result, the additional costs for Natural Resources Wales attendance at additional local service boards, shown as £3,600 in Table 36, are likely to have been slightly underestimated. The Welsh Government based its estimate on its own understanding of Natural Resources Wales involvement.
- 3.38 Having now seen the Regulatory Impact Assessment and the emerging detail about how public service boards may work, Natural Resources Wales has identified that the costs quoted for its involvement in related community planning work may not accurately reflect the demand on and grade mix of the staff involved. Natural Resources Wales has identified various estimated costs that it would like to understand more fully and is considering the relationship between the requirements and consequent administrative costs of this Bill and those of the Environment (Wales) Bill.
- 3.39 With the exception of additional input from Natural Resources Wales, the Regulatory Impact Assessment assumes that the costs associated with assessments of local well-being, the preparation of local well-being plans and citizen engagement will remain unchanged when compared with the current arrangements that underpin the preparation of single integrated plans. Given, for example, the extensive statutory consultation requirements in the Bill's provisions for the preparation of well-being plans, it is not clear that this assumption is reasonable. As for corporate objective setting and reporting by individual public bodies, we consider that the estimates presented in the Regulatory Impact Assessment for integrated community planning warrant further consideration and testing with the public bodies affected²⁵.
- 3.40 We note that the Welsh Government has, in Table 42, allowed for one-off transitional costs of £35,500 to prepare statutory guidance on the operation of public service boards and the preparation of local well-being plans and to facilitate two additional workshops with support officers and other stakeholders. These costs are on top of the current annual £47,000 cost to the Welsh Government of support for local service boards (Table 34)²⁶.

²⁵ For example, the Regulatory Impact Assessment indicates that fire and rescue authorities attend 12 local service boards (Table 26). They are not assumed to be engaged in preparing strategic needs assessments (Tables 27 and 28), but are assumed to be engaged across all local service boards in preparing and reporting on the single integrated plan (paragraphs 476-477 and Tables 29 and 30) and in citizen engagement (paragraph 482 and Tables 31 and 32).

²⁶ That current cost of £47,700 excludes the cost to the Welsh Government of its attendance at local service board meetings, shown as £11,400 in Table 26, and the grant funding that pays for each local service board's support officer, shown as £1.1 million a year in paragraph 467.

3.41 However, neither of these costings appear to allow for the costs to other public bodies of their engagement with the support arrangements, for example in the additional workshops or in reviewing and understand the new guidance. Some, but not necessarily all, of these costs may be covered elsewhere. For example, paragraphs 466-477 and 498 already recognise the costs of employing local service board/public service board support officers. Even then, this additional activity represents an opportunity cost. The cost of the additional workshops also looks to be marginally understated. Table 34 shows costs of £2,500 for six workshops, (an average of £416 per workshop), and Table 42 shows £700 for two workshops (an average of £350 per workshop).

Local authority scrutiny

3.42 The Regulatory Impact Assessment includes an estimate of the costs of current local service board scrutiny by each of the 22 local authorities. Those costs include scrutiny officer and analyst support, scrutiny committee chair and member time (Table 33). The total estimated annual cost of the current arrangements is £4,500 per local authority and £99,000 in total.

3.43 Under the 'introduce legislation' option, there is an assumption that the scrutiny workload and associated costs will double from 2016-17 onwards, to £9,000 per local authority (£198,000 in total) (Table 41). The Regulatory Impact Assessment does not provide any reasoning to support the assumption that existing costs will double under the Bill²⁷.

3.44 Paragraph 487 assumes that the local service board support officer will contribute to the scrutiny process, but those costs are not included for the 'do nothing' option in Table 33 because they already feature in the costs for partnership support (paragraphs 466 to 477). The estimate for the 'introduce legislation' option assumes no change in partnership support costs because of the Bill. However, Table 41 does not allow for any opportunity cost arising from increased demands on the local service board support officer, despite taking into account the doubling of the costs for local authority scrutiny officers and analysts.

²⁷ Under policy intention 1, paragraph 398 refers incorrectly to these additional scrutiny costs being set out in Table 15.

