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**CONSTITUTION OF  
GLOUCESTERSHIRE HOSPITALS NHS FOUNDATION TRUST  
(A PUBLIC BENEFIT CORPORATION)**

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**August 2016**

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# GLoucestershire Hospitals NHS Foundation Trust CONSTITUTION

## 1. Definitions

- 1.1 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution bear the same meaning as in the Health and Social Care (Community Health and Standards) Act 2003.
- 1.2 References in this constitution to legislation include all amendments, replacements, or re-enactments made.
- 1.3 Headings are for ease of reference only and are not to affect interpretation.
- 1.4 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.
- 1.5 References to clauses and paragraphs are to clauses and paragraphs in this Constitution.
- 1.6 All annexes referred to in this Constitution shall form part of it.

1.7 In this constitution:

“the 2012 Act”	means the Health and Social Care Act 2012
“the 2006 Act”	means the National Health Service Act 2006
“the 2003 Act”	means the Health and Social Care (Community Health and Standards) Act 2003;
“the 1977 Act”	means the National Health Service Act 1977;
“Annual Members’ Meeting”	means the meeting held annually at which the Members of the Trust are presented with certain statutory reports as provided for in Clause 10
“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
“areas of the Trust”	means the areas specified in Annex 1 which are (1) Cheltenham (2) Tewkesbury (3) Stroud (4) Cotswolds (5) Gloucester, and (6) Forest of Dean;
“authorisation”	means an authorisation given by the Independent Regulator
“Board of Directors”	means the Board of Directors as constituted in accordance with this constitution;

“carer”	means a person who has within the period of three years immediately prior to applying to become a member provided care to any patient, provided that such person is not providing care in pursuance of a contract (including a contract of employment), or as a volunteer for a voluntary organisation;
CQC	means the Care Quality Commission;
“Clinical Commissioning Group (CCG)”	means Gloucestershire Clinical Commissioning Group or its successor organisation;
“Council of Governors”	means the Council of Governors as constituted in this constitution, which is called a council of governors in the 2003 Act as amended;
“Director”	means a member of the Board of Directors;
“elected Governors”	means those Governors elected by the public constituencies, the patients’ constituency and the classes of the staff constituency
“Financial Year”	means a successive period of twelve months beginning with 1 April.
“General Meeting”	means a meeting of the Council of Governors of which notice has been given to all Governors and at which all Governors are entitled to attend;
“Independent Regulator”	means NHS Improvement, the body corporate known as NHS Improvement as provided by Section 61 of the 2012 Act as amended ;
“Local Authority Governor”	means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the area of the Trust;
“member”	means a member of the Trust;
“the NHS Trust”	means the NHS Trust which made the application to become the Trust
“patient”	means a person who has attended any of the Trust’s hospitals as a patient in the period of three years immediately prior to them applying to become a member;
“Patient Governor”	means a member of the Council of Governors elected by the patients’ constituency;
“Stakeholder Governor”	means up to four stakeholder appointed Governors. One of these should come from

the Gloucestershire Clinical Commissioning Group, one from Gloucestershire County Council and one from Healthwatch Gloucestershire (or their successor organisations). The fourth position could be an appointment from any other stakeholder or partnership organisation, as agreed at the time by the Board and the Council of Governors.

“public constituency”	means a public constituency of the Trust as defined in Annex 1;
“Public Governor”	means a member of the Council of Governors elected by the members of a public constituency;
“Secretary”	means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary;
“Sex Offender Order”	means an order made pursuant to Section 20 of the Crime and Disorder Act 1998;
“Staff Governor”	means a member of the Council of Governors elected by the members of one of the classes of the staff constituency
“the Trust”	means Gloucestershire Hospitals NHS Foundation Trust.

## **2. Name and status**

- 2.1 The name of the Trust is to be Gloucestershire Hospitals NHS Foundation Trust.
- 2.2 The Trust is a public benefit corporation incorporated under the 2003 Act.

## **3. Purpose**

- 3.1 The Trust’s principal purpose is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purpose related to:-
  - 3.31 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - 3.32 the promotion and protection of public health.
- 3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

#### **4. Functions**

- 4.1 The function of the Trust is to provide goods and services, including education and training, research, accommodation and other facilities, for purposes related to the provision of health care.
- 4.2 The Trust may also carry on other activities for the purpose of making additional income available in order to carry on the Trust's principal purpose better.

#### **5. Powers**

- 5.1 The Trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.
- 5.2 In particular it may:
  - 5.2.1 acquire and dispose of property,
  - 5.2.2 enter into contracts,
  - 5.2.3 accept gifts of property (including property to be held on Trust for the purposes of the Trust or for any purposes relating to the health service),
  - 5.2.4 employ staff. Any power of the Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing, or securing the provision of pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).
- 5.3 The Trust may borrow money for the purposes of or in connection with its functions, subject to the limit published by the Independent Regulator from time to time.
- 5.4 The Trust may invest money (other than money held by it as Trustee) for the purposes of or in connection with its functions. The investment may include investment by:
  - 5.4.1 forming, or participating in forming bodies corporate.
  - 5.4.2 otherwise acquiring membership of bodies corporate.
- 5.5 The Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

#### **6. Commitments**

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

##### **Representative membership**

- 6.2 The Trust shall at all times strive to ensure that taken as a whole actual membership of its public constituencies, its patients' constituency and the classes of its staff constituency is representative of those eligible for membership. To this end, 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,

##### **Co-operation with Health bodies**

- 6.3 In exercising its functions the Trust shall co-operate with those organisations in the health and social care system both commissioning and providing services.

### **Openness**

- 6.4 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.

### **Prohibiting distribution**

- 6.5 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.

## **7. Framework**

- 7.1 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. The members, the Council of Governors and the Board of Directors are to have the roles and responsibilities set out in this constitution.

