

2001 No. 794

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service Appointments Commission
Regulations 2001**

<i>Made</i> - - - -	<i>9th March 2001</i>
<i>Laid before Parliament</i>	<i>9th March 2001</i>
<i>Coming into force</i>	<i>1st April 2001</i>

The Secretary of State for Health, in exercise of the powers conferred upon him by sections 16(4) and 126(4) of, and paragraphs 12 and 16 of Schedule 5 to, the National Health Service Act 1977(a), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the National Health Service Appointments Commission Regulations 2001 and shall come into force on 1st April 2001.

(2) These Regulations extend to England only.

(3) In these Regulations—

“the Act” means the National Health Service Act 1977;

“the Commission” means the National Health Service Appointments Commission established by the Order;

“the chairman” means the chairman of the Commission;

“Executive Committee” means a committee of a Primary Care Trust appointed under regulation 9(1) of the Primary Care Trusts (Membership and Procedure) Regulations 2000(b);

“health service body” shall be construed in accordance with section 4 of the National Health Service and Community Care Act 1990(c);

“member” means a member of the Commission other than the chairman;

(a) 1977 c. 49; section 16 was substituted by paragraph 9 of Schedule 4 to the Health Act 1999 (c. 8) (“the 1999 Act”); section 126(4) was amended by section 65(2) of the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), and by paragraph 37(6) of the 1999 Act; paragraph 12 of Schedule 5 was amended by article 7 of S.I. 1985/39, by paragraph 9 of Schedule 1 to the 1990 Act, by paragraph 60(e) of Schedule 1 to the Health Authorities Act 1995 (c. 17) and by paragraph 39(4) of Schedule 4 to the 1999 Act. See section 128(1), as amended by section 26(2)(g) and (i) of the 1990 Act, for the definitions of “prescribed” and “regulations”. The functions of the Secretary of State under these provisions are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by article 2(a) of, and the entry for the 1977 Act in Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672, as amended by section 66(5) of the 1999 Act.

(b) S.I. 2000/89.

(c) 1990 c. 19.

“the Order” means the National Health Service Appointments Commission (Establishment and Constitution) Order 2001(a);

“Regional Commissioner” means a member appointed pursuant to article 4(b) of the Order.

(4) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations, and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

Appointment and tenure of office of chairman and Regional Commissioners

2.—(1) The chairman and Regional Commissioners shall be appointed by the Secretary of State.

(2) Subject to regulation 5 (termination of tenure of office), the term of office of the chairman and Regional Commissioners shall be such period, not exceeding four years, as the Secretary of State shall specify on making the appointment.

(3) Subject to regulation 3 (disqualification for appointment), the chairman and any Regional Commissioner shall, on the termination of his office, be eligible for re-appointment.

Disqualification for appointment

3.—(1) Subject to regulation 4 (cessation of disqualification), a person shall be disqualified for appointment as the chairman or as a Regional Commissioner if—

- (a) he has within the preceding five years been convicted in the United Kingdom, the Channel Islands or the Isle of Man 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;
- (b) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
- (c) he has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- (d) he has had his name removed, by a direction under section 46 of the Act, from any list prepared under Part II of the Act, and has not subsequently had his name included in such a list or he is suspended as respects the provision of Part II services by a direction made pursuant to section 49A(2) or 49B(1) of the Act (or has had his name removed or is suspended under any corresponding provision having effect in Scotland, Wales or Northern Ireland);
- (e) he is a chairman or a member of—
 - (i) a Health Authority,
 - (ii) another Special Health Authority, or
 - (iii) a Primary Care Trust;
- (f) he is a chairman or a director of an NHS trust;
- (g) he is a chairman or a member of an Executive Committee;
- (h) he is a person whose tenure of office as the chairman or as a member or director of a health service body has been terminated on the grounds that—
 - (i) it was not in the interests of, or conducive to the good management, of the health service body or of the health service that he should continue to hold that office,
 - (ii) he failed, without reasonable cause, to attend any meeting of that health service body for a period of three months or more,

(a) S.I. 2001/793.

