

## Appointing Person Consultation:

### Scope of the consultation

**Topic of this consultation:** This consultation seeks views on amending the Local Audit (Appointing Person) Regulations 2015.

**Scope of this consultation:** The Ministry of Housing, Communities and Local Government is consulting on updating the Local Audit (Appointing Person) Regulations 2015.

This includes all eligible principal local government body types listed in schedule 2 of the Local Audit and Accountability Act 2014 including:

- county councils
- district councils
- London borough councils
- unitary authorities
- metropolitan councils
- local police bodies
- fire and rescue authorities
- combined authorities (covering elected regional mayors), national park authorities
- conservation boards
- passenger transport executives
- waste authorities
- functional bodies and other specified bodies

Smaller authorities (such as parish councils) and NHS bodies, including accountable care bodies, are not eligible to opt in.

**Geographical scope:** The questions in this consultation paper apply to local government bodies in England, as defined above.

**Impact assessment:** We will produce a full Public Sector Equality Duty (PSED) assessment as the policy proposals develop further following this consultation.

### Basic Information

**To:** This is an open consultation. We particularly seek the views of individual members of the public; prospective and current elected members/representatives; all relevant local government bodies defined above; and those bodies that represent the interests of local authority members/representatives at all levels.

**Body/bodies responsible for the consultation:** The Local Government Stewardship Division in the Ministry of Housing, Communities and Local Government is responsible for conducting this consultation.

**Duration:** This consultation will last for 6 weeks from 20 April 2021.

**Enquiries:** For any enquiries about the consultation please contact: [localaudit@communities.gov.uk](mailto:localaudit@communities.gov.uk)

**How to respond:** You can respond to this call for evidence through our online consultation platform, [Citizen Space](#).

## Introduction

1. Sir Tony Redmond, in his review of the effectiveness of external audit and transparency of financial reporting in local authorities, recommended that the current fee structure for local audit be revised to ensure that adequate resources are deployed to meet the full extent of local audit requirements.
2. To support the implementation of this, the department is providing relevant local government bodies with £15 million in additional funding in 2021/22. This is intended to support affected local bodies to meet the anticipated rise in fees for 2020/21 audits, driven by new requirements on auditors, including the National Audit Office's Code of Audit Practice 2020, and to enable local authorities to develop standardised statements of service information and costs.
3. The Redmond Review considered the current processes that the above regulations require the appointing person for principal authorities (Public Sector Audit Appointments Ltd (PSAA)) to follow, both when setting fees and agreeing changes/variations to those fees to reflect increased work for the auditors. The arrangements for smaller bodies are covered in separate regulations.
4. Sir Tony found that there was an increasing disparity between the scale fees 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. Furthermore, the delay in closing a large number of audits of accounts in 2018/19 and 2019/20 had meant that PSAA Ltd were unable to take an informed view on the quantum of the increase that should be included when consulting on the base fee scales for future years.
5. The [government response](#), published on 17 December 2020, made a commitment to take swift action to support market stability and in particular to review regulations to provide the appointing person with greater flexibility to ensure the costs to audit firms of additional work are met and reduce the need for time consuming case by case consideration.
6. This could include enabling the appointing person to allow fee scales to be set later in the financial year to which the audit relates and enabling the appointing person (subject to appropriate consultation) to set additional fees across groupings of audited bodies in-year where there is clear evidence of additional work that affects those groupings.
7. We are also consulting separately over 4 weeks seeking views on the most [appropriate methodology for allocating £15 million to support affected local bodies meet the anticipated rise in audit fees](#), driven by new requirements on auditors including the 2020 Code of Audit Practice, and to enable local authorities to develop standardised statements of service information and costs.

## Summary of proposals for consultation

- To amend the date by which the appointing person is required to consult on and set the fee scale from before the start of the financial year to 30 November of the financial year to which the fee scales relate.

- That the appointing person should be able to propose and consult on a standardised additional fee for all or groups of bodies for elements of work based on its own independent research.
- To enable the appointing person to approve additional fee proposals from audit firms for additional elements of work completed during the audit rather than after completion.
- To ensure that the appointing person is able 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. This includes enabling the appointing person to have audit contracts that are shorter than an appointing period.
- The consultation also seeks any more general comments about proposed changes to these regulations.

