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Local Government Division

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## CONSULTATION: LOCAL AUTHORITY ACCOUNTS REGULATIONS

## RESPONSE SHEET

If you ask for your response not to be published we will regard it as confidential and we will treat it accordingly. You should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Unless confidentiality is requested the Scottish Government may also publish responses on the Scottish Government website. Please note that if you wish to provide additional commentary on separate sheets it would be helpful if you set out clearly the questions and/ or parts of the draft regulations to which your comments relate.

This response sheet provides some commentary on the proposed regulations. Please also refer to the consultation draft of the regulations which has been provided as part of the consultation documents.

The consultation closes **4 October 2013**

## CONSULTATION QUESTIONS

| **The Local Government Accounts (Scotland) Regulations 2013** | | | |
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| **PART 1: Introductory** | | | |
| *Regulation 1: Citation and Commencement*<br>We propose the regulations will come into force in the current financial year. This means the new regulations will apply to the 2013-14 financial year and the 2013-14 annual statutory accounts, and subsequent years.<br>Regulation 3 provides an interpretation of words or phrases used in the regulations. The definition of proper officer has been extended to cover any absence or illness of the proper officer.<br>Regulation 4 revokes The Local Authority Accounts (Scotland) Regulations 1985 (and amending regulations). | | | |
| | Question | Response | Comments / Feedback |
| 1 | Do you agree that the definition of proper officer addresses the issue of absence or illness of the proper officer? If not please provide reasons and any suggested alternative | Yes | |
| 2 | Any other comments? | Yes | Our understanding is that in |

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| | | | practice, this role would be fulfilled by the Finance Director or equivalent. It would be unusual for an unqualified officer to sign off the financial statements. We suggest that it would be informative, transparent and assuring if the relevant officer were to include any professional accounting qualifications after his or her name when signing the financial statements.<br><br>The term 'proper officer' is specialist to a local authority and therefore unlikely to be immediately understood by a wider audience. Our preference is to update this to a more universally known terminology to remove unnecessary specialism as this reduces transparency. We would suggest the term 'Director of Finance' or 'Chief Financial Officer' as the most senior Finance Officer. Updating and revising the terminology does not mean that we disagree with the responsibilities which legislation may attribute to the 'proper officer'.<br><br>Our understanding is that in practice, the proper officer is not necessarily a member of the Executive Team. We suggest that evidence needs to be gathered on how many local authorities have a proper officer who is not a member of the Executive Team and then to assess to what extent this may impact on the ability of the proper officer to discharge their responsibilities effectively and meet good practice corporate governance objectives. |
| **PART 2: Financial management and internal control** | | | |
| *Regulation 5: Responsibility for financial management*<br>This regulation introduces a new requirement. There is currently no statutory requirement for Scottish local authorities to undertake an annual review of their system of internal control or to report this in an Annual Governance Statement. The regulation requires the statement to be prepared in accordance with proper practices. The Scottish Government intends to issue non-statutory guidance which will identify proper practices as being *Delivering Good* | | | |

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| *Governance in Local Government* published by CIPFA and SOLACE. The proposal is for the requirement to commence with the financial year 2013-14.<br>The CIPFA/LASAAC Code of Practice (the Code) on Local Authority Accounting requires Scottish local authorities to include a Statement of Internal Financial Control as part of the statutory accounts. The Code permits Scottish authorities to voluntarily adopt an annual review and the preparation of an Annual Governance Statement which is a statutory requirement in England and Wales. | | | |
| | Question | Response | Comments / Feedback |
| 3 | Do you agree with the requirement for an annual review of internal control with a report on the review forming part of the annual statutory accounts? | Yes | |
| 4 | Do you agree that the requirement for an annual review and annual report should apply from the financial year 2013-14? | Yes | Whilst supportive in terms of timing, this does depend on when the Regulations come into force. Some flexibility may therefore be needed. |
| 5 | Do you agree that this requirement should apply to all Scottish local authorities irrespective of size? If not please provide reasons. | Choose an item. | All local authorities need to demonstrate effective stewardship of public funds. In our view, this new requirement will help to demonstrate responsibility and accountability for effective financial management and internal control.<br><br>If the definition of local authority applies to wider section 106 bodies (and we agree with this wider application), a level of flexibility in how this is applied for the smallest bodies may be needed to avoid a disproportionate 'one size fits all' approach.<br><br>To reflect the principle of proportionate regulation, we suggest including a threshold below which the smallest entities have some exemptions (perhaps £1m spend). |
| 6 | Any others comments? | Yes | For robust governance, it is appropriate that the various elements of corporate responsibility rest with the top level within the local authority.<br><br>We agree with the inclusion of subsidiary bodies in Regulation 6(5) and note that the principle of a local authority ensuring a subsidiary has taken appropriate steps so as to provide assurance |

