



# NHS England Standing Orders

# NHS England Standing Orders

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## Introduction

NHS England leads the NHS in England to deliver high quality services for all. It, sets ~~it~~ the strategic direction through the NHS Long Term Plan and funds key priorities for improvement. NHS England with the Secretary of State for Health and Social Care has the legal duty to promote a comprehensive health service in England. NHS England is governed by a Board which provides strategic leadership and accountability to government, Parliament and the public. The Board is supported by committees which undertake detailed scrutiny in their respective areas of responsibility and provide it with regular reporting and formal assurance.

## SO1 Purpose

**1.1** These Standing Orders form a central part of NHS England's Governance Manual. Together with documents such as the Standing Financial Instructions and the Scheme of Delegation, they fulfil the dual role of protecting NHS England's interests and protecting Officers from possible accusation that they have acted less than properly (provided that Officers have followed the correct procedures outlined in the relevant document). All Executive and Non-Executive Members and all Officers should be aware of the existence of these documents, and be familiar with their detailed provisions.

### 1.2 Interpretation

- 1.2.1 Should any difficulties arise regarding the interpretation or application of any of these Standing Orders, the advice of the Secretary must be sought before acting.
- 1.2.2 Where there is a conflict between the Standing Orders and/or Scheme of Delegation in relation to the currently published Standing Financial Instructions, the Standing Orders and Scheme Delegation will take precedence in all matters of interpretation.

### 1.3 Statutory Framework

- 1.3.1 NHS England, ~~formerly legally named the National Health Service Commissioning Board~~, is a statutory body established under section 1H of the National Health Service Act 2006 (as amended). It was originally named as the NHS Commissioning Board but and subsequently renamed under Part 1 of the Health and Care Act 2022. The functions of the bodies known as NHS Digital and Health Education England were transferred to it by regulations made under section 103 of the Health and Care Act 2022.
- 1.3.2 The principal place of business of NHS England is Quarry House, Quarry Hill, Leeds LS2 7UE.
- 1.3.3 NHS England is governed by the National Health Service Act 2006 and (as amended), the Health & Social Care Act 2012 (both as amended, by the Health and Care Act 2022 and other earlier Acts), the Care Act 2014 (each as amended by), and by secondary legislation made under these Acts. In addition, as a non-departmental public body, NHS England is party to a Framework Agreement with the Department of

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Health and Social Care and the objectives and requirements of NHS England ~~for each financial year~~ are set out in the Secretary of State for Health and Social Care’s Mandate to NHS England, in accordance with section 13A of the National Health Service Act 2006 (as amended) ~~and amended by the Health and Care Act 2022~~.

- 1.3.4 The functions of NHS England are conferred by the Acts and secondary legislation referred to above. ~~They the National Health Service Act 2006 (as amended), the Health & Social Care Act 2012, the Health and Care Act 2022 and by secondary legislation made under these Acts and~~ are primarily set out in:
- ~~section 1H and, Chapter 4A-A1 of Part 2 of,~~ and Schedule A1 ~~of to,~~ the National Health Service Act 2006 (as amended); ~~and~~
  - Chapters 3 and 4 of Part 3, and Chapters 2 and 3 of Part 9, of the Health and Social Care Act 2012; and
  - Chapter 1 of Part 3 of the Care Act 2014.

~~–When exercising its functions, NHS England shall act in accordance with the duties imposed on it under the National Health Service Act 2006 (as amended), and the Health & Social Care Act 2012, and the Care Act 2014 (each as amended), the Health and Care Act 2022 and other relevant legislation.~~

## 1.4 NHS Framework

- 1.4.1 In addition to the statutory requirements, the Secretary of State for Health and Social Care through the Department of Health and Social Care issues further directions requirements and guidance, primarily in the form of the Mandate.
- 1.4.2 Other documents of particular significance are:
- The Code of Accountability for NHS Boards;
  - The Code of Conduct for NHS Boards;
  - The Code of Conduct for NHS Managers; and,
  - The Code of Practice on Openness in the NHS.

## 1.5 Delegation of Powers

- 1.5.1 SO7 summarises the Board’s powers under the National Health Service Act 2006 (as amended) to “arrange for the exercise of any of its functions by: a Committee or Sub-committee appointed by virtue of SO6; a Non-Executive Member or Employee (including any Executive Member) of NHS England; or, another body as defined in SO6.2.1”.
- 1.5.2 The Board also has the power to arrange for its functions to be exercised by or jointly with certain specified bodies. This is set out in SO6.2.1.
- 1.5.3 The Scheme of Delegation has effect as if incorporated into these Standing Orders. Together with the Standing Financial Instructions, they are referred to as the Governance Manual.

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- 1.5.4 Employees only have the authority to exercise powers specifically delegated to them, as summarised in Scheme of Delegation or as detailed in an Operating Framework, approved in accordance with SO7.5 or in an emergency by variation in accordance with SO7.3.1.
- 1.5.5 Wherever the title Chief Executive, Chief Financial Officer, or other Officer position is used in these Standing Orders, it will be deemed to include such other Employees as have been duly authorised to deputise, in accordance with the principles of SO7.4.5.

## 1.6 Failure to comply with Standing Orders, Standing Financial Instructions and the Scheme of Delegation

- 1.6.1 Failure to comply with these Standing Orders, the Standing Financial Instructions and the Scheme of Delegation may result in disciplinary action in accordance with the NHS England disciplinary procedure. Such disciplinary action may include termination of employment. Any financial or other irregularities or impropriety in relation to these instructions, which involve evidence or suspicion of fraud, bribery or corruption will be reported to NHS Counter Fraud Authority in accordance with SFI 4.1.10, with a view to a criminal investigation being conducted and potential prosecution being sought.
- 1.6.2 If for any reason these Standing Orders, Standing Financial Instructions or the Scheme of Delegation are not complied with, including the exercise of powers without proper authority, full details of the non-compliance, any justification for non-compliance and the circumstances around the non-compliance must be reported to the next formal meeting of the Audit and Risk Assurance Committee for action or ratification.
- 1.6.3 Notwithstanding the above, all Board Members ~~of the Board~~ and all Officers must report any instance of non-compliance with the Governance Manual to the Chief Executive, Chief Financial Officer or Board Secretariat immediately they become aware of it.

## SO2 Scope

### 2.1 Officers Within the Scope of these Standing Orders

- 2.1.1 All officers of NHS England and of hosted organisations, without exception, are within the scope of these Standing Orders, including and without limitation:
  - 2.1.1.1 NHS England National and Regional teams;
  - 2.1.1.2 All Commissioning Support Units;
  - 2.1.1.3 NHS Interim and Management Support (NHS IMAS);
  - 2.1.1.4 Strategic Clinical Networks;
  - ~~2.1.1.5 Clinical Senates; and~~
  - ~~2.1.1.6~~ 2.1.1.5 NHS Leadership Academy;
  - ~~2.1.1.7~~ 2.1.1.6 Employees of NHS England under Health and Social Care devolution arrangements

## SO3 Definitions

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3.1 Save as otherwise permitted by law, at any meeting the Chair’s interpretation of these Standing Orders (on which the Chief Executive or Secretary may advise them) shall be final.

