

SCHEDULES

SCHEDULE 5

Section 96

HEALTH EDUCATION ENGLAND

PART 1

CONSTITUTION

Membership

- 1 (1) HEE consists of—
 - (a) a chair appointed by the Secretary of State,
 - (b) six other members appointed by the Secretary of State,
 - (c) a chief executive appointed by the members appointed under paragraphs (a) and (b), and
 - (d) no more than four other members appointed by the members appointed under paragraphs (a) and (b).
- (2) The members appointed under sub-paragraph (1)(a) and (b)—
 - (a) are not employees of HEE, and
 - (b) are referred to in this Schedule as the “non-executive members”.
- (3) The members appointed under sub-paragraph (1)(c) and (d)—
 - (a) are employees of HEE, and
 - (b) are referred to in this Schedule as the “executive members”.
- 2 (1) The members of HEE must include persons who have clinical expertise of a description specified in regulations.
- (2) The regulations may require—
 - (a) a specified number of members to have that expertise;
 - (b) a specified number of non-executive members to have that expertise;
 - (c) a specified number of executive members to have that expertise.
- (3) The non-executive members of HEE must include a person who will represent the interests of patients.

Non-executive members: terms of office

- 3 (1) A person holds office as a non-executive member of HEE on the terms of that person’s appointment.
- (2) A person may not be appointed as a non-executive member for a period of more than four years.

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- (3) A person who ceases to be a non-executive member is eligible for re-appointment.
- (4) A person may resign from office as a non-executive member by giving notice to the Secretary of State.
- (5) The Secretary of State may remove a person from office as a non-executive member on any of the following grounds—
 - (a) incapacity;
 - (b) misbehaviour;
 - (c) failure to carry out his or her duties as a non-executive member.
- (6) The Secretary of State may suspend a person from office as a non-executive member if it appears to the Secretary of State that there are or may be grounds to remove that person from office under sub-paragraph (5).

Non-executive members: suspension from office

- 4 (1) Having decided to suspend a person under paragraph 3(6), the Secretary of State must give notice of the decision to the person; and the suspension takes effect when the person receives the notice.
- (2) The notice may be—
 - (a) delivered in person (in which case the person is taken to receive it when it is delivered), or
 - (b) sent by first class post to the person’s last known address (in which case, the person is taken to receive it on the third day after the day on which it is posted).
- (3) The initial period of suspension must not exceed six months.
- (4) The Secretary of State may review the suspension.
- (5) The Secretary of State—
 - (a) must review the suspension, if requested in writing by the person to do so, but
 - (b) need not review the suspension less than three months after the beginning of the initial period of suspension.
- (6) Following a review during a period of suspension, the Secretary of State may—
 - (a) revoke the suspension, or
 - (b) suspend the person for a period of no more than six months from the expiry of the current period.
- (7) The Secretary of State must revoke the suspension if the Secretary of State—
 - (a) decides that there are no grounds to remove the person from office under paragraph 3(5), or
 - (b) decides that there are grounds to do so but nonetheless decides not to do so.
- 5 (1) Where a person is suspended from office as the chair under paragraph 3(6), the Secretary of State may appoint a non-executive member as interim chair to exercise the chair’s functions.
- (2) Appointment as interim chair is for a term not exceeding the shorter of—
 - (a) the period ending with either—
 - (i) the appointment of a new chair, or

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- (ii) the revocation or expiry of the existing chair's suspension, and
 - (b) the remainder of the interim chair's term as a non-executive member.
- (3) A person who ceases to be the interim chair is eligible for re-appointment.

Non-executive members: pay

- 6 (1) HEE must pay its non-executive members such remuneration as the Secretary of State may decide.
- (2) HEE must pay, or provide for the payment of, such allowances or gratuities as the Secretary of State may decide to a person who is or has been a non-executive member of HEE.

Employees: terms of office

- 7 (1) Each executive member of HEE is appointed as an employee of HEE on such terms as it decides.
- (2) A person may not be appointed as chief executive without the consent of the Secretary of State.
- (3) HEE may appoint, on such terms as it decides, other persons as employees of HEE (in addition to those appointed as executive members).

Employees: pay

- 8 (1) HEE must pay its employees such remuneration as it decides.
- (2) HEE may pay, or provide for the payment of, such pensions, allowances or gratuities as it decides to or in respect of a person who is or has been an employee of HEE.
- (3) Before making a decision about pay under this paragraph, HEE must obtain the approval of the Secretary of State to its policy on the matter.

