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STATUTORY INSTRUMENTS

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**2001 No. 3786**

**NATIONAL HEALTH SERVICE, ENGLAND  
LOCAL GOVERNMENT, ENGLAND**

**The National Health Service Trusts (Membership and  
Procedure) Amendment (No. 2) 2001 (England) Regulations**

*Made* - - - - 27th November 2001  
*Laid before Parliament* 28th November 2001  
*Coming into force* - - 19th December 2001

The Secretary of State for Health, in exercise of the powers conferred by section 126(4) of the National Health Service Act 1977(1), section 5(7) of the National Health Service and Community Care Act 1990(2) 45(7) of the Health and Social Care Act 2001(3), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement, interpretation and extent**

1.—(1) These Regulations may be cited as the National Health Service Trusts (Membership and Procedure) Amendment (No. 2) 2001 (England) Regulations 2001 and shall come into force on 19th December 2001.

(2) In these Regulations—

“the principal Regulations” means the National Health Service Trusts (Membership and Procedure) Regulations 1990(4).

(3) These Regulations extend to England only.

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- (1) 1977 c. 49; section 126(4) was amended by section 65(2) of the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), by paragraph 37(6) of Schedule 4 to the Health Act 1999 (c. 8) (“the 1999 Act”) and by paragraph 5(13)(b) of Schedule 5 to the Health and Social Care Act 2001 (c. 15) (“the 2001 Act”); see section 128(1) of the 1977 Act, as amended by section 26(2) (i) and (g) of the 1990 Act, for the definition of “regulations”.
- (2) 1990 c. 19; section 5(7) was amended by paragraph 69(1) of Schedule 1 to the Health Authorities Act 1995 (c. 17). The functions of the Secretary of State under these provisions and the relevant provisions of the 1977 Act are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of, and the entry for the 1977 Act and the 1990 Act in Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 S.I. 1999/672, as amended by section 66(5) of the 1999 Act. See also section 68(1) of the 2001 Act.
- (3) 2001 c. 15. See section 66 for the definition of “regulations” and “relevant authority” in relation to, and section 70(5) for the extent of, section 45.
- (4) S.I. 1990/2024, as amended by S.I. 1990/2160, S.I. 1996/1755, S.I. 1997/2990, S.I. 1998/1975, S.I. 1999/945, S.I. 2000/2434 and S.I. 2001/2629.

### **Amendment to regulation 1 of the principal Regulations**

2. In regulation 1(2) of the principal Regulations (interpretation), in the appropriate place, insert the following definitions—

““Care Trust” means an NHS Trust designated as a Care Trust pursuant to section 45(1) of the Health and Social Care Act 2001;”;

““NHS Trust” includes a Care Trust;”;

““relevant local authority” means a local authority which is a party to LA delegation arrangements with the NHS Trust;(5).”

### **Amendment of regulation 2 of the principal Regulations**

3.—(1) Regulation 2 of the principal Regulations (maximum number of directors) shall be amended as follows.

(2) In both paragraphs (1) and (2), for “paragraph (3)” substitute “paragraphs (3) and (4)”.

(3) After paragraph (3), add the following paragraph—

“(4) In the case of a Care Trust—

(a) the maximum number of directors shall be fourteen, excluding the Chairman; and

(b) the number of executive directors shall not exceed 7 and nor shall it exceed the number of non-executive directors.”.

### **Substitution of regulation 3 of the principal Regulations**

4. For Regulation 3 of the principal Regulations (appointment of directors), substitute the following regulation—

#### **“Appointment of directors**

3.—(1) Subject to regulation 4(5), the non-executive directors of an NHS trust shall be appointed by the Secretary of State.

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

### **Amendment of regulation 4 of the principal Regulations**

5. After paragraph (3) of regulation 4 of the principal Regulations (qualifications for appointments), add the following new paragraphs—

“(4) The executive directors of a Care Trust shall include, in addition to those directors specified in paragraph (1), a person with experience of the health-related functions of local authorities.

(5) The non-executive directors of a Care Trust shall include at least one member of each relevant local authority, appointed by the Secretary of State following nomination by that authority,(6).”

### **Amendment of regulation 5 of the principal Regulations**

6. In regulation 5 of the principal Regulations (persons to be regarded as executive directors), after paragraph (b), add “or

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(5) See section 45(11) of the 2001 Act for the definition of “LA delegation arrangements”.

(6) See section 45(11) of the 2001 Act for the definition of “health-related functions”.

(c) is a person mentioned in regulation 4(4)”.

#### **Amendment of regulation 7 of the principal Regulations**

7.—(1) Regulation 7 of the principal Regulations (tenure of office of chairman and directors) shall be amended as follows.

(2) In paragraph (1), after the words “subject to”, insert the words “paragraph (1A) and”.

(3) After paragraph (1), insert the following paragraph—

“(1A) A non-executive director of a Care Trust who is a person mentioned in regulation 4(5) shall be appointed for a period not exceeding his remaining term of office as a member of the local authority.”.

#### **Amendment of regulation 8 of the principal Regulations**

8.—(1) Regulation 8 of the principal Regulations (tenure and suspension of tenure of office of executive directors) shall be amended as follows.

