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WELSH STATUTORY INSTRUMENTS

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**2020 No. 1469 (W. 315)**

**NATIONAL HEALTH SERVICE, WALES**

**The Digital Health and Care Wales  
(Membership and Procedure) Regulations 2020**

<i>Made</i>	- - - -	<i>7 December 2020</i>
<i>Laid before Senedd Cymru</i>		<i>9 December 2020</i>
<i>Coming into force</i>	- -	<i>30 December 2020</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 25(1)(b), 25(2) and 203(9) and (10) of, and paragraphs 3(3) and (4), 5 and 13 of Schedule 5 to, the National Health Service (Wales) Act 2006<sup>(1)</sup> and after consultation in accordance with paragraph 4(1) of Schedule 5 to that Act.

**PART 1**

**General**

**Title and commencement**

1.—(1) The title of these Regulations is the Digital Health and Care Wales (Membership and Procedure) Regulations 2020.

(2) These Regulations come into force on 30 December 2020.

**Interpretation**

2. In these Regulations—

“the 1992 Act” (“*Deddf 1992*”) means the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(2)</sup>;

“the Act” (“*y Ddeddf*”) means the National Health Service (Wales) Act 2006;

“the Order” (“*y Gorchymyn*”) means the Digital Health and Care Wales (Establishment and Membership) Order 2020<sup>(3)</sup>;

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(1) 2006 c. 42.

(2) 1992 c. 52.

(3) S.I. 2020/1451 (W. 313)

“associate member” (“*aelod cyswlll*”) has the meaning given in article 4(5) of the Order;

“clinical officer” (“*swyddog clinigol*”) has the meaning given in article 1(3) of the Order;

“DHCW” (“*IGDC*”) means Digital Health and Care Wales established by the Order;

“health service body” (“*corff gwasanaeth iechyd*”) means—

- (a) a clinical commissioning group established under section 14D of the National Health Service Act 2006<sup>(4)</sup>,
- (b) the Common Services Agency for Scottish Health Services constituted under section 10(1) of the National Health Service (Scotland) Act 1978<sup>(5)</sup>,
- (c) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978<sup>(6)</sup>,
- (d) the Health and Social Care Information Centre established under section 252 of the Health and Social Care Act 2012<sup>(7)</sup>,
- (e) the Health Research Authority established under section 109 of the Care Act 2014<sup>(8)</sup>,
- (f) a Local Health Board,
- (g) the National Health Service Commissioning Board established under section 1H of the National Health Service Act 2006,
- (h) an NHS foundation trust established under section 30 of the National Health Service Act 2006,
- (i) an NHS trust established under section 18 of the Act or established under section 25 of the National Health Service Act 2006,
- (j) the National Institute for Health and Care Excellence established under section 232 of the Health and Social Care Act 2012,
- (k) the Regional Health and Social Care Board established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009<sup>(9)</sup>,
- (l) a Special Health Authority established under section 22 of the Act;

“non-officer member” (“*aelod nad yw’n swyddog*”) has the meaning given in article 4(3) of the Order;

“officer member” (“*aelod sy’n swyddog*”) has the meaning given in article 4(4) of the Order;

“recognised” (“*cydnabod*”), in relation to a trade union, has the meaning given by the 1992 Act;

“trade union” (“*undeb llafur*”) has the meaning given by the 1992 Act.

(4) 2006 c. 41, section 14D inserted by s. 25(1) of the Health and Social Care Act 2012 c. 7.

(5) 1978 c. 29 (“the 1978 Act”), s. 10(1) amended by s. 25(3), Schedule 6 paragraph 2 of the Health Services Act 1980 c. 53.