Committees and sub-committees

- 9 (1) HEE may appoint committees and sub-committees.
- (2) A committee or sub-committee may consist of or include persons who are not members or employees of HEE.
- (3) HEE may pay such remuneration and allowances as it decides to a person who is a member of a committee (including a committee which HEE is required to appoint under section 103(1) (LETBs)) or sub-committee, but is not an employee of HEE, regardless of whether the person is a non-executive member of HEE.
- (4) Any committees and sub-committees of the Special Health Authority called Health Education England in existence immediately before its abolition are to become respectively committees and sub-committees of HEE (and are to be treated as appointed under this paragraph).

Procedure

- 10 (1) HEE may regulate its own procedure.

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- (2) A vacancy among the members of HEE, or a defect in the appointment of a member, does not affect the validity of any act of HEE.

Seal and evidence

- 11 (1) The application of HEE’s seal must be authenticated by the signature of a member of HEE or a person who has been authorised (whether generally or specifically) for the purpose.
- (2) A document purporting to be duly executed under HEE’s seal or to be signed on its behalf must be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- (3) But this paragraph does not apply in relation to a document which is, or is to be, signed in accordance with the law of Scotland.

Status of HEE

- 12 (1) HEE is not to be regarded as a servant or agent of the Crown, or as enjoying any status, privilege or immunity of the Crown.
- (2) HEE’s property is not to be regarded as property of, or property held on behalf of, the Crown.

PART 2

FUNCTIONS

Exercise of functions

- 13 (1) HEE must exercise its functions effectively, efficiently and economically.
- (2) HEE may arrange for any of its committees, sub-committees or members or any other person to exercise any of its functions on its behalf (but see sub-paragraph (5)).
- (3) HEE may arrange for any person to help it to exercise its functions (whether in a particular case or in cases of a particular description).
- (4) Arrangements under sub-paragraph (2) or (3) may provide for the payment of remuneration and allowances to the persons with whom HEE makes the arrangements.
- (5) HEE may not arrange for a committee which is not an LETB, or for a sub-committee, member or any other person, to exercise a function which is exercisable by an LETB.
- (6) HEE may in any way it thinks appropriate involve health care workers, persons to whom health services are provided or carers for such persons, in decisions it makes about the exercise of its functions; and “carer” means an adult who provides or intends to provide care for another person.
- (7) HEE may do anything which appears to it to be necessary or desirable for the purposes of or in connection with the exercise of its functions.

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- (8) In section 247C of the National Health Service Act 2006 (Secretary of State’s duty to keep health service functions of certain bodies under review), in subsection (2), after paragraph (e) insert—
- “(ea) Health Education England;”.

Help or advice for other public authorities

- 14 (1) HEE may provide help or advice to another public authority for the purpose of the exercise by that authority of its functions.
- (2) Help or advice under this paragraph may be provided on such terms as HEE decides (including terms relating to payment of remuneration or allowances).
- (3) “Public authority”—
- (a) includes any person certain of whose functions are functions of a public nature, but
- (b) does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.
- (4) A reference to a public authority—
- (a) includes a public authority in the Channel Islands or the Isle of Man, but
- (b) subject to that, does not include a reference to a public authority outside the United Kingdom.

Co-operation

- 15 (1) HEE must, in the exercise of its functions, co-operate with the Secretary of State in the exercise of the Secretary of State’s public health functions (as defined by section 1H of the National Health Service Act 2006).
- (2) In section 72 of that Act (co-operation between NHS bodies), after subsection (3) insert—
- “(4) For the purposes of this section, Health Education England is an NHS body.”
- (3) In section 290(3) of the Health and Social Care Act 2012 (bodies which must co-operate with Monitor and the Care Quality Commission in the exercise of their functions), after paragraph (c) (but before the following “and”) insert—
- “(ca) Health Education England;”.
- (4) Regulations may require HEE and a specified person to co-operate with each other in the exercise of their respective functions or such of their functions as are specified.

NHS contracts

- 16 In section 9(4) of the National Health Service Act 2006 (NHS contracts: health service bodies), after paragraph (kb) insert—
- “(kc) Health Education England;”.

Arrangements with devolved authorities

- 17 (1) HEE may arrange with a devolved authority for HEE—

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- (a) to exercise on behalf of the devolved authority any function which corresponds to a function of HEE;
 - (b) to provide services or facilities in so far as the devolved authority requires them in connection with the exercise of such a function.
- (2) The terms and conditions on which arrangements under this paragraph may be made include provision for payment to HEE in respect of its costs in giving effect to the arrangements.

