

2010 No. 589

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service Trusts (Trust Funds: Appointment of Trustees) (Amendment) Order 2010

Made - - - - *3rd March 2010*

Coming into force - - *17th March 2010*

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 272(7) and (8) and 273(1) of, and paragraph 10 of Schedule 4 to, the National Health Service Act 2006(a).

Citation, commencement and interpretation

1.—(1) This Order may be cited as the National Health Service Trusts (Trust Funds: Appointment of Trustees) (Amendment) Order 2010 and shall come into force on 17th March 2010.

(2) In this Order, “the Appointment Order” means the National Health Service Trusts (Trust Funds: Appointment of Trustees) Order 2000(b).

Amendment of article 1 of the Appointment Order

2. In article 1 of the Appointment Order (citation, commencement and interpretation), in paragraph (2)—

(a) for the definition of “the Act” substitute—

““the Act” means the National Health Service Act 2006;” and

(b) after the definition of “the Act”, insert—

““company” means a company as defined in section 1(1) of the Companies Act 2006(c);

“executive director” means a director who is an employee of the company;

“non-executive director” means a director who is not an employee of the company;”.

Amendment of article 2 of the Appointment Order

3. In article 2(1) of the Appointment Order (appointment of trustees), for “section 11(1) of the Act (trust funds and trustees of NHS trusts)” substitute “paragraph 10(1) of Schedule 4 to the Act (trust funds and trustees)”.

(a) 2006 c.41. The powers of the Secretary of State under the Act, as exercised in making these Regulations, are exercisable only in relation to England, by virtue of section 271(1) of the Act.
(b) S.I. 2000/212, relevant amending instrument is S.I. 2000/3116.
(c) 2006 c.46.

Amendment of article 3 of the Appointment Order

4. For article 3 of the Appointment Order (termination and suspension of appointment) substitute—

“3.—(1) The Secretary of State may terminate a trustee’s tenure of office where the Secretary of State is of the opinion that—

- (a) it is not in the interests of the Trust or of the health service or of the administration of any trust funds that the trustee should continue to hold office; or
- (b) in the case of a trustee that is a company, there has been a breach of any of the conditions in article 4(2).

(2) Where the Secretary of State is of the opinion referred to in paragraph (1), the Secretary of State may suspend the trustee from office, pending a decision on whether to terminate the trustee’s tenure of office.”

Insertion of article 4 to the Appointment Order

5. After article 3 of the Appointment Order add the following article—

“Appointment of company subject to conditions

4.—(1) The Secretary of State must not appoint a company as a trustee for the Trust, other than in relation to the Barts and the London National Health Service Trust.

(2) Where the Secretary of State appoints a company as a trustee any such appointment shall be subject to the following conditions, which must be included in the company’s constitution—

- (a) the company must be incorporated as a company limited by guarantee, established for exclusively charitable purposes and registered with the Charities Commission under the Charities Act 1993(a);
- (b) the objects of the company must include holding property as set out in paragraph 10(1) of Schedule 4 to the Act;
- (c) the number of non-executive directors must exceed the number of executive directors;
- (d) the non-executive directors of the company must be appointed by the Secretary of State;
- (e) when appointing executive directors, the company must have regard to the guidance entitled “Trustees for NHS Charities – Guidance on recruitment and selection” published by the Appointments Commission on 1st March 2010(b), as if that guidance applied to the appointment of executive directors;
- (f) the company must have systems in place for the annual appraisal and performance management of its directors;
- (g) the board of directors of the company must ratify any Secretary of State request to terminate the tenure of office of a non-executive director on the grounds that the Secretary of State considers it is not in the interests of the Trust or of the health service or of the administration of any trust funds that a non-executive director should continue to hold office.”.

(a) 1993 c. 10.

(b) The Appointments Commission is a body corporate established by the Health Act 2006 to have the functions conferred upon it under that Act, including the Secretary of State’s appointment functions in relation to chairmen, non-executive members and trustees of NHS bodies. The guidance is available at www.appointments.org.uk.

Signed by authority of the Secretary of State for Health

3rd March 2010

Mike O'Brien
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the National Health Service Trusts (Trust Funds: Appointment of Trustees) Order 2000 (the “Appointment Order”), which provides for the appointment of trustees for National Health Service trusts specified in the Schedule, to hold property for the purposes of the NHS trust for which the trustees are appointed or for any other purposes relating to the NHS.

Article 3 of the Order amends the provision of the Appointment Order which specifies that trustees are appointed by the Secretary of State, so as to replace the reference to section 11(1) of the National Health Service and Community Care Act 1990 which has been replaced by paragraph 10 of Schedule 4 to the National Health Service Act 2006.

Article 4 of the Order amends the provisions of the Appointment Order relating to the termination and suspension of trustees.

Article 5 inserts a new article 4 of the Appointment Order, to provide that the Secretary of State may not appoint a company as a trustee except in relation to the Barts and the London National Health Service Trust and to specify the conditions to which any such appointment is subject.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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