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STATUTORY INSTRUMENTS

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**2008 No. 2927**

**HEALTH CARE AND  
ASSOCIATED PROFESSIONS**

**The Council for Healthcare Regulatory Excellence  
(Appointment, Procedure etc.) Regulations 2008**

*Made* - - - - *10th November 2008*  
*Laid before Parliament* *14th November 2008*  
*Coming into force* - - *1st January 2009*

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by section 38(5) and (7) of, and paragraph 6 of Schedule 7 to, of the National Health Service Reform and Health Care Professions Act 2002<sup>(1)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Council for Healthcare Regulatory Excellence (Appointment, Procedure etc.) Regulations 2008 and come into force on 1st January 2009.

(2) In these Regulations—

“the 2002 Act” means the National Health Service Reform and Health Care Professions Act 2002;

“the appointor” means –

- (a) in the case of the appointment of the chair, the Privy Council; and
- (b) in the case of the appointment of a non-executive member, the person who appoints that member under paragraph 4 of Schedule 7 to the 2002 Act;

“the chair” means the chair of the Council;

“the Council” means the Council for Healthcare Regulatory Excellence<sup>(2)</sup>;

“final outcome”, in relation to any proceedings where there are rights of appeal, means the outcome of the proceedings—

- (a) once the period for bringing an appeal has expired without an appeal being brought; or

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(1) 2002 c.17; paragraphs 4 and 6 of Schedule 7 have been amended by section 114 of the Health and Social Care Act 2008 (c.14).  
(2) The Council’s name was changed by section 113 of the Health and Social Care Act 2008.

(b) if an appeal is brought in accordance with those rights, once those rights have been exhausted;

“licensing body” means any body anywhere in the world that licenses or regulates any profession;

“non-executive member” means a non-executive member of the Council;

“spent conviction” means—

(a) in relation to a conviction by a court in Great Britain, a conviction that is a spent conviction for the purposes of the Rehabilitation of Offenders Act 1974<sup>(3)</sup>; or

(b) in relation to a conviction by a court in Northern Ireland, a conviction that is a spent conviction for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order 1978<sup>(4)</sup>.

### **Conditions of appointment for chair and non-executive members of the Council**

2.—(1) It is a condition for the appointment as the chair or a non-executive member that that person—

(a) lives or works wholly or mainly in the United Kingdom; and

(b) does not fall within paragraph (2).

(2) A person falls within this paragraph if that person—

(a) has at any time been convicted—

(i) of an offence involving dishonesty or deception in the United Kingdom, or

(ii) of an offence in the United Kingdom, and the final outcome of the proceedings was a sentence of imprisonment or detention (whether suspended or not) of over three months, and

the conviction is not a spent conviction;

(b) has at any time been convicted of an offence elsewhere than in the United Kingdom and the appointor is satisfied that the person’s membership of the Council would be liable to undermine public confidence in the Council;

(c) has at any time —

(i) been adjudged bankrupt or had a sequestration of his estate awarded unless (in either case) that person has been discharged or the bankruptcy order has been annulled,

(ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986<sup>(5)</sup> or Schedule 2A to the Insolvency (Northern Ireland) Order 1989<sup>(6)</sup>, unless that order has ceased to have effect or has been annulled, or

(iii) made a composition or arrangement with, or granted a trust deed for, the person’s creditors unless that person has been discharged in respect of it;

(d) has at any time been removed from office as a chair, member, convenor or director of any public body on the grounds, in terms, that it was not in the interests, or conducive to the good management, of that body that the person should continue to hold that office;

(e) has at any time been, or is currently the subject of, any investigation or proceedings concerning the person’s professional conduct by any licensing body and the appointor is

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(3) 1974 c. 53.

(4) S.I. 1978/1908 (N.I. 27).

(5) 1986 c.45. Schedule 4A was inserted by the Enterprise Act 2002 (c.40).