### **Changes to the regulatory deadline by which the scale fees need to be set**

1. At present, regulation 16 of the [Local Audit \(Appointing Person\) Regulations 2015](#) requires the appointing person for principal authorities (PSAA Ltd) to specify, before the start of the financial year to which the scale of fees relates, the scale or scales of fees for the audit of the accounts of opted in authorities. This means that, for example, they are setting fees for audit year 2021/22 in March 2021, when the audit of the accounts for that year are not required to be completed until September 2022. By specifying this so far in advance, the appointing person is currently unable to assess how policy and regulatory changes - such as the new National Audit Office (NAO) Code of Audit Practice Value for Money arrangements work for the 2020/21 audit – should be accounted for in the fee scales.

2. As a result, the scale fees have ceased to represent a reliable estimate of the final cost of the audit and, instead, become an interim figure which will almost certainly be overtaken as further information emerges. In practice, this can then force audit firms and local authorities down the fee variation request process to reflect additional costs that should be part of the base fee. The delays in completing accounts in 2018/19 and 2019/20 has compounded this, as it has meant that the appointing body has been unable to quantify past additional work accurately to be able to calculate the fees in time for the scale fee consultation.

3. The consultation therefore proposes to amend the date by which the appointing person is required to consult on and set the fee scale from before the start of the financial year to 30 November of the financial year to which the fee scales relate. This will enable scale fees to reflect more up to date information. Therefore, for example the 2022/23 scale fees would need to be set by 30 November 2022 rather than by 31 March 2022. The resulting scale fees would be more up-to-date as they would be based on better information, including the results of the 2020/21 audits, the analysis of the additional fees to identify the recurring elements that should be 'baked in' to the 2022/23 scale fees, and the up-to-date research on new audit requirements. The timing would also enable audited bodies to make an informed assessment of the fee for their budget setting process for the following year, drawing on the up-to-date information provided by the appointing person.

4. In developing this proposal, the department has alternatively considered whether it would be preferable to instead introduce a flexibility to amend fee scales 'in-year'. There is a balance to be struck between wanting to have fee scales that, as far as possible, reflect the expected base fees (and therefore reducing the need for fee variations to reflect additional recurring charges) while also giving bodies confidence that audit fees are unlikely to change substantially, unless significant additional work is required. It is considered that the power to amend fee scales 'in-year' would introduce uncertainty for local bodies, and so an extended deadline for setting the fee scales, coupled with amendments to the fee variation process, is preferable.

5. There are also trade-offs in defining the date for a new, extended deadline. To provide the most up-to-date picture, we would want to ensure that the appointing person would be able to take into account any additional costs agreed for the preceding year's audits given that audited accounts should be published by 30 September. But it is also important to ensure that local bodies have sufficient advance notice to account for these costs in their financial planning. For this reason, we currently consider that a new deadline date of 30 November is the most appropriate date, but we would welcome views on this.

Q1 Do you agree with the above proposal to extend the regulatory deadline by which the scale fees need to be set to enable the appointing person (PSAA Ltd) to take into account more up-to-date information?

- Yes – I agree with the above proposal
- No – I disagree with the above proposal
- Unsure

### Use of Standardised Fee Variations

6. At present, the only way in which audit fees can be increased beyond the fee scales consultation after the start of the financial year is through the fee variations process set out in regulation 17. This is to take account of circumstances where the auditor is required to undertake additional work on an audit beyond that which was envisaged, such as where the accounts reflect complex transactions not built into the fees scale, where working papers have been poorly prepared, or for work relating to an auditor's statutory responsibilities such as objections, statutory recommendations or public interest reports. Although not required in the regulations, it is a contractual requirement that the auditor discusses the proposed variations with the audited body before submitting them to the appointing person for determination.

7. In 2015, when the regulations were drafted, it was expected that this process would only be required for a small number of bodies where specific circumstances determined more work was needed. However, the drive for higher quality audits following high profile corporate failures (such as Carillion and Patisserie Valerie) has resulted in significant additional work being needed, and has meant that individual fee variations are being required for the majority of opted in bodies, which is time consuming and inefficient for all parties. This has been amplified during the Covid-19 pandemic, where additional audit work has been required across the board.

8. In November 2020, the appointing person for principal bodies (PSAA Ltd) consulted on a potential new approach to fee variation, following requests from auditors and audited bodies, to consider whether it would be possible to remove or reduce the need for local negotiations, where the factors are likely to affect most or all audited bodies. The consultation proposed two types of variation:

a. National variations – for changes that relate to the conduct of most or all audits such as changes to audit and accounting codes, financial and regulatory requirements – i.e. where a standard cost can be reasonably estimated; and

b. Local variations which relate to local factors affecting a specific audit.

