

**2008 No. 1269**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The Primary Care Trusts and National Health Service Trusts  
(Membership and Procedure) Amendment Regulations 2008**

<i>Made</i> - - - -	<i>6th May 2008</i>
<i>Laid before Parliament</i>	<i>13th May 2008</i>
<i>Coming into force</i> - -	<i>16th June 2008</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 272(7) and (8) of, and paragraph 4(1) of Schedule 3 and paragraph 4(1) of Schedule 4 to, the National Health Service Act 2006(a):

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Primary Care Trusts and National Health Service Trusts (Membership and Procedure) Amendment Regulations 2008 and shall come into force on 16<sup>th</sup> June 2008.

(2) These Regulations apply in relation to England.

**Amendment of the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000**

2.—(1) The Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000(b) are amended in accordance with the following paragraphs.

(2) In regulation 1 (citation, commencement and interpretation), in paragraph (2), after the definition of “the Act” insert the following definition—

““appointee” in relation to a Primary Care Trust means the chairman or a non-officer member of the trust;”.

(3) In regulation 2 (membership of Primary Care Trusts), in paragraph (1), after “paragraphs (12) to (14)” insert “and regulation 4B(2)”.

(4) After regulation 4 (termination of tenure of office: chairman and non-officer members), insert the following regulations—

**“Suspension of chairman and non-officer members**

4A.—(1) The Secretary of State may suspend an appointee from office while the Secretary of State considers whether—

(a) to remove the person from office under regulation 4(4) or (7); or

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(a) 2006 c.41.

(b) S.I. 2000/89. Relevant amending instruments are S.I. 2001/3787, 2002/557 and 2006/562.

(b) the person has become disqualified for appointment under regulation 5, or was so disqualified at the time of appointment.

(2) The Secretary of State shall notify a person suspended under paragraph (1) of the decision to suspend the person from office, and the decision shall take effect upon receipt of such notification.

(3) Subject to paragraphs (4) and (5), a period of suspension under paragraph (1) shall not exceed 6 months.

(4) The Secretary of State may at any time review a suspension and shall review a suspension after 3 months if so requested in writing by the person who has been suspended.

(5) On reviewing a suspension, the Secretary of State may—

(a) revoke the suspension, in which case it shall cease to have effect; or

(b) suspend the person from office for a period of not more than 6 months from the expiry of the current period of suspension.

### **Suspension: effect on maximum number of members and on meetings**

**4B.**—(1) This regulation applies in relation to any Primary Care Trust in which an appointee of the trust is suspended under regulation 4A.

(2) Where this regulation applies in relation to a Primary Care Trust, the reference in regulation 2(1) (membership of Primary Care Trusts) to the maximum number of members that a trust is to have shall have effect in respect of that trust as if the number were increased by the number of appointees so suspended.

(3) Where this regulation applies in relation to a Primary Care Trust—

(a) references in paragraph 2(2) and (3) of Schedule 2 to members shall mean members other than any member who is suspended under regulation 4A;

(b) the reference in paragraph 6(a) of that Schedule to the whole membership shall mean the whole membership other than any appointee who is suspended under regulation 4A.

### **Suspension of chairman: appointment of vice-chairman**

**4C.**—(1) This regulation applies in relation to any Primary Care Trust in which the chairman of the trust is suspended under regulation 4A.

(2) If a vice-chairman has been appointed under regulation 7 (appointment of vice-chairman), that appointment shall cease to have effect from the time that the chairman is suspended.

(3) The Secretary of State may, for the purpose of enabling the proceedings of the trust to be conducted in the absence of the chairman, appoint a non-officer member of the trust to be vice-chairman.

(4) The appointment of a vice-chairman under paragraph (3) shall be for such a period, not exceeding the shorter of—

(a) the period for which the chairman is suspended; and

(b) the remainder of the non-officer member's term as a member of the trust,

as the Secretary of State may specify on making the appointment.

(5) When the period for which a person is appointed as vice-chairman expires, the Secretary of State may re-appoint the person, or appoint another non-officer member, as vice-chairman in accordance with paragraph (3).

(6) Any person appointed under paragraph (3) may at any time resign from the office of vice-chairman by giving notice in writing to the Secretary of State.

(7) The Secretary of State may terminate a person’s appointment as vice-chairman under paragraph (3) if the Secretary of State is of the opinion that it would be in the best interests of the trust for another non-officer member of the trust to be vice-chairman.

(8) If—

- (a) a person resigns from the office of vice-chairman under paragraph (6); or
- (b) the Secretary of State terminates a person’s appointment as vice-chairman under paragraph (7),

the Secretary of State may appoint another non-officer member as vice-chairman in accordance with paragraph (3).”.

