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STATUTORY INSTRUMENTS

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**1991 No. 535 (S. 44)**

**NATIONAL HEALTH SERVICE, SCOTLAND**

**The National Health Service Trusts (Membership  
and Procedure) (Scotland) Regulations 1991**

<i>Made</i>	- - - -	<i>4th March 1991</i>
<i>Laid before Parliament</i>		<i>11th March 1991</i>
<i>Coming into force</i>	- -	<i>1st April 1991</i>

Rules as to meetings and proceedings of the board of directors

The Secretary of State, in exercise of the powers conferred on him by sections 12A(5), 105(7) and 108(1) of, and of paragraph 7(2) of Schedule 7A to, the National Health Service (Scotland) Act 1978(1) and of all other powers enabling him in that behalf, hereby makes 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 1991 and shall come into force on 1st April 1991.

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

“the Act” means the National Health Service (Scotland) Act 1978(2);

“the appointing committee” means a committee appointed for the purpose of either paragraph (1) or (2) of regulation 12 whichever is appropriate; and

“chief finance officer” in relation to an NHS trust means the person or persons holding the post of Director of Finance of the trust or otherwise appointed to hold the post of chief finance officer by the appointing committee under regulation 12(2)(a);

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(1) 1978 c. 29; section 12A(5) was inserted by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 31; section 105(7), which was amended by the Health Service Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24, contains provisions relevant to the exercise of the powers under which these Regulations are made; section 108(1) contains definitions of “prescribed” and “regulations”; Schedule 7A was inserted by the 1990 Act, Schedule 6.

(2) 1978 c. 29.

“chief officer” in relation to an NHS trust means the person or persons holding the post of Chief Executive of the trust or otherwise appointed to hold the post of chief officer by the appointing committee under regulation 12(1);

“director” in relation to an NHS Trust includes its chairman;

“executive director” and “non-executive director” have the meanings indicated by section 12A(3)(a) of the Act(3);

“Family Health Services Authority” has the meaning indicated by section 10 of the National Health Service Act 1977(4);

“health authority” has the meaning given by section 128(1) of the National Health Services Act 1977(5);

“health service body” means —

- (a) a Health Board, a Special Health Board, the Agency or an NHS trust;
- (b) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984(6);
- (c) a health authority, a Family Health Services Authority or an NHS trust established by an order made under section 5(1) of the National Health Service and Community Care Act 1990(7);
- (d) the Scottish Dental Practice Board constituted by Regulations having effect under section 4 of the Act(8);
- (e) the Dental Practice Board constituted by Regulations having effect under section 37 of the National Health Service Act 1977(9);
- (f) the Public Health Laboratory Service Board continued in being by section 5(4) of the National Health Service Act 1977(10);
- (g) the National Radiological Protection Board established by section 1(1) of the Radiological Protection Act 1970(11);

“operational date” has the meaning given in paragraph 3(1)(e) of Schedule 7A to the Act(12);

“trade union” has the meaning given in section 28(1) of the Trade Union and Labour Relations Act 1974(13).

(3) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation is a reference to the regulation bearing that number in these Regulations, any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation and a reference to a Schedule is to the Schedule to these Regulations.

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(3) Section 12A was inserted by the 1990 Act, section 31.

(4) 1977 c. 49; section 10 was substituted by the Health and Social Security Act 1984 (c. 48) (“the 1984 Act”), section 5(1) and was amended by the 1990 Act, section 2.

(5) 1977 c. 49; section 128(1) was amended by the 1984 Act, Schedule 3, paragraph 11 and by the 1990 Act, section 26(2).

(6) 1984 c. 36.

(7) 1990 c. 19.

(8) See S.I. 1974/505; relevant amending instrument is S.I. 1990/1772. Section 4 was amended by the Health and Medicines Act 1988 (c. 49), section 12 and Schedule 3.

(9) See S.I. 1973/1468; relevant amending instrument is S.I. 1991/581. Section 37 was amended by the Health Services Act 1980 (c. 53), Schedule 1, paragraph 50 and by the Health and Medicines Act 1988 (c. 49), section 12 and Schedule 3.