9. The response to the consultation proposals was favourable and PSAA Ltd has commissioned independent research to review potential examples where standardised fee variations could apply.

10. The government response to the Redmond Review proposed to enable the appointing person (subject to appropriate consultation) to set additional fees across groupings of audited bodies in-year where there is clear evidence of additional work that affects those groupings. This consultation exercise is now proposing to update the regulations to facilitate this. It would require the appointing person to conduct research and, where relevant, propose a standardised fee for a class/group or even all bodies, thus eliminating the need for potentially time-consuming local discussions.

11. Even where the results of the research may show that it is not feasible to set a standardised fee (such as where there are too many variable factors that mean that the audit work needed at different bodies is difficult to predict) the appointing person would publish the factors that are likely to influence the extent of additional audit work required. This will be useful reference material for audited bodies when discussing their local auditor's proposed additional fees.

12. If, having completed their research, the appointing person felt that a standardised fee variation was appropriate, they would be required to consult on this with affected bodies and firms, in the same way that is required for setting the yearly fee scales.

13. These measures would help address the difficulties local bodies reported to the Redmond Review, whereby they sometimes struggled to understand what fee variation requests were for. Furthermore, removing the need for case-by-case consideration, where appropriate, would help to take a potential source of tension out of the system, reduce the burden on the appointing person, local bodies and firms of negotiating every fee variation and contribute to improved fairness within the current fee structure, whilst providing much greater certainty to all parties.

14. This consultation therefore proposes that the appointing person should be able to propose and consult on a standardised additional fee for all or groups of bodies for elements of work based on its own independent research. The requirement to consult would be in line with PSAA's consultation principles. Whilst the examples included in paragraph 8 above generally relate to cases where additional work (and therefore higher fees) is required, it is also important to emphasise that these

variations could facilitate reductions in fees, if less work than anticipated was required.

Q2. Do you agree with the above proposals to enable the appointing person to consult on and agree standardised fee variations to be applied to all or certain groups of principal bodies?

- Yes – I agree with the above proposal as long as where it is not possible to set a fee on a national basis, variations that arise are limited to identified factors
- No
- Unsure

Q3. National fee variations could only be implemented in prescribed circumstances, which would be defined in the regulations. Do you have any comments on the example circumstances outlined in paragraph 8, or any additional circumstances that should be considered?

The examples seem appropriate. No other circumstances need to be included.

#### Timing of Fee variation payments

15. The number of fee variations has increased significantly following on from the drive to improve audit quality. The framework for fee variations was designed when the number was far fewer than now, and when it was appropriate that they were processed at the end of the audit. As the fee variations become a larger part of the audit fee as a whole, delays in payment become more of an issue.

16. The consultation therefore proposes to clarify that the appointing person is able to approve additional fee proposals from audit firms for additional elements of work completed during the audit rather than after completion. The appointing person currently reviews every individual fee variation proposal from firms in accordance with the detailed procedure published on its website and approval would be subject to the appointing person carrying out its usual checks to be satisfied that additional fees are appropriate for the work done, once it has been completed and sufficient evidence has been provided.

17. This would allow the auditor to recover an appropriate audit fee more promptly for the additional elements of work that the auditor needs to carry out during the audit cycle, although still requiring the appointing body to receive confirmation that the work had been completed. This would also help to reduce the year end peak of additional fee proposals and it would provide both sides with more certainty on those fee elements earlier in the audit cycle.

Q4. Do you have any comments about the above proposals to enable some fee variations for additional elements of work to be approved during the audit, noting that the appointing person's scrutiny processes to review the proposed additional fees would operate in all cases in the usual way?

This seems reasonable. It is unlikely to be a problem for the audited body as it is probably only a minor cash flow issue.

### Auditor appointment period

18. The Regulations currently require the appointing person to appoint a local auditor “for the appropriate period”, which is the “compulsory appointing period”. This means the financial year or years for which the appointing person is responsible for appointing a local auditor, which can range from 1 to 5 years, with the default being 5 years to provide certainty for all parties.

19. The Regulations are clear that where an appointment comes to an early end (e.g. because of an independence issue) the appointing person is required to appoint an alternative auditor as soon as practicable. However, the Regulations are not clear whether the appointing person can deliberately make an appointment for a shorter duration than to the end of the appointing period.

