

2004 No. 3365

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Appointment of Consultants)
Amendment Regulations 2004**

<i>Made</i> - - - -	<i>16th December 2004</i>
<i>Laid before Parliament</i>	<i>22nd December 2004</i>
<i>Coming into force</i> - -	<i>12th January 2005</i>

The Secretary of State for Health, in exercise of the powers conferred on him by sections 126(4) of, paragraphs 10(1) and 12(b) of Schedule 5 to, and paragraphs 5(1)(d), 8(2) and (3) of Schedule 5A to, the National Health Service Act 1977(a) and section 5(7)(f) of, and paragraph 16(5) of Schedule 2 to, the National Health Service and Community Care Act 1990(b) and of all other powers enabling him in that behalf, and after consultation in accordance with paragraph 11(1) of Schedule 5 to, and paragraph 8(4) of Schedule 5A to, the National Health Service Act 1977 and paragraph 16(6) of Schedule 2 to the National Health Service and Community Care Act 1990 with bodies recognised by him as representing persons likely to be affected, hereby makes the following Regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Appointment of Consultants) Amendment Regulations 2004 and shall come into force on 12th January 2005.

(2) These Regulations apply to England only.

(3) In these Regulations, “the principal Regulations” means the National Health Service (Appointment of Consultants) Regulations 1996(c).

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- (a) 1977 (c.49). Section 126(4) was amended by section 65(2) of the National Health Service and Community Care Act 1990 (c.19)(“the 1990 Act”), section 65(1) of, and paragraphs 4 and 37 of Schedule 4 to, the Health Act 1999 (c.8)(“the 1999 Act”), section 67(1) of, and paragraphs 5 and 13 of Part 1 of Schedule 5 to, the Health and Social Care Act 2001 (c.15) (“the 2001 Act”), and section 6(3)(c) and 37(1) of the National Health Service Reform and Health Care Professions Act 2002 (c.17). Paragraph 10(1) of Schedule 5 was amended by section 14 of, and paragraph 3 of Schedule 6 to, the Health and Social Services and Social Security Adjudications Act 1983 (c.41), sections 5 and 24 of, and paragraph 14 of Part 1 of Schedule 8 to, the Health and Social Security Act 1984 (c.48), section 1 of, and paragraph 8 of Part III of Schedule 1 to, the 1990 Act, section 2(1) of, and paragraph 60(c) of Schedule 1 to, the Health Authorities Act 1995 (c.17)(“the 1995 Act”), and sections 6(1)(a) and (b) of the 2001 Act. Paragraph 12(b) of Schedule 5 was amended by section 1 of, and paragraph 9 of Part III of Schedule 1 to, the 1990 Act, sections 2(1) and 5(1) of, and paragraph 60(e) of Schedule 1 to, and Schedule 3 to, the 1995 Act, and section 65(1) of, and paragraphs 4, 39(1) and (4)(b) of Schedule 4 to, the 1999 Act. Schedule 5A was inserted by section 2(2) of, and Schedule 1 to, the 1999 Act. 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) 1990 (c.19). Section 5(7) was amended by section 2(1) of, and paragraph 69(d) of Schedule 1 to, the Health Authorities Act 1995 (c.17). Paragraphs 16 (4)-(6) of Schedule 2 were inserted by section 6(3)(b) of the Health and Social Care Act 2001(c.15). 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.
- (c) S.I. 1996/701 as amended by S.I. 2002/2469, S.I. 2003/1250 and S.I. 2004/696.

Amendment of regulation 2 of the principal Regulations

- 2.—(1) Regulation 2 of the principal Regulations (interpretation) is amended as follows.
- (2) Before the definition of “application” insert the following definition—
- ““accredited as a consultant” means—
- (a) a person whose name is included in the register of specialists maintained by the General Medical Council pursuant to article 8 of the European Specialist Medical Qualifications Order 1995^(a) (the specialist register); or
 - (b) a person whose name is included in the register of specialists maintained by the General Medical Council pursuant to article 13 of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 (the specialist register)^(b),
- where that person has either been appointed as a consultant by an Armed Services Consultant Appointment Board or appointed to a consultant post with an Authority.”.
- (3) In the definition of “Authority”, after “Primary Care Trust,” insert “an NHS trust^(c)”.
- (4) After the definition of “core members” insert the following definition—
- ““Defence Medical Services” means the medical services of the air force, army and navy of the United Kingdom, whose function is to provide primary and secondary healthcare to service personnel and entitled civilians;”.
- (5) In the definition of “lay member” delete “,NHS trust”.
- (6) In the definition of “relevant college”, after paragraph (e) insert “(ee) the Royal College of Paediatrics and Child Health,”.
- (7) For the definition of “relevant University” substitute the following—
- ““relevant University” means—
- (a) for an appointment to a Strategic Health Authority or Primary Care Trust, any University associated with the provision of health services to that Authority or Trust;
 - (b) for an appointment to an NHS trust,
 - (i) in the case where a University is specified in the Establishment Order for the NHS trust in question, that University; or
 - (ii) in all other cases, any University with a department which teaches the relevant specialty;”.

