



Llywodraeth Cymru  
Welsh Government

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# Managing Welsh Public Money

January 2016

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

## Foreword

The Welsh Government and the public sector in Wales rely on taxpayers' money, and the taxpayer rightly expects us to spend it wisely. It is hugely important people in Wales are able to trust their public services, especially in austere times when these services are relied upon most heavily.

*Managing Welsh Public Money* sets out the main principles for managing resources and is primarily aimed at organisations within the boundary of the Welsh Government's consolidated accounts, but the principles should hold true across the whole of the Welsh public sector. This document aims to explain how to handle public funds with probity and in the public interest and should be read in conjunction with *Managing Public Money* (published by HM Treasury) to understand the wider picture of funding and financial control at a UK level.

*Managing Welsh Public Money* is derived in part from *Managing Public Money* but is overlaid with the specific aspects of financial management arising from the Government of Wales Act (GoWA) 2006 and the evolving Devolution settlement. The same basic principles generally apply in all parts of the UK public sector, with adjustments for context as necessary. Everyone working in the public sector in the UK should be aware of the need to manage and deploy public resources responsibly, with integrity, transparency and value for money in mind.

There will be occasions where the advice contained herein will change over time. The law moves forward; the standards used in business and public life evolve; new techniques emerge; public expectations change; and the economic climate can have a great impact. Through all these shifts, Parliament and the National Assembly for Wales rightly expect that public funds, whether raised through taxation or public sector charges, will be used properly. They look to HM Treasury and the Welsh Government to help public servants meet these expectations in a transparent, responsible and consistent fashion. Upholding the standards of public administration is one of the most fundamental responsibilities for anyone working in the public sector.

Public sector organisations can, and should, innovate in carrying out their responsibilities, using new technology and taking advantage of best practice in business efficiency. This could mean new kinds of organisations, new institutional arrangements or new delivery methods. Each will need to be evaluated and implemented carefully to protect Parliament's and the National Assembly for Wales' rights to authorise and oversee the use of public resources. *Managing Welsh Public Money* should not, however, discourage the application of common sense.

So, if you work with public money this document is a must read. For more information about *Managing Welsh Public Money* or any of the information included, please contact the Welsh Government's Corporate Governance Unit (CGU) Mailbox ([CGU@wales.gsi.gov.uk](mailto:CGU@wales.gsi.gov.uk)).

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# Chapter 1

## Principles of Good Governance

### 1.1 Principles

**1.1.1** Everyone who works in the public service in Wales shares a personal responsibility for the stewardship of taxpayers' money, whether they manage budgets, assets or simply their own time. *Managing Welsh Public Money* sets out the framework and principles which must be applied in the Welsh Government, its Sponsored Bodies, the National Health Service in Wales, its Commissioners, Education Workforce Council, Estyn and the Welsh Government subsidiary bodies. Everyone working in public services in Wales must be aware of the need to manage and deploy public resources responsibly and in the public interest.

**1.1.2** This is all about delivering outcomes for the citizens of Wales. Looking after taxpayers' money properly means just getting two things right at the same time; delivering the outcomes sought by Ministers on behalf of the people for Wales and living up to the values demanded in the public service.

**1.1.3** Public service organisations funded by the Welsh Government<sup>1</sup> must have a governance framework in place which enables them to deliver their outcomes and live up to public service values. The governance framework for Wales is built around 7 principles which, when applied to an organisation, are intended to create a 'family resemblance' between organisations funded through public money in Wales. Each organisation should include the following principles in its governance framework:

- **Putting the citizen first** – putting the citizen at the heart of everything.
- **Knowing who does what and why** – making sure that everyone involved in the delivery chain understands each others' roles and responsibilities and how together they can deliver the best possible outcomes.
- **Engaging with others** – working in constructive partnerships to deliver the best outcome for the citizen.
- **Living public service values** – being a value-driven organisation, rooted in Nolan principles and high standards of public life and behaviour, including openness, customer service standards, diversity and engaged leadership.
- **Fostering innovative delivery** – being creative and innovative in the delivery of public services – working from evidence, and taking managed risks to achieve better outcomes.
- **Being a learning organisation** – always learning and always improving service delivery.
- **Achieving value for money** – looking after taxpayers' resources properly, and using them carefully to deliver high quality, efficient services.

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<sup>1</sup> The Welsh Government comprises of the First Minister for Wales, Welsh Ministers appointed under section 48 of Government of Wales Act 2006, the Counsel General and Deputy Welsh Ministers. Most executive functions will be conferred on the Welsh Ministers and so this section concentrates on the Welsh Ministers but it should be noted that in some cases functions may be conferred solely on the First Minister or the Counsel General (but never on Deputy Welsh Ministers).

**1.1.4** Innovative approaches to policy-making and delivery mean that public servants should be prepared to take prudent and well-managed risks. Of course there are occasions where it is necessary to be risk-averse, such as in ensuring that the organisation is not exposed to the risk of fraud. Taking risks is not a licence to ignore or circumvent due process – that is not risk management, it would be a deliberate disregard of the corporate systems and responsibilities to which everyone is required to adhere, irrespective of their position in the organisation. But there are many other areas in the management of public funds where the acceptance of a degree of risk is entirely appropriate and acceptable – provided that the risk is taken on with open eyes, having considered lessons learned from other programmes, carefully considered the nature of the risks and the probable consequences of their materialising, done all that could be done to manage them in advance and having carefully documented the thinking and process which has led to this stage so that a clear-headed decision to proceed has been taken.

**1.1.5** Alongside these corporate aims, every individual working for the public service in Wales has a responsibility to conduct themselves at all times in accordance with the Seven Principles of Public Life – the *Nolan Principles*<sup>2</sup>. These are:

- **Selflessness** – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- **Integrity** – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.
- **Objectivity** – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability** – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness** – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty** – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** – Holders of public office should promote and support these principles by leadership and example.

**1.1.6** Everyone who is active in public life in Wales has a responsibility to behave in accordance with these principles.

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<sup>2</sup> [www.gov.uk/government/publications/the-7-principles-of-public-life](http://www.gov.uk/government/publications/the-7-principles-of-public-life)

# Chapter 2

## Use of Public Funds

This chapter explains the process for Parliamentary and National Assembly for Wales authorisation of public resources. It also explains the key concepts of regularity and propriety.

### 2.1 Conditions for the Use of Public Funds

**2.1.1** The Welsh Ministers have broad powers to direct the business of the Welsh Government. In general, they may do anything that is authorised under the Government of Wales Act 2006, any Assembly Act or Measure or any other enabling legislation.

**2.1.2** HM Treasury controls public expenditure through Departmental Expenditure Limits (DEL), to which the Welsh Government is also subject. There are specific HM Treasury rules about what items “score” against these Limits. Details of these rules and other matters relating to the setting of the National Assembly for Wales budget are set out in Chapter 5 of Managing Welsh Public Money.

**2.1.3** Under Section 125 of the Government of Wales Act 2006, an annual budget motion must be moved by the First Minister or a Welsh Minister to authorise:

- The amount of resources which may be used in the financial year for the services and purposes specified in the motion.
- The amount of resources that may be retained to be used for those services and purposes.
- The amount which may be paid out of the Welsh Consolidated Fund for the specified services and purposes.

**2.1.4** Officials within the Welsh Government need the Welsh Ministers’ consent before undertaking expenditure or committing to other resource consumption. In practice, individual Ministers will vary the amount they delegate to officials according to the size and nature of their Groups.

**2.1.5** In addition, all public bodies in Wales should maintain a framework of internal delegations which gives authority to commit resources and specify the categories and instances where further approval should be sought. This will include transactions which set precedents, are novel, potentially contentious, or could cause repercussions elsewhere in the public sector. Bodies which are sponsored by the Welsh Government will also have a framework of delegations agreed between themselves and the relevant sponsor Branch of the Welsh Government.

**2.1.6** Some legislation calls for the explicit consent of Welsh Ministers to financial commitments, e.g. for certain large projects. In such cases proceeding without Welsh Ministers’ approval is unlawful. In other cases resource consumption without Welsh Ministers’ approval is irregular.

2.1.7 If expenditure is irregular, including any expenditure above the resources voted in the Annual Budget Motion, this must be shown in the Welsh Government's annual resource accounts and the Auditor General for Wales must qualify his opinion on those accounts on grounds of regularity. The National Assembly for Wales can approve a supplementary budget motion to regularise expenditure as long as it was not unlawful.

## 2.2 Regularity and Propriety

2.2.1 The concepts of regularity and propriety, fundamental to the appropriate use of public funds, are set out in box 2.1. The term *regularity and propriety* is often used to convey the idea of probity and ethics in the use of public funds – that is, delivering public sector values in the round, encompassing the qualities set out in the Seven Principles of Public Life, the *Nolan Principles*<sup>3</sup> (as set out in Chapter 1, paragraph 1.1.3).

### Box 2.1: Regularity and Propriety

- Regularity: compliant with the relevant legislation (including EU legislation), delegated authorities and following the guidance in this document.
- Propriety: meeting high standards of public conduct, including robust governance and the relevant parliamentary expectations, especially transparency.

## 2.3 Securing Adequate Legal Authority

2.3.1 Groups in the Welsh Government should ensure that both they and their public bodies have the legal powers for any specific actions they undertake, taking legal advice as necessary.

2.3.2 The use of the Appropriation Act as an authority for committing public expenditure as described in Section 2.5.4 of HM Treasury *Managing Public Money* does not apply to Welsh Government or Welsh public bodies.

## 2.4 New Services

2.4.1 When Welsh Ministers decide on a new activity, the description of the ambit in the National Assembly for Wales' budget motion should be examined to ensure that it is covered. A supplementary budget motion should be sought if the new activity does not clearly fall within the ambit of the funds allocated to the activity. Legal advice should be sought to ensure that any proposed amendments to the budget motion ambits do not include activity which is beyond the powers of Welsh Government under the Government of Wales Act 2006 or subsequent legislation.

2.4.2 Section 128 of the Government of Wales Act 2006 makes provision for expenditure to cover contingencies and emergencies.

<sup>3</sup> [www.gov.uk/government/publications/the-7-principles-of-public-life](http://www.gov.uk/government/publications/the-7-principles-of-public-life)

## 2.5 The Auditor General for Wales and the Wales Audit Office

**2.5.1** Supported by the Wales Audit Office (WAO), the Auditor General for Wales (AGW) helps the National Assembly for Wales scrutinise how public funds have been deployed in practice. Independent of government, the AGW is the external auditor of most public bodies in Wales. To help carry out this important role, the AGW has significant and far reaching powers. Further information about the role of the AGW is available on the WAO website<sup>4</sup>, and in Annex 2.1.

**2.5.2** The AGW provides the National Assembly for Wales with two sorts of audit:

- Financial audit of accounts, covering:
  - Assurance that accounts have been properly prepared and are free from material misstatements.
  - In the case of Welsh Government, confirmation that the underlying transactions have appropriate authority under the National Assembly for Wales budget motion (there is a more generic regularity opinion for most public sector organisations).
- Value for money reports assessing the economy, efficiency and effectiveness with which public money has been used, together with recommendations for making improvements. A programme of these reviews covers a wide variety of subjects over a period, taking account of the risks to value for money and National Assembly for Wales interests.

**2.5.3** The AGW has a general right to inspect the books of a wide variety of public organisations to further audit work. When the AGW examines any public sector organisation, he/she should get full cooperation in provision of papers and other information. It is good practice to draw the AGW's attention to the confidentiality of sensitive documents provided in this process. It is then for the AGW to judge what material can be published in the public interest.

**2.5.4** In addition, the AGW publishes a range of other independent reports. The National Assembly for Wales Public Accounts Committee (PAC) (see section 3.5) may hold hearings to examine evidence on any of these reports and on other related matters.

**2.5.5** The Comptroller and Auditor General, supported by the National Audit Office (NAO), undertakes a similar role to help the UK Parliament scrutinise the use of public funds. Parliament's Committee of Public Accounts (PAC) may hold hearings to examine evidence on any of his/her reports. This is relevant to Wales as some UK level reports (such as Whole of Government Accounts) include contributions from Welsh bodies, which are generally audited by staff of the WAO on behalf of the NAO. If Wales was to be an underlying cause of a qualified opinion by the NAO, both committees would be likely to be concerned.

<sup>4</sup> [www.wao.gov.uk/](http://www.wao.gov.uk/)

# Chapter 3

## Accounting Officers

This Chapter sets out the personal responsibilities of all Accounting Officers in the Welsh Government and in other public bodies in Wales. Essentially Accounting Officers must be able to assure the National Assembly for Wales, UK Parliament and the public of high standards of probity in the management of public funds. The principles outlined in this chapter are incorporated in an Accounting Officer memorandum issued to all Accounting Officers when they are appointed.

### 3.1 Role of the Accounting Officer

**3.1.1** Most public sector organisations in Wales – the Welsh Government, its agencies, the National Assembly for Wales Commission, NHS bodies and Welsh Government Sponsored Bodies (WGSBs) – must have an Accounting Officer. This person is usually its senior executive official.

**3.1.2** Formally, the Accounting Officer in a public sector organisation is the person who the National Assembly for Wales calls to account for the stewardship of resources. The standards the Accounting Officer is expected to deliver are summarised in box 3.1.

### 3.2 Appointment of Accounting Officers

**3.2.1** By virtue of Section 129(6) of the Government of Wales Act 2006, the position of Permanent Secretary to the Welsh Government carries with it the role of Principal Accounting Officer for the Welsh Ministers. HM Treasury specifies the responsibilities of the Principal Accounting Officer, which are set out in a Memorandum under Section 133 of the Government of Wales Act 2006.

**3.2.2** The Permanent Secretary of the Welsh Government has powers under Section 133(2) of the Government of Wales Act 2006 to designate other members of staff of the Welsh Government as Additional Accounting Officers. The responsibilities of Additional Accounting Officers are set out in the Memorandum which will accompany their designation letter. Additional Accounting Officers within the Welsh Government are appointed to be accountable for a Welsh Government Group or to be accountable for a specific function, programme or activity (which may be undertaken within one of the Groups).

**3.2.3** In turn the appropriate Additional Accounting Officer of each Group (or the Permanent Secretary if there is not a relevant Additional Accounting Officer) normally appoints the permanent heads of:

- Its executive agencies, as Accounting Officers for their agencies.
- All its WGSBs<sup>5</sup>, as Accounting Officers for these bodies.
- All its NHS bodies as Accountable Officers for these organisations.

### **3.3 Special Responsibilities of Accounting Officers**

**3.3.1** Each Accounting Officer takes personal responsibility for ensuring that the organisation, Group or activity he or she manages delivers the standards in box 3.1. In particular, the Principal Accounting Officer and Additional Accounting Officer for the NHS in Wales must personally sign:

- The accounts (and the summarised accounts for NHS bodies).
- The annual report.
- The governance statement for which they are responsible (see Annex 3.1).

#### **Box 3.1: Standards expected of the accounting officer's organisation**

Acting within the authority of the Welsh Minister(s) to whom he or she is responsible, the Accounting Officer should ensure that the organisation, Group or activity, and any public bodies sponsored by it, operates effectively and to a high standard of probity. The organisation or Group or activity should:

##### **Governance**

- Have a governance structure which transmits, delegates, implements and enforces decisions.
- Have trustworthy internal controls to safeguard, channel and record resources as intended.
- Work co-operatively with partners in the public interest.
- Operate with propriety and regularity in all its transactions.
- Treat its customers and business counterparties fairly, honestly and with integrity.
- Offer appropriate redress for failure to meet agreed customer standards.
- Give timely, transparent and realistic accounts of its business and decisions, underpinning public confidence.

<sup>5</sup> In certain WGSBs with small budgets, an Accounting Officer in the Welsh Government may be appointed as the Accounting Officer for the WGSB. This is the usual arrangement for advisory bodies and for the Royal Commission for Ancient and Historical Monuments in Wales.

## Decision-making

- Support its Ministers with clear, well reasoned, timely and impartial advice.
- Make all its decisions in line with the strategy, aims and objectives of the organisation set by Ministers and/or in legislation.
- Take a balanced view of the approach to managing opportunity and risk.
- Impose no more than proportionate and defensible burdens on business.

## Financial management

- Use its resources efficiently, economically and effectively, avoiding waste and extravagance.
- Plan to use its resources on an affordable and sustainable path, within agreed limits.
- Carry out procurement and project appraisal objectively and fairly, using cost benefit analysis and seeking good value for the public sector as a whole.
- Use management information systems to secure assurance about value for money and the quality of delivery and so make timely adjustments.
- Avoid over defining detail and imposing undue compliance costs, either internally or on its customers and stakeholders.
- Have practical documented arrangements for working in partnership with other organisations, as appropriate.
- Use internal and external audit to improve its internal controls and performance.

3.3.2 The Accounting Officer of a public body should arrange for a board member to sign the accounts as well as signing them himself or herself if (unusually) he or she is not a member of the board.

3.3.3 There are several other areas where Accounting Officers should take personal responsibility:

- **Regularity and propriety** (see Chapter 2) including seeking approval for any expenditure outside the normal delegations or potentially outside the relevant ambit, and carried through with appropriate disclosures in the annual accounts.
- **Affordability and sustainability**, respecting agreed budgets and avoiding unaffordable longer term commitments, taking a proportionate view about other demands for resources.
- **Value for money**, ensuring that the organisation's procurement, projects and processes are systematically evaluated and assessed to provide confidence about suitability, effectiveness, prudence, quality, good value judged for the public sector as a whole, not just for the Accounting Officer's organisation (e.g. using the HM Treasury Green Book<sup>6</sup> to evaluate alternatives).
- **Management of opportunity and risk** to achieve the right balance commensurate with the organisation's business and risk appetite.

<sup>6</sup> [www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government](http://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government)

- **Learning from experience**, both using internal feedback and from lessons emerging elsewhere.
- **Accounting accurately** for the organisation's *financial position* and *transactions*, to ensure that its published financial information is transparent and up to date and that the organisation's efficiency in the use of resources is tracked and recorded.

**3.3.4** In the case of the Principal Accounting Officer, these responsibilities apply to the business of all Welsh Government Groups and their arms length bodies. Additional Accounting Officers carry out their responsibilities within the overall framework and requirements set down by the Principal Accounting Officer (note paragraph 3.2.2.).

## 3.4 Advice to Welsh Ministers

**3.4.1** Each Accounting Officer is responsible for ensuring that all advice to Ministers to whom they work includes appropriate advice on the proper use of public funds in accordance with the responsibility of the Accounting Officer. The Accounting Officer should bring to the attention of the Minister any perceived conflict between the Minister's intentions and the Accounting Office duties. The Accounting Officer cannot simply accept the Minister's aims or policy without examination. The acid test is whether the Accounting Officer could justify the proposed activity if asked to defend it.

**3.4.2** If a Minister decides to continue with a course which the Accounting Officer has advised against as being incompatible with their responsibilities, the Accounting Officer should notify the Principal Accounting Officer but should also seek to resolve the position through further dialogue with the Minister. If the position cannot be resolved then, ultimately, the Principal Accounting Officer should seek a Direction from the First Minister to proceed as instructed, as set out in the Accounting Officer Memorandum. But all possible steps should be taken beforehand to resolve the position with the Minister.

**3.4.3** However, should a Direction be made then the Principal Accounting Officer should:

- Copy the relevant papers to the Auditor General for Wales (AGW) and the Corporate Governance Unit (CGU) promptly. The AGW will normally draw the matter to the attention of the National Assembly for Wales Public Accounts Committee (PAC). CGU will arrange for existence of the direction to be published in the governance statement, unless the matter must be kept confidential.
- Follow the Minister's direction without further ado.
- If asked, explain the Minister's course of action. This respects Ministers' rights to frank advice, while protecting the quality of internal debate.

## 3.5 National Assembly for Wales Committees

**3.5.1** The appropriate committee may hold public hearings on the accounts of the Welsh Ministers laid before the National Assembly for Wales (see section 2.1.7) and carry out examinations into the economy, efficiency and effectiveness with which Welsh Ministers have used their resources in discharging their functions. In practice, the National Assembly for Wales' Public Accounts Committee takes the lead on this and most committee hearings focus on the Auditor General for Wales' value for money studies (see section 2.5.4). The

AGW will seek to agree the factual accuracy of these reports with the Accounting Officer(s) of the organisation or Group or activity concerned so there is a clear undisputed evidence base for scrutiny.

**3.5.2** When a hearing is scheduled, the Committee normally invites the appropriate Accounting Officer to attend as a witness. An Accounting Officer may be accompanied by appropriate officials. Where it is appropriate, and the Committee agrees, the Accounting Officer may send a substitute. The Public Accounts Committee may also invite other witnesses who may not be public servants to give insight into the background of the subject in hand.

**3.5.3** In answering questions, the Accounting Officer should take responsibility for the organisation's or Group's or activity's business, even if it was delegated or if the events in question happened before he or she was appointed Accounting Officer. In response to specific Public Accounts Committee requests, previous Accounting Officers may also be expected to attend relevant Public Accounts Committee hearings.

**3.5.4** The Committee expects witnesses to give clear, accurate and complete evidence. If evidence is sensitive, witnesses may ask to give it in private. Witnesses may offer supplementary notes if the information sought is not to hand at the hearing. Any such notes should normally be provided within one week unless the Public Accounts Committee is willing to grant an extension.

## **3.6 When the Accounting Officer is Not Available**

**3.6.1** Each public sector organisation must have an Accounting Officer available for advice or decision as necessary at short notice.

**3.6.2** When the Accounting Officer is absent and cannot readily be contacted, another senior official should deputise. If a significant absence is planned, an acting Accounting Officer should be appointed.

## **3.7 Conflicts of Interest**

**3.7.1** Sometimes an Accounting Officer faces an actual or potential conflict of interest. There must be no doubt that the Accounting Officer meets the standards described in box 3.1 without divided loyalties. Possible ways of managing this issue include:

- For a minor conflict, declaring the conflict and arranging for someone other than the Accounting Officer to make a decision on the issue(s) in question.
- For a significant but temporary conflict, appointing an interim Accounting Officer for the period of the conflict of interest.
- For serious and lasting conflicts, resignation (note Annex 3.2).

## 3.8 Public Bodies

**3.8.1** The responsibilities of Accounting Officers in Groups or for activities in the Welsh Government and in public bodies are essentially similar. Accounting Officers in public bodies must also take account of their special responsibilities and powers. In particular, they must respect the legislation (or equivalent) establishing the organisation and terms of the framework document agreed with the sponsor Branch.

**3.8.2** The framework document (or equivalent) agreed between a public body and its sponsor Branch always provides for the sponsor Branch to exercise meaningful oversight of the public body's strategy and performance, pay arrangements and/or major financial transactions, e.g. by monthly returns, standard delegations, exception reporting. Public bodies should refer to their sponsor Branch any issues which appear novel, contentious or repercussive.

**3.8.3** Overall, the Accounting Officer of a sponsoring Group should make arrangements to satisfy himself or herself that the public body has systems adequate to meet the standards in box 3.1. Similarly, the Accounting Officer of a public body with a subsidiary should have meaningful oversight of the subsidiary. It is not acceptable to establish public bodies, or subsidiaries to public bodies, in order to avoid or weaken scrutiny by the National Assembly for Wales.

**3.8.4** Exceptionally, the Accounting Officer of a sponsoring Group may need to intervene if a public body drifts significantly off track, e.g. if its budget is threatened, its systems are badly defective, or it falls into disrepute. This may include replacing some or all of the leaders of the public body, possibly even its Accounting Officer.

**3.8.5** There are sensitivities about the role of the Accounting Officer in a public body which is governed by an independent board, e.g. a charity or a company. The Accounting Officer, who will normally be a member of the board, must take care that his or her personal responsibilities do not conflict with his or her duties as a board member. In particular, the Accounting Officer should vote against any proposal which appears to cause such a conflict; it is not sufficient to abstain.

**3.8.6** Moreover, if the chair or board of such a public body is minded to instruct its Accounting Officer to carry out a course inconsistent with the standards in box 3.1, then the Accounting Officer should make his or her reservations clear, preferably in writing. If the board is still minded to proceed, the Accounting Officer should then:

- Ask the Accounting Officer of the sponsoring Group to consider intervening to resolve the difference of view, preferably in writing.
- If the board's decision stands, seek its written direction to carry it out, and inform the sponsor Branch.
- Proceed to implement without delay.
- Follow the routine in paragraph 3.4.2.

**3.8.7** This routine is similar to what happens in the Welsh Government, allowing for the special position of the organisation's board, which is often appointed under statute.

## 3.9 In the Round

**3.9.1** It is not realistic to set firm rules for every aspect of the business with which an Accounting Officer may deal. Sometimes the Accounting Officer may need to take a principled decision on the facts in circumstances with no precedents. Should that happen, the Accounting Officer should be guided by the standards in box 3.1, assessing whether there is a case for seeking a direction based on any of the factors set out there or in section 3.3. It is essential that Accounting Officers seek good outcomes for the public sector as a whole, respecting the key principles of transparency and National Assembly for Wales' approval for management of public resources.

# Chapter 4

## Governance and Management

Public sector organisations should have good quality internal governance and sound financial management. Appropriate delegation of responsibilities and effective mechanisms for internal reporting should ensure that performance can be kept on track. Good practice should be followed in procuring and managing resources and assets; hiring and managing staff; and deterring waste, fraud and other malpractice. Central Government Departments have some specific responsibilities for reporting.

### 4.1 Governance Structure

**4.1.1** Each public sector organisation should establish governance arrangements appropriate to its business, scale and culture. The structure should combine efficient decision-making with accountability and transparency. Each public sector organisation needs clear leadership, normally provided by a board. Box 4.1 sets out best practice for boards.

#### Box 4.1: Best practice for boards

- Chaired by the organisation's most senior official.
- Has a number of non-executive members and a professionally qualified finance director (see Annex 4.1).
- Meetings at least quarterly.
- Sets the organisation's strategy to implement policy decisions.
- Leads the organisation's business and determines its culture.
- Ensures good management of the organisation's resources – financial, assets, people.
- Decides risk appetite and monitors emerging threats and opportunities.
- Reviews performance to keep it on track using regularly updated information about progress.
- Keeps an overview of its sponsored public bodies activities.

**4.1.2** It is good practice for public bodies to use consistent principles. In many public bodies some structural features, such as board composition, derive from statute but considerable discretion may remain. In some organisations it is usual, or found to be valuable, for the board to include members with designated responsibility or expertise, e.g. for specialist professional skills.

**4.1.3** In order to carry out its responsibilities each board needs to decide, and document, how it will operate. Box 4.2 outlines the key decisions. It is not exhaustive. Once agreed, the working rules should be reviewed from time to time to keep them relevant. Boards should challenge themselves to improve their working methods, so that their processes can achieve and maintain exemplary modern business practice.

#### **Box 4.2: Key decisions for boards**

- Mission and objectives.
- Delegations and arrangements for reporting performance.
- Procedures and processes for business decision making.
- Scrutiny, challenge and control of significant policies, initiatives and projects.
- Risk appetite and risk control procedures, e.g. maintaining and reviewing a risk register.
- Control and management of associated public bodies and other partnerships.
- Arrangements for refreshing the board.
- Arrangements for reviewing the board's own performance.
- Accountability – to the general public, to staff and other stakeholders (see section 4.13).
- How the insights of non-executives can be harnessed.
- How often the board's working rules will be reviewed.

## **4.2 Working Methods**

**4.2.1** The Principal Accounting Officer of the Welsh Government is accountable to the National Assembly for Wales and the UK Parliament for the quality of the administration that he or she leads, taking into account the standards set out in this document as well as the requirements of the Civil Service Code.

**4.2.2** Working with the Principal Accounting Officer, the Director of Finance of the Welsh Government has special responsibility for seeing that the standards described in this chapter are respected. Annex 4.1 sets this out in more detail.

#### **Box 4.3: Essentials of effective internal decision making**

##### **Choice**

- Active management of the portfolio of risks and opportunities.
- Appraisal of alternative courses of action using the techniques in the HM Treasury *Green Book*, and including assessment of feasibility to achieve value for money.
- Where appropriate, use of pilot studies to provide evidence on which to make decisions among policy or project choices.
- Active steering of initiatives e.g. reviews to take stock at critical points of projects.
- Regular risk monitoring, to track changes and make adjustments in response.

## Operation

- Appropriate internal delegations, with a single senior responsible officer (SRO) for each significant project or initiative, and a single senior person leading each end to end process.
- Prompt, regular and meaningful management information on costs (including unit costs), efficiency, quality and performance against targets to track progress and value for money.
- Proportionate administration and enforcement mechanisms, without unnecessary complexity.
- Use of feedback from internal and external audit and elsewhere to improve performance.
- Regular risk monitoring, to track changes and make adjustments in response.

## Afterwards

- Mechanisms to evaluate policy, project and programme outputs and outcomes, including whether to continue, adjust or end any continuing activities.
- Arrangements to draw out and propagate lessons from experience.

## 4.3 Opportunity and Risk

**4.3.1** Embedded in each public sector organisation's internal systems there should be arrangements for recognising, tracking and managing its opportunities and risks. Each organisation's governing body should make a considered choice about its desired risk appetite, taking account of its legal obligations, Ministers' policy decisions, its business objectives, and public expectations of what it should deliver. This can mean that different organisations take very different approaches to the same opportunities or risks.

**4.3.2** There should be a regular discipline of reappraising the opportunities and risks facing the organisation since both alter with time and circumstances, as indeed may the chosen responses. This process should avoid excessive caution, since it can be as damaging as unsuitable risk-taking. The assessment should normally include:

- Maintaining a risk register, covering both bottom up risks and contingent risks from horizon scanning.
- Reputational risks, since poor performance could undermine the credibility, and ultimately, the creditworthiness, of the public sector as a whole.
- Consideration of the dangers of maintaining the status quo.
- Plans for disaster recovery.
- Appraisal of end to end risks in critical processes and other significant activities.

**4.3.3** In making decisions about how to manage and control opportunity and risk, audit evidence and other assurance mechanisms can usefully inform choice. Audit, including internal audit, can provide specific, objective and well-informed assurance and insight to help an organisation evaluate its effectiveness in achieving its objectives. It is good practice for the audit committee to advise the governing body of a public sector organisation on its key decisions on governance and managing opportunities and risks. It is also a good discipline

for this process to include evaluating progress in implementing National Assembly for Wales Public Accounts Committee (PAC) recommendations, where they have been accepted.

**4.3.4** In turn the board should support the Accounting Officer in drawing up the governance statement, which forms part of each organisation's annual accounts, see Annex 3.1. Further guidance about managing risks is in Annex 4.2 and the HM Treasury Orange Book.

## 4.4 Insurance

**4.4.1** In the private sector risk is often managed by taking out insurance. In Central Government it is generally not good value for money to do so. This is because the public sector has a wide and diverse asset portfolio; a reliable income through its ability to raise revenue through taxation; and, at the margin, access to borrowed funds more cheaply than in the private sector. In addition commercial providers of insurance also have to meet their own costs and profit margins. Hence the public purse is uniquely able to finance restitution of damaged assets or deal with other risks, even very large ones. If the government insured risk, it would cost more.

**4.4.2** However, there are some limited circumstances in which it is appropriate for public sector organisations to insure. They include legal obligations<sup>7</sup> and occasions where commercial insurance would provide value for money<sup>8</sup>. Further information about insurance generally is in Annex 4.3.

## 4.5 Control of Public Expenditure

**4.5.1** HM Treasury coordinates a system through which departments and Devolved Administrations are allocated budget control totals for their public expenditure. Welsh Government's allocation covers its own spending and that of the other public sector organisations it funds through grant-in-aid. Within the agreed totals, it has considerable discretion over setting priorities to deliver the public services within Wales for which it is responsible.

**4.5.2** Each public sector organisation should run efficient systems for managing payments (see box 4.4). It should also keep its use of public resources within the agreed budgets, take the limits into account when entering into commitments, and generally ensure that its spending profile is sustainable.

**4.5.3** Any major project, programme or initiative should be led by SRO. It is good practice to aim for continuity in such appointments.

<sup>7</sup> e.g. public sector organisations should insure vehicles where the Road Traffic Act requires it.

<sup>8</sup> e.g. where private sector contractors take out single-site insurance policies because they are cheaper than each individual party insuring themselves separately.

