

POLICY NOTE

THE HEALTH BOARDS (MEMBERSHIP AND PROCEDURE) (SCOTLAND) AMENDMENT REGULATIONS 2016

SSI 2016/3

The above instrument was made 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 (“the 1978 Act”). The instrument is subject to negative procedure.

Policy Objectives

The instrument amends the Health Boards (Membership and Procedure) (Scotland) Regulations 2001 (“the 2001 Regulations”) to update provisions concerning the membership and procedure of Boards in Scotland established under section 2 of the 1978 Act.

The instrument has three main objectives.

The first objective is to replace outdated references to executive employee positions of a Board. The 2001 Regulations refer to the “Chief Officer”, “Chief Finance Officer” and “Director of Public Health” but those positions can also be known by different titles or may have their functions divided between other executive positions.

In certain circumstances a potential conflict of interest could arise by a person being a member and also an employee of a Board – irrespective of whether the employed position is an executive one. The policy intention is therefore to replace the outdated references with provision which refers to all employees of a Board.

The replacement provision reduces the potential for conflict by—

- (a) disqualifying a member who is also an employee of a Board from holding the position of vice-chairperson (paragraph 3A of Schedule 1 to the 1978 Act prevents the chairperson from also being an employee of the Board);
- (b) 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
- (c) 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.

The outdated references are also replaced in the provision which concerns remuneration: the revised provision prevents a member who is also employed as an executive officer of a Board from receiving remuneration for being a member. This continues to enable employees who are not executive officers to be remunerated for being a member.

The second objective of the instrument is to provide the Scottish Ministers with a power to make a determination suspending a member from taking part in the business (including meetings) of a Board. This allows the Scottish Ministers to suspend a member who may be unfit to be on a Board pending the outcome of an investigation into that matter. A member can be suspended for up to 12 months at any one time.

The third objective is to replace the disqualification provision in the 2001 Regulations with an updated disqualification provision. This fulfils the undertaking given by the Scottish Ministers in relation to the Health Boards (Membership) (Scotland) Regulations 2013 (S.S.I. 2013/334). It has taken longer than expected because the updated provision is the product of an extensive review in collaboration with the NHS Board Chairs' Group. It was considered necessary to delay updating the provision whilst discussions were taking place regarding the integration of health and social care and the creation of Integration Joint Boards.

The updated provision continues to disqualify a person from being a member of a Board, including a sitting member by virtue of regulation 5(5) of the 2001 Regulations.

It includes new and updated references to legislation, regulatory bodies and ethical standards; in particular, it reflects the current regulatory framework for healthcare professionals in the United Kingdom.

Other changes of note are—

- (a) a sitting member who commits an offence (and is sentenced to 3 months or longer) is now disqualified;
- (b) a person who is an employee of a health service body is no longer disqualified; and
- (c) a person who has resigned from paid employment with a health service body is no longer disqualified.

The provision continues to allow the Scottish Ministers to be able to waive disqualification.

Consultation

Due to the technical nature of the objectives of the instrument, focused discussions took place with the NHS Board Chairs' Group as part of a broader engagement with them on the governance and accountability of Boards.

Impact Assessments

An equality impact assessment has not been completed for the instrument. This is because the objectives of the instrument are largely technical in nature. Appointments to Boards are regulated by the Office of the Commissioner for Ethical Standards in Public Life in Scotland.

The instrument does not have an impact on business, privacy, children or the environment.

Financial Effects

The Cabinet Secretary for Health, Wellbeing and Sport confirms that the instrument has no financial effects on the Scottish Government, local government or business.

Scottish Government
Health Workforce Directorate
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