

EXPLANATORY MEMORANDUM TO
HEALTH AND SOCIAL CARE
The Health and Social Services Trusts (Membership and Procedure)
(Amendment) Regulations (Northern Ireland) 2011

SR 2011 No. 164

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Article 10(6) of the Health and Personal Social Services (Northern Ireland) Order 1991 (a) and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The amendment will remove the current disqualification which prevents 'a person who holds paid employment or office with a trade union which represents the interests of members who are employed by a health service body or a health and social services body' from being appointed to the six HSC Trusts.

3. Background

- 3.1. A recent audit of the Membership Regulations of Health and Social Care bodies identified a current disqualification contained within the Membership Regulations of the Health and Social Services Trusts (Membership and Procedure) Regulations (Northern Ireland) 1994 (b).
- 3.2. This disqualification prevents 'a person who holds paid employment or office with a trade union which represents the interests of members who are employed by a health service body or a health and social services body' from being appointed as a non-executive director to an HSC Trust.
- 3.3. The six HSC Trusts are Belfast HSC Trust, Southern HSC Trust, South Eastern HSC Trust, Northern HSC Trust, Western HSC Trust and the Northern Ireland Ambulance Service HSC Trust.
- 3.4. The Department currently has 17 HSC bodies and trade union representatives have been appointed to five HSC bodies to date. The process is underway to appoint a trade union representative member to a further four bodies as there is no current disqualification preventing the Department from doing so.

4. Consultation

- 4.1. It was not necessary to consult on the rule, however, the Department has taken advice from the Attorney General who has advised that whilst there exists room for the Minister to make appointments from trade union members, as the regulations stand, they currently place restrictions and penalise the trade union sector alone.

- 4.2. He further advises that the current restriction is likely to be inconsistent with Articles 10 (freedom of expression) and 11 ECHR (freedom of association) whether taken by themselves or with Article 14 ECHR (prohibition of discrimination).
- 4.3. The Department has also been advised by the other three UK jurisdictions that no similar disqualification exists within the Membership Regulations of any of their public bodies.
- 4.4. Nine of the eleven other NI Departments have also confirmed that no similar disqualification exists within the Membership Regulations of any of their public bodies.

5. Equality Impact

- 5.1. A preliminary Equality Impact Assessment has not been considered necessary.

6. Regulatory Impact

- 6.1. The impact of the amendment is to remove the current disqualification that currently prevents appointment as a non-executive member of a Trust board, for those who hold paid employment or office with a trade union that represents the interests of members who are employed by a health service body or a health and social services body.

7. Financial Implications

- 7.1. None.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The primary legislations listed above are considered to be in compliance with section 24 of the Northern Ireland Act 1998. It follows that this Rule would similarly comply.

9. EU Implications

- 9.1. Not applicable.

10. Parity or Replicatory Measure

- 10.1. The removal of this disqualification will ensure parity with the other three jurisdictions.

11. Additional Information

- 11.1. Not applicable.