



# Auditor Panels – Guidance to help Health Bodies meet their Statutory Duties, September 2015

From 2017/18 onwards, clinical commissioning groups and NHS trusts must have an ‘auditor panel’ to advise on the appointment of their external auditors. As the 2017/18 appointment must be made by the end of the preceding year (i.e. by 31<sup>st</sup> December 2016), auditor panels need to be in place early in 2016<sup>1</sup>.

Setting up a panel does not need to be too onerous as, in most cases, existing audit committees (or members of those committees) can be nominated to act as the panel. This is the most straightforward approach as audit committees are – by definition – independent and members have the relevant experience and skills.

This guidance has been produced by the HFMA’s Governance and Audit Committee working alongside the Department of Health. It explains the legal requirements in relation to auditor panels and gives advice on how your organisation can fulfil its responsibilities.

Sections 1 to 8 explain why a new approach is being introduced and sets out the key requirements. They can be used as a briefing document for board and audit committee members.

Section 9 looks at the legislation in detail and is aimed more at those executives who are charged with ensuring that the new approach is introduced in line with statutory requirements.

## 1. Context and scope of this guidance

The *Local Audit and Accountability Act 2014* (the 2014 Act) brings in significant changes to the local public audit regime in England by replacing centralised arrangements for appointing local (i.e. external) auditors<sup>2</sup> to local authorities and health service bodies (clinical commissioning groups and NHS trusts **NOT** foundation trusts) with a system that allows each body to make its own appointment.

The key provisions set out in the 2014 Act are that:

- The Audit Commission closed on 1<sup>st</sup> April 2015 and so is no longer responsible for the centralised system of appointing external auditors to local authorities and health service

<sup>1</sup> An auditor panel is not required if a CCG or NHS trust opts for a ‘collective procurement’ for its auditor appointment – however no such option currently exists for the NHS (see section 6 below).

<sup>2</sup> The Act and regulations use the phrase ‘local auditor’ but this guidance uses the more familiar term ‘external auditor’ other than where legislation is quoted. Using the term external auditors also ensures that there is no confusion with internal auditors.

bodies (Part 1 of the 2014 Act abolishes the Commission and repeals the *Audit Commission Act 1988*<sup>3</sup>)

- The Commission's ongoing functions transferred to a variety of other bodies (Part 5, section 19 and Schedule 6 of the Act). Of particular importance is the *Code of Audit Practice* which defines the scope, nature and extent of local public audit work. Since 1<sup>st</sup> April 2015, the Code has been issued by the Comptroller & Auditor General<sup>4</sup> and applies to all audits from 2015/16 onwards (see section 4 below)
- There is a new approach to the regulation of local public audit and eligibility of local auditors (Part 4 and Schedule 5 of the Act)
- Local public bodies select and appoint their own auditors on the advice of auditor panels (see later in this briefing for detailed legislative references).

This guidance focuses on the last of these provisions – the role of auditor panels in appointing external auditors – and in particular on how the relevant sections of the 2014 Act and the regulations issued under it (to govern health body auditor panels and ensure that an independent relationship is maintained with the auditor) can be applied in practice. It is designed to help those organisations covered by the 2014 Act meet their statutory requirements and to support them in establishing and managing auditor panels.

The guidance also outlines the implications of the other key provisions listed above.

## **2. Which organisations does this guidance apply to?**

This guidance applies only to those health bodies covered by the 2014 Act and regulations issued under it – namely, clinical commissioning groups (CCGs) and NHS trusts.

The provisions on audit appointment in the 2014 Act do not apply to NHS foundation trusts as they already appoint their own external auditors under the *NHS Act 2006* and these rules are not changing.

## **3. What happens now that the Audit Commission has closed?**

Although the Audit Commission closed on 1<sup>st</sup> April 2015, existing audit service contracts will remain in place up until 2016/17. These contracts are managed by a 'transitional body' (Public Sector Audit Appointments Ltd – PSAA – a Local Government Association company set up for the purpose). During this transition period, PSAA is therefore responsible for:

- Regulating auditors' work
- Monitoring quality
- Managing audit relationships
- Making any new auditor appointments
- Approving any non-audit work (above a de minimis level)
- Setting audit fees.

## **4. What has happened to the Audit Commission's ongoing health related functions?**

In line with section 19 and Schedule 6 of the 2014 Act, the Comptroller & Auditor General is responsible for producing the *Code of Audit Practice* from 2015/16 onwards. The Code is available on the National Audit Office's (NAO) website: <http://www.nao.org.uk/code-audit-practice/>

The NAO has also taken on responsibility for issuing guidance to auditors under the Code. Co-ordination and liaison arrangements are expected to be similar to those in place in previous years.

The National Fraud Initiative and data matching powers transferred to the Cabinet Office in April 2015. Other counter fraud activities have been wound up.

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<sup>3</sup> Some functions from the 1998 Act are 'saved' for the arrangements in the transition period.

<sup>4</sup> The Comptroller & Auditor General is a post appointed by Parliament. He uses the National Audit Office (NAO) to undertake work he is charged with, including the development and maintenance of the Code.

## 5. What is the new approach to the regulation of local audit and the eligibility of local auditors?

In line with Part 4 (section 18) and Schedule 5 of the 2014 Act, the new approach to the regulation of local public audit is the responsibility of the Financial Reporting Council (FRC) – an independent regulator, responsible for promoting high quality financial reporting and corporate governance. The FRC publishes the *UK Code of Corporate Governance* which sets out good practice for UK-listed companies and is expected to issue guidance on the regulation of auditors of local public bodies following a consultation that took place in 2014<sup>5</sup>.

The 2014 Act and the regulations issued under it are designed to bring the approach into line with that used by the corporate sector.

## 6. What are the new local audit arrangements?

From 2017/18 onwards, NHS trusts and CCGs will appoint their own auditors and directly manage the resulting contract and the relationship. NHS foundation trusts already do this. The 2014 Act specifies that **all** local public bodies covered by the legislation (referred to as ‘relevant authorities’ in the Act) must have auditor panels to advise on the selection, appointment and removal of external auditors and on maintaining an independent relationship with them.

The only exception would be if a relevant body decided to make its auditor appointment via a ‘collective procurement’ (for example, through a sector-led body) – then an auditor panel would not be required. However, at present there are no proposals for any such body in the NHS sector.

Schedule 2 of the 2014 Act specifies that ‘relevant authorities’ in health are CCGs. Schedule 13, paragraphs 3 and 4 specify that relevant authorities also includes NHS trusts ‘most of whose hospitals, establishments and facilities are situated in England’. In other words, the 2014 Act and regulations laid under it apply to CCGs and NHS trusts<sup>6</sup>.

## 7. What legislation underpins the new arrangements?

There are two key legislative sources:

- *The Local Audit and Accountability Act 2014*
- *The Local Audit (Health Service Bodies Auditor Panel and Independence) Regulations 2015* which came into force on 1<sup>st</sup> April 2015 (SI 2015 No. 18).

