

AUTHORISATION

of

BURTON HOSPITALS NHS FOUNDATION TRUST

(pursuant to section 35 of the National Health Service Act 2006)



Signature:

William Hargreaves

1 November 2008

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PART 1 Authorisation

1. Monitor (“Monitor”), the Independent Regulator of NHS Foundation Trusts, in exercise of the powers conferred by section 35 of the National Health Service 2006 (“**the Act**”) and all other powers exercisable by Monitor, hereby authorises Burton Hospitals NHS Foundation Trust to become an NHS Foundation Trust (“**the Trust**”), subject to the Conditions set out in Part 3 hereof.
2. This Authorisation shall come into force on 1 November 2008.
3. Subject to the provisions of sections 54 and 55 of the Act, this Authorisation shall be of unlimited duration.
4. This Authorisation is not assignable.
5. Monitor may vary the Conditions of this Authorisation.

PART 2 Interpretation and construction

1. Words and expressions used in the Authorisation shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.
2. Any reference to an enactment shall include any re-enactment thereof or amendment thereto.
3. Words and expressions defined in the Act shall have the same meaning when used in this Authorisation.
4. Unless otherwise specified, any reference to a numbered Condition (with or without a suffix letter) or Schedule is a reference to the Condition or Schedule bearing that number in this Authorisation.
5. In construing the provisions of this Authorisation, the heading or title of any Part, Condition or Schedule shall be disregarded.
6. Where any obligation of the Trust is required to be performed by a specified date or within a specified period, and where the Trust has failed so to perform, such obligation shall continue to be binding and enforceable after the specified date or after the expiry of the specified period.

7. In this Authorisation:

“ancillary services” means services which support the provision of the mandatory goods and services listed in Schedule 2.

“property” is land and buildings owned or leased by the Trust.

“the Board of Directors” means the Board of Directors of the Trust.

“the provision of goods and services for purposes related to the provision of health care” includes the provision of social care services.

“high security psychiatric services” has the same meaning as in section 4 of the Act.

PART 3 Conditions

1. Principal Purpose

The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England. This does not preclude the provision of cross-border services to other parts of the United Kingdom.

2. General duty

The Trust shall exercise its functions effectively, efficiently and economically.

3. Constitution

(1) The Trust may make amendments to its constitution with the approval of Monitor.

(2) The constitution, incorporating any amendments which may be made thereto, is annexed at Schedule 1.

4. Compliance and enforcement

(1) The Trust shall comply with:

any requirements imposed on it under the Act or any other enactment;

the Conditions of this Authorisation;

the terms of its constitution;

if applicable, directions issued by the Secretary of State with respect to safety and security in connection with the provision of high security psychiatric services; and

the terms of its contracts with bodies which commission the Trust to provide goods and services (including education and training, accommodation and other facilities) for the purposes of the health service in England.

(2) The Trust shall comply with any guidance issued by Monitor, unless Monitor has agreed with the Trust that, in the particular circumstances, the Trust is not required to comply.

(3) A failure to comply may result in Monitor taking enforcement action under sections 52, 53 or 54 of the Act.

5. Governance

(1) The Trust shall ensure the existence of appropriate arrangements to provide representative and comprehensive governance in accordance with the Act and to maintain the organisational capacity necessary to deliver the mandatory

goods and services referred to in Condition 7(1) and listed in Schedule 2 and the mandatory education and training referred to in Condition 7(2) and listed in Schedule 3.

- (2) The Trust shall comply with the principles of best practice applicable to corporate governance in the NHS/health sector, with any relevant code of practice and with any guidance which may be issued by Monitor.

6. Health care and other standards

- (1) The Trust shall put and keep in place and comply with arrangements for the purpose of monitoring and improving the quality of health care provided by and for the Trust.
- (2) The Trust shall comply with statements of standards in relation to the provision of health care published by the Secretary of State under section 46 of the Health and Social Care (Community Health and Standards) Act 2003, as currently set out in the Department of Health publication Health and Social Care Standards and Planning Framework (July 2004) as may be amended from time to time.
- (3) If applicable, the Trust shall comply with any statements of standards with respect to social care services which the Secretary of State may issue from time to time.
- (4) If applicable, the Trust shall comply with any statements of standards with respect to security and risk management which the Secretary of State may issue from time to time.

7. Mandatory Services

- (1) The Trust is required to provide for the purposes of the health service in England the goods and services listed in Schedule 2 in the volumes or amounts specified therein ("**mandatory goods and services**") which goods and services in the volumes or amounts specified are to be provided pursuant to a legally binding contract or contracts between the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said goods and services in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force. This requirement includes an obligation to provide any ancillary services, accommodation and other facilities related to said goods and services and which are generally accepted to be required for the effective, efficient and economic provision of said goods and services in the volumes or amounts specified.
- (2) The Trust is required to provide education and training to third parties for the purposes of the health service in England listed in Schedule 3 in the volumes or amounts specified therein ("**mandatory education and training**"), which are to be provided pursuant to a legally binding contract or contracts between the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said education and training in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force.

- (3) Monitor reserves the right to vary the goods and services and the volumes or amounts thereof which the Trust is required to provide in terms of Condition 7(1) and the education and training to third parties and the volumes or amounts thereof which the Trust is required to provide in terms of Condition 7(2), in particular in order to ensure the continuity of local service provision and the fulfilment of local health needs as they may vary from time to time.
- (4) The Board of Directors of the Trust shall regularly review and shall at all times maintain and ensure the capacity and capability of the Trust to provide the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.

8. Authorised Services

- (1) The Trust is authorised to provide goods and services (including education and training, accommodation and other facilities) for purposes related to the provision of health care, subject to written confirmation to Monitor by the Board of Directors that the Board of Directors is satisfied that the Trust has the capacity and the capability to provide said goods and services and that the provision of said goods and services will not inhibit the provision by the Trust of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.
- (2) Monitor reserves the right to refuse to authorise specific goods and services in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(1).
- (3) The Trust shall establish and maintain an up to date register of the goods and services referred to in Condition 8(1). With respect to education and training, only education and training provided to third parties shall be included in the register. Accommodation and other facilities do not require to be included in the register of goods and services.
- (4) The Trust shall make the register of goods and services available for public inspection on payment of such reasonable fee, if any, as the Trust may determine.
- (5) The Trust is authorised to carry out research in connection with the provision of health care, subject to written confirmation to Monitor by the Board of Directors that the Board of Directors is satisfied that the Trust has the capacity and the capability to provide said research, that all relevant authorisations with respect to the carrying out of said research have been secured, that the said research will be carried out in accordance with the generally accepted ethical standards and that the said research will not inhibit the provision by the Trust of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.
- (6) Monitor reserves the right to refuse to authorise research in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(5).
- (7) The Trust is authorised to make facilities and staff available for the purposes of education, training or research carried on by others.

- (8) Any activities undertaken by the Trust, other than the provision of goods and services for purposes related to the provision of health care, shall be subject to any restrictions which may be imposed by Monitor in terms of section 43(3) of the Act.

9. Protection of property

- (1) Property needed for the purposes of providing any of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2 (including the ancillary services, accommodation and other facilities related thereto) and the mandatory training and education referred to in Condition 7(2) and listed in Schedule 3 is protected.
- (2) The Trust may not dispose any protected property without the approval of Monitor.
- (3) The Trust shall establish and maintain an asset register in respect of protected property, in accordance with guidance to be issued by Monitor.
- (4) The Trust shall make the asset register available for public inspection on payment of such reasonable fee, if any, as the Trust may determine.

10. Private health care

The proportion of total income of the Trust in any financial year derived from private charges shall not be greater than the percentage set out in Schedule 4.

11. Limit on borrowing

- (1) The total amount of the Trust's borrowing is subject to the limit set out in Schedule 5 and the principles set out in the Prudential Borrowing Code for NHS Foundation Trusts.
- (2) The limit is subject to annual review by Monitor.

12. Financial viability

The Trust shall at all times remain a going concern as defined by relevant accounting standards in force from time to time.

13. Dividend payments on Public Dividend Capital

The Trust shall be required to pay annually to the Department of Health a dividend on its Public Dividend Capital at a rate to be determined from time to time by the Secretary of State.

14. Information

The Trust shall disclose to Monitor and directly to any third parties as may be specified by the Secretary of State the information, if any, specified in Schedule 6 as may be varied from time to time and such other information as Monitor may from time to time require.

15. Entry and inspection of premises

The Trust shall allow Monitor, any member, officer or member of staff of Monitor, and any agent acting on behalf of Monitor, to enter and inspect premises owned or controlled by the Trust.

16. Fees

The Trust shall pay to Monitor such reasonable annual fee, if any, as may be determined by Monitor.

17. Representative membership

The Trust shall continue to take such reasonable steps (as may be required by Monitor, by such date or within such period as may be specified by Monitor), to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) the patients' constituency is representative of those eligible for such membership.

18. Co-operation with other bodies

(1) The Trust shall co-operate with Primary Care Trusts, Strategic Health Authorities, Special Health Authorities, the Commission for Health Care Audit and Inspection, NHS foundation trusts, other NHS trusts and other health authorities and organisations in accordance with the Act and any future guidance to be published by Monitor.

(2) The Trust shall co-operate with the Commission for Social Care Inspection, the Mental Health Act Commissioners, the National Oversight Group for High Security Hospitals and such other bodies (as may be specified in any future guidance to be published by Monitor) which have a remit covering activities related to the provision of mental healthcare services.

(3) The Trust shall co-operate with local authorities in the exercise of its own functions and in the exercise by the local authorities of their respective functions.

19. Emergency planning

The Trust shall assist the relevant authorities with, and participate in, local and national emergency planning and provision.

20. Information technology

The Trust shall participate in the national programme for information technology, in accordance with any guidance issued by Monitor.

21. Audit committee

(1) The Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

(2) The Board of Directors shall satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

22. Audit

- (1) The Audit Code for NHS Foundation Trusts (“the Audit Code”) contains the directions of Monitor under paragraph 24(5) of Schedule 7 to the Act with respect to the standards, procedures and techniques to be adopted by the auditor.
- (2) The Trust shall comply with the Audit Code.
- (3) The auditor shall comply with the Audit Code.

23. Public interest reporting

The Trust shall forward a report to Monitor within thirty days (or such shorter period as Monitor may specify) of the auditor issuing a public interest report in terms of Schedule 10 paragraph 3 of the Act. The report shall include details of the Trust’s response to the issues raised within the public interest report.

24. Notification

The Trust shall deal with Monitor in an open and co-operative manner and shall promptly notify Monitor of anything relating to the Trust of which Monitor would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under this authorisation or any financial or performance thresholds which Monitor may specify from time to time.

25. Information given to Parliament and to Members of Parliament

In addition to any statutory requirements, the Chairman, Chief Executive or any other person giving information to Parliament or to a Member of Parliament on behalf of a Trust shall ensure that they comply with the standards expected of Ministers of the Crown with regard to openness of dealings, the giving of accurate and truthful information and the correction of any inadvertent error at the earliest opportunity. Any question submitted to the Trust by a Member of Parliament shall be responded to by the Trust within the same timescale as that expected of Ministers with respect to Parliamentary questions.

AUTHORISATION OF BURTON HOSPITALS NHS FOUNDATION TRUST

Schedule 1

The Constitution (and Annexures)

Burton Hospitals NHS Foundation Trust Constitution

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1 Name

The name of the foundation trust is Burton Hospitals NHS Foundation Trust (the trust).

2 Principal purpose

The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England.

3 Powers

- 3.1** The powers of the trust are set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.
- 3.2** The powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 3.3** Any of these powers may be delegated to a committee of directors or to an executive director.

4 Membership and constituencies

The trust shall have members, each of whom shall be a member of one of the following constituencies:

- 4.1** a public constituency
- 4.2** a staff constituency

5 Application for membership

An individual who is eligible to become a member of the trust may do so on application to the trust.

6 Public Constituency

- 6.1** An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the trust.
- 6.2** Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.
- 6.3** The minimum number of members in each area for the Public Constituency is specified in Annex 1.

7 Staff Constituency

7.1 An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:

7.1.1 he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

7.1.2 he has been continuously employed by the trust under a contract of employment for at least 12 months.

7.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt this shall include individuals who assist or provide services to the trust on a voluntary basis through Burton Hospitals Volunteers but shall not include any other individual volunteers.

