

THE NATIONAL ASSEMBLY FOR WALES: AUDIT COMMITTEE

REPORT 01-03 – Presented to the National Assembly For Wales on 29/05/01 in accordance with section 102(1) of the Government of Wales Act 1998

Access to Records and Information by the Auditor General for Wales

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Annex A: Memorandum by the Auditor General for Wales (January 2001)

INTRODUCTION

1. The remit of the Audit Committee, as laid down in Section 102 of the Government of Wales Act 1998, is to consider and report to the Assembly on accounts and reports laid before the Assembly by the Auditor General for Wales. In considering such accounts and reports we take evidence from accounting officers and other key officials of the Assembly and related public bodies. The Auditor General and staff of the National Audit Office Wales provide briefing for and attend evidence sessions, and advise us on audit related matters in general.
2. We welcome this close working relationship. It has operated effectively from the outset and, in our view, has served the Assembly well. It means, however, that the extent to which the Auditor General is able to follow public money will have a direct bearing on the scope and effectiveness of our work. In this context, we asked the Auditor General for information on his current rights of access to documents and information. He responded by producing a memorandum, which we considered on 25 January 2001. This memorandum formed the basis of a report to Plenary which the Auditor General for Wales tabled on 23 March 2001.
3. In the UK context, the role of the Comptroller and Auditor General was debated by both Houses of Parliament during the passage of the Government Resources and Accounts Act 2000. As a result of the concerns expressed during those debates, the Chief Secretary to the Treasury announced in February 2000 that he intended to set up a Review of Audit and Accountability for Central Government to recommend suitable arrangements for the 21st century. Lord Sharman of Redlynch led this review and his report “Holding to Account” was published in February 2001.

THE AUDITOR GENERAL'S CURRENT FUNCTIONS

4. The Auditor General audits the accounts of and undertakes value for money studies on the Assembly and other public sector organisations in Wales. His statutory rights of access to records and information to enable him to discharge his functions are laid down in the Government of Wales Act 1998. Those provisions were based on the rights of access available at the time to the Comptroller and Auditor General with a few minor modifications to reflect the constitution of the Assembly. Therefore, many of Lord Sharman's conclusions will be appropriate and relevant to the devolved administration in Wales.

LORD SHARMAN'S REVIEW OF AUDIT AND ACCOUNTABILITY FOR CENTRAL GOVERNMENT

Background

5. Lord Sharman's review was wide ranging and covers many aspects of public audit and accountability in central government. We welcome the report as a major step forward in enhancing the audit and accountability arrangements for the public sector, and we urge Assembly officials to consider carefully the applicability of its recommendations to Welsh public bodies. The following sections of this report comment on the recommendations made by Lord Sharman that would also be applicable specifically to the Auditor General for Wales.

Non-departmental public bodies

6. Lord Sharman has recommended that, as a matter of principle, the Comptroller and Auditor General should be appointed as the auditor, on behalf of Parliament, of the accounts of all non-departmental public bodies including those where the relevant minister currently appoints the auditor.

7. The Auditor General for Wales currently audits all Assembly sponsored public bodies including those that have been created by primary legislation since the establishment of the Assembly. Section 96 of the 1998 Act empowers the Assembly, where it is entitled to appoint the auditor of the accounts of a body, to appoint the Auditor General even if he would not otherwise be eligible for appointment. The provisions made to date are very welcome. As a matter of principle, we would expect the Auditor General for Wales to be appointed as the auditor of the accounts of all new Assembly sponsored public bodies that may be established in future.

Audit of companies

8. Paragraphs 11 to 13 of the Auditor General's memorandum explain the current position with regard to the audit of limited companies. The Assembly and a number of its sponsored public bodies are empowered to establish limited companies to deliver public services. The company that manages the broadcasting of Assembly proceedings and Finance Wales, a company owned by the Welsh Development Agency, are examples of those that already exist and more may be set up in future. We are concerned that the Auditor General for Wales, whose role is to audit public sector bodies set up under the Assembly's umbrella, is unable to audit the accounts of companies that form part of that public sector framework.
9. Lord Sharman has recommended that Department of Trade and Industry and the National Audit Office should work together to identify how the current obstacles to the ability of the Comptroller and Auditor General to be appointed as an auditor under the Companies Act can be removed. He adds that the aim should be for the Comptroller and Auditor General:
- to be the auditor of non-departmental public bodies which are companies, companies owned by a department, or companies which are subsidiaries of a non-departmental public body audited by the Comptroller and Auditor General; and
 - to be eligible for appointment as auditor of companies where a department has a significant stake or influence.

10. Lord Sharman adds that similar arrangements should be introduced for the audit of local government and for the Auditors' General for Wales and Scotland as regards companies in their respective areas of responsibility. We endorse this recommendation and urge the Department of Trade and Industry to resolve the issue with due speed.

