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SCHEDULES

SCHEDULE 3

Section 18

NHS TRUSTS ESTABLISHED UNDER SECTION 18

PART 1

CONSTITUTION, ESTABLISHMENT, ETC

Status

- 1 Each NHS trust is a body corporate.
- 2 (1) An NHS trust must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
(2) An NHS trust's property must not be regarded as property of, or property held on behalf of, the Crown.

Board of directors

- 3 (1) Each NHS trust has a board of directors consisting of—
 - (a) a chairman appointed by the Welsh Ministers, and
 - (b) executive and non-executive directors.
(2) Sub-paragraph (1)(b) is subject to paragraph 7(2).
(3) An executive director is a director who is an employee of the NHS trust, and a non-executive director is a director who is not an employee of the NHS trust.
(4) Sub-paragraph (3) is subject to any provision made by regulations under paragraph 4(1)(d).

Regulations

- 4 (1) The Welsh Ministers may by regulations make provision with respect to—
 - (a) the qualifications for and the tenure of office of the chairman and directors of an NHS trust (including the circumstances in which they cease to hold, or may be removed from, office or may be suspended from performing the functions of the office),
 - (b) the persons by whom the directors and any of the officers must be appointed and the manner of their appointment,
 - (c) the maximum and minimum numbers of the directors,
 - (d) the circumstances in which a person who is not an employee of the NHS trust is nevertheless, on appointment as a director, to be regarded as an executive rather than a non-executive director,

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- (e) the proceedings of the NHS trust (including the validation of proceedings in the event of a vacancy or defect in appointment), and
 - (f) the appointment, constitution and exercise of functions by committees and sub-committees of the NHS trust (whether or not consisting of or including any members of the board).
- (2) Regulations under sub-paragraph (1) may, in particular, make provision to deal with cases where the post of any officer of an NHS trust is held jointly by two or more persons or where the functions of such an officer are in any other way performed by more than one person.

Provision to be made by first NHS trust order

- 5 (1) The first NHS trust order made in relation to any NHS trust must specify—
- (a) the name of the NHS trust,
 - (b) the functions of the NHS trust,
 - (c) the number of executive directors and non-executive directors,
 - (d) where the NHS trust has a significant teaching commitment, a provision to secure the inclusion in the non-executive directors referred to in paragraph (c) of a person appointed from a university with a medical or dental school specified in the order,
 - (e) the operational date of the NHS trust, and
 - (f) if a scheme is to be made under paragraph 8, the Primary Care Trust, Special Health Authority or Local Health Board which is to make the scheme.
- (2) The functions which may be specified in an NHS trust order include a duty to provide goods or services so specified at or from a hospital or other establishment or facility so specified.
- (3) For the purposes of sub-paragraph (1)(d), an NHS trust has a significant teaching commitment in the following cases—
- (a) if the NHS trust is established to provide services at a hospital or other establishment or facility which, in the opinion of the Welsh Ministers, has a significant teaching and research commitment, and
 - (b) in any other case, if the Welsh Ministers so provide in the order.
- (4) In a case where the order contains a provision made by virtue of sub-paragraph (1)(d) and a person who is being considered for appointment by virtue of that provision—
- (a) is employed by the university in question, and
 - (b) would also, apart from this sub-paragraph, be regarded as employed by the NHS trust,
- his employment by the NHS trust must be disregarded in determining whether, if appointed, he will be a non-executive director of the NHS trust.
- (5) The operational date of the NHS trust is the date on which it will begin to undertake the whole of the functions conferred on it.
- (6) An NHS trust order must specify the accounting date of the NHS trust.

Temporary availability of staff etc.

- 6 (1) An NHS trust order may require a Strategic Health Authority, Special Health Authority, Primary Care Trust or Local Health Board to make staff, premises and

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other facilities available to an NHS trust pending the transfer or appointment of staff to or by the NHS trust and the transfer of premises or other facilities to the NHS trust.

