

EXPLANATORY MEMORANDUM TO
THE ACCOUNT AND AUDIT (AMENDMENT No.2) (ENGLAND)
REGULATIONS 2009

2009 No. 3322

1. 1.1 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 These Regulations make provision for disclosure of the remuneration of senior employees and office holders of certain public bodies and senior police officers, for the purpose of increasing transparency for the public in relation to remuneration for senior public sector workers.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative context**
 - 4.1 These Regulations amend regulation 7 of the Accounts and Audit Regulations 2003 (S.I. 2003/533) (“the 2003 Regulations”). The 2003 Regulations make provision with respect to the accounts and statement of accounts of ‘relevant bodies’. ‘Relevant body’ is defined in regulation 2 as a body whose accounts are required to be audited in accordance with Part 2 of the Audit Commission Act 1998 (“the 1998 Act”), other than a health service body, a local probation board and a probation trust. The full list of bodies subject to audit under Part 2 of the 1998 Act can be found in Schedule 2 of that Act, and include ‘local authorities’. By section 53(2) of the 1998 Act, section 270 of the Local Government Act 1972 (general interpretation) applies for the interpretation of the 1998 Act. By virtue of section 270, ‘local authority’ for England is defined as a county council, a district council, a London borough council or a parish council.
 - 4.2 By virtue of section 134(6) of the Greater London Authority Act 1999, the Regulations also apply to the summary statement of accounts that the Greater London Authority is required to prepare under that Act.
 - 4.3 Regulation 7 of the 2003 Regulations concerns the information to be included in a note accompanying the statement of accounts for relevant bodies. These Regulations amend and expand the information to be included regarding remuneration, and have been made in order to increase transparency in relation to public sector pay by relevant bodies.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to relevant bodies in England.

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**

7.1 The Government announced, in December 2009, as part of the *Putting the Front Lines First: Smarter Government* White Paper, a series of new policy measures relating to public sector pay. All officials and officers in the public sector whose salary is £150,000 and over per year should expect to have details of their remuneration disclosed and made subject to public scrutiny. In addition the Government also announced that remuneration reporting for organisations' workforces over £50,000 would be presented in bandings of £5,000. Transparency and remuneration reporting is a key aspect of these measures; the proposals announced were within the scope of the original consultation and as such the Regulations were adapted to ensure consistency.

7.2 Before the announcement however, Government believed that the existing reporting and transparency arrangements applying to relevant bodies are not sufficient to permit scrutiny of the use of public money for remuneration of public sector workers. Given the high level of public interest, the Department for Communities and Local Government undertook a series of fact-finding meetings with key interest groups in spring 2009 (including the Information Commissioners Office and the Audit Commission) to determine the differences between public bodies, central Government and the private sector in terms of the requirements for reporting on levels of remuneration.

7.3 The meetings revealed that:

- the only requirement on relevant bodies was the disclosure of the numbers of staff whose remuneration was £50,000 or more in £10,000 bandings
- this contrasted with the financial statements of listed companies in the private sector, where the requirement under the Companies Act 2006 is to disclose information about pay, pensions and bonuses of named directors
- similarly, in central government, the Financial Reporting Manual (FReM) issued by HM Treasury (a copy of the 2009/10 manual can be found here: http://www.hm-treasury.gov.uk/d/2009_10_frem_full_version.pdf) requires government Departments to make the public sector equivalent of a Director's Report and a Remuneration Report for a company (as required by the Companies Act 2006), i.e. to disclose the names and detailed remuneration information for the permanent secretary and senior officials/members of the Board. Actual salaries are disclosed within £5,000 bands. (See in particular paragraphs 5.2.6 and following of the FReM in relation to the Director's Report requirements, and paragraphs 5.2.17 – 5.2.19 in relation to the Remuneration Report requirements).

