
STATUTORY INSTRUMENTS

2008 No. 1269

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

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

3.—(1) The National Health Service Trusts (Membership and Procedure) Regulations 1990⁽¹⁾ 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—

“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.

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

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⁽²⁾ 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”.

(2) 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.