



Department
of Health

HEALTH SERVICE BODIES' AUDITOR PANELS AND THEIR INDEPENDENCE

Government Response to the Consultation on
secondary legislation for NHS Trusts and Clinical
Commissioning Groups under the Local Audit and
Accountability Act 2014

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Prepared by the Accounts Branch, Group Financial Management,
Department of Health.

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Executive summary

The government ran a consultation from July to September 2014 which sought feedback on draft regulations (secondary legislation) relating to the Local Audit and Accountability Act 2014 and its implications for auditor panels for Clinical Commissioning Groups and NHS Trusts..

38 responses were received and as a result of this some changes have been made to the regulations. This document analyses the responses to the consultation and provides a summary of the next steps.

1. Introduction

- 1.1. On 30 January 2014, the [Local Audit and Accountability Act 2014](#) received Royal Assent. The Act set out the government's proposals to disband the Audit Commission and establish a new local public audit framework.
- 1.2. The Act replaces the current centralised arrangements for the audit of local bodies and gives them the freedom to appoint their own auditors and manage their own audit arrangements, with auditor panels advising a body on maintaining an independent relationship with its auditor and on their selection and appointment.
- 1.3. The Government initially ran a consultation in late 2013, setting out proposals for audit committees in NHS Trusts and Clinical Commissioning Groups, and their roles in the new audit arrangements. As a result of the responses a number of changes were made to the proposals and the full government response can be accessed on the DH website at <https://www.gov.uk/government/consultations/new-requirements-for-nhs-audit-committees>.
- 1.4. A second consultation set out the subsequent draft regulations (secondary legislation) and was completed in the middle of September 2014. The purpose of this consultation was to seek the views of organisations affected by the proposed regulations and other interested parties on the final provisions and legal drafting. This document summarises the comments received and sets out the government's response.

2. Overview of Government Response

- 2.1. The consultation paper – Health Service Bodies Auditors Panels and their Independence: Consultation on secondary legislation for NHS Trusts and Clinical Commissioning Groups under the Local Audit and Accountability Act 2014 laid out draft regulations on the membership of auditor panels, independence of panel members, remuneration of panel members, the role of the panel in non-audit services and proceedings and validity of auditor panel meetings. It asked for feedback on the draft regulations and specifically on the auditor panel's role in agreeing non-audit work.
- 2.2. When the consultation closed on 19th September 2014, the government had received 38 responses. Of these, 16 were from NHS Trusts, 12 were from Clinical Commissioning Groups and 10 were from others including audit firms, HFMA and individuals. A breakdown of respondents by sector can be found at annex A and a full list of all respondents can be found at annex B.
- 2.3. We are grateful to all of those who took the time to respond. Overall, respondents were positive about the draft regulations and it was clear that some concerns raised in the first consultation about the practical difficulties of forming auditor panels have been allayed in the draft regulations.

3. Consultation Replies and Government Responses

- 3.1. Question 1 asked whether the auditor panel's role in agreeing non-audit work should be set in regulations. 84% of respondents agreed that it should, commenting that this is accepted current best practice and a way of maintaining independence of the external auditors. A minority (16%) disagreed, generally considering that decisions over non-audit work should be the responsibility of executive officers or that this policy should be set out in guidance rather than regulation. The government agrees with the majority view and the non-audit service provisions will be included in the regulations.
- 3.2. Question 2 asked for comments on the draft regulations. Most respondents made some additional comments in a few broad themes: minor drafting points in the regulations, the notion of 'independence' of the auditor panel members and operational information to be included in additional guidance.
- 3.3. The draft regulations proposed that the quorum for an auditor panel is 2; however one respondent suggested that this should be amended to 50%. The Department agrees that while a quorum of 2 would be appropriate for auditor panels of up to 5 members, although the regulations should state 50% to ensure proper representation for the larger auditor panels. This will be amended in the regulations.
- 3.4. Section 2 (3) addresses how auditor panel members should be recruited. One respondent noted that it was unclear if this applied to existing governing body members as well as individuals appointed solely to the auditor panel. The government agrees that this should be clearer and proposes to amend the regulations accordingly. The government also noted that the regulations were unclear about the arrangements for recruiting additional panel members who would not be considered independent and so proposes to clarify that this section of the regulations applies equally to these prospective members.
- 3.5. The heading of section 6 in the draft regulations was 'Independent requirements of the auditor panel'. One respondent suggested that the first word should be changed to read 'independence'. The government agrees and this will be amended in the regulations.
- 3.6. Section 5 of the draft regulations covers the role of the auditor panels in 'non-audit services'. A few respondents noted that there is duplication in the definition of 'non-audit services' in section 5 (1) (a) and 5 (3). The government agrees that only one definition is needed and this will be amended in the regulations.
- 3.7. A number of respondents raised queries, the answers to which would be best placed in additional guidance rather than in the regulations themselves and the government is committed to working with partners to develop such guidance. Topics raised in the consultation and likely to be included in the guidance include first time appointment of auditor panel members, terms of office for auditor panel members, cross directorships, and the potential for organisations to run joint procurements for auditors.
- 3.8. The previous consultation (see paragraph 1.3) asked a number of questions on the membership of auditor panels, whether all members should be independent and how independence should be defined. In response to this, the draft regulations define independence and set out a proposal about the membership of the auditor panels,

