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SCOTTISH STATUTORY INSTRUMENTS

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**2001 No. 301**

**NATIONAL HEALTH SERVICE**

**The National Health Service Trusts (Membership  
and Procedure) (Scotland) Regulations 2001**

*Made* - - - - 6th September 2001  
*Laid before the Scottish  
Parliament* - - - - 7th September 2001  
*Coming into force* - - 28th September 2001

The Scottish Ministers, in exercise of the powers conferred by sections 12A(5), 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**PART I**  
**GENERAL**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service Trusts (Membership and Procedure) (Scotland) Regulations 2001 and shall come into force on 28th September 2001.

(2) In these Regulations unless the context otherwise requires—

“the 1977 Act” means the National Health Service Act 1977(2);

“the Act” means the National Health Service (Scotland) Act 1978;

“the Charity Commissioners” means the Charity Commissioners constituted in accordance with section 1 of the Charities Act 1993(3);

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(1) 1978 c. 29; section 12A was inserted by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 31 and amended by the National Health Service (Primary Care) Act 1997 (c. 46) (“the 1997 Act”), Schedule 2, paragraph 46 and by the Health Act 1999 (c. 8) (“the 1999 Act”), sections 46 and 48 and Schedule 4, paragraph 45; section 105(7), which was amended by the Health Services Act 1980 (c. 53) (“the 1980 Act”), Schedule 6, paragraph 5 and Schedule 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (“the 1983 Act”), Schedule 9, paragraph 24, and by the 1999 Act, Schedule 4, paragraph 60, contains provisions relevant to the exercise of the statutory powers under which these Regulations are made; section 108(1) contains a definition of “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(2) 1977 c. 49.

(3) 1993 c. 10.

“chief finance officer” in relation to a NHS trust means the person or persons holding the post of Director of Finance of the;

“chief officer” in relation to a NHS trust means the person or persons holding the post of Chief Executive of the trust;

“committee” means a committee of a NHS trust and includes sub-committee;

“contract” includes any arrangement including a NHS contract;

“director” in relation to a NHS trust includes its chairperson, trustees and executive directors, which have the meanings indicated by section 12A(3)(a) of the Act<sup>(4)</sup>;

“health service body” means a person or body specified in section 17A(2) of the Act<sup>(5)</sup>;

“management team” means the board of directors of a NHS trust designated by section 12A(3)(a) of the Act;

“meeting” means a meeting of the management team or of any committee;

“NHS trust” means a National Health Service trust established under section 12A of the Act.

(3) A reference in these Regulations to a numbered regulation is to the regulation bearing that number in these Regulations and a reference in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation and a reference to a numbered Schedule is to a Schedule bearing that number to these Regulations.

## PART II

### MEMBERSHIP: CHAIRPERSON AND TRUSTEES

#### Appointment and term of office

2.—(1) The chairperson and trustees of a NHS trust shall be appointed by the Scottish Ministers.

(2) The term of office of the chairperson and trustees of a NHS trust shall, subject to regulation 3, be for such period as the Scottish Ministers shall specify on making the appointment.

(3) After the expiration of their term of office, the chairperson or a trustee of a NHS trust shall, subject to regulation 4, be eligible for re-appointment.

#### Resignation and removal

3.—(1) The chairperson or a trustee of a NHS trust may resign office at any time during the period of the appointment by giving notice in writing to the Scottish Ministers to this effect.

(2) If the Scottish Ministers consider that it is not in the interests of the health service that a person who is appointed as chairperson or trustee of a NHS trust should continue to hold that office they may forthwith terminate that person’s appointment.

(3) If a chairperson or trustee of a NHS trust has not attended any meeting of the management team, or of any committee of the trust of which they are a member, for a period of six consecutive months, the Scottish Ministers shall forthwith terminate that person’s appointment unless the Scottish Ministers are satisfied that—

(a) the absence was due to illness or other reasonable cause; and

(b) the chairperson or trustee will be able to attend meetings within such period as the Scottish Ministers consider reasonable.

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(4) Section 12A(3) was inserted by the 1990 Act, section 31, and amended by the 1999 Act, section 48.

(5) Section 17A(2) was inserted by the 1990 Act, section 30 and amended by the 1999 Act, Schedule 1.

(4) Where, during the period of their appointment, a trustee of a NHS trust is appointed chairperson of the trust, their period of office as trustee shall terminate on the date when their appointment as chairperson takes effect.

(5) Where a chairperson or trustee becomes disqualified in terms of regulation 4 that person shall forthwith cease to hold such appointment.