(6) Relevant amendments were made to section 2 of the 1978 Act by the Health and Social Services and Social Security Adjudications Act 1983 c. 41, Schedule 7 paragraph 1; Smoking, Health and Social Care (Scotland) Act 2005 asp 13, Schedule 2, paragraph 2(2); National Health Service and Community Care Act 1990 c. 19, s. 28(a)(i) and (ii), s. 28(b), s. 28(c), s. 66(1) and Schedule 9 paragraph 19(1); National Health Service Reform (Scotland) Act asp 7, Schedule 1 paragraph 1(2)(a) and (b).

(7) 2012 c. 7.

(8) 2014 c. 23.

(9) 2009 c. 1.

## PART 2

### Appointment of members of DHCW

#### Appointment of members

- 3.—(1) The members of DHCW are appointed as follows—
- (a) the chair, vice-chair and up to 5 other non-officer members are appointed by the Welsh Ministers;
  - (b) the chief officer is appointed in accordance with paragraph (3);
  - (c) the officer members are appointed in accordance with paragraph (4);
  - (d) the associate members are appointed in accordance with paragraph (6).
- (2) The non-officer members must not be employees of DHCW.
- (3) The chief officer is appointed by the non-officer members, apart from the first chief officer who is appointed by the Welsh Ministers.
- (4) The officer members are appointed as follows:
- (a) the first finance officer and first clinical officer are appointed by the non-officer members;
  - (b) all other officer members are appointed by the non-officer members and the chief officer.
- (5) The officer members are to be employees of DHCW.
- (6) The associate members are appointed as follows:
- (a) the Welsh Ministers, or DHCW acting with the consent of the Welsh Ministers, may appoint up to 2 associate members, and
  - (b) where one or more trade unions are recognised by DHCW, 1 associate member may be appointed in accordance with regulation 4.

#### Appointment of the trade union associate member

- 4.—(1) Where one or more trade unions are recognised by DHCW, the non-officer members must invite each of the trade unions recognised by DHCW to nominate an eligible candidate for appointment as an associate member.
- (2) The invitation must specify the period within and manner in which a nomination is to be made.
- (3) The non-officer members must appoint a person from among the eligible candidates, if any are nominated, as an associate member.
- (4) A person is an eligible candidate for nomination under paragraph (1) only if the person is—
- (a) a member of DHCW's staff,
  - (b) a member of a trade union recognised by DHCW, and
  - (c) nominated within the period specified under paragraph (2).

#### Non-officer members

5. The Welsh Ministers must ensure that the arrangements for the appointment of persons as non-officer members take into account the code published by the Minister for the Cabinet Office which sets out—
- (a) the principles for public appointments, and
  - (b) the guidance on the practices to be followed in relation to making public appointments.

## PART 3

### Terms of office

#### **Non-officer members**

6.—(1) A non-officer member holds office for such period, and on such terms and conditions, as may be specified by the Welsh Ministers in the terms of appointment, but this is subject to paragraphs (2), (3), (4) and Part 4.

(2) The period of office specified in a non-officer member's terms of appointment may not exceed 4 years.

(3) A person who has held office as a non-officer member may be eligible for reappointment as a non-officer member but a person must not be a non-officer member for a total period of more than 8 years.

(4) A non-officer member may resign from office by giving written notice to the Welsh Ministers.

#### **Officer members**

7. An officer member holds office for such period, and on such terms and conditions, as may be specified in the terms of appointment.

#### **Associate members**

8.—(1) Subject to Part 4, an associate member appointed in accordance with regulation 3(6)(a) holds office for such period, and on such terms and conditions, as may be specified in the terms of appointment.

(2) Where an associate member is appointed by DHCW in accordance with regulation 3(6)(a), the terms and conditions of appointment must be approved by the Welsh Ministers.

(3) A person who has held office as an associate member appointed in accordance with regulation 3(6)(a) may be reappointed as an associate member subject to any provision to the contrary in the terms of their appointment.

(4) An associate member appointed in accordance with regulation 3(6)(b) holds office for such period, and on such terms and conditions, as may be specified in the terms of appointment, but this is subject to paragraph (5).

