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## SCHEDULES

### SCHEDULE 7 **E+W**

Section 30

#### CONSTITUTION OF PUBLIC BENEFIT CORPORATIONS

##### *Requirement for a constitution*

- 1 (1) A public benefit corporation must have a constitution.
- (2) As well as any provision authorised or required to be made by this Schedule, the constitution may make further provision (other than provision as to the powers of the corporation) consistent with this Schedule.
- 2 The constitution must name the corporation and, if the corporation is an NHS foundation trust, its name must include the words “NHS foundation trust”.

##### *Eligibility for membership*

- 3 (1) The persons who may become or continue as members of a public benefit corporation are—
  - (a) individuals who live in any area specified in the constitution as the area for a public constituency,
  - (b) individuals employed by the corporation under a contract of employment and, if the constitution so provides, individuals who exercise functions for the purposes of the corporation otherwise than under a contract of employment with the corporation,
  - (c) if the constitution so provides, individuals who have attended any of the corporation's hospitals as either a patient or the carer of a patient within a period specified in the constitution.
- (2) The constitution may specify one or more areas as areas for public constituencies, each of which must be an electoral area for the purposes of local government elections in England and Wales or an area consisting of two or more such electoral areas.
- (3) A person may become or continue as a member of the corporation by virtue of sub-paragraph (1)(b) only if—
  - (a) he is employed by the corporation under a contract of employment which has no fixed term or has a fixed term of at least 12 months, or
  - (b) he has been continuously employed by the corporation for at least 12 months or, where he exercises functions for the purposes of the corporation as mentioned in that sub-paragraph, he has done so continuously for such a period.
- (4) Chapter 1 of Part 14 of the Employment Rights Act 1996 (c. 18) applies for the purpose of determining whether an individual has been continuously employed by the corporation, or has continuously exercised functions for the purposes of the corporation, as it applies for the purposes of that Act.

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- (5) The constitution may divide those who come within sub-paragraph (1)(b) into two or more descriptions of individuals.
- (6) An individual providing care in pursuance of a contract (including a contract of employment), or as a volunteer for a voluntary organisation, does not come within sub-paragraph (1)(c).
- (7) The constitution may divide those who come within sub-paragraph (1)(c) into three or more descriptions of individuals, one of which must comprise the carers of patients.
- (8) The constitution may make further provision as to the circumstances in which a person may not become or continue as a member.

#### *Constituencies*

- 4 (1) Members of a public benefit corporation are referred to as follows.
  - (2) Those who live in an area specified in the constitution as an area for any public constituency are referred to collectively as a public constituency.
  - (3) Those who come within paragraph 3(1)(b) are referred to collectively as the staff constituency and, if the power in paragraph 3(5) is exercised, each description of members is referred to as a class within that constituency.
  - (4) Those who come within paragraph 3(1)(c) are referred to collectively as the patient's constituency and, if the power in paragraph 3(7) is exercised, each description of members is referred to as a class within that constituency.
  - (5) A person who is a member of a constituency, or of a class within a constituency, may not while that membership continues be a member of any other constituency or class.
  - (6) A person who comes within paragraph 3(1)(b) may not become or continue as a member of any constituency other than the staff constituency.
- 5 The constitution must require a minimum number of members of each constituency or, where there are classes within the constituency, of each class.

#### *Becoming a member*

- 6 (1) An individual who is eligible to become a member of a public benefit corporation may do so on an application made to the corporation.
- (2) The constitution may provide for any individual who is—
  - (a) eligible to become a member of the staff constituency, and
  - (b) invited by the corporation to become a member of that constituency (and, where there are classes within the constituency, a member of the appropriate class),
 to become a member of the corporation as a member of that constituency (and class) without an application being made, unless he informs the corporation that he does not wish to do so.
- (3) The constitution may provide for any individual who is—
  - (a) eligible to become a member of the patients' constituency (otherwise than as the carer of a patient), and

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- (b) invited by the corporation to become a member of a specified constituency (and where there are classes within the constituency, a member of the specified class),  
to become a member of the corporation as a member of that constituency (and class) without an application being made, unless he informs the corporation that he does not wish to do so.
- (4) The constituency and, where applicable, class to be specified—
  - (a) if he is eligible to be a member of any public constituency, is that constituency,
  - (b) otherwise, is the patients' constituency and, where applicable, the class of which he is eligible to become a member.

