EXPLANATORY MEMORANDUM TO

THE LOCAL AUDIT (ENGLAND AND WALES) (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 504

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument is being made using powers in the European Union (Withdrawal) Act 2018 (c. 16). It will ensure that the framework for the regulatory oversight and professional regulation of local auditors and third country auditors in the UK works effectively following the UK's withdrawal from the European Union and in its intent broadly mirrors the relevant provisions set out in the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/177).

Explanations

What did any relevant EU law do before exit day?

2.2 The local audit regime in the Local Audit and Accountability Act 2014 and relevant secondary legislation contains provisions setting out arrangements in relation to the qualifications and regulation of local auditors. These enable auditors practising in the European Economic Area (EEA) to register for local audit, mirroring arrangements in the Companies Act 2006, at that time, relating to the appointment of EEA and Third Country auditors to the statutory audit regime for UK companies.

Why is it being changed?

2.3 As a result of the UK's withdrawal from the EU, references to arrangements with the EU, its institutions and those of Member States, to EU institutions, EU law and concepts under EU law are no longer workable in domestic legislation. This instrument makes amendments to both primary and secondary legislation to enable the continued smooth operation of the local audit framework post EU exit and maintain alignment with the statutory audit regime in this respect.

What will it now do?

2.4 This instrument ensures that upon the UK's exit from the EU, the local audit regime will align as necessary with the approach being taken for the statutory audit regime (as amended by the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019).

2.5 It will set out transitional arrangements enabling EEA auditors currently working in the local audit regime to apply to have their qualifications recognised in the UK until 1st January 2021 but will allow them to continue to practise in the UK until then,

whilst ensuring that, longer term, they meet new UK requirements. It also ensures that the future recognition of third country auditors wishing to work in the UK audit market is fair and equal.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The Local Audit (England and Wales) (Amendment) (EU Exit) Regulations 2019 were presented to the Sifting Committees for consideration on 18th February 2019. On 6th March 2019 the sifting period ended; during the sifting period the Second Legislation Scrutiny Committee reported, agreeing that the instrument should follow the negative resolution procedure (19th report of Session 2017-19, HL Paper 302) and the European Statutory Instruments Committee also agreed that the instrument should follow this process (20th report of Session 2017-19, HC 1935).

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

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

4.2 The territorial application of the instrument is as follows. It applies in relation to "relevant authorities" in England (see section 2 of, and Schedule 2 to, the Local Audit and Accountability Act 2014). That definition is capable of including persons or bodies that exercise functions partly in England and partly in Wales but at present there are no such persons or bodies. The Secretary of State has power by regulation to extend the definition of "relevant authority" by adding a person or body if that person or body exercises functions of a public nature in relation to an area which is wholly in England, or partly in England and partly in Wales.

5. European Convention on Human Rights

5.1 The Minister for Local Government, Rishi Sunak, has made the following statement regarding Human Rights:

"In my view the provisions of the Local Audit (England and Wales) (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations are being made in exercise of the powers conferred by section 8(1) of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively arising from the withdrawal of the UK from the European Union.

6.2 This Statutory Instrument makes amendments to the local audit regime set out in the Local Audit and Accountability Act 2014 ("the 2014 Act"). It follows implementation of the Statutory Auditors and Third Country Auditors (Amendment) (EU Exit) Regulations 2019 as implemented by the Department of Business, Energy and Industrial Strategy (BEIS).

6.3 The 2014 Act puts in place arrangements relating to the accounts of local authorities and certain other public bodies in England (defined as "relevant authorities") including the appointment, functions and regulation of local auditors and is intended to broadly mirror the statutory audit regime. For the bodies which are "relevant authorities" under the 2014 Act see section 2 of, and Schedule 2 to, that Act.

6.4 Part 4 of the 2014 Act is concerned with the eligibility and regulation of local auditors. It applies provisions in Part 42 of the Companies Act 2006 (statutory auditors) to audits of relevant authorities. Schedule 5 to the 2014 Act contains modifications to Part 42 of, and Schedules 10 and 13 to, the 2006 Act.

6.5 This instrument amends provisions providing for recognition of qualifications obtained in other member states. Part 2 amends Schedule 5 to the 2014 Act, which in turn modifies Part 42 of, and Schedule 10 to, the Companies Act 2006. Part 2 also makes an amendment to Schedule 10 to the Companies Act 2006. Part 3 amends regulation 9 of the Local Audit (Professional Qualifications and Major Local Audit) Regulations 2014, S.I. 2014/1627. Those Regulations make provisions about the professional audit qualifications of auditors who will carry out local audits.

6.6 An impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen.

7. Policy background

What is being done and why?

7.1 The scale of the issues affecting local auditors arising as a result of EU exit are less significant than those concerning statutory audit, given that this is a purely domestic market. In contrast, in relation to statutory audit, many businesses operate both in the UK and abroad and the number of practising EEA or Third Country qualified statutory auditors is far larger. In addition, the statutory audit regime has been substantially amended by Audit Directives and Regulations whereas the local audit regime has not.

7.2 This is largely because the local audit regime covered by the Local Audit and Accountability Act 2014 applies to domestic local public bodies including local authorities, police and crime commissioners and certain health bodies. There is no information available as to how many EU qualified auditors are currently active in the local audit market. However, we are keen to ensure that a level playing field for auditors and audit firms across both the statutory and local audit regimes continues post EU Exit.

