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**Byelaws**  
**of**  
**The NHS Confederation**

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## **1. Relationship with Articles of Association**

1.1 These Byelaws are created under Article 18 of the Articles of Association (“Articles”) of The NHS Confederation (“the Charity”). They are designed to regulate the internal processes of the Charity, and are binding on the Charity, the Trustees and any person admitted to a class of membership under these Byelaws.

1.2 The terms defined in the Articles apply to these Byelaws.

## **2. Alterations to the Byelaws**

2.1 These Byelaws may be amended from time to time by resolution of at least 75% of the total number of Trustees voting either at a meeting or by written resolution.

## **3. Board of Trustees**

3.1 The Trustees are ultimately responsible for the management of the Charity's business, the protection of its assets and the furtherance of its objects, for which purposes they may exercise all the powers of the Charity and all rights under these Byelaws.

3.2 Provisions for Trustee decision making are contained at Schedule 1.

## **4. Appointment of Trustees and retirement by rotation**

### *4.1 Nominated Trustees*

4.1.1 Each of the following groups shall be entitled to nominate one individual to be a Trustee for a term of office:

- (a) the Welsh NHS Confederation;
- (b) the Northern Ireland Confederation for Health and Social Care (“NICON”); and
- (c) any Networks or boards created by the Trustees under paragraph 7.

4.1.2 It is expected that the person nominated from each of these groups will be their respective chairs, but this is not a requirement.

4.1.3 On the expiry of that person's term of office as a Trustee, the relevant Network or board will be entitled either to re-nominate that person for a further term of office, or to nominate a different individual.

4.1.4 Nominations must be received in writing by the Trustees no less than 1 month before the board meeting at which the nomination will be considered. Such meeting will be communicated by the Charity to the members.

4.1.5 The Trustees appointed in this way are known as “Nominated Trustees”.

### *4.2 Approval of Nominated Trustees*

4.2.1 Before any person nominated or re-nominated by a network or board in accordance with these Byelaws can be appointed as a Nominated Trustee, he or she must be approved by the other Trustees.

#### 4.3 *Co-opted Trustees*

4.3.1 In addition to the Nominated Trustees, the Trustees shall also be entitled to appoint Trustees on the basis of their skills and experience and the needs of the board (“Co-opted Trustees”), provided that the total number of Trustees does not exceed 15.

#### 4.4 *Chair*

4.4.1 The Trustees shall appoint a person as to act as Chair and Trustee following an open and transparent recruitment process.

4.4.2 The Chair shall cease to hold office as Chair if removed as a Trustee under the Articles. The Chair may choose to resign the office of Chair but remain as a Trustee if so agreed by resolution of the Trustees.

#### 4.5 *Terms of office and retirement of Nominated Trustees*

4.5.1 Terms of office run by reference to the Charity’s “Trustee Retirement Meeting”, which is the board meeting at which the Trustees approve the annual accounts of the Charity relating to the previous financial year.

4.5.2 Nominated Trustees are appointed for a first term of 3 years, ending at the third Trustee Retirement Meeting. Nominated Trustees can serve for a further term, but the length of that term will be set by agreement between the rest of the Board and the relevant nominating member group. The term could be either 1, 2 or 3 years, depending on the needs of the board at that time.

4.5.3 Where a Trustee has been nominated by a Network or board and that Network or board ceases to exist, the Trustee shall also cease to hold office as at the date of the Network or board’s dissolution.

#### 4.6 *Terms of office and retirement of Co-opted Trustees*

4.6.1 On appointment of a Co-opted Trustee the Trustees shall set his or her term of office, provided that the term shall be no longer than 3 years. Co-opted Trustees may be reappointed by a decision of the Trustees to serve for a further term of office, based on the needs of the board, subject to a maximum of 6 years continuous service.

#### 4.7 *Terms of office and retirement of Chair*

4.7.1 The Chair’s term of office shall ordinarily run until the third Trustee Retirement Meeting following their appointment, unless the Trustees resolve to appoint the Chair for a different term. The Chair may be reappointed by a decision of the Trustees to serve for a further term of office, subject to a maximum of 6 years continuous service.