(5) The period of office specified in the terms of appointment of an associate member appointed in accordance with regulation 3(6)(b) may not exceed 4 years.

(6) A person who has held office as an associate member appointed in accordance with regulation 3(6)(b) may be eligible for reappointment.

## PART 4

### Eligibility, disqualification, suspension and removal

#### **Non-officer members – eligibility**

9.—(1) A person is not eligible to be a non-officer member if that person is, or has been within the 12 months prior to appointment, in the paid employment of—

- (a) a Local Health Board,
- (b) an NHS trust established under section 18 of the Act, or

(c) a Special Health Authority in relation to Wales established by the Welsh Ministers under section 22 of the Act.

(2) For the purposes of paragraph (1), a person is not to be treated as having been in paid employment by reason of having held the position of chair, vice-chair or non-officer member of a Local Health Board; a chair, vice-chair or non-executive director of an NHS trust; or a chair, vice-chair or non-officer member of a Special Health Authority.

(3) A person ceases to be eligible to be a non-officer member if following that person's appointment as a non-officer member they take up paid employment with any of the bodies listed in paragraph (1) other than in the circumstances specified in paragraph 9(2).

**Non-officer members and associate members appointed by the Welsh Ministers or by DHCW acting with the Welsh Ministers' consent – disqualification**

10.—(1) This regulation applies to any person appointed as—

- (a) a non-officer member;
- (b) an associate member by the Welsh Ministers or by DHCW in accordance with regulation 3(6)(a).

(2) A person is disqualified from being appointed, or from continuing to hold office as a member, where that person falls within one or more paragraphs of the Schedule.

(3) If a person has been appointed as a member and becomes disqualified under this regulation, the person must notify DHCW and the Welsh Ministers in writing of the disqualification.

**Non-officer members and associate members appointed by the Welsh Ministers or by DHCW acting with the Welsh Ministers' consent – removal from office**

11.—(1) This regulation applies to any person appointed as—

- (a) a non-officer member;
- (b) an associate member by the Welsh Ministers or by DHCW in accordance with regulation 3(6)(a).

(2) The Welsh Ministers, or DHCW if it has made the appointment, may by written notice to the member remove that person from office if satisfied—

- (a) that it is not in the interests of DHCW or of the health service for that person to continue to hold office,
- (b) that the person is unfit to be a member of DHCW or is unwilling or unable to exercise the functions of a member of DHCW,
- (c) that person ceases to be eligible to be a non-officer member under regulation 9(3), or
- (d) that the person is disqualified under regulation 10 from holding office or was disqualified at the time of their appointment.

**Non-officer members and associate members appointed by the Welsh Ministers or by DHCW with the Welsh Ministers' consent – suspension from office**

12.—(1) The Welsh Ministers, or DHCW if it has made the appointment, may suspend a person from office while considering whether to remove that person from office under regulation 11.

(2) The Welsh Ministers, or DHCW if it has made the appointment, must give notice of the decision to suspend a person in accordance with the terms of appointment.

(3) A person whose appointment is suspended under paragraph (1) may not perform the functions of any member during the period of suspension.

### **Officer member – removal and suspension from office**

13.—(1) This regulation applies to any person appointed as an officer member.

(2) The non-officer members may by written notice to the member remove that person from office if satisfied that it is not in the interests of DHCW or of the health service for that person to continue to hold office.

(3) The non-officer members may by written notice to the member suspend that person from office if it appears to them that there may be grounds to exercise the power in paragraph (2).

(4) A person whose appointment is suspended under paragraph (3) may not perform the functions of any member during the period of suspension.

### **Trade union associate member – removal and suspension from office**

14.—(1) This regulation applies to an associate member appointed by the non-officer members in accordance with regulation 3(6)(b).

(2) The non-officer members may by written notice remove that person from office if satisfied that the person is unfit to be a member of DHCW or is unwilling or unable to exercise the functions of a member of DHCW.

