

Technical Guidance Note 2020/3(LG) (Revised)

Guidance on Statutory Objections to Local
Government Annual Accounts



 **AUDIT SCOTLAND**

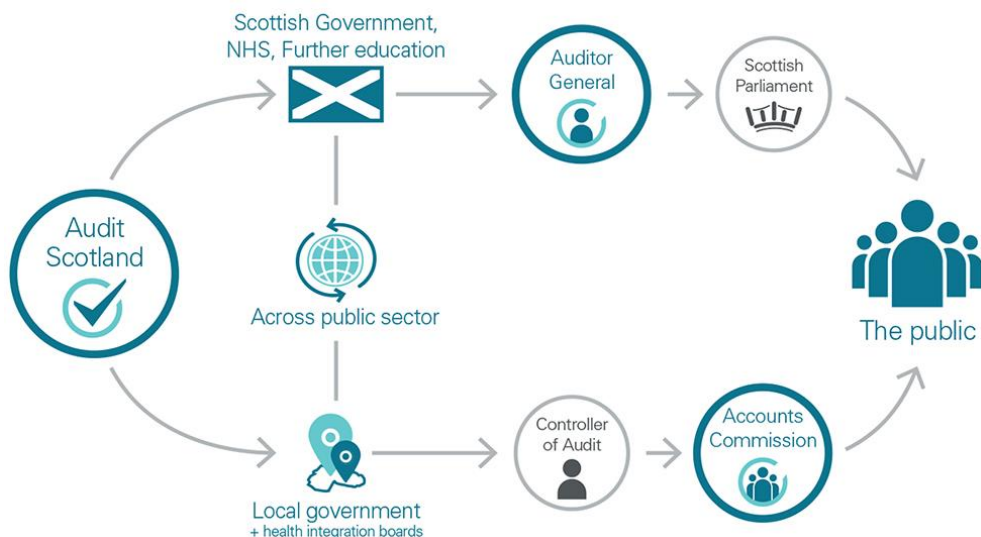
Prepared for appointed auditors in the local government sector

Revised on 28 May 2020

Who we are

The Auditor General, the Accounts Commission and Audit Scotland work together to deliver public audit in Scotland:

- The Auditor General is an independent crown appointment, made on the recommendation of the Scottish Parliament, to audit the Scottish Government, NHS and other bodies and report to Parliament on their financial health and performance.
- The Accounts Commission is an independent public body appointed by Scottish ministers to hold local government to account. The Controller of Audit is an independent post established by statute, with powers to report directly to the Commission on the audit of local government.
- Audit Scotland is governed by a board, consisting of the Auditor General, the chair of the Accounts Commission, a non-executive board chair, and two non-executive members appointed by the Scottish Commission for Public Audit, a commission of the Scottish Parliament.



About us

Our vision is to be a world-class audit organisation that improves the use of public money.

Through our work for the Auditor General and the Accounts Commission, we provide independent assurance to the people of Scotland that public money is spent properly and provides value. We aim to achieve this by:

- carrying out relevant and timely audits of the way the public sector manages and spends money
- reporting our findings and conclusions in public
- identifying risks, making clear and relevant recommendations.

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Introduction

Purpose and use of this Technical Guidance Note

1. The purpose of this Technical Guidance Note from Audit Scotland's Professional Support is to provide auditors appointed by the Accounts Commission with guidance on dealing with any statutory objections to the unaudited 2019/20 annual accounts.

This TGN provides guidance on objections

Definition

2. Statutory objections refer to the right of an interested person under [section 101](#) of the Local Government (Scotland) Act 1973 (the 1973 Act) to inspect and object to the unaudited annual accounts of the following (referred to collectively hereafter as local government bodies):
 - Councils constituted under [section 2](#) of the Local Government (Scotland) Act 1994 for their own annual accounts and those relating to the local government pension scheme.
 - Bodies to which [section 106\(1a\)](#) of the 1973 Act applies (e.g. integration joint boards, valuation joint boards, joint committees, and regional transport partnerships).
 - Trust funds to which [section 106\(1b\)](#) of the 1973 Act applies. This includes the statement of accounts prepared for registered charities.