3.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this document shall have the same meaning as set out in the National Health Service Act 2006 ~~(as amended), or,~~ the Health & Social Care Act 2012, the Care Act 2014 (both each as amended) Health and Care Act 2022 or in any secondary legislation made under ~~the National Health Service Act 2006 (as amended), the Health & Social Care Act 2012, the Health and Care Act 2022~~ those Acts and the following defined terms shall have the specific meanings given to them below:

**Accounting Officer** means the person responsible and accountable for resources within the control of NHS England, in accordance with the requirements of the HM Treasury Guidance *Managing Public Money*. Under paragraph 15 of Schedule A1 ~~to~~ the NHS Act 2006 the Accounting Officer for NHS England is the Chief Executive.

**Board** means the ~~Chair,~~ Executive Members and Non-Executive Members of NHS England collectively ~~as a body, and operating as a unitary~~ as a unitary board, with the non-executive and executive members directors-making decisions as a single group acknowledging they share the same responsibility and liability.

**Chair** means the person appointed by the Secretary of State for Health and Social Care under paragraph 2(1)(a) of Schedule A1 ~~to~~ the NHS Act 2006, ~~to lead the Board and to ensure that it successfully discharges its overall responsibility for NHS England as a whole. In relation to meetings of the Board~~

In addition, a reference to the ~~the~~ expression “Chair”:

- in relation to meetings of the Board ~~shall be deemed to include the Deputy Chair(s) if if~~ the Chair is absent from ~~at~~ the meeting or is otherwise unavailable, ~~shall be deemed to include the Deputy Chair(s) or such other person appointed in accordance with SO5.10; and-~~
- where these Standing Orders are applied to a Committee or Sub-committee, shall be read as a reference to the Chair of the Committee or Sub-Committee, as the context permits.

**Chief Executive** means the Chief Executive of NHS England appointed pursuant to paragraph 3 of Schedule A1 ~~to~~ the NHS Act 2006.

**Committee** means a committee appointed by the Board, which reports to the Board.

~~Committee Chair~~ the term “Chair” is to be read as a reference to the Chair of the Committee or Sub-committee, as the context permits.

**Committee in Common** Means where two or more organisations establish their own committees, which meet at the same time and place with a shared remit and agenda, with the aim of promoting alignment between the organisations yet reserving to themselves their own decisions

**Committee member** means a person appointed by the Board to sit on or to chair a specific Committee

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Devolution Chief Officer	means the senior officer leading a devolution area recognised by NHS England
Deputy Chair(s)	means the Non-Executive Member(s) appointed by the Board to take on the Chair's duties if the Chair is absent for any reason
Employee	means a person holding a contract of employment with <u>, or seconded to,</u> NHS England <u>(-and does not include excludes Non-Executive Members, or members of Committees or Sub-Committee who are neither employed by nor seconded to NHS England).</u>
Executive Member	means a <del>voting</del> Member of the Board appointed under paragraph 3 of Schedule A1 <del>to</del> <u>of</u> the NHS Act 2006 <u>(and does not include an Officer attending the Board in a non-voting capacity),</u> currently: Chief Executive Officer Chief Operating Officer Chief Financial Officer Chief Nursing Officer National Medical Director
<b>Executives</b>	<del>means Executive Members, other National Directors and Regional Directors that have been invited by the Chief Executive Officer to be a member of the NHS Executive</del>
Financial Directions	<del>a</del> <u>As</u> directed by the Secretary of State for Health and Social Care in accordance with <u>sections 223B to 223E and section 223O of, and</u> Schedule A1 <del>of to,</del> the NHS Act 2006 <del>and Part 1 of the Health and Care Act 2022</del> <u>(as amended).</u>
Funds held on Trust	means those funds which the Board holds on the date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept under powers derived under section 13Y <u>of,</u> and paragraph 11, Schedule A1 <u>to, of</u> the NHS Act 2006. Such funds may or may not be charitable.
HCA 2022	means Health and Care Act 2022.
HSCA 2012	means Health and Social Care Act 2012 <u>(as amended).</u>
ICS	Integrated Care System.
Member <u>(or Board Member)</u>	means a Non-Executive Member <del>or or,</del> Executive Member of the Board. <u>Where these Standing Orders are applied to a Committee or Sub-committee, a reference to a "Member" is to read as a reference to -a member of the Committee or Sub-committee,</u> as the context permits. <del>Member in relation to the Board does not include its Chair.</del>
Motion	means a formal proposition to be discussed and voted on during the course of a meeting of the Board.
National Director	means a director of NHS England who is a member of the NHS Executive Group.
NHS Act 2006	means National Health Service Act 2006 (as amended).
Nominated Officer	means an Officer charged with the responsibility for discharging a specific task within <u>SQes</u> , Scheme of Delegation and/or SFIs.

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Non-Executive Member	means a <del>voting</del> Member of the Board who is appointed under paragraph 2(1) (a) <del>or and 2(1)</del> (b) <del>of of</del> Schedule A1 <del>to of</del> the NHS Act 2006 <del>(and does not include an individual appointed as a non-voting “associate” member/director).</del>
Officer	means an Employee or any other person holding a paid appointment or office with NHS England including its hosted bodies.
Operating Framework	sets out the planning, performance and financial requirements for organisations and the basis on which they will be held to account.
Scheme of Delegation	document setting out the reservation of powers to the Board & delegation of powers.
Secretary	means a person appointed to provide advice on corporate governance issues to the Board and the Chair, and to monitor the Board's compliance with the law, Standing Orders, Scheme of Delegation and Standing Financial Instructions, and guidance issued by the Secretary of State for Health and Social Care.
Secretary of State for Health and Social Care	Means the Secretary of State for Health and Social <u>Care</u> or, where relevant within the context of legislative powers to direct or require anything of NHS England, any Secretary of State so empowered.
SFI	means Standing Financial Instructions.
SO	means Standing Orders.
Sub-Committee	means a Sub-Committee appointed by the Board, which reports to a Committee of the Board.

3.3 ~~3.3~~—Within this document, words imparting any gender include any other gender. Words in the singular include the plural and words in the plural include the singular.

## SO4 The Board

### 4.1 Composition of the Board

4.1.1 In accordance with paragraph 2 of Schedule A1 ~~to of~~ the NHS Act 2006 the composition of the Board will be:

- The Chair of the Board (appointed by the Secretary of State for Health and Social Care);
- At least five other Members (appointed by the Secretary of State for Health and Social Care), together with the Chair, are the Non-Executive Members of the Board; and,
- The Chief Executive and other Executive Members (the number of Executive Members will be less than the number of Non-Executive Members).