7.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

7.4 The Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

7.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

7.6 An individual who is:

7.6.1 eligible to become a member of the Staff Constituency, and

7.6.2 invited by the trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

shall become a member of the trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the trust that he does not wish to do so.

8 Restriction on membership

- 8.1** An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 8.2** An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 8.3** Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8 – Further Provisions.

9 Council of Governors – composition

- 9.1** The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 9.2** The composition of the Council of Governors is specified in Annex 3.
- 9.3** The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

10 Council of Governors – election of governors

- 10.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time. The Board of Directors will decide which of the two voting methods set out in the Model Rules for Elections is to be used.
- 10.2** The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 4.
- 10.3** A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the trust cannot amend the Model Rules.
- 10.4** An election, if contested, shall be by secret ballot.

11 Council of Governors - tenure

11.1 An elected governor, with the exception of first appointments where transitional arrangements apply (see paragraph 7 of Annex 5) may hold office for a period of up to 3 years commencing immediately after the annual general meeting at which his election is announced.

11.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.

11.3 An elected governor shall be eligible for re-election at the end of his term.

11.4 An elected Governor may not hold office for more than nine consecutive years and shall not be eligible for re-election if he has already held office for more than six consecutive years.

11.5 For the purposes of these provisions concerning terms of office for elected Governors, “year” means a period commencing immediately after the conclusion of an annual general meeting, and ending at the conclusion of the next annual general meeting.

11.6 Further provisions as to tenure for elected Governors are set out at Annex 5.

11.7 An appointed governor may hold office for a period of up to 3 years.

11.8 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.

11.9 An appointed governor shall be eligible for re-appointment at the end of his term.

12 Further provisions relating to election and voting of governors

12.1 A person may not vote at an election for a governor unless at the time of voting, he makes a declaration in the form approved from time to time by the Secretary of the Trust of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.

12.2 A person may not stand for election to the Council of Governors unless—

12.2.1 he has at the time of his nomination made a declaration in the form approved from time to time by the Secretary of the Trust of the particulars of his qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held, and

12.2.2 he is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or any provision of the Trust's constitution.

12.3 A person elected to the Council of Governors may not vote at a meeting of the Council of Governors unless—

12.3.1 he has within the month prior to and including the day of the meeting-made a declaration in the form approved from time to time by the Secretary of the Trust of the particulars of his qualification to vote as a member of the Trust, and

12.3.2 he is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or any provision of the Trust's constitution.

13 Council of Governors – disqualification and removal

13.1 The following may not become or continue as a member of the Council of Governors:

13.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

13.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

13.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.

13.2 Governors must be at least 18 years of age at the date they are nominated for election or appointment.

13.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Governors are set out in Annex 5.

13.4 A Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that;

13.4.1 they have committed a serious breach of the Code of Conduct; or

13.4.2 they have acted in a manner detrimental to the interests of the trust; and

13.4.3 the Council of Governors consider that it is not in the best interests of the trust for them to continue as a Governor.

14 Council of Governors – meetings of governors

14.1 The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 21.1 or paragraph 22.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 23 below), shall preside at meetings of the Council of Governors.

14.2 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. Members of the public may also be excluded from a meeting if they are interfering with or preventing the proper conduct of the meeting.

15 Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

16 Council of Governors - conflicts of interest of governors

If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

17 Council of Governors – travel expenses

The trust may pay traveling and other expenses to members of the Council of Governors at rates determined by the trust.

18 Council of Governors – further provisions

Further provisions with respect to the Board of Governors are set out in Annex 5.

19 Board of Directors – composition

19.1 The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

19.2 The Board of Directors is to comprise:

19.2.1 a non-executive Chairman

19.2.2 five other non-executive directors; and

19.2.3 five executive directors.

19.3 One of the executive directors shall be the Chief Executive.

19.4 The Chief Executive shall be the Accounting Officer.

19.5 One of the executive directors shall be the finance director.

19.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

19.7 One of the executive directors is to be a registered nurse or a registered midwife.

20 **Board of Directors – qualification for appointment as a non-executive director**

A person may be appointed as a non-executive director only if –

20.1 he is a member of the Public Constituency, or

20.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and

20.3 he is not disqualified by virtue of paragraph 26 below or Annex 8.

21 **Board of Directors – appointment and removal of chairman and other non-executive directors**

21.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the trust and the other non-executive directors.

21.2 Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

21.3 The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 22 below.

21.4 Further provisions as to the appointment and removal of the Chairman and other non executive directors are set out at Annex 8.

22 Board of Directors – appointment of initial chairman and initial other non-executive directors

22.1 The Chairman of the applicant NHS Trust shall be appointed as the initial Chairman of the trust if he wishes to be appointed.

22.2 The power of the Council of Governors to appoint the other non-executive directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of the applicant NHS Trust (other than the Chairman) who wish to be appointed.

22.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 20 above (other than disqualification by virtue of paragraph 26 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

22.4 An individual appointed as the initial chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

23 Board of Directors – appointment of deputy chairman

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman. If the Chairman is unable to discharge his office as Chairman of the Trust the Deputy Chairman shall be acting Chairman of the Trust.

24 Board of Directors - appointment and removal of the Chief Executive and other executive directors

24.1 The non-executive directors shall appoint or remove the Chief Executive.

24.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.

24.3 The initial Chief Executive is to be appointed in accordance with paragraph 25 below.

24.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

24.5 The Chief Executive shall appoint one of the Executive Directors as Deputy Chief Executive, subject to the approval of the Board of Directors.

25 **Board of Directors – appointment and removal of initial Chief Executive**

25.1 The chief officer of the applicant NHS Trust shall be appointed as the initial Chief Executive of the trust if he wishes to be appointed.

25.2 The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

26 **Board of Directors – disqualification**

The following may not become or continue as a member of the Board of Directors:

26.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.

26.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.

26.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.

26.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out in Annex 8.

27 **Board of Directors – standing orders**

The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 7.

28 **Board of Directors - conflicts of interest of directors**

If a director has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Board of Directors, the director shall disclose that interest to the members of the

Board of Directors as soon as he becomes aware of it. The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

29. Board of Directors – remuneration and terms of office

29.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.

29.2 The trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

30. Registers

The trust shall have:

30.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;

30.2 a register of members of the Council of Governors;

30.3 a register of interests of governors;

30.4 a register of directors; and

30.5 a register of interests of the directors.

31. Admission to and removal from the registers

31.1 The Secretary shall remove from the register of members the name of any member who appears to the Secretary to have ceased to be entitled to be a member under the provisions of this constitution.

31.2 The Secretary is to send to Monitor a list of persons who were first elected or appointed as Governors and Directors.

32. Registers – inspection and copies

32.1 The trust shall make the registers specified in paragraph 30 above available for inspection by members of the public, except in the

circumstances set out below or as otherwise prescribed by regulations.

32.2 The trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the trust, if the member so requests.

32.3 So far as the registers are required to be made available:

32.3.1 they are to be available for inspection free of charge at all reasonable times; and

32.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

32.4 If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

33. Documents available for public inspection

33.1 The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:

33.1.1 a copy of the current constitution;

33.1.2 a copy of the current authorisation;

33.1.3 a copy of the latest annual accounts and of any report of the auditor on them;

33.1.4 a copy of the latest annual report;

33.1.5 a copy of the latest information as to its forward planning;

33.1.6 a copy of any notice given under section 52 of the 2006 Act; and

33.1.7 a copy of the Trust's Membership Strategy

33.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy or extract.

33.3 If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

34. Auditor

34.1 The trust shall have an auditor.

34.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

35. Audit committee

The trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

36. Accounts

36.1 The trust shall keep accounts in such form as Monitor may with the approval of HM Treasury direct.

36.2 The accounts are to be audited by the trust's auditor.

36.3 The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the HM Treasury direct.

36.4 The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

36.5 Further provisions as to the accounts are set out at Annex 8.

37 Annual report and forward plans

37.1 The trust shall prepare an Annual Report and send it to Monitor.

37.2 The trust shall give information as to its forward planning in respect of each financial year to Monitor.

37.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.

37.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.

38 Meeting of Council of Governors to consider annual accounts and reports

The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:

38.1 the annual accounts

38.2 any report of the auditor on them

38.3 the annual report.

39 Instruments

39.1 The trust shall have a seal.

39.2 The seal shall not be affixed except under the authority of the Board of Directors.

40 Amendment of the constitution

40.1 No amendment shall be made to this constitution (including the Annexes, save as otherwise specified) unless:

It has been approved by the Board of Directors,
It has been approved by the Council of Governors, and
It has been approved by Monitor

40.2 Amendments will be in accordance with the Act and clearly tracked as a change. Proposals for change will be prepared as a formal paper for consideration at the Board of Directors and will confirm the reason for the change.

41 Mergers

The Trust may in accordance with section 56 of the 2006 Act apply to Monitor jointly with another NHS Foundation Trust or an NHS Trust for authorisation of the dissolution of the Trust and the transfer of some or all of their property and liabilities to a new NHS Foundation Trust established under that section. Such application shall only be made if it is approved by a majority of those members of the Trust present and voting at a members meeting duly called by the Council of Governors in accordance with this constitution.

42. Dissolution of the Trust

The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the Act 2006.

43. Interpretation and definitions

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006.

Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.

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

“the Accounting Officer” means the person who from time to

	time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
“appointed Governors”	means those Governors appointed by the appointing organisations;
“appointing Organisations”	means those organisations named in this constitution who are entitled to appoint Governors;
“annual general meeting”	means the annual meeting of the Council of Governors referred to in paragraph 37 above;
“authorisation”	means an authorisation given by the Independent Regulator;
“Board of Directors”	means the Board of Directors as constituted in accordance with this constitution;
“Code of Conduct for Governors”	means the Trust’s Code of Conduct for Governors as amended from time to time (by resolution of the Board of Directors and the Council of Governors);
“Council of Governors”	means the Council of Governors as constituted in accordance with this constitution, which has the same meaning as the Board of Governors in the 2006 Act;
“Director”	means a member of the Board of Directors;
“Elected Governors”	means those Governors elected by the public constituencies and classes of staff constituency;
“Financial Year”	means: <ul style="list-style-type: none"> (a) the period beginning with the date on which the Trust is authorised and ending with the next 31 March; and (b) each successive period of twelve months beginning 1 April

“Local Authority Governor”	means a Governor appointed by one or more local authorities whose area includes the whole or part of one of the areas of the Trust;
“Monitor”	means the Independent Regulator of NHS Foundation Trusts, as provided by Section 31 of the 2006 Act;
“Member”	means a member of the Trust;
“Partnership Governor”	means a Governor appointed by a partnership organisation;
“PCT Governor”	means a Governor appointed by a Primary Care Trust for which the Trust provides goods or services;
“Public Governor”	means a Governor elected by the members of one of the public constituencies;
“Public Constituency”	means (collectively) those members living in one of the areas of the Trust;
“Secretary”	means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary;
“Staff Governor”	means a Governor elected by one of the classes of the staff constituency;
“Staff Constituency”	means (collectively) those members of the five classes comprising the staff constituency;
“terms of authorisation”	means the terms of authorisation issued by Monitor under Section 35 of the 2006 Act;
“the Trust”	means Burton Hospitals NHS Foundation Trust;
“Voluntary organisation”	means a body, other than a public or local authority, the activities of which are not carried out for profit.

ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 6.1 and 6.3)

1. The areas for public constituencies are as follows:
 - 1.1 The electoral area covered by East Staffordshire Borough Council
 - 1.2 The electoral areas covered by South Derbyshire District Council
 - 1.3 The electoral area covered by North West Leicestershire District Council area
 - 1.4 The electoral areas covered by Lichfield and Tamworth Borough Council areas

The minimum number of members of each of the areas of the Public Constituency is to be twenty.

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 7.4 and 7.5)

1. The classes of the staff constituency are:
 - (a) Medical and Dental staff
 - (b) Nursing and Midwifery staff
 - (c) Other **clinical** staff not in a or b above
 - (d) Other staff not in a, b or c above
 - (e) Burton Hospitals Volunteers

The minimum number of members of each of the classes of the staff constituency is to be twenty.

