

2015 No. 184

LOCAL GOVERNMENT, ENGLAND AND WALES

The Local Audit (Smaller Authorities) Regulations 2015

Made - - - - *9th February 2015*

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 5(1) to (3), (4)(a), (c) to (g), (5)(a) to (c), (6) to (9), 6(4), 43(2) and 46(1) of the Local Audit and Accountability Act 2014(a).

In accordance with section 43(3) and (4)(d) of that Act, a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Local Audit (Smaller Authorities) Regulations 2015 and come into force on the day after the day on which they are made .

Interpretation

2. In these Regulations—

“the Act” means the Local Audit and Accountability Act 2014, and, unless otherwise provided references to the Act or to any provision of it are to the Act or that provision as it has effect by virtue of these Regulations;

“audit contract” means a contract between a specified person and a local auditor for the carrying out of audit work;

“audit work” means, in relation to an authority, the carrying out of the assurance engagement functions of a local auditor under the Act in relation to the accounts of that authority—

- (a) in compliance with, or with the relevant part or parts of, the code of audit practice prepared under Schedule 6 to the Act applicable to that authority; and
- (b) in accordance with any procedures specified in guidance issued by the Comptroller and Auditor General under paragraph 9 of that Schedule,

to enable the auditor to issue a report on the annual return prepared by the authority;

“compulsory appointing period” means the financial year or years for which a relevant specified person is responsible for appointing a local auditor to conduct the audit of the accounts for any authority which becomes an opted in authority by virtue of regulation 11, which—

- (a) is specified in a invitation; and
- (b) relates to—
 - (i) a specific financial year; or
 - (ii) a period of consecutive financial years, not exceeding five years;

“exempt authority” means a smaller authority that has certified itself as exempt in accordance with regulation 9(1);

“full audit authority” means a smaller authority which has decided to prepare accounts and be audited as if it was a relevant authority which is not a smaller authority, in accordance with regulation 8;

“invitation” has the meaning given in regulation 10(5);

“newly established smaller authority” means—

- (a) a smaller authority which was not in existence at the time that the relevant specified person issued an invitation under regulation 10 on a class of smaller authorities within which the smaller authority now falls; or
- (b) a smaller authority which was not a smaller authority at the time that the relevant specified person issued an invitation under regulation 10 on a class of smaller authorities within which the authority now falls;

“opted in authority” means a smaller authority for which the responsibility for the appointment of a local auditor has become that of a specified person instead of that of the authority by virtue of regulations 11, 14 or 15;

“relevant specified person”, in relation to a smaller authority, means the person specified under regulation 3(2) in relation to the class of authorities within which the smaller authority falls;

“smaller authority” does not include—

- (a) a health service body;
- (b) the Mayor’s Office for Policing and Crime;
- (c) a police and crime commissioner for a police area in England;
- (d) a chief constable for an area in England;
- (e) the Commissioner of Police of the Metropolis; or
- (f) the Common Council;

“specified person” means a person specified by the Secretary of State under regulation 3 to appoint a local auditor; and

“website” means a website which is publicly accessible free of charge.

PART 2

Specified person

Specification of a person to appoint local auditors

3.—(1) The Secretary of State may, in accordance with regulation 4, specify a person to appoint a local auditor to audit the accounts of an opted in authority.

(2) The Secretary of State may specify different persons in relation to different classes of smaller authorities.

Procedure for specifying a person to appoint local auditors

4.—(1) The specification of a person must be in writing and may, but need not, specify a date when the specification ends.

(2) The Secretary of State must publish the relevant details of any specified person—

- (a) on a website;
- (b) in the London Gazette.

(3) The relevant details are—

- (a) the person's name;
- (b) the person's registered address (if any);
- (c) the person's address for correspondence; and
- (d) details of the class of smaller authorities in relation to which that person is the specified person, if the class is not all smaller authorities.

Ending specification

5.—(1) The Secretary of State may end the specification of a specified person in accordance with this regulation.

(2) Before ending the specification, the Secretary of State must—

- (a) consult such smaller authorities as the Secretary of State considers have an interest;
- (b) consult such associations of smaller authorities or relevant authorities as appear to the Secretary of State to have an interest.

(3) The Secretary of State must—

- (a) give notice to the specified person of the ending of the specification, giving—
 - (i) the date on which the specification is to end,
 - (ii) reasons for ending the specification;
- (b) publish notice of the ending of the specification—
 - (i) on a website, and
 - (ii) in the London Gazette;
- (c) make arrangements for notifying opted in authorities of the ending of the specification.

(4) The Secretary of State may make arrangements under paragraph (3)(c) by requiring the specified person to notify opted in authorities.

Consequences of end of specification

6.—(1) If the Secretary of State gives notice to a specified person under regulation 5(3)(a), the Secretary of State may, either before or after (or both before and after) the specification ends—

- (a) exercise the functions of the specified person arising by virtue of these Regulations;
- (b) transfer rights and liabilities of the specified person arising by virtue of these Regulations to—
 - (i) the Secretary of State; or
 - (ii) another specified person.

(2) The Secretary of State may transfer some rights and liabilities under paragraph (1)(b) to the Secretary of State and some to another specified person.

(3) The specified person to whom notice is given under regulation 5(3)(a) must—

- (a) disclose all its rights and liabilities arising by virtue of these Regulations to the Secretary of State;

- (b) co-operate with the Secretary of State and any other specified person for the purpose of ensuring an audit of an opted in authority is not adversely affected.

Additional functions of specified person

7. A specified person must—

- (a) keep a record of—
 - (i) authorities which are within the class of authorities to which an invitation under regulation 10 must be issued, and
 - (ii) newly established authorities to which it must give notice under regulation 16;
- (b) publish and keep up to date, on a website—
 - (i) the records mentioned in sub-paragraph (a), and which of the authorities are opted in authorities;
 - (ii) the contact details for the auditor appointed to each opted in authority other than an exempt authority;
- (c) design and implement appropriate systems to—
 - (i) oversee issues of independence of any auditor which it has appointed, arising both at the point of appointment and when undertaking audit work;
 - (ii) monitor compliance by a local auditor against the contractual obligations in an audit contract;
 - (iii) resolve disputes or complaints from—
 - (aa) local auditors, opted in authorities and local government electors relating to audit contracts and the carrying out of audit work by auditors it has appointed;
 - (bb) authorities regarding the refusal of a request to become an opted in authority under regulation 15.

