LOCAL AUDIT AND ACCOUNTABILITY BILL [HL]

EXPLANATORY NOTES

ON COMMONS AMENDMENTS

INTRODUCTION

1. These Explanatory Notes relate to the Commons Amendments to the Local Audit and Accountability Bill [HL] as brought from the House of Commons on 18th December 2013. The Notes have been prepared by the Department of Communities and Local Government in order to assist the reader of the Bill and the Commons amendments, and to help inform the debate on the Commons amendments. They do not form part of the Bill and have not been endorsed by Parliament.

2. These Notes, like the Commons amendments themselves, refer to Bill 101, the Bill as first printed for the Commons.

3. These Notes need to be read in conjunction with the Commons amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effects of the Commons amendments.

4. All Commons amendments were tabled in the name of the Minister.

COMMENTARY ON COMMONS AMENDMENTS

Commons Amendments 1 to 13, 17, 31 and 33 - Collective sector-led procurement of audit (and related amendments)

5. Commons Amendment 17 would insert a new clause into the Bill giving the Secretary of State the power to make regulations that would enable certain authorities to have their auditor appointed by an 'appointing person' specified by the Secretary of State. The new clause has been included to allow for the development of a sector-led approach to collective procurement, and enables the details of such arrangements to be set out in regulations.

6. Under the new power, the Secretary of State would be able to make provision in regulations about the specification of an 'appointing person', the powers and duties of such a person, the process through which relevant authorities may opt-in to, or later

opt-out of, sector-led arrangements, and any relevant duties that will apply to such authorities or their auditors (for example to pay fees to, or provide information to, the appointing person). The power also allows for regulations to make provision for the appointment of an auditor where an authority 'opts-in', but the 'appointing person' fails to make an appointment. The power also allows regulations to modify or disapply any other provision in the Act resulting from this Bill in relation to a relevant authority, in consequence of that authority being subject to regulations under the new clause. Commons Amendment 31 would require that regulations made under this new clause are subject to the affirmative procedure.

7. Commons Amendments 1, 2, 3 and 13 would make minor changes around the definition of a 'local auditor' needed as a consequence of Amendment 17. They reflect the fact that, under the new clause, there is the possibility that a relevant authority would be able to choose to have their auditor appointed by an 'appointing person'. Amendment 1 would amend clause 4 of the Bill, by replacing the requirement that a relevant authority is audited 'in accordance with this Act', with a requirement for the authority to be audited in accordance with the Act or provision made under it. Amendment 2 would replace the requirement in clause 4 for an authority to be audited by an auditor appointed by the authority with a requirement for the authority to be audited by an auditor appointed in accordance with this Act or provision made under it. The effect of these amendments would be to ensure that an authority that chooses to have an auditor appointed on their behalf under sector-led arrangements will meet the requirements for audit under clause 4. Amendment 3 would simply remove a cross-reference to Schedule 3 to the Bill, which is not necessary in the light of Amendments 1 and 2. There would be no practical impact and Schedule 3 would continue to have effect.

8. Amendment 13 would make a minor drafting change to clause 7 to reflect the fact that, in the light of Amendment 2, it would no longer be where the term 'local auditor' is first used in the Bill. Amendment 33 would make a similar minor related change to update the definition of a 'local auditor' within clause 41, and update the definition to refer to clause 4 where, in light of Amendment 2, the term would first appear in the Bill.

9. Amendments 4 to 12 would make a number of minor changes to the existing provisions for a sector-led body for smaller authorities in clause 5. These ensure consistency with the new clause and clarify Government's regulation-making powers. Amendment 4 would clarify that the power to make modifications to the Act resulting from the Bill in regulations about smaller authorities applies where specific provision about a smaller authority is already made in the Bill. Amendment 6 mirrors the new clause in allowing regulations to make provision about who may be specified by the Secretary of State as a sector-led body. Amendment 7 would update subsection (3) of clause 5, and provides further detail on the scope of any functions to be given to a sector-led body through regulations. Amendment 8 would update the existing power

