

2011 No. 2250

NATIONAL HEALTH SERVICE, ENGLAND

The NHS Commissioning Board Authority Regulations 2011

Made - - - - *12th September 2011*

Laid before Parliament *15th September 2011*

Coming into force - - *31st October 2011*

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 29(2) and 272(7) and (8) of, and paragraphs 5 and 13 of Schedule 6 to, the National Health Service Act 2006(a).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the NHS Commissioning Board Authority Regulations 2011 and come into force on 31st October 2011.

(2) In these Regulations—

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

“the Authority” means the NHS Commissioning Board Authority established by article 2 of the NHS Commissioning Board Authority (Establishment and Constitution) Order 2011(b);

“the chair” means the chairman of the Authority;

“final outcome”, in relation to any proceedings where there are rights of appeal, means the outcome of proceedings—

- (a) once the period for bringing an appeal has expired without an appeal being brought; or
- (b) if an appeal is brought in accordance with those rights, once those rights have been exhausted;

“health service body” means—

- (a) a Strategic Health Authority, a Special Health Authority, a Primary Care Trust, an NHS trust, a Local Health Board or an NHS foundation trust(c);
- (b) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978(d);

(a) 2006 c.41; paragraph 5 of Schedule 6 was amended by section 19 of, and paragraph 11 of Schedule 3 to, the Health Act 2009 (c.21). The powers exercised in making these Regulations are exercisable by the Secretary of State only in relation to England, by virtue of section 271(1) of the National Health Service Act 2006.

(b) S.I. 2011/2237.

(c) See sections 13, 18, 25, 28 and 30 of the National Health Service Act 2006 and sections 11, 18 and 22 of the National Health Service (Wales) Act 2006 (c.42).

(d) 1978 c.29; section 2 was amended by paragraph 1 of Schedule 7 to the Health and Social Services Adjudications Act 1983 (c.41), section 28 of, and paragraph 19(1) of Schedule 9 and paragraph 1 of Schedule 10 to, the National Health Service and Community Care Act 1990 (c.19), paragraph 1(2) of Schedule 1 to the National Health Services Reform (Scotland) Act 2004 (asp 7), paragraph 2(2) of Schedule 2 to the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) and section 2(1) of the Health Boards (Membership and Elections) (Scotland) Act 2009 (asp 5).

- (c) the Scottish Dental Practice Board, the Common Services Agency for the Scottish Health Service, Healthcare Improvement Scotland or an NHS trust constituted under, respectively, sections 4, 10, 10A or 12A of the National Health Service (Scotland) Act 1978(a);
- (d) the Care Quality Commission(b);
- (e) the Health Protection Agency(c);
- (f) the Independent Regulator of NHS Foundation Trusts(d);
- (g) the Secretary of State;
- (h) the Northern Ireland Central Services Agency for Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972(e);
- (i) a special health and social services agency established under the Health and Personal Services (Northern Ireland) Order 1990(f);
- (j) a Health and Social Services Board constituted under the Health and Personal Services (Northern Ireland) Order 1972;
- (k) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991(g); and
- (l) the Department of Health, Social Services and Public Safety for Northern Ireland;

“member”, except in regulation 3(1)(d), (2) and (3), means a member of the Authority, including the chair;

“non-officer member”, except in regulation (3)(2)(a), means a member who is not an officer of the Authority; and

“primary care list” means—

- (a) a list referred to in section 159(1)(a) to (e) of the Act(h);
- (b) a list of persons undertaking to provide general medical services or general dental services prepared in accordance with regulations under section 29 or 36 of the National Health Service Act 1977(i) as the list existed on or before 31st March 2004;
- (c) a list of persons approved for the purposes of assisting in the provision of general medical services or general dental services prepared in accordance with regulations under section 43D(1) of the National Health Service Act 1977(j) as the list existed on or before 31st March 2004; or

