Ashford and St. Peter's Hospitals NHS
NHS Foundation Trust

TRUST BOARD
27th September 2012

TITLE	**Constitution- Impact of Commencement Orders**
EXECUTIVE SUMMARY	The Trust is required to make changes to its Constitution to reflect the Commencement Orders which introduce a number of changes from 1st October 2012 in respect of the Health and Social Care Act 2012.
BOARD ASSURANCE (Risk) / IMPLICATIONS	The Trust must have, and comply with, a legally compliant Constitution as part of its Terms of Authorisation.
STAKEHOLDER / PATIENT IMPACT AND VIEWS	The draft Constitution was discussed and agreed at the Council of Governor meeting on 11th September 2012.
EQUALITY AND DIVERSITY ISSUES	The membership of the Trust is drawn from the local catchment for the Trust and the Council of Governors monitors that it is representative with regards to age/gender/ethnicity and social representation.
LEGAL ISSUES	The Trust must have a legally compliant Constitution. The changes to the current Constitution have drawn upon the Monitor Model Constitution and have been reviewed by DAC Beachcroft.
The Trust Board is asked to:	Approved the revised Constitution which will then be submitted to Monitor fro approval.
Submitted by:	Jane Gear Head of Corporate Affairs
Date:	12th September 2012
Decision:	For approval.

Ashford and St. Peter's Hospitals NHS
NHS Foundation Trust

TRUST BOARD
27th September 2012
Constitution- Impact of Commencement Orders

1 Background

The Health and Social Care Act received Royal Assent on 27th March 2012. However its implementation is via Commencement Orders.

When the Act is fully implemented the Council of Governors and the Board (and, in certain circumstances, the members) will agree changes to the Constitution.

However until the relevant Commencement Orders are issued, Monitor is, and remains, responsible for authorising changes to the Constitution.

2 Commencement Orders

The Commencement Orders to date (Statutory Instruments 2012/1319 and 2012/1831) which impact on Foundation Trusts do not cover the full scope of the 2012 Act but concern the following:

- The continuation of the body corporate known as Monitor;
- Change from the "Board of Governors" to the "Council of Governors"; (not relevant to Ashford and St Peter's as we already use that name)
- Requirement for the principal purpose (i.e. provision of goods and services for the health service in England) to be stated in the Constitution;
- Introduction of the new legal duty to ensure that income of NHS funded goods and services is greater than income from other sources;
- Introduction of additional oversight and scrutiny by the Council of Governors over activities generating non-NHS income; and
- Replacement of HM Treasury with Secretary of State as regards giving guidance over FT accounts.

3 Private Patient Cap

The other significant change in the Commencement Orders is the repeal of the private patient income cap which is due to commence 1 October 2012.

Monitor will update NHS foundation trusts on the implications of the repeal for the terms of authorisation and Compliance Framework shortly after Monitor's September board meeting. Consequent amendments will be made globally by Monitor to each NHS foundation trust's terms of authorisation. There will be no action required from NHS foundation trusts in relation to this aspect.

4 Approving the revisions

Monitor confirmed on 20 August 2012 that all Foundation Trusts must make changes to their Constitutions to incorporate the sections of the Health and Social Care Act 2012 that have/will come into force on or before 1 October 2012 as a result of the first and second Commencement Orders.

Their requirement is for Foundation Trusts to:

- Make the relevant changes to their Constitutions either using the Monitor Model Core Constitution wording or alternative wording which is compliant with the legislation;
- Secure the internal approvals required for Constitution changes e.g. Board of Directors/Council of Governors;
- Submit to their Monitor Relationship Manager a
    - tracked change and
    - clean version of the Constitution; and
- Submit to their Monitor Relationship Manager confirmation of the internal approvals, including confirmation that each of the relevant meetings was quorate.

Monitor has said that they will not authorise other changes to the Constitution in this process (e.g. our Constitution still talks about initial set up).

The draft Constitution was discussed and agreed at the Council of Governor meeting on 11th September 2012.

5 Epsom

Later on the Board meeting agenda is a proposal on the draft Constitution taking into account both the full implementation of the Act and the Epsom transaction.

This is a separate process. However, the changes presented in this September 2012 version directly mirror the relevant sections of the major Constitution review.

The Trust will need to make changes to its Constitution to allow for the membership areas to be increased. A paragraph (para. 42) has been added to this version of the Consititution for consideration by Monitor. It is not yet clear whether Monitor will want to handle this specific change in this way or via the major review (which cannot be completed until after the consultation process). Monitor may decide to reject this change which can then simply be removed.