### **Members**

- 7.2 Members may vote in elections to, and stand for election for the Council of Governors, attend and take part in annual members meetings, and take such other part in the affairs of the Trust as is provided for in this constitution and the 2003 Act.

### **Council of Governors**

- 7.3 The roles and responsibilities of the Council of Governors and its members are to hold, attend at and participate in the General Meetings of the Council of Governors and at or through such meetings:
- 7.3.1 to hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors;
  - 7.3.2 to represent the interests of the members of the Trust as a whole and the interests of the public;
  - 7.3.3 the Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such;
  - 7.3.4 to appoint or remove the Chair of the Trust (who shall also be Chair of the Board of Directors) and the other non-executive Directors;
  - 7.3.5 to approve an appointment (by the non-executive Directors) of the chief executive;
  - 7.3.6 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;
  - 7.3.7 to appoint or remove the Trust's financial auditor;
  - 7.3.8 to appoint or remove any auditor appointed to review and to publish a report on any other aspect of the Trust's affairs;
  - 7.3.9 to be presented with the annual accounts, any report of the financial auditor on them and the annual report;
  - 7.3.10 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Trust's forward planning.
  - 7.3.11 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution.

7.3.12 to undertake such functions as the Board of Directors shall from time to time request.

7.3.13 to prepare and from time to time to review the Trust's membership strategy, its policy for the composition of the Council of Governors and of the non-executive Directors.

7.4 There is a general duty of the Council of Governors and of each Governor individually to act with a view of promoting the success of the Foundation Trust so as to maximise the benefits for members as a whole and for the public. Governors will also have an explicit duty to avoid conflicts of interests and to declare if any should arise. Governors also have an explicit duty not to accept benefits from a third party by reason of being a governor.

#### **Board of Directors**

7.5 The business of the Trust is to be managed by the Board of Directors, who (subject to this constitution) shall exercise all the powers of the Trust.

### **8. Members**

8.1 The members of the Trust are those individuals whose names are entered in the register of members and an individual shall become a member upon the date upon which their name is entered in the said register of members and they shall cease to be a member upon the date upon which their name ceases to be entered in the said register of members. Every member is either a member of one of the public constituencies, or a member of the patients' constituency or a member of one of the classes of the staff constituency.

8.2 Subject to this constitution, membership is open to any individual who:

8.2.1 is 15 years of age or older,

8.2.2 is entitled under this constitution to be a member of one of the public constituencies, or of the patient constituency or of one of the classes of the staff constituency, and

8.2.3 completes a membership application form in whatever form the Council of Governors specifies.

8.3 An individual who is entitled to be a member of one of the public constituencies and is also entitled to be a member of the patient constituency shall be entitled to choose whether he is to be entered on the register of members as a member of the public constituency or of the patient constituency.

#### **Public constituencies**

8.4 There are six public constituencies corresponding to the six areas of the Trust specified in Annex 1. Membership of a public constituency is open to individuals who

8.4.1 live in the relevant area of the Trust;

8.4.2 are not a member of another public constituency; and

8.4.3 are not eligible to be members of any of the classes of the staff constituency.

8.5 The minimum number of members of each of the public constituencies is to be four.

#### **Patients' constituency**

8.6 Membership of the patients' constituency is open to individuals who:

- 8.6.1 are a patient when they apply for membership; or
  - 8.6.2 are a carer when they apply for membership; and
  - 8.6.3 who are not eligible to be members of any of the classes of the staff constituency.
- 8.7 Not more than one carer may be registered as a member in relation to each patient.
- 8.8 The minimum number of members of the patients' constituency is to be four.

**Staff constituency**

- 8.9 The staff constituency is divided into four classes as follows;
- 8.9.1 the Medical and Dental Staff staff class;
  - 8.9.2 the Nursing and Midwifery Staff staff class;
  - 8.9.3 the Allied Health Professionals and Other Clinical, Scientific and Technical Staff staff class;
  - 8.9.4 the Other Staff staff class.
- as each such staff class is more particularly defined in Annex 2.
- 8.10 Membership of one of the classes of the staff constituency is open to individuals:
- 8.10.1 who are employed under a contract of employment by the Trust and who either
    - 8.10.1.1 are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months, or
    - 8.10.1.2 who have been continuously employed by the Trust for at least 12 months; or
  - 8.10.2 who are not so employed but who nevertheless exercise functions for the purposes of the Trust and who have exercised the functions for the purposes of the Trust continuously for at least 12 months. For the avoidance of doubt, this does not include those who assist or provide services to the Trust on a voluntary basis.
- 8.11 The Secretary shall make a final decision about the class of which an individual is eligible to be a member.
- 8.12 The minimum number of members of each of classes of the staff constituency is to be four.

**9. Termination of membership**

- 9.1 A member shall cease to be a member if:
- 9.1.1 they resign by notice to the Secretary;
  - 9.1.2 they die;
  - 9.1.3 they cease to be entitled under this constitution to be a member of any of the public constituencies, or of the patients' constituency, or of one of the classes of the staff constituency;
  - 9.1.4 they are expelled under this constitution.

- 9.1.5 if it appears to the Secretary that they no longer wish to be involved in the affairs of the Trust as a member, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to establish that they have a continuing wish to be involved in the affairs of the Trust as a member.
- 9.2 A member may be expelled by a resolution approved by a majority of the Council of Governors present and voting at a General Meeting. The following procedure is to be adopted.
  - 9.2.1 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust.
  - 9.2.2 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:
    - 9.2.2.1 dismiss the complaint and take no further action; or
    - 9.2.2.2 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
  - 9.2.3 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.
  - 9.2.4 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.
  - 9.2.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 9.3 A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.
- 9.4 No person who has been expelled from membership is to be re-admitted except by a resolution carried by a majority of the Council of Governors present and voting at a General Meeting.

