These notes refer to the Local Audit and Accountability Act 2014 (c.2) which received Royal Assent on 30 January 2014

LOCAL AUDIT AND ACCOUNTABILITY ACT 2014

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Local Audit and Accountability Act 2014 which received Royal Assent on 30 January 2014. They have been prepared by the Department for Communities and Local Government and the Department of Health in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

Summary

3. The Local Audit and Accountability Act 2014 abolishes the Audit Commission and establishes new arrangements for the audit and accountability of local public bodies (or 'relevant authorities' as set out in Schedule 2 to the Act) in England. This includes certain health service bodies that were previously audited by auditors appointed by the Audit Commission. In addition to these health service bodies, the Act makes some consequential changes to the audit arrangements for NHS Foundation Trusts.

4. The Act also amends the legislative framework for council tax referendums to provide that increases set by levying bodies are taken into account when local authorities determine whether they have set an excessive amount of council tax each year. It also provides for measures which can ensure local authority compliance with the Code of Recommended Practice on Local Authority Publicity.

5. Further, the Act introduces greater transparency and openness to meetings of local government bodies by allowing local residents to film, tweet and blog and access information relating to the decisions made in those meetings. Finally the Act also reforms legislation regarding parish polls, allowing the Secretary of State to make provisions about the number of electors needed to trigger a poll and to define the subject matter on which a poll may be held.

Background

6. On 13th August 2010, the Government announced its intention to abolish the Audit Commission and put in place new decentralised arrangements for the audit of local public bodies.

7. The Government's proposals were first set out and consulted on in March 2011. The Government published its response to the consultation in January 2012 and published draft legislation for further consultation and pre-legislative scrutiny in July 2012. An

ad-hoc Parliamentary Committee subjected the draft Act to pre-legislative scrutiny in the Autumn of 2012 and published their recommendations in January 2013. The Government published its response to those recommendations on 25th April 2013.

8. Local authorities are required, when producing publicity of any kind, to have regard to the *Code of Recommended Practice on Local Authority Publicity* (the *Publicity Code*). The Government revised the *Publicity Code* in March 2011 to introduce recommendations on the frequency, content and appearance of local authority newspapers.

9. The Localism Act 2011 ensured that excessive council tax increases are put to the local electorate for approval in a referendum. Under that Act, levies were excluded from the billing and precepting authorities' calculations of whether their council tax increase was excessive and required a referendum to be held. A precepting authority is one that does not collect its own council tax, but instead has the power to instruct another local authority (the billing authority) to collect it on its behalf. The Local Audit and Accountability Act 2014 amends Chapter 4ZA of Part 1 of the Local Government Finance Act 1992 so that the key referendum principle takes account of levy increases in the future. This will ensure that council tax referendum principles have a direct correlation to the increases that council tax payers see on their bills.

10. The section regarding access to local government meetings and documents builds on previous reforms to boost transparency in local government meetings. Through the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 the Government introduced greater transparency and openness to the meetings of a council's executive. These Regulations gave the public more rights to attend meetings of a council's executive and access information relating to decisions made in those meetings. However, these regulations did not apply to full council meetings and other local government bodies. The provisions in the Local Audit and Accountability Act 2014 were therefore introduced to address this.

11. Parish polls are a very useful way of gauging local opinion on matters that are important to local people. However, during debate in the House of Lords, it was brought to the Government's attention that the legislation underpinning parish polls was in need of modernisation. Therefore the Act was amended to give powers to the Secretary of State to make provisions about the conduct of parish polls.

OVERVIEW OF THE STRUCTURE OF THE ACT

12. The Act consists of seven Parts and 13 Schedules. The main provisions are as follows:

- The repeal of legislation under which the Audit Commission operates (the Audit Commission Act 1998) and provision to transfer assets, liabilities and continuing functions to other bodies.
- A requirement for relevant authorities other than health service bodies in England to keep accounting records and to prepare an annual statement of accounts, which must be audited. The equivalent provisions for health service bodies exist within the National Health Service Act 2006 and these continue to apply.
- A requirement on relevant authorities to appoint an external and independent auditor on the advice of an independent auditor panel and to publish information about the appointment within 28 days of appointment.
- A requirement that an audit of a relevant authority (referred to in the Act as a "local audit") must include a value for money element (replicating the definition set out in existing legislation).
- The creation of a regulatory framework for local audit which applies, with modifications, Part 42 of the Companies Act 2006, whereby the Financial Reporting

Council and professional accountancy bodies regulate the provision of local audit services.

- The transfer of responsibility for setting the code of audit practice and supporting guidance to the National Audit Office, and provisions for how the code should be approved by Parliament.
- The transfer of the Audit Commission's data matching powers for the purposes of assisting in the prevention and detection of fraud to the Secretary of State or the Minister for the Cabinet Office. It was announced on 15 July 2013 that the data matching powers would transfer to the Cabinet Office.
- A power for the Secretary of State to commission an inspection of a best value authority, mirroring powers in other legislation.
- The Act amends the National Audit Act 1983 to broaden the powers of the Comptroller and Auditor General to enable the National Audit Office to undertake examinations of thematic value for money issues relating to groups of relevant authorities (with some exclusions), and to access information held by the latter where the National Audit Office needs it to fulfil its responsibilities. Health service bodies are not included within the provision because they are within the remit of the National Audit Office for value for money considerations.
- The Act also extends existing powers for the Secretary of State to issue codes of practice concerning the publication of information by certain authorities, so that such codes may apply to relevant authorities classified as 'smaller authorities' for the purposes of the Act, and to require those authorities to publish that information.
- The Act amends the Local Government Act 1986 to ensure that local authorities comply with some or all of a code of recommended practice on local authority publicity.
- The Act amends the council tax referendums provisions in Chapter 4ZA of Part 1 of the Local Government Finance Act 1992 so that levies are included in a local authority's calculation of whether its council tax is excessive for the purpose of determining whether it is required to hold a council tax referendum
- The Act allows the Secretary of State to make regulations to allow the public to film, blog and tweet at the public meetings of local government bodies, and to require written records to be kept of certain decisions taken by officers of these bodies.
- The Act also allows for the Secretary of State to make regulations about the conduct of parish polls.

TERRITORIAL EXTENT AND APPLICATION

13. The Act applies to relevant authorities in England. Relevant authorities are listed in Schedule 2 of the Act.

COMMENTARY

Part 1 - Abolition of Existing Audit Regime

Section 1: Abolition of Audit Regime and Schedule 1: Abolition of Audit Commission: supplementary provision

14. Section 1 repeals the Audit Commission Act 1998 and abolishes the Audit Commission for Local Authorities and the National Health Service in England ("the Audit Commission").

15. Schedule 1 provides for the Secretary of State to make a scheme to transfer the property, rights and liabilities of the Audit Commission to another body or individual. This

includes providing for the Secretary of State to make payments in respect of the Audit Commission Pension Scheme. It also allows for the number of Audit Commission Board members to be reduced to reflect the transitional role of the Commission pending abolition. Upon closure of the Audit Commission, the Secretary of State must prepare a final statement of accounts for the last financial year of the Commission (unless the Audit Commission has already done so) and for any subsequent period up until the abolition of the Commission and send them to the Comptroller and Auditor General to inspect and report on. The Comptroller and Auditor General must then make arrangements to lay the statement of accounts and his or her report before Parliament. The Secretary of State must also prepare a final annual report about the discharge of the Audit Commission's functions since its last annual report, which must also be laid before Parliament.

16. Schedule 1 also provides for the repeal and revocation of various provisions consequential to the repeal of the Audit Commission Act 1998.

Part 2 – Basic Requirements and Concepts

Section 2 and Schedule 2: Relevant authorities

17. Section 2 defines a "relevant authority" as a body listed in Schedule 2, which in turn lists all the persons and bodies in England to which the provisions apply. The Secretary of State may amend the list of bodies in Schedule 2 and, under section 2, make consequential amendments to any of the provisions in the Act, or make different provision for a body added to the Schedule.

18. Schedule 13 (discussed below) provides that NHS trusts and trustees of NHS trusts are relevant authorities for the purposes of the Act, until those bodies are abolished under the Health and Social Care Act 2012.

Section 3: General requirements for accounts

19. Section 3 sets out the general duties of relevant authorities, other than health service bodies as defined in subsection (9), to keep adequate accounting records and to prepare annual statements of accounts for years ending 31 March. Equivalent provision for health service bodes is made under the National Health Service Act 2006 and these provisions are not amended by this Act.

20. The duties set out in section 3 follow the pattern of duties laid on companies and charities by the Companies Act 2006 and the Charities Act 2011, and draw a distinction between the records maintained during the year and the annual published statements. They replace the previous statutory duty on local public bodies to make up their accounts each year to 31 March, a duty which reflected the practice in earlier times of writing the year end accounting statements into the books in which the in-year records were kept. Subsection (8) highlights that section 32 gives a power to make regulations on accounting records and statements of accounts (but not in relation to health service bodies). Subsection (5), taken with subsections (6) and (7), gives a power to vary the period of the financial year for relevant authorities, which will be done by regulations rather than as formerly by direction. This power might be used, for example, if an authority was being wound up at a date other than 31 March. This subsection also allows regulations to exclude or modify the application of the section to specified relevant authorities.

Section 4: General requirements for audit

21. Section 4 imposes the general requirement that the accounts of a relevant authority must be audited in accordance with the Act or a provision made under it by an auditor appointed by the authority, again in accordance with the Act or a provision made under it. The section introduces the term "local auditor" to describe an auditor appointed in

this way. Subsections (2) to (5) define "accounts" as the term applies to the various categories of relevant authorities.

Section 5: Modification of Act in relation to smaller authorities

22. Section 5 gives the Secretary of State the power to make provision about the audit of the accounts of smaller authorities (bodies whose gross income and gross expenditure does not exceed £6.5m in a financial year). The regulations may disapply or vary any of the provisions in the Act in relation to smaller authorities (subsection (2)).