6 Legal Compliance

This September 2012 version of the Constitution is based on the changes in the Monitor Model Core Constitution and the review undertaken by DAC Beachcroft (legal advisors).

7 Documentation

A copy of the draft September 2012 Constitution is attached with tracked changes. Also part of the Constitution are the following appendices:

Annex 1 – the public constituency
Annex 2 – the staff constituency
Annex 3 not used
Annex 4 – composition of Council of Governors
Annex 5 – the model election rules
Annex 6 – additional provisions – Council of Governors
Annex 7 – standing orders – Council of Governors
Annex 8 – standing orders – Board of Directors
Annex 9 – further provisions

As none of these documents change in the September 2012 Constitution they have not been attached to keep the volume of paper down. However they are all available for inspection via the Trust Secretary on request.

8 Recommendation

The Board is asked to APPROVE the revised Constitution (September 2012 version).

Following approval by the Trust Board it will be submitted to Monitor.

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ASHFORD AND ST. PETER'S HOSPITALS NHS FOUNDATION TRUST

CONSTITUTION

September 2012

Constitution

This version of the Constitution (September 2012) incorporates 2012 Act amendments which have/will come into force on or before 1 October 2012 as a result of the first and second Commencement Orders (Statutory Instruments 2012/1319 and 2012/1831).

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Paragraph

ANNEX 1 – THE PUBLIC CONSTITUENCY
ANNEX 2 – THE STAFF CONSTITUENCY
ANNEX 3 Not used
ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS
ANNEX 5 – THE MODEL ELECTION RULES
ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS
ANNEX 7 – STANDING ORDERS – COUNCIL OF GOVERNORS
ANNEX 8 – STANDING ORDERS – BOARD OF DIRECTORS
ANNEX 9 – FURTHER PROVISIONS

1. Interpretation and definitions

Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006.

Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.

"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;
"Applicant NHS Trust"	means Ashford and St. Peter's NHS Trust;
"the 2006 Act"	means the National Health Service Act 2006;
"the 2012 Act"	means the Health and Social Care Act 2012
"Appointed Governors"	means the PCT Governors, the Local Authority Governors and the University Governors;
"Appointing Organisation"	Means the organisation responsible for appointing the Appointed Governors, as specified in Annex 4;
"Area of the Trust"	means the area consisting of all the areas specified in Annex 1 as an area for the Public Constituency;
"Board of Directors"	means the Board of Directors of the Trust as constituted in accordance with this Constitution and referred to in paragraph 20 and "Board" shall be construed accordingly;
"Chairman"	means the Chairman of the Trust appointed in accordance with paragraph 22 or paragraph 23 of this Constitution;
"Chief Executive"	means the Chief Officer (and Accounting Officer) of the Trust appointed in accordance with paragraphs 25 or 26 of this Constitution;
"Class"	means one of the five descriptions of individuals who are eligible for Membership of the Staff Constituency in accordance with paragraph 8 of the Constitution;
"Committee"	shall mean a committee appointed by the Trust;
"Committee Member"	shall be persons formally appointed by the Trust to sit on or to chair specific Committees;
"Constituencies"	means the Public Constituencies and the Staff Constituency;

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"Constitution"	means this Constitution of Ashford and St. Peter's NHS Foundation Trust and all annexes to it;
"Council of Governors"	means the Council of Governors of the Trust as constituted in accordance with this Constitution and which shall have the same meaning as the "Board of Governors" in the 2006 Act;
"Deputy Chairman"	Means the Non Executive Director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent for any reason
"Director"	means an Executive Director or Non Executive Director on the Board of Directors;
"Director of Finance and Information"	shall mean the chief finance officer of the Trust;
"Elected Governors"	means the Public Governors and the Staff Governors;
"Executive Director"	means a person appointed as an Executive Director of the Trust under sections15-19 of Schedule 7 of the 2006 Act and in accordance with paragraph 25 of the constitution and who is an officer of the Trust Executive Director of the Trust;
"Epsom Hospital"	Means that part of the Epsom and St. Helier University Hospitals NHS Trust of Wrythe Lane, Carshalton, Surrey, SM5 1AA which is subject to a possible Transfer Order to Ashford and St Peter's Hospitals NHS Foundation Trust
"Finance Director"	means the Director of Finance of the Trust;
"Financial Year"	means:- (a) the period beginning with the date on which the Trust is authorised and ending with the next 31st March; and (b) each successive period of twelve months beginning with 1st April;
"Funds Held On Trust"	shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Schedule 6, Paragraph 8 of the 2006 Act. Such funds may or may not be charitable;
"Governor"	means a Governor on the Council of Governors