(6) S.I. 1989/2405 (N.I. 19); Schedule 2A was inserted by S.I. 2005/1455 (N.I. 10).

satisfied that it would not be appropriate for the person to be a member of the Council given that investigation or those proceedings;

- (f) is subject to—
- (i) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986(7),
  - (ii) a disqualification order under Part II of the Companies (Northern Ireland) Order 1989(8),
  - (iii) a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002(9),
  - (iv) an order made under section 429(2) of the Insolvency Act 1986(10) (disabilities on revocation of a county court administration order);
- (g) has at any time been removed —
- (i) from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners, the Charity Commission for Northern Ireland or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity—
    - (aa) for which the person was responsible or to which the person was privy, or
    - (bb) which the person by their conduct contributed to or facilitated, or
  - (ii) under –
    - (aa) section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(11) (powers of the court of Session to deal with management of charities), or
    - (bb) section 34(5)(e) of the Charities and Trustees Investment (Scotland) Act 2005(12) (powers of Court of Session),from being concerned with the management or control of any body;
- (h) has been included by—
- (i) the Independent Barring Board in a barred list (within the meaning of the Safeguarding Vulnerable Groups Act 2006(13) or the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(14), or
  - (ii) the Scottish Ministers in the children’s list or the adults’ list (within the meaning of the Protection of Vulnerable Groups (Scotland) Act 2007(15));
- (i) is a member of the Council of, or a Council that is, a regulatory body mentioned in section 25(3) of the 2002 Act; or
- (j) is or has been a member of a profession regulated by the—
- (i) Chiropractors Act 1994(16).
  - (ii) Dentists Act 1984(17),

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(7) 1986 c.46.

(8) S.I. 1989/2404 (N.I. 18).

(9) S.I. 2002/3150 (N.I. 4); the relevant amending instrument is S.I. 2005/1454 (N.I. 9).

(10) Section 429(2) was amended by the Enterprise Act 2002, Schedule 23, paragraph 15.

(11) 1990 c.40; section 7 was repealed by the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

(12) 2005 asp 10.

(13) 2006 c.47.

(14) S.I. 2007/1351 (N.I. 11).

(15) 2007 asp 14.

(16) 1994 c.17.

(17) 1984 c.24.

- (iii) Health Professions Order 2001(18),
- (iv) Nursing and Midwifery Order 2001(19),
- (v) Medical Act 1983(20),
- (vi) Osteopaths Act 1993(21),
- (vii) Opticians Act 1989(22),
- (viii) Pharmacists and Pharmacy Technicians Order 2007(23), and
- (ix) Pharmacy (Northern Ireland) Order 1976(24).

### **Tenure of appointment of chair and non-executive members**

3.—(1) The appointment of the chair and a non-executive member shall be for a term of four years.

(2) Subject to paragraph (4), a non-executive member is, at the end of a term of office, eligible for reappointment.

(3) Subject to paragraph (4), a chair, at the end of a term of office, is eligible for reappointment to the chair but is not eligible for appointment as a non-executive member.

(4) No person shall serve as —

- (a) the chair,
- (b) a non-executive member, or
- (c) the chair and a non-executive member,

for more than eight years in total.

(5) For the purposes of paragraph (4), any time served as a member of the Council for the Regulation of Health Care Professionals shall be considered as time served on the Council.

(6) A person appointed as the chair or a non-executive member shall cease to hold that office if the person resigns from the office by giving notice in writing to the Council.

### **Deputising arrangements in respect of the chair**

4.—(1) Subject to paragraph (2), if, for any reason, the chair is absent from a meeting of the Council, the non-executive members who are present at that meeting shall nominate one of their number to serve as chair at that meeting.

(2) If, for any reason—

- (a) the Council is on notice that its chair is likely—
  - (i) to be absent for more than one meeting of the Council, or
  - (ii) to be unavailable to perform the duties of a chair for more than one month; or
- (b) the office of chair is vacant,

the Council may nominate a non-executive member (“deputy chair”) to serve as chair during the absence or unavailability of the chair or during the vacancy.

(3) A non-executive member serving as deputy chair shall cease to be deputy chair—

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(18) [S.I. 2002/254](#).

(19) [S.I. 2002/253](#).

(20) [1983 c.54](#).

(21) [1993 c.21](#).

(22) [1989 c.44](#).

(23) [S.I. 2007/289](#).

(24) [S.I. 1976/1213 \(N.I. 22\)](#).

- (a) in the case of—
  - (i) the absence or unavailability of the chair, once the chair is able to resume their duties, or
  - (ii) the office of chair being vacant, once the vacancy is filled;
- (b) on ceasing to be a non-executive member;
- (c) if the non-executive member resigns as deputy chair, which the member may do at any time by a notice in writing to the Council; or
- (d) if the non-executive member's membership of the Council is suspended by the Council.

