This Order supersedes SI 2012/2891 published on 21 November and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2012 No. 2950

NATIONAL HEALTH SERVICE, ENGLAND

The NHS Foundation Trusts (Trust Funds: Appointment of Trustees) Amendment (No. 2) Order 2012

Made - - - -	*26th November 2012*
Coming into force - -	*1st December 2012*

The Secretary of State for Health makes the following Order in exercise of the powers conferred by sections 51(1) and (2), 64(5) and (6) and 273(1) of the National Health Service Act 2006(**a**).

Citation and commencement

1. This Order may be cited as the NHS Foundation Trusts (Trust Funds: Appointment of Trustees) Amendment (No. 2) Order 2012 and comes into force on 1st December 2012.

Amendment of the NHS Foundation Trusts (Trust Funds: Appointment of Trustees) Order 2007

2.—(1) The NHS Foundation Trusts (Trust Funds: Appointment of Trustees) Order 2007(**b**) is amended as follows.

(2) In article 1(2) (interpretation), before the definition of "the Commission" insert—

> ""the 2012 Order" means the NHS Foundation Trusts (Trust Funds: Appointment of Trustees) Amendment (No. 2) Order 2012;".

(3) For "Commission" in each place it occurs in the following provisions, substitute "Secretary of State"—

(a) article 2 (appointment of trustees);

(b) article 3 (termination and suspension of appointment);

(c) article 3A(1) (appointment of company subject to conditions);

(d) the introduction to article 3A(2);

(e) article 3A(2)(d); and

(f) article 3A(2)(g).

(4) In article 2(3)—

(a) for "the" after "In respect of", substitute "any"; and

(**a**) 2006 c. 41.
(**b**) S.I. 2007/1766; amended by S.I. 2008/1902, 2010/306 and 2011/2962.

(b) after "that Schedule" insert ", if satisfied that the conditions specified in article 3A(2) are included in the company's constitution".

(5) In article 3(1), for the "it" after "tenure of office where" substitute "the Secretary of State".

(6) In article 3A(1), for "the" after "in respect of", substitute "a".

(7) After article 4(2) (transitional), insert—

"(3) This paragraph applies to any person (whether an individual or a company) appointed as a trustee for a foundation trust by the Commission under this Order prior to amendments made to this Order by the 2012 Order coming into force, where the period of appointment terminates after 30th November 2012.

(4) A person to whom paragraph (3) applies continues to hold office as a trustee for the remainder of the period for which they are appointed, and this Order is to apply to that person, as if that person had been appointed as a trustee by the Secretary of State under this Order.

(5) References to the Commission in the constitution of a company to which paragraph (3) applies, in so far as they complied with article 3A(2)(d) and (g) prior to amendments made to this Order by the 2012 Order coming into force, operate for the purposes of this Order as references to the Secretary of State.".

Revocation of Order

3. The NHS Foundation Trusts (Trust Funds: Appointment of Trustees) Amendment Order 2012(**a**) is revoked.

Signed by authority of the Secretary of State for Health.

Earl Howe
Parliamentary Under-Secretary of State,
Department of Health

26th November 2012

(**a**) S.I. 2012/2891.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the NHS Foundation Trusts (Trust Funds: Appointment of Trustees) Order 2007 (the "Appointment Order"), which provides for the appointment of trustees for the NHS foundation trusts specified in the Schedules, to hold property for the purposes of the NHS foundation trust for which the trustees are appointed or for any other purpose relating to the health service.

This Order amends the Appointment Order such that the duty to make the appointments falls to the Secretary of State and not to the Appointments Commission, and makes transitional provision to provide that previous appointments made by the Appointments Commission continue to be valid and are treated as if they are made by the Secretary of State pursuant to the amended Appointment Order. It also makes clear that the duty to appoint the company listed in column 2 of Schedule 2 as trustee for a foundation trust listed in column 1 of that Schedule will only apply if the conditions specified in article 3A(2) are fulfilled.

This Order also revokes the NHS Foundation Trusts (Trust Funds: Appointment of Trustees) Amendment Order 2012 ("the Amendment Order"), which made the same amendments to the Appointment Order made in this Order but contained drafting errors, prior to the Amendment Order coming into force.

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

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