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| | | | the parent has fulfilled its duties and responsibilities could be applied more widely. See further comments in our response to question 29. |
| *Regulation 6: Accounting records and control systems*<br>Regulation 6(6) and 6(7) replace Regulation 3 of the Local Authority Accounts (Scotland) Regulations 1985. This places a responsibility on the proper officer (section 95 of the Local Government (Scotland) Act 1973) for the accounting control systems and records.<br><br>Regulation 6(1) to 6(5) place a new duty on the local authority as a corporate body to keep adequate accounting records. This requirement is reflective of the provisions contained in the Companies Act 2006 (section 386). | | | |
| | Question | Response | Comments / Feedback |
| 7 | Do you agree that the Companies Act provisions have been suitably adapted for local government? | No | Our concern rests with Regulation 6(6)-(7). The duty to keep accounting records rests with the company which is effectively the board of directors as the principle of a unitary board is applied in the private sector. (See also our response to question 16).<br><br>The equivalent would be that the local authority is responsible and may delegate this to a proper officer (or chief financial officer).<br><br>Our second concern is that by making a proper officer responsible there is the anomaly that not all proper officers are a member of the executive team (as per our response to question 2). |
| 8 | Any other comments? | No | |
| *Regulation 7: Internal Audit*<br>This is a new requirement for a local authority to undertake an adequate and effective internal audit function. | | | |
| | Question | Response | Comments / Feedback |
| 9 | Do you agree there should be a statutory requirement for internal audit? | Yes | |
| 10 | Do you agree that the requirement for internal audit should apply from the financial year 2013-14? | Choose an item. | We wish to highlight a risk that the timings could create an implementation challenge given the October submission date of this consultation paper. We suggest that some flexibility/transition arrangements would be helpful. |
| 11 | Do you agree that this requirement should apply to all | Choose an | See our response to question 5. |

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| | Scottish local authorities irrespective of size? If not please provide reasons. | item. | |
| 12 | Any other comments? | No | |

**PART 3: Published Accounts and Audit**

*Regulation 8: Statement of Accounts*

The adoption of the phrase 'Statement of Accounts' (see regulation 3 for Interpretation) in the regulations is to mirror the usage of this phase by the CIPFA/LASAAC Code of Practice on Local Authority Accounting.

Regulation 8(2) sets out the statements which must be included in the Statement of Accounts. This includes a Management Commentary. The CIPFA/LASAAC Code Board considered whether the Explanatory Foreword in the statutory accounts should be replaced with a Management Commentary in line with the UK Government's Financial Reporting Manual (FReM). The position taken by the Code Board is to encourage local authorities to prepare a report taking into consideration the FReM but not making it a requirement. The Code Board has indicated it is looking to the UK Government and the Devolved Administrations to provide direction. Including the requirement for a Management Commentary in the consultation draft of the regulations seeks to resolve this situation by providing Scottish local authorities with the opportunity to express their views.

Regulation 8(3)(e) introduces a new requirement to disclose details of any land disposed of at less than best consideration. This reflects a similar requirement for central government.

Regulation 8(5) and 8(6) sets out the proper officer's responsibilities to produce the statement of accounts by 30 June each year and to send these for audit. The regulations introduce a new requirement that the statement of accounts gives a true and fair view of the authority's (or group) financial position. These provisions replace regulation 4 of The Local Authority Accounts (Scotland) Regulations 1985.

