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Protocol concerning consultation on the work to be undertaken and the handling of reports published by the Auditor General for Wales

Introduction and statutory background

1. The office of Auditor General for Wales (AGW) was established by the Government of Wales Act 1998 (the 1998 Act) to provide for the external audit of the accounts prepared by the National Assembly for Wales and its sponsored and related public bodies. The 1998 Act also gave the AGW powers to undertake economy, efficiency and effectiveness (value for money) examinations with which public sector bodies in Wales (excluding local government) have used their resources in discharging their functions.
2. The Public Audit (Wales) Act 2004 (the 2004 Act) came into full effect on 1 April 2005 and made a number of fundamental changes to the audit and inspection arrangements for the Welsh public sector. In particular it:
 - Appoints the AGW as the external auditor of the accounts of all NHS Wales bodies;
 - Requires the AGW to appoint auditors of the accounts of local government bodies;
 - Requires the AGW to undertake performance and value for money studies on local government bodies and inspections on best Value authorities under the Local Government Act 1999 (known as the Wales Programme for Improvement);
 - Created a single public audit body for Wales headed by the AGW and known as the Wales Audit Office (WAO); and
 - Gave auditors enhanced access rights to follow public money to end recipients, and placed mutual duties of co-operation and information sharing on various audit and inspection bodies operating in the Welsh health and local government sectors.
3. In bringing forward the 2004 Act, the UK Government made clear that it did not wish to undermine the democratic mandate of Welsh local authorities nor change their constitutional relationship with the Assembly. Nevertheless, the creation of a single audit body for Wales with

responsibilities covering central and local government provides significant opportunities for introducing a common audit and inspection framework for the Welsh public sector, and improved scope for undertaking studies of a cross cutting nature covering the work of central and local government in Wales.

4. The requirement and expectation placed on the WAO to co-operate with other inspectorates operating in Wales, as well as cross-border co-operation with other UK audit and inspection bodies, provides further scope for innovative working and enhanced reporting and reducing the burden of inspection.
5. The AGW has a statutory duty to consult associations of local government bodies in Wales and appropriate associations of employees before undertaking value for money/performance work affecting local government. The AGW also has a duty to take account of the views of the Assembly's Audit Committee in determining his forward programme of value for money studies on non-local government bodies. These consultation requirements are detailed at Annex A.
6. The AGW lays accounts and reports on non-local government aspects of his work before the Assembly. Section 103 of the 1998 Act requires the Assembly to publish all accounts and reports so laid. The main statutory remit of the Assembly's Audit Committee is to consider, take evidence and report in respect of accounts and reports laid before the Assembly by the AGW (Section 102 of the 1998 Act). Conversely, published accounts and reports relating solely to local government are not laid before the Assembly and are therefore outside of the Audit Committee's remit. This reflects the constitutional position of local authorities who are primarily accountable to their own electorates rather than the Assembly. Annex B details the statutory provisions in respect of the publication of reports by the AGW.

Scope

7. The above factors outline the complex relationship between the AGW/WAO and the various parts of the Welsh public sector and the likely extent of interest in the AGW's work.
8. This protocol is intended to establish a clear understanding of how the AGW will consult on his forward value for money/performance audit work programme and manage the production of reports intended for publication. It also sets out how consideration of those reports, once published, will be handled by the National Assembly for Wales and its various committees. It covers the work to be undertaken at the initiative of the AGW in the exercise of his statutory functions where the AGW is obliged or empowered to publish reports on the results of that work.

9. Specifically this protocol covers:
 - Reports published or intended for publication directly by the AGW under a statutory duty or power;
 - Reports laid or expected to be laid before the Assembly by the AGW that the Assembly has a duty to publish under Section 103 of the 1998 Act; and
 - Reports by the AGW that the organisation concerned has a statutory duty to publish.

