



Department for
Communities and
Local Government

Future of Local Audit

Consultation on secondary legislation: summary of
responses and the Government Response



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Section 1

Introduction

1.1 On 30 January 2014, the Local Audit and Accountability Act 2014 (The 2014 Act) received Royal Assent. To give effect to many of the provisions contained in the Act, secondary legislation is required. In June 2014, the Government launched the *Local Audit: Consultation*. The purpose of the consultation was to gauge the views of organisations affected by these changes and other interested parties on the draft regulations. The consultation closed on 18 July 2014. This document summarises the comments received and sets out the Government's response.

Overview of the Government's response

1.2 The consultation paper asked for views on draft secondary legislation regarding:

- i) Modification of the Act in relation to smaller authorities;
- ii) Specification of Collective Procurement body for larger authorities;
- iii) Account and Audit regulations; and
- iv) Transparency Code for internal drainage boards, charter trustees and port health authorities.

1.3 A full list of the consultation questions is available at Annex B.

1.4 123 responses were received. The majority of these responses were from local government: parish and town councils, district councils, county and unitary local authorities, and their representative bodies. Responses were also received from professional audit and accountancy firms, audit professional bodies, other public sector organisations and members of the public. A breakdown of the number of responses by sector is included in Annex A.

1.5 We are grateful to all those that responded to the consultation. The proposed draft regulations and policy statements were positively received by the majority of respondents. The following sections provide a summary of the responses to each consultation question, along with the Government's response. The draft regulations will be developed and amended as noted in sections 2-5 of this document. The Government intends to lay finalised regulations early next year.

Section 2

Smaller Authorities' Regulations

2.1 **Question 1** asked whether the regulations meet the Government's policy objective to achieve transparency, quality and cost effectiveness. 23 respondents addressed this question in relation to smaller authorities. 11 explicitly agreed and two partially agreed, of which one questioned the level of public appetite to "review the annual accounts of complex local public bodies" and the other noted the policy's dependence on the success of setting up an auditor appointing body. Six respondents explicitly disagreed. The key issues raised were:

- The auditor appointment process for exempt smaller authorities which opt-out of collective procurement is unwieldy and potentially costly: one respondent suggested that opting-in should be mandatory for all exempt authorities.
- Unfounded allegations against parish councils from members of the public: the assurance provided by routine external audit was considered helpful for rebutting these allegations.
- Concern regarding enforcement of accounting and audit requirements given high turnover of clerks: "Currently auditors are contractually obliged to obtain an Annual Return for audit from all smaller bodies. The proposed regulations place no such obligation on anyone to ensure that these regulations are met and therefore many small bodies will be unaware of the requirements and will fail to comply."
- There was also concern – largely from representatives of the audit profession – regarding the potential for confusion attached to the use of the term "audit" in relation to the routine work undertaken by auditors for smaller authorities. These organisations suggested that a distinct terminology should be used to distinguish such 'limited assurance engagements'.
- Finally, several respondents noted the complexity of the regulations.

Government response:

2.2 The Government believes that it is right that a smaller authority that wishes to appoint its own auditor should be able to do so. This decision should be considered carefully by a smaller authority, and the draft regulations require an authority wishing to opt-out of collective arrangements to do so by a decision of the body meeting as a whole (i.e. for a parish council, in full council).

2.3 Smaller authorities which are eligible to self-certify as exempt from the requirement for external audit (i.e. have a turnover of below £25,000) may, however, choose to have an external audit. All smaller authorities will be under a legal duty – as currently – to prepare a statement of accounts. This legal requirement is fundamental to the safeguarding of public money. The common period for public rights required in the Accounts and Audit regulations will enable the Government – and others – to increase awareness of the public rights through national publicity.

2.4 The 2014 Act – like the Audit Commission Act 1998 before it – retains the need for local public bodies to undertake an 'audit' of their accounts annually. To ensure

coherence with the current arrangements and to help keep the regulations as simple as possible we have used the same terminology. We propose that as at present the Code of Audit Practice sets out the different regimes applicable to different classes of authority and therefore sets out the requirements for 'limited assurance' work.

