EXPLANATORY MEMORANDUM TO

THE ACCOUNTS AND AUDIT (AMENDMENT) (ENGLAND) REGULATIONS 2009

2009 No. 473

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government ("the Department") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Accounts and Audit Regulations 2003 ("the 2003 Regulations"). It makes a number of amendments to the specific accounting and auditing rules for relevant bodies (these are bodies (mainly local authorities) subject to audit by the Audit Commission and are listed in Schedule 2 to the Audit Commission Act 1998).

2.2 It extends to Internal Drainage Boards, protection against the financial consequences of the accounting treatment of pensions liabilities similar to that currently available for local authorities and Passenger Transport Executives.

2.3 It also makes a few minor amendments consequential on amendments to audit and local government legislation made by the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Audit Commission Act 1998 makes provision in respect of local authorities and other bodies subject to audit. The 2003 Regulations are made under section 27 of that Act and make provision in respect of the keeping of accounts, their form, preparation and certification and other related matters.

4.2 The provision at regulation 4 relating to the accounting treatment of pensions liabilities of internal drainage boards reflects similar provision made in respect of Passenger Transport Executives by regulation 7A of the 2003 Regulations, introduced by S.I. 2006/564.

5. Territorial Extent and Application

5.1 This instrument applies in relation to England only.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 Regulation 5 will require responsible financial officers ("RFO") who are required to prepare statements of accounts to certify that those statements of accounts give a *true and fair view* of the financial position of the authority at the year end and of its income and expenditure for the year. This form of words is accepted in accounting circles in the UK as confirming that published accounts meet the highest standards of accounting practice. This change will bring the certification of this category of local government accounts into line with the certification of the accounts of private companies, central Government and charities.

7.2 Before its amendment by these Regulations, regulation 10(2) of the 2003 Regulations required the RFO to sign and date:

- the statement of accounts;
- the income and expenditure account and statement of balances; or
- the record of receipts and payments

as appropriate, and certify:

- where a record of receipts and payments is prepared, that it *properly presents* the receipts and payments for the year;
- where an income and expenditure account and statement of balances is prepared, that the account and statement *present fairly* the financial position of the body at the end of year and its income and expenditure for the year;
- where a statement of accounts is prepared, that the statement *presents fairly* the authority's financial position at the end of the year.

7.3 The new requirement for the RFO to certify that accounts give a *true and fair view* will apply only in relation to accounts of bodies required by regulation 7 of the 2003 Regulations to prepare a statement of accounts. Regulation 7 applies to those bodies whose annual expenditure or income is £1million or more. Where the accounting obligations of a body are governed by regulation 9 of the 2003 Regulations, the RFO will continue to be obliged to certify that the accounts *present fairly* or *properly present* the finances of the body.

7.4 Internal Drainage Boards ("IDBs"), are responsible for the drainage of land in some parts of the country under the Land Drainage Act 1991. IDBs are moving to prepare their annual accounts on a basis that fully recognises the future pension liability that has accrued for that year in respect of their employees. For local authorities, Regulations under the Local Government Act 2003 require such liabilities to be replaced by the employer contribution to the pension fund and other amounts due to be paid in the year. IDBs, like local authorities are required to prepare their annual spending plans based on a balanced budget requirement; that is all expenditure must be fully funded. As a result any addition to expenditure as a result of the pension liability, to the extent it is not met from other sources, would have to be financed from local taxation income. This change prevents excessive charges to local taxation. As IDBs are not covered by the power in the Local Government Act 2003 to specify accounting practices, these Regulations are being used to apply the same principle to them. The same approach was taken for Passenger Transport Executives in regulation 7A of the 2003 Regulations (inserted by the Accounts and Audit (Amendment) (England) Regulations 2006).

7.5 The remaining changes are consequential on amendments to audit and local government legislation made by the 2007 Act.

7.6 Regulation 2(1) has been amended. The reference to parish councils that are best value authorities has been removed from the definition of "smaller relevant body", reflecting the amendments made by section 136 of the 2007 Act (parish councils and community councils etc not to be best value authorities).

7.7 Regulation 12(1) has been amended. The words "of that meeting" have been removed as they are superfluous.

7.8 Regulation 17 has been amended. The reference to a proposed objection has been removed reflecting the requirement (introduced by amendments to section 16 of the Audit Commission Act 1998 made by section 161 of the 2007 Act) that an objection at audit is to be made in writing to the auditor.

7.9 Regulation 21 has been amended. The reference to attending before the auditor has been removed. This reflects the abolition of that right effected by the amendments to section 16 of the Audit Commission Act 1998 made by section 161 of the 2007 Act.

- ***Consolidation***

7.10 These Regulations comprise one self-contained new regulation and five alterations to the 2003 Regulations. The Department considers that they do not justify a consolidation of the 2003 Regulations at this time.

8. Consultation outcome

8.1 The Department consulted on these Regulations in a paper issued on 5 December 2008, which included draft Regulations. The paper also included the first stage of a stakeholder engagement exercise on the reporting of officer remuneration by the bodies covered by the Regulations.

