

THE GOVERNMENT RESOURCES AND ACCOUNTS BILL

THE FINANCIAL AUDIT OF EXECUTIVE AND NON-DEPARTMENTAL PUBLIC BODIES AND COMPANIES

17. Government departments have established many bodies at arm's length to help them deliver the public services that Parliament has funded. These include next steps agencies, executive non-departmental public bodies, other local spending bodies and private contracts. Of this there are some 200 executive non-departmental public bodies. Between 1979 and 1999 their annual spending of money provided out of Parliamentary grant more than doubled from (at today's prices) £8.5 billion to over £18 billion and examples include the Housing Corporation and the Environment Agency.

18. The Comptroller and Auditor General audits about two thirds of these bodies on behalf of Parliament, for example, the Further and Higher Education Funding Councils. The other one third, annually spending more than £3 billion a year out of Parliamentary grant, have auditors that Ministers appoint from the private sector and who report back to Ministers, not to Parliament.

19. Since May 1997 the Government has appointed the Comptroller and Auditor General to be the auditor of all of the nineteen new executive non-departmental public bodies. The Lord Chancellor explained the Government's approach when appointing the Comptroller and Auditor General to audit the new Legal Services Commission.

"The Government are committed to increasing transparency and openness to Parliament. For that reason, we believe that the auditor of public bodies should be the Comptroller and Auditor General rather than an auditor appointed by the relevant Minister unless there is some special reason why the auditor of a particular public body should have knowledge or experience which can be found only in the private sector."

20. Central government bodies have established over 200 companies, themselves spending some £2 billion out of Parliamentary grant every year. They fall into three categories. Some, such as the Student Loans Company and Remploy Limited, are themselves executive non-departmental public bodies. Others, such as the Sports Council Trust Company, are established by executive non-departmental public bodies. The remainder, such as Business Links, are established directly by departments with no involvement by executive non-departmental public bodies. All provide public services at public expense.

21. The Bill provides for funding out of Parliamentary grant of a new arms length body that will assist with public-private partnerships. This body is likely to be established as a company. The new body will take over many of the functions of the Private Finance Initiative Task Force at the Treasury, to which the Comptroller and Auditor General has access. It will receive funds paid out of Parliamentary grant and it will advise on the expenditure of much greater sums of public money. Its activities are likely to be of great interest to the Committee. Yet its establishment in the form of a company will prevent the Comptroller and Auditor General from being its auditor, and the Bill makes no provision for his access.

22. Under United Kingdom legislation the Comptroller and Auditor General is not authorised to audit companies. The Government has told the Comptroller and Auditor General that it believes European Union directives require this. However, some of his counterparts in other European countries are able to audit companies. He himself employs staff qualified to audit companies and he contracts work to professional firms authorised to audit companies.

Conclusions

23. We note that the current accountability system dates back to 1866 when departments were the providers of public services and the Comptroller and Auditor General was the auditor of all departments. Since then the Government has established a large number of bodies at arms length to help deliver public services.

24. One of the main categories are executive non-departmental public bodies and some 200 such bodies have been established to help deliver public services funded by government departments out of money provided by Parliament. We are concerned that around eighty of these bodies, which spend over £3 billion of funds, have auditors who are appointed by Ministers and who report to Ministers. Important examples are the Housing Corporation who spend nearly £1 billion and the Environment Agency who spend £150 million. We are pleased that, since 1997, the Government has appointed the Comptroller and Auditor General to audit every newly established non-departmental public body. We urge the Government to extend this to all existing executive non-departmental public bodies.

25. We consider that it is questionable, in principle, whether those whose accountability is being examined should appoint the external auditors of non-departmental public bodies. We recommend that the Bill should address this issue by specifying that all such bodies established in the future will be audited on behalf of Parliament by the Comptroller and Auditor General. Also the Bill should amend existing legislation to appoint the Comptroller and Auditor General as auditor to those bodies for which he is not already statutorily appointed.