2.5 The complexity of the regulations is noted. The Government has taken steps to help simplify the text of the regulations although the scope is limited due to the need for them to cover various smaller authority scenarios (e.g. Exempt authorities, Non-exempt authorities, Those automatically opted-in to the appointing body, Those opted-out of an appointing body.) Alongside this, Ministers are keen for greater communication on the new framework for smaller authorities. Therefore, we are currently:

- developing a plain English guide for use by smaller authorities to help communicate what the changes mean for them;
- ensuring that the wording in the Accounts and Audit regulations, and in time the Code of Audit practice guidance, is clear around overlapping areas;
- undertaking further communications with the sector through attendance at conferences and events;
- working with the sector to ensure a strong collective procurement offer for smaller authorities comes forward; and
- issuing the Transparency Code as recommended practice before laying regulations to make this mandatory for smaller authorities in 2015.
- We have also committed to a detailed review of the policy shortly after its implementation.

2.6 In addition, the Government believes it is important that smaller bodies publish meeting agendas and minutes more frequently than annually, to enable citizens to hold them to account and increase citizen participation. We therefore intend to legislate to ensure that the Transparency Code for Smaller Authorities covers publication of all draft meeting minutes not later than one month after each meeting has taken place, and the publication of agendas and background papers no later than three clear days before the meeting to which they relate.

2.7 **Question 2** sought further comments on the smaller authorities regulations. 20 respondents provided comments, with many providing supportive narrative to the reforms. These covered a wider range of topics such as:

- Authorities flipping between being an exempt authority and smaller authority (£25,000 limit) and principal authority and smaller authority (£6.5m limit). This was raised particularly in terms of receiving one-off grants. Some suggested that these limits should be index-linked. There were also questions on what was included in the £25,000 figure and a request for a clear definition on 'income and expenditure.' Equally it was thought by one respondent that the regulations should be clear on when an authority should notify an auditor that it had breached the £25,000 threshold.
- Several people raised concerns about how the Transparency Code will be enforced and whether the Transparency Code was more onerous than the current annual return requirements. There were some calls for exempt authorities to be completely exempt from audit.

- Some raised issues around the safeguards for councils from vexatious complainers; some asked for further clarification on the fees setting and how this will be determined, and whether this work (especially for exempt authorities) would be attractive to audit firms.
- Concern about the level of information a specified body will have to collate.
- Points of detail on use of wording in the regulations and its potential to confuse.

Government response

- 2.8 The Government has noted the concerns raised on the regulations, as outlined in the response to Question 1. The regulations have been simplified in layout and the intention is to work closely with the sector on further communications around providing support and clarification on these reforms. Smaller Authorities will need to assure themselves that the category of authority they fall into is correctly identified at the start of an audit year.
- 2.9 The Government notes the detailed drafting points raised and work is under way to ensure these concerns are addressed in the regulations or the Plain English Guide as appropriate. Chapter 5 contains further comments on the Transparency Code.
- 2.10 The current limited assurance regime for smaller authorities is well established and has been competitively bid for by prospective audit firms. The Government will ensure that the costs of the new regime will be monitored closely as it is implemented.
- 2.11 **Question 3** asked whether respondents agreed with proposals regarding the appointment of auditors to exempt authorities. For opted-in authorities, auditor appointment would be triggered if and when a local elector wished to ask a question of the auditor or raise an objection to an item of account: local electors would contact the appointing body, using details published by the authority. Authorities that opt-out would remain under a duty to appoint an auditor by 31 December in the year preceding the accounting year. Local electors would contact that auditor in the usual way.
- 2.12 19 respondents answered this question. 12 (63 percent) explicitly agreed with the proposals, whilst two disagreed. Three respondents, including the two which disagreed, proposed that all exempt authorities should be mandated into the appointed body regime. One respondent argued that the exemption should extend to all auditor functions, including considering questions and objections to items of account from local electors, in addition to routine external audit work. Three respondents noted that enforcement of auditor appointment for exempt authorities that opt-out could be an issue: one respondent observed: “it is difficult to imagine that any exempt bodies would want to go through the process and cost of appointing their own auditor to do something that may never be required”.
- 2.13 Several respondents commented more broadly on the exemption policy. One respondent suggested that the regulations should make clear how an elector will know who to contact with a question or objection. Another respondent voiced support for an exempt authority’s right to choose to have a routine external audit. This respondent also argued that “the regulations must give some protection to local councils against vexatious and persistent complainers”.

