

LOCAL AUDIT AND ACCOUNTABILITY ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 5 – Conduct of Local Audit

63. **Part 5** sets out the provisions relating to the role of the local auditors under this Act. The scope of the audit is set out in sections 20 and 21, and largely replicates existing provisions in the Audit Commission Act 1998. Section 19 and Schedule 6 set out the role of the Comptroller and Auditor General of the National Audit Office to set the audit standards through codes of audit practice and guidance. Sections 24 to 31 set out the additional duties of local auditors in undertaking audits of relevant authorities, retaining the current roles in – for example - reporting in the public interest when necessary or taking questions and objections from local government electors.

Section 19 and Schedule 6: Codes of audit practice and guidance

64. This Schedule (which is given effect to by section 19) includes provisions which set out how the code of audit practice and supporting guidance will be produced.

Paragraph 1: Duty to prepare code

65. The Comptroller and Auditor General of the National Audit Office is required to prepare one or more codes of audit practice which embody best professional practice regarding how local auditors should carry out their functions under the Act. Because audit arrangements are different for some relevant authorities, the code can include different provisions for different types of relevant authorities or there can be more than one code. The Comptroller and Auditor General must consult the listed parties when developing the code.

Paragraph 2: Procedure for code

66. This paragraph sets out the procedure for gaining Parliamentary approval to a code, which is required before a code can come into force. The Comptroller and Auditor General is required to publish the draft code, which is then laid before both Houses of Parliament by a Government Minister. If, within 40 days after laying, either House of Parliament resolves not to approve the code, the Comptroller and Auditor General must not publish it and must prepare another code of audit practice unless one or more is already in place. If Parliament does not resolve against the code, the Comptroller and Auditor must publish it.

Paragraph 3: Duty to keep code under review

67. This paragraph requires the Comptroller and Auditor General to keep the code(s) under review.

Paragraph 4: Alteration of code

68. This paragraph enables the Comptroller and Auditor General to prepare alterations to a code. The same consultation, publication in draft and Parliamentary approval processes apply to an altered code as for any code. If an altered code is not resolved against by Parliament, the Comptroller and Auditor General must publish it clearly showing where the alterations have been made.

Paragraph 5: Replacement of code

69. This paragraph requires the Comptroller and Auditor General to prepare a replacement code at least every five years and enables him/her to do so more frequently. This means that the code will be reviewed at least every five years, but can be done more frequently should major changes be needed. Because it is not within the Comptroller and Auditor General's control to ensure that a replacement code is published within five years of the existing code being published, the duty is on the Comptroller and Auditor General to use "reasonable endeavours" to ensure a code is published before the end of the five years. If this is not possible, the Comptroller and Auditor General must ensure that a code is published as soon as reasonably practicable. This ensures Parliamentary oversight of the code at least every five years.

Paragraph 6: Publication of code

70. This paragraph enables the Comptroller and Auditor General to publish a code in such manner as he/she sees fit. A code or alterations to a code come into force on the day on which it is published, unless a different date is specified. There may be different commencement dates for different purposes.

Paragraph 7: Assistance from relevant authority

71. This paragraph requires a relevant authority to provide information that the Comptroller and Auditor General reasonably requires to fulfil the functions as set out in this Schedule.

Paragraph 8: Savings for codes of practice under the Audit Commission Act 1998

72. This paragraph provides for a code prepared under the Audit Commission Act 1998 to stay in force until such time as the relevant section of that Act is repealed, or until that code is replaced by a code prepared under this Act and approved by Parliament.

Paragraph 9: Guidance

73. This paragraph enables the Comptroller and Auditor General to issue guidance to local auditors in relation to their functions as set out in this Act. The guidance may supplement or further explain the code.

Paragraph 10: Application to auditors of NHS foundation trusts

74. This paragraph covers the application of a code of audit practice to auditors of accounts of NHS foundation trusts. Although NHS foundation trusts are not relevant authorities, the duty to prepare a code of practice as regards audit of their accounts applies, as does the power to issue guidance to auditors of foundation trusts' accounts. Schedule 12 amends the National Health Service Act 2006 so that auditors of foundation trusts' accounts are required to comply with the relevant code and have regard to any such guidance (see new paragraph 24(4A) of Schedule 7 to that Act).
75. In preparing a code relating to the audit of accounts of foundation trusts, the Comptroller and Auditor General is required to consult Monitor and such associations or representatives of foundation trusts as the Comptroller and Auditor General thinks appropriate, as well as the other persons mentioned in paragraph 1(5).