### 4.2 Appointment of the Chair and Members of the Board

4.2.1 Paragraph 2(1)-(a) of Schedule A1 ~~to of~~ the NHS Act 2006 provides that the Chair is appointed by the Secretary of State for Health and Social Care, as are

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the other Non-Executive Members (paragraph 2(1)-(b) of Schedule A1 ~~to~~ the NHS Act 2006).

4.2.2 The appointment of the Chief Executive and other Executive Members of the Board are as set out in paragraph 3 of Schedule A1 to the NHS Act 2006.

### 4.3 Terms of Office of the Chair and other Non-Executive Members

4.3.1 ~~The terms of office and arrangements for suspension of~~ The terms of office of the Chair and other Non-Executive Members are provided for as set out in paragraphs 4, 5 and 6 of Schedule A1 ~~of to~~ the NHS Act 2006. In particular, each member holds office in accordance with their terms of appointment.

### 4.4 Appointment and Powers of the Deputy Chair

4.4.1 Subject to SO4.4.2 below, the Chair may appoint other Non-Executive Members as Deputy Chairs. Any appointment will be for such period not exceeding the remainder of the term as a Non-Executive Member of the Board as specified on appointment.

4.4.2 Any Non-Executive Member so appointed may resign at any time from the office of Deputy Chair by giving notice in writing to the Chair. In the event of a resignation, the Chair may appoint another Non-Executive Member as Deputy Chair in accordance with the provisions of SO4.4.1 above.

4.4.3 Where the Chair of the Board ~~has died or~~ has ceased to hold office, or where they are unable to perform their duties as Chair owing to illness or any other cause, one of the Deputy Chairs shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be. References to the Chair in these Standing Orders shall, so long as there is no Chair able to perform those duties, be taken to include references to the Vice-Chair.

### 4.5 Appointment of a Senior Independent Director

4.5.1 Subject to SO4.5.2, the Board may appoint a Non-Executive Member as Senior Independent Director or may designate an appointed Deputy Chair to this role. Any appointment will be for such period not exceeding the remainder of the term as a Non-Executive Member of the Board as specified on appointment.

4.5.2 Any Non-Executive Member so appointed may resign at any time from the office of Senior Independent Director by giving notice in writing to the Chair. In the event of a resignation, the Board may appoint another Non-Executive Member as Senior Independent Director in accordance with the provisions of SO4.5.1 above.

### 4.6 Appointment of a Deputy Chief Executive

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- 4.6.1 Subject to SO4.6.2, the Board may appoint an Executive Member as Deputy Chief Executive. Any appointment will be for such period not exceeding the remainder of the term as an Executive Member as specified on appointment.
- 4.6.2 Any person so appointed may resign at any time from the office of Deputy Chief Executive by giving notice in writing to the Chair. In the event of a resignation, the Board may appoint another Executive Member as Deputy Chief Executive in accordance with the provisions of SO4.6.1 above.

## 4.7 Joint Members

- 4.7.1 Where more than one person is appointed jointly to a post on the Board which qualifies the holder for Executive Membership or in relation to which an Executive Member is to be appointed, those persons will become appointed as an Executive Member jointly, and will count for the purpose of SO4.1 as one person.
- 4.7.2 Where the office of a Member of the Board is shared jointly by more than one person:
- 4.7.2.1 Either or both of those persons may attend or take part in meetings of the Board;
- 4.7.2.1.1 If both are present at a meeting they should cast one vote if they agree;
- 4.7.2.1.2 In the case of disagreements, no vote should be cast; and,
- 4.7.2.1.3 The presence of either or both of those persons should count as the presence of one person for the purposes of SO5.10: Quorum.

## 4.8 Role of Members

- 4.8.1 The Board will function as a corporate decision-making body unitary board – a single body consisting of both executives and non-executives, which makes strategic and other decisions of NHS England. Executive and Non-Executive Members will be full and equal members and acknowledge they share the same responsibility and liability for the Board's decisions. Their role as members of the Board will be to consider the key strategic and managerial issues facing the Board in carrying out its statutory and other functions.
- 4.8.1.1 **Executive Members**
- 4.8.1.1.1 Executive Members will exercise their authority within the terms of these Standing Orders, Standing Financial Instructions and the Scheme of Delegation.
- 4.8.1.2 **Chief Executive**
- 4.8.1.2.1 The Chief Executive is responsible for the overall performance of the executive functions of NHS England.

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- 4.8.1.2.2 Under paragraph 15(4), Schedule A1 ~~of to~~ the NHS Act 2006, the Chief Executive is the Accounting Officer for NHS England.
- 4.8.1.2.3 As Accounting Officer, the Chief Executive has the responsibilities as set out in HM Treasury Guidance *Managing Public Money*, including ensuring that NHS England acts in accordance with the legislative framework that established it and with the terms of the Framework Agreement agreed between NHS England and the Department of Health and Social Care.
- 4.8.1.2.4 The Chief Executive, together with the Chief Financial Officer, is responsible for ensuring the discharge of NHS England's obligations under any Financial Directions from the Secretary of State for Health and Social Care.

4.8.1.3 **Chief Financial Officer**

- 4.8.1.3.1 The Chief Financial Officer is responsible for the provision of financial advice to NHS England and to its Members.
- 4.8.1.3.2 The Chief Financial Officer is responsible for the supervision of financial control and accounting systems.
- 4.8.1.3.3 The Chief Financial Officer, together with the Chief Executive, is responsible for ensuring the discharge of NHS England's obligations under any Financial Directions.

4.8.1.4 **Non-Executive Members (other than the Chair)**

- 4.8.1.4.1 The Non-Executive Members other than the Chair will not be granted nor shall they seek to exercise any individual executive powers on behalf of NHS England.
- 4.8.1.4.2 They may, however, exercise collective authority when acting as Members of the Board, or when chairing a Committee of the Board that has delegated powers.

4.8.1.5 **Chair**

- 4.8.1.5.1 The Chair is responsible for the operation of the Board.
- 4.8.1.5.2 The Chair will chair all Board meetings, when present.

~~4.8.1.5.3 The Chair has certain delegated executive powers.~~

~~4.8.1.5.4~~ 4.8.1.5.3 The Chair will comply with their terms of appointment and with these Standing Orders.

~~4.8.1.5.5~~ 4.8.1.5.4 The Chair will take responsibility either directly or indirectly for the appropriate induction of Non-Executive Members, their portfolios of interests

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and assignments, ~~and~~ their performance, and their ongoing development to enable them to exercise their duties effectively.

~~4.8.1.5.6~~4.8.1.5.5 The Chair will work in close harmony with the Chief Executive.

~~4.8.1.5.7~~4.8.1.5.6 The Chair will ensure that the Board discusses key and appropriate issues in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions.

