
STATUTORY INSTRUMENTS

1999 No. 2801

**NATIONAL HEALTH SERVICE, ENGLAND
NATIONAL HEALTH SERVICE, WALES**

**The Commission for Health Improvement
(Membership and Procedure) Regulations 1999**

Made - - - - *11th October 1999*
Laid before Parliament *11th October 1999*
Coming into force - - *1st November 1999*

The Secretary of State for Health, in exercise of powers conferred on him by paragraph 5 of Schedule 2 to the Health Act 1999⁽¹⁾ and section 126(4) of the National Health Service Act 1977⁽²⁾, and of all other powers enabling him in that behalf, and after consultation with the National Assembly for Wales⁽³⁾, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Commission for Health Improvement (Membership and Procedure) Regulations 1999 and shall come into force on 1st November 1999.

(2) In these Regulations—

“the Act” means the Health Act 1999;

“the 1977 Act” means the National Health Service Act 1977;

“the Assembly” means the National Assembly for Wales established by section 1 of the Government of Wales Act 1998⁽⁴⁾;

“the Commission” means the Commission for Health Improvement established by section 19 of the Act;

“chairman” means, unless the context otherwise requires, the chairman of the Commission;

“the health service” shall be construed in accordance with section 128(1) of the 1977 Act;

(1) 1999 c. 8.

(2) 1977 c. 49. Section 126(4) applies in relation to any power to make regulations conferred by the Health Act 1999 (c. 8) (“the 1999 Act”) (see section 62(4) of the 1999 Act). Section 126(4) was amended by section 65(2) of the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”) and paragraph 37(5) of Schedule 4 to the 1999 Act.

(3) The power conferred by paragraph 5 of Schedule 2 to the 1999 Act is exercisable by the Secretary of State only after consultation with the National Assembly for Wales, by virtue of article 5(1) of, and Schedule 2 to, the National Assembly of Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), as amended by section 66(4) and (6) of the 1999 Act.

(4) 1998 c. 38.

“health service body” means—

- (a) a Health Authority, Special Health Authority or NHS trust;
- (b) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978⁽⁵⁾; or the Scottish Dental Practice Board, the Common Services Agency for the Scottish Health Service or an NHS trust respectively constituted under sections 4, 10 and 12A of that Act;
- (c) the Dental Practice Board constituted under section 37(1) of the 1977 Act;
- (d) the Public Health Service Laboratory Board continued in being by section 5(4) and (5) of, and Schedule 3 to, the 1977 Act;
- (e) the National Radiological Protection Board established by section 1 of the Radiological Protection Act 1970⁽⁶⁾;

“lay member” means a person who is not—

- (a) a holder of a paid appointment or office with any health service body;
- (b) a registered medical practitioner;
- (c) a person registered in the dentists register under the Dentists Act 1984⁽⁷⁾;
- (d) a registered nurse, midwife or health visitor;
- (e) a pharmacist registered in the register of pharmaceutical chemists;
- (f) an ophthalmic optician, other than a body corporate enrolled in the list kept under section 9 of the Opticians Act 1989⁽⁸⁾;
- (g) a person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960⁽⁹⁾ extends;
- (h) a registered osteopath as defined by section 41 of the Osteopaths Act 1993⁽¹⁰⁾; or
- (i) a registered chiropractor as defined by section 43 of the Chiropractors Act 1994⁽¹¹⁾;

“member” in relation to the Commission includes the chairman.

(3) In these Regulations—

- (a) unless the context otherwise requires, any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations, and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in the regulation; and
- (b) in relation to the member appointed by the Assembly under paragraph 4(b) of Schedule 2 to the Act, any reference to the Secretary of State, unless the context otherwise requires, is to be construed as a reference to the Assembly.