Paragraph 11: Meaning of 40-day period

76. This paragraph explains that the 40-day period starts from the day on which the code is laid unless it is not laid in both Houses of Parliament on the same day, in which case it begins with the later day. The 40-day period excludes days when Parliament is dissolved, prorogued, or where both Houses are adjourned for more than 4 days.

Section 20: General duties of auditors

77. This section sets out the general duties with which a local auditor must comply when auditing the accounts of a relevant authority – except audits of health service bodies: the general duties of local auditors for health service bodies are in section 21. It requires the auditor to be satisfied that the relevant authority’s accounts (the statement of accounts and accounting records) comply with the relevant enactments; that proper practices have been observed in the compilation of the statement of accounts and that the statement of accounts presents a true and fair view; and that the relevant authority has made proper arrangements for securing economy, efficiency and effectiveness (value for money) in the use of its resources.
78. Subsection (2) requires the auditor to issue an opinion on the statement of accounts and a certificate to confirm that the audit has been undertaken in accordance with this Act. These would usually be issued when the audit is complete, and the opinion would be included within the final statement of accounts. However, subsection (4) allows the auditor to issue the opinion on the accounts and close the accounts before issuing the certificate if the auditor is still considering objections, the resolution of which would not affect the accuracy of the statement of accounts. This means that the closure of the statement of accounts does not need to be delayed if the auditor is considering objections which would not impact on the statement of accounts thus increasing transparency locally.
79. If relevant authorities are required to keep a separate Pension Fund under the Local Government Pension Scheme, a local auditor is required to provide a separate opinion on that part of the statement of accounts.
80. Subsections (5) and (6) require local auditors of all relevant authorities (including health sector bodies) to comply with the relevant code(s) of audit practice and have regard to guidance which has been issued by the Comptroller and Auditor General in support of the code.

Section 21: General duties of auditors of accounts of health service bodies

81. Subsection (1) sets out the general duties with which a local auditor must comply when auditing the accounts of a clinical commissioning group. It requires the auditor to be satisfied that: the group’s accounts present a true and fair view and comply with relevant legislative requirements; proper practices have been observed in the preparation of the accounts; the group has made proper arrangements for securing economy, efficiency and effectiveness in their use of resources; money provided by Parliament has been expended for the purposes intended by Parliament; resources authorised by Parliament have been used for the purposes so authorised; and the financial transactions of the clinical commissioning group are in accordance with any authority which is relevant.
82. Subsection (3) sets out the general duties with which a local auditor must comply when auditing the accounts of special trustees for a hospital. The auditor must be satisfied that: the accounts present a true and fair view and comply with relevant legislative requirements; proper practices have been observed in the preparation of the accounts; and the special trustees have made proper arrangements for securing economy, efficiency and effectiveness in their use of resources. Unlike the auditors of clinical commissioning groups, audits of the accounts of special trustees of hospitals do not have to be satisfied in relation to money and resources authorised by Parliament, nor that the special trustees’ financial transactions are in accordance with any relevant

authority. These requirements are not relevant to special trustees of a hospital who hold and administer the property of university hospitals and teaching hospitals on trust, for purposes related to hospital services, including research. Special trustees do not receive funds from Parliament.

83. **Paragraph 10** of Schedule 13 extends the provision in relation to the audit of the accounts of special trustees of a hospital, so that it also applies to audit of the accounts of NHS trusts and the trustees of NHS trusts. Subsection (4) makes provision requiring the auditor of a health service body to enter certain things on the accounts of the audited body on completion of the audit of the accounts of the body. The auditor must enter on the accounts a certificate that the auditor has completed the audit in accordance with the Local Audit and Accountability Act 2014, and make a report in accordance with subsection (5).
84. Subsection (5) requires that the auditor of a health service body must make a report on all the matters on which they have a duty to satisfy themselves in subsections (1) or (3) as appropriate, other than subsections (1)(c) or (3)(c), where they must not give their opinion in the report if they are satisfied proper arrangements being made for securing economy, efficiency and effectiveness in the use of resources.