(10) 1977 c. 49; section 5(4) was amended by the Public Health Laboratory Service Act 1979 (c. 23), section 1.

(11) 1970 c. 46.

(12) Schedule 7A was inserted by the 1990 Act, Schedule 6.

(13) 1974 c. 52.

## PART II

### MEMBERSHIP

#### Maximum number and appointment of directors

2.—(1) The maximum number of directors of an NHS trust shall be eleven.

(2) All of the non-executive directors of an NHS trust shall be appointed by the Secretary of State and the executive directors of an NHS trust shall be appointed by the appointing committee in accordance with regulation 12.

#### Qualification for appointment as executive director

3.—(1) The executive directors of an NHS trust shall include—

- (a) the chief officer;
- (b) the chief finance officer;
- (c) except in the case of an NHS trust mentioned in paragraph (2)
  - (i) a medical practitioner;
  - (ii) a dental practitioner; and
  - (iii) a registered nurse or registered midwife as defined in section 10(7) of the Nurses, Midwives and Health Visitors Act 1979(14).

(2) Paragraph 1(c) shall not apply in the case of an NHS trust—

- (a) which does not provide services directly to patients; or
- (b) whose principal function is to provide ambulance or patient transport services.

(3) Except in the case of a person to be appointed as a non-executive director of an NHS trust for the purposes of paragraph 3(1)(d) of Schedule 7A to the Act, a person who is not an employee of the trust but who—

- (a) holds a post in a university with a medical or dental school, and also works for the trust; or
- (b) is seconded from his employers to work for the trust,

is nevertheless to be regarded on appointment as a director of an NHS trust as an executive rather than as a non-executive director of the trust.

#### Joint directors

4. Where one person is appointed jointly with one or more others to a post in an 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.

#### Period and termination of appointment: chairman and non-executive directors

5.—(1) Subject to paragraphs (2) to (8), the chairman and non-executive directors of an NHS trust shall be appointed for such period not exceeding four years as the Secretary of State may specify on making the appointment.

(2) The chairman or a non-executive director of an NHS trust may resign office at any time during the period for which he was appointed by giving notice in writing to the Secretary of State to this effect.

(3) Where, during the period of his appointment as a director, a non-executive director of a trust is appointed chairman of the trust, his period of office as non-executive director shall terminate on the date when his appointment as chairman takes effect.

(4) If the Secretary of State considers that it is not in the interests of the health service that a person who is appointed as chairman or non-executive director of an NHS trust should continue to hold that office he may forthwith terminate his appointment.

(5) If a chairman or non-executive director of an NHS trust has not attended a meeting of the board of directors, or of any committee or sub-committee of the trust of which he is a member, for a period of six months, the Secretary of State shall forthwith terminate his appointment unless the Secretary of State is satisfied that—

- (a) the absence was due to a reasonable cause; and
- (b) the chairman or non-executive director will be able to attend meetings of the board within such period as the Secretary of State considers reasonable.

(6) Where a person has been appointed to be chairman or a non-executive director of an NHS trust—

- (a) if he becomes disqualified for appointment by virtue of regulation 8 the Secretary of State shall forthwith notify him in writing of such disqualification; or
- (b) if it comes to the notice of the Secretary of State that at the time of his appointment he was so disqualified he shall forthwith declare that he was not duly appointed and so notify him in writing,

and upon receipt of any such notification, his appointment shall be terminated and he shall cease forthwith to act as chairman or non-executive director.

(7) If it appears to the Secretary of State that the chairman or non-executive director of an NHS trust has failed to comply with regulation 14(1) (disability of directors: conflict of interest) he may forthwith terminate that person's appointment.

(8) Where a person appointed as a non-executive director pursuant to paragraph 3(1)(d) of Schedule 7A to the Act ceases to hold a post in the university in question the Secretary of State shall terminate his appointment as a non-executive director.