23. Regulations may provide for a body specified by the Secretary of State to appoint an auditor on behalf of a smaller authority, make provision about who may be specified, set out procedures for specifying, and de-specifying, such a body, and for arrangements in the event of de-specification for the transfer of the body's rights and liabilities. Regulations may confer functions on the body specified by the Secretary of State and require consultation before functions are exercised (subsection (4)). Regulations may make provision for smaller authorities to either opt-in or to opt-out of the body specified by the Secretary of State and for the procedures required to opt-in or to opt-out. Regulations may make provision in relation to the payment of fees and provision of information by opted in authorities. In addition, regulations may make provision to enable smaller authorities to pay into a fund to cover auditors' costs in certain circumstances (subsections (5) and (6)). The regulations may also make provision about the eligibility of an auditor of a smaller authority and about the nature of the audit itself (subsection (7)). Regulations may provide for specified types of smaller authorities (for example, this power may be used in relation to relevant authorities with a turnover under £25k in a financial year) to be exempt from the requirement for external audit and the circumstances under which such exemption would not apply or would cease to apply, for example, where a small authority is new or its auditor issued a public interest report (as to which, see Schedule 7) in the previous financial year (subsection (8)). All smaller authorities will still be required to have an internal audit.

Section 6: Meaning of "smaller authority"

24. Subsection (1) sets out how the definition of a "smaller authority" applies to a body. In order to avoid bodies flipping in and out of being a smaller authority on an annual basis, a body is not classified as a smaller authority if it has exceeded the £6.5m threshold in the year of audit and in the previous two years. If the body hasn't existed for those three years then either two years or one year is used as appropriate. Subsection (3) allows estimates to be used when determining whether a body falls above or below the £6.5m threshold, as only estimated figures will be available for its gross expenditure and gross income by the 31st December deadline for appointing an auditor. Subsection (4) gives the Secretary of State the power to make regulations to provide for cases where an authority has been treated as a smaller authority for a financial year, but was in fact not a smaller authority for that year. Subsection (5) gives the Secretary of State the power to amend the section.

Part 3 – Appointment Etc of Local Auditors

Section 7: Appointment of local auditor

25. Section 7 provides that an auditor must be appointed by the end of 31st December in the financial year before the financial year which will be covered by the accounts to be audited. The appointment may last for more than one year but a new appointment must be made at least once every five years. The Secretary of State is empowered to alter this period of time by regulations. The auditor must be eligible to audit the relevant authority's accounts (as to which, see Part 4) and must be independent from the body being audited. Subsection (6) provides for more than one auditor to be appointed to audit the accounts, enabling different auditors to audit different parts of the accounts, to carry out different functions, or to audit some or all parts of the accounts jointly.

Subsection (8) gives effect to Schedule 3, which sets out further provisions around the appointment of local auditors.

Schedule 3, Paragraph 1: Provisions applying to certain local authorities

26. This paragraph sets out arrangements for the appointment of auditors by certain types of local authorities. Subsection (1) stipulates that in local authorities operating executive arrangements (i.e. Leader and Cabinet or Mayor and Cabinet) the full council, not the executive, must appoint the auditor. Subsection (2) provides that for local authorities, as defined by section 101 of the Local Government Act 1972, the provisions in that section do not apply and they must not delegate the function of appointing an auditor to a committee or subcommittee, or an officer of the authority, or to any other authority. Subsection (3) states that the Mayor of London and London Assembly must jointly appoint the auditor for the Greater London Authority.

Paragraph 4: Provisions applying to other authorities

27. This paragraph enables regulations to be made that address the appointment of an auditor to audit accounts of a relevant authority that is not an authority already covered by paragraphs 1, 2 or 3 of this Schedule. The relevant authorities set out in paragraphs 1, 2 and 3 are local authorities operating executive arrangements, those within the meaning of local authority in section 101 of the Local Government Act 1972, the Greater London Authority, chief constables, Police and Crime Commissioners, the Commissioner of Police of the Metropolis and the Mayor's Office for Policing and Crime.

Section 8: Procedure for appointment

28. Section 8 requires a relevant authority to consult its auditor panel and take its views into account when selecting and appointing an auditor. To support transparency of the appointment, the relevant authority must publish a notice within 28 days of making the appointment that: states it has made the appointment; the term of that appointment; who the appointed auditor is; sets out the auditor panel's advice; and if that advice has not been followed, the relevant authority's reasons for not following it. Relevant authorities are required to publish the notice on their website if they have one, and if not, in a way that is likely to bring the notice to the attention of the relevant persons as specified in subsection (4). The relevant authority must omit information that would prejudice commercial confidentiality, unless there is an overriding public interest in not doing so. Subsection (4)(b) and (c) describes the requirements for health service bodies in relation to publicising the appointment of an auditor

Section 9: Requirement to have auditor panel

29. Section 9 requires each relevant authority to have an auditor panel to exercise the functions of an auditor panel under the Act. Subsection (2) excludes Chief Constables and the Commissioner of Police of the Metropolis from the requirement to have an auditor panel. This is because they will be audited by the auditor appointed to audit the relevant Police and Crime Commissioner's accounts (or the Mayor's Office for Policing and Crime's accounts in the case of London). Subsection (3) gives effect to Schedule 4, which sets out further provisions around the constitution of auditor panels.

Schedule 4, Paragraph 1: Options for auditor panels

30. This paragraph sets out the different ways in which a body may meet the requirement to have an auditor panel. It is intended to provide flexibility for different arrangements that can reflect local circumstances and, for example, any joint working arrangements. It provides that the auditor panel can be a panel appointed as such, a shared auditor panel appointed by one or more other authorities, or an existing committee that complies with provisions applying to auditor panels. This paragraph also requires that for the Greater

London Authority, the appointment of the auditor panel is a matter for the Mayor of London and London Assembly acting jointly.

Paragraph 2: Constitution of auditor panels

31. This paragraph provides that an auditor panel, other than the panel for a health service body (which may be addressed in regulations under paragraph 3), must consist of at least a majority of independent members, and must be chaired by an independent member. Sub-paragraph (2) sets out the definition of independence. If the relevant authority is a corporation sole (such as a Police and Crime Commissioner), the individual holding that office is not considered independent. Under sub-paragraph (9), the Secretary of State may amend the definition of independence at sub-paragraph (2), or the provisions on independence at sub-paragraphs (4) or (8) which address a corporation sole and the definition of a 'relative'.

Paragraph 3: Constitution of auditor panels: health service bodies

32. This paragraph provides the Secretary of State with a regulation-making power to define the constitution and arrangements for the auditor panels of a health service body, including the definition of independence. The intention is that these panels will be the existing audit committees of health service bodies which will meet the independence requirements of best practice for central government audit committees.

Paragraph 5: Application of local authority enactments to auditor panels

33. This paragraph provides the Secretary of State with a regulation-making power to modify any local authority enactments in their application to auditor panels or their members; and to apply any local authority enactments to auditor panels or their members, to clarify the position of auditor panels in relation to committees of that local authority.

Paragraph 8: Meaning of "connected entity"

34. This paragraph defines a connected entity for the purposes of the Act. This concept arises in relation to matters such as local auditors' access to relevant documents, provision of information, and definitions of independence of auditor panel members

Section 10: Functions of auditor panel

35. Section 10 sets out the main functions of an auditor panel and gives a power to the Secretary of State in subsection (8) to make regulations that may set out further details about these functions, give additional functions to an auditor panel or allow a relevant authority to give additional functions to an auditor panel. The auditor panel must advise the relevant authority on maintaining an independent relationship with its auditor and on selection and appointment of its auditor. Subsections (9) and (10) require the relevant authority to publish advice from its auditor panel, with subsections (10)(b) and (10)(c) making provision for publishing such advice in respect of health service bodies. Subsection (11) provides that this must exclude information likely to prejudice commercial confidentiality, unless there is an overriding public interest in its disclosure. Subsections (12) and (13) provide that the auditor panel must take account of any guidance the Secretary of State issues in relation to the exercise of its functions, as must the relevant authority in exercising its functions in relation to its auditor panel.

Section 11: Relationship with relevant authority

36. The authority is required, on receiving a request from the auditor panel, to provide any information held by the authority that is of relevance to the auditor panel's work. The auditor panel may require a member or officer of a relevant authority to attend a meeting of the panel to answer questions. However members and officers have the same entitlement to refuse to answer questions as exists for the purposes of court proceedings

in England and Wales. The provisions of this section do not apply to health service bodies or to their auditor panels.

Section 12: Failure to appoint local auditor

37. Section 12 makes provision for cases where a relevant authority fails to appoint an auditor. Subsection (1) requires a relevant authority to inform the Secretary of State if it fails to appoint an auditor, either in accordance with Section 7 or any other requirement to appoint under Part 3 or a provision made under it. Subsection (2) provides that if a body fails to appoint an auditor by 31st December the Secretary of State may either direct the relevant authority to appoint a named auditor, or appoint an auditor on their behalf. Such an appointment would be essentially the same as one made by the relevant authority, on the terms specified by the Secretary of State. To exercise these powers, the Secretary of State must inform the relevant authority of his or her intention to do so not less than 28 days beforehand, and must also consider any representations made by the relevant authority. However there is provision for the Secretary of State to move more quickly, and without considering representations, if he thinks it likely that a function would need to be exercised by an auditor within 60 days of a direction to appoint being given or an appointment being made.

Section 13: Failure of clinical commissioning group to appoint local auditor

38. Section 13 makes provision for cases where a clinical commissioning group (CCG) fails to appoint an auditor. The Act makes separate provision for the situation where a clinical commissioning group, NHS trust or trustees of an NHS trust (see below) fails to appoint an auditor, to take account of the roles of national bodies in the healthcare sector (specifically the NHS Commissioning Board, known as NHS England, and the NHS Trust Development Authority).

39. Subsection (1) provides that the CCG must immediately notify the NHS Commissioning Board (the Board) of a failure to appoint. If the situation is not resolved by 25 March, the Board must notify the Secretary of State. The Secretary of State, once notified, may direct the Board either to direct the CCG to appoint an auditor or appoint one on the CCG's behalf; or take either of those steps him or herself. The Secretary of State or the Board must inform the CCG, not less than 28 days beforehand, of their intention to direct the CCG to appoint an auditor or to appoint one on the CCG's behalf and must also consider any representations the CCG makes on the direction or appointment. However, there is provision for the Secretary of State or the Board to act without giving notice or considering representations, if a function would need to be exercised by an auditor within 60 days of a direction to appoint being given or an appointment being made.

40. Paragraphs 8 and 9 of Schedule 13 make similar provision in relation to NHS trusts and trustees of NHS trusts, with those bodies being required to notify the National Health Service Trust Development Agency of a failure to appoint an auditor.

