

2009 No. 166

NATIONAL HEALTH SERVICE, SCOTLAND

**The National Health Service (Appointment of Consultants)
(Scotland) Regulations 2009**

<i>Made</i> - - - -	<i>29th April 2009</i>
<i>Laid before the Scottish Parliament</i>	<i>29th April 2009</i>
<i>Coming into force</i> - -	<i>1st July 2009</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 105(7) and 108(1) of, and paragraph 6 of Schedule 1 and paragraph 8 of Schedule 5 to, the National Health Service (Scotland) Act 1978(a) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the National Health Service (Appointment of Consultants) (Scotland) Regulations 2009 and come into force on 1st July 2009.

Interpretation

2.—(1) In these Regulations—

“the Act” means the National Health Service (Scotland) Act 1978;

“Board” means a Health Board constituted under section 2(1)(a) of the Act(b) or a Special Health Board constituted under section 2(1)(b) of the Act(c), and all references to a “Board” in these Regulations include the Common Services Agency for the Scottish Health Service constituted under section 10 of the Act;

“consultant post” means a post at the consultant grade in the relevant speciality;

“hospice” means an institution which provides hospital accommodation wholly or mainly for persons resident who are terminally ill;

“relevant speciality”, in relation to a proposed appointment, means the branch of medicine or dentistry in which it is proposed to make the appointment;

“Specialist List” means a list maintained by the General Dental Council in accordance with regulations made by the General Dental Council pursuant to section 26(3) and (4) of the Dentists Act 1984(d); and

-
- (a) 1978 c.29, section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c.41) (“the 1983 Act”), Schedule 9, paragraph 24 and the Health Act 1999 (c.8), Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
- (b) Section 2(1)(a) was amended by the 1983 Act, section 14(2) and Schedule 7, paragraph 1, the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), section 28(a)(i) and the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) (“the 2005 Act”), section 42(1) and schedule 2, paragraph 2(2).
- (c) Section 2(1)(b) was inserted by the 1990 Act, section 28(a)(ii) and amended by the 2005 Act, section 42(1) and schedule 2, paragraph 2(2).
- (d) 1984 c.24.

“Specialist Register” means the register maintained by the General Medical Council pursuant to article 13(1) of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(a).

Appointments to which the regulations apply

3.—(1) Subject to regulation 4, these Regulations apply to appointments to consultant posts on the staff of a Board.

(2) In making such appointments Boards must have regard to guidance which the Scottish Ministers may from time to time issue.

Appointments to which the regulations do not apply

4.—(1) These Regulations do not apply to the following appointments—

- (a) appointment to an honorary consultant post including, in particular, any such appointment of a person who is and will continue to be—
 - (i) a professor, reader or other member of a medical or dental department of a university;
 - (ii) a research worker for the purposes of whose research it is necessary or expedient that the worker be appointed to the staff of a Board; or
 - (iii) a medical practitioner who is on the staff of a hospice to provide medical services in the hospice;
- (b) appointment for a period not exceeding—
 - (i) in the case of an appointment on a locum basis, 12 months; or
 - (ii) in any other case, 2 years;

(2) In this regulation—

“honorary”, in relation to a consultant post, means that the employment in that post is on terms that the holder receives no remuneration for that post; and

“remuneration” does not include any distinction award or the defraying of expenses involved in the carrying out of the duties of a hospital appointment.

External Advisers

5.—(1) A Board proposing to make an appointment to which these regulations apply must appoint a person to act as an adviser to the Board throughout the recruitment process, such person to be known as the External Adviser.

(2) The External Adviser must be—

- (a) named on a list of suitable and trained persons held by or on behalf of the Medical Royal Colleges and Faculties in Scotland;
- (b) not employed by the Board making the appointment; and
- (c) either—
 - (i) on the Specialist Register kept by the General Medical Council for the relevant speciality or;
 - (ii) on a Specialist List kept by the General Dental Council for the relevant speciality.

Assessment Panel

6.—(1) A Board proposing to make an appointment to which these regulations apply must convene a panel for the purpose of candidate assessment and selection, such panel to be known as the Assessment Panel.

(a) S.I. 2003/1250.

(2) Subject to paragraph (3) the Assessment Panel must consist of—

- (a) an officer of the Board who is the Chair;
- (b) an External Adviser appointed in accordance with regulation 5; and
- (c) a minimum of one additional practising consultant from the relevant speciality.

(3) The Board may appoint any other persons that the Board determines necessary to the Assessment Panel.

Selection and appointment

7.—(1) Following the assessment of all candidates the Assessment Panel must determine the most appropriate candidate if any for the consultant post.

(2) The decision of the Assessment Panel as to the most appropriate candidate (or that there is no appropriate candidate) must be made by a vote in which all members of the Assessment Panel have an equal vote.

(3) In the event that the votes of the Assessment Panel are tied the Chair has a casting vote.

(4) The Chair has authority on behalf of the Board to make an offer of employment to a person determined by the Assessment Panel to be the most appropriate candidate for the consultant post.

(5) If for any reason the Chair is unable to appoint a candidate to the consultant post the recruitment process will cease and reasons must be provided in writing to the Board by the Chair.

(6) If the Board determines it to be appropriate, a new recruitment process for the consultant post may be commenced.

Revocation and transitional provisions

8.—(1) Subject to paragraph (2) the National Health Service (Appointment of Consultants) (Scotland) Regulations 1993(a) are revoked.

(2) Appointments to a consultant post first advertised before 1st July 2009 will continue to be made in accordance with the Regulations revoked by paragraph (1).

Consequential Amendments

9. The provisions in the Schedule are amended as specified in that Schedule.

NICOLA STURGEON
A member of the Scottish Executive

St Andrew's House,
Edinburgh
29th April 2009

(a) S.I. 1993/994.

SCHEDULE

Regulation 9

CONSEQUENTIAL AMENDMENTS

- 1.—(1) The Health Education Board for Scotland Order 1990^(a) is amended as follows.
- (2) In Part III of the Schedule—
- (a) in Column 1 the words “The National Health Service (Appointment of Consultants) (Scotland) Regulations 1993” are deleted; and
 - (b) in Column 2 the words “Appointment as an officer of a Health Board of any registered medical or dental practitioner to the post of consultant”, are deleted.

^(a) S.I 1990/2639, amended by S.S.I. 2003/154.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke the National Health Service (Appointment of Consultants) (Scotland) Regulations 1993 (“the 1993 Regulations”) and replace them with a simplified procedure for the appointment of consultants in the National Health Service in Scotland.

Regulation 2 defines terms used in the Regulations. In particular “consultant post” is defined as a post at the consultant grade in the relevant speciality.

Regulation 3 provides for appointments to which the Regulations apply.

Regulation 4 provides for categories of appointments to which the Regulations do not apply.

Regulation 5 establishes the role of External Advisers in the appointment process.

Regulation 6 provides for constitution of an Assessment Panel.

Regulation 7 provides for the selection and appointment of candidates to consultant posts.

Regulation 8 revokes the 1993 Regulations except in so far as they apply to a consultant post first advertised before the coming into force of these Regulations.

Regulation 9 and the Schedule provide for consequential amendment to the Health Education Board for Scotland Order 1990 (S.I. 1990/2639).

© Crown Copyright 2009

Printed in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, the Queen’s Printer for Scotland.

2009 No. 166

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Appointment of Consultants)
(Scotland) Regulations 2009