

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service Trust Development Authority Directions 2013

The Secretary of State, in exercise of the powers conferred by sections 7(1), 8(1), 272(7) and (8) and 273(1) of the National Health Service Act 2006(a) gives the following Directions.

Citation, commencement, interpretation and revocation

1.—(1) These Directions may be cited as the National Health Service Trust Development Authority Directions 2013.

(2) These Directions come into force on 1st April 2013.

(3) These Directions are given to the National Health Service Trust Development Authority established by the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012(b).

(4) These Directions revoke—

(a) the National Health Service Trust Development Authority Directions 2012 signed on 28th May 2012; and

(b) the National Health Service Trust Development Authority (Amendment) Directions 2012 signed on 25th September 2012.

(5) In these Directions—

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

“the Authority” means the National Health Service Trust Development Authority;

“Care Quality Commission requirements” means requirements mentioned in section 12(2) of the Health and Social Care Act 2008(c) (grant or refusal of registration as a service provider) in relation to any regulated activity or activities that an English NHS trust carries on;

“English NHS trust” means an NHS trust all or most of whose hospitals, facilities and establishments are situated in England;

“Monitor” means the body which is continued in existence by section 61(1) of the Health and Social Care Act 2012(d) (Monitor);

“relevant standards means—

(a) Care Quality Commission requirements; and

(b) standards set from time to time by the Authority for English NHS trusts, in relation to the performance by those trusts of their functions, in guidance issued by the Authority to English NHS trusts, including in the document entitled “Toward High Quality, Sustainable Services Planning guidance for NHS Trust Boards for 2013/14”(e);

“significant commercial transactions” means transactions which the Secretary of State considers to be significant based on the level of financing required to complete that transaction and the nature of that transaction;

(a) 2006 c. 41. By virtue of section 271(1) of the Act the functions of the Secretary of State under those sections as exercised in making these Directions are exercisable only in relation to England. Section 7 was amended by section 21 of the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”). Section 8 was amended by section 55(1) and 179(6) of, and paragraph 5(1) of Schedule 4 to, and paragraphs 1 and 3 of Schedule 14 to, the 2012 Act.

(b) S.I. 2012/901, amended by S.I. 2013/235 and 2013/260.

(c) 2008 c.14.

(d) 2012 c.7.

(e) The document can be found at http://www.ntda.nhs.uk/wp-content/uploads/2012/04/NHS-TDA_Planning-Guidance-2012-13.pdf

“special trustees” has the meaning given in section 212(1) of the Act (special trustees for a university hospital or teaching hospital);

“the Order” means the National Health Service Trust Development Authority (Establishment and Constitution) Order 2012.

Functions of the Authority relating to designing methods, developing and producing guidance

2.—(1) The Secretary of State directs the Authority to take such steps as it considers necessary and appropriate, to design methods to be used by the Authority and develop and publish guidance, as the Authority considers necessary, in connection with the Authority—

- (a) making appointments of the chair and non-executive directors of English NHS trusts, special trustees and trustees for English NHS trusts(a) and NHS foundation trusts(b); and
- (b) overseeing, developing and supporting English NHS trusts including in relation to clinical quality, governance and management of risk in English NHS trusts, compliance by English NHS trusts with relevant standards, and the progress of English NHS trusts as set out in direction 4(b)(i)(cc).

(2) The reference in paragraphs (1)(a) and (b) to developing and publishing guidance is to be read as guidance to English NHS trusts, special trustees and trustees for English NHS trusts and NHS foundation trusts.

Functions of the Authority relating to the exercise of some of the Secretary of State’s appointments functions

3.—(1) The Secretary of State directs the Authority—

- (a) to exercise any function of the Secretary of State to appoint—
 - (i) the chair and non-executive directors of English NHS trusts;
 - (ii) special trustees;
 - (iii) trustees for English NHS trusts and NHS foundation trusts;
 - (iv) the non-executive directors of a company appointed as trustee to—
 - (aa) an English NHS trust pursuant to an order made under paragraph 10(1) of Schedule 4 to the Act (trust funds and trustees), or
 - (bb) an NHS foundation trust pursuant to an order made under section 51(1) of the Act (trust funds and trustees);
- (b) to exercise the functions of the Secretary of State under regulations 3, 7, 9, 9A, 9C and 12 of the National Health Service Trusts (Membership and Procedure) Regulations 1990(c) (appointment of directors, tenure of office of chairman and directors, termination of tenure of office, suspension of chairman and non-executive directors, appointment of vice chairman where chairman is suspended and cessation of disqualification) in so far as they relate to the chair and non-executive directors of English NHS trusts;
- (c) to exercise any powers of the Secretary of State in relation to the termination of the tenure of office of the trustees specified in sub-paragraph (a)(ii) and (iii);
- (d) to exercise any function of the Secretary of State in relation to the making of requests to a company appointed as trustee to an English NHS trust or NHS foundation trust under sub-paragraph (a)(iv) to terminate the tenure of office of a non-executive director of that company;

(a) See section 25 of the Act. Trustees are appointed for an NHS trust to hold property on trust pursuant to paragraph 10 of Schedule 4 to the Act.