26. We note that central government bodies have established more than 200 companies, which spend annually some £2 billion of Parliamentary grant and we are concerned that under United Kingdom legislation the Comptroller and Auditor General cannot audit such companies. It seems to us wrong that the Comptroller and Auditor General's entitlement to audit a publicly funded body should depend on the organisational form of that body. We note that this Bill provides the Treasury with powers to establish a new body to assist with public-private partnerships, and that the Treasury intends to establish this body as a company.

27. We understand that the United Kingdom statutory provisions aim for consistency with European legislation. However, we note that other national audit offices within the European Union can audit companies; and we recommend that the Government should pursue this anomaly. We would welcome an assurance that this gap will be addressed by the Department of Trade and Industry in its fundamental review of Companies legislation which is intended to lead to a new Companies Act.

THE COMPTROLLER AND AUDITOR GENERAL'S ACCESS

28. The Comptroller and Auditor General examines, certifies and reports to Parliament on the accounts of all Government departments, the National Loans Fund, over half of all non-departmental public bodies and around 70 other public bodies. In 1998-99 his United Kingdom audit field comprised about 560 accounts covering expenditure and revenue totalling nearly £600 billion, together with assets of much greater value.

29. The Comptroller and Auditor General's work goes beyond the requirements of providing an opinion on whether financial statements represent a fair and true view. It

is also concerned with the safeguarding of public money and the proper conduct of public business. The Comptroller and Auditor General's opinion provides assurance that expenditure and income have been applied to the purposes intended by Parliament and that underlying financial transactions conform to the authorities which govern them, including Parliamentary and Treasury authority. His examinations and reports help to ensure that the bodies he audits meet their statutory and ethical duties to the public in an open and even-handed manner.

The changing central government service environment

30. In recent years Government departments have delegated significant responsibilities to new bodies, many of which in turn have delegated responsibilities to other bodies to help deliver central government services locally. Increasingly departmental activities, functions and the delivery of departmental programmes are contracted out to private sector suppliers. Many of these new forms of service delivery have the goal of achieving more efficient and effective delivery of Departmental programmes. We share this goal.

31. The main types of service deliverer which now carry out functions on behalf of departments and executive non-departmental public bodies include

private-sector companies delivering contracted-out activities and private finance initiative projects in support of departmental programmes and administration or, in the case of the operator of the National Lottery, raising public funds for distribution by funding bodies; and

other bodies which provide public services, often delivered at a local level, but which are largely or wholly funded by departments or funding bodies. These include registered social landlords helping to deliver social housing programmes on behalf of the Housing Corporation and further and higher education institutions helping to deliver educational and training programmes on behalf of the Department for Education and Employment.

The Comptroller and Auditor General's need for independent access to new types of service deliverer

32. Parliament has the right to expect the same standards of probity and regularity in the use of public funds however they are spent. Payments of public funds made to service deliverers may be irregular or represent poor value for money if they have not delivered the services satisfactorily.

33. Through his existing statutory powers of access to departments, the Comptroller and Auditor General can examine departments' own checks over the financial management or the performance of the service deliverers to which they have delegated responsibility. But such assessments may not provide adequate evidence for the Comptroller and Auditor General to reach an independent view.

34. For example:

under the New Deal initiative, the Employment Service plans to pay public funds to a range of different service providers, including management fees to employment agencies, subsidies to employers, training fees to colleges and grants and payments to voluntary organisations. The Comptroller and Auditor General needs access to such bodies to verify the participation and eligibility of those taking part in the New Deal schemes so as to ensure that the payments made by the Employment Service are in accordance with Parliamentary authority;

Prison Service contractors run three prisons designed, constructed, managed and financed under the Private Finance Initiative. Payments made by the Prison Service to the contractors depend in part on the number of prison cells made available. The Comptroller and Auditor General needs to be able to independently verify that the prison cells exist and that procedures operated by the Prison Service to monitor cell availability are sufficiently robust to support claims made by the contractors.

35. Relying on Departmental assessments, checks and controls in these situations and those like them effectively means accepting Departments' assurances that their own performance is satisfactory. This would not meet the requirement of independent audit.