Sections 22 and 23: Auditors' right to documents and information; and offences relating to section 22

85. **Section 22** gives local auditors a right of access to documents and information which are necessary to support the audit. An auditor has a right to access at all reasonable times any documents which the auditor considers necessary to carry out their functions under the Act. The auditor can inspect, copy or take the documents away. The auditor may require any person who holds or is accountable for these documents to provide further information or explanation. If documents are held electronically, the auditor can inspect and check the operation of any IT which has been used, and require specified people to provide reasonable assistance to support them do this. The specified people are those whose computer has been used or who are responsible for the computer or IT system being accessed, which is designed to apply to employees and members of a relevant authority. A local auditor can also require persons specified in subsection (8) to provide information or any other explanation. The relevant authority or connected entity must provide the auditor with all of the facilities and information that the auditor reasonably requires. In the case of a parish meeting, subsection (9) restricts auditors' access rights described in subsection (7) to past and present chairmen and proper officers of the district so that these duties do not fall on all local government electors. Subsections (11) and (12) preclude statements given in response to the auditor from being used in evidence against the person for any other criminal proceedings except the offences under section 23.
86. **Section 23** makes it an offence for a person, without reasonable excuse, to obstruct the auditor's right to access information or to fail to comply with the local auditor's requests for information. The offence is punishable by a fine not exceeding level 3 on the standard scale, and an additional daily fine if the offence continues after conviction of up to £20 per day. Local auditors can recover expenses reasonably incurred in connection with proceedings against specified persons from the relevant authority if they are not recovered from any other source.

Section 24 and Schedule 7: Reports and recommendations

87. This Schedule (which is given effect to by section 24) sets out the detailed requirements for local auditors to consider making public interest reports and written recommendations, and for the procedures to be adopted following their issue.

Paragraphs 1 to 3: Public interest reports, written recommendations and supply of public interest reports

88. **Paragraph 1** places a duty on a local auditor to consider whether in the public interest, they should make a public interest report on any matter coming to their attention during the audit and relating to the authority or connected entity to the authority so that the recommendation can be considered by the relevant authority or brought to the attention of the public. Paragraph 2 enables a local auditor to issue written recommendations to the authority relating to the authority or entity connected with it, so that the recommendation may be considered. Public interest reports and recommendations can be in relation to the authority being audited or any entity connected with that authority and can be issued during or at the end of the audit.
89. A local auditor is required to inform the authority's auditor panel as soon as is reasonably practicable after making a public interest report. This is so that the auditor panel is aware of the auditor's action but the panel does not influence the auditor's decision about whether to issue a report, as this could undermine or be perceived to undermine the auditor's independence from the relevant authority. The auditor must send public interest reports and recommendations to the Secretary of State; the related authority if the report or recommendation is in relation to a connected entity; and to the Greater London Authority for reports / recommendations relating to the London Pensions Fund Authority, a functional body, or a connected entity of a functional body. The local auditor must send public interest reports and recommendations to the National Health Service Commissioning Board in the case of clinical commissioning groups.
90. There is express provision which enables the local auditor to recover reasonable costs of investigating issues and preparing public interest reports and recommendations from the relevant authority, further supporting the auditor's independence from the authority.

Paragraph 4: Publicity for public interest reports

91. The provisions in this paragraph are designed to support transparency and local accountability. When an auditor issues a public interest report on a relevant authority or connected entity, the relevant authority must publish the public interest report as soon as practicable. It must also publish a notice which identifies the report's subject matter and explains that the public may inspect the report at a specified location and times, unless the report relates to a health service body. The authority (except a health service body) must ensure that the public can inspect and copy the report without payment, or require the relevant authority to provide a copy for a payment of a reasonable sum. The relevant authority must send copies to each of its members (if it has members) and its auditor panel (if it has one). The local auditor is able to notify and send a copy of the public interest report to any person that the auditor considers fit. The requirements for health service bodies to publish public interest reports are set out at sub-paragraph (8)(b) and (c). Paragraph 12 of Schedule 13 extends the provision relating to the publication of public interest reports to NHS trusts and trustees of NHS trusts.

Paragraph 5: Consideration of report or recommendation

92. This paragraph specifies how relevant authorities should consider public interest reports and auditors' written recommendations. This does not apply to health service bodies, because these requirements are specified in other legislation or through requirements placed upon the health service body by their regulator. Nor does it apply to the Greater London Authority (paragraph 6 specifies arrangements), nor connected entities which are also relevant authorities (except reports and recommendations on the Commissioner of Police of the Metropolis). The relevant authority must consider public interest reports and auditors' recommendations at a meeting within one month of the report or recommendation being sent to the body and decide at that meeting what action needs to be taken. Police and Crime Commissioners and the Mayor's Office for Policing and

Crime must decide within one month what action to take. The Secretary of State is able to modify this paragraph through regulations.

Paragraph 6: Consideration of report or recommendation: Greater London Authority

93. This paragraph specifies how the Greater London Authority must consider any public interest reports or recommendations made by the auditor in relation to the Greater London Authority or a connected entity of the Greater London Authority. This largely mirrors provisions in paragraph 5 and specifies that the London Assembly must consider reports and recommendations at a meeting which the Mayor must attend.