Regulation 8(7) introduces a new requirement to publish the unaudited statement of accounts on the website of the authority.

| | Question | Response | Comments / Feedback |
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| 13 | Do you agree that the annual statutory accounts should be known as the Statement of Accounts? | No | We firmly believe that there should be alignment and consistency between the public and private sectors unless there is a clearly justified reason of a particular material public sector issue that is not addressed.<br><br>The term Statement of Accounts used in the CIPFA/LASAAC Code of Practice on Local Authority Accounting is not a term that is commonly used out-with UK local authorities. It is also inconsistent with the Audit Scotland Code of Audit Practice which uses 'financial statements'.<br><br>'Financial Statements' or 'Annual Accounts' are more universally |

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| | | | known and recognisable. Unnecessarily different terminology introduces specialism and this reduces transparency for a wider audience. We suggest that using universal terminology would also assist web searches. Our preference would be to replace the term 'Statement of Accounts' with 'Financial Statements'. |
| 14 | Do you agree there should be a statutory requirement for a management commentary?<br>If not why not? What alternative/s would you suggest? | Yes | ICAS strongly believes that a management commentary is necessary to support understanding, transparency and accountability. We welcome the Scottish Government's proposal.<br><br>Although local authorities may be subject to various reporting requirements, there is a lack of an overarching high level corporate performance review for each authority and therefore a deficit in accountability to the tax payer. This inhibits transparency and is a barrier to better understanding the organisation, its use of resources and progress in achieving its objectives.<br><br>We agree that the management commentary should be mandatory and form part of the financial statements as not all local authorities produce an annual report. Some local authorities may provide a review of corporate performance on a voluntary basis, but this is not consistent across all authorities and the level of quality and content varies. There is also a wide variety of performance information which local authorities can produce. The sheer volume of information available can make it more difficult to hold a local authority to account.<br><br>In addition, local authority financial statements are particularly complex to understand. A |

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| | | | narrative report is essential to better explain how resources have been used to meet objectives and interpret the accounts for a wider user group.<br><br>The existing explanatory foreword is not sufficiently strategic and is significantly behind existing and developing reporting practice across the rest of the public and private sectors in the UK. This development would bring much-needed alignment with good practice. Indeed, the bar is being raised higher in the private sector with the new Strategic Report replacing the Business Review[1] and the international developments in integrated reporting for a holistic report of the organisation. If local authorities do not start to provide a more meaningful strategic narrative they risk being ever further behind and the step change needed becoming much greater.<br><br>To avoid contributing to longer financial statements, the introduction of a management commentary should be accompanied by the removal of the explanatory foreword.<br><br>We suggest that supplementary non-statutory guidance would help to set the standard and ensure the narrative is suitably strategic, fair, balanced and understandable. In our view the IFRS Management Commentary Practice Statement is a good starting point.<br><br>A management commentary could also be used as a simplification tool, for example signposting readers to more detailed information which can be drilled down to, as required. Our views on bolstering the front end |

[1] Companies Act 2006 Regulations 2013

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| | | | narrative reporting and simplifying the technical second half which contains the accounts is raised in our response to LASAAC on simplification of accounts[2].<br><br>The public interest need for such a report is pre-eminent. |
| 15 | Do you agree the requirement to disclosure details of any land disposed at less than best consideration is suitably drafted? | No | This is consistent with stewardship duties; however, it is not clear what the materiality of this would be for the accounts. In view of the need to simplify and de-clutter financial statements, we believe that this information sits better elsewhere.<br><br>We suggest that such disclosures could be reported to the Council, on an exceptional basis and the relevant papers could be clearly referenced on the website so that users can find the information easily. |
| 16 | Do you agree that there should be a statutory requirement for the proper officer to ensure the statement of accounts gives a true and fair view of the local authority's (or group) financial position? | No | We agree there should be a statutory responsibility to ensure the statement of accounts gives a true and fair view. We do not consider it appropriate for that statutory responsibility to rest solely with the proper officer. This would also be inconsistent with private sector practice where the duty to prepare and approve accounts which give a 'true and fair' view rests with the Board (directors) in the Companies Act 2006 (s393,394) and the Finance Director would sign off as a representative of the Board, being the most senior level. This reflects the principle of a unitary board which we believe underpins strong corporate governance in the UK as it provides the opportunity for wider Board challenge.<br><br>The local authority/ council being an elected body, is the direct representative of the tax payer and the most senior level. This should |