4.8 A Trustee who has served the maximum number of terms or years allowed must take a break from office and may not be reappointed until the earlier of:

- (a) the anniversary of the commencement of his or her break from office; and
- (b) the Trustee Retirement Meeting following the Trustee Retirement Meeting at which his or her break from office commenced.

- 4.9 *Transitional arrangements for Trustees currently in office*
- 4.9.1 Those trustees whose terms of office are due to end at 31 March 2021 will have their term of office extended, as a transitional measure, until the Trustee Retirement Meeting in 2022.
- 4.9.2 Those trustees whose terms of office were extended as a transitional measure to the Trustee Retirement Meeting in 2022, and those Trustees whose existing term of office are due to end at any point in 2022, will automatically retire at the Trustee Retirement Meeting in 2022 and will then be subject to re-nomination and re-appointment (if permitted under these Byelaws). If those trustees have served only one term of office (or less than 6 years by that date), they can serve for a second term of office. If they have served more than one term of office, or longer than 6 years, they must take a break from office and cannot be reappointed for at least 1 year.
- 4.9.3 Subject to paragraph 4.9.4 below, the nomination and appointment system set out in these Byelaws will take effect so that from 2022, each trustee can only be appointed as either a Nominated Trustee or a Co-opted Trustee. This means that nominations from member groups should be received in time for the nominated person to take up their role immediately after the Trustee Retirement Meeting in 2022. The Charity's executive will be tasked with ensuring member groups are aware of the requirements and issued with the appropriate paperwork to submit their nomination. The expectation is that the Chairs of each of the member groups should be nominated to act as trustees.
- 4.9.4 Those existing trustees whose terms of office are due to end in 2023 or beyond will continue their term until the Trustee Retirement Meeting in 2023. If there is an existing trustee whose current term of office is due to extend beyond 2022, and that trustee, at their time of appointment, was part of a specific member group, then that trustee will be deemed to have been nominated by that group until their retirement in 2023. At that point, the relevant member group could decide to re-nominate that person for a second term, or nominate a different individual.

## 5. **Membership**

- 5.1 For the purposes of the Companies Acts, the Trustees are the only members of the Charity ("Company Law Members") and any member decision required under company law is reserved for Company Law Members. The Articles allow the Trustees to create additional classes of membership (referred to as "associate members" in the Articles) whose composition and rights are specifically set out in these Byelaws.
- 5.2 The additional classes are as follows (hereafter collectively referred to in these Byelaws as "members"):
- 5.2.1 Confederation Members: are organisations that are responsible for commissioning, overseeing, or providing NHS funded care.
- 5.2.2 Partner Members: are organisations which work in partnership with the NHS such as local authorities, social care providers, the community and voluntary sector, the independent sector and industry.
- 5.3 On admission as a Confederation Member or a Partner Member, an organisation may choose to join one or more Networks or Jurisdiction Groups as appropriate, provided that they meet the eligibility criteria applicable to each Network (including, where applicable,

criteria set out in that Network's constitution) and subject to paying the appropriate subscription.

- 5.4 Associate Members: the Trustees may admit such other persons or organisations as Associate Members, whose rights and role may be further described from time to time by the Trustees.
- 5.5 People and organisations may be invited to join the Confederation (as either a Confederation Member, Partner Member or Associate Member) by the Trustees. An organisation will be admitted as a member after being invited to do so and on receipt of their subscription.
- 5.6 The Trustees have ultimate responsibility for determining whether an applicant is entitled to membership and may delegate that responsibility to the Group Chief Executive.
- 5.7 A person or organisation may only be a member of one class of membership at one time.
- 5.8 Membership shall cease if:
  - 5.8.1 The Trustees determine that a member is no longer eligible for membership;
  - 5.8.2 the member ceases to exist;
  - 5.8.3 the member resigns by giving 6 months' notice in writing to the Charity;
  - 5.8.4 any amount due from the member to the Charity remains unpaid 3 months after it first becomes payable and the Trustees resolve to terminate membership;
  - 5.8.5 the member's conduct has been deemed by the board of trustees to be harmful or prejudicial to the Charity. The necessary resolution shall be passed by more than 50% of the members of the board of trustees present at a meeting whose business includes consideration of the matter and to which the relevant member has been invited to be represented. No member who has been expelled from membership is to be re-admitted except by a resolution carried by more than 50% of the members of the Trustees.