7.4 In the light of these findings and following further consideration, Ministers decided to propose amendments to regulation 7 of the 2003 Regulations, and require the disclosure of more detailed remuneration reporting and additional information. The existing requirement for relevant bodies, other than "smaller relevant bodies"

(whose gross income or expenditure (whichever is the higher) is less than £1 million per year), is to specify the number of employees in that financial year whose remuneration fell in each bracket of a scale in multiples of £10,000 starting with £50,000. This is amended by regulation 4(3) of these Regulations. The requirement now also applies in respect of senior police officers (police officers above the rank of superintendent), and reduces the brackets of the scale to multiples of £5,000. In addition, details of the individual remuneration packages for senior employees and ‘relevant police officers’ are now required to be specified.

7.5 The new requirement in relation to senior employees and relevant police officers (both permanent and non-permanent) is for a detailed breakdown of their remuneration details for the financial year being reported and the preceding year to be included in the note accompanying the authority’s annual statement of accounts under the following categories (specified in new paragraph 2(c) of regulation 7 of the 2003 Regulations): salary, fees and allowances; bonuses; expenses allowance; compensation for loss of employment; employer’s pension contribution; any other emoluments; and in the case of chief officers of police, any other payments made to them.

7.6 Salary, fees and allowances includes both pensionable and non-pensionable amounts, and also includes, but may not be confined to, the gross salary, overtime, and location allowances or weightings.

7.7 Bonuses will be disclosed as the total amount paid, either fully or partially, in addition to salary. These may include performance related payments.

7.8 Expense allowances chargeable under UK tax and paid to the post holder should be disclosed but not amounts that are reimbursements of expenses directly incurred in the performance of an individual’s duties.

7.9 Compensation for loss of employment includes a payment for compensation on early retirement or for loss of office such as on redundancy or dismissal. The requirement is for the relevant body to disclose the total amounts paid, and is consistent with what is required of public listed companies and the Civil Service.

7.10 Pensions contribution requires disclosure of the contribution paid by the relevant body to the senior employee’s or relevant police officer’s relevant pension scheme. The disclosed amount therefore does not include any contributions made by the individual, historical contributions to the overall total benefit of the pension or assumptions about the total worth of the pension when the individual retires. Individuals covered by these Regulations are members of the Local Government Pension Scheme, the Fire Fighters’ Pension Schemes or the Police Pension Scheme. The Regulations specify the calculation that is required under these schemes to determine the amount contributed by the relevant body, for the financial year, to the individual’s pension.

7.11 The amount to be disclosed is based on the future service cost set for employers as part of the most recent scheme actuarial valuation, and published subsequent to that valuation. These valuations take into account the relevant demographic make up of these funds and liabilities arising, so no direct comparison

can be made between employees belonging to different funds. The cost does reflect the actuarially assessed costs of the pension entitlement falling to that employer.

7.12 Having established that the categories above would present a true and fair view of the senior officers' remuneration through consultation that Department then sought to ensure that the disclosure of individuals information was consistent with Government's broader policy, announce as part of *Putting the Front Lines First: Smarter Government*. Detailed remuneration disclosure for senior employees and relevant police officers will be by way of job title only, except that individuals will be named where their salary is £150,000 or more per year, in accordance with the recently announced Government policy. The changes ensure that the standards of remuneration reporting for public bodies such as local authorities, fire authorities and police authorities and police forces are comparable to the standards set out in the Companies Act 2006 for Directors of companies and as interpreted in the FReM for Board level senior officials in the Civil Service. The level of public interest in the information that will thereby be available in the public domain is considered to be significant.

'Employees', 'relevant police officers' and 'senior police officers'

7.13 'Employee' is defined as including certain persons who may not be regarded as employees as a matter of employment law, i.e. who are members of, or an office holder under, a relevant body.

7.14 Police officers are not employees of relevant bodies, even under this extended definition, instead they are independent office holders, hence the need to refer to them separately in the Regulations. Police authorities, while not employing police officers, are responsible for paying their remuneration. It is appropriate therefore for them to include such expenditure in their accounts.

7.15 'Relevant police officers' are defined as chief constables, the Commissioners of the Metropolitan Police and the City of London Police, and any other senior police officer whose salary is £150,000 per year or more. A 'senior police officer' is a member of a police force holding a rank above that of superintendent.