[2] ICAS response to LASAAC - simplification of accounts

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| | | | be where the overarching responsibility should sit to ensure top-level accountability and provide the opportunity for escalation by the delegated officer.<br><br>If the proper officer were responsible this would be inconsistent with the responsibility levels stated in regulations 5, 6, 7, 8 & 10 which identifies that responsibility rests with the local authority. It is not clear why this exception would be needed i.e. the council would be responsible for everything underpinning the accounts but not the true & fair view. There is also the anomaly of the proper officer not necessarily being a member of the Executive Team (see our response to question 2).<br><br>Our preference is that the Regulations state the local authority has ultimate responsibility and the proper officer signs off after Council have approved the draft accounts. |
| 17 | Any other comments? | No | |
| *Regulation 9: Notice of public right to inspect and object to accounts*<br>This regulation replaces regulation 5 of The Local Authority Accounts (Scotland) Regulations 1985.<br>A key change made is to fix the date when the public notice is to be given, the date the inspection period commences, and the date until which objections may be made. The inspection period remains set at 15 working days. | | | |
| | Question | Response | Comments / Feedback |
| 18 | Do you agree that the date for the public notice, the period of inspection and the latest date for objections should be fixed? If not why not? What alternative would you suggest? | Yes | It would be helpful for the inspection dates to be consistent across local authorities. It would also be helpful for the notice to stay on the website until the end of the inspection period. |
| 19 | Any other comments? | Yes | Regulation 9.3(a) – we would prefer this to state “no later than 3 July” and for objections 9.4(d) to be by a date in mid-August. |
| *Regulation 10: Signing and consideration of audited accounts*<br>This new regulation replaces regulation 6(1) of The Local Authority Accounts (Scotland) Regulations 1985, which requires the audited accounts to be laid before a meeting of the local authority held not later than two months after receipt of the audit certificate. | | | |

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| Regulation 10 of the new regulations requires the local authority, or a committee of the authority whose remit includes audit or governance, to formally meet to consider approval of the statement of accounts. This must be by 30 September. The stakeholder working group considered whether this should be an approval process or if the authority should be required to accept the statement of accounts for governance purposes. The regulations require approval as this has a natural meaning and is unambiguous. The regulation sets out which statements must be signed and dated and by whom. The proper officer is re-certify the statement of responsibilities and the balance sheet(s) of the statement of accounts. | | | |
| | Question | Response | Comments / Feedback |
| 20 | Do you agree that the new requirement for the accounts to be approved should apply from the financial year 2013-14? If not please provide reasons. | Yes | However, this will depend on when the Regulations come into force. Some flexibility may be required. |
| 21 | Any other comments? | Yes | See our response to question 16 with our objection to the level of responsibility which is relevant for regulation 10.3. If the 'proper officer' signs off the statements, it should be as a delegated authority and representative of the local authority.<br><br>For 10.2(a) it should suffice for only the Chief Executive and perhaps also the Leader to sign off the management commentary.<br><br>We suggest that the following wording "sign the…on behalf of…" would be more reflective of the action, rather than "recertify". |
| *Regulation 11: Publication of the audited statement of accounts*<br>This regulation replaces regulations 6(2) and 7 of The Local Authority Accounts (Scotland) Regulations 1985.<br>The new regulation fixes the date – 31 October – by which the audited accounts must be published.<br>There is a requirement to publish the statement of accounts, the audit certificate and also a copy of any related report. This should include the Annual Audit Report of the appointed auditor.<br>A copy of the audited statement of accounts is to be made available on the website of the local authority for a minimum period of 5 years. Copies must be available for purchase for the same period. It is not intended that published copies need to be held for purchase just that the authority has the ability to produce a copy if requested. It is anticipated that holding an electronic PDF would satisfy this requirement. | | | |
| 22 | Do you agree with the revised publication requirements? If not please provide reasons. | Yes | See comment to question 23. |
| 23 | Any other comments? | Yes | For openness, this could be supplemented by having the draft accounts accessible on the |

