

EXPLANATORY MEMORANDUM TO
THE LOCAL AUDIT (AUDITOR PANEL) REGULATIONS 2014

2014 No. 3224

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**

The Local Audit and Accountability Act 2014 (“the Act”) provides for local public bodies (“relevant authorities”) to appoint their own auditors, and also to be responsible for their removal and replacement. Local auditors may also resign from office and need to be replaced. In these matters the authority is to be advised by an auditor panel. This instrument makes some provisions additional to those in the Act, including provision about the auditor panel’s appointment, membership, allowances, function of advising the relevant authority, political balance among non-independent members of the panel, and public access to the panel’s meetings and papers.

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

None.

4. **Legislative Context**

4.1 Part 3 of the Local Audit and Accountability Act is concerned with the appointment of local auditors, and also their resignation or removal from office. Section 9 of the Act requires each relevant authority to appoint an auditor panel (subject to exceptions set out in that section). Section 10 makes provision about the panel’s functions. Schedule 4 of the Act provides for the form and constitution of auditor panels. The Act provides for regulations to be made to add to these provisions.

4.2 These Regulations relate to the auditor panels who will advise on the appointment, removal, or resignation of, the auditors of relevant authorities and supplement provisions in Part 3 of the Act. Taken together, the provisions contain new arrangements for the appointment of auditors of relevant authorities once the Audit Commission for Local Authorities and the National Health Service in England and Wales is abolished (see section 1 of the Act). See section 2 of, and Schedule 2 to, the Act in relation to the bodies that are relevant authorities for the purposes of the Act.

4.3 These Regulations provide for similar provision on disqualification, public access and political balance applying to Auditor Panels as is already

provided for meetings of local authorities and their committees and sub-committees.

4.3.1 Provision on disqualification for membership of committees and joint committees is found in section 104 of the Local Government Act 1972 (“the 1972 Act”). The section applies provision in the 1972 Act about disqualification from membership of local authorities, including where the person holds a position which could give rise to a conflict of interest, or where the person’s circumstances give rise to questions of suitability (such as bankruptcy).

4.3.2 Sections 100A-100K of, and Schedule 12A to, the 1972 Act provide for meetings of local authorities to be open to the public except in certain circumstances which require confidentiality to be maintained. They also provide for public access to agendas for meetings and connected reports (subject to similar confidentiality exceptions) which should, in most cases, be made available five clear days prior to the meeting to which they relate.

4.3.3 Provisions contained in sections 15-17 of, and Schedule 1 to, the Local Government and Housing 1989 are concerned with political balance. They impose a duty on a local authority when making appointments to committees and sub-committees, or to other bodies (such as joint committees), to review the representation of different political groups. The objective is to ensure the composition of the authority’s committees and sub-committees, and its representation on joint committees etc, is representative of the overall political make-up of the appointing authority.

5. Territorial Extent and Application

This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 Relevant authorities will be responsible for appointment of, and management of the ongoing relationship with, their auditors. They will also be responsible for their removal from office. Local auditors may resign from office. In all cases the relevant authority will be responsible for any subsequent auditor appointment. In respect of these matters the relevant authority will be advised by an auditor panel.

7.2 These Regulations:

- for accountability and transparency, require that auditor panel vacancies be advertised, that the authority be responsible for fixing the term of office, and that the authority's full council or equivalent make appointments to the panel.
- for practicality, set the minimum panel membership and quorum at three, enabling authorities to have a small auditor panel if they choose; provide that the authority may pay allowances to panel members if they wish.
- for clarity in maintaining auditor independence, provide more detail about the panel's function of advising the authority on its relationship with its auditor, including the adoption and content of a policy on awarding "non-audit" work to the auditor.

7.3 Though auditor panels have an independent advisory role, it is appropriate for certain local government enactments relevant to local authority committees to be applied to auditor panels. Therefore the Regulations provide for similar levels of transparency, by enabling public access to meetings and papers, and accountability, by applying political balance requirements to any local authority members appointed to an auditor panel, and for the disqualification arrangements applicable to a member of a local authority committee to apply to any member of an auditor panel.

8. Consultation outcome

8.1 Public consultation, lasting four weeks, from 25th November to 20th December 2013, was undertaken on a draft of these Regulations. The consultation also covered draft regulations on independence requirements for membership of auditor panels, and arrangements for resignation, removal, and subsequent replacement, of auditors. The consultation paper can be found here:

http://localaudit.readandcomment.com/wp-content/uploads/2013/11/Future_of_Local_Audit_-_Consultation_on_secondary_legislation_.pdf

A summary of the consultation response can be found here:

<https://www.gov.uk/government/consultations/future-of-local-audit-consultation-on-secondary-legislation>

8.2 4% of all respondents, all from the audit and accountancy sector and representing 45% of respondents from that sector, suggested that policy on non-audit work, on which auditor panels will advise, should build on the Financial Reporting Council's ethical standards. The FRC's ethical standards provide requirements and guidance on circumstances around the provision of non-audit services by audit firms to bodies they audit which may create threats to the auditor's objectivity or give rise to a perceived loss of independence.

8.3 The Government agrees that policies on non-audit work should reflect existing ethical standards for auditors, and will consider with the sector how

to emphasise this in guidance, along with other matters relating to auditor panels.

9. Guidance

In partnership with the sector, the Government will consider guidance on the new arrangements for local audit, which may include advice on how best to recruit an auditor panel; how the panel is supported to discharge their functions; and what a policy on non-audit work should contain.

10. Impact

10.1 The impact on charities or voluntary bodies is nil; however there will be an impact on audit firms, with annualised costs per annum rising from around £1.04million to £2.18million. However this is offset by the opening up of the local public sector audit market to firms, enabling them to realise greater profits than in the baseline year and a decreased contribution to system costs (see Annex 3 of impact assessment for the 2014 Act).

10.2 The impact on the public sector in complying with the new audit arrangements in total is estimated to range from £2.98million per annum to £4.48million per annum, a best estimate of £3.73million per annum, which equates to roughly £4,800 per body per year in compliance costs (see Annex 2 of impact assessment for the 2014 Act).

10.3 An Impact Assessment was published alongside the introduction of the Local Audit and Accountability Bill to Parliament which provides an assessment of the overall cost and impact of the new regime. This can be accessed at the following address:-

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349418/2014_FINAL_Local_Audit_IA.pdf

11. Regulating small business

Whilst the legislation does not apply to small business in a wider sense there will be an impact on audit firms. The detailed costs and benefits are set out in Annex 3 of the impact assessment for the 2014 Act. However, whilst the new arrangements will result in an increased cost to audit firms, this is offset by the opening up of the local public sector audit market to a wider range of firms, enabling them to realise greater profits over the longer term, with a decreasing contribution to system costs over the current regime.

12. Monitoring & review

12.1 As part of the Government's commitment to review the implementation of new legislation within three to five years of receiving Royal Assent, Government has set out some general principles towards developing a possible approach to such a review and assessing the impacts/outcomes associated with the Government's reforms to local audit. An over-riding objective for the final approach would be to ensure that any proposed measurement is both proportionate and cost effective.

12.2 The aims and success criteria of the local audit reforms are to:

- Deliver greater localism, decentralisation and transparency;
- Maintain competitive audit fees; and
- Uphold high standards of auditing.

The post implementation review will provide Government, Parliament and the public with the evidence to demonstrate that the local audit framework is achieving its anticipated outcomes

13. Contact

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