

## SCHEDULES

### SCHEDULE 8

Section 61

#### MONITOR

##### *Membership*

- 1 (1) Monitor is to consist of—
  - (a) a chair appointed by the Secretary of State,
  - (b) at least four other members so appointed, and
  - (c) the chief executive and other members appointed in accordance with paragraph 2.
- (2) The number of executive members must be less than the number of non-executive members.
- (3) In this Schedule—
  - (a) references to non-executive members of Monitor are references to the members appointed in accordance with sub-paragraph (1)(a) and (b), and
  - (b) references to executive members of Monitor are references to the other members.

##### *The chief executive and other executive members: appointment and status*

- 2 (1) The chief executive and the other executive members of Monitor are to be appointed by the non-executive members.
- (2) A person may not be appointed as chief executive or as another executive member without the consent of the Secretary of State.
- (3) The non-executive members may not appoint more than five executive members without the consent of the Secretary of State.
- (4) The chief executive and the other executive members are to be employees of Monitor.

##### *Non-executive members: tenure*

- 3 (1) A person holds and vacates office as a non-executive member of Monitor in accordance with that person's terms of appointment.
- (2) A person may at any time resign from office as a non-executive member by giving notice to the Secretary of State.
- (3) The Secretary of State may at any time remove a person from office as a non-executive member on any of the following grounds—
  - (a) incapacity,
  - (b) misbehaviour, or
  - (c) failure to carry out his or her duties as a non-executive member.

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- (4) The Secretary of State may suspend a person from office as a non-executive member if it appears to the Secretary of State that there are or may be grounds to remove the person from office under sub-paragraph (3).
- (5) A person may not be appointed as a non-executive member for a period of more than four years.
- (6) A person who ceases to be a non-executive member is eligible for re-appointment.

#### *Suspension from office*

- 4 (1) This paragraph applies where a person is suspended under paragraph 3(4).
- (2) The Secretary of State must give notice of the decision to the person; and the suspension takes effect on receipt by the person of the notice.
- (3) The notice may be—
  - (a) delivered in person (in which case, the person is taken to receive it when it is delivered), or
  - (b) sent by first class post to the person’s last known address (in which case, the person is taken to receive it on the third day after the day on which it is posted).
- (4) The initial period of suspension must not exceed six months.
- (5) The Secretary of State may at any time review the suspension.
- (6) The Secretary of State—
  - (a) must review the suspension if requested in writing by the person to do so, but
  - (b) need not review the suspension less than three months after the beginning of the initial period of suspension.
- (7) Following a review during a period of suspension, the Secretary of State may—
  - (a) revoke the suspension, or
  - (b) suspend the person for another period of not more than six months from the expiry of the current period.
- (8) The Secretary of State must revoke the suspension if the Secretary of State—
  - (a) decides that there are no grounds to remove the person from office under paragraph 3(3), or
  - (b) decides that there are grounds to do so but does not remove the person from office under that provision.
- 5 (1) Where a person is suspended from office as the chair under paragraph 3(4), the Secretary of State may appoint a non-executive member as interim chair to exercise the chair’s functions.
- (2) Appointment as interim chair is for a term not exceeding the shorter of—
  - (a) the period ending with either—
    - (i) the appointment of a new chair, or
    - (ii) the revocation or expiry of the existing chair’s suspension, and
  - (b) the remainder of the interim chair’s term as a non-executive member.
- (3) A person who ceases to be the interim chair is eligible for re-appointment.

### *Payment of non-executive members*

- 6
- (1) Monitor must pay to its non-executive members such remuneration and allowances as the Secretary of State may determine.
  - (2) Monitor must pay or make provision for the payment of such pensions, allowances or gratuities as it may, with the approval of the Secretary of State, determine to or in respect of any person who is or has been a non-executive member.
  - (3) If a person ceases to be a non-executive member and the Secretary of State decides that there are exceptional circumstances which mean that the person should be compensated, Monitor must pay compensation to the person of such amount as the Secretary of State may determine.

### *Staff*

- 7
- (1) Monitor may appoint such persons to be employees of Monitor as it considers appropriate.
  - (2) Employees of Monitor are to be paid such remuneration and allowances as Monitor may determine.
  - (3) Employees of Monitor are to be appointed on such other terms and conditions as Monitor may determine.
  - (4) Monitor may pay or make provision for the payment of such pensions, allowances or gratuities as it may determine to or in respect of any person who is or has been an employee of Monitor.
  - (5) Before making a determination as to remuneration, pensions, allowances or gratuities for the purposes of sub-paragraph (2) or (4), Monitor must obtain the approval of the Secretary of State to its policy on that matter.

