STATUTORY INSTRUMENTS

2010 No. 743

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 2010

Made - - - -	*10th March 2010*
Laid before Parliament	*17th March 2010*
Coming into force - -	*1st July 2010*

The Secretary of State for Health makes the following Regulations in exercise of powers conferred by sections 25(3) and 272(7) and (8) of, and paragraphs 28(3) and 29(4) of Schedule 4 to, the National Health Service Act 2006(**a**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 2010 and shall come into force on 1st July 2010.

(2) In these Regulations, unless the context otherwise requires—

"the Act" means the National Health Service Act 2006;

"the 2007 Act" means the Local Government and Public Involvement in Health Act 2007(**b**);

"dissolution order" means an order under paragraph 28 of Schedule 4 to the Act (dissolution of NHS trusts) dissolving an NHS trust;

"establishment order" means an order under section 25(1) of the Act (NHS trusts) establishing an NHS trust;

"local authority" means a local authority within the meaning of section 229(1) of the 2007 Act (interpretation);

"local involvement network" means a person who, in pursuance of arrangements made under section 221(1) of the 2007 Act, is to carry on activities specified in section 221(2) of that Act (activities relating to involvement in health services and social services);

"relevant local involvement network" means a local involvement network for a local authority in whose area is situated—

(a) in a case where the Secretary of State is considering making an establishment order, any hospital or other establishment or facility which would be managed by the NHS trust to be established; or

(b) in any other case, any hospital or other establishment or facility managed by the NHS trust in respect of which the order is to be made;

(**a**) 2006 c. 41. See section 275(1) of that Act for the definition of "prescribed"; there are no relevant amendments to that section. Paragraph 28(3) of Schedule 4 was amended by section 18(10) of the Health Act 2009 (c. 21). The powers of the Secretary of State under the National Health Service Act 2006, as exercised in making these Regulations, are exercisable only in relation to England, by virtue of section 271 of that Act.

(**b**) 2007 c. 28.

"staff interests" means such persons or bodies as the NHS trust which is to be dissolved may recognise as representing persons who are employed by or for the purposes of that NHS trust, and who are, in its opinion, likely to be affected by a transfer order;

"the Schedule" means Schedule 4 to the Act (NHS trusts established under section 25);

"transfer order" means an order under paragraph 29 of the Schedule (transfers from dissolving NHS trusts) transferring or providing for the transfer of property, liabilities and staff of an NHS trust.

Consultation relating to orders under section 25 of the Act and dissolution orders

2.—(1) For the purposes of section 25(3) of the Act (NHS trusts), the prescribed consultation which must be completed before the Secretary of State may make an establishment order is consultation by the Secretary of State with each relevant local involvement network.

(2) Subject to paragraphs (3) and (4), for the purposes of section 25(3) of the Act, the prescribed consultation which must be completed before the Secretary of State may make an order under section 25(1) of the Act in relation to an NHS trust, other than an establishment order or an order revoking an establishment order, is consultation by the Secretary of State with that NHS trust.

(3) Paragraphs (1) and (2) shall not apply where the order is made following the publication of a final report under section 65I(3) of the Act (final report of trust special administrator)(**a**).

(4) Paragraph (2) shall not apply where the order to be made under section 25(1) of the Act is an order the only purpose of which is to designate an existing NHS trust as a Care Trust in accordance with section 77(6) of the Act (designation of an existing body as a Care Trust).

(5) Subject to regulation 4(3), for the purposes of paragraph 28(3) of the Schedule (dissolution of an NHS trust)(**b**), the prescribed consultation which, except in cases of urgency or where the order is made following the publication of a final report under section 65I(3) of the Act, must be completed before the Secretary of State may make a dissolution order is—

(a) where the dissolution order is to be made pursuant to paragraph 28(2)(a) of the Schedule (dissolution on the application of the NHS trust concerned), consultation by that NHS trust with each relevant local involvement network; or

(b) where the dissolution order is to be made pursuant to paragraph 28(2)(b) of the Schedule (where the Secretary of State considers dissolution to be appropriate in the interests of the health service), consultation by the Secretary of State with each relevant local involvement network.

