EXPLANATORY MEMORANDUM TO

THE GOVERNMENT RESOURCES AND ACCOUNTS ACT 2000 (AUDIT OF PUBLIC BODIES) ORDER 2017

2017 No. [XXXX]

1. Introduction

1.1 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 six constituted as companies, to be audited by the Comptroller and Auditor General ("the C&AG") from the financial year ending on 31st March 2018. The bodies are-

- the Ebbsfleet Development Corporation,
- the Housing Ombudsman,
- BPDTS Limited,
- the College of Policing,
- English Sports Development Trust Limited,
- the Oil and Gas Authority,
- Phone Paid Services Authority Limited, and
- Revenue and Customs Digital Technology Services Limited.

2.2 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 Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

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 paragraph 2.1.

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 The Ebbsfleet Development Corporation was established by article 3(1) of the Ebbsfleet Development Corporation (Area and Constitution) Order 2015 (S.I.

2015/747). Currently, paragraph 11 of Schedule 31 to the Local Government Planning and Land Act 1980 provides that the accounts and statement of accounts of the Ebbsfleet Development Corporation shall be audited by an auditor appointed annually by the Secretary of State. The person appointed must be eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006.

4.4 The Housing Ombudsman was incorporated by the Housing Ombudsman (Corporation Sole) Order 2013 made pursuant to paragraph 10(2)(b) of Schedule 2 to the Housing Act 1996. Currently, under the Housing Ombudsman Scheme, the Ombudsman prepares annual accounts in accordance with an accounts direction approved by HM Treasury and those accounts are audited by the C&AG. Locating the requirement for a C&AG audit in the instrument will ensure that the Ombudsman's annual accounts can be laid before Parliament.

4.5 In relation to the companies listed in paragraph 2.1, 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 the exemption in section 482 of the CA 2006, 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.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom, although it does not apply to the Auditors General for Scotland or Wales or the Comptroller and Auditor General for Northern Ireland.

6. European Convention on Human Rights

6.1 The Exchequer Secretary to the Treasury 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 2017 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 Government at the time 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.

7.2 The instrument makes Ebbsfleet Development Corporation; and the Housing Ombudsman subject to C&AG statutory audit. It also makes six non-profit-making companies subject to C&AG statutory audit. These are BPDTS Limited, the College

[1] Audit and Accountability in Central Government – Cm 5456, March 2002

of Policing, English Sports Development Trust Limited, the Oil and Gas Authority, Phone Paid Services Authority Limited and Revenue and Customs Digital Technology Services Limited.

7.3 The instrument amends primary legislation in relation to the audit arrangements for Ebbsfleet Development Corporation; namely, Schedule 31 to the Local Government, Planning and Land Act 1980. It also amends the Housing Act 1996 as a consequence of the auditing requirements for the Housing Ombudsman now being located in the instrument.

7.4 The instrument further amends primary and secondary legislation to remove bodies and companies from the scope of audit by the C&AG either because they have been abolished, are no longer in operation, or because they have ceased to meet the criteria for public sector audit. The primary and secondary legislation being amended for these purposes is-

- the Industrial Organisation and Development Act 1947;
- the Offender Management Act 2007;
- The Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003 (SI 2003/1326);
- The Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2005 (SI 2005/913);
- The Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2008 (SI 2008/817);
- The Government Resources and Accounts Act 2000 (Audit of Non-profit-making Companies) Order 2009 (SI 2009/476); and
- The Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2012 (SI 2012/854).

Consolidation

7.5 The instrument amends five previous orders which deal with public audit. HM Treasury does not consider consolidation is required at this time, but will keep this 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 bodies.

8.2 The Treasury and the National Audit Office have consulted the bodies which will be audited by the C&AG after the coming into force of this instrument. In addition, the C&AG was consulted as is required by the enabling power and he is content.

8.3 Each of the bodies which will be audited by the C&AG after the coming into force of this instrument 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 in 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 activities which are undertaken by small businesses.

12. Monitoring & review

12.1 The Treasury consulted 12 public bodies across the relevant Government Departments, in December 2014, to seek feedback on the impact of changing to a C&AG audit. This was the third internal consultation following those carried out in 2005 and 2008. The consultation concluded that the 12 public bodies were content with C&AG audit and that the NAO provided a good audit service. There is no impact on the public sector, apart from the change in audit responsibility, therefore, no Impact Assessment was required.

13. Contact

13.1 Adrian Baxter at HM Treasury can answer any queries regarding the instrument. Telephone: 020 7270 5498 or email: Adrian.Baxter@hmtreasury.gsi.gov.uk