PART 3

Types of authority

Full audit authorities

8.—(1) A smaller authority, other than one to whom paragraph (2) applies, may decide to prepare a statement of accounts and be audited as if it were a relevant authority which is not a smaller authority in accordance with this regulation (“a full audit authority”).

(2) This paragraph applies to an authority if—

- (a) the higher of the authority’s gross income for the financial year and its gross expenditure for the year does not exceed £25,000; or
- (b) the higher of the authority’s gross receipts and gross payments for the financial year does not exceed £25,000.

(3) A full audit authority is, for the purposes of these Regulations, to be treated as if it were not a smaller authority other than for the purposes of—

- (a) the definitions of “full audit authority” and “smaller authority” in regulation 2;
- (b) paragraph (1) of this regulation;
- (c) regulations 10(1) and 14(1)(b); and
- (d) regulation 24(2)(a) and paragraph (1) of that regulation insofar as it relates to paragraph (2)(a).

(4) A full audit authority may decide to prepare a statement of accounts and be audited as a smaller authority, and so cease to be a full audit authority.

Exempt authorities

- 9.—(1) A smaller authority may certify itself as an exempt authority for a financial year if—
- (a) the qualifying condition for that authority and that financial year in paragraph (2) is met;
 - (b) the financial year is not one of the first three years of the authority’s existence; and
 - (c) none of the relevant circumstances in paragraph (3) apply in relation to the keeping of the accounts for the preceding financial year or to the audit of those accounts.
- (2) The qualifying condition is met for an authority and a financial year if—
- (a) the higher of the authority’s gross income for the year and its gross expenditure for the year does not exceed £25,000, or
 - (b) the higher of the authority’s gross receipts and gross payments for the year does not exceed £25,000.
- (3) The relevant circumstances are—
- (a) the local auditor has made a public interest report^(a) in respect of the authority or any entity connected with it;
 - (b) the local auditor has made a recommendation to the authority, relating to the authority or any entity connected with it;
 - (c) the local auditor has issued an advisory notice under paragraph 1(1) of Schedule 8 to the Act, and has not withdrawn the notice;
 - (d) the local auditor has commenced judicial review proceedings under section 31(1) of the Act, and the proceedings have not been withdrawn nor has the court found against the auditor;
 - (e) the local auditor has made an application under section 28(1) of the Act for a declaration that an item of account is unlawful, and the application has not been withdrawn nor has the court refused to make the declaration; or
 - (f) the court has declared an item of account unlawful after a person made an appeal under section 28(3) of the Act.
- (4) Subject to paragraph (5), where any relevant circumstances under paragraph (3) apply after the authority has certified itself as an exempt authority in relation to a financial year, the authority ceases to be an exempt authority.
- (5) If, after the authority ceases to be an exempt authority because a relevant circumstance in paragraphs (3)(c) to (e) applied—
- (a) the advisory notice referred to in paragraph (3)(c) is withdrawn;
 - (b) the judicial review proceedings referred to in paragraph (3)(d) are withdrawn or the court finds against the local auditor; or
 - (c) the application referred to in paragraph (3)(e) is withdrawn or the court has refused to make the declaration;
- the authority becomes an exempt authority again.
- (6) An authority which has certified itself as exempt must—
- (a) if the authority is an opted in authority, give notice to the relevant specified person as soon as practicable after the certification; and
 - (b) publish a notice—
 - (i) stating that it has certified itself as exempt;
 - (ii) providing an explanation of the effect of that certification in relation to—
 - (aa) the conduct of the audit of the authority; and

(a) See section 44 of the Local Audit and Accountability Act 2014 for meaning of “public interest report” and “recommendation”.

- (bb) the appointment of an auditor to audit the accounts of the authority;
- (7) The notice must be published—
- (a) if the authority has a website, on its website;
 - (b) otherwise in such manner as the authority thinks is likely to bring the notice to the attention of persons who live in its area.
- (8) An authority which certified itself as exempt, but which has ceased to be an exempt authority in accordance with paragraph (4) must—
- (a) if the authority is an opted in authority, give notice to the relevant specified person as soon as practicable after the authority ceases to be an exempt authority; and
 - (b) publish a notice—
 - (i) stating that it is no longer an exempt authority;
 - (ii) providing an explanation of the effect of this in relation to—
 - (aa) the conduct of the audit of the authority; and
 - (bb) the appointment of an auditor to audit the accounts of the authority;
- (9) The notice must be published—
- (a) if the authority has a website, on its website;
 - (b) otherwise in such manner as the authority thinks is likely to bring the notice to the attention of persons who live in its area.
- (10) An authority which becomes an exempt authority again in accordance with paragraph (5) must—
- (a) if the authority is an opted in authority, give notice to the relevant specified person as soon as practicable after the authority has become an exempt authority again; and
 - (b) publish a notice—
 - (i) stating that it has become an exempt authority again;
 - (ii) providing an explanation of the effect of this in relation to—
 - (aa) the conduct of the audit of the authority; and
 - (bb) the appointment of an auditor to audit the accounts of the authority;
- (11) The notice must be published—
- (a) if the authority has a website, on its website;
 - (b) otherwise in such manner as the authority thinks is likely to bring the notice to the attention of persons who live in its area.

PART 4

Invitation to become an opted in authority

Issuing of invitation to smaller authorities

10.—(1) Before every compulsory appointing period begins, a relevant specified person must issue an invitation in accordance with this regulation to all authorities which it reasonably believes—

- (a) to be smaller authorities, and
- (b) to fall within the class of authorities in relation to which the person has been specified under regulation 3(2).

(2) The invitation must be published in such manner as the relevant specified person thinks is likely to bring it to the attention of the principal authorities concerned.

(3) The invitation must contain the following details—

- (a) the length of the compulsory appointing period, specifying the financial year or years to which it relates;
- (b) the closing date for the giving of notice to the specified person by an authority within the class giving its response to the invitation (and that date must allow at least eight weeks for the response beginning on the date the invitation is published);
- (c) a statement that the specified person will not be under a duty to appoint a local auditor to a full audit authority or any other authority which does not become an opted in authority;
- (d) an explanation of the procedures by which an authority—
 - (i) becomes an opted in authority; or
 - (ii) may reject the invitation.

(4) An invitation may not relate to a financial year which commences before 1st April 2017.