36. Private companies helping to deliver government programmes, as well as many executive non-departmental public bodies, are audited by private sector auditors. The primary responsibility of private sector auditors is to the contractors' shareholders or, in the case of executive non-departmental public bodies, to the sponsoring department. They provide a professional service in certifying the accounts under the terms of their contracts.

37. The Comptroller and Auditor General will usually be able to rely on the private sector auditors for the evidence he needs where they have been charged with checking regularity and propriety issues on behalf of a department or funding body. However to undertake a fully independent examination of the whole regime of controls to which a service deliverer is subject, the Comptroller and Auditor General will sometimes need to undertake selective examinations of how well each tier of control is operating.

Deficiencies in the Comptroller and Auditor General's access

38. At present the Comptroller and Auditor General's general statutory powers of access do not extend beyond the doors of departments. In order to obtain access to the new types of service deliverer undertaking functions on behalf of central government the Comptroller and Auditor General must rely on departments to provide for his access.

39. These piece-meal arrangements have led to gaps and anomalies in the Comptroller and Auditor General's statutory rights of access. For example:

he has statutory access rights to Higher and Further Education institutions funded by the Education Funding Councils but not to Training and Enterprise Councils funded by the Department for Education and Employment nor to Registered Social Landlords funded by the Housing Corporation;

he has no statutory access rights to private sector contractors or voluntary bodies including, for example, those:

processing £4 billion worth of pay transactions on behalf of central government each year;

running and managing six prisons on behalf of the Prison Service;

spending some £5.2 million of public funds providing training opportunities under the New Deal initiative.

40. Where the Comptroller and Auditor General has no statutory right of access to such bodies, he is dependent on the body as well as its sponsoring department for access. He has to negotiate the terms of these rights on an individual basis with the bodies and their sponsoring department. This is administratively burdensome and diminishes the Comptroller and Auditor General's independence.

41. The Treasury has accepted that the Comptroller and Auditor General may need access to private-sector contractors. But it has issued guidance to departments and funding bodies which falls far short of guaranteeing access when the Comptroller and Auditor General considers it necessary. It assumes that the use of contractors to provide services means that audit of public spending can be undertaken at the level of purchasers, using their records. It sets out examples of when departments and funding bodies may consider the need to make exceptions to this general rule. The Comptroller and Auditor General has to rely on departments or funding bodies agreeing that the circumstances of each case merit his access. Then he must rely on the department or funding body negotiating access with the contractor and writing appropriate terms into the contract.

42. The present non-statutory arrangements mean that resources which could be better employed elsewhere are used up in the individual negotiation of these rights between the National Audit Office, the department or the funding body and the contractor in each case. There are also dangers that important contracts will slip through the net. Without a general statutory right of access there is no guarantee that the Comptroller and Auditor General can obtain the access when he needs it. For example:

The private contractor running the National Lottery since 1993 refused the Comptroller and Auditor General access to documents and information needed to check that public funds being raised through the lottery were being handled properly and passed on to central government. The contractor also refused to allow their auditors to pass on information to the Comptroller and Auditor General. As a result the Comptroller and Auditor General was unable to express an opinion on whether the sums recorded in the National Lottery Distribution Fund were correct. An opportunity to remedy this situation was only provided by the passage of the National Lottery Act 1998 when Parliament was able to include a clause providing the Comptroller and Auditor General with statutory access to the National Lottery operator;

The Comptroller and Auditor General needed access to the site and records of the main contractor processing civil service pay in order to audit £4 billion worth of transactions related to some 150 accounts he audits. Without a general statutory right of access, the Comptroller and Auditor General had to draw up an agreement with the privatised company to ensure he retained the powers of access he needed. However subsequent changes to the way the privatised operations are undertaken, has led the new owners to suggest that the Comptroller and Auditor General cannot have access to information from their internal auditors or access to computer systems to enable him to assess the adequacy of controls over pay processing.

