

2010 No. 720

NATIONAL HEALTH SERVICE, ENGLAND

**The Health Act 2009 (Powers in Relation to NHS Bodies—
Consequential Amendments) Regulations 2010**

Made - - - - *10th March 2010*

Laid before Parliament *15th March 2010*

Coming into force in accordance with regulation 1(2) and (3)

The Secretary of State for Health makes the following Regulations in exercise of powers conferred by sections 244(2) and 272(7) and (8) of, 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 Health Act 2009 (Powers in Relation to NHS Bodies—Consequential Amendments) Regulations 2010.

(2) Except as provided in paragraph (3), these Regulations shall come into force on 12th April 2010.

(3) Regulation 2(1) and (3), so far as relating to the addition of regulation 2(5) of the National Health Service Trusts (Membership and Procedure) Regulations 1990(b), shall come into force on 19th April 2010.

(4) These Regulations apply in relation to England.

Amendments relating to membership of NHS trusts

2.—(1) The National Health Service Trusts (Membership and Procedure) Regulations 1990 are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation)(c), in paragraph (2), after the definition of “trade union” add the following definition—

““trust special administrator” means a person appointed in relation to an NHS trust under section 65B(6)(a) of the 2006 Act (appointment of trust special administrator) (d).”.

(3) In regulation 2 (maximum number of directors)(e)—

(a) in paragraphs (1) and (2), for each occurrence of “paragraphs (3) and (4)” substitute “paragraphs (3) to (6)”; and

(a) 2006 c. 41. The powers of the Secretary of State as exercised in the making of these Regulations are exercisable only in relation to England, by virtue of section 271 of the Act.

(b) S.I. 1990/2024.

(c) Regulation 1(2) was amended by S.I. 1996/1755, 1998/646, 2000/2434, 2001/3786, 2002/2469 and 2861, 2004/696, 865 and 1016, 2005/525, 1622 and 2078, 2006/552, 562 and 946, 2008/1269 and 2009/1385.

(d) Section 65B was inserted by section 16 of the Health Act 2009 (c. 21).

(e) Regulation 2 was substituted by S.I. 1998/1775 and amended by S.I. 2000/2434, 2001/3786 and 2008/1269.

(b) after paragraph (4) add—

“(5) Paragraphs (1) and (2) shall not apply to an NHS trust that became an NHS trust by virtue of an order made under section 52D(1) of the 2006 Act (de-authorisation)(a) during any period specified in relation to that trust under section 52D(5) of that Act.

(6) Paragraphs (1) and (2) shall not apply to an NHS trust that became an NHS trust by virtue of an order under section 65E(1) of the 2006 Act (NHS foundation trusts: de-authorisation and appointment of trust special administrator)(b) until the date an order made in respect of that trust under section 65L(4) of that Act (trusts coming out of administration)(c) comes into force.”.

(4) In regulation 7 (tenure of office of chairman and directors)(d)—

(a) in paragraph (1), for “paragraph (1A)” substitute “paragraphs (1A) and (3)”;

(b) in paragraph (2), for “regulation 8” substitute “paragraph (3) and regulation 8”; and

(c) after paragraph (2) add—

“(3) Paragraphs (1) and (2) shall not apply to a person who became a chairman or director of an NHS trust by virtue of paragraph 4(3) of Schedule 8A to the 2006 Act (de-authorised foundation trusts: board of directors)(e).”.

(5) In regulation 15 (appointment of committees and sub-committees), in paragraph (1), after “an NHS trust” insert “or a trust special administrator”.

(6) In regulation 16 (arrangements for the exercise of functions), in paragraph (1)—

(a) after “an NHS trust” insert “or a trust special administrator”;

(b) for “its” substitute “the trust’s”; and

(c) for “the trust thinks fit” substitute “the trust or administrator thinks fit”.