Timescales for the setting of and reporting on corporate objectives by specified public bodies and integrated community planning

- 3.45 The Regulatory Impact Assessment builds its analysis of the costs of corporate objective setting and reporting on a standard assumption that, with the exception of town and community councils, the specified public bodies undertake a detailed corporate objective setting exercise once in the five-year period 2015-16 to 2019-20. Our comments at paragraphs 3.11 to 3.13 of this report in respect of the absence of a long-term analysis of costs are particularly relevant in this context. Unless the Welsh Government intends the Bill to only be extant for one five-year period, which is not apparent from the Explanatory Memorandum, then the overall costs are understated.
- 3.46 The Regulatory Impact Assessment then assumes annual updating and reporting in each of the intervening four years. Table 14 summarises the related costing assumptions over the period 2015-16 to 2019-20. Within this profile, the assumptions are:
- a the Welsh Government undertakes a ‘setting corporate objectives’ exercise in 2016-17 (after the May 2016 National Assembly elections); and
 - b all other specified public bodies undertake a ‘setting corporate objectives’ exercise in 2015-16, with annual updating and reporting for the following four years.
- 3.47 The five-year cycle is based on the Welsh Government’s Programme for Government arrangements but is unlikely to be an accurate reflection of the current arrangements for other specified public bodies. The Regulatory Impact Assessment recognises that some of the public bodies currently operate on a three year planning cycle. However, in our view the Regulatory Impact Assessment does not address adequately in its assessment and profiling of costs the relationship between the planning requirements introduced by the Bill for individual public bodies and existing arrangements.
- 3.48 We have already commented on issues relating to the Local Government (Wales) Measure 2009. However, there may also be a conflict with the requirements that currently apply to other public bodies. The NHS (Wales) Act 2014, requires local health boards to prepare plans that set out their strategy for securing compliance with a financial duty over a three year period while improving the health of the people for whom they are responsible and the provision of healthcare to such people. These arrangements are clarified in the Welsh Government’s *NHS Wales Planning Framework 2015-16*, which extends this planning requirement to the NHS trusts in Wales. Although the well-being goals set in the Bill include ‘a healthier Wales’, as with other specified public bodies, NHS bodies will be required to set well-being objectives against all of the well-being goals.

- 3.49 For HEFCW and the other Welsh Government sponsored bodies covered by the Bill, we understand that the relevant 'framework document' requires annual objective setting in response to an annual 'remit letter' setting out the Welsh Government's policy aims, key performance indicators and production of an annual report. In practice, these bodies are likely also to prepare longer-term corporate objectives for a period of their choosing. The sponsored bodies' annual updating of and reporting on corporate objectives under the provisions of the Bill could reasonably be expected to follow the pattern of current arrangements, assuming that the Welsh Government's own policy aims and performance indicators are established in line with the well-being goals.
- 3.50 In profiling local service board or future public service board related costs under the 'do nothing' and 'introduce legislation' options, the Regulatory Impact Assessment only considers one five-year period. Again, unless the Welsh Government intends the public service board provisions of the Bill to only be extant for one five-year period, which is not apparent from the Explanatory Memorandum, then the overall costs of those provisions are understated.
- 3.51 The Regulatory Impact Assessment assumes a detailed needs/well-being assessment in 2016-17 followed by a revised single integrated plan, or new local well-being plan in 2017-18. Given that the profile of the costs set out in the Regulatory Impact Assessment indicate a peak in citizen engagement activity in 2017-18 to inform the new local well-being plan (Table 43)²⁸, it is reasonable to assume that the plan would not be finalised until later in the year.
- 3.52 When writing to the Finance Committee in September 2014, the Minister for Natural Resources confirmed that where local authorities are unaffected by the proposals in the July 2014 *Reforming Local Government* White Paper²⁹, they would be expected to have published their local assessment of well-being in April 2017 and their local well-being plan by the end of April 2018. This timescale raises the question of whether, where relevant, individual public bodies would look to undertake a more detailed update of their corporate objectives in 2017-18 than the Regulatory Impact Assessment currently envisages, to align with the development of the local well-being plan. Regardless of the timetable for the local well-being plans, local authorities are likely to undertake a more wholesale reflection on their corporate objectives where any new administrations are in place after the local government elections in May 2017, with any decisions on budget and spending plans likely to be effective from 2018-19³⁰.

²⁸ There are two tables referenced as Table 43, on pages 123 and 124. The table on page 123 shows the profile of costs for the 'introduce legislation' option.

²⁹ Welsh Government, *Devolution, Democracy and Delivery: White Paper – Reforming Local Government*, July 2014.

