

**DONCASTER & BASSETLAW HOSPITALS NHS FOUNDATION
TRUST**

CONSTITUTION

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1. INTERPRETATION AND DEFINITIONS

In this Constitution:

"the 2006 Act"	means the National Health Service Act 2006 as amended from time to time;
"Accounting Officer"	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
"Appointed Governors"	means the PCT Governors, the Local Authority Governors or the Partnership Governors;
"Area of the Trust"	means the area consisting of all the areas specified in Annex 1 as an area for a public constituency;
"Audit Commission"	means the Audit Commission for Local Authorities and the National Health Service in England;
"Board of Directors"	means the board of directors as constituted in accordance with this Constitution;
"Board of Governors"	means the board of governors as constituted in accordance with this Constitution;
"Chairman"	means the chairman of the Trust appointed in accordance with paragraph 22 of this Constitution;
"Chief Executive"	means the chief executive officer of the Trust appointed in accordance with the terms of this Constitution;
"Constitution"	means this Constitution and all annexes to it;
"Deputy Chairman"	means the Non-Executive Director appointed as deputy chairman of the Trust in accordance with paragraph 23 of this Constitution;
"Director"	means an Executive Director or a Non-Executive Director on the Board of Directors;
"Elected Governor"	means the Public Governors, the Patient Governors and the Staff Governors;
"Election Scheme"	means the election scheme set out in Annex 5;
"Executive Director"	means an executive director of the Trust;
"Financial Year"	means a period of 12 months beginning on 1 st April in a calendar year and ending on 31 st March in the following calendar year;
"Governor"	means a Governor on the Board of Governors and being either an Elected Governor or an Appointed Governor;
"Health Service Body"	means a body which is a health service body for the purpose of section 9(4) of the 2006 Act;
"Local Authority"	means the local authority specified in Annex 4, which is a local authority for an area which includes the whole or part of the Area of the Trust;

"Local Authority Governor"	means a member of the Board of Governors appointed by the Local Authority in accordance with the provisions of this Constitution and as specified in Annex 4;
"Member"	means a member of the Trust;
"Membership"	means membership of the Trust as determined in accordance with the provisions of this Constitution and as specified in Annex 4;
"Monitor"	means the regulator for the purposes of Part 2 of the 2006 Act otherwise known as Monitor – (The Independent Regulator of NHS Foundation Trusts);
"Model Election Rules"	means the model form rules for the conduct of elections published from time to time by the Department of Health and as currently set out in Annex 5;
"Non-Executive Director"	means a non-executive director of the Trust;
"PCT Governor"	means each member of the Board of Governors appointed in accordance with the provisions of this Constitution by each of the Primary Care Trusts specified in Annex 4;
"Partnership Governor"	means a member of the Board of Governors appointed by a Partnership Organisation specified in Annex 4;
"Partnership Organisation"	means those organisations designated as partnership organisations for the purposes of this Constitution specified in Annex 4;
"Patients Constituency"	means the part of the Trust's Membership consisting of the patients of the Trust as set out in Annex 1;
"Patient Governor"	means a member of the Board of Governors elected by the Members of the Patients Constituency;
"Public Constituencies"	means a public constituency as defined in Annex 1;
"Public Governor"	means a member of the Board of Governors elected by the Members of the Public Constituency;
"Secretary"	means the Secretary to the Board or any other person appointed to perform the duties of the secretary to the Board, including a joint, assistant or deputy secretary;
"Senior Independent Director"	means the Non-Executive Director elected by the Board of Governors as the senior independent director of the Trust;
"Staff Class"	means a class of Membership within the Staff Constituency as provided for in Schedule 7 to the 2006 Act and as set out in Annex 2;
"Staff Constituency"	means the part of the Trust's Membership consisting of the staff of the Trust and which is divided into the classes as specified in Annex 2;
"Staff Governor"	means a member of the Board of Governors elected by a Staff Class in accordance with the provisions of this Constitution;
"Terms of Authorisation"	means the terms of authorisation issued to the Trust by Monitor under Section 35 of the 2006 Act;

- “the Trust” means Doncaster & Bassetlaw Hospitals NHS Foundation Trust;
- “ Vice Chairman” means a Governor appointed as vice chairman in accordance with the provisions of this Constitution;
- 1.2 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act.
- 1.3 References in this Constitution to legislation include all amendments, replacements, or re-enactments made, and all regulations, statutory guidance or directions.
- 1.4 Headings are for ease of reference only and are not to affect interpretation.
- 1.5 Words importing the masculine gender shall include the feminine gender and words importing the singular shall include the plural and vice-versa.
- 1.6 References in this Constitution to paragraphs are to paragraphs in the Constitution.

2. **NAME**

The name of the foundation trust is Doncaster & Bassetlaw Hospitals NHS Foundation Trust.

3. **PRINCIPAL PURPOSE**

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

4. **POWERS**

- 4.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the Terms of Authorisation.
- 4.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Any of these powers may be delegated to a committee of directors or to an executive director.
- 4.4 Without prejudice to the generality of paragraph 4.1 or the Terms of Authorisation, the Trust may:
- 4.4.1 provide hospital and other accommodation for the purposes of any of its activities;
 - 4.4.2 provide the services of medical, dental, midwifery and nursing staff, other health care professionals, other staff and volunteers;
 - 4.4.3 provide such other facilities for the care of expectant and nursing mothers and young children as it considers appropriate;
 - 4.4.4 provide such facilities for the prevention of illness, the care of persons suffering from illness and the aftercare of persons who have suffered from illness as it considers appropriate;
 - 4.4.5 provide such other services as it considers are required for the diagnosis and treatment of illness and the care of those suffering from illness;

- 4.4.6 conduct, or assist by grants or otherwise any person to conduct, research into any matters relating to the causation, prevention, diagnosis or treatment of illness and into any such other matters connected with any service provided by the Trust as it considers appropriate and publish the results of such research;
- 4.4.7 educate and train its own staff and students and those from other organisations or educational establishments in any trade, profession or other occupation relevant or related to any part of the Trust's functions and collaborate with other organisations in the provision of such education and training;
- 4.4.8 in fulfilling its statutory duty to co-operate with another body, provide to that body, and receive from it, goods and services on such terms as the Trust considers appropriate, including terms under which the goods or services are provided for received free of charge;
- 4.4.9 provide goods and services outside England;
- 4.4.10 provide, or assist in providing, information, training and support to voluntary and community bodies within the area of the Trust or providing services within the Area of the Trust;
- 4.4.11 raise charitable funds and, in so doing, appeal for any contributions, donation, grant or gift of money or property;
- 4.4.12 insure the property of the Trust against any foreseeable risk and take out other insurance policies to protect the Trust when required or enter into arrangements which have a similar effect;
- 4.4.13 insure the Governors and Directors and any employee of the Trust against the cost of a defence to a criminal prosecution brought against them in their capacity as such or against personal liability incurred in respect of any act or omission which is, or is alleged to be, a breach of trust or a breach of duty, unless the Governor, Director or employee concerned knew that, or was reckless whether, the act or omission was a breach of trust or a breach of duty or enter into arrangements which have a similar effect;
- 4.4.14 provide and participate in external quality assurance schemes; and
- 4.4.15 carry out investigations into any aspect of the activities of the Trust.

5. **MEMBERSHIP AND CONSTITUENCIES**

- 5.1 The Trust shall have Members, each of whom shall be a Member of one of the following constituencies:
 - 5.1.1 a Public Constituency;
 - 5.1.2 a Staff Constituency; or
 - 5.1.3 the Patient Constituency.
- 5.2 An individual who is eligible to become a Member of the Trust may do so on application to the Trust.

6. **PUBLIC CONSTITUENCY**

- 6.1 The Public Constituency comprises two areas as set out in Annex 1. Each area of the Public Constituency is to be known by the name listed in Annex 1.

- 6.2 An individual who lives in the Area of the Trust specified in Annex 1 as an area for a public constituency may become or continue as a Member of the Trust provided that:
- 6.2.1 they have made an application for Membership to the Trust; and
 - 6.2.2 they are not eligible to become a Member of the Staff Constituency; and
 - 6.2.3 they are not otherwise disqualified from Membership under paragraph 10 or paragraph 2 of Annex 7.
- 6.3 Those individuals who live in an area specified as an area for any Public Constituency are referred to collectively as the Public Constituency.
- 6.4 The minimum number of Members in each area for the Public Constituency is specified in Annex 1.

7. STAFF CONSTITUENCY

- 7.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided that:
- 7.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 7.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 7.2 Those individuals who are eligible for Membership of the Trust by reason of paragraph 7.1 are referred to collectively as the Staff Constituency.
- 7.3 The Staff Constituency shall be divided into four classes of individuals who are eligible for Membership of the Staff Constituency, each class of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 7.4 The minimum number of Members in each class of the Staff Constituency is specified in Annex 2.

8. AUTOMATIC MEMBERSHIP BY DEFAULT AND BY APPLICATION – STAFF

- 8.1 An individual who:
- 8.1.1 is eligible to become a Member of the Staff Constituency pursuant to paragraph 7.1 above, and
 - 8.1.2 invited by the Trust to become a Member of the Staff Constituency and a Member of the appropriate Staff Class within the Staff Constituency,

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

- 8.2 The process by which an individual shall be invited or shall apply to become a Member of the Staff Constituency shall be in accordance with the provisions of Annex 7.