#### **Box 4.4: Essentials of systems for committing and paying funds**

- Selection of projects after appraisal of the alternatives (see the HM Treasury *Green Book*).
- Open competition to select suppliers from a diverse range, preferably specifying outcomes rather than specific products, to achieve value for money (see Annexes 4.5 and 4.6).
- Where feasible, procurement through multi-purchaser arrangements, shared services and/or standard contracts to drive down prices.
- Effective internal controls to authorise acquisition of goods or services (including vetting new suppliers), within any legal constraints.
- Separation of authorisation and payment, with appropriate controls, including validation and recording, at each step to provide a clear audit trail.
- Checks that the goods or services acquired have been supplied in accordance with the relevant contract(s) or agreement(s) before paying for them.
- Payment terms chosen or negotiated to provide good value.
- Accurate payment of invoices: once and on time, avoiding lateness penalties (see Annex 4.7).
- A balance of preventive and detective controls to tackle and deter fraud, corruption and other malpractice (see Annex 4.8).
- Integrated systems to generate automatic audit trails which can be used to generate accounts and which both internal and external auditors can readily check.
- Periodic reviews to benefit from experience, improve value for money or to implement developments in good practice.

## **4.6 Receipts**

**4.6.1** Public sector organisations should have arrangements for identifying, collecting and recording all amounts due to them promptly and in full. Outstanding amounts should be followed up diligently. Key features of internal systems of control are suggested in box 4.5.

**4.6.2** Public sector organisations should take care to track and enforce debts promptly. The presumption should be in favour of recovery unless it is uneconomic to do so.

#### **Box 4.5: Essential features of systems for collecting sums due**

- Adequate records to enable claims to be made and pursued in full.
- Routines to prevent unauthorised deletions and amendments to claims.
- Credit management systems to manage and pursue amounts outstanding.
- Controls to prevent diversion of funds and other frauds.
- Clear lines of responsibility for making decisions about pressing claims increasingly more firmly, and for deciding on any abatement or abandonment of claims which may be merited.
- Arrangements for deciding upon and reporting any write-offs (see Annex 4.9). Audit trails which can readily be checked and reported upon both internally and externally.

## **4.7 Non-standard Financial Transactions**

**4.7.1** From time to time public sector organisations may find it makes sense to carry out transactions outside the usual planned range, e.g.:

- Write-offs of unrecoverable debts or overpayments.
- Recognising losses of stock or other assets.
- Long-term loans or gifts of assets.

**4.7.2** In each case it is important to deal with the issue in the public interest, with due regard for probity and value for money. Annexes 4.9 to 4.11 set out what is expected when such transactions take place in Central Government.

**4.7.3** Where an organisation discovers an underpayment, the deficit should be made good as soon as is practicable and in full. If there has been a lapse of time, for example caused by legal action to establish the correct position, it may be appropriate to consider paying interest, depending on the nature of the commitment to the payee and taking into account the reputation of the organisation and value for money for the public sector as a whole (see also section 4.11).

**4.7.4** Similarly, public sector organisations may have reason to carry out current transactions which would not normally be planned for. These might be:

- Extra contractual payments to service providers.
- Extra-statutory payments to claimants (where a similar statutory scheme exists).
- Ex gratia payments to customers (where no established scheme exists).
- Severance payments to employees leaving before retirement or before the end of their contract and involving payments above what the relevant pension scheme allows.

**4.7.5** Again, it is important that these payments are made in the public interest, objectively and without favouritism. The disciplines the National Assembly for Wales and Parliament expects of Central Government entities are set out in Annex 4.12, which explains the notification procedure to be followed for larger one-off transactions of this kind. The steps to be considered when setting up statutory or extra-statutory compensation schemes are discussed in Annex 4.13.

## 4.8 Unusual Circumstances

**4.8.1** Sometimes public sector organisations face dilemmas in meeting their commitments. They may have a legal or business obligation which would be uneconomic or inappropriate to carry out assiduously to the letter. In such cases it can be justifiable to seek a pragmatic, just and transparent alternative approach, appropriately reported to the National Assembly for Wales and Parliament in the organisation's annual accounts. One-off schemes of this kind are always novel and so require legal advice and financial approval. Box 4.6 suggests precedented examples.

### Box 4.6: Examples of one-off pragmatic schemes

- A court ruling could mean that a public sector organisation owed each of a large number of people a very small sum of money. The cost of setting up and operating an accurate payment scheme might exceed the total amount due. The organisation could instead make a one-off payment of equivalent value to a charity representing the recipient group.
- A dispute with a contractor might conclude that the contractor owed a public sector organisation an amount too big for it to meet in a single year while staying solvent. The customer might instead agree more favourable payment terms, with appropriate safeguards, if this arrangement provides better value for money.

## 4.9 Staff

**4.9.1** Each public sector organisation should have sufficient staff with the skills and expertise to manage its business efficiently and effectively. The span of skills required should match the organisation's objectives, responsibilities and resources, balancing professional, practical or operational skills and policy makers, and recognising the value of each discipline. Succession and disaster planning should ensure that the organisation can cope robustly with changes in the resources available, including unforeseen disruption.

**4.9.2** Public sector organisations should seek to be fair, honest and considerate employers. Some desirable characteristics are suggested in box 4.7.

**4.9.3** Similarly public sector employers have a right to expect good standards of conduct from their employees. The qualities and standards expected of civil servants are set out in the *Civil Service Code*. Other public sector employees should strive for similar standards, appropriate to their context.

#### **Box 4.7: Public sector organisations as good employers**

- Selection designed to value and make good use of talent and potential of all kinds.
- Fairness, integrity, honesty, impartiality and objectivity.
- Professionalism in the relevant disciplines, always including finance.
- Arrangements to make sure that staff are loaded cost effectively.
- Management techniques balancing incentives to improve and disciplines for poor performance.
- Diversity valued and personal privacy respected.
- Mechanisms to support efficient working practices, both normally and under pressure.
- Arrangements for whistle blowers to identify problems privately without repercussions.

### **4.10 Assets**

**4.10.1** All public sector organisations own or use a range of assets. Each organisation needs to devise an appropriate asset management strategy to define how it acquires, maintains, tracks, deploys and disposes of the various kinds of assets it uses. Annex 4.14 discusses how to set up and use such a strategy.

**4.10.2** It is good practice for public sector organisations to take stock of their assets from time to time and consider afresh whether they are being used efficiently and deliver value for public funds. If there is irreducible spare capacity there may be scope to use part of it for other government activities, or to exploit it commercially for non-statutory business.

### **4.11 Standards of Service**

**4.11.1** Poor quality public services are not acceptable. Public sector organisations should define what their customers, business counterparties and other stakeholders can expect of them.

**4.11.2** Standards can be expressed in a number of ways. Examples include guidelines (e.g. response times), targets (e.g. take-up rates) or a collection of customer rights in a charter. Even where standards are not set explicitly, they may sometimes be inferred from the way the provider organisation carries out its responsibilities; so it is normally better to express them directly.

**4.11.3** Whatever standards are set, they should be defined in a measurable way, with plans for recording performance, so that delivery can be readily gauged. It is good practice to use customer feedback, including complaints, to reassess from time to time whether standards or their proxies (milestones, targets, outcomes) remain appropriate and meaningful.

**4.11.4** Where public sector organisations fail to meet their standards, or where they fall short of reasonable behaviour, it may be appropriate to consider offering remedies. These can take a variety of forms, including apologies, restitution (e.g. supplying a missing licence) or, in more serious cases, financial payments. Decisions about financial remedies – which should not be offered routinely – should include taking account of the legal rights of the other party or parties and the impact on the organisation's future business.

**4.11.5** Any such payments, whether statutory or ex gratia, should follow good practice (see section 4.12). Since schemes of financial redress often set precedents or have implications elsewhere, they should be cleared with finance colleagues before commitments are made, just as with any other public expenditure out of the normal pattern (see sections 2.1 to 2.2).

## 4.12 Complaints

**4.12.1** Those public sector organisations which deal with customers directly should strive to achieve clear, accurate and reliable standards for the products and services they provide. It is good practice to arrange for complaints about performance to be reviewed by an independent organisation such as an ombudsman.

**4.12.2** Often such review processes are statutory. The Public Services Ombudsman for Wales<sup>9</sup> (PSOW) may investigate complaints against a wide range of public bodies in Wales that have not acted properly or fairly, or have provided a poor service. In the light of the investigation of a case, the PSOW decides whether those complaining have suffered injustice or hardship because of maladministration or service failure, and whether any injustice or hardship has been, or will be, remedied. The PSOW's view is final (although is not binding in the way a court order would be), subject to judicial review by the courts.

**4.12.3** Where maladministration or service failure is found, the PSOW may recommend that the public organisation concerned should provide redress for those complaining; and for any others who may have suffered in the same way. Further guidance about redress is at Annex 4.13.

## 4.13 Transparency

**4.13.1** All public sector organisations should operate as openly as is compatible with the requirements of their business. In line with the statutory public rights, they should make available timely information about their services, standards and performance. This material should strike a careful balance between protecting confidentiality and open disclosure in the public interest.

**4.13.2** All public sector organisations should adopt a publication scheme routinely offering information about the organisation's activities. They should also publish regular information about their plans, performance and use of public resources.

**4.13.3** The published information should be in sufficient detail, and be sufficiently regular, to enable users and other stakeholders to hold the organisation and its Ministers to account. Benchmarks can help local users to evaluate local performance more easily.

**4.13.4** The primary document of record for Central Government Departments is the report and accounts. It should include a governance statement (see Annex 3.1) discussing how the department is controlled and organised; how it deals with its associated local organisations such as local authorities and the NHS; and an assessment of the risks it faces together with a discussion of how they are being dealt with.

<sup>9</sup> e.g. Freedom of Information Act 2000, Data Protection Act 1998, Environmental Information Regulations 2004 and the Re-use of Public Sector Information Regulations 2005.

**4.13.5** In addition, HM Treasury is responsible for publishing certain aggregate information about use of public resources, for example Whole of Government Accounts (WGA) consolidating all central and local government organisations' accounts and comparisons of outturn with budgets. The Office for National Statistics (ONS) also uses input from data gathered by HM Treasury to publish the national accounts.

**4.13.6** In certain areas of public business it is also important or desirable to provide adequate public access to physical assets. Unnecessary or disproportionate restrictions should be avoided. Managed properly, this can be a valuable mechanism to promote inclusion and enhance public accountability.

## 4.14 Dealing with Initiatives

**4.14.1** Public sector organisations need to integrate all the advice in this handbook when introducing new policies or planning projects. Each is unique and will need bespoke treatment. The checklist in box 4.8 brings the different factors together. It applies directly to Central Government organisations but the principles will be of value elsewhere.

### Box 4.8: Factors to consider when planning policies or projects

#### Design

- Has the proposal been evaluated against alternative options, including doing nothing?
- Should there be pilot testing before full roll out?
- Are the controls agreed and documented clearly?
- Have the risks and opportunities been considered systematically? What dangers are there in doing nothing?
- Is the change process resilient to shocks? What contingencies might arise?
- Is the intended intervention proportionate to the identified need?
- What standards should be achieved? How will performance be tracked and assessed? Could the proposal be simplified without loss of function?
- If partner(s) are involved, is the allocation of responsibilities appropriate?
- Will the proposal be efficient, effective and offer good value for money?
- Is the policy sustainable in the broadest sense? Should it have a sunset clause?
- Does the planned activity meet high standards of probity, integrity and honesty?
- Will the proposal deliver the desired outcome to time and cost?

#### Control

- How will internal governance and delegation work? Will it be effective? Is it transparent? Should there be an SRO?
- Is there adequate legislation? If not, what is needed to make the action lawful?
- Is there any conflict with European law, including limits on state aids?
- How will the proposal be financed? Is there budget and estimate cover? Is it appropriate to charge to help finance the service? Are charges set within the law?
- Is the proposed action within the department's delegated authorities?

- What financial techniques will be used to manage rollout, implementation and operation?
- Are project and programme management techniques likely to be useful?
- How will the intended new arrangements be monitored and efficiency measured?
- How will feedback be used to improve outcomes?
- Does the design inhibit misuse and counter fraud? What safeguards are needed?
- How will the associated risks be tracked and the responses adjusted?
- What intervention will be possible if things go off track?
- Would it be possible to recover from a disaster promptly?

### **Accountability**

- How should the National Assembly for Wales be told and kept informed of the proposal?
- What targets will be used? Are they sufficiently stretching?
- Is public access called for? How?
- Is the policy or service fair and impartial?
- Will its administration be open, transparent and accessible?
- Should there be customer standards? How are complaints used to improve performance?
- Should there be arrangements for redress after poor delivery?
- Is enforcement required? If so, is it proportionate?
- Is an appeal mechanism needed?
- Is regulation called for?

### **Learning lessons**

- What audit arrangements (internal and external) are intended?
- What information about the activity will be published? How and how often?
- When and how will the policy or project be evaluated to assess its cost and benefits and to determine whether it should continue, be adjusted, replaced or ceased?

# Chapter 5

## Funding

This chapter explores the means by which Welsh Government organisations may obtain funds to allow them to commit and use resources.

### 5.1 The Framework for Public Expenditure Control

**5.1.1** Resource budgets for public expenditure are allocated among UK Central Government Departments through a central process of spending reviews (held every two or three years) operated by HM Treasury. These budgets may be adjusted subsequently in UK Budgets and UK Autumn Statements. The control total for each Central Government Department is its share of total managed expenditure (TME), composed of a departmental expenditure limit (DEL) and annually managed expenditure (AME). The Welsh Government also receives control totals from HM Treasury in the same way as Central Government Departments. The DEL of the Welsh Government is adjusted using the Barnett Formula (see box 5.1).

#### Box 5.1: Elements of resource budgets

**Departmental expenditure limits (DEL):** provision planned and managed over three years, with scope (subject to HM Treasury agreed limits) to carrying forward unspent provision from one year into the next through the Budget Exchange mechanism. This provides a degree of flexibility, to encourage setting priorities and deter end-year surges in spending. The DEL usually comprises most of each Group's budget.

**Annually managed expenditure (AME):** expenditure which is not so readily controlled as is DEL, but which must be budgeted for each year, including demand-led social security expenditure and local authority expenditure financed from local taxation.

Both DEL and AME include separate limits on revenue and capital expenditure with items such as depreciation and impairment charges being ring fenced with revenue budgets.

**Barnett Formula:** this formula is used to adjust the DEL allocations of the Devolved Administrations. Slightly simplified, the formula consists of three elements:

- The increase in the DEL of the Whitehall Department.
- The population proportion of Wales compared to England.
- A comparability factor – this is the extent to which the devolved administration is responsible for certain departmental functions, e.g. the devolved administrations have a 0% comparability for Defence whilst Health is almost 100%.

An example of how the formula works is as follows:

The Department of Health receives an additional £10 million. This translates to Wales as £10m x 5.759% (population proportion) x 99.1% (comparability). Wales will therefore receive £570k.

**5.1.2** There are differences between what scores against DEL limits and what scores against the ambits in the National Assembly for Wales budget motion, and these are set out in each budget motion as a reconciliation between Administrative Budget and Resource Allocations (as approved by the National Assembly for Wales.)

**5.1.3** Subject to approval by a budget motion in the National Assembly for Wales, Welsh Government allocates its budget across its responsibilities, cascading provision to those who receive grants from it. These include Welsh Government Sponsored Bodies (WGSBs) and local government recipients. Annex 5.1 discusses the principles on which grants (for specific purposes) and grants-in-aid (unspecific support) should be based. In general it is sensible to consider arrangements for protecting Welsh Government's interest through claw-back of specific grants should the purposes for which they are agreed not materialise (see Annex 5.2).

**5.1.4** Within the resource budgeting framework, a variety of mechanisms are used to encourage the wise and effective deployment of public expenditure to meet Welsh Government's objectives, including:

- Administration budgets: the separate identification and monitoring of the amount of DEL provision used for basic support services such as salaries.
- Asset management strategies: plans to build and manage capital stock through investment.
- Group's strategic objectives: performance targets for public services such as waiting times, crime rates or educational standards.

**5.1.5** Resource budgets are not set in cash. Derived from Group budgets, they use the accruals approach on which resource accounts are based. So they include elements to measure resource consumption such as depreciation, and charges for goods/services consumed even if the bill has not yet been paid (accruals).

## **5.2 Parliamentary Estimates and their Relationship to Wales**

**5.2.1** The agreed resource budgets of Devolved Administrations do not of themselves confer authority to spend or commit resources. That requires the UK Parliamentary agreement through the Supply Estimate process. Departmental Estimates containing one or more Requests for Resources (RfRs) and Ambit descriptions are put to Parliament covering one financial year at a time. The Ministry of Justice includes the provision for Wales. The Wales Office is funded through this RfR and the remaining large majority of that block goes into the Welsh Consolidated Fund (WCF), through which the following are funded or part-funded:

- Welsh Government
- Public Services Ombudsman for Wales (PSOW)
- The Assembly Commission
- The Wales Audit Office (WAO).

**5.2.2** The Welsh Consolidated Fund (WCF) is administered by the Welsh Government, which must have authorisation from the Auditor General for Wales (AGW) to make payments from the WCF to the bodies above. It must also produce accounts for the WCF each year, which are audited by the AGW.

**5.2.3** The Parliamentary Ambit applicable to Wales (describing what the funds allocated by Parliament may be spent on) is very broad and contains far less detail than other departmental ambits.

**5.2.4** Agreed Estimate provision approved by Parliament for one year cannot be carried forward to the next. If the department needs to spend resources it did not consume in a previous year, and provided the budget will allow, authority to spend in a subsequent year must be requested afresh.

**5.2.5** The Accounting Officers of the Devolved Administrations have an important role in overseeing the overall accuracy of the presentation of the amounts presented in Estimates. In particular, Accounting Officers are responsible for ensuring that actual spending is regular and proper, represents value for money (see box 2.1), and does not exceed the amount of Estimate provision. HM Treasury presents Parliament each year with a Statement of Excesses to request retrospective authority for the unauthorised resources (or cash) consumed above the relevant limits.

**5.2.6** Expenditure in excess of provision is to be avoided since the authority of an Appropriation Act is required. It is possible, with HM Treasury agreement, to amend the limits within an Estimate during the course of the year through the Supplementary Estimates process. Changes to Estimates include transfers from the HM Treasury Reserve or between Government Departments or through the carry-forward of budgets through the Budget Exchange Mechanism. However, unplanned requests to HM Treasury to access to the Reserve by a Devolved Administration might be seen as a failure in financial control unless exceptional circumstances apply.

**5.2.7** The Comptroller and Auditor General (C&AG) reports excess expenditure on a vote to Parliament. Their Public Accounts Committee (PAC) may seek to examine the responsible Accounting Officers to see whether there is evidence of some underlying weakness of control. This practice still holds for the Devolved Administrations (see Section 136 of the Government of Wales Act 2006 and contrast with Section 143).

## **5.3 Setting the Budget of the Welsh Government**

**5.3.1** Each of the Devolved Administrations operates under their own procedures for allocating the resources voted to them by Parliament. The Government of Wales Act (GoWA) 2006 and Standing Order 20 sets out the requirements relating to Wales. Welsh Government's Budget structure does not utilise the same structure operated by the Parliamentary Estimates process but uses a system of Ambits (resources allocated to defined areas of activity and specific bodies funded through the WCF) since the implementation of GoWA 2006.

**5.3.2** Every year, the Welsh Government and Assembly Commission will lay a Draft Budget before the National Assembly for Wales detailing the resources required for the following financial year (and subsequent two years where appropriate). The Auditor General for Wales/Wales Audit Office (AGW/WAO) and Public Services Ombudsman for Wales (PSOW) will also present an estimate of their resource requirements for the following financial year. These budgets will be scrutinised by the Finance Committee. There will normally follow a debate on the Draft Budget during a plenary session of the National Assembly for Wales.

**5.3.3** The Welsh Government will subsequently table an Annual Budget Motion (ABM) incorporating the Final Budgets of the Welsh Government and Assembly Commission and budget estimates for the AGW/WAO and PSOW. The ABM will include the Ambits within which income and expenditure is authorised and provide details of the resource and cash limits.

**5.3.4** It is important that the Ambit descriptions for each Major Expenditure Group (MEG) adequately cover the services and purposes to which resources will be committed. If the AGW does not consider that a particular activity is fairly represented in the Ambit then the AGW may qualify the annual accounts of the Welsh Government on the grounds that Welsh Ministers have incurred expenditure which was not authorised by the National Assembly for Wales. Expenditure incurred over and above the resources allocated against the Welsh Government's overall Ambit should also be avoided or the AGW will qualify his "regularity" audit opinion on the grounds that unauthorised expenditure has been incurred. The out-turn against each MEG is also reported in the annual accounts and under the Additional Accounting Officer arrangements operated by the Welsh Government the respective Additional Accounting Officer may be called on to explain any breaches of individual MEG resource limits or insufficient Ambit cover to the Public Accounts Committee of the National Assembly for Wales.

**5.3.5** Under GoWA 2006, similar controls described above apply to income. Each Ambit describes the source of the income (referred to as accruing resources) and the services and purposes for which it may be used. Any excess income should be returned to the WCF unless the approval of the National Assembly for Wales is obtained via a supplementary Budget motion. As with expenditure, each income Ambit should provide a fair representation of the activities generating the income and the services and purposes for which it is to be used.

## **5.4 Supplementary Budgets**

**5.4.1** At any time after the Annual Budget Motion, Welsh Ministers may table a Supplementary Budget. If agreed, the Supplementary Budget will replace the preceding budget voted on by the National Assembly for Wales. A Supplementary Budget is necessary where:

- Any allocations through the Budget Exchange Mechanism or Unallocated Reserves are being made.
- Any transfers of funding between Ambits are needed.
- Any changes in expected income that need to be retained by Groups are being made.
- Any changes to Ambit descriptions or Resource Limits are being made, for example the transfer of a new function to Wales together with any associated resources, or any changes in cash requirements from the WCF are needed.

## **5.5 Commitments**

**5.5.1** Political commitments by Ministers generally entail a need for resource consumption. So all policy commitments should be scrutinised and appraised as stringently as specific proposals for resource consumption.

## 5.6 Tax

**5.6.1** Public sector organisations should not engage in, or conspire at, tax evasion, tax avoidance or tax planning. If a public sector organisation was to obtain financial advantage by moderating the tax paid by a contractor, supplier or other counterparty, it would usually mean that the public sector as a whole would be worse off – thus conflicting with the Accounting Officer's duties (see section 3.3). Thus artificial tax avoidance schemes should normally be rejected. It should be standard practice to consult HM Revenue and Customs (HMRC) about transactions involving non-standard approaches to tax before going ahead.

**5.6.2** There is of course no problem with using tax advisers to help meet normal legitimate requirements of carrying on public business. These include administration of VAT, PAYE and NICs, where expert help can be useful and efficient.

## 5.7 Public Dividend Capital

**5.7.1** Certain public sector businesses, notably trading funds, are set up with public dividend capital (PDC) in lieu of equity. Like equity, PDC should be serviced, though not necessarily at a constant rate.

**5.7.2** PDC is not a soft option; in view of the risk it carries, it should deliver a rate of return equal to, or greater than, equivalent National Loans Fund (NLF) loans. There is scope for the return to vary, e.g. to reflect market conditions and investment patterns; but persistent underperformance against the agreed rate of return should not be tolerated.

**5.7.3** Welsh Government needs approval from HM Treasury to invest PDC into an arm's length public sector body, who may report it to Parliament. Sometimes, instead of a specific issue of PDC, the legislation establishing (or financially reconstructing) a public sector business deems an issue of PDC to the new business. Dividends on PDC, and any repayments of PDC, are paid to the sponsors of the business.

## 5.8 Borrowing by Public Sector Organisations

**5.8.1** Some public sector organisations, e.g. certain trading funds, are partly financed through loans provided through the sponsor Groups in Welsh Government or from the NLF. HM Treasury consent and specific legal powers are always required. Limits and other conditions are common. The NLF has limited application in Wales but if further information is needed, Section 5.8 and Annex 5.5 of HM Treasury's Managing Public Money refer.

**5.8.2** Every loan should be made with the condition that it will be serviced and repaid on the agreed schedule. Groups and other organisations are responsible for scrutinising borrowers' creditworthiness, not just relying on their track record. Should a sponsor Group become aware of concerns about the security of outstanding loans, it should warn the Director of Finance promptly and consider what action it can take to reduce or otherwise mitigate any potential loss.

## 5.9 External Borrowing

**5.9.1** Welsh Ministers have limited borrowing powers for capital investment which are subject to strict controls. A strategic approach is applied to borrowing within Welsh Government (including arm's length bodies) and all borrowing commitments are agreed by Welsh Ministers.

## 5.10 Multiple Sources of Funding

**5.10.1** Sometimes public sector organisations derive funding from more than one source. Examples of funding other than voted funds include lottery funding and charitable funding and these alternatives usually come with specific conditions attached.

**5.10.2** Organisations in this position should segregate and account separately for the different streams of funding so that they can apply the relevant terms and conditions to each. In particular, where a source of funding is designated to a particular purpose, it is rarely appropriate to use another instead. When there is doubt about how to handle multiple streams of funding, it is good practice to consult with finance colleagues.

## 5.11 Cash Management

**5.11.1** The various organisations in UK Central Government together handle very large flows of public funds every working day. At the end of each working day, the Exchequer must either borrow from the money market or place funds on deposit with the money market, depending on the net position reached after balancing outflows to finance expenditure against inflows from taxes and other receipts.

**5.11.2** So there is considerable advantage to be gained for the public sector as a whole by minimising this net position. In practice this means gathering balances together at the end of each working day. Together all these accounts make up the Exchequer Pyramid managed by HM Treasury. Most are held with the Government Banking Service.

**5.11.3** It is essential for public sector organisations to minimise the balances in their own accounts with commercial banks. Were each to retain a significant sum in its own account with such banks, the amount of net government borrowing outstanding on any given day would be appreciably higher, adding to interest costs and hence worsening the fiscal balance.

**5.11.4** Each organisation in the Welsh Government should establish a policy for its use of banking services.

## 5.12 Other Financing Techniques

**5.12.1** Depending on its circumstances, vires, purposes and risk profile, a public sector organisation may consider using financial instruments provided by the commercial markets. Among these techniques are foreign currency transactions and various hedging instruments designed to control or limit business risks, for example those arising out of known requirements for specific future purchases of market priced commodities. Another possibility is permitting payments by various electronic means, including credit cards.

**5.12.2** As with making decisions about other policies and projects, an organisation considering using unfamiliar financing techniques should evaluate them carefully. *HM Treasury's Managing Public Money* Section 5.12 offers further guidance on this.

# Chapter 6

## Fees, Charges and Levies

Charges for services provided by public sector organisations normally pass on the full cost of providing those services. There is scope for charging more or less than this provided that the relevant Ministerial approval is given and there is full disclosure. Public sector organisations may also supply commercial services on commercial terms designed to work in fair competition with private sector providers. The Welsh Government expects proper controls over how, when and at what level charges may be levied.

### 6.1 Why Charges Matter

**6.1.1** Certain public goods and services are financed by charges rather than from general taxation. This can be a rational way to allocate resources because it signals to consumers that public services have real economic costs. Charging can thus help prevent waste through badly targeted consumption. It can also make comparisons with private sector services easier, promote competition, develop markets and generally promote financially sound behaviour in the public sector.

**6.1.2** There are unavoidable reasons why policy on charging is important:

- Charges substitute for taxation (or, in the short term, borrowing) as a means of Government finance. Decisions on charging policy should therefore be made with the same care, and to similar standards, as those on taxation.
- For this reason, there may be a need to consider legislation on whether charges should be made, how they should be structured, and on charge levels.
- International standards determine how income from charges is classified in the national accounts.

**6.1.3** As in other areas of managing public funds, Parliament and the National Assembly for Wales expects the Welsh Government to make sure that its interests are respected, including pursuit of efficiency and avoidance of waste or extravagance. Because budgets are shown net of income, special effort is required to give the National Assembly for Wales information about both gross and net costs and about the sources and amounts of income.

### 6.2 Basic Principle

**6.2.1** The standard approach is to set charges to recover full costs. Cost should be calculated on an accruals basis, including overheads, depreciation (e.g. for start up or improvement costs) and the cost of capital. Annex 6.1 sets out how to do this.

**6.2.2** This approach is simply intended to make sure that public organisations neither profits at the expense of consumers nor makes a loss for taxpayers to subsidise. It requires honesty about the policy objectives and rigorous transparency in the public interest.

**6.2.3** As elsewhere, organisations supplying public services should always seek to control their costs so that public money is used efficiently and effectively. The impact of lower costs should normally be passed on to consumers in lower charges. Success in reducing costs is no excuse for avoiding the principles in this guidance.

**6.2.4** This chapter applies to all fees and charges set by Welsh Ministers and by an extensive range of public bodies in Wales: Welsh Government Sponsored Bodies (WGSBs), the NHS and subsidiary companies. Sponsors should be able to satisfy themselves that their public bodies can deliver the financial objectives for the services they charge for. This chapter also applies when one public organisation supplies another with goods or services and to certain statutory local authority charges set by Welsh Ministers.

## **6.3 Setting a Charge: Standard Practice**

**6.3.1** The Welsh Government requires power in legislation in order to set a fee for a service it may provide. This is because the Welsh Ministers only have the legal power to do that which legislation enables them to do whether such power is stated expressly on the face of the legislation or is necessarily implied. If there is any doubt, Legal Services should be consulted.

**6.3.2** Such power may be acquired in the following ways:

- In or under<sup>10</sup> a UK Parliament Act conferring powers on the Welsh Ministers.
- By means of a Transfer of Functions Order under Section 58 of the Government of Wales Act 2006 transferring a Minister of the Crown and/or HM Treasury function exercisable in relation to Wales to the Welsh Ministers.
- In or under an Assembly Measure or an Act of the Assembly.
- In or under prerogative instruments such as Royal Charters or Royal Warrants.
- In or under subordinate legislation made under Section 2(2) of the European Communities Act 1972.
- In subordinate legislation made under Section 56 of the Finance Act 1973.<sup>11</sup>

**6.3.3** Exercise of the power to make a charge may require approval of HM Treasury, depending upon how the power has been vested in the Welsh Ministers. For advice on the power to charge you should contact Legal Services.

**6.3.4** When deciding the level of a charge, it is important to define:

- The range(s) of services for which a charge is to be made.
- How any categories of service are to be differentiated, if at all, in setting charges.

**6.3.5** The standard approach is that the same charge should apply to all users of a defined category of service, so recovering full costs for that category of service. Different charges may be set for objectively different categories of service costing different amounts to provide. Box 6.1 shows how this can work.

<sup>10</sup> Such a power may be conferred "under" an Act if the Act itself confers a power to make subordinate legislation and that power is wide enough to enable the conferral of such a power on the Welsh Ministers.

<sup>11</sup> By virtue of Section 59(5) of the Government of Wales Act 2006.

### **Box 6.1: How different charges can apply to different categories of service**

Different categories could be recognised by:

- Distinguishing supply differences, e.g. in person, by post or online.
- Priorities, e.g. where a quicker service costs more.
- Quality, e.g. charging more for a premium service with more features.
- Recognising structural differences, where it costs more to supply some consumers.

**6.3.6** However, different groups of customers should not be charged different amounts for a service costing the same, e.g. charging firms more than individuals. Similarly, cross subsidies are not standard practice, e.g. charging large businesses more than small ones where the cost of supply is the same.

**6.3.7** It is often helpful to consult the Welsh Government as the categories to bear different charge levels are developed. This is essential if the proposed arrangements entail any features which could affect other parts of Welsh Government or set precedents for it. This applies to staff both within Welsh Government and other public bodies.

**6.3.8** Annex 6.1 contains guidance about how full cost should be measured for the purpose of setting charges. Special rules apply to charges for information services: see Annex 6.2 and Section 69 of the Government of Wales Act 2006. Information may be provided free or at low charge in the public interest. This approach recognises the value of helping the general public obtain the data it requires.

**6.3.9** If Welsh Ministers decide on a financial target short of full cost recovery, there should be a plan to achieve full cost recovery within a reasonable period. If this is not intended, it is important to decide (and document) clearly why and how long any deliberate public subsidy should last. The responsibility to advise Welsh Ministers falls to the Accounting Officer to protect public funds and state aid rules should also be considered.

**6.3.10** Charges within and among public sector organisations should normally also be at full cost, including the standard cost of capital. Any different approach would cause one party to make a profit or loss not planned in agreed budgets; while the customer organisation(s) would conversely face charges higher or lower than full costs. A number of objectionable consequences might flow from this. For instance, a question of state aid could arise or private sector consumers of the customer organisation might be charged distorted fees.

**6.3.11** Shared services (see box 6.2) are a special case of charging within the public sector.

### **Box 6.2: Shared services**

It is often possible to make economies of scale by arranging for several public service organisations to join together to deliver services cheaper, e.g. by using their joint purchasing power. One organisation supplies the other(s). Since all the parties should lower their costs, the Accounting Officer of each organisation should have no difficulty in recognising improved value for money and so justify going ahead.

Public sector organisations supplying (or improving) shared services should consult the Welsh Government at an early stage of planning. Typically, supplier organisations face the cost of setting up provision on a larger scale than they need for their own use. As with setting up any new service, plans in budgets should amortise initial costs so that they can be recovered over an appropriate period from the start of the service. More detail on shared services is in section 7.5.

