

LOCAL AUDIT AND ACCOUNTABILITY ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 7 – Miscellaneous and Supplementary

Section 34 and Schedule 10: Amendments consequential on transfer of role of inspector

122. **Schedule 10** (given effect to by section 34) contains amendments to sections of the Local Government Act 1999. Under that Act, the Secretary of State can direct the Audit Commission to carry out an inspection of a specified authority's compliance with its best value duties. This Schedule amends the 1999 Act to give the Secretary of State a similar power to appoint a person to carry out such an inspection, following the abolition of the Audit Commission.
123. **Schedule 12** includes some amendments relating to this section.

Section 35: Examinations by the Comptroller and Auditor General

124. This section amends the National Audit Act 1983 by inserting section 7ZA. The new section provides a power for the Comptroller and Auditor General to undertake and publish the results of examinations regarding the value for money with which relevant authorities have used resources in undertaking their functions. Under the National Audit Act 1983, the Comptroller and Auditor General may already carry out such examinations into any department which it audits; and similar studies may be conducted in relation to bodies that receive more than half their income from public funds and which are appointed (or whose members are required to be appointed), by or on behalf of the Crown. At the moment these powers do not extend to local authorities and many other local public bodies. Health service bodies are already subject to examination by the Comptroller and Auditor General under the National Audit Act 1983 and therefore excluded from this section.
125. Section 7ZA provides for the Comptroller and Auditor General to undertake thematic examinations relating to relevant authorities, although some relevant authorities are excluded from this power. The examinations must be designed to complement the National Audit Office's role in holding Government to account to Parliament regarding the resources it provides to relevant authorities, or support relevant authorities to learn from any thematic or systemic issues identified. These powers do not enable examinations of individual relevant authorities and are not designed to produce assessment of the performance of individual relevant authorities or comparative analyses in the form of published league tables.
126. The Comptroller and Auditor General must consult relevant representative organisations of the relevant authorities which are the subject of examinations under new section 7ZA and subsection (9) requires the Comptroller and Auditor General to

take into account other relevant examinations in developing the programme. The new section enables the Comptroller and Auditor General to access information required for examinations from relevant authorities. It allows the Comptroller and Auditor General to combine examinations under this new power with examinations undertaken within existing powers (i.e. of government departments and other bodies as set out above).

Section 36 and Schedule 11: Disclosure of information

127. This Schedule (which is given effect to by section 36) sets out the conditions under which auditors and other persons or bodies exercising functions under the Act can disclose information they obtain while exercising these functions. It provides that no information obtained in the exercise of functions under the Act which relates to a particular body or person can be disclosed except insofar as such a disclosure is made in accordance with the exceptions set out in paragraphs 2 to 4.
128. [Paragraph 2](#) places a general bar on disclosure of information obtained by the authorities listed in paragraph 1, together with a number of exceptions.
129. [Paragraph 3](#) of this Schedule enables local auditors and any body which is a public authority for the purposes of the Freedom of Information Act 2000 to disclose information to which the Schedule applies unless doing so would prejudice the operation of their functions. There is no restriction regarding to whom this information can be disclosed.
130. [Paragraph 4](#) enables other people not specified in paragraph 3 to disclose information if they get consent from the local auditor to do so. The local auditor must give consent unless doing so would, or would be likely to, prejudice the auditor undertaking their functions effectively.
131. [Paragraph 5](#) provides that a person who discloses information in contravention of this Schedule is guilty of an offence, conviction of which can result in a fine not exceeding level 5 on the standard scale. Paragraph 5(2) provides that if section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force on or before the day on which this Act is passed, this will remove the limit on the fine on conviction. This provision is of no effect because that section did not come into force before the Act was passed on [30th January 2014]. Section 85 will nevertheless apply to this offence when that section comes into force.

Section 37: Social security references and reports

132. This section enables a local auditor who has discovered social security issues when undertaking a local audit to bring these to the attention of the Secretary of State if the issues are relevant to the Secretary of State's functions. This is intended to be a transitional measure, only having effect until the Welfare Reform Act 2012 repeals section 139D of the Social Security Administration Act 1992, after which a local auditor will still be required to send copies of any public interest reports to the Secretary of State, under Schedule 7. These provisions are necessary to ensure that powers are provided to auditors to refer any matters coming up through an audit once the Audit Commission is closed, and before local authorities cease to administer Housing Benefit, as a consequence of the introduction of Universal Credit and other welfare reforms. Subsection (2) makes the necessary amendments to the Social Security Act 1992.