9. PATIENTS CONSTITUENCY

- 9.1 An individual who has, within the period specified below, attended any of the Trust's hospitals as a patient may become a Member of the Trust provided that:

- 9.1.1 they have made an application for Membership of the Trust; and
 - 9.1.2 they are not eligible to be a Member of the Staff Constituency; and
 - 9.1.3 they are not otherwise disqualified for Membership under paragraph 10 or paragraph 4 of Annex 7.
- 9.2 The period referred to in paragraph 9.1 shall be the period of 10 years commencing on the date of the individual having used the Trust's services.
- 9.3 Those individuals who are eligible for Membership of the Trust by reason of paragraph 9.1 are referred to collectively as the Patients Constituency.
- 9.4 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for Membership of the Patients Constituency.
- 9.5 The minimum number of Members in the Patients Constituency is to be 100.
- 10. RESTRICTION ON MEMBERSHIP**
- 10.1 An individual who is a Member of a constituency, or of a class within a constituency, may not while Membership of that constituency or class continues, be a Member of any other constituency or class.
- 10.2 An individual who satisfies the criteria for Membership of the Staff Constituency may not become or continue as a Member of any constituency other than the Staff Constituency.
- 10.3 An individual must be at least 16 years old at the date of his application or invitation (as the case may be) to become a Member of the Trust.
- 10.4 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in Annex 7.
- 11. BOARD OF GOVERNORS - COMPOSITION**
- 11.1 The Trust is to have a Board of Governors, which shall comprise both Elected and Appointed Governors.
- 11.2 The composition of the Board of Governors is specified in Annex 4.
- 11.3 The members of the Board of Governors, other than the appointed members, shall be chosen by election by their Constituency or, where there are classes within a constituency, by their class within that Constituency. The number of Governors to be elected by each Constituency, or, where appropriate, by each class of each Constituency, is specified in Annex 4.
- 12. BOARD OF GOVERNORS - ELECTION OF GOVERNORS**
- 12.1 Elections for elected members of the Board of Governors shall be conducted in accordance with the Model Election Rules.
- 12.2 The Model Election Rules as may be varied from time to time, form part of this Constitution and are attached at Annex 5.
- 12.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 38 of the Constitution (amendment of the Constitution).
- 12.4 An election, if contested, shall be by secret ballot.

13. BOARD OF GOVERNORS - TENURE

- 13.1 An Elected Governor may hold office for a period of up to 3 years.
- 13.2 An Elected Governor shall cease to hold office if he ceases to be a Member of the Constituency or class by which he was elected.
- 13.3 An Elected Governor shall be eligible for re-election at the end of his term.
- 13.4 An Appointed Governor may hold office for a period of 3 years.
- 13.5 An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 13.6 An Appointed Governor shall be eligible for re-appointment at the end of his term.

14. BOARD OF GOVERNORS – DISQUALIFICATION AND REMOVAL

- 14.1 The following may not become or continue as a member of the Board of Governors:
 - 14.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 14.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
 - 14.1.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 14.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 14.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Governors are set out in Annex 6.

15. BOARD OF GOVERNORS – MEETINGS OF GOVERNORS

- 15.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 22 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 23 below), shall preside at meetings of the Board of Governors save that if the Chairman and Deputy Chairman are unable to preside whether for reasons of absence, conflict of interest or otherwise the Vice Chairman shall preside.
- 15.2 The Vice Chairman shall be a Public Governor or a Patient Governor and shall be elected by a majority of the Board of Governors in a general meeting for a term of up to 3 years. The provisions of paragraph 8 of Annex 6 shall also apply.
- 15.3 Meetings of the Board of Governors shall be open to members of the public save that members of the public may be excluded from a meeting on the grounds set out in paragraph 6.2 of Annex 6.

16. BOARD OF GOVERNORS – STANDING ORDERS

- 16.1 The Board of Governors shall adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings).

17. BOARD OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS

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

18. BOARD OF GOVERNORS – TRAVEL EXPENSES

The Trust may pay travelling and other expenses to members of the Board of Governors at rates determined by the Trust.

19. BOARD OF GOVERNORS – FURTHER PROVISIONS

Further provisions with respect to the Board of Governors are set out in Annex 6.

20. BOARD OF DIRECTORS – COMPOSITION

- 20.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.
- 20.2 The Board of Directors is to comprise:
- 20.2.1 a non-executive Chairman
 - 20.2.2 5 other Non-Executive Directors (one of which may be elected by the Board of Governors as the Senior Independent Director); and
 - 20.2.3 5 Executive Directors.
- 20.3 One of the Executive Directors shall be the Chief Executive.
- 20.4 The Chief Executive shall be the Accounting Officer.
- 20.5 One of the Executive Directors shall be the Finance Director.
- 20.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 20.7 One of the Executive Directors is to be a registered nurse or a registered midwife.
- 20.8 One of the Executive Directors shall be the Director of Human Resources.
- 20.9 The Board of Directors shall at all times be constituted so that the number of Non-Executive Directors (excluding the Chair) equals or exceeds the number of Executive Directors.

21. BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR

A person may be appointed as a Non-Executive Director only if:

- 21.1 he is a Member of the Public Constituency; or
- 21.2 he is a Member of the Patients' Constituency; and
- 21.3 he is not disqualified by virtue of paragraph 25 below.

22. **BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIRMAN AND OTHER NON-EXECUTIVE DIRECTORS**

22.1 The Board of Governors at a general meeting of the Board of Governors shall appoint or remove the Chairman and the other Non-Executive Directors.

22.2 Removal of the Chairman or another Non-Executive Director shall require the approval of three-quarters of the members of the Board of Governors.

22.3 The provisions of paragraph 9 of Annex 6 shall also apply.

23. **BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIRMAN**

23.1 The Board of Governors at a general meeting of the Board of Governors shall appoint one of the Non-Executive Directors as a Deputy Chairman.

23.2 The Deputy Chairman shall be appointed for a term of 3 years and shall be eligible for re-appointment at the end of that term but may not serve as Deputy Chairman for more than a total of 6 years.

24. **BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS**

24.1 The Non-Executive Directors shall appoint or remove the Chief Executive.

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

24.3 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

25. **BOARD OF DIRECTORS – DISQUALIFICATION**

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

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

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

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

25.1.4 a person who falls within the further grounds for disqualification set out in Annexe 7.

26. **BOARD OF DIRECTORS – STANDING ORDERS**

The Board of Directors shall adopt its own standing orders, as may be varied from time to time, for its practice and procedure, in particular for its procedure at meetings.

27. **BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS**

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

any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

28. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

28.1 The Board of Governors at a general meeting of the Board of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other Non-Executive Directors. The provisions of paragraph 7 of Annex 7 shall also apply.

28.2 A committee of Non-Executive Directors shall be established to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

29. REGISTERS

29.1 The Trust shall have:

29.1.1 a register of Members showing, in respect of each Member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;

29.1.2 a register of members of the Board of Governors;

29.1.3 a register of interests of Governors;

29.1.4 a register of Directors; and

29.1.5 a register of interests of the Directors.

29.2 The process of admission to and removal from the registers shall be as set out in Annex 7.

30. REGISTERS – INSPECTION AND COPIES

30.1 The Trust shall make the registers specified in paragraph 29 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

30.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:

30.2.1 any Member of the Patients Constituency; or

30.2.2 any other Member of the Trust, if he so requests.

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

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

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

30.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

31. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

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

31.1.1 a copy of the current Constitution;

- 31.1.2 a copy of the current Terms of Authorisation;
 - 31.1.3 a copy of the latest annual accounts and of any report of the auditor on them;
 - 31.1.4 a copy of the latest annual report;
 - 31.1.5 a copy of the latest information as to its forward planning; and
 - 31.1.6 a copy of any notice given under section 52 of the 2006 Act.
- 31.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 31.3 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.
- 32. AUDITOR**
- 32.1 The Trust shall have an auditor.
- 32.2 The Board of Governors shall appoint or remove the auditor at a general meeting of the Board of Governors.
- 32.3 The provisions of paragraph 11 of Annex 7 shall apply.
- 33. AUDIT COMMITTEE**
- The Trust shall establish a committee of Non-Executive Directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.
- 34. ACCOUNTS**
- 34.1 The Trust shall keep accounts in such form as Monitor may with the approval of HM Treasury direct.
- 34.2 The accounts are to be audited by the Trust's auditor.
- 34.3 The Trust shall prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the HM Treasury direct.
- 34.4 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 34.5 The provisions of paragraph 12 of Annex 7 shall apply.
- 35. ANNUAL REPORT AND FORWARD PLANS**
- 35.1 The Trust shall prepare an annual report and send it to Monitor.
- 35.2 The Trust shall give information as to its forward planning in respect of each Financial Year to Monitor.
- 35.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 35.4 In preparing the document, the Directors shall have regard to the views of the Board of Governors.
- 35.5 The provisions of paragraph 13 of Annex 7 shall apply.

36. **MEETING OF BOARD OF GOVERNORS TO CONSIDER ANNUAL ACCOUNTS AND REPORTS**

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

- 36.1 the annual accounts;
- 36.2 any report of the auditor on them; and
- 36.3 the annual report.

37. **INSTRUMENTS**

- 37.1 The Trust shall have a seal.
- 37.2 The seal shall not be affixed except under the authority of the Board of Directors.

38. **AMENDMENT OF THE CONSTITUTION**

- 38.1 Amendments by the Trust of its Constitution are to be made with the approval of Monitor. For the avoidance of doubt, any amendments to the annexes attached to this Constitution must also be approved by Monitor.
- 38.2 No proposals for amendment of this Constitution will be put to Monitor unless they have been approved by the Board of Governors by a majority of those present and voting provided that a majority of those voting are Public Governors and Patient Governors. Approved proposals for amending the Constitution may only be communicated to Monitor by the Chairman or Chief Executive.
- 38.3 The Constitution shall be formally reviewed by the Board of Governors every 3 years.

