

2008 No. 2558

NATIONAL HEALTH SERVICE, ENGLAND

The National Information Governance Board Regulations 2008

Made - - - - *30th September 2008*

Laid before Parliament *6th October 2008*

Coming into force - - *27th October 2008*

The Secretary of State for Health, in exercise of the powers conferred by sections 250C and 272(7) and (8) of the National Health Service Act 2006(a), makes the following Regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the National Information Governance Board Regulations 2008 and shall come into force on 27th October 2008.

(2) These Regulations shall apply in relation to England only.

(3) In these Regulations—

“the Act” means the National Health Service Act 2006;

“the 1977 Act” means the National Health Service Act 1977(b);

“the Board” means the National Information Governance Board established by section 250A of the Act;

“formal meetings of the Board” means meetings of the Board that are formally constituted and include the meetings referred to in regulation 10(1);

“health service body” means—

(a) an English NHS body(c);

(b) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978(d), or the Scottish Dental Practice Board, the Common Service Agency for the Scottish Health Service or an NHS trust constituted under, respectively, sections 4, 10 or 12A of that Act(e);

(c) the Secretary of State;

(d) the Commission for Healthcare Audit and Inspection(f);

(a) 2006 c.41. Sections 250A to 250C were inserted into the Act by section 157(1) of the Health and Social Care Act 2008 (c.14) (“the 2008 Act”).

(b) 1977 c.46.

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

(d) 1978 c.29.

(e) Section 4 was amended by section 12(3) of, and Schedule 3 to, the Health and Medicines Act 1988 (c.49) (“the 1988 Act”); section 10 was amended by paragraph 2 of Schedule 6 to the Health Services Act 1980 (c.53) and Schedule 10 to the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”); section 12A was inserted by section 31 of the 1990 Act and amended by section 46(1) of the Health Act 1999 (c.8).

(f) See section 41 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43) (“the 2003 Act”).

- (e) the Care Quality Commission(a);
- (f) the Dental Practice Board constituted under section 37(1) of the 1977 Act(b);
- (g) the Health Protection Agency(c);
- (h) the Independent Regulator of NHS Foundation Trusts(d);
- (i) the National Assembly for Wales;
- (j) the Wales Centre for Health(e);
- (k) the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)(f);
- (l) the Northern Ireland Central Services Agency for Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972(g);
- (m) a special health and social services agency established under the Health and Personal Services (Special Agencies) (Northern Ireland) Order 1990(h);
- (n) a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972;
- (o) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991(i);
- (p) the Department of Health, Social Services and Public Safety for Northern Ireland; or
- (q) a body in relation to which a direction has been given under section 58, 60 or 61 of the Act(j);

“local authority” means—

- (r) any of the bodies listed in section 1 of the Local Government Act 2000 (meaning of local authority)(k);
- (s) a council constituted under section 2 of the Local Government etc, (Scotland) Act 1994 (constitution of Councils)(l); or
- (t) a district council established under the Local Government (Northern Ireland) Act 1972(m); and

“sentence of imprisonment” does not include committal—

- (a) in default of payment for any sum of money;
- (b) for want of sufficient distress to satisfy any sum of money; or
- (c) for failure to do or abstain from doing anything required to be done or left undone.

Membership of the National Information Governance Board

2. The Board shall consist of not less than 15 members nor more than 34 members appointed by the Secretary of State.

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- (a) See section 1 of the 2008 Act.
 - (b) 1977 c.49. Section 37(1) was amended by section 12 of the 1988 Act and repealed in part by section 25 of, and Schedule 3 to, that Act, and amended by section 2(1) of, and paragraph 26 of Schedule 1 to, the Health Authorities Act 1995 (c.17) and section 1(3) of, and paragraphs 1 and 17 of Schedule 1 to, the National Health Service Reform and Health Care Professions Act 2002 (c.17). The Dental Practice Board was abolished by sections 181 and 196 of, and Schedule 14 to, the 2003 Act.
 - (c) See section 1(1) of the Health Protection Agency Act 2004 (c.17).
 - (d) See section 2 of the 2003 Act.
 - (e) See section 2 of the Health (Wales) Act 2003 (c.4).
 - (f) The NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) was established by S.I. 2005/2529.
 - (g) S.I. 1972/1265 (N.I. 14).
 - (h) S.I. 1990 /247 (N.I. 3).
 - (i) S.I. 1991/194 (N.I. 1).
 - (j) A list of the bodies referred to in paragraph (q) of the definition of “health service body” is available from the Appointments Commission, Blenheim House, West One, Duncombe Street, Leeds LS1 4PL (telephone 0113 394 2950).
 - (k) 2000 c.22.
 - (l) 1994 c.39.
 - (m) 1972 c.9.