Section 14: Limitation of auditor's liability

41. This section requires that a liability limitation agreement, by which an auditor limits their liability for negligence, default, breach of duty or breach of trust by agreement with a relevant authority, must meet certain conditions prescribed by regulations by the Secretary of State. Regulations may address the duration of the agreement and the amount to which the auditor's liability may be limited, and impose requirements for the agreement to contain certain provisions specified in regulations. Regulations may also require disclosure of specified information about such agreements. This section also provides that a liability limitation agreement that complies with relevant regulations is not subject to section 2(2) or 3(2)(a) of the Unfair Contract Terms Act 1977. These sections would otherwise prevent an auditor from excluding or restricting liability for

negligence or for breach of contract (except in so far as the term or notice satisfies the requirement of reasonableness).

Section 15: Further provisions about liability limitation agreements

42. Subsection (1) provides that the relevant authority must seek and consider its auditor panel's views on the agreement before entering into a liability limitation agreement. Subsection (4) provides that only the full council of a local authority operating under executive arrangements can decide whether to enter into a liability limitation agreement. Subsection (5) provides that in the case of a local authority, they may not delegate the function of deciding to enter into a liability limitation agreement to a committee or sub-committee, or to an officer of the authority, or to any other authority. Subsection (6) provides that this function is to be for the Mayor and London Assembly acting jointly on behalf of the GLA.

Section 16: Resignation and removal of auditor

43. Section 16 provides the Secretary of State with the power to make regulations about resignation or removal of a local auditor from office. These regulations may specify what is required from an auditor (and in turn from the relevant authority) in the process of the auditor's resignation, and when that resignation can take effect. They may also specify what actions are required, and by whom (such as the local auditor, relevant authority, and auditor panel) to remove a local auditor from office, and following that removal from office. Subsection (4) allows for the Secretary of State to take some or all of the steps in respect of the removal of a local auditor from office in respect of health service bodies. Subsection (5) provides that regulations may apply the provisions for the Secretary of State to appoint, or direct a relevant authority to appoint, a local auditor, to circumstances following the resignation or removal of a local auditor.

Section 17: Appointment of auditor by specified person

44. Section 17 gives the Secretary of State the power to make provision, by regulations, for certain relevant authorities to have a local auditor appointed on their behalf by a body (an 'appointing person') specified by the Secretary of State. This is to allow for sector-led collective procurement arrangements, under which relevant authorities would be able to opt to have their auditor appointed by a specified sector-led body, rather than appoint locally.

45. Section 17 enables the Secretary of State to make provision in regulations in connection with such arrangements. This includes further provision on the process for specifying or de-specifying an appointing person, and the functions and duties of such a person (for example to consult on a scale of fees). Regulations may make provision around the process through which relevant authorities will become subject to these arrangements (for example the process for opting-in) – and on any duties / functions of such authorities, or of their auditors. Regulations under section 17 may also make provision for the appointment of an auditor where that authority has opted-in, but the appointing person fails to make an appointment.

46. Subsection (8) of section 17 specifies that regulations may also disapply or modify any provision under Part 3 as it applies to an authority that is subject to collective procurement arrangements. It also allows regulations to disapply or modify provisions elsewhere in the Act in consequence of any provision made in regulations under section 17.

Part 4– Eligibility and Regulation of Local Auditors

Section 18 and Schedule 5: Eligibility and regulation of local auditors

47. Schedule 5 (which is given effect to by section 18) sets out the arrangements for the eligibility and regulation of auditors in the local audit framework. This Schedule applies

Part 42 of and Schedule 10 to the Companies Act 2006, seeking largely to align the regulatory framework for local auditors with auditors of companies. Schedule 5 sets out the modifications to the Companies Act which are necessary to reflect the differences between statutory and local audit.

48. Many of the modifications to the Companies Act 2006 are to omit those provisions that are not relevant to local auditors or to change references so that the provisions of the Companies Act are appropriate for local audit. More significant modifications have been made in respect of:

- independence, where the Act sets out specific requirements for local auditors; and
- appropriate qualifications for local audit, where the Act provides the Secretary of State with a power both to recognise a professional qualification specifically for local audit and to enable those individuals qualified under the Audit Commission Act 1998 to continue to be appropriately qualified in the new framework.

49. Part 42 of the Companies Act 2006 sets out the arrangements for ensuring that firms and individuals undertaking local audit have the required skills, qualifications and experience to undertake that work. It also sets out specific independence requirements that auditors must comply with in order to be appointed as a local auditor.

50. Schedule 10 to the Companies Act 2006 sets out the framework governing the recognised supervisory bodies under that Act. Under the Companies Act 2006, eligibility for appointment as an auditor depends on membership of, and compliance with the rules of, a professional accountancy body which has been authorised (or "recognised") by the Secretary of State. These bodies are referred to as "recognised supervisory bodies", and this term is carried across to the Act in relation to local audit. In practice, the power to recognise supervisory bodies under the Companies Act 2006 is delegated to the Financial Reporting Council. Recognised supervisory bodies are required to put in place rules and practices to be followed by their members, for example, concerning ethical standards of conduct, and the experience and other criteria that individuals must meet before being permitted to carry out an audit and sign off an audit report.

51. Recognised supervisory bodies are also responsible for monitoring the quality of audits undertaken by their members. This is the case for both local and company audit. Schedule 5 provides for an additional level of oversight for the monitoring of the quality of "major local audits", meaning local audits of relevant authorities specified or defined in regulations or in a direction. In line with the monitoring of "major audits" in the companies sector, this role is to be delegated to the Financial Reporting Council.

52. In the local audit framework, auditors will be required to hold an "appropriate qualification" to sign an audit report and this could either be a qualification recognised under Part 42 of the Companies Act 2006, or another qualification recognised under the Act. The Secretary of State may make regulations setting out the minimum requirements that those other qualifications must meet in order to be recognised for the purposes of local audit. As well as the requirement for an auditor to hold an appropriate qualification, recognised supervisory bodies are required to have rules in place to ensure that those eligible to sign an audit report on behalf of a firm have suitable experience.

Paragraphs 1-4: Modifications to the Companies Act 2006

53. Paragraph 1(1) outlines the approach taken to applying the Companies Act 2006 and paragraph 1(2) provides definitions for the terms "local audit" and "local audit work" that are used throughout the Schedule. Paragraph 2(1) sets out the general modifications where references need to be substituted throughout. Paragraph 3 specifies a number of provisions to be omitted given that they are not relevant for local audit.

Paragraph 5: Independence requirement

54. This paragraph substitutes section 1214 of the Companies Act 2006, for the purposes of the Act, to set out the circumstances where a person may not act as a local auditor on grounds of lack of independence. Under subsection (2), this includes persons who are officers or elected members of the relevant authority, individuals exercising executive authority as corporations sole (for example, Police and Crime Commissioners), or the partner or employee of such persons. Under subsection (4) this includes where the person is an officer or employee of an entity connected to the relevant authority. Subsection (6) provides the Secretary of State with a reserve power to make regulations regarding other connections between the relevant authority and the local auditor by virtue of which a person will be regarded as lacking independence.

Paragraph 6: Effect of lack of independence

55. This paragraph omits subsections (2) to (7) of section 1215 of the Companies Act 2006 which set out the criminal sanctions for auditors.

Paragraph 9: Appropriate qualifications

56. This paragraph modifies section 1219 of the Companies Act 2006 to provide when a person holds an appropriate qualification for the purposes of local audit i.e. that he or she holds either a qualification recognised in accordance with regulations made by the Secretary of State, or a professional qualification obtained in the UK which is recognised in accordance with Chapter 2 of Part 42 of the Companies Act. Subsections (2) to (6) set out the matters about which the Secretary of State may make regulations to provide for a qualification to be recognised as an appropriate qualification, including how such a qualification is to be recognised, and the requirements such a qualification would need to meet. Subsection (7) sets out which existing professional qualifications will be considered appropriate for local audit under the new framework. This is to ensure that individuals qualified under the Audit Commission Act 1998 will be able to continue to undertake local audit in the new regime. Subsection (13) provides that a qualifying body which offers a qualification that has been recognised in accordance with regulations made by the Secretary of State is to be known as a "recognised qualifying body".

Paragraph 10: Provision of documents to the Secretary of State

57. This paragraph provides the Secretary of State, a body to whom the Secretary delegates his or her functions (by order under section 1252 of the Companies Act 2006), or a recognised supervisory body, with the power to require a relevant authority to make available to them their accounts or other such documents that might reasonably be required.

Paragraph 11: Enforcement: general

58. This paragraph specifies modifications that reflect the arrangements for recognising appropriate qualifications for local audit. In the Companies Act 2006, Schedule 11 sets the framework and this is not applied in this Act. Instead, regulations made under the modified section 1219 of the Companies Act 2006 are to set the requirements for the recognition of appropriate qualifications.

Paragraph 14: The register of auditors

59. This paragraph concerns the register of eligible auditors and modifies section 1239 of the Companies Act 2006, mainly to recognise the differences in eligibility for auditors of companies and those of relevant authorities. It also includes a regulatory power to set requirements around the keeping of such a register.

Paragraph 16: The Secretary of State's power to require second audit

60. This paragraph modifies section 1248 of the Companies Act 2006 to specify that a copy of a direction requiring a second audit is sent to the auditor's recognised supervisory body rather than the registrar of companies. It also allows for the Secretary of State to specify when the authority must comply with the direction.

Paragraph 21: Delegation of the Secretary of State's functions

61. This paragraph modifies section 1252 of the Companies Act 2006, which provides that the Secretary of State may delegate certain functions, so that in subsection (3) such an order may have the effect of making the body to whom functions are delegated subject to the obligations of the Freedom of Information Act 2000, but only in respect of information held by the body that relates to the exercise of the functions which have been delegated to it.

Paragraph 28: Recognised supervisory bodies

62. This paragraph provides for general modifications to Schedule 10 to the Companies Act 2006 in relation to the responsibilities of recognised supervisory bodies, and in particular to specify the experience and training needed by those people carrying out inspections of local audits and in monitoring the quality of local audits undertaken by their member firms, including an additional level of oversight for audits of significant local bodies. Sub-paragraph (7) provides the Secretary of State with regulatory powers to set out which bodies would have their audits defined as 'major local audits', which would then be subject to this additional level of oversight by the Financial Reporting Council. Recognised supervisory bodies must also comply with guidance issued by the Secretary of State on the appropriate level of competence of auditors.