20. The advantage of being able to do so would mean greater flexibility in terms of auditor appointments. For example, this would enable procurements within an appointing period, which may help maintain a sustainable supply market as losing firms do not have to wait 5 years for the chance to win another appointing person contract. There may also be situations where audit firm rotation would be appropriate part way through an appointing period, to accord with best practice.

21. The consultation therefore proposes to provide clarification that the appointing person is able 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. This includes enabling the appointing person to have audit contracts that are shorter than an appointing period.

Q5 Do you agree with the above proposal that the appointing person is able 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?

- Yes – I agree with the above proposal. However, it needs to be done with the consideration, that every time the auditor is changed, there is initially more work for the auditor in terms of familiarisation with the new organisation is auditing and for the auditee in supporting this process. Therefore it would not be appropriate to have lots of short term commissions.
- No – I disagree with the above proposal
- Unsure

### General comments

Q6. Finally, we would also welcome any more general comments on the proposals, including any comments relating to equalities impact or any potential for unintended consequences of any of the above proposals.

No comments to add

### List of Questions

Q1. Do you agree with the above proposal to extend the regulatory deadline by which the scale fees need to be set to enable the appointing person (PSAA Ltd) to take into account more up-to-date information?

Q2. Do you agree with the above proposal to enable the appointing person to consult on and agree standardised fee variations to be applied to all or groups of principal bodies?

Q3. National fee variations could only be implemented in prescribed circumstances, which would be defined in the regulations. Do you have any comments on the example circumstances outlined in paragraph 8, or any additional circumstances that should be considered?

Q4. Do you have any comments about the above proposals to enable r some fee variations for additional elements of work to be approved during the audit, noting that the appointing person's scrutiny processes to review the proposed additional fees would operate in all cases in the usual way?

Q5. Do you agree with the above proposal that the appointing person is able 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?

Q6. Finally, we would also welcome any more general comments on the proposals, including any comments relating to equalities impact or any potential for unintended consequences of any of the above proposals.

### About this consultation

This consultation document and consultation process have been planned to adhere to the Consultation Principles issued by the Cabinet Office.

Representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions when they respond.

Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection



Act 2018 (DPA), the UK General Data Protection Regulation, and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Ministry of Housing, Communities and Local Government will process your personal data in accordance with the law and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties. A full privacy notice is included at Annex A.

Individual responses will not be acknowledged unless specifically requested.

Your opinions are valuable to us. Thank you for taking the time to read this document and respond.

Are you satisfied that this consultation has followed the Consultation Principles? If not or you have any other observations about how we can improve the process please contact us via the complaints procedure.

## **Annex A – Personal Data Rights**

### **Personal data**

The following is to explain your rights and give you the information you are entitled to under the Data Protection Act 2018.

Note that this section only refers to your personal data (your name address and anything that could be used to identify you personally) not the content of your response to the call for evidence.

#### **1. The identity of the data controller and contact details of our Data Protection Officer**

The Ministry of Housing, Communities and Local Government (MHCLG) is the data controller. The Data Protection Officer can be contacted at [dataprotection@communities.gov.uk](mailto:dataprotection@communities.gov.uk).

#### **2. Why we are collecting your personal data**

Your personal data is being collected as an essential part of the call for evidence process, so that we can contact you regarding your response and for statistical purposes. We may also use it to contact you about related matters.

### **3. Our legal basis for processing your personal data**

The Data Protection Act 2018 states that, as a government department, MHCLG may process personal data as necessary for the effective performance of a task carried out in the public interest. i.e. a call for evidence.

### **4. With whom we will be sharing your personal data**

We use a third-party platform, Citizen Space, to collect consultation responses. In the first instance, your personal data will be stored on their secure UK-based servers.

### **5. For how long we will keep your personal data, or criteria used to determine the retention period.**

Your personal data will be held for two years from the closure of the call for evidence.

### **6. Your rights, e.g. access, rectification, erasure**

The data we are collecting is your personal data, and you have considerable say over what happens to it. You have the right:

- a. to see what data we have about you
- b. to ask us to stop using your data, but keep it on record
- c. to ask to have all or some of your data deleted or corrected
- d. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at <https://ico.org.uk/>, or telephone 0303 123 1113.

### **7. Your personal data will not be sent overseas**

### **8. Your personal data will not be used for any automated decision making.**

### **9. Your personal data will be stored on a secure government IT system.**

Your data will be transferred to our secure government IT system as soon as possible after the consultation has closed, and it will be stored there for the standard two years of retention before it is deleted.