
STATUTORY INSTRUMENTS

2005 No. 408

PUBLIC HEALTH

The Health Protection Agency Regulations 2005

<i>Made</i>	- - - -	<i>28th February 2005</i>
<i>Laid before Parliament</i>		<i>4th March 2005</i>
<i>Coming into force</i>		
<i>Regulations 1 to 6</i>		<i>25th March 2005</i>
<i>Regulation 7</i>		<i>1st April 2005</i>

The Secretary of State for Health, after consultation with the Scottish Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland and the National Assembly for Wales, acting in exercise of the powers conferred upon him by section 2(2) and (3) of, and paragraphs 1(6), 3(1), 8(1) and (2), 10(1) and 29 of Schedule 1 to, the Health Protection Agency Act 2004⁽¹⁾, and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Health Protection Agency Regulations 2005.

(2) Regulations 1 to 6 shall come into force on 25 March 2005 and regulation 7 shall come into force on 1 April 2005.

(3) In these Regulations—

“the Act” means the Health Protection Agency Act 2004;

“the Agency” means the Health Protection Agency established by section 1(1) of the Act;

“the chairman” means the chairman of the Agency;

“health service body” means any of the following, namely—

- (a) a Strategic Health Authority,
- (b) a Health Authority,
- (c) a Special Health Authority,
- (d) a health board constituted under section 2 of the National Health Service (Scotland) Act 1978⁽²⁾,

(1) 2004 (c. 17).

(2) 1978 (c. 49).

- (e) a Primary Care Trust,
 - (f) a Local Health Board,
 - (g) the Common Services Agency for the Scottish Health Service,
 - (h) an NHS trust, including such a trust established under the National Health Service (Scotland) Act 1978,
 - (i) an NHS foundation trust,
 - (j) the Independent Regulator of NHS Foundation Trusts,
 - (k) the Commission for Healthcare Audit and Inspection,
 - (l) the Dental Practice Board or the Scottish Dental Practice Board,
 - (m) the Public Health Laboratory Service Board,
 - (n) the Secretary of State,
 - (o) the National Assembly for Wales,
 - (p) the Northern Ireland Central Services Agency for the Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972(3),
 - (q) a special health and social services agency established under the Health and Personal Services (Special Agencies) (Northern Ireland) Order 1990(4),
 - (r) a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972(5),
 - (s) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991(6), and
 - (t) the Department of Health, Social Services and Public Safety in Northern Ireland;
- “the NHS Act” means the National Health Service Act 1977(7);
- “the NHS Tribunal” means the Tribunal constituted under section 46 of the NHS Act(8) for England and Wales;
- “the NRPB” means the National Radiological Protection Board established under the Radiological Protection Act 1970(9);
- “primary care list” means—
- (a) a list referred to in section 49N(1)(a) to (c) of the NHS Act;
 - (b) the list of persons undertaking to provide general medical services prepared in accordance with regulations made under section 29 of the NHS Act(10) as the list existed on or before 31 March 2004;
 - (c) a list of persons approved by a Primary Care Trust or Health Authority for the purpose of assisting in the provision of general medical services prepared in accordance with

(3) S.I. 1972/1265 (N.I. 14).

(4) S.I. 1990/247 (N.I. 3).

(5) S.I. 1972/1265 (N.I. 14).

(6) S.I. 1991/194 (N.I. 1).

(7) 1977 (c. 49).

(8) Section 46 was repealed by section 67 of, and paragraph 5 of Schedule 5 and Part 1 of Schedule 6 to, the 2001 Act; the NHS Tribunal, except for prescribed cases, had effect in relation to England until 14 December 2001, and in relation to Wales, until 26 August 2002; see article 2(5) and (6)(b) of S.I. 2001/3738 which sets out prescribed cases for England, and article 2(2) and (3)(b) of S.I. 2002/1919 which sets out prescribed cases for Wales.

(9) 1970 (c. 46).

(10) Section 29 has been repealed by sections 175(2) and 196 of, and Schedule 14 to, the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

regulations under section 43D(1) of the NHS Act(11) as such a list existed on or before 31 March 2004; or

- (d) a services list referred to in section 8ZA(1)(a) of the National Health Service (Primary Care) Act 1997(12) as such a list existed on or before 31 March 2004.

Appointment and tenure of office of chairman and members

2.—(1) The prescribed number of—

- (a) non-executive members, excluding the chairman, shall be not less than five and not more than twenty,
- (b) executive members, excluding the chief executive, shall be not less than one and not more than four.

(2) Subject to regulation 6 (termination of tenure of office of chairman and non-executive members), the term of office of the chairman and non-executive members shall be such period, not exceeding five years, as is specified when the appointment is made by the Secretary of State or, as the case may be, a devolved authority.

(3) Subject to regulation 3 (disqualification for appointment), the chairman and any non-executive member shall, on the termination of that office, be eligible for re-appointment.