## 4.9 Corporate Role of the Board

4.9.1 The Board is the senior decision-making structure in NHS England. It provides strategic leadership to the organisation and, in support of that:

- sets the overall direction of NHS England, within the context of the NHS Mandate from Government;
- approves the business plan, which is designed to support achievement of NHS England's strategic objectives and monitors NHS England's performance against it;
- holds the NHS Executive to account for this performance and for the proper running of the organisation (including operating in accordance with legal and government requirements);
- determines which decisions it will make and which it will delegate to the Executive via the Scheme of Delegation;
- ensures high standards of corporate governance and personal conduct;
- monitors the performance of the group against core financial and operational objectives;
- provides effective financial stewardship; and
- promotes effective dialogue between NHS England, its partners, ICBs and providers of healthcare and communities served by the commissioning system.

4.9.2 All business will be conducted in the name of the Board.

4.9.3 The functions conferred on the Board will be exercised by the Board meeting in public session, except as otherwise provided for in SO5.

## 4.10 Scheme of Delegation

4.10.1 The Board has resolved that there are certain powers and decisions related to statutory functions that the Board may only exercise in formal session. These powers and decisions are described in the Scheme of Delegation and have effect as if incorporated into these Standing Orders. Those powers and decisions not reserved to the Board are delegated to Officers and other bodies all as described in the Scheme of Delegation and have effect as if incorporated into these Standing Orders.

## 4.11 Lead Roles for Board Members

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- 4.11.1 The Chair will ensure that the designation of lead roles or appointments of Board Members as required by statute, the Department of Health and Social Care or other guidance, are made in accordance with relevant requirements.

## SO5 Meetings of the Board

### 5.1 Calling Meetings

- 5.1.1 Meetings of the Board will be held at such times, and places, as the Board may determine and there will be no fewer than four meetings per year.
- 5.1.2 Meetings of the Board may be called by the Secretary, or by the Chair, or by four Members (other than the Chair) who give written notice to the Secretary specifying the business to be carried out.
- 5.1.3 If the Chair refuses, or fails, to call a meeting within seven days of a written notice being presented, the Members signing the notice may forthwith call a meeting.
- 5.1.4 Other, or emergency, meetings of the Members may be called (by appropriate means including, without limitation, by email or any other electronic means).

### 5.2 Notice of Meetings and the Business to be Transacted

- 5.2.1 The Secretary will send (by appropriate means including, without limitation, by email or any other electronic means) a written notice of the dates, times and locations of meetings to all Members as soon as possible after receipt of such a request.
- 5.2.2 Subject to SO5.2.3, the Secretary will call a meeting on at least fourteen days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or four other Members, whichever is the case, may call such a meeting.
- 5.2.3 In special circumstances, where there is an urgent need to call a meeting, the Secretary or Chair may decide that a meeting will be called on less than fourteen days' notice and in such circumstances as much notice as possible will be given of the meeting to each of the Members.
- 5.2.4 Subject to SO5.2.5 below, lack of service of the notice on any Member will not affect the validity of a meeting.
- 5.2.5 Failure to serve such a notice specifying the business on more than two Members other than the Chair will invalidate the meeting. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post or, where the notice is sent by email, at the time at which the email is sent.

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- 5.2.6 A Member other than the Chair desiring a matter to be included on an agenda should make the request in writing to the Chair at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.
- 5.2.7 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under SO5.6.
- 5.2.8 Before each meeting of the Board a public notice of the time and place of the meeting and the public part of the agenda will be made publicly available at least three clear days before the meeting, in accordance with the requirements of section 1(4)(a) of the Public Bodies (Admission to Meetings) Act 1960.

### 5.3 Agenda and Supporting Papers

- 5.3.1 Before each meeting of the Board, an agenda of the meeting specifying the business proposed to be transacted at it and any supporting papers will usually be made available to each Member five working days before the meeting, other than in exceptional circumstances and with the express agreement of the Chair. This standard will also apply to the Committees and Sub-Committees, unless otherwise stated in their terms of reference.
- 5.3.2 The Board may determine that certain matters will appear on every agenda for a meeting of the Board and will be addressed prior to any other business being conducted. Such matters may be identified within these Standing Orders or following subsequent resolution will be listed in an Appendix to these Standing Orders.

### ~~5.4 Petitions~~

- ~~5.4.1 The Secretary will include the petitions received as an item on the agenda at no more than six monthly intervals.~~

### ~~5.5.4~~ Notice of Motion

- ~~5.5.15.4.1~~ Subject to SO5.7 and SO5.9, a Member (other than the Chair) ~~of the Board~~ wishing to move or amend a Motion should send a written notice at least ten clear days before the meeting to the Chair, who will insert in the agenda for the meeting all notices so received subject to the notice being permissible under these Standing Orders.
- ~~5.5.25.4.2~~ This Standing Order will not prevent any Motion being withdrawn or moved during the meeting, without notice, on any business mentioned on the agenda.

### ~~5.6.5~~ Emergency Motions

- ~~5.6.15.5.1~~ Subject to the agreement of the Chair and to SO5.7, a Member of the Board may give written notice of an emergency Motion after the issue of the notice of meeting and agenda, and up to one hour before the time fixed for the meeting.

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The notice should state the grounds of urgency. If the notice is in order, it will be declared to the Board at the commencement of the business of the meeting as an additional item to be included in the agenda. The Chair's decision to include the item will be final.

## **5.75.6 Motions: Procedure at and During a Meeting**

### **5.7.15.6.1 Who may propose**

**5.7.1.15.6.1.1** The Chair of the meeting or any other Member present may propose a Motion. Another Member shall also second it.

### **5.7.25.6.2 Procedure**

**5.7.2.15.6.2.1** The mover of a Motion will have a right of reply at the close of any discussion on the Motion or any amendment thereto. When a Motion is under discussion or immediately prior to discussion it will be open to a Member to move:

**5.7.2.1.15.6.2.1.1** An amendment to the Motion;

**5.7.2.1.25.6.2.1.2** The adjournment of the discussion or the meeting;

**5.7.2.1.35.6.2.1.3** That the meeting proceed to the next business\*;

**5.7.2.1.45.6.2.1.4** The appointment of an ad hoc Committee to deal with a specific item of business; or,

**5.7.2.1.55.6.2.1.5** That the business be now put\*.

**5.7.2.25.6.2.2** In the case of paragraphs denoted by an \* above, Motions may only be put by a Member who has not previously taken part in the debate. No amendment to the Motion will be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the Motion.

## **5.85.7 Items for approval by correspondence**

5.8.1 Where appropriate, or where an item of business cannot be deferred to the next scheduled Board meeting, the Boards can approve an item by correspondence, by written or electronic means. Approval of an item sent by correspondence will require one third of the whole numbers of Board Members, including the Chair and at least one Executive Member and one other Non-Executive Member. Non-Executive Members should be in the majority and a majority of Non-Executive Members.

## **5.95.8 Motion to Rescind a Resolution**

**5.9.15.8.1** Notice of Motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months should bear the signature of the Member who gives it and also the signature of three other Members. Before considering any such Motion of which notice will have been given, the Board may refer the matter to any appropriate Committee or to the Chief Executive for recommendation.