10. This protocol specifically excludes:
 - Work intended to lead to reports to management or those charged with governance that are not intended for publication (even if they are subsequently put into the public domain - for example under the provisions of the Freedom of Information Act after the application of any “public interest” test);
 - Work undertaken on individual local authorities under the Wales Programme for Improvement leading to reports that are not intended for publication;
 - Work undertaken by the WAO at the request of the organisation(s) concerned or by their governing authorities, the Welsh Assembly Government or a Minister of the Crown that is not expected to result in the production of a report intended for publication. Such work will normally be covered by separate terms of reference;
 - Audit of accounts (although reports on accounts are included) and certification of grant claims.

11. This protocol also excludes reports issued by local government appointed auditors under their own statutory powers. This work is the subject of a separate arrangement.

12. The Auditor General has published a Code of Audit and Inspection Practice that sets out how the AGW’s own audit and inspection responsibilities are to be carried out by the AGW’s staff and contractors. This protocol is consistent with that Code and needs to be read in conjunction with it.

13. This protocol has been agreed between the AGW, Welsh Assembly Government, Chairs of all Assembly Committees, the Welsh Local Government Association and the Partnership Council.

Consultation arrangements – value for money/performance work involving the Assembly, its sponsored and related public bodies, and the health and further and higher education sectors

14. The AGW's value for money proposals are developed by drawing on the ongoing marking and monitoring work of WAO staff. Marking and monitoring work involves surveying, among other things, trends in expenditure, developments in business (such as the establishment of new government programmes), the results of current financial audit and value for money examination work, and previous deliberations of the Audit Committee. This information is used to assess risks to value for money.
15. As well as considering the risk to value for money, in determining the programme of subjects for value for money work, the WAO will have regard to:
 - areas of particular interest to the Assembly Audit Committee;
 - areas of particular interest to the Welsh Assembly Government;
 - the scope for the AGW to add value—through financial impact, improving services or other means;
 - the need for a mixed diet of work—some wide-ranging with significant fieldwork at local bodies, and some more narrowly focused—and an overall programme that is deliverable;
 - the desirability of co-ordinating work between the AGW and other auditors, and with inspectors, regulators, internal auditors and other parties, so as to maximise the benefit of such work, while minimising its burden;
 - the need for systematic coverage of the audit field over time, reflecting materiality both in terms of expenditure and nature;
 - existing commitments, including conducting follow-up work in areas previously examined;
 - whether the AGW is undertaking a suite of studies on a particular topic or theme at different audited bodies;
 - the scope for, and desirability of, collaborative work with other UK audit institutions; and
 - the need to protect the AGW's independence and objectivity.
16. The AGW has a statutory duty to take the views of the Assembly's Audit Committee into account when determining his programme. In order to discharge this duty the AGW introduces the draft programme formally to the Committee at a meeting in September or October of each year alongside his estimate of income and expenses for the following financial year. In return, the Members offer advice to the AGW on the programme.
17. WAO staff will consult the Welsh Assembly Government (through senior officials and the Minister for Finance, Local Government and Public Services), Assembly Sponsored Public Bodies and other interested organisations and individuals regarding the draft proposals before they are presented formally to the Audit Committee. Information that supports draft

proposals will be discussed with officials at an operational level. Draft proposals will be marked “Audit in Confidence” before they are published and recipients should respect this marking by not communicating them further prior to publication. Such publication will be by being tabled for consideration by the Audit Committee. As the balance of the public interest lies in protecting the audit planning process, the WAO and those public bodies that it consults may apply exemptions from disclosure provided by Sections 33 and 36 of the Freedom of Information Act 2000 to prevent premature disclosure of draft proposals and comments on them.

18. Following the Committee’s formal consideration it is for the Auditor General to make a decision as to the final programme which is then published.
19. During the year it may be necessary to amend the programme to take account of unplanned events or changing priorities. The AGW/WAO will consult as appropriate on any such changes with the organisations that are affected, and with the Chair of the Audit Committee. The final decision on any such changes, including the commencement and termination of work, rests with the AGW.

