

EXPLANATORY MEMORANDUM TO
THE ACCOUNTS AND AUDIT (AMENDMENT NO. 2) REGULATIONS 2021
2021 No. 565

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument corrects an error in the Accounts and Audit (Amendment) Regulations 2021 (S.I. 2021/263) (“the 2021 Regulations”) to apply the extension for local government bodies to publish, and make available for inspection, their unaudited annual accounts and supporting documents to “Category 1” local government bodies alone, rather than to all bodies, i.e. including “Category 2” bodies.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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

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

4. Extent and Territorial Application

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

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 The Accounts and Audit Regulations 2015 (S.I. 2015/234) (“the 2015 Regulations”)¹ set out a procedure for the audit of accounts of relevant authorities (apart from health bodies), as defined in Schedule 2 to the Local Audit and Accountability Act 2014 (“the 2014 Act”).

¹ https://www.legislation.gov.uk/uksi/2015/234/pdfs/uksi_20150234_en.pdf

(i) Period for exercise of public rights

- 6.2 One aspect of the process involves a period during which the rights of objection, inspection and questioning of the local auditor under sections 26 and 27 of the 2014 Act may be exercised. Under section 26 interested persons and journalists may inspect the accounting records and supporting documents for a relevant authority (other than a health service body) for the financial year and make copies of those documents. Section 27 allows a local government elector to make an objection to a local auditor if the elector considers that there is a matter about which the auditor could make a public interest report or apply for a declaration that expenditure is unlawful.
- 6.3 For “Category 1 authorities”² (defined in regulation 2(1) of the 2015 Regulations) the period for the exercise of public rights must include the first 10 working days of June in the financial year immediately following the financial year to which the statement of accounts relates. A financial year begins with 1 April. For Category 1 authorities, and their statement of accounts for the financial years 2020/21 and 2021/22, the 2021 Regulations removed the reference to the first 10 working days of June to require instead that the public inspection period must have started by the first working day of August.
- 6.4 However, the 2021 Regulations also removed the period for the exercise of public rights for “Category 2 authorities”³ (also defined in regulation 2(1) of the 2015 Regulations) which must include the first 10 working days of July in the financial year immediately following the financial year to which the statement of accounts relates to require instead that the public inspection period must have started by the first working day of August.

(ii) Deadline for publishing audited accounts

- 6.5 The 2021 Regulations also change the deadline for publication of audited accounts for Category 1 authorities and associated documents from 31 July to 30 September relating to the financial years 2020/21 and 2021/22.
- 6.6 The deadline for publication of audited accounts for Category 2 authorities is currently 30 September and for these authorities that date remains unchanged.

7. Policy background

What is being done and why?

- 7.1 The 2021 Regulations were made in response to a recommendation by Sir Tony Redmond in his independent report into the effectiveness of external audit and transparency of financial reporting in local authorities⁴ and were intended to reduce the pressure on Category 1 authorities (and auditors) to comply with legal deadlines. As such, those Regulations provided those bodies with additional time to complete the audit of their accounts for 2020/21 and 2021/22.
- 7.2 The error in the 2021 Regulations meant that the extension to the unaudited accounts publication deadline to 1 August covered both Category 1 and Category 2 authorities. Whilst the change would not prevent any authority from publishing their unaudited

² Such as county councils, unitary authorities, fire and rescue authorities and police bodies

³ Such bodies include parish councils and internal drainage boards

⁴ <https://www.gov.uk/government/publications/local-authority-financial-reporting-and-external-audit-independent-review>

accounts before this date, the intention was for this to only apply to Category 1 authorities, and concerns have been raised by sector stakeholders that notionally reducing the window between publishing unaudited and audited accounts could inadvertently lead to delays in audit completions and additional costs to Category 2 authorities.

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

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 Section 32(3) of the 2014 Act requires that any regulations be subject to consultation with certain named stakeholders. These are the Comptroller and Auditor General of the National Audit Office, appropriate representatives of relevant authorities and recognised supervisory bodies. Given the request for the Regulations to be corrected as soon as possible to provide category 2 authorities and audit firms with certainty, we consulted sector stakeholders and affected audit firms over 10 days from 16-28 April.

10.2 All the named stakeholders were consulted. In addition, the need to make the proposed amendments for Category 2 authorities was discussed at a meeting of the local audit monitoring board and comments were sought from attendees on the draft regulations, which were also circulated to members.

10.3 All sector stakeholders responded to confirm that they were content and named stakeholders acknowledged the need for the change. Given the specific and minor nature of the change it is not intended to publish a separate consultation response.

10.4 It is our intention to ensure that all Category 2 bodies are made aware of the correction of the error via their audit procurement body and auditors.

10.5 Although the territorial extent of this instrument includes Wales, there are separate regulations covering Welsh authorities made by the devolved administration. Officials have notified the devolved administrations of the error to make them aware of the steps we have taken to correct it.

11. Guidance

11.1 We are not intending to produce guidance to accompany this statutory instrument.

12. Impact

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

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

12.3 An Impact Assessment has not been prepared for this instrument. There is a low level of impact because the provisions in this instrument restore the existing position in the 2015 Regulations for Category 2 authorities.

13. Regulating small business

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

14. Monitoring & review

- 14.1 The amendment made by this instrument corrects an error in the 2021 Regulations and restores the previous position set out in the 2015 Regulations and therefore do not require monitoring or review.

15. Contact

- 15.1 Alison Morris at the Ministry of Housing, Communities and Local Government Telephone: 0303 444 2613 or email: alison.morris@communities.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Max Soule Deputy Director for Local Government Stewardship, at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Luke Hall, Minister of State at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.