### *Superannuation*

- 8
- (1) Sub-paragraph (2) applies where a person who is an active or deferred member of a scheme under section 1 of the Superannuation Act 1972 is appointed as chair.
  - (2) The Minister for the Civil Service may determine that the person's office as chair is to be treated for the purposes of the scheme as service in the employment by reference to which the person is a member (whether or not any benefits are payable by virtue of paragraph 6(2)).
  - (3) Employment with Monitor is among the kinds of employment to which a scheme under section 1 of the Superannuation Act 1972 can apply; and, accordingly, in Schedule 1 to that Act (in which those kinds of employment are listed), at the end of the list of "Other Bodies" insert—  
"Monitor".
  - (4) Monitor must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase attributable to sub-paragraph (2) or (3) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

*Committees*

- 9 (1) Monitor may appoint such committees and sub-committees as it considers appropriate.
- (2) A committee or sub-committee may consist of or include persons who are not members or employees of Monitor.
- (3) Monitor may pay such remuneration and allowances as it determines to any person who—
- (a) is a member of a committee or sub-committee, but
  - (b) is not an employee of Monitor,
- whether or not that person is a non-executive member of Monitor.

*Procedure*

- 10 (1) Monitor may regulate its own procedure.
- (2) The validity of any act of Monitor is not affected by any vacancy among the members or by any defect in the appointment of a member.

*Exercise of functions*

- 11 (1) Monitor must exercise its functions effectively, efficiently and economically.
- (2) Monitor may arrange for the exercise of its functions on its behalf by—
- (a) a non-executive member;
  - (b) an employee (including the chief executive);
  - (c) a committee or sub-committee.

*Assistance*

- 12 (1) Monitor may arrange for persons to assist it in the exercise of its functions in relation to—
- (a) a particular case, or
  - (b) cases of a particular description.
- (2) Such arrangements may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.

*Borrowing*

- 13 (1) Monitor may, with the consent of the Secretary of State, borrow money temporarily by way of overdraft.
- (2) But subject to that, and subject to sections 145 and 146 (power to borrow for exercising functions in relation to financial assistance and power of Secretary of State to lend etc.), Monitor may not borrow money.

*Acquiring information*

- 14 (1) Monitor may obtain, compile and keep under review information about matters relating to the exercise of its functions.

- (2) Where Monitor exercises the power under sub-paragraph (1), it must do so with a view to (among other things) ensuring that it has sufficient information to take informed decisions and to exercise its other functions effectively.
- (3) In exercising the power under sub-paragraph (1), Monitor may carry out, commission or support (financially or otherwise) research.

#### *General power*

- 15 Monitor may do anything which appears to it to be necessary or expedient for the purposes of, or in connection with, the exercise of its functions.

#### *Finance*

- 16 (1) The Secretary of State may make payments to Monitor out of money provided by Parliament of such amounts as the Secretary of State considers appropriate.
- (2) Payments made under sub-paragraph (1) may be made at such times and on such conditions (if any) as the Secretary of State considers appropriate.

#### *Accounts of NHS foundation trusts*

- 17 (1) Monitor must prepare in respect of each financial year a set of accounts which consolidates the annual accounts of all NHS foundation trusts.
- (2) The Secretary of State may, with the approval of the Treasury, direct Monitor to prepare a set of accounts in respect of such period as may be specified in the direction which consolidates any accounts prepared by NHS foundation trusts by virtue of paragraph 25(1A) of Schedule 7 to the National Health Service Act 2006 in respect of that period.
- (3) In preparing any consolidated accounts under this paragraph, Monitor must comply with directions given by the Secretary of State with the approval of the Treasury as to—
  - (a) the content and form of the consolidated accounts;
  - (b) the methods and principles according to which the consolidated accounts should be prepared.
- (4) Monitor must send a copy of any consolidated accounts under this paragraph to the Secretary of State and, if the Secretary of State so directs, the Comptroller and Auditor General—
  - (a) accompanied by such other reports or information as the Secretary of State may direct, and
  - (b) within the relevant period.
- (5) In sub-paragraph (4)(b), the relevant period is—
  - (a) in relation to consolidated accounts under sub-paragraph (1), such period after the end of the financial year concerned as the Secretary of State may direct;
  - (b) in relation to consolidated accounts under sub-paragraph (2), such period as the Secretary of State may direct.

