
WELSH STATUTORY INSTRUMENTS

2009 No. 1385

The Public Health Wales National Health Service Trust (Membership and Procedure) Regulations 2009

PART II

Membership

Maximum number of directors

- 2.—(1) The maximum number of directors of the Trust will be 11 excluding the chair.
- (2) The Trust may have no more than 6 non-executive directors (excluding the chair), and no more than 5 executive directors.

Appointment of directors

- 3.—(1) The non-executive directors of the Trust will be appointed by the Welsh Ministers in accordance with the provisions of Schedule 1.
- (2) The executive directors will be appointed by the relevant committee.

Executive Directors

4. The executive directors of the Trust will be—
- (a) the chief officer;
 - (b) the chief finance officer;
 - (c) three other directors appointed by the Trust.

Non-Executive Directors

- 5.—(1) The non-executive directors of the Trust will include—
- (a) a person nominated by a university in Wales with teaching or research specialism in public health;
 - (b) a person nominated by a local authority or local authorities in Wales;
 - (c) a person who is an employee or member of a voluntary sector organisation in Wales;
 - (d) a person who is an officer of a trade union or other employee representative body representing staff of the Trust.
- (2) The Welsh Ministers may determine the nominating local authority or local authorities for the purposes of regulation 5(1)(b).

Persons to be regarded as executive directors

- 6.—(1) A person who is not an employee of the Trust but who—

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- (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 or her employers to work for the Trust;

is nevertheless, on appointment as a director, to be regarded as an executive director of the Trust appointed under regulation 4(c) rather than a non-executive director of the Trust.

(2) Paragraph (1) does not apply to the non-executive director referred to in paragraph (a) of regulation 5(1).

Joint directors

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

Tenure of office of chair and directors

8.—(1) Subject to regulation 10, the chair and non-executive directors of the Trust are appointed for such period not exceeding four years as the Welsh Ministers may specify on making the appointment.

(2) Subject to regulation 9, the tenure of office of executive directors, other than the chief officer and chief finance officer, will be for such period as the relevant committee may specify on making the appointment.

Tenure and suspension of tenure of office of executive directors

9.—(1) Subject to regulation 8(2), an executive director of the Trust will hold office—

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

(2) If the relevant committee is of the opinion that it is not in the interests of the Trust that an executive director of the Trust other than the chief officer or chief finance officer should continue to hold office as director the relevant committee will immediately terminate his or her tenure of office.

(3) If an executive director of the Trust is suspended from his or her post in the Trust that director will be suspended from performing his or her functions as director for the period of his or her suspension.

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

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

10.—(1) The chair or a non-executive director of the Trust may resign his or her office at any time during the period for which he or she was appointed by giving notice in writing to the Welsh Ministers.

(2) Where during his or her period of directorship a non-executive director of the Trust is appointed chair of the Trust, his or her tenure of office as non-executive director will terminate when his or her appointment as chair takes effect.

(3) If the Welsh Ministers are of the opinion that it is not in the interests of the health service for a person appointed as a chair or non-executive director of the Trust to continue to hold that office, the Welsh Ministers may immediately terminate that person's tenure of office.

(4) If a chair or non-executive director of the Trust has not attended a meeting of the Trust for a period of six months the Welsh Ministers will immediately terminate his or her tenure of office unless the Welsh Ministers are satisfied that—

- (a) the absence was due to a reasonable cause; and
- (b) the chair or non-executive director will be able to attend meetings of the Trust within such period as the Welsh Ministers consider reasonable.

(5) Where a person has been appointed the chair or non-executive director of the Trust—

- (a) if that person becomes disqualified for appointment under regulation 15 the Welsh Ministers will immediately notify him or her in writing of such disqualification; or
- (b) if it comes to the notice of the Welsh Ministers that at the time of that person's appointment he or she was so disqualified, they will immediately declare that the person was not duly appointed and so notify him or her in writing,

and upon receipt of any such notification, his or her tenure of office, if any, will be terminated and that person will cease to act as chair or non-executive director.

