

2012 No. 1640

NATIONAL HEALTH SERVICE, ENGLAND

SOCIAL CARE, ENGLAND

PUBLIC HEALTH, ENGLAND

**The Care Quality Commission (Healthwatch England
Committee) Regulations 2012**

Made - - - - - *21st June 2012*

Laid before Parliament *27th June 2012*

Coming into force in accordance with regulation 1(1)

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 6(1A) and (5A) to (5D) 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 (Healthwatch England Committee) Regulations 2012 and come into force immediately after the commencement of section 181 of the Health and Social Care Act 2012(b).

(2) In these Regulations—

“the Committee” means the Healthwatch England committee of the Commission(c); and

“member”, except in the expression “member of the Commission”, means a member of the Committee, including the chair.

Members

2.—(1) The Committee is to consist of—

(a) a chair appointed by the Secretary of State; and

(b) not less than six and not more than twelve other members appointed by the chair.

(2) Before appointing the first members, the chair must consult the chair of the Commission(d).

(a) 2008 c.14 (“the 2008 Act”). See the definition of “regulations” in section 97(1) of that Act. There are no relevant amendments to section 161 of the 2008 Act. Sub-paragraphs (1A) and (5A) to (5D) were inserted into paragraph 6 of Schedule 1 to the 2008 Act by subsections (2) and (3), respectively, of section 181 of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”).

(b) 2012 c.7.

(c) The reference to “the Commission” is a reference to the Care Quality Commission – see section 1(1) of the 2008 Act which made provision for the establishment of the Commission.

(d) See paragraph 3(1)(a) of Schedule 1 to the 2008 Act as to the appointment of the chair of the Commission.

(3) For the purposes of paragraph (2), “the first members”, in relation to the Committee, means those members, other than the chair, whose membership of the Committee takes effect from 1st October 2012.

Appointment of members

3.—(1) The Secretary of State must exercise the function in regulation 2(1)(a) so as to secure that the chair is a person who is a member of the Commission at the time when the appointment as chair takes effect(a).

(2) The chair must exercise the function in regulation 2(1)(b) so as to secure that—

- (a) a majority of members are not members of the Commission;
- (b) so far as reasonably practicable, the persons appointed include persons with knowledge or experience relevant to the discharge, by the Committee, of functions under section 45A of the Health and Social Care Act 2008(b) (functions to be exercised by Healthwatch England); and
- (c) arrangements for the selection and appointment of persons as members take into account—
 - (i) the principle that the selection and appointment of members should be open and transparent; and
 - (ii) the principles laid down in the Commissioner for Public Appointments’ Code of Practice for Ministerial Appointments to Public Bodies of 1st April 2012(c).

(3) In exercising the function in regulation 2(1)(b), the chair must have regard to the need to encourage diversity in the range of persons who may be appointed.

(4) In exercising that function, the chair may, subject to the conditions specified in paragraph (5), appoint up to four members who are directors of Local Healthwatch organisations(d).

(5) The conditions are that—

- (a) those persons are not members of the Commission at the time of the appointment; and
- (b) in relation to each region of England, no more than one member is appointed from directors of Local Healthwatch organisations for the areas of English local authorities(e) in that region.

(6) For the purposes of paragraph (5)(b), the regions of England are listed in column (1) of the Table in Schedule 1 and comprise the areas specified in column (2) of the Table.

Co-option

4.—(1) The Committee may appoint members in addition to those appointed under regulation 2 (“Co-opted Members”).

(2) A Co-opted Member is appointed for such period as the Committee considers appropriate and a Co-opted Member who has ceased to hold office may be re-appointed.

(3) A Co-opted Member does not count as a member for the purposes of regulations 5 to 9.

(4) A Co-opted Member may not vote on any matter.

(a) See paragraph 3 of Schedule 1 to the 2008 Act and S.I. 2008/2252, as amended by S.I. 2011/2547, as to the membership of the Commission.

(b) Section 45A was inserted into Part 1 of the 2008 Act by section 181(4) of the 2012 Act. Subsection (1) of section 45A provides that the functions set out in subsections (2) to (5) are functions of the Commission but that the Commission must arrange for the Healthwatch England committee to exercise the functions on its behalf.

(c) A copy of the Code of Practice of April 2012 is available to download from the Commissioner for Public Appointments’ website at <http://publicappointmentscommissioner.independent.gov.uk>.

(d) As to the meaning of “Local Healthwatch organisation”, see subsection (2A) of section 222 of the Local Government and Public Involvement in Health Act 2007 (c.28) (“the 2007 Act”), which is to be inserted by section 183(2) of the 2012 Act on a date to be appointed under section 306 of the 2012 Act.

(e) See section 97(1) of the 2008 Act as to the definition of “English local authority”.

(5) The Committee must exercise its power under paragraph (1) so as to secure that a majority of members are not members of the Commission.

(6) The membership of a Co-opted Member may be withdrawn at any time by the Committee.

Tenure

5.—(1) Subject to regulations 8 and 10, the term of office of a member must be such period, not exceeding four years, as is specified by the person making the appointment at the time of the appointment.

