

**EXPLANATORY MEMORANDUM TO**  
**THE ACCOUNTS AND AUDIT (ENGLAND) REGULATIONS 2011**

**2011 No. 817**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 The instrument is a revision and consolidation of regulations which contain provisions on financial management, annual accounts and audit procedures applying to local authorities and a number of other public bodies who must be audited in accordance with the Audit Commission Act 1998 ('relevant bodies').

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

3.1 There has been a breach of the 21 day rule. The Department has had problems with email correspondence. The email box to which consultation responses had to be sent ceased functioning for a week at the end of the consultation period (which is when most of the responses are sent). Consultation responses were either sent back to the senders by the Department's email system and so were not received, or, even when they were delivered to the Department's email system, they were irrecoverable from the email system. Nearly all consultation responses are sent by email these days.

3.2 As a result, the Department had to email all consultees and put a notice on its website extending the consultation period for 4 days, and supply an alternative email box for responses. Any consultees who had responded during the period when the email system was not working were asked to resend their responses. The timetable therefore had to be extended to give consultees a proper chance to make their representations.

3.2 The date on which the regulations come into force cannot be extended, because the changes are to have effect for the audit year 2010-11, which ends on 31 March 2011. The bodies affected by these regulations have all been consulted on the draft regulations, and so the changes in the law are being anticipated by them.

4. **Legislative Context**

4.1 These regulations, made under the Audit Commission Act 1998, are updated periodically to ensure that the requirements relating to the financial management, annual accounts and audit procedures applying to relevant bodies are appropriate for current practice.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England only.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- What is being done and why

7.1 The regulations incorporate a number of amendments to the previous regulations designed to take account of new developments and to apply the Government policies of lifting burdens and increasing transparency to the subjects covered by the regulations.

7.2 The definition of “smaller relevant body” is being amended to bring more bodies within that category. The threshold of annual income or expenditure (whichever is the higher) is being raised from £1 million to £6.5 million, but subject to an overriding requirement that no body which has the freedoms given by the prudential system of capital controls (under Part 1 of the Local Government Act 2003) can be a smaller relevant body. The prudential system places responsibility on authorities to determine for themselves the amount they can borrow, without central government approval. Status as a smaller relevant body means that the body is subject to less onerous accounting and audit requirements. Almost a hundred bodies are expected to benefit from the change, mainly large parish councils, internal drainage boards and joint committees.

7.3 The procedure for approving and publishing statements of accounts is being amended for the larger relevant bodies to align it more closely with the procedures applying to companies. The change will mean that members of the body will be asked to approve the annual accounts after, rather than before, the findings of the audit are known. This will mean they are better placed to make an informed decision. This change has been recommended by professional accountancy and audit organisations. It has not been possible to apply the same change to smaller relevant bodies for procedural reasons connected with the limited assurance audit regime that applies to them. But for these bodies it is made clear that the approval members are required by the regulations to give to their annual accounts is for the purpose of submission to the auditors, rather than a final approval.

7.4 Regulation 17, which applies to Passenger Transport Executives (PTEs), has been amended to facilitate their move to accounts based on International Financial Reporting Standards (IFRS) on the same timetable as their parent Integrated Transport Authorities and local government in general.

The first IFRS based accounts will be prepared for 2010-11. This change is made at the request of the PTEs.

7.5 The regulations no longer provide that failure to comply with any of the regulations should constitute a criminal offence; previous regulations had identified several of the regulations in this way. This change is in line with Government policy to abolish obsolete or unnecessary criminal offences. It is considered more appropriate, as a safeguard for compliance, to rely on duties placed on the officers of authorities and the powers of auditors to report to the public and to take action in the civil courts. This is in practice how the regulations have been enforced in the past.

7.6 New requirements have been added for the larger bodies to place their accounts and public notices on their websites.

- Consolidation

7.7 The aim of the consolidation has been to make the regulations easier to understand. They have been restructured to separate out provisions on the annual accounts applying to smaller and larger relevant bodies. The intertwining of different requirements affecting the two categories added to the complexity of the regulations previously.

7.8 We have also taken the opportunity to simplify parts of the text of the regulations which the numerous amendments over a period of years have made difficult to follow. Spent provisions have been removed, and references to statutory bodies updated.

## **8. Consultation outcome**

8.1 In accordance with the consultation duty under the Audit Commission Act 1998 we consulted with the Audit Commission, the Local Government Association, London Councils, the National Association of Local Councils (NALC), the Association of Drainage Authorities (ADA), the Chartered Institute of Public Finance and Accountancy (CIPFA) and the Institute of Chartered Accountants in England and Wales (ICAEW). We also notified all principal local authorities of the consultation and invited responses from any other organisations or persons interested.

