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Peredur Owen Griffiths MS
Chair of the Finance Committee
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Cardiff Bay, Cardiff CF99 1SN

By email only:
SeneddFinance@senedd.wales

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Dear Peredur

Improvement of audit legislation

Thank you again for your letter of 3 July 2024 in which you ask for an update on the changes that should be made to the Public Audit (Wales) Act 2013 Act.

You requested that those changes be set out in order of priority ranging from what we deem to be essential to those that are desirable. Annex A to this letter lists and explains what we see as the most pressing and needed changes to the 2013 Act. Annex C lists and explains other desirable changes to the Act.

Annex B addresses a different set of issues. These relate to wider aspects which, if implemented, would give Wales and the post-2026 Senedd a stronger and more coherent public audit regime.

Where possible we have provided estimates of potential financial savings. Many of the suggested changes, though, are important for constitutional reasons such as the independence of the Auditor General and their work, or the robustness of arrangements for the Senedd to hold the wider public sector to account or to fulfil its responsibilities in respect of control over the use of public funds.

The tables below summarise the proposed changes.

Essential changes to the 2013 Act	
Change	*Benefits*
Removal of requirements on the Senedd to consult the First Minister on appointment matters.	Improves independence of Audit Wales, which is conducive to good scrutiny and improving value for money.
Rationalisation of fee provisions.	Ongoing administrative savings of up to £50,000 a year and reduced risk of expensive legal challenge.
Clarification of disqualification provisions.	Reduced risk of expensive administrative and legal work, and reduced disincentive to potential candidates for office.

Desirable changes to other legislation	
Change	*Benefits*
Making sustainable development examinations proportionate.	Enabling a risk-based approach would be more cost-effective and economical: potential savings £100,000 a year.
Streamlining community council audit arrangements.	Savings potentially of £55,000 a year and making audit regime less onerous.
“Proper arrangements” duty in central government audit.	Brings central government audit scrutiny up to standard applied to local government.
Updating data matching powers	Reduces risk of lost financial savings caused by Wales not being able to participate fully in UK-wide data matching exercises.
Explicit provision for requlrity audit opinion for all central government bodies.	Avoids confusion and reinforces importance of Senedd approval of use of funds.
Revision of eligibility of Auditor General to audit the accounts of Further Education corporations.	Option of lower costs of audit while the public sector elements of the FE sector’s audit would be enhanced.
Rationalisation of certification deadlines.	Conducive to good scrutiny and stewardship of public money.
Explicit access rights for sustainable development examinations.	Reduces risk of expense and delay from challenges to Auditor General access.

Desirable changes to the 2013 Act	
Change	*Benefits*
Facilitating adherence to WAO statutory quorum rule by reducing number of staff board members.	Avoids disruption and delay of WAO business, reduces risk of expensive legal challenge and enables ongoing staff time and allowance saving of c. £12,000.
Removal of requirement for interim reports on exercise of functions	Saves time and effort in producing otherwise unnecessary reports: saving up to £20,000 a year.
Removal of cap on fees for agreement work.	Removes missed opportunity to defray cost of audit of Welsh public bodies.
Streamlining/clarification of WAO-related appointments processes.	Saves on confusion and additional legal and administrative expense: annual equivalent savings of some £5,000.
Rationalising Auditor General expense provisions.	Avoiding confusion and helping protect the independence of the Auditor General, which helps assure taxpayers that appropriate audit arrangements are in place in the Welsh public sector.
Streamlining duplicative annual reporting requirements.	Removes source of confusion; improved credibility of legislation.

We would of course be happy to discuss further.

Yours sincerely

DR IAN REES
Chair, Wales Audit Office

ADRIAN CROMPTON
Auditor General for Wales

Annex A

Essential changes to the 2013 Act

Removal of requirements on the Senedd to consult the First Minister on appointment matters—these requirements, which cover the remuneration of the Chair of the WAO and the Auditor General, and the appointment and termination of the Chair, undermine the independence of those positions as well as that of the Senedd itself. Scottish audit legislation is free of equivalent fettering provisions in relation to the Auditor General for Scotland and Audit Scotland.

