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UPDATING ACCOUNTS AND AUDIT LEGISLATION

During the Committee's session on 15 March 2017 on issues relating to the audit of Natural Resources Wales, I undertook to write to you with further details of the need for some updating of Welsh accounts and audit legislation.

The main overall problem

As I mentioned on 15 March, the main overall problem with the audit provisions for Welsh public bodies is their inconsistency across the various bodies. Within that overall issue, the most serious problems are as follows.

a) **The lack of a duty to be satisfied as to arrangements for securing vfm in central government bodies**

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, Welsh Government Sponsored Bodies and certain other bodies such as the Assembly Commission) is in contrast to the requirement in respect of local government bodies and health bodies (under sections 17(2)(d) and 61(3)(b) of the Public Audit (Wales) Act 2004 respectively).

The absence of a duty to be satisfied as to arrangements for securing vfm in central government means that the work to support scrutiny of central government bodies is permitted by statute to be less extensive and thorough than that done in the NHS and local government. In practice, my central government audit teams work on a discretionary basis to overcome this weakness, by, among other things, considering whether deficiencies that they encounter during the audit of accounts

are matters that should be taken into account in the design of vfm examinations and studies. They also raise issues that they encounter in management letters. Similarly, my vfm examination and study teams will look to take account of corporate governance issues in planning and executing their work.

Even given these work-arounds, the situation is less than satisfactory, as discretionary consideration is more open to challenge than consideration done in the course of a statutory duty. A further practical issue is that the absence of specific statutory consideration of arrangements for securing vfm means that more additional work now needs 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. This is because consideration of arrangements for securing vfm requires significant amounts of review of corporate governance arrangements, and much of that governance review work may be used to meet both the requirements of sections 17 and 61 of the 2004 Act and the requirements of section 15 of the 2015 Act.

b) The absence of explicit provision in statute for regularity opinions among many central government bodies

An absence of explicit provision for a regularity opinion means that a fundamental element of Assembly control of central government expenditure is missing from statute in respect of the relevant body. The Committee will be well aware that one of the key functions of the National Assembly 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 National Assembly 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 are:

- the Care Council for Wales;
- the Education Workforce Council;
- the Higher Education Funding Council for Wales;
- the Local Democracy & Boundary Commission for Wales;
- the National Library for Wales;
- the National Museums & Galleries for Wales;
- Natural Resources Wales;
- Qualifications Wales.

The Arts Council and the Sports Council are also affected because of the omission of relevant provisions from their Royal Charters. Indeed, the Sports Council's Charter omits audit provisions completely.

I have continued the Comptroller & Auditor General's practice of providing regularity opinions in respect of all sponsored bodies despite the omissions because it is clearly required for the reasons set out above. It is also regarded as necessary to comply with professional standards (the Financial Reporting Council's Practice Note 10).

c) Inflexibility of deadlines

As the case of NRW has illustrated, accounts and audit deadlines are sometimes not sufficiently flexible when significant problems arise. For Welsh public bodies, there is no agile variation provision in legislation as there is for UK resources accounts under the Government Resources and Accounts Act 2000.

d) Overlapping laying requirements

There has been a recent tendency for legislation to include provision for bodies to prepare annual reports on the exercise of functions and for those bodies (not the Auditor General) to lay such reports (see, for example, paragraphs 28 and 29 of Schedule 1 to the Qualifications Wales Act 2015). These requirements sit alongside requirements for the Auditor General to lay the audited accounts with his certificate and report (for example, paragraph 33 of Schedule 1 to the Qualifications Wales Act 2015). At the same time, the Financial Reporting Manual (FReM) set by HM Treasury places a requirement on bodies to provide an annual report alongside the accounts. (Indeed, it is normal for bodies in both the public and private sectors to publish "annual reports and accounts".) These multiple requirements can lead to confusion as to who is required to lay the "annual report".

Potential solutions

The absence of a duty to be satisfied as to arrangements for securing vfm in central government bodies could be remedied by the insertion of such provision in relevant legislation. For the Welsh Ministers and the Assembly Commission this would mean amending the Government of Wales Act 2006 (or any restatement of audit provisions following the Wales Act 2017). These would be small amendments rather than extensive changes. For Welsh Government Sponsored Bodies, similar small amendments would be needed for a range of legislation, including:

- The Care Standards Act 2000
- The Commissioner for Older People (Wales) Act 2006
- The Government of Wales Act 1998 (for Estyn)
- The Well-being of Future Generations (Wales) Act 2015
- The Further & Higher Education Act 1992
- The Local Government (Democracy) (Wales) Act 2013
- The Museums and Galleries Act 1992
- The Natural Resources Body for Wales (Establishment) Order 2012
- The Public Services Ombudsman (Wales) Act 2005
- The Qualifications Wales Act 2015
- The Welsh Language (Wales) Measure 2011
- The Royal Charters of the Arts Council and the Sports Council

Similarly, regularity opinion provisions could be inserted in relevant legislation where these are missing. Likewise, provisions for the laying of annual reports could be aligned so as to provide for the Auditor General to lay such reports (preferably combined annual reports that meet both statutory and FReM requirements).