³⁰ We have not sought to consider here any wider issues relating to activity that may be required to align public bodies' own corporate objectives or local well-being plans with other strategies and plans at a regional level, such as for 'city regions'.

- 3.53 The Welsh Government needs to consider further how the requirements of the Bill can be implemented in practice and the implications for the profiling of costs within the Regulatory Impact Assessment. We understand that officials are already doing just that, including taking into account any impact from the proposals in the local government White Paper. The Welsh Government published the local government White Paper the day after the Bill. In his correspondence with the Finance Committee, the Minister for Natural Resources noted that the standard Welsh Government approach to developing a Regulatory Impact Assessment was to reflect confirmed policy changes only.
- 3.54 In its response³¹ to the report of the *Commission on Public Service Governance and Delivery*, the Welsh Government sets out its preference for a reduction to 12 local authorities across Wales. On this assumption, the Minister's letter to the Finance Committee outlined some of the potential savings that could arise from local government reform in respect of integrated community planning. The Minister pointed to potential savings of up to £496,800 compared with the status quo. While the Minister's response did not detail the possible impact on the Regulatory Impact Assessment's estimates for local authorities in respect of setting and reporting against corporate objectives, the Welsh Government is also giving that matter further consideration.

Proposals for the Future Generations Commissioner

- 3.55 Under policy intention 3, the Regulatory Impact Assessment sets out the current costs that fall to the Welsh Government in respect of:
- a payment of and travel and subsistence costs for the current Commissioner for Sustainable Futures;
 - b a three year contract with Cynnal Cymru – Sustain Wales to provide external support on sustainable development, and to support the existing Commissioner; and
 - c monitoring of the Commissioner's activities to ensure value for money.
- 3.56 These costs for the 'do nothing' option are estimated at £662,780 per year (Table 18). The Cynnal Cymru contract was only scheduled to run until the end of 2014-15. Welsh Government officials have indicated to us that they anticipated continuing with similar arrangements in the 'do nothing' scenario. However, the Regulatory Impact Assessment does not identify a cost for work to arrange a new contract. The effectiveness of the current contractual arrangement is not explored.
- 3.57 The 'introduce legislation' option would see the appointment of a statutory Future Generations Commissioner supported by an Advisory Panel and with specific duties to:
- a scrutinise national and local well-being strategies and plans;

³¹ Welsh Government, *Devolution, Democracy and Delivery: Improving public services for people in Wales*, July 2014.

- b provide advice and assistance, including requiring information and making recommendations;
 - c engage and consult;
 - d produce an annual report; and
 - e produce a Future Generations Report at least 12 months before a general election.
- 3.58 In estimating the costs of the new Commissioner and his/her office, the Welsh Government took as a reference point its own staff costs, the activities currently carried out by the Commissioner and Cynnal Cymru and comparison with the office of the Older People's Commissioner. Welsh Government officials have indicated that they also took account of information relating to the work of the other public service commissioners in Wales (Children's and Welsh Language) but that they saw the Older People's Commissioner as the best point of comparison.
- 3.59 The Welsh Government was also able to consider information supplied by the Welsh Local Government Association concerning the costs of 'Sustainable Development Framework' support provided to the City and County of Swansea Council in 2011-12, 2012-13, and for part of 2013-14. However, Welsh Government officials have explained to us that the scope of the support provided to Swansea Council covered issues that extend beyond the provisions of the Bill.
- 3.60 As we understand it, it will be for the new Commissioner to determine the structure of his/her office, the salary rates for staff and the resource allocation across different activities. Nevertheless, some consideration within the Regulatory Impact Assessment of other models for the structure may have been helpful³². Alternatively, the Commissioner could choose to pursue an approach that would still involve the contracting in of specialist expertise to support public bodies, underpinned by a leaner office. There may also be opportunities to share back office functions/costs with other organisations³³.
- 3.61 Having considered the costings in this part of the Regulatory Impact Assessment, we would also make the following observations about the 'introduce legislation' option:
- a Table 24 brings together recurring annual costs and transitional costs but, as a result, is not clear and does not add up correctly. Specifically:
 - the £40,669 cost of a Welsh Government official managing the transition is not explained in the supporting narrative;
 - the transitional costs of £2,500 in paragraph 436 are not included;

³² We also note that the balance of evidence received by the Environment and Sustainability Committee appeared to favour the prospect of the new Commissioner being a National Assembly rather than Welsh Government appointment.