Three other sets of regulations have also been issued that are relevant to health bodies:

- *The Local Audit (Auditor Resignation and Removal) Regulations 2014* (SI 2014 No.1710) which came into force on 1<sup>st</sup> April 2015
- *The Local Audit (Liability Limitation Agreements) Regulations 2014* (SI 2014 No.1628) which came into force on 1<sup>st</sup> April 2015
- *The Local Audit (Appointing Person) Regulations 2015* (SI 2015 No.192) which came into force on 10<sup>th</sup> February 2015.

The Act and regulations are available in full from: <http://www.legislation.gov.uk/> and should be referred to alongside this guidance.

### 7.1 The 2014 Act

The sections of the 2014 Act that apply to health service bodies are:

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<sup>5</sup> The FRC’s consultation document and its feedback statement on the comments received is available via its website: <https://www.frc.org.uk/Our-Work/Publications/Professional-Oversight/Consultation-Documents/Regulation-of-Auditors-of-L.aspx>

<sup>6</sup> NHS charities are not included in the definition of relevant authorities and, after the transition period, their trustees will be responsible for making their own auditor appointments. This is set out in Schedule 12 para 119 of the Act, which amends the *Charities Act 2011*.

- Part 3, sections 7 and 8 set out requirements relating to the appointment of local auditors
- Part 3, section 9 sets out the requirement for each 'relevant authority' to appoint an auditor panel
- Part 3, section 10 sets out the functions that an auditor panel must carry out
- Part 3, section 12 (and Schedule 13, paragraph 9) requires an NHS trust to inform the NHS Trust Development Authority if it fails to appoint an auditor and sets out what then happens
- Part 3, section 13 requires a CCG to inform NHS England (in the 2014 Act referred to by its statutory name – the NHS Commissioning Board) if it fails to appoint an auditor and sets out what then happens
- Part 3, sections 14 and 15 make provision for regulations to be laid in relation to liability limitation agreements with auditors
- Part 3, section 16 makes provision for regulations to be made in relation to the resignation and removal of local auditors
- Part 3, section 17 makes provision for regulations to be laid for the appointment of a local auditor by a 'specified person'
- Schedule 4, paragraph 1 sets out options for auditor panels in terms of their form
- Schedule 4, paragraphs 3 and 4 provide for regulations to be made about the constitution of health service bodies' auditor panels
- Schedule 4 paragraph 7 requires the 'reasonable expenses' of auditor panel members to be met.

## 7.2 The Regulations

As mentioned above, four sets of regulations have been issued under the Act that are relevant to health bodies. The main focus of this guidance is the *Local Audit (Health Service Bodies Auditor Panel and Independence) Regulations 2015* (the Regulations) which were laid in January 2015 and came into force in 1<sup>st</sup> April 2015. The Regulations are issued under section 10 (8) and paragraphs 3 and 4 of Schedule 4 to the 2014 Act. They take account of guidance issued by HM Treasury and the FRC and also look at consistency with non-health service bodies (in Schedule 6 to the Act) and NHS foundation trusts.

The aim of the Regulations is to ensure that there is appropriate scrutiny and oversight of the health service body's relationship with its external auditor. This is achieved through having the auditor panel chaired by an independent member who is not part of the body's management structure (a non-executive) and so can objectively look at the wider public interest, and with the majority of the other panel members also being independent.

### What the Regulations say – a summary

- Regulation 2: an auditor panel member may receive remuneration.
- Regulation 3: the quorum is two members or 50% of the membership of the panel (whichever is the greater). The proceedings of the meetings are valid if a majority of members present are independent.

This ensures proper representation on auditor panels and that the independence of the auditor panel from the health service body's governing board/ body and executive management is maintained.

- Regulation 4: the auditor panel should advise the health service body on the purchase of 'non-audit services' from the auditor.

Many audit firms offer services to their clients over and above external audit, such as consultancy, advice or project management. There can be advantages to an organisation in procuring these services from the firm also providing the external audit (for example, their existing knowledge of the business) but it is essential that an impartial relationship between external auditor and health service body is maintained, in which the robustness and

independence of external audit is not compromised, or seen to be compromised, by considerations of additional lucrative contracts.

- Regulation 5: an auditor panel must have at least three members, including a Chair who is an independent non-executive member of the health service body's governing board/ body. A majority of the panel's members must also be independent and non-executive members of the governing board/ body but the panel may include a minority of members who are not members of the governing board/ body or who are not considered independent.

This addresses the concerns of a number of health service bodies (particularly CCGs) whose governing bodies are small and for whom forming an auditor panel of three independent non-executive governing body members would not be possible without additional expense and where clinical input (often from General Practitioners from the CCG who are therefore not independent), is considered key.

Prospective members not already on the health service body's governing board/ body must be appointed in response to an advertised vacancy and after submitting an application to fill that vacancy; the body must adopt a set of rules for the removal or resignation of auditor panel members and its Chair.

This sets out minimum standards around the formation of the auditor panel, ensuring that vacancies for members are advertised to attract the broadest range of candidates possible and the vacancy is filled in an open and transparent process. It also ensures that health service bodies consider how auditor panel members can be removed or how their resignation will be handled to ensure this is fair and consistent.

- Regulation 6: the governing board/ body must assess a prospective auditor panel member's independence by considering whether his or her circumstances could affect his or her judgement and by a number of factors – for example, recent employment with the health service body, close family ties to its directors, members, advisors or senior employees or a material business relationship with the health service body.

This ensures that governing boards/ bodies consider prospective auditor panel members' circumstances to ensure that independence remains the overarching principle.

## **8. What your organisation needs to do – the timeline**

As set out above, the new approach to local audit does not come into play until 2017/18. Between now and then, we are in a transition period. However, as appointments for 2017/18 must be made by the end of 2016, your auditor panel needs to be in place early in 2016 so that it can fulfil its responsibilities in relation to the procurement and appointment of auditors.

## **9. What your organisation needs to do – how to comply with the legislation**

So far this guidance has focussed on explaining the legislation that underpins the introduction of auditor panels as part of the new regime for local public audit. The following tables work through the relevant sections of the 2014 Act and the Regulations and provide some practical guidance. This section is aimed primarily at those who are responsible for ensuring that the new approach is introduced correctly.

