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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 3**

**NATIONAL HEALTH SERVICE**

**The Health Boards (Membership and Procedure)  
(Scotland) Amendment Regulations 2016**

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| <i>Made</i>                                | - - - - | <i>6th January 2016</i>  |
| <i>Laid before the Scottish Parliament</i> | - - - - | <i>8th January 2016</i>  |
| <i>Coming into force</i>                   | - -     | <i>8th February 2016</i> |

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraphs 4 and 11(a) and (c) of Schedule 1 to the National Health Service (Scotland) Act 1978<sup>(1)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1. These Regulations may be cited as the Health Boards (Membership and Procedure) (Scotland) Amendment Regulations 2016 and come into force on 8th February 2016.

**Amendment of the Health Boards (Membership and Procedure) (Scotland) Regulations 2001**

2.—(1) The Health Boards (Membership and Procedure) (Scotland) Regulations 2001<sup>(2)</sup> are amended as follows.

(2) In regulation 1(2) (regarding interpretation) omit the definitions of “the 1997 Act”, “the Charity Commissioners” and “Chief Officer”.

(3) In regulation 4 (remuneration of members) for “holding the position of” to the end substitute “who are employed as an executive officer of a Board.”.

(4) After regulation 5 (resignation and removal of members) insert—

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(1) 1978 c.29. Paragraph 4 was amended by paragraph 1 of the schedule to the Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5) (the “2009 Act”). Paragraph 11(a) was modified by section 1(7) of the 2009 Act for the specified Health Board areas in S.S.I. 2009/242; section 1(7) remains in force for those areas by virtue of article 3(1) of S.S.I. 2013/364. Section 108(1) contains definitions of “regulations” and “prescribed”. The relevant functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) S.S.I. 2001/302, as amended by S.S.I. 2004/212 and 2005/108; amendments made by S.S.I. 2009/302 were revoked, and S.S.I. 2001/302 as it existed immediately before those amendments was revived, by S.S.I. 2013/334.

### “Suspension of members

**5A.**—(1) The Scottish Ministers may by determination suspend a member from taking part in the business (including meetings) of a Board.

(2) The suspension ends if—

- (a) the Scottish Ministers determine that the suspension ends; or
- (b) the person’s appointment as a member of the Board is not terminated within a period of 12 months beginning with the date the person is suspended.”.

(5) For regulation 6 and its heading (disqualification) substitute—

### “Disqualification from being a member

**6.**—(1) A person is disqualified from being a member if the person—

- (a) within a period of 5 years before the proposed date of appointment or after appointment (as the case may be) commits an offence in the British Islands for which the person is sentenced to imprisonment (whether suspended or not) for 3 months or longer;
- (b) is or has been dismissed from employment in a health service body, except by redundancy;
- (c) is or has been removed from office in a health service body before the term of office expires;
- (d) is a member of another health service body;
- (e) is or has been removed, for reasons of impairment or loss of fitness to practise, from a list under—
  - (i) Parts I or II of the Act;
  - (ii) the National Health Service Act 2006<sup>(3)</sup>;
  - (iii) the National Health Service (Wales) Act 2006<sup>(4)</sup>; or
  - (iv) the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(5)</sup>;
- (f) is or has been removed, for reasons of impairment or loss of fitness to practise, from a statutory register maintained by a regulatory body;
- (g) is an undischarged bankrupt;
- (h) is or has been subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986<sup>(6)</sup> or the Company Directors Disqualification (Northern Ireland) Order 2002<sup>(7)</sup>;
- (i) is or has been removed or prevented from being a trustee of, or otherwise acting for or on behalf of, a charity (or a body controlled by a charity) by—
  - (i) a charity regulator; or
  - (ii) a court or tribunal in the British Islands; or
- (j) is or has been subject to a sanction under section 19(1)(b) to (e) (action on finding of contravention) of the Ethical Standards in Public Life etc. (Scotland) Act 2000<sup>(8)</sup>.

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<sup>(3)</sup> 2006 c.41.

<sup>(4)</sup> 2006 c.42.

<sup>(5)</sup> S.I. 1972/1265 (N.I. 14).

<sup>(6)</sup> 1986 c.46.

<sup>(7)</sup> S.I. 2002/3150 (N.I. 4).