Disqualification from office

3. Subject to regulation 4 a person (“P”) shall be disqualified from appointment to the Board if—

- (a) P has, within the preceding 5 years—
 - (i) been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom would constitute a criminal offence; and
 - (ii) been sentenced to a sentence of imprisonment (whether suspended or not), and neither the conviction has been quashed nor the sentence reduced to a sentence other than a sentence of imprisonment (whether suspended or not) on appeal;
- (b) P is the subject of a bankruptcy restrictions order^(a) inserted by Schedule 5 to the Insolvency (Northern Ireland) Order 2005^(b) or an interim bankruptcy restrictions order;
- (c) P has had a sequestration of P’s estate awarded and has not been discharged;
- (d) P has been dismissed, otherwise by reason of redundancy, from any paid employment with a health service body or a local authority;
- (e) P is a person whose tenure of office as the chairman, convener or member or director of any public body has been terminated on the grounds that—
 - (i) it was not in the interests, or conducive to the good management, of that body that P should continue to hold that office; or
 - (ii) P failed to attend meetings of the body.
- (f) P is subject to a disqualification order under the Company Directors Disqualification Act 1986^(c), the Companies (Northern Ireland) Order 1989^(d) or the Company Directors Disqualification (Northern Ireland) Order 2002^(e) or to an order made under section 429(2)(b) of the Insolvency Act 1986^(f) (disabilities on revocation of administration order against an individual); or
- (g) P has been—
 - (i) removed from office of the charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of misconduct or mismanagement in the administration of the charity for which P was responsible or to which P was privy, or which P, by P’s conduct, contributed to or facilitated; or
 - (ii) removed 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; or
 - (iii) removed as a director, trustee or committee member of a registered social landlord^(h).

Cessation of disqualification

4.—(1) Subject to paragraph (2), a person who is disqualified under reg 3 (d), (e) or (g) may, after the expiry of two years beginning with the date on which they were dismissed or removed, apply in writing to the Secretary of State to remove the disqualification, and the Secretary of State may remove the disqualification.

(a) See Schedule 4A to the Insolvency Act 1986 (c.45), inserted by Schedule 20 to the Enterprise Act 2002 (c.40). See also Schedule 2A to the Insolvency (Northern Ireland) Order 1990 (S.I. 1989/2405 (N.I. 19)) inserted by S.I. 2005/1455 (N.I. 10), Schedule 5.

(b) (S.I. 2005/1455) (N.I. 10)).

(c) 1986 c.46.

(d) S.I. 1989/2404 (N.I.18).

(e) S.I. 2002/3150 (N.I. 4).

(f) 1986 c.45.

(g) 1990 c.40.

(h) See paragraph 4 of Schedule 1 to the Housing Act 1996 (c.52).

(2) Where the Secretary of State refuses an application under paragraph (1), 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.

Period of office

5.—(1) Subject to regulation 6 and 8(4) and (5), the period of office shall be such period not exceeding four years as the Secretary of State may specify on making the appointment.

(2) Subject to paragraph (3) and regulation 8(4) and (5), a member shall on the expiry of his period of office be eligible for re-appointment.

(3) No member shall hold office for more than six years in total.

Termination of office

6.—(1) Any member of the Board may submit their resignation from the Board by giving notice in writing to the Secretary of State.

(2) Where the Secretary of State is of the opinion that it is not in the interests of, or conducive to the good management of, the Board that the member of the Board should continue to hold office, the Secretary of State may immediately remove the member from office by giving him notice in writing to that effect.

(3) If the member fails to attend three consecutive meetings of the Board, the Secretary of State shall immediately remove the member from office unless satisfied that—

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

(4) Where a member has been appointed and the member becomes disqualified for appointment under regulation 3, the member shall give notice in writing to the Secretary of State of that disqualification.

(5) Where a member has been appointed and it comes to the notice of the Secretary of State that at the time of the member's appointment or later the member was disqualified for appointment under regulation 3—

- (a) the Secretary of State shall declare that the person in question was not duly appointed or (as the case may be) became disqualified after appointment; and
- (b) the Secretary of State shall immediately remove the member from office.

(6) Where the Secretary of State removes a member from office under this regulation, the Secretary of State shall give notice in writing to the member to that effect.

Suspension from office

7.—(1) The Secretary of State may suspend a member from office while the Secretary of State considers—

- (a) to remove the member from office under regulation 6; or
- (b) the person is disqualified for appointment under regulation 3 or was disqualified for the purposes of regulation 6(5).

(2) Where the Secretary of State suspends a member from office under paragraph (1), the Secretary of State shall give notice in writing to that member to that effect.

(3) A decision to suspend a member shall take effect immediately.

(4) Subject to paragraphs (5) and (6), a period of suspension shall not exceed a period of six months beginning with the date of the decision to suspend the member.

(5) The Secretary of State may review at any time a suspension and shall review a suspension after a period of three months beginning with the date of the decision to suspend the member if so requested by the member who has been suspended.

- (6) Where the Secretary of State reviews a suspension, the Secretary of State may—
- (a) revoke the suspension, in which case the suspension shall cease to have effect; or
 - (b) suspend the member from office for a further period not exceeding six months beginning with the date of the expiry of the current period of suspension.