(4) Regulations 4 (cessation of disqualification) and 6 (termination of tenure of office of chairman and non-executive members) apply to a non-executive member appointed by a devolved authority as if each reference to the Secretary of State were a reference to the relevant devolved authority.

Disqualification for appointment

3.—(1) Subject to regulation 4 (cessation of disqualification), a person shall be disqualified for appointment as the chairman or as a non-executive member if—

- (a) he has, within the preceding five years, been convicted in the United Kingdom of any offence or convicted elsewhere 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 has been sentenced to a period of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine, and which has not been quashed on appeal;
- (b) he is the subject of a bankruptcy restrictions order or interim bankruptcy restrictions order or has had a sequestration of his estate awarded;
- (c) he has been dismissed, otherwise than by reason of redundancy, from any paid employment with—
- (i) a health service body, or
- (ii) the NRPB;
- (d) he is a person whose tenure of office as a chairman or as a member or director of a health service body or the NRPB and in the case of an NHS foundation trust as a governor of a trust, has been terminated on the grounds that—
- (i) it was not in the interests of, or conducive to the good management of, the health service body, the NRPB, or the health service that he should continue to hold that office,
- (ii) he failed, without reasonable cause, to attend any meeting of that health service body or, as the case may be, the NRPB, for a period of three months or more, or

(11) Section 43D was inserted by section 24 of the 2001 Act and amended by section 2(5) of, and paragraphs 1 and 20 of Schedule 2 to, the 2002 Act; section 43D(1) is repealed in part by section 196 of, and Schedule 14 to, the 2003 Act.

(12) 1997 (c. 46).

- (iii) he failed to declare a pecuniary interest or withdraw from consideration of any matter in respect of which he had a pecuniary interest;
- (e) he—
- (i) is the subject of a national disqualification pursuant to section 49N of the NHS Act(13),
 - (ii) was refused nomination or approval to fill a vacancy for a medical practitioner pursuant to regulations made under section 29B(2A) of the NHS Act(14) and was not subsequently nominated, approved or included in a primary care list,
 - (iii) has been refused admission to a primary care list on grounds corresponding to the conditions referred to in section 49F(2), (3) or (4) of the NHS Act(15) and has not subsequently been included in a primary care list,
 - (iv) is conditionally included in a primary care list (16),
 - (v) has been removed from a primary care list on any of the grounds set out in section 49F(2), (3) or (4) of the NHS Act or by a direction of the NHS Tribunal and has not subsequently been included in such a list,
 - (vi) is contingently removed from a primary care list(17), or
 - (vii) is suspended from a primary care list(18) or is treated as so suspended by virtue of regulation 6(2) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001(19) or regulation 6(2) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002(20),
- and in this sub-paragraph any reference to a provision in the NHS Act includes a reference to the provision corresponding to that provision in Scotland and Northern Ireland;
- (f) he is subject to a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986(21) or the Company Directors Disqualification (Northern Ireland) Order 2002(22) or to an order made under section 429(2)(b) of the Insolvency Act 1986(23) (failure to pay under county court administration order);
- (g) he has been—
- (i) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct

(13) Section 49N was inserted by the 2001 Act, section 25. Section 49N has been amended by the 2003 Act, section 184 and Schedule 11, paragraphs 7 and 24(a) and (b), the 2002 Act, section 2(5) and Schedule 2, Part 1, paragraphs 1 and 25(1), (2) (a), (b), (3), (4), (5)(a), (b), S.I. 2002/288, article 7(1), (3)(i), and S.I. 2002/480, article 6(1) and (4)(j).

(14) Section 29B(2A) was inserted by the 2001 Act. Section 29B was repealed by section 196 of, and Schedule 14 to, the 2003 Act.

(15) Section 49F was inserted by section 25 of the 2001 Act and amended by section 2(5) of, and paragraphs 1 and 21(a) of Schedule 2 to, the 2002 Act; section 49F(1)(a) has been repealed by section 196 of, and Schedule 14 to, the 2003 Act.

(16) See section 43ZA of the NHS Act for conditional inclusion. Section 43ZA was inserted by the 2001 Act, section 21 and amended by the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (“the 2002 Act”), section 2(5) and Schedule 2, paragraphs 1 and 18. See also sections 28X(5) and 43D(4) of the NHS Act and section 8ZA(7) of the National Health Service (Primary Care) Act 1997 (c. 46) (“the 1997 Act”).

(17) See section 49G of the NHS Act for contingent removal. Section 49G was inserted by the 2001 Act, section 25, and amended by the 2002 Act, section 2(5) and Schedule 2, Part 1, paragraphs 1 and 21(c). See also sections 28X(4) and 43D(6) of the NHS Act and section 8ZA(7) of the 1997 Act.

(18) See section 49I of the NHS Act for suspension. Section 49I was inserted by the 2001 Act, section 25, and amended by the 2002 Act, section 29(5) and Schedule 2, Part 1, paragraphs 1 and 21(c). See also sections 28X(4) and 43D(6) of the NHS Act and section 8ZA(7) of the 1997 Act.

(19) S.I. 2001/3744.

