

REGULATORY IMPACT ASSESSMENT

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REGULATORY IMPACT ASSESSMENT

Orders to be made in support of the Government Response to Lord Sharman's "Holding to Account" Report

1. The intention is to make Orders under the Government Resources and Accounts Act 2000, Sections 25(6), 25(7), 25(8), 25(9) and 25(10).
2. The Audit Order provides that the C&AG is to be the auditor of all NDPBs (other than those incorporated under the Companies Acts) which are currently required by or under statute to be audited by auditors appointed either by the Minister or by the NDPB itself.) The Access Order grants the C&AG statutory access rights, in connection with those audits, to documents where access has hitherto been provided, or would have been provided, in accordance with non-statutory arrangements as well as to the documents identified in the Government's response to Lord Sharman's report (as noted in paragraph 4 below).
3. The access being granted under the GRAA Order will be for the purpose of the C&AG's financial audit work only; it will not apply to his value for money (vfm) studies which consider the economy, efficiency and effectiveness with which public money is spent. However, the Government's intention is to provide, for the purpose of the C&AG's vfm studies, access on an administrative basis to the same documents as will become accessible to him for financial audit purposes. Access would not be for the purpose of conducting a value for money (vfm) examination of the accessee: access would be exercised solely in connection with vfm examinations of public sector bodies.

Objectives of the Orders

4. The intention is to give effect to the policy set out in the document *Audit and Accountability in Central Government: The Government's Response to Lord Sharman's Report "Holding to Account"*, published on 13 March 2002. The Orders will
 - a) make the C&AG the auditor of those NDPBs (other than companies) which are currently required by or under statute to be audited by auditors appointed either by the Minister or by the NDPB itself. In due course, following amendment to the Companies Act, a further Order will be needed to provide for the C&AG to be appointed as the statutory auditor of those NDPBs which are also companies;
 - b) give the C&AG access, for the purposes of carrying out a financial audit in a body where he is appointed auditor, to:

I. documents held by the bodies listed in paragraph 4.58 of Lord Sharman's report (as illustrative examples rather than an exhaustive list), namely:

- (i) bodies and undertakings in receipt of grants
- (ii) registered social landlords
- (iii) train operating companies; and
- (iv) PFI contractors;

II. documents held by other bodies which are currently covered by access arrangements based on negotiated agreement or conventions;

III. documents held by bodies in relation to contracts they have with organisations where the C&AG is the statutory auditor, including where access is not currently provided on a non-statutory basis. Access will also be provided to associated documents held by sub-contractors;

- c) to ensure that when access is considered in the future the C&AG's access will be formalised, at which point new Orders may be required.

Description of the scale of the issue

Audit

- 5. Making the C&AG the statutory auditor of all NDPBs (other than companies) that are currently required by or under statute to be audited by auditors appointed either by the Minister or by the NDPB itself will require change only for the minority of NDPBs, as most NDPBs are already required by statute to be audited by the C&AG. The NDPBs affected by the implementation of the policy are listed in the Order.

Access

- 6. The Government estimates that those covered by the access Order will number many thousands. However, for the vast majority of those affected, the change will simply place on a statutory basis arrangements which already apply on a non-statutory basis.
- 7. Access provided by the GRAA access Order will be limited to those documents which relate to the financial audit of a body audited by the C&AG. The C&AG will only be using this power in relation to documents needed to come to an opinion on the accounts of the body being audited.
- 8. Arrangements for the C&AG's access associated with these Orders will be covered by protocols which are intended to limit any burdens on those affected. These protocols were set out in Section 3 of the Government's response to Lord Sharman's report noted above. The protocols include the need in normal circumstances for the C&AG to give reasonable notice that he wishes to exercise his access rights and that

the C&AG will explain the basis on which the decision to exercise his access rights was made, namely to carry out his statutory duties in relation to the financial audit of a department or other public body. Access will be limited to documents which relate to the public body subject to audit and would not extend to other aspects of the accessee's business or affect the position and activities of their own auditors. Access will not include a certification audit or reports on the accessee's financial affairs or the right to conduct a vfm examination of the business of the accessee.

Identification of who is affected; and any issues of equity

9. Potential accessees covered by the policy intentions specified above include firms contracted to provide goods or services to Government and recipients of grant from a Government Department (other than individuals receiving grants under certain social security legislation). They do not generally include private individuals, but typically range from small firms to the largest companies, and include organisations in the private, public and voluntary sectors. Of the accessees potentially affected, only a very small percentage will actually be accessed by the C&AG during any year.
10. There are no equity issues involved, indeed the provisions will be more straightforward and equitable than the current arrangements where discrepancies in audit or access arrangements occur across similar bodies.

Risks, costs and benefits

Audit

11. The main **risk** associated with extending the C&AG's audit to those NDPBs where he is not currently the auditor is that a sponsoring Department may be uncertain as to whether it will receive an equivalent level of assurance about the financial arrangements in place in its NDPB as it currently receives. This risk will be addressed by the establishment of arrangements designed to recognise the Department as a stakeholder in such bodies' audit and to provide assurances about the way in which the audit will be managed. These arrangements are set out in Section 3 of the Government's response to Lord Sharman's report (paragraph 4 above).
12. Other potential risks arise from an initial lack of knowledge on a change of auditor of the body being audited, a need to re-provide for other services currently offered by private sector auditors, and the need to change existing contracts or wait for their expiry before the C&AG can become the statutory auditor. These risks exist in the short term only and will be addressed through the arrangements referred to in the previous paragraph.
13. There is a risk that the contracting of audits by the C&AG to the private sector will add an extra burden of review and liaison, as compared to the private sector carrying

out these audits in its own right. This risk will be addressed by the NAO's commitment to continue to develop closer partnerships with private sector audit firms.