that enables regulations to give a sector-led body a duty to consult smaller authorities before setting fees. The amended power enables regulations to require the body to consult specified persons before exercising specified functions. Amendment 9 copies across a provision in the new clause in Amendment 17, to confirm that regulations may make provision on how an auditor is to be appointed to an authority where a sector-led body is due to, but fails to, make such an appointment. Amendment 10 would make a minor change to the regulation-making power in relation to the procedure through which an authority can opt-in, or opt-out, of sector-led arrangements. This ensures that such regulations can make provision as to the role of both individual authorities and the sector-led body itself. The amendment would also confer a general power to impose duties on smaller authorities to which the arrangements apply, including to pay fees and supply information to the sector-led body. Amendment 12 would replace the existing power to make provision in regulations on the 'audit of the accounts' of a smaller authority with a power to make provision on the "functions of a local auditor in relation to the accounts" of a smaller authority. This clarifies that the regulations can make provision in relation to smaller authorities which will be exempt from the requirement for routine audit. Amendments 5 and 11 would amend references to an 'auditor', so that they refer instead to a 'local auditor'.

Commons Amendment 14 - Notice of Auditor Appointment

10. Commons Amendment 14 would modify clause 8(2), which requires a relevant authority to publish a notice on the appointment of their auditor. The amendment would require that, in addition to the requirements already set out at clause 8(2), the authority includes in the published notice details on the term / length of the auditor's appointment.

Commons Amendments 15, 16, 19, 20, 34, 36, 42, 44, 45, 48, 53, 55, 60, 62, 63, 66, 68, 69 and 71 - Parish meetings

11. Commons Amendments 15, 16, 19, 20, 34, 36, 42, 44, 45, 48, 53, 55, 60, 62, 63, 66, 68, 69 and 71 would clarify where the functions placed on a relevant authority will sit in relation to a parish meeting. Amendment 36 would create a default that the chairman exercises the function on behalf of the parish meeting unless the Bill expressly confers the function on the parish meeting itself. Amendments 16, 44, 45, 48, 53, 68 and 71 would confer functions on the parish meeting itself: these provisions relate to decision-making rather than administrative functions. Amendments 15, 19 and 20 would ensure that duties which would otherwise be placed on "members" of the parish meeting are restricted to the chairman and the proper officer of the district and are not placed on all local government electors. Amendments 62 and 69 would exclude the chairman of a parish meeting from a duty to supply a copy of a report in the public interest or a written recommendation to all local government electors.

Amendments 34, 42 and 55 would facilitate references to a parish meeting. Amendment 63 would remove provision which is redundant in the light of the new default. Amendments 60 and 66 would remove provisions relating to serving reports and written recommendations on the chairman of a parish meeting. These are redundant in the light of section 231 of the Local Government Act 1972, which provides that where a document is to be served on a parish meeting, it should be addressed to the chairman.

Commons Amendments 18 and 46 - Health service bodies

12. Commons Amendment 18 would amend the provisions which set out the general duties of auditors of health service bodies. Currently, the Bill places a requirement on the local auditor to examine the accounts and carry out other duties to satisfy themselves on a number of matters (e.g. whether the accounts are 'true and fair'; have been prepared in accordance with proper accounting practices and relevant legislation; whether money has been spent in accordance with Parliament's intended purposes, etc). The amendment would impose a duty to make a report which contains an opinion on the relevant matters as well as to provide a certificate to confirm that the audit has been completed (although an auditor will have to provide an opinion on value for money only if the auditor is not satisfied in respect of that matter). This is something that happens in practice already, but the amendment would make the requirement explicit on the face of the Bill.

13. Commons Amendment 46 would clarify that paragraph 6(1) of Schedule 4 does not apply to health service bodies. There are existing separate legislative requirements that apply to the audit committees of health service bodies, including when they act as auditor panels. This amendment, therefore, makes it clear on the face of the Bill that where legislative requirements apply in relation to the audit committees of health service bodies, these would apply when the audit committee is acting as an auditor panel.