Government Response

2.14 The Government proposes to include the provisions for auditor appointment to exempt authorities in the regulations. The regulations will clarify how local electors for exempt authorities will be able to find out who to contact. The 2014 Act gives auditors discretion to disregard objections from local electors which are vexatious or frivolous, or are likely to be disproportionately costly to investigate. However, this discretion will not apply where the auditor thinks that the objection could uncover serious concerns about how the relevant authority is managed or led. Complaints about the professional competence of an auditor would continue to be dealt with as they are currently, through the professional audit bodies.

Section 3

Collective Procurement

3.1 **Question 4** asked whether regulations should require that the decision by local authorities to opt-in to sector-led arrangements should be made at full council.

3.2 A majority of 24 responses (14) expressing an opinion were in favour of this decision being reserved for full council. Ten responses, and a majority of local authorities responding (nine of fifteen), disagreed with the requirement; seven expressed a preference for an audit committee to take the decision.

Government response

3.3 The legislation already provides that local authorities must take the decision to appoint an auditor through full council; this is because auditor appointment is an important decision for which the full council should be accountable. All members of a local authority will therefore have the opportunity to speak, and to vote, on that decision and that decision will be taken transparently.

3.4 The Government recognises the role many audit committees already play in their local authorities' consideration of audit and accounting matters. Those audit committees may still have a meaningful role in the decision to opt-in to auditor appointment by the specified person, for instance in initial consideration of, and making a recommendation about, that decision.

3.5 Having considered the responses to this question, the Government remains of the view that the decision to have that appointment made on behalf of the local authority by the specified person has the same importance as auditor appointment, and should be treated in the same manner.

3.6 **Question 5** asked whether the maximum length of appointing period for which the specified person should take responsibility for appointing auditors to a body should be set at five years.

3.7 A majority of responses were in favour of this maximum. Of 18 responses to the question, five disagreed; of these, two said that it would have been useful to be able to extend this period, to allow for an extension of the audit contract or to keep tendering costs down. One respondent, while in agreement with the limit of five years for the specified person's appointing period, noted that there may also be a need for limits to the length of any appointment of an auditor.

Government response

3.8 In light of responses, the Government continues to consider that both the principle of a maximum length of appointing period, and that maximum being limited to five years, are correct. It is important for the audited body to be given an opportunity to review its

opt-in to collective procurement in appointing auditors on its behalf, and the five year limit provides for this in a timely manner.

- 3.9 **Question 6** invited comments on any other aspects of the proposed specified person regulations. A local authority asked how an authority opted-in to the collective procurement arrangements might cancel a contract in the circumstances of irreconcilable differences with their auditor.
- 3.10 One respondent, an audit firm, expressed the opinion that an auditor appointed by the specified person following a resignation or removal should be replaced by the same deadline, as set out in in the Local Audit (Auditor Resignation and Removal) Regulations 2014 (SI 2014/1710) for the replacement of an auditor appointed by the audited body.
- 3.11 Another audit firm suggested that the specified person should have a role to publish the contact details of the auditor appointed by any local authority which has not opted-in to the collective procurement arrangements.

Government response

- 3.12 The specified person will have the role of monitoring the auditor's compliance with their contractual obligations, and of dealing with any disputes or complaints relating to their audit contracts. This averts where possible any need for an auditor's resignation or removal, and where this is not possible, the specified person will make any replacement appointment.
- 3.13 The replacement appointment deadline stipulated for bodies making their own appointments following a resignation or removal provides the Secretary of State with a power to intervene. This power will be used if it appears to the Minister that it is necessary to direct the authority to appoint an auditor or to appoint one on the local authority's behalf. However the Government expects the specified person, whose role it will be to appoint auditors to a number of authorities, will make a replacement appointment in a timely manner and therefore it is not considered necessary to provide a similar deadline.
- 3.14 The Government does not consider it necessary for the specified person to collate and publish contact details for auditors appointed to authorities that have not opted-in to the collective procurement arrangements. Such authorities will be required to publish those details, and will also make them available on request, so anyone with an enquiry or complaint for the auditor should face no difficulty establishing contact.

