

1990 No. 2024

**NATIONAL HEALTH SERVICE, ENGLAND AND
WALES**

**The National Health Service Trusts
(Membership and Procedure)
Regulations 1990**

Made - - - - - 12th October 1990
Laid before Parliament 19th October 1990
Coming into force - 9th November 1990

The Secretary of State for Health, as respects England, and the Secretary of State for Wales, as respects Wales, in exercise of powers conferred by sections 126(4) and (5) and 128(1) of the National Health Service Act 1977(a) and section 5(7) of the National Health Service and Community Care Act 1990(b) 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) Regulations 1990 and shall come into force on 9th November 1990

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

“the Act” means the National Health Service and Community Care Act 1990;

“appointing authority” in relation to a director means the Secretary of State or Regional Health Authority or the relevant committee as appropriate, which appointed him;

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

“executive director” and “non-executive director” have the meaning assigned to them in section 5(5)(a) of the Act.

“health service body” means—

(a) a health authority, a Family Health Services Authority or an NHS trust;

(a) 1977 c.49; section 126(4) was amended by, and section 126(5) was inserted by, section 65(2) of the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”); section 128(1) was amended by the 1990 Act, section 26(2) and is cited for the definition “regulations”.

(b) 1990 c.19.

- (b) a Health Board, a Special Health Board, the Common Services Agency for the Scottish Health Service or an NHS trust respectively constituted under section 2, 10 and 12A of the National Health Service (Scotland) Act 1978(a);
- (c) a State Hospital Management Committee constituted under section 91 of the Mental Health (Scotland) Act 1984(b);
- (d) the Dental Practice Board constituted by Regulations having effect under section 37 of the National Health Service Act 1977(c);
- (e) the Scottish Dental Practice Board constituted by Regulations having effect under section 4 of the National Health Service (Scotland) Act 1978(d)
- (f) the Public Health Laboratory Service Board continued in being by section 5(4) of the National Health Service Act 1977;
- (g) the National Radiological Protection Board established by section 1 of the Radiological Protection Act 1970(e);

“general dental practitioner” means a dental practitioner who is providing general dental services in accordance with arrangements under section 35 of the National Health Service Act 1977;

“general medical practitioner” is a medical practitioner who is providing general medical services in accordance with arrangements under section 29 of the National Health Service Act 1977;

“operational date” has the meaning assigned to it in paragraph 3 (1)(e) of Schedule 2 to the Act;

“the relevant committee” means a committee of an NHS trust appointed under either regulation 17 or regulation 18 whichever is appropriate;

“trade union” has the meaning assigned to it in section 28 of the Trade Union and Labour Relations Act 1974(f).

(3) in regulation 20–

“public body” includes–

- (a) any body established for the purposes of carrying on, under national ownership, any industry or part of any industry or undertaking;
- (b) the governing body of any university, university college or college, school or hall of a university; and
- (c) the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907(g);

“securities” means–

- (a) shares or debentures, whether constituting a charge on the assets of the company or other body or not, or rights or interests in any shares or such debentures, or
- (b) rights (whether actual or contingent) in respect of money lent to or deposited with any industrial and provident society or building society;

“shares” means shares in the share capital of a company or other body or the stock of a company or other body.

(4) 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, and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

(a) 1978 c.29; section 2 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 7, paragraph 1 and the 1990 Act, section 28; section 10 was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 2; section 12A was inserted by the 1990 Act, section 31.

(b) 1984 c.36.

(c) See S.I. 1973/1468. Section 37 was amended by the Health Services Act 1980 (c.53), Schedule 1, paragraph 69 and by the Health and Medicines Act 1988 (c.49), section 12.

(d) See S.I. 1974/505. Section 4 was amended by the Health and Medicines Act 1988, section 12.

(e) 1970 c.46.

(f) 1974 c.52.

(g) 1907 c.xxxvi.

PART II

MEMBERSHIP

Maximum number of directors

2. The maximum number of directors of an NHS trust shall be eleven.

Appointment of directors

3.—(1) Of the non-executive directors of an NHS trust whose hospital establishment or facility is situated in England—

- (a) two shall be appointed by the Regional Health Authority in whose region the hospital establishment or facility is situated, or, if it is situated in more than one region, the Regional Health Authority in whose region it principally carries out its functions; and
- (b) the remainder, which shall include the person, if any, appointed pursuant to paragraph 3(1)(d) of Schedule 2 to the Act, shall be appointed by the Secretary of State.

(2) All of the non-executive directors of an NHS trust whose hospital establishment or facility is situated in Wales shall be appointed by the Secretary of State.

(3) The executive directors of an NHS trust shall be appointed by the relevant committee.

Qualifications for appointments

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

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

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

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

Persons to be regarded as executive directors

5. A person who is not an employee of an NHS trust but—

- (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, on appointment as a director, to be regarded as an executive rather than a non-executive director of the trust.

Joint directors

6. Where more than one person is appointed jointly to a post in an NHS trust which qualifies the holder for executive directorship or in relation to which an executive director is to be appointed, those persons shall become or be appointed an executive director jointly, and shall count for the purposes of regulation 2 as one person.

