

EXPLANATORY NOTE

Local Audit and Accountability Act 2014

1. Introduction

1.1 This Explanatory Note relates to the Local Audit and Accountability Act 2014 which received Royal Assent on 30 January 2014. This Explanatory note focuses on the key provisions of the Act.

2. Summary and Background

2.1 Summary

2.1.1 The Local Audit and Accountability Act 2014 abolishes the Audit Commission and establishes new arrangements for the audit and accountability of local public bodies in England.

2.1.2 Under the new arrangements public bodies will be required to appoint an external and independent auditor on the advice of an independent auditor panel.

2.1.3 Each relevant authority is required to have an auditor panel to exercise the functions conferred on auditor panels by or under the Act. The Panel must consist of a majority of independent members (or wholly of independent members), and must be chaired by an independent member.

2.1.4 The Act amends the legislative framework for council tax referendums and provides measures which can ensure local authority compliance with the Code of Recommended Practice on Local Authority Publicity.

2.1.5 The Act also introduces greater transparency and openness to meetings of local government bodies by allowing local residents to film, tweet and blog and access information relating to the decisions made in those meetings.

2.2 Background

2.2.1 On 13th August 2010, the Government announced its intention to abolish the Audit Commission and put in place new decentralised arrangements for the audit of local public bodies, allowing local public bodies to appoint their own auditors from an open and competitive market, with appropriate safeguards to ensure the continuation of high standards of local public audit, whilst ensuring that local people will be able to hold local public bodies to account for local spending decisions.

2.2.2 Since the announcement in 2010, the Government has consulted widely and worked with a range of partners and bodies affected by these changes to develop and refine the proposals.

2.2.3 The Government introduced the Local Audit and Accountability Bill (the Bill) into Parliament on 9 May 2013. The Bill set out the Government's vision for

the new local audit framework, and contained additional measures which are complementary to existing initiatives to increase transparency and enable local scrutiny of public bodies.

2.2.4 The Act received Royal Assent on 30 January 2014. However, the provisions of the Act will come into force at different times.

3. Overview of the Structure of the Act

3.1 The main provisions of the Act are as follows:

- The repeal of legislation under which the Audit Commission operates (the Audit Commission Act 1998) and provision to transfer assets, liabilities and continuing functions to other bodies.
- A requirement for relevant authorities to keep accounting records and to prepare an annual statement of accounts, which must be audited.
- A requirement on relevant authorities to appoint an external and independent auditor on the advice of an independent auditor panel and to publish information about the appointment within 28 days of appointment.
- A requirement that an audit of a relevant authority (referred to in the Act as a “local audit”) must include a value for money element (replicating the definition set out in existing legislation).
- The creation of a regulatory framework for local audit which applies, with modifications, Part 42 of the Companies Act 2006, whereby the Financial Reporting Council and professional accountancy bodies regulate the provision of local audit services.
- The transfer of responsibility for setting the code of audit practice and supporting guidance to the National Audit Office, and provisions for how the code should be approved by Parliament.
- The transfer of the Audit Commission’s data matching powers for the purposes of assisting in the prevention and detection of fraud to the Secretary of State or the Minister for the Cabinet Office. It was announced on 15 July 2013 that the data matching powers would transfer to the Cabinet Office.
- A power for the Secretary of State to commission an inspection of a best value authority, mirroring powers in other legislation.
- The Act amends the National Audit Act 1983 to broaden the powers of the Comptroller and Auditor General to enable the National Audit Office to undertake examinations of thematic value for money issues relating to groups of relevant authorities (with some exclusions), and to access information held by the latter where the National Audit Office needs it to fulfil its responsibilities.
- The Act also extends existing powers for the Secretary of State to issue codes of practice concerning the publication of information by certain authorities, so that such codes may apply to relevant authorities classified as ‘smaller authorities’ for the purposes of the Act, and to require those authorities to publish that information.
- The Act amends the Local Government Act 1986 to ensure that local authorities comply with some or all of a code of recommended practice on local authority publicity.

- The Act amends the council tax referendums provisions in Chapter 4ZA of Part 1 of the Local Government Finance Act 1992 to provide that increases set by levying bodies are taken into account when local authorities determine whether they have set an excessive amount of council tax each year. It also provides for measures which can ensure local authority compliance with the Code of Recommended Practice on Local Authority Publicity.
- The Act allows the Secretary of State to make regulations to allow the public to film, blog and tweet at the public meetings of local government bodies, and to require written records to be kept of certain decisions taken by officers of these bodies.

4. Auditing of Public Bodies

- 4.1 On the 5 March 2012 the Audit Commission announced the award of contracts for the work currently undertaken by the Audit Practice for the period 2012/13 to 2016/17.
- 4.2 The current contracts were let in 2012 and will run until 2017 (with the possibility of extension until 2020). As the Commission will have been abolished before that date, the contracts will transfer to other bodies so they can run for their full duration:
 - The National Audit Office will be responsible for the codes of audit practice and guidance, which set out the way in which auditors are to carry out their functions.
 - Recognised supervisory bodies (accountancy professional bodies) will register audit firms and auditors. They will be required to have rules and practices in place that cover the eligibility of firms to be appointed as local auditors and also the qualifications, experience and criteria that individuals will need to have to sign an audit report. They will also monitor and enforce audit standards. This will all be supervised by the Financial Reporting Council. This mirrors the arrangements under the Companies Act 2006.

