
STATUTORY INSTRUMENTS

1993 No. 994 (S.140)

NATIONAL HEALTH SERVICE, SCOTLAND

**The National Health Service (Appointment
of Consultants) (Scotland) Regulations 1993**

<i>Made</i>	- - - -	<i>1st April 1993</i>
<i>Laid before Parliament</i>		<i>13th April 1993</i>
<i>Coming into force</i>	- -	<i>4th May 1993</i>

The Secretary of State, in exercise of the powers conferred on him by sections 105(7) and 108(1) of, and paragraphs 5 and 6 of Schedule 1 and paragraphs 7 and 8 of Schedule 5 to, the National Health Service (Scotland) Act 1978((1)), as read with article 5 of, and Part I of the Schedule to, the Health Education Board for Scotland Order 1990((2)), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the National Health Service (Appointment of Consultants) (Scotland) Regulations 1993 and shall come into force on 4th May 1993.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

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

“the Agency” means the Common Services Agency for the Scottish Health Service constituted in terms of section 10(1) of the Act((3));

“Authority” means a Health Board, the Health Education Board for Scotland or the Agency (acting through the management committee);

“committee” means an Advisory Appointments Committee appointed in accordance with regulation 7;

(1) 1978 c. 29; Section 105(7) was amended by the Health Services Act 1980 (c. 53) (“the 1980 Act”), Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24; section 108(1) contains a definition of “regulations” relevant to the exercise of the statutory powers under which these Regulations are made; paragraph 5 of Schedule 1 was amended by the 1980 Act, Schedule 6, paragraph 7(2)(b) and paragraph 7 of Schedule 5 was amended by the 1980 Act, Schedule 6, paragraph 8(3)(b) and Schedule 7.

(2) S.I. 1990/2639.

(3) Section 10(1) was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 2.

“consultant” means—

- (a) in relation to a relevant specialty, a registered medical or dental practitioner who is a consultant in the relevant specialty;
 - (b) a consultant in public health medicine including a Chief Administrative Medical Officer and Director of Public Health; or
 - (c) a consultant in Dental Public Health,
- and “consultant post” shall be construed accordingly;

“General Manager” means, in relation to—

- (a) a Health Board;
- (b) the Health Education Board for Scotland; or
- (c) the Agency,

the person holding the post or performing the duties of general manager thereof;

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

“the management committee” means the management committee of the Agency constituted in terms of paragraph 3 of Schedule 5 to the Act((4));

“NHS trust” has the meaning indicated by section 12A of the Act((5));

“the Panel” means the National Panel of Specialists constituted in accordance with regulation 6;

“professional person”, in relation to a proposed appointment, means, if it is a medical appointment, a registered medical practitioner and, if it is a dental appointment, a registered dental practitioner;

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

(2) Any reference in these Regulations to a committee of an Authority shall in relation to the Agency be construed as a reference to a sub-committee of the management committee.

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

Appointments to which the regulations apply

3. These Regulations shall apply to appointments to consultant posts on the staff of an Authority and, unless the context otherwise requires, any reference therein to an appointment shall be construed as a reference to such an appointment.

Exempted appointments

4.—(1) For the purposes of regulations 5, 7, 8 and 9, each of the following appointments shall be an exempted appointment, namely, any appointment—

- (a) to an honorary consultant post including, in particular, any such appointment of a person who is and will continue to be—

(4) Paragraph 3 was amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), Schedule 5, paragraph 9.

(5) Section 12A was inserted by the 1990 Act, section 31.

