

2008 No. 2252

NATIONAL HEALTH SERVICE, ENGLAND

SOCIAL CARE, ENGLAND

PUBLIC HEALTH, ENGLAND

The Care Quality Commission (Membership) Regulations 2008

<i>Made</i> - - - -	<i>20th August 2008</i>
<i>Laid before Parliament</i>	<i>3rd September 2008</i>
<i>Coming into force</i> - -	<i>1st October 2008</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by section 161(3) and (4) of, and paragraph 3(3) to (5) of Schedule 1 to, the Health and Social Care Act 2008(a):—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Care Quality Commission (Membership) Regulations 2008 and shall come into force on 1st October 2008.

(2) In these Regulations—

“FHSAA” means the Family Health Service Appeal Authority constituted under section 169 of, and Schedule 13 to, the NHS Act 2006;

“NHS Act 2006” means the National Health Service Act 2006(b);

“NHS body” means—

- (a) an English NHS body(c);
- (b) the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)(d);
- (c) the Independent Regulator of NHS Foundation Trusts(e);
- (d) the National Assembly for Wales;
- (e) the Wales Centre for Health(f);

(a) 2008 c.14 (“the 2008 Act”). See the definitions of “prescribed” and “regulations” in section 97(1) of that Act.

(b) 2006 c.41.

(c) See section 97(1) of the 2008 Act for the definition of “English NHS body”.

(d) The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) was established by S.I. 2005/2529.

(e) See section 31 of the National Health Service Act 2006.

(f) See section 2 of the Health (Wales) Act 2003 (c.4).

- (f) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978(a);
- (g) the Scottish Dental Practice Board constituted under section 4 of the National Health Service (Scotland) Act 1978(b);
- (h) the Common Service Agency for the Scottish Health Service constituted under section 10 of the National Health Service (Scotland) Act 1978(c);
- (i) a National Health Service trust constituted under section 12A of the National Health Service (Scotland) Act 1978(d);
- (j) the Northern Ireland Central Services Agency for Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972(e);
- (k) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990(f);
- (l) a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972;
- (m) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991(g);

“NHS tribunal” means the Tribunal constituted under section 46 of the National Health Service Act 1977(h) for England and Wales;

“Performers Lists Regulations” means the National Health Service (Performers Lists) Regulations 2004(i);

“pharmaceutical list” means a list published in accordance with regulations made under section 129(2)(a) of the NHS Act 2006.

Members

2. The Commission shall have six members in addition to the chair.

Tenure of office of members

3.—(1) Subject to regulation 6, the term of office of a member shall be such period, not exceeding four years, as is specified by the Secretary of State at the time of the appointment.

(2) Subject to regulation 4, the Secretary of State may re-appoint a member who has ceased to hold office.

Disqualification for appointment or from holding office

4. Subject to regulation 5, a person is disqualified for appointment or from holding office as a member where that person falls within one or more of paragraphs 1 to 27 of the Schedule.

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- (a) 1978 c.29; section 2 was amended by paragraph 1 of Schedule 7 to the Health and Social Services Act and Social Security Adjudications Act 1983 (c.41) and by section 28 of, and paragraph 19(1) of Schedule 9, and Schedule 10 to, the National Health Service and Community Care Act 1990 (c.19)
 - (b) Section 4 was amended by section 12(3) of, and Schedule 3 to, the Health and Medicines Act 1988 (c.49) and paragraph 44 of Schedule 4 to the Health Act 1999 (c.8).
 - (c) Section 10 was amended by paragraph 2 of Schedule 6 to the Health Services Act 1980 (c.53), Schedule 10 to the National Health Service and Community Care Act 1990 and paragraph 45 of Schedule 4 to the Health Act 1999.
 - (d) Section 12A was inserted by section 31 of the National Health Service and Community Care Act 1990 and amended by section 46(1) of the Health Act 1999.
 - (e) S.I. 1972/1265 (N.I. 14).
 - (f) S.I. 1990/247 (N.I. 3).
 - (g) S.I. 1991/194 (N.I. 1).
 - (h) 1977 c.49. Section 46 was repealed by the Health and Social Care Act 2001, Schedule 5, paragraph 5(8) and Schedule 6, Part 1.
 - (i) SI 2004/585.

