

**2002 No. 106**

**SOCIAL CARE**

**The Scottish Commission for the Regulation of Care  
(Appointments and Procedure) Regulations 2002**

*Made* 6th March 2002

*Laid before the Scottish Parliament* 8th March 2002

*Coming into force* 1st April 2002

The Scottish Ministers, in exercise of the powers conferred by paragraph 7 of schedule 1 to the Regulation of Care (Scotland) Act 2001(a) and of all other powers enabling them in that behalf, after consulting such persons or groups of persons as they consider appropriate, hereby make the following Regulations:

**ARRANGEMENT OF REGULATIONS**

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9. National Advisory Forum Committee
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11. Disability of convener and members in proceedings on account of conflict of interest
12. Remuneration, allowances etc.
13. Delegation of functions

**SCHEDULE**

Provisions as to meetings and proceedings of Commission

## **Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Scottish Commission for the Regulation of Care (Appointments and Procedure) Regulations 2002 and shall come into force on 1st April 2002.

(2) In these Regulations—

“the Act” means the Regulation of Care (Scotland) Act 2001;

“the 1938 Act” means the Nursing Homes Registration (Scotland) Act 1938(a);

“the 1968 Act” means the Social Work (Scotland) Act 1968(b);

“the convener” means, unless the context otherwise requires, the convener of the Commission;

“governance” means the practice of ensuring that a public or other body complies with its statutory obligations and conducts its operations with due propriety and integrity;

“member” means a member of the Commission other than the convener; and

“public body” means a body established by or under any enactment.

(3) In these Regulations, unless the context otherwise requires, any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations, and any reference to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

## **Appointments**

2.—(1) Subject to the requirements of paragraph 4, and in addition to the convener provided for by paragraph 2, of schedule 1 to the Act, the Commission shall consist of such number of members as the Scottish Ministers shall think fit.

(2) The convener and all of the members shall, except in the case of persons appointed in accordance with paragraph 4 of schedule 1 to the Act, be persons appearing to the Scottish Ministers to have appropriate experience in governance and management.

(3) In making appointments under this regulation, the Scottish Ministers shall ensure that one member of the Commission shall be a person who is the convener or a member of the Council.

## **Terms of Appointment**

3.—(1) The convener and members shall each be appointed for a period not exceeding three years.

(2) The period of appointment of the convener and of each member shall be determined by the Scottish Ministers, and may be different in each case.

(3) Subject to paragraph (5), the convener or a member shall, on the termination of any period of appointment, be eligible for appointment or re-appointment (as the case may be) as convener or member in either case for such further period not exceeding three years as the Scottish Ministers may determine.

(4) A member may during any period of appointment be appointed as convener for such period not exceeding three years as the Scottish Ministers may determine, and in such case the terms on which the member was appointed as a member shall cease to apply on the day on which the appointment as convener takes effect.

(5) Except in a case to which paragraph (6) applies, the total duration of separate periods of appointment of any person whether as convener or member shall not exceed six years.

(6) Where a member is appointed as convener, any period of appointment as a member shall be disregarded for the purposes of paragraph (5).

## **Disqualification for appointment**

4.—(1) The following persons are disqualified for appointment as convener or member of the Commission:—

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(a) 1938 c.73.

(b) 1968 c.49.

- (a) a person who within 5 years of the day the appointment would otherwise have taken effect has been convicted whether in the United Kingdom or elsewhere of any offence and has been sentenced to a period of imprisonment (whether or not suspended or deferred) for a period of not less than 3 months without the option of a fine;
- (b) a person whose estate has been sequestrated in Scotland or who has been adjudged bankrupt elsewhere than in Scotland in relation to whose estate a judicial factor has been appointed or who has granted a trust deed for the benefit of the person's creditors:

Provided that—

- (i) the disqualification attaching to a person whose estate has been sequestrated shall cease if and when—
  - (aa) the sequestration is recalled or reduced; or
  - (bb) the sequestration is discharged;
- (ii) the disqualification attaching to a person by reason of having been adjudged bankrupt shall cease if and when—
  - (aa) the bankruptcy is annulled; or
  - (bb) the person is discharged;
- (iii) the disqualification attaching to a person in relation to whose estate a judicial factor has been appointed shall cease if and when—
  - (aa) that appointment is recalled; or
  - (bb) the judicial factor is discharged; or
- (iv) the disqualification attaching to a person who has granted a trust deed shall cease if and when the person pays the creditors in full or on the expiry of five years from the date of grant of the deed;
- (c) a person who has been dismissed, otherwise than by reason of redundancy, from any paid employment with a public body;
- (d) a person whose appointment as chairman, convener, member or director of any public body has been terminated on the ground that—
  - (i) it was not in the interests of, or conducive to the good management of, that body that the person should continue to hold office;
  - (ii) the person failed without the consent of that body to attend its meetings for a continuous period of 3 months; or
  - (iii) the person failed to declare a pecuniary interest or withdraw from consideration of any matter in respect of which the person had a pecuniary interest;
- (e) a person who is employed by the Commission or by any body exercising functions similar to those of the Commission under legislation in force in England, Wales or Northern Ireland, or has been so employed but was dismissed otherwise than by reason of redundancy;
- (f) any person—
  - (i) whose application for registration under—
    - (aa) section 7 of the Act;
    - (bb) the 1938 Act;
    - (cc) the 1968 Act; or
    - (dd) any legislation of similar effect in force in England, Wales or Northern Ireland;
 has been refused; or
  - (ii) who has—
    - (aa) provided a care service;
    - (bb) carried on a nursing home within the meaning of the 1983 Act;
    - (cc) carried on an establishment within the meaning of the 1968 Act; or
    - (dd) provided or carried on a similar service, home or establishment under legislation of similar effect in force in England, Wales or Northern Ireland, whose registration in respect thereof has been cancelled other than at the person's request; and
- (g) any person whose registration as a health care professional has been withdrawn or is currently suspended.

- (2) For the purposes of paragraph (1)(a)–
- (a) the date of conviction shall be deemed to be the date on which the ordinary period allowed for making an appeal or application with respect to the conviction expires or, if such an appeal or application is made, the date on which the appeal or application is finally disposed of or abandoned or fails by reason of its not being prosecuted; and
  - (b) any conviction by or before a court outside the United Kingdom for an offence in respect of conduct which, if it had taken place in any part of the United Kingdom, would not have constituted an offence under the law in force in that part of the United Kingdom shall be disregarded.
- (3) Subject to paragraph (4), a person who is disqualified under paragraph (1)(c) or (d) may, after the expiry of 2 years beginning on the date on which the person was dismissed or (as the case may be) on which the appointment was terminated, apply in writing to the Scottish Ministers to remove that disqualification, and the Scottish Ministers may direct that that disqualification shall cease.
- (4) Where the Scottish Ministers refuse an application under paragraph (3) to remove a disqualification no further application may be made by that person until the expiry of the period of 2 years beginning with the date of the application, and this paragraph shall apply to any subsequent application.
- (5) In paragraph (1)(g), a “health care professional” means–
- (a) a registered medical practitioner;
  - (b) a registered dentist;
  - (c) a registered pharmacist, as defined in section 108(1) of the National Health Service (Scotland) Act 1978(a);
  - (d) an ophthalmic optician, as defined in section 108(1) of the National Health Service (Scotland) Act 1978 but excluding a body corporate enrolled in the list kept under section 9 of the Opticians Act 1989(b);
  - (e) a registered nurse, midwife or health visitor;
  - (f) a person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960(c) extends;
  - (g) a registered osteopath as defined by section 41 of the Osteopaths Act 1993(d); or
  - (h) a registered chiropractor as defined by section 43 of the Chiropractors Act 1994(e).

### **Resignations**

5.—(1) The convener or a member of the Commission may resign office at any time during a term of office by giving not less than 30 days notice in writing to the Scottish Ministers.

(2) A person who resigns as convener of the Commission may, if the Scottish Ministers consent, continue to serve as a member for any part of the period of appointment which remains when the resignation takes effect.

(3) A person who, on resignation as convener, seeks to continue to serve as a member must inform the Scottish Ministers in writing of the wish to do so at the time the resignation as convener is submitted.