- (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 he be appointed to the staff of an Authority; or
 - (iii) a medical practitioner who is on the staff of a hospice to provide medical services in the hospice;
- (b) for a period not exceeding—
- (i) in the case of an appointment on a *locum tenens* basis, 12 months; or
 - (ii) in any other case, 2 years;
- (c) of a person whose employment by an Authority other than the appointing Authority or by an NHS trust in a consultant post (“his former post”) has been, or is about to be, terminated as part of, or in consequence of, a local reorganisation, if the appointment is—
- (i) to fill a post the duties of which are substantially the same as those of his former post; and
 - (ii) to give effect to a transfer approved by the Secretary of State;
- (d) of a person whose employment, or last employment, by— (i) an Authority (including the appointing Authority) or an NHS trust; or
- (ii) in England or Wales, a Regional Health Authority, a District Health Authority, the Special Hospitals Service Authority⁽⁶⁾, a Teaching Authority or an NHS trust established under Part I of the National Health Service and Community Care Act 1990⁽⁷⁾,
- in a consultant post (“his former post”) has been, or is about to be, terminated by reason of redundancy or as part of, or in consequence of, a local reorganisation, if the appointment is made both in anticipation of, or within two years after, that termination of employment and to fill a post the duties of which are substantially the same as those of his former post;
- (e) of a person whose concurrent employment by a university, the Medical Research Council or other similar body and, in an honorary consultant post, by an Authority (including the appointing Authority) (“his former post”) has been, or is about to be, terminated, if the appointment is—
- (i) to fill a post the duties of which are substantially the same as those of his former post; and
 - (ii) to give effect to a transfer approved by the Secretary of State;
- (f) of a person whose employment in a consultant post by an Authority other than the appointing Authority or by an NHS trust is expected to continue, if the appointment is to fill a post the duties of which will normally not exceed one day’s work (or its equivalent) in each fortnight.
- (2) In this regulation—
- “employment” includes part-time employment, whether or not the officer is also employed by any other Authority or an NHS trust (or, in England or Wales, by a Regional Health Authority, a District Health Authority, a Teaching Authority or the Special Hospitals Service Authority or an NHS trust established under Part I of the National Health Service and Community Care Act 1990);
- “honorary”, in relation to a consultant post, means that the employment in that post is on terms that the holder receives no remuneration therefor;

⁽⁶⁾ See the Special Hospitals Service Authority (Establishment and Constitution) Order 1989 (S.I. 1989/948), to which there is an amendment not relevant to these Regulations.

⁽⁷⁾ 1990 c. 19.

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

Advertisement of appointments

5.—(1) The provisions of this regulation shall apply in relation to any appointment to a consultant post except:

- (a) an exempted appointment;
- (b) an appointment to a regraded post.

(2) For the purposes of this regulation “appointment to a regraded post” means the first appointment to any consultant post—

- (a) which the Authority has resolved shall be regraded as a consultant post attracting substantially the same duties as those attaching to the post prior to regrading; and
- (b) where the Secretary of State considers that it is not against the interests of the National Health Service that that post may be filled without advertisement.

(3) Where an Authority propose to make an appointment to which this regulation applies they shall place an advertisement in no fewer than two publications circulating throughout the United Kingdom which are commonly used for similar advertisements relating to the profession concerned; but where such advertisement is not reasonably practicable the Authority shall advertise the post in such other publications as they think appropriate.

(4) Any advertisement shall specify the exact nature of the appointment and the closing date for receipt of applications, which date shall be not less than one month from the date on which the advertisement appears.

(5) Where such an advertisement is in respect of a wholetime post, the advertisement shall include a statement to the effect that applicants for appointment for less time than is required to carry out the full duties of the post will be considered if they are unable to undertake wholetime work.

National Panel of Specialists

6.—(1) Subject to the following provisions of this regulation, the Secretary of State shall constitute a panel for the purpose of providing members of Advisory Appointments Committees appointed in accordance with regulation 7 and that panel shall be known as the National Panel of Specialists.

(2) The Panel shall consist of not more than 350 members holding consultant posts of whom—

- (a) not more than 70 shall be nominated by one or more of the Universities of Glasgow, Aberdeen, Edinburgh and Dundee;
- (b) not more than 225 shall be nominated by one or more of such professional post-graduate bodies or organisations as appear to the Secretary of State from time to time to be representative of the medical and dental professions; and
- (c) not more than 55 shall be persons not so nominated.