³³ In early discussions with the current Commissioner Wales Audit Office staff discussed a range of options, including the Canadian model whereby the equivalent role of the Commissioner is a function within the national audit body.

- as presented, the transitional and recurring costs should total £1,424,300 and not the £1,460,250 figure shown; and
- if shown in isolation, the total recurring annual staff and office costs of the Commissioner excluding the Advisory Panel would be £1,358,300.

- b Paragraphs 435 and 436 refer to transitional costs in relation to the appointment of the Commissioner, communication and branding. However, the transitional costs in Table 24 do not account for other one-off costs, such as for the recruitment of staff, purchase of IT systems and/or licenses, and any legal or other ‘set-up’ costs associated with obtaining and furnishing accommodation. While some of these costs may be able to be absorbed within the annual running cost for the first year of operation, this would imply that less resources would be available for other activities. It would have been helpful to clearly profile the expected costs over the expected life of the office, working in assumptions about the timescale for the first appointment of the new Commissioner (and subsequent appointments) and the setting up of his/her office.
- c The cost estimate for the Advisory Panel uses a standard day rate of £350 for the specific members identified (Table 24). Based on our knowledge of the salary rates of the other commissioners in Wales, these day rates appear too low if they are also to take account of employers’ national insurance and pension contributions. In addition, the Regulatory Impact Assessment does not make any allowance for the cost of recruiting additional members.
- d The recurring annual costs for the ‘introduce legislation’ option do not take into account any on-going monitoring by the Welsh Government of the Commissioner’s activities. The ‘do nothing’ option (paragraph 425 and Table 18) identifies an annual cost to the Welsh Government of £28,500 in respect of the current arrangements and we would have expected the Regulatory Impact Assessment to make some allowance for similar activity under the ‘introduce legislation’ option. However, it is possible that these costs would, in any case, be double counted given that the costs of the sustainable development branch are represented under policy intention 1. The ‘introduce legislation’ option could also have factored in the prospect of external scrutiny by the National Assembly.

3.62 Finally, in the context of the discussions that are on-going with the Welsh Government regarding the role of the Auditor General ([Appendix 3](#)), we consider that the respective roles of the Auditor General, the Commissioner and the Welsh Government in the implementation of the Bill require further consideration. Any changes to the proposed roles and functions will have consequences for the costings set out in the Regulatory Impact Assessment.

Closing remarks

3.63 We have brought to the attention of the Welsh Government officials responsible for the development of the Bill a number of other relatively minor issues arising from our review of the Regulatory Impact Assessment. We are grateful to those and other Welsh Government officials for the assistance that they have provided to enable us to complete our work in a short timescale.

Appendices

Appendix 1 - Audit methods

Appendix 2 - Timeline relevant to the development and publication of the Regulatory Impact Assessment

Appendix 3 - Letter from the Auditor General to the Chair of the National Assembly's Environment and Sustainability Committee (25 November 2014)

Appendix 1 - Audit methods

As noted in [paragraphs 7 to 13](#) of the summary to this report, we have planned and delivered our audit work in a short timescale to help inform the legislative process following a request from the National Assembly's Environment and Sustainability Committee.

The key issues that we have considered in undertaking this audit work have been:

- Whether the cost estimates in the Explanatory Memorandum are based on a realistic interpretation of the requirements of the Bill.
- Whether the Welsh Government has presented clearly the estimated additional cost of its preferred 'introduce legislation' option.
- Whether the cost estimates are realistic – in terms of their completeness, timing and scale.
- Whether the Welsh Government used a reasonable process to develop its cost estimates. We have considered, at a high-level, the time and resources committed to the process, the commissioning of supporting research, internal and external consultation, and whether the process was in accordance with relevant guidance.

When considering the scope of our work, we reviewed a series of relevant reports by the National Audit Office on Regulatory Impact Assessments across UK Government³⁴. We have also had regard to the Welsh Government's own 'Legislation Handbook Volume 1: Assembly Bills (Edition 2) January 2014' and 'Guidance on undertaking Regulatory Impact Assessments for Assembly Bills'.