## **10. Annual Members Meeting**

- 10.1 The Trust is to hold a members meeting (called the Annual Members Meeting) within eight months of the end of each Financial Year. The Annual Meeting shall be open to members of the public.
- 10.2 The Annual Members Meeting is to be convened by the Secretary by order of the Council of Governors.
- 10.3 The Council of Governors may decide where a members meeting is to be held and may also for the benefit of members arrange for the Annual Members Meeting to be held in different venues each year.
- 10.4 At the Annual Members Meeting:
  - 10.4.1 At least one member of the Board of Directors shall present to the members:
    - 10.4.1.1 the annual report and accounts
    - 10.4.1.2 any report of the financial auditor
    - 10.4.1.3 any report of any other auditor of the Trust's affairs

- 10.4.1.4 forward planning information for the next financial year
- 10.4.2 the Council of Governors shall present to the members:
  - 10.4.2.1 a report on steps taken to secure that (taken as a whole) the actual membership of the public constituencies, the patients' constituency and of the classes of the staff constituency is representative of those eligible for such membership;
  - 10.4.2.2 the progress of the membership strategy
  - 10.4.2.3 any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors
- 10.4.3 the results of any election and appointment of Governors will be announced.
- 10.5 Notice of the Annual Members Meeting is to be given:
  - 10.5.1 by notice sent to all members; by notice prominently displayed at the Trust's Head Office; and
  - 10.5.2 by notice on the Trust's website
 at least 14 clear days before the date of the meeting.
- 10.6 The notice must:
  - 10.6.1 be given to the Council of Governors and the Board of Directors, and to the Trust's financial auditors;
  - 10.6.2 give the time, date and place of the meeting; and
  - 10.6.3 indicate the business to be dealt with at the meeting.
- 10.7 Before a members meeting can do business there must be a quorum present. Except where this constitution provides otherwise a quorum is twenty members entitled to vote at the meeting.
- 10.8 The Chair of the Council of Governors or in their absence the Vice-Chair of the Council of Governors, and in their absence another Governor nominated by the Council of Governors shall preside at an Annual Members Meeting.
- 10.9 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine and the Secretary shall in either case give notice to each Governor that the meeting has been adjourned and shall give details of the day, time and place upon and/or at which the adjourned meeting will take place. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.

## **11. Council of Governors**

- 11.1 The Trust is to have a Council of Governors. It is to consist of Public Governors; a Patient Governor; Staff Governors; and up to four stakeholder appointed Governors. One of these should come from the Gloucestershire Clinical Commissioning Group, one from Gloucestershire County Council and one from Healthwatch Gloucestershire (or their successor organisations). The fourth position could be an appointment from any other stakeholder or partnership organisation, as agreed at the time by the Board and the Council of Governors.

- 11.2 Subject always to the provisions of the 2003 Act, the composition of the Council of Governors shall seek to ensure that:
- 11.2.1 the interests of the community served by the Trust are appropriately represented; and
  - 11.2.2 the level of representation of the public constituencies, the patients' constituency and the classes of the staff constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs
- and to these ends, the Council of Governors
- 11.2.3 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy and is representative of the membership of their constituencies as set out in paragraph 6.2, and
  - 11.2.4 shall from time to time and not less than every three years review the policy for the composition of the Council of Governors, and
  - 11.2.5 when appropriate shall propose amendments to this constitution
- 11.3 The Council of Governors of the Trust is to comprise:
- 11.3.1 twelve Public Governors, from the following public constituencies:
    - 11.3.1.1 Cheltenham – two Public Governors
    - 11.3.1.2 Tewkesbury – two Public Governors
    - 11.3.1.3 Stroud – two Public Governors
    - 11.3.1.4 Cotswolds – two Public Governors
    - 11.3.1.5 Gloucester – two Public Governors
    - 11.3.1.6 Forest of Dean – two Public Governors
  - 11.3.2 one Patient Governor
  - 11.3.3 Staff Governors from the following staff classes:
    - 11.3.3.1 the Medical and Dental Staff staff class – one Staff Governor;
    - 11.3.3.2 the Nursing and Midwifery Staff staff class – two Staff Governors;
    - 11.3.3.3 the Allied Health Professionals and Other Clinical, Scientific and Technical Staff staff class – one Staff Governor;
    - 11.3.3.4 the Other Staff staff class – two Staff Governors.
  - 11.3.4 up to four stakeholder appointed Governors. One of these should come from the Gloucestershire Clinical Commissioning Group, one from Gloucestershire County Council and one from Healthwatch Gloucestershire (or their successor organisations). The fourth position could be an appointment from any other stakeholder or partnership organisation, as agreed at the time by the Board and the Council of Governors.” The Local Authority Governor to be nominated and appointed by Gloucestershire County Council to represent Gloucestershire County Council, Gloucester City Council, Cheltenham Borough Council, Forest of Dean District Council, Stroud District Council, Cotswold District Council, Tewkesbury Borough Council or in the event of any

subsequent boundary changes affecting the electoral areas of the above local authorities such local authorities as shall then include the whole or part of any area specified in Annex 1 as an area of the Trust's public constituencies; and

### **Elected Governors**

- 11.4 Public Governors are to be elected by members of the public constituencies, Patients' Governors are to be elected by members of the patients' constituency, and Staff Governors are to be elected by members of their class of the staff constituency.
- 11.5 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.
- 11.6 The Model Rules for Elections, as may be varied from time to time, form part of this Constitution and are attached at Annex 3.
- 11.7 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.
- 11.8 If contested, the elections must be by secret ballot.
- 11.9 A member of a public constituency or the patients' constituency may not vote at an election unless within 28 days before they vote they have made a declaration in the form specified by the Council of Governors that they are qualified to vote as a member of the relevant constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