### **Termination by the Scottish Ministers of tenure of office of convener and members**

- 6.—(1) The Scottish Ministers–
- (a) shall terminate the appointment of a person as convener or member of the Commission where the person becomes disqualified for appointment under regulation 4; and
  - (b) may terminate the appointment of a person as convener or member of the Commission where–
    - (i) the person is incapable of carrying out the functions of the post by reason of a physical or mental illness;

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(a) 1978 c.29.  
 (b) 1989 c.44.  
 (c) 1960 c.66.  
 (d) 1993 c.21.  
 (e) 1994 c.17.

- (ii) the person fails without the consent of the Commission to attend meetings for a continuous period of 3 months beginning with the date of a meeting;
- (iii) the person has failed to comply with regulation 11 (disability on account of conflict of interest); or
- (iv) they are of the opinion that it is not in the interests, or conducive to the good management, of the Commission or any of its committees that the person should continue to hold office.

(2) Where the Scottish Ministers decide to terminate an appointment under paragraph (1), they shall forthwith give the person concerned notice in writing of the termination of the appointment and of the reasons for their decision.

(3) Where a person has been appointed convener or a member and it comes to the notice of the Scottish Ministers that at the time of the appointment the person was disqualified for appointment under regulation 4, they shall forthwith declare that the person in question was not duly appointed and notify the person in writing to that effect; and upon receipt of such notification, the appointment shall be terminated and the person shall cease to act as such convener or member.

### **Deputy convener**

7.—(1) Subject to paragraph (2), where requested to do so by the Commission, the Scottish Ministers may appoint a member to be deputy convener for such period, not exceeding the remainder of that person's term of office as a member, as they may specify on making the appointment.

- (2) The Scottish Ministers shall not appoint as deputy convener—
  - (a) a member appointed under regulation 2(3), or
  - (b) a person who does not appear to them to have appropriate experience in governance and management.

(3) Any member appointed as deputy convener may resign from that office at any time by giving not less than 30 days notice in writing to the Scottish Ministers.

(4) Where the convener is, for whatever reason, unable to perform the convener's functions, the deputy convener may perform those functions.

(5) The Scottish Ministers may, when requested to do so by the Commission, terminate the appointment of a person as deputy convener on any of the grounds set out in regulation 6(1)(b).

(6) Where the Scottish Ministers decide to terminate an appointment under paragraph (5), they shall forthwith give the person concerned notice in writing of the termination of the appointment and of the reasons for their decision.

### **Appointment of committees and sub-committees**

8.—(1) Subject to any directions given to it by the Scottish Ministers and to regulation 9 below the Commission may, and if so directed by the Scottish Ministers shall, appoint committees of the Commission.

- (2) A committee appointed by the Commission may appoint sub-committees.

- (3) Committees shall consist of—
  - (a) a committee convener who is the convener or a member, and
  - (b) other persons (whether the convener or members or not),

appointed by the Commission.

- (4) Sub-committees shall consist of—
  - (a) a sub-committee convener who,
    - (i) if the convener or a member, is appointed by the committee, or
    - (ii) if not such a person, is appointed by the Commission, and
  - (b) other persons who,
    - (i) if the convener or members, are appointed by the committee, or
    - (ii) if not such persons are appointed by the Commission.

(5) Sub-committees shall be responsible to the committee which appoints them and shall report only to that committee.

### **National Advisory Forum Committee**

9.—(1) There shall be a committee of the Commission which shall be known as the National Advisory Forum Committee (“the Forum”).

(2) The Forum shall meet at least twice each year with a view to obtaining from relevant persons their views on the work of the Commission and reporting to the Commission.

(3) The Commission may require the Forum to report to it on any matter relevant to the work of the Commission.

(4) At least one month before the date of a meeting of the Forum the Commission shall advertise the date, time and place of that meeting and any matter referred to in paragraph (3) in at least 2 national newspapers and in such other manner as it considers appropriate and such advertisement shall invite any relevant person to attend the meeting.

(5) A relevant person may raise at any meeting of the Forum any matter relevant to the work of the Commission provided that—

- (a) that person gives written notice to the Commission no less than 5 working days before the meeting of that matter, and
- (b) the convener or, in the absence of the convener and where one has been appointed, the deputy convener agrees that the matter should be dealt with by the Forum.