### **Disqualification**

4.—(1) Subject to paragraphs (2) and (3) a person shall be disqualified for appointment as the chairperson or a trustee of a NHS trust if—

- (a) they have within the period of five years immediately preceding the proposed date of appointment been convicted in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic of any offence in respect of which they have received a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;
- (b) their estate has been sequestrated in Scotland or they have otherwise been made or become bankrupt elsewhere than in Scotland, they have granted a trust deed for the benefit of their creditors, or entered into any arrangement with their creditors, or a curator bonis or judicial factor has been appointed over their affairs;
- (c) they have resigned or been removed or dismissed, otherwise than by reason of redundancy, from any paid employment or office with a health service body;
- (d) they are a person whose appointment as the chairperson, member or director of a health service body has been terminated other than by the expiration of their term of office; or
- (e) they are a chairperson, member, director or employee of a health service body;
- (f) they are a general medical practitioner, who is providing general medical services in accordance with arrangements made under section 19 of the Act<sup>(6)</sup> or personal medical services in accordance with an agreement made under section 17C of the Act<sup>(7)</sup>, or general dental practitioner, who is providing general dental services in accordance with arrangements made under section 25 of the Act, or an employee of either of those;
- (g) they are a general medical practitioner or general dental practitioner, who is providing personal medical services or, as the case may be, personal dental services, under a pilot scheme entered into pursuant to Part I of the National Health Service (Primary Care) Act 1997<sup>(8)</sup>, or an employee of either of those;
- (h) they have had their name removed, by a direction under section 29 of the Act<sup>(9)</sup> from any list prepared under Part II of the Act and have not subsequently had their name included in such a list;
- (i) they are a person whose name has been included in any list prepared under Part II of the Act, and whose name has been withdrawn from the list on their own application;
- (j) they are a general medical practitioner, who is providing general medical services in accordance with arrangements made under section 29 of the 1977 Act<sup>(10)</sup> or general dental

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(6) Section 19 was amended by the Health Services Act 1980 (c. 53), section 7, the 1983 Act, section 14(2), the Health and Medicines Act 1988 (c. 49), section 17(1) and Schedule 7, paragraph 2, the 1990 Act, section 37, the Medical (Professional Performance) Act 1995 (c. 51) (“the 1995 Act”), Schedule and the 1997 Act, Schedule 2.

(7) Section 17C was inserted by the 1997 Act, section 21.

(8) 1997 c. 46.

(9) Section 29 was amended by the Health and Social Security Act 1984 (c. 48), Schedule 8 and by the National Health Service (Amendment) Act 1995 (c. 31), section 7 and the Schedule.

(10) Section 29 of the 1977 Act was amended by Health Authorities Act 1995 (c. 17), Schedule 1, the 1995 Act, Schedule and the 1997 Act, Schedule 2, paragraph 71.

- practitioner, who is providing general dental services in accordance with arrangements made under section 35 of the 1977 Act<sup>(11)</sup>, or an employee of either of those;
- (k) they have had their name removed, by a direction under section 46 of the 1977 Act<sup>(12)</sup> from any list prepared under Part II of the 1977 Act and have not subsequently had their name included in such a list;
  - (l) they are a person whose name has been included in any list prepared under Part II of the 1977 Act, and whose name has been withdrawn from the list on their own application;
  - (m) they are a person who is subject to a disqualification order under the Company Directors Disqualification Act 1986<sup>(13)</sup>; or
  - (n) they are a person who has been removed from the position of trustee of a charity, whether by the court or by the Charity Commissioners.
- (2) For the purpose of paragraph (1)–
- (a) the disqualification attaching to a person whose estate has been sequestrated shall cease if and when–
    - (i) the sequestration of their estate is recalled or reduced; or
    - (ii) the sequestration is discharged;
  - (b) the disqualification attaching to a person by reason of their having been adjudged bankrupt shall cease if and when–
    - (i) the bankruptcy is annulled; or
    - (ii) they are discharged;
  - (c) the disqualification attaching to a person in relation to whose estate a judicial factor has been appointed shall cease if and when–
    - (a) that appointment is recalled; or
    - (b) the judicial factor is discharged;
  - (d) the disqualification attaching to a person who has granted a trust deed or entered into an arrangement with their creditors shall cease if and when that person pays their creditors in full or on the expiry of five years from the date of their granting the deed or entering into the arrangement.
- (3) The Scottish Ministers may direct that in relation to any individual person or NHS trust any disqualification so directed shall not apply in relation thereto.
- (4) For the purposes of paragraph (1)(a) the date of conviction shall be deemed to be the date on which the days of appeal expire without any appeal having been lodged, or if an appeal has been made, the date on which the appeal is finally disposed of or treated as having been abandoned.