(5) In regulation 7 (appointment of vice-chairman), add at the end the following paragraph—

“(4) This regulation does not apply in relation to any Primary Care Trust to which regulation 4C applies.”.

(6) For regulation 8 (powers of vice-chairman), substitute the following regulation—

**“Powers of vice-chairman**

**8.—**(1) This regulation applies where—

- (a) the chairman of a Primary Care Trust is suspended under regulation 4A and a member of the trust is appointed to be vice-chairman under regulation 4C; or
- (b) a member of a Primary Care Trust is appointed to be vice-chairman under regulation 7, and the chairman of the trust—
  - (i) has died or has ceased to hold office; or
  - (ii) is unable to perform the chairman’s duties owing to illness, absence from England and Wales or any other cause.

(2) Where this regulation applies—

- (a) the vice-chairman shall act as chairman until a new chairman is appointed or the existing chairman resumes the chairman’s duties, as the case may be; and
- (b) the references to the chairman in Schedule 2 shall, so long as there is no chairman able to perform the chairman’s duties, be taken to include references to the vice-chairman.”.

**Amendment of the National Health Service Trusts (Membership and Procedure) Regulations 1990**

**3.—**(1) The National Health Service Trusts (Membership and Procedure) Regulations 1990(a) are amended in accordance with the following paragraphs.

(2) In regulation 1 (citation, commencement and interpretation), in paragraph (2), after the definition of “the Act” insert the following definitions—

““the 2006 Act” means the National Health Service Act 2006;

“appointee” in relation to an NHS trust means the chairman or a non-executive director of the trust;”.

(3) In regulation 2 (maximum number of directors), in paragraphs (1) and (2), after “paragraphs (3) and (4)” insert “and regulation 9B(2)”.

(4) After regulation 9 (termination of tenure of office of chairman and non-executive directors), insert the following regulations—

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(a) S.I. 1990/2024. Relevant amending instruments are S.I. 1996/1775, 1998/1975, 2000/2434 and 2001/3786.

### **“Suspension of chairman and non-executive directors**

**9A.**—(1) The Secretary of State may suspend an appointee from performing the appointee’s functions as chairman or director while the Secretary of State considers whether—

- (a) to remove the person from office under regulation 9(3) or (6); or
- (b) the person is disqualified for appointment under regulation 11, or was so disqualified at the time of appointment.

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

(3) Subject to paragraphs (4) and (5), a period of suspension under paragraph (1) shall not exceed 6 months.

(4) The Secretary of State may at any time review a suspension and shall review a suspension after 3 months if so requested in writing by the person who has been suspended.

(5) On reviewing a suspension, the Secretary of State may—

- (a) revoke the suspension, in which case it shall cease to have effect; or
- (b) suspend the appointee from performing the appointee’s functions as chairman or director for a period of not more than 6 months from the expiry of the current period of suspension.

### **Suspension: effect on maximum number of directors and on meetings**

**9B.**—(1) This regulation applies in relation to any NHS trust in which an appointee of the trust is suspended under regulation 9A.

(2) Where this regulation applies in relation to an NHS trust, each of the references in regulation 2 (maximum number of directors) to the maximum number of—

- (a) directors; or
- (b) non-executive directors,

shall have effect in respect of that trust as if the number were increased by the number of appointees so suspended.

(3) Where this regulation applies in relation to an NHS trust—

- (a) references in paragraphs 2(2) and 3(5) and (5A) of the Schedule to the whole number of directors shall mean the whole number of directors excluding any directors who are suspended under regulation 9A;
- (b) references in paragraph 2(3) of the Schedule to a director shall mean a director other than a director who is suspended under regulation 9A.

### **Suspension of chairman: appointment of vice-chairman**

**9C.**—(1) This regulation applies in relation to any NHS trust in which the chairman of the trust is suspended under regulation 9A.

(2) If a vice-chairman has been appointed under regulation 13 (appointment of vice-chairman), that appointment shall cease to have effect from the time that the chairman is suspended.

(3) The Secretary of State may, for the purpose of enabling the proceedings of the trust to be conducted in the absence of the chairman, appoint a non-executive director of the trust to be vice-chairman.

(4) The appointment of a vice-chairman under paragraph (3) shall be for such a period, not exceeding the shorter of—

- (a) the period for which the chairman is suspended; and
- (b) the remainder of the non-executive director’s term as a director of the trust,

as the Secretary of State may specify on making the appointment.

(5) When the period for which a person is appointed as vice-chairman expires, the Secretary of State may re-appoint the person, or appoint another non-executive director, as vice-chairman in accordance with paragraph (3).