ANNEX 1 – THE PUBLIC CONSTITUENCY

Table 1

1	2	3	4
Name of the Public Constituency	Area of the Public Constituency (as defined by Local Authority boundaries)	Minimum Number of Members	Number of Governors to be Elected
Bassetlaw District	Bassetlaw District Council	300	5
Metropolitan Doncaster	Doncaster Metropolitan Borough Council	470	13

ANNEX 2 – THE STAFF CONSTITUENCY

Table 1

Staff Class	Minimum Number of Members	Number of Governors to be elected for each Staff Class
Medical and Dental Practitioners Staff Class	75	1
Nurses and Midwives Staff Class	450	2
Other Clinical Staff Class	100	1
Non Clinical Staff Class	375	2
TOTAL	1000	6

1. CLASSES OF THE STAFF CONSTITUENCY

1.1 The Staff Constituency shall be divided into four classes as follows:

- 1.1.1 Medical and Dental Practitioners Staff Class;
- 1.1.2 Nurses and Midwives Staff Class;
- 1.1.3 Other Clinical Staff Class; and
- 1.1.4 Non Clinical Staff Class.

1.2 Medical and Dental Practitioners Staff Class

1.2.1 The Members of the Medical and Dental Staff Class are individuals who are Members of Staff Constituency who:

- (a) are fully registered persons within the meaning of the Medicines Act 1956 or the Dentists Act 1984 (as the case may be) and who are otherwise fully authorised and licensed to practise in England and Wales or who are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class for the purposes of this paragraph having regard to the usual definitions applicable at that time for persons carrying on the professions of medical practitioner or dentist; and
- (b) who are employed by the Trust in that capacity at the date of their invitation or application under paragraph 6 of the Constitution to become a Member in accordance with the provisions of Annex 7 and at all times thereafter remain employed by the Trust in that capacity.

1.3 Nurses and Midwives Staff Class

1.3.1 The Members of the Nurses and Midwives Staff Class are individuals who:

- (a) are registered under the Nurses, Midwives and Health Visitors Act 1997 and who are otherwise fully authorised and licensed to practise in England and Wales or are otherwise designated by the Trust from time to time as eligible to be Members of the Staff Class for the purposes of this paragraph, having regard to the usual definitions applicable at that time for persons carrying on the profession of registered nurse or registered midwife and individuals who are health care assistants; and
- (b) who are employed by the Trust in that capacity at the date of their invitation or application under paragraph 6 of the Constitution to become a Member in accordance with the provisions of Annex 7 and at all times thereafter remain employed by the Trust in that capacity.

1.4 Other Clinical Staff Class

Members of the Other Clinical Staff Class are clinical staff who do not fall within paragraphs 1.2 or 1.3 of this Annex 2, including clinical therapists, scientists and technical staff, who are employed by the Trust in that capacity at the date of their invitation or application under paragraph 6 of the Constitution to become a Member in accordance with the provisions of Annex 7 and at all times thereafter remain employed by the Trust in that capacity.

1.5 Non Clinical Staff Class

Members of the Non Clinical Staff Class are Members of the Staff Constituency who do not come within paragraphs 1.2, 1.3 or 1.4 of this Annex 2.

2. **MINIMUM NUMBERS AND NUMBERS OF GOVERNORS**

- 2.1 The minimum number of Members in each Staff Class shall be as set out in column 3 of Table 1 to this Annex and the number of Governors to be elected by each such Staff Class is given in the corresponding entry in Column 4 of that Table.

3. **CONTINUOUS EMPLOYMENT**

- 3.1 For the purposes of paragraph 6.1.2 of the Constitution, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Trust or has continuously exercised functions for the purposes of the Trust.

ANNEX 3 – THE PATIENTS’ CONSTITUENCY

NOT USED

ANNEX 4 – COMPOSITION OF BOARD OF GOVERNORS

1. INTRODUCTION

- 1.1 The Board of Governors shall comprise Governors who are:
 - 1.1.1 elected by the respective Constituencies in accordance with the provisions of this Constitution; or
 - 1.1.2 appointed in accordance with paragraph 2 below.
- 1.2 The Board of Governors shall at all times be constituted so that more than half the Board of Governors shall consist of Governors who are elected by Members of the Public Constituency and the Patients Constituency.

2. BODIES ENTITLED TO APPOINT A MEMBER OF THE BOARD OF GOVERNORS

- 2.1 The following bodies in this paragraph 2 shall be entitled to appoint a Governor or Governors (as the case may be) to the Board of Governors as provided for in this paragraph 2.
- 2.2 PCT Governors
 - 2.2.1 Bassetlaw Primary Care Trust and Doncaster Primary Care Trust shall each be entitled to appoint a Governor in accordance with a process of appointment agreed by each of them with the Trust. The absence of any such agreed process shall not preclude the said Primary Care Trust from appointing its Governors provided the appointment is duly made in accordance with the Primary Care Trust's own internal processes.
 - 2.2.2 If a Primary Care Trust named in paragraphs 2.2.1 above declines or fails to appoint its Governors within three months of being requested to do so by the Trust, the Trust shall in its absolute discretion be entitled to extend an invitation to any of those other Primary Care Trusts to whom it provides goods and services to appoint Governors in substitution for the Primary Care Trust which has failed or declined to do so. The Trust shall give notice of that invitation to Monitor.
 - 2.2.3 If the invitation referred to in paragraph 2.2.2 above is accepted by a Primary Care Trust, that Primary Care Trust shall appoint a Governor and the Primary Care Trust which has previously failed to appoint a Governor shall cease to be entitled to do so, subject to the provisions of paragraph 2.2.7 below.
 - 2.2.4 Subject to paragraph 2.2.6 below, if the invitation is not accepted within a reasonable period or such period as may have been specified in the invitation the Trust shall extend an invitation to any other such Primary Care Trust until the invitation, is accepted and a Governor is appointed.
 - 2.2.5 The Trust shall give notice forthwith to Monitor of all invitations the Trust may extend under the preceding paragraph and of any acceptances.
 - 2.2.6 Any Governor appointed under paragraphs 2.2.3 and 2.2.4 above shall serve on the Board of Governors for the period stipulated in Annex 6. At the end of that period the Trust shall in its absolute discretion decide whether to permit that Primary Care Trust which had first failed or declined to appoint a Governor to do so for the next

period of office or to invite that Primary Care Trust which had appointed a Governor in substitution to do so.

2.3 Local Authority Governors

2.3.1 Doncaster Metropolitan Borough Council shall be entitled to appoint two Governors in accordance with a process of appointment agreed by it with the Trust.

2.3.2 Bassetlaw District Council and Nottinghamshire County Council shall each be entitled to appoint a Governor in accordance with a process of appointment agreed by each of them with the Trust.

2.3.3 The absence of any agreed process of appointment as referred to in paragraphs 2.3.1 and 2.3.2 above shall not preclude the said local authority from appointing its Governor(s).

2.3.4 If the local authority named in paragraphs 2.3.1 or 2.3.2 above declines or fails to appoint a Governor within three months of being requested to do so by the Trust, the Trust shall consult each local authority whose area includes the whole or part of the Area of the Trust and the Trust in its absolute discretion may extend an invitation to any of those local authorities to appoint a Governor in substitution for the local authority which has failed or declined to do so.

2.3.5 A Governor appointed under this paragraph 2.3 shall then serve on the Board of Governors for the period stipulated in Annex 6. At the end of that period the Trust shall in its absolute discretion decide whether to permit the local authority which had failed or declined to appoint a Governor to appoint a Governor for the next period of office (provided it remains eligible to do so) or to invite the local authority which had appointed a Governor in substitution to do so.

2.4 Partnership Governors

2.4.1 The organisations designated as Partnership Organisations by the Trust for the purposes of this Constitution are:

- (a) Doncaster Council for Voluntary Service;
- (b) Bassetlaw Council for Voluntary Service;
- (c) University of Sheffield; and
- (d) Sheffield Hallam University.

2.4.2 Each of the above organisations shall be entitled to appoint 1 Governor each, save for Doncaster Council for Voluntary Service and Bassetlaw Council for Voluntary Service which shall be entitled to appoint 1 Governor between them, in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude that Partnership Organisation from appointing its Governor provided the appointment is duly made in accordance with its own internal processes.

2.5 Upon notice being given under paragraph 2.4.3, the Partnership Organisation to which notice has been given shall cease to be a Partnership Organisation and its Governor shall cease to hold office forthwith upon the expiration of such notice period or upon such date as may have been specified in the said notice.

3. COMPOSITION OF THE BOARD OF GOVERNORS

	Electing/Appointing Body	Number of Governors	Total
1.	Public Constituencies		
	1.1 Bassetlaw District	5	
	1.2 Metropolitan Doncaster	13	
			18
2.	Staff Constituency		
	2.1 Medical and Dental Practitioners Staff Class	1	
	2.2 Nurses and Midwives Staff Class	2	
	2.3 Other Clinical Staff Class	1	
	2.4 Non-Clinical Staff Class	2	
			6
3.	Patients Constituency	2	2
4.	Appointed Governors		
	4.1 Doncaster Primary Care Trust	1	
	4.2 Bassetlaw Primary Care Trust	1	
	4.3 Doncaster Metropolitan Borough Council	2	
	4.4 Bassetlaw District Council	1	
	4.5 Nottinghamshire County Council	1	
	4.6 Bassetlaw Council for Voluntary Service and Doncaster Council for Voluntary Service	1	
	4.7 University of Sheffield	1	
	4.8 Sheffield Hallam University	1	
			9
	Total Number of Governors		35

4. FURTHER PROVISIONS

- 4.1 Further provisions relating to the composition of the Board of Governors are at Annex 6.

