EXPLANATORY MEMORANDUM TO

THE GOVERNMENT RESOURCES AND ACCOUNTS ACT 2000 (AUDIT OF PUBLIC BODIES) ORDER 2012

2012 No.

1. This explanatory memorandum has been prepared by HM Treasury and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 This instrument provides for the accounts of certain public sector bodies, including three constituted as companies, to be audited by the Comptroller and Auditor General ("C&AG"). The Appendix lists these bodies and specifies the financial year for which the C&AG will first audit their accounts. The instrument also removes from the scope of audit by the C&AG a number of public bodies and companies either because they have been abolished or are no longer in operation or because they have ceased to meet the criteria for public sector audit.

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

3.1 None.

4. Legislative context

4.1 This instrument gives the C&AG responsibility for auditing the accounts of the public sector bodies and companies listed in the Appendix.

4.2 Section 25(6) of the Government Resources and Accounts Act 2000 ("the GRAA") allows the Treasury by order to provide for the accounts of a body to be audited by the C&AG. The body must exercise public functions or must be entirely or substantially funded by the Government.

4.3 Section 482 of the Companies Act 2006 ("the CA 2006") provides that non-profit-making companies which have been designated in an order under section 25(6) of the GRAA are exempt from audit under Part 16 of the CA 2006. To be eligible for designation, a company must meet a number of additional eligibility criteria, namely that:

- the company is non-profit-making;
- if the company is a parent or subsidiary undertaking, all undertakings in the group are non-profit-making; and
- the balance sheet contains a statement that the company is entitled to exemption under section 482 of the CA 2006.

4.4 Probation Trusts were established under section 5 of the Offender Management Act 2007. Section 2 of, and Schedule 2 to, the Audit Commission Act 1998 subject the accounts of probation trusts (except a Welsh probation trust) to audit by an auditor or auditors appointed by the Commission. Paragraph 13(2) of Schedule 1 to the Offender Management Act 2007 provides that the C&AG may examine the accounts of a probation trust, any records relating to the accounts and any auditor's report on them.

4.5 The Horserace Betting Levy Board was established by section 24 of the Betting, Gaming and Lotteries Act 1963. Section 15(1) of the Horserace Betting and Olympic Lottery Act 2004 prospectively allowed the Secretary of State to repeal sections 24 to 30 (levy) by order. No such order has been made to date.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. It does not, however, affect the powers of the Auditors General for Scotland or Wales or of the Comptroller and Auditor General for Northern Ireland.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, Chloe Smith, has made the following statement regarding Human Rights:

"In my view, the provisions of the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2012 are compatible with the Convention rights."

7. Policy background

- ***What is being done and why***

7.1 In its response to Lord Sharman's Report *Holding to Account*[1], the previous Government accepted his recommendation that the C&AG be appointed auditor for all public bodies on a statutory basis. This policy received all-party support and is being continued by this Government. The Order makes the Horserace Betting Levy Board and English probation trusts subject to C&AG statutory audit.

7.2 Section 31(1) of the Betting, Gaming and Lotteries Act 1963 provides for the accounts of the Horserace Betting Levy Board to be audited by qualified accountants. Pending the dissolution of the Board, the accounts are to be made subject to audit by the C&AG because it is a central government body. The Order modifies section 31(1) to correspond with provision for audit by the C&AG.

[1] Audit and accountability in Central Government – CM 5456, March 2002

7.3 The Order removes the four museums from C&AG audit, as they have been subsumed within the new National Museum of the Royal Navy and their accounts will be consolidated with the accounts of the new body. For the Fleet Air Arm Museum, Royal Marines Museum and Royal Naval Submarine Museum this is subject to C&AG audit of final public sector accounts for part of the financial year 2011-12. The National Museum of the Royal Navy is one of the companies made subject to C&AG audit, thus retaining Parliamentary accountability for the museums.

7.4 The other two companies being made subject to audit by the C&AG are High Speed Two (HS2) Limited and United Kingdom Anti-Doping Limited. This is for the financial year 2011-12 and subsequent years.

7.5 The Order further removes three non-profit-making companies from the scope of the Government Resources and Accounts Act 2000 (Audit of Non-Profit-Making Companies) Order 2009 because they are no longer in operation or have been moved into the private sector and are therefore no longer eligible for audit by the C&AG. For the School Food Trust this is subject to C&AG audit of final public sector accounts for part of the financial year 2011-12. The C&AG will audit its accounts for the period ending on 30 September 2011, but will not audit accounts prepared for the remaining part of this financial year. For Firebuy Limited this is subject to C&AG audit of public sector accounts due to be prepared for the financial years 2010-11 and 2011-12. The C&AG will audit these accounts, which will be the closing accounts of the company as it is in liquidation.