(6) Any person appointed under paragraph (3) may at any time resign from the office of vice-chairman by giving notice in writing to the Secretary of State.

(7) The Secretary of State may terminate a person's appointment as vice-chairman under paragraph (3) if the Secretary of State is 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-chairman.

(8) If—

(a) a person resigns from the office of vice-chairman under paragraph (6); or

(b) the Secretary of State terminates a person's appointment as vice-chairman under paragraph (7),

the Secretary of State may appoint another non-executive director as vice-chairman in accordance with paragraph (3).

### **Suspension: effect on order specifying number of non-executive directors**

**9D.**—(1) This regulation applies in relation to any NHS trust—

(a) in which an appointee of the trust is suspended under regulation 9A; and

(b) which was established by an establishment order made before the date on which these Regulations are made.

(2) Where this regulation applies in relation to an NHS trust, the provisions in the trust's establishment order specifying the number of non-executive directors of the trust shall have effect as if the number were increased by the number of appointees so suspended.

(3) In this regulation—

(a) “establishment order” means an order made under section 5(1) of the Act<sup>(a)</sup> or section 25(1) of the 2006 Act;

(b) the reference in paragraph (2) to the number of non-executive directors relates to the number of non-executive directors specified in the establishment order, whether or not expressed to be including the chairman.”.

(5) In regulation 13 (appointment of vice-chairman), add at the end the following paragraph—

“(3) This regulation does not apply in relation to any NHS trust to which regulation 9C applies.”.

(6) In regulation 14 (powers of vice-chairman), after “Wales” insert “, suspension under regulation 9A”.

Signed by authority of the Secretary of State for Health.

6th May 2008

*Ann Keen*  
Parliamentary Under-Secretary of State,  
Department of Health

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(a) The National Health Service and Community Care Act 1990 (c. 19) (*see* the definition of “the Act” in regulation 1(2) of National Health Service Trusts (Membership and Procedure) Regulations 1990). Section 5(1) of that Act was amended by the Health Act 1990 (c. 8), section 13(1)(a). It was repealed by the National Health Service (Consequential Provisions) Act 2006 (c. 43), section 6 and Schedule 4, with effect from 1st March 2007, and was re-enacted as section 25(1) of the National Health Service Act 2006.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Primary Care Trusts (Membership, Procedure and Administration Arrangements) Regulations 2000 (“the PCT Regulations”) and the National Health Service Trusts (Membership and Procedure) Regulations 1990 (“the NHS trust Regulations”) to enable the Secretary of State to suspend the chairman or non-officer members of a Primary Care Trust (“PCT”), and the chairman or non-executive directors of a National Health Service trust (“NHS trust”).

Regulation 2 amends the PCT Regulations so as to make provision for suspension of the chairman or non-officer members of a PCT. Regulation 2(4) inserts new regulations in the PCT Regulations as follows.

The new *regulation 4A* of the PCT Regulations provides for suspension of the chairman or non-officer members, the notification of suspension, the period of suspension and provision for reviewing, revoking and extending the suspension.

*Regulation 4B* provides for the maximum number of members specified in the PCT Regulations to be increased in the event of suspension, so as to allow for a replacement member to be appointed. *Regulation 4B* also modifies the provisions in the PCT Regulations relating to the number of members needed to requisition a meeting or to form a quorum at a meeting of the trust, in cases where the chairman or a non-officer member has been suspended. *Regulation 4C* provides for the Secretary of State to appoint a non-officer member of the trust to be vice-chairman in a case where the chairman of the trust is suspended.

Regulation 3 of these Regulations makes similar amendments in respect of NHS trusts. Regulation 3(4) inserts new regulations in the NHS trust Regulations as follows.

The new *regulation 9A* of the NHS trust Regulations provides for suspension of the chairman or non-executive directors, the notification of suspension, the period of suspension and provision for reviewing, revoking and extending the suspension.

*Regulation 9B* provides for the maximum number of directors specified in the NHS trust Regulations to be increased in the event of suspension, so as to allow for a replacement director to be appointed. *Regulation 9B* also amends the provisions in the NHS trust Regulations relating to the number of directors needed to requisition a meeting or to form a quorum at a meeting of the NHS trust, in cases where the chairman or a director has been suspended. *Regulation 9C* provides for the Secretary of State to appoint a non-executive director of the trust to be vice-chairman in a case where the chairman of the trust is suspended.

Regulation 3 of these Regulations also makes provision in relation to the number of non-executive directors specified in the order establishing an NHS trust. *Regulation 9D* provides that the number so specified is to be increased where the chairman or a non-executive director is suspended, so as to allow for additional directors to be appointed to replace any person suspended.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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