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraph 9)

1. The aggregate number of Public Governors is to be more than half of the total number of Members of the Council of Governors.
2. The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors;
 - 2.1 the interests of the community serviced by the Trust are appropriately represented;
 - 2.2 the level of representation of the Public Constituency, the Staff Constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs;and to this end, the Council of Governors;
 - 2.3 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the Membership Strategy; and
 - 2.4 shall from time to time and at least every three years review the policy for the composition of the Council of Governors; and
 - 2.5 when appropriate shall propose amendments to this constitution.
3. The Council of Governors of the Trust is to comprise:
 - 3.1 Fourteen Public Governors elected from the following areas of the Public Constituency;
 - 3.1.1 East Staffordshire – 7 Public Governors
 - 3.1.2 South Derbyshire – 3 Public Governors
 - 3.1.3 Lichfield and Tamworth – 3 Public Governors
 - 3.1.4 North West Leicestershire – 1 Public Governor
 - 3.2 Five Staff Governors elected from the following staff groups:
 - 3.2.1 Medical and Dental Staff – 1 Staff Governor
 - 3.2.2 Nursing and Midwifery staff – 1 Staff Governor
 - 3.2.3 Other Clinical staff not in 3.2.1 or 3.2.2 above – 1 Staff Governor
 - 3.2.4 Other staff not in 3.2.1, 3.2.2 or 3.2.3 above – 1 Staff Governor
 - 3.2.5 Burton Hospitals Volunteers – 1 Staff Governor

3.3 Pursuant to a process agreed by South Staffordshire PCT and the Trust, two Governors to be appointed as follows:

3.3.1 One PCT Governor to be appointed by South Staffordshire PCT.

3.3.2 One PCT Governor to be appointed by South Staffordshire PCT (with the agreement of the other PCTs listed below) from the following:

3.3.2.1 Leicestershire County and Rutland PCT

3.3.2.2 Derbyshire County PCT

3.4 Two Local Authority Governors to be appointed by Staffordshire County Council (with the agreement of the other Councils listed below) from the following:

3.4.1 East Staffordshire Borough Council

3.4.2 South Derbyshire District Council

3.4.3 North West Leicestershire District Council

3.4.4 Lichfield District Council

3.4.5 Tamworth Borough Council

3.4.6 Staffordshire County Council

3.4.7 Derbyshire County Council

3.4.8 Leicestershire County Council

pursuant to a process agreed by Staffordshire County Council and the Trust.

3.5 Three Partner Governors to be appointed from the following organisations:

3.5.1 Burton College – 1 Partner Governor

3.5.2 Community Action and Support – East Staffordshire (CASES)
– 1 Partner Governor

3.5.3 Burton Chamber of Commerce – 1 Partner Governor

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

(Paragraph 10.2)

NHS foundation trusts (Board of Governors) Model Election Rules

Part 1 - Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

4. Returning officer
5. Staff
6. Expenditure
7. Duty of co-operation

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election
9. Nomination of candidates
10. Candidate's consent and particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination papers
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination papers
17. Withdrawal of candidates
18. Method of election

Part 5 – Contested elections

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting documents
25. Ballot paper envelope and covering envelope

The poll

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

32. Receipt of voting documents
33. Validity of ballot paper
34. Declaration of identity but no ballot paper
35. Sealing of packets

Part 6 - Counting the votes

- stv36. Interpretation of Part 6
37. Arrangements for counting of the votes
38. The count
- stv39. Rejected ballot papers
- fpp39. Rejected ballot papers
- stv40. First stage
- stv41. The quota
- stv42. Transfer of votes
- stv43. Supplementary provisions on transfer
- stv44. Exclusion of candidates
- stv45. Filling of last vacancies
- stv46. Order of election of candidates
- fpp46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

- fpp47. Declaration of result for contested elections
- stv47. Declaration of result for contested elections
48. Declaration of result for uncontested elections

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll
50. Delivery of documents
51. Forwarding of documents received after close of the poll
52. Retention and public inspection of documents
53. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

- fpp54. Countermand or abandonment of poll on death of candidate
- stv54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

- 55. Expenses incurred by candidates
- 56. Expenses incurred by other persons
- 57. Personal, travelling, and administrative expenses

Publicity

- 58. Publicity about election by the corporation
- 59. Information about candidates for inclusion with voting documents
- 60. Meaning of “for the purposes of an election”

Part 11 – Questioning elections and irregularities

- 61. Application to question an election

Part 12 – Miscellaneous

- 62. Secrecy
- 63. Prohibition of disclosure of vote
- 64. Disqualification
- 65. Delay in postal service through industrial action or unforeseen event

Part 1 - Interpretation

1. Interpretation – (1) In these rules, unless the context otherwise requires -

“corporation” means the public benefit corporation subject to this constitution;

“election” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the board of governors;

“the regulator” means the Independent Regulator for NHS foundation trusts; and

“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003.

(2) Other expressions used in these rules and in Schedule 1 to the Health and Social Care (Community Health and Standards) Act 2003 have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

2. Timetable - The proceedings at an election shall be conducted in accordance with the following timetable.

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination papers to returning officer	Not later than the twenty eighth day before the day of the close of the poll.
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than twenty fifth day before the day of the close of the poll.
Notice of the poll	Not later than the fifteenth day before the day of the close of the poll.
Close of the poll	By 5.00pm on the final day of the election.

3. Computation of time - (1) In computing any period of time for the purposes of the timetable -

- (a) a Saturday or Sunday;
- (b) Christmas day, Good Friday, or a bank holiday, or
- (c) a day appointed for public thanksgiving or mourning,

shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the returning officer be obliged to proceed with the counting of votes on such a day.

(2) In this rule, “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

Part 3 – Returning officer

4. Returning officer – (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

(2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff – Subject to rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure - The corporation is to pay the returning officer –

- (a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
- (b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation – The corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election – The returning officer is to publish a notice of the election stating –

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the board of governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

- (a) is to supply any member of the corporation with a nomination paper, and
- (b) is to prepare a nomination paper for signature at the request of any member of the corporation,

but it is not necessary for a nomination to be on a form supplied by the returning officer.

10. Candidate's particulars – (1) The nomination paper must state the candidate's -

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests – The nomination paper must state –

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party,

and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility – The nomination paper must include a declaration made by the candidate–

- (a) that he or she is not prevented from being a member of the board of governors by paragraph 8 of Schedule 1 of the 2003 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate – The nomination paper must be signed and dated by the candidate, indicating that –

- (a) they wish to stand as a candidate,
- (b) their declaration of interests as required under rule 11, is true and correct, and
- (c) their declaration of eligibility, as required under rule 12, is true and correct.

14. Decisions as to the validity of nomination – (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer-

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination paper is invalid,
- (c) receives satisfactory proof that the candidate has died, or
- (d) receives a written request by the candidate of their withdrawal from candidacy.

(2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds -

1. that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
2. that the paper does not contain the candidate's particulars, as required by rule 10;
3. that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,

4. that the paper does not include a declaration of eligibility as required by rule 12,
or
5. that the paper is not signed and dated by the candidate, as required by rule 13.

(3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.

(4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.

(5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of candidates – (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

(2) The statement must show –

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing,

as given in their nomination paper.

(3) The statement must list the candidates standing for election in alphabetical order by surname.

(4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers – (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

(2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

17. Withdrawal of candidates - A candidate may withdraw from election on or before the date and time for withdrawal by candidates, by providing to the returning officer a written notice of withdrawal which is signed by the candidate and attested by a witness.

18. Method of election – (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the board of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

(2) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the board of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

(3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be board of governors, then –

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

Part 5 – Contested elections

19. Poll to be taken by ballot – (1) The votes at the poll must be given by secret ballot.

(2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20. The ballot paper – (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

(2) Every ballot paper must specify –

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the board of governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

(3) Each ballot paper must have a unique identifier.

(4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (public and patient constituencies) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter is the person to whom the ballot paper was addressed,
- (b) that the voter has not marked or returned any other voting paper in the election, and
- (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22. List of eligible voters – (1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

(2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll - The returning officer is to publish a notice of the poll stating–

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the board of governors to be elected from that constituency, or class with that constituency,

- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

24. Issue of voting documents by returning officer – (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters–

- (a) a ballot paper and ballot paper envelope,
- (b) a declaration of identity (if required),
- (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
- (d) a covering envelope.

(2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope – (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

(2) The covering envelope is to have –

- (a) the address for return of the ballot paper printed on it, and
- (b) pre-paid postage for return to that address.

(3) There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –

- (a) the completed declaration of identity if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

26. Eligibility to vote – An individual who becomes a member of the corporation on or before the closing date for the receipt of nominations by candidates for the election, is eligible to vote in that election.

27. Voting by persons who require assistance – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

(2) Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

28. Spoilt ballot papers (1) – If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

(2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

(3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she –

- (a) is satisfied as to the voter’s identity, and
- (b) has ensured that the declaration of identity, if required, has not been returned.

(4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
- (c) the details of the unique identifier of the replacement ballot paper.

29. Lost ballot papers – (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –

- (a) is satisfied as to the voter’s identity,
- (b) has no reason to doubt that the voter did not receive the original ballot paper, and
- (c) has ensured that the declaration of identity if required has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –

- (a) the name of the voter, and

- (b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper– (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

(2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (public and patient constituencies) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
- (b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter’s signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents – (1) Where the returning officer receives a –

- (a) covering envelope, or
- (b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to –

- (a) the candidate for whom a voter has voted, or
- (b) the unique identifier on a ballot paper.

(3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper – (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.

(2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –

- (a) put the declaration of identity if required in a separate packet, and
- (b) put the ballot paper aside for counting after the close of the poll.

(3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –

- (a) mark the ballot paper “disqualified”,
- (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,
- (c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
- (d) place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (public and patient constituency) – Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

- (a) mark the declaration of identity “disqualified”,

- (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper; and
- (c) place the declaration of identity in a separate packet.

35. Sealing of packets – As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing–

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity if required,
- (c) the list of spoiled ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

Part 6 - Counting the votes

stv36. Interpretation of Part 6 – In Part 6 of these rules –

“continuing candidate” means any candidate not deemed to be elected, and not excluded,

“count” means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates,

“deemed to be elected” means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll,

“mark” means a figure, an identifiable written word, or a mark such as “X”,

“non-transferable vote” means a ballot paper –

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule stv44(4) below,

“preference” as used in the following contexts has the meaning assigned below–

- (a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,
- (b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

- (c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

“quota” means the number calculated in accordance with rule stv41 below,

“surplus” means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in these rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable papers from the candidate who has the surplus,

“stage of the count” means –

- (a) the determination of the first preference vote of each candidate,
- (b) the transfer of a surplus of a candidate deemed to be elected, or
- (c) the exclusion of one or more candidates at any given time,

“transferable paper” means a ballot paper on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate,

“transferred vote” means a vote derived from a ballot paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred, and

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule stv42 below.

37. Arrangements for counting of the votes – The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.

38. The count – (1) The returning officer is to –

- (a) count and record the number of ballot papers that have been returned, and
- (b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

Stv39. Rejected ballot papers – (1) Any ballot paper –

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

(2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

(3) The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).

fpp39. Rejected ballot papers – (1) Any ballot paper –

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

shall, subject to paragraphs (2) and (3) below, be rejected and not counted.

(2) Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

(3) A ballot paper on which a vote is marked –

- (a) elsewhere than in the proper place,
- (b) otherwise than by means of a clear mark,
- (c) by more than one mark,

is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the paper is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

(4) The returning officer is to –

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

(5) The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings –

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,
- (c) writing or mark by which voter could be identified, and
- (d) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of ballot papers rejected in part.

stv40. First stage – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

(2) The returning officer is to then count the number of first preference votes given on ballot papers for each candidate, and is to record those numbers.

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

stv41. The quota – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

(2) The result, increased by one, of the division under paragraph (1) above (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule stv44 has been complied with.

stv42. Transfer of votes – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped –

- (a) according to next available preference given on those papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-paragraph of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value (“the transfer value”) which –

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

(5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers in the sub-paragraph of transferred votes which was last received by that candidate into separate sub-paragraphs so that they are grouped –

- (a) according to the next available preference given on those papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-paragraph of non-transferable votes.

(6) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-paragraph of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –

- (a) a transfer value calculated as set out in paragraph (4)(b) above, or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

(8) Each transfer of a surplus constitutes a stage in the count.