Consultation arrangements – value for money/performance work involving local government bodies

20. The AGW has a statutory duty to consult associations of local government bodies in Wales and appropriate associations of employees before undertaking studies on local government bodies in Wales under Sections 41 and 42 of the 2004 Act. He will do this by consulting the Welsh Local Government Association, (WLGA), individual local authorities and any relevant associations of employees. In determining his programme of such studies, the Auditor General will also have regard to all relevant factors (for example, national policy objectives, evidence of past performance, matters of public interest etc.), as well as views expressed by other interested parties such as the National Improvement Board and the Partnership Council.
21. The Assembly’s Audit Committee does not have a statutory role in advising the AGW on his programme of local government work but the AGW will include such information in his draft forward programme submitted to the Committee with information on the totality of the work of the WAO in order to enable it to see the overall context of the work planned.
22. Similarly, in preparing a proposed programme of local government work, the AGW will include information on work involving the Assembly, its sponsored and related public bodies, including health bodies and further and higher education institutions. This is to help provide the associations of local government bodies and associations of local government employees with information on the totality of the work of the WAO, so as to enable the proposals to be seen in context.

Consultation on cross-cutting work affecting both local government bodies and bodies whose accounting officers are accountable to the Assembly's Audit Committee

23. A feature of the work of the AGW will be value for money/performance work that covers the work of "central" and local government bodies in Wales (e.g. economic development or health and social care), and also takes into account where appropriate the role of the voluntary and community sectors. In developing the forward work programme the AGW/WAO will consult the interested parties using the appropriate procedures as set out above.
24. Proposals for such work will be included in the draft forward programme that the AGW introduces to the Audit Committee. In offering advice to the AGW in respect of such work, the Committee will operate within its own statutory remit as laid down in Section 102 of the 1998 Act.

Consultation - joint working with other audit and inspection bodies

25. The AGW and certain other audit and inspection bodies are obliged or have chosen to co-operate with each other in order to help develop an integrated programme and to minimise the burden on those organisations being reviewed – in particular, by avoiding duplication of effort and better management of respective roles and responsibilities.
26. In developing proposals for co-operative working, the AGW will naturally work closely with the other audit and inspection bodies concerned. In respect of such work, the AGW/WAO may choose to consult jointly in a way that meets their respective obligations (including this protocol).
27. In making any co-operative arrangements with other audit and inspection bodies, the AGW will have regard to the provisions of this protocol.

Production of draft AGW reports and clearance for factual accuracy

28. If the AGW is minded to produce a report for publication the following guidelines will apply in respect of drafting and clearance for factual accuracy. In exceptional circumstances, it may be necessary to vary the normal procedure.
29. Following completion of the necessary fieldwork, the audit team will discuss the main findings with the body or bodies concerned and normally produce an outline of the report to be published. This outline and any subsequent drafts of the report will contain a warning notice that:
 - it has been supplied in confidence solely for the purpose of verifying the accuracy and completeness of the information contained in it and to obtain views on the provisional conclusions reached;

- neither the draft outline/report nor any of its contents should be disclosed to any other person unless such disclosure is authorised; and
 - must be safeguarded at all times to prevent publication or other improper use of its contents, and that unauthorised disclosure could prejudice the exercise of the AGW's statutory functions and may result in legal proceedings.
30. The outline report and subsequent drafts of the report will be used as the basis for discussing and agreeing the findings, content and balance of the report with the bodies concerned. This process is also intended to identify any potentially serious divergences of view in respect of factual content at an early stage in the process, as well as any political or public impact considerations that need to be taken into consideration in the handling of the report. Depending on the subject matter, the team may also need to discuss the content of all or part of the report with named third parties.
31. Following discussions on the report at working level, the AGW will write formally to the Accounting Officer(s) who may subsequently be required to give evidence to the Assembly's Audit Committee. For local government bodies, the AGW will write to the appropriate chief executives. The AGW will ask for a response normally within 10 working days requesting confirmation that the facts contained within the report are materially accurate and any further comments on the presentation.
32. The AGW will consider all comments made during the "clearance" process with a view to establishing that:
- All material and relevant facts have been included;
 - The facts are not in dispute;
 - Their presentation is fair; and
 - Where the report states any views and conclusions which the bodies concerned are unable to agree, this was clear, with the reasons of all parties being properly represented and with all necessary balance.
- In the event of a serious disagreement on matter of content, the AGW and the accounting officer(s)/chief executive(s) concerned will agree directly a form of words that meet the above criteria.
33. This process should not be used to delay publication and the AGW is responsible for making the final decision on what is published.
34. If the AGW wishes to issue a press notice to accompany any report, he will invite comments on a draft from the organisations concerned. The WAO's press officer will also discuss the publication arrangements with the press offices of those organisations at least two working days beforehand. Those press officers will reciprocate by sharing any planned responses to the media at least one day before publication. Any media response should not prejudice or pre-empt any possible subsequent consideration of the report by the Assembly's Audit Committee or be capable of being construed as doing so.

