**EXPLANATORY MEMORANDUM TO**

**THE LOCAL AUDIT (APPOINTING PERSON) (AMENDMENT) REGULATIONS 2021**

**2021 No. [XXXX]**

## 1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Levelling Up, Housing and Communities and is laid before Parliament by Command of Her Majesty.

## 2. Purpose of the instrument

2.1 This instrument makes amendments to the Local Audit (Appointing Person) Regulations 2015 (SI2015/192) in respect of the audit of local authority accounts. This instrument amends the deadline for the appointing person to set fee scales for the audit of the accounts of authorities that choose to opt-in to the appointing person arrangements from before the start of the financial year to 30 November of the financial year to which the fee scale relates. It also makes provision for the appointing person to apply standardised fee variations to all or a group of opted in authorities and to appoint a local auditor to an opted in authority for one or more financial years at a time, up to a maximum of five consecutive years.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 None.

## 4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England and Wales.

## 5. European Convention on Human Rights

5.1 Kemi Badenoch MP, Minister of State, has made the following statement regarding Human Rights:

"In my view the provisions of the Local Audit (Appointing Person) (Amendment) Regulations 2021 are compatible with the Convention rights."

## 6. Legislative Context

6.1 The Local Audit (Appointing Person) Regulations 2015 (SI 2015/192) ('the 2015 Regulations') make provision for the appointment of a local auditor by a person (the 'appointing person') specified by the Secretary of State to audit the accounts of local authorities that choose to opt into such arrangements.

6.2 The 2015 Regulations also make provision for the appointing person to set fee scales for the audits of opted-in authorities and to charge a larger or smaller fee than provided for by the fee scales in cases where the work involved in a particular audit of

a local authority turns out to be substantially more or less than envisaged when fee scales were set.

6.3 Regulation 2(2) of this instrument amends regulation 13 of the 2015 Regulations. This amendment provides that an appointing person may appoint a local auditor to an opted in authority for one or more financial years at a time, up to a maximum of five consecutive years and clarifies that the appointing person is able to appoint an auditor for preceding years when an authority opts in after the start of the compulsory appointing period.

6.4 Regulation 2(3) of this instrument amends regulation 16 of the 2015 Regulations. This amendment extends the deadline for an appointing person to specify the fee scales for audits until 30 November of the financial year to which the fee scales relate.

6.5 Regulation 2(4) of this instrument amends regulation 17 of the 2015 Regulations. This amendment specifies the circumstances in which an appointing person may charge a smaller or larger fee than provided by the fee scales, to all or a group of opted in authorities.

## 7. Policy background

***What is being done and why?***

7.1 The timely completion of audits is vital in maintaining the transparency and assurance of local authority accounts. Late delivery of local assurance can have a significant impact not just on local authority financial planning but also on the timely completion of Whole Government Accounts.

7.2 Sir Tony Redmond's independent review into the effectiveness of external audit and transparency of financial reporting in local authorities ('the Redmond Review[1]') was published in September 2020. Sir Tony found that there was an increasing disparity between the fee scales set by the appointing person and the amount of work being carried out by auditors, which had led in turn to a large increase in the amount of fee variation requests. These are requests from auditors to charge additional fees beyond those provided for in the fee scales set by the appointing person for each audit year, where additional work has been undertaken.

7.3 The wording of the 2015 Regulations provides for fee variations relating to the audit of a particular authority to be considered by the appointing person. In practice, this means that the appointing person can only approve fee variations on a case-by-case basis, with each individual request requiring negotiations. Therefore, an increase in the number of fee variation requests can contribute to delays in the timely completion of local audits.

7.4 In its response to the Redmond Review,[2] the government committed to review regulations to provide the appointing person with greater flexibility to ensure the costs to audit firms of additional work were met and to reduce the need for time consuming

[1] https://www.gov.uk/government/publications/local-authority-financial-reporting-and-external-audit-independent-review

[2] https://www.gov.uk/government/publications/local-authority-financial-reporting-and-external-audit-government-response-to-the-redmond-review/local-authority-financial-reporting-and-external-audit-government-response-to-the-independent-review

case by case consideration of fee variation requests. This instrument makes three amendments to the current arrangements.

7.5 First, this instrument will amend the regulatory deadline for the appointing person to set fee scales from before the start of the financial year to 30 November of the financial year to which the fee scales relate. The rationale for extending the deadline is to provide additional time for the appointing person to take into account more up-to-date information when setting fee scales. Such information could be the results of previous audits, analysis of any recurring fee variation requests that may need to be incorporated into fee scales, and the results of any research conducted on the impact of new audit requirements. More accurate fee scales should help to reduce the number of instances where fee variations are required.