Commons Amendments 21, 22 and 23 - Local electors' right to make objections at audit

14. Commons Amendments 21, 22 and 23 would change the detailed operation of local electors' rights to appeal to the court if they consider that an item of account is unlawful. Under the Bill a local elector of a relevant authority (except a health service body) can object to a local auditor if they consider that an item of account is unlawful, and the auditor can apply to the court to make a declaration that the item of account is unlawful. If an elector has objected to the auditor, but the auditor has decided not to make such an application to the court, the elector can require the auditor to provide a statement of reasons and appeal the auditor's decision to the court, within six weeks. The amendments would sequence the two periods so that an elector has six weeks in which to ask the auditor to provide a statement of reasons, and, following receipt of

the statement of reasons, a further 21 days to appeal the auditor's decision to the court. The unamended clause would allow a six week period during which the elector could both ask for the statement of reasons and appeal to the court. The clause as amended mirrors the current process under the Audit Commission Act 1998.

Commons Amendments 24, 25 and 72 - Cost recovery for auditors

15. The Bill currently enables a local auditor to recover reasonable costs from the relevant authority for the time they take to undertake certain statutory functions under the Bill and in investigating whether they need to issue a public interest report or formal recommendation, but ultimately not doing so. Commons Amendments 24, 25 and 72 would make similar provisions for auditors to recover costs for their time in investigating whether they need to undertake other statutory functions under the Bill (issuing an advisory notice; applying to the court for a declaration that there is an unlawful item of account; and applying for judicial review of an authority's decision), but ultimately do not do so.

Commons Amendments 26, 32, 38 and 102 - Access to local government meetings and documents

16. Commons Amendment 26 would insert a new clause into the Bill which 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 new clause would enable 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, would be able to use social media to report or give commentary on the proceedings at meetings. Subsection (2) of the new clause would list 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.

17. Subsection (3) of the new clause would allow 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.

18. Subsection (4) of the new clause would enable 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.

19. Subsection (6) of the new clause 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 would apply. By subsection (7), subsection (1) would also apply 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) would apply to the Greater London Authority (including officers of the London Assembly and the Mayor's cabinet).

20. Subsection (9) of the new clause provides that these provisions would 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.

21. Subsection (11) would amend 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.

22. Commons Amendment 32 would require the regulations to be subject to the affirmative procedure where amending primary legislation. This will give both Houses of Parliament the opportunity to debate the provisions in the regulations before approving them through resolution. Where the regulations amend secondary legislation the negative procedure will be used.

23. Commons Amendment 38 specifies that the power to make regulations will come into force two months after the Bill has been passed. The Government intends to work with the Local Government Association and NALC (National Association of Local Councils) regarding the detail of the regulations.

24. Commons Amendment 102 simply updates the Bill's long title to reflect the inclusion of the new clause.

Commons Amendments 27 to 29, 37, 39 and 40 - Council Tax

25. Commons Amendment 27 would amend clause 39 and operates in conjunction with subsections (14) to (16) of that clause and Commons Amendment 29, which would insert new subsections (17) to (20) into that clause. The combined effect would be to ensure that the existing subsections (14) to (16) and the newly inserted subsections

(18) to (20) were mutually exclusive, so that only one set of provisions could have effect. The trigger for determining which provisions would take effect would be whether the section comes into force at Royal Assent or subsequently by order.

26. Commons Amendments 37, 39 and 40 would together amend clause 46 to allow for clause 39 to come into force at Royal Assent as currently provided for, or instead to commence by order. Commons Amendment 39 makes these two scenarios conditional on whether the Bill receives Royal Assent before 5th February 2014.

27. The combined effect of these Amendments would be to ensure that if Royal Assent is received before 5th February 2014, the provisions in clause 39 would take effect in the way set out in the Bill as first introduced. Alternatively, if Royal Assent was received on or after 5th February 2014, then the new provisions in Commons Amendment 29 would take effect.

28. Commons Amendment 28 would make a minor change to clause 39, to clarify that the clause is not intended to modify or restrict the existing discretion of the Secretary of State when determining a category of authority and setting principles for that category.