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- (6) Before giving a direction under sub-paragraph (5), the Secretary of State must consult Monitor.
- (7) The Comptroller and Auditor General must—
  - (a) examine, certify and report on any consolidated accounts sent under this paragraph,
  - (b) if the Secretary of State so directs, send a copy of the report on the accounts to the Secretary of State, and
  - (c) if the Secretary of State so directs, lay copies of the accounts and the report on them before Parliament.
- (8) Monitor must act with a view to securing that NHS foundation trusts—
  - (a) comply promptly with requests from it or the Secretary of State for information relating to their accounts, and
  - (b) otherwise act so as to facilitate the preparation of accounts by the Secretary of State.
- (9) This paragraph does not apply to the financial year specified for the purposes of section 155(7) (which provides for the order that commences section 155, which itself relates to the preparation of the accounts of NHS foundation trusts, to specify the first financial year to which that section will apply) or to the subsequent financial years.

#### *Accounts of Monitor*

- 18 (1) Monitor must keep proper accounts and proper records in relation to the accounts.
- (2) The Secretary of State may, with the approval of the Treasury, give directions to Monitor as to—
  - (a) the content and form of its accounts, and
  - (b) the methods and principles to be applied in the preparation of its accounts.
- (3) In sub-paragraph (2), the reference to accounts includes Monitor’s annual accounts prepared under paragraph 19 and any interim accounts prepared by virtue of paragraph 20.
- 19 (1) Monitor must prepare annual accounts in respect of each financial year.
- (2) Monitor must send copies of the annual accounts to the Secretary of State and the Comptroller and Auditor General within such period after the end of the financial year to which the accounts relate as the Secretary of State may direct.
- (3) The Comptroller and Auditor General must—
  - (a) examine, certify and report on the annual accounts, and
  - (b) lay copies of them and the report before Parliament.
- 20 (1) The Secretary of State may, with the approval of the Treasury, direct Monitor to prepare accounts in respect of such period or periods as may be specified in the direction (“interim accounts”).
- (2) Monitor must send copies of any interim accounts to the Secretary of State and, if the Secretary of State so directs, the Comptroller and Auditor General within such period as the Secretary of State may direct.
- (3) The Comptroller and Auditor General must—

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- (a) examine, certify and report on any interim accounts sent by virtue of subparagraph (2),
- (b) if the Secretary of State so directs, send a copy of the report on the accounts to the Secretary of State, and
- (c) if the Secretary of State so directs, lay copies of the accounts and the report on them before Parliament.

#### *Reports and other information*

- 21 (1) As soon as practicable after the end of each financial year, Monitor must prepare an annual report on how it has exercised its functions during the year.
- (2) The report must, in particular—
- (a) set out the measures that Monitor has taken to promote economy, efficiency and effectiveness in the use of resources for the exercise of its functions,
  - (b) include a statement of what it did to comply with the duty under section 63(2) (duty to have regard to Secretary of State’s guidance on duty under section 62(9)), and
  - (c) include a statement of what it did to comply with the duty under section 66(2) (h) (duty to have regard to Secretary of State’s guidance on relevant parts of document on improving quality of services).
- (3) Monitor must—
- (a) lay a copy of the report before Parliament, and
  - (b) once it has done so, send a copy of it to the Secretary of State.
- (4) Monitor must provide the Secretary of State with—
- (a) such other reports and information relating to the exercise of Monitor’s functions as the Secretary of State may require;
  - (b) such information about NHS foundation trusts that Monitor has in its possession as the Secretary of State may require.

#### *Recommendations by Committees in Parliament*

- 22 Monitor must respond in writing to any recommendation about its exercise of its functions that a Committee of either House of Parliament or a Committee of both Houses makes.

#### *Seal and evidence*

- 23 (1) The application of Monitor’s seal must be authenticated by the signature of the chair or any other person who has been authorised (generally or specifically) for that purpose.
- (2) A document purporting to be duly executed under Monitor’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.

#### *Status*

- 24 (1) Monitor must not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.

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- (2) Monitor's property must not be regarded as property of, or property held on behalf of, the Crown.