### **Stakeholder Governors**

- 11.10 There shall be up to four stakeholder appointed Governors. One of these should come from the Gloucestershire Clinical Commissioning Group, one from Gloucestershire County Council and one from Healthwatch Gloucestershire (or their successor organisations). The fourth position could be an appointment from any other stakeholder or partnership organisation, as agreed at the time by the Board and the Council of Governors." Partnership Governors are to be appointed by the partnership organisation in accordance with a process to be agreed with the Trust Secretary
- 11.11 **Local Authority Governor**
- 11.12 Gloucestershire County Council having consulted with Gloucester City Council, Cheltenham Borough Council, Forest of Dean District Council, Stroud District Council, Cotswold District Council and Tewkesbury Borough Council (and in the event of any subsequent boundary changes affecting the electoral areas of the above local authorities such local authorities as shall then include the whole or part of any area specified in Annex 1 as an area of the Trust's public constituencies) is to agree the appointment of a Local Authority Governor with those local authorities.

### **Appointment of Lead Governor**

- 11.13 The Council of Governors shall appoint a Lead Governor in accordance with a procedure agreed by the Council of Governors.

### **Terms of office for Governors**

- 11.14 Elected Governors:
  - 11.14.1 shall hold office for a period of three years commencing immediately after the Annual Members Meeting at which their election is announced save as otherwise provided for in Clause 11.19 ;

- 11.14.2 are eligible for re-election at the end of that period;
  - 11.14.3 may not hold office for more than nine consecutive years and shall not be eligible for re-election without a break from office of three years.
- 11.15 Appointed Governors:
- 11.15.1 shall hold office for a period of three years commencing immediately after the Annual Members Meeting at which their appointment is announced;
  - 11.15.2 are eligible for re-appointment at the end of that period;
  - 11.15.3 may not hold office for longer than nine consecutive years.
- 11.16 For the purposes of these provisions concerning terms of office for Governors, “year” means a period commencing immediately after the conclusion of the Annual Members Meeting, and ending at the conclusion of the next Annual Members Meeting.

#### **Eligibility to be a Governor**

- 11.17 A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so if:
- 11.17.1 they are a Director of the Trust;
  - 11.17.2 they are under 15 years of age;
  - 11.17.3 being a member of one of the public constituencies or of the patients’ constituency they refuse to sign a declaration in the form specified by the Council of Governors that they are a member of the relevant constituency and are not prevented from being a member of the Council of Governors
  - 11.17.4 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
  - 11.17.5 they have made a composition or arrangement with, or granted a Trust deed for, their creditors and have not been discharged in respect of it;
  - 11.17.6 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
  - 11.17.7 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
  - 11.17.8 they are a person whose tenure of office as the Chair or as a member or Director of a health service 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;
  - 11.17.9 they have had their name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and have not subsequently had their name included in such a list;
  - 11.17.10 they are the subject of a Sex Offender Order;
  - 11.17.11 if within the last 5 years they have been involved in a serious incident of violence at any of the Trust’s hospitals or facilities or against any of the Trust’s employees or registered volunteers.

### **Termination of office and removal of Governors**

- 11.18 A person holding office as a Governor shall immediately cease to do so if
- 11.18.1 they resign by notice in writing to the Secretary;
  - 11.18.2 they are appointed a non-executive Director of the Trust;
  - 11.18.3 in the case of an elected Governor, they cease to be a member of the Trust;
  - 11.18.4 in the case of an appointed Governor, the appointing organisation terminates the appointment;
  - 11.18.5 if they refuse to undertake any training which the Council of Governors requires all Governors to undertake;
  - 11.18.6 they have failed to sign and deliver to the Secretary a statement in the form required by the Council of Governors confirming acceptance of the code of conduct for Governors;
  - 11.18.7 they are removed from the Council of Governors under the following provisions.
- 11.19 Governors are expected to attend as a minimum 4 of the 6 Council of Governor meetings per year. Where a Governor is absent from 4 Council of Governor meetings, the Chair shall write to the Governor concerned seeking reasons for absence. Illness usually to be the only approved reason for absence. The Governance and Nominations Committee to consider what action, if any, should be taken in respect of a Governor absent from 4 Council of Governor meetings per year.
- 11.20 A Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors on the grounds that
- 11.20.1 they have committed a serious breach of the code of conduct, or
  - 11.20.2 they have acted in a manner detrimental to the interests of the Trust, and
  - 11.20.3 the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor.

### **Vacancies amongst Governors**

- 11.21 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 11.22 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.
- 11.23 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty:
- 11.23.1 to call an election to fill the seat for the remainder of that term of office; or
  - 11.23.2 having regard to the number of Governors remaining in post to represent that constituency, to defer the election until the next round of routine elections; or
  - 11.23.3 invite the next highest polling candidate for that constituency at the most recent election to take office to fill the post for any unexpired period of the term of office and if that candidate is not willing to do so to invite the

candidate who secured the next highest number of votes until the vacancy is filled.

Notwithstanding the provisions of Clause 11.21, an election shall be called by the Trust as soon as reasonably practicable if by reason of the vacancy the number of Public Governors and Patient Governors thereby ceases to be more than half of the total number of Governors in office at that time.

11.24 No defect in the appointment or election (as the case may be) of a Governor nor any vacancy on the Council of Governors shall invalidate any act of or decision taken by the Council of Governors.

#### **Expenses and remuneration of Governors**

11.25 The Trust may reimburse Governors for travelling and other costs and expenses at such rates as the executive remuneration committee of non-executive Directors decides.