14. There is a further risk that by transferring audit responsibility from private sector audit firms to the NAO the benefits that these firms bring to the public sector, such as experience in auditing in different environments, innovation and the quality that derives from competition, will be lost. In practice this risk will be minimised by the C&AG's commitment to contract out the same number of audits as are currently carried out by the private sector, thus providing scope for these benefits to continue to be available to the public sector.
15. While there may be some small variation in charges on a change of auditor, we expect the overall cost to be broadly the same as if the current arrangements had continued.
16. The main **benefit** of the change will be to achieve consistency in the statutory auditing arrangements for NDPBs.

Access

17. There is some **risk** that potential accessees will be disinclined to do business with the Government or that potential investors in partnership activities will be deterred. These risks are not expected to be significant as, in most cases, statutory access arrangements will simply replace existing non-statutory arrangements. Even where access is new it is not expected to be burdensome (this expectation is consistent with Lord Sharman's observations – paragraph 4.56 of his report refers).
18. Equally, any extra cost burden on potential accessees is expected to be rare and not significant since the C&AG envisages that, taken as a whole, the new statutory rights of access are unlikely to be used more frequently than existing non-statutory rights and he is committed to operate at all times with full regard to the need to minimise the cost of any such access.
19. **Benefits** include greater surety and commonality over arrangements for access, increased understanding of the reason for the C&AG's access rights and a reduction in delays currently incurred as a result of the need to negotiate access on a case by case basis.

How compliance will be secured

20. The audit Order raises no compliance issues as the bodies affected are all in the public sector and have agreed to the proposed new statutory audit arrangements.
21. In the main, compliance with the access Order will be secured by maintaining awareness amongst those affected by the Order (representative bodies have already been alerted and relevant material placed on the Treasury website as part of the

consultation process) and by the C&AG's notification to those concerned of the arrangements set out in the Order at the point at which he proposes to exercise his rights.

22. In the event of failure to comply with the arrangements set out in the Order, the Government would give explicit support to the C&AG's request for access. Any issues occurring at that point could be raised by the C&AG in the Audit Liaison Group foreshadowed in the Government's Response.
23. Ultimately, in the event of a refusal to provide the C&AG with access, the C&AG would be able to seek a Court injunction to gain access to the relevant documents. Failure to comply with an injunction would be a contempt of court.
24. Any accessee wishing to raise issues about the C&AG's use of his access powers should make representations to the NAO Director responsible for the audit, the relevant NAO Assistant Auditor General or the C&AG. Where an issue other than audit judgment needs to be raised with the NAO separately from the team responsible for the audit, the NAO are providing a central reference point. Alternatively the accessee can make representations via the body in connection with whose audit the access is required.

Pros and cons and cumulative burdens

Audit

25. The main advantage of the change will be to achieve consistency in the statutory audit arrangements for NDPBs— a matter on which the PAC, on behalf of Parliament, has expressed concern to successive Governments.
26. The main disadvantage is that sponsor Departments will lose the ability to select a new auditor if they are unhappy with the service provided. The C&AG recognises the stakeholder interest of audited bodies and their sponsors in his audit work and is putting arrangements in place to provide an opportunity for those bodies to comment on the way the audit is staffed.

Access

27. For the vast majority of cases, statutory access would simply replace non-statutory access and thus lead to little change in practice. The main **advantage** of the new arrangements would be the removal of the need to agree access on a case by case basis and of any disputes arising, thus saving time and increasing the certainty of the operating environment for the C&AG, audited bodies and those subject to access. These are matters on which the PAC, on behalf of Parliament, has expressed concern to successive Governments.
28. A possible **disadvantage** is that there might, at the margin and probably only for a bedding-in period, be a learning/acclimatising process for potential accessees.

The competition filter

29. The results of the “competition filter” (part of the Office of Fair Trading’s *Guidelines for Competition Assessment*) are intended to indicate the extent to which the potential effects of a proposed regulation on the competitive process may give cause for concern.
30. The competition filter carried out on these proposals indicates that a majority – six of the nine questions in the filter – are answered in the negative, thus indicating that overall the proposals do not give rise to significant competition issues.
31. The three affirmative answers are an acknowledgement that the position of the C&AG with regard to the audit of NDPBs is already monopolistic. For this reason the Government attaches great importance to the commitment by the C&AG to:
 - Š contract out to commercial auditors an equal number of additional audits as are currently awarded by departments;
 - Š consult NDPBs and other stakeholders on who – the NAO or a commercial auditor – should undertake the audit before making a final decision;
 - Š put in place arrangements to ensure continuing quality of service.

Conclusion

The overall cost of the new arrangements is expected to be broadly the same as if the current arrangements had continued. The arrangements set out above may not be completely without cost in each individual case. However, in the light of the assurances provided by the C&AG that the new powers, particularly those of access, are unlikely to be used in a way which, taken as a whole, increases existing burdens, the Government is satisfied that on balance the advantages and disadvantages of these arrangements add up to a clear and continuing net gain for Parliament and the public.