(5) In these Regulations “invitation” means an invitation to become an opted in authority for the duration of the compulsory appointing period.

Opting in

11.—(1) A smaller authority which is within the class of authorities to whom an invitation relates, may accept that invitation by giving notice to that effect to the relevant specified person on or before the closing date mentioned in regulation 10(3)(b).

(2) A smaller authority which gives notice under paragraph (1) becomes an opted in authority on the date on which the notice is received by the relevant specified person.

(3) A smaller authority which is within the class of authorities to whom an invitation relates but which does not either give the notice referred to in either paragraph (1) or regulation 12 becomes an opted in authority on the day after the closing date mentioned in regulation 10(3)(b).

(4) An authority which has become an opted in authority under this regulation is an opted in authority only for the duration of the compulsory appointing period specified in the invitation.

Opting out

12.—(1) A smaller authority, which is within the class of authorities to whom an invitation relates, may reject that invitation by giving notice to that effect to the relevant specified person, on or before the closing date mentioned in regulation 10(3)(b).

(2) Subject to regulation 15, an authority which gives notice under paragraph (1) does not become an opted in authority.

Invitation to non-qualifying authorities: duty to notify

13.—(1) If an authority which is within the class of authorities to whom an invitation relates—

- (a) is a full audit authority, it must give notice to the specified person that it is a full audit authority;
- (b) does not fall within the class of authorities in relation to which the specified person is the relevant specified person, it must give notice to the specified person that it does not fall within the class; and

in each case, notice must be given as soon as practicable and in any event on or before the closing date mentioned in regulation 10(3)(b).

(2) Paragraph (3) applies where an authority fails to give notice to the relevant specified person as required by paragraph (1).

(3) The specified person may recover from the authority any reasonable costs incurred in relation to that authority by—

- (a) the specified person; or
- (b) a local auditor appointed to the authority by the specified person,

until the date when the authority notifies the specified person as required by paragraph (1).

PART 5

Opted in authorities during compulsory appointing period

Right to become an opted in authority during a compulsory appointing period

14.—(1) During a compulsory appointing period, the following authorities have the right to become an opted in authority, in accordance with this regulation—

- (a) a newly established smaller authority;
- (b) a smaller authority that was a full audit authority at the time the invitation was published under regulation 10(2), but which has subsequently ceased to be a full audit authority; and
- (c) a smaller authority to which a relevant specified person should have issued an invitation under regulation 10 but failed to do so.

(2) An authority falling within paragraph (1) may become an opted in authority by giving notice to the relevant specified person of its decision to become an opted in authority; and such notice must specify the authority's postal address.

(3) An authority which gives a notice under paragraph (2) becomes an opted in authority on the date on which the notice is received by the specified person.

(4) The authority is an opted in authority for the remainder of the compulsory appointing period which is in existence on the date mentioned in paragraph (3).

Right to request to become an opted in authority during a compulsory appointing period

15.—(1) During a compulsory appointing period, any authority which rejected an invitation made by a relevant specified person under regulation 12 may make a request to the relevant specified person to become an opted in authority, in accordance with this regulation.

(2) The authority must give notice to the relevant specified person of its request to become an opted in authority.

(3) The relevant specified person must—

- (a) consider the authority's request to opt in,
- (b) agree to the request unless the specified person has reasonable grounds for refusing it,
- (c) give notice to the authority of the decision in relation to the request as soon as practicable, and
- (d) provide reasons if the request is refused.

(4) The authority becomes an opted in authority on the date on which the relevant specified person gives notice to the authority agreeing to its request to become an opted in authority.

(5) The authority is an opted in authority for the remainder of the compulsory appointing period which is in existence on the date mentioned in paragraph (4).

(6) A relevant specified person may recover its reasonable costs for making arrangements to appoint a local auditor to an authority which becomes an opted in authority under this regulation, from that authority.

Newly established smaller authorities

16. As soon as a specified person becomes aware of the existence of—

- (a) a newly established smaller authority, or
- (b) a smaller authority on whom it should have served a proposal under regulation 10 but failed to do so,

which falls within the class of authorities in relation to which the person was specified under regulation 3(2), it must write to the authority and provide it with details of the right to become an opted in authority under regulation 14.

Opted in authority ceasing to qualify: duty to notify

17.—(1) An opted in authority which becomes a full audit authority must give notice to the relevant specified person that it is a full audit authority as soon as practicable after it becomes a full audit authority.

(2) An opted in authority which ceases to be a smaller authority must, as soon as practicable after the day on which it ceases to be such an authority, give notice of that fact to the relevant specified person.

(3) An opted in authority which ceases to fall within the class of authority for which the specified person was the relevant specified person, must give notice to the relevant specified person as soon as practicable after it should reasonably have been aware that it no longer fell within the class.

(4) Paragraph (5) applies where an authority fails to give notice to the relevant specified person as required by paragraph (1), (2) or (3).

(5) The relevant specified person may recover any reasonable costs incurred in relation to that authority by—

- (a) the specified person, or
- (b) a local auditor appointed to the authority by the specified person,

until the date when the authority in fact gives notice to the specified person.

PART 6

Appointment of local auditors to opted in authorities

Appointment of local auditors to opted in authorities

18.—(1) Subject to paragraph (3), the relevant specified person must appoint a local auditor to conduct the audit of the accounts of each opted-in authority for the appropriate period.

(2) The appropriate period is—

- (a) for an authority which is an opted in authority by virtue of regulation 11, the compulsory appointing period;
- (b) for an authority which is an opted in authority by virtue of regulation 14 or 15, the remainder of the current compulsory appointing period beginning with the day on which the authority became an opted in authority.

(3) Before appointing a local auditor to an opted in authority, a specified person must consult the authority about the proposed appointment.

(4) In the case of an exempt authority, and subject to paragraph (6), a relevant specified person is only required to appoint a local auditor to audit its accounts after receipt from a local government elector of—

- (a) a request for an opportunity to question the auditor about the authority's accounting records under section 26(2); or
- (b) an objection under section 27(1).

(5) Where a request or objection is received in accordance with paragraph (4), the specified person must appoint an auditor as soon as practicable and in any event within the period of four weeks beginning with the date that the request or objection is received.

(6) The local auditor must only be appointed for the financial year to which the request or objection relates.