Number of members

2. The Commission shall have fourteen members, not less than eight of whom shall be lay members.

(5) 1978 c. 29. Section 2 was amended by the Health and Social Services and Social Security Adjudication Act 1983 (c. 41), Schedule 7, paragraph 1 and by the 1990 Act, section 25; section 4 was amended by the Health and Medicines Act 1988 (c. 49), section 12(3) and Schedule 3; section 10 was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 2 and the 1990 Act, Schedule 10; section 12A was inserted by the 1990 Act, section 31 and amended by section 46(1) of the 1999 Act.

(6) 1970 c. 46.

(7) 1984 c. 24.

(8) 1989 c. 44.

(9) 1960 c. 66.

(10) 1993 c. 21.

(11) 1994 c. 17.

Appointment of members

3.—(1) Subject to regulation 7 (termination of tenure of office), the term of office of a member shall be such period, not exceeding four years, as the Secretary of State shall specify on making the appointment.

(2) The Assembly may appoint the member for Wales only after consultation with the Secretary of State.

(3) Subject to paragraph (2) and regulation 5 (disqualification for appointment), and article 5(1) of, and Schedule 2 to, the National Assembly for Wales (Transfer of Functions) Order 1999⁽¹²⁾ (consultation with the Assembly before the exercise of powers by the Secretary of State), a member shall, on termination of his office, be eligible for re-appointment.

Appointment of deputy-chairman

4.—(1) Subject to paragraph (2), the members may appoint one of the members, other than the chairman, to be deputy-chairman for such period, not exceeding the remainder of his term as a member, as they may specify on making the appointment.

(2) Any member so appointed may at any time resign from the office of deputy-chairman by giving notice in writing to the chairman.

(3) Where the chairman has died or has ceased to hold office, or where he is unable to perform his duties as chairman owing to illness, absence from England and Wales or any other cause, references to the chairman in the Schedule to these Regulations shall, so long as there is no chairman available to perform his duties, be taken to include references to the deputy-chairman.

Disqualification for appointment

5.—(1) Subject to regulation 6 (cessation of disqualification) a person shall be disqualified for appointment as a member if—

- (a) he has within the preceding five years been convicted in the United Kingdom, the Channel Islands or the Isle of Man of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;
- (b) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
- (c) he has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- (d) he is a person whose tenure of office as the chairman or as a member or director of a health service body has been terminated on the grounds that—
 - (i) it was not in the interests of, or conducive to the good management of, the body that he should continue to hold office,
 - (ii) it was not in the interests of the health service that he should continue to hold office, or
 - (iii) he failed, without reasonable cause, to attend any meeting of that body for a period of three months;
- (e) he has had his name removed, by a direction under section 46 of the 1977 Act (or any provision in force in Scotland or Northern Ireland corresponding to that provision), from any list prepared under Part II of that Act, and has not subsequently had his name included in such a list;

⁽¹²⁾ S.I. 1999/672. Schedule 2 was amended by section 66(6) of the 1999 Act.

- (f) he is suspended as respects the provision of general medical services, general dental services, general ophthalmic services or pharmaceutical services under the 1977 Act by a direction of the Tribunal constituted under section 46 of that Act made pursuant to section 49A(2) or section 49B(1) of that Act⁽¹³⁾ (or any provision in force in Scotland or Northern Ireland corresponding to those provisions);
- (g) he has been removed, or is suspended, from a register of members admitted to practice maintained under any of the following Acts—
 - (i) the Pharmacy Act 1954⁽¹⁴⁾;
 - (ii) the Professions Supplementary to Medicine Act 1960⁽¹⁵⁾;
 - (iii) the Medical Act 1983⁽¹⁶⁾;
 - (iv) the Dentists Act 1984⁽¹⁷⁾;
 - (v) the Opticians Act 1989⁽¹⁸⁾;
 - (vi) the Osteopaths Act 1993⁽¹⁹⁾;
 - (vii) the Chiropractors Act 1994⁽²⁰⁾;
 - (viii) the Nurses, Midwives and Health Visitors Act 1997⁽²¹⁾;
- (h) he is a chairman or non-officer member of a Health Authority or Special Health Authority established under the 1977 Act, or a member of a committee or sub-committee of such an authority (other than an employee of that authority);
- (i) he is a chairman or a non-executive director of a National Health Service trust established under section 5(1) of the National Health Service and Community Care Act 1990⁽²²⁾, or a member of a committee or sub-committee of such a trust (other than an employee of that trust); or
- (j) he is an employee of the Commission.

