

**EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE LITIGATION AUTHORITY (AMENDMENT)
REGULATIONS 2015**

2015 No. 1683

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations remove a disqualification criterion applying in relation to appointment to the posts of chairman or non-officer member of the NHS Litigation Authority (“the NHSLA”). They amend the National Health Service Litigation Authority Regulations 1995 by removing from the list of disqualified persons those holding the post of chairman, member or executive director of an NHS Trust, and chairman, chief executive or non-executive director of an NHS Foundation Trust.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The NHSLA was established by the National Health Service Litigation Authority (Establishment and Constitution) Order 1995 (SI 1995/2800). The National Health Service Litigation Authority Regulations 1995 (SI 1995/2801), which these Regulations amend, make provision for the governance of the NHSLA. The 1995 Regulations include disqualification provisions at regulation 7 relating to the posts of chairman and non-officer member of the NHSLA. The present Regulations amend the disqualification criteria set out in regulation 7 in relation to both Wales and England. (The Secretary of State’s power to do so in relation to both parts of the United Kingdom is explained in the footnote (b) on page 1 of the present statutory instrument.) These provisions have previously been amended differentially in relation to England and Wales, necessitating slightly different wording in the present Regulations to achieve the same effect in relation to both parts of the United Kingdom.

5. Territorial Extent and Application

5.1 These Regulations apply to England and Wales, although regulation 2(a) applies only to England and regulation 2(b) only to Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 The NHS Litigation Authority is a Special Health Authority, formed in 1995. Its main function is to manage a number of schemes that provide an indemnity for liabilities of NHS Trusts in England. The schemes cover clinical negligence and public and professional liabilities.

As with all public bodies, the Chairman and non-officer members play an important role in adding value and expertise to the NHS LA, as well as scrutinising the work of the Executive.

It is important for the efficacy of NHS LA that there is a sufficiently large pool of suitably knowledgeable persons from which appointments to the posts of chairman and non-officer member may be made. The Department considers NHS LA's effectiveness can be further enhanced by the ability to recruit candidates from the categories of people brought into scope by these Regulations. It is anticipated such candidates will have skills and knowledge of the health care system which could help provide valuable oversight of the NHSLA's work.

Procedures exist for NHSLA to manage such conflicts that might arise from time to time from the appointment of a chairman or non-officer member in the categories of person in respect of which the disqualification is removed.

Candidates who apply for public appointments to the NHSLA are required to declare any actual or potential conflicts of interest as part of their written application. The question is asked again at interview to all candidates shortlisted. Failure to disclose a conflict of interest may become grounds for an appointment to be terminated.

- Consolidation

7.2 Both Welsh Ministers and the Secretary of State have powers in relation to the making of the 1995 Regulations and amendments to them. There are currently no immediate plans to consolidate the 1995 Regulations but this is being kept under review.

8. Consultation outcome

8.1 No separate consultation exercise was conducted, as this instrument widens the scope of the benefits to all, thereby enhancing the NHSLA's capability.

9. Guidance

9.1 Guidance will be provided in the relevant recruitment materials, as and when the role of Chairman or non-officer member of the NHS Litigation Authority becomes vacant.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as no cost to the business or voluntary sectors is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 Successful implementation of this instrument will be assessed using qualitative and quantitative evaluation, following any such recruitment exercise for the role of Chairman or non-officer member of the NHS Litigation Authority.

13. Contact

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