8.2 The paper was e-mailed to the statutory consultees identified in section 27(3) of the Audit Commission Act 1998, including the Audit Commission, the Chartered Institute of Public Finance and Accountancy (CIPFA), the Local Government Association and the Association of Drainage Authorities. It was also e-mailed to all principal local authorities in England. Responses were requested by 23 January 2009, in accordance with the informal agreement with the Local Government Association that consultation periods for technical material of this kind need not exceed 6 weeks. The consultation paper is available at:
http://www.local.odpm.gov.uk/audit.htm

8.3 Over sixty responses were received to the paper. 29 of them made direct reference to some or all of the provisions contained in regulations 3, 4, 6, 7 and 8 of these Regulations. All that did either supported the proposals or said that they had no comment. Those in support included the Association of Drainage Authorities and the Audit Commission. As a result no change other than minor drafting amendments has been made to those proposed provisions.

8.4 In relation to the change in the form of certification for the annual statements of accounts for the larger bodies covered by the 2003 Regulations (those with annual expenditure or income of £1million or more) from "presents fairly" to "true and fair" as from the 2008-09 statements, almost all the respondents were in favour of this change (but see paragraph 8.6 below).

8.5 The change to "true and fair" certification had been recommended by the joint committee of CIPFA and the Local Authority (Scotland) Accounts Advisory Committee (CIPFA/LASAAC) that is responsible for preparing the accounting code of practice for local authorities in the United Kingdom. The chair of the joint committee wrote to the Department, the devolved administrations and the territorial audit authorities on 26 February 2007 asking for agreement that the change should be pursued. In its response of 1 March 2007 the Audit Commission supported the change and said it would be happy for the form of the auditor's opinion also to move to "true and fair".

8.6 In its response to the December 2008 consultation the Audit Commission confirmed its support in principle for the change to "true and fair" certification, but considered that the change should take effect for the 2010-11 statements of accounts, when local authority accounts would be based completely on International Financial Reporting Standards (IFRS). In a subsequent submission the Commission explained why it did not consider "true and fair" to be appropriate for the 2008-09 and 2009-10 statements. There were two issues: Firstly, it considered it too late to make the change for 2008-09 and secondly it was concerned that certain changes proposed for the

2009-10 accounting code of practice, while not necessarily precluding an unqualified "true and fair" opinion, would affect the coherence of the accounting principles on which the accounts were based. It also indicated that there were other aspects of local government accounting practices which might not be consistent with the accounts presenting a "true and fair" view. Only two local authorities responded to the consultation in terms which support the Audit Commission's view.

8.7 The Government's view is that the local government bodies will be able to produce financial statements capable of presenting a "true and fair" view. The Responsible Financial Officer will be able to certify the statutory accounts as "true and fair". This position is supported by CIPFA/LASAAC. However, the Government agrees that there may be an issue with the timing of such a change as it would be applicable for the whole 2008-09 reporting year if it came in to force on 31 March 2009. Consequently it has been decided to defer the implementation of true and fair certification until 2009-10, thereby allowing local government bodies sufficient time to consider fully the implications of, and adapt to, such a change.

8.8 The Government acknowledges that there could be both UK generally accepted accounting practice and a partial adoption of IFRS if the proposed changes in the SORP 2009 are implemented. However, this does not preclude the financial statements presenting a true and fair view. This view is widely supported as evidenced in the consultation exercise. Consequently the Government has decided to proceed with the proposed change to be implemented in 2009-10 reporting year.

9. Guidance

9.1 The Statement of Recommended Practice (SORP) specifies the principles and practices of accounting required to prepare a Statement of Accounts and the basis for the Responsible Financial Officer's Certification. This will be updated to take account of the change to require the Statement of Accounts to give a "true and fair view" of the financial position and transactions of a local government body from the 2009-10 reporting year.

9.2 As the other changes to the 2003 Regulations are relatively minor, the Department does not intend to issue any guidance. Guidance on the accounting practices of IDBs is set out in *Governance and Accountability in Internal Drainage Boards in England – a Practitioners' Guide*, published by the Association of Drainage Authorities. This will be updated to take account of these Regulations.

10. Impact

10.1 No impact on business, charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is that the Regulations will require the Responsible Financial Officer to provide a higher level of certification in relation to the truth and fairness of the information in the Statement of Accounts.

10.3 The secondary impact on the public sector is that the Regulations will allow IDBs to maintain the current basis on which they finance pensions, while adopting improved accounting practices.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department continues to keep under review the regulatory framework for accounting practices for local authorities and other local public bodies covered by the 2003 Regulations. Further changes based on the December 2008 paper and the responses made to it will be considered later in 2009.

13. Contact

Manj Kalar at the Department for Communities and Local Government Tel: 020 7944 6899 or email: manj.kalar@communities.gsi.gov.uk can answer any queries regarding the instrument.