The 2014 Act	What this means and what your organisation needs to do	Practical guidance
<p><b>Part 3, section 7 – appointment of local auditor</b></p>	<ul style="list-style-type: none"> <li>• Your organisation <b>must</b> appoint a local auditor<sup>7</sup> to audit the annual accounts by 31/12 of the preceding year</li> <li>• This appointment <b>can</b> be for longer than a year but there <b>must</b> be a new appointment process at least once every 5 years</li> <li>• An auditor <b>can</b> be re-appointed for further terms</li> <li>• A local auditor <b>must</b> be eligible for appointment in line with FRC requirements (Part 4 and Schedule 5 of the Act)</li> <li>• 2 or more local auditors <b>can</b> be appointed to audit the accounts – in such cases the auditors may act jointly or separately.</li> </ul> <p>[See also Schedule 3 to the Act ]</p>	<p>Auditor panels will advise on appointments only after current contracts expire in 2017. This means that the first time that an auditor panel will advise on an appointment will be in 2016. The appointment of auditors <b>must</b> be made by 31/12/16 for the 2017/18 financial year.</p> <p>In terms of eligibility, the FRC will establish ‘recognised supervisory bodies (RSBs)’ – professional accountancy bodies that will register and regulate eligible audit firms. This means that RSBs will hold the register of firms that are eligible for appointment.</p> <p>Although the contract length can be anything from 1 to 5 years, 3 to 5 years is ‘normal’. Whatever length is chosen, it must be agreed at an early stage.</p> <p>Arrangements for contract specification and development have not yet been established but the expectation is that guidance will be issued in time to be used for the first round of appointments.</p> <p>In the meantime it is worth noting that the scope of the work auditors do is determined by the <i>Code of Audit Practice</i> issued by Comptroller &amp; Auditor General<sup>8</sup>. This includes an appendix that sets out clearly what the auditors’ statutory responsibilities are for each type of NHS body under three headings – audit scope; reporting and additional duties.</p> <p>In addition to following guidance on contract specification and development, standard procurement procedures as set out in your organisation’s standing financial instructions (SFIs) / prime</p>

<sup>7</sup> The 2014 Act and regulations use the phrase ‘local auditor’ but in the guidance columns we use the more familiar term ‘external auditor’. This also ensures that there is no confusion with internal auditors

<sup>8</sup> The *Code of Audit Practice*, NAO, 2015: <http://www.nao.org.uk/code-audit-practice/>



The 2014 Act	What this means and what your organisation needs to do	Practical guidance
		<p>financial policies (PFPs) and relevant EU requirements must be followed. The auditor panel may need to seek expert procurement advice.</p> <p>Joint procurements (i.e. with one or more other NHS bodies) are an option but would require each organisation's auditor panel and governing board/ body to approve and agree the service specification.</p> <p>Collective procurements (for example, via regional or sector-wide led procurements) are also an option. Although the regulations<sup>9</sup> that allow such an approach cover all relevant authorities, there are no current proposals for a health sector led body to conduct collective procurements. If such a body emerges and the governing board/ body decides to use it for its auditor appointment, there is no requirement to have an auditor panel.</p>
<p><b>Part 3, section 8 – procedure for appointment</b></p>	<ul style="list-style-type: none"> <li>• Your organisation <b>must</b> consult and take account of your auditor panel's advice on the selection and appointment of the local auditor</li> <li>• Your organisation <b>must</b> publish a notice within 28 days of appointing your local auditor stating that the appointment has been made; who the auditor is; how long the appointment is for</li> <li>• The notice <b>must</b> also summarise the advice given by the auditor panel and reasons for not following it if that is the case</li> <li>• The notice <b>must</b> be published either on your organisation's website or in such a way that those whom it serves/ to whom it is accountable see it.</li> </ul> <p>[See also Schedule 13, paragraph 6 which applies this section to NHS trusts]</p>	<p>It is important to remember that the auditor panel is an advisory body – it advises on the selection and appointment of external auditors. Responsibility for the actual procurement and appointment of the auditors remains with your organisation's governing board/ body.</p> <p>It is also important to recognise that – quite apart from the auditor panel's role – normal procurement rules (as set out in your organisation's SFIs/ PFPs) must be followed.</p> <p>It makes sense to publish the advice of your auditor panel alongside other disclosures about the contract – this applies even if your organisation decides NOT to take the auditor panel's advice. In terms of what and where you publish information about the contract, you should follow your organisation's normal procurement procedures as set out in your SFIs/ PFPs.</p>

<sup>9</sup> The Local Audit (Appointing Person) Regulations 2015 (SI 2015 No. 292) which came into force on 10th February 2015.

The 2014 Act	What this means and what your organisation needs to do	Practical guidance
		<p><b>Other sources of guidance</b></p> <p>NHS foundation trusts will have examples of notices they issue to inform their stakeholders about their auditor appointments that may be helpful.</p> <p>Another source of guidance that may be helpful is the government's 'contracts finder' which allows you to search for information about contracts worth over £10,000 with the government and its agencies. The link is:  <a href="https://www.gov.uk/contracts-finder">https://www.gov.uk/contracts-finder</a></p>
<p><b>Part 3, section 9 – requirement to have an auditor panel</b></p>	<ul style="list-style-type: none"> <li>Your organisation <b>must</b> have an auditor panel to exercise functions set out in the Act.</li> </ul> <p>[See also Schedule 4 below]</p>	<p>As Public Sector Audit Appointments Ltd (PSAA) will manage existing audit contracts, your auditor panel must be in place early in 2016 in time to advise on the appointment of auditors for the 2017/18 financial year (the appointment must be made by 31/12/16).</p>
<p><b>Part 3, section 10 – functions of an auditor panel</b></p>	<ul style="list-style-type: none"> <li>The auditor panel <b>must</b> advise your organisation on: <ul style="list-style-type: none"> <li>The maintenance of an independent relationship with the appointed auditor</li> <li>The selection and appointment of the local auditor</li> </ul> </li> <li>If your organisation asks the auditor panel, the auditor panel <b>must</b> advise on any proposal to enter into a liability limitation agreement</li> <li>Your organisation <b>must</b> publish advice from the auditor panel in such a way that those whom it serves/ to whom it is accountable see it</li> <li>Your organisation <b>must</b> exclude anything that prejudices commercial confidentiality from the published advice <b>unless</b> there's an overriding public interest.</li> </ul> <p>[ See also Schedule 13, paragraph 7 which applies this section to NHS trusts]</p>	<p>The auditor panel's key role is to check that:</p> <ul style="list-style-type: none"> <li>Contract arrangements (i.e. procurement and the selection of external auditors) are appropriate</li> <li>The relationship and communications with the external auditors are professional</li> <li>Conflicts of interest are effectively dealt with.</li> </ul> <p>It is also important that your auditor panel is alert to the possibility of conflicts of interest – for example, if non-audit services work is awarded to the external audit provider, how will the auditor panel ensure that the auditors' independence is maintained?</p> <p>Similarly, if members of the auditor panel are ex-employees of a potential external audit provider that is being considered for appointment, the interest must be declared and that member should exclude him/ herself from the decision. It may also be sensible to exclude any such individuals from membership of the auditor panel if they have been employed by a potential audit</p>