including how many of the members should be independent. The draft regulations allow for a minority of the auditor panel to be members who are not independent non-executive governing board /body members and who do not meet the guidelines to determining independence in the regulations. This was thought to be important, particularly in the Clinical Commissioning Group sector where Governing Bodies tend to be small and have significant clinical input and where it was considered that non independent members may be needed to ensure the panel has the requisite knowledge and skills.

4. Government Next Steps

- 4.1. The government wishes to thank everyone who responded to the consultation. Minor amendments will be made to the draft regulations as described. The Government plans to lay the final regulations in Parliament later in 2014.
- 4.2. The government will work with partners in NHS England, NHS Trust Development Authority and others to draft guidance which will sit alongside the regulations. This will provide further detail and advice to Clinical Commissioning Groups and NHS Trusts on implementing the changes in the regulations.

Annex A: Respondents by sector

Respondents by sector

Sector	Number of responses
Clinical Commissioning Group	12
NHS Trust	16
Other	10
Total	38

Annex B: List of Respondents

South Warwickshire CCG	Leeds West CCG
Birmingham CrossCity CCG	Portsmouth CCG
Southern Derbyshire CCG	East Riding of Yorkshire CCG
North Tyneside CCG	Wolverhampton CCG
Herts Valleys CCG	Central Manchester, North Manchester and South Manchester CCGs
Worcestershire CCG	Nottingham North East CCG
Wirral Community NHS Trust	Wirral Community NHS Trust
Worcestershire Health and Care NHS Trust	Avon and Wiltshire Mental Health Partnership NHS Trust
Surrey & Sussex Healthcare NHS Trust	Royal Cornwall Hospitals NHS Trust
Norfolk Community Health & Care NHS Trust	Devon Partnership NHS Trust
Lewisham and Greenwich NHS Trust	Portsmouth Hospitals NHS Trust
University Hospital of North Staffordshire NHS Trust	Yorkshire Ambulance Service NHS Trust
Bradford District Care Trust	East Sussex Healthcare NHS Trust
Dudley & Walsall Mental Health Partnership NHS Trust	Mersey Care NHS Trust
Individual response	TIAA Limited
NHS Audit England	NHS Clinical Commissioners
CIPFA	Audit Commission
Grant Thornton	HFMA
Deloitte	Accorde

Annex C: Consultation Questions and Draft Regulations

Question 1: Do you agree that auditor panel's role (regulation 5) in agreeing non-audit work should be set in regulations?

Question 2: Do you have any comments on the proposed regulations?

The draft regulations are set out below.

Draft Regulations prepared for the purposes of consulting on provisions to the Local Audit and Accountability Act 2014.

STATUTORY INSTRUMENTS

2015 No.

NATIONAL HEALTH SERVICE, ENGLAND

**THE LOCAL AUDIT (HEALTH SERVICE BODIES AUDITOR
PANEL AND INDEPENDENCE) REGULATIONS 2015**

The Local Audit (Health Service Bodies' Auditor Panel and
Independence) Regulations 2015

<i>Made</i>	- - - -	<i>2014</i>
<i>Laid before Parliament</i>		<i>2014</i>
<i>Coming into force</i>	- -	<i>2015</i>

The Secretary of State for Health makes these Regulations in exercise of powers conferred by section 10(8) of, and paragraphs 3 and 4 of Schedule 4 to, the Local Audit and Accountability Act 2014.⁽¹⁾

Citation, commencement, interpretation and application

—a) These Regulations may be cited as the Local Audit (Health Service Bodies Auditor Panel and Independence) Regulations 2015 and come into force on xxx 2015.