35. The above procedures also apply to reports prepared under the Local Government Act 1999 (Wales Programme for Improvement) and intended for publication by the AGW.

Audit Committee consideration of AGW reports

36. The statutory remit of the Assembly's Audit Committee derives from Section 102 of the 1998 Act and its operations are governed by Standing Order 12. In essence the Audit Committee is empowered to consider any reports or accounts laid before the Assembly by the Auditor General for Wales, and to make its own reports to the Assembly.
37. In considering the AGW's reports, the Committee normally takes evidence from the relevant accounting officers (the permanent officials heading the organisations concerned or designated Assembly accounting officers) and supporting staff. The Committee is able to use the Assembly's powers to summon individuals for this purpose if necessary. After taking evidence the Committee publishes its own report to which the Welsh Assembly Government (or the House Committee, as the case may be) must respond within 30 working days.
38. The AGW is required or empowered to lay before the Assembly the accounts and reports as detailed in Annex B in order to bring them within the remit of the Committee. Reports that are only concerned with the operations of local government bodies are not laid in this way and therefore fall outside the Committee's remit.
39. Reports that cover both "central"¹ and local government operations will normally be laid by the AGW in order that the Audit Committee may take evidence on the "central" aspects if it so wishes. The Committee will expect local government bodies to rely on their own accountability arrangements and therefore restrict its consideration of such reports to the central government operations. The Committee may invite representatives of local government bodies to give oral or written evidence on such reports but this will be to aid its understanding of the subject matter, and not with a view to holding those bodies to account.

Use of WAO reports by other Assembly Committees

40. Other Assembly committees may wish to make use of published AGW reports to aid their scrutiny and advisory functions. This could apply both to reports that the AGW has laid before the Assembly and reports on local government operations that are not laid. The AGW/WAO would be happy to assist committees in this regard by giving evidence or making a presentation although members of such committees should be aware that the AGW is not permitted to question the merits of policy objectives.

¹ Central government operations in this context include the functions of the Assembly, its sponsored and related public bodies and NHS Wales.

41. The Audit Committee has the statutory power to consider reports that the AGW has laid before the Assembly. Other Assembly committees may wish to use such reports after the Audit Committee has finished its consideration or if it has indicated that it does not wish to consider them further. It will be for the Chair of any committee wishing to use such a report to agree appropriate arrangements with the Audit Committee Chair.

Protocol to be authenticated by appropriate signatories

AGW PERFORMANCE/VALUE FOR MONEY AUDIT WORK**STATUTORY CONSULTATION PROVISIONS**

Type of report	Statutory provision
Assembly	GOWA 100 ^③ , 145A ^④
ASPBs and other related bodies	GOWA 145 ^③ , 145A ^④
NHS Wales bodies	GOWA 145 ^③ , 145A ^④
Local government bodies ^⑤	PAWA 41 -42 ^⑥

