

2009 No. 1385 (W. 141)

**NATIONAL HEALTH
SERVICE, WALES**

**The Public Health Wales National
Health Service Trust (Membership
and Procedure) Regulations 2009**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the Membership and Procedures of the Public Health Wales National Health Service Trust (“the Trust”).

Part 2 of these Regulations make provisions—

- (a) for the maximum number of directors (regulation 2);
- (b) for the appointment and reappointment of directors (regulations 3 and 14 and Schedule 1);
- (c) in relation to the composition and membership of the Trust (regulations 4 to 7);
- (d) in relation to tenure of office, termination of appointment and suspension of directors, and the disqualification for appointment (regulations 8 to 15).

Part 3 contains provisions in relation to proceedings of the Trust including the appointment of a vice-chair, appointment of committees and procedures for meetings.

Part 4 sets out transitional arrangements between the establishment date and operational date of the Trust and makes certain consequential amendments.

A regulatory impact assessment has been prepared in connection with these Regulations. A copy can be obtained from the Welsh Assembly Government, Cathays Park, Cardiff CF10 3NQ.

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SERVICE, WALES**

**The Public Health Wales National
Health Service Trust (Membership
and Procedure) Regulations 2009**

Made 9 June 2009

Laid before the National Assembly for Wales
9 June 2009

Coming into force 1 August 2009

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 203(9) and (10) of and paragraph 4 of Schedule 3 to the National Health Service (Wales) Act 2006⁽¹⁾.

Part I

General

Citation, commencement and interpretation

1.—(1) The title of these Regulations is the Public Health Wales National Health Service Trust (Membership and Procedure) Regulations 2009 and come into force on 1 August 2009.

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

“the Act” (“*y Ddeddf*”) means the National Health Service (Wales) Act 2006;

“appointee” (“*penodai*”) means the chair or a non-executive director of the Trust;

“director” (“*cyfarwyddwr*”) in relation to the Trust includes its chair;

⁽¹⁾ 2006 c.42.

“establishment date” (“*dyddiad sefydlu*”) means 1 August 2009;

“executive director” (“*cyfarwyddwr gweithredol*”) and “non-executive director” (“*cyfarwyddwr anweithredol*”) have the meaning assigned to them in paragraph 3(3) of Schedule 3 to the Act;

“health service body” (“*corff gwasanaeth iechyd*”) means—

- (a) a Strategic Health Authority, a Special Health Authority, a Primary Care Trust, an NHS trust, an NHS foundation trust, a Local Health Board or a PHS body as defined in section 139(6) of the National Health Service Act 2006⁽¹⁾ and section 97(6) of the Act or a contractor which is treated as a health service body pursuant to regulation 10 of the National Health Service (Local Pharmaceutical Services etc) Regulations 2006⁽²⁾;
- (b) a Health Board, a Special Health Board or the Common Services Agency for the Scottish Health Service, respectively constituted under section 2, 10 and 12A of the National Health Service (Scotland) Act 1978⁽³⁾;
- (c) the Scottish Dental Practice Board constituted by Regulations having effect under section 4 of the National Health Service (Scotland) Act 1978;
- (d) the Independent Regulator of NHS Foundation Trusts;

“Independent Regulator of NHS Foundation Trusts” (“*Rheoleiddiwr Annibynnol Ymddiriedolaethau Sefydledig GIG*”) means the body corporate continued in existence by section 31(1) of the National Health Service Act 2006;

“operational date” (“*dyddiad gweithredol*”) has the meaning assigned to it in paragraph 5(5) of Schedule 3 to the Act;

“the 1990 Regulations” (“*Rheoliadau 1990*”) means the National Health Service Trusts (Membership and Procedure) Regulations 1990⁽⁴⁾

“the relevant committee” (“*y pwyllgor perthnasol*”) means a committee of an NHS trust appointed under either regulation 21 or regulation 22 whichever is appropriate;

“the Trust” (“*yr Ymddiriedolaeth*”) means the Public Health Wales National Health Service Trust established by the Public Health Wales National

⁽¹⁾ 2006 c. 41.

