
STATUTORY INSTRUMENTS

1991 No. 535

The National Health Service Trusts (Membership and Procedure) (Scotland) Regulations 1991

PART II

MEMBERSHIP

Maximum number and appointment of directors

2.—(1) The maximum number of directors of an NHS trust shall be eleven.

(2) All of the non-executive directors of an NHS trust shall be appointed by the Secretary of State and the executive directors of an NHS trust shall be appointed by the appointing committee in accordance with regulation 12.

Qualification for appointment as executive director

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

- (a) the chief officer;
- (b) the chief finance officer;
- (c) except in the case of an NHS trust mentioned in paragraph (2)
 - (i) a medical practitioner;
 - (ii) a dental practitioner; and
 - (iii) a registered nurse or registered midwife as defined in section 10(7) of the Nurses, Midwives and Health Visitors Act 1979(1).

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

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

(3) Except in the case of a person to be appointed as a non-executive director of an NHS trust for the purposes of paragraph 3(1)(d) of Schedule 7A to the Act, a person who is not an employee of the trust but who—

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

Joint directors

4. Where one person is appointed jointly with one or more others to a post in an NHS trust the holder of which qualifies as such to be an executive director, those persons shall become or be appointed jointly as an executive director, and shall count for the purposes of these Regulations as one person.

Period and termination of appointment: chairman and non-executive directors

5.—(1) Subject to paragraphs (2) to (8), the chairman and non-executive directors of an NHS trust shall be appointed for such period not exceeding four years as the Secretary of State may specify on making the appointment.

(2) The chairman or a non-executive director of an NHS trust may resign office at any time during the period for which he was appointed by giving notice in writing to the Secretary of State to this effect.

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

(4) If the Secretary of State considers 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 he may forthwith terminate his appointment.

(5) If a chairman or non-executive director of an NHS trust has not attended a meeting of the board of directors, or of any committee or sub-committee of the trust of which he is a member, for a period of six months, the Secretary of State shall forthwith terminate his appointment 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 board within such period as the Secretary of State considers reasonable.

(6) Where a person has been appointed to be chairman or a non-executive director of an NHS trust—

- (a) if he becomes disqualified for appointment by virtue of regulation 8 the Secretary of State shall forthwith notify him in writing of such disqualification; or
- (b) if it comes to the notice of the Secretary of State that at the time of his appointment he was so disqualified he shall forthwith declare that he was not duly appointed and so notify him in writing,

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

(7) 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 14(1) (disability of directors: conflict of interest) he may forthwith terminate that person's appointment.

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

Period and termination of appointment: executive directors

6.—(1) Subject to paragraphs (2) to (5), an executive director of an NHS trust who is not the chief officer or chief finance officer shall hold office as such during such period as is specified by the appointing committee on appointing him but for no longer than the period during which he holds a post in the trust.

(2) An executive director of an NHS trust who holds such office by virtue of being the chief officer or chief finance officer, of the trust shall hold such office for so long as he is chief officer or as the case may be chief finance officer, and shall cease to hold such office forthwith and without notice upon ceasing to be chief officer or the chief finance officer.

(3) Except in the case of the chief officer or chief finance officer, if the appointing committee considers that it is not in the interests of the trust that an executive director of the trust should continue to hold office as such then the committee shall forthwith terminate the appointment of that person as a director.

(4) An executive director of an NHS trust who is suspended from his post as an employee of the trust shall be suspended automatically and without notice from performing his functions as a director of the trust during the period of his suspension as such employee.

(5) Except in the case of the chief officer or chief finance officer, an executive director of an NHS trust may resign office as director at any time during the period for which he was appointed as director by giving notice in writing to that effect to the appointing committee.

Eligibility for re-appointment

7.—(1) Subject to regulation 8, the chairman or a non-executive director of an NHS trust shall, on the termination of their period of appointment as such director, be eligible for re-appointment.

(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 appointment as such director be eligible for re-appointment.

Disqualification for appointment: chairman and non-executive directors

8.—(1) Subject to regulation 9, a person shall be disqualified for appointment as the chairman or a 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 in respect of which he has received 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) his estate has been sequestrated or he has otherwise been made or become bankrupt, he has granted a trust deed for the benefit of his creditors, or a curator bonis or judicial factor has been appointed over his affairs; 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 appointment as the chairman, member or director of a health service body has been terminated; or
- (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 29 of the Act 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 days of appeal expire without any appeal having been lodged, or if an appeal has been made, the date of which the appeal is finally disposed of or treated as having been abandoned.

(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 having been the chairman, member or director of the health service body.

(4) A person shall not be disqualified by virtue of paragraph (1)(e) from being the non-executive director referred to in paragraph (3)(1)(d) of Schedule 7A to the Act by reason of his employment with a health service body.

(5) In paragraph (1)(f)—

“general dental practitioner” means a dental practitioner who is providing general dental services in accordance with arrangements made under section 25 of the Act; and

“general medical practitioner” means a medical practitioner who is providing general medical services in accordance with arrangements made under section 19 of the Act.

Cessation of disqualification

9.—(1) Where a person is disqualified under regulation 8(1)(b) by reason of his estate having been sequestrated—

(a) if the sequestration is recalled such disqualification shall cease to have effect on the date of the granting of the recall; or

(b) the disqualification shall cease to have effect on the date of his discharge.

(2) Where a person is otherwise disqualified under regulation 8(1)(b) 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 disqualification arose.

(3) Subject to paragraph (4), where a person is disqualified under regulation 8(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 8(1)(d) (certain chairmen and directors whose appointments have been terminated), the disqualification shall cease on the expiry of the period of two years or such longer period as the Secretary of State specifies when terminating his appointment but the Secretary of State may on application being made to him by that person reduce the period of disqualification.