(6) Where an NHS trust consults a local involvement network in pursuance of paragraph (5)(a), it must report the results of that consultation to the Secretary of State within such period as the Secretary of State may determine.

Consultation relating to transfer orders

3.—(1) Subject to regulation 4(3), for the purposes of paragraph 29(4) of the Schedule (transfer of property and liabilities on dissolution of an NHS trust), the prescribed consultation which must be completed before the Secretary of State may make a transfer order is—

(a) where the dissolution order in respect of that NHS trust is to be made pursuant to paragraph 28(2)(a) of the Schedule, consultation by that NHS trust with each relevant local involvement network and staff interests; or

(b) where the dissolution order in respect of that NHS trust is to be made pursuant to paragraph 28(2)(b) of the Schedule, consultation by the Secretary of State with each relevant local involvement network and staff interests.

(2) Where an NHS trust consults a local involvement network in pursuance of paragraph (1)(a), it must report the results of that consultation to the Secretary of State within such period as the Secretary of State may determine.

(**a**) Section 65I was inserted by section 16 of the Health Act 2009 (c. 21).
(**b**) Paragraph 28(3) was amended by section 18(10) of the Health Act 2009 (c. 21).

Combined and joint consultations

4.—(1) Where a dissolution order and a transfer order are to be made in respect of an NHS trust, the consultation required by regulation 2(5) may be combined with the consultation required by regulation 3(1).

(2) Where a dissolution order and a transfer order are to be made in respect of two or more NHS trusts, on the application of the NHS trusts concerned, the consultation prescribed by regulations 2(5)(a) and 3(1)(a) may be undertaken jointly by those trusts.

(3) Where the Secretary of State proposes to make—

(a) a dissolution order;

(b) an establishment order; and

(c) a transfer order transferring the property and liabilities of the NHS trust to be dissolved by that dissolution order to the NHS trust to be established by that establishment order,

the prescribed consultation for the purposes of paragraphs 28(3) and 29(4) of the Schedule is consultation by the Secretary of State with, respectively, each relevant local involvement network and each relevant local involvement network and staff interests.

(4) The consultation required by paragraph (3) may be combined with each other and with the consultation required by regulation 2(1).

(5) Paragraphs (3) and (4) shall not apply where the orders are to be made following the publication of a final report under section 65I(3) of the Act in respect of the NHS trust to be dissolved.

Revocation

5. The following Regulations are revoked in so far as they relate to England—

(a) the National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 1996(**a**); and

(b) regulation 9 of the Care Trusts (Applications and Consultation) Regulations 2001 (amendment of the National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 1996)(**b**).

Signed by authority of the Secretary of State for Health

Mike O'Brien
Minister of State,
Department of Health

10th March 2010

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the consultation which must take place in accordance with section 25(3) of, and paragraphs 28(3) and 29(4) of Schedule 4 to the National Health Service Act 2006 where an NHS trust is established, dissolved or its establishment order is amended, or an order is made transferring property and liabilities of a dissolving trust.

In particular—

- regulation 2 provides for the consultation which must take place before the Secretary of State makes an establishment or dissolution order, or an order amending an establishment

(**a**) S.I. 1996/653.
(**b**) S.I. 2001/3788.

order, and disapplies the requirements where an order is made to designate the trust as a Care Trust or following the publication of a final report of a trust special administrator;

- regulation 3 provides for the consultation which must take place before the Secretary of State makes a transfer order;
- regulation 4 makes provision for combined and joint consultations in specified circumstances and disapplies the consultation requirements relating to the making of a dissolution order and related establishment and transfer orders where that order is to be made following the publication of a final report of a trust special administrator;
- regulation 5 revokes the National Health Service Trusts (Consultation on Establishment and Dissolution) Regulations 1996 and regulation 9 of the Care Trusts (Applications and Consultation Regulations 2001 in so far as they relate to England.

A full impact assessment has not been produced for this instrument as no impact on private or voluntary sectors is foreseen.

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