(3) Each member of the Panel shall be appointed—

- (a) for such period not exceeding 4 years as the Secretary of State shall specify;
- (b) subject to any conditions as to re-appointment which the Secretary of State may impose.

(4) After retirement from a consultant post a member of the Panel may complete his term of office unless he first attains the age of 70 years, at which age he shall cease to be a member.

(5) The Secretary of State shall appoint a registered medical practitioner as Secretary of the Panel.

Constitution of Advisory Appointments Committee

7.—(1) For the purposes of making any appointment other than an exempted appointment, an Authority making the appointment shall constitute an Advisory Appointments Committee in accordance with the following provisions of this regulation.

- (2) Subject to paragraphs (3) to (5), a committee shall consist of—
- (a) 4 members appointed by the Authority and of those members—
 - (i) 1 shall act as chairman;
 - (ii) not fewer than 2 shall be professional persons;
 - (iii) 1 shall be the General Manager; and
 - (iv) where the appointment is in public health medicine, 1 shall be the Chief Administrative Medical Officer and Director of Public Health or, if for reasonable cause he is unable to act, a consultant in public health medicine;
 - (b) 2 members appointed from the Panel who are in the relevant specialty of whom at least 1 is not employed by the Authority making the appointment; and
 - (c) in the case of an appointment involving undergraduate teaching duties—
 - (i) 2 members; or
 - (ii) where, following consultation with the University concerned, the Authority considers that the appointment carries major teaching responsibilities, a maximum of 4 members, nominated by the University concerned.
- (3) Except in the case of an appointment of—
- (a) a Chief Administrative Medical Officer and Director of Public Health; or
 - (b) a consultant in Dental Public Health,

if the General Manager is for reasonable cause unable to act for the purpose of paragraph (2)(a)(iii), the Authority may appoint a senior manager on their staff to act in his place.

- (4) For the purpose of paragraph (2), where an Authority—
- (a) propose making an appointment to a post of part-time consultant; and
 - (b) after consulting an NHS trust, consider it likely that the person appointed will also be appointed to, or be the holder of, a part-time consultant post on the staff of that NHS trust and will serve concurrently in the two part-time posts,

then the Authority may appoint as additional members of the committee—

- (i) the Chief Executive of the NHS trust concerned or, if for reasonable cause he is unable to act, another senior officer of that NHS trust; and
- (ii) after consultation with that NHS Trust, up to 3 further persons, 2 of whom shall be professional persons.

- (5) For the purpose of paragraph (2)(b)—
- (a) where there are not 2 members of the Panel in the relevant specialty, the members appointed from the Panel thereunder shall include one (if there is one) in the relevant specialty and, subject thereto, shall be members of the Panel in the most appropriate specialty or specialties;
 - (b) where there are one or more members of the Panel in the relevant specialty but that member is, or those members are, for reasonable cause unable to accept appointment to a committee at any particular time or times, the members appointed shall include—
 - (i) if only one member in the relevant specialty is unable to act, another member who is; or

- (ii) if all of those members in the relevant specialty are unable to act, 2 other members who are,
in the most appropriate specialty or specialties.

Selection by committee

8.—(1) In the case of a post advertised in pursuance of regulation 5, the Authority shall refer to the committee all applications for the post received on or before the closing date specified in the advertisement, and may also refer an application received after that date if they are satisfied that there is a reasonable explanation for the failure to submit the application in time.

(2) In the case of appointment to a regraded post within the meaning of regulation 5(2) the Authority shall fix a closing date for receipt of the application for such a post and shall thereafter refer the application to the committee.

(3) The committee shall consider all applications so referred to them and may interview any of the applicants in order to select the persons whom the committee consider to be suitable for the appointment.