Tenure of office of chairman and directors

7.—(1) Subject to regulation 9, the chairman and non-executive directors of an NHS trust shall be appointed for such period not exceeding four years as the appointing authority may specify on making the appointment.

(2) Subject to regulation 8, the tenure of office of executive directors, other than the chief officer and chief finance officer, shall be for such period as the appointing authority may specify on making the appointment.

(a) 1979 c.36.

Tenure and suspension of tenure of office of executive directors

8.—(1) Subject to paragraphs (2) to (4) and regulation 7(2), an executive director of an NHS trust shall hold office—

- (a) if he is not the chief officer or the chief finance officer, for as long as he holds a post in the trust;
- (b) if he is the chief officer or the chief finance officer, for as long as he holds that post in the trust.

(2) If the appointing authority is of the opinion that it is not in the interests of the NHS trust that an executive director of an NHS trust other than the chief officer or chief finance officer should continue to hold office as director the appointing authority shall forthwith terminate his tenure of office.

(3) If an executive director of an NHS trust is suspended from his post in the trust he shall be suspended from performing his functions as director for the period of his suspension.

(4) An executive director other than the chief officer or chief finance officer of an NHS trust may resign his office at any time during the period for which he was appointed by giving notice in writing to the relevant committee.

Termination of tenure of office of chairman and non-executive directors

9.—(1) The chairman or a non-executive director of an NHS trust may resign his office at any time during the period for which he was appointed by giving notice in writing to the appointing authority.

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

(3) If an appointing authority is of the opinion 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 the appointing authority may, subject to the consent of the Secretary of State, unless it is the Secretary of State, forthwith terminate his tenure of office.

(4) If a chairman or non-executive director of an NHS trust has not attended a meeting of the trust for a period of six months, the Secretary of State shall forthwith terminate his tenure of office 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 trust within such period as the Secretary of State considers reasonable.

(5) Where a person has been appointed the chairman or non-executive director of an NHS trust—

- (a) if he becomes disqualified for appointment under regulation 11 the appointing authority shall forthwith notify him in writing of such disqualification; or
- (b) if it comes to the notice of the appointing authority that at the time of his appointment he was so disqualified it shall forthwith declare that he was not duly appointed and so notify him in writing,

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

(6) 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 20 (disclosure etc. on account of pecuniary interest) he may forthwith terminate that person's tenure of office.

(7) Where a person appointed as a non-executive director pursuant to paragraph 3(1)(d) of Schedule 2 to the Act ceases to hold a post in the university in question the Secretary of State shall terminate his appointment as non-executive director.

Eligibility for reappointment

10.—(1) Subject to regulation 11 the chairman or non-executive director of an NHS trust shall, on the termination of the period of his tenure of office, be eligible for reappointment.

(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 tenure of office be eligible for re-appointment.

Disqualification for appointment of chairman and non-executive directors

11.—(1) Subject to regulation 12 a person shall be disqualified for appointment as the chairman or 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 and has had passed on him 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) he has been adjudged bankrupt or has made a composition or arrangement with his creditors; 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 tenure of office as the chairman member or director of a health service body has been terminated because his appointment is not in the interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
- (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 46 of the National Health Service Act 1977, 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 ordinary period allowed for making an appeal or application with respect to the conviction expires, or if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of it not being prosecuted.

(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 chairmanship, membership or directorship of the health service body.

(4) A person shall not be disqualified by paragraph (1)(e) from being the non-executive director of an NHS trust referred to in paragraph 3(1)(d) of Schedule 2 to the Act by reason of his employment with the trust.

Cessation of disqualification

12.—(1) Where a person is disqualified under regulation 11 (1)(b) by reason of having been adjudged bankrupt—

- (a) if the bankruptcy is annulled on the ground that he ought not to have been adjudged bankrupt or on the ground that his debts have been paid in full, the disqualification shall cease on the date of the annulment;
- (b) if he is discharged the disqualification shall cease on the date of his discharge.

(2) Where a person is disqualified under regulation 11 (1)(b) by reason of his having made a composition or arrangement with his creditors, 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 terms of the deed of composition or arrangement are fulfilled.

(3) Subject to paragraph (4) where a person is disqualified under regulation 11(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 11 (1)(d) (certain chairmen and directors whose appointments have been terminated), the disqualification shall cease on the expiry of a period of two years or such longer period as the appointing authority specifies when terminating his period of office but the Secretary of State may on application being made to him by that person or by that appointing authority, reduce the period of disqualification.

PART III

CONSTITUTION AND PROCEEDINGS

Appointment of vice-chairman

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

(2) Any non-executive director so elected 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 non-executive director as vice-chairman in accordance with paragraph (1).

Powers of vice-chairman

14. Where the chairman of an NHS trust has died or has otherwise ceased to hold office or where he has been unable to perform his duties as chairman owing to illness, absence from England and Wales or any other cause, references to the chairman in the Schedule to these Regulations shall, so long as there is no chairman able to perform his duties, be taken to include references to the vice-chairman.