29. The first subsection inserted into clause 39 by Commons Amendment 29 (subsection (17)), would ensure that the subsequent new subsections (18) to (20) apply only if the clause comes into force by order.

30. The subsequent new subsections (18) to (20) inserted by the Amendment would provide that the financial year beginning 1st April 2015 would be the first year in which the council tax excessiveness principles would be based upon a revised meaning of an 'excessive increase' which takes into account levies.

31. The new subsections would make clear that the Secretary of State may determine categories of authority for the year beginning 1st April 2015, based on whether their increase in either the year beginning 1st April 2013, the year beginning 1 April 2014, or both were excessive using the revised meaning of 'excessive increase'.

Commons Amendments 30 and 103 - Parish Polls

32. Commons Amendment 30 would insert a new clause into the Bill to modernise the arrangements surrounding parish polls. Currently, a parish poll may be demanded on any question arising from a parish meeting and in terms of the trigger threshold for a poll, a poll may be held 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.

33. The new clause would amend 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.

34. New 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 new sub-paragraph (11) the regulations would be subject to the negative resolution procedure. Subsection (4) of the new clause would make a number of technical amendments to section 243 of the Local Government Act 1972.

35. Amendment 103 would amend the long title of the Bill to refer to the subject matter of the new clause.

Commons Amendments 35, 47, 49 to 52, 54 and 56 to 58 - Eligibility and regulation of auditors & European Economic Area (EEA) Auditors

36. Commons Amendment 35 is a minor and technical amendment that would clarify that references to 'provision made under the Bill' includes provision made under Part 42 of the Companies Act 2006 as applied by Schedule 5 to the Bill.

37. Amendments 51 and 52 together would replace the power for the Secretary of State to make regulations on the recognition of existing professional qualifications as appropriate qualifications, with a provision on the face of the Bill in Schedule 5. These amendments enable those holding a qualification recognised under the Audit Commission Act 1998 to continue to hold an appropriate qualification to carry out local audits under the new framework. Amendment 50 is a minor necessary amendment to subsection (1)(a) of the modified section 1219 of the Companies Act 2006 to reflect the fact that the appropriate qualifications provision is now partly in the Bill rather than in regulations.

38. Amendments 47, 49, 54, 57 and 58 are minor amendments to Schedule 5. Amendment 47 would insert a new sub-paragraph (3) into paragraph 1 of Schedule 5 to make it clear that the relevant supplementary provisions of the Companies Act 2006 apply when making regulations in relation to local rather than statutory audit. Amendment 49 corrects a drafting error and amendment 54 would ensure that the definition of local auditor in Schedule 5 refers to the correct clause in the Bill following other amendments described above. Amendments 57 and 58 would ensure that a body to which the Secretary of State's functions are delegated – which is

expected to be the Financial Reporting Council – is able to be audited by either a local or a statutory auditor.

39. Commons Amendment 56 further modifies Schedule 10 to the Companies Act 2006 in respect of auditors with qualifications from elsewhere in the European Economic Area. The amendment would enable recognised supervisory bodies for local audit to recognise the qualifications of those with the equivalent of a UK local audit qualification. It would also clarify that EEA statutory auditors can only be required to sit an aptitude test where they are seeking to establish as a local auditor in the UK on a permanent basis. This would ensure compliance with relevant EU Directives and prevent any indirect discrimination against EEA nationals.

Commons Amendment 41 - Financial Privilege Amendment

40. Commons Amendment 41 would remove the Financial Privilege Amendment that was inserted during Third Reading of the Bill in the House of Lords, which prevents a Bill that has been introduced in the House of Lords from infringing the financial privileges of the Commons.

Commons Amendment 43 - Internal Drainage Boards wholly or mainly in Wales

41. After a decision by the National Assembly for Wales to transfer the functions of Internal Drainage Boards that are wholly or mainly in Wales to Natural Resource for Wales, Commons Amendment 43 would remove cross-border Internal Drainage Boards, (currently Powysland and Lower Wye) from Schedule 2 and therefore from the provisions applying to "relevant authorities" under this Bill.