### **Period and termination of appointment: executive directors**

6.—(1) Subject to paragraphs (2) to (5), an executive director of an NHS trust who is not the chief officer or chief finance officer shall hold office as such during such period as is specified by the appointing committee on appointing him but for no longer than the period during which he holds a post in the trust.

(2) An executive director of an 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 he is 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.

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

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

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

### **Eligibility for re-appointment**

7.—(1) Subject to regulation 8, the chairman or a non-executive director of an NHS trust shall, on the termination of their period of appointment as such director, be eligible for re-appointment.

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

### **Disqualification for appointment: chairman and non-executive directors**

8.—(1) Subject to regulation 9, a person shall be disqualified for appointment as the chairman or a non-executive director of an NHS trust if—

- (a) he has within the preceding five years been convicted in the United Kingdom, the Channel Islands or the Isle of Man of any offence in respect of which he has received a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine; or
- (b) his estate has been sequestrated or he has otherwise been made or become bankrupt, he has granted a trust deed for the benefit of his creditors, or a curator bonis or judicial factor has been appointed over his affairs; or
- (c) he has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body; or
- (d) he is a person whose appointment as the chairman, member or director of a health service body has been terminated; or
- (e) he is a chairman, member, director or employee of a health service body; or
- (f) he is a general medical practitioner or general dental practitioner or an employee of either of those; or
- (g) he holds a paid appointment or office with a trade union which represents the interests of members who are employed by a health service body; or
- (h) he has had his name removed, by a direction under section 29 of the Act from any list prepared under Part II of that act and has not subsequently had his name included in such a list.

(2) 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 of which the appeal is finally disposed of or treated as having been abandoned.

(3) For the purposes of paragraph (1)(c) a person shall not be treated as having been in paid employment by reason only of his having been the chairman, member or director of the health service body.

(4) A person shall not be disqualified by virtue of paragraph (1)(e) from being the non-executive director referred to in paragraph (3)(1)(d) of Schedule 7A to the Act by reason of his employment with a health service body.

(5) In paragraph (1)(f)—

“general dental practitioner” means a dental practitioner who is providing general dental services in accordance with arrangements made under section 25 of the Act; and

“general medical practitioner” means a medical practitioner who is providing general medical services in accordance with arrangements made under section 19 of the Act.

### **Cessation of disqualification**

**9.—(1)** Where a person is disqualified under regulation 8(1)(b) by reason of his estate having been sequestrated—

- (a) if the sequestration is recalled such disqualification shall cease to have effect on the date of the granting of the recall; or
- (b) the disqualification shall cease to have effect on the date of his discharge.

(2) Where a person is otherwise disqualified under regulation 8(1)(b) if he pays his debts in full the disqualification shall cease on the date on which the payment is completed and in any other case it shall cease on the expiry of five years from the date on which the disqualification arose.

(3) Subject to paragraph (4), where a person is disqualified under regulation 8(1)(c) (dismissed employees) he may, after the expiry of a period of not less than two years, apply in writing to the Secretary of State to remove the disqualification and the Secretary of State may direct that the disqualification shall cease.

(4) Where the Secretary of State refuses an application to remove a disqualification no further application may be made by that person until the expiration of two years from the date of the application.

(5) Where a person is disqualified under regulation 8(1)(d) (certain chairmen and directors whose appointments have been terminated), the disqualification shall cease on the expiry of the period of two years or such longer period as the Secretary of State specifies when terminating his appointment but the Secretary of State may on application being made to him by that person reduce the period of disqualification.

## **PART III PROCEEDINGS**

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

**10.—(1)** For the purpose of enabling the business of the trust to be conducted in the absence of the chairman, the directors of an NHS trust may appoint one of the non-executive directors to be vice-chairman for such a period, not exceeding the remainder of his period as director of the trust, as they may specify on appointing him.

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

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

### **Appointment and functions of committees and sub-committees**

11.—(1) Subject to regulation 12, the board of directors of an NHS trust may appoint committees consisting wholly or partly of directors of the trust or wholly of persons who are not directors of the trust.