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~~5.9.25.8.2~~ When the Board has dealt with any such Motion, it will not be competent for any Member other than the Chair to propose a Motion to the same effect within six months. This Standing Order does not apply to Motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

### ~~5.105.9~~ Chair of Meeting

~~5.10.15.9.1~~ At any meeting of the Board the Chair, if present, will preside. If the Chair is absent from the meeting one of the Deputy Chairs, if the Board has made such appointments and if present, will preside.

~~5.10.25.9.2~~ In the absence of the Chair and the Deputy Chairs, a Non-Executive Director chosen by the Chair before the meeting or by the other Members at the start of a meeting will preside.

### ~~5.115.10~~ Chair's Ruling

~~5.11.15.10.1~~ The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions), and their interpretation at the meeting of these Standing Orders and Standing Financial Instructions will be final.

### ~~5.125.11~~ Quorum

~~5.12.15.11.1~~ No business will be transacted at a meeting unless at least one-third of the whole number of Members ~~of the Board~~, including the Chair (or any person presiding) and at least one Executive Member and one other Non-Executive Member. Non-Executive Members should be in the majority.

~~5.12.25.11.2~~ An Officer in attendance for an Executive Member but without formal acting up status may not count towards the quorum.

~~5.12.35.11.3~~ If the Chair or an-other Member has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO9) that person will 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 will be recorded in the minutes of the meeting. The meeting will then proceed to the next business.

### ~~5.135.12~~ Voting

~~5.13.15.12.1~~ Save as provided in SO5.14 and SO5.15, every question put to a vote at a meeting will be determined by a majority of the votes of Members present and voting on the question except that:

~~5.13.1.15.12.1.1~~ In the case of an equal vote, the Chair or the person acting as chair at that meeting will have a second and casting vote; and,

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~~5.13.1.25.12.1.2~~ No resolution of the Board will be passed if it is unanimously opposed by all of the Executive Members present or by all of the Non-Executive Members present.

~~5.13.25.12.2~~ At the discretion of the Chair, all questions put to ~~the a~~ vote will be determined by oral expression or by a show of hands (and if any person is attending by telephone, teleconference, video or computer link, such person will cast their vote verbally (such vote to be recorded in the minutes)).

~~5.13.35.12.3~~ A paper ballot may also be used if a majority of Members present so request, in which case any person attending by telephone, teleconference, video or computer link will cast their vote verbally (such verbal vote to be recorded in the minutes).

~~5.13.45.12.4~~ If at least one-third of the Members present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Member present voted or abstained.

~~5.13.55.12.5~~ If a Member so requests, their vote will be recorded by name.

~~5.13.65.12.6~~ The Board may agree that its Members can participate in its meetings by telephone, teleconference and video or computer link. Participation in a meeting in this manner will be deemed to constitute a presence in person at the meeting.

~~5.13.75.12.7~~ An Officer, who has been appointed formally by the Board to deputise for an Executive Member during a period of incapacity or temporarily to fill an Executive Member vacancy, will be entitled to exercise the voting rights of the Executive Member. An Officer attending the Board to represent an Executive Member during a period of incapacity or temporary absence without formal deputising status may not exercise the voting rights of the Executive Member. A Member's status when attending a meeting will be recorded in the minutes.

~~5.13.85.12.8~~ For the voting rules relating to joint Members see SO4.7.

### ~~5.145.13~~ **Suspension of Standing Orders**

~~5.14.15.13.1~~ Except where this would contravene any statutory provision or any direction made by the Secretary of State for Health and Social Care or the rules relating to the Quorum (SO5.12), any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the Members ~~of the Board~~ are present (including at least one Member who is an Executive Member of the Board and one Member who is not) and that at least two-thirds of those Members present signify their agreement to such suspension. The reason for the suspension will be recorded in the Board's minutes.

~~5.14.25.13.2~~ A separate record of matters discussed during the suspension of Standing Orders will be made and will be available to the Chair and ~~other~~ Members of the Board.

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5.14.35.13.3 No formal business may be transacted while Standing Orders are suspended.

5.14.45.13.4 The Audit & Risk Assurance Committee will review every decision to suspend Standing Orders.

#### 5.155.14 Variation and Amendment of Standing Orders

5.15.15.14.1 These Standing Orders will not be varied except in the following circumstances:

5.15.1.15.14.1.1 Upon a notice of motion under SO5.5;

5.15.1.25.14.1.2 Upon a recommendation of the Chair or Chief Executive included on the agenda for the meeting;

5.15.1.35.14.1.3 That two thirds of the ~~Board~~ Members are present at the meeting where the variation or amendment is being discussed, and that at least half of the Board's Non-Executive Members vote in favour of the amendment; and,

5.15.1.45.14.1.4 Providing that any variation or amendment does not contravene a statutory provision or direction made by the Secretary of State for Health and Social Care.

#### 5.165.15 Record of Attendance

5.16.45.15.1 The names of the Chair and other Members present at the meeting will be recorded.

#### 5.175.16 Minutes

5.17.45.16.1 The minutes of the proceedings of a meeting will be drawn up and submitted for agreement at the next ensuing meeting, where the Chair will sign them.

5.17.25.16.2 No discussion will take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate.

#### 5.185.17 Admission of the Public and the Press

5.18.45.17.1 **Admission and exclusion on grounds of confidentiality of business to be transacted**

5.18.1.45.17.1.1 The public and representatives of the press may attend all meetings of the Board, but shall be required to withdraw upon the Board resolving:

*'that representatives of the press, and other members of the public, be excluded from the whole or part (as relevant) 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'* in accordance with section 1(2) Public Bodies (Admission to Meetings) Act 1960.

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~~5.18.1.2~~ ~~Guidance may be sought from NHS England's freedom of information lead to ensure correct procedure is followed on matters to be included in the exclusion.~~

### ~~5.18.25.17.2~~ **General disturbances**

~~5.18.2.15.17.2.1~~ The Chair or the person presiding over the meeting will give such directions as he thinks fit with regard to arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business can be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board resolving:

*'That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete its business without the presence of the public in accordance with section 1(8) of the Public Bodies (Admissions to Meetings) Act 1960.*

### ~~5.18.35.17.3~~ **Business proposed to be transacted when the press and public have been excluded from a meeting**

~~5.18.3.15.17.3.1~~ Matters to be dealt with by the Board following the exclusion of representatives of the press, and other members of the public, as above, will be confidential to the Members ~~of the Board~~.

~~5.18.3.25.17.3.2~~ Members and any Officer of NHS England in attendance will not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Board, without the express permission of the Board. This prohibition will apply equally to the content of any discussion during the Board meeting that may take place on such reports or papers.

### ~~5.195.18~~ **Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings**

~~5.19.15.18.1~~ Nothing in these Standing Orders will be construed as permitting the introduction by the public or press representatives of recording, transmitting, video or similar apparatus into meetings of the Board or a Committee or Sub-committee of the Board. Such permission will be granted only upon agreement by the Chair.