Part 5 – Conduct of Local Audit

63. Part 5 sets out the provisions relating to the role of the local auditors under this Act. The scope of the audit is set out in sections 20 and 21, and largely replicates existing provisions in the Audit Commission Act 1998. Section 19 and Schedule 6 set out the role of the Comptroller and Auditor General of the National Audit Office to set the audit standards through codes of audit practice and guidance. Sections 24 to 31 set out the additional duties of local auditors in undertaking audits of relevant authorities, retaining the current roles in – for example - reporting in the public interest when necessary or taking questions and objections from local government electors.

Section 19 and Schedule 6: Codes of audit practice and guidance

64. This Schedule (which is given effect to by section 19) includes provisions which set out how the code of audit practice and supporting guidance will be produced.

Paragraph 1: Duty to prepare code

65. The Comptroller and Auditor General of the National Audit Office is required to prepare one or more codes of audit practice which embody best professional practice regarding how local auditors should carry out their functions under the Act. Because audit arrangements are different for some relevant authorities, the code can include different provisions for different types of relevant authorities or there can be more than one code. The Comptroller and Auditor General must consult the listed parties when developing the code.

Paragraph 2: Procedure for code

66. This paragraph sets out the procedure for gaining Parliamentary approval to a code, which is required before a code can come into force. The Comptroller and Auditor General is required to publish the draft code, which is then laid before both Houses of

Parliament by a Government Minister. If, within 40 days after laying, either House of Parliament resolves not to approve the code, the Comptroller and Auditor General must not publish it and must prepare another code of audit practice unless one or more is already in place. If Parliament does not resolve against the code, the Comptroller and Auditor must publish it.

Paragraph 3: Duty to keep code under review

67. This paragraph requires the Comptroller and Auditor General to keep the code(s) under review.

Paragraph 4: Alteration of code

68. This paragraph enables the Comptroller and Auditor General to prepare alterations to a code. The same consultation, publication in draft and Parliamentary approval processes apply to an altered code as for any code. If an altered code is not resolved against by Parliament, the Comptroller and Auditor General must publish it clearly showing where the alterations have been made.

Paragraph 5: Replacement of code

69. This paragraph requires the Comptroller and Auditor General to prepare a replacement code at least every five years and enables him/her to do so more frequently. This means that the code will be reviewed at least every five years, but can be done more frequently should major changes be needed. Because it is not within the Comptroller and Auditor General's control to ensure that a replacement code is published within five years of the existing code being published, the duty is on the Comptroller and Auditor General to use "reasonable endeavours" to ensure a code is published before the end of the five years. If this is not possible, the Comptroller and Auditor General must ensure that a code is published as soon as reasonably practicable. This ensures Parliamentary oversight of the code at least every five years.

Paragraph 6: Publication of code

70. This paragraph enables the Comptroller and Auditor General to publish a code in such manner as he/she sees fit. A code or alterations to a code come into force on the day on which it is published, unless a different date is specified. There may be different commencement dates for different purposes.

Paragraph 7: Assistance from relevant authority

71. This paragraph requires a relevant authority to provide information that the Comptroller and Auditor General reasonably requires to fulfil the functions as set out in this Schedule.

Paragraph 8: Savings for codes of practice under the Audit Commission Act 1998

72. This paragraph provides for a code prepared under the Audit Commission Act 1998 to stay in force until such time as the relevant section of that Act is repealed, or until that code is replaced by a code prepared under this Act and approved by Parliament.

Paragraph 9: Guidance

73. This paragraph enables the Comptroller and Auditor General to issue guidance to local auditors in relation to their functions as set out in this Act. The guidance may supplement or further explain the code.

Paragraph 10: Application to auditors of NHS foundation trusts

74. This paragraph covers the application of a code of audit practice to auditors of accounts of NHS foundation trusts. Although NHS foundation trusts are not relevant authorities, the duty to prepare a code of practice as regards audit of their accounts applies, as does the power to issue guidance to auditors of foundation trusts' accounts. Schedule 12 amends the National Health Service Act 2006 so that auditors of foundation trusts' accounts are required to comply with the relevant code and have regard to any such guidance (see new paragraph 24(4A) of Schedule 7 to that Act).

75. In preparing a code relating to the audit of accounts of foundation trusts, the Comptroller and Auditor General is required to consult Monitor and such associations or representatives of foundation trusts as the Comptroller and Auditor General thinks appropriate, as well as the other persons mentioned in paragraph 1(5).

Paragraph 11: Meaning of 40-day period

76. This paragraph explains that the 40-day period starts from the day on which the code is laid unless it is not laid in both Houses of Parliament on the same day, in which case it begins with the later day. The 40-day period excludes days when Parliament is dissolved, prorogued, or where both Houses are adjourned for more than 4 days.

Section 20: General duties of auditors

77. This section sets out the general duties with which a local auditor must comply when auditing the accounts of a relevant authority – except audits of health service bodies: the general duties of local auditors for health service bodies are in section 21. It requires the auditor to be satisfied that the relevant authority's accounts (the statement of accounts and accounting records) comply with the relevant enactments; that proper practices have been observed in the compilation of the statement of accounts and that the statement of accounts presents a true and fair view; and that the relevant authority has made proper arrangements for securing economy, efficiency and effectiveness (value for money) in the use of its resources.

78. Subsection (2) requires the auditor to issue an opinion on the statement of accounts and a certificate to confirm that the audit has been undertaken in accordance with this Act. These would usually be issued when the audit is complete, and the opinion would be included within the final statement of accounts. However, subsection (4) allows the auditor to issue the opinion on the accounts and close the accounts before issuing the certificate if the auditor is still considering objections, the resolution of which would not affect the accuracy of the statement of accounts. This means that the closure of the statement of accounts does not need to be delayed if the auditor is considering objections which would not impact on the statement of accounts thus increasing transparency locally.

79. If relevant authorities are required to keep a separate Pension Fund under the Local Government Pension Scheme, a local auditor is required to provide a separate opinion on that part of the statement of accounts.

80. Subsections (5) and (6) require local auditors of all relevant authorities (including health sector bodies) to comply with the relevant code(s) of audit practice and have regard to guidance which has been issued by the Comptroller and Auditor General in support of the code.

Section 21: General duties of auditors of accounts of health service bodies

81. Subsection (1) sets out the general duties with which a local auditor must comply when auditing the accounts of a clinical commissioning group. It requires the auditor to be satisfied that: the group's accounts present a true and fair view and comply with relevant legislative requirements; proper practices have been observed in the preparation of the

accounts; the group has made proper arrangements for securing economy, efficiency and effectiveness in their use of resources; money provided by Parliament has been expended for the purposes intended by Parliament; resources authorised by Parliament have been used for the purposes so authorised; and the financial transactions of the clinical commissioning group are in accordance with any authority which is relevant.

82. Subsection (3) sets out the general duties with which a local auditor must comply when auditing the accounts of special trustees for a hospital. The auditor must be satisfied that: the accounts present a true and fair view and comply with relevant legislative requirements; proper practices have been observed in the preparation of the accounts; and the special trustees have made proper arrangements for securing economy, efficiency and effectiveness in their use of resources. Unlike the auditors of clinical commissioning groups, audits of the accounts of special trustees of hospitals do not have to be satisfied in relation to money and resources authorised by Parliament, nor that the special trustees' financial transactions are in accordance with any relevant authority. These requirements are not relevant to special trustees of a hospital who hold and administer the property of university hospitals and teaching hospitals on trust, for purposes related to hospital services, including research. Special trustees do not receive funds from Parliament.

83. Paragraph 10 of Schedule 13 extends the provision in relation to the audit of the accounts of special trustees of a hospital, so that it also applies to audit of the accounts of NHS trusts and the trustees of NHS trusts. Subsection (4) makes provision requiring the auditor of a health service body to enter certain things on the accounts of the audited body on completion of the audit of the accounts of the body. The auditor must enter on the accounts a certificate that the auditor has completed the audit in accordance with the Local Audit and Accountability Act 2014, and make a report in accordance with subsection (5).

84. Subsection (5) requires that the auditor of a health service body must make a report on all the matters on which they have a duty to satisfy themselves in subsections (1) or (3) as appropriate, other than subsections (1)(c) or (3)(c), where they must not give their opinion in the report if they are satisfied proper arrangements being made for securing economy, efficiency and effectiveness in the use of resources.

Sections 22 and 23: Auditors' right to documents and information; and offences relating to section 22

85. Section 22 gives local auditors a right of access to documents and information which are necessary to support the audit. An auditor has a right to access at all reasonable times any documents which the auditor considers necessary to carry out their functions under the Act. The auditor can inspect, copy or take the documents away. The auditor may require any person who holds or is accountable for these documents to provide further information or explanation. If documents are held electronically, the auditor can inspect and check the operation of any IT which has been used, and require specified people to provide reasonable assistance to support them do this. The specified people are those whose computer has been used or who are responsible for the computer or IT system being accessed, which is designed to apply to employees and members of a relevant authority. A local auditor can also require persons specified in subsection (8) to provide information or any other explanation. The relevant authority or connected entity must provide the auditor with all of the facilities and information that the auditor reasonably requires. In the case of a parish meeting, subsection (9) restricts auditors' access rights described in subsection (7) to past and present chairmen and proper officers of the district so that these duties do not fall on all local government electors. Subsections (11) and (12) preclude statements given in response to the auditor from being used in evidence against the person for any other criminal proceedings except the offences under section 23.

86. Section 23 makes it an offence for a person, without reasonable excuse, to obstruct the auditor's right to access information or to fail to comply with the local auditor's requests for information. The offence is punishable by a fine not exceeding level 3 on the standard scale, and an additional daily fine if the offence continues after conviction of up to £20 per day. Local auditors can recover expenses reasonably incurred in connection with proceedings against specified persons from the relevant authority if they are not recovered from any other source.

Section 24 and Schedule 7: Reports and recommendations

87. This Schedule (which is given effect to by section 24) sets out the detailed requirements for local auditors to consider making public interest reports and written recommendations, and for the procedures to be adopted following their issue.

Paragraphs 1 to 3: Public interest reports, written recommendations and supply of public interest reports

88. Paragraph 1 places a duty on a local auditor to consider whether in the public interest, they should make a public interest report on any matter coming to their attention during the audit and relating to the authority or connected entity to the authority so that the recommendation can be considered by the relevant authority or brought to the attention of the public. Paragraph 2 enables a local auditor to issue written recommendations to the authority relating to the authority or entity connected with it, so that the recommendation may be considered. Public interest reports and recommendations can be in relation to the authority being audited or any entity connected with that authority and can be issued during or at the end of the audit.

