

2002 No. 3040

NATIONAL HEALTH SERVICE, ENGLAND

**The Counter Fraud and Security Management Service
Regulations 2002**

Made - - - - *10th December 2002*

Laid before Parliament *10th December 2002*

Coming into force *1st January 2003*

The Secretary of State for Health, in exercise of the powers conferred upon him by sections 16 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, application and interpretation

1.—(1) These Regulations may be cited as the Counter Fraud and Security Management Service Regulations 2002 and shall come into force on 1st January 2003.

(2) These Regulations apply to England only.

(3) In these Regulations—

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

“the CFSMS” means the Counter Fraud and Security Management Service established by the Counter Fraud and Security Management Service (Establishment and Constitution) Order 2002(b);

“chairman” means, unless the context otherwise requires, the chairman of the CFSMS;

“health service body” means—

(a) a Strategic Health Authority, Special Health Authority, Primary Care Trust or NHS trust;

(b) a Health Board or Special Health Board constituted under section 2 of the National

(a) 1977 c.49; section 16 was substituted by paragraph 9 of Schedule 4 to the Health Act 1999 (c.8) (“the 1999 Act”) and amended by section 1(3) of, and paragraphs 1 and 3(c) of Schedule 1 to, the National Health Service Reform and Health Care Professions Act 2002 (c.17); 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 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. 2002/3039.

Health Service (Scotland) Act 1978(a) or the Scottish Dental Practice Board, the Common Services Agency for the Scottish Health Service or an NHS trust constituted under, respectively, sections 4, 10 or 12A of that Act; and

(c) the Dental Practice Board constituted under section 37(1) of the Act;

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

“non-officer member” means a member who is not an officer of the CFSMS;

“primary care list” means a list either of persons undertaking to provide general medical services, general dental services, general ophthalmic services or, as the case may be, pharmaceutical services prepared pursuant to regulations made under section 29, 36, 39, 42 or 43 of the Act(b) or a list of persons approved for the purpose of assisting in the provision of any such services prepared pursuant to regulations made under section 43D of the Act(c).

Appointment and tenure of office of chairman and non-officer members

2.—(1) The chairman and non-officer members 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 non-officer members 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 non-officer member 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 non-officer member if—

- (a) he has been convicted in the United Kingdom of any offence, or convicted elsewhere for an offence which, if committed in any part of the United Kingdom would constitute a criminal offence in that part, and in either case has had passed on him a sentence of imprisonment (whether suspended or not) without the option of a fine, and which has not been quashed on appeal;
- (b) he has—
 - (i) been adjudged bankrupt or had a sequestration of his estate awarded, or
 - (ii) made a composition or arrangement with, or granted a trust deed for, his creditors;
- (c) he has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;

(a) 1978 c.29. Section 2 was amended by the Health and Social Services and Social Security Adjudication Act 1983 (c.41), Schedule 7, paragraph 1 and by the 1990 Act, section 25; section 4 was amended by the Health and Medicines Act 1988 (c.49), section 12(3) and Schedule 3; section 10 was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 2 and the 1990 Act, Schedule 10; section 12A was inserted by the 1990 Act, section 31 and amended by section 46(1) of the 1999 Act.

