

EXPLANATORY MEMORANDUM TO
THE HEALTH PROTECTION AGENCY (AMENDMENT) REGULATIONS 2010
2010 No. 2540

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 (Amendment) Regulations 2010 (“the Regulations”) amend the Health Protection Agency Regulations 2005 (“the 2005 Regulations”) which make provision about the membership of the Health Protection Agency (“the Agency”). The purpose of the Regulations is to provide for the suspension of members of the Health Protection Agency.
 - 2.2 The Regulations provide for the suspension of the chairman and non-executive members of the Agency where certain conditions are satisfied and allow for the appointment of an interim deputy chair when the chair is suspended.
 - 2.3 The amendments made by these Regulations apply in relation to a person appointed at any time, including a time before the coming into force of those amendments.
 - 2.4 The Regulations will bring the Agency in line with suspension provisions for the Secretary of State’s other public appointments.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 The 2005 Regulations concern membership of the Agency and were made under powers in the Health Protection Agency Act 2004. The 2005 Regulations provide for the appointment of members, tenure of office, disqualification for appointment, remuneration and allowances and termination of tenure of office but do not provide for suspension of members.
 - 4.2 Schedule 3 to the Health Act 2009 amended provisions in Schedule 1 to the Health Protection Agency Act 2004 to provide for the appointment of a new deputy chair where the chair is suspended and the appointment of the deputy chair ceases to have effect.
 - 4.3 The Regulations amend the 2005 Regulations by inserting additional provisions that concern the suspension of the chairman and non-executive members of the Health Protection Agency where certain conditions are met and allow for the appointment of an interim deputy chair when the chair is suspended.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Secretary of State has regulation making powers in paragraphs 1(5A), 8(1) and (2) of Schedule 1 to, the Health Protection Agency Act 2004 in relation to suspension of the chair and non-executive members of the Health Protection Agency. When making regulations under these powers the Secretary of State is required to consult each of the devolved authorities.

7.2 In relation to the suspension provisions, the Regulations enable the Secretary of State to suspend the chairman from office and any non-executive member of the Agency from office if certain conditions are met. The Regulations also enable the devolved authorities to suspend a member they have appointed, from office as non-executive member of the Agency if certain conditions are met.

7.3 In relation to the appointment provisions, the Regulations enable the Secretary of State to direct that the appointment of a deputy chair by the members of the Agency ceases to have effect where the chair is suspended. The Secretary of State may appoint a new deputy chair to lead the organisation during the period of the chair's suspension.

- *Consolidation*

7.4 This policy will bring suspension provisions in line with the Secretary of State's other public appointments.

8. Consultation outcome

8.1 A formal 12 week consultation exercise¹ was carried out between 17 July and 9 October 2008 on introducing the new suspension powers and processes. Consultation was held with all of the bodies affected by the provisions, DH sponsor branches and the Devolved Administrations. Responses to the consultation revealed no general concerns about introducing the new policy, which was already in place for PCTs and NHS Trusts. The Government's response² was published on 16 January 2009.

¹ "Removing or suspending chairs and non-executives of health bodies: consultation on introducing new powers of suspension, Department of Health."

² "Removing or suspending chairs and non-executives of Health Bodies: feedback on the consultation to introduce powers of suspension."

9. Guidance

- 9.1 Draft guidance was issued as part of the formal consultation and will be updated and published by the Appointments Commission once suspension provisions come in to force.
- 9.2 Notification of a change in Terms and Conditions will also be sent to those public appointees affected in advance of the revised terms and conditions being issued.

10. Impact

- 10.1 A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen, however the impact on the public sector is outlined in the Impact Assessment carried out for the suspension provisions in the Health Act 2009 (attached).

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 These suspension provisions will strengthen the way the healthcare system holds people to account when they fail to meet the requirements of public office, by allowing time for a considered and balanced investigation to take place prior to any decision being made as to whether to commence procedures for termination of an individual's appointment.
- 12.2 They will be reviewed 18 months after the suspension provisions come in to force.

13. Contact

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