We have met with key Welsh Government officials who have contributed to the development of the Regulatory Impact Assessment. We have also reviewed a range of documentation relevant to the development of the Regulatory Impact Assessment. That information has been supplied by Welsh Government officials, taking into account the scope of our work and in response to specific queries that we raised with them. Given the timescale we have been working to, this process of documentary review has not been exhaustive.

We have not sought to engage widely with other stakeholders, and we have been mindful that the Environment and Sustainability Committee has already received a range of written and oral evidence about the Bill through its own inquiry. Instead, our focus has been on understanding the process and analysis that underpins the Regulatory Impact Assessment. However, we invited additional evidence from Natural Resources Wales, the Welsh Local Government Association, and from the Commissioner for Sustainable Futures. We have also discussed with staff from PricewaterhouseCoopers (PwC) the work that they had undertaken on behalf of the Welsh Government to consider the administrative impact of the Bill.

³⁴ For example and most recently: *National Audit Office, Delivering High Quality Impact Assessments*, January 2009.

Appendix 2 - Timeline relevant to the development and publication of the Regulatory Impact Assessment

The timeline below has been supplied to us by the Welsh Government, although most of the events listed feature in documentary evidence that we have reviewed.

Date	Milestone/activity
June 2013	Preliminary evidence gathering from sustainable development branch policy officials relating to provisions of the Bill, for example in relation to the Future Generations Commissioner for Wales.
September/ October 2013	Decision taken to set out well-being goals on the face of the Bill rather than leaving agenda setting to Welsh Ministers' discretion.
October 2013	Formal internal workshop held to commission first draft sections for the Regulatory Impact Assessment.
November 2013	PwC administrative impact appraisal commissioned.
December 2013	First draft of Explanatory Memorandum developed, without Regulatory Impact Assessment costings at this stage.
January/ February 2014	Administrative impact appraisal workshops arranged and held with public bodies as part of PwC's work.
January/ February 2014	Cabinet agreement to the draft goals for the 'Wales we Want' ³⁵ consultation exercise undertaken by the Commissioner for Sustainable Futures (launched in February 2014).
January/ February 2014	Refinement by policy team of options to be analysed in the Regulatory Impact Assessment and commissioning of other internal teams for evidence.
March/ April/ May 2014	Narrowing of options, including narrowing the scope of the Bill to focus on corporate objective and budget-setting. We note that the Bill and Explanatory Memorandum as published do not refer explicitly to budget-setting. Agreement of Regulatory Impact Assessment structure and input of costings.
March 2014	Draft PwC report.
May 2014	Economist division view provided in relation to quantification of 'administrative costs' only within the Regulatory Impact Assessment.

³⁵ Welsh Government, *The Wales we want by 2050*, February 2014.

Date	Milestone/activity
May 2014	Commentary and clearance of the Regulatory Impact Assessment by strategic budgeting department.
May 2014	Final PwC report.
May/ June 2014	Clearance of the Bill, Explanatory Memorandum and Regulatory Impact Assessment by Ministers and the First Minister.
June 2014	Submission of the Bill and Explanatory Memorandum/Regulatory Impact Assessment to the National Assembly for Wales Table Office.
June 2014	Response to queries raised by the Table Office.
July 2014	Bill and Explanatory Memorandum/Regulatory Impact Assessment laid before the National Assembly for Wales. Policy Intent Statement sent to and published by the Environment and Sustainability Committee.

Appendix 3 - Letter from the Auditor General to the Chair of the National Assembly's Environment and Sustainability Committee (25 November 2014)

Mr Alun Ffred Jones AM
Chair, Environment & Sustainability Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Date: 25 November 2014
Our ref:HVT/2238/fgb
Page:1 of 3

Dear Alun

The well-being of future generations (wales) bill: discussions between the minister for natural resources and the auditor general

I am writing to provide the Committee with an update on the discussions between my lawyers and policy officials and those of the Welsh Government, following the Minister's meeting with me on 4 November 2014.

The main issues that have been the subject of discussion have been our disagreement as to the requirements of existing audit duties in relation to the Bill, and our disagreement as to the National Assembly's legislative competence to introduce new duties on the Auditor General in relation to the Bill:

- In terms of the disagreement as to existing audit duties, the Welsh Government had been of the view that the Auditor General's existing duties in the audit of the accounts of local government and NHS bodies meant that the Auditor General was under a duty to consider the effectiveness and efficiency in the "setting of well-being objectives and taking all reasonable steps to achieve the objectives" (paragraph 390 of the Explanatory Memorandum).
- On the National Assembly's legislative competence, the Welsh Government had been of the view that providing a new duty relating to economy, efficiency and effectiveness on the Auditor General was outside competence.