(3) The non-officer members may by written notice to the person suspend that person from office if it appears to the non-officer members that there may be grounds to exercise the power in paragraph (2).

(4) An associate member ceases to hold office if the member ceases to be an eligible candidate for appointment as an associate member under regulation 4(4).

(5) A person whose appointment is suspended under paragraph (1) may not perform the functions of any member during the period of suspension.

## **PART 5**

### **Procedure**

#### **Powers of vice-chair in chair's absence**

15.—(1) This regulation applies if—

- (a) the chair is suspended under regulation 12,
- (b) the office of chair is temporarily vacant for any reason, or
- (c) the chair is unable or unwilling to perform the duties of chair owing to illness, absence or any other cause.

(2) Where this regulation applies the vice-chair is to act as chair until a new chair is appointed or the existing chair resumes the chair's duties.

#### **Appointment of committees and sub-committees**

16.—(1) Subject to any directions given by the Welsh Ministers, DHCW may—

- (a) establish committees and sub-committees;
- (b) together with one or more Special Health Authorities, establish joint committees or joint sub-committees;

consisting wholly or partly of persons who are not members of DHCW.

(2) DHCW must establish any such committees, sub-committees, joint committees and joint sub-committees referred to in paragraph (1) if directed to do so by the Welsh Ministers.

#### **Arrangements for the exercise of functions**

**17.**—(1) Subject to any directions given by the Welsh Ministers, DHCW may make arrangements for the exercise of any of its functions by a committee, sub-committee, joint committee or joint sub-committee appointed under regulation 16, or by an officer of DHCW, subject to such restrictions and conditions as DHCW thinks fit.

(2) An arrangement under paragraph (1) does not affect DHCW's responsibility for or its ability to exercise a delegated function.

#### **Meetings and proceedings**

**18.**—(1) Subject to any directions given by the Welsh Ministers, DHCW must make standing orders for the regulation of its proceedings and business.

(2) Where a committee, sub-committee, joint committee or joint sub-committee has been established in accordance with regulation 16, subject to any directions given by the Welsh Ministers, DHCW must approve any standing orders that may be made by that committee, sub-committee, joint committee or joint sub-committee.

## **PART 6**

### **Accounts and Reports**

#### **Reports**

**19.**—(1) For each financial year DHCW must—

- (a) prepare an annual report on how it has discharged its functions during that year, and
- (b) send a copy of that report to the Welsh Ministers as soon as possible after the end of that financial year.

(2) DHCW must—

- (a) make such other reports to the Welsh Ministers in such manner and at such time as the Welsh Ministers direct, and
- (b) provide the Welsh Ministers with such information as the Welsh Ministers from time to time request.

#### **Accounts**

**20.** For each financial year DHCW must—

- (a) prepare accounts and keep records in relation to those accounts, and
- (b) prepare a statement of accounts;

in accordance with any directions given by the Welsh Ministers.

7 December 2020

*Vaughan Gething*  
Minister for Health and Social Services, one of  
the Welsh Ministers



SCHEDULE  
DISQUALIFICATION

Regulation 10

**Criminal convictions**

1.—(1) The person has within the period of 5 years immediately preceding the date of the proposed appointment been convicted, or at any time during their term of office is convicted—

- (a) in the United Kingdom of any criminal offence, or
- (b) outside the United Kingdom of an offence which, if committed in any part of the United Kingdom, would constitute a criminal offence in that part;

and, in either case, the final outcome of the proceedings was a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months without the option of paying a fine.

(2) For the purposes of this paragraph, the date of conviction is 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.

**Bankruptcy**

2.—(1) The person is subject to a bankruptcy restrictions order, an interim bankruptcy restrictions order or has a composition or an arrangement with creditors.