#### *Board of Governors*

- 7 (1) A public benefit corporation has a board of governors.
- (2) Only members of the corporation and persons appointed under the following provisions may become or continue as members of the board.
- (3) The members of the board other than the appointed members must be chosen by election.
- (4) Members of a constituency or, where there are classes within it, members of each class may elect any of their number to be a member of the board.
- 8 (1) The following may not become or continue as members of the board of governors—
  - (a) a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged,
  - (b) a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it,
  - (c) a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- (2) The constitution may make further provision as to the circumstances in which a person may not become or continue as a member of the board.
- 9 (1) More than half of the members of the board of governors must be elected by members of the corporation other than those who come within paragraph 3(1)(b).
- (2) At least three members of the board must be elected by the staff constituency or, where there are classes within it, at least one member of the board must be elected by each class and at least three members must be elected altogether.
- (3) At least one member of the board must be appointed by a Primary Care Trust for which the corporation provides goods or services.
- (4) At least one member of the board must be appointed by one or more qualifying local authorities.
- (5) A qualifying local authority is a local authority for an area which includes the whole or part of an area specified in the constitution as the area for a public constituency.

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- (6) If any of the corporation's hospitals includes a medical or dental school provided by a university, at least one member of the board must be appointed by that university.
- (7) An organisation specified in the constitution as a partnership organisation may appoint a member of the board.
- 10 (1) An elected member of the board of governors may hold office for a period of three years.
- (2) Such a member is eligible for re-election at the end of that period.
- (3) But such a member ceases to hold office if he ceases to be a member of the corporation.
- 11 The corporation may pay travelling and other expenses to members of the board of governors at rates decided by the corporation.
- 12 The constitution must provide for the chairman of the corporation or (in his absence) another person to preside at meetings of the board of governors.
- 13 (1) The constitution must provide for meetings of the board of governors to be open to members of the public.
- (2) But the constitution may provide for members of the public to be excluded from a meeting for special reasons.
- 14 (1) The constitution must make provision as to—
- (a) the conduct of elections for membership of the board,
  - (b) the appointment of persons to membership,
  - (c) the practice and procedure of the board,
  - (d) the removal of a member from office.
- (2) The constitution may make further provision about the board.

#### *Directors*

- 15 (1) A public benefit corporation has a board of directors.
- (2) The constitution must provide for all the powers of the corporation to be exercisable by the board of directors on its behalf.
- (3) But the constitution may provide for any of those powers to be delegated to a committee of directors or to an executive director.

**Modifications etc. (not altering text)**

**C1** Sch. 7 para. 15(3) modified by 1983 c. 20, s. 142B (as inserted (24.7.2007) by [Mental Health Act 2007](#) (c. 12), [ss. 45\(3\), 56\(1\)](#); [S.I. 2007/2156](#), art. 2)

- 16 (1) The board consists of—
- (a) executive directors, one of whom is the chief executive (and accounting officer) and another the finance director,
  - (b) non-executive directors, one of whom is the chairman.

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- (2) One of the executive directors must be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984 (c 24)); and another must be a registered nurse or a registered midwife.
  - (3) A person may not be appointed as an executive director if he is within paragraph 8(1).
  - (4) A person may be appointed as a non-executive director only if—
    - (a) he is a member of a public constituency or the patients' constituency, or
    - (b) where any of the corporation's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university,and he is not within paragraph 8(1).
- 17
- (1) It is for the board of governors at a general meeting to appoint or remove the chairman and the other non-executive directors.
  - (2) Removal of a non-executive director under sub-paragraph (1) requires the approval of three-quarters of the members of the board.
  - (3) It is for the non-executive directors to appoint or remove the chief executive.
  - (4) It is for a committee consisting of the chairman, the chief executive and the other non-executive directors to appoint or remove the executive directors.
  - (5) The appointment of a chief executive requires the approval of the board of governors.
- 18
- (1) It is for the board of governors at a general meeting to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors.
  - (2) The corporation must establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive directors; but the constitution may make provision for those matters to be decided pending the establishment of such a committee.

*Initial directors of former NHS trusts*

- 19
- (1) This paragraph applies, where the application for authorisation is made under section 33, to the exercise of the powers mentioned in paragraph 17 to appoint the initial non-executive directors and the initial chief executive.
  - (2) The power to appoint the initial chairman of the corporation must be exercised by appointing the chairman of the NHS trust, if he wishes to be appointed.
  - (3) The power to appoint the other initial non-executive directors of the corporation must be exercised, so far as possible, by appointing any of the non-executive directors of the NHS trust (other than the chairman) who wish to be appointed.
  - (4) A person appointed in accordance with sub-paragraph (2) or (3) must be appointed for the unexpired period of his term of office as chairman or non-executive director of the NHS trust; but if, on any such appointment, that period is less than 12 months, he must be appointed for 12 months.
  - (5) The power to appoint the initial chief executive of the corporation must be exercised by appointing the chief officer of the NHS trust, if he wishes to be appointed.

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- (6) Sub-paragraphs (a) and (b) of paragraph 16(4) do not apply to the appointment of any initial non-executive director in pursuance of this paragraph; and paragraph 17(5) does not apply to the appointment of the initial chief executive of the corporation in pursuance of sub-paragraph (5).