- (iii) he failed to declare a pecuniary interest or withdraw from consideration of any matter in respect of which he had a pecuniary interest;
- (i) he holds any paid appointment or office with a health service body;
- (j) he holds an appointment as—
 - (i) a special trustee for a health service hospital,
 - (ii) a trustee for an NHS trust, or
 - (iii) a trustee for a Primary Care Trust.

(2) For the purposes of paragraph (1)(a), the date of conviction shall be deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted.

(3) For the purposes of paragraph (1)(c) a person shall not be treated as having been in paid employment by reason only of his having been the chairman or a member or director of a health service body.

Cessation of disqualification

4.—(1) Where a person is disqualified under regulation 3(1)(b) by reason of having been adjudged bankrupt—

- (a) if the bankruptcy is annulled on the ground that he ought not to have been adjudged bankrupt or on the ground that his debts have been paid in full, the disqualification shall cease on the date of the annulment;
- (b) if he is discharged, the disqualification shall cease on the date of his discharge.

(2) Where a person is disqualified under regulation 3(1)(b) by reason of his having made a composition or arrangement with his creditors—

- (a) if he pays his debts in full, the disqualification shall cease on the date on which such payment is completed; and
- (b) in any other case, it shall cease on the expiry of the period of five years beginning on the date on which the terms of the deed of composition or arrangement are fulfilled.

(3) Subject to paragraph (4), where a person is disqualified under regulation 3(1)(c) he may, after the expiry of two years beginning on the date on which he was dismissed, apply in writing to the Secretary of State to remove the disqualification, and the Secretary of State may direct that the disqualification shall cease.

(4) Where the Secretary of State refuses an application to remove a disqualification no further application may be made by that person until the expiry of the period of two years beginning with the date of the application and this paragraph shall apply to any subsequent application.

(5) Where a person is disqualified under regulation 3(1)(h), the disqualification shall cease on the expiry of the period of two years beginning on the date of the termination of his tenure of office or such longer period as the Secretary of State specifies when terminating his period of office but the Secretary of State may, on application being made to him by that person, reduce the period of disqualification.

Termination of tenure of office and suspension of chairman and members

5.—(1) The chairman or a Regional Commissioner may resign his office at any time during his term of office by giving notice in writing to the Secretary of State.

(2) Where the Secretary of State is of the opinion that it is not in the interests of, or conducive to the good management of, the Commission or of the health service that the chairman or a Regional Commissioner should continue to hold office, he may forthwith terminate his tenure of office by giving him notice in writing to that effect.

(3) If the chairman or a Regional Commissioner fails to attend any meeting of the Commission for a period of three months the Secretary of State shall forthwith terminate that person's tenure of office unless he is satisfied that—

- (a) the absence was due to a reasonable cause; and
- (b) the person in question will be able to attend meeting of the Commission within such a period as the Secretary of State considers reasonable.

- (4) Where a person has been appointed to be chairman or a Regional Commissioner, and—
- (a) he becomes disqualified for appointment under regulation 3, the Secretary of State shall forthwith notify him in writing of such disqualification; or
 - (b) it comes to the notice of the Secretary of State that at the time of his appointment he was so disqualified, he shall forthwith declare that the person in question was not duly appointed and notify him in writing to that effect,

and upon receipt of any such notification, his tenure of office, if any, shall be terminated and he shall cease to act as such chairman or member.

(5) If it appears to the Secretary of State that the chairman or a Regional Commissioner has failed to comply with regulation 10 (disability on account of pecuniary interest) he may forthwith terminate that person's tenure of office by giving him notice in writing that effect.

(6) The chief officer of the Commission shall cease to hold office as a member of the Commission where he ceases to hold that post.

(7) If the chief officer of the Commission is suspended from his post in the Commission he shall be suspended from performing his functions as a member for the period of his suspension.

Appointment of vice-chairman

6.—(1) Subject to paragraph (2), the chairman and Regional Commissioners may appoint one of the Commissioners to be vice-chairman for such period, not exceeding the remainder of his term as a member, as they may specify on appointing him.