It is not acceptable for supplier organisations to plan to profit from, or subsidise, supply to customer organisations in the public sector. Nor is it acceptable for accounting officers to resist shared services just because the impact on their own organisation is not perceived to be favourable.

## **6.4 Setting a Charge: Non-Standard Approaches**

**6.4.1** Welsh Ministers' policy objectives for a service where a charge is levied may not fit the standard model in section 6.3. In such cases it may be possible to deliver the policy objective in another way. Some ways of doing this are described below. Explicit Welsh Government consent, and often formal legal authority, is always required for such variations. It is desirable to consult the Welsh Government at an early stage to make sure that the intended strategy can be delivered.

### **Charging below cost**

**6.4.2** Where Welsh Ministers decide to charge less than full cost, there should be an agreed plan to achieve full cost recovery within a reasonable period. Each case needs to be evaluated on its merits and obtain Welsh Government clearance. If the subsidy is intended to last this decision should be documented and periodically reconsidered.

### **Charging above cost**

**6.4.3** The Office for National Statistics (ONS) normally classifies charges higher than the cost of provision, or not clearly related to a service to the charge payer, as taxes. Such charges always call for an explicit relevant Welsh Ministerial decision as well as specific statutory authority. The Welsh Government does not automatically allow budgets for net expenditure associated with above cost charges. Netting off, or netting off up to full costs, may be agreed in certain instances, considering each case on its merits.

**6.4.4** Sometimes, when a change of this kind is classified as tax, there is a proposal to assign its revenue. All proposals of this kind are treated with caution and should be referred to the Welsh Government for approval.

## Cross Subsidies

**6.4.5** Cross subsidies always involve a mixture of overcharging and undercharging, even if the net effect is to recover full costs for the service as a whole. So cross subsidised charges are normally classified as taxes. They always require appropriate legislation and Welsh Ministers' explicit authority.

## Information Services

**6.4.6** In the public interest, information may be provided free or at low charge. This approach recognises the value of helping the general public obtain the data they require to function in the modern world. There are some exceptions – see Annex 6.2.

## 6.5 Levies

**6.5.1** Levies may be justified in the wider public interest, not because they provide a direct beneficial service to those who pay them. Depending on the circumstances the Welsh Government may allow regulators to retain the fees charged if this approach is efficient and in the public interest.

**6.5.2** As with other fees and charges, levies should be designed to recover full costs. If the legislation permits, the charge can cover the costs of the statutory body e.g. a Regulator could recover the cost of registration to provide a license and of associated supervision. It may be appropriate to charge different levies to different kinds of licensees, depending on the cost of providing different kinds of licenses (see box 6.1).

## 6.6 Commercial Services

**6.6.1** Some public sector services are discretionary, i.e. no statute underpins them. Services of this kind are often supplied into competitive markets, though sometimes the public sector supplier has a monopoly or other natural advantage.

**6.6.2** Charges for these services should be set at a commercial rate. The rate should deliver a commercial return on the use of the public resources deployed in supplying the service. So the financial target should be in line with market practice, using a risk weighted rate of return on capital relevant to the sector concerned. The rate of return used in pricing calculations for sales into commercial markets should be:

- For sales into commercial markets, in line with competitors' assessment of their business risk, rising to higher rates for more risky activities.
- Where a public sector body supplies another, or operates in a market without competitors, the standard rate for the cost of capital (see Annex 6.1).

**6.6.3** If a publicly provided commercial service does not deliver its target rate of return, outstanding deficits should be recovered, e.g. by adjusting charges. Any objective short of achieving the target rate of return calls for Welsh Ministers' agreement, and should be cleared with the Welsh Government. But discretionary services should never undermine the supplier organisation's public duties, including its financial objective(s).

**6.6.4** It is important for public suppliers of commercial services to respect competition law. Otherwise, public services using resources acquired with public funds might disturb or distort the fair operation of the market, especially where the public sector provider might be in a dominant position: see Annex 6.3.

## 6.7 Disclosure

**6.7.1** It is important that parliament and the National Assembly for Wales is fully informed about use of charges. Each year the annual report of the charging organisation should give:

- The amounts charged.
- Full costs and unit costs.
- Total income received.
- The nature and extent of any subsidies and/or overcharging.
- The financial objectives and how far they have been met.

**6.7.2** To keep the National Assembly for Wales properly informed, the budget motion should display details of expected income from charges.

**6.7.3** The Financial Reporting Manual (FReM) published by HM Treasury sets out the information public sector organisations should publish in their accounts. This information should include analysis of income.

## 6.8 Taking Stock

**6.8.1** As with any other use of public resources, it is important to monitor the performance of a service being charged for so that the activity being undertaken can be adjusted as necessary to stay on track. It is good practice to review the service routinely at least once a year to check and, if appropriate, to revise the charging level. At intervals, a more fundamental review is usually appropriate, e.g. on a timetable compatible with the dynamics of the service. Box 6.3 suggests some issues to examine.

### **Box 6.3: Reviewing a public service for which a charge is made**

- Is it still right for a public sector body to use public resources to supply the service?
- Are there any related services for which there might be a case for charging?
- Does the business structure still make sense? Are the assets used for the service adequate?
- How can efficiency and effectiveness be improved so that charges can be lower or offer better value?
- Is the financial objective right?
- For a statutory (or other public sector) service, if full costs are not recovered, why not?
- For a commercial service, does the target rate of return still reflect market rates?
- Is it still appropriate to net off against costs any agreed charges above cost?
- Is there scope to secure economies of scale by developing a shared service?
- What developments might change the business climate?
- Do any discretionary services remain a good fit for the business model and wider objectives?
- Should any underused assets be redeployed, used to make a commercial return, or sold?
- Would another business model (e.g. licensing, contracting out, privatising) be better?

# Chapter 7

## Working With Others

It often makes sense for public sector organisations to work with partners to deliver public services. This Chapter outlines how sponsor Branches should monitor the performance of their partners, and where necessary control their activities. It is important that the public interest and the need to keep the National Assembly for Wales informed are given priority in setting up and operating these relationships.

### 7.1 The Case for Working in Partnership

**7.1.1** Engaging with others and working in partnership is an essential part of delivering public services in Wales. Far more can be achieved, and public resources used to best effect, through joint working. The Welsh Government may find it advantageous to delegate certain functions to a public sector body that can be free to concentrate upon those functions without conflict of interest. Or it may be helpful to harness the expertise of a commercial or third sector organisation such as charities and voluntary groups with skills and leverage not available to the public sector.

**7.1.2** Any such relationship inevitably creates tensions as well as opportunities. The autonomy of each organisation needs to be buttressed by sufficient accountability to give the National Assembly for Wales and the public confidence that public resources are used wisely.

**7.1.3** It can be important for a public sector body to be demonstrably independent. This in itself does not determine the body's form or structure. Independence is achieved by specifying how the body is to operate. Functional independence is compatible with financial oversight by the body's sponsor Branch, and with accountability.

**7.1.4** It is essential to deal with any potential conflicts head on by deciding at the outset how the relationship(s) between the parties should work. The key issues to tackle are set out in box 7.1.

#### **Box 7.1: Issues for partnerships with public sector members**

- There should be a clear rationale and business case (assessed against a number of alternatives) for entering into a partnership agreement, which considers vires and information sharing issues and which evaluates other options. This can take into account the wider public good resulting from the partnership as well as the benefits for each participating body.
- Partnerships should be based upon a relationship of trust and co-operation. Potential conflicts of interest or areas of disagreement should be identified at the outset and handling strategies agreed.
- There should be clear agreement about the outputs and outcomes which the partners are seeking to achieve from their partnership.

- There should be a documented partnership framework in place to which all partners subscribe and which sets out the terms of how the partnership should operate and which takes account of any statutory or other constraints on participating bodies.
- There should be clear and unambiguous arrangements for how the partnership will take decisions and how it will resolve disagreements.
- Accountability and reporting arrangements should be clear and unambiguous.
- Where the partnership includes an element of joint funding then the arrangements for accountability and financial control should be documented comprehensively.
- Where the partnership includes jointly managed staff then the arrangements for performance management and accountability should be clear and unambiguous.

## 7.2 Setting up New Public Bodies

**7.2.1** When a new public body is created decisions must be made on what kind of body it should be, and this will be driven by the nature of the business, its functions, political views and legal constraints, taking account of the relevant professional advice and experience available. Annex 7.1 offers advice on setting up a new public body and compares the characteristics of agencies, a WGSB and Non-Ministerial Departments.

**7.2.2** In general, each new body should have a specific purpose, distinct from the Welsh Government. There should be a clear perceived advantage in establishing a new organisation, such as separating implementation from policy making; demonstrating the integrity of independent assessment; establishing a specialist identity for a professional skill; or introducing a measure of commercial discipline. It is sensible to be sceptical about setting up a new public body, since it will often add to costs.

**7.2.3** Bodies cannot be given authority to make decisions appropriate to Welsh Ministers, nor to perform functions proper to the Welsh Government. Only rarely is a Non-Ministerial Department (NMDs) the right choice as NMDs have limited accountability to the National Assembly for Wales. Nor is it acceptable to use a Royal Charter to establish a public sector body since such arrangements deny the National Assembly for Wales control and accountability.

**7.2.4** The Welsh Government cannot relinquish all responsibility for the business of its public bodies by delegation. It should operate oversight arrangements appropriate to the importance, quality and range of the body's business. Normally new, large, experimental or innovative bodies need more attention than established or small bodies doing familiar or low risk business. And the sponsor Branch always needs sufficient reserve powers to reconstitute the management of each body should events require it (see section 3.8).

**7.2.5** The sponsor Branch should plan carefully to make sure that its oversight arrangements and the internal governance of any new body are designed to work together harmoniously without unnecessary intrusion. It is important to ensure that the new arrangement will deliver the intended outcome without unnecessary complexity. The sponsor Branch is responsible for ensuring that the budgetary control and internal disciplines of new public bodies are satisfactory so that it can live within its budget allocation and deliver its objectives.

**7.2.6** There is a good deal of flexibility about form and structure. It may be expedient, e.g. to set up an organisation which is eventually to be sold as a Companies Act company, or certain WGSBs may operate most effectively when constituted as charities. Mutual structures can also be attractive. Innovation often makes sense. The standard models are all capable of a good deal of customisation.

**7.2.7** If sponsors plan to innovate in this way, it is usually necessary to consider whether primary legislation is required and to secure appropriate budgetary cover.

**7.2.8** If the Public Accounts Committee decides to investigate a public body, the Accounting Officers of both the body and its sponsor Branch should expect to be called as witnesses. The Public Accounts Committee will seek to be satisfied that the sponsor's oversight is adequate.

## 7.3 What to Clarify in Partnership Agreements

**7.3.1** When documenting an arrangement with a partner, public sector organisations should analyse the relationship and consider how it might evolve. The terms of the arrangement must be set out in a framework document (or equivalent) and must be clearly understood by each party to avoid confusion as the partnership develops. It should then be kept up to date as the partnership develops. Box 7.2 contains terms which should always be considered for inclusion. The list is not exhaustive.

**7.3.2** In framing founding documentation, the partners should adopt a proportionate approach in line with the scale and risk of the business involved. Public sector organisations should analyse the relationship and how it might evolve. The National Assembly for Wales expects that public funds will be used in a way that gives reasonable assurance that public resources will be used to deliver the intended objectives. It is good practice to develop structured arrangements for regular dialogue between the parties to avoid misunderstandings and surprises.

### Box 7.2: Framework terms for partnership agreements

#### Purpose

The aims of the relationship and its working remit.

Its standards, key objectives and targets.

#### Governance and accountability

- The legal relationship, including any financial or other limits.
- Any statutory requirements relating to the functions of the partnership.
- The governance of the body: its Board structure, how its members are appointed (and removed). How the partnership should work, eg regular meetings of senior people.
- The extent to which Welsh Ministers are responsible to the National Assembly for Wales for the conduct of a partner.
- Any other important features of the sponsorship role of the public sector partner, e.g. consulting third parties.

- Any arrangements for regular reporting on performance to the public and/or the National Assembly for Wales.
- Plans for any evolution (eg into a mutual) in the future.
- Any arrangements for successor activity, e.g. establishing similar partnerships elsewhere.

### **Decision making**

- How strategic decisions about the future of the partnership will be made, with timetable, terms for intervention, break points, dispute resolution procedures, termination process.
- How the chain of responsibility should work, e.g. stewardship reporting, keeping track of efficiency, risk assessment, project appraisal, management of interdependencies.
- How the partnership will identify, manage and track opportunities and risks.
- The status of the staff; and how they are to be hired, managed and remunerated.
- How any professional input (e.g. medical, scientific) is to be managed and quality assured.
- Arrangements for taking stock of performance and learning lessons from it.
- Arrangements for intervention when necessary.

### **Financial management**

- The financial relationship between the partners, e.g.:
  - Any founding capital (including assets, goods, financial sums or other valuables).
  - Any periodic grants and their terms.
  - How the partnership's corporate plan and annual target(s) are to be agreed.
  - How asset management and capital projects are to be decided and managed.
  - How cashflow is to be managed, and current expenditure financed.
  - The distribution of income and profit flows.
  - Any financial targets, e.g. return on capital employed (ROCE).
  - How any charges to customers or users are to be set.
  - Any agreed limits on the partnership's business.
- Monitoring, financial reporting, regular liaison and any other tracking arrangements.
- Internal and external audit arrangements, with any relevant accounts directions.
- Arrangements for consolidation of accounts.

**7.3.3** In this process the aim should be to put the Accounting Officers of the parties in a position to take a well-informed view on the status of the relationship, enabling timely adjustments to be made as necessary. There might initially be a significant degree of reporting and other exchanges, with potential for intervention, underpinning a venture which is large, experimental and/or risky; and scaling back later if experience gives confidence about performance. Conversely, a partnership following a well-tested pattern in a familiar area might call for less intervention.

**7.3.4** Further advice about framework documents is in Annex 7.2. It is important that such documents fit the business to which they relate (rather than following precedent or copying a standard model).

## 7.4 Agencies

**7.4.1** Agencies are intended to bring professionalism and customer focus to the management and delivery of UK or Welsh Government services, operating with a degree of independence from their sponsor Branches. Some may also be trading funds.

**7.4.2** Each agency is established with a framework document on the lines sketched out in box 7.2. With the exception of those agencies which are trading funds (see section 7.8), they are normally funded through public expenditure.

## 7.5 Working Together

**7.5.1** To promote better delivery and enhance efficiency, Welsh Government officials may find it useful to work with their counterparts in UK Government Departments, other Devolved Administrations or public bodies. This can make sense where responsibilities overlap, or both operate in the same geographical areas or with the same client groups – arrangements loosely categorised as “joined-up government.” Another model might entail sharing common services. Such arrangements offer opportunities for organisations to reduce costs overall while each partner plays to its strengths.

**7.5.2** Such relationships can be constituted in a number of different ways. Some models are sketched in box 7.3. The list is not exhaustive.

**7.5.3** Shared services often need funding to set up infrastructure, e.g. to procure IT equipment. Funding for this will need to be secured and, given the different regimes that may be involved, this may require careful planning. Each of the Accounting Officers involved should be satisfied that the project offers value for money for the public sector as a whole. The provider’s charges should be at cost, following the standard fees and charges rules (see Chapter 6).

### Box 7.3: Examples of joined up activities

- One partner can act as lead provider selling services (i.e. IT, HR, finance functions) to other(s) as customers, operating under Section 83 (of the Government of Wales Act 2006) agreement(s).
- Cost sharing arrangements for common services (e.g. in a single building), allocated in line with an indicator such as numbers of staff employed or areas of office space occupied.
- Joint procurement using a collaborative protocol.
- A joint venture project with its own governance, e.g. an agency or wholly owned company, selling services to a number of organisations, some or all of which may be public sector.
- An outsourced service, delivering to several public sector customers.

**7.5.4** In any joint activity, there must be a single Accounting Officer so that the lines of responsibility are clear. If the Public Accounts Committee decides to investigate, the Accounting Officers of each of the participants should expect to be summoned as witnesses.

## 7.6 Welsh Government Sponsored Bodies

**7.6.1** WGSBs may take a number of legal forms, including corporate bodies and charities. Most executive WGSBs have a bespoke structure set out in legislation or its equivalent (e.g. a Royal Charter). This may specify in some detail what task(s) the WGSB is to perform, what its powers are, and how it should be financed. Sometimes primary legislation contains powers for secondary legislation to set or vary the detail of the WGSB's structure.

**7.6.2** Each WGSB is a special purpose body charged with responsibility for part of the process of government. Each has a sponsor Branch in Welsh Government charged with general oversight and responsibility for reporting its activity to the Welsh Ministers. So sponsor Branches within their Groups must have appropriate arrangements for regular monitoring with scope for steering the WGSB's performance as necessary.

**7.6.3** WGSBs show considerable variety of structures and working methods, with scope for innovation and customisation. Some WGSBs work with other organisations as well as with their sponsor Branches. All this should be documented in the framework document (see Annex 7.2).

**7.6.4** WGSBs' sources of finance vary according to their constitution and function. Box 7.4 shows the main options available.

### Box 7.4: Sources of finance for WGSBs

- Specific conditional grant(s) from the sponsor Branch (and/or other Branches).
- General (less conditional) grant-in-aid from the sponsor Branch.
- Income from charges for goods or services the WGSB may sell.
- Income from other dedicated sources, e.g. lottery funding.
- Public dividend capital.

**7.6.5** In practice WGSBs operate with some independence and are not under day-to-day Ministerial control. Nevertheless, the Welsh Ministers are ultimately accountable to the National Assembly for Wales for WGSBs' efficiency and effectiveness. This is because the Welsh Ministers: are responsible for WGSBs' founding legislation; have influence over WGSBs' strategic direction; (usually) appoint their boards; and have the ultimate sanction of winding up unsatisfactory WGSBs.

## 7.7 Public Corporations

**7.7.1** The Welsh Ministers own controlling interests in public corporations or limited companies, perhaps (but not necessarily) as a step toward disposal. Public corporations' powers are usually defined in statute; but otherwise all the disciplines of corporate legislation apply.

**7.7.2** Sponsors should define any contractual relationship with a body corporate in a framework document adapted to suit the corporate context while delivering public sector disciplines. The financial performance expected should give Welsh Government, as shareholder, a fair return on the public funds invested in the business. Box 7.5 offers suggestions.

**7.7.3** The Welsh Ministers may also use a company they own as a contractor or supplier of goods or services. It is a good discipline to separate decisions about the company's commercial performance from its contractual commitments, so avoiding confusion about objectives. So there should be clear arm's length contracts between the company and its customer Group in Welsh Government defining the customer-supplier relationship(s).

#### **Box 7.5: Outline terms for a relationship with a public corporation**

- The Welsh Government's strategic vision for the business, including the rationale for public ownership and the public sector remit of the business.
- The capital structure of the business and the agreed dividend regime, with suitable incentives for business performance.
- The business objectives the enterprise is expected to meet, balancing policy, customer, shareholder and any regulatory interests.
- Welsh Government's rights and duties as shareholder, including:
  - Governance of the business.
  - Procedure for appointments (and their removal).
  - Financial and performance monitoring.
  - Any necessary approvals processes.
  - The circumstances of, and rights upon, intervention.
- Details of any other relationships with public bodies.

## **7.8 Trading Funds**

**7.8.1** Trading Funds are not common in Wales. All trading funds are public corporations. Their activities are not consolidated with their sponsor Branch's business.

**7.8.2** Each trading fund is set up through an order subject to affirmative resolution procedure. Before an order can be laid in Parliament, HM Treasury will need to be satisfied that a proposed trading fund can satisfy the statutory requirement that its business plan is sustainable without additional funding in the medium term. A period of shadow operation as a pilot trading fund may help inform this assessment.

**7.8.3** Each trading fund must be financed from its trading income. In particular, each trading fund is expected to generate a financial return commensurate with the risk of the business in which it is engaged. In practice this means the target rate of return should be no lower than its cost of capital. The actual return achieved may vary a little from one year to the next, reflecting the market in which the trading fund operates.

**7.8.4** The possible sources of capital for trading funds are shown in box 7.6. They are designed to give trading funds freedom from the discipline of annual budget funding. The actual mix for a given trading fund must be agreed with the sponsors (if there is one) and with HM Treasury.

**7.8.5** Further detail about trading funds is in Annex 7.3, and guidance can also be sought from Finance and Legal Services. Guidance on setting charges for the goods and services trading funds sell is in Chapter 6.

#### **Box 7.6: Sources of capital for trading funds**

- Public dividend capital (equivalent to equity, bearing dividends).
- Reserves built up from trading profits.
- Long or short term borrowing (either voted from a sponsor Branch or borrowed from the National Loans Fund if the trading fund is a department in its own right).
- Temporary subsidy from a sponsor Branch, voted in the National Assembly for Wales budget.
- Finance leases.

## **7.9 Non-Ministerial Departments**

**7.9.1** A very few UK Central Government organisations are Non-Ministerial Departments (NMDs). This vehicle however, may become more common in Wales as further powers are devolved. It is therefore important that there is clear rationale for this status to be used in each case.

**7.9.2** NMDs do not answer directly to Ministers. They have their own Accounting Officers, their own budget, publish their own annual reports and are staffed by civil servants. Ministers however, maintain a watching brief over each NMD so that they can answer for the NMD's business, and if necessary, take action to, e.g. adjust the legislation under which they operate. A framework document should define such a relationship.

**7.9.3** This limited degree of parliamentary accountability must be carefully justified. It can be suitable for a public sector organisation with professional duties where Ministerial input would be inappropriate or detrimental to its integrity. The need for independence however, is rarely enough to justify NMD status. It is possible to craft arrangements for WGSBs which confer robust independence. Where this is possible it provides better parliamentary accountability and so is to be preferred.

## **7.10 Local Government**

**7.10.1** The Welsh Government makes significant grants to local authorities in Wales. Some of these are specific (hypothecated). Most are not, allowing local authorities to set out their own priorities.

**7.10.2** Nevertheless the National Assembly for Wales expects assurances that such decentralised funds are used appropriately, ie that they are spent with economy, efficiency and effectiveness, and not wasted nor misused. The quality of the assurance available differs from that expected of central government organisations because local authorities' prime accountability is to their electorates.

**7.10.3** For these relationships a framework document is not usually the most fruitful approach. Instead, Welsh Government Groups should draw up an annual account of how their accounting officers assure themselves that grants to local government are distributed and spent appropriately; and how underperformance can be dealt with. This account forms part of the governance statement in the report and accounts of each relevant Welsh Government Group (see Annex 3.1).

**7.10.4** Similar considerations apply to the NHS.

## **7.11 Innovative Structures**

**7.11.1** Sometimes Welsh Government Groups have objectives which more easily fit into bespoke structures suited to the business in hand, or better suited to the longer range plans for the future of the business. Such structures might, e.g. include various types of mutual or of partnership.

**7.11.2** Proposals of this kind are by definition novel and thus require explicit Corporate Governance Unit consent. In each case, proposals are judged on their merits against the standard public sector principles after examining the alternatives, taking account of any relevant experience. The Corporate Governance Unit will always need to understand why one of the existing structures will not serve: e.g. the WGSB format has considerable flexibility in practice. Boxes 4.9 and 7.2 may help with this analysis.

## **7.12 Outsourcing**

**7.12.1** Public sector organisations can on occasions find it satisfactory and cost effective to outsource some non-core services or functions rather than provide them internally. Candidates have included cleaning, security, catering and IT support. A much wider range of services is potentially suitable for this treatment. Innovative approaches should be explored constructively.

**7.12.2** The first step in setting up any outsourcing agreement should be to specify the service(s) to be provided and the length of contract to be sought. At that stage it is usually desirable to draw up an outline business plan to help evaluate whether outsourcing makes financial and operational sense. Any decision to outsource should then be made on value for money grounds.

**7.12.3** It is good practice to arrange an appropriate form of competition for all outsourcing, as for other kinds of procurement. In most cases, it is legally essential to open the competition to all firms in the EU (see Annex 4.5). If services are likely to be required at short notice – e.g. legal services for advice on opportunities, threats or other business pressures which emerge with little warning – it is good practice to arrange a competition to establish a standing panel of providers whose members can be called upon to deal with rapidly emerging needs.

**7.12.4** Contracting out does not dissolve responsibility. Public sector organisations using a contractor should set in place systems to track and manage performance under the contract. It may be appropriate to plan for penalties for disruption and/or failure if the contractor cannot deliver. The Public Accounts Committee may need to be satisfied that the arrangements for contracting out entail sufficient accountability for the use of public funds.

## 7.13 Private Finance

**7.13.1** Where properly constructed and managed, public sector organisations can use private finance arrangements to construct assets and/or deliver services with good value for money. Structured arrangements where the private sector puts its own funds at risk can help deliver projects on time and within budget.

**7.13.2** It is important to carry out a rigorous value for money analysis to determine whether these benefits are likely to exceed the additional cost of private finance. Contracting organisations should also make sure that they should be able to afford such arrangements over their working lifetimes, taking account, as far as possible, of the risk of difficult future financial environments. It is not good practice to embark on a private finance arrangement if it is dependent on other independent financial transactions taking place during the project's lifetime.

**7.13.3** Procurement using private finance is a flexible, versatile and often effective technique, so it should be considered carefully as a procurement option. HM Treasury has published standard terms for such contracts but Welsh Government Groups must contact the Director of Finance and Value Wales before engaging in private finance plans. There may also be State Aid implications which should be discussed with the State Aid Unit and Legal Services. Other public bodies must discuss their plans with their sponsors in the Welsh Government.

## 7.14 Commercial Activity

**7.14.1** When public bodies have assets which are not fully used but are to be retained, it is good practice (subject to vires allowing it) to consider exploiting the spare capacity to generate a commercial return in the public interest. This is essentially part of good asset management.

**7.14.2** Any kind of public sector asset can and should be considered. Candidates include both physical and intangible assets, e.g. land, buildings, equipment, software and intellectual property (see Annex 4.14). A great variety of business models is possible.

**7.14.3** Such commercial services always go beyond the public sector supplier's core duties. Because these assets concerned have been acquired with public funds, it is important that services are priced fairly: see Chapter 6. It is also important to respect the rules on State Aids: see Annex 4.6. Welsh Government organisations should work through the checklist at box 7.7.

### **Box 7.7: Planning commercial exploitation of existing assets**

- Define the service to be provided.
- Establish that any necessary vires and Budget provision exist.
- Ensure that it does not interfere with the body's statutory functions and does not hamper delivery of core responsibilities.
- Consider any State Aid considerations.
- Identify any prospective business partners and run a selection process.
- If the proposed activity is novel, contentious, or likely to set a precedent elsewhere obtain Corporate Governance Unit (for Welsh Government Groups) or sponsor Branch (for other bodies) approval.
- Comply with the normal requirements for propriety, regularity and value for money.

**7.14.4** While it makes sense to make full use of assets acquired with public resources, such activity should not squeeze out, or risk damaging, a public sector organisation's main objectives and activities. Similarly, it is not acceptable to acquire assets only for the purpose of engaging in, or extending, commercial activity. If a public sector supplier's wider markets activity demands further investment to keep it viable, reappraisal is usually appropriate. This should consider alternatives such as selling the business, licensing it (this must be discussed with Legal Services), bringing in private sector capital, or seeking other ways of exploiting the underused potential in the assets or business.

**7.14.5** It is a matter of judgement when Groups should inform the National Assembly for Wales of the existence, or growth, of significant commercial ventures.

## **7.15 Working with Third Sector Bodies**

**7.15.1** Welsh Government Groups and other public bodies may find they can deliver their objectives effectively through relationships with third sector bodies: that is, charities, social, voluntary or community institutions, mutual organisations, social enterprises and other not-for-profit organisations (see Annex 7.4 for further details). Such partnerships can achieve more than either the public or the third sector can deliver alone, e.g., using a third sector body can provide better insight into demand for, and suitable means of delivery of public services.

**7.15.2** In this kind of relationship a public sector organisation may fund activities, make grants, lend assets, or arrange other transfers to a third sector body performing or facilitating delivery of services. It is essential to build in safeguards to ensure that resources are used as intended (see Annex 5.2). This gives the National Assembly for Wales confidence that voted resources are used for the purposes it has approved.

**7.15.3** The safeguards to be applied should be agreed at the start of the relationship. Customisation is nearly always essential. It is often right to require claw-back, i.e. to agree terms in which public sector donors reclaim the proceeds if former publicly owned assets are sold.

## 7.16 Working with Commissioners

**7.16.1** The Welsh Government has set up a number of Commissioner since it was established in 1999. All have been created through legislation. It is important that Welsh Government Groups refer to the specific legislation for each Commissioner in setting up arrangements which define the way that they will work together, since there are important variations between each piece of legislation.

**7.16.2** All Commissioners are champions for the people or policy areas whose interests they represent. As such, they are independent of Government and must have the freedom and discretion to undertake research, arrange visits and write reports without fear of their work having an impact on their funding. In addition, some Commissioners are also Regulators (such as the Welsh Language Commissioner) and may be investigating the Welsh Government and imposing penalties. The relationship between the Welsh Government and Commissioners is, therefore, fundamentally different to the relationship that the Welsh Government has with other categories of bodies, such as Welsh Government Sponsored Bodies or subsidiaries.

**7.16.3** Despite the policy and operational independence of Commissioners, all are funded by public funds which are provided by the Welsh Government. All Commissioners are Accounting Officers, receive Accounting Officer letters [from HM Treasury] and must attend appropriate training. They are, therefore, personally responsible for the management of the funds allocated to them. The accounts and governance arrangements of all Commissioners must be subject to internal audit and to external audit by the Auditor General for Wales.

**7.16.4** In most instances the legislation setting up the roles of Commissioners requires them to submit Estimate of Accounts and Annual Reports to Welsh Ministers, who in turn must lay them before the National Assembly for Wales. Therefore, Ministers and officials have a role in ensuring that public funds allocated to Commissioners are set at an appropriate level to enable them to undertake their work, whilst also ensuring that adequate arrangements are in place to ensure that public funds are managed appropriately. However, it would not be appropriate for the level of scrutiny to be as detailed as that for other categories of bodies.

**7.16.5** Groups responsible for funding Commissioners should put in place a protocol or Framework Agreement which is prepared with, and agreed by, the Commissioner, although the content may vary from Commissioner to Commissioner depending on the role and size of budget. In all cases, the Welsh Government Corporate Governance Unit should be consulted when such a document is prepared. All such documents should be reviewed at least every three years and within three months of the appointment of a new Commissioner.

**7.16.6** Commissioners are Corporation Soles and are not, therefore, accountable to a Board of Directors. However, it is advisable for each Commissioner to have access to independent policy advice and to establish Audit Committees consisting of independent members, although the arrangements may vary from Commissioner to Commissioner due to variations in legislation.