⁽²⁾ S.I. 2006/552

⁽³⁾ 1978 c.29.

⁽⁴⁾ S.I. 1990/2024.

Health Service Trust (Establishment) Order 2009⁽¹⁾;

“trade union” (“*undeb llafur*”) has the meaning assigned to it in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992⁽²⁾.

(3) In regulation 24—

“public body” (“*corff cyhoeddus*”) includes—

- (a) any body established for the purposes of carrying on, under national ownership, any industry or part of any industry or undertaking; and
- (b) the governing body of any university, university college or college, school or hall of a university;

“securities” (“*gwarannau*”) means—

- (a) shares or debentures, whether constituting a charge on the assets of the company or other body or not, or rights or interests in any shares or such debentures, or
- (b) rights (whether actual or contingent) in respect of money lent to or deposited with any industrial and provident society or building society;

“shares” (“*cyfranddaliadau*”) means shares in the share capital of a company or other body or the stock of a company or other body.

(4) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation is a reference to the regulation bearing that number in these Regulations, and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

Part II

Membership

Maximum number of directors

2.—(1) The maximum number of directors of the Trust will be 11 excluding the chair.

(2) The Trust may have no more than 6 non-executive directors (excluding the chair), and no more than 5 executive directors.

⁽¹⁾S.I. 2009/ (w.).

⁽²⁾ 1992 c.52

Appointment of directors

3.—(1) The non-executive directors of the Trust will be appointed by the Welsh Ministers in accordance with the provisions of Schedule 1.

(2) The executive directors will be appointed by the relevant committee.

Executive Directors

4.—The executive directors of the Trust will be—

- (a) the chief officer;
- (b) the chief finance officer;
- (c) three other directors appointed by the Trust.

Non-Executive Directors

5.—(1) The non-executive directors of the Trust will include—

- (a) a person nominated by a university in Wales with teaching or research specialism in public health;
- (b) a person nominated by a local authority or local authorities in Wales;
- (c) a person who is an employee or member of a voluntary sector organisation in Wales;
- (d) a person who is an officer of a trade union or other employee representative body representing staff of the Trust.

(2) The Welsh Ministers may determine the nominating local authority or local authorities for the purposes of regulation 5(1)(b).

Persons to be regarded as executive directors

6.—(1) A person who is not an employee of the Trust but who—

- (a) holds a post in a university with a medical or dental school, and also works for the Trust; or
- (b) is seconded from his or her employers to work for the Trust;

is nevertheless, on appointment as a director, to be regarded as an executive director of the Trust appointed under regulation 4(3) rather than a non-executive director of the Trust.

(2) Paragraph (1) does not apply to the non-executive director referred to in paragraph (a) of regulation 5(1).

Joint directors

7. Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for

executive directorship or in relation to which an executive director is to be appointed, those persons will become or be appointed an executive director jointly, and will count for the purposes of regulation 2 as one person.

Tenure of office of chair and directors

8.—(1) Subject to regulation 10, the chair and non-executive directors of the Trust are appointed for such period not exceeding four years as the Welsh Ministers may specify on making the appointment.

(2) Subject to regulation 9, the tenure of office of executive directors, other than the chief officer and chief finance officer, will be for such period as the relevant committee may specify on making the appointment.

Tenure and suspension of tenure of office of executive directors

9.—(1) Subject to regulation 8(2), an executive director of the Trust will hold office—

- (a) if that director is not the chief officer or the chief finance officer, for as long as he or she holds a post in the Trust;
- (b) if that director is the chief officer or the chief finance officer, for as long as he or she holds that post in the Trust.

(2) If the relevant committee is of the opinion that it is not in the interests of the Trust that an executive director of the Trust other than the chief officer or chief finance officer should continue to hold office as director the relevant committee will immediately terminate his or her tenure of office.

(3) If an executive director of the Trust is suspended from his or her post in the Trust that director will be suspended from performing his or her functions as director for the period of his or her suspension.