(2) For the purposes of paragraph (1)(a), the date of conviction shall be 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.

(3) For the purposes of paragraph (1)(c), a person shall not be treated as having been in paid employment by reason only of his having been the chairman or member or director of a health service body.

Cessation of disqualification

6.—(1) Where a person is disqualified under regulation 5(1)(b) by reason of having been adjudged bankrupt—

- (a) if the bankruptcy is annulled on the ground that he ought not to have been adjudged bankrupt or on the ground that his debts have been paid in full, the disqualification shall cease on the date of the annulment;
- (b) if he is discharged, the disqualification shall cease on the date of his discharge.

⁽¹³⁾ Sections 49A and 49B were inserted by the National Health Service (Amendment) Act 1995 (c. 31), section 2(1).

⁽¹⁴⁾ 1954 c. 61.

⁽¹⁵⁾ 1960 c. 66.

⁽¹⁶⁾ 1983 c. 54.

⁽¹⁷⁾ 1984 c. 24.

⁽¹⁸⁾ 1989 c. 44.

⁽¹⁹⁾ 1993 c. 21.

⁽²⁰⁾ 1994 c. 17.

⁽²¹⁾ 1997 c. 24.

⁽²²⁾ Section 5(1) was amended by section 13(1) of the 1999 Act.

(2) Where a person is disqualified under regulation 5(1)(b) by reason of his having made a composition or arrangement with his creditors—

- (a) if he pays his debts in full, the disqualification shall cease on the date on which such payment is completed; and
- (b) in any other case, it shall cease on the expiry of the period of five years beginning on the date on which the terms of the deed of composition or arrangement are fulfilled.

(3) Subject to paragraph (4), where a person is disqualified under regulation 5(1)(c) he may, after the expiry of two years beginning on the date on which he was dismissed, apply in writing to the Secretary of State to remove the disqualification, and the Secretary of State may direct that the disqualification shall cease.

(4) Where the Secretary of State refuses an application to remove a disqualification, no further application may be made by that person until the expiry of the period of two years beginning with the date of the application and this paragraph shall apply to any subsequent application.

(5) Where a person is disqualified under regulation 5(1)(d), the disqualification shall cease on the expiry of the period of two years beginning on the date of the termination of his tenure of office or such longer period as the Secretary of State specifies when terminating his period of office but the Secretary of State may, on application being made to him by that person, reduce the period of disqualification.

Termination of tenure of office

7.—(1) A member may resign his office at any time during his term of office, by giving notice in writing to the Secretary of State.

(2) Where during his term of office a member other than the chairman is appointed to be the chairman, his tenure of office as such a member shall terminate when his appointment as chairman takes effect.

(3) Where the Secretary of State is of the opinion that it is not in the interests of the Commission or the health service that a member should continue to hold office, he may forthwith terminate his tenure of office by giving him notice in writing to that effect.

(4) If a member fails to attend any meeting of the Commission for a period of three months the Secretary of State shall forthwith terminate that person's tenure of office, unless he is satisfied that—

- (a) the absence was due to a reasonable cause; and
- (b) the person in question will be able to attend meetings of the Commission within such period as the Secretary of State considers reasonable.

(5) Where a person has been appointed to be a member, and—

- (a) he becomes disqualified for appointment under regulation 5, the Secretary of State shall forthwith notify him in writing of such disqualification; or
- (b) it comes to the notice of the Secretary of State that at the time of his appointment he was so disqualified, he shall forthwith declare that the person in question was not duly appointed and notify him in writing to that effect,

and upon receipt of any such notification, his tenure of office, if any, shall be terminated and he shall cease to act as such a member.

