EXPLANATORY MEMORANDUM TO

THE SPECIAL HEALTH AUTHORITIES (AUDIT) ORDER 2006

2006 No.960

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

2. Description

2.1 The instrument provides for the Comptroller & Auditor General (C&AG) to have statutory audit responsibility for four newly established Special Health Authorities (SpHAs). The bodies are: the Health and Social Care Information Centre; NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG); the NHS Business Services Authority (Awdurdod Gwasanaetha Busness y GIG); and the NHS Institute for Innovation and Improvement.

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

3.1 None.

4. Legislative background

4.1 This Order will have the effect of removing what would otherwise be dual audit burdens on the four newly established SpHAs. In exercise of the power conferred on HM Treasury by section 25 (6) and (7) of the Government Resources and Accounts Act 2000, this Order provides for the C&AG to have statutory audit responsibility for four newly established SpHAs, for a financial year ending on or after 31st March 2006. This Order makes consequential amendments to the National Health Service Act 1977 and the Audit Commission Act 1998.

4.2 This instrument should be read in conjunction with the Special Health Authorities (Summarised Accounts) Order 2006 that is being laid at the same time.

4.3 This is the third time that the Order making power in the Government Resources and Accounts Act 2000 has been used to give the C&AG statutory audit responsibility for SpHAs. The first instrument in 2003[1] enabled the C&AG to become the statutory auditor for 19 SpHAs. The second instrument in 2004[2] provided for the C&AG to become the statutory auditor for four more SpHAs.

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[1] The Government Resources and Accounts Act 2000 (Audit of Health Service Bodies)) Order 2003 (SI/2003/1324)

[2] The Government Resources and Accounts Act 2000 (Audit of Health Service Bodies) Order 2004 (SI/2004/1714)

5. Extent

5.1 The Order will apply throughout the UK. 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 Financial Secretary to the Treasury, John Healey, has made the following statement regarding Human Rights:

'In my view, the provisions of the draft Special Health Authorities (Audit) Order 2006 are compatible with the Convention rights.'

7. Policy Background

7.1 The current position is that Section 98 (1) of the National Health Service Act 1977 requires individual SpHAs to prepare their own annual accounts, these accounts are subject to audit by auditors appointed by the Audit Commission. These accounts are then submitted to the Department of Health who prepare separate NHS summarised accounts for each of the SpHAs from the underlying accounts. Following any changes that the Department might make to ensure consistency across NHS bodies and to take account of recent events, the C&AG examines and certifies the summarised accounts and lays them before Parliament. This requires two sets of accounts to be prepared for each SpHA, and in effect creates an administratively expensive dual audit burden. The Policy objective is to remove this dual audit burden, by requiring the C&AG to audit the accounts of SpHAs.

7.2 It is likely that this is the final year in which it will be necessary to take such an Order through Parliament. The Health Bill, currently going through Parliament, includes provision to amend the National Health Service Act 1977 so that, in future, all SpHAs will be statutorily audited by the C&AG without the requirement to take an instrument through Parliament under the powers available in the Government Resources and Accounts Act 2000. It is expected therefore that this will be the last time that the Government will need to take an Order through Parliament to give the C&AG statutory audit responsibility for any new Special Health Authority (and to discontinue the requirement for the Department to prepare summarised accounts – see the separate Explanatory Memorandum on the Special Health Authorities (Summarised Accounts) Order 2006).

7.3 The timetable of the Health Bill is such that this Order is necessary to provide power for the C&AG to audit these SpHAs for the current financial year. It is therefore necessary to take this instrument through Parliament in this financial year. Otherwise the four SpHAs would be subject to the administratively expensive dual audit regime process under the National Health Service Act 1977.

8. Impact

8.1 A Regulatory Impact Assessment (RIA) covering this and the Special Health Authorities (Summarised Accounts) Order 2006 is attached to this memorandum.

8.2 The impact on the public sector is cost neutral.

9. Contact

9.1 David Barton at HM Treasury, e-mail david.barton@hm-treasury.gsi.gov.uk can answer any queries regarding the instrument.

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

13 February 2006

1) REGULATORY IMPACT ASSESSMENT

TITLE OF PROPOSAL

Orders under the Government Resources and Accounts Act 2000, relating to Special Health Authorities established in the Financial Year 2005-06**:**

- Draft Special Health Authorities (Audit) Order 2006
- Special Health Authorities (Summarised Accounts) Order 2006

PURPOSE AND INTENDED EFFECT

Objective

To make the Comptroller and Auditor General (C&AG) statutory auditor for four recently established Special Health Authorities (SpHAs), and remove the requirement on the Department of Health to prepare summarised accounts of three of these SpHAs. The four SpHAs to be statutorily audited by the C&AG are:

- The Health and Social Care Information Centre
- NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG)
- The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)
- The NHS Institute for Innovation and Improvement

Background

C&AG audit

Oversight of financial management in government rests with HM Treasury, as does the responsibility for ensuring that Parliament receives financial accountability commensurate to its needs.