Audit access to other bodies

11. The Auditor General has a statutory right to obtain information from and to access to the books and records of the bodies that he audits. However, he needs access to those bodies spending public money beyond those he audits himself, in order to provide the Assembly with independent assurance that this money has been spent wisely and for proper purposes. The Auditor General told us that Assembly officials have been very helpful in making arrangements for such access by agreement where he has requested it. We welcome this positive and helpful attitude. However, such arrangements can be time consuming to set up and there can be no assurance that agreements with the bodies concerned will always be possible in future. Therefore, they are no substitute for access provisions that are enshrined in statute.

12. Lord Sharman makes a similar case in the UK context. He recommends that the Comptroller and Auditor General should be given statutory access to bodies such as grant recipients, registered social landlords, train operating companies and private finance initiative contractors (this list is illustrative and not exhaustive). In return the Comptroller and Auditor General and the organisations involved should agree protocols for the exercise of such powers. If the UK Government accepts this recommendation, the extended rights of access can be given by Order under the Government Resources and Accounts Act 2000.

13. We welcome Lord Sharman's recommendation, and would add that the arguments for granting such access rights to the Comptroller and Auditor General also apply equally to the Auditor General for Wales. We recommend that the Counsel General should explore with the Wales Office and the Treasury the possibility of using the Secretary of State for Wales' Order making powers under the Government of Wales Act 1998 to extend any

new rights of access given to the Comptroller and Auditor General to the Auditor General for Wales. If this does not prove to be possible, we would urge the Cabinet to request primary legislation to resolve the matter at the earliest opportunity. Until such rights are available to the Auditor General under statute, we would look to Assembly officials to continue to make access agreements for the Auditor General on request with the bodies concerned.

CONCLUSIONS AND RECOMMENDATIONS

14. We welcome Lord Sharman's report as a major step forward in enhancing the audit and accountability arrangements for the public sector. We urge Assembly officials to consider carefully the applicability of its recommendations to Welsh public bodies.

15. Lord Sharman makes the case for increased rights of access to books and records for the Comptroller and Auditor General. The current rights of access for the Auditor General for Wales as laid down in the Government of Wales Act 1998 were based on those available to the Comptroller and Auditor General at the time. There is thus a strong case for increasing the Auditor General for Wales' rights in line with any changes made to those of the Comptroller and Auditor General.

16. We accept the arguments made by the Auditor General in paragraph 17 of his memorandum. Specifically we recommend that:

- i) The Auditor General should be appointed as the auditor of the accounts of any new Assembly sponsored public bodies that may be established in future;
- ii) The Auditor General should be empowered to audit limited companies established in the public sector and we urge the Department of Trade and Industry to resolve any legal barriers that prevent this at the earliest opportunity; and Any new rights given to the Comptroller and Auditor General to access the books and records of bodies sending public money should be extended to the Auditor General for Wales. The Counsel General should explore with the Wales Office and the Treasury as to whether this can be done by using the Secretary of State for Wales' Order making powers under the Government of Wales Act 1998. If this proves not to be possible, we would urge the Cabinet to request primary legislation to resolve the matter at the earliest opportunity. In the meantime we would look to Assembly officials to continue to make

access agreements for the Auditor General on request with the bodies concerned

Annex A

Memorandum by the Auditor General for Wales

The Auditor General for Wales' rights of access to records and information

Submitted to the Audit Committee of the National Assembly for Wales

January 2001

Introduction

1. At the Audit Committee meeting on 19 October 2000, I undertook to produce a paper detailing the access rights that I have to documents and information for the purposes of auditing accounts and undertaking value for money investigations. The extent to which I am able to follow public money has, of course, a direct bearing on the effectiveness of the work of the Audit Committee in the exercise of its statutory functions.
2. My powers to audit accounts and undertake economy, efficiency and effectiveness (value for money) examinations are derived from the Government of Wales Act 1998. In essence, they are very similar to those enjoyed by the Comptroller and Auditor General. Indeed, in drafting the Bill, the Government took the view that it would be appropriate for the Auditor General for Wales to have powers that broadly mirrored those enjoyed at that time by the Comptroller and Auditor General.
3. Any major amendments to the statutory powers of the Auditor General for Wales would have to be made by an Act of Parliament. This differs from the position in Scotland where the devolved Parliament is able to legislate on the functions of the Auditor General for Scotland. Indeed it has already done so, for example, by appointing the Auditor General Scotland as the auditor of Scottish NHS bodies and Scottish further education institutions.

