

## National Assembly for Wales

### The Audit Regime in Wales 1999-2011

September 2011

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This paper provides a history of the audit regime in Wales from the outset of devolution in 1999 until 2011.

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# **National Assembly for Wales**

## **The Audit Regime in Wales 1999-2011**

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**Special thanks:**

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Research  
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# The Audit Regime in Wales 1999-2011

## 1. Introduction

The Welsh Government intends to bring forward a *draft Wales Audit Office Bill* in autumn 2011 which will “strengthen the governance and accountability arrangements of the Wales Audit Office, without restricting the Auditor General’s crucial independence to examine whatever subjects he chooses”. Provisions in the Bill:

- will establish the Wales Audit Office (WAO) as a body corporate with a majority of non-executive members appointed by public appointments procedures, including pre-appointment hearings in the Assembly; and
- set out the relationship between the Wales Audit Office and the Auditor General Wales.

If the Bill is enacted in that form, the Auditor General Wales, whose terms and conditions of service will be set by the Assembly on the recommendation of the Public Accounts Committee independent of the Welsh Government, will become the Chief Executive Officer of the WAO.

This paper provides a history of the audit regime in Wales from the outset of devolution in 1999 until 2011.

## 2. UK Audit

The *National Audit Act 1983* established the office of Comptroller and Auditor General (C&AG) (which has existed since 1866) as an Officer of the House of Commons, to be appointed by the Crown but in consultation with the Chairman of the Public Accounts Committee (PAC). The Act also created an independent National Audit Office (NAO), with staff employed directly by the C&AG and gave the C&AG complete discretion over discharge of functions, although, in determining to carry out a value for money examination, he or she must take into account any proposals made by the PAC (although this does not apply to audit of accounts). Finally, it created a statutory Public Accounts Commission to oversee the budget of the NAO and appoint its auditor. This consists of the Chairman of the PAC, the Leader of the House (a Cabinet Minister) and seven other MPs, none of whom can be ministers.

The *Budget Responsibility and National Audit Act 2011*<sup>1</sup> provides for the modernisation of the NAO's governance arrangements. Although the legislation was taken through Parliament as a Government Bill, the provisions relating to the NAO had previously been agreed and requested by the PAC following its review into the NAO's governance arrangements. The Act continues the office of C&AG as an independent officer of Parliament but limits the term of appointment to that office to ten years. It provides for the establishment of a new corporate body, the new NAO, whose functions will include providing resources for the C&AG's functions, monitoring the carrying out of those functions and approving the provision of certain services. The NAO Board will have a majority of non-executives and be led by a non-executive chair. The office of C&AG will continue to be a corporation sole and the office holder will be the NAO's chief executive but will not be an NAO employee. Within the new governance framework, the C&AG continues to have complete discretion in the carrying out of the C&AG's functions.

A "corporation sole" is a legal personality, enjoying and being subject to legal rights and duties, consisting of one person and his or her successors.

These arrangements pertain to Wales in respect of non-devolved matters. The C&AG has access rights to devolved bodies in Wales subject to consultation with the AGW under s136 of the *Government of Wales Act 2006*.

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<sup>1</sup> *Budget Responsibility and National Audit Act 2011 (c.4)*

### 3. 1999-2004

The **Auditor General for Wales (AGW)** was a statutory appointment under section 90 of the *Government of Wales Act 1998*, appointed by the Queen and paid for by the National Assembly for Wales. The post is legally a **corporation sole**. The AGW was independent of the Assembly and its Audit Committee, although, like the C&AG he or she was obliged to 'take into account the views of the Audit committee' in respect of his proposed value for money examinations.

Sir John Bourn became the first AGW on 1 June 1999. He also held the office of C&AG (and Head of the National Audit Office). The NAO supported the work of the AGW by providing professional, administrative and technical services in accordance with Section 92(1) of the 1998 Act.

For the first five years of devolution, therefore, the AGW, supported by staff from the NAO in Cardiff, reported to the National Assembly on the accounts and value for money of public bodies in Wales (excluding local authorities).

