

AGENDA ITEM NO:

**UNIVERSITY HOSPITALS BIRMINGHAM NHS FOUNDATION TRUST
BOARD OF DIRECTORS
THURSDAY 28 MARCH 2013**

Title:	CHANGES TO THE CONSTITUTION
Responsible Officer:	David Burbridge, Director of Corporate Affairs
Contact:	David Burbridge, Director of Corporate Affairs, Ext 14317

Purpose:	To recommend changes to the Trust's Constitution with regard to enactment of certain parts of the Health and Social Care Act 2012 (the "Act").
Confidentiality Level & Reason:	NONE
Key Issues Summary:	<p>The Health and Social Care Act Commencement Order no. 4 has now been made, bringing several provisions of that Act into effect on 1 April 2013. This includes the section that replaces the current statutory requirement for Monitor to approve amendments to the Trust's Constitution with one that requires such amendments to be approved by both the Council of Governors and the Board of Directors.</p> <p>At the time of writing, it is expected that The Health and Social Care Act Commencement Order no. 5 will be made shortly, bringing in additional provisions of the Act, also on 1 April.</p> <p>Most of the amendments are as required by other sections of the Act and the remainder are either consequential, or are for the sake of clarification.</p> <p>The proposed amendments will be submitted to the next meeting of the Council of Governors for their approval.</p>
Recommendations:	<p>The Board of Directors is asked to consider this paper and the accompanying document and RESOLVE as follows:</p> <p>That, subject to the approval by the Council of Governors, the Constitution of the Trust be amended as set out in the document attached at Appendix A.</p>

Signed:	Date: March 2013
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UNIVERSITY HOSPITALS BIRMINGHAM NHS FOUNDATION TRUST
BOARD OF DIRECTORS
THURSDAY 28 MARCH 2013
CHANGES TO THE CONSTITUTION
DIRECTOR OF CORPORATE AFFAIRS

2. Introduction

- 2.1. The Health and Social Care Act Commencement Order no. 4 has now been made, bringing several provisions of that Act into effect on 1 April 2013. This includes the section that replaces the current statutory requirement for Monitor to approve amendments to the Trust's Constitution with one that requires such amendments to be approved by both the Council of Governors and the Board of Directors.
- 2.2. At the time of writing, it is expected that The Health and Social Care Act Commencement Order no. 5 will be made shortly, bringing in additional provisions of the Act, also on 1 April.
- 2.3. Accordingly, the approval of the Board of Directors is sought with regard to the amendments set out in the attached document. Most of the amendments are as required by other sections of the Act and the remainder are either consequential, e.g. the provision of rules regarding the conduct of the Annual Members' Meeting set out in Annex 7, or are for the sake of clarification.
- 2.4. The proposed amendments will be submitted to the next meeting of the Council of Governors for their approval.

3. Proposed Amendments

- 3.1. The key amendments are as follows:
 - 3.1.1. Requirement to hold an Annual Members' Meeting (6.10);
 - 3.1.2. No requirement for a Stakeholder Governor appointed by the PCT (7.3);
 - 3.1.3. New general duties of the Council of Governors to (7.16.1):
 - a. hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
 - b. represent the interests of the members of the trust as a whole and the interests of the public
 - 3.1.4. A duty on the Trust to secure that the governors are equipped with the skills and knowledge they require (7.16.2);
 - 3.1.5. The power of the Council of Governors to require one or more of the directors to attend a meeting for the purposes of obtaining information about the Trust's performance of its

functions or the directors' performance of their duties (7.19.8);

- 3.1.6. A general duty of the Board of Directors and of each director individually, to act with a view to promoting the success of the Trust so as to maximize the benefits for the members of the Trust and the public (8.8.1);
 - 3.1.7. Meetings of the Board of Directors to be open to the public, except for special reasons (8.9.1);
 - 3.1.8. The requirement to send a copy of the agenda of each meeting of the Board of Directors to the Governors, prior to the meeting and to send a copy of the minutes of the meeting to the Governors, as soon as is practicable (8.9.2);
 - 3.1.9. Provisions regarding conflicts of interests of the Directors (8.10);
 - 3.1.10. Provisions regarding referrals by the Council of Governors to Monitor's Panel (17.2); and
 - 3.1.11. Approval of Mergers and Significant Transactions (19).question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.
- 3.2. The definition of significant transaction currently used by Monitor has been proposed, as previously discussed and agreed with the Council of Governors. It is set out in Annex 5.

4. Recommendation

- 4.1. The proposed amendments are set out in Appendix A, attached (for existing annexes, only those pages with amendments have been included.)
- 4.2. The Board of Directors is asked to consider this paper and the accompanying document and RESOLVE as follows:
- 4.3. That, subject to the approval of the Council of Governors, the Constitution of the Trust be amended as set out in the document attached at Appendix A , to be effective from the date of approval by the Council of Governors.

D J Burbridge
Director of Corporate Affairs

March 2013