The Sharman review

4. Mechanisms for delivering public services have developed considerably since the principles of the current framework were set down in the mid-nineteenth century. At that time government departments raised and spent most public money. Now arms length public sector bodies, voluntary organisations, private companies and the few remaining public corporations are all involved in the provision of public services and handle public funds. If accountability is to remain effective, audit arrangements must continue to keep pace to ensure that there is adequate information, advice and assurance on the use of public money.
5. The adequacy of the arrangements for public audit in the United Kingdom was raised recently in Parliament during the passage of the Government Resource and Accounts Act 2000. In order to address the concerns raised by Members of both Houses from all

political parties, the Government has asked Lord Sharman to undertake a review of central government audit and accountability. Although that review will not consider specifically the adequacy of the powers of the Auditor General for Wales, it is fair to say that the issues being raised about the powers of the Comptroller and Auditor General are also applicable in the Welsh context.

6. The National Audit Office has recently made a submission to Lord Sharman, and I have also written separately in my capacity as Auditor General for Wales. I have provided Audit Committee members with copies of both of the submissions.

Audit of accounts

7. The Government of Wales Act 1998 created the office of Auditor General for Wales and made provision for me to audit the accounts of the Assembly (including its executive agencies), Estyn, Welsh Forestry, Welsh Administration Ombudsman and NHS Commissioner for Wales. The audits of various other accounts, including those prepared by executive Assembly sponsored public bodies, that were formerly undertaken by the Comptroller and Auditor General under various statutes have been transferred to the Auditor General for Wales by the Order in Council made under Section 22 of the 1998 Act. I have also been appointed as the external auditor of all new bodies to be set up in Wales by Acts of Parliament since the establishment of the Assembly. These new bodies are the Children's Commissioner for Wales, Care Council for Wales and the National Council for Education and Training for Wales.
8. Section 96(3) of the 1998 Act empowers me to audit accounts by agreement with the body concerned and the Assembly or a Minister of the Crown. In this way, I audit the accounts of the Sports Council for Wales and its Trust, Arts Council of Wales, Local Government Boundary Commission for Wales, the Assembly Members' pension fund and the National Library of Wales Pension Fund.
9. Section 96(1) of the 1998 Act empowers the Assembly, where it is entitled to appoint the auditor of the accounts of a body, to appoint the Auditor General for Wales even if I would not otherwise be eligible for appointment. This valuable provision was used by the

Assembly to appoint me as the auditor of the accounts of the Welsh National Board for Nursing, Midwifery and Health Visiting, even though the original enabling legislation for that body required the Secretary of State to appoint an auditor qualified under the Companies Acts. Under Section 96(1), the Assembly may appoint me as the auditor of any new public corporation or subsidiaries that it is empowered to create with the exception of limited companies (see below) and health service bodies (where the Audit Commission is required to appoint the external auditors).

10. As a result of the above measures, I now audit all the accounts prepared by the Assembly and its executive agencies and sponsored public bodies either by statute or by agreement.

Audit of Companies

11. The Assembly is empowered to set up limited companies and, to date, has used this power to establish a company to manage the broadcasting of its proceedings. Other public bodies – for example the Welsh Development Agency – also use subsidiary companies to manage certain operations (Finance Wales for example). Such companies could potentially undertake important public functions on behalf of the Assembly.
12. Under the Companies Act 1989 only a registered auditor can audit a body established as a limited company. The legislation does not permit the Auditor General for Wales (or the Comptroller and Auditor General) to become registered. Many of the staff of the National Audit Office are registered and qualified to undertake the audit of limited companies in a personal capacity but the National Audit Office cannot undertake the audit of a limited company whilst acting under the authority of the Auditor General for Wales. I have rights of access to the books and records of such companies by statute in the case of Assembly subsidiaries or by agreement for other bodies. However, this is no substitute for the in-depth knowledge that would be gained if I were able to undertake a full audit of their accounts each year. Also, in an ideal world, efficiency of the overall audit process could be improved if my value for money work could be informed by me also auditing companies that fall within the Assembly's remit.

13. The current restrictions on my ability to audit limited companies applies also to the work of the Comptroller and Auditor General and should, in my view, be removed. The Department of Trade and Industry is currently undertaking a review of company law and the National Audit Office has submitted its concerns to that review.

Value for money examinations

14. I am empowered to undertake value for money examinations on a wide range of Welsh public bodies that receive the majority of their income from public funds. This includes the Assembly, its sponsored public bodies and bodies in the further and higher education sectors. It excludes local authorities and related bodies such as the police and fire services. Under the present arrangements, they are accountable to their own electorates and the Audit Commission undertakes value for money work.