Section 38: Duty of smaller authorities to publish information

133. This section amends section 2 of the Local Government, Planning and Land Act 1980 so that it applies to smaller authorities as defined in section 6 (other than those already within section 4(4) of that Act; which for these purposes essentially means Passenger Transport Executives). Section 2 of that Act contains powers for the Secretary of State to issue codes of recommended practice as to the publication of information by certain authorities about the discharge of their functions and other matters which he or she

considers to be related. Section 2 currently covers some, but not all, of the smaller authorities listed in Schedule 2 to the Act. This section will enable the Secretary of State to issue a “Transparency Code” for those smaller authorities. For smaller authorities exempted from the requirement for automatic external audit under regulations made under section 5(8), this is intended to facilitate local accountability. Any code will apply only to information relating to a financial year in which a body qualifies as a smaller authority under section 6. Section 3 of the Local Government, Planning and Land Act 1980 enables the Secretary of State to make regulations requiring publication and to specify the manner and form in which the information is to be published. Before issuing a code or making regulations, the Secretary of State must consult authorities’ representative bodies.

Section 39: Code of practice on local authority publicity

134. This section amends the Local Government Act 1986 to provide the Secretary of State with the power to give directions and make orders requiring local authorities in England to comply with one or more of the recommendations made in a code of practice issued under section 4 of that Act (a Code of Recommended Practice on Local Authority Publicity). The Secretary of State may give a direction to a single named authority, or to a number of named authorities, requiring compliance with some or all of the Code. The section also sets out the procedures to be followed prior to giving a direction and for the withdrawal or modification of a direction. The power to require compliance with a Code by all authorities in a particular class, or by all authorities to which the Code applies, is to be exercised by order, subject to the draft affirmative procedure.

Section 40: Access to local government meetings and documents

135. This section gives the Secretary of State a power to make regulations that may require local government bodies to allow members of the public the rights to attend all their public meetings and to have access to records relating to decisions taken by their officers. Subsection (1) of the section enables regulations to be made to allow persons to film, photograph or audio-record a public meeting of a local government body or to use any other means that will enable a person not present at the meeting to see or hear proceedings at the meeting. With this, people, whether professional or citizen journalists, can use social media to report or give commentary on the proceedings at meetings. Subsection (2) of the section lists further provisions that the regulations may make. For instance, members of the public may be allowed to use any medium such as the internet to make any reporting activities available to the public. Provision may also be made to ensure that activities such as filming or photographing do not disrupt the good order and conduct of public meetings.
136. Subsection (3) of the section allows regulations to be made about the recording of certain decisions taken by officers, including with regard to what information is to be included with the record. Regulations may also be made to require written records and connected documents to be made available to members of the body or the public and to create offences for non-compliance with the regulations.
137. Subsection (4) enables the Secretary of State to make regulations that may require or permit a body to give a notice of a meeting through electronic means e.g. the internet. Similarly, any documents required to be open to inspection may also be required or permitted to be made available electronically.
138. Subsection (6) sets out the bodies such as London borough councils, the London Fire and Emergency Planning Authority, county councils and district councils in England, to which this openness measure applies. By subsection (7), subsection (1) also applies to the executives of district councils, county councils in England and London borough councils. Subsection (8) makes it clear that the provisions in subsection (3) apply to the Greater London Authority (including officers of the London Assembly and the Mayor’s cabinet).

139. Subsection (9) provides that these provisions also apply to joint committees of bodies to which Part 5A of the Local Government Act 1972 (relating to access to meetings and documents of certain authorities, committees and sub-committee) applies. Similarly, subsection (10) provides that the provisions of the new clause relating to Part 5A of the Local Government Act 1972 apply to that Part as it applies to the London Assembly as a result of the Greater London Authority Act 1999.
140. Subsection (11) amends the period of notice to be given for a meeting of a principal council from three to five clear days, making the requirement consistent with the notice required under Part 5A of the Local Government Act 1972.