The 2014 Act	What this means and what your organisation needs to do	Practical guidance
		<p>provider in the preceding five years.</p> <p><b>Liability limitation agreements</b>  As far as the auditor panel is concerned, its role is to consider any liability limit suggested by the external auditors as part of the procurement process and advise the governing body on whether or not it is fair and reasonable. Panels should also review these limits and be prepared to test them as and when the need arises. See also Part 3, section 14 below.</p> <p>For the corporate sector, liability limitation agreements are defined in sections 532 to 538 of the <i>Companies Act 2006</i> and are designed to limit the amount of a liability owed to a company by its auditor in relation to any negligence, default, breach of duty or breach of trust that occurs whilst the accounts are audited and for which the auditor may be responsible. Any such agreements cannot cover more than one financial year and must be agreed by the company's shareholders. The 2006 Act states that any such agreements must be 'fair and reasonable' – if they are not the courts can override any limits agreed. The FRC has produced detailed guidance on liability limitation agreements<sup>10</sup> and although this is aimed at the corporate sector the principles are equally relevant to the public sector.</p> <p><b>Commercial confidentiality</b></p> <p>Prices included in contract documentation are the obvious example of something that is generally excluded from published advice as this would prejudice commercial confidentiality. You should follow your organisation's normal procedures as set out in your SFIs/ PFPs.</p>

<sup>10</sup> *Guidance on Auditor Liability Limitation Agreements*, FRC, 2008: <https://www.frc.org.uk/FRC-Documents/FRC/Guidance-on-Auditor-Liability-Limitation-Agreement.aspx>

The 2014 Act	What this means and what your organisation needs to do	Practical guidance
<b>Part 3, section 12 (and Schedule 13, paragraph 9) – failure [of an NHS trust] to appoint a local auditor</b>	<ul style="list-style-type: none"> <li>If an NHS trust fails to appoint a local auditor it <b>must</b> immediately inform the NHS TDA which <b>must</b> inform the Secretary of State by 25<sup>th</sup> March in the preceding financial year</li> <li>When this happens, the Secretary of State or NHS TDA <b>will</b> either direct the NHS trust to appoint a named auditor or appoint an auditor for the NHS trust.</li> </ul>	Contact should be made with the NHS TDA's Director of Finance.
<b>Part 3, section 13 – failure of a CCG to appoint a local auditor</b>	<ul style="list-style-type: none"> <li>If a CCG fails to appoint a local auditor it <b>must</b> immediately inform NHS England which <b>must</b> inform the Secretary of State by 25<sup>th</sup> March in the preceding financial year</li> <li>When this happens, the Secretary of State or NHS England <b>will</b> either direct the CCG to appoint a named auditor or appoint an auditor for the CCG.</li> </ul>	Contact should be made with NHS England's Chief Finance Officer.
<b>Part 3, sections 14 and 15 – limitation of local auditor's liability</b>	<ul style="list-style-type: none"> <li>Any agreements to limit the liability owed to your organisation by the auditor in respect of negligence, default, breach of duty or breach of trust must comply with regulations made by the Secretary of State.</li> </ul> <p>The relevant regulations are <i>The Local Audit (Liability Limitation Agreements) Regulations 2014</i> issued in June 2014 (SI 2014 No.1628). They came into force on 1<sup>st</sup> April 2015.</p>	<p>Regulation 2 sets out a restriction on the duration of an agreement: it cannot cover more than the financial year or years to which the appointment of the external auditor relates.</p> <p>Regulation 3 prevents the agreement from limiting the external auditor's liability to less than such amount as is fair and reasonable given the circumstances.</p> <p>As mentioned above in relation to Part 3, section 10, external auditors set their own limits on liability and auditor panels should review them as part of the procurement process.</p>
<b>Part 3, section 16 – resignation and removal of a local auditor</b>	<ul style="list-style-type: none"> <li>The Secretary of State <b>may</b> issue regulations about the resignation/ removal of auditors</li> <li>This section also specifies what any such regulations may cover.</li> </ul> <p>The relevant regulations are the <i>Local Audit (Auditor Resignation and Removal) Regulations 2014</i> issued in July 2014 (SI 2014 No.1710). They came into force on 1<sup>st</sup> April 2015.</p>	<p>The regulations mean that your organisation is responsible for:</p> <ul style="list-style-type: none"> <li>Appointing the external auditors</li> <li>Managing the ongoing relationship with the external auditors</li> <li>Removing the external auditors.</li> </ul> <p>External auditors may themselves resign.</p> <p>In all cases of resignation/ removal, the organisation <b>must</b> appoint</p>

The 2014 Act	What this means and what your organisation needs to do	Practical guidance
		<p>a replacement auditor.</p> <p>Resignation or removal of an auditor is expected to be a very rare occurrence. The arrangements for removal and resignation provide for transparency in the process so that both the organisation and auditor can make the reasons for their decisions public, and for the auditor panel to provide independent advice to the organisation on any decision about removal of the auditor, or circumstances around the auditor's resignation.</p> <p>In the case of <b>removal</b>, the organisation must give the auditor 28 days' notice of the proposal to remove them; the auditor will have the right to respond, and any response must be shared with the auditor panel; the auditor panel will advise on the proposal, and the organisation must take this advice into account; the auditor, and a member of the auditor panel, may attend and speak at any meeting considering removal; the organisation must publish a notice of their decision, including the auditor's response, the auditor panel's advice, and if the organisation has not followed that advice, reasons why; the organisation must notify the supervisory body by which the external auditor is recognised of the auditor's removal from office.</p> <p>In the case of <b>resignation</b>, the auditor must give the organisation 28 days' notice of resignation including a statement of relevant circumstances to the organisation, which must forward it to the auditor panel; the organisation must respond in writing to the auditor's notice; that notice and the organisation's response must be published by the organisation and forwarded to the auditor panel.</p> <p>Following resignation, the auditor panel must investigate the circumstances of the resignation, giving a view on those circumstances and explaining any action it considers is required of the organisation to address issues raised.</p>