(a) Section 4 was amended by section 12(3) of, and Schedule 3 to, the Health and Medicines Act 1988 (c.49) and paragraph 2(3) of Schedule 2 to the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) (“the 2005 Act”); section 10 was amended by paragraph 2 of Schedule 6 to the Health Services Act 1980 (c.53), paragraph 1 of Schedule 10 to the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), paragraph 44 of Schedule 8 to the Health Act 1999 (c.8) (“the 1999 Act”) and paragraph 2(4) of Schedule 2 to the 2005 Act; section 10A was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8); section 12A was inserted by section 31 of the 1990 Act and amended by paragraph 34 of Schedule 2 to the National Health Service (Primary Care) Act 1997 (c.46) and sections 46(1) and 48 of, and paragraph 45 of Schedule 4 to, the 1999 Act.

(b) The Care Quality Commission was established by section 1 of the Health and Social Care Act 2008 (c.14).

(c) The Health Protection Agency was established in relation to England and Wales by the Health Protection Agency Act 2004 (c.17).

(d) See section 31 of the Act.

(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) See, in relation to the lists referred to under section 159(1)(c), the National Health Service (Performers List) Regulations 2004 (S.I. 2004/585).

(i) 1977 c.49; section 29 was repealed by section 196 of, and Schedule 14 to, the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

(j) Section 43D was inserted by section 24 of the Health and Social Care Act 2001 (c.15) and amended by section 2(5) of, and paragraphs 1 and 20 of Schedule 2 to, the National Health Service Reform and Health Care Professions Act 2002 (c.17); section 43D(1) was repealed in part by section 196 of, and Schedule 14 to, the Health and Social Care (Community Health and Standards) Act 2003 and section 43D(10) was amended by section 184 of, and paragraph 20 of Schedule 11 to, that Act. The National Health Service Act 1977 was repealed by the National Health Service (Consequential Provisions) Act 2006 and section 43D was re-enacted as section 149 of the National Health Service Act 2006.

- (d) a services list referred to in section 8ZA(1)(a) of the National Health Service (Primary Care) Act 1997(a) as the list existed on or before 31st March 2004.

Appointment and tenure of office of members

2.—(1) The non-officer members must be appointed by the Secretary of State.

(2) Subject to regulation 5, the term of appointment of a non-officer member must be such period, not exceeding 4 years, as the Secretary of State specifies on making the appointment.

(3) Subject to regulation 3, a non-officer member is, on the termination of his appointment, eligible for re-appointment as a non-officer member.

(4) The Secretary of State must appoint the member who is to be the chief executive of the Authority.

(5) The non-officer members and the chief executive must appoint the other members who are officers.

Disqualification for appointment

3.—(1) Subject to regulation 4, a person is disqualified for appointment as a non-officer member if—

- (a) that person has, within the period of five years immediately preceding the date of the proposed appointment, been convicted—
- (i) in the United Kingdom of any offence, or
 - (ii) convicted outside of the United Kingdom of an offence which, if committed in any part of the United Kingdom, would constitute a criminal offence in that part,
- and, in either case, the final outcome of the proceedings was a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;
- (b) that person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(b), Schedule 2A to the Insolvency (Northern Ireland) Order 1989(c) or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985(d) (which relate to bankruptcy restrictions orders and undertakings);
- (c) that person has been dismissed within the period of five years immediately preceding the date of the proposed appointment, otherwise than by reason of redundancy, from any paid employment with a health service body;
- (d) that person is a person whose term of appointment as the chairman, a member, a director or a governor of a health service body has been terminated on the grounds—
- (i) that it was not in the interests of, or conducive to the good management of, the health service body or of the health service that the person should continue to hold that office,
 - (ii) that the person failed, without reasonable cause, to attend any meeting of that health service body for three successive meetings,
 - (iii) that the person failed to declare a pecuniary interest or withdraw from consideration of any matter in respect of which that person had a pecuniary interest, or
 - (iv) of misbehaviour, misconduct or failure to carry out the person's duties;
- (e) that person—

(a) 1997 c.46; section 8ZA was repealed by section 196 of, and Schedule 14 to, the Health and Social Care (Community Health and Standards) Act 2003.

