

LOCAL AUDIT AND ACCOUNTABILITY ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 3 – Appointment Etc of Local Auditors

Section 7: Appointment of local auditor

25. **Section 7** provides that an auditor must be appointed by the end of 31st December in the financial year before the financial year which will be covered by the accounts to be audited. The appointment may last for more than one year but a new appointment must be made at least once every five years. The Secretary of State is empowered to alter this period of time by regulations. The auditor must be eligible to audit the relevant authority's accounts (as to which, see Part 4) and must be independent from the body being audited. Subsection (6) provides for more than one auditor to be appointed to audit the accounts, enabling different auditors to audit different parts of the accounts, to carry out different functions, or to audit some or all parts of the accounts jointly. Subsection (8) gives effect to Schedule 3, which sets out further provisions around the appointment of local auditors.

Schedule 3, Paragraph 1: Provisions applying to certain local authorities

26. This paragraph sets out arrangements for the appointment of auditors by certain types of local authorities. Subsection (1) stipulates that in local authorities operating executive arrangements (i.e. Leader and Cabinet or Mayor and Cabinet) the full council, not the executive, must appoint the auditor. Subsection (2) provides that for local authorities, as defined by section 101 of the Local Government Act 1972, the provisions in that section do not apply and they must not delegate the function of appointing an auditor to a committee or subcommittee, or an officer of the authority, or to any other authority. Subsection (3) states that the Mayor of London and London Assembly must jointly appoint the auditor for the Greater London Authority.

Paragraph 4: Provisions applying to other authorities

27. This paragraph enables regulations to be made that address the appointment of an auditor to audit accounts of a relevant authority that is not an authority already covered by paragraphs 1, 2 or 3 of this Schedule. The relevant authorities set out in paragraphs 1, 2 and 3 are local authorities operating executive arrangements, those within the meaning of local authority in section 101 of the Local Government Act 1972, the Greater London Authority, chief constables, Police and Crime Commissioners, the Commissioner of Police of the Metropolis and the Mayor's Office for Policing and Crime.

Section 8: Procedure for appointment

28. **Section 8** requires a relevant authority to consult its auditor panel and take its views into account when selecting and appointing an auditor. To support transparency of the

appointment, the relevant authority must publish a notice within 28 days of making the appointment that: states it has made the appointment; the term of that appointment; who the appointed auditor is; sets out the auditor panel's advice; and if that advice has not been followed, the relevant authority's reasons for not following it. Relevant authorities are required to publish the notice on their website if they have one, and if not, in a way that is likely to bring the notice to the attention of the relevant persons as specified in subsection (4). The relevant authority must omit information that would prejudice commercial confidentiality, unless there is an overriding public interest in not doing so. Subsection (4)(b) and (c) describes the requirements for health service bodies in relation to publicising the appointment of an auditor

Section 9: Requirement to have auditor panel

29. **Section 9** requires each relevant authority to have an auditor panel to exercise the functions of an auditor panel under the Act. Subsection (2) excludes Chief Constables and the Commissioner of Police of the Metropolis from the requirement to have an auditor panel. This is because they will be audited by the auditor appointed to audit the relevant Police and Crime Commissioner's accounts (or the Mayor's Office for Policing and Crime's accounts in the case of London). Subsection (3) gives effect to Schedule 4, which sets out further provisions around the constitution of auditor panels.

Schedule 4, Paragraph 1: Options for auditor panels

30. This paragraph sets out the different ways in which a body may meet the requirement to have an auditor panel. It is intended to provide flexibility for different arrangements that can reflect local circumstances and, for example, any joint working arrangements. It provides that the auditor panel can be a panel appointed as such, a shared auditor panel appointed by one or more other authorities, or an existing committee that complies with provisions applying to auditor panels. This paragraph also requires that for the Greater London Authority, the appointment of the auditor panel is a matter for the Mayor of London and London Assembly acting jointly.