(b) See section 30 of the Act. Trustees are appointed for an NHS foundation trust to hold property on trust pursuant to section 51 of the Act.

(c) S.I. 1990/2024; Regulations 9A and 9C were inserted by S.I. 2008/1269, and these cited regulations are otherwise amended by S.I. 1996/1755, 1997/2990, 2001/3786, 2006/1722, 2008/1269 and 2010/720.

- (e) to record, update and keep information about appointments to the offices specified in sub-paragraph (a) and about applications by persons seeking appointment to such offices;
 - (f) to provide advice to the chair and non-executive directors of English NHS trusts and the trustees specified in sub-paragraph (a)(ii) and (iii) with respect to the development of their role as chair, non-executive director or trustee;
 - (g) to secure that the chair and non-executive directors of English NHS trusts and the trustees specified in sub-paragraph (a)(ii) and (iii) receive training and other assistance with respect to the performance of their functions as chair, non-executive director or trustee;
 - (h) to develop procedures for appraising the performance of the chair and non-executive directors of English NHS trusts and of trustees specified in sub-paragraph (a)(ii) and (iii), and for carrying out those appraisals as required under those procedures; and
 - (i) to carry out the appraisals of the chair and non-executive directors of English NHS trusts and of trustees specified in sub-paragraph (a)(ii) and (iii) as required under the procedures developed under sub-paragraph (h).
- (2) In exercising the functions in paragraph (1)(a) the Authority must—
- (a) develop—
 - (i) descriptions of the duties and role of the offices specified in paragraph (1)(a); and
 - (ii) criteria for appointment to those offices;
 - (b) use and have regard to the descriptions and criteria developed under paragraph (2)(a);
 - (c) ensure that the procedures for appointment operated by the Authority are open, transparent and comply with the Code of Practice given by the Commissioner for Public Appointments(a);
 - (d) have regard to the need to maintain public confidence in the process of public appointments; and
 - (e) consult, in relation to paragraph (1)(a)(ii), the chair of the body which manages the hospital for which the special trustee is appointed and in relation to paragraph (1)(a)(iii) the chair of the English NHS trust or NHS foundation trust concerned.

Other Functions of the Authority

4. The Secretary of State directs the Authority—

- (a) to, where it considers it to be appropriate, give directions to English NHS trusts about their exercise of any of their functions;
- (b) to oversee, develop and support English NHS trusts including by—
 - (i) assessing—
 - (aa) clinical quality, governance and management of risk in English NHS trusts;
 - (bb) English NHS trusts' compliance with relevant standards; and
 - (cc) the progress of English NHS trusts towards being able to satisfy Monitor of the matters specified in section 35(2) of the Act (authorisation of NHS foundation trusts) as to which Monitor must be satisfied prior to giving an authorisation as an NHS foundation trust under that section; and
 - (ii) where the Authority considers improvements in clinical quality, governance and management of risk could be made, or where English NHS trusts are not meeting relevant standards, or where suitable progress is not, in the Authority's opinion, being made under sub-paragraph (i)(cc)—
 - (aa) assisting those trusts to make improvements, meet such standards, or make such progress by providing advice, support, help or guidance; or

(a) The Code of Practice is available at <http://publicappointmentscommissioner.independent.gov.uk/the-code-of-practice>