### **Appointment and powers of vice-chairperson**

5.—(1) For the purpose of enabling the business of the NHS trust to be conducted in the absence of the chairperson, the directors of a trust shall appoint one of the trustees to be vice-chairperson for such a period, not exceeding the remainder of their period as director of the trust, as they may specify on appointment.

(2) Any director so appointed may at any time resign from the office of vice-chairperson by giving notice in writing to the chairperson, and the directors of the trust may appoint another trustee as vice-chairperson in accordance with paragraph (1).

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<sup>(11)</sup> Section 35 was amended by the Health Authorities Act 1995 (c. 17), Schedule 1 and the 1997 Act, Schedule 2, paragraph 72.

<sup>(12)</sup> Section 46 was amended by the Health Authorities Act 1995 (c. 17), Schedule 1 and the National Health Service (Amendment) Act 1995 (c. 31), sections 1, 2 and 3.

<sup>(13)</sup> 1986 c. 46.

(3) Where the chairperson of a NHS trust has died or has ceased to hold office or where that person has been unable to perform their duties as chairperson owing to illness, absence from Scotland or any other cause, the vice-chairperson shall take the place of the chairperson in the conduct of the business of the trust and references to the chairperson shall, so long as there is no chairperson able to perform their duties, be taken to include references to the vice-chairperson.

## PART III

### MEMBERSHIP: EXECUTIVE DIRECTORS

#### Appointment and term of office

- 6.—(1) The executive directors of a NHS trust shall include—
- (a) the chief officer;
  - (b) the chief finance officer;
  - (c) except in the case of a NHS trust which does not provide services directly to patients
    - (i) medical or a dental practitioner; and
    - (ii) registered nurse or midwife within the meaning of section 10 (7) of the Nurses, Midwives and Health Visitors Act 1979(14).

(2) Where one person is appointed jointly with one or more others to a post in a NHS trust the holder of which qualifies as such to be an executive director, those persons shall become or be appointed jointly as an executive director, and shall count for the purposes of these Regulations as one person.

(3) Subject to regulation 7, an executive director of a NHS trust who is not the chief officer or chief finance officer shall hold office as such during such period as is specified on appointment but for no longer than the period during which they hold a post in the NHS trust.

(4) An executive director of a NHS trust, other than the chief officer and the chief finance officer, shall on the termination of the period of their appointment as such a director be eligible for re-appointment.

(5) An executive director of a NHS trust who holds such office by virtue of being the chief officer or chief finance officer, of the trust shall hold such office for so long as they are chief officer or as the case may be chief finance officer, and shall cease to hold such office forthwith and without notice upon ceasing to be chief officer or the chief finance officer.

#### Resignation and removal

7.—(1) Except in the case of the chief officer or chief finance officer, if the NHS trust considers that it is not in the interests of the NHS trust that an executive director of the trust should continue to hold office as such then the NHS trust shall forthwith terminate the appointment of that person as a director.

(2) An executive director of a NHS trust who is suspended from their post as an employee of the trust shall be suspended automatically and without notice from performing their functions as a director of the NHS trust during the period of their suspension as such employee.

(3) Except in the case of the chief officer or chief finance officer, an executive director of a NHS trust may resign office as director at any time during the period for which they were appointed as director by giving notice in writing to that effect to the NHS trust.

(4) Where any director becomes disqualified in terms of regulation 8 the appointment of that person as a director of a NHS trust shall terminate forthwith.

### **Disqualification**

8. Regulation 4 applies to disqualify a director of a NHS trust as it applies to disqualify a chairperson or trustee.

## **PART IV PROCEEDINGS**

### **Meetings and minutes**

9.—(1) The meetings and proceedings of the management team and any committee shall be conducted in accordance with the standing orders made pursuant to regulation 10.

(2) At every meeting of the management team, the chairperson, if present, shall preside.

(3) If the chairperson is absent from any meeting, the vice-chairperson, if present, shall preside, and if the chairperson and vice-chairperson are both absent, the members present at the meeting shall elect from among themselves a trustee to act as chairperson for that meeting.