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are –

- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
- (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

(11) This rule does not apply at an election where there is only one vacancy.

stv43. Supplementary provisions on transfer – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if –

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.

(2) The returning officer shall, on each transfer of transferable papers under rule stv42 above –

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- (d) compare—
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

(3) All ballot papers transferred under rule stv42 or stv44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule stv42 or stv44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion

of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

stv44. Exclusion of candidates – (1) If—

- (a) all transferable papers which under the provisions of rule stv42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule stv45 below, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

- (a) ballot papers on which a next available preference is given, and
- (b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).

(3) The returning officer shall, in accordance with this rule and rule stv43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

(4) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

(5) If, subject to rule stv45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

(6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

(9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in

the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.

(10) The returning officer shall after each stage of the count completed under this rule—

- (a) record –
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
- (b) add that total to the previous total of votes recorded for each candidate and record the new total,
- (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
- (d) compare—
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

(11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule stv42 and rule stv43.

(12) Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

(13) If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest—

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

stv45. Filling of last vacancies – (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

(2) Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

(3) Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

stv46. Order of election of candidates – (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule stv42(10) above.

(2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

(3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

(4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

fpp46. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 – Final proceedings in contested and uncontested elections

fpp47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to –

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the board of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected–
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 4(4) of the 2003 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

(2) The returning officer is to make –

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule fpp39(5),

available on request.

stv47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to—

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 4(4) of the 2003 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

(2) The returning officer is to make –

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule stv39(1),

available on request.

48. Declaration of result for uncontested elections – In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election –

- (a) declare the candidate or candidates remaining validly nominated to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll – (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –

- (a) the counted ballot papers,
- (b) the ballot papers endorsed with “rejected in part”,
- (c) the rejected ballot papers, and
- (d) the statement of rejected ballot papers.

(2) The returning officer must not open the sealed packets of –

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the declarations of identity,
- (c) the list of spoiled ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

(3) The returning officer must endorse on each packet a description of –

- (a) its contents,
- (b) the date of the publication of notice of the election,
- (c) the name of the corporation to which the election relates, and
- (d) the constituency, or class within a constituency, to which the election relates.

50. Delivery of documents – Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the chair of the corporation.

51. Forwarding of documents received after close of the poll – Where –

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued,

the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

52. Retention and public inspection of documents – (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

(3) A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

53. Application for inspection of certain documents relating to an election – (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of the Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

(3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening,

and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

(4) On an application to inspect any of the documents listed in paragraph (1), –

- (a) in giving its consent, the regulator, and
- (b) and making the documents available for inspection, the corporation,

must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –

- (i) that his or her vote was given, and
- (ii) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

fpp54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to

- (a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class, and
- (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

(2) Where a new election is ordered under paragraph (1), no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to –

- (a) count and record the number of ballot papers that have been received, and
- (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.

(6) The returning officer is to endorse on each packet a description of –

- (a) its contents,
- (b) the date of the publication of notice of the election,
- (c) the name of the corporation to which the election relates, and
- (d) the constituency, or class within a constituency, to which the election relates.

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

stv54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to –

- (a) publish a notice stating that the candidate has died, and
- (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - (i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
 - (ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

55. Election expenses – Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application to the regulator under Part 11 of these rules.

56 Expenses and payments by candidates - A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to –

- (a) personal expenses,
- (b) travelling expenses, and expenses incurred while living away from home, and
- (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

57. Election expenses incurred by other persons – (1) No person may -

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

(2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

58. Publicity about election by the corporation – (1) The corporation may –

- (a) compile and distribute such information about the candidates, and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be –

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

(3) Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

59. Information about candidates for inclusion with voting documents - (1) The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

(2) The information must consist of –

- (a) a statement submitted by the candidate of no more than 250 words, and
- (b) a photograph of the candidate.

60. Meaning of “for the purposes of an election” - (1) In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

(2) The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

Part 11 – Questioning elections and the consequence of irregularities

61. Application to question an election – (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

(2) An application may only be made once the outcome of the election has been declared by the returning officer.

(3) An application may only be made to the Regulator by -

- (a) a person who voted at the election or who claimed to have had the right to vote, or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must –

- (a) describe the alleged breach of the rules or electoral irregularity, and
- (b) be in such a form as the Regulator may require.

(5) The application must be presented in writing within 21 days of the declaration of the result of the election.

(6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

(7) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.

(8) The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

(9) The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

- (a) the returning officer,
- (b) the returning officer's staff,

must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to –

- (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the candidate(s) for whom any member has voted.

(2) No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.

(3) The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

63. Prohibition of disclosure of vote – No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted.

64. Disqualification – A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is –

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or
- (d) employed by or on behalf of a person who has been nominated for election.

65. Delay in postal service through industrial action or unforeseen event – If industrial action, or some other unforeseen event, results in a delay in –

- (a) the delivery of the documents in rule 24, or
- (b) the return of the ballot papers and declarations of identity,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraphs 10, 11, 13, 14, 16 and 18)

1. Elected Governors

- 1.1 Public Governors are to be elected by members of the public constituency to which they belong and Staff Governors are to be elected by members of the class of the staff constituency to which they belong.

2. Tenure of Elected Governors

- 2.1. Elected Governors, with the exception of first appointments where transitional arrangements apply (see para 7 of this Annex):

2.1.1 shall normally hold office for a period of three years commencing immediately after the annual general meeting at which his appointment is announced;

2.1.2 shall be eligible for re-appointment at the end of his term;

2.1.3 may not hold office for longer than nine consecutive years, and shall not be eligible for re-appointment if he has already held office for more than six consecutive years.

- 2.2. For the purposes of these provisions concerning terms of office for elected Governors, “year” means a period commencing immediately after the conclusion of an annual general meeting, and ending at the conclusion of the next annual general meeting.

3. Appointed Governors

- 3.1 The Secretary, having consulted South Staffordshire Primary Care Trust having the right to appoint PCT Governors, is to adopt a process for agreeing the appointment of PCT Governors within South Staffordshire Primary Care Trust.

- 3.2. The Secretary, having consulted each Local Authority having the right to appoint Local Authority Governors, is to adopt a process for agreeing the appointment of Local Authority Governors within those local authorities.

- 3.3 The Secretary, having consulted each organisation having the right to appoint Partnership Organisation Governors is to adopt a process for agreeing the appointment of a Partnership Organisation Governor with those Partner Organisations.

- 3.4 An appointed Governor shall cease to hold office if the appointing organisation which appointed him terminates the appointment.

4. Further provisions as to eligibility to be a Governor

- 4.1. A person may not become, or continue as, a Governor of the Trust, and if already holding such office will immediately cease to do so, if:

- 4.1.1. they are a Director (whether Executive or Non Executive) or an Associate Director (or equivalent, as determined by the Chair and Chief Executive) of the Trust or a Governor or Director (whether Executive or Non Executive) of an NHS body (unless they are appointed as an appointed Governor by an appointing organisation which is an NHS body)
- 4.1.2 they are under 18 years of age
- 4.1.3 they are the spouse, partner, parent, child, sister or brother of a member of the Board of Directors or Associate Director (or equivalent, as determined by the Chair and Chief Executive) of the Trust
- 4.1.4 they are a member of a local authority's Scrutiny Committee covering health matters
- 4.1.5 they are a member of a Local Involvement Network (LINK) unless that LINK is a partnership organisation of the Trust and has appointed them as a Partnership Governor
- 4.1.6 they are deemed to be a vexatious complainant, as determined in accordance with the Trust's complaints procedure
- 4.1.7 they have been previously removed as a Governor pursuant to paragraph 5 of this Annex 5 or they have been removed as a Governor or expelled from membership of another foundation trust
- 4.1.8 being a member of the Public Constituency, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors
- 4.1.9 they, on the basis of disclosures obtained through an application to the Criminal Records Bureau, are not considered suitable by the Chief Executive
- 4.1.10 they are subject to a sex offender order
- 4.1.11 they have within the last five years been involved as a perpetrator in a serious incident of violence at any of the Trust's hospitals or facilities or against any of the Trust's service users, employees or other persons who exercise functions for the purposes of the Trust, or against any registered volunteer
- 4.1.12 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body
- 4.1.13 they are a person whose tenure of office as the Chairman or as a member or Director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health

service, for non-attendance at meetings, or for non-disclosure of pecuniary interest.

5. Termination of office and removal of Governors

- 5.1 A person holding office as a Governor shall immediately cease to do so if;
- 5.1.1 they resign by notice in writing to the Secretary
 - 5.1.2 they fail to attend three consecutive meetings of the Council of Governors, unless the other Governors are satisfied that:
 - 5.1.2.1 the absences were due to reasonable causes; and
 - 5.1.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable
 - 5.1.3 in the case of an elected Governor, they cease to be a member of the constituency or class of constituency by whom they were elected
 - 5.1.4 in the case of an appointed Governor, the appointing organisation terminates the appointment
 - 5.1.5 they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake
 - 5.1.6 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the Code of Conduct for Governors
 - 5.1.7 they are removed from the Council of Governors under the provisions at paragraph 13.4 of the constitution.

6. Vacancies amongst Governors

- 6.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply:
- 6.1.1 Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
 - 6.1.2 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:
 - 6.1.2.1. to call an election within three months to fill the seat for the remainder of that term of office; or

- 6.1.2.2 if the unexpired period of the term of office is less than 12 months, to leave the seat vacant until the next elections are held provided that the number of Public Governors does not fall below the majority on the Council of Governors.

7. Initial Governors

- 7.1 Two of the initial Public Governors elected from the East Staffordshire public constituency, one of the initial Public Governors elected from the South Derbyshire public constituency and one of the initial Public Governors elected from the Lichfield and Tamworth public constituency who in each case polled the highest number of votes in their constituency and the initial Public Governor elected from the North West Leicestershire public constituency will serve a term of office ending at the conclusion of the annual general meeting in 2012; three of the initial Public Governors elected from the East Staffordshire public constituency, one of the initial Public Governors elected from the South Derbyshire public constituency and one of the initial Public Governors elected from the Lichfield and Tamworth public constituency who in each case polled the next highest number of votes in their constituency will serve a term of office ending at the conclusion of the annual general meeting in 2011; the remaining initial Public Governors will serve a term of office ending at the conclusion of the annual general meeting in 2010. For the purposes of this paragraph any Public Governor who is elected unopposed, or elected pursuant to a subsequent election to fill a seat left empty at or after the initial elections, shall be deemed to have received no votes.
- 7.2. The initial Staff Governors will draw lots to decide which two Staff Governors will serve a term of office ending at the conclusion of the annual general meeting in 2012; which two Staff Governors will serve a term of office ending at the conclusion of the annual general meeting in 2011; and which Staff Governor will serve a term of office ending at the conclusion of the annual general meeting in 2010.
- 7.3. There will be no elections to take effect at the conclusion of the annual general meeting in 2009, unless any of the places on the Council of Governors remain unfilled following the initial elections held before the Trust was authorised.
- 7.4 For the purposes of eligibility to seek re-election or to be re-appointed as Governors under this constitution, the period between their election or appointment as initial Governors and the conclusion of the annual general meeting in 2010 shall be treated as a year.

8. Additional Roles and Responsibilities

- 8.1 The roles and responsibilities of the Council of Governors in addition to the roles and responsibilities set out elsewhere in the constitution, which are to be carried out in accordance with this constitution and the Trust's terms of Authorisation, are:

- 8.1.1 To respond as appropriate when consulted by the Board of Directors in accordance with this constitution;
- 8.1.2 To undertake such functions as the Board of Directors shall from time to time request.
- 8.1.3 To prepare and from time to time review the Trust's Membership Strategy and its policy for the composition of the Council of Governors and of the Non-Executive Directors
- 8.1.4 When appropriate to make recommendations for the revision of this constitution.

ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

(Paragraph 15)

BURTON HOSPITALS NHS FOUNDATION TRUST

STANDING ORDERS

FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

FOREWARD

The Burton Hospitals NHS Foundation Trust is a Public Benefit corporation established on *(date to be inserted)* under the National Health Service Act 2006.

As such, the Trust has specific powers to contract in its own name and to act as a corporate trustee. In its latter role the Trust is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held on behalf of patients.

These Standing Orders (SOs) are for the regulation of the Trust's Council of Governors' proceedings and business.

