

Agenda Item No: 7
Report To: **Audit Committee**
Date: 26 September 2014
Report Title: Local Audit Consultation Response
Report Author: Rich Clarke



Summary: This report brings to Members' attention the Government's proposals for secondary legislation accompanying the Local Audit & Accountability Act, and the Council's response to those proposals.

Key Decision: NO

Affected Wards: N/A

Recommendations: **Audit Committee is asked to:-**

Members note the Government's proposals and the Council's response.

Policy Overview: The report concerns proposals made by CLG on future external audit provision and arrangements of the Council.

Financial Implications: None directly

Risk Assessment This is a consultation response, so no direct implications at this stage.

Equalities Impact Assessment No

Other Material Implications: None

Background Papers: The full CLG consultation document is at <https://www.gov.uk/government/consultations/local-audit-regulations> which also includes links to primary legislation and other relevant resources.

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Report Title: Local Audit Consultation

Purpose of the Report

1. This report brings to Members' attention both the Government's proposals for secondary legislation following passage of the Local Audit & Accountability Act 2014 and the Council's response to those proposals.
2. The consultation ran from 19 June to 18 July 2014 and the Government plans to respond in late September/early October.

Issue to be Decided

- Audit Committee is asked to note the proposals and the Council's response.

Background

3. The Local Audit & Accountability Act became law in early 2014 and made a number of changes to how the audit of local authorities is managed.
4. The most prominent change is the abolition of the Audit Commission (although a residual body persists until 31 March 2015) and allowing local authorities to select their own external audit provider once the current audit contracts expire. The current contracts were awarded to start with the audit of the 2012/13 financial statements and run for 5 years with a 2 year option, exercisable at the discretion of CLG. Consequently the earliest the Council would have its own selected external audit provider in place is the audit of the 2017/18 financial statements, suggesting that the decision to select an audit provider would likely be required no earlier than autumn 2016.
5. In June 2014 CLG launched a consultation on secondary legislation consequent to the primary act. This sought to clarify existing and propose new arrangements in a number of areas, including:
 - Applying the legislation to smaller authorities (such as parishes),
 - Arrangements for allowing collective procurement including the rules around using a 'specified person' to arrange and monitor audit provision,
 - Timetable for accounts publication including bringing the publication date forward from 30 September to 31 July,
 - Rights of access for local authority electors, including harmonising a single inspection window and
 - Transparency Code for smaller bodies.
6. The full consultation proposals, with links to supporting legislation and other documents are included on CLG's website at:
<https://www.gov.uk/government/consultations/local-audit-regulations>.

7. The Council, in common with the other three authorities who make up the Mid Kent Audit Partnership, wished to respond to the consultation. The consultation response, submitted on 17 July 2014, is included in full as an appendix to this report but makes the following headline points:
- Any change to the date of the sign off accounts must balance the benefits against the costs. In a continuing time of financial restraint in the public sector, it is timely to consider the complexity of accounts while proposing earlier closedown. Reduced timescales are difficult but achievable, however will require assistance from CIPFA to stem and turn back the growth of local authority financial statements.
 - The Regulations will need to ensure authorities are sufficiently informed to take the irrevocable opt-in/out decision [to allow a specified individual to select an auditor and audit fee on its behalf], including setting out clearly how a specified person will manage and control its costs.
 - We feel there is no pressing need to alter current public inspection arrangements, save the moves to online advertisement and streamlining to remove auditor involvement.
 - The present publication of expenditure by local authorities is working well and enforcing through regulation will risk disrupting an effective process.
 - We welcome general moves towards increasing 'online default' in information publishing.

Risk Assessment

8. At present, these are proposals and so pose no direct risk. However, the Council is monitoring progress on arrangements for external audit to ensure it is in place to respond appropriately.

Other Options Considered

9. We await CLG's response to the consultation, expected later this year.

Consultation

10. The response was compiled alongside partners in the Mid Kent Audit Partnership, including relevant directors and officers in Swale, Tunbridge Wells and Maidstone. We also sought input from Chairs of Audit Committees at each authority prior to submission.

Implications Assessment

11. No current implications, but the Council will need to consider next steps once the complete regulations are published.

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Local Audit Consultation Department for Communities and Local Government



Joint Response from:

- **Ashford Borough Council**
- **Maidstone Borough Council**
- **Swale Borough Council**
- **Tunbridge Wells Borough Council**



17 July 2014

We are four district authorities in Mid-Kent who together serve a population of more than half a million people, with annual service expenditure of £74 million and around £185 million of net assets. We work in partnership in a number of configurations to deliver services, including a shared internal audit service operating in partnership since 2010.

We are grateful for the opportunity to respond to the consultation and welcome the Government seeking our input into draft regulations. We share the Government's overall concern for maintaining the high standards of governance in local authorities while enabling local people to be able to hold local public bodies to account.