(2) A committee appointed under this regulation may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include directors of the trust) or wholly of persons who are not members of the committee (whether or not they include directors of the trust).

(3) Subject to paragraph (4) and to regulation 12, the board of directors of an NHS trust may make arrangements for the exercise of any of its functions by a committee or sub-committee appointed by virtue of this regulation subject to such restrictions and conditions as the board may specify in Standing Orders under regulation 13(3) or otherwise.

(4) If the board of directors of an NHS Trust appoints a committee to exercise any of its functions as managers of a hospital in relation to the discharge of patients under Part V of the Mental Health (Scotland) Act 1984(15), that committee shall not include any employees of the Trust.

### **Appointment of the executive directors: committees**

12.—(1) A committee consisting of the chairman and the non-executive directors of an NHS trust shall appoint a person to be the chief officer.

(2) The committee appointed under paragraph (1), with the addition of the chief officer, shall appoint—

- (a) a person to be the chief finance officer; and
- (b) the executive directors other than the chief officer and the chief finance officer.

(3) In this regulation the expression “executive director” includes any person to whom regulation 3(3) applies.

### **Meetings and proceedings**

13.—(1) The meetings and proceedings of the board of directors of an NHS trust shall be conducted in accordance with—

- (a) the provisions of regulation 14;
- (b) the rules set out in the Schedule; and
- (c) Standing Orders made under paragraph (2).

(2) The board of directors of an NHS trust shall make and may vary or revoke Standing Orders for the regulation of its proceedings and business including the authorisation of persons to sign or subscribe documents on behalf of the trust and provision may be made in such Standing Orders for their suspension and those Standing Orders will be subject to the rules set out in the Schedule.

(3) The board of directors of an NHS trust may make, vary and revoke Standing Orders relating to the quorum, proceedings and place of meetings of a committee or sub-committee.

(4) Standing Orders made under this regulation may contain provision for the exclusion, subject to such exceptions and qualifications as may be so provided, of a director from a meeting of the board of directors and any committee or sub-committee of the trust while any contract, proposed contract, or other matter in which he or an associate of his has an interest is under consideration.

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(15) 1984 c. 36; see section 125(1) for the definitions of “hospital” and “managers of a hospital” which were amended by the 1990 Act, Schedule 9, paragraph 28(4).

(5) The proceedings of the board of directors of an NHS trust or of any committee or sub-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 or sub-committee.

#### **Disability of directors: conflict of interest**

**14.**—(1) Subject to the following provisions of this regulation, if a director of an NHS trust or any nominee or associate of his has any interest, direct or indirect other than as such director, in any contract, proposed contract or other matter and is present at a meeting of the board of directors of the trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in any consideration and discussion of the contract, proposed contract or other matter or vote on any question with respect to it.

(2) The Secretary of State may, subject to such conditions as he may think fit to impose, remove in whole or in part any disability imposed by this regulation, in any case in which it appears to him to be in the interests of the health service that the disability should be removed.

(3) Any remuneration, compensation or allowances payable to a director by virtue of paragraph 9 of Schedule 7A to the Act shall not be treated as an 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 he, or an associate of his, has an interest in any company, body or person which is so remote or insignificant that he 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 or sub-committee of an NHS trust as it applies to the board of directors of the trust and applies to any member of any such committee or sub-committee (whether or not he is also a director of the trust) as it applies to a director of the trust.

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

#### **Execution of documents**

**15.**—(1) A document is signed on behalf of an NHS Trust if it is signed on its behalf by a director of the trust or by any person authorised generally or specifically to sign the document on its behalf and a document so signed is for any purpose other than those mentioned in paragraph (3), validly executed by an NHS trust.