## **6. Confederation members' council**

- 6.1 The Trustees will establish a council of Confederation Members to act as an advisory body and assist communication between the Trustees and Confederation Members.

## **7. Networks and boards**

- 7.1 The Trustees have the power to establish and dissolve committees known as "Networks" or "boards". The purpose of the Networks and boards is to allow space for discussion and collaboration between members in relation to certain sectors or issues.
- 7.2 The Secretary shall keep a list of the Networks then in existence and shall update that list based on the decisions of the Trustees.
- 7.3 Each Network is entitled to manage its own affairs, subject to the provisions of these Byelaws, their Terms of Reference and the reasonable requirements and oversight of the Trustees.

7.4 The proceedings of each Network shall be governed by the Network Terms of Reference found at Schedule 2.

7.5 The Trustees are entitled to amend the Network Terms of Reference at any time and to require that a Network amends its constitution (if any).

## **8. Jurisdiction Groups**

8.1 The Trustees shall establish two committees which will be responsible for the operation of the Charity within the devolved jurisdictions of Wales and Northern Ireland:

8.1.1 the Welsh NHS Confederation; and

8.1.2 NICON.

8.2 The proceedings of each committee shall be governed by terms of reference created and maintained by that committee, subject to the approval of the Trustees.

## **9. Subscriptions**

9.1 Each member must pay the subscriptions appropriate to their membership.

9.2 Subscriptions for members in England will be determined by the Trustees, according to type of organisation. Subscriptions for members in Wales and Northern Ireland will be determined by the Welsh NHS Confederation and NICON respectively.

9.3 Failure to pay subscriptions when due may mean the Charity restricts or removes that member's access to the Charity's materials.

## **10. Committees and working groups**

10.1 Subject to the provisions above in relation to Networks and Jurisdiction Groups, the Trustees may form and remove such Networks, boards or committees as they think fit in order to manage the affairs of the Charity.

10.2 As at the date of these Byelaws, the following committees are established:

10.2.1 committees relating to audit, remuneration and investment and other issues which shall operate in accordance with terms of reference made and amended by the Trustees from time to time.

10.3 Except where specified otherwise in these Byelaws or terms of reference, the following general rules shall apply to committees:

10.3.1 the composition of any committee shall be entirely in the discretion of the Trustees and may include such of their number (if any) as the resolution establishing the committee may specify;

10.3.2 the deliberations of any committee must be reported regularly to the Trustees and any resolution passed or decision taken by any committee must be reported promptly to the Trustees and every committee must appoint a secretary for that purpose;

- 10.3.3 the Trustees may make such regulations and impose such terms and conditions and give such mandates to any committee as they may from time to time think fit; and
- 10.3.4 no committee shall knowingly incur expenditure or liability on behalf of the Charity except where authorised by the Trustees or in accordance with a budget which has been approved by the Trustees.
- 10.4 Committees must take minutes in accordance with the provisions regarding Minutes in the Articles.

## **11. Executive**

- 11.1 There shall be an individual officer known as the Group Chief Executive, to whom the Trustees will delegate overall executive responsibility for the Charity.
- 11.2 As part of their duties, the Group Chief Executive shall consult with the Directors in Wales and Northern Ireland and will meet them on a regular basis so that they are informed and can influence decisions that may affect them and their staff.

## **12. Finances**

- 12.1 The Trustees have ultimate responsibility for ensuring that the assets of the Charity are used effectively for the Charity's purposes. Except where the Trustees have expressly delegated authority to an individual, committee or group, financial decisions shall be taken by the Trustees and any bank account shall be operated by the Trustees and be in the name of the Charity. Where decisions involving assets or funds are delegated, they must always be overseen by the Charity's Finance Department and subject to the Charity's finance procedures. Appropriate reporting arrangements must also be in place with full transparency to enable proper scrutiny and oversight.