Section 41: Council tax referendums

141. This section amends Chapter 4ZA of Part 1 of the Local Government Finance Act 1992 to include the cost of levies within a billing or major precepting authority's calculation of whether its council tax is excessive, and so requires a council tax referendum to be held. In effect, this amends the meaning of 'relevant basic amount of council tax' which is the primary trigger for council tax referendums from the previous definition which excluded levies, to one that includes levies. This latter definition is also known as the 'basic amount of council tax', and is the amount that people see on their council tax bills.
142. Each year the Secretary of State may set referendum 'principles' for categories of authorities. One of the principles must be a comparison between the 'relevant basic amount' of council tax set by an authority in the relevant year, and that set in the preceding year. Previously the 'relevant basic amount' was essentially the Band D council tax set by the authority but adjusted to exclude any precepts issued to the authority and any levies received from a wide range of bodies.
143. The amendment made by subsection (2) requires a billing authority that has set an excessive increase and triggered a referendum to notify any body that has issued a levy or special levy to it.
144. The amendment made by subsection (3) requires a billing authority to notify any body from which it received a levy or special levy of the result of the referendum.
145. The amendments made by subsections (5) and (8) replicate these provisions for major precepting authorities (including specifically the Greater London Authority).
146. The amendments in subsections (6) and (7) are minor consequential amendments related to subsections (5) and (8).
147. The amendments made by subsections (9) to (13) change the definition of 'relevant basic amount of council tax' for billing and major precepting authorities (including specifically, in subsection (13), the Greater London Authority) so that it now includes any levies issued to them or anticipated by them. The relevant basic amount will continue to exclude any precepts issued to billing authorities, as precept-setting bodies are individually and separately subject to the referendum legislation.
148. The amendments made by subsections (14) to (21) provide transitional measures for the years beginning 1 April 2014 and 1 April 2015. Subsections (15) to (17) and (19) to (21) are mutually exclusive, so that only one set of provisions can have effect. The trigger for determining which provisions will take effect is whether in accordance with section 49(3) the section came into force at Royal Assent or comes into force subsequently by order. As the Act received Royal Assent on 30 January 2014, this section came into force on that day, so that subsections (15) to (17) apply rather than subsections (19) to (21).
149. Subsections (15) to (17) make provision in relation to the referendum principles that the Secretary of State may set for the financial year beginning 1 April 2014. Specifically, they allow the Secretary of State to determine a category of authority on the basis of whether its relevant basic amount of council tax for the financial year 2013-14 would

have been excessive if the relevant basic amount in that year and 2012-13 had been calculated in accordance with the newly-amended legislation. In short, this explicitly allows the Secretary of State to consider the impact of previous levy increases when setting referendum principles for the financial year 2014-15.

Section 42: Parish meetings: parish polls

150. **Section 42** modernises the arrangements surrounding parish polls. Currently, a parish poll may be demanded on any question arising from a parish meeting. A poll is triggered if either the Chairman of the parish meeting consents or if the poll is demanded by not less than 10 or one-third of the electors present at the meeting, whichever is the less. Polling can only take place from 4-9pm and there are no provisions for polling cards or postal/proxy voting.
151. The section amends paragraph 18 of Schedule 12 to the Local Government Act 1972 including the existing provisions by which the Secretary of State has a power to create rules about polls subsequent to parish meetings. The new clause would provide the Secretary of State with a power to make regulations about the conduct of parish polls covering in particular: the number of local government electors who must demand a poll for a poll to be required, the questions arising at a meeting on which a poll may be held and the arrangements for the conduct of a poll, for example, the hours in which a vote may be cast.
152. Sub-paragraphs (9) and (10) of paragraph 18 would allow for the regulations made by the Secretary of State to apply existing electoral legislation to parish polls such as procedures for postal voting. By sub-paragraph (11) the regulations would be subject to the negative resolution procedure. Subsection (4) would make a number of technical amendments to section 243 of the Local Government Act 1972.