## Glossary

<p><b>Accounting Officer</b></p>	<p>Each organisation in Government must have an Accounting Officer, accountable for departmental operations and the preparation of accounts. The appointee is, by convention, usually the head of a department or other organisation, or the Chief Executive of a non-departmental public body (NDPB), or Welsh Government Sponsored Bodies in Wales.</p> <p>As Principal Accounting Officer, he/she is also responsible for the overall organisation, management and staffing of the Welsh Government, and for its procedures in financial and other matters.</p> <p>In accordance with section 133(2) of the Government of Wales Act 2006, the Principal Accounting Officer may designate other members of staff of the Welsh Government as Additional Accounting Officers, whose responsibilities are set out in a formal Memorandum.</p> <p>See chapter 3.</p>
<p><b>Affirmative resolution</b></p>	<p>A Parliamentary or Assembly procedure for secondary legislation (i.e. a Statutory Instrument in the form of an order or regulation). The positive approval of Parliament or the Assembly is required before the instrument can be made and take effect. (National Assembly for Wales Standing Order 27).</p>
<p><b>AMBIT</b></p>	<p>The AMBIT is the descriptions of expenditure included in a Budget Motion to be approved by the Assembly in accordance with Section 125 of the Government of Wales Act 2006. The AMBIT is split between Main Expenditure Groups (MEGs) for administrative purposes. This is the voted financial limit that applies to the Welsh Government MEGs. See also Main Expenditure Group.</p>
<p><b>Annually Managed Expenditure, AME</b></p>	<p>HM Treasury recognises the volatility and demand led basis of certain programmes and the resultant difficulty in estimating costs over a period of time. As a result, these programme budgets are funded and managed on an annual basis within the Annual Managed Expenditure (AME). The Welsh Government AME budgets are split between MEGs via the annual budget process. See also Main Expenditure Group.</p>
<p><b>Appropriation Act</b></p>	<p>Act of Parliament, which gives formal approval to departmental Supply Estimates. The Consolidated Fund (Appropriation) Bill when enacted becomes the Appropriation Act.</p>
<p><b>Auditor General for Wales</b></p>	<p>The statutory external Auditor of the Welsh Government, WGSBs, NHS bodies and other public sector bodies in Wales, established by section 145 of, and schedule 8 to, the Government of Wales Act 2006.</p>

<b>Barnett formula</b>	A mechanism used by HM Treasury to automatically adjust the amount of public expenditure it allocates to the Devolved Administrations.
<b>Capital spending</b>	Spending on the purchase of assets, above a certain threshold, which are expected to be used for a period of at least one year. It includes the purchase of buildings, equipment and land. The threshold is set by each body: items valued below it are not counted as capital assets, even if they do have a productive life of more than one year.
<b>Central government bodies</b>	Departments and departmental executive agencies, including trading funds, non departmental public bodies (such as Welsh Government Sponsored Bodies), and NHS health authorities and Local Health Boards.
<b>Chief executive</b>	Title for the head of an arm's length body, normally appointed as Accounting Officer.
<b>Civil Service Code</b>	A concise statement issued by the Cabinet Office which sets out the framework within which all civil servants work, and the core values and standards they are expected to uphold.
<b>Clawback</b>	The concept that where an asset financed by public money is sold, all or part of the proceeds of the sale should be returned to the Exchequer.
<b>Commercial banks</b>	Bodies other than the Government Banking Service which provide banking services, including private sector banks and building societies.
<b>Committee of Public Accounts</b>	A committee of the House of Commons which examines the accounting for, and the regularity and propriety of UK Government expenditure. It also examines the economy, efficiency and effectiveness of expenditure. Also commonly known as the Public Accounts Committee (PAC).
<b>Common law</b>	One of the historical sources of law in the United Kingdom. Often used to distinguish judge made case-law and longstanding legal principles from legislation which has been made by Parliament or the National Assembly for Wales.
<b>Comptroller and Auditor General, (C&amp;AG)</b>	The head of the National Audit Office, appointed by the Crown, and an Officer of the House of Commons. As Comptroller, the C&AG's duties are to authorise the issue by HM Treasury of public funds from the Consolidated Fund and National Loans Fund to Government Departments and others (such as the Welsh Government); as Auditor General, the C&AG certifies the accounts of all UK Government Departments and some other public bodies, and carries out value-for-money examinations.
<b>Concordat</b>	A long-standing agreement between HM Treasury and the Public Accounts Committee that continuing functions of government should be defined in specific statute.

<b>Consolidated Fund standing services</b>	Payments for services which Parliament has decided by statute should be met directly from the Consolidated Fund, rather than financed annually by voted money.
<b>Consolidated Fund, CF</b>	The UK Government's current account, operated by HM Treasury, through which pass most Government payments and receipts.
<b>Contingencies Fund</b>	A UK or Welsh Government fund, controlled by HM Treasury or the Welsh Ministers (under section 128 of the Government of Wales Act 2006), which, subject to certain criteria, can be used to finance urgent expenditure (through issue of repayable advances) in anticipation of parliamentary approval of Estimates, or used to finance expenditure in advance of receipts.
<b>Contingent liabilities</b>	Potential liabilities that are uncertain but recognise that future expenditure may arise if certain conditions are met or certain events happen.
<b>Control total</b>	The measure used by the UK Government to plan public expenditure for the medium term, and monitor and control it within each financial year.
<b>Corporate governance</b>	The system by which organisations are directed and controlled.
<b>Cost of capital</b>	The cost to the UK Government of financing investment, i.e. the rate at which it borrows. This is charged to UK Government Departments to improve transparency under resource accounting and encourage efficient use of assets. It is included in the calculation when setting fees and charges and is calculated as a percentage of the net asset value.
<b>Counsel General</b>	The Chief Legal Adviser to the Welsh Government.
<b>Data Protection Act</b>	UK legislation (1998) which governs how organisations can use personal information which they hold.
<b>Delegated authority</b>	A standing authorisation by HM Treasury under which a body may commit resources or incur expenditure from money voted by Parliament without specific prior approval from HM Treasury. Delegated authorities may also authorise commitments to spend (including the acceptance of contingent liabilities) and to deal with special transactions (such as write-offs) without prior approval.
<b>Departmental Expenditure Limit, DEL</b>	The Departmental Expenditure Limit is the resource and capital limit set by HM Treasury in Spending Reviews. The Welsh Government may not exceed the DEL limits which have been set. The Welsh Government DEL is split between the Main Expenditure Groups (MEGs) via the annual budgeting process. See also Main Expenditure Group.

<b>Depreciation</b>	A measure of the wearing out, consumption or other reduction in the useful life of a fixed asset whether arising from use, passage of time or obsolescence through technological or market changes.
<b>Derivative</b>	A financial instrument derived from another, usually sold singly or in packages to promote hedging, e.g. interest rate and exchange rate options.
<b>Detective controls</b>	Controls designed to detect error, fraud, irregularity or inefficiency.
<b>Devolved administrations</b>	The Administrations established in Scotland, Wales and Northern Ireland under the Scotland Act 1998, the Government of Wales Act 1998, the Government of Wales Act 2006, and the Northern Ireland Act 1998.
<b>Discretionary services</b>	Services that are not required by statute but are provided, often into competitive markets.
<b>Estimate</b>	<p>A statement of how much money the UK and Welsh Governments needs in the coming financial year, and for what purpose(s), by which Parliamentary authority is sought for the planned level of expenditure and receipts in a department.</p> <p>Section 119 of the Government of Wales Act 2006 makes provision for the Secretary of State for each financial year to make a written statement showing the total amount of payments which the SoS estimates will be made under s.118 of that Act (payments to the Welsh Consolidated Fund) in the financial year.</p>
<b>Estimates Manual</b>	A practical reference guide issued by HM Treasury which provides detailed information on the Supply Estimates process.
<b>Estimates Memorandum</b>	An explanation to the relevant Departmental Select Committee setting out the links to other spending controls and the contents of a Departmental Estimate.
<b>Excess vote</b>	A request for resources which, after the year end, is found to have financed expenditure not agreed by Parliament, whether because it exceeds the prescribed amount of expenditure or because part is outside the descriptions Parliament has approved. See section 5.3.
<b>Exchequer</b>	UK Government's central financing arrangements, based on the Consolidated Fund and National Loans Fund, and managed by HM Treasury and the Bank of England.
<b>Exchequer pyramid</b>	A series of accounts operated by HM Treasury through which the overnight sweep and funding flows.
<b>Expenditure outside the ambit of a vote, EOTA</b>	Expenditure outside the ambit of a vote, i.e. resources spent on matters which were not included in the relevant ambit in the Departmental Estimate and therefore Parliament has not authorised. See section 5.3.

<b>Finance Act</b>	The legislation through which Parliament agrees the UK Government's tax decisions. Normally passed in the summer after the publication of the spring budget.
<b>Financial Reporting Manual, FReM</b>	The technical accounting guide for the preparation of financial statements. HM Treasury publishes illustrative financial statements and other guidance to aid accounts preparers following the manual.
<b>First Minister</b>	An Assembly Member appointed by the Queen to be First Minister, following nomination by the National Assembly for Wales. The First Minister is Head of the Welsh Government.
<b>Framework document</b>	A document setting out the key principles of accountability for agencies. See annex 7.2.
<b>Freedom of Information</b>	Legislation (2000) designed to promote public access to a wide range of public sector data and information (but not personal data).
<b>Full cost</b>	The total cost of all the resources used in providing a good or service in any accounting period (usually one year). This will include all direct and indirect costs of producing the output (both cash and non-cash costs), including a full proportional share of overhead costs and any selling and distribution costs, insurance, depreciation, and the cost of capital, including any appropriate adjustment for expected cost increases.
<b>Funding</b>	Transferring monies to an account, so that they are available when needed for payments.
<b>Generally accepted accounting practice in the UK, UK GAAP</b>	The accounting and disclosure requirements of the Companies Acts and pronouncements by the Accounting Standards Board (principally accounting standards and Urgent Issues Task Force abstracts), supplemented by accumulated professional judgement.
<b>Governance Statement</b>	An annual statement that Accounting Officers are required to make as part of the accounts on a range of risk and control issues.
<b>Government Banking Service, GBS</b>	The banking shared service provider to UK Government and the wider public sector. It is part of HM Revenue & Customs.
<b>Grant</b>	Payments made by UK and Welsh Government departments to outside bodies to reimburse expenditure on agreed items or functions, and often paid only on statutory conditions.
<b>Grant in aid</b>	Regular payments made by Departments to outside bodies (e.g. non-departmental public bodies/WGSBs) to finance their operating expenditure.
<b>Green book</b>	Informal title of a document published by HM Treasury called <i>Appraisal and Evaluation in Central Government</i> to guide UK Government organisations in investment appraisal.

<b>Hedging</b>	Transaction(s) designed to reduce or eliminate financial risk, e.g. because of interest rate or exchange rate fluctuations.
<b>Hypothecated Grant</b>	Grants with terms and conditions (ring-fenced). Hypothecated grants enable the Welsh Government to be more directive on how the funding is used to meet policy objectives. Hypothecated funding is provided to enable external bodies to undertake specific projects or deliver a specific purpose as defined at the outset; it can be project specific and/or for core funding.
<b>Joined-up government</b>	Arrangements under which policy-making and service delivery are unhindered by Departmental boundaries.
<b>Judicial review</b>	A procedure by which the courts can review the legality of the decisions and actions of public authorities, including the UK and Welsh Government. Judicial review looks at the fairness of the decision-making process rather than the merits of the decision itself.
<b>Legislative Competence</b>	The term used to describe the scope of the National Assembly for Wales' power to make and enact legislation in Wales. The scope of the Assembly's legislative competence is set out under section 108 of, and schedule 7 to the Government of Wales Act 2006.
<b>Levies</b>	Process of raising charges. A means of recovering associated costs such as supervision by a regulator. See section 6.3.
<b>Main Expenditure Group, MEG</b>	The Welsh Government budget is split into Main Expenditure Groups (MEGs) which, historically, are aligned to Ministerial portfolios. Each MEG consists of HM Treasury control totals (Departmental Expenditure Limits (DEL) and Annual Managed Expenditure (AME)) and the AMBIT. See also Departmental Expenditure Limit, Annual Managed Expenditure and AMBIT.
<b>Maladministration</b>	Any form of administrative failing or bad practice. Maladministration can be investigated by various complaints handling authorities, including the Parliamentary and Health Service Ombudsman, the Local Government Ombudsman and the Public Service Ombudsman for Wales.
<b>Memorandum Trading Accounts, MTAs</b>	An informal working document, prepared before the start of the financial year in the form of a forecast to determine the appropriate level of fees and charges for a repayment service, and after the end of the year in the form of an outturn statement to provide a record of performance.
<b>Misstatement</b>	A statement which is untrue. The maker of a misstatement can be sued for damages by those who have relied on the misstatement, but only if in the circumstances it was reasonable to rely on it.

<b>National Accounts</b>	Accounts produced by the Office for National Statistics in accordance with the European System of Accounts 1995, which promotes standardisation in the way in which public sector income and expenditure is measured.
<b>National Assembly for Wales</b>	The legislative body constituted under section 1 of the Government of Wales Act 2006, made up of the 60 Assembly Members.
<b>National Audit Office, NAO</b>	Office of the Comptroller and Auditor General, which scrutinises public spending on behalf of Parliament. See Annex 2.1.
<b>National Insurance Fund, NIF</b>	A UK Government fund used to meet the cost of contribution-based benefits, financed mainly by contributions paid by employers and individuals.
<b>National Loans Fund, NLF</b>	The fund through which passes most of the UK Government's borrowing transactions and some domestic lending transactions.
<b>National Procurement Service</b>	Set up in 2013 to enable the Welsh public sector to collaborate more closely in procuring goods and services.
<b>Near-cash</b>	Resource expenditure that has a related cash implication, even though the timing of the cash payment may be slightly different. For example, expenditure on gas or electricity supply is incurred as the fuel is used, though the cash payment might be made in arrears on a quarterly basis. Other examples of near-cash expenditure are: pay, rental.
<b>Net cash requirement</b>	The upper limit agreed by Parliament on the cash which a Department may draw from the Consolidated Fund to finance the expenditure within the ambit of its Request for Resources. It is equal to the agreed amount of net resources and net capital less non-cash items and working capital.
<b>Non-cash cost</b>	Costs where there is no cash transaction but which are included in a body's accounts (or taken into account in charging for a service) to establish the true cost of all the resources used.
<b>Non-departmental public body, NDPB</b>	A body which has a role in the processes of Government, but is not a Government Department or part of one. NDPBs accordingly operate at arm's length from Government Ministers.
<b>Notional cost of insurance</b>	A cost which is taken into account in setting fees and charges to improve comparability with private sector service providers. The charge takes account of the fact that public bodies do not generally pay an insurance premium to a commercial insurer.
<b>Office for National Statistics, ONS</b>	The independent body responsible for collecting and publishing official statistics about the UK's society and economy. It is the executive office of UK Statistics Authority and although they are separate, they are still closely related.

<b>Orange book</b>	The informal title for Management of Risks: Principles and Concepts, which is published by HM Treasury for the guidance of public sector bodies.
<b>Overdraft</b>	An account with a negative balance.
<b>Parliamentary Authority</b>	Parliament's formal agreement to authorise an activity or expenditure.
<b>Prerogative powers</b>	Powers exercisable under the Royal Prerogative, i.e. powers which are unique to the Crown, as contrasted with common-law powers which may be available to the Crown on the same basis as to natural persons.
<b>Primary legislation</b>	Acts which have been passed by the Westminster Parliament and, where they have legislative competence, the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly. Begin as Bills until they have received Royal Assent.
<b>Private Finance Initiative, PFI</b>	Arrangements under which a public sector organisation contracts with a private sector entity to construct a facility and provide associated services of a specified quality over a sustained period. See Annex 7.3.
<b>Propriety</b>	The principle that patterns of resource consumption should respect Parliament's and National Assembly for Wales intentions, conventions and control procedures, including any laid down by the PAC.
<b>Public Accounts Committee (Wales)</b>	The role of the Committee is to ensure that proper and thorough scrutiny is given to Welsh Government expenditure. The Committee will consider reports prepared by the Auditor General for Wales on the accounts of the Welsh Government and other public bodies, and on the economy, efficiency and effectiveness with which resources were employed in the discharge of public functions.
<b>Public corporation</b>	A trading body controlled by the UK Government, local authority or other public corporation that has substantial day to day operating independence.
<b>Public Dividend Capital, PDC</b>	Finance provided by government to public sector bodies as an equity stake; an alternative to loan finance.
<b>Public Private partnership, PPP</b>	A structured arrangement between a public sector and a private sector organisation to secure an outcome delivering good value for money for the public sector. It is classified to the public or private sector according to which has more control.
<b>Public Service Agreement, PSA</b>	Sets out what the public can expect the government to deliver with its resources. Every large Government Department has PSA(s) which specify deliverables as targets or aims related to objectives.

<b>Rate of return</b>	The financial remuneration delivered by a particular project or enterprise, expressed as a percentage of the net assets employed.
<b>Regularity</b>	The principle that resource consumption should accord with the relevant legislation, the relevant delegated authority and this document.
<b>Request for Resources, (RfR)</b>	The functional level into which Departmental Estimates may be split. RfRs contain a number of functions being carried out by the Department in pursuit of one or more of that Department's objectives.
<b>Resource account</b>	An accruals account produced in line with the <i>Financial Reporting Manual (FRM)</i> .
<b>Resource accounting</b>	The system under which budgets, Estimates and accounts are constructed in a similar way to commercial audited accounts, so that both plans and records of expenditure allow in full for the goods and services which are to be, or have been, consumed – i.e. not just the cash expended.
<b>Resource budget</b>	The means by which the UK and Welsh Governments plan and control the expenditure of resources to meet its objectives.
<b>Restitution</b>	A legal concept which allows money and property to be returned to its rightful owner. It typically operates where another person can be said to have gained money unfairly.
<b>Return on capital employed, ROCE</b>	The ratio of profit to capital employed of an accounting entity during an identified period. Various measures of profit and of capital employed may be used in calculating the ratio.
<b>Royal charter</b>	The document setting out the powers and constitution of a corporation established under prerogative power of the Monarch acting on Privy Council advice.
<b>Secondary legislation</b>	Subordinate laws, which include orders and regulations, made using powers in primary legislation (enabling powers). Normally used to set out technical and administrative provision in greater detail than primary legislation, they are subject to a less intense level of scrutiny by Parliament and the Assembly. European legislation is, however, often implemented in secondary legislation using powers in the European Communities Act 1972.
<b>Service-level agreement</b>	Agreement between parties, setting out in detail the level of service to be performed. Where agreements are between UK Government bodies, they are not legally a contract but have a similar function.
<b>Spending review</b>	Sets out the key improvements in public services that the public can expect over a given period. It includes a thorough review of departmental aims and objectives to find the best way of delivering the Government's objectives, and sets out the spending plans for the given period.

<b>State aid</b>	State support given selectively to undertakings engaged in economic activity that could potentially distort competition and trade within the EU. See Annex 4.6.
<b>Statement of Excess</b>	A formal statement detailing UK Government Departments' overspends prepared by the Comptroller and Auditor General as a result of undertaking annual audits.
<b>Subhead</b>	Individual elements of UK Government Departmental expenditure identifiable in Estimates as single cells, for example cell A1 being administration costs within a particular line of Departmental spending.
<b>Supply</b>	Resources voted by Parliament in response to Estimates, for expenditure by UK Government Departments.
<b>Supply Estimates</b>	A statement of the resources the UK Government needs in the coming financial year, and for what purpose(s), by which Parliamentary authority is sought for the planned level of expenditure and income.
<b>Target rate of return</b>	The rate of return required of a project or enterprise over a given period, usually at least a year.
<b>Third sector</b>	Private sector bodies which do not act commercially, including charities, social and voluntary organisations and other not-for-profit collectives. See Annex 7.4.
<b>Total Managed Expenditure, TME</b>	HM Treasury budgeting term which covers all current and capital spending carried out by the public sector (i.e. not just by UK Government Departments).
<b>Trading fund</b>	An organisation (either within a UK Government Department or forming one) which is largely or wholly financed from commercial revenue generated by its activities. Its Estimate shows its net impact, allowing its income from receipts to be devoted entirely to its business.
<b>Treasury Minute</b>	A formal administrative document drawn up by HM Treasury, which may serve a wide variety of purposes including seeking Parliamentary approval for the use of receipts as appropriations in aid, a remission of some or all of the principal of voted loans, and responding on behalf of the UK Government to reports by the Public Accounts Committee (PAC).
<b>Un hypothecated Grant</b>	All other grant funding that does not fall under the Hypothecated grant funding definition.
<b>Value for money</b>	The process under which organisation's procurement, projects and processes are systematically evaluated and assessed to provide confidence about suitability, effectiveness, prudence, quality, value and avoidance of error and other waste, judged for the public sectors a whole.
<b>Virement</b>	The process through which funds are moved between subheads such that additional expenditure on one is met by savings on one or more others.

<b>Vires</b>	Legal authority for a body to take any specific action, which may be provided for or limited by statute, the body's constitution or other authority.
<b>Vote</b>	The process by which Parliament approves funds in response to supply Estimates.
<b>Voted expenditure</b>	Provision for expenditure that has been authorised by Parliament, which 'votes' authority for public expenditure through the Supply Estimates process. Most expenditure by UK Government Departments is authorised in this way.
<b>Wales Audit Office</b>	The organisation which provides the Auditor General for Wales (AGW) with resources to support the discharge of his/her duties, and holds the AGW to account. It was established as a Body Corporate by section 13 of the Public Audit (Wales) Act 2013.
<b>Welsh Government</b>	The body established under section 45 of the Government of Wales Act 2006 as the executive for Wales to develop policies and take decisions. The members of the Welsh Government are the First Minister, the Welsh Ministers, the Counsel General, and the Deputy Welsh Ministers.
<b>Welsh Consolidated Fund</b>	A neutral place to hold the public money allocated to Wales by the UK Government, via the Secretary of State for Wales, and also those monies received from other sources.
<b>Welsh Government Sponsored Bodies (WGSBs)</b>	The name in Wales for Non-Departmental Public Bodies established by the Welsh Ministers.
<b>Welsh Minister</b>	An Assembly Member appointed under section 48 of the Government of Wales Act 2006 as Welsh Minister by the First Minister with the approval of Her Majesty, forming part of the Welsh Government.
<b>Welsh Ministers</b>	The First Minister and the Welsh Ministers appointed by the First Minister. This does not include Deputy Welsh Ministers or the Counsel General.
<b>Windfall</b>	Monies received by a UK and Welsh Government department which were not anticipated in the spending review.

## Annex 2.1

# The Auditor General for Wales and the Wales Audit Office

Supported by staff of the Wales Audit Office, the Auditor General for Wales (The Auditor General) is the independent auditor of most of the public sector in Wales. Using extensive statutory rights of access to records, the Auditor General provides direct advice and assurance to the National Assembly for Wales.

**A2.1.1** The Auditor General for Wales (the Auditor General) is the auditor of most Welsh public bodies. He or she undertakes his or her work using staff and other resources provided by the Wales Audit Office (WAO), which is a corporate body in the form of a board.

**A2.1.2** The Auditor General is the Chief Executive and Accounting Officer of the WAO. The Auditor General is appointed by the Sovereign on the nomination of the National Assembly for Wales. The Auditor General is independent of the Welsh Government and The National Assembly for Wales in the exercise of his or her functions. This independence is protected by statute.

**A2.1.3** The Auditor General's powers and responsibilities include:

- Examining and certifying the accounts of the National Assembly for Wales Commission; the Welsh Government and its sponsored and related public bodies, including NHS bodies in Wales; and all forms of Local Government bodies, ranging from unitary authorities to community councils.
- In addition to auditing their financial statements, the Auditor General has a statutory responsibility to satisfy himself or herself that Local Government and NHS bodies have put in place proper arrangements to secure economy, efficiency and effectiveness in their use of resources.
- Examining and reporting to the National Assembly for Wales on the economy, efficiency and effectiveness with which the Welsh Government and its sponsored and related public bodies have used, and may improve the use of, their resources in discharging their functions.
- Conducting value for money studies that relate to Local Government bodies.
- Assessing and inspecting unitary, Fire and Rescue, and National Park Authorities' compliance with the improvement requirements of the Wales Programme for Improvement. This involves not only auditing the bodies' performance against their Improvement Plans but also an assessment of their corporate capability for delivering improvement in the future.
- Authorising payments from the Welsh Consolidated Fund, ensuring that proposed payments from the Fund are in accordance with legislation and budget authority<sup>12</sup>.

<sup>12</sup> An important part of the Auditor General's responsibilities is oversight of payments from the Welsh Consolidated Fund. In response to requests from the Welsh Government, the Auditor General checks that proposed payments from the Fund are in accordance with legislation and budget authority. Only once the Auditor General's authorisation is given, may the Government Banking Service issue money from the Fund.

**A2.1.4** The Public Audit Wales (Act) 2013 requires the Auditor General to issue a code of audit practice specifying the way in which certain of his or her functions are to be carried out. In order to carry out audit work, the Auditor General has extensive statutory rights of access to Welsh public bodies' and other organisations' records. These rights extend to the records of contractors and recipients of grants. The Auditor General also has the right to obtain information about, and explanations of, any of this evidence.

**A2.1.5** All reports published by the Auditor General (except for those issued solely in respect of Local Government bodies) are laid before the National Assembly for Wales, and the Public Accounts Committee is able to call for both oral and written evidence from the relevant Accounting/Accountable Officer(s) and others to assist the Committee in its consideration of the Auditor General's reports.

**A2.1.6** Information about the Auditor General's UK equivalent, the Comptroller and Auditor General, and about the National Audit Office, can be found in *Managing Public Money*.

## Annex 3.1

### Governance Statement

It is fundamental to each Accounting Officer's responsibilities to manage and control the resources used in his or her organisation. The governance statement, a key feature of the organisation's annual report and accounts, sets out clearly how these duties have been carried out in the course of the year. It has three components: corporate governance, risk management and, in the case of some organisations, oversight of certain local responsibilities.

#### Purpose

**A3.1.1** Each Accounting Officer (AO) delegates responsibilities within his or her organisation so as to control business and meet the standards set out in Chapter 3, box 3.1. The systems used to do this should give adequate insight into the business of the organisation and its use of resources to allow the AO to make informed decisions about progress against business plans and, if necessary, put performance back on track. In doing this the AO is usually supported by a board.

**A3.1.2** These responsibilities are central to the AO's duties. To carry them out the AO needs to develop a keen sense of the risks and opportunities the organisation faces. In the light of the board's assessment of the organisation's appetite for risk, the AO needs to decide how to respond to the evolving perceived risks.

**A3.1.3** The governance statement, for which the AO takes personal responsibility, brings together all these judgements about the use of public resources as part of the annual report and accounts. It should give the reader a clear understanding of the dynamics and control structure of the business. Essentially, it records the stewardship of the organisation. Supplementing the accounts, it should provide a sense of the organisation's vulnerabilities and resilience to challenges.

#### Preparing the Governance Statement

**A3.1.4** The governance statement is published in each organisation's annual report and accounts. It should be assembled from work throughout the year to gain assurance about performance and insight into the organisation's risk profile, its responses to the identified and emerging risks, and its success in tackling them.

**A3.1.5** There is no set template for the governance statement.

**A3.1.6** The AO and the board have a number of inputs into this process:

- The board's annual review of its own processes and practices, informed by the views of its audit committee, of the organisation's assurance arrangements.
- Insight into the organisation's performance from internal audit, including an audit opinion on the quality of the systems of governance, management and risk control.

- Feedback from the delegation chain(s) within the organisation about its business, its use of resources, its responses to risks, the extent to which in year budgets and other targets have been met, and any other internal accountability mechanisms; including
  - Bottom-up performance and assessments to generate a full appreciation of performance and risks as they are perceived from within the organisation.
  - End-to-end assessments of processes, since it is possible to neglect interdependent and compounded risks if only the individual components are considered.
  - A high level overview of the organisation’s business so that systemic risks can be considered in the round.
  - Any evidence from internal control failures or poor risk management.
  - Potentially, information from whistleblowers.
- Material from any public body connected with the organisation which may shed light on the performance of the organisation or its board.

**A3.1.7** It is important that the governance statement covers the material factors affecting the organisation in the round, not neglecting the more serious (if remote) risks<sup>13</sup>, emerging technology and other cutting edge developments. It should also mention any protective security concerns in suitably careful terms<sup>14</sup>, with details reported to the external auditor.

## Content of Governance Statement

**A3.1.8** With the board’s support, it is for the AO to decide how to:

- Organise the governance statement.
- Take account of input from within the organisation and from the board and its committees.
- Where relevant, integrate information about the organisation’s public bodies, some of which may be material to the consolidated organisation.
- Provide an explanation of how the organisation ensures that use of any resources granted to certain locally governed organisations (including the NHS) is satisfactory. See A3.1.12.

<sup>13</sup> Including the external risks identified in the National Risk Assessment.

<sup>14</sup> As set out in the Security Policy Framework.

**A3.1.9** Box A3.1A summarises subjects that should always be covered.

**Box A3.1A: Essential features of the governance statement**

- The governance framework of the organisation, including information about the board's committee structure, its attendance records, and the coverage of its work.
- The board's performance, including its assessment of its own effectiveness.
- Highlights of board committee reports, notably by the audit and nomination committees.
- An account of corporate governance, including the board's assessment of its compliance with the Corporate Governance Code, with explanations of any departures.
- Information about the quality of the data used by the board, and why the board finds it acceptable.
- Where relevant, an account of how resources made available to certain locally governed organisations are distributed and how the Group gains assurance about their satisfactory use.
- A risk assessment (see Annex 4.2), including the organisation's risk profile, and how it is managed, including, subject to a public interest test:
  - Any newly identified risk.
  - A record of any Ministerial directions given.
  - A summary of any significant lapses of protective security (eg data losses).

**A3.1.10** All the items in this box are important. The risk assessment is crucial. This is where the AO, supported by the board, should discuss how the organisation's risk management and internal control mechanism work and why they were chosen to deliver reasonable assurance about prevention, deterrent or other appropriate action to manage the actual and potential problems (or opportunities) facing the organisation. Avoiding lengthy description of process, it should assess the evidence about the effectiveness in practice of the risk management processes in place. In doing so it should face frankly up to any revealed deficiencies as risks have materialised.

**A3.1.11** In putting together the governance statement, the AO needs to take a view on the extent to which items are significant enough to the welfare of the organisation as a whole to be worth recording. There are no hard and fast rules about this. Some factors to take into account are suggested in box A3.1B.

### Box A3.1B: Deciding what to include in the governance statement

- Might the issue prejudice achievement of the business plan – or other priorities?
- Could the issue undermine the integrity or reputation of the organisation?
- What view does the board’s audit committee take on the point?
- What advice or opinions have internal audit and/or external audit given?
- Could delivery of the standards expected of the AO (Chapter 3, box 3.1) be at risk?
- Might the issue make it harder to resist fraud or other misuse of resources?
- Does the issue put a significant programme or project at risk?
- Could the issue divert resources from another significant aspect of the business?
- Could the issue have a material impact on the accounts?
- Might national security or data integrity be put at risk?

## Localism

**A3.1.12** Organisations should include in their governance statements a summary account of how they achieve accountability for the grants they distribute to Local Government and the NHS. It should cover:

- An account of how resources are distributed, eg in response to needs or desired change.
- How the AO gains assurance about probity in the use of public funds.
- How the AO achieves or encourages value for money in the local use of grants, eg through local arrangements which provide incentives to achieve good value.
- The use the AO makes of disaggregated information about performance, including investigating apparent outliers and/or requiring those responsible locally to explain their results.

## External Audit

**A3.1.13** The organisation’s external auditor will review the governance statement for its consistency with the audited financial statements. The external auditor may report on:

- Any inconsistency between evidence collected in the course of the audit and the discussion of the governance statement.
- Any failure to meet the requirement to comply with or explain departures from the *Corporate Governance Code* or any other authoritative guidance.

## Annex 3.2

### Conflicts of Interest

The Public are entitled to have trust in those organisations working on its behalf. Public Sector employers are therefore committed to ensuring the highest standard of conduct from staff. The Nolan Principles set out the standards of behaviour expected of Public Office Holders. The Civil Service Code sets out the behaviour expected from all civil servants. Conflicts of interest can occur in the course of one's duties, so it is important to be aware of what to do if such a situation arises.

**A3.2.1** A conflict of interest is a set of circumstances that creates a risk which impairs an individual's ability to apply judgement, carry out official/professional duties, or where an Official could be influenced by secondary interests (e.g. benefiting personally from or bias towards a transaction). The perception of competing interests, impaired judgements or undue influence can also be conflicts of interest.

#### Box A3.2A: Examples of conflicts of interest:

- **Direct or indirect financial interest** – Officials could influence public spending decisions.
- **Non Financial or Personal interest** – contracts from companies or individuals in which Official has some kind of relationship.
- **Competing Loyalties** between the organisation to which a primary duty is owed, and some other person or entity.
- **Accepting Gifts or Hospitality** – accepting gifts or hospitality creates a perception of biased decision making, even if the gift has no bearing on judgement.

### Consequences

**A3.2.2** Failing to manage Conflicts of Interests adequately could result in:

- Reputational damage.
- Undermining public confidence in the integrity of the Organisation.
- Legal action arising from, for example, fraud, bribery and corruption.

### Management of Conflicts

**A3.2.3** Conflicts of interest are common and unavoidable. Organisations should recognise the importance of maintaining and building effective networks in order to support the aims and objectives of the organisation, and to gain understanding of the views of our stakeholders. It is therefore not reasonable to completely eliminate the risks of such conflict. Measures should be put in place however, to identify and manage conflicts of interest when they do arise.

**A3.2.4** Officials may have outside interests which may place them in a situation where a conflict of interest could arise e.g. membership of an external Board or Committee. Their employer should be made aware immediately of such membership or affiliation. Officials will be expected not to partake in any part of a meeting where they could be perceived to influence the outcome. This may even mean not being present while the issue is being discussed. This also applies to Board Members of outside bodies which is being sponsored or receives funding from the employing organisation. Declarations of interest should be recorded in the notes of the meeting concerned, and if any contact is made by the person who has declared the conflict with the Public Sector Official associated with the project, the nature of that contact should be documented as well as how the conflict was managed.

**A3.2.5** Large Organisations are frequently subjected to changes of staff. When that does happen, proper and thorough hand over arrangements should be made to ensure staff taking on projects afresh are aware of any issues associated with those projects and to whom any enquiries should be addressed.

## Annex 4.1

### Finance Directors

It is UK Government policy that all departments should have professional finance directors reporting to the Permanent Secretary with a seat on the departmental board, at a level equivalent to other board members. This applies equally to Devolved Administrations. It is good practice for all other public sector organisations to do the same and to operate to the same standards. This Annex sets out the main duties and responsibilities of finance directors.