In these Regulations —

“the 2006 Act” means the National Health Service Act 2006⁽²⁾;

“the 2012 Act” means the Health and Social Care Act 2012⁽³⁾;

“the 2014 Act” means the Local Audit and Accountability Act 2014;

“additional remuneration” means any remuneration other than that which relates solely to a person’s role as a member of a governing board;

“CCG” means clinical commissioning group⁽⁴⁾;

“governing board” means

in relation to an NHS trust⁽⁵⁾, the body of executive and non-executive directors⁽⁶⁾ of that trust; and

in relation to a CCG, the governing body of a CCG⁽⁷⁾;

“a member of a CCG” has the meaning given in section 14A(4) of the 2006 Act;

“a non-executive member” means—

(a) in the case of a CCG—

an individual who is a lay person⁽⁸⁾; or

a person who is not an employee or a member of the CCG; and

(b) in the case of an NHS trust, a person who is a non-executive director of that trust.

These Regulations apply to health service bodies⁽⁹⁾.

Members of auditor panels

—b) The following provisions apply to the auditor panel of a health service body.

An auditor panel must have a minimum of three members.

A person may not be appointed as an independent member of an auditor panel unless—

⁽¹⁾ 2014 c. 2.

⁽²⁾ 2006 c. 41.

⁽³⁾ 2012 c. 7.

⁽⁴⁾ A clinical commissioning group is a body established under section 14D of the 2006 Act. Section 14D was inserted into the 2006 Act by section 25(1) of the 2012 Act.

⁽⁵⁾ An NHS trust is a body established under section 25(1) of the 2006 Act.

⁽⁶⁾ See paragraph 16 of Schedule 7 to the 2006 Act as to directors of NHS trusts.

⁽⁷⁾ See section 14L of the 2006 Act for the meaning of “governing body”. Section 14L was inserted into the 2006 Act by section 25(1) of the 2012 Act.

⁽⁸⁾ “Lay person” has the meaning given in section 14N(6) of the 2006 Act.

⁽⁹⁾ “Health service bodies” has the meaning given in section 3(9) of, and paragraph 4 of Schedule 13 to the 2014 Act. [These provisions have not been commenced in so far as they relate to special trustees appointed as mentioned in section 212(1) of the 2006 Act and trustees of NHS trusts appointed under paragraph 10 of Schedule 4 to that Act.]

a vacancy for an independent member has been advertised in such manner as the health service body considers is likely to bring it to the attention of the public;

the person has submitted an application to fill the vacancy to the health service body; and

the person's appointment has been approved by a majority of the members of the health service body's governing board .

The health service body must adopt a set of rules with regard to the removal or resignation of members of the auditor panel, or of its chair, and may from time to time revise any of those rules.

Remuneration or allowances of auditor panel members

The health service body may pay members of the auditor panel such remuneration or allowances as the body may determine.

Proceedings and validity of proceedings of auditor panels

In relation to a meeting of the auditor panel—

the minimum quorum is two; and

the proceedings of the panel are valid if the majority of the members present at the meeting are independent members of the panel.

Further functions of auditor panels: Non-audit services

—c) The auditor panel must advise the health service body on—

adopting a policy on the purchase, from the health service body's local auditor, of services ("non-audit services") that are not part of the carrying out of the local auditor's functions under the 2014 Act; and

the contents of such a policy.

The policy mentioned in paragraph (1) must include—

the circumstances or manner in which the health service body may or may not purchase non-audit services from the body's local auditor; and

the circumstances or manner in which the health service body may ask the auditor panel for advice.

In this regulation, "non-audit services" in relation to a health service body means services provided by the health service body's local auditor to the body other than in the exercise of the functions of the local auditor under the 2014 Act.

Independent requirements of the auditor panel

—d) The auditor panel of a health service body must have—

a chair who is an independent non-executive member of the governing board; and

a majority of independent non-executive members.

The auditor panel of a health service body may include—

members of the governing board who do not meet the requirements of "independent" determined in accordance with regulation 7; or

persons who meet the requirements of "independent" determined in accordance with regulation 7 who are not members of the governing board.