Section 4

Accounts and Audit Regulations

- 4.1 In total, of the 123 responses received to the consultation, 89 per cent commented on the Accounts and Audit regulations.
- 4.2 **Question 8**, which asked for views on the electronic publication of the accounts, received the most support with 71 respondents commenting in favour of electronic publication with only 4 suggesting it may not reach all interested parties or would result in additional costs to the bodies least able to afford it.
- 4.3 **Questions 7 and 9**, on whether 30 working days is a suitable period for the accounts to be available, and whether there should be a common period for the exercise of public rights, received more mixed responses. A number of respondents suggested that the aims were not achievable or compatible. In relation to the proposed common period, particular concern was expressed that this would have the effect of slowing 'early' councils down in laying final accounts and that at 'late' councils the public would be inspecting incomplete records. Some questioned the proposed common inspection/objection period, as residents were only interested in their own area. However, overall, 57 were in favour of there being a common period for inspection and objections to accounts as suggested in Question 9, with 26 unsure or against the proposal. 56 were in favour of the longer 30 working days proposal in Question 7 and 24 against.
- 4.4 **Question 10** in relation to the intentions proposed for the smallest Category 2 or 'exempt' authorities i.e. those with turnover below £25,000 per annum received little comment. However, some of the comments in response to question 11 reflected confusion about the categories of authority and sought further guidance around what was required in relation to audit for Category 2 authorities. Sector bodies commented that the role played by auditors currently in helping smaller councils comply with audit requirements should not be underestimated, and expressed concern about the increased risk of non-compliance that may remain undetected under the proposed new arrangements.
- 4.5 **Question 11** sought other comments on the draft Accounts and Audit Regulations. Respondents expressed concern at the compression of the audit timetable, citing reduced staffing, tight budgets and the shortage of qualified auditors to do the accounts – with a potential increase in fees as a result as key issues. Some expressed doubts as to how this measure would increase local accountability and concern that it would lead to quality issues as accounts would make greater use of estimates. Only a handful of the 106 responses to this question were broadly in favour of the proposal and even then emphasised the need for radical simplification of current audit requirements and other measures to make it achievable.
- 4.6 Some responses suggested specific changes in the regulations – for example the separation of local government pension fund accounts from the main accounts of the pensions administering authorities and permitting police and crime commissioners and

chief constables to produce combined accounts. Other detailed comments related to recent changes to pensions regulations and their effect on the remuneration disclosures, the new requirement for a narrative statement and the wording of the regulation on internal audit.

Government response

- 4.7 In response to the concerns expressed about the proposed reduction in the period required for the preparation and publication of statements; the timeliness of the Statement of Accounts aligns with the Government's wish to improve local government transparency and accountability. It is the Government's view that a more timely closedown process would increase public interest in local authority accounts, especially when coupled with proposed moves to simplify accounting statements and a common inspection and objection period.
- 4.8 Overall, whilst it is acknowledged that such changes involve a substantial effort initially, the Government believes that this change will ultimately reduce the burden of the closure process and enable finance staff to give more time to in-year financial management. The changes in processes in-year that will be required to achieve early closure will serve to tighten up overall financial controls as issues will need to be dealt with during the year rather than at year end. In addition early closure sends a positive message about the efficiency of local government and the wider public sector. The Government may revisit this issue in future years to consider whether an earlier closure timetable may be possible.
- 4.9 By giving 3-4 years' notice of these changes the Government is providing authorities and auditors with a reasonable timescale to adjust. The Government is therefore minded to retain the proposed approach in relation to principal authorities in bringing forward the date by which accounts must be published to July as from the accounts for the year 2017-18. This will not apply to smaller authorities, which will retain the existing publication deadline of September.
- 4.10 In response to concerns around the introduction of a common period to view the accounts: the Government believes that a national common period would enable the Government – and others - to increase awareness of the public rights (which all respondents agreed were not utilised at present), and that the longer term benefits of this requirement would outweigh any early disadvantages in compliance. In particular, local authorities that produce their accounts early will not be prevented from publishing their unaudited statements of accounts as soon as they are ready. Once again, the Government may revisit this issue in future years to consider bringing forward the common period in line with any earlier proposed closure timetable.
- 4.11 Furthermore, the Government believes that journalists should also be able to inspect accounts and information, in the interests of local people, and therefore intends to legislate at the earliest opportunity to ensure that the definition of "persons interested" (see section 26 of the Local Audit and Accountability Act 2014) is wide enough to enable this.
- 4.12 In response to confusion around the categories of authorities and what would be required for smaller authorities; the Government intends to provide a Plain English

Guide that will set out the key requirements of the new audit regime for smaller authorities – including accounts preparation. On this issue, the majority of category 2 authorities would still be subject to completing an annual return that would be externally audited – under the limited assurance regime – as they are presently. Only authorities with annual turnover of less than £25,000 will be able to class themselves as exempt from external audit, and even then they must still prepare accounts, and local electors' rights to put questions and objections to an auditor are being preserved.