(b) Schedule 4A to the Insolvency Act 1986 (c.45) was inserted by Schedule 20 to the Enterprise Act 2002 (c.40).

(c) Schedule 2A to the Insolvency (Northern Ireland) Order 1989 S.I. 1989/2405 (N.I. 19) was inserted by article 13(2) of the Insolvency (Northern Ireland) Order 2005 S.I. 2005/1455 (N.I. 10).

(d) Sections 56A to 56K of the Bankruptcy (Scotland) Act 1985 (c.66) were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

- (i) is subject to a national disqualification by the First-tier Tribunal(a),
- (ii) is subject to a national disqualification under a decision by the National Health Service Tribunal(b) which is treated as a national disqualification by virtue of regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001(c) or regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002(d),
- (iii) has been refused admission to a primary care list and was not subsequently nominated or approved for inclusion in a primary care list,
- (iv) is conditionally included in a primary care list(e),
- (v) is suspended from a primary care list(f) or treated as so suspended by virtue of regulation 6(2) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001 or regulation 6(2) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002,
- (vi) is contingently removed from a primary care list(g), or
- (vii) has been removed from a primary care list on any of the grounds set out in section 159(2), (3) or (4) of the Act or regulation 10(1)(a) or (b) or (4) of the National Health Service (Performers List) Regulations 2004(h), or by a direction of the National Health Service Tribunal, and has not subsequently been included in such a list,

and in this sub-paragraph any reference to a provision in, or made under, the Act includes a reference to the provision corresponding to that provision in legislation relating to Scotland or Northern Ireland;

- (f) that person—
 - (i) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986(i),
 - (ii) is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002(j), or
 - (iii) is subject to an order made under section 429(2) of the Insolvency Act 1986(k) (disabilities on revocation of administration order against an individual); or
- (g) that person has at any time been removed—
 - (i) from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners, the Charity Commission, the Charity Commission for Northern Ireland or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity—
 - (aa) for which the person was responsible or to which the person was privy, or
 - (bb) which the person by their conduct contributed to or facilitated, or
 - (ii) under—

(a) See section 159 of the National Health Service Act 2006 which was amended by S.I. 2010/22.
 (b) The National Health Service Tribunal was abolished by section 16 of the Health and Social Care Act 2001.
 (c) S.I. 2001/3744, as modified and amended by S.I. 2002/2469.
 (d) S.I. 2002/1920, regulation 6 has effect in relation to Wales only.
 (e) See, in particular, section 148 of the National Health Service Act 2006 and regulation 8 of S.I. 2004/585 as amended by S.I. 2010/222.
 (f) See, in particular, section 154 of the Act and regulation 13 of S.I. 2004/585 as amended by S.I. 2010/222.
 (g) See, in particular, section 152 of the Act and regulation 12 of S.I. 2004/585.
 (h) S.I. 2004/585: there are no relevant amendments.
 (i) 1986 c.46.
 (j) S.I. 2002/3150 (N.I. 4).
 (k) 1986 c.45; section 429(2) was amended by paragraph 15 of Schedule 23 to the Enterprise Act 2002 (c.40) and is to be substituted by paragraph 3 of Schedule 16 to the Tribunal, Courts and Enforcement Act 2007 (c.15), on a date to be appointed under section 148 of that Act.

- (aa) section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990^(a) (powers of the Court of Session to deal with management of charities), or
- (bb) section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005^(b) (powers of the Court of Session to deal with management of charities)

from being concerned in the management or control of any body.