Chair of the Board

- 8.—(1) The Secretary of State shall appoint the Chair of the Board.
- (2) The Chair shall be a member of the Board.
- (3) Where the Chair ceases to be a member of the Board (whether by resignation, removal from office or otherwise), they shall cease to be Chair of the Board.
- (4) The Chair shall be appointed for such period not exceeding four years as the Secretary of State may specify on making the appointment.
- (5) The Chair shall on the expiry of his period of office be eligible for re-appointment as Chair, but no one may be Chair for more than six years in total.
- (6) The Chair may submit their resignation as Chair by giving notice in writing to the Secretary of State.
- (7) The Secretary of State may immediately remove the Chair as Chair of the Board where the Secretary of State is of the opinion that it is not in the interests of, or conducive to the good management of, the Board for the Chair to continue as Chair of the Board.
- (8) Where the Secretary of State removes the Chair as Chair of the Board under paragraph (7), the Secretary of State shall give notice in writing to the Chair to that effect.

Deputy Chair of the Board

- 9.—(1) The Board may by a majority vote elect a member of the Board to be the Deputy Chair.
- (2) Where there is no member willing to act as Deputy Chair, the Secretary of State may appoint a Deputy Chair who shall be a member of the Board.
- (3) The Deputy Chair shall perform the duties of the Chair for any period in which the Chair is unable to discharge their duties.
- (4) Subject to regulation 5(3), where the Secretary of State has appointed the Deputy Chair under paragraph (2), the Deputy Chair shall hold office as the Deputy Chair and member for such period not exceeding four years as the Secretary of State may specify on making the appointment.
- (5) The Deputy Chair may submit their resignation as Deputy Chair by giving notice in writing to the Secretary of State.
- (6) The Secretary of State may immediately remove the Deputy Chair as Deputy Chair of the Board where the Secretary of State is of the opinion that it is not in the interests of, or conducive to the good management of, the Board for the Deputy Chair to continue as Deputy Chair of the Board.
- (7) Where the Secretary of State removes the Deputy Chair as Deputy Chair of the Board under paragraph (6), the Secretary of State shall give notice in writing to the Deputy Chair to that effect.

Proceedings of the Board

- 10.—(1) The Board shall have at least four formal meetings each year.
- (2) The quorum of the Board shall be at least half the membership of the Board.
- (3) Where the members of the Board hold differing views on any matter which falls for decision, a majority vote shall be taken.
- (4) Where there is no majority, the Chair shall have the casting vote.
- (5) Where a vote is taken in accordance with paragraph (4), the minutes of the meeting shall record the number of votes in favour and the numbers of votes against the decision.
- (6) The proceedings of the formal meetings of the Board shall be publicly available.

Observers

- 11.—(1) The Board may invite a person to attend a meeting of the Board as an observer.
(2) An observer shall not have a right to vote at a meeting of the Board.

Papers for formal meetings of the Board

- 12.—(1) The Board shall maintain a list of persons and organisations which shall be sent copies of papers which are to be discussed at formal meetings of the Board
(2) The Chair shall determine which papers it considers appropriate to send to which persons and organisations under paragraph (1).
(3) Where a person or organisation makes written comments to the Board prior to the relevant Board meeting, the Board shall take account of those comments.

Committees and sub-committees

- 13.—(1) The Board may establish such committees or sub-committees as it thinks fit (whether to advise the Board or to exercise a function delegated to it by the Board).
(2) The members of the committees or sub-committees may include persons who are not members of the Board.

Delegation of functions

14. The Board may delegate a function to a committee, a member or to staff.

Remuneration

- 15.—(1) The Secretary of State may determine the amount of remuneration, allowances and expenses that the Board is to pay the Chair, the Deputy Chair and members of the Board and its committees and sub-committees.
(2) Payments under this regulation shall be made at such times and in such manner and subject to such conditions as the Secretary of State may determine.

Payments to the Board

16. The Secretary of State shall make payments to the Board in respect of any expenses which it incurs in the performance of its duties.

Accommodation and secretariat

- 17.—(1) The Secretary of State shall provide such accommodation and secretarial and administrative support to the Board for the performance of its functions as the Secretary of State may determine.
(2) The tasks of the secretariat to the Board shall include the taking of minutes at the formal meetings of the Board and at such committees and sub-committees as it is invited to attend by the Chair of the committee or sub-committee.

Signed by authority of the Secretary of State for Health

30th September 2008

Dawn Primarolo
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning the appointment etc. of the members, Chair and Deputy Chair of the National Information Governance Board (“the Board”) established by section 250A of the National Health Service Act 2006.

In particular, they make provision for the Board to consist of not less than 15 nor more than 34 members appointed by the Secretary of State (regulation 2), disqualification from appointment to the Board (regulations 3 and 4), the period of office of members (regulation 5), termination and suspension from office (regulations 6 and 7), the appointment of the Chair and Deputy Chair (regulations 8 and 9), proceedings of the Board (regulation 10), observers at meetings of the Board (regulation 11), corresponding members who will receive Board papers (regulation 12), for the Board to establish committees and sub-committee and the delegation of functions (regulations 13 and 14), remuneration of the Chair, Deputy Chair and members of the Board and committees and sub-committees of the Board (regulation 15), payment of the Board’s expenses (regulation 16) and the provision of accommodation and secretariat to the Board (regulation 17).

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STATUTORY INSTRUMENTS

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£5.00