Following devolution, the Audit Commission continued to have responsibility for appointing the auditors for local authorities and health service bodies in England and Wales, for promoting value for money and undertaking studies in these sectors and for undertaking best value inspections on local government bodies (known in Wales as the "Wales Programme for Improvement").

Key aspects of the finance and audit arrangements for the Assembly as it was then constituted and operated at that time were:

- Parliament voted monies to the Secretary of State for Wales;
- The National Assembly for Wales received a block grant from the Secretary of State for Wales;
- The Assembly then spent these funds, or granted them to Assembly sponsored public bodies and NHS bodies to spend;
- The AGW audited the accounts of the Assembly, and its sponsored bodies, to check that funds have been spent on the purposes intended. He or she was also empowered to investigate whether value for money has been achieved;
- In carrying out audits, the AGW had the right to obtain documents, information and explanations deemed necessary;
- The AGW reported findings to the Assembly.

A House of Commons Research paper noted:

Unlike for the UK and Scotland, there is no Assembly involvement in the appointment or dismissal of the AGW. One major factor is that the Assembly is legally a body corporate, encompassing both executive and legislature. The Richard Commission has made recommendations to make a separation of the two roles, but statutorily at least, it would not seem appropriate to give the Assembly (encompassing the Welsh Executive) a role in

appointing the auditor for government bodies in Wales. Other models, such as a role for the Audit Committee of the Assembly, might be more appropriate. Within Wales, the Audit Commission continues to audit local authority and health expenditure.<sup>2</sup>

The lack of Assembly involvement in the appointment of the AGW respected the “Principles of Public Audit” issued by the Public Audit Forum which, amongst other things, stated that no public sector body responsible for executive functions should be able to appoint own auditor.<sup>3</sup>

#### 4. Public Audit (Wales) Act 2004

In 2003 the UK Government consulted on a draft *Public Audit (Wales) Bill* which was considered by the Welsh Affairs Select Committee and by a National Assembly Committee. Don Touhig MP, Parliamentary Under Secretary of State outlined the rationale for the legislation in a statement to the Assembly Committee:

The Public Audit (Wales) Bill is very much a logical progression of the devolutionary process. Since 1999 the Wales Office and the National Assembly have developed an agenda for the formulation and delivery of objectives and policies based on partnership with a whole range of public sector bodies. Many policy initiatives demonstrate a distinctive way of working that involve the Assembly; Assembly sponsored public bodies; the voluntary sector; and local government in active delivery of the objectives.

As the boundaries between policy implementation break down it is reasonable that the current division of responsibilities for public audit, in terms of safeguarding the taxpayers interest and assisting in achieving the best value for money possible should also be removed. A single public audit body for Wales will achieve this purpose. As the Committee will know Scotland and Northern Ireland have both adopted this approach.<sup>4</sup>

The *Public Audit (Wales) Act 2004*<sup>5</sup> conferred a number of new functions on the AGW. The most significant effect of the functions is that the AGW exercises most of the functions previously exercised in Wales by the Audit Commission for Local Authorities and the National Health Service in England and Wales. The Act also transferred the NAO and Audit Commission staff in Wales to the AGW’s employment to create **a single public audit body** for Wales – the **Wales Audit Office (WAO)** - headed by the AGW. From 1 April 2005, the AGW and WAO therefore had responsibility for the financial and performance audits of the Assembly (as then constituted), its sponsored and related bodies, NHS bodies (primarily NHS Trusts and Local Health Boards) and local government bodies in

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<sup>2</sup> [HC Research Paper, \*The Public Audit \(Wales\) Bill \(HL\) \(Bill 108 of 2003/04\)\*, 04/45, 2004.](#)

<sup>3</sup> [Public Audit Forum, \*Principles of Public Audit\*, 1998](#)

<sup>4</sup> [Written Statement by Mr Don Touhig MP, Parliamentary Under Secretary of State for Wales. Public Audit \(Wales\) Bill Scrutiny Committee, 10 July 2003](#)

<sup>5</sup> [Public Audit \(Wales\) Act 2004 \(c.23\) \[accessed 9 August 2011\]](#)

Wales. The Act includes provisions intended to safeguard the constitutional independence and democratic accountability of local government.<sup>6</sup>