A Code of Business Conduct lays down certain procedures where there is a concern about possible conflicts of interest of Governors.

A Code of Practice on Openness in the NHS sets out the requirements for public access to information on the NHS.

The Burton Hospitals NHS Foundation Trust believes that public service values lie at its heart. High standards of corporate and personal integrity, based on recognition that service users and carers come first, is a fundamental value of the Trust.

1. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

1.1 Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive or Secretary to the Board).

1.2 Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in this interpretation and in addition:

"Accountable Officer" means the NHS Officer responsible and accountable for funds entrusted to the Trust. The officer shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

"Trust" means the Burton Hospitals NHS Foundation Trust.

"Board of Directors" and (unless the context otherwise requires) **"Board"**, means the Chairman and Non Executive Directors appointed by the Council of Governors and the Executive Directors appointed by the Non Executive Directors and (except his/her own appointment) by the Chief Executive collectively as a body.

"Budget" means a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.

"Chairman" is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chairman of the Trust" shall be deemed to include the Non Executive Director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent from the meeting or is otherwise unavailable.

"Chief Executive" means the chief officer of the Trust.

"Committee" means a committee or sub-committee appointed by the Council of Governors.

"Committee members" means persons formally appointed by the Council of Governors to sit on or to chair specific committees.

"Council of Governors" means the Board of Governors of the Trust as defined in the 2006 Act as constituted by the Constitution.

"Code of Conduct for Governors" means the Trust's Code of Conduct for Governors as amended from time to time (by resolution of the Board of Directors and the Council of Governors)

“**Director**” means a person appointed to the Board of Directors in accordance with the Trust’s Constitution and includes the Chairman.

“**Executive Director**” means a Member of the Board of Directors who holds an executive office of the Trust. “**Associate Director**” means a person appointed by the Board of Directors to assist the Directors in specific functions.

“**Motion**” means a formal proposition to be discussed and voted on during the course of a meeting.

“**Nominated officer**” means an officer charged with the responsibility for discharging specific tasks within Standing Orders.

“**Non Executive Director**” means a Member of the Board of Directors who does not hold an executive officer of the Trust.

“**Officer**” means employee of the Trust.

“**SOs**” means Standing Orders.

“**Secretary**” means the Foundation Trust Secretary appointed by the Chief Executive and Chairman jointly with responsibility for the administration of corporate governance.

“**Senior Independent Director**” means the Non Executive Director appointed by the Board of Directors, in consultation with the Council of Governors to fulfill the duties described in the job description.

2. GENERAL INFORMATION

2.1 The purpose of the Council of Governors’ Standing Orders is to ensure that the highest standards of Corporate Governance and Conduct are applied to all Council meetings and associated deliberations.

2.2 All business shall be conducted in the name of the Trust.

2.3 The Board of Directors shall appoint trustees to administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.

3. COMPOSITION OF COUNCIL OF GOVERNORS

3.1 The composition of the Council of Governors shall be in accordance with paragraph 9 and Annex 3 of the Trust’s constitution.

3.2 Appointment and removal of the Chairman and Deputy Chairman of the Council of Governors will be made by the Governors in accordance with paragraph 21 of the Trust’s constitution.

4. MEETINGS OF THE COUNCIL OF GOVERNORS

4.1 Meetings Held in Public

- 4.1.1 Meetings of the Council of Governors must be open to the public.
- 4.1.2 The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that
 - (i) publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - (ii) there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 4.1.3 The Chairman may also exclude any member of the public from the meeting of the Council of Governors if he is interfering with or preventing any conduct of the meeting.
- 4.1.4 Meetings of the Council of Governors shall be held at least 4 times each year at times and places that the Council of Governors may determine.
- 4.1.5 The Trust will hold an annual meeting which will be a public meeting of the Council of Governors within nine months of the end of each financial year.

4.2 Calling meetings

- 4.2.1 Notwithstanding 4.1.4 above, the Chairman may, in exceptional circumstances, call a meeting of the Council of Governors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by a majority of the Governors, or if without so refusing the Chairman does not call a meeting within fourteen days after requisition to do so, then the Governors may forthwith call a meeting.

4.3 Notice of Meetings

- 4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf, shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him at least five clear days before the meeting. Lack of service of the notice on any Governor shall not affect the validity of a meeting.
- 4.3.2 Notwithstanding the above requirement for notice, the Chairman may waive notice on written receipt of the agreement of at least 50% of Governors.

- 4.3.3 In the case of a meeting called by Governors in default of the Chairman, the notice shall be signed by those Governors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice.
- 4.3.4 Failure to serve such a notice on more than three quarters of Governors will invalidate the meeting. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

4.4 Setting the Agenda

- 4.4.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council and shall be addressed prior to any other business being conducted.
- 4.4.2 A Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

4.5 Chairman of Meeting

- 4.5.1 At any meeting of the Council of Governors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Deputy Chairman shall preside. Otherwise, the Governors shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chairman.

4.6 Notices of Motions

- 4.6.1 A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting. All notices so received are subject to the notice given being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to section 4.3 of these Standing Orders.
- 4.6.2 A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

- 4.6.3 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governors who give it and also the signature of four other Governors. When any such motion has been disposed of by the Council it shall not be competent for any Governor, other than the Chairman, to propose a motion to the same effect within six months; however, the Chairman may do so if he/she considers it appropriate.
- 4.6.4 The mover of a motion shall have a right to reply at the close of any discussion on the motion or any amendment thereto.
- 4.6.5 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move;
- a) An amendment to the motion.
 - b) The adjournment of the discussion or the meeting.
 - c) The appointment of an adhoc committee to deal with a specific item of business.
 - d) That the meeting proceeds to the next business.
 - e) That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

In the case of motions under (d) and (e), to ensure objectivity, motions may only be put by a Governor who has not previously taken part in the debate.

4.7 Chairman's Ruling

- 4.7.1 Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

4.8 Voting

- 4.8.1 Decisions at meetings shall be determined by a majority of the votes of the Governors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.

- 4.8.2 All decisions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 4.8.3 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.8.4 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.8.5 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

4.9 Variation and Amendment of Standing Orders

- 4.9.1 These Standing Orders shall be amended only if
 - a) A notice of motion has been given; and
 - b) No fewer than half the total of the Governors vote in favour of amendment; and
 - c) At least two-thirds of the Governors are present; and
 - d) The variation proposed does not contravene a statutory provision.

4.10 Record of Attendance

- 4.10.1 The names of the Governors present at the meeting shall be recorded in the minutes.

4.11 Minutes

- 4.11.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding over it.
- 4.11.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 4.11.3 Minutes shall be circulated in accordance with the Governors wishes. The Minutes of the meeting shall be made available to the public except for minutes relating to the business conducted when members of the public are excluded under the terms of Section 4.1 of these Standing Orders (required by the Code of

Practice on Openness in the NHS which has been adopted by the Trust).

4.12 Quorum

4.12.1 No business shall be transacted at a meeting of the Council of Governors unless thirteen Governors including not less than seven Public Governors, and not less than six non public Governors are present. There will be a majority of public Governors present at any meeting. If a quorum is not present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned until the same time and place seven days later and at such reconvened meeting those present shall constitute a quorum.

4.12.2 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5. SENIOR INDEPENDENT DIRECTOR

5.1 The Council of Governors is entitled to be consulted by the Non Executive Directors on the appointment of the Trust's Senior Independent Director.

5.2 The role of the Senior Independent Director is as set out in the Trust's "Senior Independent Director Job Specification" as amended from time to time.

6. COMMITTEES

6.1 The Council of Governors may appoint committees of the Council consisting wholly of persons who are Governors. Non-Governors may attend such committees if appropriate under the Committee's terms of reference but they shall have no vote.

6.2 A committee so appointed may appoint sub-committees consisting wholly of persons who are Governors. Non-Governors may attend such committees if appropriate under the Committee's terms of reference but they shall have no vote.

6.3 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees so established by the Council of Governors.

- 6.4 Each such committee or sub-committee shall operate in an advisory capacity only and have such terms of reference and be subject to such conditions (as to reporting back to the Council of Governors) as the Council shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 6.5 Committees may not delegate their powers to a sub-committee unless expressly authorised by the Council of Governors.
- 6.6 The Council of Governors shall approve the membership to all committees/sub committees that it has formally constituted and shall determine the Chairman of each committee/sub committee.

7. CONFIDENTIALITY

- 7.1 A member of the Council of Governors or an attendee on a committee of the Council shall not disclose a matter dealt with by, or brought before, the Council of Governors without its permission or until the committee shall have reported to the Council or shall otherwise have concluded on that matter.
- 7.2 A Governor or a non-governor in attendance at a committee shall not disclose any matter dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee resolves that it is confidential.

8 DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

8.1 Declaration of Interests

Governors are required to comply with the Trust's Standards of Business Conduct and to declare interests that are relevant to the Council. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

8.1.1 Interests regarded as "relevant and material" are:

- 8.1.1.1 Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies);
- 8.1.1.2 Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- 8.1.1.3 Employment with any private company, business or consultancy;

- 8.1.1.4 Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS;
 - 8.1.1.5 A position of authority in a charity or voluntary organisation in the field of health and social care;
 - 8.1.1.6 Any connection with a voluntary or other organisation contracting for NHS services.
 - 8.1.1.7 Any connection with any organisation, entity or company considering entering into financial arrangements with the Trust including but not limited to lenders or banks.
- 8.1.2 If a Governor has any doubt about the relevance of an interest, he should discuss it with the Chairman who shall advise him whether or not to disclose the interest.
- 8.1.3 At the time Governors interests are declared, they should be recorded in the Council of Governors minutes and entered on a Register of interests of Governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council meeting following the change occurring.
- 8.1.4 Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report.
- 8.1.5 During the course of a Council meeting, if a conflict of interest is established, the Governor concerned shall, unless two thirds of those Governors present agree, otherwise withdraw from the meeting and play no part in the relevant discussion or decision.

There is no requirement for the interests of Governors spouses or partners to be declared. (Note however, that regulations require that the interest of Governors' spouses, if living together, in contracts should be declared).

8.2 Register of interests

- 8.2.1 The Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Governors.
- 8.2.2 Details of the Register will be kept up to date and reviewed monthly.
- 8.2.3 The Register will be available to the public.

9. COMPLIANCE - OTHER MATTERS

- 9.1 All Governors shall comply with the Code and Standards of Business Conduct set by the Board of Directors for the guidance of staff employed by the Trust.

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

(Paragraph 27)

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BURTON HOSPITALS NHS FOUNDATION TRUST

STANDING ORDERS

1. INTRODUCTION

1.1 Statutory Framework

The Burton Hospitals NHS Foundation Trust is a Public Benefit corporation established on (*date to be inserted*) under the National Health Service Act 2006.

The Trust is governed by Acts of Parliament mainly the 2006 Act, by its Constitution and by the terms of Authorisation granted by the Independent Regulator of Foundation Trusts (the Regulatory framework). The functions of the Corporation are conferred by the Regulatory framework which requires the Board of Directors to adopt Standing Orders for the regulation of its proceedings and business

The Trust has specific powers to contract in its own name and to act as a corporate trustee. In its latter role the Trust is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held on behalf of patients.

1.2 Delegation of Powers

Subject to the Regulatory Framework and such guidance, if any, as may be given by the Independent Regulator, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee or sub committee appointed by virtue of Standing Order 5 below, in each case subject to such restrictions and conditions as the Board thinks fit. Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers) which has effect as if incorporated into the Standing Orders.

2. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive or Secretary to the Board).

Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in these Standing Orders and in addition:

"Accountable Officer" means the NHS Officer responsible and accountable for funds entrusted to the Trust. The officer shall be

responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

"Trust" means Burton Hospitals NHS Foundation Trust.

"Board" means the Chairman, and Non Executive Directors, appointed by the Council of Governors, and the Executive Directors appointed by the relevant Committee of the Trust.

"Budget" means a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.

"Budget holder" means the director or employee with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.

"Chairman" is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chairman of the Trust" shall be deemed to include the Deputy-Chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.

"Chief Executive" means the chief officer of the Trust.

"Audit Committee" means a committee whose functions are concerned with the arrangements for the purpose of monitoring and improving the quality of healthcare for which Burton Hospitals NHS Foundation Trust has responsibility.