7.6 Second, this instrument will enable the appointing person to set standardised fee variations to be applied to all bodies or groups of bodies. There are circumstances in which a particular event (for example, a regulatory or policy change) has a similar impact on the audit of all bodies or particular groupings of bodies (it may, for example, lead to additional work for auditors). In these circumstances, the appointing person will be able to apply a standardised fee variation to all affected bodies which will obviate the need for the auditor to submit a similar fee variation request for each individual body, to then be processed by the appointing person on a case-by-case basis. This change will not remove the ability of the appointing person to consider individual fee variations on a case-by-case basis where appropriate.

7.7 Third, this instrument will enable the appointing person to appoint a local auditor to an opted in authority for the period it considers most appropriate, for one or more financial years at time, up to a maximum of five consecutive years, including any preceding years prior to the date the authority opts in to the appointing person's arrangements for which an audit has not already been completed. Under existing regulations, when an authority opts-in to the appointing person's procurement arrangements, the appointing person is required to appoint an auditor to that authority for the remainder of the compulsory appointing period, which could be up to 5 years, depending at what point in the appointing period the authority elects to opt-in.

7.8 Removing this requirement will give the appointing person flexibility to appoint auditors for shorter periods where desirable. There may also be situations where audit firm rotation would be appropriate part way through an appointing period, to accord with best practice. This amendment also clarifies that the appointing person can appoint auditors to opted-in authorities for financial years which precede the date the authority elected to opt into the appointing person arrangements in cases where an audit has not already been completed for that year. This will help resolve situations where authorities with outstanding audits for previous financial years opt-in to the appointing person arrangements.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union nor trigger the statement requirements under the European Union (Withdrawal) Act.

## 9. Consolidation

9.1 There are no current plans for a consolidation.

## 10. Consultation outcome

10.1 The government ran a public consultation[3] from 20 April to 1 June 2021 to gather views from stakeholders on potential amendments to the 2015 Regulations. The consultation proposed a number of amendments:

- extending the regulatory deadline by which scale fees need to be set to enable the appointing person to take into account more up-to-date information;
- enabling the appointing person to apply standardised fee variations to all or certain groups of principal bodies;
- providing clarification on the ability of the appointing person to approve fee variation requests for work completed during the audit; and
- expressly enabling the appointing person to appoint auditors for the period that it considers to be the most appropriate, up to the maximum length of the appointing period, subject to consultation with the relevant bodies.

10.2 The government published its response to the consultation on 28 July 2021.[4] There were 86 responses to the consultation in total. Responses were received from councils, fire and rescue authorities, local police bodies, national park authorities, audit firms and regulatory and accountancy bodies.

10.3 86% of respondents said they agreed with the proposal to extend the regulatory deadline by which scale fees need to be set, while 9% disagreed and 5% were unsure.

10.4 86% of respondents said they agreed with the proposal to enable the appointing person to consult on and agree standardised fee variations, while 5% disagreed and 9% were unsure. There were a number of comments suggesting example circumstances in which national fee variations should be considered:

- changes in legislation
- impact of rulings in relevant legal cases
- issues that have a common impact on high risk areas, such as pensions and asset valuations
- unique/extraordinary circumstances which affect all bodies
- sector specific developments – e.g. changes in funding or business rates regimes.

10.5 Considering the variety of circumstances in which respondents felt standardised fee variations might be needed, the government decided it would not be appropriate to set prescribed circumstances in which fee variations could be applied.

10.6 91% of respondents agreed with the proposal to enable the appointing person to appoint auditors for the period it considers most appropriate, while 9% disagreed or were unsure.

10.7 In its response to the consultation, the government set out that it did not consider that existing regulations prevented the appointing person from approving fee variations additional for work completed during the audit. To reiterate this point, the government is content that the appointing person is able to approve fee variations either during or

[3] https://www.gov.uk/government/consultations/amendments-to-local-audit-fee-setting-arrangements

[4] https://www.gov.uk/government/consultations/amendments-to-local-audit-fee-setting-arrangements

after the audit, as long as the additional work has been completed. The government hopes that this provides sufficient clarification for all relevant parties.

10.8 As outlined above, the overwhelming majority of respondents agreed with the proposals in the consultation. Consequently, the government committed to introducing secondary legislation to amend the Local Audit (Appointing Person) Regulations 2015.

## 11. Guidance

11.1 Further detail on the expectations of how the new regulations will work in practice will be set out in a Memorandum of Understanding between the Department for Levelling Up, Housing and Communities and the appointing person.

## 12. Impact

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

12.2 There is no significant impact on the public sector.

12.3 A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

## 13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

## 14. Monitoring & review

14.1 The aim of this legislation is to reduce the number of fee variation requests and, more broadly, to support the timely completion of local audit. The impact of the legislation will be kept under internal review.

## 15. Contact

15.1 William Hannam at the at the Department for Levelling Up, Housing and Communities Telephone: 0303 444 8437 or email: william.hannam@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Mandeep Samra, Deputy Director for Local Government Strategy, at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kemi Badenoch MP, Minister of State at the Department for Levelling Up, Housing and Communities can confirm that this Explanatory Memorandum meets the required standard.