(7) Where the specified person appointed a local auditor because the authority ceased to be an exempt authority in accordance with regulation 9(4), that auditor may remain in office if the authority becomes an exempt authority again in accordance with regulation 9(5), but the auditor's term of appointment must be amended if necessary to meet the requirement in paragraph (6).

(8) Paragraph (7) does not prevent the specified person from re-appointing a local auditor.

Retention of local auditor by non-qualifying authority

19.—(1) This paragraph applies where a specified person has appointed a local auditor to audit the accounts of an authority which the specified person reasonably believed to be an opted in authority for which the specified person was the relevant specified person, but at the time of the appointment of the auditor the authority—

- (a) was a full audit authority;
- (b) was not a smaller authority; or
- (c) did not fall within the class of authorities for which the specified person is the relevant specified person.

(2) This paragraph applies where a specified person has appointed a local auditor to audit the accounts of an opted in authority for which the specified person was, at the time of the appointment, the relevant specified person, but subsequently the authority—

- (a) has become a full audit authority;
- (b) has ceased to be a smaller authority; or
- (c) no longer falls within the class of authorities for which the specified person is the relevant specified person.

(3) Where the specified person has appointed a local auditor to an authority and paragraph (1) or (2) applies, the auditor may remain in office for the relevant financial year subject to agreement between the authority and the auditor.

(4) In paragraph (3) “relevant financial year” means the financial year in which the circumstances first fall within paragraph (1)(a), (b) or (c) or paragraph (2)(a), (b) or (c)

Resignation and removal of auditors

20.—(1) The Local Audit (Auditor Resignation and Removal) Regulations 2014(a) are—

- (a) in relation to opted in authorities, disapplied;
- (b) in relation to smaller authorities which are not opted in authorities, modified as follows—
 - (i) omit the definition of “supervisory body” in regulation 1(2);
 - (ii) omit the words in regulation 7(5)(a) after the words “auditor panel” to the end of sub-paragraph (a); and
 - (iii) omit regulation 8.

(2) A specified person may remove a local auditor which it appointed from office before the expiry of the term of that office.

(3) Subject to paragraph (5), when a local auditor appointed by a relevant specified person to an opted in authority leaves office, whether through—

- (a) resignation by the auditor from office, or
- (b) removal by the specified person of the auditor from office,

the relevant specified person must appoint a new local auditor to that opted in authority as soon as practicable after the auditor leaves office.

(a) S.I. 2014/1710.

(4) Paragraph (5) applies where a local auditor appointed to an opted in authority, which is an exempt authority, leaves office, whether through—

- (a) resignation by the auditor from office, or
- (b) removal by the specified person of the auditor from office.

(5) Regulation 18(3) and (4) apply in relation to a local auditor to an authority, so long as it remains an exempt authority, where the relevant specified person has not received in the financial year for which the auditor was appointed—

- (a) a request for an opportunity to question the auditor about the authority's accounting records under section 26(2); or
- (b) an objection under section 27(1).

(6) Before appointing an auditor under paragraph (3), the specified person must consult the authority about the proposed appointment.

(7) An opted in authority which is not an exempt authority must, within the period of 28 days beginning with the day on which an appointment under paragraph (3) is notified to the authority by the relevant specified person, publish a notice that—

- (a) states that the relevant specified person has made the appointment,
- (b) identifies the local auditor that has been appointed, and
- (c) specifies the period for which the local auditor has been appointed.

(8) The notice must be published—

- (a) if the authority has a website, on its website;
- (b) otherwise, in such manner as the authority thinks is likely to bring the notice to the attention of persons who live in its area.

(9) The authority must exclude from the notice information whose disclosure would prejudice commercial confidentiality, unless there is an overriding public interest in favour of its disclosure.

PART 7

Fees for audit

Setting of fee scales for audits

21.—(1) A specified person must specify, before the start of the financial year to which the scale of fees relates, the scale or scales of fees for the audit of the accounts of opted in authorities for which it is responsible for appointing the local auditor.

(2) A scales of fees must relate to a particular financial year, but may be set for more than one financial year at a time.

(3) A specified person may vary the scale of fees which it has specified, but must not do so once the financial year to which the scale of fees relates has begun.

(4) Before specifying or varying any scale of fees, a specified person must consult—

- (a) such representative associations of smaller authorities as appear to the specified person to be concerned, and
- (b) such bodies of accountants as appear to the specified person to be appropriate.

(5) A scale of fees may take account of the costs or expenses and anticipated costs or expenses of—

- (a) the specified person in respect of any function imposed by or under the Act;
- (b) anything which is reasonably incidental or supplementary to the functions of the appointing person imposed by or under the Act;
- (c) local auditors which are recoverable from authorities under the Act, specified in regulation 22(3).

- (6) The scale of fees applicable to the audit of an authority—
- (a) which became an opted in authority under regulation 14 or 15, or
 - (b) which is an exempt authority to which an auditor has been appointed under paragraph (3),
- must be the same scale of fees as is applicable to other opted in authorities falling within the same class of authorities as the authority.

Setting of fee for audit

22.—(1) Subject to paragraph (2), the fee for the audit of the accounts of an opted in authority is to be set in accordance with the appropriate fee scale.

(2) If it appears to a specified person, on the basis of information supplied by the local auditor which it has appointed—

- (a) that the work involved in a particular audit was substantially more or less than that envisaged by the appropriate scale, or
- (b) any of the provisions mentioned in paragraph (3) apply,

the specified person may charge a fee which is larger or smaller than that referred to in paragraph (1) as appropriate.

(3) The costs or expenses of the local auditor recoverable from an authority under any of the following provisions of the Act are recoverable as part of the fee for the audit of the accounts of the opted in authority to which the costs or expenses relate—

- (a) section 23(3) (offences relating to auditor's right to documents and information);
- (b) section 26(3) (inspection of documents etc);
- (c) section 27(7) (right to make objections at audit);
- (d) section 28(7) (declaration that item of account is unlawful);
- (e) section 31(6) (power of auditor to apply for judicial review);
- (f) paragraph 1(5) of Schedule 7 (public interest reports);
- (g) paragraph 2(4) of Schedule 7 (written recommendations); and
- (h) paragraph 3(5) of Schedule 8 (advisory notices).

(4) The specified person must notify the authority concerned of any larger or smaller fee, giving reasons.