(20) S.I. 2002/2469.

(21) 1986 (c. 46). See section 1A of the Act.

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

(23) 1986 (c. 45).

or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he, by his conduct, contributed to or facilitated, or

- (ii) removed under section 7 of the Law Reform (Miscellaneous Provisions)(Scotland) Act 1990(24) (powers of 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)(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.

(3) For the purposes of paragraph (1)(c) a person shall not be treated as having been in paid employment by reason only of his having been—

- (a) Chairman or a member or director of the NRPB or a health service body other than an NHS foundation trust; or
- (b) Chairman, a governor or non-executive director of an NHS foundation trust.

Cessation of disqualification

4.—(1) Subject to paragraph (2), a person who is disqualified under regulation 3(1)(c) or (g)(i) may, after the expiry of two years beginning on the date of the dismissal or removal, apply in writing to the Secretary of State to remove the disqualification, and the Secretary of State may direct that the disqualification shall cease.

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

(3) Where a person is disqualified under regulation 3(1)(d), the disqualification shall cease on the expiry of the period of two years beginning on the date upon which that person's tenure of office was terminated or such longer period as was specified when the tenure of office was terminated but, on application being made to the Secretary of State by that person, the Secretary of State may reduce the period of disqualification.

Remuneration and allowances of chairman and non-executive members

5.—(1) The Secretary of State may determine the amount of the remuneration the Agency is to pay the chairman and non-executive members of the Agency.

(2) The Secretary of State may determine the amount the Agency is to pay by way of a pension, allowance or gratuity to or in respect of the chairman or a non-executive member of the Agency.

(3) Where a person ceases to be chairman or a non-executive member of the Agency and it appears to the Secretary of State that there are special circumstances which make it right for that person to receive compensation, the Secretary of State may decide that the Agency shall make him a payment of such amount as the Secretary of State may determine.

(4) Payments under this regulation shall be made at such times and in such manner and subject to such conditions as the Secretary of State may determine.

Termination of tenure of office of chairman and non-executive members

6.—(1) The chairman or a non-executive member may resign from that office at any time during the term of that office by giving notice in writing to the Secretary of State.

(24) 1990 (c. 40).

(2) Where the Secretary of State is of the opinion that it is not in the interests of, or conducive to the good management of, the Agency or of the health service that the chairman or a non-executive member should continue to hold office, the Secretary of State may immediately terminate that person's tenure of office by giving that person notice in writing to that effect.

(3) If the chairman or a non-executive member fails to attend any meeting of the Agency for a period of three months the Secretary of State shall immediately terminate that person's tenure of office unless satisfied that—

- (a) the absence was due to a reasonable cause; and
- (b) the person in question will be able to attend meetings of the Agency within such a period as the Secretary of State considers reasonable.

(4) Where a person has been appointed to be the chairman or a non-executive member, and—

- (a) he becomes disqualified for appointment under regulation 3, he shall notify the Secretary of State in writing of such disqualification, or
- (b) it comes to the notice of the Secretary of State that at the time of his appointment or later he was so disqualified, the Secretary of State shall immediately declare that the person in question was not duly appointed and notify him in writing to that effect, and

his tenure of office, if any, shall be terminated and he shall cease to act as chairman or non-executive member.

Directions - health functions

7. The Secretary of State directs the Agency—

- (a) to undertake the function of the designation of vaccinating centres in England for vaccination or revaccination against Yellow Fever for the purposes of the International Health Regulations (1969)(25); and
- (b) to exercise his function of appointment of medical inspectors under paragraph 1(2) of Schedule 2 to the Immigration Act 1971(26) in relation to medical inspectors who exercise functions otherwise than in Wales.

Signed by authority of the Secretary of State for Health

28th February 2005

Melanie Johnson
Parliamentary Under Secretary of State,
Department of Health

(25) See Appendix 2 to the International Health Regulations (1969) adopted by the Twenty-second World Health Assembly in 1969 and amended by the Twenty-sixth World Health Assembly in 1973 and the Thirty-fourth World Health Assembly in 1981.

(26) 1971 c. 77.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations make provision concerning the membership of the Health Protection Agency (“the Agency”). They also direct the Agency, when it is established on 1 April 2005, to have and to exercise certain health protection functions.

Regulations 1 to 6 come into force on 25 March. Regulation 2 prescribes the numbers of non-executive and executive members and provides for the tenure of office of the chairman and non-executive members of the Agency, regulations 3 and 4 provide for disqualification for appointment as chairman or a non-executive member, regulation 5 provides for the payments to be made by the Agency to the chairman and non-executive members and regulation 6 provides for termination of tenure of office of the chairman and non-executive members.

Regulation 7, which comes into force on 1 April, directs the Agency to undertake the designation of Yellow Fever vaccination centres in England for the purposes of the International Health Regulations 1969 and to exercise the Secretary of State’s function of the appointment of medical inspectors in relation to medical inspectors who exercise functions otherwise than in Wales.

These Regulations do not impose a cost on business.