(2) For the purposes of paragraph (1)(c), a person is not to be treated as having been in paid employment by reason only of that person having been—

- (a) in the case of a health service body which is not an NHS trust or an NHS foundation trust, the chairman or a non-officer member of the health service body in question;
- (b) in the case of an NHS trust, the chairman or a non-executive director of, the NHS trust; or
- (c) in the case of an NHS foundation trust, the chairman, a governor or a non-executive director of the NHS foundation trust.

(3) In paragraph (2)(a), “non-officer member” means a member of a health service body who is not employed by that body.

Cessation of disqualification

4.—(1) A person who is disqualified under regulation 3(1)(c) may, on the expiry of the period of two years beginning on the date of the dismissal, apply in writing to the Secretary of State to have that disqualification removed.

(2) Where a person makes an application under paragraph (1), the Secretary of State may direct that the disqualification of that person under regulation 3(1)(c) is to cease to have effect.

(3) Where the Secretary of State refuses an application made by a person under paragraph (1) (“the first application”) no further application may be made by that person before the expiry of the period of two years beginning with the date of the first, or any subsequent, application under that paragraph.

(4) Subject to paragraph (5), where a person is disqualified under regulation 3(1)(d), the disqualification is to cease to have effect on the expiry of the period of two years beginning on the date of the termination of the term of appointment, or such longer period as the Secretary of State may specify when the period of office is terminated.

(5) Where a person who is disqualified under regulation 3(1)(d) applies to the Secretary of State, the Secretary of State may reduce the period of disqualification which applies in respect of that person.

Termination of term of appointment of non-officer members

5.—(1) A non-officer member may resign from that office at any time during the term of that member’s appointment by giving notice in writing to the Secretary of State.

(2) Where the Secretary of State considers that it is not in the interests of, or conducive to the good management of, the Authority or of the health service that the term of appointment of a non-officer member should continue, the Secretary of State may terminate that member’s appointment with immediate effect by giving that member notice in writing to that effect.

(3) If a non-officer member fails to attend three successive meetings of the Authority the Secretary of State must terminate that member’s appointment with immediate effect unless the Secretary of State is satisfied that—

- (a) the absence was due to a reasonable cause; and

(a) 1990 c.40; section 7 was repealed by section 104 and Schedule 4 to the Charities and Trustee Investment (Scotland) Act 2005 asp 10.

(b) 2005 asp 10; section 34 was amended by section 122 of the Public Services Reform (Scotland) Act 2010 (asp 8).

(b) the member will be able to attend meetings of the Authority within such a period as the Secretary of State considers reasonable.

(4) Where a person has been appointed to be a non-officer member and becomes disqualified for appointment under regulation 3, that person must notify the Secretary of State in writing of such disqualification.

(5) If it comes to the notice of the Secretary of State that at the time of a person's appointment as a non-officer member the person was disqualified under regulation 3, the Secretary of State must declare that the person in question was not duly appointed and must notify that person in writing to that effect.

(6) If it comes to the notice of the Secretary of State (whether under paragraph (4) or otherwise) that a person appointed as a non-officer member has, since the appointment, become disqualified under regulation 3, the Secretary of State must notify that person in writing of such disqualification.

(7) When a person receives a notification under paragraph (5) or (6), that person's term of appointment, if any, is terminated with immediate effect and that person is to cease to act as a non-officer member.

(8) If it appears to the Secretary of State that a non-officer member has failed to comply with regulation 13, the Secretary of State may terminate that member's appointment with immediate effect by giving that member notice in writing to that effect.

Suspension of non-officer members

6.—(1) The Secretary of State may suspend a non-officer member from office while the Secretary of State considers whether—

- (a) to remove the member under regulation 5(2) or (8); or
- (b) the member has become disqualified for appointment under regulation 3, or was so disqualified at the time of appointment.

(2) The Secretary of State must give notice to the member of the decision to suspend and the suspension is to take effect on the date on which the notification is received by the member.

(3) A notice under paragraph (2) may be—

- (a) delivered in person to the member, in which case the member is treated as receiving it when it is delivered; or
- (b) sent by first class post to the member's last known postal address in which case the member is treated as receiving it on the third day after the day on which it was posted.