### ~~5.205.19~~ **Observers at Board Meetings**

~~5.20.15.19.1~~ The Board will decide what arrangements it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board's meetings, and may change, alter or vary these arrangements as it deems fit.

## **SO6 Appointment of Committees & Sub-committees**

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## 6.1 Committees and Sub-committees

- 6.1.1 Under paragraph 10 of Schedule A1 ~~of to~~ the NHS Act 2006, the Board may appoint Committees and Sub-committees of the Board.
- 6.1.2 If it requires, the Board may receive and consider reports of such Committees and Sub-committees.

## 6.2 Joint Committees and Committees in Common

- 6.2.1 Under section 65Z6 of the ~~HSCA 2022~~ NHS Act 2006 (as inserted by the HCA 2022) the Board may appoint a joint committee where it has entered into an arrangement in accordance with section 65Z6 and, pursuant to that arrangement, the functions are exercisable jointly by NHS England and another relevant body (integrated care board, NHS trust, NHS foundation trust or other prescribed body) or local authority~~prescribed body~~.
- 6.2.2 The joint committee may exercise the functions covered by the arrangement in question.
- 6.2.3 If it requires, the Board may receive and consider reports of such joint committees.
- 6.2.4 The Board may choose to meet in common with the Board of any other organisation and permit any of its Committees and Sub-committees to do the same.

## 6.3 Applicability of Standing Orders and Standing Financial Instructions to Committees, Sub-committees and Joint Committees

- 6.3.1 These Standing Orders and Standing Financial Instructions apply to the meetings of all Committees and Sub-committees.
- 6.3.2 These Standing Orders and Standing Financial Instructions apply to the meetings of each joint committee, Board meetings in common, Committees or Sub-Committees in Common; in as far as alternative governance arrangements have not been established and agreed by the Board.  
~~The term “Chair” is to be read as a reference to the Chair of the Committee or Sub-committee and the term “Member” is to be read as a reference to a member of the Committee or Sub-committee, as the context permits.~~
- 6.3.3 There is no requirement to hold meetings of Committees, Sub-committees or joint committees in public.

## 6.4 Terms of Reference

- 6.4.1 The Board will approve the terms of reference of Committees, any Sub-Committees that it appoints and any joint committees taking account of any legislation or direction issued by the Secretary of State for Health and Social Care.

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- 6.4.2 Where Committees are authorised to establish Sub-Committees, the Committee will also have the authority to approve the terms of reference of each Sub-committee it establishes, taking account of any conditions (including as to reporting to the Board) as the Board decide, legislation or direction issued by the Secretary of State for Health and Social Care.
- 6.4.3 Such terms of reference will have effect as if incorporated into these Standing Orders.

## 6.5 Approval of Appointments to Committees and Sub-Committees

- 6.5.1 The Board will determine the membership of Committees, and any Sub-Committees that it appoints.
- 6.5.2 Where Committees are authorised to establish Sub-Committees the Committee will also have the authority to determine the membership of each Sub-Committee it establishes.
- 6.5.3 The Board will agree the process for determining the membership of joint committees that it appoints, and ensure this is documented.
- 6.5.4 The Board may approve that a Committee or Sub-Committee may consist of or include persons who are not Members or Employees of NHS England.
- 6.5.5 Where the Board determines that persons, who are neither Members nor Employees, may be appointed to a Committee or Sub-Committee the terms of such appointment should be within the powers of the Board as defined by the Secretary of State for Health and Social Care.
- 6.5.6 The Board will define the powers of such appointees and will agree such remuneration and allowances as it determines and in accordance with relevant guidance.

## 6.6 Appointments for Statutory Functions

- 6.6.1 Where the Board is required to appoint persons to a Committee or Sub-Committee and/or to undertake statutory functions as required by the Secretary of State, and where such appointments are to operate independently of the Board, such appointment will be made in accordance with applicable regulations and directions made by the Secretary of State.

## 6.7 Delegation of Powers by Committees to Sub-Committees

- 6.7.1 Where Committees are authorised to establish Sub-Committees they may not delegate powers to the Sub-Committee unless expressly authorised by the Board.

## 6.8 Committees established by the Board

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6.8.1 The standing Committees established by the Board are:

- ~~6.8.1.1~~ Audit & Risk Assurance Committee (ARAC)
- ~~6.8.1.16.8.1.2~~ Cyber Security & Risk Sub-Committee of the ARAC
- ~~6.8.1.26.8.1.3~~ People and Remuneration Committee
- ~~6.8.1.4~~ Nominations Committee
- ~~6.8.1.36.8.1.5~~ Data, Digital and Technology Committee
- ~~6.8.1.6~~ Quality Committee
- ~~6.8.1.46.8.1.7~~ Workforce, Training and Education Committee
- ~~6.8.1.8~~ The New NHS England Committee (time-limited)

6.8.2 The Board shall set out the terms of reference for each Committee and may at any time amend the terms of reference of any committee.

6.8.3 The Board may establish time limited Committees and advisory groups.

#### 6.8.1.10 Trust & Charitable Funds Committee

6.8.1.10.1 In the event that NHS England is required to act as corporate trustee the Board will establish a Trust & Charitable Funds Committee.

## SO7 Arrangements for the Exercise of Board Functions by Delegation

### 7.1 Delegation of Functions to Committees, Employees or Other Bodies

7.1.1 Under paragraph 13, Schedule A1 ~~of~~ the NHS Act 2006, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by:

- 7.1.1.1 A Committee or Sub-committee appointed by virtue of SO6;
- 7.1.1.2 A Non-Executive Member or Employee (including any Executive Member) of NHS England; ~~or,~~
- ~~7.1.1.3 Another body as defined in SO6.2.~~

7.1.2 In each case, such delegation will be subject to such restrictions and conditions as the Board thinks fit.

7.1.3 Subject to any regulations made by the Secretary of State for Health and Social Care, section ~~65Z513Z~~ of the NHS Act 2006 provides that ~~the Board-NHS England~~ may arrange for any function ~~conferred on the Board under or by virtue of the NHS Act 2006 or any prescribed provision of any other Act exercisable by it~~ to be exercised by or jointly with one or more of the following:

- ~~7.1.3.1 A Special Health Authority~~ an integrated care board;
- ~~7.1.3.2 An Integrated Care System; or,~~ an NHS trust;
- ~~7.1.3.3 an NHS foundation trust;~~
- ~~7.1.3.4 a local authority;~~
- ~~7.1.3.27.1.3.5~~ a combined authority;

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~~7.1.3.37.1.3.6~~ ~~Such other prescribed body prescribed in regulations.~~

- 7.1.4 Where any functions are exercisable jointly by ~~the Board NHS England~~ and another body by virtue of a delegation made under section ~~65Z513Z~~, they may be exercised by a joint committee of ~~the Board NHS England~~ and the other body as set out in SO6.2.
- 7.1.5 Arrangements made under section ~~13Z-65Z5~~ will be on such terms and conditions (including terms as to payment or prohibiting or restricting further delegation) as agreed between ~~the Board NHS England~~ and the other party.
- 7.1.6 The Board reserves the ability to, at any time, withdraw a function, duty or power it has delegated and then to exercise the function, duty or power itself or to delegate it.