89. A local auditor is required to inform the authority's auditor panel as soon as is reasonably practicable after making a public interest report. This is so that the auditor panel is aware of the auditor's action but the panel does not influence the auditor's decision about whether to issue a report, as this could undermine or be perceived to undermine the auditor's independence from the relevant authority. The auditor must send public interest reports and recommendations to the Secretary of State; the related authority if the report or recommendation is in relation to a connected entity; and to the Greater London Authority for reports / recommendations relating to the London Pensions Fund Authority, a functional body, or a connected entity of a functional body. The local auditor must send public interest reports and recommendations to the National Health Service Commissioning Board in the case of clinical commissioning groups.

90. There is express provision which enables the local auditor to recover reasonable costs of investigating issues and preparing public interest reports and recommendations from the relevant authority, further supporting the auditor's independence from the authority.

Paragraph 4: Publicity for public interest reports

91. The provisions in this paragraph are designed to support transparency and local accountability. When an auditor issues a public interest report on a relevant authority or connected entity, the relevant authority must publish the public interest report as soon as practicable. It must also publish a notice which identifies the report's subject matter and explains that the public may inspect the report at a specified location and times, unless the report relates to a health service body. The authority (except a health service body) must ensure that the public can inspect and copy the report without payment, or require the relevant authority to provide a copy for a payment of a reasonable sum. The relevant authority must send copies to each of its members (if it has members) and its auditor panel (if it has one). The local auditor is able to notify and send a copy of the public interest report to any person that the auditor considers fit. The requirements for health service bodies to publish public interest reports are set out at sub-paragraph (8)(b) and (c). Paragraph 12 of Schedule 13 extends the provision relating to the publication of public interest reports to NHS trusts and trustees of NHS trusts.

Paragraph 5: Consideration of report or recommendation

92. This paragraph specifies how relevant authorities should consider public interest reports and auditors' written recommendations. This does not apply to health service bodies, because these requirements are specified in other legislation or through requirements placed upon the health service body by their regulator. Nor does it apply to the Greater London Authority (paragraph 6 specifies arrangements), nor connected entities which are also relevant authorities (except reports and recommendations on the Commissioner of Police of the Metropolis). The relevant authority must consider public interest reports and auditors' recommendations at a meeting within one month of the report or recommendation being sent to the body and decide at that meeting what action needs to be taken. Police and Crime Commissioners and the Mayor's Office for Policing and Crime must decide within one month what action to take. The Secretary of State is able to modify this paragraph through regulations.

Paragraph 6: Consideration of report or recommendation: Greater London Authority

93. This paragraph specifies how the Greater London Authority must consider any public interest reports or recommendations made by the auditor in relation to the Greater London Authority or a connected entity of the Greater London Authority. This largely mirrors provisions in paragraph 5 and specifies that the London Assembly must consider reports and recommendations at a meeting which the Mayor must attend.

Paragraph 7: Bar on delegation of functions relating to meetings

94. This paragraph prevents certain relevant authorities from delegating the consideration of public interest reports or auditors' recommendations. Sub-paragraph (1) has the effect that the full council of a local authority which operates executive arrangements must consider a public interest report or auditor's recommendation. Sub-paragraph (2) excludes the consideration of public interest reports and auditors' recommendations from provisions in the Local Government Act 1972 enabling a local authority to discharge its functions by a committee, sub-committee or officer, or by another local authority. In the case of a parish meeting, sub-paragraph (3) requires consideration of public interest reports and auditors' recommendations to be considered by the meeting. Sub-paragraphs (4) and (5) preclude the Mayor of London and the London Assembly from delegating the consideration of public interest reports and auditors' recommendations.

Paragraph 8: Publicity for meetings

95. This paragraph sets out the arrangements that a relevant authority must follow in publicising meetings to consider public interest reports and auditors' recommendations. The relevant authority must publish a notice at least 8 days before the meeting specifying the time and location of the meeting; that the meeting is to discuss a public interest report or auditor recommendation; and the subject matter (the full recommendation should be included if reasonably practicable). When the authority's members are sent the agenda for the meeting, this must be accompanied by a copy of the public interest report or recommendation.

Paragraph 9: Access to meetings and documents

96. This paragraph explains that public interest reports and recommendations are not considered as excluded or exempt information with regards to provisions made in the Public Bodies (Admission to Meetings) Act 1960 and the Local Government Act 1972. This means that a public interest report and recommendations should be included with other documents (as set out in the Local Government Act 1972) as being open to public inspection and should not be considered as excluded material if a newspaper requests it under the Public Bodies (Admission to Meetings) Act 1960.

Paragraph 10: Publicity for decisions under paragraph 5 or 6

97. This sets out the requirements on a relevant authority for publicising its decision about its response to a public interest report or auditor recommendation. The relevant authority must notify the auditor of its decision and publish a notice summarising the decision (and this must be on its website if it has one). The notice can exclude decisions that were made in the meeting while the public were excluded for protection of public interest (under section 1(2) of the Public Bodies (Admission to Meetings) Act 1960), confidential matters (under section 100A(2) of the Local Government Act 1972) or exempt information (under section 100A(4) of the Local Government Act 1972). The notice must also specify if there are any documents that are available for inspection.

Section 25: Inspection of statements of accounts etc

98. This section requires relevant authorities, other than health service bodies, to enable local government electors to inspect and make copies of the statement of accounts prepared by the relevant authority and specified reports and other documents made by the auditor to the relevant authority. These documents must be made available for inspection at all reasonable times without payment, or if requested, the relevant authority must supply copies of any of these documents upon payment of a reasonable sum.

Section 26: Inspection of documents etc

99. This section provides that any interested person may inspect the accounting records and supporting documents for a relevant authority, other than a health service body, for the audit year and make copies of those documents. The section also enables local government electors to ask the auditor questions about the accounting records. There are exceptions for records and documents containing personal information and information protected on grounds of commercial confidentiality. The auditor is able to recover reasonable costs for their time in undertaking this function from the relevant authority.

Section 27: Right to make objections at audit

100. This section provides for a local government elector to make an objection to a local auditor if they consider that there is a matter about which the auditor could make a public interest report or apply for a declaration that expenditure is unlawful. This does not apply to health service bodies. The objection must be made in writing with a copy sent to the relevant authority.

101. The auditor is required to decide whether to consider the objection, and if so whether they need to make a public interest report or a declaration of unlawful expenditure. The auditor has discretion not to consider the objection if (in particular) the auditor considers that it is frivolous or vexatious; repeats a previously considered objection; or where the cost of the auditor's investigation would be disproportionate to the financial amount to which the objection relates (and if there are no serious governance issues). Instead of considering the objection, the auditor may recommend that the relevant authority take action itself. The auditor is able to recover reasonable costs for their time in considering objections from the relevant authority.

Section 28: Declaration that item of account is unlawful

102. This section provides for a local auditor to apply to the courts for a declaration that an item in the accounts is unlawful. This does not apply to health service bodies. The court will decide whether to make that declaration and where it does, may order changes to be made to the statement of accounts or the accounting records.

103. If an auditor decides not to investigate an objection made under section 27 relating to unlawful expenditure or decides not to refer the matter to the courts, the person raising the objection may require the auditor to provide written reasons for that decision within

six weeks of the auditor's decision. Following receipt of the auditor's written reasons, the person then has a further 21 days to appeal against the decision to the courts. If the local elector appeals to the court, the court has the same powers as it does if the auditor had applied for a declaration.

104. The court can make an order for the relevant authority to pay expenses incurred by the local auditor or local government elector as a result of this action. If an auditor considers exercising this power, but ultimately does not do so, they can recover the reasonable costs for their time in investigating the issue from the relevant authority.

Section 29 and Schedule 8: Advisory notices

105. This Schedule (which is given effect to by section 29) does not apply to health service bodies.

Paragraph 1: Power to issue advisory notice

106. This paragraph enables a local auditor to issue an advisory notice if the auditor thinks that the relevant authority or an officer of the authority has, or is about to, undertake specified unlawful actions. These unlawful actions are: a decision which incurs unlawful expenditure, a course of action which is likely to lead to a loss or deficiency, or the entering of an unlawful item of account. The advisory notice must: be addressed to the relevant authority or officer; specify the relevant decision incurring unlawful expenditure, unlawful course of action or unlawful item of account; specify that the notice takes effect on the day on which it is served; and specify the notice period within which the authority or officer must inform the auditor if they intend to continue to take the action (which must not exceed 21 days).

Paragraph 2: Service and withdrawal of notice

107. This paragraph sets out how the advisory notice must be served on the relevant authority or officer and enables the auditor to withdraw it. If the advisory notice is addressed to the authority, then it must be served on the authority. If an advisory notice is addressed to an officer, it must be served on both the officer and the relevant authority. Within 7 days of issuing the advisory notice, the local auditor must also serve a statement of their reasons for doing so.

Paragraph 3: Effect of an advisory notice

108. This paragraph makes it unlawful for the authority or officer to continue to take or implement the action that the advisory notice refers to while the advisory notice has effect. Sub-paragraph (2) makes an exclusion where the authority or officer has considered the auditor's notice and the consequence of taking the action, informed the auditor of their intention to take the action and the notice period has expired. The advisory notice takes effect from the day on which the notice is served; and ceases to have effect either when it is withdrawn or if the auditor does not serve a statement of reasons within 7 days following its issue. Sub-paragraph (4) enables the auditor to recover from the relevant authority any costs reasonably incurred in issuing advisory notices and any work to investigate whether they need to.

Paragraph 4: Further provisions about advisory notices

109. This paragraph provides for the situation where a relevant authority has (prior to the advisory notice being served) entered into a contract to dispose of or acquire an interest in land, where the existence of the advisory notice would mean it would be unlawful to complete the disposal/acquisition. The existence of the advisory notice does not affect the damages that could be available and no action lies against the auditor in respect of any loss or damages as a result of an advisory notice issued in good faith.

Section 30: Unlawful expenditure or activity of health service bodies

110. This section provides for the steps a local auditor of a health service body must take if the auditor believes that the body, or an officer of the body, is about to take or has taken decisions which have incurred or would incur unlawful expenditure, or is about to take or has taken a course of action which would be unlawful and likely to lead to a loss or deficiency. The auditor must, as soon as reasonably practicable, notify the Secretary of State and, if the body is a clinical commissioning group, the NHS Commissioning Board. If the body is an NHS trust or the trustees for an NHS trust, the auditor must notify the Secretary of State and the National Health Service Trust Development Authority. (Paragraph 13 of Schedule 13 provides for this.)