'Senior' employees

7.16 Senior employees will mean different things in different relevant bodies, depending on the organisation and structure of that body. There is no standard structure for management or executive 'boards' across all relevant bodies. Therefore it was necessary to define which employees would qualify as senior and whose remuneration would need to be included in detailed reporting. A 'senior' employee is an employee whose salary is £150,000 or more per year, or whose salary is £50,000 or more per year (to be calculated pro rata for a part time employee) and who falls within one of the categories listed in the next paragraph.

7.17 The categories are:

- a. for a person employed by a relevant body to which section 2 of the Local Government and Housing Act 1989 applies, the person who has been designated as the head of paid service, a statutory chief officer, or a non-

- statutory chief officer (see paragraph (a) of the definition of ‘senior employee’);
- b. the head of staff for any relevant body to which section 4 of the Local Government and Housing Act 1989 Act does not apply (see paragraph (b) of the definition), or
 - c. a person who fulfils the functional test designed to apply to other employees performing a ‘senior’ role (see paragraph (c) of the definition).

7.18 Part 1 of the Local Government and Housing Act 1989 applies to ‘local authorities’ as defined in section 21 of that Act; most relevant bodies are local authorities under this Act.

7.19 Paragraph (c) of the definition of ‘senior employee’ was adapted from FReM (see paragraph 5.2.6(d)). The requirement for remuneration disclosure applies equally to permanent and temporary employees. Where there have been staff changes for these posts during the year, this should be reflected clearly in the statement of annual accounts. Guidance produced by Chartered Institute Public Finance and Accountancy will describe how to treat such inclusions in the statement of annual accounts (see further section 9 on guidance).

Data Protection and privacy

7.20 The Government takes data protection issues seriously. The public interest in the accountability of public bodies regarding the expenditure of public money, including on the remuneration of public sector workers, must be balanced against the protection of private information and private interests of the workers involved regarding the protection of private information.

7.21 Of particular relevance to the Government’s consideration of the content of the Regulations was the response from the Information Commissioner’s Office (ICO). In the ICO’s response, it was noted that the Commissioner encourages public authorities to publish information pro-actively wherever possible, including certain information about staff costs. The Commissioner did not foresee that the proposals would be incompatible with the Data Protection Act, and envisaged that section 34 of that Act would apply. The Commissioner agreed that public sector workers who are responsible for major policy decisions and the spending of public money should expect some scrutiny of their pay, and supported the detailed reporting of remuneration as proposed, but sounded a note of caution that such disclosure should not be misleading. Disclosure should provide transparency about the expenditure of public money, not an employee’s purely private financial affairs. Overall, the Commissioner welcomed the proposal to bring the reporting requirements for local authorities into line with those for central government and listed companies.

7.22 The Government’s approach in relation to pensions’ disclosure changed as a result of this, and other similar, responses. The new requirements reflect the cost of the pension contribution to the employer in respect of an individual for the financial year, but no longer contain any amounts which relate to an individual’s private financial arrangements (such as transfer of previous pension entitlement or additional contributions).

7.23 It was originally proposed that detailed remuneration disclosure should be on the basis of naming all individuals. After the consultation, and the concerns expressed by some respondents that this would represent an intrusion into private individual's privacy, it was decided that disclosure should be on the basis of job title only. The public interest can generally be satisfied by knowing the level of public expenditure relating to particular jobs, and there is no universal need to name individuals. It is accepted that for high level posts, where only one person fills the post, that it will in most cases be a relatively simple task to identify a particular individual. However, these will be the most senior level posts, where the justification for anonymity is least strong.

7.24 However, those whose salary is £150,000 or more per year *will* be required to be individually named, in line with the announcements in the *Putting the Front Lines First: Smarter Government White Paper*. These individuals are the highest earners in the public sector, and must expect a corresponding degree of scrutiny of the level of expenditure on their salaries. As the consultation proposal was originally for the naming of all individuals, this is within the scope of the consultation.