(4) The initial period of suspension must not exceed 6 months.

(5) The Secretary of State may review the member's suspension at any time.

(6) The Secretary of State may review the member's suspension if requested in writing by the member to do so, but need not carry out a review if a period of less than 3 months has elapsed since the beginning of the initial period of suspension.

(7) Following a review, the Secretary of State may—

- (a) revoke the member's suspension; or
- (b) suspend the member for another period of not more than 6 months from the expiry of the current period.

(8) The Secretary of State must revoke the member's suspension if at any time the Secretary of State decides that—

- (a) there are no grounds to remove the member from office under regulation 5(2) or (8);
- (b) there are such grounds but the Secretary of State is not minded to remove the member from office under those provisions; or
- (c) the member is not disqualified for appointment under regulation 3.

Appointment of vice-chair

7.—(1) The members may appoint one of the non-officer members, other than the chair, to be vice-chair for such period, not exceeding the remainder of that person's term as a member, as they may specify on the appointment.

(2) Any member appointed under paragraph (1) may at any time resign from the office of vice-chair by giving notice in writing to the chair or, if the office of chair is vacant, the members.

(3) This regulation does not apply where regulation 8 applies.

Appointment of vice-chair when chair is suspended

8.—(1) This regulation applies where the chair is suspended under regulation 6.

(2) If a vice-chair has been appointed under regulation 7(1) that appointment is to cease to have effect.

(3) The Secretary of State may re-appoint the person mentioned in paragraph (2) or appoint another non-officer member to be the vice-chair.

(4) The appointment of a vice-chair under paragraph (3) must be for a period not exceeding the shorter of—

- (a) the period for which the chair is suspended; and
- (b) the remainder of the non-officer member's term of appointment as a member.

(5) When the period for which a member is appointed as vice-chair expires, the Secretary of State may re-appoint the member as vice-chair or appoint another non-officer member as vice-chair.

(6) Any person appointed under paragraph (3) or (5) may at any time resign from office of vice-chair by giving notice in writing to the Secretary of State.

(7) A notice given under paragraph (6) takes effect—

- (a) where a date is specified in the notice as that on which the resignation is to take effect, on that date; or
- (b) in any other case, on the date that the notice is received by the Secretary of State.

(8) The Secretary of State may terminate a person's appointment as vice-chair under paragraph (3) or (5) if the Secretary of State is of the opinion that it would be in the best interests of the Authority for another non-officer member to be vice-chair.

(9) If—

- (a) a person resigns from the office of vice-chair under paragraph (6); or
- (b) the Secretary of State terminates a person's appointment as vice-chair under paragraph (8),

the Secretary of State may appoint another non-officer member as vice-chair under paragraph (3).

Powers of vice-chair

9.—(1) This regulation applies where—

- (a) the chair is suspended under regulation 6 and a non-officer member is appointed to be vice-chair under regulation 8; or
- (b) a non-officer member is appointed to be vice-chair under regulation 7 and—
 - (i) the office of chair is vacant for any reason, or
 - (ii) the chair is unable to perform his duties as chair owing to illness, absence or any other cause.

(2) Where this regulation applies—

- (a) the vice-chair is to act as chair until a new chair is appointed or the existing chair resumes the chair's duties, as the case may be; and

- (b) references to the chair in the Schedule are, for so long as there is no chair available to perform the duties of the chair, to be taken to include references to the vice-chair.

Appointment of committees and sub-committees

10.—(1) Subject to such directions as may be given by the Secretary of State, the Authority may, and if so directed by the Secretary of State must, appoint committees of the Authority which may consist wholly or partly of members of the Authority or wholly of persons who are not members of the Authority.

(2) A committee appointed under this regulation may, subject to such directions as may be given by the Secretary of State or the Authority, appoint sub-committees which may consist wholly or partly of members of the committee (whether or not they are members of the Authority) or wholly of persons who are not members of the Authority or the committee.