(6) If it appears to the Secretary of State that a member has failed to comply with regulation 10 (disability on account of pecuniary interest) he may forthwith terminate that person's tenure of office by giving him notice in writing to that effect.

Appointment of committees and sub-committees

8.—(1) Subject to such directions as may be given by the Assembly, the Commission may, and if so directed by the Assembly must, appoint a committee whose functions are to—

- (a) consider matters relating to the exercise of the Commission’s functions in relation to Wales; and
- (b) advise the Commission on such matters.

(2) Subject to such directions as may be given by the Secretary of State, the Commission may, and if so directed by him must, appoint other committees of the Commission.

(3) A committee appointed under paragraph (1) or (2) may consist wholly or partly of members of the Commission or wholly of persons who are not members of the Commission.

(4) A committee appointed under paragraph (1) or (2), subject to such directions as may be given by the Secretary of State, the Commission or, in the case of the committee referred to in paragraph (1), the Assembly, appoint sub-committees consisting wholly or partly of members of the committee (whether or not they are members of the Commission) or wholly of persons who are not members of the Commission or the committee.

(5) Regulation 5, other than paragraph (1)(j), and regulation 6 apply to the appointment of members of committees and sub-committees appointed under this regulation as they apply to the appointment of members of the Commission.

Meetings and proceedings

9.—(1) The meetings and proceedings of the Commission shall be conducted in accordance with the rules set out in the Schedule to these Regulations and with Standing Orders made under paragraph (2).

(2) Subject to those rules, to regulation 10 (disability on account of pecuniary interest) and to such directions as may be given by the Secretary of State, or, in the case of a committee appointed under regulation 8(1), the Assembly, the Commission shall make, and may vary or revoke, Standing Orders for the regulation of its proceedings and business, including provision for the suspension of the Standing Orders or any of them.

(3) Subject to such directions as may be given by the Secretary of State, or, in relation to a committee appointed under regulation 8(1), the Assembly, the Commission may make, vary and revoke Standing Orders relating to the quorum, proceedings and place of meeting of any committee or sub-committee of the Commission but, subject to any such Standing Orders, the quorum, proceedings and place of meeting shall be such as the committee or sub-committee may determine.

(4) The proceedings of the Commission shall not be invalidated by any vacancy in its membership or by any defect in a member’s appointment.

Disability of members in proceedings on account of pecuniary interest

10.—(1) Subject to the following provisions of this regulation, if a member has any pecuniary interest, direct or indirect, in any matter and is present at any meeting of the Commission at which the matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement, disclose his interest and shall not take part in the consideration or discussion of the matter or vote on any question with respect to it.

(2) The Secretary of State may, subject to such conditions as he may think fit to impose, remove any disability imposed by this regulation in any case in which it appears to him in the interests of the health service that the disability should be removed.

(3) The Commission may, by Standing Orders made under regulation 9(2), provide for the exclusion of a member from a meeting of the Commission while any matter in which he has a pecuniary interest, direct or indirect, is under consideration.

(4) Any remuneration, compensation or allowances payable to a member by virtue of paragraph 6 of Schedule 2 to the Act (remuneration and allowances) shall not be treated as a pecuniary interest for the purpose of this regulation.

(5) Subject to paragraphs (2) and (6), the circumstances in which a member shall be treated for the purpose of this regulation as having an indirect pecuniary interest in a matter include—

- (a) if he, or a nominee of his, is a director of a company or other body, not being a public body, which has a direct pecuniary interest in the matter under consideration; or
- (b) if he is a partner of, or is in the employment of, a person who has a direct pecuniary interest in the matter under consideration,

and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purpose of this regulation to be also an interest of the other.

(6) A member shall not be treated as having a pecuniary interest in any matter by reason only—

- (a) of his membership of a company or other body if he has no beneficial interest in any securities of that company or other body; or
- (b) of an interest in any company, body or person with which he is connected as mentioned in paragraph (5) which is so remote or insignificant that it cannot reasonably be regarded as likely to influence him in the consideration or discussion of, or in voting on, any question with respect to that matter.

