

Finance Committee

**Report into the delay in the laying
of Natural Resources Wales
Annual Accounts 2015-16 by the
Auditor General for Wales**

May 2017



National Assembly for Wales
Finance Committee

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales, agrees Welsh taxes and holds the Welsh Government to account.

An electronic copy of this report can be found on the National Assembly's website:
www.assembly.wales/SeneddFinance

Copies of this report can also be obtained in accessible formats including Braille, large print; audio or hard copy from:

Finance Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Tel: **0300 200 6565**
Email: **SeneddFinance@assembly.wales**
Twitter: **@SeneddFinance**

© National Assembly for Wales Commission Copyright 2017

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.

Finance Committee

**Report into the delay in the laying
of Natural Resources Wales
Annual Accounts 2015-16 by the
Auditor General for Wales**

May 2017



National Assembly for Wales
Finance Committee

Finance Committee

To carry out the functions of the responsible committee set out in Standing Order 19; the functions of the responsible committee set out in Standing Orders 18.10 and 18.11; and consider any other matter relating to the Welsh Consolidated Fund.

Current Committee membership:



Simon Thomas AM (Chair)
Plaid Cymru
Mid and West Wales



Mike Hedges AM
Welsh Labour
Swansea East



Steffan Lewis AM
Plaid Cymru
South Wales East



Eluned Morgan AM
Welsh Labour
Mid and West Wales



Nick Ramsay AM
Welsh Conservative
Monmouth



David Rees AM
Welsh Labour
Aberavon

The following member represented UKIP Wales in consideration of this issue.



Mark Reckless AM
South Wales East

Contents

Summary of findings	5
01. The role of the Finance Committee	6
02. The Statutory Framework.....	7
03. Other obligations of the Auditor General for Wales.....	12
Annex 1	15

Summary of findings

The Committee fully accepts that the Code of Practice must be issued by the Auditor General for Wales under Section 10 of the Public Audit (Wales) Act 2013. The Committee also accepts that Section 8 of that Act allows the Auditor General for Wales to exercise discretion and specifies that he is not under the control of the National Assembly for Wales. However, notwithstanding this, the Committee believes it would be helpful for the Auditor General for Wales to review the content of the Code of Practice with a view to removing any contradictions which exist within the Code and between the Code and various pieces of legislation. Additionally, should a conflict remain within the Code, it would be helpful if the Code clarified which provisions within it would take precedent in the event of a conflict. Page 11

The Committee is of the firm view that the Auditor General for Wales should ensure his Code of Practice, as required under the Public Audit (Wales) Act 2013, is updated annually to allow the reader to understand that a review has taken place, regardless as to whether that review results in any changes. Page 11

The Committee believes that the Auditor General for Wales should have the provision to request an extension to a four month deadline, and this process should happen relatively quickly to allow the Auditor General flexibility to extend statutory deadlines at short notice, where appropriate. Page 14

The Committee will write to the Welsh Government to obtain its view on how it believes the issue of the Auditor General for Wales not meeting statutory four month deadlines can be addressed going forward to prevent a similar situation such as that which has happened with the accounts of the Natural Resources Body for Wales. Page 14

The Committee recognises that in addition to the need for provision to extend the statutory four month deadline, there are issues to be considered around the wider legislative audit provisions in legislation. The Committee will write to the Welsh Government regarding the points raised in relation to:

- securing value for money in central government bodies;
- the absence of specific provision in statute for regularity opinions among many central government bodies;
- the overlapping laying requirements. Page 14

01. The role of the Finance Committee

1. The **Public Audit (Wales) Act 2013** confers a number of functions on the National Assembly for Wales. In accordance with the Act and under **Standing Orders 18.10 and 18.11** the Finance Committee (the Committee) is the 'responsible committee' for oversight of the governance of the Wales Audit Office (WAO) and office of the Auditor General for Wales (AGW).
2. As the responsible committee, the Finance Committee's roles in relation to the WAO include consideration of the annual estimate of income and expenses each year and scrutiny of Annual Plans, Fee Schemes, Annual Reports and other related reports.
3. The Committee also exercises powers in relation to the appointment and removal from office of the AGW, the chair of the Wales Audit Office and the Non-Executive members of the WAO Board.
4. In relation to the certification of the accounts of the Natural Resources Body for Wales (NRW) the Committee's primary responsibilities lay with understanding the administrative and decision-making processes surrounding the delay in laying NRW's accounts. Specifically, the circumstances and processes undertaken by the AGW that meant the statutory deadline outlined within **The Natural Resources Body for Wales (Establishment) Order 2012** (the Order) was not met.
5. The AGW gave evidence to the Finance Committee regarding the delay in laying NRW annual accounts 2015-16 on **15 March 2017**.
6. Matters relating to the detail of the NRW accounts were examined by the **Public Accounts Committee** (PAC) on 28 March 2017 and 22 May 2017.

