

UNIVERSITY HOSPITALS BIRMINGHAM NHS FOUNDATION TRUST
COUNCIL OF GOVERNORS
THURSDAY 13 NOVEMBER 2014

Title:	CHANGES TO THE CONSTITUTION
Responsible Officer:	David Burbridge, Director of Corporate Affairs
Contact:	David Burbridge, Director of Corporate Affairs, Ext 14317

Purpose:	To recommend changes to the Trust's Constitution with regard to certain parts of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the "Regulations") and other matters.
Confidentiality Level & Reason:	NONE
Key Issues Summary:	<p>The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 come into force in November 2014. They include a requirement that the Trust does not appoint or have in place an individual as a director who does not meet the requirements of the Regulations. An appropriate amendment to the Constitution is proposed.</p> <p>Additionally, it is proposed that the Trust adopts new Model Election Rules, which permit electronic voting and a single transferable vote system, in place of the current first past the post system.</p> <p>Amendments to the Constitution must be approved by both the Council of Governors and the Board of Directors. The proposed amendments will be considered by the Board of Directors later this month.</p> <p>The Council of Governors is also asked to agree how the capital of the Trust is to be assessed in connection with the meaning of Significant Transaction in the Constitution.</p>
Recommendations:	<p>The Council of Governors is asked to consider this paper and the accompanying documents and RESOLVE as follows:</p> <ol style="list-style-type: none"> 1. Subject to, and with effect from, the approval of the Board of Directors, that the Constitution of the Trust be amended as set out in the document attached at Appendix A; 2. Subject to, and with effect from, the approval of the Board of Directors, that the existing Annex 3 of the Constitution (Election Rules) be deleted and replaced with the new

	Election Rules set out in Appendix B; and 3. the impact of the Trust's PFI on its capital should be disregarded when assessing whether a particular transaction is a Significant Transaction for the purposes of section 19.2 of the Trust's Constitution.
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Approved by: David Burbridge	Date: 6 November 2014
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UNIVERSITY HOSPITALS BIRMINGHAM NHS FOUNDATION TRUST
COUNCIL OF GOVERNORS
THURSDAY 13 NOVEMBER 2014
CHANGES TO THE CONSTITUTION
DIRECTOR OF CORPORATE AFFAIRS

1. Introduction

- 1.1. The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 come into force in November 2014. They include a requirement that the Trust does not appoint or have in place an individual as a director who does not meet the requirements of the Regulations. An appropriate amendment to the Constitution is proposed.
- 1.2. Additionally, it is proposed that the Trust adopts new Model Election Rules, which permit electronic voting and a single transferable vote system, in place of the current first past the post system.
- 1.3. A small number of minor amendments are also proposed for the sake of clarification.
- 1.4. Amendments to the Constitution must be approved by both the Council of Governors and the Board of Directors. The proposed amendments will be considered by the Board of Directors later this month.
- 1.5. Accordingly, the approval of the Council of Governors is now sought with regard to the amendments set out in the attached document.
- 1.6. The Council of Governors is also asked to agree a matter with regard to the interpretation of the meaning of Significant Transaction as set out in Annex 5 of the Constitution.

2. Fit and proper persons: directors

- 2.1. Under the Regulations, the Trust must not appoint or have in place an individual as a director unless:
 - 2.1.1. the individual is of good character;
 - 2.1.2. the individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed;

- 2.1.3. the individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed;
- 2.1.4. the individual has not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not); and
- 2.1.5. none of the following grounds of unfitness apply to the individual:
 - a. The person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged;
 - b. The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland;
 - c. The person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986;
 - d. The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it;
 - e. The person is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland; or
 - f. The person is prohibited from holding the relevant office or position, or in the case of an individual from carrying on the regulated activity, by or under any enactment, for example, under a directors' disqualification order.
- 2.2. The key amendments are set out in Section 8.7 in Appendix A.

3. Election Rules

- 3.1. Annex 3 of the Constitution sets out the election rules that apply to the election of Governors. They are consistent with the Model Election Rules previously approved by Monitor.
- 3.2. New Model Election Rules have now been developed jointly by the Foundation Trust Network in partnership with Lancashire Teaching Hospitals NHS Foundation and were published in August 2014.
- 3.3. The new rules:

- 3.3.1. allow members to vote for foundation trust governors using e-voting technology; and
- 3.3.2. set out that challenges to the conduct of foundation trust elections will now be determined by the Independent Elections Arbitration Panel instead of Monitor.
- 3.4. Additionally, the new rules contain provisions for single transferable votes, as opposed to the first past the post system in the Trust's current rules.
- 3.5. It is proposed that the Trust adopts the new Model Election Rules.

4. Interpretation of Significant Transactions Definition

- 4.1. The Council of Governors must approve any Significant Transaction, as defined in Annex 5 of the Constitution. The meaning in that Annex follows that used by Monitor in its Risk Assessment Framework and, in particular, makes reference to the capital of the Trust.
- 4.2. Accounting rules mean that the capital of the Trust is affected by the Trust's PFI, such that it is currently a negative value. This means that using that value to assess whether a transaction is a Significant Transaction or otherwise is without merit.
- 4.3. Monitor has agreed that the impact of the Trust's PFI on its capital should be disregarded when assessing whether a particular transaction is a Significant Transaction. The Board of Directors would like to agree a similar approach with the Council of Governors.

5. Recommendations

- 5.1. The proposed amendments are set out in Appendix A, attached (only those pages with amendments have been included.)
- 5.2. Appendix B contains the proposed new Election Rules.
- 5.3. The Council of Governors is asked to consider this paper and the accompanying document and RESOLVE as follows:
 - 5.3.1. Subject to, and with effect from, the approval of the Board of Directors, that the Constitution of the Trust be amended as set out in the document attached at Appendix A;
 - 5.3.2. Subject to, and with effect from, the approval of the Board of Directors, that the existing Annex 3 of the Constitution (Election Rules) be deleted and replaced with the new Election Rules set out in Appendix B; and

- 5.3.3. the impact of the Trust's PFI on its capital should be disregarded when assessing whether a particular transaction is a Significant Transaction for the purposes of section 19.2 of the Trust's Constitution.

D J Burbridge
Director of Corporate Affairs

November 2014