As regards improving the flexibility of deadlines, again, specific provisions to allow variations by Order, along the lines of those provided by the Government Resources & Accounts Act 2000, could be inserted in the full range of relevant legislation. Such provisions would need to explicitly provide for accelerated procedure so as to enable variations to be made in a worthwhile realistic (short) timescale. However, as I previously mentioned in my letter of 22 December 2016, an alternative and more efficient approach might be to include provision with the effect that the deadline applies only to the extent that it does not prejudice compliance with the Code of Audit Practice. This could dispense with Order-making processes altogether.

With all four of the issues set out above, piecemeal amendment of individual pieces of legislation would not be the most efficient approach. A more sensible approach would be to codify the provisions, for example, along the lines of the provisions of Chapter 2 of Part 2 of the draft Public Audit (Wales) Bill, which was consulted on by the Welsh Government in March 2012. However, some changes to the draft Bill provisions would be needed, as, among other things, it should cover recently created bodies, such as the Future Generations Commissioner.

Data matching

While it is not strictly a matter of audit in itself, I should also take this opportunity to raise the issue of how my data matching powers are now lagging behind those of counterparts in Scotland, England and Northern Ireland.

Currently, data matching exercises are undertaken for the purposes of preventing and detecting fraud. The exercises are done in collaboration with other UK audit agencies, and are known as the National Fraud Initiative (NFI). To date, the NFI has prevented and detected fraud and error of over £1.1 billion across the UK, with some £26 million being prevented and detected in Wales. Most of these amounts relate to fraud perpetrated against public bodies.

Under section 64A of the Public Audit (Wales) Act 2004, I currently have a power to undertake data matching for the “purpose of assisting in the prevention and detection of fraud in or with respect to Wales”. The Auditor General for Scotland, the Secretary of State and the Comptroller & Auditor General Northern Ireland have similar powers under the following legislation:

- Scotland—the Public Finance and Accountability (Scotland) Act 2000;
- England—the Local Audit and Accountability Act 2014;
- Northern Ireland—the Audit and Accountability (Northern Ireland) Order 2003.

The Scottish legislation, however, also provides for data matching to be undertaken 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. Furthermore, the Scottish Parliament’s Post Legislative Scrutiny Committee has recently consulted on strengthening and extending the coverage of the Scottish legislation.

The legislation in respect of English bodies contains provision for the purposes of data matching exercises to be extended by regulations so as to cover assisting:

- (a) the prevention and detection of crime other than fraud;
- (b) the apprehension and prosecution of offenders;
- (c) the prevention and detection of errors and inaccuracies, and
- (d) the recovery of debt owing to public bodies.

The Northern Ireland legislation is similar to that applying to English bodies but does not include the prevention and detection of errors and inaccuracies. It is, however, the strongest in the UK in terms of requiring bodies to participate in data matching exercises, as it enables the Comptroller & Auditor General Northern Ireland to require any body audited by him (other than designated “North/South co-operation implementation” bodies) or a local government auditor to provide information for matching rather than that power applying just to a defined list of bodies. For Wales, the list of such mandatory participants is inadequate, as it is limited to local government and health bodies.

My counterparts and I 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;
- (b) the potential financial benefits of data matching to identify errors and inaccuracies, and assist debt recovery will not be available to Wales, and
- (c) the potential to achieve additional savings through the inclusion of new mandatory participants will not be realised.

I would therefore ask the Committee to consider seeking change to the Welsh legislation so as to extend the permitted purposes of data matching to those listed above in respect of English bodies. I would also ask the Committee to consider seeking change to the legislation so as to change the provisions for potential mandatory participants so that all bodies audited by the Auditor General are covered.

Other audit related matters

I know that the Committee is already aware of my concerns about the complexity and difficulties caused by the fee provisions of the Public Audit (Wales) Act 2013 (and related legislation amended by that Act). However, I will not go into detail again now, as the WAO Board and I intend to provide more material setting out how the provisions are not fit for purpose and suggesting possible solutions, in a forthcoming consultation document.

Finally, I should perhaps mention that I am in the process of developing my response to the Welsh Government’s “Reforming Local Government” White Paper. The main focus of that White Paper is the structure of Welsh local government, which has some implications for my audit functions. In addition, there is also a small amount of coverage concerning my functions, with among things, a commitment to repeal Part 1 of the Local Government (Wales) Measure 2009. I will copy my response to the Welsh Government’s White Paper consultation to the Committee. However, I can say now that I welcome repeal of Part 1 of the 2009 Measure, as it is unnecessarily prescriptive and lacks the

flexibility needed to provide proportionate reporting. Repeal of the 2009 Measure will allow resources to be used in pursuit of the more proportionate arrangements of Part 2 of the Public Audit (Wales) Act 2004.

Yn gywir

A handwritten signature in blue ink, appearing to read 'Huw Vaughan Thomas'.

HUW VAUGHAN THOMAS
AUDITOR GENERAL FOR WALES