## 5. The Government of Wales Act 2006

The *Government of Wales Act 2006*<sup>7</sup> reconstituted the Assembly as an unincorporated association of 60 members and created the Welsh Assembly Government (now known as the Welsh Government) as a separate legal entity. As the reconstituted Assembly no longer has any executive or government functions, it is able to take the lead in appointing the AGW without falling foul of the Principles of Public Audit. In practice there had been an administrative separation of government and scrutiny functions within the previous Assembly corporate body since the outset and the then Audit Committee was invited to undertake a recruitment exercise and recommend an appointment to the Secretary of State when John Bourn stood down in 2005.

The 2006 Act removed the role of the Secretary of State from the appointment process and provided for the appointment to be made by the Monarch on the nomination of the Assembly. No nomination is to be made until the Assembly is satisfied that reasonable consultation has been undertaken with bodies that represent the interests of local government in Wales.<sup>8</sup> The post is subject to dismissal by the Monarch on the grounds of misbehaviour, although the Assembly can only recommend dismissal following a resolution passed by at least two thirds of all Assembly Members.<sup>9</sup>

### Standing Order 18.2

The Public Accounts Committee (“the Committee”) must:

- (i) exercise the functions set out in paragraph 12 of Schedule 8 to the Act relating to the main estimate of income and expenses submitted by the Auditor General for each financial year;
- (ii) consider any supplementary budget motions tabled under section 126 of the Act that seek to amend amounts previously authorised by a budget resolution or supplementary budget resolution in respect of the Auditor General;
- (iii) advise the Assembly in the exercise of its functions under paragraph 14 of Schedule 8 to the Act relating to the appointment of the auditor of the accounts of the Auditor General;
- (iv) present views to the Auditor General from time to time on the Auditor General’s exercise of his or her powers to undertake economy, efficiency and effectiveness examinations; and
- (v) consider and report to the Assembly on any use of resources in excess of that authorised or deemed to be authorised that is recorded in the audited accounts of Welsh Ministers, the Commission, the Auditor General or the Ombudsman, recommending whether the Assembly should authorise the excesses retrospectively by supplementary budget resolution.

<sup>6</sup> [Public Audit \(Wales\) Act 2004, Explanatory Notes \[accessed 9 August 2011\]](#)

<sup>7</sup> [Government of Wales Act 2006 \(c.32\) \[accessed 9 August 2011\]](#)

<sup>8</sup> *Government of Wales Act 2006* (c.32) Schedule 8, para.1

<sup>9</sup> Thomas, A “Parliamentary Officers’ in Wales”, chapter in Gay, O and Winetrobe B, *Parliament’s Watchdogs: At the Crossroads*, Constitution Unit/Study of Parliament Group, 2008.

Before the 2006 Act, funding for the AGW's salary costs was subject to annual approval by the Assembly as part of the overall budget tabled by the Welsh Ministers. It is now funded as a direct charge on the Welsh Consolidated Fund (established under the 2006 Act) in recognition of the independence of that Office from the Welsh Government . The general expenditure for the running costs of the WAO is now authorised by Assembly Budget Motion<sup>10</sup> following scrutiny of its annual estimate by the Public Accounts Committee. The PAC can make modifications to the AGW's estimate but must consult the AGW before laying an estimate containing such modifications before the Assembly.

The Audit Committee (called the Public Accounts Committee since 2009) is the only committee which the Assembly is required to have by the 2006 Act<sup>11</sup> It examines reports prepared by the AGW on the audit of accounts and value for money investigations of the Welsh Government and other public bodies – but not local government bodies. The AGW may attend private meetings of the Committee, with the permission of or at the request of the chair and the Committee determines its programme of work in consultation with the AGW. At the first meeting of the Audit Committee in the Third Assembly in July 2007 the AGW, Jeremy Coleman, outlined the relationship between the AGW and the Committee.

The Committee operates along non-party political lines, and traditionally in unanimity, to give an impartial view on the implementation of policy. Its ability to do so is greatly enhanced by its right to consider comprehensive evidence and analysis in reports from the Auditor General and to base its questioning of witnesses on them.