Changes in 2019/20

3. The guidance in this TGN, originally published on 12 March 2020, had been enhanced to make auditors' actions clearer.
4. The TGN was then revised and republished as a result of temporary changes to statutory requirements in respect of the inspection process under [Schedule 6 of the Coronavirus \(Scotland\) Act 2020](#).

Technical enquiries

5. Enquiries should be e-mailed to TechnicalQueries@audit-scotland.gov.uk

Section 1

Inspection

Public notice

Auditor action 1

Auditors should evaluate whether the public inspection notice for 2019/20 is in accordance with applicable legislation.

6. [Regulation 9](#) of The Local Authority Accounts (Scotland) Regulations 2014 requires a local government body to give a public notice of the right of interested persons to inspect the unaudited accounts and associated documents. However, [Schedule 6 of the Coronavirus \(Scotland\) Act 2020](#) permits a local government body to decide to delay complying with this duty until there is no longer a significant risk of the transmission of coronavirus.
7. The following table summarises the application of specific Regulation 9 requirements in the context of Schedule 6, as well as [Finance Circular 10/2020](#) which provides further guidance:

Regulation 9	Schedule 6	Finance Circular 10/2020
The notice is to be in accordance with section 195 of the 1973 Act, including a requirement to display it beside the entrance to the body's offices.	A body can decide not to display the notice at its offices provided it is published on its website.	The notice should set out the process for requesting a document, including how they will be provided (electronically) with a hyperlink. The notice should explain that where it is not possible to provide a document electronically, the body will provide access when there is no longer a significant risk.
The notice is to be given by 17 June.	A body may decide to delay complying with this duty until there is no longer a significant risk of the transmission of coronavirus.	Requests to inspect documents, together with the documents provided electronically, should be made in the same place on the website as the inspection notice. When it is not possible to provide the information electronically, the statement that the body will not comply should also be published in the same place.
The places at which the accounts and other documents will be available and the hours during which they will be available should be stated.	A body can decide not to comply if it is of the view that doing so may give rise to a significant risk of the transmission of coronavirus. The documents should be made available electronically (or a statement made explaining that is not possible).	
The notice should specify the start date of the 15 working days inspection period which must be at least 14 days after the date of the notice but cannot be later than 1 July	A body may decide to delay complying with this duty	

8. Auditors should evaluate whether the notice for 2019/20 is in accordance with [Regulation 9\(4\)](#). This applies regardless of any objections being received. In particular, the notice should not state that objections require to be submitted to the Controller of Audit. A number of notices for 2018/19 included such a reference in error.

The notice should not refer to the Controller

Section 2

Objections

Auditor action overview

9. The actions for dealing with a potential objection to the accounts are summarised in the following table:

Auditor actions	Summary of process
Initial consideration of submission	Acknowledge receipt of submission Advise the Audit Scotland Correspondence team of receipt of the submission, and provide a copy Consider whether the submission meets the criteria for being treated as a statutory objection
Provide initial response	Confirm that it is to be treated as a statutory objection (or explain why it is not)
Arrange for and hold hearing (where appropriate)	Suggest date and time for hearing Use hearing to collect further details
Form a conclusion on materiality	Evaluate whether any misstatement could be material
Form final conclusion	Obtain evidence on which to base final conclusion
Discuss need for statutory report	Discuss with the Audit Scotland local government sector contact whether a statutory report is appropriate
Communicate conclusion	Report conclusion to objector and relevant body
Report in Annual Audit Report	Include appropriate reference in Annual Audit Report

10. Guidance on each action is provided in the remainder of this section. Auditors should carry out action 2 for every submission. Where the submission is to be treated as an objection, auditors should then carry out actions 3 to 9. A checklist of the main auditor actions is also provided at Appendix 1. Auditors are encouraged to discuss any aspect of the process with Professional Support.
11. The consideration of objections is part of core audit work. However, as it is not possible to anticipate how many (if any) are likely to be received in any year, there is no allowance for this work included in the construction of expected fees. Auditors should refer to section 3 of the [Audit Management and Quality Guidance](#) for information in this regard.
12. Where the submission is not to be treated as an objection, auditors should carry out action 10.