02. The Statutory Framework

Public Audit (Wales) Act 2013

7. The core aim of the Act is to strengthen and improve the accountability and governance arrangements relating to the AGW and the WAO, whilst protecting the AGW's independence and objectivity. In doing this, the Act increased the National Assembly for Wales' oversight role and strengthened the accountability and transparency of the AGW's office through establishing the WAO as a new, separate body with responsibility for the corporate functions that were previously vested with the AGW.

8. Section 10 of the Act requires that the AGW produce, consult on and abide by a **Code of Audit Practice** (the Code). Section 10(4) of the Act states:

“The code must embody what appears to the Auditor General to be the best professional practice with respect to the standards, procedures and techniques to be adopted in carrying out functions of a kind specified in subsection (2).”¹

9. The Code is created by the AGW and the specific detail of what it should contain is not outlined by the Act.

Auditor General's Code of Audit Practice

10. **The Code** prescribes the way in which the AGW's audit and certain other functions are to be exercised, and represents what the AGW views as best practice, as well as the way in which auditors are to exercise audit function. The AGW has designed the Code to complement International Standards on Auditing and recognised standards and guidance that are regarded as best professional practice, such as those issued by the Financial Reporting Council and by professional bodies.

11. In evidence to the Committee the AGW was asked about an apparent conflict requirement between paragraphs 31(d) and paragraphs 31(f)(i) in his Code. Paragraph 31(d) states:

“After concluding fieldwork, auditors must offer audited bodies and relevant third parties the opportunity to comment on the factual accuracy of the findings, as appropriate.”

12. Whilst paragraph 31(f)(i) states:

“Produce outputs that comply with statutory and professional reporting requirements.”

13. The Assistant Auditor General and Head of Financial Audit Practice, accompanying the AGW at Committee, said the Code was currently being reviewed. He said that:

“it wouldn't change the contradiction that exists between natural justice of giving third parties [correction: giving third parties the opportunity to comment], and complying with administrative duties in terms of the timetables.”²

¹ **Public Audit (Wales) Act 2013**

² National Assembly for Wales, Finance Committee, Record of Proceedings, paragraph 111, 15 March 2017

14. However, the Assistant Auditor General and Head of Financial Audit Practice said this “was something we will look at in this context”.³

The Natural Resources Body for (Wales) Establishment Order 2012

15. The Natural Resources Body for (Wales) Establishment Order 2012 (**the Order**) is the mechanism brought forward under the **Public Bodies Act 2011** that established the NRW. Under section 23(5) of the Order a requirement is placed on the AGW to examine, certify and report on the annual accounts of NRW no later than four months after a statement of accounts has been submitted. Paragraph 23(5) of the Order states:

“(5) The Auditor General for Wales must-

(a) examine, certify and report on the statement of accounts;

(b) provide a copy of the certified statement of accounts together with his or her report on it to the body; and

(c) no later than 4 months after the statement of accounts is submitted, lay before the National Assembly for Wales a copy of the certified statement of accounts and report.”

16. Under sections 23(2) and (3) of the Order, NRW is required to submit a statement of accounts to the AGW (and the Welsh Ministers) no later than 31 August each year. Therefore, the latest date the Assembly would expect the AGW to report would be 31 December.

17. NRW submitted its draft accounts 2015-16 to the AGW on 23 August 2016. Therefore, the latest date that the AGW would have been expected to lay the certified accounts and report and comply with the statutory requirement set out in the Order was 23 December 2016.

18. The AGW laid the accounts and his report on the accounts on 9 March 2017, six and a half months after they were submitted by NRW. When asked about the circumstances leading to this delay the AGW described the occurrence as “a blue moon type of occasion”.⁴

19. In relation to obtaining an extension in the AGW’s statutory deadline for laying the accounts, the AGW said:

“If I were sitting in Westminster, I could have sought an Order to be made by Treasury under the Government Resources and Accounts Act 2000, which can be done very quickly—a matter of days—and has the effect of delaying such time limits in order to allow an audit to be concluded. In Wales, I have no such provision.”⁵

20. The AGW explains he would have needed to have sought an Order under section 13 of the Public Bodies Act 2011, but as that includes a requirement to consult, the AGW would have had to have been aware of his intention to qualify the accounts four months in advance.⁶