- (2) Where a person is disqualified under sub-paragraph (1)—
  - (a) if the bankruptcy is annulled on the ground that the person ought not to have been adjudged bankrupt or on the ground that the person's debts have been paid in full, that person becomes eligible for appointment as a member on the date of the annulment,
  - (b) if the person is discharged from bankruptcy, that person becomes eligible for appointment as a member on the date of the discharge,
  - (c) if, having made a composition or arrangement with creditors, the person's debts are paid in full, that person becomes eligible for appointment as a member on the date upon which such debts are paid in full, and
  - (d) if, having made a composition or arrangement with creditors, a period of 5 years has expired from the date on which the terms of the composition or arrangement were fulfilled, that person becomes eligible for appointment as a member.

**Dismissal from health service body**

3.—(1) The person has been dismissed as a member, otherwise than by reason of redundancy, or non-renewal of a fixed term contract, from paid employment with a health service body.

(2) A person who is disqualified under sub-paragraph (1) may, after the expiry of 2 years from the date of dismissal, apply in writing to the Welsh Ministers to have that disqualification removed.

(3) Where the Welsh Ministers have directed that a disqualification is to be removed under sub-paragraph (2), the person is no longer disqualified for the purpose of this Schedule.

(4) If the Welsh Ministers refuse a person's application under sub-paragraph (2), no further application may be made by the person before the expiry of the period of 2 years beginning with the date of the person's last application.

(5) For the purpose of this paragraph, a person is not to be treated as having been in paid employment by reason only of having been—

*Status: This is the original version (as it was originally made).*

- (a) in the case of a health service body which is not an NHS trust or an NHS foundation trust (other than a clinical commissioning group), the chair, vice-chair or a non-officer member of the body,
  - (b) in the case of an NHS trust, the chair, vice-chair or a non-executive director of the trust,
  - (c) in the case of an NHS foundation trust, the chair, a governor or a non-executive director of the trust, or
  - (d) in the case of a clinical commissioning group, the chair or a member of the governing body.
- (6) In sub-paragraph (5)(a), “non-officer member” means a member of a health service body who is not employed by the body.

#### **Termination of membership of health service body**

- 4.—(1) The person has—
- (a) had his or her membership as chair, vice-chair, member or director of a health service body terminated, other than by reason of redundancy, voluntary resignation, reorganisation of the health service body, or expiry of the period of office for which that person was appointed, or
  - (b) been removed from office as the chair or a member of the governing body of a clinical commissioning group.
- (2) If a person is disqualified under sub-paragraph (1) the disqualification ceases to have effect on the expiry of 2 years beginning on the date of the termination of the term of appointment or such longer period as may have been specified by the body that terminated the person’s membership.
- (3) The Welsh Ministers may reduce the period of disqualification mentioned in sub-paragraph (2) on the application of the disqualified person.
- (4) When the period of disqualification under sub-paragraph (2) comes to an end, the person is no longer disqualified for the purpose of this Schedule.

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### **EXPLANATORY NOTE**

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

These Regulations make provision concerning the membership and procedure of Digital Health and Care Wales (“DHCW”). DHCW is a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006 by the Digital Health and Care Wales (Establishment and Membership) Order 2020.

In particular, Part 2 of these Regulations provides the procedure for the appointment of the office of the chair, vice-chair, the chief officer and other members of DHCW (regulations 3, 4 and 5). Part 3 makes provision regarding the term of office of those appointments (regulations 6, 7 and 8). Part 4 makes provision in relation to eligibility and disqualification of members (regulations 9 and 10) and suspension and removal from office of members (regulations 11, 12, 13 and 14).

Part 5 makes provision relating to the procedures of DHCW, including the powers of a vice-chair in the chair’s absence (regulation 15) and the appointment of, and exercise of functions by, committees, sub-committees, joint committees and joint sub-committees (regulations 16 and 17).

Provision is also made in relation to the conduct of meetings and proceedings (regulation 18). Part 6 makes provision requiring DHCW to prepare and keep accounts and to prepare and furnish reports to the Welsh Ministers (regulations 19 and 20).

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Department of Health and Social Services, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.