Cessation of disqualification

5.—(1) Subject to paragraph (2), a person who is disqualified under paragraph 5 or 14 of the Schedule may, after the expiry of the period of two years beginning on the date of the dismissal or removal, apply in writing to the Secretary of State to remove the disqualification, and the Secretary of State may direct that the disqualification shall cease.

(2) 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.

(3) Where a person is disqualified under paragraphs 15 to 19 of the Schedule, the disqualification shall cease on the expiry of—

- (a) the period of two years beginning on the date of the termination or cessation of or disqualification from office referred to in those paragraphs; or
- (b) such longer period as the Secretary of State specifies when terminating that person's period of office,

but, where application is made to the Secretary of State by that person, the Secretary of State may reduce the period of disqualification.

Termination of tenure of office

6.—(1) A member may resign at any time by giving notice in writing to the Secretary of State.

(2) Where a member other than the chair is appointed to be the chair, that member's tenure of office as such a member shall terminate when the appointment as chair takes effect.

(3) A member's tenure of office shall cease upon being notified in writing by the Secretary of State—

- (a) that the Secretary of State is satisfied that one of the conditions specified in paragraph 3(3) of Schedule 1 to the Health and Social Care Act 2008 is met in relation to that member; and
- (b) of the reason why the Secretary of State is so satisfied.

Suspension of members

7.—(1) Paragraphs (2) to (4) apply where it appears to the Secretary of State in relation to a member that one of the conditions in paragraph 3(3) of Schedule 1 to the Health and Social Care Act 2008 is or may be satisfied.

(2) The Secretary of State may suspend the member from office by giving that member notice in writing to that effect.

(3) Such notice shall give the reason for, and the period of, the suspension and the date that it is to begin.

(4) The Secretary of State may by giving the member notice in writing—

- (a) before the period referred to in the notice has expired, extend, or further extend, the suspension for a further specified period; or
- (b) if it has expired, impose a further suspension for a specified period.

(5) A member shall cease to perform his functions as a member for the period of the suspension but the period of that member's term of office shall not be affected by the suspension.

(6) Where a member is suspended under this regulation the Secretary of State may, on application by the suspended member or otherwise, remove a suspension before the end of the period specified in a notice given under paragraph (2) or reduce its period.

(7) Where the Secretary of State removes, or reduces the period of, suspension under paragraph (6) the Secretary of State shall notify the member in writing to that effect.

20th August 2008

SCHEDULE

Regulation 4

GROUNDS FOR DISQUALIFICATION

1. The person has within the preceding five years—

- (a) been convicted in the United Kingdom of any criminal offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom would constitute a criminal offence; and
- (b) been sentenced to a sentence of imprisonment (whether suspended or not), and

the conviction has not been quashed nor the sentence reduced to a sentence other than a sentence of imprisonment (whether suspended or not) on appeal.

2. The person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged.

3. The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order^(a) or an order to like effect made in Scotland or Northern Ireland.

4. The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.

5. The person has been dismissed (without being re-instated) by reason of misconduct from any paid employment where that dismissal has not been the subject of a finding of unfair dismissal by a tribunal or court.

6. The person is the subject of a national NHS disqualification, namely—

- (a) a decision made by FHSAA, under section 159 of the NHS Act 2006 or under regulations corresponding to that section made under section 91(3), 106(3), 123(3) or 146(3) of that Act (regulations in relation to lists of persons performing primary medical, dental, ophthalmic and local pharmaceutical services); or
- (b) a decision by the NHS Tribunal which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4)(b) of the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2001^(b) or regulation 6(4)(b) of the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2002^(c).

7. The person has been refused admission to—

- (a) a pharmaceutical list pursuant to regulations made under section 129 of the NHS Act 2006; or
- (b) a performers list under regulation 6 of the Performers Lists Regulations^(d),

and has not subsequently been included in a pharmaceutical list or, as the case may be, a performers list.

8. The person is conditionally included in—

(a) See Schedule 4A to the Insolvency Act 1986 (c.45), inserted by the Enterprise Act 2002 (c.40).

(b) SI 2001/3744; amended by S.I. 2002/2469.

(c) SI 2002/1920.

(d) Regulation 6 was amended by S.I. 2005/893, S.I. 2005/3491 and S.I. 2006/635.