Amendment of regulation 5 of the principal Regulations

- 3.—(1) Regulation 5 of the principal Regulations (exempt appointments) is amended as follows.
- (2) In paragraph (1), sub-paragraph (d), delete “an NHS trust,”.
- (3) In paragraph (1), sub-paragraph (e)(ii) for “NHS trust” substitute “Authority”.
- (4) In paragraph (1), sub-paragraph (g)—
- (a) for “Public Health Laboratory Service Board” substitute “special health authority established by article 2 of the Health Protection Agency (Yr Asiantaeth Diogelu Iechyd) (Establishment) Order 2003^(d) or the Health Protection Agency established by the Health Protection Agency Act 2004^(e)”;
 - (b) for “ or that Board” substitute “special health authority or Agency”.

(a) S.I. 1995/3208, as amended by S.I. 2002/849 and S.I. 2003/1250.

(b) S.I. 2003/1250.

(c) See section 5 of the National Health Service and Community Care Act 1990 (c.19).

(d) S.I. 2003/505.

(e) c.17.

(5) After paragraph (1)(g) insert—

“(h) a person who has been accredited as a consultant and has been appointed to a consultant post in the Defence Medical Services, and whose appointment to the staff of an Authority will be to a post in which the duties and location of the post are substantially the same as the duties and location of the post previously held in the Defence Medical Services;”;

“(i) a person whose last employment by an Authority was in post as a consultant, the termination of which employment was by reason of retirement and who is appointed to a consultant post in the same Authority without any significant alteration in the duties of the post.”.

Amendment of regulation 6 of the principal Regulations

4. At the end of paragraph (1) of regulation 6 of the principal Regulations (advertisement of proposed appointment) insert “, and for these purposes only one of the publications may be solely in electronic form”.

Amendment of Schedule 1 to the principal Regulations

5.—(1) Schedule 1 to the principal Regulations (constitution of an advisory appointments committee), is amended as follows.

(2) In paragraph 2, in sub-paragraph (b)(ia) delete “or”.

(3) In paragraph 2, after sub-paragraph (b)(ia), insert the following—

“(ib) in the case of an NHS trust, a practitioner employed by the trust making the appointment, or”.

(4) In paragraph 3, omit “substantial”.

(5) At the end of paragraph 6 insert “and where they do so, the requirements of paragraph 2 apply with the following modifications—

- (a) the Authorities shall jointly select and appoint one member meeting the requirements of each of paragraphs 2(a) and (b);
- (b) where more than two Authorities act together as a single Authority, the Authorities shall each select and appoint at least one member meeting the requirements of each of paragraphs 2(c), (d) and (e);
- (c) where two Authorities act together as a single Authority, one of the Authorities shall select and appoint two members, and the other shall select and appoint one member, meeting the requirements respectively of each of paragraphs 2(c), (d) and (e).”.

Signed by authority of the Secretary of State for Health

16th December 2004

John Hutton
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Appointment of Consultants) Regulations 1996 (“the 1996 Regulations”).

Regulations 2, 3 and 5 make a number of amendments which apply the provisions of the 1996 Regulations to NHS trusts, together with a number of other minor amendments.

Regulation 3(5) creates two new exemptions from the requirement that an Advisory Appointments Committee must be held to appoint a consultant. The first exemption applies to a person who has been in post as a consultant with the medical services of the army, navy or air force and is appointed to a consultant post in one of the bodies to whom the 1996 Regulations apply without moving location and without the duties involved in the post altering in any significant way. The second exemption applies to a consultant who retires but then returns to a very similar post in the same body, albeit that the terms of his employment may have altered.

Regulation 4 allows one of the advertisements for a consultant appointment to be in electronic form.

Regulation 5 sets out the exact requirements for the constitution of an Advisory Appointments Committee where two or more bodies to whom the 1996 Regulations apply act together to establish a joint Advisory Appointments Committee.

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