Commons Amendments 59, 61, 64, 65 and 67 - Functional Bodies of the Greater London Authority, Supply of Reports and Recommendations

42. Commons Amendment 59 would require that a copy of any written recommendation relating to either a functional body of the Greater London Authority or an entity connected with that body is sent to the Greater London Authority. Similarly, Amendment 61 would require that a copy of a Public Interest Report relating to either a functional body of the Greater London Authority or an entity connected with that body is sent to the Greater London Authority.

43. Commons Amendments 64, 65, and 67 would make minor drafting changes needed as a consequence of the Mayor's Office for Policing and Crime ceasing to be a connected entity of the Greater London Authority. Amendment 65 inserts a new sub-paragraph that would clarify that where a report or recommendation is made in relation to the Commissioner of Police of the Metropolis, it should still be formally considered by the Mayor's Office for Policing and Crime. Amendment 64 would make a related

amendment to add a reference to this new sub-paragraph within the sub-paragraph that sets out the requirements for relevant authorities that are also connected entities to consider reports or recommendations. Amendment 67 would clarify that the Greater London Authority is not under a duty to consider reports or recommendations in relation to the Commissioner of Police of the Metropolis, given that they will instead be considered by the Mayor's Office for Policing and Crime. These amendments would not change the policy position, but simply correct the drafting of the existing requirement to reflect the fact that the Mayor's Office for Policing and Crime is no longer a connected entity of the Greater London Authority.

Commons Amendments 70 and 73 - Definition of relevant authority

44. Commons Amendments 70 and 73 would apply the definition of "relevant authority concerned" (in relation to advisory notices) to all provisions related to advisory notices, not just those which describe the effect of an advisory notice.

Commons Amendments 74, 75 and 76 - Data matching exercises

45. Commons Amendment 76 would amend Schedule 9 to the Bill to include the prevention and detection of errors and inaccuracies as further potential purposes for which data matching exercises may be undertaken. This amendment provides the means for the Cabinet Office, as the future host of the National Fraud Initiative, to take steps that will enable the Initiative to continue to carry out data matching exercises detecting error and inaccuracies. In order to extend the data matching powers to include any potential further purposes (including the subject of this amendment), the relevant Minister would be required to consult relevant authorities, their representatives and the bodies affected before bringing forward regulations subject to the affirmative resolution procedure.

46. Both Commons Amendment 74 and 75 would maintain the status quo in relation to the cross boundary work of the National Fraud Initiative. Amendment 75 would ensure that the definition of a relevant NHS body in Northern Ireland is consistent with other devolved legislation. Amendment 74 would ensure that it remains lawful for persons in England and Wales to further disclose data received under paragraph 4(2) of Schedule 9 pursuant to a duty under devolved legislation. This amendment would also ensure consistency between the definition of enactment used in this Schedule and Schedule 11.

Commons Amendments 77 to 84 - Best Value Authorities

47. Schedule 10 to the Bill amends the Local Government Act 1999. Commons Amendments 77 to 79 and 81 to 84 would take account of amendments to that Act made by the Public Audit Wales Act 2013, which removed redundant references relating to the Auditor General for Wales.

48. Amendment 80 would amend section 25(2)(a) of the Local Government Act 1999, to ensure that inspectors and assistant inspectors of Best Value Authorities can still be required to have regard to any guidance issued by the Secretary of State when carrying out investigations or inspections.

Commons Amendments 85 to 101 - Related amendments

49. A range of minor and technical amendments would be made to Schedule 12, removing redundant references to the Audit Commission in other Acts and where necessary replacing them with reference to auditors appointed in accordance with this Bill, and would amend provisions already in the Bill to avoid unintended outcomes.

50. Amendment 85 would make a consequential amendment to the Transport Act 1985, removing the requirement that an auditor of a Public Transport Company in England must be approved for appointment by the Audit Commission, as well as meeting the requirements in Part 42 of the Companies Act 2006 to act as a statutory auditor. Following the abolition of the Audit Commission, this provision would no longer be needed; there is an existing requirement for auditors of Public Transport Companies to meet the requirements of the Companies Act 2006.