The Committee's ability to draw on the Auditor General's work whether in reports intended to provide a basis for an evidence session or in considering issues raised in correspondence, such as the responses of the Assembly Government to its recommendations, is a major strength. It adds to the Committee's effectiveness, and incidentally increases the authority of the Auditor General's reports.<sup>12</sup>

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<sup>10</sup> A budget motion serves the same purpose and has the same statutory effect as the annual Appropriation Act

<sup>11</sup> Op.cit., *Government of Wales Act 2006* s.30

<sup>12</sup> [Audit Committee, Stocktake of value for money work since devolution/ Introduction to the remit and work of the Audit Committee, AC \(3\) 1-07, paper 1, 12 July 2007](#)

## 6. Review of the Corporate Governance of the UK National Audit Office

In 2007 there was controversy about the travel expenses incurred by Sir John Bourn, C&AG of the United Kingdom, which led to him announcing his retirement in October 2007.<sup>13</sup> The House of Commons Public Accounts Commission had considered the matter and agreed that Sir John had not broken any rules but that a transparent system was needed for the C&AG's travel expenses and made recommendations accordingly.<sup>14</sup> It also decided to review the corporate governance arrangements for the NAO to ensure that these conform to best practice. In November 2007 it commissioned John Tiner to conduct the review which was published in January 2008.<sup>15</sup> The Report stated:

The National Audit Office is a unique and critically important organisation in the UK public sector. Its head, the Comptroller and Auditor General (C&AG) is an Officer of the House of Commons and enjoys complete discretion over the discharge of his functions. This combined with his appointment by Her Majesty the Queen on a motion from the House of Commons makes him completely independent of Government, a sine qua non for the position. The current C&AG has put in place a number of governance processes, but in their effectiveness these fall short of what is currently best practice, even when taking into account the unique role of the Office. In the exercise of his responsibilities the C&AG must, in my view, rely not only on the powers given to him by Parliament, but also on the moral authority which comes from the National Audit Office (NAO) maintaining the highest standards of governance.<sup>16</sup>

The Report stressed the importance of maintaining the independence of the office but ensuring that systems of governance and internal controls are consistent with best practice. It proposed significant changes to the current governance structure. The Report also said:

While I have sought to understand the governance arrangements in the devolved administrations they do not fall within my terms of reference and I make no comment on whether my proposals for the NAO have any application in the devolved administrations.<sup>17</sup>

The Public Accounts Commission published its response to the Tiner Report in March 2008.<sup>18</sup>

The *Constitutional Reform and Governance Bill*<sup>19</sup>, announced in the 2009 - 10 Queen's Speech, included provisions to put new governance systems in place in respect of the audit regime in the UK which had been requested by the Public Accounts Commission following the Tiner Review.

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<sup>13</sup> [Daily Telegraph, How unsackable Sir John Bourn sealed his fate, 29 October 2007](#)

<sup>14</sup> [HC Public Accounts Commission, Press Notice, Comptroller and Auditor General's expenses, 11 July 2007](#)

<sup>15</sup> Op.cit, HC, Public Accounts Committee, 14<sup>th</sup> Report 2007-8.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> [HC Public Accounts Commission, Response to the Tiner Report on Corporate Governance of the National Audit Office, 15<sup>th</sup> Report 2007-8, March 2008.](#)

<sup>19</sup> [Constitutional Reform and Governance Bill 2007](#)

The UK Government also put down an amendment to the Bill which would have granted Measure-making powers to the Assembly in respect of the Auditor General for Wales.<sup>20</sup> Although the amendment was agreed and the new clause added to the Bill on 4 November 2009, it and the UK clauses, were subsequently removed from the Bill following “wash-up” discussions between parties ahead of dissolution on 12 April 2010. The clauses were reintroduced following the election as part of the *Budget Responsibility and National Audit Act 2011* which also amended schedule 7 to the 2006 Act to confer full legislative competence on the Assembly in this area. The proposed amendments to schedule 5 were dropped following the affirmative vote in the March 2011 referendum.

