

Explanatory Memorandum to the Public Health Wales National Health Service Trust (Membership and Procedure) (Amendment) Regulations 2011

This Explanatory Memorandum has been prepared by Public Health & Health Professions Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Public Health Wales National Health Service Trust (Membership and Procedure) (Amendment) Regulations 2011.

Edwina Hart

MINISTER FOR HEALTH & SOCIAL SERVICES

29 March 2011

1. Description

These Regulations amend the Non-Executive Director membership of the board of Public Health Wales NHS Trust by amending the *Public Health Wales National Health Service Trust (Membership and Procedure) Regulations 2009* (“the 2009 Regulations”).

2. Matters of special interest to the Constitutional Affairs Committee

None.

3. Legislative background

Paragraph 4(1) of Schedule 3 to the *National Health Service (Wales) Act 2006* provides that the Welsh Ministers may by regulations make provision with respect to various matters relating to NHS Trusts, including the qualifications for and tenure of office of the chairman and directors. Section 203(9) of the Act allows (amongst other things) for specific provision to be made in relation to specific NHS Trusts. These were the powers that the Welsh Ministers used to make the 2009 Regulations and they may use them now to amend those regulations.

This instrument follows the negative resolution procedure.

4. Purpose & intended effect of the legislation

- The Public Health Wales Non-Executive Director posts were advertised in early August 2009 and although appointments were made to five (5) of the positions no applications were received for the Trade Union Non-Executive Director post.
- The 2009 Regulations currently reference the requirement to appoint a Trade Union Non-Executive Director. They provide that the Trade Union Non-Executive Director should be someone who is an officer of a trade union or other employee representative body representing staff of the Trust. The 2009 Regulations further provide that a Non-Executive Director cannot be an employee of a health service body (which includes the Trust).
- Informal feedback received from stakeholders indicates that the current eligibility criteria for the Trade Union Non-Executive Director post are proving a barrier to recruitment.

- There is currently no trade union representation on the Trust Board, so we need to identify the most appropriate route for securing that representation.
- We need to maintain the balance of Directors on the Trust Board in favour of the Non-Executive Directors to ensure there is the necessary challenge, experience and perspective for all key decisions taken by the Board. The 2009 Regulations provide for a maximum of 11 Directors (excluding the independent chair) made up of no more than 6 Non-Executive Directors and 5 Executive Directors.

Proposals

What specific changes are we proposing?

- We propose to make the *Public Health Wales National Health Service Trust (Membership and Procedure) (Amendment) Regulations 2011* in order to remove references to the Trade Union Non-Executive Director position.
- We propose that trade union representation on the Trust Board will be as set out in the *Handbook for Trade Union Representatives at Trust Boards*
- We propose to commence a public appointments recruitment exercise to recruit an additional Independent Non-Executive Director to represent the wider community in Wales (and therefore maintain the maximum of six (6) Non-Executive Directors on the Board).

What outcomes do we anticipate?

- The Local Partnership Forum will be asked to nominate Trade Union Representative(s) to attend Trust Board meetings – procedure set out in the *Handbook for Trade Union Representatives at Trust Boards*.
- A public appointments recruitment exercise will take place in order to recruit the Independent Non-Executive Director.
- Public Health Wales will have a full complement of Non-Executive Directors (6) and trade union representation at Board meetings (in line with requirements set out in the Handbook) by the summer of 2011.

5. Consultation

These Regulations were subject to a three (3) week consultation period, between the 2nd March 2011 and the 23rd March 2011.

The consultation paper, which included these Regulations (in draft), was circulated to a comprehensive list of stakeholders and was published on the Welsh Assembly Government website. Hard copies of the consultation were available on request.

Five (5) responses were received during the consultation period and an analysis of the responses is available on request from:
publichealthsponsorshipteam@wales.gsi.gov.uk

No changes have been made to these Regulations as a result of the consultation.

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been undertaken due to the minor nature of the changes proposed. A Regulatory Impact Assessment was undertaken for the 2009 Regulations.