- (2) An NHS trust order making provision under this paragraph may make provision with respect to the time when the functions of the Strategic Health Authority, Special Health Authority, Primary Care Trust or Local Health Board under the provision are to come to an end.

Establishment of NHS trust prior to operational date

- 7 (1) An NHS trust order may provide for the establishment of an NHS trust with effect from a date earlier than the operational date of the NHS trust and, during the period between that earlier date and the operational date, the NHS trust has such limited functions for the purpose of enabling it to begin to operate satisfactorily with effect from the operational date as may be specified in the order.
- (2) If an NHS trust order makes the provision referred to in sub-paragraph (1), then, at any time during the period referred to in that sub-paragraph, the NHS trust must be regarded as properly constituted (and may carry out its limited functions accordingly) notwithstanding that, at that time, all or any of the executive directors have not yet been appointed.
- (3) If an NHS trust order makes the provision referred to in sub-paragraph (1), the order may require a Strategic Health Authority, Special Health Authority or Local Health Board to discharge such liabilities of the NHS trust as—
- (a) may be incurred during the period referred to in that sub-paragraph, and
 - (b) are of a description specified in the order.

Transfer of staff to NHS trusts

- 8 (1) This paragraph applies to any person who, immediately before an NHS trust's operational date—
- (a) is employed by a Special Health Authority, Primary Care Trust or Local Health Board to work solely at, or for the purposes of, a hospital or other establishment or facility which will become the responsibility of the NHS trust, or
 - (b) is employed by a Special Health Authority, Primary Care Trust or Local Health Board to work at, or for the purposes of, such a hospital, establishment or facility and is designated for the purposes of this paragraph by a scheme made by the Special Health Authority, Primary Care Trust or Local Health Board specified as mentioned in paragraph 5(1)(f).
- (2) Sub-paragraph (1) is subject to sub-paragraph (6).
- (3) A scheme under this paragraph does not have effect unless approved by the Welsh Ministers.
- (4) Subject to sub-paragraphs (9) to (11), the contract of employment between a person to whom this paragraph applies and the Special Health Authority, Primary Care Trust or Local Health Board by whom he is employed has effect from the operational date as if originally made between him and the NHS trust.
- (5) In particular—

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- (a) all the rights, powers, duties and liabilities of the Special Health Authority, Primary Care Trust or Local Health Board under or in connection with a contract to which sub-paragraph (4) applies are by virtue of this paragraph transferred to the NHS trust on its operational date, and
 - (b) anything done before that date by or in relation to the Special Health Authority, Primary Care Trust or Local Health Board in respect of that contract or the employee is deemed from that date to have been done by or in relation to the NHS trust.
- (6) In any case where—
- (a) an NHS trust order provides for the establishment of an NHS trust with effect from a date earlier than the operational date of the NHS trust,
 - (b) on or after that earlier date but before its operational date the NHS trust makes an offer of employment by the NHS trust to a person who at that time is employed by a Special Health Authority, Primary Care Trust or Local Health Board to work (whether solely or otherwise) at, or for the purposes of, the hospital or other establishment or facility which will become the responsibility of the NHS trust, and
 - (c) as a result of the acceptance of the offer, the person to whom it was made becomes an employee of the NHS trust,
- sub-paragraphs (4) and (5) have effect in relation to that person's contract of employment as if he were a person to whom this paragraph applies and as if any reference in those sub-paragraphs to the operational date of the NHS trust were a reference to the date on which he takes up employment with the NHS trust.
- (7) Sub-paragraphs (4) and (5) do not affect any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions; but no such right arises by reason only of the change in employer effected by this paragraph.
- (8) A scheme under this paragraph may designate a person either individually or as a member of a class or description of employees.
- (9) In the case of a person who falls within sub-paragraph (1)(b), a scheme under this paragraph may provide that, with effect from the NHS trust's operational date, his contract of employment (his “original contract”) must be treated, in accordance with the scheme, as divided so as to constitute—
- (a) a contract of employment with the NHS trust, and
 - (b) a contract of employment with the Special Health Authority, Primary Care Trust or Local Health Board by whom he was employed before that date (the “transferor authority”).
- (10) Where a scheme makes provision as mentioned in sub-paragraph (9)—
- (a) the scheme must secure that the benefits to the employee under the two contracts referred to in that sub-paragraph, when taken together, are not less favourable than the benefits under his original contract,
 - (b) this paragraph applies in relation to the contract referred to in sub-paragraph (9)(a) as if it were a contract transferred under this paragraph from the transferor authority to the NHS trust, and
 - (c) so far as necessary to preserve any rights and obligations, the contract referred to in sub-paragraph (9)(b) must be regarded as a continuation of the employee's original contract.