We have provided a response to each question set out in the consultation but wish to draw out the following main points by way of summary:

- Any change to the date of the sign off accounts must balance the benefits against the costs. In a continuing time of financial restraint in the public sector, it is timely to consider the complexity of accounts while proposing earlier closedown. Reduced timescales are difficult but achievable, however will require assistance from CIPFA to stem and turn back the growth of local authority financial statements.
- The Regulations will need to ensure authorities are sufficiently informed to take the irrevocable opt-in/out decision, including setting out clearly how a specified person will manage and control its costs.
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Detailed consultation response

Smaller Authorities

These regulations do not apply to district councils and so we provide no response.

Collective Procurement

Q4. Should regulations require that the decision to opt-in to sector-led arrangements is made by full council?

As proposed, this decision should be made by full council.

Although not specified in the Act itself, there is a common understanding that the decision to appoint a particular auditor ought to be made by full council on advice of its independent panel. That Schedule 3 of the Act bars a council's executive from taking the decision to appoint a particular auditor, reinforces that understanding.

The decision to opt-in is, in governance terms, the effective equivalent of a decision to appoint a particular auditor as it is the final formal decision in the process. Consequently it should be taken at no lesser a level.

Q5. Do you agree that the maximum length appointing period should be restricted to five years?

This is a reasonable restriction, balancing the need for commercial security of auditors with authorities retaining a degree of control over the process.

Q6. Do you have any other comments on the proposed collective procurement regulations?

Information made available to authorities

We note that, following invitation to opt-in; the Regulations propose councils have eight weeks to take what is essentially an irrevocable decision for the duration of the contract. We are uncertain why the Regulations propose eight weeks, and ask whether a longer window ought to be allowed, particularly if the timing of the offer is difficult for an authority's committee cycle to readily accommodate.

That notwithstanding, given the limited time available we are surprised that the Regulations are silent on the question of what information a specified person (or persons) should provide to a council to inform its decision. The list below is incomplete, but we would want to know before taking the decision as a minimum:

- The criteria by which the specified person will select an auditor;
- The process for consultation with authorities at key points in the selection and throughout the contractual period;
- Proposals for how the specified person would monitor independence and adjudicate in the event of dispute;
- How the specified person will go about setting the fee, and
- How the specified person will recover its own costs.

We believe it is vital that the Secretary of State set out in regulation his expectations on how a specified person should shape his offer to authorities. This will help to ensure that the authority can exercise an informed choice in its audit provision and so retain the policy benefits outlined by the Secretary of State in his introduction to

the Act. In order to maintain appropriate governance, authorities should have the power to opt-out of the arrangement should the result be materially at odds to that intention conveyed by the specified person.

Costs of the specified person

Further to the above, it is inevitable that the specified person will incur both one-off project and on-going monitoring costs associated with their responsibilities, as distinct from the fee charged by the auditor for his or her services. Authorities will want to know both the quantum and means of recovery proposed and have a means of calling the specified person to account for those costs.

Removal of a specified person

The proposed Regulations 36-38 grant the Secretary of State the power to revoke (after appropriate consultation) the rights of a specified person and to exercise those rights himself or transfer them to another body. We suggest that such an action would constitute a fundamental change in the circumstances of the appointment, equivalent to those outlined in paragraph 3.11 of the consultation, and so should be added to that list as a point where authorities may 'opt-in' mid contract or elect to 'opt-out' and make their own arrangements.

Accounts and Audit Regulations

Q7. Is 30 working days a suitable period for the accounts to be available?

We have not noted an issue with the current 20 working day period. Councils have in the past shown reasonable flexibility in accommodating those enquiries which continue beyond the 20 day window, or where reasonable, could not begin during that time. The majority of those wishing to inspect are waiting for the window to open and so we do not believe an extension will increase the number of requests we receive. I agree with this comment. It is worth noting that with the transparency information available together with the use of Freedom of Information requests means that a great deal more detail is now available all year round than was previously the case.

Consequently we believe this change will have little impact and so have no strong view on its implementation.

Q8. Do you agree this information should be published electronically?

Yes. We are moving in the direction of 'digital by default' and so welcome any Government moves that help us to achieve that goal.

Q9. Do you agree that a common period for the exercise of public rights should be included in the regulations?

Currently the rights extend only to electors in the local authority areas, although interested parties from outside the area can act through local nominees. That notwithstanding, we have seen no evidence of the confusion cited in the consultation at 4.10 regarding variations in inspection times. We note that inspection periods may vary, but still fall within a three month window during the summer and so believe few local government electors of a mind to inspect the accounts, are currently frustrated in their attempts to do so by the timetable.

Moreover, we note that auditors will be reluctant to issue their final opinion until the local electorate have had the chance to inspect the statements and ask their questions. This will mean the, presumably unintended consequence that those authorities who currently publish significantly ahead of the timetable (such as Oldham MBC) will be prevented from continuing to do so. This seems a perverse outcome at a time when encouraging early closure is the aim.