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	and being either an Elected Governor or an Appointed Governor;
“Heath Service Body”	means a body which is a health service body for the purpose of Section 9(4) of the 2006 Act;
"Initial Elections"	means the first elections held by the Trust pursuant to this Constitution;
"Initial Elected Governors"	means those Elected Governors who are elected as Governors at the Initial Elections;
“Lead Governor”	means the governor appointed by the Council of Governors whose role is more fully described at Annex 7 paragraph 3
“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 the member of the Council 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 as determined in accordance with paragraph 5 of this Constitution;
“Membership”	means Membership of the Trust through being a Member of one of its constituencies;
"Membership Strategy"	means a document explaining how the Trust will recruit and support an active membership by engaging Members and Governors in the business of the Trust;
“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;
“Motion”	means a formal proposition to be discussed and voted on during the course of a meeting;
“NHS Foundation Trust Code of Governance”	means the Code of Governance published by Monitor in 2010 or such similar or further guidance as Monitor may publish from time to time;
“Nominated Officer”	means an Officer charged with the responsibility for discharging specific tasks within SOs and SFIs;

Deleted: “Independent Regulator” or “Monitor”

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"Non-Executive Director"	means a person appointed as a Non-Executive Director of the Trust under Schedule 7 of the 2006 Act and in accordance with paragraph 20 of the Constitution;
"Officer"	means an employee of the Trust;
"Partnership Organisations"	means those organisations designated as partnership organisations for the purposes of this Constitution specified in Annex 4;
"Partnership Organisation Governor"	means each member of the Council of Governors appointed in accordance with the provisions of this Constitution by each of the Partnership Organisations specified in Annex 4;
"Patients"	means individuals who have attended any of the Trust's premises for care;
"PCT Governor"	means each member of the Council of Governors appointed in accordance with the provisions of this Constitution by each of the Primary Care Trusts specified in Annex 4;
"Primary Care Trust" or "PCT"	means those Primary Care Trusts specified in Annex 4;
"Public Benefit Corporation"	means a body corporate which is constituted in accordance with Schedule 7 of the NHS Act;
"Public Governor"	means a member of the Council of Governors elected by the Members of a Public Constituency;
"Public Constituency"	means a public constituency of the Trust as defined in Annex 1;
"Regulator" or "Monitor"	means the corporate body known as Monitor as provided by Section 61 of the 2012 Act
"Secretary"	means the secretary of the Trust or any other person appointed to perform the duties of the Secretary of the Trust;
"Senior Independent Director"	means a Non-Executive Director nominated to the role of Senior Independent Director in accordance with the provisions of this Constitution;
"SFIs"	means Standing Financial Instructions;
"Staff Classes"	means the classes of the Staff Constituency as specified in Annex 2;
"Staff Constituency"	means that part of the Trust's Membership

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	consisting of the staff of the Trust and other persons as more particularly provided for at paragraph 8 of this Constitution and which is divided into the Staff Classes as specified in Annex 2;
"Staff Governor"	means a member of the Council of Governors elected by a Staff Class;
"Standing Orders (or SOs)"	means whichever of the Standing Orders for the Council of Governors at Annex 7 or the Standing Orders for the Board of Directors at Annex 8 as is relevant;
"Terms of Authorisation"	means the authorisation issued to the Applicant Trust by the Independent Regulator under Section 35 of the 2006 Act;
"the Trust"	means Ashford and St. Peter's NHS Foundation Trust;
"Trust Volunteers"	means those individuals who are eligible to become Members of the Trust Volunteer Staff Class within the Staff Constituency specified in paragraph 5 of Annex 2;
"Trust's Hospital"	means any premises used by the Trust for the provision of goods and services for the purposes of the health service in England falling within the definition of "hospital" in Section 275 of the 2006 Act;

2. Name

The name of the foundation trust is Ashford and St. Peter's Hospitals NHS Foundation Trust (the Trust).

3. Principal purpose

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

3.2 The Trust does not fulfil its principal purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provisions of goods and services for any other purpose.

3.3 The Trust may provide goods and services for any purposes related to:

3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and

3.3.2 the promotion and protection of public health

3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

4. 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.

5. Membership and constituencies

The Trust shall have members, each of whom shall be a member of one of the following constituencies:

5.1 a public constituency and

5.2 a staff constituency

6. Application for membership

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An individual who is eligible to become a member of the Trust may do so on application to the Trust.