Section 31: Power of auditor to apply for judicial review

111. This section enables a local auditor to apply to the courts for judicial review if the auditor considers that a decision by a relevant authority or a failure by the relevant authority to act would have an effect on the authority's accounts. This does not apply to health service bodies. Subsection (4) enables the court to order the relevant authority to pay the expenses incurred by the auditor. If an auditor investigates issues which could result in him/her applying for judicial review, subsections (5) and (6) enable them to recover reasonable costs for the time taken.

Section 32: Accounts and audit regulations

112. With respect to relevant authorities other than health service bodies, section 32 provides a power for the Secretary of State to make regulations on matters connected with those authorities' accounts, audit and corporate governance. The power takes account of the new statutory distinction between accounting records and statements of accounts (see section 3). It is expected that this power will be used to specify aspects of the format of the published accounts, and set out the framework for their preparation, approval and publication. Procedural aspects of the conduct of the audit, including arrangements for the exercise of the rights of the public (sections 25 to 27), are also likely to be included in the regulations. The section specifies persons who must be consulted before regulations are made.

Part 6 – Data Matching

Section 33 and Schedule 9: Data matching

113. Apart from transferring the power to conduct data matching exercises from the Audit Commission to the Secretary of State or the Minister for the Cabinet Office, and inserting the prevention and detection of errors and inaccuracies as a further *potential* purpose for which data matching exercises may be undertaken, the data matching powers set out in Schedule 9 and given effect to by section 33, are largely the same as the provisions inserted into the Audit Commission Act 1998 by the Serious Crime Act 2007.

Paragraph 1: Power to conduct data matching exercises

114. This paragraph provides for the Secretary of State or the Minister for the Cabinet Office ("a relevant minister") to carry out data matching exercises or to arrange for them to be done on his or her behalf. Sub-paragraph (3) explains how a data matching exercise works. It involves the comparison of sets of data, for example, taking two local authority payroll databases and matching them. If matches occur, it may indicate an inconsistency that requires investigation. Sub-paragraph (4) defines the purposes for which the data matching powers can be exercised. These purposes are assisting in the prevention and detection of fraud. Sub-paragraph (5) provides that data matching may not be used to identify patterns and trends in an individual's characteristics or behaviour which

suggest nothing more than his or her potential to commit fraud in future and is designed to prevent the creation of individual profiles of potential fraudsters.

Paragraph 2: Mandatory provision of data

115. This paragraph enables a relevant minister to require the provision of data to conduct a data matching exercise. Sub-paragraph (2) sets out persons who may be required to provide data under this section. They are (a) relevant authorities (i.e. those authorities subject to audit), (b) English best value authorities (not subject to audit, for example a waste disposal authority) and (c) an NHS foundation trust.

Paragraph 3: Voluntary provision of data

116. This paragraph provides that where a relevant minister thinks it appropriate, he or she may conduct a data matching exercise using data held by or on behalf of persons not required to provide data under paragraph 2. It also provides that such a person may disclose data to the Minister for those purposes. Sub-paragraph (2) clarifies that bodies required to provide data under paragraph 2 may also provide data voluntarily. Sub-paragraph (3) provides that nothing relating to the voluntary provision of data authorises any disclosure which (a) contravenes the Data Protection Act 1998 or (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000. Sub-paragraphs (4) and (5) make clear that "patient data" – i.e. data held for medical purposes from which an individual can be identified – may not be disclosed. Sub-paragraph (6) provides that the disclosure of information does not breach (a) any obligation of confidence owed by a person making the disclosure or (b) any other restriction on the disclosure of information however imposed. Sub-paragraph (8) provides that data matching exercises may include data provided by a body or person outside England.

Paragraph 4: Disclosure of results of data matching etc

117. This paragraph sets out the circumstances under which information (obtained for a data matching exercise and the result of any such exercise) may be disclosed by or on behalf of a Minister– see sub-paragraph (2). These circumstances are different to those under which disclosures can be made in relation to the rest of the Act (see sub-paragraph (9), and section 36 and Schedule 11). Sub-paragraph (7) places restrictions on the further disclosure of information disclosed under sub- paragraphs (2) and (3). Sub-paragraph (8) creates an offence of disclosing information (except as authorised by sub-paragraphs (2), (3) and (6)) and sets out the penalty. Those committing the offence are liable on summary conviction to a fine not exceeding level 5 on the standard scale. Paragraph 4(9) provides that if section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force on or before the day on which the Act is passed, this will remove the limit on the fine on conviction. This provision is of no effect because that section did not come into force before the Act was passed on [30th January 2014]. Section 85 will nevertheless apply to this offence when that section comes into force.

Paragraph 5: Publication

118. This paragraph enables a relevant minister to publish a report on data matching exercises, notwithstanding the limits on disclosure under paragraph 4. Sub-paragraph (2) provides that a report that is published may not include information relating to a particular body or person if (a) the body or person is the subject of any data included in the data matching exercise; and (b) the body or person can be identified from the information; and (c) the information is not otherwise in the public domain. Sub-paragraph (3) provides that a report may be published in such a manner as the minister considers appropriate for bringing it to the attention of those who may be interested.

Paragraph 6: Fees for data matching

119. This paragraph requires a relevant minister to prescribe a scale (or scales) of fees in respect of the data matching exercises he or she conducts. Sub-paragraph (2) provides that a person required to provide data in accordance with paragraph 2 must pay the minister according to the fee scales provided for in sub-paragraph (1). Sub-paragraph (3) provides for circumstances where the work involved in a data matching exercise is substantially more or less than originally envisaged. The minister can charge the body a fee which can be larger or smaller than that referred to in sub-paragraph (2). Sub-paragraph (4) requires the minister to consult those persons required to provide data in accordance with paragraph 2 or other persons as he thinks appropriate before he prescribes a scale of fees. Sub-paragraphs (5) and (6) provide that the minister may charge a fee to other bodies providing information or receiving results for data matching and the terms under which such a fee is payable.

Paragraph 7: Code of Data matching practice

120. This paragraph requires a relevant minister to prepare and keep under review a code of data matching practice. Sub-paragraph (2) provides that all those bodies and other persons involved in data matching must have regard to the code of data matching practice. Sub-paragraph (3) requires the minister to consult those persons required to provide data in accordance with paragraph 2, such representatives of those persons (for example, the Local Government Association with regard to local authorities), the Information Commissioner, and such other bodies as he or she thinks appropriate before preparing or altering the code of data matching practice. Sub-paragraph (4) places a duty on a minster to: (a) lay the code before Parliament; and (b) publish the code from time to time.

Paragraph 8: Powers to amend this Schedule

121. Sub-paragraph (1) of paragraph 8 provides for a relevant minister to extend by regulations the purposes of data matching exercises and to modify the application of this Schedule accordingly. Sub-paragraph (2) defines the extent of the purposes which may be added. Sub-paragraph (4) provides for the minister to add or remove public bodies to those listed in paragraph 2(2)(a) and (b), and to modify the application of this Schedule to those bodies. Sub-paragraphs (3) and (5) require the minister to consult certain persons before making any regulations under sub-paragraph (4). Sub-paragraph 6 defines the meaning of public body in this paragraph.

Part 7 – Miscellaneous and Supplementary

Section 34 and Schedule 10: Amendments consequential on transfer of role of inspector

122. Schedule 10 (given effect to by section 34) contains amendments to sections of the Local Government Act 1999. Under that Act, the Secretary of State can direct the Audit Commission to carry out an inspection of a specified authority's compliance with its best value duties. This Schedule amends the 1999 Act to give the Secretary of State a similar power to appoint a person to carry out such an inspection, following the abolition of the Audit Commission.

123. Schedule 12 includes some amendments relating to this section.

Section 35: Examinations by the Comptroller and Auditor General

124. This section amends the National Audit Act 1983 by inserting section 7ZA. The new section provides a power for the Comptroller and Auditor General to undertake and publish the results of examinations regarding the value for money with which relevant authorities have used resources in undertaking their functions. Under the National Audit Act 1983, the Comptroller and Auditor General may already carry out such

examinations into any department which it audits; and similar studies may be conducted in relation to bodies that receive more than half their income from public funds and which are appointed (or whose members are required to be appointed), by or on behalf of the Crown. At the moment these powers do not extend to local authorities and many other local public bodies. Health service bodies are already subject to examination by the Comptroller and Auditor General under the National Audit Act 1983 and therefore excluded from this section.

125. Section 7ZA provides for the Comptroller and Auditor General to undertake thematic examinations relating to relevant authorities, although some relevant authorities are excluded from this power. The examinations must be designed to complement the National Audit Office's role in holding Government to account to Parliament regarding the resources it provides to relevant authorities, or support relevant authorities to learn from any thematic or systemic issues identified. These powers do not enable examinations of individual relevant authorities and are not designed to produce assessment of the performance of individual relevant authorities or comparative analyses in the form of published league tables.

126. The Comptroller and Auditor General must consult relevant representative organisations of the relevant authorities which are the subject of examinations under new section 7ZA and subsection (9) requires the Comptroller and Auditor General to take into account other relevant examinations in developing the programme. The new section enables the Comptroller and Auditor General to access information required for examinations from relevant authorities. It allows the Comptroller and Auditor General to combine examinations under this new power with examinations undertaken within existing powers (i.e. of government departments and other bodies as set out above).

Section 36 and Schedule 11: Disclosure of information

127. This Schedule (which is given effect to by section 36) sets out the conditions under which auditors and other persons or bodies exercising functions under the Act can disclose information they obtain while exercising these functions. It provides that no information obtained in the exercise of functions under the Act which relates to a particular body or person can be disclosed except insofar as such a disclosure is made in accordance with the exceptions set out in paragraphs 2 to 4.

128. Paragraph 2 places a general bar on disclosure of information obtained by the authorities listed in paragraph 1, together with a number of exceptions.

129. Paragraph 3 of this Schedule enables local auditors and any body which is a public authority for the purposes of the Freedom of Information Act 2000 to disclose information to which the Schedule applies unless doing so would prejudice the operation of their functions. There is no restriction regarding to whom this information can be disclosed.