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- (11) Where, as a result of the provisions of this paragraph, by virtue of his employment during any period after the operational date of the NHS trust—
- (a) an employee has contractual rights against an NHS trust to benefits in the event of his redundancy, and
 - (b) he also has statutory rights against the trust under Part 11 of the Employment Rights Act 1996 (c. 18) (redundancy payments),
- any benefits provided to him by virtue of the contractual rights referred to in paragraph (a) must be taken as satisfying his entitlement to benefits under that Part of that Act.

Transfer of property and liabilities to NHS trusts

- 9 (1) The Welsh Ministers may by order transfer, or provide for the transfer of, any of the property and liabilities of a Strategic Health Authority, a Primary Care Trust, a Special Health Authority, a Local Health Board, or the Welsh Ministers, to an NHS trust, with effect from any date as may be specified in the order.
- (2) An order under this paragraph may create or impose such new rights or liabilities in respect of what is transferred or what is retained as appear to the Welsh Ministers to be necessary or expedient.
- (3) Nothing in this paragraph affects the power of the Welsh Ministers or any power of a Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board to transfer property or liabilities to an NHS trust otherwise than under sub-paragraph (1).
- (4) Stamp duty is not chargeable in respect of any transfer to an NHS trust effected by or by virtue of an order under this paragraph.
- (5) Where an order under this paragraph provides for the transfer—
- (a) of land held on lease from a third party, or
 - (b) of any other asset leased or hired from a third party or in which a third party has an interest,
- the transfer is binding on the third party notwithstanding that, apart from this sub-paragraph, it would have required his consent or concurrence.
- (6) “Third party” means a person other than the Welsh Ministers, a Strategic Health Authority, a Primary Care Trust, a Special Health Authority or a Local Health Board.
- (7) Any property and liabilities which—
- (a) belong to, or are used or managed by, a Strategic Health Authority, Special Health Authority or Local Health Board or belong to a Primary Care Trust, and
 - (b) will be transferred to an NHS trust by or by virtue of an order under this paragraph,
- must be identified by agreement between the Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board and the NHS trust or, in default of agreement, by direction of the Welsh Ministers.
- (8) Where, for the purpose of a transfer pursuant to an order under this paragraph, it becomes necessary to apportion any property or liabilities, the order may contain such provisions as appear to the Welsh Ministers to be appropriate for the purpose.

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- (9) Where any such property or rights fall within sub-paragraph (5), the order must contain such provisions as appear to the Welsh Ministers to be appropriate to safeguard the interests of third parties, including, where appropriate, provision for the payment of compensation of an amount to be determined in accordance with the order.
- (10) In the case of any transfer made by or pursuant to an order under this paragraph, a certificate issued by the Welsh Ministers that any property specified in the certificate or any such interest in or right over any such property as may be so specified, or any right or liability so specified, is vested in the NHS trust specified in the order is conclusive evidence of that fact for all purposes.
- (11) An order under this paragraph may include provision for matters to be settled by arbitration by a person determined in accordance with the order.
- (12) Sub-paragraph (11) does not affect section 203(10).