(2) Any member so appointed may at any time resign from the office of vice-chairman by giving notice in writing to the chairman.

(3) Where the chairman has died or has ceased to hold office, or where he is unable to perform his duties as chairman owing to illness, absence from England and Wales or any other cause, references to the chairman in the Schedule to these Regulations shall, so long as there is no chairman available to perform his duties, be taken to include references to the vice-chairman.

Appointment of committees and sub-committees

7.—(1) Subject to such directions as may be given by the Secretary of State, the Commission may, and, if so directed by him, shall, appoint committees of the Commission consisting wholly or partly of members of the Commission or wholly of persons who are not members of the Commission.

(2) A committee appointed under this regulation may, subject to such directions as may be given by the Secretary of State or the Commission, appoint sub-committees consisting wholly or partly of members of the committee (whether or not they are members of the Commission) or wholly of persons who are not members of the Commission or the committee.

(3) Regulations 3 (other than paragraph (1)(e) to (g), (i) and (j)) and 4 apply to the appointment of members of committees and sub-committees appointed under this regulation as they apply to the appointment of members of the Commission.

Arrangements for the exercise of functions

8. Subject to such directions as may be given by the Secretary of State, the Commission may make arrangements for the exercise, on behalf of the Commission, of any of its functions by a committee or sub-committee appointed by virtue of regulation 7 or by an officer of the Commission in each case subject to such restrictions and conditions as the Commission thinks fit.

Meetings and proceedings

9.—(1) The meetings and proceedings of the Commission shall be conducted in accordance with the rules set out in the Schedule to these Regulations and with Standing Orders made under paragraph (2).

(2) Subject to those rules, to regulation 10 (disability on account of pecuniary interest) and to such directions as may be given by the Secretary of State, the Commission shall make, and may vary or revoke, Standing Orders for the regulation of its proceedings and business, including provision for the suspension of the Standing Orders or any of them.

(3) Subject to such directions as may be given by the Secretary of State, the Commission may make, vary and revoke Standing Orders relating to the quorum, proceedings and place of meeting of any committee or sub-committee of the Commission, but subject to any such Standing Orders, the quorum, proceedings and place of meeting shall be such as the committee or sub-committee may determine.

Disability of chairman and members in proceedings on account of pecuniary interest

10.—(1) Subject to the following provisions of this regulation, if the chairman or a member has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at any meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement, disclose his interest and shall not take part in the consideration or discussion of the contract or other matters or vote on any question with respect to it.

(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 health service that the disability should be removed.

(3) The Commission may, by Standing Orders made under regulation 9(2), provide for the exclusion of the chairman or a member from a meeting of the Commission while any contract, proposed contract or other matter in which he has a pecuniary interest, direct or indirect, is under consideration.

(4) Any remuneration, compensation or allowances payable to the chairman or a member by virtue of paragraph 9 of Schedule 5 to the Act (pay and allowances) shall not be treated as a pecuniary interest for the purpose of this regulation.

(5) Subject to paragraphs (2) and (6), the chairman or a member shall be treated for the purpose of this regulation as having an indirect pecuniary interest in a contract, proposed contract or other matter if—

- (a) he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- (b) he is a partner of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration,

and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purpose of this regulation to be also an interest of the other.

(6) Neither the chairman nor a member shall be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only—

- (a) of his membership of a company or other body if he has no beneficial interest in any securities of that company or other body; or
- (b) of an interest in any company, body or person with which he is connected as mentioned in paragraph (5) which is so remote or insignificant that it cannot reasonably be regarded as likely to influence him in the consideration or discussion of, or in voting on, any question with respect to that contract, proposed contract or other matter.

(7) Where the chairman or a member—

- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
- (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, which ever is the lesser; and
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this regulation shall not prohibit him from taking part in the consideration or discussion of the contract or other matter, or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.

(8) This regulation applies to a committee or sub-committee as it applies to the Commission and applies to a member of any such committee or sub-committee (whether or not he is also a member of the Commission) as it applies to a member of the Commission.