## 7.2 Emergency Powers and Urgent Decisions

- 7.2.1 The Chief Executive and the Chair may in emergency or for an urgent decision exercise the powers that the Board has reserved to itself within these Standing Orders after having consulted at least two Non-Executive Members. The exercise of such powers by the Chief Executive and Chair will be reported to the next formal meeting of the Board in public session for formal ratification.
- 7.2.2 In an emergency ~~to~~ the Chief Executive and the Chair of the Audit and Risk Assurance Committee (or if they are unavailable their deputies) shall have the power to vary the delegations detailed within the Scheme of Delegation by authorising alternative post holders or committees to exercise relevant powers. The exercise of such powers by the Chief Executive and Chair of the Audit and Risk Committee will be notified in writing to the Board Secretariat with confirmation of the delegation variations, the period of such variation and the reason for this variation. The exercise of such powers will be reported to the next formal meeting of the Board in public session for formal ratification.

## 7.3 Delegation to Committees, Sub-committees or Joint Committees

- 7.3.1 The Board will agree from time to time to the delegation of powers to be exercised by a Committee, Sub-committee or joint committee, which has been formally constituted in accordance with SO6.

## 7.4 Delegation to Employees

- 7.4.1 Those functions of the Board, which have not been retained as reserved to the Board or delegated to a Committee or Sub-committee or joint committee, will be exercised on behalf of the Board by the Chief Executive.
- 7.4.2 The Chief Executive will determine which functions will be performed personally and will nominate Employees to undertake the remaining functions for which the Chief Executive will retain accountability to the Board.

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- 7.4.3 The Chief Executive will prepare a Scheme of Delegation identifying the proposals, which will be considered and approved by the Board.
- 7.4.4 The Chief Executive may periodically propose amendment to the Scheme of Delegation, which will be considered and approved by the Board.
- 7.4.5 In nominating Employees, reference will be made to job titles rather than named individuals. The nomination will cover the substantive post holder, an Employee appointed for an interim period, or an Employee formally deputising into the post during a period of absence of the substantive post holder (eg holiday or long-term sickness) or to cover a vacant post, subject to such deputising arrangements being formally documented and signed off by the appropriate Director. Records should be retained locally for audit.
- 7.4.6 If, for any reason, the named post holder cannot take a decision allocated to them, then that decision may be taken by the person to whom they report within NHS England.
- 7.4.7 NHS England does not have the statutory authority to delegate powers to Officers who are not Employees, other than Non-Executive Members. Therefore, Officers who are not Employees or Non-Executive Members may not exercise any power on behalf of NHS England, including in a deputising capacity.
- 7.4.8 Where the scheme of delegation uses non-post specific terminology the delegation will rest with the National Director, ~~Devolution Chief Officer~~, Managing Director of a CSU, Managing Director of Sustainable Development Unit or Managing Partner of NHS IMAS, as appropriate, nominated to carry out a specific task/function within Standing Orders and/or Standing Financial Instructions and/or the Scheme of Delegation.
- 7.4.9 Where a function is delegated to Regional Directors, each Regional Director shall be accountable for the discharge of that function within the region for which they are Regional Director.
- 7.4.10 Where multiple National Directors are named, each Director shall be accountable for the discharge of the relevant element of the function relating to the directorate they lead.
- 7.4.11 Where a power has not been specifically delegated to an Employee under the processes described in this SO7.4 or SO7.5 they have no authority under these Standing Orders, Standing Financial Instructions or the Scheme of Delegation to exercise that power.
- 7.4.12 Nothing in the Scheme of Delegation will impair the discharge of the direct accountability to the Board of the Chief Financial Officer to provide information and advise the Board in accordance with statutory or other requirements. Outside of these statutory requirements the Chief Financial Officer will be accountable to the Chief Executive for operational matters.

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## 7.5 Ability to Delegate Delegated Functions, Duties and Powers

- 7.5.1 The Board, Committees, Sub-Committees, Non-Executive Members, Executive Members and designated Employees may not delegate functions, duties or powers that have been delegated to them, unless specifically authorised to do so as part of the delegation of that function, duty or power.
- 7.5.2 Where the Scheme of Delegation uses non-post specific terminology the Director(s) identified in accordance with SO7.4.7 may prepare an operating framework that will identify their proposed downward delegation to specific post(s) within their area of responsibility.
- 7.5.3 Managing Directors of Commissioning Support Units, NHS IMAS and, NHS Sustainable Development Unit ~~and Devolution Chief Officers~~ have the authority to delegate functions, duties or powers delegated to them, subject to such delegation being recorded in their function's operating framework.
- 7.5.4 All operating frameworks will be approved by the National Director who is NHS England's Senior Responsible Officer for the relevant hosted organisation, at which point they become effective as though an integral part of the scheme of delegation.

## 7.6 Scheme of Delegation

- 7.6.1 The arrangements made by the Board as set out in the Scheme of Delegation have effect as if incorporated in these Standing Orders.

## SO8 Duties and Obligations of Board Members under these Standing Orders

### 8.1 Declaration of Interests

- 8.1.1 The Standards of Business Conduct Policy<sup>1</sup> requires Board Members to declare interests that are relevant and material to the NHS Board of which they are a Member. All existing Members ~~of the Board~~ should declare such interests. Any Members appointed subsequently to the Board should do so on appointment.
- 8.1.2 Guidance on interests which should be regarded as relevant and material is provided in NHS England's Standards of Business Conduct Policy. Interests which should be regarded as relevant and material are:
- ~~8.1.2.1 Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies);~~

<sup>1</sup> NHS England » Standards of Business Conduct Policy

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- ~~8.1.2.2 — Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;~~
- ~~8.1.2.3 — Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS;~~
- ~~8.1.2.4 — A position of authority in a charity or voluntary organisation in the field of health and social care;~~
- ~~8.1.2.5 — Any connection with a voluntary or other organisation contracting for NHS services;~~
- ~~8.1.2.6 — Research funding/grants that may be received by an individual or their department;~~
- ~~8.1.2.7 — Interests in pooled funds that are under separate management; and,~~
- ~~8.1.2.8 — Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with NHS England, including but not limited to lenders or banks.~~

8.1.3 Any Board Member ~~of the Board~~ who comes to know that NHS England has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in SO9.4 and elsewhere) has any pecuniary interest, direct or indirect, the Board Member should declare his/her interest by giving notice in writing of such fact to the Chair as soon as practicable.

#### 8.1.4 **Advice on Interests**

8.1.4.1 If Board Members have any doubt about the relevance of an interest, this should be discussed with the Chair or the Director of Governance, Legal and Inquiry and Legal.

8.1.4.2 Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships, including general practitioners, should also be considered.

#### 8.1.5 **Recording and management of interests in Board**

8.1.5.1 At the time Board Members' interests are declared, they should be recorded in the Board minutes.

8.1.5.2 Any changes in interests should be declared at the next Board meeting following the change occurring and recorded in the minutes of that meeting.