#### The Finance Function

**A4.1.1** The finance director of a public sector organisation should

- be professionally qualified<sup>15</sup>
- have board status equivalent to other board members
- report directly to the permanent head of the organisation
- be a member of the senior leadership team, the management board and the executive committee (and/or equivalent bodies).

**A4.1.2** This demanding leadership role requires a persuasive and confident communicator with the stature and credibility to command respect and influence at all levels through the organisation. Its main features are described in box A4.1A. Many of the day-to-day responsibilities may in practice be delegated but the finance director should maintain oversight and control. In large part these duties consist of ensuring that the financial aspects of the Accounting Officer's responsibilities are carried through to the organisation and its associated public bodies in depth.

**A4.1.3** The finance function should maintain a firm grasp of the organisation's financial position and performance. Supporting the Accounting Officer, the finance director should ensure that there is sufficient expertise in depth, supported by effective systems, to discharge this responsibility and challenge those responsible for the organisation's activities to account for their financial performance. It is important that financial management is taken seriously throughout each public sector organisation.

#### Financial Leadership

**A4.1.4** The finance director is responsible for leadership of financial responsibilities within the organisation and its public bodies. He or she should ensure that the information on which decisions about the use of resources are based is reliable. Box A4.1B explains some specific responsibilities of the role.

<sup>15</sup> The term professional finance director in this context means both being a qualified member of one of the five bodies comprising the Consultative Committee of Accounting Bodies (CCAB) in the UK and Ireland, i.e. the Chartered Institute of Public Finance and Accountancy, the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Institute of Chartered Accountants in Ireland, the Association of Chartered Certified Accountants, or having equivalent professional skills and/or qualifications; and having relevant prior experience of financial management in either the private or the public sector.

## **Box A4.1A: The role of the Finance Director**

### **Governance**

- Financial leadership, both within the organisation and to its public bodies, at both a strategic and operational level.
- Ensuring sound and appropriate financial governance and risk management.
- Leading, motivating and developing the finance function, establishing its full commercial contribution to the business.
- Planning and delivering the financial framework agreed with the HM Treasury or sponsoring organisation against the defined strategic and operational criteria.
- Challenging and supporting decision makers, especially on affordability and value for money, by ensuring policy and operational proposals with a significant financial implication are signed-off by the finance function.

### **Internal control**

- Co-ordinating the planning and budgeting processes.
- Applying discipline in financial management, including managing banking, debt and cash flow, with appropriate segregation of duties.
- Preparation of timely and meaningful monthly management information.
- Ensuring that delegated financial authorities are respected.
- Selection, planning and oversight of any capital projects.
- Ensuring efficiency and value for money in the organisation's activities.
- Provision of information and advice to the audit committee (known as Corporate Governance Committees within Welsh Government).
- Leading or promoting change programmes both within the organisation and its public bodies.

### **External links**

- Preparing draft budgets and resource accounts and consolidation data for whole of government accounts.
- Liaison with the external auditor.
- Liaison with National Assembly for Wales Finance and Public Accounts Committees, other relevant Assembly Committees, and, possibly, Parliament's Committee of Public Accounts.

### **Box A4.1B: Financial management leadership**

- Providing professional advice and meaningful financial analysis enabling decision makers to take timely and informed business decisions.
- Maintaining a long term financial strategy to underpin the organisation's financial viability within the agreed framework.
- Developing and maintaining an effective resource allocation model to optimise outputs.
- Ensuring financial probity, regularity and value for money.
- Developing and maintaining appropriate asset management and procurement strategies.
- Reporting accurate and meaningful financial information about the organisation's performance to the National Assembly for Wales, Office of National Statistics, Parliament, HM Treasury and the general public.
- Setting the strategic direction for any commercial activities.
- Acting as head of profession in the organisation.

## **Internal Financial Discipline**

**A4.1.5** The finance director should maintain strong and effective policies to control and manage use of resources in the organisation's activities. This includes improving the financial literacy of budget holders in the organisation. Similarly, he or she should ensure that there are similar disciplines in bodies sponsored by the organisation. These should all draw on best practice in accounting and respect central requirements, including, where relevant, accounts directions. These responsibilities are described in box A4.1C.

### **Box A4.1C: Financial control**

- Enforcing financial compliance across the organisation while guarding against fraud and delivering continuous improvement in financial control.
- Applying strong internal controls in all areas of financial management, risk management and asset control.
- Establishing budgets, financial targets and performance indicators to help assess delivery.
- Reporting performance of both the organisation and its public bodies to the board and other parties as required.
- Value management of long term commercial contracts.
- Ensuring that the organisation's capital projects are chosen after appropriate value for money analysis and evaluation using the HM Treasury Green Book.

**A4.1.6** Individual finance director posts will, of course, have duties specific to their organisations and contexts in addition to those delineated in this annex. But all finance director posts should seek to operate to these standards as an essential minimum.

## Annex 4.2

### Risk

Each public sector organisation should have systems for identifying and managing risk – both opportunities and threats – suited to its business, circumstances and risk appetite. The board should lead the assessment and management of risk, and support the Accounting Officer in drawing up the governance statement (see Annex 3.1).

#### The Case for Managing Risk

**A4.2.1** All public sector organisations face a variety of uncertainties, both positive and negative, which can affect their success in delivering their objectives, budget and value for money. So the board of each public sector organisation should actively seek to recognise both threats and opportunities and to decide how to respond to them, including how to set internal controls.

**A4.2.2** Managing risk should be integrated into the normal management systems of each public sector organisation so that it can achieve its goals and maintain a reputation of credibility and reliability. It is for each Accounting Officer (AO), supported by the board, to decide how.

**A4.2.3** The board should make a strategic choice about the style, shape and quality of risk management within each organisation. This is risk tolerance, i.e. the extent to which the organisation is willing to accept loss or detriment either in the performance of its regular services or in order to secure better outcomes. Different risk tolerances will apply to different circumstances, e.g. mission critical programmes or policies might find service failure scarcely tolerable, whereas investment bodies may care more about achieving financial success even at the price of some failures. Boards should be willing to take a proportionate approach so that less important risks do not crowd out the vital ones.

#### Risk Management in Practice

**A4.2.4** The board's strategic guidance on risk appetite should permeate each organisation's programmes, policies, processes and projects. It should determine how delegations and reporting arrangements work so that departures from plan can be picked up and dealt with promptly.

**A4.2.5** Feedback from working level should also inform each board's reassessment of risk. Thus risk management should be a continuous cycle of assessment and feedback, responding to new information and developments. The essentials of the process are summarised in box A4.2A.

**A4.2.6** Each organisation should decide how this cycle should work, in line with its circumstances, priorities and working practices. The final word must always be for the AO supported by the board, taking a broad and connected view across the whole organisation.

### Box A4.2A: Outline of the risk management cycle

1. The board defines the organisation's risk tolerance.
2. The organisation identifies and categorises its risks.
3. The organisation assesses the risks identified: how likely their possible impact, identifying which are beyond tolerance and when.
4. The board scans the horizon for any remote overlooked risks.
5. The board decides which risks matter and what action should be taken if any.
6. Downward delegation of management, coupled with upward reporting of risks through the organisation enables the board to track performance.
7. Using this feedback, the board takes a rounded overview, and may adjust decisions e.g. on tolerance or on response.
8. Back to step 1 and iterate as the board chooses.

## Identifying Risks

**A4.2.7** It is important to capture all the organisation's risks so that they can be evaluated properly in context.

**A4.2.8** There is value in getting each part of the organisation to think through its own risks. At working level, operational risks may loom large. It may only be at board level that it is really possible to scan the horizon for emerging trends, problems or opportunities that might change the organisation's working environment. Some of the critical risks that are easily overlooked are shown in box A4.2B.

### Box A4.2B: Examples of risk which are easily missed

- **Information security risks:** unsecured digital information can be misplaced or copied.
- **High impact low probability risks:** remote risks with serious effect if they happen.
- **Opportunity risks:** where some choices may close off other alternatives.
- **End to end risks:** which emerge when an operational chain fails simultaneously in several places in a linked set of processes.
- **Inter-organisational risks:** which can cause failure of the organisation's business because of links to partners, suppliers and other stakeholders.
- **Cumulative risks:** which happen if several risks precipitate at once, e.g. in response to the same trigger.

**A4.2.9** As well as drawing on risk assessment from within the organisation, it may be valuable to use an external source to make sure that nothing important has been overlooked. Sometimes different public sector organisations can help each other out in this way, to their mutual advantage. And it can be useful to get staff to work together to consider the subject, e.g. in facilitated groups.

**A4.2.10** Once the organisation's risks have been identified, it is possible to draw up a risk register. This is a list of recognised risks which can be kept up to date and which the board can review regularly. Each organisation needs to decide how to prioritise its total risk exposure so that the board can take an informed strategic approach to risk for the organisation as a whole.

## Responding to Risk

**A4.2.11** Each organisation needs to decide whether, and if so how, to respond to its identified risks. Some standard responses are listed in box A4.2C.

### Box A4.2C: Some standard responses to risk

**Treat:** a common response. Treatment can mean imposing controls so that the organisation can continue to operate; or setting up prevention techniques. See box A4.2D for possible treatments.

**Transfer:** another organisation might carry out an activity in which it is more expert. Insurance is not usually open to public sector organisations (see Annex 4.3) but other forms of transfer are, e.g. using a payroll bureau. Some risks cannot be transferred, especially reputational risk. So delegating organisations should retain oversight of their agents, with scope for remedial action when necessary.

**Terminate:** it may be best to stop (or not to start) activities which involve intolerable risks or those where no response can bring the residual risk to a tolerable level, e.g. failing projects where it is cheaper to start again. This option is not always available in the public sector, which sometimes has to shoulder difficult risks – typically remote but potentially serious ones – which the private sector can choose to avoid.

**Tolerate:** for risks where the downside is containable with appropriate contingency plans; for some where the possible controls cannot be justified (e.g. because they would be disproportionate); and for unavoidable risks, e.g. terrorism.

**Take the opportunity:** boards may embrace some risks, accepting their downside perhaps with controls or preventative action, in the expectation of beneficial outcomes. Avoiding all risk can be as irresponsible as disregarding risk.

**A4.2.12** In choosing responses, the acid test is whether the residual risk can be made acceptable after action. All controls should be realistic, proportionate to the intended reduction of risk, and offer good value for money. The more common types are listed in box A4.2D.

## Box A4.2D: Common controls

**Preventive action:** measures to eliminate or limit undesirable outcomes, e.g. improving training or risk awareness; or stopping transfer of digital information using data sticks. Beware of imposing unnecessary costs or damaging innovation.

**Corrective controls:** measures to deal with damaging aspects of realised risks, e.g. clauses to recover the cost of failure of a contract. Includes contingency planning.

**Directive controls:** measures designed to specify the way in which a process is carried out to rule out some obvious potential damage, e.g. hygiene requirements.

**Detective controls:** measures to identify damage so that it can be remedied quickly. Especially useful where prevention is not appropriate, but can be a useful cross check elsewhere, e.g. stock controls.

**A4.2.13** However it is treated, it is usually impossible to eliminate all risk. It would often be poor value for money to do so were it possible. So it is good practice to associate application of controls with contingency planning to cope with resolution of damage when risks precipitate. Many organisations find it useful to dry run these plans: first to check that they work, second to make sure they are proportionate and third to address and eliminate any unnecessary features they may have.

## The Board

**A4.2.14** Risk management is a key governance task for the board. It should take a strategic view of risk in the organisation in the round, factoring together all the relevant input it can reasonably use. For example, it may consider to what extent risks interact, cumulate or cancel each other out. And consideration of risk should naturally feature in all the board's significant decisions.

**A4.2.15** It is good practice for the board to consider risk regularly as part of its normal flow of management information about the organisation's activities. It is good practice for each layer of management to give upward assurance about its performance, so reinforcing responsibility through the structure.

**A4.2.16** It is up to each board to decide how frequently it wants to consider risk. Some set regular timetables to consider the whole risk register, while some choose to look at parts of the risk register in a regular sequence. Scrutiny of this kind enables the board to assess developments in context and make confident decisions about their relevance and significance.

**A4.2.17** It is good practice for the board to make these assessments on the advice of its audit committee, though it should form its own view. Audit committees can also add value by chasing up implementation of the organisation's responses to PAC reports. Each audit committee should be chaired by a non-executive board member, drawing on input from the organisation's internal reporting and internal audit functions.

**A4.2.18** Having weighed the identified risks, the board should also seek to distinguish unidentified risks, some of which may be remote. Box A4.2B offers some possibilities though it is not exhaustive. This process may lead the board to reconsider its strategy on risk tolerance.

**A4.2.19** A useful focus of board risk work is supporting the AO in preparation of the governance statement for publication in its annual report (see Annex 3.1). It should include an account of how the organisation has responded to risk and what it is doing both to contain and manage risk; and also to respond to opportunities.

**A4.2.20** More generally, the board should make sure that lessons are learned from the organisation's experience. This applies particularly to perceived failures, e.g. an unforeseen risk or a crystallised risk which turned out more damaging than expected. But it is equally true of successes, especially those where risk was managed well, to see whether there is anything to be gained by repeating effective techniques elsewhere.

**A4.2.21** Finally, the board should consider whether the organisation's risks are being treated appropriately. If damage has been prevented, it may be possible to adjust the existing response to risk to achieve equally successful results by less expensive or less invasive techniques, e.g. replacing physical controls with security cameras.

## Departmental Groups

**A4.2.22** The Welsh Government sponsors a number of "arms length" public bodies for which it takes ultimate responsibility while allowing them a degree of (or sometimes considerable) independence (see Chapter 7). The accounts of these public bodies may be consolidated with the Welsh Government's accounts. Whether they are or not, the sponsor stands behind them. It follows that each Welsh Government Group should consider its risk profile including the businesses of its public bodies.

### References

The HM Treasury Orange Book:  
[www.gov.uk/government/publications/orange-book](http://www.gov.uk/government/publications/orange-book)

Other HM Treasury risk guidance:  
[www.webarchive.nationalarchives.gov.uk/20130129110402/  
www.hm-treasury.gov.uk/psr\\_governance\\_risk\\_riskguidance.htm](http://www.webarchive.nationalarchives.gov.uk/20130129110402/www.hm-treasury.gov.uk/psr_governance_risk_riskguidance.htm)

NAO report on Managing risks in government:  
[www.nao.org.uk/report/managing-risks-in-government/](http://www.nao.org.uk/report/managing-risks-in-government/)

GAD's practical guide to strategic risk management:  
[www.gad.gov.uk/Knowledge\\_Centre/Strategic\\_Risk\\_Management.html](http://www.gad.gov.uk/Knowledge_Centre/Strategic_Risk_Management.html)

## Annex 4.3

### Insurance

Public sector organisations generally should not take out commercial insurance because it is better value for money for the taxpayer to cover his/her own risks. However, there are some circumstances where commercial insurance is appropriate. This annex sets out the issues to be considered.

**A4.3.1** Public sector organisations do not, as a general rule, purchase commercial insurance against the risks they face except where there is a legal obligation so to do (e.g. in respect of vehicles where Road Traffic Acts require it). Typically, it is cheaper for them to cover their own risk (this is because, over time, costs of insurance premiums would exceed the likely payout for any losses incurred).

**A4.3.2** However, in certain circumstances, as part of forming a risk management strategy, Accounting Officers (AOs) may choose to purchase commercial insurance so as to protect certain parts of the organisation's portfolios. Such decisions should always be made after cost benefit analysis in order to secure value for money. Some acceptable reasons for using insurance are set out in box A4.3A.

#### Box A4.3A: Where commercial insurance may be justified

- **Building insurance as a condition of the lease** and where the lessor will not accept an indemnity: commercial insurance may be taken out where the cost of accommodation, together with the cost of insurance, is more cost effective than other accommodation options.
- **Overall site insurance:** private sector contractors and developers usually take out a single-site insurance policy because it is cheaper than each individual party insuring themselves separately. So, a client organisation may be able to cover its risks at little or no extra cost.
- **Insurance of boilers and lifts:** which may be a condition of taking out a lease and typically involves periodic expert inspection designed to reduce the risk of loss or damage.
- **Commercial initiatives:** because these activities are outside the Welsh Government's core responsibilities, losses on its discretionary commercial activities could reduce resources available for its core activities (see Chapter 7). Therefore, it will usually make sense to insure them.
- **Where commercial insurance is integral to a project:** for example, where private contractors insist, it may be appropriate to purchase insurance even if the net benefit is negative. But, this may be a sign that the project needs restructuring to avoid any requirement to buy commercial insurance, perhaps through letters of comfort or statements of support. The costs and benefits of taking out insurance should be included in the appraisal of the project as a whole.

## Appraising the Options

**A4.3.3** Decisions on whether to buy insurance should be based on objective cost-benefit analysis, using guidance in the HM Treasury Green Book<sup>16</sup>. Box A4.3B outlines some factors which are often worth considering in such assessments.

### Box A4.3B: Costs and benefits which could be included in assessments

#### Costs

- The insurance premium which may be paid.
- The administrative cost of managing claims with the insurance company.

#### Benefits

- Transfer of risk, valued at the expected compensation for the insured losses.
- Claims handling, where the insurance company will manage claims against third parties.
- The value of guaranteed business recovery: the potential reduction in the time taken to reinstate losses, reducing business interruption.

## Setting Fees and Charges

**A4.3.4** If public sector organisations insure risks arising in supplying a service for which a fee or charge is levied the actual premium payments should be included in the calculation of costs when deciding the fee or charge. Similarly, where self-insurance applies, the notional cost of premium payments should be taken into account. See Chapter 6 for further details.

## Claims Administration

**A4.3.5** Managing claims against third parties can be time-consuming and require expert attention. Insurance companies may be better placed than public sector organisations to deal with claims economically and efficiently. Contracting-out claims administration to an insurance company might be more cost-effective than retaining the work in-house.

## Dealing with Losses

### Uninsured losses (except traffic accidents)

**A4.3.6** Where a loss occurs or a third-party claim is received, public sector organisations should consider initially whether the loss should be made good or the claim accepted. Thus:

- **Loss of or damage to assets:** the question of repair or replacement should always be considered carefully, taking account of the need for the asset and current policies. This decision is, in effect, a new investment decision and should be appraised accordingly.
- **Third-party claims:** the justification for the claim should be carefully considered with appropriate legal advice.

<sup>16</sup> [www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government](http://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government)

**A4.3.7** If the organisation decides to repair or replace an asset, or meet a third party claim, the cost should normally be met from within existing resources. Bids for additional resources in such cases are not approved routinely. If a bid did arise, the Welsh Government Director of Finance would consider it on its merits and in the light of the resources available, in the same way as other bids for increases in provision. Similarly, public bodies should not normally expect their sponsors to meet claims for reimbursement of loss.

### Insured losses

**A4.3.8** Public sector organisations should make insurance claims in accordance with the terms of the policy.

**A4.3.9** Public bodies may retain amounts paid under commercial insurance policies to meet expenditure resulting from losses or third-party claims. If it is decided not to replace or to repair an insured asset, the sponsor department may reduce any grant in aid payable.

## Claims between Public Sector Organisations

**A4.3.10** A situation could arise whereby the Welsh Government and another Government Department are involved in an incident causing loss to one or other resulting in the Welsh Ministers making a claim or having a claim made against them for the cost of damages. To avoid the cost involved in preparing and settling small claims the rule is not to pursue a claim in the case of damage to fixed or movable property where the damage is minor. Similar waiver arrangements should apply up to mutually agreed limits between other public sector organisations. However, waiver arrangements of this kind are not appropriate where there are rights of claim against third parties.

**A4.3.11** Box A4.3C shows how to proceed when one government organisation makes a larger claim against one or more others.

### Box A4.3C: Handling claims between public sector organisations

#### Insurance Status

All insured

All uninsured

Organisation at fault uninsured,  
other organisation(s) insured

Organisation at fault insured,  
other organisations(s) uninsured

#### Settlement of Claims

Insurers settle claims

Organisation(s) at fault negotiate about whether to reimburse the other(s)

Insured organisation claims on its insurance policy. Uninsured organisation(s) deal with claims from the insurers on the basis of strict legal liability

Uninsured organisation(s) seek financial satisfaction through the insurers of the organisation(s) at fault

## Vehicles

**A4.3.12** Many claims between public bodies involving damage to, or loss caused by, vehicles can be handled using the arrangements in paragraph A4.3.10.

**A4.3.13** Vehicles travelling in other EU countries must comply with Directives. These require vehicles of a member state operating in another's territory to be covered by insurance to the extent required by the legislation in territory of the journey, unless there are acceptable alternative arrangements, e.g. indemnities.

## Loans

**A4.3.14** When public sector assets are loaned to a body other than a public sector organisation which does not insure, it is important to protect the interests of the lending organisation. The borrower should insure against damage or loss of the assets from the time of receipt and against claims by third parties including its own employees. An indemnity by the borrowers may be an acceptable substitute, provided the Welsh Government is satisfied that the borrower could and would meet any damage or other loss. In such circumstances advice should be sought from legal services.

**A4.3.15** Public bodies are usually expected to meet the cost of insuring any assets (e.g. equipment or stores) held by a contractor in the normal course of business. The cost of any insurance against risks arising from negligence or wilful misconduct by the contractor's employees should be borne by the contractor. These arrangements should be set out explicitly in the relevant contract.

**A4.3.16** Should the Welsh Government or its public bodies borrow objects of value from a non-government body an indemnity against damage or loss should normally be offered to the owner (prior to entering into any such indemnity advice should be sought from Legal Services). Such indemnities should leave no doubt as to the extent and duration of the borrowing organisation's liability.

**A4.3.17** Borrowers should only take out commercial insurance for loaned items of value if the owner insists upon it or if the borrower has reason to believe that commercial insurance would be more cost effective than giving an indemnity.

## Employers' Liability

**A4.3.18** The Crown is not bound by the Employers' Liability (Compulsory Insurance) Act 1969. Consequently, the Welsh Government need not insure the risks outlined in the Act.

**A4.3.19** Similarly, a body funded by grant-in-aid need not insure against employers' liability risks. This is because the Employers' Liability (Compulsory Insurance) Regulations 1998 (SI 1998/2573) provide exemption for any body (or person who may be an employer) holding a certificate issued by a Government Department.

**A4.3 20** The scope of the certificate should be confined strictly to the risks with which the Employers' Liability (Compulsory Insurance) Act 1969 is concerned and may not be extended to any other risks. A copy of the format of the certificate can be obtained from the Corporate Governance Unit. The Welsh Government will ensure that the circumstances in which certificates have been issued are reviewed from time to time, so that certificates may be revoked if circumstances change.

## Annex 4.5

### Procurement

It is important to secure value for money through sound procurement and commissioning. Public sector organisations should acquire goods and services through fair and open competition, acting on appropriate advice. This annex provides an overview of the policy framework for public procurement in Wales.

**A4.5.1** Procurement is the process of acquisition from third parties (including the logistical aspects) and covers all expenditure with third parties on goods and services. Procurement spans the whole life cycle from initial concept and definition of business needs through to the end of the useful life of an asset or end of a services contract. Both conventionally funded and more innovative types of funded projects are included.

**A4.5.2** When taken as a whole, the Welsh public sector is the largest user of services and goods from the private and voluntary sectors in the country. Value Wales was established by the Welsh Government to work with public sector bodies, promoting collaboration and best practice procurement policy, in pursuit of efficiency and improved value in the delivery of public services.

**A4.5.3** Corporate Procurement Services (CPS) is a policy delivery function of the Department for Finance and Corporate Services. It provides advice, support and stewardship for procurement activity in the Welsh Government.

**A4.5.4** CPS is responsible for the development and implementation of procurement policy across Wales and acts as the liaison point between Wales and other parties, such as Cabinet Office, who are central to effective policy development.

**A4.5.5** Good procurement practice demands that public sector organisations buy the goods, works and services they need using fair and open procurement processes, guarding against corruption and seeking to secure value for public funds with due regard to propriety and regularity. EU law and World Trade Organisation (WTO) agreements underpin these principles. The specific responsibilities of public sector organisations are set out in box A4.5A.

**A4.5.6** The Welsh Government recognises the impact of effective public sector procurement on the social, economic and environmental landscape of Wales. It promotes procurement practices that not only address legislative requirements, but which are sensitive to wider sustainable procurement issues and which aim to break down barriers between suppliers and public sector procurement.

## Box A4.5A: Checklist of key purchasing responsibilities

### General

- Value for money, normally through competition.
- Compliance with legal obligations under EU regulation and UK law and other international agreements.
- Follow published policies and standards on public procurement including the Wales Procurement Policy Statement.

### Management approach

- Leadership on the importance of procurement in delivering objectives.
- Define roles and responsibilities of key staff, with adequate separation of duties.
- Promote awareness of the importance of procurement policy and Cabinet Office guidance.

### Planning and engagement

- Consult CPS on procurement policy issues.
- Clarify objectives of procurement from the start.
- Consider how the procurement strategy could attract a diverse range of suppliers including SMEs and third sector organisations.
- Consider collaborative or shared procurement with other organisations to maximise purchasing power.
- Design procurement strategy and engage with the market early and well before competition starts. Advertise opportunities through the national procurement portal ([www.sell2wales.co.uk](http://www.sell2wales.co.uk)).

### Skills

- Use procurement professionals throughout.
- Make sure you contact CPS in advance of starting any procurement exercise.
- Ensure that there is sufficient skills capacity in undertaking and managing procurements and projects.

### Review

- Apply the Gateway review process.
- Draw issues which may have wider implications to Value Wales' attention.

**A4.5.7** This guidance is intended to be fully consistent with the UK's EU and international obligations. It does not create any rights or legal obligations.

## Value for money

**A4.5.8** Value for money is defined as the optimum combination of whole-life costs and quality to meet the user's requirement – this definition allows relevant social and environmental issues to be taken into account in procurement decisions (see box A4.5B).

**A4.5.9** In order that procurement delivers maximum benefit organisations must set out the vision of success and formulate a plan that sets out how this will be delivered – a procurement strategy. CPS has produced a template for compiling an organisational procurement strategy which can be accessed via the Procurement Route Planner ([www.prp.gov.wales](http://www.prp.gov.wales)). The template is supported by a best practice toolkit which provides a range of resources to support delivery of the strategy. In compiling a procurement strategy the organisation will need to consider the following issues:

1. Wales Procurement Policy Statement
2. Organisational policy
3. Structure of procurement
4. Procurement profile
5. Business processes
6. Value for money and efficiency
7. Collaboration
8. People, training and development
9. Wider objectives – social, economic and environmental
10. Performance management

### Box A4.5B: Securing value for money

**Cost:** the key factor is whole life cost, not lowest purchase price. Whole life cost takes into account the cost over time, including capital, maintenance, management, operating and disposal costs. For complex procurements, whole life cost can be very different from initial price.

**Quality:** paying more for higher quality may be justified if the whole life cost is better, for example, taking into account maintenance costs, useful life and residual value. The purchaser should determine whether increased benefits justify higher costs.

**Perspective:** each public sector organisation's strategy should seek to achieve the best value outcome for the public sector as a whole, not just for the organisation itself. This should be designed in before the invitation to tender is published.

**Collaborative procurement:** in the vast majority of cases, standardising and aggregating procurement requirements will deliver better value for money. Public sector organisations, including smaller ones, should therefore collaborate as far as possible on procurement in line with best practice and the Wales Procurement Policy Statement.

**A4.5.10** Collaboration in procurement is an important tool that can help deliver improvement in public services through greater value for money and resource efficiency. However, it is also recognised that each individual organisation is responsible and accountable for its own decisions and that each organisation's primary duty is to fulfil its' own remit effectively and work towards its own policies and objectives to provide the best outcome to its organisation.

## Legal framework

**A4.5.11** Public sector organisations are responsible for ensuring that they comply with the law on procurement (see box A4.5C). EC Treaty principles apply to all procurement, and there are specific EU rules that apply to most contracts where the estimated value exceeds a specified threshold. The latest EU Procurement Directives came into force on an EU level in April 2014, with new rules, thresholds and guidance for procurement. Member states were given two years to put these into National Legislation. Subsequently, the UK Parliament passed the new Public Contracts Regulations 2015, which came into force on 26 February 2015.

**A4.5.12** The main changes to the EU regulations are summarised here: [ec.europa.eu/internal\\_market/publicprocurement/docs/modernising\\_rules/reform/fact-sheets/fact-sheet-01-overview\\_en.pdf](http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/reform/fact-sheets/fact-sheet-01-overview_en.pdf)

### Box A4.5C: The legal framework for public procurement

- EU procurement and remedies rules (the Treaty and procurement directives).
- International obligations, notably WTO agreements.
- Domestic legislation, including subordinate legislation implementing directives.
- Contract and commercial law in general.
- Relevant Court of Justice of the European Union case law.
- Domestic case law.

## The procurement process and suppliers

**A4.5.13** Competition promotes economy, efficiency and effectiveness in public expenditure. Goods, services and works should be acquired through open, transparent and fair competition. The form of competition chosen should be appropriate to the value and complexity of the goods, services or works to be acquired and must comply with EU procurement regulations and the UK Public Contract Regulations 2015 and other relevant UK Government policy on procurement – (links to each are attached in 'Further Guidance' below).

**A4.5.14** CPS has developed the Procurement Route Planner (PRP) to provide a web-based resource available to provide support to the Welsh public sector for undertaking procurement. The PRP provides a structured, step-by-step approach and encourage a consistent, best practice approach to procurement throughout the Welsh public sector – [www.prp.gov.wales](http://www.prp.gov.wales)

**A4.5.15** Public sector organisations should aim to treat suppliers responsibly (see box A4.5D) to maintain good reputations as purchasers.

#### **Box A4.5D: Relationships with suppliers**

- Commit to and implement the principles of the Wales Procurement Policy Statement.
- Use best practice principles in all procurement processes for example in the use of Prior Information Notices (PINs) and supplier briefings.
- High professional standards in the award of contracts.
- Clear procurement contact points.
- Ensure information contained in contract notices, tender documents and all other related information is clear and accurate.
- Make sure that barriers to participation, particularly for smaller businesses are minimised and requirements are appropriate to the value and nature of the contract.
- Look for opportunities to break large requirements down into lots to encourage a broader range of businesses to bid.
- The outcome of bids announced promptly (in accord with EU standards).
- Feedback to winners and losers on request on the outcome of the bidding process.
- High professional standards in the management of contracts.
- Prompt, courteous and efficient responses to suggestions, enquiries and complaints.

**A4.5.16** Full guidance on good practice procurement can be found on the Procurement Route Planner – [www.prp.gov.wales](http://www.prp.gov.wales).

**A4.5.17** During the evaluation process, it is important for procuring organisations to:

- Establish the propriety of candidate suppliers – taking account of the requirement to exclude those convicted of, for example, fraud, theft, fraudulent trading or cheating HM Revenue and Customs (HMRC).
- Assess suppliers economic and financial standing to gain confidence of their capacity to carry out what the buyer requires within the pre-determined timescale and deliver value for money.
- Secure value for money (see box A4.5B), using relevant and consistent criteria for evaluating the key factors (cost, size, sustainability, design etc).

## **Collaborative Procurement**

**A4.5.18** Collaboration is core to the delivery of successful procurement across Wales. In seeking value for money organisations should review the collaborative options available before commencing a stand alone procurement exercise. National Procurement Service leads on collaborative opportunities particularly for common and repetitively bought goods and services. Other collaborative opportunities are offered through sector purchasing bodies such as Welsh Purchasing Consortium, Welsh Health Supplies, Higher Education Purchasing Consortium Wales (HEPCW) or Welsh Further Education Purchasing Consortium (WFEPCC).

**A4.5.19** If purchasers employ private sector agents to undertake procurement on their behalf they should:

- Require compliance with EU rules.
- Require compliance with established good practice including the Wales Procurement Policy Statement and engage with the National Procurement Service to identify collaborative opportunities.
- Ensure clear allocation of responsibilities.
- Where appropriate, obtain the agent's indemnity against any costs incurred as a result of its failure to comply with the legal framework on its behalf.

## National Procurement Service

**A4.5.20** National Procurement Service (NPS) for Wales was launched by the Finance Minister and the Minister for Local Government in November 2013. NPS has been set up to enable the Welsh public sector to collaborate more effectively when procuring goods and services, particularly in the area of common and repetitive spend. NPS has teams of experts looking after the following categories:

- Fleet
- ICT
- Corporate Services and Utilities
- Construction and Facilities Management
- Professional Services
- People Services and Communications.

**A4.5.21** NPS brings together public sector purchasing power of £1.8 billion representing 42% of Welsh Government's annual third party expenditure. NPS is targeting annual savings of £25 million, once it is firmly established, through collaboration and best procurement practice.