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		<p>In either case (resignation or removal), the organisation is required to make a new appointment within three months of the auditor's departure; if it fails to do so it must inform NHS England (CCGs)/ NHS TDA (NHS trusts) which must in turn inform the Secretary of State, who then has the power to appoint, or direct the appointment of, a specific auditor. This is intended to give sufficient time to make a replacement appointment, whilst ensuring as short a time as possible without an auditor.</p>
<p><b>Part 3, section 17</b></p>	<ul style="list-style-type: none"> <li>• The Secretary of State <b>may</b> issue regulations to allow an 'appointing person' to be specified to appoint a relevant authority's local auditor</li> <li>• Any regulations issued <b>may</b> set out details about who can be specified and what their core functions would be.</li> </ul> <p>The relevant regulations are the <i>Local Audit (Appointing Person) Regulations 2015</i> (SI 2015 No. 292) which came into force on 10<sup>th</sup> February 2015.</p>	<p>This allows for a joint collective procurement by a specified person – for example by a sector led body.</p> <p>As mentioned above in relation to Part 3, section 7, the regulations cover all relevant authorities. However, there are no current proposals for a health sector led body to conduct collective procurements.</p>
<p><b>Schedule 4, paragraph 1 – options for auditor panels</b></p>	<ul style="list-style-type: none"> <li>• An auditor panel <b>must</b> be appointed <b>EITHER</b> by the organisation <b>OR</b> by the organisation and one or more other organisations (all organisations being 'relevant authorities')</li> <li>• The auditor panel <b>must</b> be either: <ul style="list-style-type: none"> <li>- A specially established panel <b>OR</b></li> <li>- An existing committee, sub-committee or panel provided it agrees to comply with the provisions applying to auditor panels set out in Schedule 4.</li> </ul> </li> </ul>	<p>An auditor panel <b>must</b> be appointed so that it can advise on the appointment of the external auditors by 31/12 of the preceding year. As existing contracts run until 2017, auditor panels will <b>not</b> be carrying out this role until 2016 (for the appointment of auditors for the 2017/18 financial year).</p> <p>Each organisation's governing board/ body must decide how it appoints its auditor panel. The 2014 Act allows this flexibility so that local circumstances and preferences can be taken into account. Whatever approach is adopted the relevant regulations <b>must</b> be followed.</p> <p>There are advantages and disadvantages of each approach, but it is highly likely that in the first instance, most NHS bodies will decide to nominate their existing audit committee (or members of that committee) to act as their auditor panel. This is the most straightforward approach as the audit committee is – by definition</p>

The 2014 Act	What this means and what your organisation needs to do	Practical guidance
		<p>– independent and its members have the relevant experience and skills. It may also be easier for an auditor panel made up of audit committee members to comply with the regulations.</p> <p>Other good reasons for nominating your audit committee to act as your auditor panel are that the audit committee:</p> <ul style="list-style-type: none"> <li>• Has an established relationship with external auditors and agrees their annual strategy and plan</li> <li>• Receives and reviews external audit reports throughout the year including the mandatory reports (for example, the report to those charged with governance; the statutory report and opinion on the annual report and accounts; the conclusion on whether the audited body has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources and the annual audit letter)</li> <li>• Is involved in reviewing external auditors' work and performance. As a result the audit committee is ideally placed to evaluate prospective external auditors prior to appointment / re-appointment.</li> </ul> <p>If the audit committee acts as the auditor panel, the auditor panel will effectively be either the audit committee itself or a 'sub-set' of the audit committee. When either the audit committee or the sub-set is carrying out auditor panel functions this will need to be made clear (see below) with the approach agreed by the governing board/ body. The audit committee's terms of reference need to reflect the additional responsibilities that it has when acting as the auditor panel. These terms of reference must be agreed with the governing board/ body.</p> <p>Whatever option is chosen, the auditor panel will have a very close relationship with the audit committee.</p> <p>In terms of accountabilities, the Chair of the auditor panel must provide a report to the governing board/body about the auditor</p>

The 2014 Act	What this means and what your organisation needs to do	Practical guidance
		<p>panel's activities and decisions. If the auditor panel is a sub-set of the audit committee, this report should be separate from the report/ minutes of the audit committee. This makes crystal clear to everyone that the auditor panel is fulfilling a distinctive and important role.</p> <p>This approach (i.e. members of one committee or board wearing different 'hats') is already familiar in the NHS – for example, where an NHS trust is associated with an NHS charity, the governing board/ body sometimes acts in the role of the charity's corporate trustee with charitable funds business considered as a separate but distinct item on the board's agenda. In other words, there must be a clear demarcation.</p> <p>Some NHS bodies may choose to establish an entirely separate auditor panel – either with a different or the same Chair as the audit committee. In both cases, the relationship with the audit committee will need to be established and respective roles and responsibilities made clear.</p> <p>It is also possible that two or more organisations may appoint a single auditor panel. If this approach is followed, auditor panel members would need to meet the independence criteria for all the organisations involved and be confirmed by each of the organisations' governing boards/ bodies.</p> <p>Whatever approach is adopted, clear reporting and accountability lines need to be in place from the outset. These must cover the relationship with the governing board(s)/ body (or bodies) and the audit committee (s).</p> <p>The status of the auditor panel itself must also be clear and covered in the NHS body's scheme of delegation.</p>
<b>Schedule 4, paragraph 3 – constitution of</b>	This allows for the Secretary of State for Health to make regulations about:	

The 2014 Act	What this means and what your organisation needs to do	Practical guidance
<b>auditor panels: health service bodies</b>	<ul style="list-style-type: none"> <li>• Whether auditor panel members must be independent and if so what proportion</li> <li>• Whether the auditor panel Chair must be independent.</li> </ul> <p>The relevant regulations for health are the <i>Local Audit (Health Service Bodies Auditor Panel and Independence) Regulations 2014</i> – see below.</p>	
<b>Schedule 4, paragraph 4 – power to make further provision about the constitution of auditor panels</b>	<p>This allows for the Secretary of State for Health to make regulations about the constitution of an auditor panel and gives details about what these may cover.</p> <p>The relevant regulations for health are the <i>Local Audit (Health Service Bodies Auditor Panel and Independence) Regulations 2014</i> – see below.</p>	
<b>Schedule 4, paragraph 7 – expenses of auditor panels</b>	<p>Your organisation <b>must</b> meet the reasonable expenses of its auditor panel when acting as such.</p> <p>This point is covered in the <i>Local Audit (Health Service Bodies Auditor Panel and Independence) Regulations 2015</i> – see below.</p>	



The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
<p><b>Citation, commencement, interpretation and application</b></p> <p>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 1<sup>st</sup> April 2015.</p> <p>(2) In these Regulations—</p> <p>“a CCG” means a clinical commissioning group;</p> <p>“governing board” means—</p> <p>(a) in relation to an NHS trust, the body of executive and non-executive directors of that trust; and</p> <p>(b) in relation to a CCG, the governing body of that CCG;</p> <p>“health service body” means a CCG or an NHS trust;</p> <p>“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;</p> <p>“a non-executive member” means—</p> <p>(a) in relation to a CCG’s governing body, a person who is not an employee or a member of that CCG; and</p> <p>(b) in relation to an NHS trust, a person who is a non-executive director of that trust.</p> <p>(3) These Regulations apply to health service bodies.</p>	<p>An executive director is a director who is an employee of the NHS trust, and a non-executive director is a director who is not an employee of the NHS trust.</p> <p>A CCG governing body’s main role is to ensure that the CCG exercises its functions effectively, efficiently and economically and in accordance with relevant generally accepted principles of good governance.</p> <p>Health bodies affected by these regulations are CCGs and NHS trusts.</p>	<p>Confirm that the Regulations apply to your organisation.</p> <p>The Regulations came into force on 1<sup>st</sup> April 2015 and so even though audit contracts are in place until 2017/18 you must start thinking about setting up your auditor panel. The auditor panel must be established in time to advise on the appointment of auditors for 2017/18. This appointment has to be made by 31/12/16. In practice this means that your auditor panel needs to be in place early in 2016.</p> <p>It is important to bear in mind that CCGs can have healthcare professionals as lay members (non-executives) if they do not have a business interest (i.e. income) with the CCG.</p> <p>The <i>NHS (Clinical Commissioning Groups) Regulations 2012</i> are also helpful here as they refer to CCG governing bodies:</p> <p><b>Regulation 11(3)</b> provides that the membership of a governing body must include an employee of the CCG who has a professional qualification in accountancy and expertise to lead the financial management of the CCG, a registered nurse, an individual who is a secondary care specialist, a lay person qualified for membership by virtue of regulation 12(3) or (4) – see below.</p> <p>A ‘lay person’ is specifically defined in section 14N(6) of the <i>NHS Act 2006</i> to mean a person who is not:</p> <ul style="list-style-type: none"> <li>• A member of a CCG</li> <li>• A health care professional</li> </ul>

