
STATUTORY INSTRUMENTS

1991 No. 809 (S. 74)

NATIONAL HEALTH SERVICE, SCOTLAND

The Health Boards (Membership and Procedure) (No.2) Regulations 1991

<i>Made</i>	- - - -	<i>22nd March 1991</i>
<i>Laid before Parliament</i>		<i>25th March 1991</i>
<i>Coming into force</i>		
<i>For the purposes of regulation 12(c)</i>		<i>31st March 1991</i>
<i>For all other purposes</i>		<i>1st April 1991</i>

The Secretary of State, in exercise of the powers conferred on him by sections 2(10), 105(7) and 108(1) of, and by paragraphs 2A, 4 and 11 of Schedule 1 to the National Health Service (Scotland) Act 1978(1), as read with Article 5 of, and Part I of the Schedule to, the Health Education Board for Scotland Order 1990(2), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Health Boards (Membership and Procedure) (No.2) Regulations 1991 and shall come into force for the purposes of regulation 12(c) on 31st March 1991 and for all other purposes on 1st April 1991.

(2) In these Regulations, unless the context otherwise requires—

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- (1) 1978 c. 29; section 105(7), which was amended by the Health Services Act 1980 (c. 53) (“the 1980 Act”), Schedule 6, paragraph 5(1)(a) and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (“the 1983 Act”), Schedule 9, paragraph 24, contains provisions relevant to the exercise of the statutory powers under which these Regulations are made; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made; paragraph 2A of Schedule 1 was inserted by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), Schedule 5, paragraph 2; paragraph 4 of Schedule 1 was amended by the 1990 Act, Schedule 5, paragraph 3; and paragraph 11 of Schedule 1 was amended by the 1980 Act, Schedule 6, paragraph 7 and Schedule 7 and by the 1990 Act, Schedule 5, paragraph 7.
- (2) S.I. 1990/2639.

- (a) “the 1978 Act” means the National Health Service (Scotland) Act 1978;
- (b) “Board” means a Health Board and includes the Health Education Board for Scotland established by the Health Education Board for Scotland Order 1990;
- (c) “member” means a member of a Board and includes the chairman and “members” shall be construed accordingly;
- (d) “contract” includes any arrangement including an NHS contract;
- (e) “officer” includes employee.

(3) Unless the context otherwise requires, a reference in these Regulations to a numbered regulation is to the regulation bearing that number in these Regulations and a reference in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation.

PART II

MEMBERSHIP

Term of office

2.—(1) Subject to the following provisions of these regulations, the term of office of the members of a Board shall be for such period not exceeding four years as the Secretary of State shall specify on making the appointment.

(2) At the expiration of his term of office a member shall, subject to regulations 5 and 6 be eligible for re-appointment.

University members

3. For the purposes of paragraph 2A of Schedule 1 to the Act the Health Boards in the case of which at least one of the persons appointed to be chairman or a member under paragraph 2 of that Schedule must hold a post in a university with a medical or dental school, are Lothian Health Board, Greater Glasgow Health Board and Tayside Health Board.

Remuneration of members

4. In addition to the chairman, the members to whom remuneration may be paid under paragraph 4 of Schedule 1 to the Act are members appointed for the purposes of paragraph 2A of that Schedule and any other members who are not also officers of the Board.

Resignation and removal of members

5.—(1) A member who desires to resign his membership shall give written intimation of his resignation to the Secretary of State.

(2) If a member has not attended any meeting of the Board or of any committee or subcommittee of the Board throughout a period of six consecutive months, the Secretary of State shall, unless satisfied that his absence was due to illness or other reasonable cause, declare that his seat on the Board has become vacant and that person shall forthwith cease to be a member.

(3) Where a member who was appointed for the purposes of paragraph 2A of Schedule 1 to the Act ceases to hold the post in a university with a medical or dental school, which he held at the time of his appointment for those purposes, the Secretary of State may terminate his appointment as a member.

(4) A member of a Board being either

- (a) a person who holds any paid appointment or office or other place of profit under a Board or under the Agency and who is dismissed, removed or resigns from such appointment, office, or other place of profit; or—
 - (b) a person whose name is included in any list prepared under Part II of the Act, and whose name is withdrawn from the list on his own application,
- shall, if the Secretary of State so directs, forthwith cease to be a member.