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| | | | website until the final audited version is available.<br><br>Various local authorities publish group accounts and use other bodies to deliver public services. Group entity accounts are not consistently available on a local authority's website. ICAS have concerns that the same standards and level of scrutiny is not applied to all public services when different business structures or group models are applied. The scope of this regulation should include access to the annual report and accounts of all group bodies plus any related reports. These should be linked on the parent local authority's website and cross-referenced/ linked in the parent's accounts. |
| **SCHEDULE Content of Remuneration Report** | | | |
| References to police and fire have been removed from the regulations. The consultation draft regulations do not make any further changes to the requirement for a Remuneration Report as currently set out in the 1985 Regulations.<br><br>The consultation undertaken in 2010 included a proposal for the remuneration report to disclose the value of the cash equivalent transfer value of a person's pension right. In light of consultation responses at that time, in particular feedback that imminent tax changes should be considered, Scottish Ministers did not make this disclosure a requirement in the amending regulations laid before the Scottish Parliament.<br><br>The disclosure of cash equivalent transfer values continues to be a requirement for both central government and the private sector. This has not changed in light of tax changes to pensions. We therefore propose to make it a requirement that local authorities should make this additional disclosure. | | | |
| | Question | Response | Comments / Feedback |
| 25 | Do you agree that the cash equivalent transfer value (CETV) of a person's pension should be disclosed? | Choose an item. | We support including the accrued benefit as this brings local authority disclosures in line with other public and private sector disclosures.<br><br>To exclude the accrued pension value would potentially be more misleading as an incomplete figure for remuneration is presented which is inconsistent with other sectors. Exclusion would also not be in line with transparency and the intention of the Remuneration |

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| | | | Report.<br><br>Disclosure of the accrued pension value to date for the local government pension scheme (LGPS) is easily determined by a formula described on the LGPS website[3]), although such a formula may not exist for other pension schemes and CETV may be a required alternative.<br><br>However, CETV is not specifically mentioned in the local government context in regulations dated 2010 or 2013 so it is not clear what the proposed change is, why a CETV would need to be shown as well as the accrued benefit, or under what circumstances.<br><br>We suggest that the term accrued benefit is used as an overall term for different types of defined benefit pension schemes (if LGPS or otherwise). CETV may be an appropriate disclosure for some non-LGPS schemes. If a defined contribution scheme is used then accrued benefit would not be applicable as only the contributions are payable and known. In terms of pension value the risk is borne by the individual, not the employer so it is not possible to guarantee the level of benefit. If the latter is applicable, it would be helpful if the Remuneration Report could explain this in a note. |
| 26 | Do you agree that the cash equivalent transfer value of both officers and council members should be disclosed? | Choose an item. | See 25 above. |
| 27 | Are there any other changes which need to be made to the remuneration report requirements? If yes please provide details of the changes you would propose | Choose an item. | <u>Additional points</u><br><br>It is noted that there is inconsistency in where the Remuneration Report is positioned in the accounts, with some |