## **Schedule 1 TRUSTEE DECISIONS**

1. Trustee decisions
  - 1.1 The Trustees will normally operate by consensus and decisions made with the Chair inviting members to support or reject recommendations. However, if there is a disagreement among Trustees a vote may be taken by show of hands.
  - 1.2 Any decision of the Trustees must be either:
    - 1.2.1 by the decision of a majority of the Trustees present and voting at a quorate Trustees' meeting (subject to paragraph 6); or
    - 1.2.2 a decision taken in accordance with paragraph 7.
2. **Calling a Trustees' meeting**
  - 2.1 Any Trustee may (and the Secretary, must at the request of any Trustee) call a Trustees' meeting.
  - 2.2 A Trustees' meeting must be called by giving at least seven Clear Days' notice unless either:
    - 2.2.1 all the Trustees agree; or
    - 2.2.2 urgent circumstances require shorter notice.
  - 2.3 In deciding on the date and time of any Trustees' meeting, the Trustee calling or requesting the Secretary to call the meeting must try to ensure, subject to the urgency of any matter to be discussed at the meeting, that as many Trustees as practicable are likely to be available to participate.
  - 2.4 Notice of Trustees' meetings must be given to each Trustee.
  - 2.5 Every notice calling a Trustees' meeting must specify:
    - 2.5.1 the place, day and time of the meeting;
    - 2.5.2 the general nature of the business to be considered at such meeting; and
    - 2.5.3 if it is anticipated that Trustees participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.
  - 2.6 Notice of Trustees' meetings need not be in Writing.
  - 2.7 Article 27 shall apply, and notice of Trustees' meetings may be sent by Electronic Means to an Address provided by the Trustee for the purpose.



### **3. Participation in Trustees' meetings**

3.1 Subject to the Articles, Trustees participate in a Trustees' meeting, or part of a Trustees' meeting, when:

3.1.1 the meeting has been called and takes place in accordance with the Articles; and

3.1.2 they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting (for example via telephone or video conferencing).

3.2 In determining whether Trustees are participating in a Trustees' meeting, it is irrelevant where any Trustee is or how they communicate with each other.

3.3 If all the Trustees participating in a meeting are not in the same place, they may decide that the meeting is to be treated as taking place wherever any of them is.

### **4. Quorum for Trustees' meetings**

4.1 At a Trustees' meeting, unless a quorum is participating, no decisions can be made and no proposal can be voted on, except a proposal to call another meeting.

4.2 The quorum for Trustees' meetings may be fixed from time to time by a decision of the Trustees, but it must never be less than five

4.3 If the total number of Trustees for the time being is less than the quorum required, the Trustees must not take any decision other than a decision to appoint further Trustees.

### **5. Chairing of Trustees' meetings**

The Chair, if any, or in his or her absence another Trustee nominated by the Trustees present shall preside as chair of each Trustees' meeting.

### **6. Casting vote**

6.1 If the numbers of votes for and against a proposal at a Trustees' meeting are equal, the chair of the meeting has a casting vote in addition to any other vote he or she may have.

6.2 Paragraph 6.1 does not apply if, in accordance with the Articles, the chair of the meeting is not to be counted as participating in the decision-making process for quorum or voting purposes.

### **7. Majority decisions without a meeting**

7.1 The Trustees may, in the circumstances outlined in this paragraph, make a majority decision without holding a Trustees' meeting.

7.2 If:

7.3 a Trustee has become aware of a matter on which the trustees need to take a decision;

7.4 that Trustee has taken all reasonable steps to make all the other trustees aware of the matter and the decision;

- 7.5 the Trustees have had a reasonable opportunity to communicate their views on the matter and the decision to each other; and
- 7.6 a majority of the Trustees vote in favour of a particular decision on that matter
- a decision of the Trustees may be taken by majority and shall be as valid and effectual as if it had been taken at a Trustees' meeting duly convened and held.
- 7.7 Trustees may be in different places, participate at different times and communicate with each other by any means.
- 7.8 The Chair, or such other Trustee as shall be appointed by the Trustees shall be the chair of the process of decision-making in accordance with this paragraph. In the case of an equality of votes, the chair shall be entitled to a casting vote in addition to any other vote he or she may have.

## **Schedule 2 NETWORK TERMS OF REFERENCE**

The following terms of reference shall apply to the activities of all Networks formed by the Trustees.