51. Amendment 86 would modify the existing consequential amendment to the Education Reform Act 1988 in Schedule 12, and ensure that it preserves the definition of the "financial year" within that Act. The existing consequential amendment, which reflects the planned abolition of the Audit Commission, would have the unintended consequence of removing the existing definition of financial year in the Education Reform Act 1988. This amendment would modify the consequential amendment so that the definition is preserved.

52. Amendment 87 would amend the Social Security Administration (Northern Ireland) Act 1992. The Social Security Administration (Northern Ireland) Act 1992 includes provisions which make it an offence for persons employed in the audit of expenditure to disclose information without lawful authority. The Audit Commission for England and Wales is currently listed as one of those persons. This amendment would remove the reference to the Audit Commission and auditors appointed by the Commission and replace this with the local auditors appointed by virtue of this Bill, the Auditor General for Wales, the Wales Audit Office and its staff. This would mirror amendments already contained in the Bill in relation to the equivalent provisions for Great Britain contained in the Social Security Administration Act 1992.

53. Amendment 88 would make consequential amendments to the power in section 23 of the Local Government Act 1999 to make regulations about the accounts of best value authorities. It would remove a requirement to consult the Audit Commission, and change the reference to auditors appointed by the Commission to local auditors appointed in accordance with the Bill.

54. Commons Amendments 89, 91 and 93 would update related amendments to Scottish, Northern Irish and Welsh legislation in Schedule 12 relating to disclosure of data matching exercise results. These amendments have the effect of allowing relevant audit authorities in Scotland, Northern Ireland and Wales to share results of data matching exercises with the relevant Minister with responsibility for the National Fraud Initiative as well as local auditors. These amendments replicate the current position whereby relevant audit authorities in the devolved administrations can disclose results of data matching exercises to the Audit Commission and related parties including appointed auditors and audited bodies. In addition, these amendments would ensure that Scottish, Northern Irish and Welsh legislation contain the most up to date definition of 'relevant NHS body' capturing health bodies listed at paragraph 4(11) of Schedule 9 to this Bill.

55. Amendment 90 would repeal parts of section 100 of the Local Government Act 2003 which relate to the exercise of various powers by the Secretary of State in respect of categorisations of Best Value Authorities based on performance. These provisions are now redundant following the repeal of section 99 of the Act, which made provision for the categorisation of Best Value Authorities based on their performance.

56. Amendments 97, 99 and 100 would be consequential upon Amendment 92, repealing provisions that amend section 100 of the Local Government Act 2003.

57. Amendments 92, 94, 95 and 96 would make some further amendments to the Public Audit (Wales) Act 2004. Schedule 12 already makes some amendments to that Act to remove and replace references to the Audit Commission. However, the Public Audit (Wales) Act 2013 will be amending some of those provisions - which means that it is necessary for this Bill to make further amendments to update the cross references. These amendments would also remove some text from the Public Audit (Wales) Act 2004 which has become superfluous as a result of the amendments that the Bill already makes to that Act.

58. Amendment 98 would make modifications to the existing provisions in Schedule 12 and additionally repeals paragraph 14 of Schedule 1 to the Public Audit (Wales) Act 2004 which previously amended the Local Government Act 1999.

59. Amendment 101 would make a further amendment to the Housing and Regeneration Act 2008. The Bill already amends the Housing and Regeneration Act 2008 to retain the ability for the housing regulator to commission an audit report on a local authority's social housing accounts once the Audit Commission has closed. The Bill also revokes two provisions in the Housing and Regeneration Act 2008 (Registration of Local Authorities) Order 2010. Amendment 103 is needed to revoke another provision in the Order which inserted a section in the Act which is being repealed by this Bill. It would also make a correction by removing the repeal of paragraph 55 of Schedule 1 to the Order as this is not necessary.

COMPATABILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Access to local government meetings and documents

60. The amendments to the Bill which would allow residents attending meetings of the full council, its committees and sub-committees to act as citizen journalists potentially engage some rights under the European Convention on Human Rights ("the ECHR").