(6) The Forum shall consist of—

- (a) a Forum convener appointed by the Commission who is either the convener, the deputy convener or a member, and
- (b) any member and any relevant person attending a meeting of the Forum.

(7) The Forum may, subject to such directions as may be given by the Scottish Ministers appoint sub-committees.

(8) Sub-committees shall consist of a sub-committee convener and other persons appointed by the convener of the Forum after consultation with the Forum.

(9) Sub-committees shall be responsible to the Forum and shall report only to the convener of the Forum.

(10) Regulations 8, 11, 12 and 13 shall not apply to the Forum or its sub-committees or to the membership of the Forum or its sub-committees in that capacity.

(11) Regulation 10(3) shall not apply to the Forum where the vacancy or defect referred to in that regulation is of or relates to the Forum convener.

(12) In this regulation “relevant person” means—

- (a) any person who uses or would be entitled to use care services;
- (b) any person who cares for a person who uses care services;
- (c) any person who provides, or makes arrangements with another person for that other person to provide, a care service;
- (d) any person who is employed in the provision of care services; and
- (e) any person whom, or any representative of any organisation which, the Commission considers to have an interest in its work.

### **Meetings and proceedings**

10.—(1) The meetings and proceedings of the Commission shall be conducted in accordance with the provisions set out in the Schedule to these Regulations and with Standing Orders made under paragraph (2).

(2) Subject to the provisions set out in the Schedule to these Regulations, to regulation 11 (disability on account of conflict of interest) and to such directions as may be given by the Scottish Ministers, the Commission shall make, and may vary or revoke, Standing Orders for the regulation of the proceedings and business of the Commission and any committee or sub-committee

appointed under regulation 8, including provision for the suspension of the Standing Orders or any of them.

(3) The proceedings of the Commission or of any committee or sub-committee shall not be invalidated by any vacancy in its membership or by any defect in the appointment of a member.

#### **Disability of convener and members in proceedings on account of conflict of interest**

**11.**—(1) Subject to the following provisions of this regulation, if the convener or any member of the Commission or a nominee or associate of such person has a pecuniary or other interest, direct or indirect, in any contract, proposed contract or other matter and such person is present at any meeting of the Commission at which the contract, proposed contract or other matter is the subject of consideration, that person shall at the meeting and as soon as practicable after its commencement disclose the interest and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

(2) Where a person has disclosed an interest as provided for in paragraph (1)–

(a) the convener; or

(b) where the person disclosing the interest is the convener, a majority of the members, may if the convener thinks or (as the case may be) they think fit, exclude the person from the meeting while any contract, proposed contract or other matter in which the person has a pecuniary interest, direct or indirect, is under consideration.

(3) Any remuneration, compensation or allowances payable to the convener or a member by virtue of these Regulations shall not be treated as a pecuniary interest for the purpose of this regulation.

(4) A person shall not be treated as having an interest in any contract, proposed contract or other matter by reason only that the person, or an associate of the person, has an interest in any company, body or person which is so remote or insignificant that it cannot reasonably be regarded as likely to effect any influence in the consideration or discussion of or in voting on any question with respect to that contract or matter.

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

(6) For the purposes of this regulation, “associate” has the meaning ascribed to it by section 74 of the Bankruptcy (Scotland) Act 1985(a).

#### **Remuneration, allowances etc.**

**12.**—(1) Subject to the following provisions of this regulation, the Commission shall pay–

(a) to its convener and to any member, such fee, and

(b) to its convener, to any member and to any person appointed to a committee or sub-committee, such allowances,

as may be specified from time to time by the Scottish Ministers.

(2) The Commission may, in exceptional circumstances and with the approval of the Scottish Ministers, pay–

(a) to a former convener or former member of the Commission such pension, allowance or gratuity;

(b) to a person who, other than on the expiry of a term of office, ceases to be its convener or a member, such compensation;

(c) to a person who was not a member and whose appointment to a committee or sub-committee has come to an end, such payment; and

(d) to a member who acts in place of the convener, such payment,

as may be approved by the Scottish Ministers.