Deficiencies in the access clause in the Bill

43. The access clause suggested in the Bill is unsatisfactory because:

the 1866 and 1921 Exchequer and Audit Acts invested the powers of access directly in the Comptroller and Auditor General and could be interpreted as providing him with rights to papers outside the Department. The clause proposed by the Treasury is more restrictive since it explicitly makes Departments the gateway through which the Comptroller and Auditor General must gain access to the information he needs;

it does not take account of the need to update the legislation to provide the Comptroller and Auditor General with the access needed to provide Parliament with similar levels of independent assurance over Departmental expenditure as the post-holder was able to provide in 1866.

44. The Comptroller and Auditor General should have by statute at least as much access to information as departments, funding bodies and other paying bodies secure for themselves in paying out public funds. Such access powers would not represent an extension of the remit of the Comptroller and Auditor General. They would simply provide him with the modern powers he requires to enable him to provide independent assurance to Parliament over the funds it makes available to departments.

45. Concern for the conduct of public business and care for the honest handling of public money are compatible with innovative and flexible approaches to service delivery. A statutory right of access by the Comptroller and Auditor General would not compromise the independent status of the bodies covered. The access would only extend to information and records relevant to the spending of public funds and be used to establish that these funds are being spent on the services agreed or contracted by the departments and their funding bodies. The Comptroller and Auditor General's activities would not extend to other aspects of a voluntary organisation's affairs or a private sector contractor's business, or affect the position and activities of their regular auditors.

Conclusions

46. Parliament relies on the Comptroller and Auditor General to ensure, through his audit of Appropriation Accounts, that government departments have complied with Parliament's intentions when granting supply. The Comptroller and Auditor General's work depends, in turn, on unfettered and independent access to records and information. We note that his rights of access are currently set out in legislation which was drafted at a time when departments alone were responsible for central government expenditure. As the intention of that legislation must have been that he should have access to all central government expenditure, we are surprised that the Bill does nothing to update those rights from those of the 19th century.

47. In recent years Government departments have delegated significant responsibilities to bodies such as registered social landlords which spend £1 billion annually and increasingly departmental activities are contracted out to private sector suppliers including a computer centre processing £4 billion of civil service pay and private finance initiative contractors to whom departments are committed to pay more than £70 billion over the next 25 years. We consider it unsatisfactory that departments regularly secure greater powers of access for themselves to the bodies than they secure for the Comptroller and Auditor General.

48. When departments delegate activities, they rightly secure access to the records of organisations delivering services on their behalf so they can exercise their responsibility for ensuring that public funds are spent properly. They do this through conditions of grant and contractual terms. In order to examine the accountability of departments, the Comptroller and Auditor General needs statutory matching rights of access so he can give Parliament independent assurance that public funds have been spent properly. The Bill should give effect to this principle.

PERFORMANCE REPORTING

49. In their Modernising Government White Paper published in March 1999 the Government announced a number of measures aimed at driving up standards in the public services. These include:

new public service agreements which will for the first time set out in detail what people can expect in return for public investment; and

targets and measures for all public bodies focussing on key outcomes.

50. From 2000-2001, departments will be required to report annually on their progress towards meeting targets established in public service agreements. In our 67th report of 1997-98 we said that we expected performance statements to be independently validated by the Comptroller and Auditor General. The Treasury Select Committee, in their 7th report of 1998-99, said that for Parliament and the public to judge progress on public service agreement targets independently, the figures reported would need to be made credible by external validation. They concluded that the best body to do this would be the National Audit Office. Elsewhere in the public sector, auditors are required by statute to report on the performance information of public bodies.

Conclusion

51. We welcome the Government's decision to report annually on progress against public service agreement targets. Such reporting will aid accountability to Parliament by demonstrating on a systematic basis what departments have achieved with their funding. We are, however, disappointed that this reporting will be at the Government's initiative rather than a statutory requirement set down in the Bill. We are further disappointed that the Bill does not require performance reports to be independently validated by the Comptroller and Auditor General. Such validation is essential to the credibility of performance