Appointment of committees and sub-committees

15.—(1) Subject to regulations 17 and 18 an NHS trust may appoint committees of the trust 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 the directors of the trust) or wholly of persons who are not members of the committee (whether or not they include directors of the trust).

Arrangements for the exercise of functions

16. Subject to regulations 17 and 18 an NHS trust may make arrangements for the exercise, on behalf of the trust, of any of its functions by a committee or sub-committee appointed by virtue of regulation 15 subject to such restrictions and conditions as the trust thinks fit.

Committee for appointing chief officer as director

17. An NHS trust shall appoint a committee whose members shall be the chairman and non-executive directors of the trust whose function will be to appoint the chief officer as a director of the trust.

Committee for appointing executive directors other than chief officer

18. An NHS trust shall appoint a committee whose members shall be the chairman, the non-executive directors and the chief officer whose function will be to appoint the executive directors of the trust other than the chief officer.

Meetings and Proceedings

19.—(1) The meetings and proceedings of an NHS trust shall be conducted in accordance with the rules set out in the Schedule to these Regulations and with Standing Orders made under paragraph (2).

(2) Subject to those rules and to regulation 20 an NHS trust shall make and may vary or revoke Standing Orders for the regulation of its proceedings and business and provision may be made in such Standing Orders for the suspension of them.

(3) 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 but, subject to regulation 20 and to any such Standing Orders, the quorum, proceedings and place of meeting shall be such as the committee or sub-committee may determine.

(4) The proceedings of an NHS trust shall not be invalidated by any vacancy in its membership or by any defect in a director's appointment.

Disability of directors in proceedings on account of pecuniary interest

20.—(1) Subject to the following provisions of this regulation, if a director of an NHS trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting 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 the consideration and discussion of the 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 any disability imposed by this regulation, in any case in which it appears to him in the interests of the health service that the disability shall be removed.

(3) An NHS trust may, by Standing Orders made under regulation 19 provide for the exclusion of a director from a meeting of the trust while any contract, proposed contract, or other matter in which he has a pecuniary interest, direct or indirect, is under consideration.

(4) Any remuneration, compensation or allowances payable to a director by virtue of paragraph 9 of Schedule 2 to the Act shall not be treated as a pecuniary interest for the purpose of this regulation.

(5) Subject to paragraphs (2) and (6), a director shall be treated for the purposes of this regulation as having indirectly a pecuniary interest in a contract, proposed contract or other matter if—

- (a) he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- (b) he is a partner of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration and, in the case of married persons living together, the interest of one spouse shall be deemed for the purpose of this regulation to be also an interest of the other.

(6) A director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only—

- (a) of his membership of a company or other body if he has no beneficial interest in any securities of that company or other body;
- (b) of an interest in any company, body or person with which he is connected as mentioned in paragraph (5) which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

(7) Where a director—

- (a) has an indirect pecuniary interest in a contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
- (b) the total nominal value of those securities does not exceed £5,000 or one hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and

- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has the beneficial interest does not exceed one hundredth of the total issued share capital of that class,

this regulation shall not prohibit him from taking part in consideration or discussion of the contract or other matter or from voting on any question in respect to it without prejudice however to his duty to disclose his interest.

(8) This regulation applies to a committee or sub-committee of an NHS trust as it applies to 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.

12th October 1990

K. Clarke
Secretary of State for Health

12th October 1990

David Hunt
Secretary of State for Wales

SCHEDULE

Regulation 19(1)

RULES AS TO MEETINGS AND PROCEEDINGS OF NHS TRUSTS

1. The first meeting of an NHS trust 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 NHS trust 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, such one third or more members shall forthwith call a meeting.

(3) Before each meeting of an NHS trust, 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 an NHS trust the chairman, if present, shall preside.

(2) If the chairman and vice-chairman (if any) are absent such non-executive director as the directors present shall choose shall preside.

(3) Every question at a meeting shall be determined by a majority of the votes of the directors present 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 an NHS trust unless one third of the whole number of directors are present including 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 for agreement at the next ensuing meeting where they will be signed by the person presiding at it.

4. Where a post of executive director is shared by more than one person in pursuance of regulation 6—

- (a) both persons shall be entitled to attend meetings of the NHS trust;
 - (b) either of those persons shall be eligible to vote in the case of agreement between them;
 - (c) in the case of disagreement between them no vote shall be cast;
 - (d) the presence of either or both of those persons shall count as one person for the purpose of paragraph 3(5) of this Schedule.
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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 the National Health Service and Community Care Act 1990. They include in Part II provisions relating to the number, appointment, qualifications and description of directors and joint directorships (regulations 2 to 6), the tenure of office of directors and the termination of tenure of office and eligibility for re-appointment (regulations 7 to 10) and for disqualification for appointment as director and cessation of disqualification (regulations 11 and 12). In Part III provisions are included relating to vice-chairmen (regulations 13 and 14), the appointment of and the exercise of functions by committees and sub-committees (regulations 15 to 18) and meetings and proceedings of a trust including disability for taking part in proceedings on account of pecuniary interest (regulations 19 and 20 and the Schedule).