The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
		<ul style="list-style-type: none"> <li data-bbox="1355 316 1883 339">• An individual of a prescribed description.</li> </ul> <p data-bbox="1355 373 2045 523"><b>Regulation 12(3) and (4)</b> make further provision as to who is a 'lay person' for the purposes of a CCG governing body and Schedule 4 to the Regulations specifies persons who may not be 'lay persons' of a CCG governing body. This includes a member or employee of a CCG.</p> <p data-bbox="1355 558 2045 676">There is also a helpful document on NHS England's website about roles, attributes and skills of CCG governing body members: <a href="http://www.england.nhs.uk/wp-content/uploads/2012/09/ccg-members-roles.pdf">http://www.england.nhs.uk/wp-content/uploads/2012/09/ccg-members-roles.pdf</a></p>

The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
<p><b>Remuneration or allowances of auditor panel members</b></p> <p>2. A health service body may pay members of the auditor panel such remuneration or allowances as the body may determine.</p>	<p>You can pay auditor panel members for reasonable expenses incurred whilst fulfilling the role. The auditor panel members are 'office holders' rather than employees so these payments do not disqualify them from being on a panel.</p>	<p>It makes sense to apply to your auditor panel members the same tried and tested approach to remuneration and allowances that you use for your existing non-executive directors/ lay members.</p> <p>If you decide not to, you need to have a clear process in place that is documented and approved. This will help manage the risk of any future challenge.</p> <p>If a sub-set of your audit committee is acting as your auditor panel it is logical in any case to follow the existing approach to remuneration and allowances.</p> <p>The Regulations do not mention reimbursements but they too should be dealt with in line with your existing policy/ approach.</p> <p>What constitutes 'reasonable' will vary from organisation to organisation.</p> <p>There is guidance available about remuneration for CCG 'lay members' and non-executive directors at NHS trusts.</p> <p>For CCGs the key reference is on page 36 of NHS England's guide to roles, attributes and skills of CCG governing body members: <a href="http://www.england.nhs.uk/wp-content/uploads/2012/09/ccg-members-roles.pdf">http://www.england.nhs.uk/wp-content/uploads/2012/09/ccg-members-roles.pdf</a></p> <p>This states that for 'lay members', 'remuneration should be in line with non-executive director payments in other NHS organisations'.</p>

The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
		<p>For NHS trusts the level of remuneration paid to Chairs and non-executive directors is set by the Secretary of State for Health. All NHS trusts are allocated to one of three remuneration bands, depending on their turnover. The current bands and additional guidance can be found here: <a href="http://www.ntda.nhs.uk/blog/2013/04/26/useful-info-for-non-execs/">http://www.ntda.nhs.uk/blog/2013/04/26/useful-info-for-non-execs/</a></p>

The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
<p><b>Proceedings and validity of proceedings of auditor panels</b></p> <p>3. In relation to a meeting of the auditor panel—</p> <p>(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</p> <p>(b) the proceedings of the panel are valid if the majority of the members present at the meeting are independent members of the panel.</p>	<p>To be quorate independent members must be in the majority AND there must be at least two independent members present or 50% of the auditor panel's total membership, whichever is the highest.</p>	<p>Terms of reference for the auditor panel and how the panel should be managed should be in line with your organisation's established procedures.</p> <p>If your auditor panel has only two independent members both need to be present and (if they are the only members present) as a 50% majority is not possible, the Chair's vote is considered to be a 'casting vote'.</p> <p><b>Related existing guidance for audit committees that may be helpful:</b></p> <p>Para 2.4 of the HFMA's <i>NHS Audit Committee Handbook</i> says that it is important to have a clear policy on what constitutes a quorate meeting. In the HFMA's view, this should be a minimum of two of the three independent non-executive/ lay members of the audit committee who are also members of the organisation's governing board/ body.</p>
<p><b>Further functions of auditor panels: Non-audit services</b></p> <p>4. —(1) The auditor panel must—</p> <p>(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</p> <p>(b) approve such a policy.</p> <p>(2) The policy mentioned in paragraph (1) must include—</p> <p>(a) the circumstances or manner in which the</p>	<p>The auditor panel must advise on and approve the policy's content but this does not mean that the panel itself writes the policy.</p>	<p>These functions apply from the 2017/18 financial year.</p> <p>As mentioned earlier it is important to remember that normal procurement rules apply.</p> <p>The auditor panel should also think about how the nature AND monetary value of any non-audit services work coupled with any other work already awarded to a particular external audit provider affects that auditor's</p>

The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
<p>health service body may or may not purchase non-audit services from the body's local auditor; and</p> <p>(b) the circumstances or manner in which the health service body may ask the auditor panel for advice.</p> <p>(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 <i>Local Audit and Accountability Act 2014</i>.</p>		<p>ability to remain independent.</p> <p>For example, your organisation might be looking for some outside help with reviewing its governance arrangements but if any such work is undertaken by the firm that carries out your audit, the value for money review could be compromised. Similarly, if non-audit services work is worth more than the audit fee, the auditors may not be prepared to deliver tough messages. There may also be a piece of work that does not cost much but which could nevertheless undermine the auditors' independence.</p> <p>In other words, the auditor panel must look at the impact of any additional non-audit services work on the external auditors' independence regardless of the associated fees.</p> <p>If the proportion of non-audit services work becomes significant, the audit committee may need to consider whether or not there is a need to change the external auditors.</p> <p><b>Related existing guidance for audit committees that may be helpful:</b></p> <ul style="list-style-type: none"> <li>• The HFMA's <i>NHS Audit Committee Handbook</i> (paragraph 5.4.4) says it is good practice for the audit committee to approve a policy for considering and managing any such [non-audit services] services.</li> <li>• Monitor's March 2015 publication, <i>Governance</i></li> </ul>