Payment of fee

23. An opted in authority must pay to the relevant specified person the fee set under regulation 22.

PART 8

Miscellaneous

Requirements in relation to certain functions

24.—(1) A smaller authority may only exercise the functions in paragraph (2) by the members of the authority meeting as a whole.

(2) The functions are—

- (a) deciding to become, or to cease to be, a full audit authority under regulation 8;
- (b) deciding to self-certify as an exempt authority under regulation 9;
- (c) deciding to reject an invitation under regulation 12;
- (d) deciding to request to become an opted in authority under regulation 15.

Duty to provide information

25. A smaller authority or local auditor appointed by the specified person must, so far as reasonably practicable, provide the specified person with such information that it may reasonably require for the purposes of exercising its functions under these Regulations.

Notices

26. A notice or document that is required under these Regulations to be given to a person or authority must be in writing and may be served by—

- (a) delivering it to that person's or authority's address;
- (b) sending it by post to that person's or authority's address; or
- (c) electronic service in accordance with regulation 27.

Electronic service

27.—(1) This regulation applies in respect of electronic service of a notice or document on a person or an authority ("the recipient").

(2) Transmission of the notice or document to the recipient by means of an electronic communication has effect for the purposes of service of the notice or document on the recipient if, and only if, the conditions in paragraph (3) are met.

(3) The conditions are that—

- (a) the recipient has stated a willingness to receive notices or documents by means of an electronic communication,
- (b) the statement has not been withdrawn, and
- (c) the notice or document was transmitted to an electronic address specified by the recipient.

(4) A statement may be limited to notices or documents of a specified description.

(5) A statement may require a notice or document to be in a specified electronic form.

(6) A statement may be modified or withdrawn—

- (a) in a case where the statement was made by being published, by publishing the modification or withdrawal in the same or in a similar manner;
- (b) in any other case, by giving a notice to the person to whom the statement was made.

(7) Where a notice or document is served on a recipient in accordance with this regulation, the notice or document is, unless the contrary is proved, to be deemed to have been given to that recipient at the time at which the electronic communication is transmitted.

(8) In this regulation—

"electronic address" includes any number or address used for the purposes of receiving electronic communications;

"electronic communication" means an electronic communication within the meaning of section 15 of the Electronic Communications Act 2000 (general interpretation)(a);

"specified" means specified in a statement made for the purposes of paragraph (3)(a).

Modifications to the Act and other Acts

28. The Schedule to these Regulations has effect.

Signed by authority of the Secretary of State for Communities and Local Government

(a) 2000 c. 7. The definition of "electronic communication" in section 15 was amended by Schedule 17 to the Communications Act 2003 (c. 21).

SCHEDULE

Modifications to the Act and other Acts

Regulation 28

PART 1

General modifications

1. The Act applies in relation to the audit of the accounts of smaller authorities as it applies in relation to the audit of the accounts of other relevant authorities subject to the modifications to the Act in Parts 2 to 4 of this Schedule.

PART 2

Modification to Part 3 (appointment etc. of local auditors)

Appointment of local auditor

2.—(1) Section 7 applies, in relation to an opted in authority which is an exempt authority, as if for subsections (1) to (4) there were substituted—

“(1) Subject to subsection (3), the specified person responsible for appointing the local auditor to audit the accounts of an opted in authority which is an exempt authority is not required to appoint an auditor unless the specified person receives from a local government elector—

- (a) a request for an opportunity to question the auditor about the authority’s accounting records under section 26(2); or
- (b) an objection under section 27(1).

(2) Where a request or an objection is received in accordance with subsection (1), the specified person must appoint an auditor as soon as practicable, and in any event within the period of 4 weeks beginning with the day that the request or objection is received.

(3) The local auditor must be appointed only for the financial year to which the request or the objection relates.

(4) Where the specified person appointed a local auditor because the authority ceased to be an exempt authority in accordance with regulation 9(4) of the Local Audit (Smaller Authorities) Regulations 2015, that auditor may remain in office if the authority becomes an exempt authority again in accordance with regulation 9(5) of those Regulations, but the auditor’s term of appointment must be amended if necessary to meet the requirement in subsection (3).

(5) Subsection (3) does not prevent the specified person from re-appointing a local auditor.”.

(2) Section 7 applies in relation to an opted in authority which is an exempt authority as if subsections (6) and (8) were omitted.

3.—(1) Section 7 applies in relation to an opted in authority which is not an exempt authority—

- (a) as if for subsection (1) there were substituted—

“(1) Subject to subsection (1A), the specified person must, not later than 31st December in the preceding financial year, appoint a local auditor to audit the accounts of any opted in authority for which it is responsible for appointing the local auditor for a financial year.

(1A) Where an opted in authority was an exempt authority but the authority ceased to be an exempt authority in accordance with regulation 9(4) of the Local Audit (Smaller Authorities) Regulations 2015, the specified person responsible for appointing that authority’s local auditor must appoint a local auditor to audit the authority’s accounts—

- (a) in accordance with subsection (1) if the notice given in accordance with regulation 9(8)(a) of those Regulations is given at least four weeks prior to 31st December in the preceding financial year; and
 - (b) if such notice is given less than four weeks before 31st December in the preceding financial year, as soon as reasonably practicable, and in any event within the period of four weeks beginning with the day that the request or objection is received.”;
- (b) as if in subsection (2)—
- (i) for “A relevant authority” there were substituted “The specified person”;
 - (ii) for “its accounts” there were substituted “the accounts”; and
 - (iii) in paragraph (b) for “the authority” there were substituted “the specified person”;
- (c) as if in subsection (3) for “the relevant authority” there were substituted “the specified person”;
- (d) as if in subsection (6) for “a relevant authority” there were substituted “an authority”; and
- (e) as if subsection (8) were omitted.

Procedure for appointment

4. In relation to an opted in authority which is an exempt authority, the Act has effect as if section 8 were omitted.

5. Section 8 applies in relation to an opted in authority which is not an exempt authority as if—

- (a) subsection (1) were omitted;
- (b) in subsection (2)—
 - (i) for “The relevant authority” there were substituted “An opted in authority”;
 - (ii) for “the appointment is made” there were substituted “the appointment of a local auditor in relation to the authority is notified to the authority by the specified person”;
 - (iii) in paragraph (a), for “it has made” there were substituted “the specified person has made”;
 - (iv) at the end of paragraph (b) there were inserted “and”;
 - (v) paragraphs (d) and (e) were omitted;
- (c) in subsection (3) “relevant” were omitted;
- (d) in subsection (4)—
 - (i) for “A relevant authority” the first time it appears there were substituted “An authority”;
 - (ii) in paragraph (a) the words from “in the case” to “health service body,” were omitted;
 - (iii) paragraphs (b) and (c) were omitted;
- (e) in subsection (5) “relevant” were omitted; and
- (f) subsection (6) were omitted.