- 4.13 In addition, the Government agrees with respondents that internal audit will continue to be a vital element of the new assurance framework for such exempt authorities, as well as for authorities subject to an external audit. Guidance on the issues of independence and competence of the internal auditor and internal audit for smaller authorities is already available in the National Association of Local Councils / Society of Local Council Clerks publication *Governance and Accountability for Local Councils: A Practitioners' Guide* (England). A recent update of this guide is available on the National Association of Local Councils website at:
http://www.nalc.gov.uk/About_NALC/Governance_and_Accountability_for_Local_Councils.aspx
- 4.14 The new Accounts and Audit Regulations will give legal backing to this guidance by requiring authorities, in meeting their duty to undertake an adequate and effective internal audit, to take account of public sector internal auditing standards or guidance. The Government considers that the relevant section of the guide would constitute guidance for this purpose.
- 4.15 The regulations have also been amended to take on board concerns about the internal audit provisions and the wording of the remuneration disclosure requirements in relation to pension entitlements.

Section 5

Transparency Code for Internal Drainage Boards, Charter Trustees and Port Health Authorities

- 5.1 **Question 12** sought views on whether the Code should be mandatory for internal drainage boards, charter trustees and port health authorities with an annual turnover not exceeding £25,000. 16 responses directly answered this question and of these, 14 (87.5 per cent) explicitly supported the Government's proposal. These respondents stressed the necessity of making the Code mandatory since it will represent a substitute for routine external audit. The Information Commissioner's Office also noted that the proactive publication of key governance and financial information should help reduce the administrative burden on these bodies when responding to Freedom of Information requests. Those respondents that were not in favour of making the Code mandatory (two, or 12.5 per cent) cited the burden of complying with the Code and suggested that it may not represent an adequate substitute for external audit.
- 5.2 **Question 13** sought views on whether to apply a threshold above which individual items of expenditure should be published. 19 respondents directly answered this question. Of these, 14 responses agreed that a threshold should be applied. The most frequently proposed threshold was £500 by 4 respondents, although 2 respondents each suggested a threshold of either £100 or £125. Other respondents did not agree that a threshold should apply and suggested that it would be easier to publish all expenditure rather than to delete items of expenditure that fall below the threshold.
- 5.3 **Question 14** asked whether any exemptions should apply to information published to explain negative responses to internal controls objectives. 16 responses directly answered this question and of these, 13 agreed that some exemptions should be permitted. These respondents felt that current exemptions under the Data Protection Act 1998 and Freedom of Information Act 2000, in addition to any information which might prejudice a current fraud investigation or prosecution, should be exempt from publication.
- 5.4 **Questions 15 and 16** asked whether internal drainage boards and charter trustees should be exempt from publishing the details of public land and infrastructure assets. 12 responses directly answered question 15 and of these, half, including the Association of Drainage Authorities (the only representative of internal drainage boards to respond to the consultation), agreed with the Government's proposal. In its response, the Association stated that internal drainage boards should only be required to publish the details of registered land and buildings that have a market value and which appear in their Fixed Assets Register. Infrastructure assets, such as pumping stations, watercourses, sluices and other water level control structures, have no market value and publishing the location of these assets may lead to an increase in theft and vandalism at these sites. Of the six respondents that disagreed with the Government's proposal, all stated that a consistent policy should be applied to all smaller authorities that are responsible for managing public assets. 11 respondents directly answered question 16 and of these, seven, including the only charter trustee to respond to the

consultation, were in favour of the exemption. The consultation explained that charter trustees are not permitted to own either land or buildings under the Charter Trustees Order (1974) and the requirement to publish this information would therefore be irrelevant.