(3) Subject to such directions as may be given by the Secretary of State, regulations 3 and 4 apply to the appointment of members of committees and sub-committees appointed under this regulation as they apply to the appointment of members of the Authority.

Arrangements for the exercise of functions

11. Subject to such directions as may be given by the Secretary of State, the Authority may make arrangements for the exercise on behalf of the Authority of any of its functions by a committee or sub-committee appointed by virtue of regulation 10 or by an officer of the Authority, in each case subject to such restrictions and conditions as the Authority thinks fit.

Meetings and proceedings

12.—(1) The meetings and proceedings of the Authority are to be conducted in accordance with the rules set out in the Schedule and with standing orders made under paragraph (2).

(2) Subject to the rules set out in the Schedule, to regulation 13 and to such directions as may be given by the Secretary of State, the Authority must make, and may vary or revoke, standing orders for the regulation of its proceedings and business, including provision for the suspension of all or any of the standing orders.

(3) Subject to such directions as may be given by the Secretary of State, the Authority may make, vary and revoke standing orders relating to the quorum, proceedings and place of meeting of any committee or sub-committee of the Authority.

(4) Subject to standing orders referred to in paragraph (3), the quorum, proceedings and place of meeting of a committee or sub-committee of the Authority are to be such as the committee or sub-committee may determine.

Disability of members in proceedings on account of pecuniary interest

13.—(1) This paragraph applies where a member has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at any meeting of the Authority at which the contract, proposed contract or other matter is the subject of consideration.

(2) Subject to the following provisions of this regulation, where paragraph (1) applies in respect of a member, the member must at the meeting and as soon as practicable after its commencement, disclose the interest and must not take part in the consideration or discussion of the contract, proposed contract or other matter or vote on any question with respect to it.

(3) The Secretary of State may, subject to such conditions as the Secretary of State thinks fit to impose, remove any disability imposed by this regulation in any case in which it appears to the Secretary of State to be in the interests of the health service that the disability should be removed.

(4) The Authority may, by standing orders made under regulation 12(2), provide for the exclusion of a member from a meeting of the Authority while any contract, proposed contract or other matter in which the member has a pecuniary interest, direct or indirect, is under consideration.

(5) Any remuneration, compensation or allowances payable to a member by virtue of paragraph 2 of Schedule 6 to the Act (pay and allowances) is not to be treated as a pecuniary interest for the purpose of this regulation.

(6) Subject to paragraphs (3) and (7), the member must be treated for the purpose of this regulation as having an indirect pecuniary interest in a contract, proposed contract or other matter if—

- (a) the member, or their nominee, is a director of a company or other body with which the contract was made or is proposed to be made, or which has a direct pecuniary interest in the other matter under consideration; or
- (b) the member is a partner of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration,

and in the case of two persons living together as a couple (whether married or not) the interest of one is, if known to the other, to be deemed for the purpose of this regulation to be also an interest of the other.

(7) A member is not to be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only—

- (a) of membership of a company or other body, if the member has no beneficial interest in any securities of that company or other body; or
- (b) of an interest in any company, body or person with which the member is connected as mentioned in paragraph (6) which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the member in the consideration or discussion of, or voting on, any question with respect to that contract, proposed contract or other matter.

(8) Where a member—

- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
- (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the lesser; and
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which the chair or member has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this regulation does not prohibit the member from taking part in the consideration or discussion of the contract, proposed contract or other matter, or from voting on any question with respect to it but in such circumstances the member must nonetheless disclose the interest.

(9) This regulation applies to a committee or sub-committee as it applies to the Authority and applies to a member of any such committee or sub-committee (whether or not the member is also a member of the Authority) as it applies to a member of the Authority.

