

# NATIONAL HEALTH SERVICE, ENGLAND

## The National Health Service Trust Development Authority (Amendment) Directions 2012

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<sup>(a)</sup> gives the following Directions.

### Citation, commencement, and interpretation

**1.**—(1) These Directions may be cited as the National Health Service Trust Development Authority (Amendment) Directions 2012.

(2) These Directions come into force on 1st October 2012.

(3) In these Directions, “the Principal Directions” means the directions to the National Health Service Trust Development Authority signed on 28th May 2012.

### Amendments to the Principal Directions

**2.**—(1) In direction 1 of the Principal Directions (citation, commencement and interpretation) in paragraph (4)—

(a) after the definition of “English NHS trust” insert the following definition—

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

(b) after the definition of “non-officer member” insert the following definition—

““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”.

(2) In the heading to direction 2 of the Principal Directions (Functions of the Authority) after “Authority” insert “relating to designing methods and producing guidance”.

(3) In direction 2(1)(a) of the Principal Directions, omit “from 1st October 2012,” and “from that date”.

(4) After direction 2 of the Principal Directions insert—

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

**2A**—(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<sup>(c)</sup> and NHS foundation trusts<sup>(d)</sup>;

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(a) 2006 c. 41. By virtue of section 271(1) of the Act the powers conferred on the Secretary of State by those sections are exercisable only in relation to England. Section 7 of the Act was amended by section 21 of the Health and Social Care Act 2012 (c. 7).

(b) 2012 c. 7.

(c) 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.

(d) 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.

- (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, or
  - (bb) an NHS foundation trust pursuant to an order made under section 51(1) of the Act;
- (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<sup>(a)</sup> (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;
- (e) to manage the process for recruiting, and supporting the Secretary of State in appointing, the chair and non-officer members of Strategic Health Authorities and Primary Care Trusts;
- (f) to record, update and keep information about appointments to the offices specified in sub-paragraphs (a), (b) and (e) and about applications by persons seeking appointment to such offices;
- (g) 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;
- (h) 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;
- (i) 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).
- (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<sup>(b)</sup>;
  - (d) have regard to the need to maintain public confidence in the process of public appointments;

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

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

- (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.

(3) The reference in paragraph (1)(e) to managing the process for recruiting, and supporting the Secretary of State in appointing, the chair and non-officer members of Strategic Health Authorities and Primary Care Trusts is not to be read as including the making of such appointments to such bodies.

### Other functions

**2B** The Secretary of State directs the Authority—

- (a) to carry out the Secretary of State’s function under section 33(1) of the Act;
- (b) 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 to authorise the appointment of a trust special administrator to an English NHS trust, such report to contain the reasons for its opinion;
- (c) to provide advice to English NHS trusts to assist those trusts to prepare plans 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;
- (d) to scrutinise the plans prepared by English NHS trusts referred to in sub-paragraph (c) 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.
- (e) to assess proposals of English NHS trusts to dissolve and transfer property and liabilities to other English NHS trusts or NHS foundation trusts;
- (f) to prepare a written report to the Secretary of State as to whether he should approve any proposals assessed by the Authority under sub-paragraph (e); and
- (g) 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<sup>(a)</sup> 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 (g)(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.

### Reports

**2C** The Authority must furnish to the Commissioner for Public Appointments such information relating to the appointments for which it is responsible under paragraph (1)(a) of direction 2A as the Commissioner may from time to time require.”.

(5) In direction 3 of the Principal Directions (exercise of functions) for “direction 2” substitute “directions 2, 2A and 2B”.

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(a) See [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_122791](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_122791) for current financial limits.

Signed by authority of the Secretary of State for Health

A handwritten signature in black ink, appearing to read 'S. Habibi', written in a cursive style.

Date 25 September 2012

Sebastian Habibi  
Member of the Senior Civil Service  
Department of Health