5.5 **Question 17** sought views on whether the Code should require electronic publication. 20 respondents directly answered this question. Of these, 95 per cent of responses agreed that the information set out in the Code should be published electronically. The Information Commissioner's Office noted that electronic publication is the most efficient and effective way of disseminating information and promoting transparency.

5.6 **Question 18** asked how much additional staff time and cost would be involved in publishing the required data online. 11 respondents answered this question. Of these, 4 thought the cost involved would be minimal, 4 believed that related costs would be significant, whilst 3 respondents were unable to estimate likely staff time and cost.

Government response

5.7 The Government recently consulted on a draft transparency code for parish councils. The consultation for parish councils considered many of the same issues included in this consultation and a summary of responses to the first consultation, along with the Government's response, was published on 6 August.¹ Respondents to this consultation agreed with the views expressed by parish councils. Therefore, the Government's response to questions 12-14, 17 and 18 in relation to charter trustees, internal drainage boards and port health authorities, mirrors that for parishes, namely:

- that the Government intends to introduce regulations to make the Code mandatory. Due to the wide support for greater transparency, the Government will also require the publication of meeting minutes, agendas and papers more frequently than annually;
- a threshold above which individual items of expenditure should be published will be set at £100 (including VAT where it cannot be recovered);
- exemptions under the Data Protection Act 1998 and Freedom of Information Act 2000 will apply to data published in accordance with this Code;² and
- the Code will require mandatory electronic publication.

5.8 The Government welcomes the support its proposal to exempt internal drainage boards from publishing the details of public land and infrastructure. The Government considers that it would be unreasonably onerous to place them under a duty to publish such information. Internal drainage boards will therefore be required to only publish the details of registered land and buildings that have a market value and which appear in their Fixed Assets Register. Charter trustees will also not be required to publish this

¹ <https://www.gov.uk/government/consultations/draft-transparency-code-for-parish-councils>

² These exemptions are conditional and the Government will require parish councils to publish full information at the earliest opportunity. This does not prevent the publication of data such as about councillors/senior staff, sole traders, publication of contract data on grounds of 'commercial confidentiality'

information since they are not permitted to own either land or buildings under the Charter Trustees Order (1974).

Annex A

Respondents by sector

Type of respondent	Number of responses	%
Councils	75	61.0%
Parish and town councils	10	8.1%
Police	7	5.7%
Personal responses	2	1.6%
Fire	4	3.3%
Audit Firm	6	4.9%
Representative organisation	12	9.8%
Other	7	5.7%
Total	123	100%

Annex B

List of consultation questions

Smaller Authorities

1. Do the regulations meet the Government's policy objective at Paragraph 2.1?
2. Do you have any other comments on the proposed Smaller Authorities Regulations?
3. Do you agree with the differing proposals regarding the appointment of auditors to exempt authorities which are opted-in and those which are opted-out of the specified person's auditor appointment regime?

Collective Procurement

4. Should regulations require that the decision to opt-in to sector-led arrangements is made by full council?
5. Do you agree that the maximum length appointing period should be restricted to five years?
6. Do you have any other comments on the proposed collective procurement regulations?

Accounts and Audit Regulations

7. Is 30 working days a suitable period for the accounts to be available?
8. Do you agree this information should be published electronically?
9. Do you agree that a common period for the exercise of public rights should be included in the regulations?
10. Do you have any views on the intentions for exempt authorities set out above?
11. Do you have any other comments on the proposed Accounts and Audit Regulations?

Transparency Code

12. Do you agree that the Code should be mandatory for internal drainage boards, charter trustees and port health authorities with an annual turnover not exceeding £25,000?
13. Should there be a threshold above which individual items of expenditure must be published? If yes what should this threshold be (e.g. £50, £100)?

- 14. What exemptions – if any – would need to be made to information published to explain negative responses to the internal controls objectives (e.g. information relating to a current fraud case)?**
- 15. The Government proposes that internal drainage boards will be exempt from publishing the details of public land and infrastructure assets. Do you agree?**
- 16. The Government proposes that charter trustees will be exempt from publishing the details of public land and building assets. Do you agree?**
- 17. Do you agree this information should be published electronically?**
- 18. How much additional staff time and cost will be involved for authorities in publishing the required data online?**