ANNEX 5 –THE MODEL ELECTION RULES

Part 1 - Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

Part 5 – Contested elections

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

Action to be taken before the poll

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

The poll

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

Procedure for receipt of envelopes

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

35. Sealing of packets

Part 6 - Counting the votes

stv36. Interpretation of Part 6
37. Arrangements for counting of the votes
38. The count
stv39. Rejected ballot papers
fpp39. Rejected ballot papers
stv40. First stage
stv41. The quota
stv42. Transfer of votes
stv43. Supplementary provisions on transfer
stv44. Exclusion of candidates
stv45. Filling of last vacancies
stv46. Order of election of candidates
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Part 7 – Final proceedings in contested and uncontested elections

fpp47. Declaration of result for contested elections
stv47. Declaration of result for contested elections
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Part 8 – Disposal of documents

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

Part 9 – Death of a candidate during a contested election

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

Part 10 – Election expenses and publicity

Expenses

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

Publicity

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

Part 11 – Questioning elections and irregularities

61. Application to question an election

Part 12 – Miscellaneous

62. Secrecy
63. Prohibition of disclosure of vote
64. Disqualification

65. Delay in postal service through industrial action or unforeseen event

Part 1 - Interpretation

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

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

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

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

“the 2006 Act” means the NHS Act 2006

(2) Other expressions used in these rules and in Schedule 7 to the NHS Act 2006 have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

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

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

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

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

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

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

Part 3 – Returning officer

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

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

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

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

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

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

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

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

(2) The returning officer-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (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

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

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

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

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

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

“non-transferable vote” means a ballot paper –

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

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

- (a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,
- (b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

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

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

“stage of the count” means –

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

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

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

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

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

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

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

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

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

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

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

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

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

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

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

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

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

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

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

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

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

(4) The returning officer is to –

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

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

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

(d) unmarked or rejected because of uncertainty,

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

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

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

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

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

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

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

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

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

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

(3) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-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 stv43 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.

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

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

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

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

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

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

stv44. Exclusion of candidates – (1) If—

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

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

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

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

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

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

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

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

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

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

(9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part 7 – Final proceedings in contested and uncontested elections

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

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the board of governors from the

constituency, or class within a constituency, for which the election is being held to be elected,

- (b) give notice of the name of each candidate who he or she has declared elected—
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 4(4) of the 2003 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

(2) The returning officer is to make –

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

available on request.

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

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

(2) The returning officer is to make –

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

available on request.

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

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

Part 8 – Disposal of documents

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

by any person without the consent of the Regulator.

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

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

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

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

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

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

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

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

Part 9 – Death of a candidate during a contested election

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

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

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

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

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

(5) The returning officer is to –

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

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

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

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

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

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

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

Part 10 – Election expenses and publicity

Election expenses

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

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

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

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

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

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

Publicity

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

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

as it considers necessary.

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

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

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

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

(2) The information must consist of –

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

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

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

Part 11 – Questioning elections and the consequence of irregularities

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

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

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

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

(4) The application must –

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

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

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

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.

ANNEX 6 – ADDITIONAL PROVISIONS – BOARD OF GOVERNORS

1. Board of Governors: Terms of Office

1.1 A Governor:

1.1.1 shall be elected or appointed for a term of 3 years;

1.1.2 shall be eligible for re-election or re-appointment at the end of that term;

1.1.3 shall cease to hold office if:

(a) he ceases to be a Member of a Trust constituency or, in the case of an Appointed Governor, if the body which appointed him withdraws its appointment at any time;

(b) his term of office is terminated in accordance with paragraph 3 below and/or he is disqualified from or is otherwise ineligible to hold office as a Governor; or

1.1.4 he resigns by notice in writing to the Trust.

1.2 Notwithstanding the provisions of paragraph 1.1.4(a) above, a Public Governor elected by a Public Constituency who ceases to be eligible to be a Member of that Public Constituency but who is eligible to be and forthwith becomes a Member of another Public Constituency shall not by virtue of paragraph 1.1.4(a) above cease to hold office but shall continue in office as Public Governor for the Constituency which elected him for the remainder of the term for which he was elected.

2. Board of Governors: Removal and Disqualification

2.1 A Governor shall not be eligible to become or continue in office as a Governor if:

2.1.1 he ceases to be eligible to be a Member, save in the case of Appointed Governors;

2.1.2 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of him;

2.1.3 any of the grounds contained in paragraph 14 of the Constitution apply to him;

2.1.4 he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a Health Service Body;

2.1.5 he is a person whose term of office as the chair or as a member or director of a Health Service Body has been terminated on the grounds that his continuance in office is no longer in the best interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;

2.1.6 he has had his name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had his name included in such a list;

2.1.7 he has failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act or has spoken or voted in a meeting on a matter in which they have direct or indirect pecuniary or non-pecuniary interest and he is judged to have acted so by a majority of not less than 75% of the Board of Governors;

- 2.1.8 Monitor has exercised its powers to remove him as a Governor of the Trust or has suspended him from office or has disqualified him from holding office as a Governor of the Trust for a specified period or Monitor has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;
 - 2.1.9 he has received a written warning from the Trust for verbal and/or physical abuse towards Trust staff;
 - 2.1.10 he has at any time been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person's Act 1933 to 1969 (as amended);
 - 2.1.11 he has 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 on him;
 - 2.1.12 his term of office is terminated pursuant to paragraph 3 below;
 - 2.1.13 he is a Member of a Staff Class and any professional registration relevant to his eligibility to be a Member of that Staff Class has been suspended for a continuous period of more than 6 months;
 - 2.1.14 he is incapable by reason of mental disorder, illness or injury in managing and administering his property and/or affairs;
 - 2.1.15 the relevant organisation which he represents ceases to exist;
 - 2.1.16 he is a member of the UK Parliament;
 - 2.1.17 he is a Director of the Trust or a director or a governor of another NHS Foundation Trust;
 - 2.1.18 he is a member of a local authority overview and scrutiny committee; or
 - 2.1.19 he has, within the preceding 2 years, been a chairman or non-executive director of another Health Service Body.
- 2.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified from that appointment he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which rendered him disqualified.
- 2.3 If it comes to the notice of the Trust that a Governor is disqualified, the Trust shall immediately declare him disqualified and shall give him notice in writing to that effect as soon as practicable.
- 2.4 Upon the giving of notice under paragraphs 2.2 and 2.3 above, that person's tenure of office as a Governor shall thereupon be terminated and he shall cease to be a Governor and his name shall be removed from the Register of Governors.
3. Board of Governors: Termination of Tenure
- 3.1 A Governor's term of office shall be terminated:
 - 3.1.1 by the Governor giving notice in writing to the Secretary of his resignation from office at any time during that term of office;
 - 3.1.2 by the Trust if any grounds exist under paragraph 2 above;

- 3.1.3 by the Board of Governors if he has failed to attend two consecutive meetings of the Board of Governors unless within one month of the second meeting, the Board of Governors is satisfied that:
- (a) the absence was due to reasonable cause; and
 - (b) the Governor will resume attendance at meetings of the Board of Governors within such period as it considers reasonable.
- 3.1.4 if the Board of Governors resolves to terminate his term of office for reasonable cause on the grounds that in the reasonable opinion of not less than 75% of the Governors present and voting at a meeting of the Board of Governors convened for that purpose that his continuing as a Governor would or would be likely to:
- (a) prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or
 - (b) prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or
 - (c) adversely affect public confidence in the goods and services provided by the Trust; or
 - (d) otherwise bring the Trust into disrepute or is detrimental to the interest of the Trust; or
 - (e) it would not be in the best interests of the Trust for that person to continue in office as a Governor; or
 - (f) the Governor is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and his continuance in office would not be in the best interests of the Trust; or
 - (g) he has failed or refused to undertake and/or satisfactorily complete any training which the Board of Governors has required him to undertake in his capacity as a Governor by a date six months from the date of his election or appointment; or
 - (h) he has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust, the Constitution and/or the Terms of Authorisation; or
 - (i) he has committed a material breach of any code of conduct applicable to Governors of the Trust and/or the Governors standing orders.
- 3.2 Upon a Governor resigning under paragraph 3.1.1 above or upon the Board of Governors resolving to terminate a Governor's tenure of office in accordance with the above provisions, that Governor shall cease to be a Governor and his name shall be forthwith removed from the Register of Governors.
- 3.3 The Standing Orders adopted by the Board of Governors may contain provisions governing its procedure for termination under these provisions and for a Governor to appeal against the decision terminating his tenure of office.
- 3.4 A Governor who resigns or whose tenure of office is terminated under this paragraph 4 shall not be eligible to stand for re-election for a period of 3 years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is the later except

by resolution carried by a majority of the Board of Governors present and voting at a general meeting.

- 3.5 Where a Governor's membership of the Board of Governors ceases for one of the reasons set out in paragraph 3 or paragraph 4, Elected Governors shall be replaced in accordance with paragraphs 3.6 to 3.8 below and, in the case of Appointed Governors, the Trust shall invite the relevant appointing body to appoint a new Governor to hold office for the remainder of the term of office in accordance with the processes referred to in Annex 4 within 30 days of the vacancy having arisen.

4. Vacancies – Elected Governors

- 4.1 In the case of an Elected Governor, where a vacancy arises within 6 months of the election then the candidate who secured the next highest number of votes for that Constituency will be appointed.
- 4.2 If the vacancy arises during the last 6 months of office, the office will remain vacant until it is filled at the next scheduled election.
- 4.3 If a vacancy arises at any other time it will be filled by holding an election, in accordance with the Election Scheme.
- 4.4 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Board of Governors shall affect the validity of any act or decision of the Board of Governors.