Requirement to have auditor panel

6. Section 9 applies in relation to a smaller authority as if—
- (a) in subsection (1), after “relevant authority” there were inserted “other than an opted in authority”; and
 - (b) after subsection (1) there were inserted—
 - “(1A) An authority may have an auditor panel at any time, but that panel must not be consulted about—
 - (a) whether or not the authority is to become an opted in authority;
 - (b) matters relating to an auditor appointed by a specified person; or
 - (c) matters relating to an audit carried out by an auditor appointed by a specified person.”.

Functions of auditor panel

7. Section 10 applies in relation to a smaller authority as if before subsection (1) there were inserted—

“(A1) This section is subject to section 9.”

Failure of specified person to appoint local auditor

8. In the event that the specified person fails to appoint a local auditor to an opted in authority in accordance with Part 3 of the Act, section 12 applies as if—

- (a) for subsection (1) there were substituted—
 - “(1) If a specified person fails to appoint a local auditor to audit the accounts of an opted in authority in accordance with this Part, the authority must immediately inform the specified person and the Secretary of State of that fact.”;
- (b) in subsection (2)—
 - (i) for the words “relevant authority” to “commissioning group,” there were substituted “specified person”;
 - (ii) after “local auditor”, the first time those words appear, there were inserted “to audit the accounts of an opted in authority”; and
 - (iii) after paragraph (a) there were inserted—
 - “(aa) direct that specified person to appoint an auditor, or”;
- (c) after subsection (2) there were inserted—
 - “(2A) Where an appointment is made under subsection (2)(aa)—
 - (a) the appointment takes effect on such terms as the Secretary of State may direct; and
 - (b) the specified person may recover from the authority its reasonable administrative costs of making arrangements to appoint a local auditor for the authority.”;
- (d) in subsection (3)(a) “relevant” were omitted;
- (e) in subsection (4)—
 - (i) “relevant” were omitted both times it occurs;
 - (ii) in paragraph (a), after “authority” there were inserted “and where the Secretary of State intends to direct the specified person, that person”; and
 - (iii) in paragraph (b), after “authority” there were inserted “or the specified person”; and
- (f) in subsection (5), for “a relevant authority” there were substituted “an authority”.

Failure of smaller authority which is not an opted in authority to appoint auditor

9. In the event that a smaller authority which is not an opted in authority fails to appoint a local auditor in accordance with Part 3 of the Act, section 12 applies as if—

- (a) in subsection (1), for the words “relevant authority” to “commissioning group,” there were substituted “smaller authority”;
- (b) in subsection (2)—
 - (i) for the words “relevant authority” to “commissioning group,” there were substituted “smaller authority”; and
 - (ii) after paragraph (a) there were inserted—
 - “(aa) direct the person who is specified under regulation 3(2) of the Local Audit (Smaller Authorities) Regulations 2015 in relation to the class of smaller authorities within which the authority falls, to appoint an auditor, or”;
- (c) after subsection (2) there were inserted—
 - “(2A) Where an appointment is made under subsection (2)(aa)—
 - (a) the appointment takes effect on such terms as the Secretary of State may direct; and
 - (b) the specified person may recover from the authority its reasonable administrative costs of making arrangements to appoint a local auditor for the authority.”;
- (d) in subsection (3)(a) “relevant” were omitted;
- (e) in subsection (4)—
 - (i) “relevant” were omitted both times it occurs;
 - (ii) in paragraph (a) after “authority” there were inserted “and where the Secretary of State intends to direct the specified person, that person”;
 - (iii) in paragraph (b) after “authority” there were inserted “or the specified person”; and
- (f) in subsection (5) for “a relevant authority” there were substituted “an authority”.

Limitation of local auditor’s liability

10. The Act applies in relation to a smaller authority as if sections 14 and 15 were omitted.

PART 3

Modifications to Part 5 (conduct of local audit)

General duties of auditors

11. Section 20 applies in relation to a smaller authority other than an exempt authority as if—

- (a) in subsection (1)—
 - (i) for “relevant authority other than a health service body” there were substituted “smaller authority other than an exempt authority”; and
 - (ii) in paragraph (b) the words from “that the statement” to the end were omitted;
- (b) in subsection (2) for “a relevant authority other than a health service body” there were substituted “a smaller authority other than an exempt authority”;
- (c) in subsections (3) and (5) for “a relevant authority” there were substituted “a smaller authority other than an exempt authority”;
- (d) after subsection (6) there were inserted—

“(7) A local auditor must comply with any directions given by the Secretary of State as to arrangements to monitor the standard of the work of auditors in the performance of audits under this section (including arrangements to inspect that work).

(8) The arrangements mentioned in subsection (7) may include arrangements made by any other person the Secretary of State considers appropriate.”.

12. Section 20 applies in relation to an exempt authority as if—

(a) before subsection (1) there were inserted—

“(A1) A local auditor must not carry out an audit of the accounts of an exempt authority unless a local government elector—

(a) requests an opportunity to question an auditor about the authority’s accounting records under section 26(2); or

(b) makes an objection under section 27(1).

(A2) Subject to paragraph (1), the audit of the accounts of an exempt authority is limited to responding appropriately to any—

(a) question raised under section 26(2); or

(b) objection made under section 27(1).”;

(b) in subsection (1)—

(i) for the words “auditing the accounts” to “auditor must” there were substituted “exercising functions under subsection (A2), if a matter comes to the attention of the auditor which the auditor thinks merits further investigation, and it would be proportionate to do so, the local auditor may”;

(ii) for “be satisfied” there were substituted “consider whether”;

(iii) the word “that” at the beginning of paragraphs (a) to (c) were omitted;

(iv) in paragraph (b) the words from “that the statement” to the end were omitted;

(c) subsections (2) to (4) were omitted;

(d) in subsection (5) for “a relevant authority” there were substituted “an exempt authority”;

(e) after subsection (6) there were inserted—

“(7) A local auditor must comply with any directions given by the Secretary of State as to arrangements to monitor the standard of the work of auditors in the performance of audits under this section (including arrangements to inspect that work).