Failure to exercise functions

- 18 (1) If the Secretary of State considers that HEE is failing or has failed to exercise any of its functions, and that the failure is significant, the Secretary of State may direct HEE to exercise such of its functions, in such manner and within such period, as the direction specifies.
- (2) If HEE fails to comply with a direction under this section, the Secretary of State may—
- (a) exercise the functions specified in the direction, or
 - (b) make arrangements for some other person to exercise them on the Secretary of State's behalf.
- (3) Where the Secretary of State exercises a power under sub-paragraph (1) or (2), the Secretary of State must publish the reasons for doing so.
- (4) The reference in sub-paragraph (1) to exercising a function includes a reference to exercising it properly.

PART 3

FINANCE AND REPORTS

Funding

- 19 (1) The Secretary of State must pay HEE for each financial year sums not exceeding the amount the Secretary of State has allotted for that year towards meeting the expenditure that is attributable to HEE's exercise of its functions in that year.
- (2) An amount is to be regarded as allotted when the Secretary of State notifies HEE accordingly.
- (3) The Secretary of State may make a new allotment under this paragraph increasing or decreasing the allotment previously made, but only if—
- (a) HEE agrees,
 - (b) a parliamentary general election takes place, or
 - (c) the Secretary of State considers that exceptional circumstances make a new allotment necessary.
- (4) The Secretary of State may give directions to HEE about the payment by it to the Secretary of State of sums in respect of charges or other amounts relating to the valuation or disposal of assets.

- (5) Sums payable to HEE under this paragraph are payable subject to such conditions as to records, certificates or otherwise as the Secretary of State may decide.
- (6) In this Part of this Schedule, “financial year” includes the period—
 - (a) beginning with the day on which HEE is established, and
 - (b) ending with the following 31 March or, if the period ending with that date is 3 months or less, ending with the 31 March following that date.

Financial duties: expenditure

- 20
- (1) HEE must ensure that total expenditure attributable to its exercise of its functions in each financial year (its “total spending”) does not exceed the aggregate of—
 - (a) the amount allotted to it for that year under paragraph 19,
 - (b) the income generated in that year from carrying out activities for the purposes of or in connection with the exercise of its functions, and
 - (c) any other sums received by it in that year for the purpose of enabling it to meet such expenditure.
 - (2) The Secretary of State may direct that spending of a specified description is, or is not, to be treated for the purposes of sub-paragraph (1) as part of HEE’s total spending.
 - (3) The Secretary of State may by directions determine—
 - (a) the extent to which, and circumstances in which, sums received by HEE under paragraph 19 but not yet spent are to be treated for the purposes of sub-paragraph (1) as part of HEE’s total spending, and
 - (b) to which financial year those sums are to be attributed.
 - (4) The Secretary of State may direct HEE to use specified banking facilities for specified purposes.

Financial duties: use of generated income

- 21
- Where HEE generates income from carrying out activities for the purposes of or in connection with the exercise of its functions, it must ensure that the income is used for exercising its functions.

Financial duties: controls on total resource use

- 22
- (1) HEE must ensure that—
 - (a) its use of capital resources in a financial year does not exceed the amount specified by the Secretary of State, and
 - (b) its use of revenue resources in a financial year does not exceed the amount specified by the Secretary of State.
 - (2) The Secretary of State may, in relation to a financial year, direct that for the purposes of this paragraph—
 - (a) resources of a specified description are, or are not, to be treated as capital resources or revenue resources;
 - (b) a specified use of capital resources or revenue resources is, or is not, to be taken into account.

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- (3) An amount specified for the purposes of sub-paragraph (1)(a) or (b) may be varied only if—
- (a) HEE agrees,
 - (b) a parliamentary general election takes place, or
 - (c) the Secretary of State considers that exceptional circumstances make the variation necessary.
- (4) A reference to the use of capital resources or revenue resources is a reference to their expenditure, consumption or reduction in value.

Financial duties: additional controls on resource use

- 23 (1) The Secretary of State may direct HEE to ensure that—
- (a) total capital resource use in a financial year which is attributable to specified matters does not exceed a specified amount,
 - (b) total revenue resource use in a financial year which is attributable to specified matters does not exceed a specified amount, and
 - (c) total revenue resource use in a financial year which is attributable to specified matters relating to administration does not exceed a specified amount.
- (2) The Secretary of State may give directions, in relation to a financial year, specifying uses of capital resources or revenue resources which are, or are not, to be taken into account for the purposes of sub-paragraph (1)(a), (b) or (c) (as the case may be).
- (3) The Secretary of State may not give a direction under sub-paragraph (1)(a) or (b) unless the direction is for the purpose of complying with a limit imposed by the Treasury.