Trust funds and trustees

- 10 (1) The Welsh Ministers may by order provide for the appointment of trustees for an NHS trust to hold property on trust—
 - (a) for the general or any specific purposes of the NHS trust (including the purposes of any specific hospital or other establishment or facility at or from which services are provided by the NHS trust), or
 - (b) for any purposes relating to the health service.
- (2) An order under sub-paragraph (1) may—
 - (a) make provision as to the persons by whom trustees must be appointed and generally as to the method of their appointment,
 - (b) make any appointment subject to such conditions as may be specified in the order (including conditions requiring the consent of the Welsh Ministers),
 - (c) make provision as to the number of trustees to be appointed, including provision under which that number may from time to time be determined by the Welsh Ministers after consultation with such persons as they consider appropriate, and
 - (d) make provision with respect to the term of office of any trustee and his removal from office.
- (3) Where under sub-paragraph (1) trustees have been appointed for an NHS trust, the Welsh Ministers may by order provide for the transfer of any trust property from the NHS trust to the trustees.

Pay and allowances

- 11 (1) An NHS trust must pay—
 - (a) to the chairman and any non-executive director of the NHS trust remuneration of an amount determined by the Welsh Ministers,
 - (b) to the chairman and any non-executive director of the NHS trust such travelling and other allowances as may be determined by the Welsh Ministers,

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- (c) to any member of a committee or sub-committee of the NHS trust who is not also a director such travelling and other allowances as may be determined by the Welsh Ministers.
- (2) If an NHS trust so determines in the case of a person who is or has been a chairman of the NHS trust, the NHS trust must pay such pension, allowances or gratuities to or in respect of him as may be determined by the Welsh Ministers.
- (3) A determination under sub-paragraph (2), so far as it relates to pensions, may be made only with the approval of the Treasury.
- (4) Different determinations may be made under sub-paragraph (1) or sub-paragraph (2) in relation to different cases or descriptions of cases.

Reports and other information

- 12
- (1) For each accounting year an NHS trust must prepare and send to the Welsh Ministers an annual report in such form as may be determined by the Welsh Ministers.
 - (2) At such time or times as may be prescribed, an NHS trust must hold a public meeting at which must be presented—
 - (a) its audited accounts and annual report, and
 - (b) any report on the accounts made pursuant to section 8 of the Audit Commission Act 1998 (c. 18) or paragraph 19 of Schedule 8 to the Government of Wales Act 2006 (c. 32).
 - (3) In such circumstances and at such time or times as may be prescribed, an NHS trust must hold a public meeting at which such documents as may be prescribed must be presented.

Modifications etc. (not altering text)

- C1** Sch. 3 para. 12(2)(b) modified (temp.) (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 5, 8(2), **Sch. 3 para. 10(4)(b)** (with Sch. 3 Pt. 1)

- 13 An NHS trust must furnish to the Welsh Ministers such reports, returns and other information, including information as to its forward planning, as, and in such form as, they may require.

PART 2

POWERS AND DUTIES

General

- 14
- (1) An NHS trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.
 - (2) In particular it may—
 - (a) acquire and dispose of property,
 - (b) enter into contracts, and

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(c) accept gifts of property (including property to be held on trust, either for the general or any specific purposes of the NHS trust or for any purposes relating to the health service).

(3) The reference in sub-paragraph (2)(c) to specific purposes of the NHS trust includes a reference to the purposes of a specific hospital or other establishment or facility at or from which services are provided by the NHS trust.

NHS contracts

15 (1) In addition to carrying out its other functions, an NHS trust may, as the provider, enter into NHS contracts.

(2) An NHS trust may not, as the provider, enter into an NHS contract for the provision of high security psychiatric services (within the meaning of section 4) unless the NHS trust is approved for the purpose of this paragraph by the Welsh Ministers.

(3) Such approval—

- (a) must be for a period specified in the approval,
- (b) may be given subject to conditions, and
- (c) may be amended or revoked at any time.

Research

16 An NHS trust may undertake and commission research and make available staff and provide facilities for research by other persons.