11.26 Governors are not to receive remuneration for holding office as Governors of the Trust.

#### **Meetings of the Council of Governors**

11.27 The Council of Governors is to meet at least three times in each Financial Year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published in the Members' Newsletter, on the Trust's website and at the Trust Head Office a clear three days before the meeting.

11.28 Meetings of the Council of Governors may be called by the Secretary, or by the Chair, or by eight Governors including at least one appointed Governor who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors 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 Chair or eight Governors including at least one appointed Governor, whichever is the case, shall call such a meeting.

11.29 All meetings of the Council of Governors are to be General Meetings 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. Any member of the public attending a General Meeting of the Council of Governors is entitled to speak at the meeting. The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

11.30 Eight Governors shall form a quorum.

11.31 The Chair of the Trust or, in their absence, the Vice Chair of the Council of Governors who is also the Vice Chair of the Trust, shall preside at meetings of the Council of Governors. If both the Chair and the Vice Chair are absent one of the Non-Executive Directors shall preside at meetings of the Council of Governors

11.32 The Council of Governors may invite a representative of the Trust's auditors or other advisors to attend a meeting of the Council of Governors. For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance) the Council of Governors may require one or more of the Directors to attend a meeting.

- 11.33 The Council of Governors 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.
- 11.34 Subject to this constitution, including the following provisions of this paragraph, issues arising at a meeting of the Council of Governors shall be decided by a majority of votes.
- 11.35 In case of an equality of votes the -Chair shall have a casting vote.
- 11.36 No resolution of the Council of Governors shall be passed if it is unanimously opposed by all of the Public and Patients' Governors present.
- 11.37 The Council of Governors may appoint committees consisting of its members, Directors, and other persons to assist the Council in carrying out its functions.
- 11.38 The Council of Governors may, through the Secretary, request that advisors with the support of the Trust assist them or any committee they appoint in carrying out their functions.
- 11.39 All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.
- 11.40 The Board of Directors shall send either by post or electronically to the Council of Governors:
- 11.40.1.1 the annual report and accounts
  - 11.40.1.2 any report of the financial auditor
  - 11.40.1.3 any report of any other auditor of the Trust's affairs
  - 11.40.1.4 forward planning information for the next financial year

#### **Referral to the Panel**

- 11.41 In this paragraph, the Panel means a panel of persons appointed by NHS Improvement to which a Governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing:-
- 11.41.1.1 To act in accordance with its Constitution, or
  - 11.41.1.2 To act in accordance with the provision made under Chapter 5 of the 2006 Act
- 11.42 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

#### **Disclosure of interests**

- 11.43 Any Governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors and:
- 11.43.1 shall not be present except with the permission of the Council of Governors in any discussion of the matter, and
  - 11.43.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

- 11.44 Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors.
- 11.45 A material interest in a matter in any interest (save for the exceptions referred to below) held by a Governor or their spouse or partner in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust. The exceptions which shall not be treated as material interests are as follows:
- 11.45.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
  - 11.45.2 an employment contract held by Staff Governors;
  - 11.45.3 a contract with their CCG held by a CCG Governor;
  - 11.45.4 an employment contract with a local authority held by a Local Authority Governor.
- 11.46 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings.
- 11.47 An elected Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Council of Governors that they are qualified to vote as a member of a particular public constituency or of the patients' constituency or of a particular class of the staff constituency as the case may be and are not prevented from being a member of the Council of Governors by any of the provisions contained in paragraphs 11.17. to 11.17.11. An elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of elected Governors.

## **12. Board of Directors**

- 12.1 The Trust is to have a Board of Directors. It is to consist of executive and non-executive Directors. The Board is to include:
- 12.1.1 the following non-executive Directors:
    - 12.1.1.1 a Chair, who is to be appointed (and removed) by the Council of Governors in a General Meeting;
    - 12.1.1.2 seven non-executive Directors who are to be appointed (and removed) by the Council of Governors in a General Meeting;

in each case subject to the approval of a majority of the Council of Governors (in the case of an appointment) present and voting at the meeting, and a three-quarters majority of all of the members of the Council of Governors (in the case of a removal) voting at the meeting;
  - 12.1.2 the following executive Directors:
    - 12.1.2.1 a Chief Executive (who is the accounting officer), who is to be appointed (and removed) by the non-executive Directors, and whose appointment is subject to the approval of a majority of the members of the Council of Governors present and voting at a General Meeting;
    - 12.1.2.2 a Finance Director;

- 12.1.2.3 a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984);
- 12.1.2.4 a registered nurse or registered midwife;
- 12.1.2.5 three other executive Directors; and
- 12.1.2.6 not less than one and not more than three other executive Directors,

all of whom save for the Chief Executive are to be appointed (and removed) by a committee consisting of the Chair, the Chief Executive and the other non-executive Directors.

- 12.2 Only those directors specified in Clause 12.1.2.1 – 12.1.2.5 above shall be entitled to vote on any resolution of the Board of Directors.
- 12.3 The Board of Directors shall elect one of the non-executive Directors to be Vice-Chair of the Board. If the Chair is unable to discharge their office as Chair of the Trust, the Vice-Chair of the Board of Directors shall be acting Chair of the Trust.
- 12.4 Only a member of a public constituency or the patients' constituency is eligible for appointment as a non-executive Director.
- 12.5 Non-executive Directors are to be appointed by the Council of Governors. The Council of Governors will maintain a policy for the composition of the non-executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
- 12.6 The general duty of the Board of Directors and each Director individually is to act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public.

#### **Terms of Office**

- 12.7 The Chair and the non-executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office decided by the Council of Governors at a General Meeting.
- 12.8 Any re-appointment of a non-executive Director shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors have approved.
- 12.9 The executive remuneration committee of non-executive Directors shall decide the terms and conditions of office including remuneration and allowances of the executive Directors including the Chief Executive and the Finance Director.