130. Paragraph 4 enables other people not specified in paragraph 3 to disclose information if they get consent from the local auditor to do so. The local auditor must give consent unless doing so would, or would be likely to, prejudice the auditor undertaking their functions effectively.

131. Paragraph 5 provides that a person who discloses information in contravention of this Schedule is guilty of an offence, conviction of which can result in a fine not exceeding level 5 on the standard scale. Paragraph 5(2) provides that if section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force on or before the day on which this Act is passed, this will remove the limit on the fine on conviction. This provision is of no effect because that section did not come into force before the Act was passed on [30th January 2014]. Section 85 will nevertheless apply to this offence when that section comes into force.

Section 37: Social security references and reports

132. This section enables a local auditor who has discovered social security issues when undertaking a local audit to bring these to the attention of the Secretary of State if the issues are relevant to the Secretary of State's functions. This is intended to be a transitional measure, only having effect until the Welfare Reform Act 2012 repeals section 139D of the Social Security Administration Act 1992, after which a local auditor will still be required to send copies of any public interest reports to the Secretary of State, under Schedule 7. These provisions are necessary to ensure that powers are provided to auditors to refer any matters coming up through an audit once the Audit Commission is closed, and before local authorities cease to administer Housing Benefit, as a consequence of the introduction of Universal Credit and other welfare reforms. Subsection (2) makes the necessary amendments to the Social Security Act 1992.

Section 38: Duty of smaller authorities to publish information

133. This section amends section 2 of the Local Government, Planning and Land Act 1980 so that it applies to smaller authorities as defined in section 6 (other than those already within section 4(4) of that Act; which for these purposes essentially means Passenger Transport Executives). Section 2 of that Act contains powers for the Secretary of State to issue codes of recommended practice as to the publication of information by certain authorities about the discharge of their functions and other matters which he or she considers to be related. Section 2 currently covers some, but not all, of the smaller authorities listed in Schedule 2 to the Act. This section will enable the Secretary of State to issue a "Transparency Code" for those smaller authorities. For smaller authorities exempted from the requirement for automatic external audit under regulations made under section 5(8), this is intended to facilitate local accountability. Any code will apply only to information relating to a financial year in which a body qualifies as a smaller authority under section 6. Section 3 of the Local Government, Planning and Land Act 1980 enables the Secretary of State to make regulations requiring publication and to specify the manner and form in which the information is to be published. Before issuing a code or making regulations, the Secretary of State must consult authorities' representative bodies.

Section 39: Code of practice on local authority publicity

134. This section amends the Local Government Act 1986 to provide the Secretary of State with the power to give directions and make orders requiring local authorities in England to comply with one or more of the recommendations made in a code of practice issued under section 4 of that Act (a Code of Recommended Practice on Local Authority Publicity). The Secretary of State may give a direction to a single named authority, or to a number of named authorities, requiring compliance with some or all of the Code. The section also sets out the procedures to be followed prior to giving a direction and for the withdrawal or modification of a direction. The power to require compliance with a Code by all authorities in a particular class, or by all authorities to which the Code applies, is to be exercised by order, subject to the draft affirmative procedure.

Section 40: Access to local government meetings and documents

135. This section gives the Secretary of State a power to make regulations that may require local government bodies to allow members of the public the rights to attend all their public meetings and to have access to records relating to decisions taken by their officers. Subsection (1) of the section enables regulations to be made to allow persons to film, photograph or audio-record a public meeting of a local government body or to use any other means that will enable a person not present at the meeting to see or hear proceedings at the meeting. With this, people, whether professional or citizen journalists, can use social media to report or give commentary on the proceedings at meetings. Subsection (2) of the section lists further provisions that the regulations may make. For instance, members of the public may be allowed to use any medium such as

the internet to make any reporting activities available to the public. Provision may also be made to ensure that activities such as filming or photographing do not disrupt the good order and conduct of public meetings.

136. Subsection (3) of the section allows regulations to be made about the recording of certain decisions taken by officers, including with regard to what information is to be included with the record. Regulations may also be made to require written records and connected documents to be made available to members of the body or the public and to create offences for non-compliance with the regulations.

137. Subsection (4) enables the Secretary of State to make regulations that may require or permit a body to give a notice of a meeting through electronic means e.g. the internet. Similarly, any documents required to be open to inspection may also be required or permitted to be made available electronically.

138. Subsection (6) sets out the bodies such as London borough councils, the London Fire and Emergency Planning Authority, county councils and district councils in England, to which this openness measure applies. By subsection (7), subsection (1) also applies to the executives of district councils, county councils in England and London borough councils. Subsection (8) makes it clear that the provisions in subsection (3) apply to the Greater London Authority (including officers of the London Assembly and the Mayor's cabinet).

139. Subsection (9) provides that these provisions also apply to joint committees of bodies to which Part 5A of the Local Government Act 1972 (relating to access to meetings and documents of certain authorities, committees and sub-committee) applies. Similarly, subsection (10) provides that the provisions of the new clause relating to Part 5A of the Local Government Act 1972 apply to that Part as it applies to the London Assembly as a result of the Greater London Authority Act 1999.

140. Subsection (11) amends the period of notice to be given for a meeting of a principal council from three to five clear days, making the requirement consistent with the notice required under Part 5A of the Local Government Act 1972.

Section 41: Council tax referendums

141. This section amends Chapter 4ZA of Part 1 of the Local Government Finance Act 1992 to include the cost of levies within a billing or major precepting authority's calculation of whether its council tax is excessive, and so requires a council tax referendum to be held. In effect, this amends the meaning of 'relevant basic amount of council tax' which is the primary trigger for council tax referendums from the previous definition which excluded levies, to one that includes levies. This latter definition is also known as the 'basic amount of council tax', and is the amount that people see on their council tax bills.

142. Each year the Secretary of State may set referendum 'principles' for categories of authorities. One of the principles must be a comparison between the 'relevant basic amount' of council tax set by an authority in the relevant year, and that set in the preceding year. Previously the 'relevant basic amount' was essentially the Band D council tax set by the authority but adjusted to exclude any precepts issued to the authority and any levies received from a wide range of bodies.

143. The amendment made by subsection (2) requires a billing authority that has set an excessive increase and triggered a referendum to notify any body that has issued a levy or special levy to it.

144. The amendment made by subsection (3) requires a billing authority to notify any body from which it received a levy or special levy of the result of the referendum.

145. The amendments made by subsections (5) and (8) replicate these provisions for major precepting authorities (including specifically the Greater London Authority).

146. The amendments in subsections (6) and (7) are minor consequential amendments related to subsections (5) and (8).

147. The amendments made by subsections (9) to (13) change the definition of 'relevant basic amount of council tax' for billing and major precepting authorities (including specifically, in subsection (13), the Greater London Authority) so that it now includes any levies issued to them or anticipated by them. The relevant basic amount will continue to exclude any precepts issued to billing authorities, as precept-setting bodies are individually and separately subject to the referendum legislation.

148. The amendments made by subsections (14) to (21) provide transitional measures for the years beginning 1 April 2014 and 1 April 2015. Subsections (15) to (17) and (19) to (21) are mutually exclusive, so that only one set of provisions can have effect. The trigger for determining which provisions will take effect is whether in accordance with section 49(3) the section came into force at Royal Assent or comes into force subsequently by order. As the Act received Royal Assent on 30 January 2014, this section came into force on that day, so that subsections (15) to (17) apply rather than subsections (19) to (21).

149. Subsections (15) to (17) make provision in relation to the referendum principles that the Secretary of State may set for the financial year beginning 1 April 2014. Specifically, they allow the Secretary of State to determine a category of authority on the basis of whether its relevant basic amount of council tax for the financial year 2013-14 would have been excessive if the relevant basic amount in that year and 2012-13 had been calculated in accordance with the newly-amended legislation. In short, this explicitly allows the Secretary of State to consider the impact of previous levy increases when setting referendum principles for the financial year 2014-15.

Section 42: Parish meetings: parish polls

150. Section 42 modernises the arrangements surrounding parish polls. Currently, a parish poll may be demanded on any question arising from a parish meeting. A poll is triggered if either the Chairman of the parish meeting consents or if the poll is demanded by not less than 10 or one-third of the electors present at the meeting, whichever is the less. Polling can only take place from 4-9pm and there are no provisions for polling cards or postal/proxy voting.

151. The section amends paragraph 18 of Schedule 12 to the Local Government Act 1972 including the existing provisions by which the Secretary of State has a power to create rules about polls subsequent to parish meetings. The new clause would provide the Secretary of State with a power to make regulations about the conduct of parish polls covering in particular: the number of local government electors who must demand a poll for a poll to be required, the questions arising at a meeting on which a poll may be held and the arrangements for the conduct of a poll, for example, the hours in which a vote may be cast.

152. Sub-paragraphs (9) and (10) of paragraph 18 would allow for the regulations made by the Secretary of State to apply existing electoral legislation to parish polls such as procedures for postal voting. By sub-paragraph (11) the regulations would be subject to the negative resolution procedure. Subsection (4) would make a number of technical amendments to section 243 of the Local Government Act 1972.

Section 45 and Schedule 12: Related amendments

153. This Schedule (which is given effect to by section 45) makes a range of amendments to various Acts, related to the changes made by this Act. Many of these are consequential and remove redundant references to the Audit Commission; however some make more significant changes to existing legislation. Of particular note are the following:

154. Paragraphs 2, 30, 44, 46, 69 and 82 to 84 make consequential amendments to legislation setting out the powers and duties of certain inspection authorities: Her Majesty's Chief Inspector of Prisons, HM Inspectors of Constabulary, HM Inspector of the Crown Prosecution Service, HM Inspectorate of Probation, HM Chief Inspector of Children's Services and Skills, and the Care Quality Commission. The amendments remove references to the Audit Commission, which previously had powers to carry out inspections of certain local authorities and so would co-ordinate those with other inspectorates. They also insert provisions to enable inspectorates to do anything they think appropriate to facilitate an inspection carried out under new section 10 of the Local Government Act 1999 (see section 34 and Schedule 10).

155. Paragraphs 50 and 51 amend sections 21 and 22 of the Local Government Act 2003. Section 21 provides a definition of proper practices in relation to accounts and gives a power to define accounting practices by regulation. These powers have formerly been used to apply professional accounting codes to principal local authorities and to establish accounting practices that avoid unwarranted increases in council tax. Section 22 provides a related definition of "revenue account." Both of these sections only apply to bodies that are local authorities as defined in that Act, plus three types of bodies (parish councils, community councils and charter trustees).