Training

17 An NHS trust may—

- (a) provide training for persons employed or likely to be employed by the NHS trust or otherwise in the provision of services under this Act, and
- (b) make facilities and staff available in connection with training by a university or any other body providing training in connection with the health service.

Joint exercise of functions

18 An NHS trust may enter into arrangements for the carrying out, on such terms as the NHS trust considers appropriate, of any of its functions jointly with any Strategic Health Authority, Primary Care Trust, Special Health Authority, Local Health Board or other NHS trust, or any other body or individual.

Payment for accommodation or services

19 (1) According to the nature of its functions, an NHS trust may make accommodation or services available for patients who give undertakings (or for whom undertakings are given) to pay any charges imposed by the NHS trust in respect of the accommodation or services.

(2) An NHS trust may exercise the power conferred by sub-paragraph (1) only—

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- (a) to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts, and
- (b) in circumstances specified in directions under section 19, with the consent of the Welsh Ministers.

Additional income

- 20 (1) For the purpose of making additional income available in order better to perform its functions, an NHS trust has the powers specified in section 7(2) of the Health and Medicines Act 1988 (c. 49) (extension of powers of Welsh Ministers for financing the health service).
- (2) The power conferred by sub-paragraph (1) may be exercised only—
- (a) to the extent that its exercise does not to any significant extent interfere with the performance by the NHS trust of its functions or of its obligations under NHS contracts, and
 - (b) in circumstances specified in directions under section 19, with the consent of the Welsh Ministers.

Provision of accommodation and services outside England and Wales

- 21 An NHS Trust may arrange for the provision of accommodation and services outside England and Wales.

Conferral of further powers by order

- 22 The Welsh Ministers may by order confer specific powers on NHS trusts, further to those provided for by paragraphs 15 to 21.

Powers of NHS trusts to enter into externally financed development agreements

- 23 (1) The powers of an NHS trust include power to enter into externally financed development agreements.
- (2) For the purposes of this paragraph, an agreement is an externally financed development agreement if it is certified as such in writing by the Welsh Ministers.
- (3) The Welsh Ministers may give a certificate under this paragraph if—
- (a) in their opinion the purpose or main purpose of the agreement is the provision of facilities or services in connection with the discharge by the NHS trust of any of its functions, and
 - (b) a person proposes to make a loan to, or provide any other form of finance for, another party in connection with the agreement.
- (4) If an NHS trust enters into an externally financed development agreement it may also, in connection with that agreement, enter into an agreement with a person who falls within sub-paragraph (3)(b) in relation to the externally financed development agreement.
- (5) “Another party” means any party to the agreement other than the NHS trust.
- (6) The fact that an agreement made by an NHS trust has not been certified under this paragraph does not affect its validity.

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Agreements under section 50 or 64

- 24 An NHS trust may provide services under an agreement made under section 50 (primary medical services) or section 64 (primary dental services) and may do so as a member of a qualifying body (within the meaning given by section 51 or section 65).

Staff

- 25 (1) An NHS trust may employ such staff as it considers appropriate.
- (2) An NHS trust may—
- (a) pay its staff such remuneration and allowances, and
 - (b) employ them on such other terms and conditions,
- as it considers appropriate.
- (3) An NHS trust must—
- (a) in exercising its powers under sub-paragraph (2), and
 - (b) otherwise in connection with the employment of its staff,
- act in accordance with regulations and any directions given by the Welsh Ministers.
- (4) Before making any regulations under sub-paragraph (3), the Welsh Ministers must consult such bodies as they may recognise as representing persons who, in their opinion, are likely to be affected by the regulations.

Pensions, etc.

- 26 (1) An NHS trust may, for or in respect of such of its employees as it may determine, make arrangements for providing pensions, allowances or gratuities.
- (2) Such arrangements may include the establishment and administration, by the NHS trust or otherwise, of one or more pension schemes.
- (3) The reference in sub-paragraph (1) to pensions, allowances or gratuities to or in respect of employees of an NHS trust includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the NHS trust's employees who suffer loss of office or employment or loss or diminution of emoluments.
- (4) This paragraph does not affect the generality of paragraphs 14 and 25.