5. Board of Governors: Role

- 5.1 The Board of Governors and each Governor shall act in the best interests of the Trust at all times and with proper regard to the provisions of the NHS Foundation Trust Code of Governance any code of conduct for the Board of Governors.
- 5.2 Subject to the requirement specified in paragraph 4.1 above, each Governor shall exercise his own skill and judgement in his conduct of the Trust's affairs and shall in his stewardship of the Trust's affairs bring as appropriate the perspective of the constituency or organisation by which he was elected or appointed, as the case may be.
- 5.3 Subject to the further provisions of this Constitution and without in any way derogating from them, the Board of Governors shall;
- 5.3.1 assist the Board of Directors in setting the strategic direction of the Trust and targets for the Trust's performance and in monitoring the Trust's performance in terms of achieving those strategic aims and targets which have been set; and
- 5.3.2 monitor the activities of the Trust with the view to ensuring that they are being conducted in a manner consistent with its Terms of Authorisation and the terms of this Constitution.

6. Board of Governors: Meetings

- 6.1 The Board of Governors shall hold not less than 3 general meetings each financial year.
- 6.2 All such meetings shall be open to the public unless the Board of Governors resolves that the public be excluded from the meeting, whether for the whole or part of the proceedings, on the grounds that publicity would be prejudicial to the public interest or the interest of the Trust by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or the proceedings.

- 6.3 The Board of Governors may appoint committees or sub-committees consisting of its members to advise and assist it in the discharge of its functions.
- 6.4 The Board of Governors may request the attendance of some or all of the members of the Board of Directors at its meetings and the Board of Directors may attend and may give such reports and information to the Board of Governors as the Board of Directors considers appropriate and subject always to the other provisions of this Constitution.
- 6.5 The Board of Governors' Standing Orders, as may be varied from time to time, is to provide for further details of the practice and procedure at Board of Governors meetings (including general meetings).
7. Board of Governors: Declarations
- 7.1 A Member of a Public Constituency or of the Patients' Constituency standing for election as Governor must make a declaration for the purposes of Section 60 of the 2006 Act in the form specified below stating the particulars of his qualification to vote as a Member and that he is not prevented from being a member of the Board of Governors by virtue of any provisions of this Constitution.
- 7.2 The specified form of declaration shall be set out on the Nomination Form referred to in the Election Scheme and shall state as follows:
- "I declare that I am resident at the address detailed in Section 1 of this form. I declare that to the best of my knowledge I am eligible to stand for election to the Board of Governors for the seat named in Section 2 of this form. I declare that to the best of my knowledge I am not de-barred from standing for election by any of the provisions detailed at Section 3 of this form. I declare that I have stated details of any of my political Membership and any financials I have in the Trust at Section 4 of this form. I understand that if any of these declarations are later found to be false I will if elected lose my seat on the Board of Governors and may also have my Membership withdrawn. I endorse the principles of the National Health Service and in particular that healthcare should be available to everyone regardless of age, income or ethnicity and is based on need, not the ability to pay, as well as being free at the point of delivery".
8. Board of Governors: Vice Chairman
- 8.1 No person may serve as the Vice Chairman for more than a total of six years.
- 8.2 A person appointed as the Vice Chairman shall cease to be eligible to continue serving as the Vice Chairman if he ceases to be a Governor or Member and the Vice Chairman's term of office may be terminated by a majority of not less than 75% of the Governors present and voting at a meeting of the Board of Governors.
9. Board of Governors: Appointment of Senior Independent Director
- 9.1 A majority of the Governors shall at a general meeting of the Board of Governors appoint one of the Non-Executive Directors to be the Senior Independent Director for a term of three years. The Senior Independent Director shall be eligible for re-appointment at the end of that term but may not serve as Senior Independent Director for more than a total of six years.
- 9.2 The Senior Independent Director shall be available to Members and Governors if they have concerns which contact through the normal channels of the Chairman, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate.
- 9.3 A person appointed as the Senior Independent Director shall cease to be eligible to continue serving as the Senior Independent Director if he ceases to be a Non

Executive Director and the Senior Independent Director's term of office may be terminated by a majority of not less than 75% of the Governors present and voting at a meeting of the Board of Governors.

ANNEX 7 – FURTHER PROVISIONS

1. Eligibility for Membership

It is the responsibility of Members to ensure their eligibility and not the Trust, but if the Trust is on notice that a Member may be disqualified from Membership, the Trust shall carry out all reasonable enquiries to establish if this is the case.

2. Public Constituency

2.1 For the purposes of determining whether an individual lives in an area specified as an area for Public Constituency, an individual shall be deemed to do so if:

2.1.1 his name appears on the electoral roll at an address within the said area and the Trust has no reasonable cause to conclude that the individual is not living at that address; or

2.1.2 the Trust is otherwise satisfied that the individual lives in the said area.

2.2 An individual who is a Member of the Public Constituency shall cease to be eligible to continue as a Member if he ceases to live in the area of the Public Constituency of which he is a Member save as may otherwise be provided in this paragraph 1.

2.3 Where a Member of a Public Constituency ceases to live permanently in the area of the Public Constituency of which he is a Member he shall forthwith advise the Trust that he is no longer eligible to continue as a Member and the Trust shall forthwith remove his name from the Register of Members unless the Trust is satisfied that the individual concerned lives in some other area of a Public Constituency of the Trust. Where the Trust is satisfied that such an individual continues to live in the area of a Public Constituency of the Trust it shall, if the individual so requests, thereafter treat that individual as a Member of that other Public Constituency and amend the Register of Members accordingly provided the Trust has given that individual not less than 14 days' notice of its intention to do so.

2.4 Where a Member ceases to live temporarily in the area of the Public Constituency of which he is a Member, the Trust may permit that individual nonetheless to remain on the Register of Members for that Public Constituency if it is for good cause satisfied that the absence is of a temporary duration only and that the Member will either return to live in the area of that Public Constituency of which he is a Member or will live in some other part of the Area of the Trust in which case the provisions of paragraph 2.1 shall apply as appropriate.

3. Staff Constituency

3.1 A Member of a Staff Class will cease to be eligible to be a Member of that Staff Class if they no longer meet the eligibility requirements of paragraph 6 of the Constitution and of Annex 2.

3.2 Where an individual is a Member by virtue of their eligibility to be a Member of a Staff Class and they cease to be eligible for Membership of that Staff Class but are eligible for Membership of some other Staff Class then the Trust may give notice to that Member of its intention to transfer him to that other Staff Class on the expiration of a period of time or upon a date specified in the said notice and shall after the expiration of that notice or date amend the Register of Members accordingly.

4. Patient Constituency

- 4.1 A Member of the Patients' Constituency shall cease to be eligible for Membership unless they have at all times since becoming a Member attended one of the Trust's Hospitals as a Patient within the preceding ten years.
- 4.2 Where in the reasonable opinion of the Trust an individual is no longer eligible to continue as a Member of the Patients' Constituency it shall be at liberty to remove that individual from the Register of Members and that individual shall thereupon cease to be a Member of the Trust but this power may not be exercised until the Trust has given not less than 14 days' written notice to that Member addressed to him at the address given in the Register of Members of its intention to remove him from the Register of Members and that Member has not within that period notified the Trust of his wish to continue as a Member and has provided proof satisfactory to the Trust of his continued eligibility.

5. Membership Termination of Tenure

- 5.1 A Member shall cease to be a Member if:-
- 5.1.1 they cease to be entitled under this Constitution to be a Member of any of the Public Constituencies, the Patient Constituency or one of the classes of the Staff Constituency;
- 5.1.2 they resign by notice in writing to the Secretary;
- 5.1.3 they die;
- 5.1.4 they are expelled under this Constitution;
- 5.1.5 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 Board of Governors they fail to establish that they have a continuing wish to be involved in the affairs of the Trust as a Member.

6. Board of Directors: Disqualification

- 6.1 In addition to the grounds of disqualification set out in paragraph 25 of the Constitution, a person may also not be or continue as a Director of the Trust if:
- 6.1.1 in the case of a Non-Executive Director, he no longer satisfies the relevant requirements for appointment;
- 6.1.2 he is a person whose tenure of office as a chairman or as a director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of public service, or for non-disclosure of a pecuniary interest;
- 6.1.3 he has within the preceding two years been dismissed, otherwise than by reason of redundancy, by the coming to an end of fixed term contract or through ill health, from any paid employment with a Health Service Body;
- 6.1.4 information revealed by a Criminal Records Bureau check is such that it would be inappropriate for him to become or continue as a Director on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- 6.1.5 in the case of an Executive Director, he is no longer employed by the Trust;

- 6.1.6 he is a person who has had their name removed by a Direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act, and have not subsequently had their name included on such a list;
- 6.1.7 he is an executive or non-executive director of another NHS Foundation Trust, or a governor, non-executive director, Chair, Chief Executive Officer of another Health Service Body or a body corporate whose business includes the provision of healthcare;
- 6.1.8 he is a member of a patient and public involvement forum;
- 6.1.9 he is a member of a local authority's overview and scrutiny committee;
- 6.1.10 he is the subject of a disqualification order made under the Company Directors' Disqualifications Act 1986;
- 6.1.11 he has failed or refused to undertake any training which the Board of Directors requires all Directors to undertake;
- 6.1.12 he has failed to sign and deliver to the Secretary in the form required by the Board of Directors confirmation that he accepts the Code of Conduct of NHS Managers;
- 6.1.13 he/she is a partner or spouse of an existing Director.

7. Non-Executive Directors: Terms of Office

- 7.1 Subject to paragraph 7.2, a Non-Executive Director shall be appointed by the Board of Governors for a term of 3 years.
- 7.2 The Board of Governors may, prior to the expiry of the term referred to in paragraph 7.1, extend the term of office of a Non-Executive Director by a period not exceeding 2 years if it considers such an extension is in the best interests of the Trust.
- 7.3 Prior to extending any term of office under paragraph 7.2, the Board of Governors shall consult the Directors and may seek advice from the Appointments and Remuneration Committee.