(4) Thereafter the committee shall submit to the Authority a report stating—

- (a) the names of the persons recommended by the committee as being suitable for the appointment;
- (b) the order in which those persons are so recommended; and
- (c) the comments of the committee (including in particular the views of the members from the Panel) on the suitability of those persons for appointment,

but such report shall not include the name of any person who has not been interviewed in accordance with paragraph (3).

(5) Where an Authority propose to make an appointment to a whole-time post but in the opinion of the committee one or more applicants would be suitable for appointment for less than whole-time they shall submit to the Authority the names of any such applicants and may add such comments as they consider appropriate.

(6) If the committee consider that none of the applicants is suitable for the appointment they shall so inform the Authority.

(7) No applicant shall be considered suitable for appointment unless a majority of the members of the committee considers him to be suitable and in the event of an equality of votes the Chairman shall not have a casting vote.

Appointment by the Authority

9.—(1) An appointment shall be made by the Authority, or, if the Authority so delegate, by the appropriate committee of the Authority (other than an Advisory Appointments Committee), but neither the Authority nor a committee of the Authority to which power to make an appointment has been delegated shall make an appointment other than an exempted appointment except from persons selected by a committee pursuant to regulation 8.

(2) The Authority shall not delegate power to make an appointment to an Advisory Appointments Committee.

(3) Neither the Authority nor such a committee of the Authority as is mentioned in paragraph (1) shall appoint any person who, in respect of his application for the appointment, has canvassed any member of the Authority or of such a committee.

(4) Where a post has been advertised in pursuance of regulation 5 but the Authority decide not to make an appointment from persons named by a committee or where an Authority are informed

pursuant to regulation 8(6) that none of the applicants is suitable, the committee shall be discharged but, unless the Authority discontinue their proposal to make the appointment, these Regulations shall apply in relation thereto as though the post had yet to be advertised in pursuance of regulation 5 and applications had yet to be referred to an Advisory Appointments Committee in pursuance of regulation 8.

Revocation and transitional provisions

10.—(1) Subject to paragraph (2), the National Health Service (Appointment of Consultants and Community Medicine Specialists) (Scotland) Regulations 1986((8)) are hereby revoked.

(2) Where, before 4th May 1993 an Advisory Appointments Committee has been constituted under the National Health Service (Appointment of Consultants and Community Medicine Specialists) (Scotland) Regulations 1986 to select a person for appointment after that date, those Regulations shall apply in respect of that appointment as if these Regulations had not come into force.

St. Andrew's House,
Edinburgh
1st April 1993

Fraser of Carmyllie
Minister of State, Scottish Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which provide for the method of appointing consultants in the National Health Service in Scotland, supersede the National Health Service (Appointment of Consultants and Community Medicine Specialists) (Scotland) Regulations 1986.

The Regulations prescribe the procedures relating to the appointment of consultants in Scotland by Health Boards, the Health Education Board for Scotland or the Common Services Agency for the Scottish Health Service. Certain kinds of appointment are exempted (regulations 3 and 4).

Provision is made for advertisement of appointments except in relation to certain regraded posts (regulation 5).

The Regulations provide for the constitution of a National Panel of Specialists consisting of consultants nominated by Universities; by professional postgraduate bodies or organisations representative of the medical and dental professions; and by the Secretary of State. Members of Advisory Appointments Committees are drawn in part from consultants who are members of the Panel. Provision is made for the constitution of such committees to select candidates suitable for appointment as consultants (regulations 6, 7 and 8).

The principal changes made by the new Regulations are—

- (a) provision for enlarging the National Panel of Specialists and removal of certain restrictions on the appointment of its members;
- (b) further specification of the categories of members to be appointed to Advisory Appointments Committees;
- (c) provision for appointing persons to Advisory Appointments Committees who are representative of NHS trusts in certain cases.

The Regulations contain transitional provisions to the effect that the 1986 Regulations will continue to apply in the case of an Advisory Appointments Committee constituted thereunder prior to the date of coming into force of these Regulations in respect of an appointment which will be made on or after that date.