The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
		<p><i>over audit, assurance and accountability: guidance for foundation trusts</i><sup>11</sup>, states that the audit committee should 'develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm. The council of governors should receive a report at least annually of non-audit services that have been approved for the auditors to provide under the policy (on the basis of services approved, regardless of whether they have started or finished) and the expected fee for each service'.</p> <ul style="list-style-type: none"> <li>• PSAA's terms of appointment<sup>12</sup> (paragraphs 2.22 to 2.26) set de minimis amounts for additional non- (audit) Code work above which PSAA approval must be obtained. And any non-Code work that exceeds 50% of the audit fee is not normally approved.</li> <li>• Ethical standards (ESs) for auditors are published by the FRC<sup>13</sup>. These set out basic principles and essential procedures that auditors must follow. Of particular relevance is ES 5 - <i>Non-audit services provided to audited entities</i>. This provides guidance on circumstances when non-audit work could threaten auditors' objectivity and safeguards that can eliminate or significantly reduce such threats.</li> </ul>

<sup>11</sup> *Governance over audit, assurance and accountability; guidance for foundation trusts*, Monitor, 2015: <https://www.gov.uk/government/publications/risk-assessment-framework-raf>

<sup>12</sup> *Terms of Appointment*, PSAA, 2015: <http://www.psa.co.uk/wp-content/uploads/2006/08/Terms-of-Appointment-from-1-April-2015.pdf>

<sup>13</sup> *Ethical Standards for Auditors*, FRC: <https://www.frc.org.uk/Our-Work/Codes-Standards/Audit-and-assurance/Standards-and-guidance/Standards-and-guidance-for-auditors/Ethical-standards-for-auditors.aspx>



The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
<p><b>Members of auditor panels</b></p> <p>5. —(1) The auditor panel of a health service body must have—</p>		
<p>(a) a minimum of three members;</p>	<p>The governing body must decide how many members it wants on its auditor panel – three is the minimum but there can be more.</p> <p>It is important that auditor panel members are of the right calibre with sufficient knowledge and experience. In other words, quality matters as much as quantity.</p>	<p><b>Related existing guidance for audit committees that may be helpful:</b></p> <ul style="list-style-type: none"> <li>• The Treasury's <i>Audit and Risk Assurance Committee Handbook</i><sup>14</sup> states that audit committees should comprise at least three non-executive directors/ lay members.</li> <li>• The FRC's <i>UK Corporate Governance Code</i><sup>15</sup> requires boards in the private sector to establish an audit committee of at least three, or in the case of smaller companies, two independent non-executive directors.</li> <li>• Monitor's <i>Code of Governance</i><sup>16</sup> builds on the FRC's <i>UK Corporate Governance Code</i> and requires foundation trusts to establish an audit committee composed of non-executive directors (NEDs) which should include at least three independent NEDs.</li> </ul>
<p>(b) a chair who is—</p> <p>(i) independent and;</p>		<p>Appointments to the auditor panel are made by the governing board/ body.</p>

<sup>14</sup> *Audit and Risk Assurance Committee Handbook*, HM Treasury, 2013: <https://www.gov.uk/government/publications/audit-committee-handbook>

<sup>15</sup> *UK Corporate Governance Code*, FRC, 2014: <https://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx>

<sup>16</sup> *NHS Foundation Trusts Code of Governance*, Monitor, 2014: <https://www.gov.uk/government/publications/nhs-foundation-trusts-code-of-governance>

The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
<p>(ii) a non-executive member of the governing board of that health service body; and</p> <p>(c) a majority of members who are—</p> <p>(i) independent and;</p> <p>(ii) non-executive members of the governing board of that health service body.</p>	<p>Independence is extremely important as it ensures that there is an effective separation between auditors and the organisation audited. It also means the auditor panel is genuinely free to advise.</p>	<p>The Chair is a key role so it is important to select the right person who is clear about what the role involves and is able to carry it out. The Chair may be selected by a separate appointment process or chosen from existing independent members.</p> <p>The Chair of the organisation itself should not be a member of the auditor panel.</p> <p>If for any reason the Chair cannot attend an auditor panel meeting, the role should be assumed by another independent panel member.</p> <p><b>Related existing guidance for audit committees that may be helpful:</b></p> <ul style="list-style-type: none"> <li>• In relation to chairing an audit committee, the HFMA's <i>NHS Audit Committee Handbook</i> says (paragraph 2.8) that the selection of the Chair is a critical appointment for the organisation as the role's responsibilities differ from those of other non-executive directors/ lay members. In most cases, the person appointed to this role will possess a prior understanding of finance and internal control or other relevant expertise such as risk management.</li> <li>• In CCGs, NHS England guidance specifies that the lay member for governance should chair the audit committee<sup>17</sup> and that he or she must have qualifications, expertise or experience</li> </ul>

<sup>17</sup> CCG Governing Body Members: role outlines, attributes and skills, NHS England, 2012: <http://www.england.nhs.uk/wp-content/uploads/2012/09/ccg-members-roles.pdf>

The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
		<p>that enables them to express informed views about financial management<sup>18</sup>.</p> <ul style="list-style-type: none"> <li>• Treasury guidance<sup>19</sup> requires the audit committee Chair to be a non-executive board member with ‘relevant experience’ and includes a useful appendix on the role of the Chair with a focus on how to ensure that the committee is effective.</li> </ul> <p>It is important that auditor panel members have the necessary skills, abilities and experience to fulfil their role – evidence should be sought when appointments are made.</p> <p>Panel members should also keep up to date with relevant developments and undertake training as and when it is needed.</p>
<p>(2) The auditor panel of a health service body may include—</p> <p>(a) members of the governing board who do not meet the requirements of “independent” determined in accordance with regulation 6; and</p> <p>(b) persons who meet the requirements of “independent” determined in accordance with regulation 6 who are not members of the governing board.</p>	<p>This was included in the regulations to widen the potential membership for the purpose of ensuring appropriate levels of skills and experience.</p>	<p>It is important to remember that the auditor panel is not on its own: others will attend to advise and assist – although they will not be members. The Chair should invite executive directors (or others) to attend depending on the requirements of each meeting’s agenda. Invitees should be given sufficient warning that their presence is required so that they come to meetings fully prepared.</p> <p><b>Related existing guidance for audit committees that may be helpful:</b></p> <p>This regulation is consistent with the template terms of reference for CCG audit committees which say that ‘The committee shall be appointed by the CCG as set out in the CCG’s constitution and may include individuals who are</p>

<sup>18</sup> NHS England Model Constitution Framework, section 6.6.2d: <http://www.england.nhs.uk/resources/resources-for-ccgs/ccg-mod-cons-framework/>

<sup>19</sup> Audit and Risk Assurance Committee Handbook, HM Treasury, 2013: <https://www.gov.uk/government/publications/audit-committee-handbook>