8. Governors and Directors: Communication and Conflict

8.1 Summary

This paragraph 8 describes the processes intended to ensure a successful and constructive relationship between the Board of Governors and the Board of Directors. It emphasises the importance of informal and formal communication, and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal communications, and sets out the formal arrangements for resolving conflicts between the Board of Governors and the Board of Directors.

8.2 Informal Communications

- 8.2.1 Informal and frequent communication between the Governors and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.
- 8.2.2 The Chairman shall use his reasonable endeavours to encourage effective informal methods of communication including:
 - (a) participation of the Board of Directors in the induction, orientation and training of Governors;

- (b) development of special interest relationships between Non-Executive Directors and Governors;
- (c) discussions between Governors and the Chairman and/or the Chief Executive and/or Directors through the office of the Secretary;
- (d) involvement in Membership recruitment and briefing at public events organised by the Trust.

8.3 Formal Communication

8.3.1 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Board of Governors and the Board of Directors respectively.

8.3.2 Formal communications initiated by the Board of Governors and intended for the Board of Directors will be conducted as follows:

- (a) specific requests by the Board of Governors will be made through the Chairman to the Board of Directors;
- (b) any Governor has the right to raise specific issues to be put to the Board of Directors at a duly constituted meeting of the Board of Governors through the Chairman. In the event of disagreement, two thirds of the Governors present must approve the request. The Chairman will raise the matter with the Board of Directors and provide the response to the Board of Governors;
- (c) joint meetings will take place annually or as and when appropriate between the Board of Governors and the Board of Directors.

8.3.3 The Board of Directors may request the Chairman to seek the views of the Board of Governors on such matters as the Board of Directors may from time to time determine.

8.3.4 Communications initiated by the Board of Directors and intended for the Board of Governors will be conducted as follows:

- (a) request the Chairman to seek the view of the Board of Governors on the Board of Directors' proposals for the Strategic Direction and the Annual Patient Services Plan;
- (b) presentation and approval of annual accounts, annual report and auditor's report;
- (c) request the Chairman to seek the view of the Board of Governors on the Board of Directors' proposals for developments;
- (d) request the Chairman to seek the view of the Board of Governors on Trust Performance;
- (e) request the Chairman to seek the view of the Board of Governors for involvement in service reviews and evaluation;
- (f) request the Board of Governors to seek views of the Membership on proposed changes, plans and developments.

8.3.5 Formal communications will normally be conducted as follows:

- (a) attendance by the Board of Directors at a meeting of the Board of Governors;

- (b) formal reports or presentation by Executive Directors to a meeting of the Board of Governors;
- (c) inclusion of minutes for information on the Agenda of a meeting of the Board of Governors;
- (d) reporting the views of the Board of Governors to the Board of Directors through the Chairman or Vice-Chairman;
- (e) Governors attend meetings in public of the Board of Directors as observers.

8.3.6 Wherever possible and practical, written communications will be conducted by e-mail.

8.4 Resolving Conflict

8.4.1 The Board of Governors and the Board of Directors must be committed to developing and maintaining a constructive and positive relationship. The aim at all times is to resolve any potential or actual differences of view quickly, through discussion and negotiation.

8.4.2 If as the first step, the informal efforts the Chairman do not achieve resolution of a disagreement or a conflict, the Chairman will follow the process described in paragraph 8.4.3 below. The aim is to resolve the matter at the first available opportunity, and only to escalate to the next step if the step taken fails to achieve resolution.

8.4.3 In the event of a conflict between the Board of Governors and Board of Directors, the following action will be taken, in the sequence shown:

- (a) the Chairman will call a Resolution Meeting of the members of the Board of Governors and Board of Directors, to take place as soon as possible, but no later than twenty working days following the date of the request. The meeting must comprise of two thirds of the Membership of the Board of Governors and two thirds of the membership of the Board of Directors. The meeting will be held in private. The Agenda and any papers for the meeting issued in accordance with the Standing Orders of the Board of Governors. The aim of the meeting will be to achieve resolution of the conflict. The Chairman will have the right to appoint an independent facilitator to assist the process. Every effort must be made to reach agreement;
- (b) if a Resolution Meeting of the members of the Board of Governors and Board of Directors fails to resolve a conflict, the Board of Directors will decide the disputed matter;
- (c) if, following the formal Resolution Meeting, and the decision of the Board of Directors, the Board of Governors considers that implementation of the decision will result in the Trust failing to comply with the Terms of Authorisation, the Board of Governors will refer the specific issue of non-compliance to Monitor.

8.4.4 The right to call a Resolution Meeting rests with the following, in the sequence of escalation shown:

- (a) the Chairman;
- (b) the Chief Executive;
- (c) two thirds of the members of the Board of Governors;

(d) two thirds of the members of the Board of Directors.

9. Indemnity

Members of the Board of Governors and Board of Directors 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 Board functions, save where they have acted recklessly. Any reasonable costs arising in this way will be met by the Trust and the Trust shall have the power to purchase suitable insurance or make appropriate arrangements with the National Health Service Litigation Special Health Authority to cover such costs.

10. Validity of Actions

No defect or deficiency in the appointment or composition of the Board of Governors or the Board of Directors shall affect the validity of any action taken by them.

11. Registers

11.1 The Secretary shall be responsible for compiling and maintaining the Registers. Removal from any Register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 14 days.

11.2 Register of Members

11.2.1 Members must complete and sign an application in the form prescribed by the Secretary; and

11.2.2 the Secretary shall maintain the Register in two parts. Part 1 shall include the name of each Member and the Constituency or class to which they belong and shall be open to inspection by the public in accordance with paragraph 30 of this Constitution. Part 2 shall contain all the information from the individual's application form and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party. Notwithstanding this provision, the Trust shall extract such information as it needs in aggregate to satisfy itself that the actual Membership of the Trust is representative of those eligible for Membership.

11.3 Register of Members of the Board of Governors

The Register shall list the names of members of the Board of Governors, their category of Membership of the Board (public, patient, staff or organisation represented) and an address through which they may be contacted which may be the Secretary.

11.4 Register of Interests of the Members of the Board of Governors

Each member of the Board of Governors shall complete and sign a form as prescribed by the Secretary setting out interests to be declared in accordance with the Standing Orders and the register shall contain the names of all members of the Board of Governors and any interests declared including no interests.

11.5 Register of Directors

The Register shall list the names of Members of the Board of Directors, their capacity on the Board and an address through which they may be contacted which may be the Secretary.

11.6 Register of Interests of Directors

Each Member of the Board of Directors shall complete and sign a form as prescribed by the Secretary setting out any interests to be declared in accordance with the Standing Orders for the Board of Directors and the Register shall contain the names of all members of the Board of Directors and any interests declared including no interests.

12. Auditor

12.1 An officer of the Audit Commission may be the Trust's auditor if he is appointed by the Board of Governors with the agreement of the Audit Commission. The Commission is to charge the Trust such fees for his services that will cover the full cost of providing them.

12.2 A person may only be appointed auditor if he (or in the case of a firm each of its members) is a member of one or more of the following bodies:

12.2.1 the bodies mentioned in section 3(7)(a) to (e) of the Audit Commission Act 1998; or

12.2.2 any other body of accountants established in the United Kingdom and approved by Monitor.

13. Accounts

13.1 The following documents will be made available to the Comptroller and Auditor General for examination at his request:

13.1.1 the accounts;

13.1.2 any records relating to them; and

13.1.3 any report of the auditor on them.

13.2 In preparing its annual accounts, the Trust is to comply with any directions given by Monitor with the approval of the Treasury as to:

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

13.2.2 the information to be given in the accounts.

13.3 The Trust must:

13.3.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and

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

13.4 Annual reports and forward plans

13.4.1 The annual report submitted by the Trust to Monitor in accordance with paragraph 35.1 is to give:

(a) information on any steps taken by the Trust to secure that (taken as a whole) the actual Membership of its public and patient constituencies is representative of those eligible for such Membership; and

(b) any other information Monitor requires.

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

13.4.3 the form of the reports;

13.4.4 when the reports are to be sent to it; and

13.4.5 the periods to which the reports are to relate.

ANNEX 8 – STANDING ORDERS OF THE BOARD OF GOVERNORS

1 INTERPRETATION AND DEFINITIONS

- 1.1 Save as permitted by law, at any meeting the Chairman of the Trust, advised by the Chief Executive, shall be the final authority on the interpretation of Standing Orders.
- 1.2 These Standing Orders shall only be applied in accordance with the Constitution. Where any provision in these Standing Orders contradicts any provision in the Constitution, the Constitution shall be paramount.