"Commissioning" means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.

"Committee" means a committee or sub-committee created and appointed by the Trust.

"Committee members" means persons formally appointed by the Trust to sit on or to chair specific committees.

"Contracting and procuring" means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.

"Director of Finance and Contracting" means the Chief Financial Officer of the Trust.

“Funds held on trust” shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument. Such funds may or may not be charitable.

"Director" means a person appointed as a Director in accordance with the Membership and Procedure Regulations and includes the Chairman.

“Associate Director” shall mean a person appointed by the Board to assist the Directors in specific functions.

"Nominated officer" means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.

"Non-officer member" means a member of the Trust who is not an officer of the Trust.

"Officer" means employee of the Trust or any other person holding a paid appointment or office with the Trust.

"Officer member" means a member of the Trust who is also an officer of the Trust.

"Secretary" means a person appointed by the Chief Executive and Chairman jointly to act independently of the Board to provide advice on corporate governance issues to the Board and the Chairman and monitor the Trust's compliance with the law, Standing Orders, and observance of NHS Executive guidance.

“Senior Independent Director” means the Non Executive Director appointed by the Board of Directors, in consultation with the Council of Governors to fulfill the duties described in the job description.

"SFIs" means Standing Financial Instructions.

"SOs" means Standing Orders.

"Deputy Chairman" means the Non Executive Director appointed by the Trust to take on the Chairman's duties if the Chairman is absent for any reason.

All references to the masculine or feminine gender should be read as equally applicable to either sex.

3. THE BOARD OF DIRECTORS

3.1 All business shall be conducted in the name of the Trust. The board is collectively responsible for the exercise of the powers and the performance of the Trust.

3.2 The board will provide active leadership within a framework of prudent and effective controls which enables risk to be assessed and managed and is responsible for ensuring compliance with the Trusts terms of authorisation, its constitution, mandatory guidance issued by Monitor, relevant statutory requirements and obligations. All directors have joint responsibility for every decision of the Board of Directors regardless of their individual skills or status.

3.3 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.

3.4 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission and to Monitor – Independent Regulator of NHS Foundations Trusts (hereafter known as Monitor). Accountability for non-charitable funds held on trust is only to Monitor.

3.5 Schedule of Matters reserved to the Board and Scheme of Delegation

The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the 'Schedule of Matters Reserved to the Board' and shall have effect as if incorporated into the Standing Orders. Those powers which it has delegated to officers and other bodies are contained in the Scheme of Delegation.

3.6 Composition of the Board of Directors

The composition of the Board will be in accordance with the Constitution. The composition of the Board of Directors shall ensure there is not a majority of Executive Directors over Non-Executive Directors. The Board of Directors shall be:

The Chairman of the Trust
Up to 5 Non Executive Directors
Up to 5 Executive Directors including:

- the Chief Executive (the Chief Officer);
- the Director of Finance and Contracting (The Chief Finance Officer);
- A Medical or Dental Practitioner
- A Registered Nurse

3.7 Appointment of Chairman and Non Executive Directors

The Chairman and Non-Executive Directors are appointed by the Council of Governors.

3.8 Appointment of the Executive Directors

The Chief Executive is appointed by the Non Executive Directors, subject to the approval of the Council of Governors. The other Executive Directors are appointed by a committee consisting of the Chairman, the other Non Executive Directors and the Chief Executive.

3.9 Terms of Office of the Chairman and other members of the Board of Directors

The regulations setting out the period of tenure of office of the Chairman and other Members of the Board of Directors and for the termination or suspension of office of the Chairman and other members of the Board of Directors are contained in the Constitution of the Trust.

3.10 Appointment and Powers of Senior Independent Director

The Board of Directors should appoint one of the independent Non-Executive Directors to be the Senior Independent Director, in consultation with the Council of Governors. The Senior Independent Director should be available to Members and Governors if they have concerns which contact through the normal channels of the Chairman and Chief Executive has failed to resolve or for which contact is appropriate. The Senior Independent Director could be the Deputy Chairman.

3.11 Associate Directors

The Trust Board of Directors may appoint an Associate Director(s) to assist the Board in exercising its specific functions.

Associate Directors may attend Board meetings by invitation and advise any Committee or Sub-Committee appointed under Standing Order 5.

They are not members of the Board and are not entitled to vote on any resolution of the Board of Directors, Committee or Sub-Committee.

4. MEETINGS OF THE BOARD OF DIRECTORS

4.1 Calling Meetings

Ordinary meetings of the Board shall be held at such times and places as the Board may determine. The Chairman of the Trust may call a meeting of the Board at any time.

One third or more members of the Board may requisition a meeting in writing. If the Chairman refuses, or fails, to call a meeting within seven days of a requisition being presented, the Directors signing the requisition may forthwith call a meeting.

4.2 Annual Public Meeting

The Trust will publicise and hold an Annual (public) Meeting.

4.3 Notice of Meetings and the Business to be transacted

4.3.1 Before each meeting of the Board a written notice specifying the business proposed to be transacted shall be delivered to every member, or sent by post to the usual place of residence of each Director, so as to be available to Directors at least three clear days before the meeting. The notice shall be signed by the Chairman or by an officer authorised by the Chairman to sign on their behalf.

4.3.2 Lack of service of such a notice on any member shall not affect the validity of a meeting.

4.3.3 In the case of a meeting called by Directors in default of the Chairman, the notice shall be signed by those Directors and no business shall be transacted other than that specified in the notice.

4.3.4 Before each meeting of the Board a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's principal offices at least three clear days before the meeting, (required by the Public Bodies (Admission to Meetings) Act 1960 Section 1 (4) (a)).

4.4 Agenda and Supporting Papers

4.4.1 Setting the Agenda

The Board may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders).

4.4.2 The Agenda will be sent to Directors 5 working days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in emergency.

4.4.3 A Director who wishes to add an item to an agenda shall make his/her request in writing to the Chairman at least 5 clear days before the meeting and should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made informally or made less than 5 days before a meeting may be included on the agenda at the discretion of the Chairman.

4.5 Petitions

Where a petition has been received by the Trust the Chairman shall include the petition as an item for the agenda of the next Board meeting.

4.6 Notices of Motion

4.6.1 Subject to the provision of Standing Orders a Director of the Board wishing to move a motion shall send a written notice to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

4.6.2 Emergency Motions

Subject to the agreement of the Chairman, and subject also to the provision of Standing Order 4.6.5 'Motions', a Director of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Trust Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include the item shall be final.

4.6.3 Withdrawal of Motion or Amendments

A motion, or an amendment to a motion, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

4.6.4 **Motion to Rescind a Resolution**

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of three other Directors, and before considering any such motion of which notice shall have been given, the Trust Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.

When any such motion has been dealt with by the Trust Board it shall not be competent for any Director other than the Chairman to propose a motion to the same effect within six months, however the Chairman may do so if he/she considers it appropriate. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

4.6.5 **Motions**

The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

When a motion is under discussion or immediately prior to discussion it shall be open to a Member of the Board to move:

- An amendment to the motion
- The adjournment of the discussion or the meeting
- That the meeting proceed to the next business (*)
- The appointment of an adhoc committee to deal with a specific item of business
- That the motion be now put (*)

In the case of sub paragraphs denoted by (*) above to ensure objectivity motions may only be moved by a member of the Board who has not previously taken part in the debate and who is eligible to vote.

No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

4.7 **Chairman of meeting**

At any meeting of the Trust Board the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Deputy Chairman (if the Board has appointed one), if present, shall preside.

If the Chairman and Deputy Chairman are absent, such member (who is not also an Officer Member of the Trust) as the members present shall choose, shall preside.

4.8 Chairman's ruling

The decision of the Chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

4.9 Voting

4.9.1 Save as provided in Standing Order 4.12 - Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of members present and voting on the question. In the case of an equal vote, the person presiding (ie: the Chairman of the meeting) shall have a second, and casting vote.

4.9.2 At the discretion of the Chairman all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chairman directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.

4.9.3 If at least one third of the Directors present so request, the voting on any question may be recorded so as to show how each Director present voted or did not vote (except when conducted by paper ballot).

4.9.4 If a Director so requests, their vote shall be recorded by name.

4.9.5 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.

4.9.6 An Officer who has been formally appointed to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board meeting to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

4.10 Minutes

The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.

No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate.

4.11 Waiver of Standing Orders

- 4.11.1 Except where this would contravene any statutory provision or any guidance issued by Monitor, any one or more of the Standing Orders may be waived at any meeting, provided at least two thirds of the Board are present, including one Executive and one Non Executive Director, and that a majority of those present vote in favour of waiver.
- 4.11.2 A decision to waive Standing Orders shall be recorded in the minutes of the meeting.
- 4.11.3 The Audit Committee shall review every decision to waive Standing Orders.

4.12 Variation and amendment of Standing Orders

- 4.12.1 These Standing Orders shall not be varied except in the following circumstances:
- upon a notice of motion under Standing Order 4.6
 - upon a recommendation of the Chairman or Chief Executive included on the agenda for the meeting;
 - that two thirds of the Directors are present at the meeting where the variation or amendment is being discussed, and that at least half of the Trust's Non-Executive Directors vote in favour of the amendment;
 - providing that any variation or amendment does not contravene a statutory provision or direction made by Monitor.

4.13 Record of Attendance

The names of the Chairman and Directors/members present at the meeting shall be recorded.

4.14 Quorum

- 4.14.1 No business shall be transacted at a meeting unless at least one-third of the whole number of the Chairman and Directors (including at least one Executive Director of the Trust and one Non Executive Director) are present. An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum. If a quorum is not present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned until the same time and place seven days later and at such reconvened meeting those present shall constitute a quorum.
- 4.14.2 If the Chairman or Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO No.8) that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter

may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4.15 Observers at Trust meetings

The Trust will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Trust Board's meetings and may change, alter or vary these terms and conditions as it deems fit.

5. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

5.1 Subject to such guidance as may be issued by the Independent Regulator, the Board may and, if directed by the Independent Regulator, shall appoint committees of the Board, consisting of one or more members of the Board.

5.2 A committee appointed under SO5.1 may, subject to such guidance as may be given by the Independent Regulator or the Board, appoint sub-committees consisting wholly or partly of members of the committee (but may only include Directors of the Trust).

5.3 The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall as appropriate apply to meetings and any committees established by the Trust. In which case the term "Chairman" is to be read as a reference to the Chairman of other committee as the context permits, and the term "member" is to be read as a reference to a member of other committee also as the context permits. (There is no requirement to hold meetings of committees established by the Trust in public.)

5.4 Terms of Reference

Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide and shall be in accordance with any legislation and the regulatory framework and any guidance issued by the Independent Regulator. Such terms of reference are to be read in conjunction with the Standing Orders.

5.5 Delegation of Powers by Committees to Sub-Committees

Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board.

5.6 Approval of Appointments to Committees

The Board shall approve the appointments to each of the committees which it has formally constituted.

5.7 Appointments for Statutory functions

Where the Board is required to appoint persons to undertake statutory functions, and where such appointments are to operate independently of the Board, such appointments shall be made in accordance with applicable statute and regulations and with guidance issued by the Independent Regulator.

6. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

6.1 Delegation of Functions to Committees, Officers or other bodies

Subject to the Regulatory Framework and such guidance, if any, as may be given by the Independent Regulator, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee, sub-committee appointed by virtue of Standing Order 5, or by an Officer of the Trust (provided such officer is a Director of the Trust), in each case subject to such restrictions and conditions as the Board thinks fit.

6.2 Emergency Powers and urgent decisions

The powers which the Board has reserved to itself within these Standing Orders (see Standing Order 3.5) may in emergency or for an urgent decision be exercised by the Chief Executive and the Chairman after having consulted at least two Non Executive Directors. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Board for noting.

6.3 Delegation to Committees

The Board shall agree from time to time to the delegation of executive powers to be exercised by other committees, or sub-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees and their specific executive powers shall be approved by the Board.

6.4 Delegation to Officers

6.4.1 Those functions of the Trust which have not been retained as reserved by the Board or delegated to other committees or sub-committees shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate Officers (who are also Directors) to undertake the

remaining functions for which he/she will still retain accountability to the Board.

6.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board. The Chief Executive may periodically propose amendments to the Scheme of Delegation which shall be considered and approved by the Board.