#### **Circumstances in which the chair and non-executive members may be suspended**

5. The Council may suspend a person from the office of chair or as a non-executive member by a notice served on that person if —

- (a) the Council has reasonable grounds for suspecting that the person no longer lives or works wholly or mainly in the United Kingdom;
- (b) the Council has reasonable grounds for suspecting that the person has become a person who falls within the description of persons in regulation 2(2);
- (c) the person is, or the Council has reasonable grounds for suspecting that the person is, subject to any investigation or proceedings in the United Kingdom relating to a criminal offence, or in any other part of the world relating to an offence which, if committed in any part of the United Kingdom, would constitute a criminal offence and, in the Council's opinion it would not be appropriate for the person to continue to participate in proceedings of the Council while the investigation or proceedings is or are ongoing; or
- (d) the person is, or the Council has reasonable grounds for suspecting that the person is, subject to any investigation or proceedings concerning the person's professional conduct by any licensing body and, in the Council's opinion it would not be appropriate for the person to continue to participate in proceedings of the Council while the investigation or proceedings is or are ongoing.

#### **Circumstances in which the chair or non-executive member may be removed from office**

6. A person appointed as the chair or a non-executive member shall be removed from that office by the appointor if —

- (a) the person becomes a person who falls within regulation 2(2);
- (b) the person ceases to live or work wholly or mainly in the United Kingdom;
- (c) the person fails to attend any meeting of the Council for a period of three consecutive months without the consent of the Council unless the appointor is satisfied that—
  - (i) the absence was due to a reasonable cause; and
  - (ii) the person in question will be able to attend meetings of the Council within such period as the appointor considers reasonable;
- (d) the appointor is satisfied that the person is no longer able to perform the duties of the chair or a non-executive member because of adverse physical or mental health; or
- (e) the appointor is satisfied that the person's continued membership of the Council would be liable to undermine public confidence in the Council's ability to exercise its functions.

## **Committees**

7.—(1) The Council may appoint committees of the Council consisting wholly or partly of members of the Council or wholly of persons who are not members of the Council.

(2) A committee appointed under this regulation may appoint sub-committees wholly or partly of members of the committee (whether or not they are members of the Council) or wholly of persons who are not members of the Council or the committee.

(3) The condition applicable to the appointment of members mentioned in regulation 2(1) applies to the members of committees and sub-committees appointed under this regulation, except that in relation to paragraph (1)(b) of regulation 2, only to the extent that a person falls within paragraph (2) (a) to (h) of that regulation.

## **Transitional arrangement in respect of appointment of non-executive members**

8. In the case of the first appointments of non-executive members to the Council made immediately after these Regulations come into force, the term of appointment for three of the non-executive members may be for a period of less than four years but must not be for less than two years.

## **Revocation**

9. The Council for the Regulation of Health Care Professionals (Appointment etc.) Regulations 2002(25) are revoked.

Signed by authority of the Secretary of State for Health.

10th November 2008

*Ben Bradshaw*  
Minister of State,  
Department of Health

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision with regard to the conditions of appointment and terms of office of the chair and non-executive members of the Council for Healthcare Regulatory Excellence (“the Council”).

Conditions of appointment are set out in regulation 2. Certain categories of people, for example people who have been convicted of certain types of offences, are disqualified from being non-executive members or the chair of the Council. The appointment is generally for 4 years (regulation 3) and may be renewed subject to a maximum of 8 years in total. Time served on the Council’s predecessor body (the Council for the Regulation of Health Care Professionals) counts towards this 8-year period.

There are provisions relating to the deputising arrangements for the chair, and the Council will have powers to appoint a deputy chair to serve during the absence of a chair (regulation 4).

Once the chair and members have been appointed, there are certain circumstances in which they may be suspended or removed from office (regulations 5 and 6).

Regulation 7 permits the setting up of committees and sub-committees, which may be comprised partly or wholly of people who are not members of the Council. Regulation 8 contains transitional arrangements for the appointment of non-executive members.

An impact assessment has been prepared in relation to these Regulations and is available from the Department of Health, Quarry House, Quarry Hill, Leeds LS2 7UE.