(7) Where a member—

- (a) has an indirect pecuniary interest in a matter by reason only of a beneficial interest in securities of a company or other body;
- (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, which ever is the lesser; and
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this regulation shall not prohibit him from taking part in the consideration or discussion of the matter, or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.

(8) This regulation applies to a committee or sub-committee as it applies to the Commission and applies to a member of any such committee or sub-committee (whether or not he is also a member of the Commission) as it applies to a member of the Commission.

(9) In this regulation—

“public body” includes any body established for the purpose of carrying on, under national ownership, any industry or part of any industry or undertaking, the governing body of any university, university college or college, school or hall of a university and the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907(23).

“securities” means—

- (a) shares or debentures, whether or not constituting a charge on the assets of a company or other body, or rights of interests in any share or such debentures; or

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- (b) rights (whether actual or contingent) in respect of money lent to, or deposited with, any industrial or provident society or building society;
- “shares” means shares in the share capital of a company or other body or the stock of a company or other body.

Reports by the Commission

11.—(1) The Commission must provide the Assembly with such reports and information relating to the exercise of the Commission’s functions in relation to Wales as the Assembly may from time to time require.

Signed by authority of the Secretary of State for Health

11th October 1999

John Denham
Minister of State,
Department of Health

SCHEDULE

Regulation 9(1)

RULES AS TO MEETINGS AND PROCEEDINGS OF THE COMMISSION

1. The first meeting of the Commission shall be held on such day and at such place as may be fixed by the chairman, and he shall be responsible for convening the meeting.

2.—(1) The chairman may call a meeting of the Commission at any time.

(2) If a requisition for a meeting, signed by at least five members, is presented to the chairman, and the chairman either—

(a) refuses to call a meeting; or

(b) without so refusing, does not within 21 days after the requisition has been presented to him call a meeting,

those members may forthwith call a meeting.

(3) Before each meeting of the Commission, a notice of the meeting which—

(a) specifies the principal business proposed to be transacted at it; and

(b) is signed by the chairman or by an officer of the Commission authorised by the chairman to sign on his behalf,

shall be delivered to each member, or sent by post to his last known address, at least seven clear days before the day of the meeting.

(4) The proceedings of any meeting shall not be invalidated by a failure to deliver such notice to any member.

(5) In the case of a meeting called under sub-paragraph (2) above by members, the notice shall be signed by those members and no business other than that specified in the notice shall be transacted at the meeting.

3.—(1) At any meeting of the Commission the chairman or, in his absence, the deputy-chairman (if there is one and he is present) shall preside.

(2) If the chairman and any deputy-chairman are absent, such other member present as the other members present shall choose for the purpose shall preside.

4. Every question at a meeting shall be determined by a majority of votes of the members present and competent to vote on the question and, in the case of an equality of votes, the chairman or, in his absence, the person presiding at the meeting shall have a second and casting vote.

5.—(1) Subject to sub-paragraph (2) below, no business shall be transacted at any meeting unless at least five members are present.

(2) The chairman shall be present at any meeting of the Commission which is convened for the purpose of appointing a person to act as the Director for Health Improvement.

6.—(1) The minutes of the proceedings of a meeting shall be drawn up and shall be signed at the next ensuing meeting by the person presiding at that next meeting.

(2) The names of the members present at a meeting shall be recorded in the minutes.

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning the membership and procedure of the Commission for Health Improvement established by section 19 of the Health Act 1999. In particular, they make provision for the numbers, appointment and tenure of office of members (regulations 2 and 3), the appointment of a deputy-chairman (regulation 4), disqualification for appointment (regulations 5 and 6), removal from office (regulation 7), the appointment of committees and sub-committees (regulation 8), meetings and proceedings, including provision for disability for participation in proceedings on account of pecuniary interest (regulations 9 and 10, and the Schedule), and reports by the Commission (regulation 11).