7. Public Constituency

7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.

7.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.

7.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

7.4 Further provisions relating to Membership of the Public Constituency are set out in Annex 9

8. Staff Constituency

8.1 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:

8.1.1 he is 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

8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.

8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months, including but not limited to Trust Volunteers.

8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

8.4 The Staff Constituency shall be divided into five (5) descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

8.6 An individual who is:

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8.6.1 eligible to become a member of the Staff Constituency, and

8.6.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

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9. Patients' Constituency

9.1 Not used

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 14 years old 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 9 – Further Provisions.

11. Council of Governors – composition

11.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

11.2 The composition of the Council of Governors is specified in Annex 4.

11.3 The members of the Council 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.

11.4 The Council of Governors shall nominate one of their Governors to be the lead Governor

12. Council of Governors – election of governors

12.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.

12.2. The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the Trust's Authorisation 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 41 of the constitution (amendment of the constitution).

12.4 An election, if contested, shall be by secret ballot.

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13. Council of Governors - tenure

13.1 Subject to the transitional provisions contained in paragraph 1 of Annex 6A in relation to initial Governors 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, subject to the provisions of paragraph 5 of Annex 6A.

13.4 An appointed governor may hold office for a period of up to 3 years.

13.5 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him or if the Appointing Organisation ceases to exist and there is no successor in title to it.

13.6 An appointed governor shall be eligible for re-appointment at the end of his term

13.7 A Governor shall be eligible for re-election or re-appointment as appropriate at the end of his term. A Governor shall not hold office for more than 6 years or 2 terms of office which ever is the least.

13.8 For the purposes of this paragraph 13 ,"year" means the period of 12 months commencing on authorisation or such other date on which the election or appointment of a Governor takes effect.

13.9 Further provisions relating to a Governor's tenure are set out in Annex 6

14. Council of Governors – disqualification and removal

14.1 The following may not become or continue as a member of the Council 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 Council of Governors are set out in Annex 6.

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14.4 The constitution makes provision for the removal of Governors in Annex 6C.

15. Council 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 22.1 or paragraph 23.1 below) or, in his absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 24 below)], shall preside at meetings of the Council of Governors.

15.2 Meetings of the Council of Governors shall be open to members of the public save that members of the public may be excluded from a meeting for grounds specified in Annex 7 Standing Orders for the Council of Governors)

16. Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 7.

17. Council of Governors - conflicts of interest of governors

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 Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council 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. Council of Governors – travel expenses

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

19. Council of Governors – further provisions

Further provisions with respect to the Council 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

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20.2.2 Up to 6 other non-executive directors (excluding the Chairman; and

20.2.3 Up to 6 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 The operation of 20.2 above shall be that at all times at least half of the Board of Directors, excluding the Chairman, shall be Non Executive Directors.

20.9 The Board may determine that the operational directors may attend meetings of the Board of Directors as and when required to provide operational advice and support to assist the Board in the discharge of their responsibilities. For the avoidance of doubt, such operational directors will not be statutory directors under the 2006 Act, nor will they be able to vote and will bear no responsibility or liability for any action or decisions of the Board of Directors.

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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, and

21.2 he is not disqualified by virtue of paragraph 27 below.

22. Board of Directors – appointment and removal of chairman and other non-executive directors

22.1 The Council of Governors at a general meeting of the Board of Governors shall appoint or remove the chairman of the Trust 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 Council of Governors.

22.3 The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 23 below.

23. Board of Directors – appointment of initial chairman and initial other non-executive directors

23.1 The Council of Governors shall appoint the chairman of the applicant NHS Trust as the initial chairman of the Trust, if he wishes to be appointed.

23.2 The power of the Council of Governors to appoint the other non-executive directors of the Trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the Trust any of the non-executive directors of the applicant NHS Trust (other than the Chairman) who wish to be appointed.

23.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 21 above (other than disqualification by virtue of paragraph 27 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

23.4 An individual appointed as the initial chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

23.5 Board of Directors- appointment of Senior Independent Director

The Board shall, following consultation with the Council of Governors, appoint one of the independent non executive directors as a Senior Independent Director to act in accordance with Monitor's Code of Governance and the Board's Standing Orders.

24. Board of Directors – appointment of deputy chairman

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a Deputy Chairman.

25. Board of Directors - appointment and removal of the Chief Executive and other executive directors

25.1 The non-executive directors shall appoint or remove the Chief Executive.

25.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.