Repealing these requirements (see paras 5(2), 7(2) and 12(2) of Sch 1 to the Act, as well as section 7(2)) should be a straightforward matter and would help protect the independence of Audit Wales and so assist in assuring taxpayers and other stakeholders that appropriate audit arrangements are in place in the Welsh public sector. Such arrangements are of course conducive to, among things, ensuring value for money.

Rationalisation of fee provisions—The rules in the 2013 Act for fees charged by the WAO are over-prescriptive and impossible in practice to meet fully (see section 23(5) of the Act).

The rules require that fees do not exceed the full cost of exercising “a function” at a particular body. Therefore, where the WAO charges fees, it sets hourly fee rates at a level so as to only recover costs incurred. It then sets fees based on estimated staff time for each auditor role required to complete the work. This is done each year for each audited body. While the WAO seeks to make realistic estimates, inevitably there are variances between estimates and actuals, which requires additional administrative effort and cost.

Apart from the time that has to be consumed by detailed time-recording, as fees to bodies are subject to the “no more than full cost” rule in respect of individual functions, and several functions are undertaken at each body (see Box 1 below), it is not uncommon for a body to be due a refund in respect of one or more functions, yet the overall cost of work at the body exceeds the aggregate fee. The exact overall outturn of cost often takes many months to emerge, as the work in respect of a particular year of account may extend well into the fourth quarter of the following year or even beyond.

Box 1: The problem of relating fees to functions

The Auditor General undertakes several functions (powers or duties) at each audited body. To take a simple example, the Auditor General must audit the accounts of an NHS body, such as a local health board, under section 61(a) of the Public Audit (Wales) Act 2004, which in itself is one function. In addition, under s61(3)(a) of the 2004 Act, the Auditor General must in examining the accounts, "satisfy himself…that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it", i.e. provide a "regularity opinion", which is another function. Furthermore, under s61(3)(b) of the 2004 Act, the Auditor General must in examining the accounts, "satisfy himself...that the body to which the accounts relate has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources". This is the "vfm conclusion" and it is a further function. If the local health board requires a grant claim to be certified, the duty to certify is yet another function (undertaken under paragraph 20 of Schedule 8 to the Government of Wales Act 2006).

The "no more than full cost" rule set out in section 23 of the Public Audit (Wales) Act 2013 means that as an underspend in undertaking one function cannot be used to fund an overspend in undertaking another, there can be no cross-subsidy between functions.

The situation with local government bodies is more complex than in the NHS, as there are many more functions exercised at each body.

To a somewhat limited extent, these variations can be managed over time by "offsetting" (netting off refunds in respect of one function against additional fees due where cost exceeds estimate in respect of another function, or the same function in the next year). However, the 2013 Act does not provide for offsetting, and there is a risk that as soon as it is apparent that a body has been charged more than the full cost of the relevant function, the fee could be held to be unlawful. This contrasts, for example, with the offsetting permitted in the case of Audit Scotland where the "total sum received…taking one year with another" needs only be "broadly equivalent" to the expenditure in respect of the exercise of functions.

The additional administration required to demonstrate best efforts to meet the requirements imposes additional cost on the WAO—between £30,000 and £50,000 a

year[1], which in turn falls on other Welsh public bodies and ultimately the taxpayer. The impossibility of full and unambiguous compliance also puts the WAO at risk of expensive legal challenge and perhaps calls into question the credibility of the legal framework the Senedd has put in place.

A further problem is that the "no more than full cost" rule acts as a disincentive to economy and efficiency at the team and individual level. For example, an audit team might identify a way of delivering an audit in fewer staff hours, perhaps by reducing the amount of direct testing by placing more reliance on their assessed strength of the body's internal controls. However, the resulting reduction in work tends to create problems rather than benefits because, under the "no more than full cost" rule, the reduced cost of the audit must be refunded to the relevant audited body, but the option of laying auditors off to reflect the reduction in work is not practical, especially not in the short term. While it is sometimes possible to apply saved auditor time to other fee earning audit work, overall this is not the case, as the volume of fee-earning audits is essentially fixed. (And using agency staff is generally not cost-effective, as hourly fee rates are high and lack of continuity reduces professional effectiveness.) Even if laying off auditors were practical, this would not provide motivation for efficiency.