1.3 In these Standing Orders:

“the 2006 Act”	means the National Health Service Act 2006 and other acts as maybe introduced from time to time;
"Appointed Governors"	means the Partner Governors;
"Audit Commission"	means the Audit Commission for Local Authorities and the National Health Service in England;
“Chairman”	means the chairman of the Trust appointed in accordance with the Trust Constitution;
“Chief Executive”	means the Chief Executive Officer of the Trust appointed in accordance with the terms of the Trust Constitution;
“Committee”	Means a committee appointed by the Board of Governors;
“Committee members”	means those persons formally appointed by the Board of Governors to sit on or to chair specific committees;
"Constitution"	means the Trust Constitution and all annexes to it;
“Board of Governors”	means the Board of Governors as constituted in accordance with the Trust Constitution;
“Director”	means a director on the Board of Directors;
"Elected Governor"	means the Public Governors, the Patient Governors and the Staff Governors;
“Governor”	means a Governor on the Board of Governors and being either an Elected Governor or an Appointed Governor;
“Health Service Body”	means a body which is a health service body for the purpose of section 9(4) of the 2006 Act;
“Member”	means a member of the Trust;
“Motion”	means a formal proposition to be discussed and voted on during the course of a meeting;
“Non-Executive Director”	means a non-executive director of the Trust;
“Officer”	means an employee of the Trust;

"Partner Governor"	means a member of the Board of Governors appointed by one of the Primary Care Trusts, Local Authorities, or Partnership Organisations specified in the Trust Constitution;
"Partnership Organisation"	means those organisations designated as partnership organisations in the Trust Constitution;
"Patient Governor"	means a member of the Board of Governors elected by the Members of the Patients Constituency as set out in the Trust Constitution;
"Public Governor"	means a member of the Board of Governors elected by the Members of the public constituency as set out in the Trust Constitution;
"Secretary"	means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary;
"Senior Independent Director"	means the Non-Executive Director elected by the Board of Governors as the senior independent director of the Trust;
"SFIs"	means Standing Financial Instructions;
"SOs"	means Standing Orders;
"Staff Class"	means a class of Membership within the Staff Constituency as provided for in Schedule 7 to the 2006 Act and as set out in the Trust Constitution;
"Staff Governor"	means a member of the Board of Governors elected by a Staff Class in accordance with the provision of the Trust Constitution;
"Terms of Authorisation"	means the terms of authorisation issued to the Trust by Monitor under Section 35 of the 2006 Act;
"the Trust"	means Doncaster & Bassetlaw Hospitals NHS Foundation Trust;
"Vice Chairman"	means a Governor appointed as a vice chairman in accordance with the provisions of the Trust Constitution.

2 COMPOSITION OF THE BOARD OF GOVERNORS

2.1 In accordance with the 2006 Act, the composition of the Board of Governors of the Trust shall be:

- (i) Chairman of the Trust
 - (ii) Eighteen elected Public Governors:
 - 13 Governors from Metropolitan Doncaster
 - 5 Governors from Bassetlaw District
- 4.1.1
- (iii) Two elected Patient Governors
 - (iv) Six elected Staff Governors

- 2 Governors from the Non-clinical staff class
- 2 Governors from the Nursing and Midwifery staff class
- 1 Governor from the Medical and Dental staff class
- 1 Governor from the Clinical therapists, scientists, technical and other professional staff class

(v) Nine appointed Partner Governors

- 1 Governor appointed by Doncaster PCT
- 1 Governor appointed by Bassetlaw PCT
- 2 Governors appointed by Doncaster Metropolitan Borough Council
- 1 Governor appointed by Bassetlaw District Council
- 1 Governor appointed by Nottinghamshire County Council
- 1 Governor appointed by Sheffield University
- 1 Governor appointed by Sheffield Hallam University
- 1 Governor appointed by Doncaster and Bassetlaw Council for Voluntary Services

2.2 The aggregate number of Members of Public and Patient Governors is to be more than half the total membership of the Board of Governors

3 CHAIRMAN OF THE BOARD OF GOVERNORS

3.1 The Chairman of the Trust is the Chairman of the Board of Governors.

3.2 The Chairman is appointed by the Board of Governors. The appointment shall be in accordance with the Constitution.

3.3 The regulations governing the tenure of office of the Chairman shall be in accordance with the Constitution.

3.4 At any meeting of the Board of Governors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Deputy Chairman, shall preside.

3.5 If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chairman, if present, shall preside.

3.6 The Chairman and Deputy Chairman may not preside in respect of votes of the Board of Governors concerning Non-executive Directors. The Board of Governors should provide for a Vice Chairman to preside and have a casting vote in respect of votes of the Board of Governors concerning Non-Executive Directors.

3.7 **Deputy Chairman**

Where the Chairman of the Trust has died or has otherwise ceased to hold office or where he has been unable to perform his duties as Chairman owing to illness, absence from England and Wales or any other cause, references to the Chairman in the Schedule to these Regulations shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Deputy Chairman. The Deputy Chairman shall act as Chairman of the Board of Governors.

3.8 The appointment of the Deputy Chairman shall be as prescribed in the Constitution.

3.9 The regulations governing the tenure of office of the Deputy Chairman shall be in accordance with the Constitution.

3.10 **Vice-Chairman**

The Vice Chairman is to preside in respect of votes of the Board of Governors concerning Non-Executive Directors, including the Chairman.

- 3.11 The appointment of the Vice-Chairman shall be as prescribed in the Constitution.
- 3.12 The regulations governing the tenure of office of the Vice-Chairman shall be in accordance with the Constitution.

4 PRACTICE AND PROCEDURE OF MEETINGS

4.1 All business at meetings of the Board of Governors shall be conducted in the name of the Trust.

4.2 The Trust has the functions conferred on it by the 2006 Act and its Terms of Authorisation issued by the Independent Regulator.

4.3 Admission of the Public and Press

The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Board of Governors but shall be required to withdraw upon the Board of Governors resolving as follows:

“That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest”.

4.4 The Chairman (or Deputy Chairman) shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board of Governors business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on the grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board of Governors resolving as follows:

“That in the interests of public order the meeting adjourns for (the period to be specified) to enable the Board of Governors to complete business without the presence of the public”

4.5 Nothing in these Standing Orders shall require the Board of Governors to allow members of the public or representatives of the press to record proceedings in any manner.

4.6 Frequency of Meetings

Ordinary meetings of the Board of Governors shall be held at such times and places as the Board of Governors may determine:

- (a) The Board of Governors shall meet at least three times a year
- (b) The Trust will publicise and hold an annual general meeting.
- (c) At the annual general meeting, which will be held prior to 30 September each year, the Board of Governors is to receive and consider the annual accounts, any report of the auditor on them, and the annual report.

4.7 Notice of Meetings

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 Governors to all Governors. Notice will also be published in a local newspaper or newspapers circulating in the area served by the Trust and on the Trust's website. The notice of the meeting will specify the business proposed to be transacted at it, and will be signed by the Chairman or Secretary.

4.8 Lack of service of the notice on any Governor shall not affect the validity of a meeting.

4.9 In the case of a meeting called by Governors in default of the Chairman, the notice shall be

signed by the ten Governors who called the meeting (subject to SO 3.6), and no business shall be transacted at the meeting other than that specified in the notice.

- 4.10 Failure to serve such a notice on more than three Governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 4.11 The Chairman may call a meeting of the Board of Governors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose signed by at least ten Governors has been presented to him specifying the business to be carried out, 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 ten Board of Governors Members shall call such a meeting. No business shall be conducted at such a meeting other than that specified in the notice of the meeting.
- 4.12 Before each meeting of the Board of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him at least three clear days before the meeting.
- 4.13 **Quorum**
18 Board of Governors Members, of whom at least 50% must be Patient or Public Governors, shall form a quorum.
- 4.14 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest, he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 4.15 **Voting**
Every question at a meeting will be determined by a majority of the votes of the Governors present and voting on the question and, in the case of an equality of votes, the person presiding shall have a second or casting vote.
- 4.16 All questions put to the vote shall, at the discretion of the Chairman, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 4.17 If a majority of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.18 If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.19 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.20 **Setting the Agenda**
The Board of Governors may determine that certain matters shall appear on every agenda for a meeting of the Trust and shall be addressed prior to any other business being conducted.
- 4.21 A Governor desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least ten clear days before the meeting is notified to Governors, subject to SO 4.12. Requests made less than ten days before a meeting is notified to Governors may be included on the agenda at the discretion of the Chairman.
- 4.22 **Minutes**

The names of Governors present at the meetings shall be recorded.

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

4.24 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.25 Minutes shall be circulated in accordance with Governors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public.

4.26 **Notices of Motion**

A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting is notified to Governors to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved without notice during the meeting, on any business mentioned on the agenda subject to SO 4.12.

4.27 Any Governor who has submitted apologies for a meeting and desires to comment in relation to a matter on the agenda of that meeting shall make his request in writing to the Chairman at least 3 clear days before the date of the meeting. The comment may then be reported to the Board of Governors at the discretion of the Chairman.

4.28 **Withdrawal of Motion or Amendments**

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

4.29 **Motion to Rescind a Resolution**

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Trust, it shall not be competent for any Governor other than the Chairman to propose a motion to the same effect within six months, however the Chairman may do so if he considers it appropriate.

4.30 **Motions**

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

4.31 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:

- (i) An amendment to the motion.
- (ii) The adjournment of the discussion or the meeting.
- (iii) The appointment of an ad hoc committee to deal with a specific item of business.
- (iv) That the meeting proceed to the next business.*
- (v) That the motion be now put to a vote.*

In the case of sub-paragraphs denoted by * above, to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate.

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

- 4.33 **Chairman's Ruling**
Statements of Governors made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.
- 4.34 **Suspension of Standing Orders**
Any one or more of the Standing Orders may be suspended at any duly constituted meeting, provided that:
- (i) at least two-thirds of the Trust's total Governors are present; and
 - (ii) a majority of those present, including no fewer than half of the elected Governors present, vote in favour of suspension; and
 - (iii) the variation proposed does not contravene any statutory provision or direction made by the Independent Regulator.
- 4.35 A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 4.36 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Governors.
- 4.37 No formal business may be transacted while SOs are suspended.
- 4.38 The Audit Committee shall review every decision to suspend SOs.