(4) An executive director other than the chief officer or chief finance officer of the Trust may resign his or her office at any time during the period for which he or she was appointed by giving notice in writing to the relevant committee.

Termination of tenure of office of chair and non-executive directors

10.—(1) The chair or a non-executive director of the Trust may resign his or her office at any time during the period for which he or she was appointed by giving notice in writing to the Welsh Ministers.

(2) Where during his or her period of directorship a non-executive director of the Trust is appointed chair of the Trust, his or her tenure of office as non-executive

director will terminate when his or her appointment as chair takes effect.

(3) If the Welsh Ministers are of the opinion that it is not in the interests of the health service for a person appointed as a chair or non-executive director of the Trust to continue to hold that office, the Welsh Ministers may immediately terminate that person's tenure of office.

(4) If a chair or non-executive director of the Trust has not attended a meeting of the Trust for a period of six months the Welsh Ministers will immediately terminate his or her tenure of office unless the Welsh Ministers are satisfied that—

- (a) the absence was due to a reasonable cause; and
- (b) the chair or non-executive director will be able to attend meetings of the Trust within such period as the Welsh Ministers consider reasonable.

(5) Where a person has been appointed the chair or non-executive director of the Trust—

- (a) if that person becomes disqualified for appointment under regulation 15 the Welsh Ministers will immediately notify him or her in writing of such disqualification; or
- (b) if it comes to the notice of the Welsh Ministers that at the time of that person's appointment he or she was so disqualified, they will immediately declare that the person was not duly appointed and so notify him or her in writing,

and upon receipt of any such notification, his or her tenure of office, if any, will be terminated and that person will cease to act as chair or non-executive director.

(6) A person appointed as chair or non-executive director of the Trust must immediately notify the Trust if that person becomes disqualified for appointment under regulation 15.

(7) If it appears to the Welsh Ministers that the chair or non-executive director of the Trust has failed to comply with regulation 24 (disclosure etc on account of pecuniary interest) they may immediately terminate that person's tenure of office.

(8) Where any one of the non-executive directors referred to respectively in—

- (a) paragraph (c) of regulation 5(1) cease to be a member or employee of the voluntary organisation in Wales;
- (b) paragraph (d) of regulation 5(1) cease to be an officer of the trade union or employee representative body

the Welsh Ministers will terminate his or her appointment as non-executive director.

Suspension of chair and non-executive directors

11.—(1) The Welsh Ministers may suspend an appointee from performing the appointee's functions as chair or director while the Welsh Ministers consider whether—

- (a) to remove the person from office under regulation 10(3) or (7); or
- (b) the person is disqualified for appointment under regulation 15, or was so disqualified at the time of appointment.

(2) The Welsh Ministers will notify a person suspended under paragraph (1) of the decision to suspend, and the decision will take effect upon receipt of such notification.

(3) Subject to paragraphs (4) and (5), a period of suspension under paragraph (1) will not exceed six months.

(4) The Welsh Ministers may at any time review a suspension and will review a suspension after three months if so requested in writing by the person who has been suspended.

(5) On reviewing a suspension, the Welsh Ministers may—

- (a) revoke the suspension, in which case it ceases to have effect; or
- (b) suspend the appointee from performing the appointee's functions as chair or director for a period of not more than six months from the expiry of the current period of suspension.

Suspension: effect on maximum number of directors and on meetings

12.—(1) This regulation applies where an appointee is suspended under regulation 11.

(2) Where this regulation applies —

- (a) references in paragraphs 2(2) and 3(5) of Schedule 2 to the whole number of directors mean the whole number of directors excluding any directors who are suspended under regulation 11;
- (b) references in paragraph 2(3) of Schedule 2 to a director means a director other than a director who is suspended under regulation 11.

Suspension of chair: appointment of vice-chair

13.—(1) This regulation applies where the chair of the Trust is suspended under regulation 11.

(2) If a vice-chair has been appointed under regulation 18 (appointment of vice-chair), that appointment ceases to have effect from the time that the chair is suspended.