8.1.5.3 If a conflict of interest is established during the course of a Board meeting, the Board Member concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

## 8.2 Register of Interests

8.2.1 The Secretary will ensure that a register of interests is established to formally record declarations of interests of Board Members. In particular, the register will

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include details of all directorships and other relevant and material interests (as defined in SO9.1.2) which have been declared by both Executive Members and Non-Executive Members.

8.2.2 These details will be kept up to date by means of a monthly review of the register in which any changes to interests declared will be incorporated.

The register will be published on NHS England's website.

***Exclusion of the Chair and/or Members from Proceedings on Account of Pecuniary Interest***

**8.2.3 *Exclusion in proceedings of the Board***

8.2.3.1 Subject to the provisions of this Standing Order, if the Chair or ~~other a~~ Member of the Board has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, they should at the meeting and as soon as practicable after its commencement disclose the fact and will not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

8.2.3.2 The Board may exclude the Chair or ~~other a~~ Member of the Board from a meeting of the Board while any contract, proposed contract or other matter in which he has a pecuniary interest is under consideration.

8.2.3.3 Any remuneration, compensation or allowance payable to the Chair or a Member by virtue of paragraphs 7 and 9 of Schedule A1 (pay and allowances) ~~to~~ the NHS Act 2006 will not be treated as a pecuniary interest for the purpose of this Standing Order.

8.2.3.4 This Standing Order applies to a Committee, Sub-committee and joint committee as it applies to the Board and to a Member of any such Committee, Sub-committee (whether or not he is also a Member of the Board) or joint committee as it applies to a Member of the Board.

8.2.3.5 The Secretary of State may, subject to such conditions as he/she may think fit to impose, remove any disability imposed by this Standing Order in any case in which it appears to them in the interests of the National Health Service that the disability should be removed.

**8.3 Standards of Business Conduct**

8.3.1 All Board Members and Officers should comply with the national guidance contained in NHS England's 'Standards of Business Conduct Policy (see SO8.2)

**8.3.2 *Canvassing of and recommendations by Members in relation to appointments***

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- 8.3.2.1 Canvassing of Members of the Board or of any Committee ~~of the Board~~ directly or indirectly for any appointment under NHS England will disqualify the candidate for such appointment. The contents of this paragraph of this Standing Order should be included in application forms or otherwise brought to the attention of candidates.
- 8.3.2.2 Members of the Board should not solicit for any person any appointment under NHS England or recommend any person for such appointment. This paragraph of this Standing Order does not preclude a Member from giving written testimonial of a candidate's ability, experience or character for submission to NHS England.
- 8.3.3 ***Relatives of Members or Officers***
- 8.3.3.1 Candidates for any appointment as an employee with NHS England should, when making an application, disclose in writing to NHS England whether they are related to any Member or Officer of NHS England. Failure to disclose such a relationship will disqualify a candidate and, if appointed, render the Member liable to instant dismissal.
- 8.3.3.2 The Chair and every other Member and Officer of NHS England should disclose to NHS England any relationship between themselves and a candidate of whose candidature that Member or Officer is aware. It is the duty of the Chief Executive to report to the Board any such disclosure made.
- 8.3.3.3 On appointment, Members (and prior to acceptance of an appointment in the case of Executive Members) should disclose to the Board whether they are related to any other Member or Officer of NHS England.
- 8.3.3.4 Where the relationship to a Member or Officer of the Board is disclosed, SO9.4 applies.

## SO9 Custody of Seal, Sealing of Documents & Signature of Documents

### 9.1 Custody of the Seal

- 9.1.1 The common seal of NHS England will be kept by the Secretary in a secure place.
- 9.1.2 The seal of NHS England will not be affixed to any document without the prior authorisation of the Board, a Board Committee or a National Director using the pre-seal authorisation form.
- 9.1.3 Where it is necessary that a document be sealed (in accordance with SO 10.3.3), the seal will be affixed in the presence of the Secretary, the Director of Governance and Legal, or the Deputy Directors of Legal (or a Nominated Officer authorised by them), and will be attested by them.

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9.1.4 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Chief Financial Officer (or an Officer nominated by the Chief Financial Officer).

## 9.2 Register of Sealing

9.2.1 An entry of every sealing will be made and numbered consecutively in a register provided for that purpose.

9.2.2 A report of all sealings will be made to the Board bi-annually. The report will detail the seal number, the description of the document and date of sealing.

9.2.3 The seal should only be used to execute deeds (e.g. conveyances of land) or where otherwise required by law. Where it is unclear whether the use of the seal is necessary, appropriate legal advice should be sought by the Secretary, or an Officer nominated by the Secretary.

## 9.3 Signature of Documents

9.3.1 Where the signature of any document will be a necessary step in legal proceedings involving NHS England, it should be signed by the Chief Executive, the Chief Financial Officer or other Executive Member, Director of Governance and Legal, Secretary, or the Deputy Directors of Legal, unless any enactment otherwise requires or authorises, or the Board has given the necessary authority to some other person for the purpose of such proceedings.

9.3.2 The Chief Executive, or the Chief Financial Officer or other Executive Members will be authorised, by resolution of the Board, to sign on behalf of NHS England any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board or any Committee or Sub-committee to which the Board has delegated appropriate authority.

9.3.3 In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (eg sale/ purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be execute as a deed).

## SO10 Legal Proceedings

**10.1** ~~The Director of Governance, Legal and Inquiry (if a solicitor), the Deputy Directors of Legal (the Legal Officers)~~ All solicitors working in the NHS England legal team or instructed by NHS England (the Legal Officers) are authorised to accept service of all legal proceedings ~~(including judicial review, third party disclosure and other civil claims)~~ on behalf of NHS England. ~~The address for acceptance of all legal proceedings is: Director of Governance and Legal, 4W08, NHS England, Quarry House, Quarry Hill, Leeds, LS2 7UE. NHS England will also accept service of proceedings by email directly to either the dedicated legal proceedings inbox: nhsei.newproceedings@nhs.net or,~~

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~~where external lawyers are instructed and on record as acting in a particular matter, to the email address of the lawyer named as acting.~~

**10.2** The Legal Officers are authorised to receive, institute, defend or participate in any legal proceedings or formal alternative dispute resolution in any case where such action is necessary to give effect to decisions of NHS England or in any case where the Legal Officers considers that such action is necessary to protect NHS England's interests, unless an Act of Parliament requires some other person to do so, or NHS England gives authority to some other person.

## SO11 Miscellaneous

### 11.1 Joint Finance Arrangements

- 11.1.1 The Board may confirm contracts to purchase from a voluntary organisation or a local authority.
- 11.1.2 The Board may confirm contracts to transfer money from the NHS to the voluntary sector or the health-related functions of local authorities where such a transfer is to fund services to improve the health of the local population more effectively than equivalent expenditure on NHS services.

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