156. The effect of Paragraphs 50 and 51 is to extend the list of bodies to which sections 21 and 22 apply to include all relevant authorities under section 2 other than health service bodies. Any further bodies included as a relevant authority in future will also be brought within sections 21 and 22, unless they are health service bodies.

157. Paragraph 79 amends paragraph 9 of Schedule 13 to the Serious Crime Act 2007 by omitting the reference to Schedule 7 of the same Act. Schedule 7 modified section 32D(8)(b) of the Audit Commission Act 1998 by specifying that "... a person who discloses information to which this section applies is guilty of an offence and liable ... on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both". The Local Audit and Accountability Act 2014 does not contain any imprisonable criminal sanctions in relation to data matching.

158. Paragraphs 89 to 96 amend the Housing and Regeneration Act 2008 to enable the housing regulator to appoint a local auditor to undertake an extraordinary audit of a local authority's social housing accounts. This is consistent with the regulator's existing power under section 210 of that Act to order an extraordinary audit as part of an inquiry under section 206 in respect of a private registered provider of social housing.

NHS charities

159. Paragraphs 118 to 122 make amendments to the provisions in the Charities Act 2011 which concern the audit or examination of the accounts of English NHS charities. An English NHS charity is a charitable trust which has as its trustee an English NHS body, such as an NHS trust (see section 149(7) of the Charities Act 2011). English NHS charities are generally established by English NHS bodies in order to handle their charitable funds.

160. Paragraph 119(2) replaces the requirement in section 149 of the Charities Act 2011 that the accounts of larger NHS charities should be audited by a person appointed by the Audit Commission with a requirement that the audit be carried out by someone who is eligible to act as an auditor under either the Companies Act 2006, this Act, or who is a member of a body specified in regulations under the Charities Act 2011. Section 144(1) of the Charities Act 2011 provides that this applies to NHS charities whose gross income in the year exceeds £500,000; or whose gross income in the year exceeds the accounts threshold (specified in section 133 of the Charities Act 2011) and whose assets exceed £3.26 million.

161. Paragraph 119(3) requires the trustees of smaller English NHS charities, with income of between £25,000 and £500,000 in the year in question, to appoint either an auditor (in the same way as larger English NHS charities) or a qualified independent examiner. Currently, the Audit Commission decides whether the accounts of smaller NHS charities should be audited or examined. Paragraph 119(4) sets out the criteria for someone to be qualified as an independent examiner.

162. Paragraph 119(5) removes the imposition of the requirements in section 3 of the Audit Commission Act 1998 on the audit of accounts of English NHS charities. The main provisions in that section relate to who should be appointed as an auditor. For NHS charities, these would be superseded by the provision in paragraph 118(2). Other provision in section 3 concerns the terms of appointment of auditors, which would become a matter for the trustees of an NHS charity.

163. Paragraph 119(6) extends the existing provision in section 149(5) of the Charities Act 2011 whereby the Charities Commission can give directions about the carrying out of examinations of the accounts of smaller NHS charities, so that the Charities Commission can also give guidance about the selection of independent examiners.

164. Paragraph 120 has the effect that if an NHS charity is the parent charity for a group of charities that meets the definition of larger group in section 151 of the Charities Act 2011, the auditor for the group accounts would in future be appointed by the trustees of that charity, rather than the Audit Commission. Paragraph 117 makes similar provision where a NHS charity is the parent charity for a group of charities that meets the definition of smaller group in section 152 of the Act.

Section 47 and Schedule 13: NHS trusts and trustees for NHS trusts

165. NHS trusts provide goods and services for the purposes of the NHS in England. They include acute trusts (hospitals), ambulance trusts and mental health trusts. NHS trusts are moving towards foundation trust status or another sustainable form. Section 179(1) of the Health and Social Care Act 2012 makes provision for the abolition of NHS trusts. This provision has not yet been commenced, pending the transition of all NHS trusts to alternative forms. Given the provision for the abolition of NHS trusts and their trustees, the Act makes specific provision about NHS trusts and trustees for NHS trusts in Schedule 13, with paragraph 1 providing that the Schedule will cease to have effect when there are no longer any NHS trusts. Paragraph 2 enables the Secretary of State to make further transitory or saving provision in relation to NHS trusts and their trustees, particularly in relation to the preparation of accounts covering the period during which an NHS trust ceased to be constituted as such.

166. Paragraphs 3 and 4 add NHS trusts and the trustees of NHS trusts to the list of "relevant authorities" in Schedule 2 and the definition of "health service bodies" in section 3(9).

167. Paragraph 5 defines "accounts" in relation to NHS trusts and the trustees of NHS trusts for the purposes of section 4 (General requirements for audit).

168. Paragraph 6 concerns the publication by an NHS trust or the trustees of an NHS trust of details about the appointment of an auditor. Specifically it provides that an NHS trust or the trustees of an NHS trust must publish the notice about the appointment of an auditor provided for in section 8(4) in a way that the trust or trustees consider likely to bring the notice to the attention of patients of the trust.

169. Paragraph 7 makes similar provision to paragraph 6, but in relation to the publication of advice from the auditor panel provided for in section 10(10).

170. Paragraphs 8 and 9 concern the failure by an NHS trust or the trustees of an NHS trust to appoint an auditor. If this happens, the trust or trustees must inform the National Health Service Trust Development Authority immediately. If the situation is not resolved by the 25 March which is immediately before the financial year for which an auditor has not been appointed, the Authority must notify the Secretary of State. The Secretary

of State, once notified, may direct the Authority either to direct the trust or trustees to appoint an auditor or appoint one on their behalf; or take either of those steps him or herself. The Secretary of State or the Authority must inform the trust or trustees, not less than 28 days beforehand, of their intention to direct the trust or trustees to appoint an auditor or to appoint one on their behalf and must also consider any representations the trust or trustees make on the direction or appointment. However, there is provision for the Secretary of State or the Authority to act without giving notice or considering representations, if the Secretary of State or the Authority considers that it is likely that a function would need to be exercised by an auditor within 60 days of a direction to appoint being given or an appointment being made. These provisions mirror those for clinical commissioning groups provided for in section 13, except that the initial notification is to the National Health Service Trust Development Authority, rather than the NHS Commissioning Board; and the Authority, rather than the Board, can take steps to remedy the situation.

171. Paragraph 10 extends the provisions in section 21 that apply to the auditors of the accounts of special trustees of a hospital, so that they also apply to auditors of the accounts of NHS trusts and trustees of NHS trusts. Paragraph 10 has the effect that the auditor of an NHS trust or trustees of an NHS trust must be satisfied that: the accounts present a true and fair view and comply with relevant legislative requirements; proper practices have been observed in the preparation of the accounts; and the trust or trustees have made proper arrangements for securing economy, efficiency and effectiveness in their use of resources. Unlike the auditors of clinical commissioning groups, audits of the accounts of NHS trusts or the trustees of NHS trusts do not have to be satisfied in relation to money and resources authorised by Parliament, nor that the trust's or trustees' financial transactions are in accordance with any relevant authority. These requirements are not relevant to NHS trusts or the trustees of NHS trusts, as NHS trusts supply services under contracts with clinical commissioning groups and others. Any "use of funds" opinion on the accounts of an NHS trust or the trustees of an NHS trust would therefore duplicate the opinions given by the auditors of clinical commissioning groups.

172. Paragraph 11 has the effect that a director of an NHS trust may not act as the local auditor for that trust or the trustees of that trust.

173. Paragraph 12 makes detailed provision on the way in which Schedule 7 (reports and recommendations) would apply to NHS trusts and the trustees of NHS trusts. It provides that where the auditor of an NHS trust or the trustees of an NHS trust makes a written recommendation or a public interest report, the recommendation or report must be sent at the time at which it is made to the National Health Service Trust Authority. This is in addition to the provision in paragraph 2(3) of Schedule 7 that the recommendation or report be sent to the Secretary of State. Paragraph 12 also makes detailed provision on the publication by NHS trusts and the trustees of NHS trusts of any public interest report made by their auditors. Specifically, paragraph 12 provides that the trust or trustees must publish the report in a way that they consider is likely to bring it to the attention of patients of the trust.

174. Paragraph 13 applies where the auditor of an NHS trust or the trustees of an NHS trust believes that the trust or trustees, or one of its officers, is about to take or has taken decisions which have or would incur unlawful expenditure, or is about to take or has taken a course of action which would be unlawful and likely to lead to a loss or deficiency. The auditor must notify the Secretary of State and the National Health Service Trust Development Authority.

COMMENCEMENT

175. Section 49 makes provision about commencement. Sections 1 to 38, 42, 45 and 47 (provisions to abolish the Audit Commission and establish the new local audit regime,

related amendments and Parish meetings: parish polls) come into force by order made by the Secretary of State.

176. Section 39 (provisions to ensure compliance with the Code of Recommended Practice on Local Authority Publicity) and 40 (Access to local government meetings and documents) come into force 2 months after the Act is passed.

177. Section 41 (amendments to the council tax referendums provisions) comes into force on the day the Act is passed if that date is before 5 February 2014, otherwise the section comes into force by order made by the Secretary of State.

HANSARD REFERENCES

178. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	***Date***	***Hansard reference***
House of Lords		
Introduction	9 May 2013	Vol. 745 Cols 21 & 22
Second Reading	22 May 2013	Vol. 745 Cols 891-924
Committee	17 June 2013	Vol. 746 Cols GC1 40
	19 June 2013	Vol.746 Cols GC 99-138
	24 June 2013	Vol. 746 Cols GC 187-218
	26 June 2013	Vol. 746 Cols GC 219- 268
Report	15 July 2013 and 17 July 2013	Vol. 747 Cols 549-611 & Cols 852-868
Third Reading	24 July 2013	Vol. 747 Cols 1318-1337
House of Commons		
Introduction	29 August 2013	No debate
Second Reading	28 October 2013	Vol. 569 Cols 678-730
Committee	5 November 2013	Hansard- Local Audit and Accountability Bill 2013/14 Public Bill Committee
	7 November 2013	
	12 November 2013	
	19 November 2013	
	21 November 2013	
Report and Third Reading	17 December 2013	Vol. 572 Cols 645-710
Lords Consideration of Commons Amendments	21 January 2014	Vol. No. 751 Cols 619- 660
Royal Assent	30 January 2014	Lords: Vol. 751 Col. 1351
		Commons: Vol. 574 Col 1008