5 REMOVAL OF GOVERNORS

- 5.1 A Governor's tenure of office may be terminated by not less than 75% of the Governors present and voting at a general meeting of the Board of Governors in accordance with sections 3.1.3 and 3.1.4 of Annex 6 of the Constitution.
- 5.2 Section 3.3 of Annex 6 of the Constitution states that the Standing Orders adopted by the Board of Governors may contain provisions governing its procedure for termination of a Governor's tenure of office.
- 5.3 Removal under Section 3.1.3 of Annex 6 to the Constitution**
At the opening of each Board of Governors meeting, the Chairman shall state if there are any Governors who have missed two consecutive general meetings of the Board of Governors.
- 5.4 If any Governor has missed two consecutive meetings, the Trust Board Secretary, on behalf of the Chairman, shall enquire as to the circumstances of the absence, and report back to the Chairman, Vice-Chairman and Senior Independent Director within 28 days of the Governor's failure to attend a second consecutive meeting.
- 5.5 If the Chairman, Vice-Chairman and Senior Independent Director are satisfied that:
- (i) the absence was due to reasonable cause; and
 - (ii) the Governor will resume attendance at meetings of the Board of Governors within such period as is considered reasonable,
- then the Governor's tenure of office shall not be terminated and this shall be reported at the next general meeting of the Board of Governors.
- 5.6 If the Chairman, Vice-Chairman and Senior Independent Director are not satisfied of the above, the Chairman shall propose a motion to terminate the Governor's tenure of office in accordance with the provisions of Section 3.1.3 of Annex 6 to the Constitution at the next general meeting of the Board of Governors.

- 5.7 The Chairman shall serve written notification to the Governor whose tenure of office is the subject of this motion not less than 14 days before the meeting of the Board of Governors when the motion is to be proposed.
- 5.8 The Governor shall have the right to make written and verbal representations to the Board of Governors at the meeting when the motion is proposed.
- 5.9 When a motion to terminate a Governor's tenure of office is to be discussed, the press and public shall be required by the Board of Governors to withdraw from the meeting.
- 5.10 Removal under Section 3.1.4 of Annex 6 to the Constitution**
Any member of the Board of Governors, including the Chairman, may propose a motion to terminate a Governor's tenure of office in accordance with the provisions of Section 3.1.4 of Annex 6 to the Constitution.
- 5.11 Any member of the Board of Governors wishing to propose termination of tenure of another Governor must notify the Chairman of this proposal in writing not less than 28 days before the general meeting of the Board of Governors when this motion is to be proposed.
- 5.12 The Chairman shall serve written notification to the Governor whose tenure of office is the subject of this motion not less than 14 days before the meeting of the Board of Governors when the motion is to be proposed.
- 5.13 The Governor shall have the right to make written and verbal representations to the Board of Governors at the meeting when the motion is proposed.
- 5.14 When a motion to terminate a Governor's tenure of office is to be discussed, the press and public shall be required by the Board of Governors to withdraw from the meeting.

6 COMMITTEES

- 6.1 Appointment of Committees**
The Board of Governors may appoint committees consisting of its Members to advise and assist the Board of Governors in carrying out its functions.
- 6.2 The Standing Orders of the Board of Governors, as far as they are applicable, shall apply with appropriate alteration to meetings of any established committee of the Board of Governors.
- 6.3 Each such committee shall have such terms of reference and functions and be subject to such conditions (as to reporting back to the Board of Governors), as the Board of Governors shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 6.4 Committees may not delegate their functions to a sub-committee unless expressly authorised by the Board of Governors.
- 6.5 Confidentiality**
A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Governors or shall otherwise have concluded on that matter.
- 6.6 Governor of the Trust shall not disclose any matter reported to the Board of Governors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Governors or committee shall resolve that it is confidential.

7 DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

7.1 Pursuant to Section 20 of Schedule 7 of the 2006 Act, a register of Governors interests must be kept by the Trust

7.2 Declaration of Interests

Governors are required to declare interests, which are relevant and material. All existing Governors should declare relevant and material interests. Any Governors appointed subsequently should do so on appointment or election.

7.3 Interests which should be regarded as "relevant and material" and which, for the guidance of doubt, should include in the register are:

- a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
- b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
- d) A position of authority in a charity or voluntary organisation in the field of health and social care.
- e) Any connection with a voluntary or other organisation contracting for NHS services.
- f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the NHS Foundation Trust, including but not limited to, lenders or banks.

7.4 If Governors have any doubt about the relevance of an interest, this should be discussed with the Chairman.

7.5 At the time the interests are declared, they should be recorded in the Board of Governors minutes as appropriate. Any changes in interests should be declared at the next Board of Governors meeting as appropriate following the change occurring. It is the obligation of the Governor to inform the Trust Board Secretary in writing within 7 days of becoming aware of the existence of a relevant or material interest. The Trust Board Secretary will amend the Register upon receipt within 3 working days.

7.6 During the course of a Board of Governors meeting, if a conflict of interest is established, the Director or Governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, majority will resolve the issue with the Chairman having the casting vote.

7.7 There is no requirement for the interests of Governors' spouses or partners to be declared.

7.8 Register of Interests

The details of Governors interests recorded in the Register will be kept up to date by means of a monthly review of the Register by the Trust Board Secretary, during which any changes of interests declared during the preceding month will be incorporated.

7.9 Subject to contrary regulations being passed, the Register will be available for inspection by the public free of charge. The Chairman will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Register must be provided to members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on

non-members for copies or extracts of the Register.

8 DISABILITY OF GOVERNORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 8.1 Subject to the following provisions of this Standing Order, if a Governor of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Governors at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 8.2 The Independent Regulator may, subject to such conditions as he may think fit to impose, remove any disability imposed by this Standing Order in any case in which it appears to him in the interests of the National Health Service that the disability shall be removed.
- 8.3 The Chairman shall exclude a Governor from a meeting of the Board of Governors while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.
- 8.4 Any remuneration, compensation or allowances payable to a Governor shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 8.5 For the purpose of this Standing Order the Chairman or a Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- (a) he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
- or
- (b) he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

- 8.6 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- (a) of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
- (b) of an interest in any company, body or person with which he is connected as mentioned in SO 7.5 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 8.7 Where a Governor:
- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this Standing Order shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his duty to disclose his interest.

- 8.8 Standing Order 8 applies to a committee of the Board of Governors as it applies to the Board of Governors and applies to any member of any such committee (whether or not he is also a Governor of the Trust) as it applies to a Governor of the Trust.

9 STANDARDS OF BUSINESS CONDUCT

9.1 Policy

Members of the Board of Governors shall act in accordance with the Nolan Principles Governing Conduct of Public Office Holders at all times.

- 9.2 The Board of Governors has adopted as good practice the national guidance contained in HSG(93)5 'Standards of Business Conduct for NHS staff', and Governors must comply with this. The following provisions should be read in conjunction with this document.

9.3 Interest of Governors in Contracts

If it comes to the knowledge of a Governor of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Secretary of the fact that he is interested therein. In the case of married persons, or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

- 9.4 A Governor must also declare to the Secretary any other employment or business or other relationship of his, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

9.5 Canvassing of, and Recommendations by, Governors in Relation to Appointments

Canvassing of Governors of the Trust or members of any committee of the Board of Governors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

- 9.6 A Governor of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

- 9.7 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

9.8 Relatives of Governors

Candidates for any staff appointment shall when making application disclose in writing whether they are related to any Governor of the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.

- 9.9 The Governors of the Trust shall disclose to the Chairman any relationship with a candidate of whose candidature that Governor is aware. It shall be the duty of the Chairman to report to the Board of Governors any such disclosure made.

- 9.10 On appointment, Governors should disclose to the Trust whether they are related to any other

Governor, Director or holder of any office under the Trust.

- 9.11 Where the relationship of an officer or another Director or Governor to a Governor of the Trust is disclosed, the Standing Order headed 'Disability of Governors in proceedings on account of pecuniary interest' (SO 7) shall apply.
- 9.12 Any Board of Governors member who receives or is offered and declines hospitality in excess of £50.00 is required to enter the details of the hospitality in the Trust's Hospitality Register.

10 SIGNATURE OF DOCUMENTS

- 10.1 Where the signature of any document will be a necessary step in legal documents involving the Board of Governors, it shall be signed by the Chairman or Deputy Chairman.
- 10.2 The Chairman or Deputy Chairman shall be authorised, by resolution of the Board of Governors, to sign on behalf of the Board of Governors any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Governors or committee to which the Board of Governors has delegated appropriate authority.

11 APPOINTMENT OF AUDITOR

- 11.1 Pursuant to section 23 of Schedule 7 of the 2006 Act, the Trust is required to have an auditor. The Board of Governors shall appoint or replace the Trust's auditors at a general meeting of the Board of Governors.
- 11.2 A person may only be appointed auditor if he (or in the case of a firm each of its Members) is a Member of one or more of the bodies referred to in Schedule 7 of the 2006 Act.
- 11.3 The appointment of the Auditor by the Board of Governors, and the monitoring of the auditor's functions by a committee of Non-Executive Directors are covered in the Constitution.
- 11.4 An officer of the Audit Commission may be appointed with the agreement of the Commission. The Commission is to charge the Trust such fees for his services that will cover the full cost of providing them.
- 11.5 The Auditor is to carry out his duties in accordance with the 2006 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.

12 MISCELLANEOUS

- 12.1 **Standing Orders to be given to Governors**
It is the duty of the Chairman to ensure that existing Governors and all new Governors are notified of and understand their responsibilities within Standing Orders and SFIs. Updated copies shall be issued to Governors designated by the Chairman. New Governors shall be informed in writing and shall receive copies where appropriate of SOs.
- 12.2 **Documents having the standing of Standing Orders**
Standing Financial Instructions shall have effect as if incorporated into SOs.
- 12.3 **Review of Standing Orders**
Standing Orders shall be reviewed annually by the Board of Governors. The requirement for review extends to all documents having the effect as if incorporated in SOs.

13 VARIATION AND AMENDMENT OF STANDING ORDERS

13.1 These Standing Orders shall be amended only if:

- (i) a notice of motion under SO 4.26 has been given; and
- (ii) at least two-thirds of the Trust's total Governors are present; and
- (iii) a majority of those present, including no fewer than half of the elected Governors present, vote in favour of amendment; and
- (iv) the variation proposed does not contravene any statutory provision or direction made by the Independent Regulator.