

2015 No. 18

NATIONAL HEALTH SERVICE, ENGLAND

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

<i>Made</i>	- - - -	<i>6th January 2015</i>
<i>Laid before Parliament</i>		<i>15th January 2015</i>
<i>Coming into force</i>	- -	<i>1st April 2015</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 10(8) of, and paragraphs 3 and 4 of Schedule 4, as read with paragraphs 3 and 4 of Schedule 13, to the Local Audit and Accountability Act 2014(a).

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the Local Audit (Health Service Bodies Auditor Panel and Independence) Regulations 2015 and come into force on 1st April 2015.

(2) In these Regulations—

“a CCG” means a clinical commissioning group(b);

“governing board” means—

(a) in relation to an NHS trust(c), the body of executive and non-executive directors(d) of that trust; and

(b) in relation to a CCG, the governing body of that CCG(e);

“health service body” means a CCG or an NHS trust(f);

“a member of a CCG” means a provider of primary medical services within the meaning of chapter A2 of Part 2 of the National Health Service Act 2006, specified in the constitution of a CCG as a member of that group(g);

“a non-executive member” means—

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- (a) 2014 c.2. Paragraphs 3 and 4 of Schedule 13 are cited for the meaning of “relevant authorities” and “health service bodies”. These provisions incorporate NHS trusts into the definition of “relevant authorities” and “health service bodies” as used in the main powers cited.
- (b) A clinical commissioning group is a body established under section 14D of the National Health Service Act 2006 (c.41.) (“the 2006 Act”). Section 14D was inserted into the 2006 Act by section 25(1) of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”).
- (c) An NHS trust is a body established under section 25(1) of the 2006 Act.
- (d) See paragraph 3(1)(b) of Schedule 4 to the 2006 Act as to executive and non-executive directors of NHS trusts.
- (e) 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.
- (f) For the purposes of these Regulations, the meaning of “health service body” is narrower than the definition given in section 3(9) of, and paragraph 4 of Schedule 13, to the Local Audit and Accountability Act 2014.
- (g) See section 14A(3) of the 2006 Act for the meaning of “provider of primary medical services”; see section 14B of, and Part 1 of Schedule 1A to, the 2006 Act for the constitution of a CCG. Chapter A2 of Part 2 of the 2006 Act was inserted by sections 25 and 26 of the 2012 Act.

- (a) in relation to a CCG's governing body, a person who is not an employee or a member of that CCG; and
 - (b) in relation to an NHS trust, a person who is a non-executive director of that trust.
- (3) These Regulations apply to health service bodies.

Remuneration or allowances of auditor panel members

2. A 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

3. In relation to a meeting of the auditor panel—
- (a) the quorum is two members or the number of members who make up at least 50 per cent of the panel, whichever is the greater; and
 - (b) 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

- 4.—(1) The auditor panel must—
- (a) advise on the contents of a health service body's policy on the purchase from the body's local auditor, of non-audit services; and
 - (b) approve such a policy.
- (2) The policy mentioned in paragraph (1) must include—
- (a) 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
 - (b) the circumstances or manner in which the health service body may ask the auditor panel for advice.
- (3) 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 Local Audit and Accountability Act 2014.

Members of auditor panels

- 5.—(1) The auditor panel of a health service body must have—
- (a) a minimum of three members;
 - (b) a chair who is—
 - (i) independent and;
 - (ii) a non-executive member of the governing board of that health service body; and
 - (c) a majority of members who are—
 - (i) independent and;
 - (ii) non-executive members of the governing board of that health service body.
- (2) The auditor panel of a health service body may include—
- (a) members of the governing board who do not meet the requirements of "independent" determined in accordance with regulation 6; and
 - (b) persons who meet the requirements of "independent" determined in accordance with regulation 6 who are not members of the governing board.
- (3) A person may not be appointed as an independent member of an auditor panel unless—

- (a) 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;
- (b) the person has submitted an application to fill the vacancy to the health service body; and
- (c) the person's appointment has been approved by a majority of the members of the health service body's governing board.

(4) The health service body may appoint a member of the governing board or the audit committee of that body as a member of the auditor panel and in that event the procedures required in paragraph (3) do not apply.

(5) 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.

Meaning of independent etc.

6.—(1) "Independent", in relation to membership of an auditor panel, means that the member or prospective member of the panel is not in circumstances, and does not have relationships, which are likely to affect, or could affect his or her judgement in discharging his or her duties as a member of the auditor panel.

(2) The governing board of the health service body must decide whether a prospective member of the auditor panel would qualify as independent if appointed.

(3) In deciding whether a prospective member would qualify as independent, the governing board must consider whether any of the factors described in paragraph (5) apply.

(4) If any of those factors apply, the governing board may decide, in all the circumstances, that the prospective member would not qualify as independent.

(5) The factors referred to in paragraph (3) are whether the person—

- (a) has been a member or an employee of the health service body within the period of five years immediately preceding the date of the proposed appointment;
- (b) in the case of a CCG, has been, within the period of five years immediately preceding the date of the proposed appointment, an employee or a member of that CCG;
- (c) has had, within the period of three years immediately preceding the date of the proposed appointment—
 - (i) a direct material business relationship with the health service body; or
 - (ii) an indirect material business relationship as a partner, or senior employee of a body that has such a relationship with the health service body;
- (d) has, within the period of three years immediately preceding the date of the proposed appointment—
 - (i) received additional remuneration from the health service body;
 - (ii) participated in the health service body's performance related pay scheme; or
 - (iii) is a member of the health service body's pension scheme (other than the NHS pension scheme);
- (e) has close family ties with any of the health service body's advisors, directors, members or senior employees;
- (f) 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;
- (g) has previously 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;
- (h) is an appointed representative of the health service body's medical or dental school provided by a university.

(6) For the purposes of paragraph (5)(c), a material business relationship means what the governing board determines to constitute such a relationship.

(7) For the purposes of paragraph (5)(d)(i), additional remuneration means any remuneration other than that which relates solely to a person's role as a member of a governing board.

(8) For the purposes of paragraph (5)(f), a person holds a cross-directorship where-

- (a) he or she serves as a member of another organisation's governing board, audit committee or auditor panel; and
- (b) 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.

Signed by authority of the Secretary of State for Health.

Earl Howe
Parliamentary Under-Secretary of State
Department of Health

6th January 2015

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Regulation 2 makes provision for remuneration and allowances of auditor panels.

Regulation 3 makes provision for the proceedings and validity of proceedings of the auditor panel.

Regulation 4 makes provision for further functions of auditor panels. In particular, regulation 4(1) and (2) makes provision for the auditor panel to advise on the contents of the health service body's policy on the purchase of "non-audit services" from the body's local auditor and to approve such a policy.

Regulation 5(1) and (2) makes provision for requirements as to independence in respect of the chair and other members of the auditor panel and also makes provision for membership of auditor panels and in particular the minimum number of members of such a panel. Regulation 5(3) and (4) makes provision for the appointment of members of the auditor panel. Regulation 5(5) makes provision for the removal and resignation of members of the auditor panel and of its chair.

Regulation 6 sets out the factors that the health service body must have regard to when deciding whether a prospective member of the auditor panel is independent.

A full impact assessment has been produced in relation to the relevant provisions of the 2014 Act and a copy is available at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349418/2014_FIN_AL_Local_Audit_IA.pdf

A full Impact Assessment has not been produced for this instrument as no additional impact on the private sector or voluntary sector is foreseen.

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