³ National Assembly for Wales, Finance Committee, Record of Proceedings, paragraph 111, 15 March 2017

⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, paragraph 13, 15 March 2017

⁵ National Assembly for Wales, Finance Committee, Record of Proceedings, paragraph 15, 15 March 2017

⁶ National Assembly for Wales, Finance Committee, Record of Proceedings, paragraph 15, 15 March 2017

Other legal considerations

21. In correspondence to the Chair of the Finance Committee (22 December 2016), the AGW outlined that he had been prevented from laying the certified statement of accounts and his report due to “several legal obligations” which could not all be met in line with the timescales required by the Order. This is repeated in the AGW’s report contained within the [NRW Annual Report and Accounts](#). In this report the AGW states:

“I am advised by my legal advisor that given the conflicting statutory duties, it was appropriate to give more prominence to the requirement of the 2013 Act and the Code.”⁷

22. The AGW expands on the conflict between the Act, the Code and the Order, advising that allowing third parties the opportunity to comment was important to “natural justice”.

23. The AGW outlines that abiding by the four-month deadline would not allow him to comply with Common Law, specifically, with reference to case law; *R v Secretary of State for the Home Department Ex p Doody* [1994] 1 A.C 531. This case established that where a person may be adversely affected by a decision, they should have an opportunity to make representations. It was the AGW’s view that he would breach both “natural justice” and these principles if he published information before providing the opportunity for the audited body or third party to comment. The AGW stated:

“The full nature of our findings only became apparent following our receipt of finalised external legal advice on 28 November 2016. As I mentioned in my letter to the Chair of PAC of 14 December, it has been necessary for NRW to gather a significant quantity of documentation, which took nearly two months, and in addition it has been necessary for WAO staff to review that documentation and obtain legal advice. It has not been possible, and it is not possible, to provide the contracting parties with the opportunity to make representations by 23 December (the deadline set by the Establishment Order).”⁸

24. The AGW deemed that the adverse effects of publishing his report could potentially inflict more detriment upon the audited body and third parties than that caused by not adhering to the statutory deadline for certifying the statement of accounts and laying them before the Assembly.

25. The AGW suggested that the delay in laying NRW’s accounts has resulted from a conflict of requirements between the four-month deadline that requires the Auditor General to lay the accounts of NRW no later than four months after the statement of accounts is submitted, in this case, by 23 December, as outlined in [The Natural Resources \(Wales\) Establishment Order 2012](#) and the requirement of the [Public Audit \(Wales\) Act](#) to abide by the [Code of Audit Practice](#).⁹ The Code requires that the opportunity is given to third parties and audited bodies to comment on audit findings.¹⁰

⁷ Letter from the Auditor General for Wales to the Chair of the Finance Committee – 22 December 2016

⁸ Letter from the Auditor General for Wales to the Chair of the Finance Committee – 22 December 2016

⁹ Letter from the Auditor General for Wales to the Chair of the Finance Committee – 22 December 2016

¹⁰ Auditor General for Wales: Code of Audit Practice, April 2014

26. In evidence to the Committee, the AGW said that as the “only place that my audit opinion can be challenged is in the courts, ... it is important, therefore, that I withstand any kind of judicial review by indicating that I have applied issues of natural justice and fairness.”¹¹

The statutory four-month deadline

27. There are no consequences outlined in the Act, the Code or the Order should the AGW not meet the statutory four-month deadline for certifying and reporting on the accounts. There is also no guidance regarding the approach the AGW is required to take, should he be unable to meet a stipulated deadline.

28. In not laying the accounts, the AGW first wrote to the Chair of the Public Accounts Committee on 14 December 2016, stating:

“Unfortunately, I have concluded that it is not possible to meet this deadline without incurring a significant risk to fairness to third parties. My audit has encountered some significant issues concerning contracts entered into by NRW, and it is necessary in order to be fair to those concerned outside NRW (as well as NRW) that I provide reasonable opportunity to comment on my findings in line with the principles of natural justice.”¹²

29. The AGW goes on to say that the issues encountered are “legally complex” and required NRW to gather and provide a “significant” amount of documentation. The AGW outlines that the gathering of this documentation took “nearly two months”. Following this, the WAO reviewed the documentation and obtained external legal advice.

30. Following his correspondence with the Chair of the Public Accounts Committee on 14 December 2016, the AGW formally advised the Chair of the Finance Committee that he would be unable to meet his statutory deadlines with regard to NRW in a letter dated 16 December 2016.

31. The AGW said that there is a need, in Wales, to have “the same kind of mechanism that the Government Resources and Accounts Act 2000 gives to the NAO [National Audit Office] in England”.¹³ This would allow for an extension to be given within a matter of days.