(6) A person appointed as chair or non-executive director of the Trust must immediately notify the Trust if that person becomes disqualified for appointment under regulation 15.

(7) If it appears to the Welsh Ministers that the chair or non-executive director of the Trust has failed to comply with regulation 24 (disclosure etc on account of pecuniary interest) they may immediately terminate that person's tenure of office.

(8) Where any one of the non-executive directors referred to respectively in—

- (a) paragraph (c) of regulation 5(1) cease to be a member or employee of the voluntary organisation in Wales;
- (b) paragraph (d) of regulation 5(1) cease to be an officer of the trade union or employee representative body

the Welsh Ministers will terminate his or her appointment as non-executive director.

Suspension of chair and non-executive directors

11.—(1) The Welsh Ministers may suspend an appointee from performing the appointee's functions as chair or director while the Welsh Ministers consider whether—

- (a) to remove the person from office under regulation 10(3) or (7); or
- (b) the person is disqualified for appointment under regulation 15, or was so disqualified at the time of appointment.

(2) The Welsh Ministers will notify a person suspended under paragraph (1) of the decision to suspend, and the decision will take effect upon receipt of such notification.

(3) Subject to paragraphs (4) and (5), a period of suspension under paragraph (1) will not exceed six months.

(4) The Welsh Ministers may at any time review a suspension and will review a suspension after three months if so requested in writing by the person who has been suspended.

(5) On reviewing a suspension, the Welsh Ministers may—

- (a) revoke the suspension, in which case it ceases to have effect; or
- (b) suspend the appointee from performing the appointee's functions as chair or director for a period of not more than six months from the expiry of the current period of suspension.

Suspension: effect on maximum number of directors and on meetings

- 12.**—(1) This regulation applies where an appointee is suspended under regulation 11.
- (2) Where this regulation applies —
- (a) references in paragraphs 2(2) and 3(5)) of Schedule 2 to the whole number of directors mean the whole number of directors excluding any directors who are suspended under regulation 11;
 - (b) references in paragraph 2(3) of Schedule 2 to a director means a director other than a director who is suspended under regulation 11.

Suspension of chair: appointment of vice-chair

- 13.**—(1) This regulation applies where the chair of the Trust is suspended under regulation 11.
- (2) If a vice-chair has been appointed under regulation 18 (appointment of vice-chair), that appointment ceases to have effect from the time that the chair is suspended.
- (3) The Welsh Ministers may, for the purpose of enabling the proceedings of the Trust to be conducted in the absence of the chair, appoint a non-executive director of the Trust to be vice-chair.
- (4) The appointment of a vice-chair under paragraph (3) must be for such a period, not exceeding the shorter of—
- (a) the period for which the chair is suspended; and
 - (b) the remainder of the non-executive director's term as a director of the Trust,
- as the Welsh Ministers may specify on making the appointment.
- (5) When the period for which a person is appointed as vice-chair expires, the Welsh Ministers may re-appoint the person, or appoint another non-executive director, as vice-chair in accordance with paragraph (3).
- (6) Any person appointed under paragraph (3) may at any time resign from the office of vice-chair by giving notice in writing to the Welsh Ministers.
- (7) The Welsh Ministers may terminate a person's appointment as vice-chair under paragraph (3) if the Welsh Ministers are of the opinion that it would be in the best interests of the Trust for another non-executive director of the Trust to be vice-chair.
- (8) If—
- (a) a person resigns from the office of vice-chair under paragraph (6); or
 - (b) the Welsh Ministers terminate a person's appointment as vice-chair under paragraph (7),
- the Welsh Ministers may appoint another non-executive director as vice-chair in accordance with paragraph (3).

Eligibility for reappointment

- 14.**—(1) Subject to paragraph 3 and regulation 15 the chair or non-executive director of the Trust will, on the termination of the period of his or her tenure of office, be eligible for reappointment.
- (2) An executive director of the Trust appointed under regulation 4(3) to whom regulation 6 applies will on the termination of the period of his or her tenure of office be eligible for reappointment.
- (3) A person may not hold office as non-executive director for a total period of more than eight years.