(b) Section 29 was extended by the Health and Medicines Act 1988 (c.49) (“the 1988 Act”), section 17; and amended by the following: the Health Services Act 1980 (c.53) (“the 1980 Act”), sections 1 and 7 and Schedule 1, paragraph 42(b); the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 6, paragraph 2; the Medical Act 1983 (c.54), section 56(1) and Schedule 5, paragraph 16(a); by S.I. 1985/39, article 7(3); the Health Authorities Act 1995 (c.17) (“the 1995 Act”), Schedule 1, paragraph 18; the National Health Service (Primary Care) Act 1997 (c.46) (“the 1997 Act”), Schedule 2, paragraph 8; the Health and Social Care Act 2001 (“the 2001 Act”), section 17, and the National Health Service Reform and Health Care Professions Act 2002 (c.17) (“the 2002 Act”), Schedule 2, paragraph 3; section 36(1) was so numbered by the Health and Social Security Act 1984 (c.48) (“the 1984 Act”), Schedule 3, paragraph 5(1) and amended by S.I. 1981/432, article 3(3)(a); by S.I. 1985/39, article 7(10); by the 1988 Act, Schedule 2, paragraph 4; by the 1990 Act, section 24; by the 1995 Act, Schedule 1, paragraph 25(a) and by the 2002 Act, section 2 and Schedule 2, Part 1; section 36(4)–(8) was inserted by the 2001 Act, section 20(1)(4)(c); section 39 was extended by the 1988 Act, section 17; and amended by the 1980 Act, sections 1 and 2 and Schedule 1, paragraph 52; by the 1984 Act, section 1(4), Schedule 1, Part 1, paragraph 1 and Schedule 8, Part 1; by S.I. 1985/39, article 7(12); by the 1995 Act, Schedule 1, paragraph 28; by the Health Act 1999 (c.8), section 9(4); by the 2001 Act, section 20(5) and 23(4) and by the 2002 Act, section 2 and Schedule 2, Part 1; section 42 was substituted by the National Health Service (Amendment) Act 1986 (c.66), section 3(1); extended by the 1988 Act (c.49), section 17; and amended by S.I. 1987/2202, article 4; by the 1990 Act, section 12(3); by the 1995 Act, Schedule 1, paragraph 30; by the 2001 Act, section 43(2), (3) and (4) and by the 2002 Act, section 2 and Schedule 2, Part 1; section 43 was amended by the 1995 Act, section 2(1) and Schedule 1, paragraph 31 and by the 2002 Act, section 2 and Schedule 2, Part 1.

(c) Section 43D was inserted by the 2001 Act, section 24.

- (d) 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, or
 - (iii) he failed to declare a pecuniary interest or withdraw from consideration of any matter in respect of which he had a pecuniary interest;
- (e) he—
- (i) is subject to a national disqualification under section 49N of the Act^(a) imposed by the Family Health Services Appeal Authority constituted under section 49S^(b) of the Act,
 - (ii) is subject to a national disqualification under a decision of the National Health Service Tribunal, which is treated as a national disqualification by virtue of regulation 6 (4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001^(c),
 - (iii) has been refused nomination or approval to fill a vacancy for a medical practitioner pursuant to regulations made under section 29B(2A) of the Act^(d) or refused admission to a primary care list, on grounds corresponding to the conditions referred to in section 49F(2),(3) or (4) of the Act^(e) (efficiency cases, fraud cases and unsuitability cases) and has not subsequently been approved or, as the case may be, included in a primary care list,
 - (iv) is conditionally included in a primary care list under section 43ZA of the Act^(f),
 - (v) has been removed from a primary care list under section 49F of the Act, or by a direction of the National Health Service Tribunal and has not subsequently been included in such a list,
 - (vi) is contingently removed from a primary care list under section 49G of the Act^(g), or
 - (vii) is suspended from a primary care list under section 49I of the Act^(h) or is treated as so suspended by virtue of regulation 6(2) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001,
- and in this sub-paragraph any reference to a provision in the Act includes a reference to the provision corresponding to that provision in Scotland and Northern Ireland;
- (f) he is subject to a disqualification order under the Company Directors Disqualification Act 1986⁽ⁱ⁾, the Companies (Northern Ireland) Order 1986^(j) or to an order made under section 429(2)(b) of the Insolvency Act 1986^(k) (failure to pay under county court administration order);

(a) Section 49N was inserted by the 2001 Act, section 25.

(b) Section 49S was inserted by the 2001 Act, section 27.

(c) S.I. 2001/3744. The National Health Service Tribunal was abolished by the 2001 Act, section 16 with effect from 14th December 2001, subject to article 2(5) and (6) of S.I. 2001/3738 which provided for a later commencement date for section 16 in respect of certain types of case before the National Health Service Tribunal.

(d) Section 29B was inserted by the 1997 Act, section 32(1) and section 29B(2A) was inserted by the 2001 Act, section 20(1) and (3)(a) and amended by the 2002 Act, Schedule 2, Part I, paragraph 5(1) and (2).

(e) Section 49F was inserted by the 2001 Act, section 25.