(8) The arrangements mentioned in subsection (7) may include arrangements made by any other person the Secretary of State considers appropriate.”.

Public inspection and action by auditor

13. Section 25(1) applies in relation to an exempt authority as if paragraphs (b) and (c) were omitted.

14. Section 26 applies in relation to an opted in authority which is an exempt authority as if for subsection (2) there were substituted—

“(2) At the request of a local government elector for any area to which the accounts relate, such request being made to the specified person responsible for appointing the local auditor to the authority concerned, the specified person must arrange for the elector, or any representative of the elector, an opportunity to question the auditor about the accounting records.”.

15. Section 27(1) applies in relation to an opted in authority which is an exempt authority as if before “local auditor” there were inserted “specified person responsible for appointing the”.

PART 4

Modification to Schedules to the Act

Modification to Schedule 3 (further provisions about appointment of local auditors)

16. In relation to an opted in authority the Act has effect as if Schedule 3 were omitted.

Modification to Schedule 5 (eligibility and regulation of local auditors)

17. Paragraph 3 of Schedule 5 applies in relation to a smaller authority as if—

- (a) in sub-paragraph (b) after “sections” there were inserted “1217 (supervisory bodies), 1218 (exemption from liability for damages), 1219 (appropriate qualifications), ”;
- (b) after sub-paragraph (d) there were inserted—
“(da) sections 1225 to 1225G (concerning enforcement);”;
- (c) after sub-paragraph (e) there were inserted—
“(ea) Chapter 4 (the register of auditors etc);”
- (d) after sub-paragraph (f) there were inserted—
“(fa)sections 1251 (fees) and 1251A (duty of the Secretary of State to report on inspections);”;
- (e) after sub-paragraph (g) there were inserted—
“(ga) section 1254 (directions to comply with international obligations);”;
- (f) after sub-paragraph (h) there were inserted—
“(ha) Schedule 10 (recognised supervisory bodies);”.

18. Schedule 5 applies in relation to a smaller authority as if for paragraph 4 there were substituted—

“**4.** For section 1212 (individuals and firms: eligibility for appointment as a statutory auditor), substitute—

“Individuals and firms: eligibility for appointment as a local auditor of the accounts of a smaller authority

1212. An individual or firm is eligible for appointment as a local auditor of the accounts of a smaller authority if the individual or firm—

- (a) is eligible for appointment as a local auditor under the Local Audit and Accountability Act 2014 as it has effect apart from its application by virtue of the Local Audit (Smaller Authorities) Regulations 2015; or
- (b) is eligible for appointment as a statutory auditor under Part 42 of this Act as it has effect apart from its application by virtue of the Local Audit and Accountability Act 2014.”.

19. Schedule 5 applies in relation to a smaller authority as if after paragraph 4 there were inserted—

“**4A.** In section 1213 (effect of ineligibility)—

- (a) in subsection (1)—
 - (i) for “statutory auditor of an audited person” substitute “local auditor of a smaller authority”; and
 - (ii) at the end, for “statutory auditor “ substitute “local auditor of a smaller authority”;
- (b) in subsection (2)—

- (i) for “statutory auditor” both times it occurs, substitute “local auditor of a smaller authority”;
- (ii) at the end of paragraph (a), omit “and”;
- (iii) in paragraph (b), for “audited person” substitute “smaller authority”;
- (iv) at the end of paragraph (b), insert “and”; and
- (v) after paragraph (b), insert—
 - “(c) where the local auditor was appointed by a specified person, also give the notice in paragraph (b) to the specified person.”; and
- (c) in subsection (8) for “statutory auditor” substitute “local auditor of a smaller authority”.

20. Paragraph 5 of Schedule 5 applies in relation to a smaller authority as if—

- (a) in subsection (1) of the inserted text—
 - (i) for “relevant authority” there were substituted “smaller authority”; and
 - (ii) for “(3), (4) and (5)” there were substituted “, (4), (5) and (5A)”;
- (b) in subsections (2)(a), (4) and (5) of the inserted text for “relevant authority” there were substituted “smaller authority”;
- (c) subsections (2)(b) and (3) of the inserted text were omitted;
- (d) after subsection (5) of the inserted text there were inserted—
 - “(5A) This subsection applies if—
 - (a) P is an employee or a member of the specified person who is responsible for appointing the smaller authority’s local auditor; or
 - (b) P is a partner or employee of a person falling within paragraph (a), or a partnership of which such a person is a partner.”; and
- (e) subsection (7) were omitted.

21. Paragraph 6 of Schedule 5 applies in relation to a smaller authority as if the text of that paragraph were sub-paragraph (2) and before that paragraph there were inserted—

- “(1) In section 1215 (effect of lack of independence) in subsection (1)—
 - (a) for “statutory auditor” substitute “local auditor of a smaller authority”;
 - (b) omit “and” at the end of paragraph (a);
 - (c) in paragraph (b)—
 - (i) for “audited person” substitute “smaller authority”;
 - (ii) at the end insert “and”; and
 - (d) after paragraph (b) insert—
 - “(c) where the local auditor of a smaller authority was appointed by a specified person also give the notice in paragraph (b) to the specified person.””.

22. Paragraph 7 of Schedule 5 applies in relation to an opted in authority as if the text of that paragraph were sub-paragraph (3) and as if—

- (a) before that sub-paragraph there were inserted—
 - “(1) Section 1216 (effect of appointment of partnership) is amended as follows.
 - (2) In subsection (5) for “relevant authority” both times it occurs substitute “specified person”.
- (b) in that sub-paragraph for “In section 1216 (effect of appointment of partnership) after” there were substituted “After”; and
- (c) after sub-paragraph (3) there were inserted—
 - “(4) In subsection (6)—

- (a) in paragraph (a) for “statutory auditor” substitute “local auditor of a smaller authority” and
- (b) in paragraph (b) for “audited person” substitute “smaller authority”.