8.2 The consultation period originally ran for a six week period from 24 January 2011. Subsequently this was extended to 8 March 2011 for the reason explained in paragraph 3.1 above. A six week period was adopted in accordance with the informal agreement with the Local Government Association that consultation periods for technical material of this type need not exceed six weeks. The changes proposed in the consultation reflected extensive discussions with the key professional and representative organisations before it was issued. The consultation paper included a draft of the proposed regulations. The paper is available at:  
<http://www.communities.gov.uk/documents/localgovernment/pdf/1824755.pdf>

8.3 We received replies from 152 organisations or persons, including 5 of the statutory consultees, 106 principal authorities, 28 parish councils or other smaller bodies and 13 other persons or organisations. The responses were overwhelmingly in favour of the changes proposed. The main issues raised in the responses are discussed in the following paragraphs.

8.4 There was general support for the increase of the threshold for smaller relevant bodies from £1 million to £6.5 million. The draft regulations proposed that this change should take effect for the 2010-11 accounts. This was supported by organisations representing the bodies affected (NALC and ADA) and principal authorities concerned with joint committees affected. The latter were particularly concerned that the change should apply for 2010-11, to avoid the need to prepare accounts on an IFRS basis for such relatively small bodies. However, the Audit Commission, supported by the ICAEW, recommended that the change should be deferred by a year, so that it first applied to the 2011-12 accounts. They justified this by significant practical issues that, in their view, a change for 2010-11 would raise for the audited bodies, the Commission and auditors. Accounts preparation and audit planning would have been undertaken before the regulations were made, and a change in the audit requirements might require the Commission to make new audit appointments. In the Government's view introducing the increased threshold for 2010-11 would be manageable for the audited bodies affected (and they have the option under the regulations to continue with larger body accounting statements if they wish). The Government accepts that action may be needed by the Commission to make new audit appointments, which may mean audits are delayed for the first year of the change. The Government also accepts that auditors may have undertaken work on the 2010-11 audits that would be unnecessary with the change in status of the affected bodies and that this work will have to be paid for. But the Government, having accepted that an increase in the threshold was warranted, would find it difficult to justify requiring the bodies affected to prepare accounts and receive audits at the higher level for a further year, with the administrative burden and expense that this would entail. The Government has decided therefore not to amend the regulations to defer the implementation of the higher threshold.

8.5 The draft regulations proposed to require authorities to use their "best endeavours" to publish their accounts by 30 September, and, for the smaller bodies, to approve their accounts by 30 June. There was a general consensus, supported by the Audit Commission, CIPFA and NALC, that this wording was likely to lead to uncertainty and disputes, and a preference for a more definite statement of the time limit. The Government has therefore amended the wording to say that the bodies "must" comply with the time limits.

8.6 Three other changes have been made to the regulations in response to points made in the consultation responses:

- The requirement to produce a statement on internal control in regulation 4(3) has been replaced with a duty to produce an annual governance statement. This brings the regulations into line with current professional guidance and general practice in local government.

- Some minor changes have been made to the provisions on internal audit in regulation 6. Bodies are now required to “undertake”, rather than “maintain”, an adequate and effective internal audit. A right of access is now given to “documents and records” rather than “documents of the body which relate to its accounting and other records”. The new wording better reflects the current understanding of the nature of internal audit and the items to which it needs access.
- The arrangements for providing access each year for 20 working days to a body’s accounts and supporting documents have been amended for the smaller bodies. The consultation draft proposed that for most of them access was available throughout the 20 days at a place and at hours notified by public advertisement, but for the smallest access was to be available after giving reasonable notice. In the final regulations the arrangements for the smallest bodies have been extended to all the smaller bodies. This lifts a burden on these bodies without prejudicing the rights of the public.

8.7 A number of other recommendations were made in the consultation responses. Suggestions were made for changes to the remuneration disclosures required under regulation 7 and to the wider framework of public rights in relation to the audit. In both cases it would not have been appropriate to make changes in the current regulations. However, the suggested changes to the remuneration disclosures will be considered for inclusion in future amendments to the regulations, when they can be the subject of specific consultation. Recommendations on changes to the wider framework would require changes in primary legislation and can be considered in the preparation of proposals for the arrangements to follow the disbanding of the Audit Commission.

## **9. Guidance**

9.1 No statutory guidance will be issued on the regulations. But, following past practice with the Accounts and Audit Regulations, it is intended to issue a circular letter to explain the changes made.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is to reduce burdens on almost 100 local public bodies by raising the threshold below which bodies are classed as smaller relevant bodies (see paragraph 7.2 above).

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 The regulations will be reviewed as part of the preparation of the new framework for local government audit to be introduced when the Audit Commission is disbanded.

## **13. Contact**

Graham Fletcher at the Department for Communities and Local Government  
Tel: 0303 44 41740 or email: [graham.fletcher@communities.gsi.gov.uk](mailto:graham.fletcher@communities.gsi.gov.uk) can answer any queries regarding the instrument.