Disqualification

- 6.—(1) A person shall be disqualified for being a member of a Board, if—
- (a) he is chairman or a director of an NHS trust; or
 - (b) he holds any paid appointment or office with a trade union which represents the interests of members who are employed by a health service body; or
 - (c) he is a member of a fund-holding practice recognised under section 87A of the Act⁽³⁾;
 - (d) he is a person who within the preceding five years has been convicted in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine; or
 - (e) he is a person who has held any paid appointment or office or other place of profit under a Board or under the Agency and has been dismissed from such appointment, office, or other place of profit otherwise than by reason of redundancy; or
 - (f) he is disqualified under section 29 of the Act⁽⁴⁾ for inclusion in any list prepared under Part II of the Act; or
 - (g) he is a person whose estate has been sequestrated in Scotland or who has been adjudged bankrupt elsewhere than in Scotland in relation to whose estate a judicial factor has been appointed or who has granted a trust deed for the benefit of his creditors:
 - Provided that—
 - (i) the disqualification attaching to a person whose estate has been sequestrated shall cease if and when—
 - (a) the sequestration of his estate is recalled or reduced; or
 - (b) the sequestration is discharged;
 - (ii) the disqualification attaching to a person by reason of his having been adjudged bankrupt shall cease if and when—
 - (a) the bankruptcy is annulled; or
 - (b) he is discharged;
 - (iii) the disqualification attaching to a person in relation to whose estate a Judicial factor has been appointed shall cease if and when—
 - (a) that appointment is recalled; or
 - (b) the judicial factor is discharged;
 - (iv) the disqualification attaching to a person who has granted a trust deed shall cease if and when he pays his creditors in full or on the expiry of five years from the date of his granting the deed.

(3) Section 87A was inserted by the 1990 Act, section 34.

(4) Section 29 was amended by the Health and Social Security Act 1984 (c. 48), Schedule 8, Part I.

(2) The Secretary of State may direct that in relation to any individual person, Health Board or Special Health Board any disqualification so directed shall not apply in relation thereto.

(3) In this regulation “health service body” is any one of the persons and bodies specified in section 17A(2) of the Act⁽⁵⁾ and “trade union” has the meaning given in section 28(1) of the Trade Union and Labour Relations Act 1974⁽⁶⁾.

PART III

APPOINTMENT OF VICE-CHAIRMAN AND COMMITTEES

Vice-Chairman and committees

7.—(1) Each Board shall appoint a member who is not also an officer of the Board to be vice-chairman and any person so appointed shall, so long as he remains a member of the Board, hold office for such period as the Board may decide.

(2) Subject to paragraph (3), each Board may, and if so directed by the Secretary of State shall, appoint committees and sub-committees for such purposes as the Board may determine, subject to such restrictions or conditions as the Board may think fit, or as the Secretary of State may direct.

(3) Any committee of the Board appointed under this regulation shall include at least one member of the Board and may include persons who are co-opted.

(4) If a Board appoints a committee to exercise any of its functions as manager of a hospital under Part V of the Mental Health (Scotland) Act 1984⁽⁷⁾, it shall appoint to that committee one or more members who are not also officers of the Board and shall not appoint any members who are officers of the Board.

PART IV

PROCEDURE OF BOARDS

Interpretation

8. In this Part, unless the context otherwise requires, “committee” includes “sub-committee”.

Meetings and minutes

9.—(1) At every meeting of a Board, the chairman, if present, shall preside.

(2) If the chairman is absent from any meeting, the vice-chairman, if present, shall preside, and if the chairman and vice-chairman are both absent, the members present at the meeting shall elect from among themselves a person to act as chairman for that meeting who is not also an officer of the Board.

(3) All acts of, and all questions coming and arising before, a Board shall be done and decided by a majority of the members of the Board present and voting at a meeting of the Board and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

(4) Minutes of every meeting of a Board shall be forwarded to the Secretary of State not later than one week before the date of the next meeting of the Board after that to which they relate.

(5) Section 17A was inserted by the 1990 Act, section 30.

(6) 1974 c. 52.

(7) 1984 c. 36.

Conflict of interest

10.—(1) Subject to such exceptions and qualifications as may, with the approval of the Secretary of State, be specified in standing orders, if a member has any pecuniary or other interest, direct or indirect, in any contract or proposed contract (not being a contract for the provision of any of the services mentioned in Part II of the Act) or other matter, and is present at a meeting of the Board or of a committee of the Board at which the contract or other matter is the subject of consideration, he shall at the meeting, as soon as practicable after the commencement thereof, disclose the fact, and shall not take part in the consideration and discussion of, or vote on any question with respect to, the contract or other matter.