The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
		not on the governing body'. The template is available on NHS England's website: <a href="http://www.england.nhs.uk/resources/resources-for-ccgs/ccg-tor/">http://www.england.nhs.uk/resources/resources-for-ccgs/ccg-tor/</a>
<p>(3) A person may not be appointed as an independent member of an auditor panel unless—</p> <p>(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;</p> <p>(b) the person has submitted an application to fill the vacancy to the health service body; and</p> <p>(c) the person's appointment has been approved by a majority of the members of the health service body's governing board.</p>	<p>If you are appointing entirely new members to the auditor panel you must go through a full recruitment process.</p>	<p>You need to think about how you can attract new and/or additional auditor panel members – where and how it is best to advertise; what the recruitment process should involve and what the job description should say.</p>
<p>(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.</p>	<p>If the prospective auditor panel member is already a member of the governing body you do not need to go through a full recruitment process. This is because they should already have been through an appointment process – for example, for NHS trust non-executives this is carried out by the NHS TDA. However, the independence criteria below (Regulation 6) will still need to be considered by the governing board/ body for these prospective members.</p>	
<p>(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.</p>	<p>This is for the governing board/ body to decide, and should be consistent with the organisation's rules for its audit committee and other committees.</p>	<p>You need to make clear what the terms of office are for members of the auditor panel (including length of tenure; 'renewability'; removal/ resignation). The approach should be in line with your existing rules for committees and take</p>

The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
		<p>account of the timing of key activities – it would not make sense to have members’ terms finishing just before auditor selection.</p> <p><b>Related existing guidance for audit committees that may be helpful:</b></p> <ul style="list-style-type: none"> <li>• The HFMA’s <i>NHS Audit Committee Handbook</i> (para 2.5) says that the duration of appointments to the committee and the process and timescales for renewal is a matter for the governing body but should be made clear when membership begins. The policy adopted in this area is a matter of judgement for the organisation’s governing body, but a balance needs to be struck between bringing in fresh perspectives and maintaining an experienced membership that has established effective relationships with those that attend the committee.</li> <li>• The Treasury’s <i>Audit and Risk Assurance Committee Handbook</i> recommends that all committee members receive a formal letter of appointment covering key expectations and responsibilities.</li> <li>• The HFMA’s <i>NHS Audit Committee Handbook</i> (paragraph 2.6) also notes that if a conflict of interest is likely to continue for some time, the member may be asked to stand down from the committee.</li> </ul>
<b>Meaning of independent etc.</b>		
6.—(1) “Independent”, in relation to membership of	This sets out the core principle for	

The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
<p>an auditor panel, means that the <b>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.</b></p>	<p>determining independence.</p>	
<p>(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.</p>	<p>It is for the governing board/ body to decide whether or not someone is independent using the criteria set out in the regulations and any other relevant issues.</p>	<p>You should be consistent with existing rules for other committees.</p>
<p>(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.</p>		
<p>(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.</p>		
<p>(5) The factors referred to in paragraph (3) are whether the person—</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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;</li> </ul>	<p>In applying the five year rule as set out in 5 (a), it is important to note that any employment or membership of an organisation that has since merged with your organisation is also covered.</p>	<p>Lay members will not always meet the independence criteria – for example, if a GP lay member has a contract with the CCG. The key is to consider the relationship of a lay member with the CCG and the nature of his/ her business. An out of area GP lay member may satisfy the definition so long as he/she is not taking a significant proportion of his/her income from the CCG.</p> <p>When considering independence, it is also important to think about how members of an auditor panel are perceived. For example, whilst a retired director or partner of an audit firm may satisfy the independence criteria, there is a danger that they will not be perceived as being</p>

The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
		<p>truly independent.</p> <p><b>Related existing guidance for audit committees that may be helpful:</b></p> <p>The HFMA's <i>NHS Audit Committee Handbook</i> says (para 2.2) that the distinctive characteristic of the audit committee is that it comprises only independent, objective non-executive directors (NEDs) or lay members<sup>20</sup> who are appointed by the organisation's governing body. In other words, audit committee members should satisfy the governing body's definition of 'independence' and:</p> <ul style="list-style-type: none"> <li>• <b>Not</b> be employed by the organisation</li> <li>• <b>Not</b> claim a significant proportion of their 'trading income' from the organisation.</li> </ul> <p>Note: Trading income is income received from an organisation for services provided. This does not include a fee or expenses received for serving as a NED or lay member.</p>
<p>(c) has had, within the period of three years immediately preceding the date of the proposed appointment—</p> <p style="padding-left: 40px;">(i) a direct material business relationship with the health service body; or</p>	<p>In c (i) a 'direct business relationship' refers to a formal contractual</p>	

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<sup>20</sup> For CCGs, Schedule 2, paragraph 7 (3) of the *Health and Social Care Act 2012* says that 'Arrangements ..... **may** include provision for the audit committee to include individuals who are not members of the governing body.' However, NHS England's *Model Constitution Framework* for CCGs recommends that they should follow the *NHS Audit Committee Handbook*.



The Local Audit Regulations 2015	What this means	What you need to do and where you can find further guidance that will help
<p>(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;</p>	<p>relationship established to provide for regular business services. For CCGs and trusts it means that if a person was employed by, owned or lent etc. to one of their suppliers, or receivers of service, then their independence would be in doubt as that relationship could affect or appear to affect their judgement. This could include situations where someone being considered has been an employee/ partner/ director of a prospective auditor.</p> <p>'Material' is of sufficient value that the transactions could individually or collectively influence the decisions of the individual.</p> <p>In c (ii) 'indirect' means via a secondary relationship – for example, a parent body.</p>	
<p>(d) has, within the period of three years immediately preceding the date of the proposed appointment—</p> <p>(i) received additional remuneration from the health service body;</p> <p>(ii) participated in the health service body's performance related pay scheme; or</p> <p>(iii) is a member of the health service body's pension scheme (other than the NHS pension scheme);</p>	<p>Regulation 6 (5) (d) – i.e. if an individual has been paid in any capacity apart from as a board member. See regulation 6 (7) below.</p>	

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(e) has close family ties with any of the health service body's advisors, directors, members or senior employees;	There is no definition of 'close family' but it could include, for example, immediate family and spouses/partners – i.e. father, mother, brothers, sisters, siblings and all their spouses/civil partners.	You should be consistent with existing rules for other committees.
(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;	The definition of cross-directorship is in regulation 6 (8) below. Such a relationship is considered to make the two boards/ governing bodies too intimately involved with each other and potentially reduces the quality of the scrutiny that the two members involved in the cross-directorship can bring.	
(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;	It is expected that a typical term would be three years and a term could be renewed twice. This is in line with the practice in the FRC's <i>UK Corporate Governance Code</i> .	
(h) is an appointed representative of the health service body's medical or dental school provided by a university.	Medical and dental schools are in effect joint operations so there is a relationship and interest to the health service body even if the member is formally employed by the 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-		

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<p>(a) he or she serves as a member of another organisation's governing board, audit committee or auditor panel; and</p> <p>(b) at the same time, a member of the governing board at the organisation referred to in subparagraph (a) serves as a member of the governing board or the auditor panel of the health service body.</p>		

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