Committee view

32. The Committee notes the issues raised in relation to a lack of a proper process allowing the AGW to extend the statutory deadline on reporting the accounts of the NRW. This issue is dealt with further in chapter 3.

33. The Committee notes that one of the issues that caused a problem for the AGW is the conflict between the requirements of the Order and the requirements of the AGW’s own Code. Whilst the Committee recognises this conflict, the AGW has discretion to decide how to develop his Code, and the Code has been developed in such a way that it includes provision, which on this occasion, caused conflict with the requirements of the Order. This conflict is in addition to the apparent conflict identified between paragraphs 31(d) and 31(f)(i) of the AGW’s own code. The Code does not specify which of its requirements should take precedence in situations where there is a conflict. The Committee believes this would be a helpful addition to the Code.

¹¹ National Assembly for Wales, Finance Committee, Record of Proceedings, paragraph 37, 15 March 2017

¹² Letter from the Auditor General for Wales to the Chair of the Public Accounts Committee – 14 December 2016

¹³ National Assembly for Wales, Finance Committee, Record of Proceedings, paragraph 39, 15 March 2017

34. Furthermore, the Committee notes that the AGW asserted that the Code is reviewed annually, yet the current Code states it has not been updated since 2014. Whilst appreciating a review is not the same as updating, as it is feasible that there may not need to be changes to the Code, the Committee believes it should be able to identify from the Code whether such a review had taken place.

The Committee fully accepts that the Code of Practice must be issued by the Auditor General for Wales under Section 10 of the Public Audit (Wales) Act 2013. The Committee also accepts that Section 8 of that Act allows the Auditor General for Wales to exercise discretion and specifies that he is not under the control of the National Assembly for Wales. However, notwithstanding this, the Committee believes it would be helpful for the Auditor General for Wales to review the content of the Code of Practice with a view to removing any contradictions which exist within the Code and between the Code and various pieces of legislation. Additionally, should a conflict remain within the Code, it would be helpful if the Code clarified which provisions within it would take precedent in the event of a conflict.

The Committee is of the firm view that the Auditor General for Wales should ensure his Code of Practice, as required under the Public Audit (Wales) Act 2013, is updated annually to allow the reader to understand that a review has taken place, regardless as to whether that review results in any changes.

03. Other obligations of the Auditor General for Wales

35. The four-month reporting provision referred to in chapter 2 exists in a number of other pieces of legislation currently active in Wales. Some examples of organisations subject to legislation that include this provision are outlined below (not an exhaustive list):

- In relation to the Welsh Revenue Authority ([Tax Collection and Management \(Wales\) 2016 Act, Section 30\(2\)](#))
- In relation to Social Care Wales ([Regulation and Inspection of Social Care \(Wales\) Act 2016, Schedule 1, Section 16\(4\)](#))
- In relation to Qualification Wales ([Qualifications Wales Act 2015, Schedule 1 Section 33\(2\)](#))
- In relation to the Boundary Commission for Wales ([Local Government \(Democracy\) \(Wales\) Act 2013, Section 19\(4\)](#))
- In relation to the Welsh Ministers ([Government of Wales Act 2006, Section 131\(6\)](#))

36. In evidence to the Committee the AGW said:

“...there is still no four-month requirement on a number of public sector bodies in Wales. That gradually crept in in the 1990s—with various establishment Orders, four months started to be placed. It is a very crucial distinction ...we have no means of very quickly delaying cut off dates.”¹⁴

37. The AGW also raised concerns around the clarity of Welsh audit legislation, stating:

“Welsh audit and accounting legislation—is spread over a range of statutes, often with conflicting requirements, or at least incompatible requirements one with the other. So, there is, particularly now that we are having extra powers given to Wales, I think, a need to consolidate and really bring together that range of legislation. I should mention that when the 2013 Act, which is now in force in terms of the Wales Audit Office, was introduced, it was the Government’s intention at that stage to actually have a part 2. The part 2 would have done the consolidation of audit legislation, but, for various reasons, I understand that consent was not possible from Westminster for that to take place. But it can be done, and I would think that the conclusions I would draw from the experience that we’ve gone through with the NRW accounts is (1), as I said, it’s a rare event, but, secondly, that we need to have the mechanism that the Government Resources and Accounts Act provides for my counterparts in terms of dealing with this kind of event, even though probably another one won’t arise for at least 10 years.”