**A4.5.22** NPS is committed to making Welsh procurement totally transparent and inclusive, particularly for smaller, local businesses and to generating community benefits for Wales ([www.npswales.gov.uk](http://www.npswales.gov.uk)).

**A4.5.23** NPS works closely with CPS. CPS is the first point of contact for any procurement on behalf of the Welsh Government. For procurement solutions for the public sector in Wales please contact NPS directly.

## Taxation

**A4.5.24** Organisations should:

- Base procurement decisions independent of any tax advantages that may arise from a particular bid.
- Avoid contractors using offshore jurisdictions, consistent with EU and other international obligations and the government's stated objectives on tax transparency and openness.

- Be vigilant in not facilitating tax arrangements with suppliers or their agents that are detrimental or disadvantageous to the Exchequer. Public sector organisations need to take special care in relation to the tax arrangements of public appointees.
- Employ internal management processes to ensure that transactions that give rise to questions of propriety of tax arrangements are brought to the Accounting Officer's or, if necessary, Ministers' attention.

**A4.5.25** Public procurement projects involving the transfer of real estate or assets that are likely to appreciate in value can often give rise to specific tax issues, in particular liability to capital gains tax. If public sector organisations are negotiating with bodies that wish to structure procurement proposals in this way, they should consult HM Revenue and Customs (HMRC) at an early stage to identify the likely tax implications and assess the proposal for propriety generally.

## Further guidance

**A4.5.26** Central sources of guidance on procurement and related issues include:

- Value Wales [www.prp.wales.gov.uk](http://www.prp.wales.gov.uk) and ([vwpolicy@wales.gsi.gov.uk](mailto:vwpolicy@wales.gsi.gov.uk)).
- UK Public Contract Regulations 2015 ([www.legislation.gov.uk/ukxi/2015/102/pdfs/ukxi\\_20150102\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/102/pdfs/ukxi_20150102_en.pdf)).
- UK Government procurement policy notes. ([www.gov.uk/government/collections/procurement-policy-notes](http://www.gov.uk/government/collections/procurement-policy-notes))
- The Crown Commercial Service ([www.ccs.cabinetoffice.gov.uk/](http://www.ccs.cabinetoffice.gov.uk/)).
- The Treasury's Green Book on project appraisal and evaluation in central government ([www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/179349/green\\_book\\_complete.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/179349/green_book_complete.pdf)).
- Welsh Government State Aid unit ([www.gov.wales/funding/state-aid/?lang=en](http://www.gov.wales/funding/state-aid/?lang=en)).
- Department for Business, Innovation and Skills on state aid rules ([www.gov.uk/state-aid](http://www.gov.uk/state-aid)); see Annex 4.6.
- Competition and Markets Authority on cartels and bid-rigging ([www.gov.uk/topic/competition/competition-act-cartels](http://www.gov.uk/topic/competition/competition-act-cartels)); and
- HM Revenue and Customs on tax avoidance issues ([www.hmrc.gov.uk/](http://www.hmrc.gov.uk/)).

**A4.5.27** Guidance on the EU rules (available on CPS Procurement Route Planner) is also published by the European Commission, but public sector organisations are advised not to seek advice from the Commission without first consulting their own and their sponsor body's procurement units, who, may in turn consult CPS.

## Annex 4.6

### State Aid

Any public assistance provided to organisations (public, private and not for profit) engaged in commercial economic activities needs to comply with the European state aid rules. Any aid paid in contravention to the rules could result in the recovery of the aid from the recipient. Consideration of the impact of state aid rules should therefore be built in at an early stage of policy and programme development, to ensure that any state aid to be awarded has the necessary European Commission approval.

**A4.6.1** Article 107(1) of the Treaty on the Functioning of the European Union prohibits, in principle, any form of preferential Government assistance – state aid – to commercial undertakings. The purpose is to prevent distortion of competition within the EU.

**A4.6.2** The definition of state aid stems from Article 107 of the Treaty and translates to the five tests set out in box A4.6A. These tests may need to be applied to a wide variety of policies and investments as commercial undertakings can include public organisations, charities, universities and not-for-profit organisations if they engage in economic activities or compete with commercial undertakings.

#### **Box A4.6A: Characteristics of state aid**

1. Aid is granted by a member state or through state resources (including, for example, lottery distributions and European funds).
2. Aid confers an advantage on the recipient.
3. It favours certain commercial undertakings or the production of certain goods (i.e. it must be selective in its nature).
4. It distorts or has the potential to distort competition.
5. The activity is tradable between member states and the aid has the potential to effect trade.

All five tests must be met for state aid to be present.

**A4.6.3** The European Commission and the European Court of Justice interpret the applicability of the state aid tests widely. The potential to distort competition and affect trade criteria in particular are very broad – even small amounts of aid could distort competition and it is sufficient that a product or service is subject to trade between member states for it to have an effect on trade even if the aided undertaking itself does not trade with other member states. It may, however, be possible to argue under certain circumstances that the last test on tradable activity is not met for very small-scale and localised assistance.

**A4.6.4** A measure meeting all the tests in box A4.6A is not automatically incompatible with the Treaty. Article 107 of the Treaty sets out the circumstances under which state aid can be considered permissible. Most of these circumstances are set out in a series of guidelines, regulations and frameworks collectively known as the state aid rules, which allow member states to target market failures in order to achieve desirable policy outcomes.

**A4.6.5** Where the support is classed as state aid, the public authority responsible will need to ensure that it has the necessary European Commission approval before the aid can be granted. Aid measures will have the necessary approval if they comply with the conditions of:

- **An approval from the European Commission** – The public organisation responsible for the aid should notify the European Commission for approval. This process can take 6-9 months, sometimes longer.
- **A block exemption regulation** – The General Block Exemption Regulation (GBER) exempts a number of categories of aid from the need for prior notification. The GBER covers aid for regional development, SMEs, risk capital, research, development and innovation, environmental protection, disadvantaged workers and training. From 1 July 2014 this was extended to include aid to make good the damage caused by certain natural disasters, broadband infrastructures, culture and heritage and sport and multifunctional recreational infrastructures. As long as the aid meets the strict conditions set out in the Regulation, member states are only required to inform the Commission and confirm compliance with the regulation within 20 days of implementing, rather than going through the notification process. There is also a block exemption for compensation awarded for certain Services of General Economic Interest.
- **De minimis** – The de minimis regulation allows member states to give small amounts of aid (€200,000 over a three fiscal year period) to any enterprise of any size (with certain restrictions) as long as a number of administrative procedures are completed.

**A4.6.6** When designing policies, it is wise to build in early consideration of the state aid position of schemes and measures to ensure that they have the necessary European Commission approval, either under exemptions or through notification to the Commission.

**A4.6.7** Further information on state aid can be accessed from the sources identified in box A4.6B. Depending on the context, it may also be useful to consult the Welsh Government State Aid Unit.

#### **Box A4.6B: Further guidance**

The BIS State Aid Unit website – [www.gov.uk/state-aid](http://www.gov.uk/state-aid)

The WG State Aid Unit webpages – [www.wales.gov.uk/topics/businessandconomy/stateaid/?lang=en](http://www.wales.gov.uk/topics/businessandconomy/stateaid/?lang=en)

European Commission State aid website – [www.ec.europa.eu/comm/competition/index\\_en.html](http://www.ec.europa.eu/comm/competition/index_en.html)

Email enquiries on state aid to – [stateaid@wales.gsi.gov.uk](mailto:stateaid@wales.gsi.gov.uk)

## Annex 4.7

### Expenditure and Payments

As part of the process of authorising and controlling commitments and expenditure of public funds, public sector organisations should time their expenditure and payments to provide good value for public money.

**A4.7.1** Public sector organisations should use good commercial practice in managing the flows of expenditure and commitments they deal with. Box 4.3, Chapter 4, has some sound high level principles. These need to be interpreted in the context of each organisation's business, in line with current legislation and using modern commercial practice. The actual techniques used may thus change from time to time and from place to place.

**A4.7.2** In particular, public sector organisations should;

- Explain payment procedures to suppliers.
- Agree payment terms at the outset and stick to them.
- Pay bills in accordance with agreed terms, or as required by law.
- Tell suppliers without delay when an invoice is contested.
- Settle quickly when a contested invoice gets a satisfactory response.

**A4.7.3** Public sector organisations are also bound by legislation<sup>17</sup> aiming to ensure that in commercial transactions, the payment period does not exceed 30 calendar days after the debtor receives an invoice. However, the UK Government recognises that the public sector should set a strong example by paying promptly. The Welsh Government is committed to paying all of its suppliers as quickly as possible in line with the Prompt Payment Code. Its target is to pay all correctly rendered invoices within 10 days<sup>18</sup> of receipt. It is also working to the present Central Government policy which is to pay 80% of all correctly rendered invoices within five days of receipt. The Welsh Government encourages all public sector bodies in Wales to do the same. The principles in Box 4.4, Chapter 4, must still be applied to all payments.

#### Payments Outside the Normal Pattern

**A4.7.4** Payments in advance should be exceptional, and should only be considered if a good value for money case can be made for them (i.e. that "need" can be demonstrated). Even then, advance payments can lead to higher financing costs, and should never be used to circumvent expenditure controls or budgetary limits. Payments in advance of need are rarely justified and are likely to attract external audit and PAC criticism.

<sup>17</sup> The Late Payment of Commercial Debts (Interest) Act 1998 (as amended by the Late Payment of Commercial Debt Regulations 2002 (SI 1674) and the Late Payment of Commercial Debt Regulations 2013).

<sup>18</sup> In this case, 10 days means 10 working days. Similarly, 5 days means 5 working days.

**A4.7.5** In particular, it is not good value for money for public sector organisations to act as a source of finance to contractors who have access to other forms of loan finance. So advance payments to contractors (ie payments made before equivalent value is received in return) should only be considered if, for example, a price discount commensurate with the time value of the funds in question can provide a good value for money case. Exceptions to these guidelines include:

- Service and maintenance contracts which require payment when the contract commences, provided that the service is available and can be called on from the date of payment.
- Grants to small voluntary or community bodies where the recipient needs working capital to carry out the commitment for which the grant is paid and private sector finance would reduce value for money.
- Minor services such as training courses, conference bookings or magazine subscriptions, where local discretion is acceptable.
- Prepayments up to a modest limit, where a value for money assessment demonstrates clear advantage in early payment.

**A4.7.6** Interim payments may have an element of prepayment and so public sector organisations should consider them carefully before agreeing to them. However, if they are genuinely linked to work completed or physical progress satisfactorily achieved, preferably as defined under a contract, they may represent acceptable value for public funds. Taking legal advice as necessary, organisations should, however, consider whether:

- The contractor's reduced need for working capital should be reflected in reduced prices.
- The contractor should provide a performance bond in the form of a bank guarantee to deal with possible breach of contract.

**A4.7.7** Public sector organisations should not, however, use interim payments to circumvent public spending controls. For example, it is not acceptable to make payments where value has not been received, simply to avoid underspending.

**A4.7.8** Deferred payments are generally not good practice. They normally mean paying more to compensate the contractor for higher financing costs and are thus poor value for money. So, any proposal for deliberate late payment by a Welsh Government Group or Welsh Government Sponsored Body must seek Welsh Government Director of Finance approval before proceeding.

## Annex 4.8

### Fraud

Governance in public sector organisations includes arrangements for preventing, countering and dealing with fraud. This annex provides further detail.

**A4.8.1** Accounting Officers are responsible for managing public sector organisations' risks, including fraud. Each organisation faces a range of fraud risks specific to its business, from internal and external sources. The risk of a given fraud is usually measured by the probability of it occurring and its impact in monetary and reputational terms should it occur.

**A4.8.2** In broad terms, managing the risk of fraud involves:

- Assessing the organisation's overall vulnerability to fraud.
- Identifying the areas most vulnerable to fraud risk.
- Evaluating the scale of fraud risk.
- Responding to the fraud risk.
- Measuring the effectiveness of the fraud risk strategy.
- Reporting fraud.

The most effective way to manage the risk of fraud is to prevent it from happening by developing an effective anti-fraud culture.

**A4.8.3** For guidance on all these areas, see Tackling Internal Fraud<sup>19</sup> and Tackling External Fraud<sup>20</sup>.

#### Assessing Vulnerability to Fraud

**A4.8.4** Each organisation should identify, itemise and assess how it might be vulnerable to fraud, covering the main risks in some detail. Fraud should always be considered as a potential risk for the organisation's risk register.

#### Evaluating the Scale of Fraud Risk

**A4.8.5** Public sector organisations should evaluate the possible impact and likelihood of the specific fraud risks it has identified. These should be reviewed regularly. From this, each organisation should deduce a priority order for managing its fraud risks and target its interventions accordingly. This will inform decisions about the action to be taken to manage fraud risk effectively.

<sup>19</sup> [www.webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/managing\\_the\\_risk\\_fraud\\_guide\\_for\\_managers.pdf.pdf](http://www.webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/managing_the_risk_fraud_guide_for_managers.pdf.pdf)

<sup>20</sup> [www.nao.org.uk/report/good-practice-in-tackling-external-fraud-2/](http://www.nao.org.uk/report/good-practice-in-tackling-external-fraud-2/)

## Responding to Fraud Risk

**A4.8.6** The organisation's response to fraud risk should be customised to the risks it faces. Typically it will involve some or all of the following:

- Developing a Fraud Policy Statement, a Fraud Risk Strategy and a Fraud Response Plan (key documents that every organisation should have).
- Developing and promoting an anti-fraud culture, maybe through a clear statement of commitment to ethical behaviour to promote awareness of fraud. Recruitment screening, training and maintaining good staff morale can also be important.
- Allocating responsibilities for the overall and specific management of fraud risk so that these processes are integrated into management.
- Establishing cost-effective internal systems of control to prevent and detect fraud.
- Developing the skills and expertise to manage fraud risk effectively and to respond to fraud effectively when it arises.
- Establishing well publicised avenues for staff and members of the public to report suspicions of fraud.
- Responding quickly and effectively to fraud when it arises.
- Establishing systems for investigations into allegations of fraud.
- Using Internal Audit to advise on fraud risk and drawing on their experience to strengthen control.
- Taking appropriate action (criminal, disciplinary) against fraudsters and seeking to recover losses.
- Continuously evaluating the effectiveness of anti-fraud measures in reducing fraud.
- Working with stakeholders to tackle fraud through intelligence sharing, joint investigations, etc.

**A4.8.7** It is good practice to measure the effectiveness of actions taken to reduce the risk of fraud. Assurances about these measures can be obtained from Internal Audit, stewardship reporting, control risk self assessment, monitoring or from other review bodies.

## Reporting Fraud

**A4.8.8** Public sector organisations should retain records of internal frauds discovered and actions taken, including an assessment of the value of any losses. They may need to contribute to occasional reports and analysis of frauds.

**A4.8.9** Public sector organisations in Wales should also provide the Welsh Government Head of Counter-Fraud with details of any novel or unusual frauds (or attempted frauds) so that this information can be shared more widely. Public sector organisations in Wales should also consider reporting frauds and suspected fraud to the Wales Audit Office.

## Annex 4.9

### Losses and Write Offs

This annex sets out the processes used by the Welsh Government when it incurs losses or writes off the value of assets. It is recommended good practice for all public sector organisations in Wales to follow.

**A4.9.1** As the National Assembly for Wales does not agree or approve advance provision for potential future losses when approving the annual budget, such transactions are subject to special control procedures and to special notation arrangements in the accounts. The Welsh Government should only consider accepting losses and write-offs after careful appraisal of the facts (including whether all reasonable action has been taken to effect recovery – see Annex 4.10) and should be satisfied that there is no feasible alternative. In dealing with individual cases, consideration must always be given to the soundness of internal control systems, the efficiency with which they have been operated and what necessary steps might be taken to put failings right.

#### Levels of Delegation

**A4.9.2** Deputy Permanent Secretaries and Directors General in the Welsh Government have full delegated authority to write-off losses, save for those that are deemed to be novel and/or contentious or repercussive (such cases are to be referred to the Corporate Governance Unit for consideration/determination). It is for the same officers as specified above and their Heads of Finance to put in place – and communicate to staff – appropriate arrangements for dealing with cases, including the financial delegation levels to be applied within each Group. Appropriate delegation limits for public bodies should be set out in their funding agreements.

**A4.9.3** Box A4.9A provides examples of the different categories of loss.

#### Box A4.9A: Examples of losses

##### Losses

- Cash losses: physical losses of cash and its equivalents (eg credit cards, electronic transfers).
- Bookkeeping losses: unvouched or incompletely vouched payments, including missing items, or inexplicable or erroneous debit balances.
- Exchange rate fluctuations: losses due to fluctuations in exchange rates or revaluations in currencies.
- Losses of pay, allowances and superannuation benefits to civil servants and public bodies' employees: including overpayments due to miscalculation, misinterpretation, or missing information; unauthorised issues; and other causes.
- Losses arising from overpayments: of social security benefits, grants, subsidies etc.
- Losses arising from failure to make adequate charges: eg for the use of public property.

### Losses of accountable stores

- Losses through fraud, theft, arson or any other deliberate act.
- Losses arising from other causes.

### Fruitless payments and constructive losses

### Claims waived or abandoned

## Factors to Consider

**A4.9.4** When a case arises which seems likely to result in a write-off, a full investigation should be completed as quickly as possible taking into account the following factors:

- The nature of the case, the amount involved and the circumstances in which it arose.
- Actions taken to try to effect recovery.
- The reasons for the proposed write-off, including any legal advice.
- Whether fraud (suspected or proven) is involved.
- Whether the case resulted from dereliction of duty.
- Whether failure of supervision is involved.
- Whether appropriate legal and/or disciplinary action has been taken against those involved including supervisors, and, if not, why not.
- Whether those primarily involved will be required to bear any part of the loss.
- Whether the investigation has shown any defects in the existing systems of control.
- If so, what action will be taken.

**A4.9.5** If it seems that the occurrence has wider implications of a similar type within the Welsh Government or in other directorates, the case should be drawn to the attention of Corporate Governance Unit immediately.

## Notification to the National Assembly for Wales

**A4.9.6** Losses should be brought to the attention of the National Assembly for Wales at the earliest opportunity, normally by noting in the Welsh Ministers' annual accounts, whether or not they may be reduced by subsequent recoveries. For serious losses, departments should also consider the case for a written statement to the National Assembly for Wales.

## Losses and Claims Records

**A4.9.7** Public sector organisations should maintain a record of losses. The record should show:

- The nature, gross amount (or estimate where an accurate value is unavailable), and cause of each loss.
- The action taken, total recoveries and date of write-off where appropriate.

**A4.9.8** A losses statement is required in annual accounts in accordance with the requirements of HM Treasury's Financial Reporting Manual (FRoM). Losses should be reported on an accruals basis.

**A4.9.9** Where efforts are still being made to secure recovery of cash losses formally written-off, charged to the accounts and noted, the Welsh Government and its public bodies should consider including them in a record of claims to ensure that recovery is not overlooked.

## Accounting for Cash Losses

**A4.9.10** Cash losses may initially be accounted for as debtors in annual accounts pending recovery or write-off.

**A4.9.11** Once a cash loss is identified it should be charged to the appropriate ambit subheads and for accounts recognise the cost in accordance with the FRoM.

**A4.9.12** Where a cash loss is wholly or partly recovered by reducing the amounts of pay or pension<sup>21</sup> which would otherwise be due, or under statutory or other specific powers, only the resulting outstanding balance is treated as a loss to be written off. The sum(s) are charged to the relevant ambit as if they had been paid to the individual concerned who then used the money to pay the claim.

**A4.9.13** Similarly, where the loss is wholly or partly met by voluntary payments by the person responsible or by a payment from an insurance company or other non-public source, only the net loss is written off. If, however, there are no powers to apply the sums withheld by non-issue of pay etc, the gross amount of the loss is written off.

**A4.9.14** Generally, no note is necessary if the net loss is nil by the time the annual accounts are finalised. There may, however, be exceptions (e.g. losses arising from culpable causes) where the circumstances of the loss are such as to make it proper to bring them to the notice of the National Assembly for Wales by inclusion in the Losses Statement.

## Stores Losses

**A4.9.15** Stores losses are, in effect, money spent without the authority of the National Assembly for Wales. In establishing the amount of the loss, and hence whether the annual accounts should be noted, the net value of the loss after crediting any sums recovered will be the determining factor.

**A4.9.16** Losses of stores arising from culpable causes should be noted in the organisation's records, in accordance with normal practice. Such losses should also be noted in the resource account, to ensure that such losses are brought to the attention of the National Assembly for Wales in the appropriate manner, and to aid departmental management in managing and accounting for stores.

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<sup>21</sup> Tax must be deducted from pay or pension subject to PAYE withheld in settlement of a loss, to arrive at the amount attributed to debt repayment.

**A4.9.17** Where there is an identifiable claim against some person, the loss need not be noted immediately. However, if the organisation subsequently decides to waive the claim, or finds that it cannot be presented or enforced, the loss should be treated as an abandoned claim (see paragraph A4.9.24) and noted accordingly.

**A4.9.18** Any loss recoverable from a third party, where a decision is taken to waive recovery because of a knock-for-knock agreement, should be noted as a stores loss.

**A4.9.19** Where stores are to be written off, gifted or transferred to other organisations, they should be valued in accordance with the FReM, unless circumstances justify exceptional treatment, or other arrangements have been agreed.

## Fruitless Payments

**A4.9.20** A fruitless payment is a payment which cannot be avoided because the recipient is entitled to it even though nothing of use to the department will be received in return. Some examples are in box A4.9B.

**A4.9.21** As fruitless payments will be legally due to the recipient, they are not regarded as special payments. However, as due benefit has not been received in return, they should be treated as losses and brought to the attention of the National Assembly for Wales in the same way as other losses.

### Box A4.9B: Examples of fruitless payments

A **fruitless payment** is a payment for which liability ought not to have been incurred, or where the demand for the goods and services in question could have been cancelled in time to avoid liability, for example:

- Forfeitures under contracts as a result of some error or negligence by the organisation.
- Payment for travel tickets or hotel accommodation wrongly booked or no longer needed, or for goods wrongly ordered or accepted.
- The cost of rectifying design faults caused by a lack of diligence or defective professional practices.
- Extra costs arising from failure to allow for foreseeable changes in circumstances.

## Constructive Losses

**A4.9.22** A constructive loss is a similar form of payment to store losses and fruitless payments but one where procurement action itself caused the loss. For example, goods or services might be correctly ordered, delivered or provided, then paid for as correct but later, perhaps because of a change of policy, they might prove not to be needed or to be less useful than when the order was placed.

**A4.9.23** Constructive losses need not be noted in the Losses Statement in the annual accounts unless they are significant.

## Claims Waived or Abandoned

**A4.9.24** Losses may arise if claims are waived or abandoned because, though properly made, it is decided not to present or pursue them. Some examples are in box A4.9C.

### Box A4.9C: Examples of waived and abandoned claims

- Where it is decided to reduce the rate of interest on a loan, and therefore to waive the right to receive the amount of the reduction.
- Claims actually made and then reduced in negotiations or for policy reasons.
- Claims which an organisation intended to make, but which could not be enforced, or were never presented.
- Failure to make claims or to pursue them to finality, e.g. owing to procedural delays allowing the Limitations Acts (see Annex 4.10.11) to become applicable.
- Claims arising from actual or believed contractual or other legal obligations which are not met (whether or not pursued), e.g. under default or liquidated damages clauses of contracts.
- Amounts by which claims are reduced by compositions in insolvency cases, or in out-of-court settlements, other than reductions arising from corrections of facts.
- Claims dropped on legal advice, or because the amounts of liabilities could not be determined.
- Remission of interest on loans.

**A4.9.25** The following should not be treated as claims waived or abandoned:

- Any claims wrongly identified or presented, whether in error or otherwise. A claim should not, however, be regarded as withdrawn where there is doubt as to whether it would succeed if pursued in a court of law, or if the liability of the debtor has not or cannot be accurately assessed.
- Waivers or remission of tax. HM Revenue and Customs (HMRC) has special rules about remissions of tax. Welsh Government Groups should consult the Director of Finance, about treatment when a case arises, who may need to consult HM Treasury.
- A claim for a refund of an overpayment which fails or is waived. This should be regarded as a cash loss.

**A4.9.26** Waivers should be noted in annual accounts in accordance with the FReM.

In addition:

- A claim not presented should normally be noted at its original figure.
- Where the Welsh Government and another government department are involved, each should note its records to the extent of its interest, without attempting spurious accuracy.

## Annex 4.10

### Overpayments

This annex discusses how, and how far, public sector organisations should seek to recover overpayments. Where there is uncertainty or in difficult cases it is important to act on legal advice.

**A4.10.1** Even good payment systems sometimes go wrong. Most organisations responsible for making payments will sometimes discover that they have made overpayments in error.

**A4.10.2** In principle, public sector organisations should always pursue recovery of overpayments irrespective of how they came to be made. In practice, however, there will be both practical and legal limits to how cases should be handled. So each case should be dealt with on its merits. Some overpayment scenarios are outlined in box A4.10A. Where recovery of overpayments is not pursued the guidance in Annex 4.9 should be followed.

#### **Box A4.10A: Possible reasons for overpayments**

##### **Contractors and suppliers**

Overpayments in business transactions should always be pursued, irrespective of cause. It is acceptable to recover by abating future payments if this approach offers value for money and helps preserve goodwill. If the contractor resists, the overpaying organisation should consider taking legal action, taking account of the strength of the case and of legal advice.

##### **Grants and subsidies**

Overpayments to persons or corporate bodies should be treated as business transactions and a full refund sought. The overpaying organisation should ask recipients to acknowledge the amount of the debt in writing.

##### **Pay, allowances, pensions**

Overpayments to:

- civil servants
- employees of WGSBs
- retired teachers and NHS employees
- the dependants of any of these

should be pursued, taking proper account of how far recipients have acted in good faith. Similar cases should be treated consistently. After warning recipients, recovery through deduction from future salary or pension is often convenient. Legal advice is often wise to make sure that proper account has been taken of any valid defence against recovery that recipients may have.

**A4.10.3** When deciding on appropriate action, taking legal advice, organisations should consider:

- The type of overpayment.
- Whether the recipient accepted the money in good or bad faith.
- The cost-effectiveness of recovery action (either in house or using external companies). Advice that a particular course of action appears to offer good value may not be conclusive since it may not take account of the wider public interest.
- Any relevant personal circumstances of the payee, including defences against recovery.
- The length of time since the payment in question was made.
- The need to deal equitably with overpayments to a group of people in similar circumstances.

**A4.10.4** It is good practice to consider routinely whether particular cases reveal concerns about the soundness of the controls systems and their operation. It is important to put failings right.

## Payments Made With National Assembly for Wales authority

**A4.10.5** Sometimes overpayments are made using specific legal powers but making mistakes of fact or law. These are legally recoverable, subject to the provisions of the Limitation Acts and other defences against recovery (see below). The presumption should always be that recovery should be pursued irrespective of the circumstances in which it arose.

### Good Faith

**A4.10.6** The decision on how far recovery of an overpayment should be pursued in a particular case will be influenced by whether the recipient has acted in good or bad faith:

- Where recipients of overpayments have acted in good faith, e.g. genuinely believing that the payment was right, they may be able to use this as a defence (though good faith alone is not a sufficient defence).
- Where recipients of overpayments have acted in bad faith, recovery of the full amount overpaid should always be sought.

**A4.10.7** Recipients may be inferred to have acted in bad faith if they have wilfully suppressed material facts or otherwise failed to give timely, accurate and complete information affecting the amount payable. Other cases, e.g. those involving recipients' carelessness, may require judgement. And some cases may involve such obvious error, e.g. where an amount stated is very different from that paid, that no recipient could reasonably claim to have acted in good faith.

**A4.10.8** In forming a judgement about whether payments have been received in good faith, due allowance should be made for:

- The complexity of some entitlements, e.g. to pay or benefits.
- How far the payment depended on changes in the recipient's circumstances of which he or she was obliged to tell the payer.
- The extent to which generic information was readily available to help recipients understand what was likely to be due.

## Fraud

**A4.10.9** If a public sector organisation is satisfied that the circumstances of an overpayment involved bad faith on the part of the recipient, it should automatically consider the possibility of fraud in addition to recovery action. For example, the recipient may have dishonestly given false information or knowingly failed to disclose information. If there is evidence of fraudulent intent, prosecution or disciplinary action should be undertaken where appropriate and practicable. A criminal conviction in such a case will not eliminate the public debt which had resulted from the overpayment and so recovery of the debt should also be pursued by any available means.

## Cost-Effectiveness

**A4.10.10** Public sector organisations should take decisions about their tactics in seeking recovery in particular cases on the strength of cost benefit analysis of the options and with legal advice. Decisions not to pursue recovery should be exceptional and taken only after careful appraisal of the relevant facts, taking into account the legal position. The option of abating future payments to the recipient should always be considered.

## Defences Against Recovery

**A4.10.11** Defences which may be claimed against recovery include:

- The length of time since the overpayment was made.
- Change of position.
- Estoppel.
- Good consideration.
- Hardship.

## Lapse of Time

**A4.10.12** There can be time limitations on recovery. In England and Wales, a recipient might plead that a claim is time-barred under the provisions of the Limitation Acts. Proceedings to recover overpayments must, generally, be instituted within six years (twelve years if the claim is against the personal estate of a deceased person) of discovery of the mistake or the time when the claimant could, with reasonable diligence, have discovered it.

**A4.10.13** When public sector organisations claim against a private sector organisation or people who ignore or dispute the claim, legal advice should be taken about proceeding with the claim in good time so that it does not become time barred.

**A4.10.14** If someone claims that they have overpaid a public sector organisation, they should be told promptly if the claim is time barred. But if, on its merits, it is decided that there is a case for an ex gratia payment, this should be approved by the appropriate Accounting Officer or person delegated to provide consent. Similarly, there may be a case for ex gratia payments to make good underpayments to employees, unless they were dilatory in making their claims.

## Change of Position

**A4.10.15** The recipient of an overpayment may seek to rely on change of position if he or she has, in good faith, reacted to the overpayment by relying on it to change their lifestyle. It might then be inequitable to seek to recover the full amount of the overpayment. The paying organisation's reaction should depend on the facts of the case. The onus is on the recipient to show that it would be unfair to repay the money. This defence is difficult to demonstrate.

## Estoppel

**A4.10.16** A recipient who has changed his or her position may also be able to rely on the rule of evidence estoppel if the paying organisation misled the recipient about his or her entitlement, even if the overpayment was caused by a fault on the part of the recipient. However, a mistaken payment will not normally of itself constitute a representation that the payee can keep it. There must normally be some further indication of the recipient's supposed title other than the mere fact of payment.

**A4.10.17** The paying organisation can be prevented from recovery even where it has made no positive statement to the payee that the latter is entitled to the money received. If, following a demand for repayment, the recipient can give reasons why repayment should not be made, then silence from the paying organisation would almost certainly entitle the recipient to conclude that the reply was satisfactory and that he or she could keep the money.

**A4.10.18** It is essential for public sector organisations to seek legal advice where change of position or estoppel is offered as defence against recovery.

## Good Consideration

**A4.10.19** Another possible defence against recovery is where someone makes a payment for good consideration, i.e. where the recipient gives something in return for the payment. For example, payment might be made to discharge a debt, or where the payment is part of a compromise to deal with an honest claim. If such payments are later found to be more than was strictly due, the extent to which the paying organisation was acting in good faith should be taken into account.

## Hardship

**A4.10.20** Public sector organisations may waive recovery of overpayments where it is demonstrated that recovery would cause hardship. But hardship should not be confused with inconvenience. Where the recipient has no entitlement, repayment does not in itself amount to hardship, especially if the overpayment was discovered quickly. Acceptable pleas of hardship should be supported by reasonable evidence that the recovery action proposed by the paying organisation would be detrimental to the welfare of the debtor or the debtor's family.

**A4.10.21** Hardship is not necessarily limited to financial hardship; public sector organisations may waive recovery of overpayments where recovery would be detrimental to the mental welfare of the debtor or the debtor's family. Again, such hardship must be demonstrated by evidence.

## Collective Overpayments

**A4.10.22** If a group of people have all been overpaid as a result of the same mistake, the recipients should be treated in the same way. However, that does not mean that recovery of all such overpayments should be automatically written off. For example, it may be legitimate to continue to effect recovery from those who have offered to repay, or some may not be subject to the same level of hardship.

**A4.10.23** Public sector organisations should decide how best to handle collective overpayments so that they do not inhibit the maximum recovery possible. If it is deemed impractical to pursue recovery from some members of an equivalent group, there should be no inhibition on pursuing others who may be able to pay. There is no obligation to inform the group generally about what action is being taken against particular members since all have the same legal obligation. Any differential treatment should be based on advice.