(10) In this regulation—

“securities” means—

- (a) shares or debentures, whether or not constituting a charge on the assets of a company or other body, or rights or interests in any share or debenture, or
- (b) rights (whether actually or contingent) in respect of money lent to, or deposited with, any industrial or provident society;

“shares” means shares in the share capital of a company or other body or the stock of a company or other body.

Reports by the Authority

14. The Authority must make such reports to the Secretary of State in such manner and at such time as the Secretary of State may direct, and must furnish to the Secretary of State such information as the Secretary of State may from time to time require.

Public meeting

15. If, under regulation 14, the Secretary of State directs the Authority to make an annual report to the Secretary of State for any particular year or for each year, the Authority must present the report at a public meeting held not later than 30 days after the date on which the report was made.

Signed by authority of the Secretary of State for Health.

12th September 2011

Simon Burns
Minister of State,
Department of Health

SCHEDULE

Regulation 12

RULES AS TO MEETINGS AND PROCEEDINGS OF THE AUTHORITY

1. The first meeting of the Authority is to be held on such day and at such a place as may be fixed by the chair and the chair is responsible for convening the meeting.

2.—(1) The chair may call a meeting of the Authority at any time.

(2) If a requisition for a meeting, signed by at least one third of the total number of members, is presented to the chair, and the chair either—

(a) refuses to call a meeting; or

(b) without so refusing, does not within 21 days after the requisition has been presented call a meeting,

those members may immediately call a meeting.

(3) In sub-paragraph (2), “the total number of members” means the total number of members excluding the chair or any member suspended under regulation 6.

(4) Before each meeting of the Authority, other than a meeting called pursuant to sub-paragraph (2), a notice of the meeting which—

(a) specifies the principal business proposed to be transacted at it; and

(b) is signed by the chair or by an officer of the Authority authorised by the chair to sign on his behalf,

must be delivered to each member, or sent by post to each member’s last known postal address, at least seven clear days before the day of the meeting.

(5) The proceedings of any meeting are not invalidated by a failure to deliver such notice to any member.

(6) In the case of a meeting called under sub-paragraph (2) by members, the notice must be signed by those members and no business other than that specified in the notice may be transacted at the meeting.

3.—(1) At any meeting of the Authority the chair, or in the absence of the chair the vice-chair (if there is one and that vice-chair is present), must preside.

(2) If both the chair and any vice-chair are absent, such other non-officer member present as the other members present may choose for the purpose must preside.

4. Every question at a meeting must be determined by a majority of votes of the members present and competent to vote on the question and, in the case of an equality of votes, the chair or, in the chair's absence, the person presiding at the meeting is to have a second or casting vote.

5.—(1) Subject to sub-paragraph (2), no business may be transacted at any meeting unless at least two members are present.

(2) The chair and the chief executive must be present at a meeting of the Authority at which any other officer members are appointed.

6.—(1) The minutes of the proceedings of a meeting must be drawn up and must be signed at the next ensuing meeting by the person presiding at that next meeting.

(2) The names of the members present at a meeting must be recorded in the minutes.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision concerning the membership and procedure of the NHS Commissioning Board Authority (“the Authority”). The Authority is a Special Health Authority established in relation to England under section 28 of the National Health Service Act 2006 by the NHS Commissioning Board Authority (Establishment and Constitution) Order 2011 (S.I. 2011/2237).

In particular, these Regulations provide for the appointment and term of office of the chair and members of the Authority (regulation 2), for disqualification for appointment (regulations 3 and 4) for the termination of appointment (regulation 5) and for suspension (regulation 6). Also included is provision relating to the appointment and powers of a vice-chair (regulations 7 to 9), the appointment of, and exercise of functions by, committees and sub-committees (regulations 10 and 11), the conduct of proceedings (regulation 12 and the Schedule) and disability on account of a pecuniary interest (regulation 13).

Provision is also made for requiring the Authority to furnish reports and certain other information to the Secretary of State (regulation 14) and for requiring presentation of an annual report at a public meeting (regulation 15).

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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