61. The provisions would enable the Secretary of State to make regulations which are either free-standing or amend the relevant provisions in Part 5A of and Schedule 12 to the Local Government Act 1972, the Public Bodies (Admission to Meetings) Act 1960 and the Greater London Authority Act 1999 and that mirror the following elements of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 ("the 2012 Regulations"):

- The use of websites for the publication of information such as agendas, minutes and connected reports;
- The ability of the public to attend meetings to act as 'citizen journalists' (facilitating the reporting of meetings by individuals on social media); and
- Recording the decisions taken by officers.

62. These changes follow what is already provided for in the 2012 Regulations.

63. The Bill as amended would also provide that the Secretary of State has powers to ensure that the public can film, blog, or tweet at all meetings of a full council, its committees and sub-committees; meetings of an executive, its committees and sub-committees; meetings of parish and town councils and Greater London Assembly meetings. This is a new proposal which reflects the changes in technology enabling broader access to information and new methods of reporting and recording council meeting proceedings.

64. Articles 8 (right to respect for private and family life) and 10 (freedom of expression) of the ECHR may be engaged in relation to the provisions regarding openness of council meetings. Neither of these rights is absolute and they include in their respective second paragraphs details regarding the basis on which the right may be limited.

65. Article 8 has potential to be engaged but it appears unlikely in these circumstances. The meetings being open to public attendance are unlikely to fall within the definition of "private and family life". Lord Hope and Lord Nicholls in the case of *Campbell v Mirror Group Newspapers Ltd* [2004] UKHL 22 both made clear in their judgments that the first step is to consider if the matter falls within the sphere of private and family life. The latter described the approach to take as follows: "the touchstone of

private life is whether in respect of the disclosed facts the person in question had a reasonable expectation of privacy". The court in *HRH Prince of Wales v Associated Newspapers Ltd* [2006] EWCA 1776 highlighted that whilst there was division over the conclusions in *Campbell* there was no division regarding the relevant approach in law. Given that the council meetings considered by the Bill would be held in public (unless there was a justifiable reason to exclude the public), it is difficult see a sustainable argument that attendees would have a reasonable expectation of privacy so as to engage Article 8.

66. Whilst it is unlikely that the attendees' Article 8 rights would be engaged, if a successful argument were to be made, paragraph 2 of Article 8 allows for the limitation of these rights. The Article 8 rights of those who are attending the meetings (cf. to those attending and reporting) can arguably be qualified on the basis that the limitation is:

a. in accordance with the law; as prescribed by the Bill and regulations made using the powers it contains.
b. is necessary in a democratic society. This is on the basis that wide public access to meetings and reporting on meetings increases accountability. The level of scrutiny which the public expect is influenced by the availability and ease of using different reporting methods, and this has increased since the advent of social media including blogging, tweeting etc and is further influenced by the ease of access to this technology. There is an expectation now that the public should have the ability to subject their representatives to closer and more direct scrutiny; an expectation that is shared both by members of the public and their representatives.
c. is for the protection of the rights and freedoms of others; namely, the Article 10 rights of those reporting the meeting.

67. The provisions which would allow for regulations to be made on the prevention of the public from filming, reporting etc of council meetings may engage Article 10. However, it should be noted that it is envisaged that prevention of filming, reporting etc will largely be in the same circumstances in which the public would also be excluded from the meeting. As such the new provisions regarding prevention of filming, reporting etc would reflect the existing provisions on exclusion, including the common law right to exclude the public from meetings to suppress disorderly conduct. Insofar as there is a limitation on the Article 10 rights of potential attendees, this restriction can be justified on the basis that the prevention of filming, reporting etc and exclusion from meetings provisions are drafted in a manner to ensure those decisions are not arbitrary. For example the existing provisions on exclusion state the grounds on which a council may decide to hold a closed meeting, which include: where confidential or sensitive information is to be disclosed or discussed; or where the

public are excluded under the common law right to suppress disorderly conduct. These reasons fall within the exceptions included within paragraph 2 of Article 10. Such reasons would be necessary in a democratic society if by not having the option to exclude public attendance would prevent the council from effectively carrying out its business. Further, the exclusions would be prescribed by law as the justifications for preventing filming will be set out in the regulations and the justifications for exclusion from meetings are set out in primary legislation.