(4) All acts of, and all questions coming and arising before, the management team shall be done and decided by a majority of the members of the management team present and voting at a meeting of the management team and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

(5) The proceedings of the management team or of any committee shall not be invalidated by any vacancy in its membership or by any defect in the appointment of any director or member of such committee.

### **Standing orders**

10.—(1) Subject to paragraph (2) and to such directions as may be given by the Scottish Ministers, the management team shall make, and may vary and revoke, standing orders for the regulation of the procedure and business of the management team and of any committee.

(2) Standing orders made under paragraph (1) shall include the matters set out in Schedule 1.

### **Appointment and functions of committees**

11.—(1) The management team may, and if so directed by the Scottish Ministers shall, appoint committees for such purposes as the management team may determine, subject to such restrictions or conditions as the management team may think fit, or as the Scottish Ministers may direct.

(2) Any committee, but not any sub-committee, appointed under paragraph (1) shall include at least one member of the management team and may include persons, including members of Health Boards, who are co-opted, and may consist wholly or partly of members of the management team of a NHS trust.

(3) Any sub-committee appointed under paragraph (1) may include persons, including members of Health Boards, who are co-opted and may consist wholly or partly of members of the management team or wholly of persons who are not members of the management team.

### **Conflict of interest**

**12.**—(1) Subject to such exceptions and qualifications as may, with the approval of the Scottish Ministers, be specified in standing orders, if a director, or any associate of theirs has any pecuniary or other interest, direct or indirect, in any contract or proposed contract (not being a contract for the provision of any of the services mentioned in Part II of the Act) or other matter, and that director is present at a meeting of the management team or of a committee of a NHS trust at which the contract or other matter is the subject of consideration, they shall at the meeting, and as soon as practicable after its commencement, disclose the fact, and shall not take part in the consideration and discussion of, the contract, proposed contract or other matter or vote on any question with respect to it.

(2) The Scottish Ministers may, subject to such conditions as they may think fit to impose, remove any disability imposed by this regulation in any case in which it appears to them in the interests of the national health service that the disability should be removed.

(3) Any remuneration, compensation or allowances payable to a director by virtue of paragraphs 9, 16(d), and 20 of Schedule 7A to the Act<sup>(15)</sup> shall not be treated as a pecuniary interest for the purpose of this regulation.

(4) A director shall not be treated as having an interest in any contract, proposed contract or other matter by reason only that they, or an associate of theirs, has an interest in any company, body or person which is so remote or insignificant that they cannot reasonably be regarded as likely to effect any influence in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

(5) This regulation applies to a committee of a NHS trust as it applies to the management team and applies to any member of any such committee (whether or not they are also a director of the NHS trust) as it applies to a director of the NHS trust.

(6) For the purposes of this regulation, the word "associate" has the meaning given by section 74 of the Bankruptcy (Scotland) Act 1985<sup>(16)</sup>.

## **PART V**

### **MISCELLANEOUS**

#### **Revocations**

**13.** The instruments specified in Schedule 2 are hereby revoked.

St Andrew's House,  
Edinburgh  
6th September 2001

*SUSAN DEACON*  
A member of the Scottish Executive

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<sup>(15)</sup> Schedule 7A was inserted by the 1990 Act, section 31.

<sup>(16)</sup> 1985 c. 66. Section 74 was amended by the Bankruptcy (Scotland) Regulations 1985 (S.I. 1985/1925), regulation 11.

## SCHEDULE 1

Regulation 10

### MATTERS TO BE INCLUDED IN STANDING ORDERS REGULATING MEETINGS AND PROCEEDINGS OF THE MANAGEMENT TEAM AND COMMITTEES

#### **Calling meetings**

1.—(1) The first meeting of the management team shall be held on such day and at such place as may be fixed by the chairperson and that person shall be responsible for convening the meeting.

(2) The chairperson may call a meeting of the management team at any time and the chairperson of a committee may call a meeting of that committee at any time but shall call a meeting when required to do so by the management team.

(3) If the chairperson refuses to call a meeting of the management team after a requisition for that purpose specifying the business proposed to be transacted, signed by at least one half of the whole number of directors, has been presented to the chairperson or if, without so refusing, the chairperson does not call a meeting within 7 days after such requisition has been presented, those directors who presented the requisition may forthwith call a meeting provided that no business shall be transacted at the meeting other than that specified in the requisition.

#### **Notice of Meetings**

2.—(1) Before each meeting of the management team, a notice of the meeting, specifying the time, place and business proposed to be transacted at it and signed by the chairperson, or by a director of the NHS trust authorised by the chairperson to sign on that person's behalf, shall be delivered to every director or sent by post to the usual place of residence of such director so as to be available to them at least three clear days before the meeting.