(2) For the purposes of any enactment or rule of law relating to the authentication of documents under the law of Scotland, a document is validly executed by an NHS trust if it is subscribed on behalf of the trust by—

- (a) the chairman and one of the directors of the trust; or
- (b) a director of the trust and one other person authorised generally or specifically to subscribe the document; or
- (c) two persons not being directors of the trust, authorised to subscribe the document on behalf of the trust,

notwithstanding that such subscription is not effected by witnesses and the document is not sealed with the seal of the trust.

(3) A document which bears to be executed by an NHS trust in accordance with paragraph (2) is, in relation to such execution, a probative document.

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



## PART IV

### PUBLIC MEETINGS

#### **Public meeting to present audited accounts and annual report**

**16.**—(1) Each NHS trust shall hold the public meeting at which it presents its audited accounts and its annual report on a date in every year, not later than six months after its accounting date.

(2) In this regulation the expression “accounting date” means the date specified in relation to the trust by an order made pursuant to paragraph 3(4) of Schedule 7A to the Act.

St. Andrew’s House,  
Edinburgh  
4th March 1991

*Michael B. Forsyth*  
Minister of State, Scottish Office

## SCHEDULE

Regulation 13(1)

### RULES AS TO MEETINGS AND PROCEEDINGS OF THE BOARD OF DIRECTORS

1. The first meeting of the board of directors of an NHS trust (in this Schedule referred to as “the board”) shall be held on such day and at such place as may be fixed by the chairman and he shall be responsible for convening the meeting.

2.—(1) The chairman may call a meeting of the board at any time.

(2) If the chairman refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of directors, has been presented to him or if, without so refusing, the chairman does not call a meeting within seven days after such requisition has been presented to him, those directors who presented the requisition may forthwith call a meeting.

(3) Before each meeting of the board, a notice of the meeting, specifying the business proposed to be transacted at it and signed by the chairman, or by an officer of the trust authorised by the chairman to sign on his 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 him at least three clear days before the meeting.

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

(5) In the case of a meeting called by directors in default of the chairman, the notice shall be signed by those directors and no business shall be transacted at the meeting other than that specified in the notice.

3.—(1) At any meeting of the board the chairman, if present, shall preside.

(2) If both the chairman and vice-chairman (if any) are absent a non-executive director chosen at the meeting by the directors present shall preside.

(3) 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 casting vote.

(4) The names of the directors present at the meeting shall be recorded.

(5) No business shall be transacted at a meeting of the board unless there are present at least one third of the whole number of directors including, where such meeting takes place on or after the operational date, at least one executive director and one non-executive director.

(6) The minutes of the proceedings of a meeting shall be drawn up and submitted to the next ensuing meeting for agreement whereafter they will be signed by the person presiding at that meeting.

4.—(1) Where a post of executive director is shared by more than one person in accordance with regulation 4—

- (a) those persons or any one of them shall be entitled to attend any meeting of the board;
- (b) where more than one of those persons attend they shall be entitled to 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 3(5) of this Schedule.

(2) The provisions of paragraph 4(1) of this Schedule are subject to the provisions of regulation 14.

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## EXPLANATORY NOTE

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

These Regulations make provision concerning the membership and procedure of NHS trusts established under section 12A of the National Health Service (Scotland) Act 1978, as inserted by section 31 of the National Health Service and Community Care Act 1990.

The Regulations, which come into force on 1st April 1991 contain in Part II provisions relating to the number, appointment, qualifications and description of directors and joint directorships (regulations 2 to 4), the tenure of office of directors and the termination of tenure of office and eligibility for re-appointment (regulations 5 to 7) and for disqualification for appointment as director and cessation of disqualification (regulations 8 and 9).

In Part III provisions are included relating to vice-chairmen (regulation 10), the appointment of and the exercise of functions by committees and sub-committees (regulations 11 and 12), meetings and proceedings of the board of directors and committees and sub-committees of a trust (regulation 13 and the Schedule), provisions in relation to disability for taking part in proceedings on account of conflicts of interest (regulation 14) and provisions in relation to the execution of documents by a trust.

Part IV contains provisions in relation to the holding annually of a public meeting at which are to be presented the audited accounts and annual report of a trust.