Paragraph 2: Constitution of auditor panels

31. This paragraph provides that an auditor panel, other than the panel for a health service body (which may be addressed in regulations under paragraph 3), must consist of at least a majority of independent members, and must be chaired by an independent member. Sub-paragraph (2) sets out the definition of independence. If the relevant authority is a corporation sole (such as a Police and Crime Commissioner), the individual holding that office is not considered independent. Under sub-paragraph (9), the Secretary of State may amend the definition of independence at sub-paragraph (2), or the provisions on independence at sub-paragraphs (4) or (8) which address a corporation sole and the definition of a 'relative'.

Paragraph 3: Constitution of auditor panels: health service bodies

32. This paragraph provides the Secretary of State with a regulation-making power to define the constitution and arrangements for the auditor panels of a health service body, including the definition of independence. The intention is that these panels will be the existing audit committees of health service bodies which will meet the independence requirements of best practice for central government audit committees.

Paragraph 5: Application of local authority enactments to auditor panels

33. This paragraph provides the Secretary of State with a regulation-making power to modify any local authority enactments in their application to auditor panels or their members; and to apply any local authority enactments to auditor panels or their members, to clarify the position of auditor panels in relation to committees of that local authority.

Paragraph 8: Meaning of “connected entity”

34. This paragraph defines a connected entity for the purposes of the Act. This concept arises in relation to matters such as local auditors’ access to relevant documents, provision of information, and definitions of independence of auditor panel members

Section 10: Functions of auditor panel

35. **Section 10** sets out the main functions of an auditor panel and gives a power to the Secretary of State in subsection (8) to make regulations that may set out further details about these functions, give additional functions to an auditor panel or allow a relevant authority to give additional functions to an auditor panel. The auditor panel must advise the relevant authority on maintaining an independent relationship with its auditor and on selection and appointment of its auditor. Subsections (9) and (10) require the relevant authority to publish advice from its auditor panel, with subsections (10)(b) and (10)(c) making provision for publishing such advice in respect of health service bodies. Subsection (11) provides that this must exclude information likely to prejudice commercial confidentiality, unless there is an overriding public interest in its disclosure. Subsections (12) and (13) provide that the auditor panel must take account of any guidance the Secretary of State issues in relation to the exercise of its functions, as must the relevant authority in exercising its functions in relation to its auditor panel.

Section 11: Relationship with relevant authority

36. The authority is required, on receiving a request from the auditor panel, to provide any information held by the authority that is of relevance to the auditor panel’s work. The auditor panel may require a member or officer of a relevant authority to attend a meeting of the panel to answer questions. However members and officers have the same entitlement to refuse to answer questions as exists for the purposes of court proceedings in England and Wales. The provisions of this section do not apply to health service bodies or to their auditor panels.

Section 12: Failure to appoint local auditor

37. **Section 12** makes provision for cases where a relevant authority fails to appoint an auditor. Subsection (1) requires a relevant authority to inform the Secretary of State if it fails to appoint an auditor, either in accordance with Section 7 or any other requirement to appoint under Part 3 or a provision made under it. Subsection (2) provides that if a body fails to appoint an auditor by 31st December the Secretary of State may either direct the relevant authority to appoint a named auditor, or appoint an auditor on their behalf. Such an appointment would be essentially the same as one made by the relevant authority, on the terms specified by the Secretary of State. To exercise these powers, the Secretary of State must inform the relevant authority of his or her intention to do so not less than 28 days beforehand, and must also consider any representations made by the relevant authority. However there is provision for the Secretary of State to move more quickly, and without considering representations, if he thinks it likely that a function would need to be exercised by an auditor within 60 days of a direction to appoint being given or an appointment being made.