Section 45 and Schedule 12: Related amendments

153. This Schedule (which is given effect to by section 45) makes a range of amendments to various Acts, related to the changes made by this Act. Many of these are consequential and remove redundant references to the Audit Commission; however some make more significant changes to existing legislation. Of particular note are the following:
154. **Paragraphs 2, 30, 44, 46, 69 and 82 to 84** make consequential amendments to legislation setting out the powers and duties of certain inspection authorities: Her Majesty's Chief Inspector of Prisons, HM Inspectors of Constabulary, HM Inspector of the Crown Prosecution Service, HM Inspectorate of Probation, HM Chief Inspector of Children's Services and Skills, and the Care Quality Commission. The amendments remove references to the Audit Commission, which previously had powers to carry out inspections of certain local authorities and so would co-ordinate those with other inspectorates. They also insert provisions to enable inspectorates to do anything they think appropriate to facilitate an inspection carried out under new section 10 of the Local Government Act 1999 (see section 34 and Schedule 10).
155. **Paragraphs 50 and 51** amend sections 21 and 22 of the Local Government Act 2003. Section 21 provides a definition of proper practices in relation to accounts and gives a power to define accounting practices by regulation. These powers have formerly been used to apply professional accounting codes to principal local authorities and to establish accounting practices that avoid unwarranted increases in council tax. Section 22 provides a related definition of "revenue account." Both of these sections only apply to bodies that are local authorities as defined in that Act, plus three types of bodies (parish councils, community councils and charter trustees).
156. The effect of Paragraphs 50 and 51 is to extend the list of bodies to which sections 21 and 22 apply to include all relevant authorities under section 2 other than health service bodies. Any further bodies included as a relevant authority in future will also be brought within sections 21 and 22, unless they are health service bodies.

157. [Paragraph 79](#) amends paragraph 9 of Schedule 13 to the Serious Crime Act 2007 by omitting the reference to Schedule 7 of the same Act. Schedule 7 modified section 32D(8)(b) of the Audit Commission Act 1998 by specifying that "... a person who discloses information to which this section applies is guilty of an offence and liable ... on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both". The Local Audit and Accountability Act 2014 does not contain any imprisonable criminal sanctions in relation to data matching.
158. [Paragraphs 89 to 96](#) amend the Housing and Regeneration Act 2008 to enable the housing regulator to appoint a local auditor to undertake an extraordinary audit of a local authority's social housing accounts. This is consistent with the regulator's existing power under section 210 of that Act to order an extraordinary audit as part of an inquiry under section 206 in respect of a private registered provider of social housing.

NHS charities

159. [Paragraphs 118 to 122](#) make amendments to the provisions in the Charities Act 2011 which concern the audit or examination of the accounts of English NHS charities. An English NHS charity is a charitable trust which has as its trustee an English NHS body, such as an NHS trust (see section 149(7) of the Charities Act 2011). English NHS charities are generally established by English NHS bodies in order to handle their charitable funds.
160. [Paragraph 119\(2\)](#) replaces the requirement in section 149 of the Charities Act 2011 that the accounts of larger NHS charities should be audited by a person appointed by the Audit Commission with a requirement that the audit be carried out by someone who is eligible to act as an auditor under either the Companies Act 2006, this Act, or who is a member of a body specified in regulations under the Charities Act 2011. Section 144(1) of the Charities Act 2011 provides that this applies to NHS charities whose gross income in the year exceeds £500,000; or whose gross income in the year exceeds the accounts threshold (specified in section 133 of the Charities Act 2011) and whose assets exceed £3.26 million.
161. [Paragraph 119\(3\)](#) requires the trustees of smaller English NHS charities, with income of between £25,000 and £500,000 in the year in question, to appoint either an auditor (in the same way as larger English NHS charities) or a qualified independent examiner. Currently, the Audit Commission decides whether the accounts of smaller NHS charities should be audited or examined. Paragraph 119(4) sets out the criteria for someone to be qualified as an independent examiner.
162. [Paragraph 119\(5\)](#) removes the imposition of the requirements in section 3 of the Audit Commission Act 1998 on the audit of accounts of English NHS charities. The main provisions in that section relate to who should be appointed as an auditor. For NHS charities, these would be superseded by the provision in paragraph 118(2). Other provision in section 3 concerns the terms of appointment of auditors, which would become a matter for the trustees of an NHS charity.
163. [Paragraph 119\(6\)](#) extends the existing provision in section 149(5) of the Charities Act 2011 whereby the Charities Commission can give directions about the carrying out of examinations of the accounts of smaller NHS charities, so that the Charities Commission can also give guidance about the selection of independent examiners.
164. [Paragraph 120](#) has the effect that if an NHS charity is the parent charity for a group of charities that meets the definition of larger group in section 151 of the Charities Act 2011, the auditor for the group accounts would in future be appointed by the trustees of that charity, rather than the Audit Commission. Paragraph 117 makes similar provision where a NHS charity is the parent charity for a group of charities that meets the definition of smaller group in section 152 of the Act.