**A4.10.24** If a public sector organisation is minded to forgo recovery of the whole or any of a collective overpayment, it should consult finance colleagues before telling the recipients of the overpayments. Finance colleagues will need to be satisfied that a collective waiver is defensible in the public interest or as value for money. And any such waivers should be exceptional.

## Annex 4.11

### Gifts

This Annex explains how the Welsh Government should treat gifts, both given and received. It is important to ensure that propriety has been respected through transparent reporting. The same approach should be applied in public sector organisations.

**A4.11.1** A gift is something donated voluntarily with no preconditions and without the expectation of any return: see box A4.11A.

#### Box A4.11A: Definition of gifts

Gifts include all transactions economically equivalent to free and unremunerated transfers, such as:

- The loan of an asset for its expected useful life.
- The sale or lease of assets at below market value (the difference between the amount received and the market value is the value of the gift).
- Donations.
- Transfers of land and buildings or assignment of leases to private sector bodies at less than market price (the gift is valued at the difference between the price agreed and the market price).

**A4.11.2** It is important to be clear about transactions which do not score as gifts. For example:

- Transfers of assets between Government Departments and Devolved Administrations should generally be at full current market value; assets transferred under a transfer of functions order to implement a machinery of government change are generally made at no charge. In neither case are such transfers regarded as gifts.
- Grants and grants-in-aid are not gifts as they are made under legislation, subject to conditions, with some expectation that the government will receive value through the furtherance of its policy objectives.

### Making Gifts

**A4.11.3** The authority to approve expenditure on gifts is covered by specific delegation arrangements made by Deputy Permanent Secretaries, Directors General or Directors. For Welsh Government Sponsored Bodies, any authority to incur expenditure on gifts is set out in their Framework Agreement. Significant gifts must be disclosed to the National Assembly for Wales.

## Gifts Received

**A4.11.4** Welsh Government Groups should maintain a register detailing gifts they have received, their estimated value and what happened to them (whether they were retained or disposed of). Gifts received need not be noted in the annual accounts unless it is considered that there is a special need for them to be brought to the attention of the National Assembly for Wales.

**4.11.5** Donations, sponsorship or contributions (e.g. from developers) should also be treated as gifts.

**4.11.6** Guidance on gifts made to individual civil servants is included in the Welsh Government Civil Service Code.

## Annex 4.12

### Special Payments

This annex sets out the processes used by the Welsh Government to deal with transactions outside the usual planned range. It is recommended good practice for all public sector organisations to follow.

**A4.12.1** Because special payments are not planned, and thus subject to the usual scrutiny procedures, they are subject to greater control than other payments.

**A4.12.2** Special payments are to be authorised only after careful appraisal of the facts. It is good practice to consider routinely whether particular cases reveal concerns about the soundness of the control systems and whether they have been respected as expected. It is also important to take any necessary steps to put right failings.

**A4.12.3** The Welsh Government's public bodies should operate to these same standards unless there are good reasons to the contrary (overriding requirements applicable under the Companies Act, for example). Sponsor Branches must ensure that their oversight arrangements (see Chapter 7) enable them to be satisfied that their public bodies observe the standards.

#### Dealing with special payments

**A4.12.4** Box A4.12A groups special payments into categories to help decide how individual cases should be handled. Deputy Permanent Secretaries and Directors General in the Welsh Government have delegated authority to make severance and settlement payments, save for those that are deemed novel and/or contentious or repercussive (such cases are to be referred to the Corporate Governance Unit (CGU) for consideration/determination). It is for Deputy Permanent Secretaries, Directors General and their Heads of Finance to put in place – and communicate to staff – appropriate arrangements for dealing with cases including the financial delegation levels to be applied within each Group. Appropriate delegation arrangements for public bodies should be set out in their Framework Agreements.

**A4.12.5** In particular, it is important to consult CGU about any cases which:

- Involve important questions of principle.
- Raise doubts about the effectiveness of existing systems.
- Contain lessons which might be of wider interest.
- Might create a precedent for other Groups.
- Arise because of obscure or ambiguous instructions issued centrally.

### Box A4.12A: Special payments

- **Extra-contractual payments** are payments which, though not legally due under contract, appear to place an obligation on the Welsh Government or its public bodies which the courts might uphold. Typically, these arise from action or inaction in relation to a contract. Payments may be extra-contractual even where there is some doubt about the liability to pay, e.g. where the contract provides for arbitration but a settlement is reached without it. (A payment made as a result of an arbitration award is contractual.)
- **Extra-statutory and extra-regulatory payments** are within the broad intention of the statute or regulation, respectively, but go beyond a strict interpretation of its terms.
- **Compensation payments** are made to provide redress for personal injuries (except for payments under the Civil Service Injury Benefits Scheme), traffic accidents, damage to property etc, suffered by civil servants or others. They include other payments to those in the public service outside statutory schemes (legal advice should be sought in each case) or outside contracts.
- **Special severance payments** are paid to employees, contractors and others outside of normal statutory or contractual requirements (usually the Civil Service Compensation Scheme rules for most Welsh Government staff) when leaving employment in public service, whether they resign, are dismissed or reach an agreed termination of contract (seek legal advice in each case). Approval by the First Minister is required (see below).
- **Ex gratia payments** go beyond statutory cover (Welsh Government needs vires in each case – legal advice should be sought), legal liability, or administrative rules including:
  - payments made to meet hardship caused by official failure or delay
  - out of court settlements to avoid legal action on grounds of official inadequacy
  - payments to contractors outside a binding contract, e.g. on grounds of hardship.

**A4.12.6** Special payments need to be justified properly in the public interest against the key public sector principles set out in Chapter 1, box 1.1, with particular emphasis on value for money since there is no legal liability. Any proposal to keep a special payment confidential needs to be justified especially carefully, since confidentiality could appear to mask underhand dealing. Also, financial reporting requirements and Freedom of Information legislation should be complied with. The bottom line is to establish that the responsible Accounting Officer would feel able to justify the proposed payment to the National Assembly for Wales if challenged.

**A4.12.7** In considering any proposals for special payments, the following factors should be considered.

- The nature and circumstances of the case.
- The amount involved.
- The legal advice, where appropriate.
- The management procedures followed.
- An assessment of the value for money of the case.
- Any non-financial aspects.
- Whether the case in question could have wider impact.

## Special Severance Payments

**A4.12.8** Special severance payments when staff leave public service employment should be exceptional. Such payments always require approval<sup>22</sup> because they are usually novel, contentious and potentially repercussive. Corporate Governance Unit (CGU) must be consulted in advance when a special severance payment is being considered (consultation will be via the sponsor Branch in the case of the Welsh Government public bodies). Legal advice that a particular severance payment appears to offer good value for the employer may not be conclusive since such advice may not take account of the wider public interest.

**A4.12.9** CGU adopts a cautious approach to proposals for special severance settlements. Precedents from other parts of the public sector may not be a reliable guide in any given case. Even if the cost of defeating an apparently frivolous or vexatious appeal will exceed the likely cost of that particular settlement to the employer, it may still be desirable to take the case to formal proceedings. Winning such cases demonstrates that neither the Welsh Government nor its public bodies reward failure and, as such, should enhance our reputation for prudent use of public funds.

**A4.12.10** Departments should not treat special severance as a soft option, e.g. to avoid management action, disciplinary processes, unwelcome publicity or reputational damage. Box A4.12B sets out the factors CGU needs to evaluate in dealing with special severance cases. It is important to ensure that approval is secured from CGU before any offers – whether oral or in writing – are made.

### Box A4.12B: Factors to consider in special severance cases

Any case for special severance put to CGU must outline:

- The circumstances of the case.
- Any scope for reference to a tribunal, with its potential consequences, including the legal assessment of the organisation's chances of winning or losing the case and likely scale of any award.
- The management procedures followed.
- The value for money offered by the possible settlement.
- Any non-financial considerations, e.g. where it is desirable to end someone's employment without dismissal, perhaps because of restructuring.
- Whether the case could have wider impact, e.g. for a group of potential tribunal cases.

<sup>22</sup> The Civil Service is a matter reserved for the UK Government. However, delegated authority has been given to the First Minister to exercise the discretion, in relation to compensation for employees of bodies funded by the National Assembly for Wales, granted to the Minister for the Civil Service under the scheme on:

- whether reckonable service should include service other than that in employment covered by the scheme (rule 12.1.4(3)); and
- the offering of an enhanced tariff (but still within the overall 21 month limit) in a voluntary exit scheme (rule 12.3.9)

In addition, Cabinet Office approval is no longer required before commencing any compensation schemes, as long as they have the relevant approval from the First Minister. This explicitly includes approving high value (over £95,000) cases.

**A4.12.11** Particular care should be taken to:

- Avoid unnecessary delays which might lead to greater severance payments than might otherwise be merited.
- Avoid offering the employee concerned consultancy work after severance unless best value for money can be demonstrated.
- Ensure any undertakings about confidentiality leave severance transactions open to adequate public scrutiny, including by the Wales Audit Office and the Public Accounts Committee.
- Ensure special severance payments to senior staff are transparent and negotiated avoiding conflicts of interest.

**A4.12.12** Where retrospective approval for special severance payments is sought from CGU it should not be taken for granted that approval will be provided, since such payments usually appear to reward failure and set a poor example for the public sector generally. Requests for retrospective approval will be considered as if the request had been made at the proper time and should contain the same level of detail as if the case had been brought to CGU in advance.

## Retention Payments

**A4.12.13** Retention payments, designed to encourage staff to delay their departures, particularly where transformations of public sector organisations are being negotiated, are also classed as novel and contentious. Such payments always require CGU approval, whether proposed in individual cases or in groups. CGU approval must be obtained before any commitment, whether oral or in writing, is made.

**A4.12.14** Organisations considering proposals for retention payments should subject them to strict value for money analysis. Sponsor Branches should submit a business case to CGU, supported by market evidence, together with an evaluation of the risks and costs of alternative options. CGU will always be cautious of whether they are necessary.

## Reporting

**A4.12.15** As the National Assembly for Wales does not provide for special payments when approving the annual budget, special payments should be brought to its attention, usually through a note in the annual accounts. Any special severance payments for senior staff will in any case be itemised in annual accounts.

**A4.12.16** Notification is separate from accounting treatment, which will depend on the nature of the special payment. Special payments should be noted in the accounts even if they may be reduced by subsequent recoveries.

**A4.12.17** Special payments should be noted in the annual accounts in accordance with the requirements of HM Treasury's Financial Reporting Manual (FReM).

## Annex 4.13

### Remedy

Prompt and efficient complaint handling is an important way of ensuring customers receive the service to which they are entitled and may save public sector organisations time and money by preventing a complaint escalating unnecessarily.

If their services have been found deficient, public sector organisations should consider whether to provide remedies to people or firms who complain. This is separate from administering statutory rights or other legal obligations, e.g. to make payments to compensate. Remedies may take several different forms and should be proportionate and appropriate.

#### Dealing with Complaints

**A4.13.1** Public sector organisations should operate clear accessible complaints procedures. They are a valuable source of feedback which can help shed light on the quality of service provided and, in particular, how well it matches up to policy intentions. All complaints should be investigated.

**A4.13.2** Systems for dealing with complaints should operate promptly and consistently. Those making complaints should be told how quickly their complaints can be processed. Where groups of complaints raise common issues, the remedies offered should be fair, consistent and proportionate.

**A4.13.3** In Wales, should a complainant not be satisfied with the response to their complaint, then the complainant can take their complaint to the Public Service Ombudsman for Wales (PSOW).

**A4.13.4** Public sector organisations should seek to learn from their complaints. If an internal or external review or a PSOW investigation shows there are systemic faults, defective systems or procedures should be overhauled and corrected.

#### Remedies

**A4.13.5** As section 4.11 in Chapter 4 explains, when public sector organisations have caused injustice or hardship because of maladministration or service failure, they should consider:

- Providing remedies so that, as far as reasonably possible, they restore the wronged party to the position that they would be in had things been done correctly.
- Whether policies and procedures need change, to prevent the failure reoccurring.

## The Remedies Available

**A4.13.6** Remedies can take a variety of forms, including (alone or in combination):

- An apology.
- An explanation.
- Correction of the error or other remedial action.
- An undertaking to improve procedures or systems.
- Financial payments, eg one off or as part of a structured settlement.

**A4.13.7** Financial remedies for individual cases are normally ex-gratia payments. Where a pattern develops and a number of cases raising similar points need to be dealt with, it may make sense to develop a scheme (see Annex 4.9). Legal advice should be sought in the development of any such scheme.

## Designing Remedies

**A4.13.8** The normal approach to complaints where no financial payment is called for is to offer an apology and an explanation. This may be a sufficient and appropriate response in itself. People complaining may also want reassurance that mistakes will not be repeated.

**A4.13.9** It may be more difficult to judge whether financial compensation is called for and, if so, how much, especially if there is no measurable financial detriment. Great care should be taken in designing financial compensation schemes since they may set expensive precedents.

**A4.13.10** Where financial remedies are identified as the right approach to service failure they should be fair, reasonable and proportionate to the damage suffered by those complaining. Financial remedies should not, however, allow recipients to gain a financial advantage compared to what would have happened with no service failure.

**A4.13.11** Public sector organisations deciding on financial remedies should take into account all the relevant factors. Some which might be considered are outlined in box A4.13A. This list is not exhaustive.

### **Box A4.13A: Factors to consider in deciding whether financial compensation is appropriate**

- Whether a loss has been caused by failure to pay an entitlement, e.g. to a grant or benefit.
- Whether someone has faced any additional costs as a result of the action or inaction of a public sector organisation, e.g. because of delay.
- Whether the process of making the complaint has imposed costs on the person complaining, e.g. lost earnings or costs of pursuing the complaint.
- The circumstances of the person complaining, e.g. whether the action or inaction of the public sector organisation has caused knock on effects or hardship.
- Whether the damage is likely to persist for some time.
- Whether any financial remedy would be taxable when paid to the person complaining.

**A4.13.12** If a compensation payment includes an element because the person complaining has had to wait for their award, it should be calculated as simple interest. The interest rate to be applied should be appropriate to the circumstances and defensible against the facts. Rates worth considering are the rate HM Revenue and Customs (HMRC) pays on tax repayments and the rate used in court settlements.

**A4.13.13** When a public sector organisation recognises that it needs a scheme for a set of similar or connected claims after maladministration or service failure, it should ensure that the arrangements chosen deal with all potential claimants equitably. It is important that such schemes take into account the PSOW's Principles of Good Administration<sup>23</sup> and Principles for Remedy<sup>24</sup>. They must be well designed since costs can escalate if a problem turns out to be more extensive than initially expected.

**A4.13.14** If those seeking compensation have suffered injustice or hardship in a way which is likely to persist, it may not be appropriate to pay compensation as a lump sum. Instead it may make sense to award a structured settlement with periodic (e.g. monthly or annual) payments. Public sector organisations considering such settlements should seek both legal and actuarial advice in drawing them up.

**A4.13.15** Essentially, designing a compensation scheme is no different from designing other services. Good management, efficiency, effectiveness and value for money are key goals (see Chapter 4). Some specific issues which may require special care for compensation schemes are outlined in box A4.13B.

#### **Box A4.13B: Issues to consider in designing compensation**

- Clarify the coverage of the scheme.
- Set clear scheme rules, with supporting guidance, to implement the policy intention.
- Make the remedies fair and proportionate, avoiding bias, discrimination or prejudice.
- Ensure the scheme's systems work, e.g. through pilot testing.
- Design in sufficient flexibility to cope with the characteristics of the claimant population.
- Check that the administration cost is not excessive – or simplify the scheme.
- If the scheme sets a precedent, make sure that it is acceptable generally.
- Inform the National Assembly for Wales appropriately, e.g. through a written statement and/or in the resource accounts.
- Plan to evaluate the scheme at suitable point(s).
- Provide for closure of the scheme, unless there is good reason not to.

<sup>23</sup> [www.ombudsman-wales.org.uk/~media/Files/Documents\\_en/Principles\\_of\\_Good\\_Administration.ashx](http://www.ombudsman-wales.org.uk/~media/Files/Documents_en/Principles_of_Good_Administration.ashx)

<sup>24</sup> [www.ombudsman-wales.org.uk/~media/Files/Documents\\_en/Principles\\_for\\_Remedy.ashx](http://www.ombudsman-wales.org.uk/~media/Files/Documents_en/Principles_for_Remedy.ashx)

## Consultation

**A4.13.16** When considering the making of individual remedy payments, public sector organisations need to seek appropriate legal and financial approval about cases that:

- fall outside their delegated authorities
- raise novel or contentious issues
- could set a potentially expensive precedent or cause repercussions for other public sector organisations.

**A4.13.17** Once a scheme is agreed, it is only necessary to seek further financial approval about cases outside the agreed boundaries for the scheme or the delegated authority applying to it.

## Reporting Ex Gratia Payments

**A4.13.18** Public sector organisations should ensure that ex-gratia payments have appropriate budget cover. Such payments score as special payments in organisations' resource accounts. Public sector organisations should include summary information on compensation payments arising from maladministration in their annual reports.

## Annex 4.14

### Asset Management

Each public sector organisation is expected to develop and operate an asset management strategy underpinned by a reliable and up to date asset register. The strategy should be reviewed annually.

**A4.14.1** Accounting Officers of public service organisations are responsible for managing their assets. This aspect of financial management covers the acquisition, use, maintenance and disposal of assets for the benefit of the organisation as a whole.

**A4.14.2** Each organisation needs to have a clear grasp of:

- The context of its current asset base.
- The assets it needs to deliver efficient, cost effective public services.
- What this means for asset acquisition, use, maintenance, renewal, upgrade and disposal.
- Whether any gains could be achieved by working with other public sector organisations.

**A4.14.3** Normally these responsibilities will be dispersed in an organisation through a system of delegations with appropriate reporting arrangements.

#### Asset Registers

**A4.14.4** It is good practice for each organisation to draw up, and keep up to date, a register of all the assets it owns and uses. This will usually be needed for the preparation of its accounts. It is also essential to undertake regular stock taking of the organisation's current assets base and thus for planning change.

**A4.14.5** The assets on an organisation's register should include both tangible and intangible assets, covering both owned assets and assets under its legal control such as leased assets. Box A4.14A lists the main groups but is not exhaustive. Each organisation should decide on a meaningful valuation threshold in line with best practice.

### Box A4.14A: Main categories of public sector assets

#### Tangible assets

- wholly owned land and buildings
- leased fixed assets
- raw materials
- stocks and stores
- plant, machinery, equipment, tools
- furniture and fittings
- assets under construction
- donated physical assets
- heritage assets
- antiques and works of art
- economic infrastructure assets (including highways, railways, airports, utilities communication networks and power generation and transmission)

#### Intangible assets

- copyrights, including Crown copyright
- trademarks
- franchises
- patents and other intellectual property rights, including in house software
- goodwill
- data and information
- knowledge and know-how
- software licences
- public dividend capital
- loans and deposits
- investments including shares and debentures in companies

**A4.14.6** In drawing up the asset register, particular care should be taken with two sorts of asset:

- Attractive items, such as works of art and items susceptible to theft. These may be included even if they are below the capitalisation threshold, in line with guidance provided by the Government Art Collection.
- Investments in the form of debentures and shares in commercial companies. These should be checked at least annually.

### Asset Management Strategies

**A4.14.7** The asset management strategy of a public sector organisation should be integrated into its business plans. It should, thus, be possible to help plan change in asset use or deployment where necessary. Box A4.14B suggests some key steps. The organisation's Board should take stock of progress with delivering its asset management strategy from time to time, and at least annually.

#### **Box A4.14B: Steps for developing asset management plans**

- Review the asset register to assess its adequacy for the organisation's objectives and functions.
- Plan how retained assets will be used efficiently for the organisation's core functions.
- Plan asset acquisitions, e.g. to extend, modify or replace the existing asset base (consider public sector co-location opportunities).
- Identify disposals, and plan to use the proceeds. Once decided upon, disposals should be as swift as the market will allow with reasonable value for money.
- Plan any loan of assets, with charges and conditions for their return, liability, damage.
- Consider whether any retained assets have potential to generate revenue through commercial services.

**A4.14.8** Assets should be managed like other parts of an organisation's business, with up to date and reliable information systems to provide feedback on performance, efficiency and value for money. The organisation is expected to:

- View value for money from the asset from a wider perspective, taking account of opportunities to work with other public sector organisations to minimise their overall required asset base.
- Manage the assets in a way which aims to optimise cost sustainability through their effective lives.
- Use commercial terms for the delivery and support of assets.
- Incorporate adequate flexibility to cope with the organisation's future change programme.

### **Efficiency Improvements**

**A4.14.9** Efficiency in the use of workspace may make it possible for a public sector organisation to occupy less space. It is good practice to dispose of surplus property, or to share accommodation on the Welsh Government estate with other public sector organisations where this is practicable. It may be necessary to consider a budget transfer between organisations to help meet the initial relocation costs. Opportunities to adopt flexible or agile working arrangements should also be considered to optimise the use of space. In addition, for the wider public sector, the National Asset Working Group has been established, reporting to the Minister for Finance and Government Business, to encourage and support greater levels of collaboration and by putting in place tools to help deliver efficiencies and improved levels of public service. More information can be found at [www.assetscymru.org.uk](http://www.assetscymru.org.uk).

### **Transfer of Property**

**A4.14.10** Public sector organisations may transfer assets among themselves without placing the assets on the open market, usually at market prices and in appropriate circumstances. They should follow the general guidelines in box A4.14C.

#### **Box A4.14C: Protocol for transfers of assets**

- Value assets at market prices using Royal Institution Chartered Surveyors' Red Book ([www.rics.org](http://www.rics.org)).
- The original and prospective owners should work collaboratively to agree a price. It is good practice to commission a single independent valuation to settle the price to be paid.
- The organisations should take legal advice, especially where sponsored organisations are involved as these may have specific legal requirements.
- The terms of transfer should not normally involve either claw back (rights to share disposal proceeds) or overage (rights to share future profits on disposal) though see A4.14.12 below.
- Fuller guidance is contained in the Estates Co-ordination and Land Transfer Protocol document. ([www.wales.gov.uk/topics/improving-services/pslg/nwp/assetprocure/landtransfer](http://www.wales.gov.uk/topics/improving-services/pslg/nwp/assetprocure/landtransfer))

**A4.14.11** Sometimes, transfers of assets result from machinery of government changes. The relevant legislation (e.g. a transfer of functions order) should prescribe the terms of any such transfers.

**A4.14.12** In certain circumstances overage provisions can be considered. The circumstances where overage is acceptable are:

- Where the property is sold to a private developer for housing development.
- There is a realistic prospect that selling will improve the outcome for housing policy, e.g. by creating an aggregated composite site.
- The accounting officers of the relevant public sector organisations are convinced that, in this transaction, overage offers value for money for the public sector as a whole.
- The development gains are split equally between the original and prospective owners.

### **Disposals of Property and Land Assets**

**A4.14.13** Public sector organisations should take professional advice when disposing of land and property assets. Some key guidelines are in box A4.14D.

**A4.14.14** Public sector organisations which make grants to third parties for the acquisition of assets should normally include a claw-back condition under which they can recoup the proceeds if the recipient of the grant later sells the asset. There is some scope for flexibility in this discipline, see Annex 5.2.

#### Box A4.14D: Protocol for disposal of land, property and other assets

- Value assets at market prices using Royal Institution of Chartered Surveyors' Red Book ([www.rics.org](http://www.rics.org)).
- Consider wider public sector asset collaboration opportunities.
- Dispose of surplus land property within three years.
- Dispose of surplus residential property within six months.
- Sell plant, machinery, office equipment, furniture and consumable stores by public auction as seen; or by open tender. Obtain payment before releasing the goods.
- If an asset is sold or leased at a loss, the proceeds foregone (compared to market value) should be treated as a gift (see Annex 4.11).

**A4.14.15** Disposals to charities require particular care. Their trust deeds sometimes place restrictions on how they may use their assets. It is good practice to consider the possible disposal of assets by such recipients before making gifts to them.

# Annex 5.1

## Grants

This annex sets out how the Welsh Government should arrange and control grants to external bodies, including to public bodies such as WGSBs. It should be taken as recommended best practice by other public sector organisations.

### Financial Support for External Bodies

**A5.1.1** Welsh Ministers normally offer two kinds of financial support to external bodies, using their statutory powers. In Welsh Government terms these are referred to as grant funding. In financial accounting terms they are categorised as follows.

- Grant funding (hypothecated): made for specific purposes, under statute, and satisfying specific conditions, e.g. about funded activities, or with other relevant control.
- Grant-in-aid (unhypothecated): providing more general support, usually for a WGSB, with fewer specific, but more general controls on the body, and less oversight by Welsh Government.

**A5.1.2** Grant funding should not be confused with contracts which are created via a procurement exercise; grant funding is used to help deliver Welsh Government policy objectives whereas contracts are the agreement used to underpin the purchase of goods and/or services which are of direct benefit to Government.

### Payment

**A5.1.3** Grant funding must be paid in accordance with the requirements of different funding programmes and the monitoring and claim-for-payment requirements set out in the funding agreement. For example:

- Funded bodies are often required to submit satisfactorily completed claims with supporting evidence as required.
- The recipient may need to show that it has met the conditions of the scheme, e.g. a farmer may need to disclose details of his or her business.
- Payments are often against a timetable (e.g. quarterly in arrears).
- Third sector organisations must demonstrate a need for grant funding to be paid in advance of undertaking activities for which funding is being provided.

**A5.1.4** Grants-in-aid payments should also match the recipient's need. Significant sums should be phased through the year in appropriate instalments designed to echo the recipient's expenditure pattern. In this way the recipient organisation need not carry significant cash balances, which would be an inefficient use of public money.

## Control

**A5.1.5** Allocation of public money in the form of grant funding and grant-in-aid requires specific empowering legislation as well as budgetary cover.

**A5.1.6** The appropriate Accounting Officer of Welsh Government is responsible for ensuring that grant recipients are eligible and use the grant in the way intended under the funding agreement. For grants-in-aid, it is usual to arrange this by setting out terms and conditions in a framework document sent to recipients to explain their responsibilities (see Annex 7.2). Such framework documents should strike an appropriate balance to:

- Ensure prudent management of grant-in-aid funds.
- Achieve value for money.
- Assure Welsh Ministers that grants are used for intended purposes.
- Allow recipients reasonable freedom to make their own decisions.

However, care must be taken as general and wide ranging conditions attached to grants-in-aid can transfer control of a body to a funder which may have implications for accounting and budget regimes.

**A5.1.7** Welsh Government should have a good understanding of other sources of income of a grant recipient to avoid duplication of funding. Usually it is essential to segregate income streams since they are normally intended for different purposes.

**A5.1.8** Welsh Government should ensure that recipients of grants understand that the Auditor General for Wales and the European Commission have statutory access rights to all grant recipients. Funding agreements must reflect these rights, and the access rights of Welsh Government also.

## Protecting Public Assets

**A5.1.9** Where grants are provided to private sector organisations to acquire or develop assets, suitable and proportionate steps should be taken to safeguard both the funded body's financial interests and the interests of Welsh Ministers. In such circumstances, Welsh Government must apply conditions designed to ensure that its financial interest is not overlooked if the asset is not used as agreed (see Annex 5.2).

## Endowments

**A5.1.10** Grants and grants-in-aid are normally paid to enable external bodies to help deliver Welsh Government policy objectives and priorities whilst meeting the needs of the recipients. Exceptionally, there may be a case for funding by way of endowment or dowry, i.e. a modest one-off grant to enable the recipient to set up a fund from which to draw down over several years. The recipient may then be able to make a clean break with the need for Welsh Government funding support.

**A5.1.11** Groups within Welsh Government contemplating such funding arrangements should consult the Welsh Government Director of Finance (and in turn public bodies should consult their sponsor Branches ). Groups will need to demonstrate the value for money case for this form of funding, including:

- Clear evidence of the need for this approach.
- The opportunity cost of locking public funds into a particular endowment, using investment appraisal techniques.
- The value of the particular programme or project against others. Welsh Government's central finance will need to be satisfied that such funding would not protect any low-value programmes or projects from proper expenditure scrutiny.
- The sustainability of the funded body and whether such funding will remove future reliance on public funding.
- Whether there are clear objectives, outputs and outcomes of the funding; and
- The risk of further call on public funds.

**A5.1.12** Any such endowment should:

- Reflect genuine need for capital funding that could not be raised through other methods.
- Be made only to recipients with the competence to manage the endowment over time.
- Avoid skewing public funding away from other projects that have genuine cash needs.

**A5.1.13** The terms of an endowment should:

- Be clear that the funded body should not subsequently approach Welsh Government for annual funding.
- Maintain clear boundaries between Welsh Government and recipient.

**A5.1.14** Endowments should never be used as a way of bringing expenditure forward to avoid an underspend. Endowments are intended for situations where a clear financial break will be advantageous to both recipient and donor. Normally the recipient will be a third sector organisation.

## Annex 5.2

### Protecting Public Investments

This annex discusses how public sector organisations which provide grants to the private sector and others should protect their investments where grants are used to buy or improve assets.

#### Clawback

**A5.2.1** Public sector organisations providing funds to others to acquire or develop assets should take steps to make sure that public sector funds are used for the intended purposes for which the grant is made. It is usual to consider setting conditions on such grants, taking into account the value of the grant, the use of the asset to be funded and its future value.

**A5.2.2** The standard grant condition is clawback. This is achieved by setting a condition on the grant that gives the funding body a charge over the asset so that, if the recipient proposes to sell or change the use of the asset acquired with the grant, it must:

- Consult the funder.
- Return the grant to the funder.
- Yield the proceeds of sale (or a specified proportion) to the funder.

**A5.2.3** However, a charge over the asset is not always essential. Some ground rules are suggested in box A5.2A.

#### **Box A5.2A: When to consider clawback**

##### **Clawback desirable**

- Tangible or intangible assets, including intellectual property rights, crown copyright, patents, designs and database rights, financed directly whether wholly or partly by grants or grants in aid.
- Tangible or intangible assets developed by the funded body itself, financed indirectly by a grant for a related purpose or by grants in aid.

##### **Clawback not always necessary**

- Procurement of goods and services, whereby any liability is adequately discharged once the goods and services have been provided.
- Where a grant has been provided for research and not specifically for the creation of a physical asset the successful conclusion of the research might be adequate return.

**A5.2.4** Because funders, recipients and circumstances can vary so much, there is no single model for clawback. Bespoke terms are often desirable; appropriate legal advice should be sought. They should allow as much flexibility as seems sensible. The aim should be to help recipients develop and provide services over the longer term while securing value for public funds. Drawing on the ideas in box 7.2, funders should always settle the terms of each grant with its recipient at the start of the relationship, consistent with its objectives.

## Designing Clawback Conditions

**A5.2.5** The design of clawback conditions for a grant should take account of its circumstances, the underlying policy objective(s) and the funder's approach to risk. A checklist of some common factors to consider is in box A5.2B. Using this tailored approach can mean different organisations take very different approaches to the same risks.

### Box A5.2B: Factors to consider in designing clawback terms

- The nature and purpose of the grant.
- How the asset will help secure the policy objectives behind the grant.
- The expected life of the asset.
- The extent to which the recipient is financed out of public funds.
- How the asset will be used by the recipient, e.g. scope for appreciation or generating profit.
- How long the funder should retain an interest in the asset.
- Whether the asset may be sold, with any restrictions on disposal, e.g. as to price or purchaser.
- Whether there is sense in reassessing after a certain period or on a given trigger.
- Whether the terms of clawback should vary according to a factor such as the asset value (in which case the terms may need to provide for periodic valuations).
- When the policy objectives should be delivered.
- The funder's legal powers and the recipient's legal position (e.g. as a company or charity).
- Any other relevant legal factors, e.g. EU rules on state aids.

**A5.2.6** In setting terms and conditions for grants, funders should consider what could happen if things do not proceed as intended, notably what should happen if:

- The recipient does not behave as expected.
- External conditions are very different to plans.
- The recipient goes into liquidation (e.g. should the funder take priority over unsecured creditors).

## Duration of Charge

**A5.2.7** It can make sense to relate the funder's right to clawback to the policy objectives of making the grant rather than allowing it to persist indefinitely unchanged. Some policy options are outlined in box A5.2C. If the clawback is linked to the value of an asset which is likely to appreciate, there is a risk that the recipient may face a disincentive to participate, so care and sensitivity may be needed.

### Box A5.2C: Options for clawback duration or assets as collateral

- Keying it to the objectives of the grant.
- Relating it to the period over which the intended benefits are to be delivered.
- Settling clawback rights on a declining scale, e.g. falling to zero by the end of an agreed period, or the asset's useful life, or by when the policy objectives are deemed delivered.
- Allowing the recipient to use as collateral the difference between the market value of the asset and the original grant.