7.25 The Department is aware that some individuals have put in place confidentiality agreements in relation to their remuneration, but there is no available information as to how prevalent such agreements are. It was not considered that the suspected existence of such agreements constituted sufficient justification to permit total non-compliance with the new requirements for disclosure but, as a concession to the expectations of individuals who have such agreements, it was decided to permit a delay in compliance for them until the financial year 2010/11. Therefore, the requirements in the Regulations, where such agreements are in existence and continuing at the time at which the Regulations were made, are deferred until the financial year 2010/11. Confidentiality agreements, therefore, continue to have effect in relation to accounts for the financial year 2009/10. For accounts for 2010/11, the salaries and bonuses for the financial year 2009/10 will be required to be disclosed.

8. Consultation

8.1 Section 27(3) of the 1998 Act requires the Secretary of State to consult the Audit Commission, such associations of local authorities as appear to him to be concerned, and such bodies of accountants as appear to him to be appropriate before making any regulations under that section. A full statutory consultation was undertaken before making these Regulations. The Secretary of State consulted stakeholders in writing, as listed at Annex A and B. The consultation began on 30th March 2009 with a discussion document setting out the principles and proposals for remuneration reporting. This was extended by a second letter to consultees on 20th June which included an illustrative Statutory Instrument for consultees to consider. The consultation closed on 22nd July 2009 and resulted in 154 responses. A list of respondents is at Annex C. The Department gave careful consideration to the results of the consultation in developing the final content of the regulations.

8.2 The consultation sought views on extending the legal requirement then placed on public bodies to include information with the annual statement of accounts, to now also include additional information about the remuneration of senior officers. In particular, the consultation sought views on:

1. whether the proposed areas of remuneration reporting, when presented together, provide a true and fair view of each senior officer's package of benefits;
2. whether consultees foresaw any barriers or costs to collecting and reporting the proposed areas of remunerations information in published annual accounts;
3. how best to define 'senior' in regulations – it was recognised that as the term can mean different things in different organisations it was important to obtain the widest possible response to this particular aspect of the current proposals;
4. the inclusion of individuals acting at a senior level whose position may not be permanent but who make recommendations or take decisions about public money, for example interim managers and consultants; and
5. the proposal to adjust the reporting requirement to count the number of employees earning £50,000 or more a year in narrower bandings of £5,000.

8.3 Overall, responses were supportive in principle of a move towards greater parity with the levels of transparency in place for private listed companies and the Civil Service. Within this, however, the majority of respondents were keen to see protection against inappropriate intrusions into privacy by limiting detailed remuneration reporting to the most senior officers and by ensuring that details shared were specific to the post they held. Over 80% of respondents commented on the approach towards disclosure of pension entitlements, with many offering detailed suggestions. All were carefully considered.

8.4 The intention behind the policy change was to improve transparency so that it would be comparable to that required for management boards in the civil service or private listed companies. As such there was consideration of the definition of the post of 'head of paid service', 'statutory chief officers' and 'non-statutory chief officers' (defined in the Local Government and Housing Act 1989), and a functional test for organisations where those statutory definitions do not apply. Over two-thirds respondents were supportive that those posts reporting directly to the head of paid service, or chief executive officer, be included in detailed remuneration reporting. Many of those respondents also expressed concern that naming all relevant employees would represent an inappropriate intrusion into privacy. Therefore, as set out above and in line with the government's policy on senior pay, only employees and relevant police officers whose salary is over £150,000 or more per year will be named.

8.5 The Department extended the scope of the Regulations to include senior police officers as a result of the consultation. The police authorities that responded to the consultation flagged the need to ensure an appropriate level of consistency with senior police officers. As police forces had not been covered by the consultation, a further, targeted consultation was carried out with bodies representing police officers in partnership with the Home Office. Following contributions from the Association of Police Authorities (who included the Police Authority Treasurers Society comments within their response), Chief Police Officer Staff Association and the Association of Chief Police Officers, the Regulations were amended to include relevant police officers. Indeed some expressed the view that these requirements 'need[ed] to be

introduced as soon as possible'. Given that the organisational structures in police forces are different to the relevant bodies, specific definitions were designed to refer to police officers, ie 'relevant police officers and 'senior police officers'.