(3) The Welsh Ministers may, for the purpose of enabling the proceedings of the Trust to be conducted in the absence of the chair, appoint a non-executive director of the Trust to be vice-chair.

(4) The appointment of a vice-chair under paragraph (3) must be for such a period, not exceeding the shorter of—

- (a) the period for which the chair is suspended; and
- (b) the remainder of the non-executive director's term as a director of the Trust,

as the Welsh Ministers may specify on making the appointment.

(5) When the period for which a person is appointed as vice-chair expires, the Welsh Ministers may re-appoint the person, or appoint another non-executive director, as vice-chair in accordance with paragraph (3).

(6) Any person appointed under paragraph (3) may at any time resign from the office of vice-chair by giving notice in writing to the Welsh Ministers.

(7) The Welsh Ministers may terminate a person's appointment as vice-chair under paragraph (3) if the Welsh Ministers are of the opinion that it would be in the best interests of the Trust for another non-executive director of the Trust to be vice-chair.

(8) If—

- (a) a person resigns from the office of vice-chair under paragraph (6); or
- (b) the Welsh Ministers terminate a person's appointment as vice-chair under paragraph (7),

the Welsh Ministers may appoint another non-executive director as vice-chair in accordance with paragraph (3).

Eligibility for reappointment

14.—(1) Subject to paragraph 3 and regulation 15 the chair or non-executive director of the Trust will, on the termination of the period of his or her tenure of office, be eligible for reappointment.

(2) An executive director of the Trust appointed under regulation 4(3) to whom regulation 6 applies will on the termination of the period of his or her tenure of office be eligible for reappointment.

(3) A person may not hold office as non-executive director for a total period of more than eight years.

Disqualification for appointment of chair and non-executive directors

15.—(1) Subject to regulation 16 a person is disqualified for appointment as the chair or non-executive director of the Trust if—

- (a) that person has within the preceding five years been convicted in the United Kingdom, any of the Channel Islands or the Isle of Man of any offence and has had passed on him or her a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine; or
- (b) that person is the subject of a bankruptcy restrictions order or an interim order or has made a composition or arrangement with creditors; or
- (c) that person has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body; or
- (d) that person is a person whose tenure of office as the chair, member or director or governor of a health service body has been terminated because his or her appointment is not in the interests of the health service or the health service body in question, for non-attendance at meetings or for non-disclosure of a pecuniary interest; or
- (e) that person is a chair, member, director or employee of a health service body other than an NHS foundation trust; or
- (f) that person is a chair, director or employee of an NHS foundation trust; or
- (g) that person is the chair or another member of the Independent Regulator of NHS Foundation Trusts.

(2) For the purposes of paragraph (1)(a) the date of conviction is deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires, or if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of it not being prosecuted.

(3) For the purposes of paragraph (1)(c) a person will not be treated as having been in paid employment by reason only of his or her being chair, member or director or, in the case of an NHS foundation trust his or her being chair, governor, or non-executive director of, the health service body in question.

(4) A person will not be disqualified by paragraph (1)(e) from being the chair or a non-executive director of

the Trust during the period between the date on which it is established and its operational date by virtue of being the chair or a non-executive director of another NHS trust.

Cessation of disqualification

16.—(1) Subject to paragraph (2) where a person is disqualified under regulation 15(1)(c) (dismissed employees) that person may, after the expiry of a period of not less than two years, apply in writing to the Welsh Ministers to remove the disqualification and the Welsh Ministers may direct that the disqualification will cease.

(2) Where the Welsh Ministers refuse an application to remove a disqualification no further application may be made by that person until the expiration of two years from the date of the application.

(3) Where a person is disqualified under regulation 15(1)(d) (certain chairmen and directors whose appointments have been terminated), the disqualification will cease on the expiry of a period of two years or such longer period as the Welsh Ministers specify when terminating his or her period of office but the Welsh Ministers may on application being made to him or her by that person, reduce the period of disqualification.