Losses and liabilities etc

- 24 (1) Section 265 of the Public Health Act 1875 (which relates to the protection of members and officers of certain authorities from personal liability) has effect as if there were included in the authorities referred to in that section a reference to HEE.
- (2) In its application to HEE as a result of sub-paragraph (1), section 265 of that Act has effect as if any reference in that section to that Act were a reference to this Act.
- (3) In section 71(2) of the National Health Service Act 2006 (schemes for meeting losses and liabilities etc of certain health service bodies: bodies eligible to participate), after paragraph (db) insert—
- “(dc) Health Education England.”.

Accounts

- 25 (1) HEE must keep—
- (a) proper accounts, and
 - (b) proper records relating to the accounts.
- (2) The Secretary of State may, with the approval of the Treasury, give directions to HEE about—
- (a) the content and form of its accounts, and

- (b) the methods and principles to be applied in the preparation of its accounts.
- (3) The reference in sub-paragraph (2) to accounts includes a reference to—
 - (a) the accounts prepared under paragraph 26, and
 - (b) such accounts as are prepared under paragraph 27.
- (4) The chief executive of HEE is to be its accounting officer.

Annual accounts

- 26
- (1) HEE must prepare consolidated annual accounts for each financial year.
 - (2) The consolidated annual accounts must include—
 - (a) the annual accounts of each LETB,
 - (b) the annual accounts of each other committee of HEE, and
 - (c) the annual accounts relating to the rest of HEE’s activities.
 - (3) HEE must send copies of the consolidated annual accounts to—
 - (a) the Secretary of State, and
 - (b) the Comptroller and Auditor General,within such period after the end of the financial year to which the accounts relate as the Secretary of State directs.
 - (4) The Comptroller and Auditor General must—
 - (a) examine, certify and report on the consolidated annual accounts, and
 - (b) lay copies of them and the report on them before Parliament.

Interim accounts

- 27
- (1) The Secretary of State may, with the approval of the Treasury, direct HEE to prepare accounts in respect of such period or periods as are specified in the direction (“interim accounts”).
 - (2) The interim accounts in respect of any period must include—
 - (a) the accounts of each LETB in respect of that period, and
 - (b) the accounts of each other committee of HEE in respect of that period.
 - (3) HEE must send copies of any interim accounts to—
 - (a) the Secretary of State, and
 - (b) if the Secretary of State directs, the Comptroller and Auditor General,within such period as the Secretary of State may direct.
 - (4) The Comptroller and Auditor General must—
 - (a) examine, certify and report on any interim accounts sent under sub-paragraph (3)(b),
 - (b) if the Secretary of State directs, send a copy of the report on the accounts to the Secretary of State, and
 - (c) if the Secretary of State directs, lay copies of the accounts and the report on them before Parliament.

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Annual report

- 28 (1) As soon as is feasible after the end of each financial year, HEE must prepare an annual report on how it has exercised its functions during the year.
- (2) The report must include, in particular, HEE’s assessment of—
- (a) the extent to which it has during the year—
 - (i) achieved the objectives and reflected the priorities set by the Secretary of State for the purposes of section 100(1); and
 - (ii) achieved the outcomes set by the Secretary of State for the purposes of section 100(2); and
 - (b) how effectively it discharged its duties under this Act or under regulations under this Act.
- (3) HEE must—
- (a) lay a copy of the report before Parliament, and
 - (b) send a copy of it to the Secretary of State.
- (4) HEE must provide the Secretary of State with such other reports and information relating to the exercise of its functions as the Secretary of State may request.

PART 4

CONSEQUENTIAL AMENDMENTS

Public Records Act 1958

- 29 In Part 2 of the Table in Schedule 1 to the Public Records Act 1958, at the appropriate place insert—
- “Health Education England.”

Public Bodies (Admission to Meetings) Act 1960

- 30 In the Schedule to the Public Bodies (Admission to Meetings) Act 1960, after paragraph (bl) insert—
- “(bm) Health Education England;”.

Parliamentary Commissioner Act 1967

- 31 In Schedule 2 to the Parliamentary Commissioner Act 1967, at the appropriate place insert—
- “Health Education England”.

House of Commons Disqualification Act 1975

- 32 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975, at the appropriate place insert—
- “Health Education England.”

Copyright, Designs and Patents Act 1988

- 33 In section 48(6) of the Copyright, Designs and Patents Act 1988 (definition of “the Crown”), after “the Care Quality Commission” insert “, Health Education England”.

Freedom of Information Act 2000

- 34 In Part 3 of Schedule 1 to the Freedom of Information Act 2000 (health service), at the appropriate place insert—
“Health Education England.”

Equality Act 2010

- 35 In Part 1 of Schedule 19 to the Equality Act 2010 (authorities subject to the public sector equality duty), in the group of entries under the heading “Health, social care and social security”, before the entry for the Health Service Commissioner for England, insert—
“Health Education England.”