15. The Welsh Joint Education Committee is a company limited by guarantee and is directed by appointees of local authorities. It does not therefore fall within my remit. It is, in fact, audited by a firm of accountants registered under the Companies Act 1989. The Assembly has now passed a resolution calling upon the Minister for Education and Lifelong Learning to hold discussions with the Committee and the Welsh Local Government Association in order to obtain a clear understanding of the legal status and financial circumstances of the company. This will provide scope for the accountability arrangements to be reviewed in the light of the new devolved environment.

16. The Welsh National Health Service is directly accountable to the National Assembly and I am therefore able to undertake value for money investigations on all its activities. I enjoy full rights of access to health authorities and NHS trusts. The Audit Commission appoints the auditors of individual NHS bodies. We work together closely to avoid duplication and to maximise the effectiveness of the overall audit function, having regard to our respective statutory responsibilities and the way in which our respective organisations are intended to operate.

Assurance over public money

17. The Assembly's interest in public money does not cease simply because the funds at its disposal are not spent directly by itself, or its executive agencies and sponsored bodies. I require independent access to provide adequate assurance for the Assembly that public money passed on to bodies that I do not audit has been spent and in accordance with the Assembly's requirements. Indeed, under the 1998 Act, I am required to satisfy myself that expenditure by the Assembly has been incurred lawfully and in accordance with the authority that governs it. In addition, I am required to satisfy myself that money received by the Assembly for a particular purpose (for example European funds) has been expended for that purpose.
18. I can only provide such assurances to the Assembly if I am able to access the relevant records of bodies such as suppliers of goods and services and grant recipients. To date, Assembly officials have been very co-operative in providing access when requested. For example, I have, by agreement, been given rights of access to private finance initiative contractors, Cardiff County Council in respect of the Assembly grant for Cardiff Bay, and have been promised access to the records of new European grant recipients. I am therefore currently able to fulfil the responsibilities placed upon me by virtue of these agreements. They work very well at present but my ability to carry out my statutory responsibilities under any circumstances can only be guaranteed with adequate statutory backing.
19. In my view, such rights of access should not add to the regulatory burden. For example, I will work closely with the Audit Commission in respect of grants utilised by or passing through local authorities. However, a statutory right of access to such records would remove the bureaucracy involved in including access clauses in thousands of grant conditions and contracts, and would avoid the possibility of important cases slipping through the net.

20. If I were given such rights of access I would, of course, use them wisely in full consultation with the bodies concerned, and avoid duplication of effort by relying on the work of other auditors to the maximum extent possible.

Conclusions

21. Many of the issues raised above are similar to those raised by the National Audit Office in its submission to Lord Sharman. That submission was written with a view to enhancing the powers of the Comptroller and Auditor General so that they are broadly equivalent to those enjoyed by the Audit Commission, the European Court of Auditors and national audit institutions in many other countries. The powers of the Auditor General for Wales are modelled on those currently enjoyed by the Comptroller and Auditor General and the outcome of the Sharman review will therefore certainly be capable of application to the Assembly in many respects.

22. The review of the Assembly's powers by an independent commission, which under the Partnership Agreement will report within one year of the next Assembly election, will provide an ideal opportunity to consider the remit of the Audit Committee and the Auditor General. Most of the issues that I have raised will, if accepted, require primary legislation by the Westminster Parliament although the Assembly is empowered to appoint me to audit the accounts of, or authorise me to inspect the books and records of, a limited range of bodies.

23. In my opinion, the effectiveness of my work in reporting to the Assembly on the use of public funds could be further developed by:

- i) Continuing to appoint the Auditor General for Wales to audit whenever possible the accounts of any new Assembly subsidiaries and sponsored public bodies, and other public bodies set up to exercise functions on behalf of the Assembly;
- ii) removing the restriction imposed by the Companies Act 1989 so that the Auditor General for Wales can audit any limited companies that may be set up under the jurisdiction of the Assembly; and

- iii) consolidate the agreements currently made for the Auditor General for Wales to access the records of major contractors, grant recipients and other end-users of public funds by statutory backing.

24. The Audit Committee is invited to note the contents of this memorandum. I would, of course, be very happy to discuss the issues raised with Members.

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47. In my opinion, the effectiveness of my work in reporting to the Assembly on the use of public funds could be further developed by:
- iv) Continuing to appoint the Auditor General for Wales to audit whenever possible the accounts of any new Assembly subsidiaries and sponsored public bodies, and other public bodies set up to exercise functions on behalf of the Assembly;
 - v) removing the restriction imposed by the Companies Act 1989 so that the Auditor General for Wales can audit any limited companies that may be set up under the jurisdiction of the Assembly; and
 - vi) consolidate the agreements currently made for the Auditor General for Wales to access the records of major contractors, grant recipients and other end-users of public funds by statutory backing.
48. The Audit Committee is invited to note the contents of this memorandum. I would, of course, be very happy to discuss the issues raised with Members.