#### **Disqualification**

- 12.10 A person may not become or continue as a Director of the Trust if:
  - 12.10.1 they are a member of the Council of Governors;
  - 12.10.2 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
  - 12.10.3 they have made a composition or arrangement with, or granted a Trust deed for, their creditors and have not been discharged in respect of it;
  - 12.10.4 they have within the preceding five years been convicted in the British Islands of any offence, and a sentenced of imprisonment (whether

- suspended or not) for a period of three months or more (without the option of a fine) was imposed;
- 12.10.5 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 12.10.6 in the case of a non-executive Director, they are no longer a member of one of the public constituencies or of the patients' constituency;
  - 12.10.7 they are a person whose tenure of office as a Chair or as a member or Director of a health service 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;
  - 12.10.8 they have had their name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and have not subsequently had their name included on such a list;
  - 12.10.9 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
  - 12.10.10 in the case of non-executive Directors, they have refused to undertake any training which the Board of Directors requires all non-executive directors to undertake;
  - 12.10.11 they have failed 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.

#### **Committees and delegation**

- 12.11 The Board of Directors may delegate any of its powers to a committee of Directors or to an Executive Director.
- 12.12 The Board of Directors shall appoint a committee of non-executive Directors to act as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.
- 12.13 The Board of Directors shall appoint an executive remuneration committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive Directors.

#### **Meeting of Directors**

- 12.14 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Board of Directors to all Directors.
- 12.15 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as is practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.
- 12.16 Meetings of the Board of Directors shall be open to members of the public unless the Board of Directors decides otherwise in relation to all or part of a meeting for special reasons.. The Chair may exclude any member of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.
- 12.17 Meetings of the Board of Directors are called by the Secretary, or by the Chair, 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 Chair or four Directors, whichever is the case, shall call such a meeting.

- 12.18 Five Directors including not less than two executive, and not less than three non-executive Director's shall form a quorum.
- 12.19 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.
- 12.20 The Chair of the Trust or, in their absence, the Vice-Chair of the Board of Directors, and in their absence one of the other non-executive Directors in attendance is to chair meetings of the Board of Directors.
- 12.21 Questions arising at a meeting of the Board of Directors shall be decided by a majority of votes. In case of an equality of votes the Chair shall have a second and casting vote.
- 12.22 The Board of Directors is to adopt Standing Orders covering the proceedings and business of its meetings. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.

#### **Conflicts of Interest of Directors**

- 12.23 The duties that a Director of the Trust has by virtue of being a Director include in particular:-
  - 12.23.1 A duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust
    - A duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 12.24 The duty referred to in sub paragraph 12.23.1 above is not infringed if:-
  - 12.24.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 12.24.2 The matter has been authorised in accordance with the Constitution.
- 12.25 The duty referred to in sub paragraph 12.24.1 above is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 12.26 In sub paragraph 12.23.2 "third party" means a person other than:-
  - 12.26.1 The Trust, or
  - 12.26.2 A person acting on its behalf
- 12.27 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 12.28 If a declaration under this paragraph proves to be, or becomes, inaccurate, a further declaration must be made.

- 12.29 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 12.30 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 12.31 A Director need not declare an interest:-
- 12.31.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest
  - 12.31.2 If, or to the extent that, the Directors are already aware of it
  - 12.31.3 If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered
  - 12.31.4 By a meeting of the Board of Directors or
  - 12.31.5 By a Committee of the Directors appointed for the purpose under the Constitution.
- 12.32 Any Director who has a material interest in a matter as defined below shall declare such interest to the Board of Directors and:
- 12.32.1 shall not be present except with the permission of the Board of Directors in any discussion of the matter, and
  - 12.32.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 12.33 Any Director who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Directors.
- 12.34 A material interest in a matter is any interest (save for the exceptions referred to below) held by a Director or their spouse or partner in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust.
- 12.35 a holding of shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange shall not be treated as material interests:

### **Expenses**

- 12.36 The Trust may pay travelling and other expenses to Directors at such rates as the executive remuneration committee of the non-executive directors decides.
- 12.37 The remuneration and taxable allowances for Directors are to be disclosed in the annual report.

## **13. Secretary**

- 13.1 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 shall be responsible for:
- 13.1.1 acting as Secretary to the Council of Governors, the Board of Directors and any committees;
  - 13.1.2 summoning and attending all meetings of the Council of Governors, and keeping the minutes of those meetings;

- 13.1.3 keeping the register of members and other registers and books required by this constitution to be kept;
  - 13.1.4 publishing to members in an appropriate form information which they should have about the Trust's affairs;
  - 13.1.5 preparing and sending to the Independent Regulator and any other statutory body all returns which are required by Part 1 of the 2003 Act to be made.
- 13.2 Minutes of every members meeting, 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 the meeting.
- 13.3 The Secretary is to be appointed and removed by the Board of Directors, in consultation with the Council of Governors.

#### **14. Registers**

- 14.1 The Trust shall have:
- 14.1.1 a register of Members showing, in respect of each Member:
    - 14.1.2 the constituency and where relevant the class of the constituency to which they belong;
    - 14.1.3 any address which they have authorised the Trust to use for the purposes of any communications.
  - 14.1.4 a register of members of the Council of Governors;
  - 14.1.5 a register of Directors;
  - 14.1.6 a register of interests of Governors;
  - 14.1.7 a register of interests of Directors.
- 14.2 The Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution.