Section 47 and Schedule 13: NHS trusts and trustees for NHS trusts

165. NHS trusts provide goods and services for the purposes of the NHS in England. They include acute trusts (hospitals), ambulance trusts and mental health trusts. NHS trusts are moving towards foundation trust status or another sustainable form. Section 179(1) of the Health and Social Care Act 2012 makes provision for the abolition of NHS trusts. This provision has not yet been commenced, pending the transition of all NHS trusts to alternative forms. Given the provision for the abolition of NHS trusts and their trustees, the Act makes specific provision about NHS trusts and trustees for NHS trusts in Schedule 13, with paragraph 1 providing that the Schedule will cease to have effect when there are no longer any NHS trusts. Paragraph 2 enables the Secretary of State to make further transitory or saving provision in relation to NHS trusts and their trustees, particularly in relation to the preparation of accounts covering the period during which an NHS trust ceased to be constituted as such.
166. Paragraphs 3 and 4 add NHS trusts and the trustees of NHS trusts to the list of “relevant authorities” in Schedule 2 and the definition of “health service bodies” in section 3(9).
167. Paragraph 5 defines “accounts” in relation to NHS trusts and the trustees of NHS trusts for the purposes of section 4 (General requirements for audit).
168. Paragraph 6 concerns the publication by an NHS trust or the trustees of an NHS trust of details about the appointment of an auditor. Specifically it provides that an NHS trust or the trustees of an NHS trust must publish the notice about the appointment of an auditor provided for in section 8(4) in a way that the trust or trustees consider likely to bring the notice to the attention of patients of the trust.
169. Paragraph 7 makes similar provision to paragraph 6, but in relation to the publication of advice from the auditor panel provided for in section 10(10).
170. Paragraphs 8 and 9 concern the failure by an NHS trust or the trustees of an NHS trust to appoint an auditor. If this happens, the trust or trustees must inform the National Health Service Trust Development Authority immediately. If the situation is not resolved by the 25 March which is immediately before the financial year for which an auditor has not been appointed, the Authority must notify the Secretary of State. The Secretary of State, once notified, may direct the Authority either to direct the trust or trustees to appoint an auditor or appoint one on their behalf; or take either of those steps him or herself. The Secretary of State or the Authority must inform the trust or trustees, not less than 28 days beforehand, of their intention to direct the trust or trustees to appoint an auditor or to appoint one on their behalf and must also consider any representations the trust or trustees make on the direction or appointment. However, there is provision for the Secretary of State or the Authority to act without giving notice or considering representations, if the Secretary of State or the Authority considers that it is 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. These provisions mirror those for clinical commissioning groups provided for in section 13, except that the initial notification is to the National Health Service Trust Development Authority, rather than the NHS Commissioning Board; and the Authority, rather than the Board, can take steps to remedy the situation.
171. Paragraph 10 extends the provisions in section 21 that apply to the auditors of the accounts of special trustees of a hospital, so that they also apply to auditors of the accounts of NHS trusts and trustees of NHS trusts. Paragraph 10 has the effect that the auditor of an NHS trust or trustees of an NHS trust 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 trust or 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 NHS trusts or the trustees of NHS trusts do not have to be satisfied in relation to money and resources authorised by Parliament, nor that the trust’s or

trustees' financial transactions are in accordance with any relevant authority. These requirements are not relevant to NHS trusts or the trustees of NHS trusts, as NHS trusts supply services under contracts with clinical commissioning groups and others. Any "use of funds" opinion on the accounts of an NHS trust or the trustees of an NHS trust would therefore duplicate the opinions given by the auditors of clinical commissioning groups.

172. [Paragraph 11](#) has the effect that a director of an NHS trust may not act as the local auditor for that trust or the trustees of that trust.
173. [Paragraph 12](#) makes detailed provision on the way in which Schedule 7 (reports and recommendations) would apply to NHS trusts and the trustees of NHS trusts. It provides that where the auditor of an NHS trust or the trustees of an NHS trust makes a written recommendation or a public interest report, the recommendation or report must be sent at the time at which it is made to the National Health Service Trust Authority. This is in addition to the provision in paragraph 2(3) of Schedule 7 that the recommendation or report be sent to the Secretary of State. Paragraph 12 also makes detailed provision on the publication by NHS trusts and the trustees of NHS trusts of any public interest report made by their auditors. Specifically, paragraph 12 provides that the trust or trustees must publish the report in a way that they consider is likely to bring it to the attention of patients of the trust.
174. [Paragraph 13](#) applies where the auditor of an NHS trust or the trustees of an NHS trust believes that the trust or trustees, or one of its officers, is about to take or has taken decisions which have 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 notify the Secretary of State and the National Health Service Trust Development Authority.