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STATUTORY INSTRUMENTS

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**2011 No. 2962**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The NHS Foundation Trusts (Trust Funds:  
Appointment of Trustees) Amendment Order 2011**

*Made* - - - - - *8th December 2011*

*Coming into force* - - - - - *1st January 2012*

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 51(1) and (2) and 64(5) and (6) of the National Health Service Act 2006<sup>(1)</sup>.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the NHS Foundation Trusts (Trust Funds: Appointment of Trustees) Amendment Order 2011 and shall come into force on 1st January 2012.

(2) In this Order, the “Appointment Order” means the NHS Foundation Trusts (Trust Funds: Appointment of Trustees) Order 2007<sup>(2)</sup>.

**Substitution of article 1(2) of the Appointment Order**

2. In article 1 of the Appointment Order (citation, commencement and interpretation), for article 1(2) substitute—

“(2) In this Order-

“the Commission” means the Appointments Commission<sup>(3)</sup>;

“company” means a company as defined in section 1(1) of the Companies Act 2006<sup>(4)</sup>;

“executive director” means a director who is an employee of the company;

“foundation trust” means an NHS foundation trust specified in either of the Schedules to this Order;

“non-executive director” means a director who is not an employee of the company.”.

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(1) 2006 c. 41.

(2) S.I. 2007/1766 amended by S.I. 2008/1902 and 2010/306.

(3) The Appointments Commission was established by section 57 of the Health Act 2006 (c. 28).

(4) 2006 c. 46.

### **Amendment of article 2 of the Appointment Order**

3. In article 2 of the Appointment Order (appointment of trustees) after paragraph (2) insert—
- “(3) In respect of the foundation trust specified in column 1 of Schedule 2, the Commission must appoint as trustee for the foundation trust the company which is listed adjacent to it in column 2 of that Schedule.”.

### **Substitution of article 3 of the Appointment Order**

4. For article 3 of the Appointment Order (termination and suspension of appointment) substitute—

- “3.—(1) The Commission may terminate a trustee’s tenure of office where it is of the opinion that—
- (a) it is not in the interests of the foundation trust or of the health service or of the administration of any of the trust funds that the trustee should continue to hold office; or
  - (b) in the case of a trustee that is a company, there has been a breach of any of the conditions in article 3A(2).
- (2) Where the Commission is of the opinion referred to in paragraph (1), the Commission may suspend the trustee from office, pending a decision on whether to terminate the trustee’s tenure of office.”.

### **Insertion of article 3A to the Appointment Order**

5. After article 3 of the Appointment Order insert the following article—

#### **“Appointment of company subject to conditions**

**3A.—**(1) The Commission must not appoint a company as a trustee for a foundation trust, other than in respect of the foundation trust listed in Schedule 2.

(2) Where the Commission appoints a company as a trustee any such appointment shall be subject to the following conditions, which must be included in the company’s constitution—

- (a) the company must be incorporated as a company limited by guarantee, established for exclusively charitable purposes and registered with the Charity Commission under the Charities Act 1993<sup>(5)</sup>;
- (b) the objects of the company must include holding property as set out in section 51(1) of the National Health Service Act 2006;
- (c) the number of non-executive directors must exceed the number of executive directors;
- (d) the non-executive directors of the company must be appointed by the Commission;
- (e) when appointing executive directors, the company must have regard to the guidance entitled “Trustees for NHS Charities – Guidance on recruitment and selection” published by the Appointments Commission on 1st March 2010<sup>(6)</sup>, as if that guidance applied to the appointment of executive directors;

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(5) 1993 c. 10.

(6) The guidance is available at [www.appointments.org.uk](http://www.appointments.org.uk).

- (f) the company must have systems in place for the annual appraisal and performance management of its directors;
- (g) the board of directors of the company must ratify any Commission request to terminate the tenure of office of a non-executive director on the grounds that the Commission considers it is not in the interests of the foundation trust or of the health service or of the administration of any trust funds that a non-executive director should continue to hold office; and
- (h) where any of the existing directors of the foundation trust are appointed as a director of the company appointed as trustee for that foundation trust pursuant to this Order, their term of office shall be for a period not exceeding six months.”.

#### **Amendment of the Schedule to the Appointment Order**

6. The Schedule to the Appointment Order (NHS Foundation Trusts for which Trustees are to be appointed) is renumbered Schedule 1.

#### **Insertion of Schedule 2**

7. After Schedule 1 as so renumbered by article 6 of this Order, insert the following Schedule—

“SCHEDULE 2

Articles 2(3) and 3A

NHS Foundation Trust for which a company is to be appointed as trustee

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<b>Foundation Trust</b>	<b>Company to be appointed as trustee</b>
Royal Brompton and Harefield NHS Foundation Trust(7)	Royal Brompton and Harefield Charity trustee, company number 7795583”

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Signed by authority of the Secretary of State for Health.

8th December 2011

*Simon Burns*  
Minister of State,  
Department of Health

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

This Order amends the NHS Foundation Trusts (Trust Funds: Appointment of Trustees) Order 2007 (the “Appointment Order”), which provides for the appointment of trustees by the Appointments Commission for the NHS foundation trusts specified in the Schedules, to hold property for the purposes of the NHS foundation trust for which the trustees are appointed or for any other purpose relating to the health service.

Article 3 of the Order amends the provisions of the Appointment Order to provide that the Appointments Commission must appoint as trustee for the NHS foundation trust listed in column 1 of Schedule 2 the company listed adjacent to that foundation trust in column 2 of Schedule 2.

Article 4 of the Order amends the provisions of the Appointment Order relating to the termination and suspension of trustees.

Article 5 inserts a new article 3A into the Appointment Order, to provide that the Appointments Commission must not appoint a company as a trustee for NHS foundation trusts unless the NHS foundation trust is specified in Schedule 2 and to specify the conditions to which any such appointment is subject.

Article 6 re-numbers the Schedule to the Appointment Order, and article 7 inserts a new Schedule 2 which specifies the NHS foundation trust for which a company is to be appointed as trustee and the name and company number of that company.

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