6.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance and Contracting to provide information and advise the Board in accordance with statute or the Independent Regulator's requirements. Outside these regulatory requirements the Director of Finance and Contracting shall be accountable to the Chief Executive for operational matters.

6.5 Schedule of Matters Reserved to the Board and Scheme of Delegation of powers

The arrangements made by the Board as set out in the "Schedule of Matters Reserved to the Board" and "Scheme of Delegation" of powers are to be read in conjunction with the Standing Orders.

6.6 Duty to report non-compliance with Standing Orders and Standing Financial Instructions

If for any reason these Standing Orders are not complied with, details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Audit Committee. All members of the Trust Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

7. OVERLAP WITH OTHER TRUST POLICY STATEMENTS, PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS

7.1 Policy statements: general principles

The Board will from time to time agree and approve Policy statements/procedures which will apply to all or specific groups of staff employed by Burton Hospitals NHS Foundation Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Board minute and will be deemed where appropriate to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.

7.2 Specific Policy statements

Notwithstanding the application of SO 7.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements:

- the Standards of Business Conduct for Burton Hospitals NHS Foundation Trust staff; and
- the staff Disciplinary and Appeals Procedures adopted by the Trust both of which are to be read in conjunction with the Standing Orders.

7.3 Standing Financial Instructions

Standing Financial Instructions adopted by the Board in accordance with the Financial Regulations are to be read in conjunction with the Standing Orders.

7.4 Specific guidance

Notwithstanding the application of SO 7.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following guidance and any other issued by the Independent Regulator:

- Caldicott Guardian 1997;
- Human Rights Act 1998;
- Freedom of Information Act 2000.

8. DUTIES AND OBLIGATIONS OF BOARD MEMBERS/DIRECTORS AND SENIOR MANAGERS UNDER THESE STANDING ORDERS

8.1 Declaration of Interests

8.1.1 The NHS Code of Accountability which has been adopted by the Trust, requires Trust Board Members to declare interests which are relevant and material to the NHS Board of which they are a member. All existing Board members should declare such interests. Any Board members appointed subsequently should do so on appointment.

8.1.2 Interests which are relevant and material

Interests which should be regarded as "relevant and material" are:

- a) Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies);
- b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;

- d) A position of Authority in a charity or voluntary organisation in the field of health and social care;
- e) Any connection with a voluntary or other organisation contracting for NHS services;
- f) To the extent not covered above, any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to lenders or banks.
- g) Any other commercial interest in the decision before the meeting.

8.1.3 **Advice on Interests**

If Board members have any doubt about the relevance of an interest, this should be discussed with the Chairman of the Trust or with the Trust's Company Secretary.

8.1.4 **Recording of Interests in Trust Board minutes**

At the time Board members' interests are declared, they should be recorded in the Trust Board minutes.

Any changes in interests should be declared at the next Trust Board meeting following the change occurring and recorded in the minutes of that meeting.

8.1.5 **Publication of declared interests in Annual Report**

Board members' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

8.1.6 **Conflicts of interest which arise during the course of a meeting**

During the course of a Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

8.2 **Register of Interests**

- 8.2.1 A Register of Interests will be established to formally record declarations of interests of Board or Committee members. In particular the Register will include details of all directorships and other relevant and material interests (as defined in SO 8.1.2) which have been declared by both Executive and Non-Executive Board members.

8.2.2. These details will be kept up to date by a monthly review of the Register in which any changes to interests declared during the preceding month will be incorporated.

8.2.3 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.

8.3 Exclusion of Chairman and Members in proceedings on account of pecuniary interest

8.3.1 Subject to the following provisions of this Standing Order, if the Chairman or another Member of the Board has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, he shall at the meeting as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

8.3.2 For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:

(i) "**spouse**" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);

(ii) "**contract**" shall include any proposed contract or other course of dealing.

(iii) "**Pecuniary interest**" Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract if:-

a) he/she, or a nominee of his/her, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or

b) he/she is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.

iv) Exception to Pecuniary interests

A person shall not be regarded as having a pecuniary interest in any contract if: -

a) neither he/she or any person connected with him/her has any beneficial interest in the securities of a company of which he/she or such person appears as a member, or

- b) any interest that he/she or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or
- c) those securities of any company in which he/she (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided however, that where paragraph (c) above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 8.1.

8.3.2 The Trust Board may exclude the Chairman or a member of the Board from a meeting of the Board while any contract, proposed contract or other matter in which he/she has a pecuniary interest is under consideration.

8.3.3 Any remuneration, compensation or allowance payable to the Chairman or a Member shall not be treated as a pecuniary interest for the purpose of this Standing Order.

8.3.4 This Standing Order applies to a committee or sub-committee as it applies to the Board and applies to a member of any such committee or sub-committee (whether or not he/she is also a member of the Trust) as it applies to a member of the Board.

9 STANDARDS OF BUSINESS CONDUCT

9.1 Trust Policy and National Guidance

All Trust staff must comply with the NHS Code of Conduct for NHS Managers, the NHS Code of Conduct for private practice, the Confidentiality: NHS Code of Practice, the Trust's Standards of Business Conduct and any guidance issued by the Independent Regulator.

9.2 Interest of Officers in Contracts

- i) If it comes to the knowledge of a Director or an Officer that a contract in which he has a pecuniary interest has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in SO 8) has any pecuniary interest, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Chief Executive or Trust's Company Secretary as soon as practicable.
- ii) An Officer should also declare to the Chief Executive any other employment or business or other relationship of his/her, or of a

cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

- iii) The Trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

9.3 **Canvassing of and Recommendations by Members in Relation to Appointments**

- i) Canvassing of members of the Board or of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- ii) Members of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment. This Standing Order shall not preclude a member from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- iii) Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

9.4 **Relatives of Members or Officers**

- i) Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any member or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- ii) The Chairman and every member and officer of the Trust shall disclose to the Board any relationship between himself and a candidate of whose candidature that member or officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.
- iii) On appointment, members (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other member or holder of any office under the Trust.
- iv) Where the relationship to a member of the Trust is disclosed, the Standing Order (SO 8.) shall apply.

10. CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS

10.1 Custody of Seal

The common seal of the Trust shall be kept by the Chief Executive or a nominated Manager by him/her in a secure place.

10.2 Sealing of Documents

The seal of the Trust shall not be fixed to any document unless the sealing has been authorised by a resolution of the Board or of a Committee thereof or where the Board has delegated its powers.

Before any building, engineering, property or capital document is sealed it must be approved and signed by the Chief Executive (or an Officer nominated by her) and authorised and countersigned by the Chairman (or an Officer nominated by him who shall not be within the originating directorate).

10.3 Register and Report of Sealing

An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealings shall be made to the Board at least every six months.

11. SIGNATURE OF DOCUMENTS

Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.

In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

12. SENIOR INDEPENDENT DIRECTOR

12.1 Subject to SO 12.2 below, the Board of Directors (in consultation with the Council of Governors) may appoint any Member of the Board, who is also a Non-Executive Director, to be the Senior Independent Director, for such period, not exceeding the remainder of his term as a Member of the Board, as they may specify on appointing him. The Senior Independent Director shall perform the role set out in the Trust's "Senior Independent Director Job Description", as amended from time to time by resolution of the Board.

12.2 Any Member of the Board so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chairman. The Board of Directors (in consultation with the Council of Governors) may thereupon appoint another Member of the Board as Senior Independent Director in accordance with the provisions of Standing Order 12.1.

13. MISCELLANEOUS (see overlap with SFIs)

13.1 Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have effect as if incorporated into Standing Orders.

13.2 *Review of Standing Orders*

Standing Orders shall be reviewed annually by the Board. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

ANNEX 8 – FURTHER PROVISIONS

1. COMMITMENTS

1.1 The Trust shall exercise its functions effectively, efficiently and economically.

1.2 Representative membership

The Trust shall at all times strive to ensure that the actual membership of the public constituencies is representative of those eligible for membership. To this end:

1.2.1 the Trust shall at all times have in place and pursue a Membership Strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every three years,

1.2.2 the Council of Governors shall present to each annual general meeting a report on:

1.2.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the staff constituency is representative of those eligible for such membership;

1.2.2.2 the progress of the Membership Strategy;

1.2.2.3 any changes to the Membership Strategy.

1.3 Co-operation with health service and other public bodies

In exercising its functions the Trust shall co-operate with health service bodies and other public bodies serving the community served by the Trust.

1.4 Openness

In conducting its affairs, the Trust shall have regard to the need to provide information to members and conduct its affairs in an open and accessible way.

1.5 Prohibiting distribution

The profits or surpluses of the Trust are not to be distributed either directly or indirectly in any way at all among members of the Trust.

2. FRAMEWORK

- 2.1 The affairs of the Trust are to be conducted by the Board of Directors, the Council of Governors and the Members in accordance with this constitution and the Trust's authorisation. The Members, the Council of Governors and the Board of Directors are to have their roles and responsibilities set out in this constitution.

3. MEMBERS (Paragraphs 4 and 8.3)

- 3.1 Members may attend and participate at members' meetings, vote in elections to, and stand for election to, the Council of Governors, and take such other part in the affairs of the Trust as is provided in this constitution.

3.2 Disqualification from Membership

A person may **not** be a member of the Trust if he/she is:

- 3.2.1 Under 16 years of age
- 3.2.2 If within the last 5 years they have perpetrated a serious incident or violence towards any of the Trust's hospitals or facilities or against any of the Trust's employees or registered volunteers in association with their employment with the Trust.
- 3.2.3 If, in the opinion of the Council of Governors there are reasonable grounds to believe that they are likely to act in a way detrimental to the interests of the Trust.
- 3.2.4 If the Trust has been correctly notified that their name appears on the sex offenders register.
- 3.2.5 They have habitually and persistently and without reasonable grounds instituted complaints against the Trust and are classified as a vexatious complainant.
- 3.2.6 If they have, within the preceding two years, been dismissed, otherwise than by reason of redundancy, from any paid employment with any NHS body.
- 3.2.7 If they fail to agree to abide by the values of the Trust principles.
- 3.2.8 They have been expelled from membership of the Trust, or of any other foundation trust.

3.3 Termination of Membership

- 3.3.1 A member will cease to be a member if:
- 3.3.1.1 they resign by giving notice to the Trust Secretary;
 - 3.3.1.2 they cease to be entitled under this constitution to be a member of the Public Constituency or of the Staff Constituency;
 - 3.3.1.3 they are disqualified from membership for any of the reasons described above;
 - 3.3.1.4 they die;
 - 3.3.1.5 they are expelled from membership under this constitution;
 - 3.3.1.6 it appears to the Secretary that they no longer wish to be a member of the Trust, and after enquiries made in accordance with the process approved by the Council of Governors, they fail to demonstrate that they wish to continue to be a member of the Trust.
- 3.3.2 A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting. The following procedure is to be adopted.
- 3.3.2.1 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust.
 - 3.3.2.2 If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either
 - (a) dismiss the complaint and take no further action, or
 - (b) for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution;
 - (c) arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.

- 3.3.3 If a resolution to expel a member is to be considered at a General Meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 3.3.4 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 3.3.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 3.3.6 A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
- 3.3.7 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a General Meeting.

4. ADDITIONAL PROVISIONS BOARD OF DIRECTORS

4.1 The business of the Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Trust, subject to any contrary provisions of the 2006 Act as given effect by this constitution.

4.2 Appointment and Removal of Chairman and other Non-Executive Directors (paragraph 21)

4.2.1 Non-Executive Directors are to be appointed by the Council of Governors using the following procedure:

4.2.1.1 A Nomination Committee of the Board of Directors will review the structure, size and composition of the board of Directors and make recommendations for changes where appropriate. The Nomination Committee will evaluate the balance of skills, knowledge and experience on the board and prepare a description of the role and capabilities required for a particular appointment of both executive and non executive directors including the chairman.

4.2.1.2 The Nomination Committee will work with an external organisation recognised as expert at appointments to identify the skills and experience required for Non-Executive Directors.