Disqualification for appointment of chair and non-executive directors

15.—(1) Subject to regulation 16 a person is disqualified for appointment as the chair or non-executive director of the Trust if—

- (a) that person has within the preceding five years been convicted in the United Kingdom, any of the Channel Islands or the Isle of Man of any offence and has had passed on him or her 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) that person is the subject of a bankruptcy restrictions order or an interim order or has made a composition or arrangement with creditors; or
- (c) that person has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body; or
- (d) that person is a person whose tenure of office as the chair, member or director or governor of a health service body has been terminated because his or her appointment is not in the interests of the health service or the health service body in question, for non-attendance at meetings or for non-disclosure of a pecuniary interest; or
- (e) that person is a chair, member, director or employee of a health service body other than an NHS foundation trust; or
- (f) that person is a chair, director or employee of an NHS foundation trust; or
- (g) that person is the chair or another member of the Independent Regulator of NHS Foundation Trusts.

(2) For the purposes of paragraph (1)(a) the date of conviction is 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 will not be treated as having been in paid employment by reason only of his or her being chair, member or director or, in the case of an NHS foundation trust his or her being chair, governor, or non-executive director of, the health service body in question.

(4) A person will not be disqualified by paragraph (1)(e) from being the chair or a non-executive director of the Trust during the period between the date on which it is established and its operational date by virtue of being the chair or a non-executive director of another NHS trust.

Cessation of disqualification

16.—(1) Subject to paragraph (2) where a person is disqualified under regulation 15(1)(c) (dismissed employees) that person may, after the expiry of a period of not less than two years, apply in writing to the Welsh Ministers to remove the disqualification and the Welsh Ministers may direct that the disqualification will cease.

(2) Where the Welsh Ministers refuse 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.

(3) Where a person is disqualified under regulation 15(1)(d) (certain chairmen and directors whose appointments have been terminated), the disqualification will cease on the expiry of a period of two years or such longer period as the Welsh Ministers specify when terminating his or her period of office but the Welsh Ministers may on application being made to him or her by that person, reduce the period of disqualification.

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 2 para. 3(1A) inserted by S.I. 2022/251 reg. 36(a)
- reg. 1(2)(f)(ff) added by S.I. 2015/137 Sch. 2 para. 7(4)
- reg. 1(2)(h)(i) added by S.I. 2015/137 Sch. 2 para. 7(2)
- reg. 15(1)(d)(i) words substituted by S.I. 2013/235 Sch. 2 para. 128(3)(b)(ii)
- reg. 15(1)(cha) inserted by S.I. 2012/1641 Sch. 3 para. 12(6)(b)
- reg. 15(1)(ch)(i) words substituted by S.I. 2013/235 Sch. 2 para. 128(6)(b)(ii)
- reg. 15(1)(da) inserted by S.I. 2012/1641 Sch. 3 para. 12(3)(b)
- reg. 15(1)(da) inserted by S.I. 2012/1641 Sch. 3 para. 12(6)(d)
- reg. 15(1)(da) omitted by S.I. 2022/634 reg. 41(3)(c) (Amendment to Welsh text)
- reg. 15(1)(ea) inserted by S.I. 2012/1641 Sch. 3 para. 12(3)(d)
- reg. 15(1)(ea) omitted by S.I. 2022/634 reg. 40(3)(c)
- reg. 15(3)(c) words inserted by S.I. 2013/235 Sch. 2 para. 128(3)(c)(i)
- reg. 15(3)(c) words inserted by S.I. 2013/235 Sch. 2 para. 128(6)(c)(i)
- reg. 15(3)(c) words substituted by S.I. 2013/235 Sch. 2 para. 128(3)(c)(ii)
- reg. 15(3)(c) words substituted by S.I. 2013/235 Sch. 2 para. 128(6)(c)(ii)