(2) The Secretary of State may, subject to such conditions as he may think fit to impose, remove any disability imposed by this regulation in any case in which it appears to him in the interests of the national health service that the disability should be removed.

(3) Any remuneration, compensation or allowances payable to a chairman or other member by virtue of paragraphs 4, 5 or 13 of Schedule 1 to the Act shall not be treated as a pecuniary interest for the purpose of this regulation.

Power to inake standing orders

11. Subject to such directions as may be given by the Secretary of State, each Board shall make, and may vary and revoke, standing orders for the regulation of the procedure and business of the Board and of any committee of the Board and in particular—

- (a) for the times and places of the meetings of the Board or committee which, in the case of the Board, shall be held not less often than once in every three months;
- (b) for due notice of the time and place of each meeting of the Board or of a committee of the Board and, subject to any exceptions which may be mentioned in the standing orders, of the business to be transacted thereat, to be given to members;
- (c) for the chairman of the Board to call a meeting of the Board at any time or on being required so to do on receiving a requisition in writing for that purpose specifying the business proposed to be transacted at the meeting and signed by one-third of the whole number of members of the Board including at least two Board members who are not also officers of the Board, and for such a meeting to be held within fourteen days of receipt of the requisition, and to provide that no business shall be transacted at the meeting other than that specified in the requisition;
- (d) for recording the names of members present at a meeting of a board or of a committee of a Board;
- (e) for the drawing up and signing and approval of minutes recording the proceedings of meetings of the Board or of at committee of the Board including any decision or resolution of the Board;
- (f) for specifying the exceptions and qualifications referred to in regulation 10 (conflict of interest);
- (g) for the constitution and procedures of committees of the Board including the power of the Board to co-opt persons to committees;
- (h) for providing that no business shall be transacted at a meeting of the Board unless at least one-third of the whole number of members of the Board of whom at least two should be members who are not also officers of the Board are present thereat;
- (i) for the adjournment of a meeting of the Board or of a committee of the Board to any other day, hour and place;

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- (j) for the circumstances in which any member of the Board may be suspended from the Board or disqualified for taking any part in any business of the Board on reasonable cause shown.

Revocations

12. There are hereby revoked—

- (a) the National Health Service (Health Boards: Membership, Procedure and Payment of Subscriptions) (Scotland) Regulations 1975⁽⁸⁾;
- (b) the National Health Service (Health Boards: Membership, Procedure and Payment of Subscriptions) (Scotland) Amendment Regulations 1981⁽⁹⁾; and
- (c) the Health Boards (Membership and Procedure) Regulations 1991⁽¹⁰⁾(c).

St. Andrews House,
Edinburgh
22nd March 1991

Michael B. Forsyth
Minister of State, Scottish Office

⁽⁸⁾ S.I. 1975/197.
⁽⁹⁾ S.I. 1981/147.
⁽¹⁰⁾ S.I. 1991/571.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supersede the Health Boards (Membership and Procedure) Regulations 1991 ([S.I. 1991/571](#)), which were to come into effect on 1st April 1991. The earlier Regulation which are revoked on 31 st March 1991 by regulation 12(c) contain two defects which rendered necessary their replacement.

The Regulations, which come into force on 1st April 1991 for all purposes other than revocation of the earlier Regulations, make provision in relation to Health Boards established under the National Health Service (Scotland) Act 1978 as to the membership and procedure of these Boards including the Health Education Board for Scotland also established under that Act.

By regulation 2 provision is made with regard to the terms of office of members of Health Boards and by regulation 3 as for those Health Boards which must have at least one member who holds a post in a University with a medical or dental school.

Regulation 4 deals with the remuneration of the members of Health Boards and regulation 5 with their resignation and removal from office.

Regulation 6 provides for the circumstances in which a person may be disqualified from membership of a Health Board. Regulation 7 deals with the appointment of a vice-chairman and of committees and sub-committees of Health Boards.

In part IV there are various provisions with regard to procedure including provisions as to the meetings of the boards themselves and for the sending of minutes to the Secretary of State. Regulation 10 makes provision with regard to conflict of interest and in regulation 11 there is provision for standing orders regulating the procedure of meetings of boards and of committees and sub-committees.

The final regulation revokes all previous Regulations which provided for membership and procedure of Health Boards and for payment of subscriptions including the defective Regulations referred to earlier in this Note.