*Register of members etc*

- 20 (1) A public benefit corporation must have—
- (a) a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs,
  - (b) a register of members of the board of governors,
  - (c) a register of interests of the members of the board of governors,
  - (d) a register of directors,
  - (e) a register of interests of the directors.
- (2) The constitution may make further provision about the registers including, in particular, admission to, and removal from, the registers.
- 21 The constitution must make provision for dealing with conflicts of interest of members of the board of governors and of the directors.
- 22 (1) A public benefit corporation must make the following documents available for inspection by members of the public free of charge at all reasonable times—
- (a) a copy of the current constitution,
  - (b) a copy of the current authorisation,
  - (c) a copy of the latest annual accounts and of any report of the auditor on them,
  - (d) a copy of the latest annual report,
  - (e) a copy of the latest information as to its forward planning,
  - (f) a copy of any notice given under section 52.
- (2) Any person who requests it must be provided with a copy of or extract from any of the above documents.
- (3) The corporation is also to make the registers mentioned in paragraph 20 available for inspection by members of the public, except in circumstances prescribed; and, so far as the registers are required to be available—
- (a) they must be available free of charge at all reasonable times,
  - (b) a person who requests it must be provided with a copy of or extract from them.
- (4) If the person requesting a copy or extract under this paragraph is not a member of the corporation, the corporation may impose a reasonable charge for doing so.

*Auditor*

- 23 (1) A public benefit corporation must have an auditor.
- (2) It is for the board of governors to appoint or remove the auditor at a general meeting of the board.
- (3) An officer of the Audit Commission may be the auditor if he is appointed by the board with the agreement of the Commission.

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- (4) But a person may not be appointed as auditor unless he (or, in the case of a firm, each of its members) is a member of one or more of the following bodies—
  - (a) the bodies mentioned in section 3(7)(a) to (e) of the Audit Commission Act 1998 (c. 18),
  - (b) any other body of accountants established in the United Kingdom and approved by the regulator for the purposes of this paragraph.
- (5) Where an officer of the Audit Commission is appointed as auditor, the Commission must charge the public benefit corporation such fees for his services as will cover the full cost of providing them.
- (6) The corporation must establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.
- (7) In this paragraph “the Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales.

#### *Accounts*

- 24 (1) A public benefit corporation must keep accounts in such form as the regulator may with the approval of the Treasury direct.
- (2) The accounts must be audited by the corporation's auditor.
- (3) But the Comptroller and Auditor General may examine—
  - (a) the accounts,
  - (b) any records relating to them, and
  - (c) any report of the auditor on them.
- (4) If trustees are appointed under section 51, the Comptroller and Auditor General may also examine—
  - (a) the accounts kept by the trustees,
  - (b) any records relating to them, and
  - (c) any report of an auditor on them.
- (5) In auditing the accounts the auditor must comply with any directions given by the regulator as to the standards, procedures and techniques to be adopted.
- 25 (1) A public benefit corporation must prepare in respect of each financial year annual accounts in such form as the regulator may with the approval of the Treasury direct.
- (2) In preparing its annual accounts, the corporation must comply with any directions given by the regulator with the approval of the Treasury as to—
  - (a) the methods and principles according to which the accounts must be prepared,
  - (b) the information to be given in the accounts.
- (3) In determining the form and content of the annual accounts the regulator must aim to ensure that the accounts present a true and fair view.
- (4) The corporation must—
  - (a) lay a copy of the annual accounts, and any report of the auditor on them, before Parliament, and

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- (b) once it has done so, send copies of those documents to the regulator.
- (5) The constitution must provide for the functions of the corporation under this paragraph to be delegated to the accounting officer.
- (6) In this paragraph and paragraph 27 “financial year” means—
  - (a) the period beginning with the date on which the corporation is authorised under section 35 and ending with the next 31st March, and
  - (b) each successive period of twelve months beginning with 1st April.

*Annual reports and forward plans*

- 26 (1) A public benefit corporation must prepare annual reports and send them to the regulator.
- (2) The reports must give—
  - (a) information on any steps taken by the corporation to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) of the patients' constituency is representative of those eligible for such membership,
  - (b) any other information the regulator requires.
- (3) It is for the regulator to decide—
  - (a) the form of the reports,
  - (b) when the reports must be sent to it,
  - (c) the periods to which the reports are to relate.
- 27 (1) A public benefit corporation must give information to the regulator as to its forward planning in respect of each financial year.
- (2) The document containing the information must be prepared by the directors.
- (3) In preparing the document the directors must have regard to the views of the board of governors.

*Meeting of board of governors to consider annual accounts and reports*

- 28 The following documents must be presented to the board of governors of a public benefit corporation at a general meeting—
  - (a) the annual accounts,
  - (b) any report of the auditor on them,
  - (c) the annual report.

*Instruments etc*

- 29 (1) The constitution must make provision for the authentication of the fixing of the corporation's seal.
- (2) A document purporting to be duly executed under the corporation's seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.



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