- (a) a pharmaceutical list pursuant to regulations made under section 148 of the NHS Act 2006; or
 - (b) a performers list under regulation 8 of the Performers Lists Regulations.
9. The person has been removed from—
- (a) a pharmaceutical list under section 151 of the NHS Act 2006; or
 - (b) a performers list under regulation 10 of the Performers Lists Regulations(a).
10. The person is contingently removed from—
- (a) a pharmaceutical list under section 152 of the NHS Act 2006; or
 - (b) a performers list under regulation 12 of the Performers Lists Regulations.
11. The person is suspended from—
- (a) a pharmaceutical list under section 154 or 155 of the NHS Act 2006; or
 - (b) a performers list under regulation 13 of the Performers Lists Regulations(b).
12. The person is one in whose case a body that licences or regulates a profession has made a decision under any enactment in force in Wales, Scotland or Northern Ireland corresponding to those prescribed in paragraphs 6 to 11 where that decision has like effect to the circumstances in those paragraphs.
13. The person is subject to—
- (a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986(c);
 - (b) a disqualification order under Part 2 of the Companies (Northern Ireland) Order 1989(d) or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002(e); or
 - (c) an order made under section 429(2)(b) of the Insolvency Act 1986(f) (failure to pay under county court administration order).
14. The person has been removed—
- (a) from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which that person was responsible or to which that person was privy, or which that person, by his conduct, contributed to or facilitated; or
 - (b) under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(g) (powers of Court of Session to deal with management of charities) from being concerned in the management or control of any body.
15. The person's tenure of office as the chair or as a member, director or governor of an NHS body has been terminated on the ground that—
- (a) it was not in the interests of, or conducive to the good management of, that NHS body or the health service that that person should continue to hold that office;
 - (b) that person failed, without reasonable cause, to attend any meeting of that NHS body for a period of three months or more; or

(a) Regulation 10 was amended by S.I. 2004/2694.
 (b) Regulation 13 was amended by S.I.2006/1385.
 (c) 1986 c.46.
 (d) S.I.1989/2404 (N.I. 18).
 (e) S.I.2002/3150 (N.I. 4).
 (f) 1986 c.45; section 1A (disqualification undertakings) was inserted by section 6 of the Insolvency Act 2000 (c.39); section 429(2) was amended by the Enterprise Act 2002 (c. 40), Schedule 23, paragraph 15.
 (g) 1990 c. 40; the functions of the Lord Advocate transferred to the Secretary of State by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 (S.I. 1999/678), article 2(1) and Schedule; *see* the entry in the Schedule for the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

- (c) that person failed to declare a pecuniary interest or withdraw from consideration of any matter in respect of which that person had a pecuniary interest.

16. The person ceased to be a member of a local authority by virtue of section 85 of the Local Government Act 1972(a) (vacation of office by failure to attend meetings).

17. The person is disqualified from being or becoming a member of a local authority by virtue of a decision of a case tribunal made under section 78A or section 79 of the Local Government Act 2000(b).

18. The person ceased to be a Scottish councillor by virtue of section 35 of the Local Government (Scotland) Act 1973(c) (vacation of office by failure to attend meetings).

19. The person is disqualified from being or becoming a Scottish councillor by virtue of a decision of the Standards Commission for Scotland made under section 19 of the Ethical Standards in Public Life etc. (Scotland) Act 2000(d).

20. The person is included in any list maintained by the Secretary of State under section 1 of the Protection of Children Act 1999(e) (list of persons considered unsuitable to work with children) or section 81 of the Care Standards Act 2000(f) (list of persons considered unsuitable to work with vulnerable adults), in the children's and adults' barred lists maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006(g) or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland.

21. The person's registration as a provider or manager of an establishment or agency under Part 2 of the Care Standards Act 2000 has been cancelled by the registration authority under section 14 of that Act(h) except where—

- (a) that decision has been subject to a direction by the Tribunal given under section 21 of that Act that it shall not have effect; or
- (b) the cancellation was only by reason of an application for cancellation having been made by the registered person pursuant to section 15(1)(b) of that Act.

22. The person's application for registration under Part 1 of the Health and Social Care Act 2008 has been refused under section 12 or section 15 of that Act.

