



Department
of Health

HEALTH SERVICE BODIES AUDIT COMMITTEES

Consultation about proposed new constitutional requirements for NHS Trusts and Clinical Commissioning Groups

October 2013

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HEALTH SERVICE BODIES AUDIT COMMITTEES

Consultation about proposed new constitutional requirements for NHS Trusts and Clinical Commissioning Groups

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1. Overview

1. The Department of Health has been developing proposals for new constitutional requirements for the audit committees of NHS Trusts and Clinical Commissioning Groups. These are necessary to ensure audit committees are appropriately constituted to advise their governing boards on the selection, appointment and maintenance of independent relationships with external auditors from 2015 onwards, when the Audit Commission is expected to close (subject to the approval of Parliament). The Department is now seeking views on these proposals. This consultation will run from 18 October 2013 – 31 December 2013.

2. Introduction

2.1 The Local Audit and Accountability Bill (the Bill) delivers the government's commitment to close the Audit Commission (announced in August 2010) and create new arrangements for auditing England's local public bodies, including National Health Service Trusts and Clinical Commissioning Groups ("health service bodies"). The proposals set out in the Bill, and described in this document, can only be put into practice when Parliament agrees to them. These proposals do not apply to NHS Foundation Trusts.

2.2 The Bill is the final step in a programme of reforms to local audit that will deliver estimated savings to the taxpayer of £1.2 billion over a ten year period and help local people hold local public bodies to account for local spending decisions. It will put in place a new local audit and accountability framework for local public bodies in England. This replaces the centralised arrangements for the audit of local bodies and gives local bodies the freedom to appoint their own auditors from an open and competitive market; manage their own audit arrangements, with appropriate safeguards to ensure auditor independence; and retain the same high audit standards. More information about the Bill can be found by visiting www.GOV.UK website and then searching for "The Local Audit and Accountability Bill".

2.3 The audit arrangements for health service bodies will follow the arrangements for other local public bodies, but with some differences. These differences arise due to the status of health service bodies and the fact that they are already required to have an Audit Committee.

Audit committees operating as auditor panels

2.4 When the Bill provisions are commenced in April 2015 local bodies will be required to have an auditor panel which will advise the body on the selection, appointment and maintenance of an independent relationship with the external auditor. The most likely date for health service bodies taking on their selection and appointment responsibilities is for the audit year 2017/18.

2.5 The Bill allows health service body's to nominate their existing audit committee to operate as an auditor panel provided they meet the new constitutional requirements focusing on audit committee membership and independence. The new requirements will be set out in regulations.

2.6 The Bill sets out the following issues as needing to be addressed to ensure the independence of the members of audit committees (operating as auditor panels),

- a) Whether any of the members of a health service body's audit committee must be independent;
- b) If so, the proportion which must be independent;
- c) Whether the chair of a health service body's audit committee must be independent; and
- d) The meaning of "independent" for these purposes.

3. Proposed new requirements for the constitution of audit committees

3.1 A *governing board* is the health service body's governing entity (that is, either a NHS Trust Board or Clinical Commissioning Group Governing Body). In order to advise governing boards on the selection and maintenance of independent relationships with external auditors from 2015 onwards the audit committees of NHS Trusts and Clinical Commissioning Groups need to be appropriately constituted to ensure their independence. To make sure this happens it is proposed that the proposed requirements set out below, which are in line with Treasury best practice, should be provided for in regulations. (These proposals do not apply to NHS Foundation Trusts.)

3.2 The governing board will determine if a prospective audit committee member is "Independent" - see proposed requirement 5 below. An *independent non-executive member* of the audit committee is an independent person who does not hold an executive position on the governing board and potentially includes an independent non-executive director of an NHS Trust Board, an independent lay member of a Clinical Commissioning Group Governing Body and an independent person who is not a member of the governing board – see proposed requirement 4b) below.

Cost

3.3 At this stage it is not anticipated that the proposed new requirements set out above will result in any significant additional costs. This is because health service bodies are already required to have audit committees and the new requirements are believed to be cost neutral. We will be preparing a Financial Impact Assessment in due course, as part of the regulatory process. In the meantime we would welcome any information about additional costs associated with the proposed new requirements.

Proposed requirement 1

The audit committee must have a chair who is an independent non-executive member of the governing board.

Proposed requirement 2

The audit committee must have a majority of independent non-executive members.

Proposed requirement 3

The audit committee should normally, wholly or mainly, comprise of independent non-executive members of the governing board.

3. Proposed new requirements for the constitution of audit committees

Proposed requirement 4

The audit committee, to ensure appropriate level of skills and experience, may also include members who are:

- a) Non-executive members of the health service body's governing board but do not meet the definition of independent
- b) Independent persons, who are not members of governing board,

Proposed requirement 5

The governing board will determine if a prospective audit committee member is independent. They will do this by taking into account if s/he:

- a) has been an employee of the Health Service Body within the last five years;
- b) has, or has had within the last three years, a material business relationship with the Health Service Body either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the Health Service Body;
- c) has received or receives additional remuneration from the Health Service Body apart from a "Governing Board member's fee", participates in the Health Service Body's performance related pay scheme, or is a member of the Health Service Body's pension scheme, other than the NHS Pension Scheme;
- d) has close family ties with any of the Health Service Body's advisers, directors or senior employees;
- e) holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
- f) has served on the board of the Health Service Body for more than nine years from the date of their first appointment; or
- g) is an appointed representative of the Health Service Body's university medical or dental school.

4. Consultation questions

Question 1: Do you agree an audit committee must have a chair who is an independent non-executive member of the governing board (see proposed requirement 1)?

Question 2: Do you agree an audit committee must have a majority of independent non-executive members, either from the governing board or elsewhere (see proposed requirement 2)?

Question 3: Do you agree that the audit committee should normally, wholly or mainly, comprise of independent non-executive members of the governing board (see proposed requirement 3)?

Question 4: Do you agree an audit committee should potentially be able to include non-executive members of the governing board who are not considered to be independent (see proposed requirement 4a)?

Question 5: Do you agree an audit committee should potentially be able to include independent members, who are not members of the governing board (see proposed requirement 4b)?

Question 6: Do you agree the governing board should determine the independence of a prospective audit committee member by taking into account the criteria set out in proposed requirement 5?

Question 7: Do you agree that the proposed requirements 1-5 above are appropriate and proportionate, given the responsibility that a health service body's audit committee will have to advise the health service body's governing board on the selection, appointment and maintenance of independent relationships with external auditors from April 2015 onwards?

Question 8: Do you agree that the proposed requirements 1-5 above will be cost neutral for health service bodies or otherwise? If you believe there will be additional costs please let us have details to help inform the future Financial Impact Assessment (see paragraph 3.3 above).

Question 9: Do you wish to make any other comments about the proposed requirements?

Question 10: Can we contact you if we need more information about your comments on this consultation?

5. How to give your views on the proposed new requirements

5.1 The consultation is being run, as far as is practical, in accordance with the Cabinet Office Code of Practice on Consultations.

5.2 The closing date for the consultation is Tuesday 31 December 2013. The proposals in this consultation document apply to England only.

5.3 To give your views you may complete the [online consultation response document](#)

5.4 Alternatively, there is a response form on the GOV.UK website which can be either printed and sent by post to:

Audit Consultation, Department of Health, Room 207, Richmond House, 79, Whitehall
London SW1 2NS

or

sent electronically by e-mail to: auditconsultation@dh.gsi.gov.uk

It will help us to analyse the responses if respondents fill in the online consultation response document but responses that do not follow the structure of the questionnaire will be considered equally. It would also help if responses were sent in Word format, rather than in pdf format.