Initial consideration of submission

Auditor action 2

Auditors should consider whether the submission meets the criteria for a statutory objection.

13. When auditors receive a submission, they should acknowledge receipt and explain they are considering whether it can be accepted as a statutory objection (unless it is clearly an objection in which case auditors may in effect combine this action with auditor action 3). Auditors should send a copy of the submission and acknowledgment to Audit Scotland's Correspondence team at correspondence@audit-scotland.gov.uk.
14. Where consideration is required, auditors should then consider whether the criteria for being a statutory objection are met. This is the case where all the criteria in the following table are satisfied:

Criteria	Explanation
Interested person	The person should have a demonstrable interest in the accounts (see below for further guidance).
Format	The submission should be in writing.
Timing	The submission should be sent no later than the working day after the end of the inspection period.
Grounds	A statement of the grounds for the objection should be included.
Subject matter	The subject matter should relate to a potential misstatement in the annual accounts (see below for further guidance).
Recipients	The submission should have been copied to the relevant local government body and, where relevant, any officer of that body.

15. Auditors may find it helpful to contact Professional Support to discuss whether the above criteria are met. The main areas of judgement in considering whether the criteria are met in practice are expected to be whether the:
- person making the submission meets the criteria to be an 'interested person'
 - subject matter of the submission relates to the potential misstatement of an item in the annual accounts.

Interested person

16. Professional Support obtained [legal advice](#) to clarify the meaning of 'interested person' in the context of [section 101](#). The advice received indicates that an 'interested person' requires to have a relationship with the relevant local government area. Although the term is not confined to a ratepayer or elector, it therefore does not extend to the public at large.

An interested person must have a relationship with the area

17. The working definition for an 'interested person' in a specific local government area reasonably includes:
- council tax payers
 - non-domestic rate payers
 - persons having an interest in contracts
 - local electors
 - persons in receipt of services provided by the local government body whether or not residing within the area, including persons using facilities such as sports centres, libraries etc.

18. Case law ([Stirrat v City of Edinburgh Council](#)) has established that the person's motivation in inspecting the accounts is not a relevant consideration.

Misstatement in the annual accounts

19. When considering whether the subject matter of the submission relates to the potential misstatement of an item in the annual accounts, auditors should consider whether the subject matter of the submission could impact on how the item is recognised, measured, presented or disclosed in the accounts. In practice, some elements of a submission may meet the criteria (and therefore those elements should be accepted as an objection) while others do not.
20. A matter wholly related to the wider scope of public audit cannot result in a misstatement in the annual accounts and therefore does not represent a statutory objection.
21. Examples of subject matter, and whether each relates to a potential misstatement in the annual accounts, are set out in the following table:

Subject matter of submission	Relates to a potential misstatement
A building is over-valued	Yes - it affects that amount at which the building is measured in the balance sheet
A loan with a lender option borrower option (LOBO) is poor value for money	No - poor value for money does not affect how the LOBO is recognised, measured, presented or disclosed in the accounts
An embedded derivative within a LOBO has not been separately accounted for	Yes - it affects how the LOBO has been recognised, measured, presented or disclosed in the accounts
A view that elected members' expenses are too generous	No - the expenses are correctly measured
Concerns around significant governance weaknesses that are not disclosed	Yes - governance weaknesses, if significant, should be reported in the governance statement
The management commentary omits or obscures information necessary for a full understanding of the body's performance	Yes - this information is required by statutory guidance
Constructive obligation to clean up an old coal mine is not reflected in the accounts	Yes - a liability should be recognised in the accounts

22. For the purposes of concluding whether to accept the submission as a statutory objection, auditors should be concerned simply with whether there could be a misstatement in the annual accounts. Auditors should refrain from pre-judging the outcome at this stage, for example by being influenced by the materiality of any misstatement.
23. Where the submission was sent later than the statutory deadline or where it was not copied to the body or relevant officer, auditors should exercise their own judgement as to whether, notwithstanding those areas, they will nevertheless treat it as a statutory objection.

Initial response

Auditor action 3

Auditors should confirm in an initial response that the submission will be treated as a statutory objection and advise the objector, the body and any officer of the right to be heard.