These problems could be addressed by revising the rules in the Act so that the constraint to full cost is in respect of the audited body rather than each of the particular functions undertaken at the audited body, and by providing tolerance in terms of taking one year with another, rather in terms of each single year. Such changes would bring the 2013 Act provisions in line with Scots and UK equivalents and **save up to £50,000 a year**.

Clarification of disqualification provisions—the 2013 Act includes various provisions that disqualify the Auditor General, WAO members and staff of the WAO from office. Some of these provisions are not clear, especially in relation to references to "the Crown" (see para 26(3) of Sch 1 to the Act). They also do not align with relevant professional requirements (FRC Ethical Standard) for avoiding conflicts of interest. The lack of clarity has caused practical problems, including the recent loss of a WAO Chair and the expense of additional administrative and legal work to address the situation. It may also present a disincentive to candidates for office both

[1] Estimate in letter to Chair of Finance Committee of 21 June 2018 gave a range of £27,700 to £47,700 for the cost of the no more than full cost rule

within Audit Wales and outside and raises questions about the rationale underpinning the Senedd's legislation.

These problems could be reduced by revising the disqualification provisions in the Act so as to better align them with professional standards. Even just amendment to clarify the meaning of "the Crown" in the relevant places would be helpful.

Annex B

Desirable changes to other legislation

Making sustainable development examination requirements more proportionate—as set out in the Auditor General's letter of 3 November 2023 to the Chair of the Senedd Reform Bill Committee, we consider the 2015 Act has successfully embedded the concept and practice of regular external examination of adherence to the sustainable development principle in the setting and pursuit of well-being objectives. It does now however seem to be appropriate to refine the model so that such examination and reporting can be risk-based and more proportionate. This is especially the case now that:

(a) reversion to a four-year Senedd electoral cycle will result in a 25% increase in the frequency of sustainable development examinations and reporting, and is likely to lead to a similar increase in cost—we estimate an increase of some £435,000 overall in each cycle based on 48 bodies; and
(b) on 30 June 2024, eight additional bodies were designated such that they are subject to sustainable development examinations, bringing the total to 56 and adding an estimated further £58,000 to the total cost of examinations in each electoral cycle, which is expected to be some £1.8 million.

It would be appropriate to refine the model so that the Auditor General's function of undertaking sustainable development examinations is cast solely in terms of a power rather than the current power-duty hybrid. Such refinement would enable the Auditor General to focus examination efforts on areas of significant risk, enabling a proportionate, more cost-effective and more economical approach overall. The risk assessment would encompass all aspects of the sustainable development principle, including, for example, prevention. We estimate that the potential savings over the course of an electoral cycle could be of the order of several hundred thousand pounds. There are too many unknowns to give a precise figure, but something of **the order of £100,000** a year would not seem unrealistic.

Such refinement would also help to restore and protect the overall degree of discretion that the Auditor General has in the design of his work programme, which, among other things, is beneficial in terms of ensuring appropriate audit arrangements.

Streamlining community council audit requirements—the statutory requirements for the audit of the 752 town and community councils in Wales as set out in Part 2 of the Public Audit (Wales) Act 2004 and the Accounts & Audit (Wales) Regulations 2014 are essentially much the same as those for major councils such as the City of Cardiff. This is despite major councils on average each spending over £400,000,000 each year, while on average community councils each spend less than one ten

thousandth of that amount. While Audit Wales takes as light an approach as can be adopted within the confines of the law and taking account of risk to public money, the overall regime is often criticised by community councils for being onerous and expensive. Dealing with increasing numbers of complaints from community councils about the extent of audit fees is itself becoming a time-consuming and costly activity. The cost of auditing all community councils is about £220,000 a year, so reducing this by 25% would yield **annual savings of some £55,000.**

We do not have a ready easy answer to this problem, but with the Committee's and other stakeholders' support, including that of the Welsh Government, we would be willing to invest in developing solutions. Options might include adopting elements of the provisions of the Local Audit and Accountability Act 2014, which allow smaller authorities with turnover below £25,000, while still being required to complete and publish annual returns (simple accounts), to no longer always be required to submit them for audit each year. We would suggest that such an exemption is made subject to the Auditor General not having reasonable cause (such as being aware of credible concerns on the part of electors) to consider that accounting arrangements and general financial management are significantly compromised.