(9) In this regulation—

“public body” includes

- (a) any body established for the purpose of carrying on, under national ownership, any industry or undertaking or part of any industry or undertaking;
- (b) the governing body of any university, university college or college school or hall of a university; and
- (c) the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907^(a);

“securities” means—

- (a) shares or debentures, whether or not constituting a charge on the assets of a company or other body, or rights or interests in any share or such debentures; or
- (b) rights (whether actual or contingent) in respect of money lent to, or deposited with, any industrial or provident society or building society;

“shares” means shares in the share capital of a company or other body or the stock of a company or other body.

Reports by the Commission

11. The Commission shall make reports to the Secretary of State in such manner and at such time as the Secretary of State may direct, and shall furnish to the Secretary of State such information as he may from time to time require.

Public meeting

12. If, in pursuance of regulation 11 of these Regulations, the Secretary of State directs the Commission to make an annual report to him for any particular year or for each year, the Commission shall present the report at a public meeting not later than 30 days after the date on which the report was made.

Signed by authority of the Secretary of State for Health

9th March 2001

John Denham
Minister of State,
Department of Health

^(a) 1907 c. 36.

SCHEDULE

Regulation 9(1)

RULES AS TO MEETINGS AND PROCEEDINGS OF THE COMMISSION

1. The first meeting of the Commission shall be held on such day and at such place as may be fixed by the chairman, and he shall be responsible for convening the meeting.

2.—(1) The chairman may call a meeting of the Commission at any time.

(2) If a requisition for a meeting, signed by at least one third of the total number of members, is presented to the chairman, and the chairman either—

(a) refuses to call a meeting; or

(b) without so refusing, does not within 21 days after the requisition has been presented to him call a meeting,

those members may forthwith call a meeting.

(3) Before each meeting of the Commission, a notice of the meeting which—

(a) specifies the principal business proposed to be transacted at it, and

(b) is signed by the chairman or by an officer of the Commission authorised by the chairman to sign on his behalf,

shall be delivered to each member, or sent by post to his last known address, at least seven clear days before the day of the meeting.

(4) The proceedings of any meeting shall not be invalidated by a failure to deliver such notice to any member.

(5) In the case of a meeting called under sub-paragraph (2) above by members, the notice shall be signed by those members and no business other than that specified in the notice shall be transacted at the meeting.

3.—(1) At any meeting of the Commission the chairman or, in his absence, the vice-chairman (if there is one and he is present) shall preside.

(2) If the chairman and any vice-chairman are absent, such other Regional Commissioner present as the other members present shall choose for the purpose shall preside.

4. Every question at a meeting shall be determined by a majority of votes of the members present and competent to vote on the question and, in the case of an equality of votes, the chairman or, in his absence, the person presiding at the meeting shall have a second or casting vote.

5.—(1) Subject to sub-paragraph (2) below, no business shall be transacted at any meeting unless at least the third of the membership (the chairman being included for this purpose in the reckoning) is present.

(2) The chairman and at least two members shall be present at the meeting of the Commission which is convened for the purpose of appointing a person to act as the chief officer of the Commission.

6.—(1) The minutes of the proceedings of a meeting shall be drawn up and shall be signed at the next ensuing meeting by the person presiding at that next meeting.

(2) The names of the members present at a meeting shall be recorded in the minutes.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning the membership and procedure of the National Health Service Appointments Commission which is a Special Health Authority established under section 11 of the National Health Service Act 1977 by the National Health Service Appointments Commission (Establishment and Constitution) Order 2001.

In particular, these regulations provide for the appointment and tenure of office of the chairman and members of the Commission (regulation 2), for disqualification for appointment (regulations 3 and 4) and for the termination of office (regulation 5). Also included is provision relating to the appointment of a vice-chairman of the Commission (regulation 6), the appointment of, and exercise of functions by, committees and sub-committees (regulations 7 and 8), the conduct of proceedings (regulation 9 and the Schedule), and disability on account of a conflict of interest (regulation 10).

Provision is also made for requiring the Commission to furnish reports and certain other information to the Secretary of State (regulation 11) and to hold a public meeting at which an annual report is presented (regulation 12).

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