(f) Section 43ZA was inserted by the 2001 Act, section 21 and amended by the 2002 Act, section 2(5) and Schedule 2, paragraphs 1 and 18.

(g) Section 49G was inserted by the 2001 Act, section 25 and amended by the 2002 Act, section 2(5) and Schedule 2, Part I, paragraphs 1 and 21(b).

(h) Section 49I was inserted by the 2001 Act, section 25 and amended by the 2002 Act, section 29(5) and Schedule 2, Part I, paragraphs 1 and 21(c).

(i) 1986 c.46.

(j) S.I. 1986/1032(N.I.6).

(k) 1986 c.45.

- (g) he has been—
 - (i) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated, or
 - (ii) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990^(a) (powers of Court of Session to deal with management of charities), from being concerned in the management or control of any body;
- (h) he is the chairman, chief executive or a non-officer member of—
 - (i) a Strategic Health Authority,
 - (ii) a Special Health Authority,
 - (iii) an NHS trust, or
 - (iv) 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.

Cessation of disqualification

4.—(1) Where a person is disqualified under regulation 3(1)(b) by reason of having been adjudged bankrupt or having had a sequestration of his estate awarded—

- (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, or having granted a trust deed for, 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, or, as the case may be, the terms of the trust deed, 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)(d), 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 of chairman and non-officer members

5.—(1) The chairman or a non-officer member 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 CFSMS or of the health service that the chairman or a non-officer

^(a) 1990 c.40.

member 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 non-officer member fails to attend any meeting of the CFSMS 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 meetings of the CFSMS within such a period as the Secretary of State considers reasonable.
- (4) Where a person has been appointed to be the chairman or a non-officer member, 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 non-officer member.

(5) If it appears to the Secretary of State that the chairman or a non-officer member 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.

Appointment of deputy chairman

6.—(1) Subject to paragraph (2), the chairman and members may appoint one of the non-officer members to be deputy 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 deputy 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 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 deputy chairman.

Appointment of committees and sub-committees

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

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

(3) Regulations 3 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 CFSMS.

Arrangements for the exercise of functions

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

Meetings and proceedings

9.—(1) The meetings and proceedings of the CFSMS 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 CFSMS 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 CFSMS may make, vary and revoke Standing Orders relating to the quorum, proceedings and place of meeting of any committee or sub-committee of the CFSMS; 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 CFSMS 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, proposed contract or other matter 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 CFSMS may, by Standing Orders made under regulation 9(2), provide for the exclusion of the chairman or a member from a meeting of the CFSMS 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 two persons living together as a couple (whether married or not) the interest of one 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, whichever 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, proposed 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 CFSMS and applies to a member of any such committee or sub-committee (whether or not he is also a member of the CFSMS) as it applies to a member of the CFSMS.

(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 CFSMS

11. The CFSMS 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, the Secretary of State directs the CFSMS to make an annual report to him for any particular year or for each year, it shall present the report at a public meeting held not later than 30 days after the date on which the report was made.

Signed by authority of the Secretary of State for Health

10th December 2002

Hunt
Parliamentary under Secretary of State,
Department of Health

^(a) 1907 c.36.

RULES AS TO MEETINGS AND PROCEEDINGS OF THE CFSMS

1. The first meeting of the CFSMS 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 CFSMS 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 CFSMS, 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 CFSMS 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 CFSMS the chairman or, in his absence, the deputy chairman (if there is one and he is present) shall preside.

(2) If the chairman and any deputy chairman are absent, such other non-officer member 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 one 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 CFSMS which is convened for the purpose of appointing a person to act as the Chief Executive.

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 Counter Fraud and Security Management Service (“the CFSMS”) which is a Special Health Authority established under the National Health Service Act 1977 by the Counter Fraud and Security Management Service (Establishment and Constitution) Order 2002.

In particular, these regulations provide for the appointment and tenure of office of the chairman and members of the CFSMS (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 deputy chairman (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 CFSMS to furnish reports and certain other information to the Secretary of State (regulation 11) and for requiring presentation of an annual report at a public meeting (regulation 12).

2002 No. 3040

NATIONAL HEALTH SERVICE, ENGLAND

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