Part III

Constitution and Proceedings

Appointment of vice-chair

17.—(1) For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the chair, the directors of the Trust may appoint a non-executive director from amongst them to be vice-chair for such a period, not exceeding the remainder of his or her term as non-executive director of the Trust, as they may specify on appointing him or her.

(2) Any non-executive director so elected may at any time resign from the office of vice-chair by giving notice in writing to the chair and the directors of the Trust may thereupon appoint another non-executive director as vice-chair in accordance with paragraph (1).

(3) This regulation does not apply when regulation 13 applies.

Powers of vice-chair

18. Where the chair of the Trust has died or has otherwise ceased to hold office or where he or she has been unable to perform his or her duties as chair owing to illness, absence from England and Wales,

suspension under regulation 11 or any other cause, references to the chair in Schedule 2 will, so long as there is no chair, or the chair is unable to perform his or her duties, be taken to include references to the vice-chair.

Appointment of committees and sub-committees

19.—(1) Subject to regulations 21 and 22 the Trust may appoint committees of the Trust consisting wholly or partly of directors or wholly of persons who are not directors.

(2) A committee appointed under this regulation may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include the directors of the trust) or wholly of persons who are not members of the committee (whether or not they include the directors of the trust).

Arrangements for the exercise of functions

20. Subject to regulations 21 and 22 the Trust may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of regulation 19 subject to such restrictions and conditions as the Trust thinks fit.

Committee for appointing chief officer as director

21. The Trust will appoint a committee whose members will be the chair and non-executive directors of the trust whose function will be to appoint the chief officer as a director of the Trust.

Committee for appointing executive directors other than chief officer

22. The Trust will appoint a committee whose members will be the chair, the non-executive directors and the chief officer whose function will be to appoint the executive directors other than the chief officer .

Meetings and Proceedings

23.—(1) The meetings and proceedings of the Trust must be conducted in accordance with the rules set out in Schedule 2 and with standing orders made under paragraph (2).

(2) Subject to Schedule 2 and to regulation 24 the Trust must make and may vary or revoke standing orders for the regulation of its proceedings and business and provision may be made in such standing orders for the suspension of them.

(3) The Trust may make, vary and revoke standing orders relating to the quorum, proceedings and place of

meetings of a committee or sub-committee but, subject to regulation 24 and to any such standing orders, the quorum, proceedings and place of meeting will be such as the committee or sub-committee may determine.

(4) The proceedings of the Trust will not be invalidated by any vacancy in its membership or by any defect in a director's appointment.

Disability of directors in proceedings on account of pecuniary interest

24.—(1) Subject to the following provisions of this regulation, if a director 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 Trust at which the contract or other matter is the subject of consideration, that director must at the meeting and as soon as practicable after its commencement disclose the fact and must not take part in the consideration and discussion of the contract or other matter or vote on any question with respect to it.

(2) The Welsh Ministers may, subject to such conditions as they may think fit to impose, remove any disability imposed by this regulation, in any case in which it appears to them in the interests of the health service that the disability should be removed.

(3) The Trust may, by standing orders made under regulation 23 provide for the exclusion of a director from a meeting of the trust while any contract, proposed contract, or other matter in which he or she has a pecuniary interest, direct or indirect, is under consideration.

(4) Any remuneration, compensation or allowances payable to a director by virtue of paragraph 11 of Schedule 3 to the Act may not be treated as a pecuniary interest for the purpose of this regulation.

(5) Subject to paragraphs (2) and (6), a director must be treated for the purposes of this regulation as having indirectly a pecuniary interest in a contract, proposed contract or other matter if—

- (a) that director, or a nominee of his or hers, 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) that director 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 or civil partners, the interest of one spouse or civil partner is

deemed for the purpose of this regulation to be also an interest of the other.