25.3 The initial Chief Executive is to be appointed in accordance with paragraph 26 below.

25.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

26. Board of Directors – appointment and removal of initial Chief Executive

26.1 The non-executive directors shall appoint the chief officer of the applicant NHS Trust as the initial Chief Executive of the Trust, if he wishes to be appointed.

26.2 The appointment of the chief officer of the applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.

27. Board of Directors – disqualification

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

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

27.2 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.

27.3 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.

27.4 A person who falls within further grounds for disqualification as set out in Annex 9D

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28. Board of Directors – standing orders

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 8.

29. Board of Directors - conflicts of interest of directors

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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.

30. Board of Directors – remuneration and terms of office

30.1 The Council of Governors at a general meeting of the Council 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.

30.2 The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

30.3 Pending the committee being established by the Council of Governors, the terms and allowances applied by the applicant Trust will apply.

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31. Registers

The Trust shall have:

31.1 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;

31.2 a register of members of the Council of Governors;

31.3 a register of interests of governors;

31.4 a register of directors; and

31.5 a register of interests of the directors.

32. Admission to and removal from the registers

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The Trust will comply with the Public Benefit Corporation (Register of members) Regulations 2004 as amended or updated from time to time.

The Secretary to the Trust shall remove from the Register of Members the name of any member who ceases to be entitled to be a member under the provisions of the constitution.

33. Registers – inspection and copies

33.1 The Trust shall make the registers specified in paragraph 31 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

33.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.

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

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

33.3..2a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

33.4 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.

34. Documents available for public inspection

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

34.1.1 a copy of the current constitution;

34.1.2 a copy of the current authorisation;

34.1.3 a copy of the latest annual accounts and of any report of the auditor on them;

34.1.4 a copy of the latest annual report;

34.1.5 a copy of the latest information as to its forward planning; and

34.1.6 a copy of any notice given under section 52 of the 2006 Act.

34.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

34.3 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.

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35. Auditor

35.1 The Trust shall have an auditor.

35.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

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36. 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.

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37. Accounts

37.1 The Trust must keep proper accounts and proper records in relation to the accounts

37.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts

37.3 The accounts are to be audited by the Trust's auditor.

37.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.

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37.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

38. Annual report, forward plans and non NHS work

38.1 The Trust shall prepare an Annual Report and send it to Monitor.

38.2 The Trust shall give information as to its forward planning in respect of each Financial Year to Monitor.

38.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.

38.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.

38.5 Each forward plan must include information about –

38.5.1. the activities other than the provision of goods and services for the purposes of the Health Service in England that the Trust proposes to carry on, and

38.5.2 the income it expects to receive from doing so.

38.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 42.5.1 the Council of Governors must

38.6.2 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and

38.6.3 notify the Directors of the Trust of its determination.

38.7 A proposal to increase by 5% or more the proportion of the Trust's total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of health service in England may only be implemented the proposal if more than half of the members of Council of Governors of the Trust voting approve its implementation.

39. Meeting of Council of Governors to consider annual accounts and reports

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

39.1 the annual accounts

39.2 any report of the auditor on them

39.3 the annual report.

40. Instruments

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<#>The accounts are to be audited by the Trust's auditor.¶
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37.3 . 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.¶
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37.4 . The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.¶

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40.1 The Trust shall have a seal.

40.2 The seal shall not be affixed except under the authority of the Board of Directors.

41. Amendment of the constitution

41.1 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.

41.1 No proposal for amendment of this Constitution will be submitted to Monitor unless it has first been approved by the Board of Directors who shall have consulted with the Council of Governors before so doing.

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42. Transitional Arrangements for the Membership and the Council of Governors

42.1 Prior to the acquisition date, the Trust shall take those steps necessary in terms of membership which appear necessary or expedient for the purpose of preparing for the acquisition. This will include inviting membership from residents in the proposed extended constituency areas. The Trust will also advise all current members of staff employed by Epsom Hospital and identified as transferring employment to the Trust, that they will become members of the Trust unless they indicate to the Trust that they do not wish to do so or they are disqualified under this Constitution.

42.2 The provisions set out in this Constitution shall terminate when the Trust completes the acquisition of Epsom Hospital by an Order or Orders of the Secretary of State for Health dissolving the Epsom and St. Helier University Hospitals NHS Trust and transferring to the Trust the relevant property and liabilities relating to Epsom Hospital on the completion date of the acquisition.

42.3 The provisions of this Constitution will be superseded by the adoption of a new Constitution on the date that the Trust acquires Epsom Hospital

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