STATUTORY PROVISIONS RELATING TO THE PUBLICATION OF REPORTS BY THE AGW

Type of published	Statutory provision	Provision to lay reports before the Assembly ^②
Report by the AGW on an account prepared by a non-local government body	See note ⑦ below	Yes
Report made by the AGW in the public interest on non-local government body	GOWA 96A ^⑧	Yes
Reports on value for money/performance work on the Assembly	GOWA 100 ^③ , 145A ^④	Yes
Reports on Value for money/performance work on ASPBs, NHS Wales and other bodies related to the Assembly (excluding local government)	GOWA 145 ^③ , 145A ^④	Yes
Studies at the request of educational bodies	GOWA 145B	Yes with the consent of the body requesting the study
Studies relating to social landlords	GOWA 145C	Yes
AGW Reports on value for money/performance work on local government bodies ^⑤	PAWA 41 -42 ^⑥	Section 41 work – no Section 42 work – where appropriate

Notes to annexes A and B:

1. *The table in Annex A covers work that might be undertaken by the Wales Audit Office on the primary bodies where the Auditor General for Wales has statutory powers or duties to undertake value for money or performance work. It excludes work that might be undertaken under provisions that allow the AGW to undertake studies by agreement with an organisation and/or the Assembly, a Minister of the Crown, or other governing body, as such work is outside the scope of this protocol.*
2. *The table in Annex B covers reports that might be produced that are intended for publication by the Auditor General for Wales. Reports concerned solely with local government bodies are published by the AGW but are not laid before the Assembly. The AGW has a power or a duty to lay reports concerning the Assembly, its sponsored and related public bodies and NHS Wales bodies before the Assembly. The Assembly is required to publish any reports so laid under s103 GOWA, and they are also brought within the remit of its Audit Committee by virtue of s102.*
3. *Section 100 of the Government of Wales Act 1998(GOWA) gives the AGW powers to undertake examinations into the economy, efficiency and effectiveness with which the Assembly has used its resources in discharging its functions. Section 145 extends this power to include ASPBs, NHS Wales bodies and other organisations as listed in Schedule 17 to the 1998 Act. For related bodies not so listed (i.e. Estyn, Welsh Forestry, Public Services Ombudsman for Wales, Children’s Commissioner for Wales, Health Professions Wales and the Wales Centre*

for Health), similar provisions are made in the relevant enabling legislation or amendments to the enabling legislation. The AGW also has powers to undertake value for money work in respect of the Environment Agency's operations in Wales by virtue of Section 147 of the 1998 Act and the 1999 Transfer of Functions Order. The AGW is required to take account of the views of the Audit Committee in exercising functions under these sections and may lay a report before the Assembly following his examination.

4. *Section 145A of the 1998 Act gives the AGW power to undertake or promote studies designed to enable recommendations to be made for improving economy, efficiency and effectiveness in the discharge of the functions of any relevant body or bodies. These studies have potential for greater scope than the work undertaken under sections 100 and 145 and are particularly appropriate to forward looking and cross cutting themes and issues. Relevant bodies include any organisation whose accounts are audited by the AGW and any other body (except a local government body) where the AGW already has VFM functions. The AGW is required to take account of the views of the Audit Committee in exercising functions under this section and may lay a report before the Assembly following his examination.*
5. *See Section 12 of the Public Audit (Wales) Act 2004 (PAWA) for definition of local government bodies.*
6. *Section 41 PAWA requires the AGW to undertake or promote studies designed to enable recommendations to be made for improving economy, efficiency and effectiveness in the discharge of functions and provision of services, and for improving the financial or other management. Section 42 requires the AGW to undertake studies to enable reports to be prepared on the operation of any statutory provisions or any guidance/directions given by the Assembly on economy, efficiency and effectiveness in the discharge of functions. The AGW is required to consult associations of local government bodies and appropriate associations of employees before undertaking studies under these sections. The AGW is required to lay before the Assembly a report on matters arising from Section 42 work that, in the AGW's opinion, ought to be drawn to the attention of the Assembly.*
7. *Accounts for these bodies are prepared under a variety of different legislation but, in the majority of cases, the AGW is required to lay the audited accounts before the Assembly together with any report that he makes on them.*
8. *The AGW may produce a report in the public interest at any time if a matter arises during the course of an examination on any of these bodies that warrants bringing to the public's attention. The AGW must lay any such report before the Assembly.*