## 7. Developments at the Wales Audit Office

In 2009, the Assembly’s Public Accounts Committee planned to launch an inquiry into governance arrangements at the Wales Audit Office. However, this was deferred following the former AGW’s decision to commission his own [International Peer Review](#)<sup>21</sup>. This found that there was scope to strengthen and enhance the governance arrangements and offered two alternative arrangements for a WAO “board structure”. The review rejected the idea of establishing the WAO as a corporate body along the new NAO lines as being inappropriate for Wales. It stated:

The creation of corporate structures around an Auditor General who himself is a corporation sole poses risks. The creation of an independent Chair could confuse the accountability of the Auditor General as a corporation sole accountable to the National Assembly. Particular circumstances in England led to the new arrangements and the same factors are not at issue in Wales.<sup>22</sup>

In February 2010 the then AGW, Jeremy Coleman resigned unexpectedly. It subsequently emerged that he was being investigated by the police for downloading child pornography on to his work computer. He was later charged and found guilty and was sentenced to an eight month prison term.<sup>23</sup>

Later in 2010 reports appeared about a severance package agreed between Mr Coleman and the Chief Operating Officer of the WAO. The Public Accounts Committee decided to hold an inquiry on the issue:

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<sup>20</sup> [Welsh Government, \*Constitutional Reform and Governance Bill: Welsh Assembly Government Memorandum on Framework powers conferring Legislative Competence on the National Assembly for Wales, October 2009.\*](#)

<sup>21</sup> [Wales Audit Office, \*International Peer Review, 8 October 2009\*](#)

<sup>22</sup> [Public Accounts Committee, \*Accounting, governance and propriety issues at the Wales Audit Office, March 2011 \[Accessed 19 July 2011\]\*](#)

<sup>23</sup> [BBC News, \*Ex-Wales auditor jailed for child image offences, 19 November 2010.\*](#)

In view of the high level of public interest in, and disquiet at, this transaction – including concerns raised with us by the present Auditor General, we felt it our duty to look into the manner in which the severance package had been agreed and the extent to which its nature and cost had been clearly and accurately reflected in the Auditor General’s accounts in accordance with relevant financial reporting standards.<sup>24</sup>

The Committee’s subsequent [report](#) explained the current position in respect of audit governance and the case for change:

Under the Act, the office of Auditor General for Wales is a “corporation sole”. The Wales Audit Office consists of the Auditor General and his/her staff but it is not a body corporate and unlike, say, a health body or an Assembly Government sponsored body does not have an appointed board. In the case of the Wales Audit Office, all of the functions are vested in the Auditor General who is charged with the governance of his office.

This arrangement reflects the well-established fact that audit judgements are best made by an individual rather than a board and that that individual is best placed to decide on how an individual audit assignment should be resourced and executed. Other bodies such as the Ombudsman, Children’s Commissioner and Older People’s Commissioner are similarly established as corporations” sole for similar reasons.

We fully agree that the Auditor General must be unfettered as to the exercise of his or her statutory functions so that audit judgements are and are seen to be independent and objective. However, recent events have shown that abuse of that position can have disastrous consequences. We therefore conclude that the governance arrangements for the Wales Audit Office and its accountability to the Assembly need to be strengthened.<sup>25</sup>

The Report also suggested issues for consideration by a future committee:

- place the arrangements for the AGW’s remuneration and term of office on a statutory basis;
- establish an Independent Advisory Board to oversee the governance arrangements for the WAO. Crucially, the Board would be appointed by and therefore be answerable to the National Assembly. The Board would be able to establish committees and would be required to establish an audit committee – it could decide to adopt the committee structure currently being put in place by the AGW; and
- the Board would be free to advise the AGW on any aspect of his role and the governance of his office but the AGW would retain his or her responsibilities as Accounting Officer for the Wales Audit Office and would continue to be

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<sup>24</sup> Ibid.