(2) At the beginning of paragraph (2), insert “Subject to paragraph (2A),”.

(3) After paragraph (2), insert the following paragraph—

“(2A) In the case of a Care Trust, the relevant committee shall not terminate the tenure of office of a director under paragraph (2) unless it has consulted each relevant local authority.”.

#### **Amendment of regulation 9 of the principal Regulations**

9.—(1) Regulation 9 of the principal Regulations (termination of tenure of office of chairman and non-executive directors) shall be amended as follows.

(2) At the beginning of paragraphs (3), (4) and (6), insert “Subject to paragraph (8),”.

(3) After paragraph (7), add the following paragraphs—

“(8) In the case of a Care Trust the Secretary of State shall not terminate the tenure of office of a chairman or non-executive director under paragraph (3), (4) or (6) unless he has consulted each relevant local authority.

(9) Where a relevant local authority notifies the Secretary of State in writing that they no longer wish a relevant director to continue as a director of the Care Trust the Secretary of State shall forthwith terminate the tenure of office of that director.

(10) In paragraph (9), a relevant director means a director nominated by the authority in accordance with regulation 4(5).

(11) If the chairman or a non-executive director of a Care Trust who is a member of a local authority is suspended from being a member of that authority by virtue of a decision of a case tribunal made under section 79 of the Local Government Act 2000(7) he shall be suspended from performing his functions as a member of the Care Trust for the period of the suspension.”.

#### **Amendment of regulation 11 of the principal Regulations**

10. In regulation 11 of the principal Regulations (disqualification for appointment of chairman and non-executive directors), after paragraph (1), insert the following paragraph—

“(1A) In the case of a Care Trust, in addition to the circumstances set out in paragraph (1), a person shall be disqualified for appointment as the chairman or non-executive director if he has been dismissed, otherwise than by reason of redundancy, from any paid employment with a local authority.”.

#### **Amendment of regulation 12 of the principal Regulations**

**11.** In regulation 12(3) of the principal Regulations (cessation of disqualification), after the words “regulation 11(1)(c)” insert “or (1A)”.

#### **Amendment of regulation 17 of the principal Regulations**

**12.** In regulation 17 of the principal Regulations (committee for appointing chief officer as director), after “director of the trust”, insert “and in the case of a Care Trust the non-executive directors must include a person mentioned in regulation 4(5)”.

#### **Amendment of regulation 18 of the principal Regulations**

**13.** In regulation 18 of the principal Regulations (committee for appointing executive directors other than chief officer), after “other than the chief officer”, insert “and in the case of a Care Trust the non-executive directors must include a person mentioned in regulation 4(5)”.

#### **Amendment of regulation 19 of the principal Regulations**

**14.** In regulation 19(3) of the principal Regulations (meetings and proceedings of committees and sub-committees), after “subject to”, insert “paragraphs (17), (18) and”.

#### **Amendment of the Schedule to the principal Regulations**

**15.** In the Schedule to the principal Regulations (rules as to meetings and proceedings of NHS trusts)—

- (a) in paragraph 3(5), after “NHS trust”, insert “which is not a Care Trust”.
- (b) after paragraph 3(5), insert the following sub-paragraph—

“(5A) No business shall be transacted at a meeting of a Care Trust unless one third of the whole number of directors are present including, on or after the operational date of the trust, one executive and two non-executive directors one of which non-executive directors shall be a director mentioned in regulation 4(5).”.

Signed by authority of the Secretary of State for Health

27th November 2001

*Jacqui Smith*  
Minister of State,  
Department of Health

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## EXPLANATORY NOTE

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

These Regulations make further amendments to the National Health Service Trusts (Membership and Procedure) Regulations 1990 (“the principal Regulations”). The amendments are in connection with the designation of NHS trusts as Care Trusts (“Care Trusts”).

Regulation 3 makes provision for the maximum numbers of directors of a Care Trust and Regulation 4 deals with the appointment of directors of NHS trusts and Care Trusts.

Regulation 5 amends the principal Regulations to make provision for the membership of Care Trusts so as to include, as an executive director, a person with experience of the health-related functions of local authorities. Regulation 6 makes provision so that at least one local authority member from each partner local authority shall be a non-executive director and regulation 7 makes provision for the tenure of such directors.

Regulation 8 amends the principal Regulations to provide that in the case of Care Trusts an executive director’s tenure of office shall not be terminated unless each relevant local authority has been consulted.

Regulation 9 amends the principal Regulations to make provision for the termination and suspension of non-executive directors of Care Trusts. Where a local authority no longer wishes a director nominated by it to be a director of the trust the Secretary of State shall terminate his tenure of office. It also requires consultation with each relevant local authority before a director’s tenure of office may be terminated under certain provisions. It also provides that where a non-executive director who is a member of a local authority is suspended from being a member of the local authority he is suspended as a member of the Care Trust for the duration of the suspension.

Regulations 10 and 11 amend the principal Regulations to make provision in relation to the disqualification from appointment as the chairman or non-executive director of a Care Trust.

Regulations 12, 13 and 14 make provision for the constitution of the committees responsible for appointing the officers of a Care Trust.

Regulation 15 amends the Schedule to the principal Regulations to make provision for rules as to meetings and proceedings of Care Trusts.