24. Where the submission can be accepted as a statutory objection, the auditor should write to the objector, the body (usually via the Chief Executive) and any officer of the body concerned as soon as possible and:

- confirm that it will be treated as a statutory objection
- advise them of the right to be heard in relation to the objection.

25. Auditors should copy the initial (and any subsequent) response to correspondence@audit-scotland.gov.uk at the same time.

Hearing

Auditor action 4

Where requested to do so, auditors should arrange for a hearing on the objection.

Pre-hearing

26. The objector, body and any officer has the right under [section 101](#) to 'appear before and be heard by the auditor' which entails a meeting in person, where requested. The meeting (generally referred to as a 'hearing') may be with the objector or with a representative. On receipt of a request to exercise the right to be heard, auditors should:
- suggest a suitable date, time and location for the hearing. Legislation does not place a time limit on holding the hearing. The timescale will depend on the auditor's assessment of the expected impact on the annual accounts based on the information in the written submission but should not be unduly delayed
 - request any further documentation relevant to the subject matter of the objection.

At hearing

27. Auditors should use the hearing process to collect further details on the grounds for the objection and to obtain any supplementary information.
28. At the hearing, auditors should make whatever enquiries are considered necessary to assist in understanding the subject matter of the objection. Auditors should, however, refrain from expressing a view on the matter at the hearing stage.

No hearing

29. In the absence of a hearing, auditors should make whatever enquiries they consider appropriate to establish the factual position.

Preliminary conclusion on materiality

Auditor action 5

Auditors should evaluate whether any misstatement arising from the objection could potentially be material.

30. Auditors should consider the information they have gathered on the subject matter of the objection (from any hearing and/or from the submission itself) and form a preliminary conclusion. As soon as they are in a position to do so, auditors should evaluate whether any misstatement could potentially be material and take the actions set out in the following table:

Materiality	Action
Potential to be material	Evaluate the impact on the reporting timetable Advise Audit Scotland's Audit Quality and Appointments (AQA) (Owen Smith on osmith@audit-scotland.gov.uk) if a delay in completion of the audit is anticipated along with an explanation for the delay Advise the body's section 95 officer of a potential adjustment to the annual accounts

Materiality	Action
No potential to be material	Proceed with the audit Consider the objection as soon as this can be accommodated within the work schedule (possibly after the completion of the 2019/20 audit)

Final conclusion

Auditor action 6

Auditors should conclude on the subject matter of the objection.

31. Auditors should carry out appropriate procedures to obtain evidence on which to base their final conclusion on the matter.
32. Objections often refer to the absence of information that the objector believes should be disclosed in the annual accounts. In considering the objection, auditors should bear in mind that the extent of detail and analysis provided on any subject is a matter of judgement taking into account the factors set out in the following table:

Factors	Explanation
Users	Annual accounts are required to provide information that meets the common needs of a wide range of users. They are not designed to meet the specific needs of individual users.
Disclosure requirements	The accounting code specifies minimum disclosure requirements. It also requires additional disclosures, where appropriate, to enable users to understand the impact of particular transactions on the body's financial position and performance.
Materiality	Bodies need to form a view on whether an item is sufficiently material to warrant separate disclosure. Auditors should evaluate whether that view is reasonable in the circumstances.

33. Auditors may find it helpful to contact Professional Support to inform their judgement when reaching a final conclusion.

Statutory report

Auditor action 7

Auditors should consider, in discussion with Audit Scotland, whether the objection should be the subject of a statutory report.

34. There is a possibility that the objection could result in a statutory report by the Controller of Audit to the Accounts Commission under section 102 of the Local Government (Scotland) Act 1973. In accordance with section 5C of the [Guidance on Planning 2019/20 Audits](#), auditors should contact the local government sector contact (Anne MacDonald on amacdonald@audit-scotland.gov.uk) to discuss this possibility. This is required regardless of any discussions with Professional Support on the objection itself.
35. Where a statutory report is considered to be appropriate, the sector contact will agree the extent of the local auditor's contribution, and how much of that is beyond the scope of the core audit. This will generally include contributing to drafting the report and providing briefings at meetings of the Accounts Commission. Firms should base fees on no more than the maximum grade-related daily rates set out at paragraph 16 of the planning guidance for work beyond the core scope, except in exceptional circumstances where the use of experts is required.