Introduction of a "proper arrangements" duty in central government—the lack of a requirement for the Auditor General to satisfy himself as to arrangements for securing value for money in central government bodies (the Welsh Government and sponsored and related bodies) is in sharp contrast to local government bodies and health bodies. This means that the work to support scrutiny of central government bodies is not supported by statute to be as thorough as that done in the NHS and local government. The importance of this duty has been underlined by the parlous state of local government in England, where private sector provision led to little work being done in many authorities in respect of the duty between 2010 and 2020.

A further practical problem is that the absence of the proper arrangements duty means that more additional work has to be done in central government than in local government and the NHS in order to undertake the sustainable development principle examinations required by section 15 of the Well-being of Future Generations (Wales) Act 2015.

The absence of the proper arrangements duty for central government would be remedied by the insertion of such provision in relevant legislation, such as section 131(7) of the Government of Wales Act 2006. These would, however, be small amendments rather than extensive changes. The additional cost of complying with the duty would not be extensive because much of the necessary work is already undertaken to meet the requirements of other functions, such as sustainable development principal examinations.

Updating data matching powers—the Auditor General's data matching powers are now lagging behind those of counterparts in other parts of the UK. The exercises are generally done in collaboration with other UK audit agencies and the Cabinet Office, as the "National Fraud Initiative" (NFI). To date, the NFI has prevented and detected fraud and error of over £2.37 billion across the UK, with some £49.4 million being prevented and detected in Wales.

Under section 64A of the Public Audit (Wales) Act 2004, the Auditor General currently has a power to undertake data matching for the "purpose of assisting in the prevention and detection of fraud in or with respect to Wales". Counterparts in other parts of the UK have more extensive powers. For example, the Auditor General for Scotland, may also undertake data matching for the purposes of assisting in the prevention and detection of crime other than fraud, and for assisting in the apprehension and prosecution of offenders.

The audit agencies and the Cabinet Office are continually developing the NFI so as to provide further support to public bodies. There is, however, a significant risk that if Welsh data matching legislation does not keep pace with that in other UK jurisdictions, then (a) it may not be possible to run complete UK-wide data matching exercises in Wales, and (b) the potential financial benefits of data matching to identify errors and inaccuracies and assist debt recovery will not be available to Wales.

Insertion of explicit provision in statute for regularity opinions among central government bodies where this is missing—an absence of explicit provision for a regularity opinion means that a fundamental element of Senedd control of central government expenditure is missing from statute, which sometimes causes confusion among audited bodies. The Committee will be well aware that one of the key functions of the Senedd is the approval, following scrutiny, of budget motions so as to authorise government's use of resources. In order to complete the cycle of control, it is necessary that the Senedd receives reports on whether the resources it has voted have been used in accordance with its intentions. The bodies affected by the omission of relevant provisions include the National Library for Wales, the National Museums & Galleries for Wales and Natural Resources Wales.

The solution to the omission of regularity opinions would be amendments similar to those mentioned above in respect of the lack of provision for a proper arrangements duty.

Revision of eligibility of the Auditor General to audit the accounts of Further Education corporations - one of the changes brought about by the 2013 Act was a change in the eligibility of persons to provide the audit of Further Education corporations. Until the 2013 Act came into force, the Auditor General could arrange with individual Further Education corporations for his staff to be appointed to audit such corporations. Such appointments were subject to the pre-existing eligibility

requirement in the Education Reform Act 1998 for such auditors to be Companies Act auditors or members of the Chartered Institute of Public Finance & Accountancy. The 2013 Act transferred staff from employment by the Auditor General to employment by the WAO, but the Act did not transfer the ability for the Auditor General to arrange for staff of the WAO to be appointed. It only allowed the Auditor General to be appointed, and as the incumbent is not a Companies Act auditor or member of the Chartered Institute of Public Finance & Accountancy, he is not eligible. The 2013 Act therefore caused all audits to be transferred from public sector auditors to private sector auditors.

In recent years, Further Education corporations have expressed interest in returning to public sector audit by the Auditor General/staff of the WAO, particularly as private sector auditors now charge proportionately higher audit fees and in some cases have been less willing to undertake the audits. Unfortunately, with the legislation as it stands, the option of public sector provision of Further Education corporation audit is not possible.