Section 13: Failure of clinical commissioning group to appoint local auditor

38. **Section 13** makes provision for cases where a clinical commissioning group (CCG) fails to appoint an auditor. The Act makes separate provision for the situation where a clinical commissioning group, NHS trust or trustees of an NHS trust (see below) fails to appoint an auditor, to take account of the roles of national bodies in the healthcare sector (specifically the NHS Commissioning Board, known as NHS England, and the NHS Trust Development Authority).
39. Subsection (1) provides that the CCG must immediately notify the NHS Commissioning Board (the Board) of a failure to appoint. If the situation is not resolved

by 25 March, the Board must notify the Secretary of State. The Secretary of State, once notified, may direct the Board either to direct the CCG to appoint an auditor or appoint one on the CCG's behalf; or take either of those steps him or herself. The Secretary of State or the Board must inform the CCG, not less than 28 days beforehand, of their intention to direct the CCG to appoint an auditor or to appoint one on the CCG's behalf and must also consider any representations the CCG makes on the direction or appointment. However, there is provision for the Secretary of State or the Board to act without giving notice or considering representations, if a function would need to be exercised by an auditor within 60 days of a direction to appoint being given or an appointment being made.

40. Paragraphs 8 and 9 of Schedule 13 make similar provision in relation to NHS trusts and trustees of NHS trusts, with those bodies being required to notify the National Health Service Trust Development Agency of a failure to appoint an auditor.

Section 14: Limitation of auditor's liability

41. This section requires that a liability limitation agreement, by which an auditor limits their liability for negligence, default, breach of duty or breach of trust by agreement with a relevant authority, must meet certain conditions prescribed by regulations by the Secretary of State. Regulations may address the duration of the agreement and the amount to which the auditor's liability may be limited, and impose requirements for the agreement to contain certain provisions specified in regulations. Regulations may also require disclosure of specified information about such agreements. This section also provides that a liability limitation agreement that complies with relevant regulations is not subject to section 2(2) or 3(2)(a) of the Unfair Contract Terms Act 1977. These sections would otherwise prevent an auditor from excluding or restricting liability for negligence or for breach of contract (except in so far as the term or notice satisfies the requirement of reasonableness).

Section 15: Further provisions about liability limitation agreements

42. Subsection (1) provides that the relevant authority must seek and consider its auditor panel's views on the agreement before entering into a liability limitation agreement. Subsection (4) provides that only the full council of a local authority operating under executive arrangements can decide whether to enter into a liability limitation agreement. Subsection (5) provides that in the case of a local authority, they may not delegate the function of deciding to enter into a liability limitation agreement to a committee or sub-committee, or to an officer of the authority, or to any other authority. Subsection (6) provides that this function is to be for the Mayor and London Assembly acting jointly on behalf of the GLA.

Section 16: Resignation and removal of auditor

43. Section 16 provides the Secretary of State with the power to make regulations about resignation or removal of a local auditor from office. These regulations may specify what is required from an auditor (and in turn from the relevant authority) in the process of the auditor's resignation, and when that resignation can take effect. They may also specify what actions are required, and by whom (such as the local auditor, relevant authority, and auditor panel) to remove a local auditor from office, and following that removal from office. Subsection (4) allows for the Secretary of State to take some or all of the steps in respect of the removal of a local auditor from office in respect of health service bodies. Subsection (5) provides that regulations may apply the provisions for the Secretary of State to appoint, or direct a relevant authority to appoint, a local auditor, to circumstances following the resignation or removal of a local auditor.

Section 17: Appointment of auditor by specified person

44. **Section 17** gives the Secretary of State the power to make provision, by regulations, for certain relevant authorities to have a local auditor appointed on their behalf by a body (an ‘appointing person’) specified by the Secretary of State. This is to allow for sector-led collective procurement arrangements, under which relevant authorities would be able to opt to have their auditor appointed by a specified sector-led body, rather than appoint locally.
45. **Section 17** enables the Secretary of State to make provision in regulations in connection with such arrangements. This includes further provision on the process for specifying or de-specifying an appointing person, and the functions and duties of such a person (for example to consult on a scale of fees). Regulations may make provision around the process through which relevant authorities will become subject to these arrangements (for example the process for opting-in) – and on any duties / functions of such authorities, or of their auditors. Regulations under section 17 may also make provision for the appointment of an auditor where that authority has opted-in, but the appointing person fails to make an appointment.
46. Subsection (8) of section 17 specifies that regulations may also disapply or modify any provision under Part 3 as it applies to an authority that is subject to collective procurement arrangements. It also allows regulations to disapply or modify provisions elsewhere in the Act in consequence of any provision made in regulations under section 17.