### **1. Purpose of Network**

- 1.1 A Network may be established by the Trustees to focus on a particular issue or sector and to support members within that sector by providing them with specific and targeted representation.
- 1.2 The fundamental purpose of all Networks is to allow space for discussion and collaboration between members in relation to certain sectors or issues, to develop policies reflecting those members' views, to lobby on behalf of those members, and to collaborate with other Networks and groups within the Confederation.
- 1.3 Networks are a critical part of the Confederation, influencing and shaping not only matters affecting the own members but also the policies and practice of the Confederation as a whole. Networks will be expected to contribute to the development of 'system working' and to collaborate with each other and all the constituent parts of the Confederation.
- 1.4 Each Network shall have a written statement describing its purpose and remit. The remit of a Network shall initially be determined by the Trustees and may subsequently be altered by the Network's board with approval from the Trustees. Networks may create their own constitution to supplement these Terms of Reference, provided that if there is any inconsistency between the constitution and these Terms of Reference then the Terms of Reference shall prevail.

### **2. Membership**

- 2.1 Each Confederation Member may choose to join one or more Networks, provided that they meet the eligibility criteria relating to that Network set by the Trustees.
- 2.2 The Network Board may apply to the Trustees remove a Confederation Member from membership of a Network on the occurrence of any event found at paragraph 5.8 of the Byelaws.

### **3. Network Board**

- 3.1 The members of a Network shall elect a Board. The system and conduct of any election will be determined by the Trustees and will as far as possible be standard across all Networks. The role of the Board is to direct the activities of the Network.
- 3.2 Networks shall have discretion as to the size and composition of the Network Board, but these must first be approved by the Trustees. All Networks must elect a Chair for a term of 3 years (or such shorter period as may be agreed with the Trustees), with the end of their term of office coinciding with the Trustee Retirement Meeting described in the Byelaws.
- 3.3 Each Network is entitled to nominate an individual to serve as a Trustee in accordance with the Byelaws.

### **4. Meetings**

4.1 Network members may meet as often as they may decide. A Network which has not met during a calendar year may indicate to the Trustees that the Network is no longer required and should be dissolved.

## **5. Reporting**

5.1 On a regular basis to be determined by the Trustees, Networks will be required to provide reports on their activities. Ordinarily these will be delivered either by the Confederation executive lead for that Network or by the Trustee nominated by that Network, but the Trustees may also request other materials or individuals to provide reports.

5.2 Networks are expected to take minutes of their meetings, including the key items discussed and decisions made.

## **6. Budget**

6.1 The Network executive lead will be assigned a budget by the Trustees (or the Group Chief Executive may be delegated to do so by the Trustees) for the purpose of furthering the Network's activities. The executive lead will be responsible directly or indirectly to Group Chief Executive. The budget will sit within bank accounts controlled by the Charity and be subject to the Charity's finance procedures. The executive lead, as the budget holder, will be responsible for the management of those funds, working with the network Board and its Chair.

## **7. Authority of the Network**

7.1 The role of Networks is to advise the Trustees on a specific issue or sector and to support and speak for members within that sector. The policies and programme of the Network will be set by its Board. The Board will be supported by an executive lead for that network who will be a senior member of the Confederation's executive team. The Chair of the Network will agree a set of annual objectives for the executive lead with the Group Chief Executive or one of her/his Directors and will contribute to their annual appraisal.

7.2 Meetings of the Network Board will be administered and supported by the Confederation's executive team and may be attended by senior staff including the Group Chief Executive.

7.3 Networks have the right to speak publicly on behalf of their members and will be supported by the executive team to deliver this. However, they are expected to collaborate with the rest of the Confederation and to inform the Group Chief Executive if any public statement or other activity is likely to run counter to positions adopted by the Confederation or any of its constituent parts. Networks do not have the power to act on behalf of the Charity unless this is approved by the Group Chief Executive or her/his team. Networks are part of the Confederation and budgets, staffing levels and the organisation of events and other activities must be approved by the Trustees or the Group Chief Executive and her/his team under delegation from the Trustees.

## **8. Oversight by the Trustees**

Networks are created under the Charity's Articles of Association as committees of the Trustees. The Trustees are ultimately responsible for the activities of the Networks and the assets of a Network are assets of the Charity. The Trustees have the power to dissolve a

Network by giving not less than 3 months' notice to the Chair of the Network (or the person most recently elected as Chair).