- 4.2.1.3 Appropriate candidates (not more than five for each vacancy) will be identified by the Nomination Committee through a process of open competition.
 - 4.2.1.4 The Chairman or an independent Non-Executive Director will chair the committee.
 - 4.2.1.5 The Council of Governors shall consider the appointment of the Non-Executive Director candidate(s) recommended for appointment by the Nomination Committee at the next meeting of the Council of Governors.
- 4.2.2 The removal of the Chairman or another Non-Executive Director shall be in accordance with the following procedures.
- 4.2.2.1 Any proposals for removal must be proposed by a Governor and seconded by not less than three quarters of the Council of Governors including at least two elected Governors and two appointed Governors.
 - 4.2.2.2 Written reasons for the proposal shall be provided to the Non-Executive Director in question, who shall be given the opportunity to respond to such reasons.
 - 4.2.2.3 In making any decision to remove a Non-Executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chairman.
 - 4.2.2.4 If any proposal to remove a Non-Executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such Non-Executive Director based upon the same reasons within 12 months of the meeting.

4.3 Associate Directors

- 4.3.1 Associate Directors may assist the Board and attend Board meetings by invitation. They are not members of the Board and are not entitled to vote on any resolution of the Board of Directors.

4.4 Further provisions as to disqualification of Directors (paragraph 26)

- 4.4.1 A person may not become or continue as a Director of the Trust if:
 - 4.4.1.1 they are a member of the Council of Governors or a Governor or (unless the Board or Directors approves) a director of an NHS body;

- 4.4.1.2 they are a member of a Local Involvement Network covering the Trust
- 4.4.1.3 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
- 4.4.1.4 they are a member of the local authority's Scrutiny Committee covering health matters;
- 4.4.1.5 they are subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 4.4.1.6 they are a person whose tenure of office as a Chairman or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings, or for non disclosure of a pecuniary interest;
- 4.4.1.7 they have within the preceding two years been dismissed, otherwise that by reason of redundancy, from any paid employment with an NHS body;
- 4.4.1.8 in the case of a Non-Executive Director they have refused without reasonable cause to fulfill any training requirement established by the Board of Directors; or
- 4.4.1.9 they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.

4.5 Meetings of the Board of Directors

- 4.5.1 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all Directors at least five days written notice of the date and place of every meeting of the Board of Directors.
- 4.5.2 Meetings of the Board of Directors shall be held monthly.
- 4.5.3 Meetings of the Board of Directors may be called by the Secretary, or by the Chairman or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call

such a meeting then the Chairman or four Directors, whichever is the case, shall call such a meeting.

- 4.5.4 Quorum - No business shall be transacted at a meeting unless at least one third of the whole number of the Chairman and Directors (including at least one Executive Director and one Non executive Director) are present.
- 4.5.5 The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 4.5.6 The Chairman of the Trust or, in their absence, the Deputy Chairman of the Board of Directors, is to chair meetings of the Board of Directors.
- 4.5.7. Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.
- 4.5.8 In case of an equality of votes the Chairman shall have a second and casting vote.

4.6 Expenses (paragraph 29)

- 4.6.1 The Trust may reimburse Executive Directors travelling and other costs and expenses incurred in carrying out their duties at such rates as the Remuneration Committee of Non-Executive Directors decides. These are to be disclosed in the annual report.
- 4.6.2. The remuneration and allowances for Directors are to be disclosed in bands in the annual report.

5. SECRETARY

- 5.1 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:
 - 5.1.1 acting as the Secretary to the Council of Governors and the Board of Directors, and any committees;
 - 5.1.2 summoning and attending all meetings of the Council of Governors and the Board of Directors, and ensuring minutes are kept of those meetings;
 - 5.1.3 keeping the register of Governors, a Register of Directors' interests and other registers and books required by this constitution to be kept;

- 5.1.4 having charge of the Trust's seal;
 - 5.1.5 publishing to members in an appropriate form information which they should have about the Trust's affairs;
 - 5.1.6 preparing and sending to the Independent Regulator and any other statutory body all returns which are required to be made.
- 5.2 Minutes of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of that meeting.
- 5.3 The Secretary is to be appointed and removed by the Chairman and the Chief Executive acting jointly.

6. FURTHER PROVISIONS AS TO AUDITOR AND OTHER EXTERNAL AUDITORS

- 6.1 A person may only be appointed as the auditor if they (or in the case of a firm each of its members) are a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.
- 6.2 An officer of the Audit Commission may be appointed as auditor with the agreement of the Audit Commission.
- 6.3 The auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.
- 6.4. The Board of Directors shall nominate auditors to be appointed by the Council of Governors and may resolve that other external auditors be appointed to review and publish a report on any other aspect of the Trust's performance. Any such auditors are to be appointed by the Council of Governors.

7. FURTHER PROVISIONS AS TO ACCOUNTS

- 7.1 The following documents will be made available to the Comptroller and Auditor General for examination at his request;
- 7.1.1 the accounts;
 - 7.1.2 any records relating to them; and
 - 7.1.3 any report of the auditor on them.

7.2 In preparing its annual accounts, the Accounting Officer shall cause the Trust to comply with any directions or guidance given by Monitor with the approval of the Treasury as to:

7.2.1 the methods and principles according to which the accounts are to be prepared;

7.2.2 the information to be given in the accounts;

and shall be responsible for the functions of the Trust as set out in paragraph 25 of Schedule 7 to the 2006 Act.

7.3 The annual accounts, any report of the auditor on them, and the annual report are to be presented to the Council of Governors at a general meeting.

7.4 The Accounting Officer shall cause the Trust to:

7.4.1 lay a copy of the Annual Accounts, and any report of the auditor on them, before Parliament; and

7.4.2 once it has done so, send copies of those documents to Monitor.

8. FURTHER PROVISIONS AS TO ANNUAL REPORTS

8.1 The annual reports are to give:

8.1.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of the Public Constituency and of the Staff Constituency is representative of those eligible for such membership; and

8.1.2 any other information Monitor requires.

8.2 The Trust is to comply with any decision Monitor makes as to:

8.2.1 the form of the reports;

8.2.2 when the reports are to be sent to him;

8.2.3 the periods to which the reports are to relate.

9. INDEMNITY

9.1 Members of the Council of Governors and the Board of Directors and the Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, including (but not limited to) any liability arising by reason of the Trust acting as a Corporate Trustee save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

9.2 The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors

and the Board of Directors and the Secretary and may participate in risk pooling schemes, including (but not limited to) insurance and schemes operated by the NHS Litigation Authority.

10. DISPUTE RESOLUTION PROCEDURES

10.1 Every unresolved dispute which arises out of this constitution between the Trust and:

10.1.1 a member; or

10.1.2 any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or

10.1.3 any person bringing a claim under this constitution; or

10.1.4 an office-holder of the Trust

is to be submitted to the Senior Independent Director (or to another non-executive director, if the Senior Independent Director has a conflict of interest), acting as an expert, for adjudication. The expert's decision will be binding and conclusive on all parties.

10.2 Any person bringing a dispute must, if required to do so, deposit with the Trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Secretary. The expert will decide how the cost of the adjudication will be paid and what should be done with the deposit.

11. NOTICES

11.1 Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purpose of such communications.

11.2 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

12. FURTHER PROVISIONS AS TO TRANSITION

12.1 The Board of Directors of the applicant NHS Trust shall prepare and approve the first Membership Strategy and the first policy for the composition of the Council of Governors and of the Non-Executive Directors.

12.2 These will be reviewed by the Council of Governors following the election and appointment of their initial Governors.

- 12.3 For the purpose of the period before the applicant NHS Trust becomes a Foundation Trust:
- 12.3.1 elections shall be carried out in accordance with the rules set out in the Model Rules for Elections set out at Annex 4.
 - 12.3.2 the Chief Executive of the applicant NHS Trust will approve
 - 12.3.2.1 a Membership Application Form;
 - 12.3.2.2 Forms of declaration required by sections 60 (1), (2) and (3) of the 2006 Act;
 - 12.3.2.3 a form confirming acceptance of a Code of Conduct for Governors;
 - 12.3.3 The Chief Executive of the applicant NHS Trust or her delegated representative, will oversee the arrangements for consulting and agreeing the appointments of appointed Governors.
 - 12.3.4 The Chief Executive of the applicant NHS Trust shall make the final decision about the class of the Staff Constituency of which an individual is eligible to be a member.

AUTHORISATION OF BURTON HOSPITALS NHS FOUNDATION TRUST

Schedule 2

Mandatory Goods and Services

Schedule 2

2008/09

Mandatory Goods and Services

Burton Hospitals NHS Foundation Trust

Code	Specialty Specialty	Emergency Spells	Elective Spells	Day case Spells	A&E Attendances	Outpatient Attendances	Critical Care Bed Days
100	General surgery	2,043	1,298	2,714	-	15,488	-
101	Urology	377	663	441	-	6,657	-
110	Trauma and orthopaedics	1,399	1,136	276	-	25,537	-
120	Ear, nose and throat (ENT)	372	1,336	306	-	10,284	-
130	Ophthalmology	108	141	132	-	6,205	-
140	Oral surgery	-	-	-	-	3,703	-
143	Orthodontics	-	-	-	-	9,763	-
160	Plastic surgery	-	32	5	-	615	-
180	Accident and emergency (A&E)	1,081	-	-	56,614	2,304	-
192	Critical care medicine	-	-	-	-	-	2,113
300	General medicine	6,020	171	1,589	-	12,659	-
303	Clinical haematology	374	60	749	-	4,047	-
315	Palliative medicine	-	-	-	-	177	-
320	Cardiology	-	37	139	-	4,898	-
330	Dermatology	24	21	38	-	14,805	-
360	Genito-urinary medicine	-	-	-	-	6,614	-
361	Nephrology	-	-	-	-	615	-
370	Medical oncology	-	20	3,229	-	7,105	-
400	Neurology	-	7	18	-	1,770	-
410	Rheumatology	27	90	132	-	5,370	-
420	Paediatrics/SCBU	2,179	48	132	-	4,433	-
430	Geriatric medicine	1,528	8	-	-	1,964	-
501	Obstetrics	6,608	-	-	-	9,276	-
502	Gynaecology	1,247	630	274	-	7,822	-
822	Chemical pathology	-	-	-	-	1,014	-
307	Diabetic Medicine	-	-	-	-	2,371	-
Total		23,387	5,698	10,174	56,614	165,496	2,113

AUTHORISATION OF BURTON HOSPITALS NHS FOUNDATION TRUST

Schedule 3

Mandatory Education and Training

Schedule 3
Mandatory Education and Training Services
Burton Hospitals NHS Foundation Trust

2008/09

Commissioning body	Educational body	Contract Length (years)	Expiry date of contract	Student group	Type of training	Number of Students	Contract Value (£'000s)
NHS West Midlands	West Mids Deanery	1 year	31st March 2009	Junior Doctors	Medical	117	2,931
NHS East Midlands	L & W Med School	1 year	31st March 2009	Medical Students	Medical	1,584	1,449
NHS West Midlands	NHS West Midlands	1 year	31st March 2009	Trainee Nurses	Nursing	9	158
NHS West Midlands	NHS West Midlands	1 year	31st March 2009	Pharmacy Trainees	Pharmacy	7	177

AUTHORISATION OF BURTON HOSPITALS NHS FOUNDATION TRUST

Schedule 4

Private Health Care

AUTHORISATION OF BURTON HOSPITALS NHS FOUNDATION TRUST

PRIVATE HEALTH CARE

In 2002/03 the proportion of the total patient income derived from private health charges was 3.3%.

Pursuant to section 44 of the Act and Condition 10 of this Authorisation the proportion of total income of the Trust in any financial year derived from private charges shall not be greater than 3.3%.

DEFINITION:

Private patient income

Total patient
related income

AUTHORISATION OF BURTON HOSPITALS NHS FOUNDATION TRUST

Schedule 5

Limit on Borrowing

AUTHORISATION OF BURTON HOSPITALS NHS FOUNDATION TRUST

PRUDENTIAL BORROWING LIMIT

Pursuant to section 46 of the Act, the Prudential Borrowing Limit ("PBL") for the year 2008/09 is the sum of the following:

- (i) Maximum cumulative long term borrowing: £29.0 million and
- (ii) Approved working capital facility: not to exceed £10 million

AUTHORISATION OF BURTON HOSPITALS NHS FOUNDATION TRUST

Schedule 6

Information

Full details of the information which the Trust shall disclose to Monitor directly and to any third parties as may be specified by the Secretary of State and as may be varied from time to time are set out on Monitor's website at www.monitor-nhsft.gov.uk.