In 2003 the landscape of financial accountability to Parliament was altered. This was primarily a consequence of the Government fulfilling the commitments it gave in response to Lord Sharman's independent review of 'audit and accountability for central government'[3]. However, the Government went further.

In addition to ensuring the Comptroller and Auditor General (C&AG)[4] became statutory auditor of all Non Departmental Public Bodies (NDPBs), the Government chose to also pass statutory audit responsibilities for Special Health Authorities (SpHAs) to the C&AG. Prior to this, the Audit Commission had held statutory responsibility for appointing auditors to conduct SpHA annual accounts audits.

[3] Audit and Accountability in Central Government – CM 5456, March 2002

[4] The C&AG is the head of the National Audit Office (NAO) and an officer of Parliament. The statutory role of the C&AG is to offer Parliament independent audit assurance

The change to statutory C&AG audit was made through *The Government Resources and Accounts Act 2000 (Audit of Health Service Bodies) Order 2003*[5]. A further Order was made the following year[6] to maintain the policy, following the creation of several new SpHAs.

The Health Bill, currently before Parliament, includes provision to make all SpHAs subject to C&AG statutory audit for the future. It would remove the need for the Treasury to have recourse to the Order making power under the Government Resources and Accounts Act 2000 (GRAA)[7]. However, the timing of that Bill is such that an Order under the GRAA is necessary to provide power for the C&AG to audit these SpHAs for the current financial year.

Summarised accounts

Prior to 2003 the C&AG had been responsible for auditing and certifying summarised accounts of SpHAs, which were prepared under statutory obligation by the Secretary of State for Health.

The effect of making the C&AG statutory auditor of SpHAs in 2003 was to consolidate the dual audit burden on SpHAs that had always existed around the C&AG as auditor. As the summarised accounts were drawn from the accounts, that following 2003 are now audited by the C&AG, it would have been a duplication of effort for the C&AG to continue to also audit these less detailed summarised accounts.

The requirement on the Secretary of State to prepare summarised accounts for SpHAs, and to submit them for audit by the C&AG, was lifted for 16 of the SpHAs in existence in 2003 through *The Government Resources and Accounts Act 2000 (Summarised Accounts of Special Health Authorities) Order 2003*[8]. A further Order was made the following year[9] to maintain the policy following the creation of several new SpHAs.

The Order making power that the Treasury has used, and is proposing to use[10], has several qualifying limitations. It can only be applied in respect of a body for a year where the Treasury considers that the information contained in either the *Resource Accounts*, or the *Whole of Government Accounts*, makes the preparation of summarised accounts unnecessary. These accounts exclude SpHAs that mainly trade services to other parts of the NHS. NHS Blood and Transplant is one such body and is not included in the summarised accounts Order.

The Health Bill, currently before Parliament, also includes provision to ensure that, in future, summarised accounts will no longer need to be produced for SpHAs, thus removing the need for further Orders beyond those proposed here.

Rationale for government intervention

DoH's review of ALBs

The Department of Health (DoH) has conducted a review of its Arms Length Bodies (ALBs). SpHAs are one of the classes of ALB.

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[5] Statutory Instrument 2003 No. 1324
[6] Statutory Instrument 2004 No. 1714
[7] Section 25(6) and (7) of the Government Resources and Accounts Act 2000 (c. 20)
[8] Statutory Instrument 2003 No. 983
[9] Statutory Instrument 2004 No. 1416
[10] Section 14 of the Government Resources and Accounts Act 2000 (c. 20)

The department published its conclusions in July 2004[11]. It is now in the process of delivering the rationalisation of ALBs, from 38 down to 20. Several new or reconstituted SpHAs have been created in 2005, which will produce accounts for the financial year closing 31st March 2006:

- The Health and Social Care Information Centre
- NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG)
- The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)
- The NHS Institute for Innovation and Improvement

Consequence of doing nothing

What if the Government were to do nothing?

In that circumstance it would remain the Audit Commission's responsibility to appoint auditors for these SpHAs. It would be inconsistent with how all other SpHAs are audited and go against the policy as advanced in previous such orders and set out in the Health Bill. It would also cost DoH £1,800 per annum, because DoH would need to prepare summarised accounts.

CONSULTATION

The C&AG, the Auditor General Wales, the Welsh Assembly and the four SpHAs affected by these Orders have been consulted and are content.

OPTIONS

Option 1

Retain the Audit Commission's power to appoint auditors for these SpHAs [Do nothing]: this would breach the commitment entered into in the Government's response to Lord Sharman, to strengthen the C&AG's statutory audit powers. It would carry the risk that potentially adverse consequences could result from the failure to meet that commitment.

Option 2

Make the C&AG the statutory auditor of the Health and Social Care Information Centre, NHS Blood and Transplant (Gwaed a Thrawsblaniadau'r GIG), the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) and the NHS Institute for Innovation and Improvement: this maintains a consistent approach to implementing the Government's policy on statutory audit of all SpHAs.