- (bb) giving directions to those trusts to require them to take such steps as the Authority considers appropriate;
- (c) to ensure that English NHS trusts comply with such conditions which are equivalent to the conditions of any licence issued by Monitor under Chapter 3 of Part 3 of the Health and Social Care Act 2012 (licensing) as the Authority deems appropriate to apply to English NHS trusts, which may be by setting these conditions out in relevant standards or by giving directions to an English NHS trust where necessary;
- (d) to, in exercising the functions in sub-paragraph (c), seek and consider advice from Monitor, including advice on what steps an English NHS trust should take to ensure compliance by that English NHS trust with such conditions;
- (e) to provide advice to English NHS trusts to assist those trusts to prepare plans for each financial year, starting with plans for the financial year 1st April 2013 to 31st March 2014, as to how those trusts will exercise their functions;
- (f) to scrutinise the plans prepared by English NHS trusts referred to in sub-paragraph (e) and where the Authority considers that those plans could be improved—
 - (i) to provide feedback on the plans to those trusts; and
 - (ii) to assist those trusts to amend those plans to take that feedback into account;
- (g) to oversee, develop and support English NHS trusts to assist those trusts to become sustainable organisations including by—
 - (i) supporting English NHS trusts to ensure they are in a position to make an application for authorisation under section 33 of the Act (applications by NHS trusts) as an NHS foundation trust under section 35 of the Act (authorisation of NHS foundation trusts);
 - (ii) exercising, where an English NHS trust makes such an application for authorisation as an NHS foundation trust, the Secretary of State's function under section 33(1) of the Act (applications by NHS trusts);
 - (iii) assessing proposals of English NHS trusts to—
 - (aa) dissolve and transfer property and liabilities to other English NHS trusts or NHS foundation trusts;
 - (bb) make an application to Monitor under section 56 of the Act (mergers);
 - (iv) preparing a written report to the Secretary of State as to whether he should support any proposals assessed by the Authority under sub-paragraph (g)(iii);
 - (v) making recommendations to English NHS trusts where in the opinion of the Authority such trusts should—
 - (aa) dissolve and transfer property to another English NHS trust or NHS foundation trust;
 - (bb) merge with an NHS foundation trust under section 56 of the Act (mergers);
 - (vi) negotiating and liaising with other English NHS trusts or NHS foundation trusts in order to make recommendations in sub-paragraph (g)(v) and facilitate such dissolutions, transfers and mergers; and
 - (vii) taking any other steps which the Authority considers necessary;
- (h) to produce a report to the Secretary of State when, in the opinion of the Authority, it is in the interests of the health service that the Secretary of State makes an order under section 65B(1) of the Act^(a) (NHS trusts: appointment of trust special administrator) to authorise the appointment of a trust special administrator to an English NHS trust, such report to contain the reasons for its opinion;

(a) Section 65B was inserted by section 16 of the Health Act 2009 (c.21). The heading of section 65B was substituted by section 174(2) of the Health and Social Care Act 2012.

- (i) to produce a report to the Secretary of State when, in the opinion of the Authority, it is appropriate for the Secretary of State to make an order under section 66 of the Act(a) (intervention powers) as a result of an English NHS trust not performing one or more of its functions adequately or at all, or there being significant failings in the way the body is run, such report to contain the reasons for its opinion and advice on appropriate provisions for any such order;
- (j) to produce a report to the Secretary of State when, in the opinion of the Authority, the Secretary of State should make an order under section 68 of the Act(b) (default powers) as a result of an English NHS trust failing to carry out its functions or, in carrying out its functions failing to comply with any regulations or directions relating to those functions, such report to contain the reasons for its opinion and advice on appropriate provisions for any such order;
- (k) where the Authority produces a report under paragraph (j), to carry out such inquiry as the Secretary of State considers appropriate, and report to the Secretary of State with the results of its inquiry;
- (l) where an English NHS trust has proposals involving capital investment or significant commercial transactions under consideration—
 - (i) where such proposals do not exceed financial limits set by the Secretary of State from time to time(c) and where such proposals are not, in the opinion of the Secretary of State, novel, contentious or repercussive to—
 - (aa) determine which proposals do not require approval of the Authority; and
 - (bb) assess and approve proposals not falling within sub-paragraph (l)(i)(aa); or
 - (ii) where such proposals exceed those financial limits or are, in the opinion of the Secretary of State, novel, contentious or repercussive, to assist the Secretary of State in assessing and approving such proposals;
- (m) to request information, which the Authority requires in order to carry out its functions, from English NHS trusts; and
- (n) to designate the Chief Executive of each English NHS trust as its Chief Accountable Officer.

Reports

5. The Authority must—

- (a) furnish to the Commissioner for Public Appointments such information relating to the appointments for which it is responsible under paragraph (1)(a) of direction 3 as the Commissioner may from time to time require;
- (b) prepare an annual report of its activities in each financial year, starting with the year 1st April 2013 to 31st March 2014, and provide a copy to the Secretary of State by a date to be determined by the Secretary of State; and
- (c) provide such information to the Secretary of State as the Secretary of State may require on a date to be determined by the Secretary of State.

Exercise of functions

6. In exercising the functions set out in directions 2, 3, and 4, the Authority is to have regard to any guidance issued by the Secretary of State from time to time to the Authority.

(a) Section 66 was amended by section 279 of, and paragraphs 5 and 8(1) of Schedule 21 to the Health and Social Care Act 2012.

(b) Section 68 was amended by section 279 of, and paragraphs 5 and 10(1) of Schedule 21 to, the Health and Social Care Act 2012.

(c) See http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_122791 for current financial limits.

Arrangements for the exercise of functions

7. Pursuant to regulation 11 of the National Health Service Trust Development Authority Regulations 2012(a), the Secretary of State directs that the role of the Accounting Officer of the Authority is to be performed by the Chief Executive of the Authority.

Signed by authority of the Secretary of State for Health



Date 21 March 2013

Kristen McLeod
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(a) S.I. 2012/922.