#### **15. Public Documents**

- 15.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times, and shall be available on the Trust's website:
- 15.1.1 a copy of the current constitution;
  - 15.1.2 a copy of the current licence
  - 15.1.3 a copy of the latest annual accounts and of any report of the financial auditor on them;
  - 15.1.4 a copy of the latest annual report;
  - 15.1.5 a copy of the latest information as to its forward planning;
  - 15.1.6 a copy of the Trust's membership strategy;
  - 15.1.7 a copy of the Trust's policy for the composition of the Council of Governors and the non-executive Directors;

- 15.1.8 a copy of any notice given under section 23 of the 2003 Act (regulator's notice to failing NHS foundation Trust).
- 15.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times, and shall be available on the Trust's website:
- 15.2.1 a copy of any order made under Section 65D (appointment of Trust Special Administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (Trusts coming out of administration), or 65LA (Trusts to be dissolved) of the 2006 Act
- 15.2.2 a copy of any report laid under Section 65D (appointment of Trust Special Administrator) of the 2006 Act
- 15.2.3 a copy of any information published under Section 65D (appointment of Trust Special Administrator) of the 2006 Act
- 15.2.4 a copy of any draft report published under Section 65F (administrator's draft report) of the 2006 Act
- 15.2.5 a copy of any statement provided under Section 65F (administrator's draft report) of the 2006 Act
- 15.2.6 a copy of any notice published under Section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act
- 15.2.7 a copy of any statement published or provided under Section 65G (consultation plan) of the 2006 Act
- 15.2.8 a copy of any final report published under Section 65I (administrator's final report)).
- 15.2.9 a copy of any statement published under Section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act
- 15.2.10 a copy of any information published under Section 65M (replacement of Trust Special Administrator) of the 2006 Act
- 15.3 The registers (but not the addresses of members of the Trust) shall be made available for inspection by members of the public, except in circumstances prescribed by regulations; and so far as they are required to be available they are to be available free of charge at all reasonable times.
- 15.4 Any person who requests it is to be provided with a copy or extract from any of the above documents or registers. The Trust may impose a reasonable charge for providing the copy or extract, but a member is entitled to a copy or extract from the registers free of charge.

## **16. Auditors**

- 16.1 The Trust is to have a financial auditor and is to provide the financial auditor with every facility and all information which he may reasonably require for the purposes of his functions under Part 1 of the 2003 Act.
- 16.2 A person may only be appointed as the financial auditor if he (or in the case of a firm of each of its members) is a member of one or more of the bodies referred to in

paragraph 19 (3) of Schedule 1 to the 2003 Act. An officer of the Audit Commission may be appointed with the agreement of the Commission.

- 16.3 The Council of Governors at a General Meeting shall appoint or remove the Trust's auditors.
- 16.4 The financial auditor is to carry out his duties in accordance with Schedule 5 to the 2003 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.
- 16.5 The Board of Directors may resolve that 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.

## **17. Accounts**

- 17.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 17.2 The Independent Regulator may with the approval of the Secretary of State give directions to the Trust as to the content and form of accounts.
- 17.3 The accounts are to be audited by the Trust's auditor.
- 17.4 The following documents will be made available to the Comptroller and Auditor General for examination at his request:
  - 17.4.1 the accounts;
  - 17.4.2 any records relating to them; and
  - 17.4.3 any report of the financial auditor on them.
- 17.5 The Trust is to prepare in respect of each financial year annual accounts in such form as the Independent Regulator may with the approval of the Secretary of State direct.
- 17.5 In preparing its annual accounts, the Trust is to comply with any directions given by the Independent Regulator with the approval of the Secretary of State as to:
  - 17.5.1 the methods and principles according to which the accounts are to be prepared;
  - 17.5.2 content and form of the accounts;
- 17.6 The annual accounts, any report of the financial auditor on them, and the annual report are to be presented to the Council of Governors at a General Meeting.
- 17.7 The Trust shall:
  - 17.7.1 lay a copy of the annual accounts, and any report of the financial auditor on them, before Parliament; and
  - 17.7.2 once it has done so, send copies of those documents to the Independent Regulator within such a period as the Independent Regulator may direct..

## **18. Annual reports, forward plans and non-NHS work**

- 18.1 The Trust is to prepare annual reports and send them to the Independent Regulator.
- 18.2 The reports are to give:
  - 18.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual Membership of the public constituencies and of the

patients' constituency and of the classes of the staff constituency is representative of those eligible for such membership; and

- 18.2.2 any other information the Independent Regulator requires.
- 18.3 The Trust is to comply with any decision the Independent Regulator makes as to:
  - 18.3.1 the form of the reports;
  - 18.3.2 when the reports are to be sent to him;
  - 18.3.3 the periods to which the reports are to relate.
- 18.4 Each forward plan must include information about:-
  - 18.4.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
  - 18.4.2 the income it expects to receive from doing so.
- 18.5 Where a forward plan contains proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 18.4.1 the Council of Governors must:-
  - 18.5.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions.
  - 18.5.2 notify the Directors of the Trust of its determination.
- 18.6 If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purpose of the health service in England it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.
- 18.7 The Trust is to give information as to its forward planning in respect of each financial year to the Independent Regulator. The document containing this information is to be prepared by the Directors, and in preparing the document, the Board of Directors must have regard to the views of the Council of Governors.

## **19. Indemnity**

- 19.1 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, save where they have acted recklessly. Any costs arising in this way will be met by the Trust. The Trust may purchase and maintain insurance against any such liability for its own benefit and the benefit of members of the Council of Governors and the Board of Director

## **20. Execution of documents**

- 20.1 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- 20.2 The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.

## **21. Dispute Resolution Procedures**

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

- 21.1.1 a member; or
- 21.1.2 any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or
- 21.1.3 any person bringing a claim under this constitution

is to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by the Strategic Commissioning Services. The arbitrator's decision will be binding and conclusive on all parties.