Lift the requirement on the Secretary of State for Health to produce summarised accounts in respect of the Health and Social Care Information Centre, the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) and the NHS Institute for Innovation and Improvement for the financial year ending 31st March 2006: this maintains a consistent

[11] Reconfiguring the Department of Health's Arm's Length Bodies, July 2004

approach to implementing the Government's policy on statutory audit of all SpHAs.

COSTS AND BENEFITS

Sectors and groups affected

The proposal, if implemented, will directly affect the Comptroller & Auditor General (C&AG), the listed Special Health Authorities (SpHAs) and the Department of Health (DoH). It will do so in the following ways:

- **C&AG**. The C&AG will become responsible for auditing the SpHAs, and consequently will not have to audit their summarised accounts (except for NHS Blood and Transplant, whose activities do not qualify for lifting the requirement).
- **SpHAs**. The SpHAs will be audited by the C&AG, or where agreed, by the C&AG's contractor. They will be subject to the C&AG's audit methodologies.
- **DoH**. The department will not need to prepare summarised accounts on behalf of the Secretary of State (except for NHS Blood and Transplant, whose activities do not qualify for lifting the requirement).

It is expected that the change will be largely cost neutral, with an annual saving within DoH of £1,800.

Analysis of costs and benefits

To inform this analysis the Treasury has surveyed SpHAs. The survey sought to test the outcome to date, against the potential costs and benefits that were identified in 2003. These were detailed in the Regulatory Impact Assessment (RIA) accompanying the 2003 Orders[12].

The potential costs and benefits identified in the 2003 RIA were:

- **"**Some SpHAs have expressed concern about a potential loss of continuity of audit experience**"**.
- **"**Another potential modest risk could arise from the termination of the statutory requirement for the auditor to satisfy themselves that each audited body has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources**"**.
- **"**Some SpHAs have expressed concern about a potential increase in audit costs for themselves. However, there will be no increase in aggregate audit burden on SpHAs and thus the transfer of responsibility will not adversely affect the aggregate level of audit fees expected to be charged to SpHAs. Moreover, the C&AG has indicated that he has no intention of increasing fees to individual SpHAs, other than for inflationary pressures, unless the scale and complexity of activities increase**"**.

[12] www.hm-treasury.gov.uk/consultations_and_legislation/ria/consult_ria_index.cfm

- **"**The main benefit of the change will be a reduction in the overall audit burden, as the Department of Health will no longer be required to prepare summarised accounts for all but two **(**as at 2003**)** SpHAs**"**.

The broad findings of the Treasury's 2005 survey were that:

- There was no great loss of continuity, with a largely smooth transition appearing to have taken place.
- On average, across the SpHAs, NAO audit fees appeared to have been held in line with the C&AG's commitment.
- SpHAs sometimes have to resource for more-lengthy audit enquiries than before, and now have to resource the publication and the laying of annual accounts before Parliament.
- The Department of Health has realised a saving of around £1,800 per annum from not having to prepare summarised accounts.
- Good working level relationships appear to have been established between C&AG staff and audited SpHAs.

Summary of costs and benefits

The 2005 survey has shown that the change has been delivered with a broadly neutral cost impact; some burdens have moved from the DoH to the SpHAs, but there appears to be no overall increase.

Monitoring

HM Treasury has monitored, and will continue to monitor, the implementation of this policy. In anticipation of the Health Bill receiving Royal Assent HM Treasury will seek comments from DoH on the impact that C&AG audit has had on SpHAs as part of an annual survey similar to the one held in 2005.

Summary and Recommendation

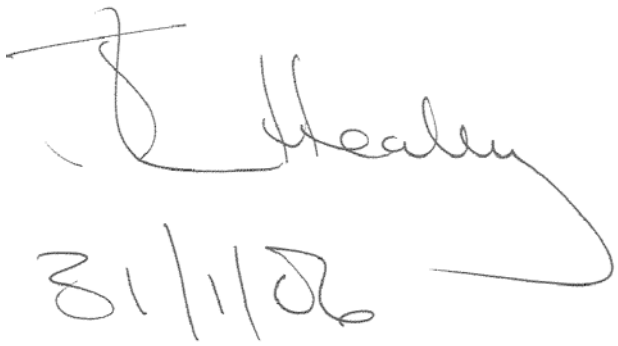
Conclusion

In light of the broad findings from the Treasury's survey of SpHAs, and given the benefit to Parliament of the C&AG auditing these bodies, this proposal represents the delivery of a clear continuing net gain for Parliament and the public.

It is therefore recommended that the necessary Orders be taken forward, as per Option 2 above.

Declaration and Publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.



Signed and Dated

John Healey, MP
Financial Secretary to the Treasury
HM Treasury

Contact point

David Barton
Treasury Officer of Accounts (TOA) team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Telephone: 020 7270 5365
Email: david.barton@hm-treasury.gsi.gov.uk