- 4.3 The key milestones table below sets out the implementation dates of the new framework:

Financial Year	Key Milestones in implementing the new framework
2014/15	Final Year of Audit Commission Framework Residual Audit Commission closes)
2015/16	New regulatory regime is introduced Outsourcing contracts are transferred to another body to run their remaining two years
2017/18	Local bodies appoint their own auditors from the start of the financial year

5. Appointment of the Local Auditors

- 5.1 Auditors 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.
- 5.2 The auditor must be eligible to audit the authority's accounts and must be independent from the body being audited. Two or more local auditors may be appointed to audit the accounts of an authority, and those auditors may be appointed:
- (a) to act jointly in relation to some or all parts of the accounts;
 - (b) to act separately in relation to different parts of the accounts;
 - (c) to carry out different functions in relation to the audit.
- 5.3 Local Authorities operating executive arrangements (i.e. Leader and Cabinet or Mayor and Cabinet) the full council, not the executive, must appoint the auditor, following advice from an auditor panel providing the panel has a majority of independent committee members.
- 5.4 To support transparency of the appointment, the 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.

6. Requirement to have Auditor Panel

- 6.1 The Act requires each relevant authority to have an auditor panel to exercise the functions conferred on auditor panels by or under the Act.

- 6.2 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.
- 6.3 The auditor panel:
- (a) must consist of a majority of independent members (or wholly of independent members), and
 - (b) must be chaired by an independent member.
- 6.4 A member of the auditor panel is “independent” at any given time if:
- (a) the panel member has not been a member or officer of the authority within the period of 5 years ending with that time;
 - (b) the panel member has not been an officer or employee of an entity connected with the authority within that period; and
 - (c) the panel member is not at that time a relative or close friend of a member or officer of the authority or an officer or employee of an entity connected with the authority.
- 6.5 An Elected Mayor of a relevant authority is not independent of that authority for the purposes of paragraph 6.4.
- 6.6 Where the authority has determined that a committee of the authority should be its auditor panel, the panel when acting as such is not to be treated as a committee of the authority for the purposes of any enactment.

7. Appointment of the Auditor Panel

- 7.1 The new audit framework is intended to take effect for the financial year 2015/16, albeit that the local auditors will initially be those currently working under out-sourcing arrangements made by the Audit Commission. Local authorities are expected to make the first appointment of auditors by the end of 31 December prior to the financial year which will be covered by the accounts to be audited, which in Wirral Council’s case is the financial year 2017/18.
- 7.2 Grant Thornton are currently working under out-sourcing arrangement made by the Audit Commission to audit Wirral Council’s accounts to 2016/17, therefore the auditor for Wirral Council will need to be appointed prior to 31 December 2016.
- 7.3 If Wirral Council chooses to appoint a new auditor panel it must comply with the provisions of the Act applying to auditor panels (See reference paragraph 6 for details).
- 7.4 The auditor panel will need to be set up prior to April 2016, to allow sufficient time to complete the procurement exercise. Although it is anticipated that necessary arrangements will be made well in advance of this date.

- 7.5 The Audit and Risk Management Committee has previously agreed that the membership of the Committee be amended to include the majority of independent members in readiness for the next Municipal Year (2014/15). This is also consistent with the Council's Improvement Plan.
- 7.6 However, DCLG has issued consultation on draft Regulations, namely The Local Audit (Auditor Panel Independence) Regulations 2014, which will amend and add to the definition of independence in the Local Audit and Accountability Act 2014, in addition to the definition given in 6.4 above.
- 7.7 The draft Regulations provides that a panel member must have no relevant interest in an authority. A person will have a relevant interest in the relevant authority if at any given time:
- Any contract has been made between the person (or a body in which the person has a beneficial interest and the relevant authority-under which goods or services are to be provided or works are to be executed, which has not been fully discharged;
 - Is a person who has been appointed to act as the relevant authority's current auditor;
 - Is a person who has made a bid which has not been declined or withdrawn for a contract of appointment as the relevant authority's current auditor; or
 - Is an employee of a current or prospective auditor or a partner in a current or prospector auditor that is a firm.
- 7.8 There is therefore a risk that if the agreed action set out at paragraph 7.5 above to appoint independent members is taken forward prior to the Regulations and guidance being issued, these appointments may be non-compliant under the Act/Regulations. It is not yet known when the Regulations will be brought into effect and the draft Regulations may be altered following consultation.
- 7.9 The Act allows the ARMC to be used as the audit panel for the purposes of the Act, providing the committee complies with the provisions of the Act applying to auditor panels (See paragraph 6 above).
- 7.10 It should be noted that the Secretary of State is empowered to amend the definition on independence.