- 21.2 Any person bringing a dispute must, if required to do so, deposit with the Trust a reasonable sum (not exceeding £500) to be determined by the Council of Governors and ratified by the Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

## **22. Amendment of the Constitution**

- 22.1 The Trust may make amendments of its Constitution only if:-
  - 22.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments, and
  - 22.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 22.2 Amendments made under paragraph 22.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.
- 22.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):-
  - 22.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 22.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment
- 22.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 22.5 Amendments by the Trust of its constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendment, accords with Schedule 7 of the 2006 Act

## **23. Mergers**

- 23.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 23.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 2.2.2 "Significant transaction" means an investment or divestment worth more 25% of the Trust as an investment or divestment valued at more than 25% of the Trust, as measured by any of Income; Gross Assets; or Gross Capital.

**24. Dissolution of the Trust**

24.1 The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2003 Act.

**25. Head Office and Website**

25.1 The Trust's head office is at Trust Headquarters, Alexandra House, Cheltenham General Hospital, Sandford Road, Cheltenham Gloucestershire. GL53 7ANN

25.2 The Trust will maintain a website, the address of which shall be [www.gloshospitals.org.uk](http://www.gloshospitals.org.uk) or such other website address as it may determine from time to time.

25.3 The Trust will display its name and website on its business letters, notices, advertisements, other publications.

**26. Notices**

26.1 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 purposes of such communications.

26.2 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.

## Annex 1: List of public constituencies

Constituencies as defined by Local Authority boundaries	Area	Minimum number of Members per Constituency
Gloucester City Council Area ("Gloucester")	Gloucestershire	4
Stroud District Council Area ("Stroud")		4
Tewkesbury Borough Council Area ("Tewkesbury")		4
Cheltenham Borough Council Area ("Cheltenham")		4
Cotswolds District Council Area ("Cotswolds")		4
Forest of Dean District Council Area ("Forest of Dean")		4
Total		24

## **Annex 2: Definitions of the Trust's staff classes**

### **1. The Medical and Dental Staff staff class**

The members of the Medical and Dental Staff staff class are those individuals who are members of the staff constituency who:

- 1.1 are fully registered persons within the meaning of the Medicines Act 1956 or the Dentist Act 1984 (as the case may be) and who are otherwise fully authorised and licensed to practice in England and Wales; or
- 1.2 are otherwise designated by the Trust from time to time as eligible to be members of this staff class having regard to the usual definitions applicable at that time for persons carrying on the professions of a medical practitioner or a dentist; and
- 1.3 are employed by the Trust in that capacity at the date of their application or invitation (as the case may be) to become a member in accordance with the provisions of this constitution and at all times thereafter remain employed by the Trust in that capacity.

### **2. The Nursing and Midwifery Staff staff class**

The members of the Nursing and Midwifery Staff staff class are individuals who are members of the staff constituency who:

- 2.1 are registered under the Nurses, Midwives and Health Visitors Act 1997 and who are otherwise fully authorised and licensed to practice in England and Wales; or
- 2.2 are otherwise designated by the Trust from time to time as eligible to be members of this staff class having regard to the usual definitions applicable at that time for persons carrying on the profession of registered nurse or registered midwife; and
- 2.3 are employed by the Trust in that capacity at the date of their application or invitation (as the case may be) to become a member in accordance with the provisions of this constitution and who at all times thereafter remain employed by the Trust in that capacity.

### **3. The Allied Health Professionals and Other Clinical, Scientific and Technical Staff staff class**

The members of the Allied Health Professionals and Other Clinical, Scientific and Technical Staff staff class are those individuals who are members of the staff constituency:

- 3.1 whose regulatory body falls within the remit of the Council for the Regulation of Healthcare Professions established by Section 25 of the NHS Reform and Healthcare Professions Act 2002; or
- 3.2 are otherwise designated by the Trust from time to time as eligible to be members of this staff class having regard to the usual definitions applicable at that time for persons carrying on such professions; and
- 3.3 are employed by the Trust in that capacity at the date of their application or invitation (as the case may be) to become a member in accordance with the provisions of this Constitution and who at all times thereafter remain employed by the Trust in that capacity.

### **4. The Other Staff staff class**

The members of the Other Staff staff class are those individuals who are members of the staff constituency who:

- 4.1 do not come within those definitions set out in paragraphs 1–3 above and who are

- 4.2 designated by the Trust from time to time as eligible to be members of this staff class;  
and
- 4.3 are not otherwise eligible to be members of another staff class having regard to the relevant definitions applicable at that time; and
- 4.4 are employed by the Trust in that capacity at the date of their application or invitation (as the case may be) to become a member in accordance with the provisions of this constitution and who at all times thereafter remain employed by the Trust in that capacity.

## **Annex 3: Model Election Rules**

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*Part I - Interpretation*

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

“corporation” means Gloucestershire Hospitals NHS Foundation Trust 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 Council 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.

<b>Proceeding</b>	<b>Time</b>
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 I 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 -

- (a) 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,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or

(e) 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*

**36. 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 44(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 41 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 42 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.

**39. 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).

**40. 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.

**41. 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 44 has been complied with.

**42. 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 43 below, to transfer each sub-parcel 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-parcel of transferred votes which was last received by that candidate into separate sub-parcels 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-parcel of non-transferable votes.

(6) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel 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.

**43. 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 42 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 42 or 44 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 42 or 44 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.

**44. Exclusion of candidates** — (1) If—

- (a) all transferable papers which under the provisions of rule 42 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 45 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 43 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 45 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 42 and rule 43.

(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.

**45. 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.

**46. 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 42(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.

**47. 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 Gloucestershire Hospitals 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 39(l), 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 spoilt 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 II.

(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*

**54. 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 II 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) traveling 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 statement submitted by the candidate of no more than 250 words.

**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 II — 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.
- (a) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
  - (b) 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.
  - (c) 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.