

EXPLANATORY MEMORANDUM TO
THE GOVERNMENT RESOURCES AND ACCOUNTS ACT 2000 (AUDIT OF
PUBLIC BODIES) ORDER 2008

2008 No. 817

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument provides for the Comptroller and Auditor General (C&AG) to have statutory audit responsibility for four Non-Departmental Public Bodies (NDPBs). These are the Independent Living Fund 2006; the Ombudsman for the Board of the Pension Protection Fund; the Pensions Ombudsman; and the Royal Ulster Constabulary George Cross Foundation. The instrument also provides for the C&AG to have statutory audit responsibility for NHS Direct NHS Trust.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative background

4.1 This is the fourth time that the power in the Government Resources and Accounts Act 2000 has been used to give the C&AG statutory audit responsibility for NDPBs.

4.2 The first instrument in 2003 enabled the C&AG to become statutory auditor for 26 NDPBs which were then audited by private firms or where the C&AG was appointed by agreement.¹ The instrument in 2004 dealt with the Hearing Aid Council and the timing of the C&AG's appointment as auditor to the Sea Fisheries Industry Authority.² The third in 2005 covered three Urban Development Corporations (UDCs) and the British Transport Police Authority (BTPA).³

4.2 This Order addresses four further NDPBs for whom there is no current statutory provision for audit by the C&AG, either because they have only recently been classified as an NDPB or because they were set up under legislation or other arrangements that did not provide for such audit. The

¹ The Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003 (S.I. 2003/1326), in conjunction with The Government Resources and Accounts Act 2000 (Rights of Access of Comptroller and Auditor General) Order 2003 (S.I. 2003/1325)

² The Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2004 (S.I. 2004/1715)

³ The Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2005 (S.I. 2005/913)

Royal Ulster Constabulary (George Cross) Foundation was established under Regulation 3 of the Royal Ulster Constabulary GC Foundation Regulations 2002.⁴ The Independent Living Fund (2006) was established by a deed of trust dated 10 April 2006. The Ombudsman for the Board of the Pension Protection Fund was established under the Pensions Act 2004. The Pensions Ombudsman was established under the Pensions Schemes Act 1993.

4.3 While the Treasury has used this power to give the C&AG audit responsibility for Special Health Authorities on three previous occasions, this is the first time it has been used for an NHS Trust.⁵ NHS Direct NHS Trust (NHS Direct), which operates in England only, was established by the NHS Direct NHS Trust (Establishment) Order 2007.⁶ Its predecessor was a Special Health Authority. Under Schedule 15 to the National Health Service Act 2006, NHS Trusts established under Section 25 of the NHS Act 2006 are audited by an auditor appointed by the Audit Commission. This order gives the C&AG statutory audit responsibility for NHS Direct.

5. Extent

5.1 This instrument applies to all of the United Kingdom. It does not, however, affect the powers of the Auditor General for Scotland or Wales or of the Comptroller and Auditor General for Northern Ireland.

5.2 The provisions which the instrument amends vary in their application.

6. European Convention on Human Rights

6.1 The Exchequer Secretary to the Treasury, Angela Eagle, has made the following statement regarding Human Rights.

‘In my view, the provisions of the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 are compatible with the Convention rights.’

7. Policy Background

7.1 In its response to Lord Sharman’s report *Holding to Account* ⁷, the Government accepted his recommendation that the C&AG be appointed auditor for all NDPBs on a statutory basis.

7.2 Initial implementation covered NDPBs that were until then either audited by private firms, or where the C&AG was auditor by agreement.

⁴ S.R. (NI) 2002 No 260

⁵ The Government Resources and Accounts Act 2000 (Audit of Health Service Bodies) Order 2003 (S.I. 2003/1324); The Government Resources and Accounts Act 2000 (Audit of Health Service Bodies) Order 2004 (S.I. 2004/1714); and The Special Health Authorities (Audit) Order 2006 (S.I. 2006/960).

⁶ S.I. 2007/478

⁷ Audit and accountability in Central Government – CM 5456, March 2002

7.3 Since the policy was established, new primary legislation to set up an NDPB will usually include provision for the body to be audited by the C&AG. The four NDPBs listed in paragraph 2.1 have either recently been reclassified as NDPBs, or were established under arrangements or legislation in which no provision for audit by the C&AG was included. The purpose of the draft instrument is to give C&AG statutory audit responsibility for these bodies and to require the accounts and his report on them to be laid before Parliament.

7.4 NHS Direct was formerly a Special Health Authority which was made subject to C&AG audit under an earlier use of the current order-making power.⁸ It became an NHS Trust on 1 April 2007 as part of the implementation of the review into the Department of Health's arms-length bodies.⁹ The National Health Service Act 2006 provides that all NHS Trusts are to be audited by the Audit Commission. Since NHS Direct remains a national body – as opposed to all other NHS Trusts, which provide services locally – the Government believes that like other national bodies it should continue to be audited by the C&AG.

8. Impact

8.1 No Impact Assessment is required because there are no policy changes or the financial implications to business, the public sector, third sector organisations, regulators or consumers are less than £5 million.

9. Contact

9.1 David Barton at HM Treasury, e-mail david.barton@hm-treasury.gsi.gov.uk can answer any queries regarding the instrument.

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⁸ The Government Resources and Accounts Act 2000 (Audit of Health Service Bodies) Order 2004 (S.I. 2004/1714).

⁹ Reconfiguring the Department of Health's Arm's length bodies, Department of Health, July 2004