68. Article 11, freedom of assembly and association, should also be considered. The right to freedom of assembly includes participation in public meetings. However, Article 11 is a qualified right which can be restricted. The basis of the restrictions include that it is in the interests of national security or public safety, for the prevention of disorder or crime or for the protection of the rights and freedoms of others. As such the position in relation justifying qualification of Article 11 is much the same as it is for Article 10 freedom of expression.

Addition of "prevention and detection of errors and inaccuracies" as a potential further purpose for data-matching

69. Paragraph 8(2) of Schedule 9 to the Bill has been amended to include the further potential purpose of "prevention and detection of errors and inaccuracies". The Secretary of State by regulations may add this purpose to the purposes for which data matching exercises can be undertaken.

70. As with data matching for the purposes of detecting fraud there is potential for Article 8 (right to respect for private and family life) to be engaged.

71. The existing data matching provisions were debated when the Serious Crime Act 2007 amended the Audit Commission Act 1998 and the detection of errors and inaccuracies will be covered by the same safeguards as relate to fraud and are explained in the ECHR Memorandum for this Bill, dated 18th April 2013. The requirements and protections relating to compliance with a code of data matching practice, onward disclosure, offences, etc. will apply to the additional purpose of preventing and detecting errors and inaccuracies as it currently does to fraud. Should this – or any other further purpose – be enacted, the code of data matching practice would require updating, thus providing an opportunity to review the safeguards set out in the code to ensure they remain fit for purpose. In addition, before further purposes can be added to the remit of the National Fraud Initiative by regulations, consultation with interested parties and debate in both Houses of Parliament are further safeguards to ensure proportionality.

72. Data-matching exercises cannot go beyond the specified purposes for which the exercise is carried out and disclosure of information from a data matching exercise is only permissible in certain circumstances (paragraph 4 of Schedule 9) and any person acting outside of this requirement commits an offence.

73. The Department is satisfied that the potential additional purpose of prevention and detection of error and inaccuracies is a legitimate aim in the interests of the economic well-being of the country and for good governance in general; for example, by ensuring that the NHS can access the correct records for a patient when they are admitted to hospital. The Department is of the view that if this purpose was brought into effect by regulations that this would be a proportionate measure to achieve this aim.

Parish Polls

74. The amendments to the current legislation on parish polls are intended to enable various aspects of parish polls to be updated and to ensure that such polls are for parish matters.

75. The amendments would amend paragraph 18 of Schedule 12 to the Local Government Act 1972. The amendments would allow for the Secretary of State to make regulations on a number of matters including: questions on which a poll may be called; the circumstance in which a poll may or must be taken; and the conduct of a poll. They also allow for other electoral enactments to be applied to parish polls with or without modification.

76. Article 10 (freedom of expression) could potentially be engaged by the amendments. However, the Department is of the view that this is unlikely and that these provisions are ECHR compliant.

77. The Parish Polls provisions are not designed to prevent the expression and discussion of ideas, topics and matters at parish meetings. They are designed to enable regulations to prevent the use of public funds to hold parish polls upon which a parish does not have the power to act, for example parish polls relating to the UK's membership of the European Union. The amendments do not restrict the matters on which a poll may be held any further than is necessary – polls relating to parish matters can continue to take place; only those polls which are not related to a parish matter are likely to be caught by the restrictions imposed by the regulations.

78. The other provisions included in these amendments are intended to allow for the procedures relating to parish polls to be updated and to make participation in parish polls easier, promoting involvement in the democratic process.

LOCAL AUDIT
AND ACCOUNTABILITY BILL [HL]

EXPLANATORY NOTES

ON COMMONS AMENDMENTS

These notes refer to the Local Audit and Accountability Bill [HL] as brought from the House of Commons on 18th December 2013 [HL Bill 70]

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