8.6 The Department revised its approach to the disclosure of pensions information in light of the consultation responses. The Audit Commission, amongst others, highlighted that 'the predicted amount of pension entitlement is not of itself remuneration, rather it is the increase in the 'pension pot' arising in the year that constitutes remuneration'. Almost 90% of respondents commented that the approach set out in the consultation, to require disclosure of the 'total value' of an individuals pension, would not solely reflect the value and rights accrued by the post-holder in their 'senior' position. Respondents felt that disclosure of accrued rights would make this information personal and sensitive, and may reveal personal information like periods of maternity leave or career breaks, or enhancements of pension entitlement paid for directly by individuals. The Local Government Employers, in their response, said: "It is very important [...] to ensure that the definitions of the reward package are unambiguous and clear and they use terminology that is generally applicable across councils using local terminology [...] Such changes would also align the disclosure with that used in the accounts of government departments". A total value could therefore be discriminatory and misleading. Further, it was deemed impractical operationally to produce a total value without incurring costs or being able to access this information in time for its inclusion in the relevant financial year's statement of annual accounts.

8.7 Respondents provided a mix of views in regard to enhancing the detail of remuneration reporting for the workforce whose remuneration is £50,000 or more, pro rata, from bandings of £10,000 to £5,000. Less than 20% of respondents expressed views that this would result in a lengthy extension of their statement of accounts. However, overall respondents were not opposed to the narrowing of bandings. At the time of publishing our consultation responses it was suggested that government would leave the existing £10,000 bandings in place but, following the announcement by the Prime Minister to improve consistency of reporting and transparency across all sections of the public sector, Ministers reinstated this proposal.

8.8 The summary of responses and details of the responses to the consultation are available from Department for Communities and Local Government - <http://www.communities.gov.uk/publications/localgovernment/1364495>.

9. Guidance

9.1 Guidance on the application of this requirement will be produced by the sector accountancy body, Chartered Institute of Public Financial Accounting (CIPFA). [This guidance will then be specified by the Secretary of State in due course as forming part of the proper accounting practices under section 21 of the Local Government Act 2003 which local authorities (as defined in section 23 of that Act) are required to follow.]

9.2 There is no intention to consolidate the Account and Audit Regulations at this time as further revisions are expected in 2010. Consolidation will be considered at this time. The regulation will be available free of charge online (www.opsi.gov.uk).

10. Impact

10.1 A full Impact Assessment has not been prepared for this instrument as no impact on business, charities or voluntary bodies is foreseen. The impact on the public sector is limited to relevant bodies that are covered by the Account and Audit Regulations 2003. There is no significant cost incurred by the introduction of this requirement.

11. Regulating small business

11.1 The legislation does not apply to small business as the Regulations deal specifically with the content of Statements of Accounts for certain public bodies.

12. Monitoring & review

12.1 As part of the statutory responsibility for ensuring that local authorities produce their statement of annual accounts Communities and Local Government officials will maintain a dialogue with authorities and stakeholder groups. Through these engagements, effects of the policy will be monitored and, if necessary, more formally reviewed.

12.2 The Audit Commission will oversee the statutory monitoring and review of the statement of annual accounts by District Auditors. Furthermore the responsible finance officer, who signs off the accounts on behalf of the authority, will authorise the information contained within. District Auditors will also be provided with necessary training by the Audit Commission to help ensure a consistency of application and review. The Department will expect to be involved in these steps.

13. Contacts

13.1 Contact Kirsty Austin at the Department for Communities and Local Government email: kirsty.austin@communities.gsi.gov.uk for queries regarding the instrument and general policy. For queries relating specifically to the police service please contact Peter Richardson at the Home Office email: Peter.Richardson2@HomeOffice.gsi.gov.uk.