7.3 This statutory instrument provides continuity and consistency with the framework that applied prior to the UK's exit from the EU. It provides transitional arrangements enabling currently qualified EEA auditors to apply to have their qualifications recognised in the UK until January 2021 but will allow them to continue to practice in the UK until then, whilst ensuring that, longer term, they meet new UK requirements. It also ensures that the future recognition of third country auditors wishing to work in the UK Audit market is fair and equal.

7.4 Without the implementation of this statutory instrument, EEA qualified auditors currently working on local audit would still be able to do so in England indefinitely post EU Exit day. However, BEIS have amended the legislation for statutory audit, and we are keen for both regimes to remain consistent.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum, Annex A.

9. Consolidation

9.1 The amendments made by this instrument are limited and we therefore do not see the need to consolidate at present.

10. Consultation outcome

10.1 This instrument was developed by the Ministry of Housing, Communities and Local Government, having had regard to the approach taken by the Department for Business, Energy and Industrial Strategy (BEIS) and based on regular liaison with policy colleagues in that department on progress.

10.2 MHCLG did not consider it necessary to consult on the principle of these regulations as this instrument is comparable to the BEIS statutory instrument mentioned previously, and this instrument will ensure that our regime aligns with that for statutory audit. BEIS did not publicly consult in order to minimise sensitivities in advance of negotiations with the EU in relation to business.

10.3 We have however consulted informally with representatives of various groups with an interest in the regulation of both local and statutory auditors on the proposed approach. Consultees included representatives of the National Audit Office, the Financial Reporting Council (FRC), recognised supervisory bodies (Institute of Chartered Accountants (England & Wales) and Institute of Chartered Accountants (Scotland)), Public Sector Audit Appointments Ltd and Smaller Authorities Audit Appointments Ltd, the audit procurement bodies specified by the Secretary of State to procure audit services for local public bodies (excluding health bodies).

11. Guidance

11.1 The practical implementation of the changes in this instrument will primarily be a matter for the audit profession with the support of the professional accountancy bodies and oversight by the FRC.

11.2 On 12 October 2018, BEIS published a technical notice titled “Accounting and audit if there’s no Brexit deal”. The technical notice explained the transitional arrangements that will be put in place to enable auditors to apply for their EU qualifications to be recognised in the UK. No specific guidance on local audit is being proposed.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because of the low level of impact on business. In addition, these regulations provide for the maintenance of existing regulatory standards.

13. Regulating small business

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

14. Monitoring & review

14.1 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Alison Morris at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 2613 or email: Alison.morris@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Chris Widgery at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rishi Sunak at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising clauses 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Sch 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s.2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s.2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) Act 2018

1. Sifting statement(s)

1.1 The Minister for Local Government, Rishi Sunak has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

1.2 "In my view the Local Audit (England and Wales) (Amendment) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)". These Regulations, as set out in the explanatory memorandum, replicate, to the extent necessary, regulations made to statutory audit in the Statutory Auditors and Third Country Auditors (Amendment)(EU Exit) Regulations 2019 (S.I. 2019/177). The regulations are intended to provide continuity across the audit sector and will ensure that the local audit framework mirrors the statutory audit arrangements. The Regulations were approved in the House of Commons via affirmative resolution on 10 January 2019 and were approved by the House of Lords on 18 December 2018. In the House of Commons, the motion was put to the Eighth Delegated Legislation Committee and was agreed without division. The policy within these Regulations has therefore been approved by both Houses, and in that process was subject to rigorous parliamentary scrutiny. Consequently, I believe the negative resolution is appropriate here and moreover, that the use of the affirmative procedure would replicate matters previously scrutinised, decided, and agreed.

2. Appropriateness statement

2.1 The Minister for Local Government, Rishi Sunak, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

2.2 "In my view the Local Audit (England and Wales) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate". This is the case because they remedy deficiencies in the relevant domestic legislation resulting from the UK's withdrawal from the EU, to enable the continued smooth operation of the local audit framework post EU exit. Further details are set out in sections 2 and 7 of this explanatory memorandum.

3. Good reasons

3.1 The Minister for Local Government, Rishi Sunak has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

3.2 "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action". These are that we wish to, as far as necessary mirror arrangements made by BEIS in a preceding instrument for EEA and Third Country Auditors in the statutory regime for auditors practising in the local audit framework.

3.3 This instrument will enable a smooth transition to a framework where the UK's relationship to the EU Member States in the field of audit is comparable to its relationship to existing third countries. This involves the provision of a transitional

period in which EU audit qualifications and firm registrations will continue to be recognised as they are now for all existing purposes. For further details see section 2 of this explanatory memorandum.

4. Equalities

4.1 The Minister for Local Government, Rishi Sunak has made the following statement(s) "The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts".

4.2 The Minister for Local Government, Rishi Sunak, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

4.3 "In relation to the instrument, I, Rishi Sunak, Minister for Local Government at the Ministry of Housing and Local Government, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010".

5. Explanations

5.1 The explanations statement has been made in paragraph 2 of the main body of this explanatory memorandum.