<sup>(8)</sup> 2000 asp 7.

- (2) Disqualification under this regulation (or part of it) does not apply to such person or category of persons as the Scottish Ministers may determine.
- (3) In this regulation—
- (a) “charity regulator” means the Office of the Scottish Charity Regulator, the Charity Commission for England and Wales or the Charity Commission for Northern Ireland;
- (b) “regulatory body” means—
- (i) the Care Council for Wales;
  - (ii) the General Chiropractic Council;
  - (iii) the General Dental Council;
  - (iv) the General Medical Council;
  - (v) the General Optical Council;
  - (vi) the General Osteopathic Council;
  - (vii) the General Pharmaceutical Council;
  - (viii) the Health and Care Professions Council;
  - (ix) the Northern Ireland Social Care Council;
  - (x) the Nursing and Midwifery Council;
  - (xi) the Pharmaceutical Society of Northern Ireland; or
  - (xii) the Scottish Social Services Council; and
- (c) “undischarged bankrupt” means a person—
- (i) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force);
  - (ii) who has granted a trust deed for, or made a composition or arrangement with, creditors and has not been discharged in respect of it;
  - (iii) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985<sup>(9)</sup> or the Insolvency Act 1986<sup>(10)</sup>;
  - (iv) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts;
  - (v) who has been adjudged bankrupt and has not been discharged; or
  - (vi) who is subject to any other kind of arrangement or undertaking, anywhere in the world, which is analogous to those described in heads (i) to (iv).”
- (6) In regulation 7 (appointment and powers of vice-chairperson)—
- (a) in paragraph (1) for “who does not also hold the position” to the end substitute “as vice-chairperson for such period as the Board may decide.”; and
- (b) after paragraph (2) insert—
- “(2A) A member who is an employee of a Board is disqualified from being vice-chairperson.”
- (7) In regulation 8(3) (meetings and minutes) for “does not also hold the position of Chief Officer, Chief Finance Officer or Director of Public Health” substitute “is not an employee”.
- (8) In the Schedule (matters to be included in standing orders regulating meetings and proceedings of the Board and committees)—

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<sup>(9)</sup> 1985 c.66.

<sup>(10)</sup> 1986 c.45.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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- (a) in paragraph 4 (quorum), for “do not also hold the position” to the end substitute “are not employees of a Board.”; and
- (b) omit paragraph 5(2) (conduct of meetings).

St Andrew’s House,  
Edinburgh  
6th January 2016

*SHONA ROBISON*  
A member of the Scottish Government

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## EXPLANATORY NOTE

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

These Regulations amend the Health Boards (Membership and Procedure) (Scotland) Regulations 2001 (“the 2001 Regulations”) to update provision concerning the membership and procedure of Boards in Scotland established under section 2 of the National Health Service (Scotland) Act 1978. Regulation 2(2) removes redundant definitions.

Provisions which refer to certain, now outdated, executive employee positions of a Board are replaced by updated provisions—

- (a) regulation 2(3) has the effect of prohibiting a member who is also employed as an executive officer of a Board from receiving remuneration for being a member;
- (b) regulation 2(6) continues to require a Board to appoint a vice-chairperson but has the effect of disqualifying a member who is also an employee of a Board from holding that position;
- (c) regulation 2(7) has the effect of prohibiting a member who is also an employee of a Board from acting as chairperson in the absence of the appointed chairperson and vice-chairperson; and
- (d) regulation 2(8)(a) has the effect of requiring at least two members who are not also employees of a Board to make quorum, provided at least one third of all members are present.

Regulation 2(4) inserts provision allowing the Scottish Ministers to suspend a member from taking part in the business (including meetings) of a Board. Suspension ends when the Scottish Ministers determine or if the person’s appointment is not terminated by the Scottish Ministers under regulation 5(2) of the 2001 Regulations within 12 months beginning with the date of suspension, whichever is sooner.

Regulation 2(5) substitutes provision which disqualifies a person from being a member of a Board with updated disqualification provision. It continues to be the case that a person who is already a member and who becomes disqualified ceases to be a member by virtue of regulation 5(5) of the 2001 Regulations.

Regulation 2(8)(b) removes superfluous provision from the 2001 Regulations.