Communicate conclusion

Auditor action 8

Auditors should advise the objector, the body and any officer concerned of the outcome of their consideration of the matter.

36. Auditors should:
- advise the objector, the body (usually via the Chief Executive) and any officer concerned of the outcome of their consideration of the matter
 - take care to ensure their response addresses each element of the objection and that their conclusions are expressed clearly
 - if there is to be statutory report, advise the objector, the body and any officer concerned of that decision by the Controller of Audit
 - copy the response to correspondence@audit-scotland.gov.uk.

Annual Audit Report

Auditor action 9

Auditors should include an appropriate reference to the objection in the Annual Audit Report.

37. Auditors should include a reference in the 2019/20 Annual Audit Report advising that a statutory objection had been received and providing a brief explanation of the subject matter.
38. Where a conclusion has been reached by auditors on the objection prior to the completion of the Annual Audit Report, and the investigation identified matters of significance, auditors should also set out the outcome.
39. Where the matter is not material to the annual accounts and enquiries have not been concluded by the date on which the Annual Audit Report is completed, auditors should explain that any significant matters arising from their enquiries will be reported in the 2020/21 report.

Auditor action where not accepted as objection

Auditor action 10

Auditors should advise the person who raised the matter, the body and any officer concerned that the submission cannot be treated as a statutory objection.

40. Where auditors carry out action 2 and consider that the submission cannot be accepted as a statutory objection, they should discuss with Audit Scotland's Correspondence team whether it should be dealt with as an [issue of concern](#). Auditors should then communicate as soon as possible with the person who raised the matter, the body (usually via the Chief Executive) and any officer of the body who may be concerned advising that the matter:
- cannot be treated as a statutory objection and explaining the reasons
 - will be dealt with as an issue of concern (if so guided by Correspondence team).
41. Auditors should ensure they avoid describing the submission as an 'objection' in the response, subsequent reports or other correspondence.
42. As the Correspondence team aim to respond to issues of concern within 30 working days of the initial submission, it is important that auditors send the submission timeously to correspondence@audit-scotland.gov.uk. Auditors are expected to assist the Correspondence team in preparing an appropriate response.

Appendix 1

Auditor action checklist

Auditor actions	Yes/No/N/A	Initials/date	W/P ref
<p>1 Have you evaluated whether the public inspection notice is in accordance with regulations?</p>			
<p>2 Have you:</p> <ul style="list-style-type: none"> • acknowledge receipt of the submission? • sent copies to the Correspondence team • considered whether the submission meets the criteria for being treated as a statutory objection? 			
<p>3. Have you communicated to the objector, the body and any officer of the body concerned to:</p> <ul style="list-style-type: none"> • confirm that it will be treated as a statutory objection? • advise them of the right to be heard in relation to the objection? 			
<p>4. Where a request to be heard has been received, have you:</p> <ul style="list-style-type: none"> • suggested a suitable date, time and location for the hearing? • requested any further documentation? 			
<p>5. Have you evaluated whether any misstatement could potentially be material?</p> <p>Where a misstatement is considered to be potentially material, have you:</p> <ul style="list-style-type: none"> • immediately assessed the impact on the reporting timetable? • advised Audit Quality and Appointments of the reasons if a delay in completion of the audit is anticipated? • advised the section 95 officer of a potential adjustment to the annual accounts? 			
<p>6. Have you carried out appropriate procedures to obtain evidence on which to base your final conclusion on the matter?</p>			
<p>7. Have you discussed with Audit Scotland whether a statutory report is appropriate?</p>			

Auditor actions	Yes/No/N/A	Initials/date	W/P ref
8. Have you: <ul style="list-style-type: none">• advised the objector, the body and any officer concerned of the outcome of your consideration of the matter?• sent a copy of the above to Audit Scotland's Correspondence team?			
9. Have you made an appropriate reference in the Annual Audit Report?			

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