Consequently we see little merit in harmonising inspection periods across a common window. Should the deadline move to 31 July, there will in any event be only 84 working days in which the 30 day inspection window might conceivably be held. For those authorities working on the 31 May-31 July accounts deadlines there will be only 44 working days. Therefore, in practice, the inspection windows will be harmonised as a by-product of the moving deadlines without need for specific regulatory provision.

Q10. Do you have any views on the intentions for exempt authorities set out above?

These regulations do not apply to district councils and so we provide no response.

Q11. Do you have any other comments on the proposed Accounts and Audit Regulations?

Timetable and accounting requirements

We have a strong record of producing financial statements on time and working with our auditors to ensure timely completion of the opinion. However, any change to the date for sign off of the accounts must balance the benefits against the costs and additional effort involved. The complexity of accounts for all sizes of local authorities has increased in recent years, which is an approach contra to the aim of these Regulations in seeking to achieve an earlier closedown, through a simplified accounts process. The earlier timetable can only be practically achieved at a higher cost to budgets, in a continuing time of financial restraint in the public sector.

We share the view expressed in the consultation (4.6) on the length and complexity of local authority accounts prepared according to proper practices, as currently defined. Therefore, while we welcome the addition of a separate narrative to aid the reader, we are disappointed that this comes as an additional requirement at a time of shortening deadlines. We would welcome CIPFA/CLG introducing a concept similar to the Governments 'one-in, two-out' position on business regulation.

Whilst local authorities do have an excellent track record in producing financial statements to time and quality requirements, there is also the risk that bringing the

timetable forward will lead to more statements received of qualified audit opinions; as experienced by central government departments such as CLG.

Internal audit

We note the changes proposed to section 5 in the Regulations on internal audit from its equivalent (section 6) in the 2011 Regulations. We expect that the removal of 2011 Regulations sections (3) and (4) is because these have become redundant with the advent of Public Sector Internal Audit Standards (PSIAS) review and reporting requirements.

However, we are uncertain why the Regulations then go on to apparently miss the opportunity to reaffirm PSIAS as the standard to which internal audit must operate, moving from “**in accordance with** proper practices” in the 2011 Regulations to “**taking into account** Public Sector Internal Auditing Standards or guidance” in the 2014 proposed Regulations (emphasis added). We suggest that the Regulations ought to emphasise the importance of effective internal audit by combining the two into “in accordance with Public Sector Internal Auditing Standards”.

Transparency Code

Q12. Do you agree that the Code should be mandatory for internal drainage boards, charter trustees and port health authorities with an annual turnover not exceeding £25,000?

We agree. These bodies precept significant sums which have to be recovered from local council tax payers. They should therefore be subject to the same level of central control and obligations as local authorities.

Q13. Should there be a threshold above which individual item of expenditure must be published? If yes what should this threshold be (e.g. £50, £100)?

We feel that the currently operating voluntary disclosure by authorities is working well in delivering information to the public, to help inform them as to the council's activities. Voluntary disclosure has led to all but one authority making this information available. Consequently we do not think there is merit in making this the subject of regulation as it will potentially ossify publication around a 'legal requirement' and so stifle those councils who wish to respond to the particular needs of their populations by varying the extent, format and frequency of publication.

Q14. What exemptions – if any – would need to be made to information published to explain negative responses to the internal controls objectives (e.g. information relating to a current fraud case)?

We are unaware of any local authority that does not at present publish its annual internal audit report, not least because it will be discussed during the public part of the relevant committee meeting (usually audit committee).

The nature of any exemptions will be difficult to define as they will inevitably be shaped by local circumstances. Consequently we believe there is a substantial risk of unintended consequences if the Transparency Code were to attempt to elucidate a single set of 'exempt information', or even set out a principles based approach to deciding what information might be withheld.

Consequently we feel that the current arrangements for publishing internal audit reports are working well and so would not benefit from a regulatory backing which could lead to lack of clarity and potentially even reduce transparency.

Q15. The Government proposes that internal drainage boards will be exempt from publishing the details of public land and infrastructure assets. Do you agree?

We do not agree. As noted in the response to Q12, as these bodies precept significant sums we believe they ought to be subject to the same obligations as local authorities.

Q16. The Government proposes that charter trustees will be exempt from publishing the details of public land and building assets. Do you agree?

No response.

Q17. Do you agree this information should be published electronically?

Yes. We as councils are moving in the direction of 'digital by default' and so welcome any Government moves that help us to achieve that goal.

Q18. How much additional staff time and cost will be involved for authorities in publishing the required data online?

Given that the Code allows for publication requirements to be fulfilled through electronic issue of the existing document (the asset register) we do not believe there will be substantial additional cost associated with online publication.