**A5.2.8** However, it can also make sense to moderate grants conditions by using terms such as:

- A break clause allowing the funder and recipient to consider whether the objectives of the funding have been achieved, triggering the end or reduction of the funder's interest in the asset.
- A review clause allowing scope to retain the charge and review the clawback period if the project has not met the agreed objectives.
- Releasing the funder's interest in the asset (and so permitting its disposal or use as collateral) at the end of the agreed charge or clawback period.

**A5.2.9** It is common to prohibit recipients from using the assets they acquire or improve using grants as collateral in borrowing transactions. This is because the public sector funder might be forced to take up the recipient's legal liability to service debt should it fail. However, if a funder agrees that a recipient may use assets acquired or developed with grants as collateral, it should consider carefully what conditions it should apply. Some freedom of this kind may help the recipient make the transition to viability or independence. For example, a funder might allow a recipient to retain income generated by using spare capacity in the funded asset.

**A5.2.10** But normally it is important for the funder to retain some control over any use of the funded asset outside the grant conditions. Typically the funder will require the recipient to obtain the funder's consent before raising funds on any part of a funded asset so long as the clawback period continues. Any further conditions should be proportionate, striking a proper balance between encouraging the recipient to be self-supporting and allowing the recipient to use public funds for its own purposes.

## Enforcing a Claim on a Funded Asset

**A5.2.11** Where appropriate, funders should secure a formal legal charge on funded assets. This may be particularly important for high risk projects or to prevent the funder becoming exposed to assuming the recipient's debts. It is usual to take a registered charge on land under the Land Registration Act 2002 and its Rules. If the recipient is a Companies Act company, it may make sense to secure a registered charge on the company's book debts.

**A5.2.12** The form and intended duration of any charge should be recorded in the founding documents charting the relationship between the funder and recipient. Both parties will need legal advice, e.g. covering the statutory background, any relevant EU rules (e.g. on state aids) and on how the charge would be enforceable. Both parties should also keep track of their outstanding charges. It is good practice to register a land charge, so that it will automatically be taken into account during any sale process.

**A5.2.13** Sometimes a funder may decide not to enforce clawback when a funded asset is sold, even though the agreed clawback period is still in force. Funders should take any such decision consciously on its merits, not letting it go by default. Reasons why a funder might take this approach include:

- The objectives of the grant may have been achieved.
- The recipient may propose to use the funded asset in an acceptable way different from the original purpose.
- The recipient may intend to finance an alternative asset or project within the objectives of the grant scheme out of the proceeds of the sale.
- The funder might agree to abate future grants to the recipient instead of taking the proceeds of sale.

**A5.2.14** If the funder decides to waive a clawback condition, it should consider whether it needs to report that waiver as a gift. If so, it should follow the gift reporting requirements in Annex 4.11.

**A5.2.15** If it is proposed to transfer the ownership of an organisation which has applied a grant to an asset which is then subject to a legal charge, the funder should take legal advice on whether it can enforce the charge on the proceeds of the sale. The funder should consider the legal position of the proposed purchaser of the grant recipient and, in particular, whether its objectives (e.g. charitable or as a social enterprise) are in line with the original grant conditions. If the funder becomes aware that such a sale is possible at the time the grant is awarded, it would usually be appropriate to require the recipient to obtain its consent before proceeding. And any request for endorsement of a sale should be evaluated objectively.

## Annex 6.1

### How to Calculate Charges

This annex discusses how to calculate the cost of public services for which a fee is charged.

#### Introducing a New or Updated Charge Bearing Service

**A6.1.1** Public sector organisations planning to set up or update a service for which a fee may be charged should ensure early engagement with their finance colleagues. Advice should be sought at the earliest opportunity if there are any variations on the standard model. Proposed variations may be agreed in certain instances, considering each on its merits. Each will need to be justified in the public interest and on value for money grounds.

**A6.1.2** Practical issues which organisations will need to consider when setting up or refreshing a charge bearing service include: the definition of the service and its rationale; the proposed financial objective (for instance, full cost recovery; 70% of full cost plus a 30% public subsidy); how the service is to be delivered and which organisation is to deliver it; whether the provider should retain any income from charges; the proposed charging structure (for instance, a single service or several sub-services). Organisations will also need to refer to the checklist in box 4.8 in Chapter 4 of factors to consider when planning policies and projects.

#### Measuring the Full Cost of a Service

**A6.1.3** With agreed exceptions, fees for services should generally be charged at cost, sometimes with an explicit additional element to match the returns of commercial competitors. So, to set many fees for public services, it is essential to calculate accurately the cost of providing them.

**A6.1.4** The main features to be taken into account in measuring the annual cost of a service are set out in box A6.1A. Not everything in the list will apply to every service and the list may not be exhaustive. It is important that the calculation is comprehensive, including all relevant overheads and non-cash items.

**A6.1.5** So far as possible the calculation should use actual costs, where they are known. For services just starting, there may be no alternative to using best estimates, geared to estimated consumption patterns.

### **Box A6.1A: Elements to cost in measuring fees**

- Accommodation, including capital charges for freehold properties.
- Fixtures and fittings.
- Maintenance, including cleaning.
- Utilities.
- Office equipment, including IT systems.
- Postage, printing, telecommunications.
- Total employment costs of those providing the service, including training.
- Overheads, e.g. (shares of) payroll, audit, top management costs, legal services, etc.
- Raw materials and stocks.
- Research and development.
- Depreciation of start-up and one-off capital items.
- Taxes: VAT, council tax, stamp duty, etc.
- Capital charges.
- Notional or actual insurance premiums.
- Fees to sub-contractors.
- Distribution costs, including transport.
- Advertising.
- Bad debts.
- Compliance and monitoring<sup>25</sup> costs.
- Provisions.

#### **But do not include**

- Externalities imposed on society (for instance, costs from pollution and crime).
- Costs of policy work (other than policy on the executive delivery of the service).
- Enforcement costs.
- Replacement costs of items notionally insured.
- Start-up costs (those which are capitalised in the accounts) and of one-off capital items.

**A6.1.6** Start up costs which are capitalised in the accounts and the cost of fixed capital items are scored in the accounts in full. These costs should be attributed to the cost of the service as the depreciated value each year.

<sup>25</sup> See the HM Treasury publication Class (2010)2

[www.webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/classification\\_receipts.pdf](http://www.webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/d/classification_receipts.pdf)

**A6.1.7** Start up costs which cannot be capitalised in the accounts are scored as they are incurred. Such costs may be recovered through fees and charges by spreading them over the first few years of service provision. It is also good practice to set fees to recover costs which cannot be capitalised in the accounts and which have been incurred to improve efficiency and effectiveness so that charges are lower or offer better value. This should be agreed with the Welsh Government, and may require statutory backing.

**A6.1.8** For services which are charged at different rates, the same procedure should be used to set the different rates. That is, the cost of any premium service should be objectively justifiable by its additional cost (e.g. where faster shipping is offered); or conversely any discount should be justifiable by saving to the supplier (e.g. using the internet rather than over the counter). Note, however, that sometimes the legislation permits differential pricing unrelated to the relative underlying costs – though even then there should be good policy reason for the difference.

## Financial Objectives

**A6.1.9** The standard approach to setting charges for public services (including services supplied by one public sector organisation to another) is full cost recovery. It normally means recovering the standard cost of capital, currently 3.5%. Some exceptions are noted in section 6.4.

**A6.1.10** One other exception is commercial services, i.e. those services which compete or may compete with private sector suppliers of similar services. These should aim to recover full costs including a real rate of return in line with the rates achieved by comparable businesses facing a similar level of risk. The normal range of rates is 5-10% but rates as high as 15% may be appropriate for the very highest risk businesses.

**A6.1.11** Great care should be taken in pricing competitive services where public sector suppliers have a natural dominant position. The market prices of competitors will often be a good guide to the appropriate rate of return if there is genuine competition in the market. Where there are limited numbers of buyers and sellers in a market, it may be better to take other factors into account as well. These might include past performance, the degree of risk in the underlying activity and issues bearing on future performance.

## Accidental Surpluses and Deficits

**A6.1.12** Despite every effort to measure and forecast costs, surpluses and deficits are bound to arise from time to time. Causes may include variations in demand, in year cost changes, and so on. It is good practice to consider mid year adjustment to fee levels if this is feasible.

**A6.1.13** It is also good practice to set fees to recover accumulated past deficits. This may require statutory backing and needs to be discussed with the Welsh Government.

## Annex 6.2

### Charging for Information

This Annex discusses how Welsh Government charges for its information. There are exceptions to the general policy of charging at full cost. The Annex should be regarded as best practice by Welsh public sector organisations, which may have specific regulation or guidance of their own.

**A6.2.1** The policy is that much information about public services should be made available either free or at low cost, in the public interest. Anything originating in Crown bodies, including many public sector organisations, has the protection of Crown copyright. So people may need to pay if they want to duplicate or process (reuse) such material for profit.

**A6.2.2** Information products have an unusual combination of properties: typically, high cost of production combined with low cost of reproduction. So information products are frequently licensed for the use of many customers simultaneously rather than being sold or otherwise transferred. This can make for complex charging arrangements to recover costs accurately.

#### Rights to Access

**A6.2.3** Most public organisations freely post information about their activities and services on the internet. It is good practice to make available recent legislation, public policy announcements, consultation documents and supporting material sufficient to understand the business of each public sector organisation. In addition, some of this information may also be available in free leaflets.

**A6.2.4** More extensive paper or IT (such as CD rom) versions of information available on the internet may carry a charge to cover the cost of production. This should also apply to printed versions of material viewed for free in public offices. There should be no additional charge for material made available to meet the needs of particular groups of people, e.g. in Braille or other languages.

**A6.2.5** Most public sector organisations choose, as a matter of policy, to make available on the internet copies of information disclosed in response to requests under the Freedom of Information Act 2000 and Environmental Information Regulations 2004.

#### Information Carrying Charges

**A6.2.6** A number of public sector organisations supply information for which charges are made. These can include:

- Services commissioned in response to particular requests.
- Services where there are statutory powers to charge.
- Information sold or licensed.

- Publications processing publicly gathered data for the convenience of the public through editing, reclassification or other analysis.
- Retrieval software e.g. published as a key to using compiled data.

**A6.2.7** The terms on which this information is made available should be made clear at the point of sale or licensing. There is a clear public interest in maximising access to much public sector material and this should be borne in mind when deciding what charges should be levied. For this reason many publications can be reused by others free of charge. However, public sector organisations should take a careful policy view of the copyright issues, using legal advice as necessary.

**A6.2.8** However, public sector organisations can charge for supplying some information which recipients intend to process e.g. for publication in another format. The norm is:

- Raw data – license and charge at marginal cost.
- Value added data – charge at full cost including an appropriate rate of return.

Licenses supplied in this way may take a number of forms including royalties on each additional copy sold in the case of the most commercial applications.

**A6.2.9** Public sector organisations should maintain information asset registers as part of their asset management strategy. For further information see [www.nationalarchives.gov.uk](http://www.nationalarchives.gov.uk). The office of Public Sector Information (OPSI – part of the National Archives) can advise on compliance with the Re-use of Public Sector Information Regulations.

## Annex 6.3

### Competition Law

Public sector organisations need to take care if they provide services which compete with private sector suppliers of similar services, or may do so. It is important that they respect the requirements of competition law.

**A6.3.1** UK competition law is founded in Articles 81 and 82 of the EU Treaty, applied through the Competition Act 1998. Together these prohibit business agreements that prevent, restrict or distort competition in trade in the UK and EU. They also disallow market abuse on the part of any business in a dominant position<sup>26</sup> in a market.

**A6.3.2** In particular, the following kinds of unfair competition are not allowed:

- Very high prices that may exploit market power.
- Very low prices that may exclude competitors.
- Differential prices (or other terms and conditions of service) for the same product to different customers (except for objective reasons such as differences in quality or quantity) that distort competition.
- Refusing to supply competitors without objective justification such as poor customer credit worthiness.

#### Pricing in Competitive Markets

**A6.3.3** Services should be costed in line with the normal rules for full cost recovery. Charges should be set to achieve the appropriate financial objective, normally at least recovering full costs.

**A6.3.4** Some public sector organisations both supply data for use in providing public services and sell services using their data in competition with commercial firms. Such organisations need to take particular care not to abuse their competitive position in the market, especially if it is dominant. This could happen if a dominant supplier organisation allocated its costs in such a way that an efficient competitor could not operate profitably.

**A6.3.5** There can be circumstances which merit departing from the normal principle of full cost recovery. The justification is normally to achieve greater efficiency and sensitivity in responding to patterns of demand or cost, e.g.

- If the service cannot be expanded, but customers are willing to pay more, there may be a case for increasing the price.
- If there is excess capacity and customers are not willing to pay the current charge, there may be a case for reducing the charge or reducing output.
- Incentive charging, i.e. charging below cost to encourage demand, or above cost to discourage it.

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<sup>26</sup> A business is deemed to be in a dominant position if it can generally behave independently of competitive pressures in its field.

**A6.3.6** If a public sector organisation decides not to recover full costs for a while, it should take care that:

- Its prices are not reduced in such a way as to stifle competition (a rapid cut in prices could be unfair to private sector competitors).
- Its products and services are not charged at less than their average variable costs or short-run marginal costs (though this does not preclude charging at less than break even for a short period, e.g. to match competition).
- The charging strategy is compatible with full cost recovery over the medium term. This may mean ceasing to offer a service which has become unviable against the competition.
- Any cross-subsidies between services should not drive prices below average variable cost or short run marginal cost.
- If, exceptionally, a supplier charges below full cost because it has surplus capacity, there must be broader benefits and prices should not fall below average variable or short run marginal cost.

## Delivering Financial Objectives

**A6.3.7** Public sector organisations should normally plan to achieve their financial objectives. If necessary this may mean adjusting prices or managing the cost structure of the supply to deliver adequate efficiency. In particular, if a public sector supplier forecasts a deficit, it should take remedial action promptly.

**A6.3.8** If a public sector supplier moves away from full cost charging, there may be a case for reviewing its financial objective. Normally any such change needs the agreement of Welsh Ministers/Welsh Government.

## Taking Things Further

**A6.3.9** For further guidance please visit the Competitions and Markets Authority website [www.gov.uk/government/organisations/competition-and-markets-authority](http://www.gov.uk/government/organisations/competition-and-markets-authority)

### Box A6.3A: Further guidance

Among these references the following may be particularly useful:

- The Competition Act and cartels at [www.gov.uk/topic/competition/competition-act-cartels](http://www.gov.uk/topic/competition/competition-act-cartels)
- Abuse of a dominant position at [www.gov.uk/topic/competition/consumer-protection](http://www.gov.uk/topic/competition/consumer-protection)

**A6.3.10** More generally, it is good practice for bodies supplying goods or services into competitive markets to seek legal advice on the application of competition law at an early stage.

## Annex 7.1

### Forming and Reforming Public Bodies

This annex covers the processes of setting up new public bodies and reshaping existing ones, either by merger, dissolution or other transformation. While the processes are flexible, there are some common themes centring on accountability and streamlining government processes. The annex is an outline only – you must obtain Welsh Government Corporate Governance Unit, central finance and legal advice if you are engaged in setting up new bodies.

#### Rationale for Public Bodies

**A7.1.1** The Welsh Government works through public bodies when there is a good reason to do so, usually when it is helpful for a specialist body to carry out a function where independence is important. Each public body has its own bespoke reason for existing and many are established under specific legislation determining their form, functions and powers.

**A7.1.2** The four main kinds of public bodies are Agencies, Welsh Government Sponsored Bodies (WGSBs), Non-Ministerial Departments (NMDs) and Commissioners (Corporations Sole). Each has its strengths and is appropriate for a range of functions.

**A7.1.3** The three main kinds of public body for delivering Welsh Government policies are compared in box A7.1A. A number of Government-owned companies have also been set up. The arrangements for doing so and their governance are similar to those adopted for WGSBs.

#### Setting up a New Public Body

**A7.1.4** It is good practice to decide early which kind of body is most appropriate when setting up a new public body. The National Assembly for Wales is concerned that hiving off functions into a public body should not diminish accountability. For that reason, NMDs are rarely the right solution.

**A7.1.5** It is important to remember that effective functional independence does not necessarily require a specific structure. Welsh Ministers can choose to stand back from the decisions made or opinions published by any public body while maintaining financial control and oversight.

**A7.1.6** The next step is to develop a framework document setting out the relationship between the new public body and its sponsor department. Advice on this is in Annex 7.2. These should be periodically reviewed to keep abreast of experience and the changing context.

### Box A7.1A: Comparison of the three main kinds of public bodies in central government

Feature	Agency	NMD	WGSB
Status	Part of Welsh Government	Department in its own right	Independent organisation  May be a charity
Crown Body	Yes	Yes	Not usually
Established by	Administrative action (usually quick and easy)	Administrative action, often supplemented by primary legislation (if needed, may take time)	Usually bespoke primary legislation (may take time)
Governance	CEO supported by a board	Permanent Secretary or equivalent supported by a board	Independent board led by non-executive Chair
Ministerial accountability	Welsh Ministers make key decision on the agency's affairs	Rarely needed but, when necessary, the Welsh Minister decides	The Welsh Minister decides key matters eg whether to adjust functions, whether to wind up or replace
Welsh Government	Has direct control	Remote	Subject to formally agreed framework document, may be light touch
Funding	Budget and/or fee income	Usually own Request for Resources (RfR) and/or fee income	Grant(s) or grant-in-aid from sponsor department and/or income from fees or levies
Employees	Civil servants	Civil servants	Not usually civil servants
Accounts etc	Publishes plans and resource accounts as part of Welsh Government's annual accounts	Publishes own plans and accounts	Publishes own plans and accounts
Accountability to National Assembly for Wales	CEO is agency accounting officer, oversight by PAO	Its Permanent Secretary is accounting officer	CEO is normally the accounting officer, oversight by Welsh Government AAO

**A7.1.7** Decisions on the form of any particular public body must ultimately be for Welsh Ministers. They will depend, in part, on perceptions of the function in question and on the extent to which Welsh Ministers think it right to take a day-to-day interest in its affairs. Generally, the closer the public body's functions are to the centre of Government, the more likely it is to be an agency, while NMD status is appropriate for organisations of some size carrying out professional functions. The form and structure of the WGSB is very flexible, suiting specific and technical functions.

**A7.1.8** When a public body is planned, it is essential to consult the Corporate Governance Unit (CGU), central finance and Legal Services about its powers, status and funding.

**A7.1.9** It is worth remembering that the three kinds of public body in box A7.1A are only the most common ones. Others are possible. They include public corporations and various kinds of cooperative arrangements with the private or voluntary sector, some fairly loose. The CGU maintains a classification of Welsh Government public bodies and also maintains a register of public organisations in Wales. This Register is published on the Welsh Government web site.

**A7.1.10** Whatever the legal status of a public body, its sponsor Branch should have a mechanism in place for asserting an appropriate degree of control over it, especially in financial matters and in relation to issues of ethics in the use of public funds. In general, the greater the extent of public funding, the greater the degree of control called for.

**A7.1.11** Whatever the approach taken to setting up the new organisation, it is often desirable to operate a period of shadow running before it starts in earnest. Also, the process of preparation can take time – often a couple of years or more for a WGSB.

## Reforming Public Bodies

**A7.1.12** Valuable as they can be, proliferation of public bodies is not good practice. It adds to administrative costs generally and can fragment accountability. So it can be necessary or desirable to wind up or merge public bodies in the light of experience.

**A7.1.13** The process of decision making is similar to that for setting up a new public body if there is to be a successor organisation. It is good practice to decide on a suitable shape for the new organisation and then plan legislation, if necessary, to achieve it.

**A7.1.14** The predecessor organisation(s) must be wound up in an orderly fashion, with final accounts to close its affairs (including a comprehensive list of assets and liabilities). If a closing organisation has no staff by the time the final accounts are drawn up, it is usual for the Accounting Officer of the successor organisation, if there is one, to take responsibility for signing them. If this is not possible, for example if there is no successor, the PAO or AAO of the sponsor Branch should sign them.

**A7.1.15** When staff are to be migrated into a new organisation, it is important to respect their statutory employment rights. Planning for this should form a key part of the transition preparations. Mistakes can be costly.

## Annex 7.2

### Drawing Up Framework Documents

Sponsor Branches need arrangements to monitor and understand their public bodies' strategy, performance and delivery, usually built around a framework document. This annex offers an outline of how this can be drawn up. Any departures from this model must be cleared with the Welsh Government's Corporate Governance Unit.

**A7.2.1** This annex contains an outline menu of terms suitable for inclusion in the framework document for agencies, Welsh Government Sponsored Bodies (WGSBs) and other public bodies controlled by sponsor Branches. Each body will need a bespoke specification suited to its specific structure and responsibilities. The document should focus clearly on its relationship with the sponsor Branch, and with any other Groups with interest(s) in the public body's business.

**A7.2.2** The outline below can be adapted or used as a basis for framework documents for any public bodies. Some aspects must be tailored accordingly, in particular, corporate governance and the roles of the chair, board and chief executive officer are likely to be different for executive agencies and WGSBs. Those drawing up framework documents for bodies are not bound to follow the model but must discuss and agree any variations with the Corporate Governance Unit.(CGU).

#### **Box A7.2A: Framework Specifications**

##### **Framework Document for a Public Body**

##### **Purpose of the Public Body**

###### **1. Statement of:**

- Any statutory (and/or other) duties.
- Strategic aims.
- Any mission statement or equivalent.

##### **Governance and Accountability**

2. Statement of the legal origin(s) of its powers and duties.
3. Statement of the aims set by the Welsh Ministers.
4. Statement of which of the Welsh Ministers will account for the public body's business to the National Assembly for Wales.

## Box A7.2A: Framework Specifications

### Framework Document for a Public Body

#### Governance and Accountability (continued)

5. Statement of the responsibilities of the Accounting Officer for the sponsor Group within the Welsh Government, especially:
  - Regular monitoring and general oversight over the public body's business.
  - Accounting for any disbursements of grant-in-aid to the public body.
  - Relationship with any other public sector organisation with an interest in the public body's business.
6. Statement of the responsibilities of the organisation's Accounting Officer (usually the chief executive) to account to:
  - National Assembly for Wales.
  - The sponsor Branch.
  - The body's board.
  - Other stakeholders.
7. Statement of the responsibilities of the body's:
  - Board.
  - Chairman.
  - Individual board members.
8. Specification of the essential publications of the body, including:
  - Annual report and accounts, including its governance statement.
  - Any statutory reports.
  - Any bespoke requirements e.g. related to its business sector.
9. Statement of internal audit arrangements, including access by Welsh Government's Internal Audit Service.
10. Statement of internal audit arrangements, including access by Welsh Government's Internal Audit Service.
  - The auditor (usually the Auditor General for Wales – deviation from this to be cleared with CGU).
  - The accounts direction (issued by the Welsh Government).
  - Value for money audits by the AGW.

## Box A7.2A: Framework Specifications

### Framework Document for a Public Body

#### Management and Financial Responsibilities

11. Statement that the body should follow the standards, rules, guidance and advice in *Managing Welsh Public Money*, referring any difficulties or potential bids for exceptions to its sponsor Branch in the first instance. Specification of any standard exceptions to or elaborations of this general requirement.
12. Detail of corporate governance arrangements.
13. Details of risk management procedures and requirements.
14. Requirements for developing and revising the business plan, with the expected frequency, and arrangements for clearance with the sponsor Branch.
15. Details of budgeting procedures.
16. Details of the terms and conditions of payment of the grant-in-aid and any ring-fenced (hypothecated) grants made by the sponsor Branch or other Welsh Government Groups.
17. Details of reporting to the sponsor Branch, with the expected frequency, including:
  - The body's main activities.
  - Its financial performance.
  - Its expenditure against its annual budget.
  - Other monitoring information.
  - Working level liaison arrangements.
18. Specification of the activities of, and changes within, the body which require clearance from the sponsor Branch, including delegated limits of authority for approving new activities and capital projects.
19. Staffing arrangements.
20. Arrangements for periodic reviews of the body's role and status.

**A7.2.3** A specimen copy of the framework document prepared by CGU for WGSBs can be obtained from the following link:

[www.intranet/English/Services/CGU/PublicBodies/Pages/WGSBs.aspx](http://www.intranet/English/Services/CGU/PublicBodies/Pages/WGSBs.aspx)

## Annex 7.3

### Trading Funds

This annex discusses how sponsor Branches within the Welsh Government should assess proposals for trading fund status, control and monitor their trading funds, and deal with public dividend capital.

#### Proposals for Trading Fund Status

**A7.3.1** Bodies seeking trading fund status will usually need two years or so to get their proposals agreed. They will need to demonstrate that their income will largely sustain their operations and that they have the capacity to control and manage their business effectively. It is usual to establish a trading fund<sup>27</sup> to begin on 1 April with a trading year to coincide with the government's financial year, ending at end March. The key steps are set out in box A7.3.

**A7.3.2** Further guidance may be found in HM Treasury's *Guide to the Establishment and Operation of Trading Funds*<sup>28</sup>.

#### Public Dividend Capital

**A7.3.3** Trading funds are normally established with deemed capital in the form of public dividend capital (PDC) though often no cash transaction takes place. PDC may include an allowance for working capital. Once established, the trading fund should pay a dividend to Welsh Government on the PDC.

**A7.3.4** Under resource budgeting arrangements, sponsor departments score their trading funds' PDC as an asset. They also incur a cost of capital charge on the value of the net assets of bodies in which they have an investment, including trading funds. This charge is offset by the receipt of dividends on the PDC and interest on any loan capital. So, if the trading fund is unable to pay a dividend, the sponsor department may need to find offsetting savings.

#### Monitoring and Control

**A7.3.5** Sponsor departments should monitor the performance of their trading funds as any other part of their departments. They should take an active part in assessing the corporate plans prepared by their trading funds.

**A7.3.6** The trading fund's corporate plan should be supplemented by a more detailed annual business plan against which the sponsor department should measure performance monthly.

**A7.3.7** Welsh Government, the Finance Department and the Corporate Governance Unit take a strategic role. They need to be confident that the sponsor Branch has adequate procedures for monitoring and controlling its trading funds. It may take a more direct role if particular questions or problems arise.

<sup>27</sup> Under the Government Trading Fund Act 1973.

<sup>28</sup> [www.webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/psr\\_reporting\\_centralgovernment.htm](http://www.webarchive.nationalarchives.gov.uk/20130129110402/http://www.hm-treasury.gov.uk/psr_reporting_centralgovernment.htm)

### **Box A7.3A: Main steps in processing applications for trading fund status**

Sponsor Branches should:

- Consider whether the body really will get most of its income from trading.
- Assess whether trading fund status will improve the body's efficiency and effectiveness in managing its activities.
- Obtain the agreement of the portfolio Minister to the body's outline business case.
- Prepare a detailed business case, including financial forecasts, financing arrangements (e.g. loans or PDC), valuation of specialised assets and determination of financial targets.
- Arrange independent assessment of the business case (perhaps by private sector consultants), including a fitness to trade review where goods or services are not currently charged for. The review will need to confirm that the systems are adequate to identify costs of goods or services provided, make necessary charges to customers, control debtors, manage incoming cash and maintain adequate accounting and reporting systems.
- Liaise with HM Treasury and the Wales Office to ensure that any concerns and processes have been addressed (see below).
- Consult and advise customers, staff and other stakeholders about the proposal to establish a trading fund (the results of the consultation will eventually be laid before the National Assembly for Wales).
- Consult the Finance Department and CGU about:
  - The capitalisation of the trading fund, e.g. a cash injection, National Loan Fund (NLF) loans or PDC.
  - Arrangements for monitoring the financial performance of the trading fund.
  - Financial targets.
  - Appointment of the Accounting Officer for the trading fund.
  - The Framework Document.
  - The draft Trading Fund order.

#### **Welsh Government Finance Department**

- Directs the trading fund to be guided by the Financial Reporting Manual (FReM) and by standard directions on its report and accounts.

#### **HM Treasury**

- Agrees the basic business case and capitalisation of the trading fund.
- Issues a direction under the Government Trading Funds Act 1973 setting out how the assets and liabilities to be appropriated to the trading fund are to be valued.

## Annex 7.4

### Working with the Third Sector

This annex discusses the working relationships between the Welsh Government and Third Sector bodies, with pointers to further guidance. Other public sector organisations should take this as best practice.

**A7.4.1** The Third Sector encompasses a diverse community of voluntary and community organisations, charities, social enterprises, mutuals and co-operatives.

**A7.4.2** Section 74 of The Government of Wales Act 2006 requires the Welsh Ministers to “.....make a scheme setting out how they propose, in the exercise of their functions, to promote the interests of relevant voluntary organisations”.

**A7.4.3** The Minister for Communities and Tackling Poverty has published a new Third Sector Scheme<sup>29</sup> which continues to underpin Welsh Government’s long-term working relationship with the Third Sector here in Wales.

**A7.4.4** The Scheme is unique to Wales – no other part of the UK has an obligation to prepare such a document – and at the start of devolution in 1999 it was the only document of its type in Europe.

#### Third Sector Partnership Council

**A7.4.5** Under the Scheme the Welsh Government has established the Third Sector Partnership Council. This puts the Third Sector on to an equal footing with Local Government and business in their partnership arrangements with the Welsh Government.

**A7.4.6** The Third Sector Partnership Council (TSPC) is required to:

- Consider issues that relate to the strategic objectives and functions of the Welsh Government and which engage the interests of the Third Sector, and make recommendations to the Welsh Government.
- Agree, monitor and review the Framework for Engagement.
- Advise on the implementation, monitoring and review of the Third Sector Scheme including establishing indicators by which the Scheme shall be evaluated; and
- Facilitate consultation with relevant Third Sector organisations and Public Sector bodies on the Scheme’s implementation, operation and review.

**A7.4.7** The TSPC is chaired by the Welsh Government’s Minister with responsibility for the Third Sector (currently the Minister for Communities and Tackling Poverty). The frequency of the meetings is determined by agreement (at least twice a year). Third Sector membership currently comprises 25 sub-sectoral representatives (e.g. for arts; social enterprise; environmental action; health etc.) who are responsible for feeding back to their respective networks. The composition and operations of the TSPC are presently under review.

<sup>29</sup> [www.wales.gov.uk/topics/people-and-communities/voluntarysector/publications/third-sector-scheme/?lang=en](http://www.wales.gov.uk/topics/people-and-communities/voluntarysector/publications/third-sector-scheme/?lang=en)

## Code of Practice for Funding

**A7.4.8** The Welsh Government recognises that its Third Sector policy framework must include measures for assistance for the sector as set out in sub-section (4) (a) of Section 74 of the Government of Wales Act 2006.

**A7.4.9** The level of financial resources available will determine the extent of such assistance which is provided by way of grants etc., and funds will need to be targeted according to Welsh Government priorities. The Welsh Government also recognises its role in seeking to ensure that the Third Sector has fair and reasonable access to public funds.

**A7.4.10** Across the range of its functions, the Welsh Government is committed to establishing and maintaining procedures to ensure accepted best practice in the administration of its grant schemes and those of agencies which administer funds on its behalf.

**A7.4.11** The Welsh Government will maintain, use and promote the Code of Practice for Funding the Third Sector which now forms part of the Third Sector Scheme at Annex A (See link above which, sets out the key principles that will underpin Welsh Government funding for the Third Sector as well as what the Government expects from the Third Sector in return.

The key principles are:

- i. Delivery of strategic policy objectives.
- ii. Respect for the sector's independence.
- iii. Early and constructive dialogue.
- iv. Timely decisions.
- v. Security of funding.
- vi. Fair funding levels.
- vii. Value for Money.
- viii. Full Cost Recovery.
- ix. Commissioning Principles.
- x. Payments.
- xi. Fair and Reasonable Treatment.
- xii. Joint Approach to Monitoring, Evaluation and Audit.
- xiii. Identifying Expertise and Developing Capability to Deliver.
- xiv. Diversity.
- xv. Innovation.
- xvi. Good Governance and Due Diligence.
- xvii. Monitoring the Code of Practice for Funding the Third Sector.

**A7.4.12** The Code of Practice for Funding the Third Sector and the terms and conditions issued at the time a grant is made provide the mechanism by which the Welsh Government will monitor the use made of any assistance provided by it to relevant organisations.

**A7.4.13** The Code of Practice for Funding the Third Sector is monitored by the Funding and Compliance Sub-Committee of the Third Sector Partnership Council.

**A7.4.14** All Welsh Government Departments must comply with this Code. Welsh Government Sponsored Bodies (WGSBs) will be required to comply through their funding agreements. All other public bodies (including NHS bodies and local authorities) must comply with this Code in cases where Welsh Government has awarded them hypothecated funding. It is also expected that Welsh local authorities' and where relevant local health boards' adherence to these principles (as indicated above) will be reflected in local Third Sector Compacts.