Determination of the meaning of independent

—e) The governing board must determine whether a prospective member of the auditor panel is independent, by—

considering whether the person has relationships or circumstances which are likely to affect, or could affect his or her judgement; and

having regard to the factors mentioned in paragraph (2).

The factors referred to in paragraph (1)(b) are whether the person —

has been a member or an employee of the health service body within the last five years immediately preceding the date of the proposed appointment;

in the case of a CCG, has been, within the period of five years immediately preceding the date of the proposed appointment, an employee of a member of that group;

has had, within the period of three years immediately preceding the date of the proposed appointment—

a direct material business relationship with the health service body; or

an indirect material business relationship as a partner, senior employee of a body that has such a relationship with the health service body;

has, within the period of three years immediately preceding the date of the proposed appointment—

received additional remuneration from the health service body;

participated 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).

has close family ties with any of the health service body's advisors, directors, members or senior employees;

holds a cross-directorship or has significant links with other auditor panel members or board members of the health service body through involvement in other companies or bodies;

has served on the board of the health service body for a period of more than 9 years beginning with the date of his or her first appointment [as a member of the board]

is an appointed representative of the health service body's medical or dental school provided by a university.

For the purposes of paragraph (2)(c), a material business relationship means what the governing board determines to constitute such a relationship.

For the purposes of paragraph (2)(f), a person holds a cross-directorship where-

he or she is a prospective member of a health service body's auditor panel and serves as a member of another organisation's governing board, audit committee or auditor panel; and

at the same time, a member of the governing board at the organisation referred to in sub-paragraph (a) serves as a member of the governing board or the auditor panel of the health service body.

Signatory text

Date

Parliamentary Under Secretary of State
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the Local Audit and Accountability Act 2014. They make provision for the constitution of auditor panels in respect of health service bodies.

Regulation 2 makes provision for membership of auditor panels and in particular the minimum number of members of such a panel. Regulation 2(2) makes provision for the appointment of members of the auditor panel. Regulation 2(4) makes provision for the removal and resignation of members of the auditor panel and of its chair.

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Regulation 3 makes provision for remuneration and allowances of auditor panels.

Regulation 4 makes provision for the proceedings and validity of proceedings of the auditor panel.

Regulation 5 makes provision for further functions of auditor panels. In particular, regulation 5(1) makes provision for the auditor panel to advise the health service body on adopting a policy of the purchase of “non-audit services” from the health service body’s local auditor and the contents of such a policy.

Regulation 6 makes provision for “independent requirements” in respect of the chair and other members of the auditor panel.

Annex D: Outline expected timetable for NHS Trusts and CCGs

The Local Audit and Accountability Act 2014 abolishes the Audit Commission on 1 April 2015, and arrangements have been put into place to transfer its ongoing functions. The management of the existing audit contracts will transfer to Public Sector Audit Appointments Ltd, an independent company set up by the Local Government Association as a transitional body. This company will appoint auditors (for any new bodies established), regulate the audit work, monitor quality, manage audit relationships and set scale of audit fees. The Audit Commission's work on the Code of Audit Practice will pass to the National Audit Office. The National Fraud Initiative work will transfer to the Cabinet Office and the Counter-fraud work will pass to CIPFA.

While the local appointment of auditors will not take place until 2017-18, there are a number of milestones NHS Trusts and CCGs should be aware of in preparation for their own appointment of auditor panels and preparing for the other aspects of the Act.

December 2014	National Audit Office (NAO) publishes new Code of Audit Practice (effective from 2015/16) to replace the codes produced by the Audit Commission and Monitor.
December 2014	Health Service Bodies' Auditor Panel Regulations SI to be laid
January – February 2015	Guidance on appointment of Health Service Bodies Auditor Panels developed with affected bodies
March 2015	Guidance on appointment of Health Service Auditor Panels issued
March 2015	Audit Commission approve the level of audit fees for 2015-16
April 2015	Audit Commission abolished and Transitional Body (PSAA Ltd) takes over management of the current audit contracts
January – February 2016	NHS Trusts and CCGs to comply with local audit regulations and appoint auditor panels
March 2016	Transitional Body approve level of audit fees for 2016-17
Summer 2016*	Local procurement of auditors for 2017-18 from approved list
December 2016*	Local auditors to be in place by 31 December
April 2017*	Commencement of audit contracts for the 2017-18 financial year

* timing would change if the current audit contracts are extended.