Paragraph 7: Bar on delegation of functions relating to meetings

94. This paragraph prevents certain relevant authorities from delegating the consideration of public interest reports or auditors' recommendations. Sub-paragraph (1) has the effect that the full council of a local authority which operates executive arrangements must consider a public interest report or auditor's recommendation. Sub-paragraph (2) excludes the consideration of public interest reports and auditors' recommendations from provisions in the Local Government Act 1972 enabling a local authority to discharge its functions by a committee, sub-committee or officer, or by another local authority. In the case of a parish meeting, sub-paragraph (3) requires consideration of public interest reports and auditors' recommendations to be considered by the meeting. Sub-paragraphs (4) and (5) preclude the Mayor of London and the London Assembly from delegating the consideration of public interest reports and auditors' recommendations.

Paragraph 8: Publicity for meetings

95. This paragraph sets out the arrangements that a relevant authority must follow in publicising meetings to consider public interest reports and auditors' recommendations. The relevant authority must publish a notice at least 8 days before the meeting specifying the time and location of the meeting; that the meeting is to discuss a public interest report or auditor recommendation; and the subject matter (the full recommendation should be included if reasonably practicable). When the authority's members are sent the agenda for the meeting, this must be accompanied by a copy of the public interest report or recommendation.

Paragraph 9: Access to meetings and documents

96. This paragraph explains that public interest reports and recommendations are not considered as excluded or exempt information with regards to provisions made in the Public Bodies (Admission to Meetings) Act 1960 and the Local Government Act 1972. This means that a public interest report and recommendations should be included with other documents (as set out in the Local Government Act 1972) as being open to public inspection and should not be considered as excluded material if a newspaper requests it under the Public Bodies (Admission to Meetings) Act 1960.

Paragraph 10: Publicity for decisions under paragraph 5 or 6

97. This sets out the requirements on a relevant authority for publicising its decision about its response to a public interest report or auditor recommendation. The relevant authority must notify the auditor of its decision and publish a notice summarising the decision (and this must be on its website if it has one). The notice can exclude decisions that were made in the meeting while the public were excluded for protection of public interest (under section 1(2) of the Public Bodies (Admission to Meetings) Act 1960), confidential matters (under section 100A(2) of the Local Government Act 1972) or exempt information (under section 100A(4) of the Local Government Act 1972). The notice must also specify if there are any documents that are available for inspection.

Section 25: Inspection of statements of accounts etc

98. This section requires relevant authorities, other than health service bodies, to enable local government electors to inspect and make copies of the statement of accounts prepared by the relevant authority and specified reports and other documents made by the auditor to the relevant authority. These documents must be made available for inspection at all reasonable times without payment, or if requested, the relevant authority must supply copies of any of these documents upon payment of a reasonable sum.

Section 26: Inspection of documents etc

99. This section provides that any interested person may inspect the accounting records and supporting documents for a relevant authority, other than a health service body, for the audit year and make copies of those documents. The section also enables local government electors to ask the auditor questions about the accounting records. There are exceptions for records and documents containing personal information and information protected on grounds of commercial confidentiality. The auditor is able to recover reasonable costs for their time in undertaking this function from the relevant authority.

Section 27: Right to make objections at audit

100. This section provides for a local government elector to make an objection to a local auditor if they consider that there is a matter about which the auditor could make a public interest report or apply for a declaration that expenditure is unlawful. This does not apply to health service bodies. The objection must be made in writing with a copy sent to the relevant authority.
101. The auditor is required to decide whether to consider the objection, and if so whether they need to make a public interest report or a declaration of unlawful expenditure. The auditor has discretion not to consider the objection if (in particular) the auditor considers that it is frivolous or vexatious; repeats a previously considered objection; or where the cost of the auditor's investigation would be disproportionate to the financial amount to which the objection relates (and if there are no serious governance issues). Instead of considering the objection, the auditor may recommend that the relevant authority take action itself. The auditor is able to recover reasonable costs for their time in considering objections from the relevant authority.