As the Committee is aware, the advice provided to me by Peter Oldham QC indicated that neither of these Welsh Government views of the law were correct.

The Minister and I met to discuss these matters on 4 November. That helpful meeting was followed by a meeting of our respective lawyers on 17 November, and a series of meetings between our officials held between 19 and 25 November. As a result of those discussions, the Minister has agreed a Policy Note with me, a copy of which is appended to this letter.

I welcome the Welsh Government's proposal of a duty as it is implicit recognition that, in the absence of an existing duty to review the effectiveness of compliance with the Bill, there is indeed a need for a new duty on the Auditor General. It also serves to acknowledge that there is no existing duty on the Auditor General to audit the effectiveness of the setting of well-being objectives (and the Welsh Government has agreed to amend paragraph 390 of its Explanatory Memorandum accordingly). I also welcome the Welsh Government's acceptance of my suggestion that, in the interests of timely and proportionate reporting, the provisions for reporting on the exercise of such a duty should not be tied to an annual cycle but should instead provide some alignment with the Future Generations Commissioner's Future Generations report.

In my view, the enclosed Policy Note sets out a role for the Auditor General that will provide a reasonable degree of consistent audit examination of the setting and achieving of well-being objectives across the Welsh public sector. The Minister has indicated to me that the Policy Note will be translated into an appropriate Government amendment to the Bill, and I await sight of the precise wording of the proposed duty.

I should be happy to provide further explanation if the Committee would find that helpful.

Given the interests of the Public Accounts Committee and the Finance Committee, I am copying this response to Darren Millar AM and Jocelyn Davies AM. A copy also goes to Gareth Jones at the Welsh Government.

Yours sincerely



Huw Vaughan Thomas
Auditor General For Wales

Enc: Annex: Policy note agreed between the Minister for Natural Resources and the Auditor General for Wales

cc Mr Darren Millar AM
Ms Jocelyn Davies AM
Mr Gareth Jones OBE

Annex: policy note agreed between the minister for natural resources and the auditor general for wales

Well-being of future generations bill

As suggested by the Auditor General to the Committee, we agree that there should be a new duty on the Auditor General that requires him to examine and report on the application of the governance approaches in both the setting and also the achieving of objectives by public bodies. We are also in agreement that the Auditor General should lay before the Assembly a report on the finding of those examinations in a way that allows the reports to complement the Future Generations Commissioner's FG report and to lay (and therefore publish) the reports.

Proposed Role of the Auditor General

The Welsh Government has proposed that the Auditor General would regularly examine how the bodies have applied the five identified governance approaches of sustainable development. This means looking at the arrangements they have in place to ensure that they take account of the long term, the need for an integrated approach, working with others, involving people, and taking preventative action in both setting and taking steps to meet their well-being objectives.

The Auditor General would therefore be able to consider issues such as whether the body can show that it has organised itself to have robust mechanisms and procedures in place and whether these are actually being used, that is, are the governance approaches being applied when the body is making key decisions about setting well-being objectives and also when taking steps to achieve them.

Such an examination would not be a simple tick box exercise to review whether or not the body actually has well-being objectives but would be an examination of how seriously the public sector is taking sustainable development. How the Auditor General carries out this examination should be at his discretion so that he has flexibility to do so in a proportionate way.

It is not envisaged that under this duty the Auditor General would look at whether the objectives are the 'right' objectives, but whether the public body has gone the right way, i.e. embedded the governance approaches in setting the objectives, and then achieving them.

Wales Audit Office

24 Cathedral Road

Cardiff CF11 9LJ

Tel: 029 2032 0500

Fax: 029 2032 0600

Textphone: 029 2032 0660

E-mail: info@wao.gov.uk

Website: www.wao.gov.uk

Swyddfa Archwilio Cymru

24 Heol y Gadeirlan

Caerdydd CF11 9LJ

Ffôn: 029 2032 0500

Ffacs: 029 2032 0600

Ffôn Testun: 029 2032 0660

E-bost: info@wao.gov.uk

Gwefan: www.wao.gov.uk