
STATUTORY INSTRUMENTS

1991 No. 358 (S. 36)

NATIONAL HEALTH SERVICE, SCOTLAND

**The National Health Service Trusts (Consultation
before Establishment) (Scotland) Regulations 1991**

<i>Made</i>	- - - -	<i>27th February 1991</i>
<i>Laid before Parliament</i>		<i>28th February 1991</i>
<i>Coming into force</i>	- -	<i>21st March 1991</i>

The Secretary of State, in exercise of the powers conferred on him by sections 12A(2) and 105(7) of the National Health Service (Scotland) Act 1978(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service Trusts (Consultation before Establishment) (Scotland) Regulations 1991 and shall come into force on 21st March 1991.

(2) In these Regulations unless the contrary intention appears—

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

“an application” means an application to the Secretary of State proposing the establishment under section 12A(1) of the Act, of an NHS trust; and

“relevant body” has the meaning given in regulation 2(2).

Duty to consult

2.—(1) Where the Secretary of State receives an application and he is considering whether to make an order, under section 12A(1) of the Act, for the establishment of an NHS trust pursuant to that application, he shall give notice in writing to the relevant body and on receipt of a notice under this paragraph it shall then be a duty of any such body to carry out consultation with regard to that application.

(2) In these regulations “the relevant body” means—

(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; section 105(7), which was amended by the Health Services 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.

- (a) the Health Board within whose area is or, in a case to which section 12A(1)(b) of the Act applies, will be situated any hospital or other establishment or facility for whose ownership and management that proposed NHS trust is to assume responsibility, or
- (b) the Agency, in a case where that proposed NHS trust is to assume responsibility for the ownership and management of any hospital, or other establishment or facility the management of which was or, in a case to which section 12A(1)(b) of the Act applies, would have been a function of the Agency, but for the establishment of that proposed NHS trust; or
- (c) in a case where the hospital or other establishment or facility which is the subject of the application is or would be situated in the areas of more than one Health Board or if it is or would be managed in part by a Health Board and in part by the Agency, the body which the Secretary of State determines to have the major interest in the application.

Persons to be consulted

3.—(1) The relevant body which is under a duty to consult by virtue of regulation 2, in addition to commenting itself on the application shall consult the following bodies:—

- (a) any local health council within whose area or district is, or is to be, situated any part of the hospital, establishment or other facility which is the subject of an application;
- (b) any local authority within whose area or district is or is to be situated any part of such hospital, establishment or facility; and
- (c) any trade union and professional body representing the interests of any persons who are employed in such hospital, establishment or facility.

(2) In this regulation the expression “trade union” has the meaning given in section 28(1) of the Trade Union and Labour Relations Act 1974(2).

Method and period of consultation

4. The relevant body which is under a duty to consult by virtue of these Regulations, shall do so by sending by post to each consultee a detailed summary of the application with a request for comments to be submitted to it by not later than three months after the date of sending by it of such a summary, and that period of three months is referred to in the following regulation as “the consultation period”.

Report to the Secretary of State

5. The relevant body shall report to the Secretary of State all responses to the consultation, together with any comments which the relevant body wishes to make as to such responses, by the expiry of one month from the close of the consultation period.

St. Andrew’s House,
Edinburgh
27th February 1991

Michael B Forsyth
Minister of State, Scottish Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the consultation to be carried out by a Health Board or by the Common Services Agency for the Scottish Health Service before the Secretary of State for Scotland makes an Order under section 12A(1) of the National Health Service (Scotland) Act 1978 establishing a National Health Service trust in Scotland.

Regulation 1 brings the Regulations into force on 21st March 1991.

Regulation 2 makes provision as to which Health Board, or the circumstances in which the Agency, will be under a duty to carry out a consultation under the Regulations.

Regulation 3 prescribes that a Health Board or the Agency shall be under a duty to consult local health councils, local authorities and trade unions.

Regulation 4 prescribes the method and a period of three months for consultation.

Regulation 5 provides for the Health Board or Agency to report the results of the consultation to the Secretary of State.