Compulsory acquisition

- 27 (1) An NHS trust may be authorised to purchase land compulsorily for the purposes of its functions by means of an order made by the NHS trust and confirmed by the Welsh Ministers.
- (2) Subject to sub-paragraph (3), the Acquisition of Land Act 1981 (c. 67) applies to the compulsory purchase of land under this paragraph.
- (3) No order may be made by an NHS trust under Part 2 of the Acquisition of Land Act 1981 with respect to any land unless the proposal to acquire the land compulsorily—
- (a) has been submitted to the Welsh Ministers in such form and together with such information as they may require, and

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- (b) has been approved by them.

PART 3

DISSOLUTION

- 28 (1) The Welsh Ministers may by order dissolve an NHS trust.
- (2) An order under this paragraph may be made—
- (a) on the application of the NHS trust concerned, or
 - (b) if the Welsh Ministers consider it appropriate in the interests of the health service.
- (3) Except where it appears to the Welsh Ministers necessary to make an order under this paragraph as a matter of urgency, no such order may be made until after the completion of such consultation as may be prescribed.
- 29 (1) If an NHS trust is dissolved under paragraph 28, the Welsh Ministers may by order transfer, or provide for the transfer, to themselves or an NHS body of such of the property and liabilities of the NHS trust which is dissolved as in the opinion of the Welsh Ministers is appropriate; and any such order may include provisions corresponding to those of paragraph 9.
- (2) The liabilities which may be transferred by virtue of sub-paragraph (1) to an NHS body include criminal liabilities.
- (3) An order under this paragraph may make provision in connection with the transfer of staff employed by or for the purposes of the NHS trust which is dissolved; and such an order may include provisions corresponding to those of paragraph 8, including provision for the making of a scheme by such Strategic Health Authority, Special Health Authority, Local Health Board or other body as may be specified in the order.
- (4) No order may be made under this paragraph until after completion of such consultation as may be prescribed.
- 30 (1) If an NHS trust is dissolved under paragraph 28, the Welsh Ministers or such other NHS trust, Strategic Health Authority, Primary Care Trust, Special Health Authority or Local Health Board as the Welsh Ministers may direct must undertake the responsibility for the continued payment of any such pension, allowances or gratuities as, by virtue of paragraph 11(2) or paragraph 26, would otherwise have been the responsibility of the NHS trust which has been dissolved.
- (2) Sub-paragraph (1) does not affect the generality of paragraph 29.
- 31 An NHS trust may not be dissolved or wound up except in accordance with paragraph 28.

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PART 4

MISCELLANEOUS

Use and development of consecrated land and burial grounds

- 32 Section 128 of the Town and Country Planning Act 1971 (c. 78) (use and development of consecrated land and burial grounds) applies to consecrated land and land comprised in a burial ground, within the meaning of that section, which an NHS trust holds for any of its purposes as if—
- (a) that land had been acquired by the NHS trust as mentioned in subsection (1) of that section, and
 - (b) the NHS trust were a statutory undertaker, within the meaning of that Act.

Instruments etc.

- 33 (1) The fixing of the seal of an NHS trust must be authenticated by the signature—
- (a) of the chairman or of some other person authorised (whether generally or specifically) by the NHS trust for that purpose, and
 - (b) of one other director.
- (2) A document purporting to be duly executed under the seal of an NHS trust must be received in evidence and must, unless the contrary is proved, be taken to be so executed.
- (3) A document purporting to be signed on behalf of an NHS trust must be received in evidence and must, unless the contrary is proved, be taken to be so signed.

Interpretation

- 34 In this Schedule—
- “provide” includes manage,
 - “operational date” has the meaning given by paragraph 5(5).

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