This problem could be addressed by specifying in the eligibility requirements in s124B(6) of the Education Reform Act 1998 that the Auditor General is eligible for appointment. Alternatively, it could be addressed by amending legislation (including in particular section 145B(5) of the Government of Wales Act 1998) so that the Auditor General is made the auditor of Welsh FE colleges. (This would also require repeal of s124B(6) of the Education Reform act 1988 in respect of Welsh Further Education corporations.)

The chief benefits of such changes would be that Further Education sector and the taxpayer would have the option of lower costs of audit while the public sector elements of the sector's audit, such as more direct public sector scrutiny and potential integration of the audits with sustainable development examinations, would be enhanced.

Rationalisation of certification deadlines—various legislation, including the Government of Wales Act 2006, requires the Auditor General to lay copies of audited bodies' certified accounts and reports no later than four months after the body has submitted their accounts for audit. While this four-month deadline is reasonable in many cases, it can be unrealistic where there are significant problems at audited bodies, for example, in terms of failures to follow the requirements of Welsh Public Money. Such a constraint on thorough audit work is not conducive to proper scrutiny and stewardship of public money.

This problem would be resolved by amending the relevant provisions so as to allow the Auditor General to lay copies of certified accounts and reports after the four-

month deadline, while requiring him to explain to the Senedd why the deadline cannot be met and requiring him to lay them as soon as reasonably practicable.

Introduction of explicit access rights for sustainable development examinations—the Well-being of Future Generations (Wales) Act 2015 does not currently include explicit Auditor General access rights to information for the purposes of sustainable development examinations. To date, this omission has not been a significant problem, as it seems that public authorities accept that such access rights are implicit. However, with the inclusion of more and more bodies with the scope of the 2015 Act's definition of "public bodies", which makes them subject to sustainable development examinations, the risk of challenge to access rises. It would be prudent to prevent the expense and delay from such challenge by inserting explicit access rights into the 2015 Act at the same time as other updating of that legislation.

Annex C

Desirable changes to the 2013 Act

Facilitating quorum—the 2013 Act places a statutory rule on the WAO and its committees such that meetings are only quorate if a majority of members of the board or committee present are non-executive members of the WAO (para 28 of Sch 1 to the Act). As the statutorily required composition of the WAO is 5 non-executive members out of a total membership of 9, this rule makes the WAO prone to being inquorate—it only takes one non-executive to fall ill or suffer transport delays. We have managed this problem to some extent by taking the expedient of asking employee members to recuse themselves when a majority of non-executive members has not been present, but this is not ideal and on occasions significant governance business has been disrupted or delayed. Failure to meet quorum puts the WAO again at risk of expensive legal challenge.

To reduce this problem, we have previously proposed abolition of the statutory quorum rule, while the Committee has proposed amendment of the rule to allow executive members to remain at a meeting in a non-voting capacity.

On further consideration, however, and with further experience, we consider that perhaps the best solution may be to reduce the number of "non-non-executive WAO members" by abolishing the requirement for an appointed employee member (para 15 of Sch 1 to the Act). We consider that sufficient relevant executive input to decision-making can be obtained from the attendance of relevant individuals who need not be members of the board. Reducing the number of staff members would reduce the risk of failing to meet quorum while also having the benefit of a modest ongoing cost saving (allowances and lost chargeable work time of the appointed employee member). It would still leave the Board with two employee members, directly elected by their colleagues in Audit Wales, ensuring a powerful staff voice within the Board.

Removal of requirement for interim reports—the 2013 Act requires the Auditor General and the Chair of the WAO to jointly prepare interim reports on the exercise of functions. There are no such requirements placed on any other public body, and we gather that the Committee itself regards such additional reporting to be of limited utility. Producing the interim reports imposes an additional unnecessary expense on the WAO, which, while relatively small, is borne by other public bodies and ultimately the taxpayer.

This problem could be readily remedied by amending the 2013 Act so as to remove the standing requirement for interim reports. This would lead to a saving of up to **£20,000 a year**[2].