(2) Subject to regulation 6 and paragraph (3), a member who has ceased to hold office may be re-appointed.

(3) A member may not hold office for more than two consecutive terms without an intervening period of at least four years.

Disqualification for appointment or from holding office

6. Subject to regulation 7, 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 6 of Schedule 2.

Cessation of disqualification

7.—(1) Subject to paragraph (2), a person who is disqualified under paragraph 4 or 6 of Schedule 2 may, after the expiry of a period of two years beginning on the date of the dismissal or removal, apply in writing to the chair to remove the disqualification, and the chair may direct that the disqualification is to cease.

(2) Where the chair refuses an application to remove a disqualification, no further application may be made by that person until the expiry of a period of two years beginning on the date of the application, and this paragraph applies to any subsequent application.

Termination of tenure of office

8.—(1) A member may resign at any time by giving notice in writing to the Appointing Authority.

(2) If the chair ceases to be a member of the Commission, the chair's tenure of office as chair terminates on the date of the cessation^(a).

(3) If a member other than the chair is appointed to be the chair, that member's tenure of office as such a member terminates when the appointment as chair takes effect.

(4) The tenure of office of a member other than the chair terminates upon being notified in writing by the chair—

(a) that the chair is satisfied that one of the conditions specified in paragraph (5) is met in relation to that member; and

(b) of the reason why the chair is so satisfied.

(5) The conditions are that that member—

(a) is unable or unfit to carry out the duties of that office;

(b) is failing to carry out those duties; or

(c) is disqualified from holding office (or was disqualified at the time of appointment).

(6) Without prejudice to paragraph (4) and subject to regulation 10, the tenure of office of a member appointed under regulation 3(4) terminates—

(a) See S.I. 2008/2252, regulations 3 and 6 as to the tenure of office and the termination of tenure of office, respectively, of members of the Commission.

- (a) where that member ceases to be a director of a Local Healthwatch organisation, on the date of the cessation;
- (b) where that member becomes a member of the Commission, on the date on which that member's appointment as such a member takes effect; and
- (c) where the condition specified in regulation 3(5)(b) ceases to be satisfied as a result of that member becoming a director of a Local Healthwatch organisation other than that of which that member is currently a director, on the date of the cessation.

(7) Where a person has been appointed as a member under regulation 3(4), that person must give notice in writing to the chair if that person's tenure of office as a member is terminated under paragraph (6).

(8) For the purposes of paragraph (1), "the Appointing Authority"—

- (a) in relation to a member who is the chair, means the Secretary of State; and
- (b) in relation to any other member, means the chair.

Suspension of members

9.—(1) Paragraph (2) applies where the chair is suspended from office as a member of the Commission^(a).

(2) The Secretary of State must suspend the chair from office as chair, for the duration of that suspension, by giving the chair notice in writing.

(3) Paragraphs (4) and (5) apply where it appears to the chair in relation to another member that one of the conditions in regulation 8(5) is or may be satisfied.

(4) The chair may suspend the member from office by giving that member notice in writing.

(5) The chair may, by giving that member notice in writing—

- (a) before the period referred to in paragraph (8) 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.

(6) Where the chair suspends a member under this regulation, the chair may, on application by the suspended member or otherwise, remove a suspension before the period referred to in paragraph (8) has expired, or reduce its period.

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

(8) A notice given under paragraph (2) or (4) must give the reason for, and the period of, the suspension and the date that it is to begin.

(9) The chair or other member must cease to perform functions as the chair or member for the period of the suspension but the period of the chair or member's term of office is not affected by the suspension.

Transitional provision

10.—(1) In relation to appointments made during the period beginning on 1st October 2012 and ending on 31st March 2013—

- (a) the reference, in regulation 3(4), to directors of Local Healthwatch organisations is to be read as a reference to the persons mentioned in paragraph (2); and
- (b) the conditions specified in paragraph (5) of that regulation do not apply.

(2) The persons are—

- (a) persons whom the chair recognises as persons representing Local Involvement Networks; or

(a) See S.I. 2008/2252, regulation 7 as to the suspension of members of the Commission.

- (b) persons who, under arrangements made by an English local authority, are providing advice, assistance or other support to that authority in relation to that authority's preparations for making arrangements with Local Healthwatch organisations under section 221 of the 2007 Act(a) (local arrangements in relation to health services and social services).

(3) The term of office of a member appointed in accordance with this regulation must be such period, not extending beyond 30th September 2013, as the chair specifies at the time of the appointment.

(4) The membership of a person appointed in accordance with this regulation may be withdrawn at any time by the chair.

(5) In this regulation—

“the 2007 Act” means the Local Government and Public Involvement in Health Act 2007; and

“Local Involvement Network” has the meaning given by section 222(2) of the 2007 Act(b) (arrangements under section 221(1)).

Signed by authority of the Secretary of State for Health.

Earl Howe
Parliamentary Under-Secretary of State,
Department of Health

21st June 2012

SCHEDULE 1

Regulation 3(6)

REGIONS IN ENGLAND

1. The regions in England are listed in column (1) of the Table below and comprise the areas specified in column (2) of the Table.

