

**EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION AGENCY REGULATIONS 2005**

2005 No.408

1 This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2 Description

2.1 The Health Protection Agency comes into being on 1 April 2005 as a non-departmental public body established under the Health Protection Agency Act 2004.

2.2 These regulations:

- a) make provision for the membership of the board of the new Agency; and
- b) direct the Agency, from 1 April 2005, to have and to exercise certain functions.

3 Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4 Legislative Background

4.1 General The Health Protection Agency Act 2004 establishes the Health Protection Agency as a UK-wide non-departmental public body.

4.2 The powers and consultation provisions governing these regulations were brought into force by the Health Protection Agency Act 2004 (Commencement) Order (SI 2005/121 (C.5)). All the provisions of the Act not yet in force will be in force by 1 April 2005 when the Agency comes into existence, except the amendment to the Parliamentary Commissioner Act 1967 to be made by Schedule 3, paragraph 1 of the Act. (The necessary change to the 1967 Act is being made, along with other changes to that Act, in a Parliamentary Commissioner Order).

4.3 Appointments Schedule 1 of the Act makes provisions about the constitution of the Agency. It includes powers for the Secretary of State to make regulations on certain appointments matters, after consultation with Scottish Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland, and the National Assembly for Wales. Regulations 1 to 6 make use of these powers so that appointments to the Agency are governed by the regulations.

4.4 Health functions There are powers in section 2 of the Act for the Secretary of State, after consulting the National Assembly for Wales, to direct the Agency to have other functions in relation to health (subsection (2)(2)(a)) and to exercise any function conferred on him by or under an enactment (subsection (3)). These powers are used in regulation 7 (a) and (b) respectively. Regulation 7 comes into force on 1 April 2005, the date when the Agency itself comes into existence under the terms of the commencement order.

4.5 House of Lords Committee on Delegated Powers and Regulatory Reform The Government set out its plans for the use of these powers in its memorandum¹ to the Committee on Delegated Powers and Regulatory Reform, and the way the powers are now being used is consistent with this. The Government accepted² the Committee's recommendation that functions should be conferred on the Agency under what is now section 2(2), or made exercisable under what are now section 2(3) or (4), only by a statutory instrument subject to a Parliamentary procedure or (as appropriate) the National Assembly subordinate legislation procedures.

5 Extent

5.1 The Health Protection Agency is established within the United Kingdom and the regulations apply to the United Kingdom.

6 European Convention on Human Rights

6.1 Not applicable. The regulations do not amend primary legislation.

7 Policy Background

General

7.1 The Health Protection Agency Act 2004 provides for the Agency to undertake both health functions and radiation protection functions, including functions currently carried out by the Health Protection Agency Special Health Authority and the National Radiological Protection Board, both of which will be wound up when the Agency is created. These more integrated arrangements are intended to improve the UK's ability to tackle the problems posed by infectious disease and other hazards, including chemical, biological, radiological and nuclear (CBRN) terrorism.

Appointments regulations

7.2 As made clear during the passage of the Act, the intention has always been that the appointments regulations should make broadly similar provision to that in the Health Protection Agency Special Health Authority Regulations (SI 2003/506).

¹ Published in the Committee's 3rd report in the 2003/4 session, HL Paper 17.

² As reported in the Committee's 10th Report in the 2003/4 session, HL Paper 55.

Citation, commencement and interpretation

7.2 Regulation 1 is as in the Special Health Authority regulations, with a number of minor changes to take account, for example of the fact that the new Agency will be a UK-wide body.

Appointment and tenure of office of chairman and members

7.3 The numbers of non-executive members (five to twenty) and executive members (one to four) prescribed in regulation 2(1) differ from those currently prescribed for the Special Health Authority (respectively ten to twenty-five and three to eight). This reflects the fact that, after nearly two years' experience of the Special Health Authority, we have been able to refine our view of what flexibility over board size is likely to be needed.

7.4 Regulation 2(2), (3) and (4) make similar provision, *mutatis mutandis*, to Special Health Authority regulation 2(3), (4) and (6).

Disqualification for appointment and cessation of disqualification

7.5 Regulations 3 and 4 make similar provision to Special Health Authority regulations 3 and 4(3)-(5), apart from minor updating, except in the following four respects.

7.6 The provisions on bankruptcy in regulation 3(1)(b) have been brought up to date, as we indicated during the passage of the Bill we intended to do. The general policy now is that only those subject to a bankruptcy restriction order (ie those whose conduct has been found to be culpable), rather than all bankrupts, should be disqualified from appointment. A reference in regulation 3(1)(b) to "sequestration" has been retained to take care of the position in Scotland, where the legislation is different.

7.7 We have added to regulation 3(1)(f) a reference to those who have given a disqualification undertaking. The Department for Trade and Industry have drawn our attention to the fact that the majority of disqualification cases under the Company Directors Disqualification Act 1986 are now dealt with, not through disqualification orders (made by the courts), but through (voluntary) disqualification undertakings. Otherwise, this provision reads as in the Special Health Authority regulations, with the reference to the Companies (Northern Ireland) Order 1986 now replaced by one to the Company Directors Disqualification (Northern Ireland) Order 2002.

7.8 The provisions in Special Health Authority regulation 3(1)(h) have been omitted. As indicated during the passage of the Bill, we now consider these to be too restrictive.

7.9 Regulation 4(1) now permits a person disqualified under regulation 3(1)(g)(i) to apply for the disqualification to be removed. There was no provision for this in the Special Health Authority regulations, but that feature of the Special Health Authority regulations seems

anomalous. (In general, the other disqualifications in what is now regulation 3(1) either lapse with the passage of time or change of status and/or can be removed on application).

Remuneration and allowances of chairman and non-executive members

7.10 There was no equivalent to this in the Special Health Authority regulations, because provision for remuneration in that case was made by section 8 and paragraph 9 of Schedule 5 to the NHS Act. Because of the way that primary legislation was framed, the Secretary of State has the power to determine the remuneration of the members he appoints to the Special Health Authority and the National Assembly for Wales has the power to determine the remuneration of the member appointed by the Assembly (although the Assembly made clear that they intended to use their power in the same way as the Secretary of State). The new regulation provides for the Secretary of State to determine the remuneration for the chair and all the non-executive members of the board, which is normal for similar UK-wide bodies.

Termination of tenure of office of chairman and non-executive members

7.11 This makes similar provision to Special Health Authority regulation 5. It does not include an equivalent to Special Health Authority regulation 5(5), which referred to Special Health Authority regulation 10 on pecuniary interests. We are not planning an equivalent to regulation 10 for the new Agency: it will be expected to regulate its own proceedings in relation to pecuniary interests.

Direction on health functions

7.12 Regulation 7(a) provides for the Agency to designate vaccinating centres in England for vaccination or revaccination against yellow fever for the purposes of the International Health Regulations (as the Special Health Authority currently does) and as we have previously made clear it is our intention to do.

7.13 Regulation 7(b) directs the Agency to exercise the Secretary of State's function of appointment of medical inspectors as we have previously made clear it is our intention to do. The Special Health Authority was directed to exercise the Secretary of State's function of appointment of medical inspectors "in England"; the wording in regulation 7(b) ("otherwise than in Wales") means that the Agency will be able to appoint inspectors who operate outside England as well (for example, where immigration controls are applied in France for the Channel Tunnel).

8 Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9 Contact

Jenny Harper at the Department of Health, tel 020 7972 6014 or email jenny.harper@dh.gsi.gov.uk can answer queries regarding the instrument.