(7) In regulation 19 (meetings and proceedings)(f)—

(a) in paragraph (1), at the beginning insert “Subject to paragraph (1A),”;

(b) after paragraph (1) insert—

“(1A) Paragraph (1) and the Schedule shall not apply where a trust special administrator has been appointed.”; and

(c) in paragraph (2)—

(i) after “vary or revoke” insert “, or a trust special administrator may make, vary or revoke,”; and

(ii) for “its” substitute “the trust’s”; and

(d) in paragraph (3), after “an NHS trust” insert “or a trust special administrator”.

Amendments relating to trust special administrators and overview and scrutiny committees

3.—(1) The Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002(g) are amended as follows.

(2) In regulation 4 (consultation of committees by local NHS bodies other than NHS foundation trusts)(h), after paragraph (3) insert—

(a) Section 52D was inserted by section 15 of the Health Act 2009 (c. 21); section 52D(3) provides for a body that ceases to be an NHS foundation trust to become an NHS trust.

(b) Sections 65E was inserted by section 16 of the Health Act 2009 (c. 21); section 65E(4) provides for a body that ceases to be an NHS foundation trust to become an NHS trust.

(c) Section 65L was inserted by section 16 of the Health Act 2009 (c. 21).

(d) Regulation 7 was amended by S.I. 1996/1755 and 2001/3786.

(e) Schedule 8A was inserted by Schedule 2 to the Health Act 2009 (c. 21).

(f) Regulation 19 was amended by S.I. 2001/3786.

(g) S.I.2002/3048.

(h) Regulation 4 was amended by S.I. 2004/696 and 2006/562.

“(3A) Paragraph (1) shall not apply to any proposals contained in a trust special administrator’s report or draft report under sections 65F, 65I, 65R or 65U of the National Health Service Act 2006 (trust special administrators: reports and draft reports)(a).”.

(3) In regulation 4A (consultation of committees by NHS foundation trusts)(b) after paragraph (1) insert—

“(1A) This regulation does not apply if the substantial variation of the provision by an NHS foundation trust of protected goods or services was proposed in a trust special administrator’s report or draft report under sections 65F, 65I, 65R or 65U of the National Health Service Act 2006 (trust special administrators: reports and draft reports).”.

(4) In regulation 5 (information to be furnished by local NHS bodies)—

- (a) in paragraph (1), for “paragraph (3)” substitute “paragraphs (3) and (7)”; and
- (b) after paragraph (6) add—

“(7) Paragraph (1) shall not apply in relation to information contained in, or relating to, a trust special administrator’s report or draft report under sections 65F, 65I, 65R or 65U of the National Health Service Act 2006 (trust special administrators: reports and draft reports).”.

(5) In regulation 6 (obtaining information and explanations)—

- (a) in paragraph (1), after “Subject to” insert “paragraph (5) and to”; and
- (b) after paragraph (4) add—

“(5) An overview and scrutiny committee may not require an officer of a local NHS body to attend before the committee to answer questions in relation to a trust special administrator’s report or draft report under sections 65F, 65I, 65R or 65U of the National Health Service Act 2006 (trust special administrators: reports and draft reports).”.

Signed by authority of the Secretary of State for Health.

10th March 2010

Mike O’Brien
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service Trusts (Membership and Procedure) Regulations 1990 (“the 1990 Regulations”) and the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002 (“the 2002 Regulations”), in consequence of the provisions of the Health Act 2009 relating to powers in relation to failing NHS bodies in England (Chapter 1 of Part 2). Those provisions make provision, in particular, in connection with the de-authorisation of NHS foundation trusts and the appointment of trust special administrators.

In particular, regulation 2 amends the 1990 Regulations so that—

- the rule as to the maximum number of directors does not apply to an NHS foundation trust de-authorised under sections 52D or 65E of the 2006 Act (regulation 2(3));
- the provision relating to tenure of office of chairman and directors does not apply where a chairman or director of a de-authorised NHS foundation trust becomes a chairman or director of the NHS trust under paragraph 4(3) of Schedule 8A of the 2006 Act (regulation 2(4));

(a) Sections 65F and 65I were inserted by section 16 of the Health Act 2009 (c. 21). Sections 65R and 65U were inserted by section 17 of the Health Act 2009.

(b) Regulation 4A was inserted by S.I. 2004/696.

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