(2) Lack of service of the notice on any director shall not affect the validity of a meeting.

(3) In the case of a meeting of the management team called by directors in default of the chairperson, the notice shall be signed by those directors who requisitioned the meeting in accordance with paragraph 1(3).

#### **Conflict of interests**

3.—(1) A director shall be excluded from a meeting in accordance with regulation 12 while any contract, proposed contract, or other matter in which they or an associate of theirs has an interest is under consideration.

(2) The exceptions and qualifications referred to in regulation 12(1) shall be specified.

#### **Quorum**

4. No business shall be transacted at a meeting of the management team unless there are present, and entitled to vote, at least one third of the whole number of directors including at least one executive director and the chairperson or one trustee.

#### **Conduct of meetings**

5.—(1) At any meeting of a committee, the chairperson of that committee, if present, shall preside.

(2) If both the chairperson and vice-chairperson (if any) are absent from a meeting of the management committee a trustee chosen at the meeting by the directors present shall preside.



(3) If both the chairperson and vice-chairperson (if any) of a committee are absent from that committee a member of the committee chosen at the meeting by the other members present shall preside.

(4) If it is necessary or expedient to do so a meeting may be adjourned to another day, time and place.

### **Voting**

6. Every question at a meeting shall be determined by a majority of the votes of the directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.

### **Records**

7.—(1) The names of the directors present at a meeting shall be recorded.

(2) The minutes of the proceedings of a meeting including any decision or resolution made at that meeting shall be drawn up and submitted to the next ensuing meeting for agreement after which they will be signed by the person presiding at that meeting.

### **Shared executive director post**

8. Subject to regulation 12, where a post of executive director is shared by more than one person in accordance with regulation 6(2)—

- (a) those persons or any one of them shall be entitled to attend any meeting;
- (b) where more than one of those persons attend they shall be entitled to a collective single vote on any topic raised at the meeting provided they have agreed between themselves as to the way in which the vote is to be cast;
- (c) if they do not so agree no vote shall be cast by them;
- (d) the presence of any one or more of those persons shall count as the presence of one person for the purpose of paragraph 4 of this Schedule.

### **Suspension and disqualification**

9. Any member of the management team may on reasonable cause shown be suspended from the management team or disqualified for taking part in any business of the management team in specified circumstances.

## SCHEDULE 2

Regulation 14

### REVOCATIONS

<i>Instrument revoked</i>	<i>Reference</i>
The National Health Service Trusts (Membership and Procedure) (Scotland) Regulations 1991	<a href="#">S.I.1991/535</a>
The National Health Service Trusts (Membership and Procedure) (Scotland) Amendment Regulations 1993	<a href="#">S.I. 1993/412</a>

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

<i>Instrument revoked</i>	<i>Reference</i>
The National Health Service Trusts (Membership and Procedure) (Scotland) Amendment Regulations 1994	S.I. <a href="#">1994/1408</a>
The National Health Service Trusts (Membership and Procedure) (Scotland) Amendment Regulations 1998	S.I. <a href="#">1998/1458</a>
The National Health Service Trusts (Membership and Procedure) (Scotland) Amendment Regulations 1999	S.I. <a href="#">1999/1133</a>

## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations consolidate and re-enact with amendment the National Health Service Trusts (Membership and Procedure) (Scotland) Regulations 1991 concerning the membership and procedure of NHS trusts.

Part II of the Regulations contains provisions relating to the appointment, tenure of office, removal and qualifications of chairpersons and trustees. Provision is also made for the appointment and powers of vice-chairpersons (regulation 5).

Part III contains provisions, similar to those in Part II, relating to Executive Directors, but, in particular, provides for the appointment of persons to the specific positions of chief officer and chief finance officer.

Part IV contains provisions in relation to the holding of meetings (regulation 9) and requires standing orders to be prepared, in accordance with Schedule 1, governing the conduct of meetings (regulation 10). It also makes provision concerning the appointment of committees and sub-committees (regulation 11) and the procedures in the event of a member having a conflict of interests (regulation 12).

Regulation 13 provides for the revocation of the 1991 Regulations and the instruments amending those as set out in Schedule 2.

Schedule 1 sets out the matters that are required to be included in the standing orders being provisions as to the calling of meetings, quorum, conduct of meetings, voting, records, the procedure where there is a shared executive director post and for suspension and disqualification of members from meetings.