[3] http://www.lgps.org.uk/lge/core/page.do?pageId=176809

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<tr><td></td><td></td><td></td><td>showing this upfront in the Accounts as a statement, others at the end (as if it were a note, rather than the statement to the accounts which it is). This is one example of inconsistent positioning, another being the audit report. Please see our response to LASAAC (footnote 2).<br><br>The pay band disclosure threshold in paragraph 4 is too low at £50,000 and risks bringing in increasing amounts of middle-ranking staff. Our understanding is that the initial purpose of the note was to focus on the higher paid. This threshold needs to be increased periodically or it should commence at a higher level, say £60k.</td></tr>
<tr><td colspan="4">OTHER QUESTIONS – Items not in the regulations</td></tr>
<tr><td colspan="4">The new regulations require the approval of the annual governance statement and the statutory accounts themselves by either the local authority or a committee whose remit includes audit or governance functions. The stakeholder group convened to review the 1985 Regulations agreed that an audit committee represented best practice and wished to seek, through a consultation, whether this should be made a statutory requirement. This section provides the opportunity to comment on this proposal and more generally on the Accounts and Audit provisions in the on Local Government (Scotland) Act 1973 (sections 96-104), and the Regulations (made under section 105 of the 1973 Act).</td></tr>
<tr><td></td><td>Question</td><td>Response</td><td>Comments / Feedback</td></tr>
<tr><td>28</td><td>Do you agree that there should not be a statutory requirement for a local authority to have an Audit Committee? If yes please provide details of what roles and responsibilities you believe this committee should have.</td><td>Yes</td><td>Having an Audit Committee should be an implicit part of the management arrangements to deliver these regulations. It forms an important strand of robust corporate governance by providing the opportunity to challenge financial management arrangements and the accounts. If there is evidence that local authorities do not have an Audit Committee then this is a significant control weakness; if local authorities are not responding to recommendations to align with good practice and construct an appropriate high level control framework then we would support strengthening existing arrangements through regulation.</td></tr>
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| | | | Our preference is for a non-statutory approach based on complying with proper practices and explaining the reasons for any non-compliance. The need to have an Audit Committee should be firmly worded in proper practices[4] and for any non-compliance to be explained within the Annual Governance Statement.<br><br>This 'comply or explain' approach as an alternative to regulation is one which ICAS strongly supports. It is also used by the FRC for the UK Corporate Governance Code and is being adopted by the European Commission to harmonise different approaches across member states regarding non-financial reporting. (The FRC are planning to publish future guidance on what constitutes an acceptable explanation to reduce the risk of boilerplate explanations).<br><br>A local authority has a duty to observe 'proper accounting practices' in section 12 of the Local Government in Scotland Act 2003 and the status of the Code is recognised good practice, this is usually sufficient to encourage compliance for accounting matters. If the same type of requirement exists for 'proper practices' and this includes the CIPFA/SOLACE guidance (per footnote 3) then this should be sufficient without needing to bring in a separate regulatory requirement.<br><br>If the CIPFA/SOLACE guidance (2007) will be the hook, then a regular update process is needed to ensure it reflects the latest best practice. (As an example the FRC |

[4] identified in Part 2 of this response sheet as Delivering Good Governance in Local Government (CIPFA/SOLACE)

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| | | | UK Corporate Governance Code and Guidance for Audit Committees was revised in 2012). |
| 29 | Any other changes to either the primary or secondary legislation you consider should be made? Please provide details of any changes, including reasons why you consider that change is required. | Yes | *Group structures*<br>Local authorities are increasingly using arms-length organisations to deliver services which is reducing entity level size and services but correspondingly increasing the group.  This shift means that it may be more difficult for citizens to get the same level of information as group bodies may follow different accounting frameworks and are subject to less scrutiny and regulation.<br><br>As a matter of public interest, it is important that tax payers are able to access sufficient information to understand how wider services are delivered, the risks (e.g. financial guarantees, commitments and audit report qualifications) and for the local authority to demonstrate why this alternative approach delivers better outcomes and better value.  In other words, the public interest, accountability and demonstration of sound stewardship of public funds are paramount whatever the delivery model.<br><br>*Small body exemptions*<br>There is no mention of exemptions for small bodies in the regulations so it is assumed they apply to local authorities in Scotland of all sizes. As a general comparative, exemptions for smaller bodies exist for local authorities in England and small companies in the Companies Act 2006.  We consider that articulating such exemptions would help to ensure regulation is proportionate.<br><br>*Other section 106 bodies*<br>If these regulations apply to wider section 106 bodies it would be helpful to clarify how this fits with |

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| | | | other sector regulation e.g. pension fund accounts, charities etc. to minimise overlap and potential confusion.<br><br>*Simplifying local authority accounts*<br>Local authority accounts are particularly complex and we would welcome initiatives to support simplification. One of the key factors creating complexity is the legislative framework which mixes the funding and financial reporting functions within the annual accounts.<br><br>This and other points are set out in our response to LASAAC referenced in footnote 2. |