<sup>25</sup> [Public Accounts Committee, \*Accounting, governance and propriety issues at the Wales Audit Office\*, March 2011 \[Accessed 19 July 2011\]](#)

unfettered in respect of strategic direction, audit judgements, and the reporting and resourcing of audit assignments.<sup>26</sup>

## 8. Auditor General for Wales' review of governance arrangements

Before taking up his appointment as the new AGW, Huw Vaughan Thomas, reviewed the WAO's governance arrangements with senior WAO staff and the interim AGW. He concluded that:

I consider the current Wales Audit Office governance arrangements to be flawed and to lack the necessary checks and balances that would need to exist in well-run private or public sector organisations.

Improvements are urgently needed, to make the Wales Audit Office more open and accountable. Independent non-executive oversight of how the Wales Audit Office is run must be expanded including scrutiny of Remuneration, Human Resources, Finance, and Information Technology activity in addition to the existing Audit and Risk Management oversight.<sup>27</sup>

The AGW noted that the International Peer Reviewers looked at the governance arrangements at 15 audit and inspection bodies worldwide. No two bodies had exactly the same arrangements but they all had common features of accountability to Government, and the presence of non-executive scrutiny. Although no single 'right' model was identified the reviewers did specifically discard the 'corporate entity' model as being inappropriate due to the risk of confusing the accountability of the AGW to the National Assembly.

New arrangements proposed by the AGW were:

- establishing three new non-executive committees to exercise oversight of Resources (HR, IT and Finance), Remuneration, and Audit and Risk Management.
- at six monthly intervals, the Chairs of these three Committees will meet with the AGW and the WAO Executive Committee to review planned, and actual, delivery for the previous six month period.
- holding an annual governance conference to discuss future priorities and activities of the WAO. These will be attended by all non-executive members, key stakeholders and experts from outside Wales who are unconnected with the bodies audited by the Wales Audit Office.

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<sup>26</sup> [Public Accounts Committee, \*Accounting, governance and propriety issues at the Wales Audit Office\*, March 2011 \[Accessed 19 July 2011\]](#)

<sup>27</sup> [Auditor General for Wales, \*Proposed new governance arrangements for the Wales Audit Office - Briefing paper for the Public Accounts Committee\*, 7 October 2010](#)

- producing an annual governance report to be presented to the Assembly's Public Accounts Committee for consideration.<sup>28</sup>

The AGW explained:

At six-monthly intervals, the Chairs of the three Governance Committees (Audit and Risk Management, Resources, Remuneration), will meet with myself and my EC to review planned and actual delivery over the preceding period, and consider whether Wales Audit Office operations need to be amended going forward so as to improve productivity and efficiency.

In addition to the six-monthly reviews, there will be an annual Wales Audit Office Governance Conference. All nonexecutive members and Wales Audit Office Partners will attend together with key stakeholders, and experts from outside Wales/unconnected with the bodies audited by the Wales Audit Office, which will provide an opportunity for a broadly based and two-way dialogue on the future priorities for, and the activities of, the Wales Audit Office.

This will result in a Governance Report which will be presented to the PAC for consideration.<sup>29</sup>

## 9. The Draft Wales Office Audit Bill

On the 12 July 2011, the First Minister told Plenary:

We want a strong public service ethos in Wales, and one that is not prevented from delivering good quality services by unnecessary bureaucracy or governmental control. After the summer recess, we will therefore bring forward a draft Wales Audit Office Bill, with the aim of strengthening the Wales Audit Office's governance and accountability arrangements without restricting the Auditor General for Wales's crucial independence to examine whatever subjects he or she chooses. Provisions in the Bill will establish the Wales Audit Office as a body corporate, with the majority of non-executive members appointed by public appointments procedures, including pre-appointment hearings in the Assembly. The Bill will also set out the relationship between the Wales Audit Office and the Auditor General for Wales, who will become the accounting officer for the Wales Audit Office. The Auditor General for Wales, whose terms and conditions of service will be set by the Assembly, on the recommendation of the Public Accounts Committee and independently of the Welsh Government, will become the chief executive officer of the Wales Audit Office.<sup>30</sup>

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<sup>28</sup> [WAO, \*New Auditor General to 'shake up' Wales Audit Office Governance\*, Press Release, 8 October 2010](#)

<sup>29</sup> [Op cit. AGW 7 October 2010](#)

<sup>30</sup> RoP, 12 July 2011