(3) The member appointed under regulation 2(3) shall not be paid the fee referred to in paragraph (1)(a).

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(a) 1985 c.66.

### **Delegation of functions**

**13.—**(1) Subject to paragraph (2), the Commission may delegate any of its functions to any of its committees, sub-committees, members or employees.

(2) The Commission shall not delegate any function unless it is satisfied that adequate arrangements have been made for reporting to it by, and accountability to it of, the body or person to whom the function is to be delegated.

St Andrew's House,  
Edinburgh  
6th March 2002

*HUGH HENRY*  
Authorised to sign by the Scottish Ministers

## SCHEDULE

### PROVISIONS AS TO MEETINGS AND PROCEEDINGS OF THE COMMISSION

- 1.—**(1) The convener may call a meeting of the Commission at any time.
- (2) If a requisition for a meeting, signed by at least one-third (rounded up to a whole number) of the members, is presented to the convener, and the convener either—
- (a) refuses to call a meeting; or
  - (b) without so refusing, does not within 21 days after the requisition has been so presented call a meeting,
- those members may forthwith call a meeting.
- (3) Before each meeting of the Commission, a notice of the meeting which—
- (a) specifies the principal business proposed to be transacted at it; and
  - (b) is signed by the convener or by an officer of the Commission authorised by the convener to sign it on behalf of the convener,
- shall be delivered to each member, or sent by post to the member's last known address, at least 7 clear days before the day of the meeting.
- (4) The proceedings of any meeting shall not be invalidated by a failure to deliver such notice to any member.
- (5) In the case of a meeting called under sub-paragraph (2) above by members, those members shall sign the notice and no business other than that specified in the notice shall be transacted at the meeting.
- 2.—**(1) At any meeting of the Commission the convener or, in the convener's absence, the deputy convener (if there is one who is present) shall preside.
- (2) If the convener and deputy convener are both absent, such other member present as the other members present shall choose for the purpose shall preside.
- 3.—**(1) At any meeting of the Commission the quorum shall be one third (rounded up to a whole number) of the appointed members plus the convener.
- (2) Where the Commission is considering the appointment of a chief officer, the Commission is not quorate unless the convener is present.
- 4.** Every question at a meeting shall be determined by a majority of votes of the convener and members present and competent to vote on the question and, in the case of an equality of votes, the convener or, in the convener's absence, the person presiding at the meeting shall have a second vote.
- 5.—**(1) The minutes of the proceedings of a meeting shall be drawn up and shall be signed at the next meeting by the person presiding at that next meeting.
- (2) The names of the members present and the person presiding at a meeting shall be recorded in the minutes.
- (3) Subject to sub-paragraph (4) below, the minutes, once signed, shall be published in such manner as the Commission may determine and a copy of them shall be provided, without charge, by the Commission to any person on request.
- (4) Where a meeting has been held in private, or any part of a meeting has been conducted in private, sub-paragraph (3) above shall not apply in relation to the minutes of that meeting or part of the meeting.
- 6.—**(1) Meetings of the Commission shall be open to the public unless, on the motion of the convener, the Commission considers that the business to be conducted at a meeting, or for any part of a meeting, is such as to require, for the protection of confidence, that the meeting or that part, be conducted in private.
- (2) The chief officer of the Commission shall be entitled to attend any meeting of the Commission unless in the opinion of the convener such attendance would be inappropriate.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision concerning the membership and procedure of the Scottish Commission for the Regulation of Care established under Part 1 of the Regulation of Care (Scotland) Act 2001. In particular they make provision for the appointment (regulation 2) and tenure of office (regulation 3) of the convener and members of the Commission; for disqualification for appointment (regulation 4); for resignations (regulation 5); for the termination of appointments by the Scottish Ministers (regulation 6) and for the appointment of a deputy convener (regulation 7). Provision is also made for the establishment of committees and sub-committees (regulation 8) and of a National Forum Advisory Committee (regulation 9), the conduct of meetings and proceedings (regulation 10 and the Schedule) and the exclusion from meetings of those with a interest in matters under discussion (regulation 11). They also make provision for the payment of remuneration and allowances to the convener and members (regulation 12) and for the delegation of the functions of the Commission (regulation 13).



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