23. The person's registration under Part 1 of the Health and Social Care Act 2008 has been cancelled by the Commission under section 17 of that Act except where—

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- (a) 1972 c. 70; section 85 was modified by the Waste Regulation and Disposal (Authorities) Order 1985 (S.I. 1985/1884), article 10, Schedule 3; subsections (2A) and (2B) were inserted in relation to England by S.I. 2001/2237, article 7(a), and in relation to Wales, by S.I. 2002/808, article 7(a); sub-section (3) was amended in relation to England by S.I. 2001/2237, article 7(b), and in relation to Wales, by S.I. 2002/808, article 7(b); subsection (3A) was inserted by the Local Government Act 2000 (c. 22), section 107, Schedule 5, paragraph 9, and was amended in relation to England by S.I. 2001/2237, article 7(c), and in relation to Wales, by S.I. 2002/808, article 7(c); sub-section (4) was inserted by the Local Government Act 1985 (c. 51), section 84, Schedule 14, paragraph 7, and was repealed in part by the Education Reform Act 1988 (c. 40), section 237, Schedule 13, Part 1; the functions of the Secretary of State under section 85(3), so far as exercisable in relation to Wales, transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672), article 2, Schedule 1; *see* the entry in Schedule 1 to that Order for the Local Government Act 1972. The functions were subsequently transferred to the Welsh Ministers by virtue of paragraph 30(1) of Schedule 11 to the Government of Wales Act 2006 (c. 32).
 - (b) 2000 c. 22. Section 78A was inserted and section 79 was amended by the Local Government and Public Involvement in Health Act 2007 (c.28), section 198. *See* section 76 of the Local Government Act 2000 for the function of case tribunals.
 - (c) 1973 c. 65. Section 35 was amended by the Ethical Standards In Public Life etc. (Scotland) Act 2000 (asp 7), section 29(1); the functions of the Secretary of State under section 35(3) transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
 - (d) 2000 asp 7. Section 19 was amended by the Water Services etc. (Scotland) Act 2005 (asp 3), section 32 and Schedule 5, paragraph 6(a). *See* section 8 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 for the functions of the Standards Commission for Scotland.
 - (e) 1999 c. 14; section 1(2)(a) was amended by the Care Standards Act 2000, sections 95(2), 97(2), and 98(4); section 1(2)(aa) was inserted by section 96(2) of that Act.
 - (f) 2000 c.14.
 - (g) 2006 c.47.
 - (h) Section 14 was amended by paragraph 107 of Schedule 3 to the Adoption and Children Act 2002 (c.38).

- (a) that decision has been subject to a direction by the Tribunal given under section 32 of that Act that it shall not have effect; or
- (b) the cancellation was only by reason of an application for cancellation having been made by the registered person pursuant to section 19(1)(b) of that Act.

24. The person is one in whose case a decision which is of like effect to those listed in paragraph 22 or 23 has been made under any enactment in force in Scotland or Northern Ireland corresponding to Part 1 of the Health and Social Care Act 2008.

25. The person's registration as a health care professional has been withdrawn or suspended.

26. The person has been removed or suspended from the register maintained under section 56 of the Care Standards Act 2000^(a) pursuant to rules made under sections 59 and 71 of that Act or from a corresponding register maintained under any enactment in force in Scotland or Northern Ireland.

27. The person is an employee of the Commission.

28. "Health care professional" in paragraph 25 means a person who is a member of a profession regulated by a body for the time being mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002^(b).

29. For the purposes of paragraph 1, 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.

30. For the purposes of paragraph 5, a person shall not be treated as having been in paid employment by reason only of that person having been—

- (a) the chair or non-executive director of a National Health Service trust;
- (b) the chair, or a governor or a non-executive director of an NHS foundation trust;
- (c) in the case of any other NHS body, the chair or a non-officer member of the body; or
- (d) a member of the Audit Commission.

^(a) Section 56 was amended by S.I. 2007/3101.
^(b) 2002 c.17.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning membership of the Care Quality Commission established by section 1(1) of the Health and Social Care Act 2008. In particular, they make provision for the numbers and tenure of office of members (regulations 2 and 3), disqualification for appointment or from holding office (regulations 4 and 5 and the Schedule), termination of the tenure of office of a member (regulation 6) and suspension from office (regulation 7).

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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