(6) A director will not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only—

- (a) that director's membership of a company or other body if he or she 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 or she is connected as mentioned in paragraph (5) which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

(7) Where a director—

- (a) has an indirect pecuniary interest in a 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 or she has the beneficial interest does not exceed one hundredth of the total issued share capital of that class,

this regulation will not prohibit that director from taking part in consideration or discussion of the contract or other matter or from voting on any question in respect to it without prejudice however to his or her duty to disclose his or her interest.

(8) This regulation applies to a committee or sub-committee of the Trust as it applies to the Trust and applies to any member of any such committee or sub-committee (whether or not that person is also a director of the trust) as it applies to a director of the Trust.

Transitional Provision

25. Between the establishment date and the operational date paragraph 3(5) of Schedule 2 applies as if it read—

“No business may be transacted at a meeting of the Trust unless the chair and one non-executive director are present or two non-executive directors are present.”

Consequential amendments

26.—(1) In regulation 1(2) of the 1990 Regulations insert the following definition in the appropriate place—

““the Public Health Wales National Health Service Trust” means the NHS trust established by the Public Health Wales National Health Service Trust (Establishment) Order 2009.”

(2) Insert an additional regulation in the 1990 Regulations immediately after regulation 1 of those Regulations—

“1A The Public Health Wales National Health Service Trust

These Regulations do not apply to the Public Health Wales National Health Service Trust.”

Edwina Hart

Minister for Health and Social Services, one of the Welsh Ministers

9 June 2009

SCHEDULE 1
PROCEDURES FOR APPOINTMENT
OF THE CHAIR AND NON-
EXECUTIVE DIRECTORS

Regulation 3(1)

1. This Schedule applies to the selection and appointment of the chair and non-executive directors.

2. The Welsh Ministers will ensure that appropriate arrangements are in place for the selection and appointment of persons as members and that those arrangements take into account —

- (a) the principles from time to time laid down by the Commissioner for Public Appointments and in the Welsh Minister's Code of Practice for Ministerial Appointments to Public Bodies;
- (b) the requirement that the selection and appointment be open and transparent; and
- (c) the requirement of fair and open competition in the selection and appointment.

SCHEDULE 2

Rules as to Meetings and Proceedings of the Trust

Regulation 23(1)

1. The first meeting of the Trust will be held on such day and at such place as may be fixed by the chair and he or she is responsible for convening the meeting.

2.—(1) The chair may call a meeting of the Trust at any time.

(2) If the chair refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of directors, has been presented to him or her or if, without so refusing, the chair does not call a meeting within seven days after such requisition has been presented to him or her, such one third or more members must immediately call a meeting.

(3) Before each meeting of the Trust, a notice of the meeting, specifying the business proposed to be transacted at it and signed by the chair, or by an officer of the Trust authorised by the chair to sign on his or her behalf, must be delivered to every director or sent by post to the usual place of residence of such director so as to be available to each director at least ten days before the meeting.

(4) Lack of service of the notice on any director does not affect the validity of a meeting.

(5) In the case of a meeting called by directors in default of the chair, the notice must be signed by those directors and no business may be transacted at the meeting other than that specified in the notice.

3.—(1) At any meeting of the Trust the chair, if present, will preside.

(2) If the chair and vice-chair (if any) are absent such non-executive director as the directors present may choose will preside.

(3) Every question at a meeting will be determined by a majority of the votes of the directors present voting on the question and, in the case of any equality of votes, the person presiding will have a second casting vote.

(4) The names of the directors present at the meeting must be recorded.

(5) No business may be transacted at a meeting of the Trust unless one third of the whole number of directors are present including on or after the operational date at least one executive director and two non-executive directors.

(6) The minutes of the proceedings of a meeting must be drawn up and submitted for agreement at the next

ensuing meeting where they will be signed by the person presiding at it.

4. Where a post of executive director is shared by more than one person in pursuance of regulation 7—

- (a) both persons are entitled to attend meetings of the Trust;
- (b) either of those persons will be eligible to vote in the case of agreement between them;
- (c) in the case of disagreement between them no vote will be cast;
- (d) the presence of either or both of those persons may count as one person for the purpose of paragraph 3(5) of this Schedule.