38. Following the evidence session, the AGW wrote to the Committee stating his desire to have Welsh accounts and audit legislation updated. This letter is attached at Annex 1. The AGW raised four main issues:

¹⁴ National Assembly for Wales, Finance Committee, Record of Proceedings, paragraph 15, 15 March 2017

- The lack of a duty to be satisfied as to arrangements for securing value for money in central government bodies. Unlike with health bodies and local government bodies, the AGW is not required to satisfy himself as to the arrangements for securing Value for Money (VFM) in the Welsh Government, Welsh Government Sponsored Bodies and certain other bodies, including the Assembly Commission. The AGW states that this means this work is undertaken on a discretionary basis and is more open to challenge and that additional work is required in central government than in local government and the NHS.
- The absence of specific provision in statute for regularity opinions among many central government bodies, there are a number of organisations whose statutory basis does not include explicit provision for a regularity opinion.
- Inflexibility of deadlines. The AGW states the issues associated with the laying of the NRW accounts relate to mechanisms available to delay deadlines. This is in contrast to UK legislation which contains flexibility to delay laying.
- Overlapping laying requirements. Under Financial Reporting Manual requirements audited bodies are generally required to produce an annual report alongside their annual accounts. As the AGW is responsible for laying the accounts of the audited body but not the annual report, this can lead to confusion regarding who lays the reports as they will generally be presented as one document.
- Fee and charging provision. The AGW has commented to the Finance Committee on previous occasions that the current Fee Regime is overly prescriptive and complex. The Public Audit Wales Act requires that the WAO do not charge more than the cost of undertaking the ‘function’.

39. The AGW also raises the issue of his data matching powers. He considers that they now lag behind those of counterparts in Scotland, England and Northern Ireland. The letter sets out more information in respect of this. The AGW asks that the Committee considers seeking a change the Welsh legislation to extend the permitted purposes of data matching to reflect those in respect of English bodies.

40. In his letter the AGW also suggests possible solutions to these issues. This includes amending legislation, such as the Government of Wales Act 2006, in regard of VFM provisions for the Welsh Ministers and the Assembly Commission. The changes for the regularity opinions, laying of annual reports and improving flexibility of deadlines for Welsh Government Sponsored Bodies would require amendments to relevant legislation.

41. The AGW suggests that “piecemeal amendment of individual pieces of legislation would not be the most efficient approach”, instead recommends codifying the provisions in a Bill similar way to Chapter 2 of Part 2 of the draft Public Audit (Wales) Bill, consulted on by the Welsh Government in March 2012.

Committee view

42. Whilst recognising the AGW’s view that the situation with NRW is a rare occurrence, the Committee also recognises that there is a need for the AGW to be able to extend the statutory four month deadline for reporting on accounts in some circumstances. Whilst this may currently be a rare occurrence, the Committee notes that such a four month deadline now applies to a number of new

bodies, such as the Welsh Revenue Authority and Qualifications Wales. As such the Committee believes it is essential for this issue to be recognised and amended.

43. The Committee recognises that it is not a simple task to retrospectively amend the various pieces of legislation. The Committee has previously indicated it will review the Public Audit Wales Act during the fifth Assembly and this work could be undertaken as part of that review, however in the meantime the Committee intends to ask the Welsh Government whether there would be an appropriate legislative vehicle in which they could address this issue.

44. The Committee has previously committed to post legislative scrutiny of the Act, and will consider the issues raised when planning this inquiry.

The Committee believes that the Auditor General for Wales should have the provision to request an extension to a four month deadline, and this process should happen relatively quickly to allow the Auditor General flexibility to extend statutory deadlines at short notice, where appropriate.

The Committee will write to the Welsh Government to obtain its view on how it believes the issue of the Auditor General for Wales not meeting statutory four month deadlines can be addressed going forward to prevent a similar situation such as that which has happened with the accounts of the Natural Resources Body for Wales.

The Committee recognises that in addition to the need for provision to extend the statutory four month deadline, there are issues to be considered around the wider legislative audit provisions in legislation. The Committee will write to the Welsh Government regarding the points raised in relation to:

- securing value for money in central government bodies;
- the absence of specific provision in statute for regularity opinions among many central government bodies;
- the overlapping laying requirements.

24 Heol y Gadeirlan / Cathedral Road
Caerdydd / Cardiff CF11 9LJ
Ffôn / Tel: 029 20 320500
info@audit.wales / post@archwilio.cymru
www.audit.wales / www.archwilio.cymru

Date: 5 April 2017
Our ref: HVT/2702/fgb
Page: 1 of 7

Mr Simon Thomas AM
Chair of the Finance Committee
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

Annwyl Simon

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 'H. Vaughan Thomas'.

HUW VAUGHAN THOMAS
AUDITOR GENERAL FOR WALES