2. A reference to an area specified in column (2) of the Table is a reference to that area as it is for the time being.

Table

<i>(1) Name of Region</i>	<i>(2) Area Included</i>
London	Greater London
North	County of Darlington County of Durham County of Hartlepool County of Middlesbrough County of Northumberland County of Redcar and Cleveland County of Stockton-on-Tees County of Tyne and Wear County of Blackburn with Darwen County of Blackpool County of Cheshire East County of Cheshire West and Chester

(a) 2007 c.28. Section 221 of the 2007 Act is to be amended by section 182 of the 2012 Act on a date to be appointed under section 306 of the 2012 Act. By virtue of the amendments to section 222 of the 2007 Act by section 183 of the 2012 Act, such arrangements must be made with Local Healthwatch organisations.

(b) A reference in section 222 of the 2007 Act to a “local involvement network” is to a person who, in pursuance of any particular arrangements made under section 221(1) of that Act by a local authority, is to carry on, in that authority's area, activities specified in section 221(2) for that area – *see* section 222(2).

	<p>County of Cumbria County of Greater Manchester County of Halton County of Lancashire County of Merseyside County of Warrington County of the City of Kingston upon Hull County of the East Riding of Yorkshire County of North East Lincolnshire County of North Lincolnshire County of North Yorkshire County of South Yorkshire County of West Yorkshire County of York</p>
Midlands	<p>County of Derby County of Derbyshire County of Leicester County of Leicestershire County of Lincolnshire County of Northamptonshire County of Nottingham County of Nottinghamshire County of Rutland County of Bedford County of Central Bedfordshire County of Cambridgeshire County of Essex County of Hertfordshire County of Luton County of Norfolk County of Peterborough County of Southend-on-Sea County of Suffolk County of Thurrock County of Herefordshire County of Shropshire County of Staffordshire County of Stoke-on-Trent County of Telford and Wrekin County of Warwickshire County of West Midlands County of Worcestershire</p>
South	<p>County of Berkshire County of Brighton and Hove County of Buckinghamshire County of East Sussex County of Hampshire County of Isle of Wight County of Kent County of the Medway Towns County of Milton Keynes County of Oxfordshire County of Portsmouth</p>

	County of Southampton County of Surrey County of West Sussex County of Bath and North East Somerset County of Bournemouth County of the City of Bristol County of Cornwall County of Devon County of Dorset County of Gloucestershire County of North Somerset County of Plymouth County of Poole County of Somerset County of South Gloucestershire County of Swindon County of Torbay County of Wiltshire Isles of Scilly
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SCHEDULE 2

Regulation 6

GROUNDS FOR DISQUALIFICATION

1. 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.

2. The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(a), Schedule 2A to the Insolvency (Northern Ireland) Order 1989(b) or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985(c) (which relate to bankruptcy restrictions orders and undertakings).

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

4. 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.

5. The person is subject to—

- (a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986(d);
- (b) a disqualification order under Part 2 of the Companies (Northern Ireland) Order 1989(e) or a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002(f); or

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

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

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

(d) 1986 c.46.

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

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

- (c) an order made under section 429(2) of the Insolvency Act 1986(a) (disabilities on revocation of administration order against an individual).

6. 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, 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 for which that person was responsible or to which that person was privy, or which that person, by their conduct, contributed to or facilitated; or
- (b) under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(b) (powers of the Court of Session to deal with management of charities) or section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005(c) (powers of the Court of Session to deal with management of charities) from being concerned in the management or control of any body.

(a) Section 429(2) was amended by paragraph 15 of Schedule 23 to the Enterprise Act 2002, 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.

(b) 1990 c.40. Section 7 was repealed by paragraph 7(b) of Schedule 4 to the Charities and Trustee Investment (Scotland) Act 2005 (asp 10). 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 the Schedule. *See* the entry in the Schedule for the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

(c) Section 34 was amended by section 122 of the Public Services Reform (Scotland) Act 2010 (asp 8).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the appointment of the Healthwatch England committee (“the Committee”) of the Care Quality Commission (“the Commission”). The Committee was provided for in section 181 of the Health and Social Care Act 2012 (“the 2012 Act”) which made various amendments to Part 1 of, and Schedule 1 to, the Health and Social Care Act 2008 in relation to the appointment and functions of the Committee.

Regulation 2 makes provision as to the membership of the Committee.

Regulation 3 makes provision as to the appointment of members, including results to be secured by persons with powers to appoint members. This includes a requirement to secure that the majority of the members are not members of the Commission.

Regulation 4 makes provision for the appointment of co-opted members by the Committee.

Regulations 5 to 9 make provision as to the tenure of office of members (regulation 5), disqualification for appointment or from holding office as a member (regulation 6), cessation of disqualification (regulation 7), termination of tenure (regulation 8) and suspension of members (regulation 9).

Regulation 10 makes transitional provision to ensure that, until the provisions of the 2012 Act relating to Local Healthwatch organisations are commenced, specified persons, such as representatives of Local Involvement Networks, can be appointed as members in place of directors of Local Healthwatch organisations.

A full Impact Assessment has not been produced for this instrument as no impact on the private sector or civil society organisations is foreseen.

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STATUTORY INSTRUMENTS

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