7.6 The 34 probation trusts made subject to C&AG audit are specified in the Schedule to the Order. Probation trusts are established under section 5 of the Offender Management Act 2007 and are currently audited by the Audit Commission (the Commission). In view of plans to abolish the Commission, and as probation trusts are classified as central government bodies, it was decided that the accounts of the English probation trusts should be audited by the C&AG. The C&AG already influences the external audit of Trust accounts by the issue of Group Instructions to obtain the assurance needed to certify the consolidated accounts of the National Offender Management Service (NOMS). It is therefore considered that these arrangements are logical and will not lead to any loss of autonomy for Trusts. The Order makes consequential amendments to the Audit Commission Act 1998 and the Offender Management Act 2007.

- ***Consolidation***

7.7 The instrument amends two previous orders which deal with public audit (one of which is being amended for the first time). HM Treasury does not consider consolidation is justified at the moment, but will keep this position under review.

8. **Consultation outcome**

8.1 No general external consultation was carried out because this instrument affects only the audit arrangements for a small number of public sector bodies.

8.2 The Treasury and the National Audit Office have consulted the NDPBs specified in the Order. In addition, the Comptroller and Auditor General was consulted as is required by the enabling power and he is content.

8.3 The Department of Communities and Local Government consulted the Probation Trusts as part of its consultation on the future of local audit following the Government's decision to abolish the Audit Commission. The majority of those who responded agreed that the audit of probation trusts should be the responsibility of the Comptroller and Auditor General. However, the views of the probation authorities and their representatives were split.

8.4 In response to initial concerns from the Probation Association, who act on behalf of the Probation Trusts, the department for Communities and Local Government explained the current role of the C&AG in influencing the audit of Trust accounts and that they would see little difference under the new arrangements.

8.5 Each of the other bodies specified in the Order is content for the C&AG to be their auditor.

9. **Guidance**

9.1 No guidance is needed or required.

10. **Impact**

10.1 There is no impact on business, charities, or voluntary bodies.

10.2 There is no impact on the public sector, apart from the change of audit responsibility.

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 and review**

12.1 A survey of affected bodies will be carried out three years after the first year of C&AG audit. It will be based on the criteria set out in the Impact Assessment that accompanied the Government Resources and

Accounts Act 2000 (Audit of Non-Profit-Making Companies) Order 2009, which included a review of the impact of previous uses of this power.[2]

13 Contact

13.1 Adrian Baxter at HM Treasury can answer any queries regarding this instrument. (email: Adrian.Baxter@hmtreasury.gsi.gov.uk).

[2] http://www.legislation.gov.uk/uksi/2009/476/contents/made

APPENDIX

List of NDPB and NDPB companies covered by the draft of the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2012

2011-12 as the first year of C&AG audit

The National Museum of the Royal Navy
High Speed Two (HS2) Limited
United Kingdom Anti-Doping Limited

2012-13 as the first year of C&AG audit

Horserace Betting Levy Board

34 Probation Trusts:

Avon and Somerset Probation Trust
Bedfordshire Probation Trust
Cambridgeshire and Peterborough Probation Trust
Cheshire Probation Trust
Cumbria Probation Trust
Derbyshire Probation Trust
Devon and Cornwall Probation Trust
Dorset Probation Trust
Durham Tees Valley Probation Trust
Essex Probation
Gloucestershire Probation Trust
Greater Manchester Probation Trust
Hampshire Probation Trust
Hertfordshire Probation Trust
Humberside Probation Trust
Kent Probation
Lancashire Probation Trust
Leicestershire and Rutland Probation Trust
Lincolnshire Probation Trust
London Probation Trust
Merseyside Probation Trust
Norfolk and Suffolk Probation Trust
Northamptonshire Probation Trust
Northumbria Probation Trust
Nottinghamshire Probation Trust
South Yorkshire Probation Trust
Staffordshire and West Midlands Probation Trust
Surrey and Sussex Probation Trust
Thames Valley Probation
Warwickshire Probation Trust
West Mercia Probation Trust

West Yorkshire Probation Trust
Wiltshire Probation Trust
York and North Yorkshire Probation Trust