23. Schedule 5 applies in relation to a smaller authority as if paragraphs 8 to 15 were omitted.

24. Paragraph 16 of Schedule 5 applies in relation to an opted in authority as if—

- (a) in subsection (1) of the inserted text—
 - (i) after “appointed” there were inserted “by a specified person”;
 - (ii) for “relevant authority” there were substituted “smaller authority”;
- (b) in subsections (2) and (5) of the inserted text for “relevant authority” there were substituted “specified person”;
- (c) in subsection (3)(a) of the substituted text after “local auditor” there were inserted “of a smaller authority”;
- (d) in subsection (6) of the inserted text for “authority” there were substituted “specified person”;
- (e) for subsection (7) of the inserted text there were substituted—

“(7) In this section, “recognised supervisory body” means a recognised supervisory body under Part 42 of this Act—

 - (a) as it has effect by virtue of Schedule 5 to the Local Audit and Accountability Act 2014; or
 - (b) as it has effect apart from its application by virtue of the Local Audit and Accountability Act 2014.”

25. Paragraph 16 of Schedule 5 applies in relation to a smaller authority which is not an opted in authority as if—

- (a) in subsections (1), (2) and (5) of the inserted text for “relevant authority” there were substituted “smaller authority”;
- (b) in subsection (3) of the inserted text—
 - (i) in paragraph (a) after “local auditor” there were inserted “of a smaller authority”;
 - (ii) in paragraph (b) “relevant” were omitted;
- (c) after subsection (7) of the inserted text there were inserted—

“(8) In this section, “recognised supervisory body” means a recognised supervisory body under Part 42 of this Act—

 - (a) as it has effect by virtue of Schedule 5 to the Local Audit and Accountability Act 2014; or
 - (b) as it has effect apart from its application by virtue of the Local Audit and Accountability Act 2014.”

26. Paragraph 17 of Schedule 5 applies in relation to an opted in authority as if in subsection (1) of the inserted text—

- (a) for “relevant authority” the first time it occurs there were substituted “smaller authority”;
- (b) for “relevant authority” the second time it occurs there were substituted “specified person who appointed the auditor”; and
- (c) after “section 1248” there were inserted “, and must ensure that the authority is either not required to pay a fee for the first audit, or is refunded any fee paid”.

27. Paragraph 18 of Schedule 5 applies in relation to a smaller authority as if—

- (a) after sub-paragraph (1) there were inserted—

“(1A) In subsection (1), omit paragraph (a).”;
- (b) for sub-paragraph (2) there were substituted—

“(2) Omit subsections (2) to (4) and (6) to (8).”; and

(c) sub-paragraphs (4) and (5) were omitted.

28. Schedule 5 applies in relation to a smaller authority as if paragraphs 19 to 20 and 23 were omitted.

29. Schedule 5 applies in relation to a smaller authority as if after paragraph 25 of Schedule 5 there were inserted—

“**25A.** In section 1258(4) (service of notices), for paragraph (a) substitute—

“(a) in the case of a person who is eligible for appointment as a local auditor of a smaller authority and who does not have a place of business in the United Kingdom, the address of the recognised supervisory body of which that person is a member under—

(i) Part 42 of this Act, or

(ii) under Part 42 of this Act as it has effect by virtue of Schedule 5 to the Local Audit and Accountability Act 2014;””.

30. Schedule 5 applies in relation to a smaller authority as if paragraph 28 were omitted.

Modification to Schedule 6 (codes of audit practice and guidance)

31. Paragraph 1(5) of Schedule 6 applies in relation to a smaller authority as if after paragraph (e) there were inserted—

“(ea) a person specified under regulation 3(2) of the Local Audit (Smaller Authorities) Regulations 2015.”.

Modification to Schedule 11 (disclosure of information)

32. Paragraph 1(3) of Schedule 11 applies in relation to a smaller authority as if after paragraph (c) there were inserted—

“(ca) a person specified under regulation 3(2) of the Local Audit (Smaller Authorities) Regulations 2015.”.

PART 5

Modifications to other Acts

Modification to the Transport Act 1968

33. Section 14(3) of the Transport Act 1968(a) applies in relation to an opted in authority which is an exempt authority as if the words “, together with a copy of the auditor’s opinion on that statement” were omitted.

Modification to the Anti-terrorism, Crime and Security Act 2001

34. Paragraph 53F of Schedule 4 to the Anti-terrorism, Crime and Security Act 2001(b) applies where an appointing person has been specified under regulation 3 as if after “2014” there were inserted the words “as it has effect by virtue of the Local Audit (Smaller Authorities) Regulations 2015.”.

(a) 1968 c. 73. Section 14 was amended by the Local Audit and Accountability Act 2014, section 45 and Schedule 12.

(b) 2001 c. 24. Section 53F was inserted by the Local Audit and Accountability Act 2014, section 45 and Schedule 12.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Local Audit and Accountability Act 2014 (c. 2) makes provision about the accounts of local and certain other public authorities and the auditing of those accounts. These Regulations make provision for the appointment of a local auditor by a person specified by the Secretary of State to audit the accounts of smaller authorities that choose to opt in to such arrangements. They also make provision for authorities that are exempt from local audit.

Regulations 3 to 7 provide for the specification of a person to appoint local auditors (“specified person”) and that person’s functions. A specified person may be appointed in relation to all smaller authorities or specified classes of such authorities.

Regulations 8 and 9 define “full audit authorities” and “exempt authorities”.

Regulations 10 to 13 provide for the specified person to issue an invitation to all smaller authorities for which it is specified to opt in to the arrangements for the period specified in the invitation (“the compulsory appointing period”). An invitation may not relate to a financial year which commences before 1st April 2017.

Regulations 14 to 17 deal with cases where an authority wishes to opt in to arrangements during the compulsory appointing period and where an authority ceases to qualify during that period.

Regulations 18 to 20 make provision for the appointment of a local auditor by the specified person, as well as the resignation and removal of the auditor.

Regulations 21 to 23 provide for audit fees. Regulation 24 provides that certain functions are to be exercised by the full authority. Regulation 25 imposes a duty on a smaller authority or local auditor to provide the appointing person with information relevant to the performance of that person’s functions. Regulation 28 and the Schedule make consequential modifications to the Local Audit and Accountability Act 2014, Part 42 of the Companies Act 2006 and other Acts.

An impact assessment of the effect that the Local Audit and Accountability Act 2014, which this instrument helps implement, will have on the costs of business is available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349418/2014_FIN_AL_Local_Audit_IA.pdf. No separate assessment was carried out for this instrument.

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£6.00

UK2015021033 02/2015 19585

<http://www.legislation.gov.uk/id/uksi/2015/184>

ISBN 978-0-11-112922-7



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