Section 28: Declaration that item of account is unlawful

102. This section provides for a local auditor to apply to the courts for a declaration that an item in the accounts is unlawful. This does not apply to health service bodies. The court will decide whether to make that declaration and where it does, may order changes to be made to the statement of accounts or the accounting records.
103. If an auditor decides not to investigate an objection made under section 27 relating to unlawful expenditure or decides not to refer the matter to the courts, the person raising the objection may require the auditor to provide written reasons for that decision within six weeks of the auditor's decision. Following receipt of the auditor's written reasons, the person then has a further 21 days to appeal against the decision to the courts. If the local elector appeals to the court, the court has the same powers as it does if the auditor had applied for a declaration.
104. The court can make an order for the relevant authority to pay expenses incurred by the local auditor or local government elector as a result of this action. If an auditor considers exercising this power, but ultimately does not do so, they can recover the reasonable costs for their time in investigating the issue from the relevant authority.

Section 29 and Schedule 8: Advisory notices

105. This Schedule (which is given effect to by section 29) does not apply to health service bodies.

Paragraph 1: Power to issue advisory notice

106. This paragraph enables a local auditor to issue an advisory notice if the auditor thinks that the relevant authority or an officer of the authority has, or is about to, undertake specified unlawful actions. These unlawful actions are: a decision which incurs unlawful expenditure, a course of action which is likely to lead to a loss or deficiency, or the entering of an unlawful item of account. The advisory notice must: be addressed to the relevant authority or officer; specify the relevant decision incurring unlawful expenditure, unlawful course of action or unlawful item of account; specify that the notice takes effect on the day on which it is served; and specify the notice period within which the authority or officer must inform the auditor if they intend to continue to take the action (which must not exceed 21 days).

Paragraph 2: Service and withdrawal of notice

107. This paragraph sets out how the advisory notice must be served on the relevant authority or officer and enables the auditor to withdraw it. If the advisory notice is addressed to the authority, then it must be served on the authority. If an advisory notice is addressed to an officer, it must be served on both the officer and the relevant authority. Within 7 days of issuing the advisory notice, the local auditor must also serve a statement of their reasons for doing so.

Paragraph 3: Effect of an advisory notice

108. This paragraph makes it unlawful for the authority or officer to continue to take or implement the action that the advisory notice refers to while the advisory notice has effect. Sub-paragraph (2) makes an exclusion where the authority or officer has considered the auditor's notice and the consequence of taking the action, informed the auditor of their intention to take the action and the notice period has expired. The advisory notice takes effect from the day on which the notice is served; and ceases to have effect either when it is withdrawn or if the auditor does not serve a statement of reasons within 7 days following its issue. Sub-paragraph (4) enables the auditor to recover from the relevant authority any costs reasonably incurred in issuing advisory notices and any work to investigate whether they need to.

Paragraph 4: Further provisions about advisory notices

109. This paragraph provides for the situation where a relevant authority has (prior to the advisory notice being served) entered into a contract to dispose of or acquire an interest in land, where the existence of the advisory notice would mean it would be unlawful to complete the disposal/acquisition. The existence of the advisory notice does not affect the damages that could be available and no action lies against the auditor in respect of any loss or damages as a result of an advisory notice issued in good faith.

Section 30: Unlawful expenditure or activity of health service bodies

110. This section provides for the steps a local auditor of a health service body must take if the auditor believes that the body, or an officer of the body, is about to take or has taken decisions which have incurred or would incur unlawful expenditure, or is about to take or has taken a course of action which would be unlawful and likely to lead to a loss or deficiency. The auditor must, as soon as reasonably practicable, notify the Secretary of State and, if the body is a clinical commissioning group, the NHS Commissioning Board. If the body is an NHS trust or the trustees for an NHS trust, the auditor must notify the Secretary of State and the National Health Service Trust Development Authority. (Paragraph 13 of Schedule 13 provides for this.)

Section 31: Power of auditor to apply for judicial review

111. This section enables a local auditor to apply to the courts for judicial review if the auditor considers that a decision by a relevant authority or a failure by the relevant authority to act would have an effect on the authority's accounts. This does not apply to health service bodies. Subsection (4) enables the court to order the relevant authority to pay the expenses incurred by the auditor. If an auditor investigates issues which could result in him/her applying for judicial review, subsections (5) and (6) enable them to recover reasonable costs for the time taken.

Section 32: Accounts and audit regulations

112. With respect to relevant authorities other than health service bodies, section 32 provides a power for the Secretary of State to make regulations on matters connected with those authorities' accounts, audit and corporate governance. The power takes account of the new statutory distinction between accounting records and statements of accounts (see section 3). It is expected that this power will be used to specify aspects of the format of the published accounts, and set out the framework for their preparation, approval and publication. Procedural aspects of the conduct of the audit, including arrangements for the exercise of the rights of the public (sections 25 to 27), are also likely to be included in the regulations. The section specifies persons who must be consulted before regulations are made.