Removal of constraint on fees for agreement work—the rules in the 2013 Act prevent the WAO from charging more than the full cost of work done by agreement with other public bodies. This prevents the WAO generating a surplus on, for example, work undertaken for UK bodies and so provides no incentive for us to pursue opportunities that we know exist. This is therefore a missed opportunity to defray the cost of audit of Welsh public bodies.

This drawback could be readily remedied by revising the rules so that the constraint to full cost does not apply to agreement work. Provision requiring the surrender of any surplus to the Welsh Consolidated Fund or allowing only application to purposes approved by the Senedd would provide a safeguard against inappropriate use of surpluses equivalent to that applying to the National Audit Office (see para 8 of Sch 3 to the Budget Responsibility and National Audit Act 2011).

Streamlining WAO-related appointments processes—as set out in the Finance Committee of the Fifth Senedd's report Consideration of the consultation on the Public Audit (Amendment) (Wales) Bill there are problems in the 2013 Act in terms of:

- unclear provisions for the re-appointment of non-executive members and the Chair of the WAO;
- lack of clarity in the requirement on the Senedd to consult with "an appropriate person with oversight for public appointments" and in the requirement to publish a list of restricted offices etc, which a former Auditor General would need to consult the Senedd on before accepting; and
- significant contractual complications that arise in relation to the appointment of the WAO's auditors because the appointing authority (the Senedd) and the client (the WAO) are different bodies.

These problems cause ongoing confusion and additional expense. For example, in relation to the 2018 appointment of the WAO's auditors, Senedd legal services were required and incurred a cost for specialist external legal advice valued at £19,500[3].

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[2] Estimate in letter to Chair of Finance Committee of 21 June 2018 gave estimate of cost of interim reports of £20,000 a year.

[3] Letter from Legal Services to Chair of Finance Committee of 27 June 2018

These problems could be addressed by straightforward amendments of the relevant provisions, such as:

- amendment to allow the appointment of a serving non-executive member to be extended for a second term of up to four years, subject to acceptable performance; and
- amendment to allow the WAO to appoint its external auditors, subject to the Senedd's approval of the appointment.

We estimate that this would yield annual equivalent savings of some **£5,000** and reduce administrative work for the Senedd as well as Audit Wales.

Rationalisation of Auditor General expense provisions—two separate provisions of the 2013 Act (section 7 and para 13 of Sch 1) provide for different arrangements for remuneration of the Auditor General. Payments in respect of the office of Auditor General are required to direct charges on the Welsh Consolidated Fund, while those in respect of his or her capacity as a member and Chief Executive of the WAO are to be paid by the WAO from resources authorised by Senedd Budget Motion. It is, however, not practical to separate expenses incurred in respect of these roles, so the WAO pays all the Auditor General's claimed expenses. This avoids any suggestion of abuse of a provision for direct charges, which would clearly be unlawful.

We understand the underlying rationale for paying the Auditor General's expenses as a direct charge on the Welsh Consolidated Fund is to provide a safeguard for the Auditor General's independence. However, that aim is undermined by the impracticality of the provisions of the Act, which cause confusion.

Rationalising the provisions so that all the expenses of the Auditor General, including in respect of the integral role of member of the WAO and Chief Executive, are charged on the Welsh Consolidated Fund would both avoid confusion and help protect the independence of the Auditor General. Again, this would assist in assuring taxpayers and other stakeholders that independent audit arrangements are in place in the Welsh public sector.

Streamlining of duplicate annual reporting requirements—the 2013 Act effectively makes a duplicative requirement in terms of the organisation's annual reporting obligations (see para 3 of Sch 2 to the Act and para 33 of Sch 1 of the Act—the latter must be read in conjunction with HM Treasury's Financial Reporting Manual). In practice, we prepare one annual report each year that meets both requirements, which is laid twice before the Senedd. While this is a somewhat arcane matter, the necessity of duplicated laying perhaps does not reflect well on the credibility of the Senedd's law-making, and it is a source of confusion from time to time that consumes resources unnecessarily.

This problem could be readily remedied by simplifying the 2013 Act so as to enable the Auditor General and the Chair of the WAO to provide the WAO's external auditor with the annual report and subsequently require the external auditor to lay that report as part of the laying of the annual accounts.

(This problem also arises in relation to some other Welsh public bodies, such as Qualifications Wales, and could be addressed by similar changes in the relevant legislation.)