

**2006 No. 2380**

**PUBLIC HEALTH**

**NATIONAL HEALTH SERVICE, ENGLAND**

**SOCIAL CARE**

**The Appointments Commission Regulations 2006**

*Made - - - - 4th September 2006*

*Laid before Parliament 5th September 2006*

*Coming into force - - 1st October 2006*

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 65 and 79(3) of, and paragraphs 2(b) and (d), 3(3)(b), 7(1) and (2), 10(3)(c), (5) and (6), and 18(2)(b) of Schedule 4 to, the Health Act 2006(a):

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Appointments Commission Regulations 2006 and shall come into force on 1st October 2006.

(2) In these Regulations—

“the 1977 Act” means the National Health Service Act 1977(b);

“the Act” means the Health Act 2006;

“the Commission” means the Appointments Commission(c);

“commissioner” means a health and social care commissioner(d);

“the chairman” means the chairman of the Commission;

“executive member” means an executive member of the Commission(e);

“Executive Committee” means a committee of a Primary Care Trust appointed under regulation 9(1) of the Primary Care Trusts (Membership and Procedure) Regulations 2000(f);

“the FHSA” means the Family Health Service Appeal Authority constituted under section 49S of the 1977 Act;

“health service body” means—

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(a) 2006 c. 28.

(b) 1977 c.49.

(c) The Appointments Commission was established by section 57(1) of the Act.

(d) See paragraph 10(3)(c) and (4) of Schedule 4 to the Act.

(e) See paragraph 2(d) of Schedule 4 to the Act.

(f) S.I. 2000/89, to which there are no relevant amendments.

- (a) a Strategic Health Authority(a), Special Health Authority(b), Primary Care Trust(c), Local Health Board(d), NHS trust(e) or NHS foundation trust(f),
  - (b) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978(g), or the Scottish Dental Practice Board, the Common Service Agency for the Scottish Health Service or an NHS trust constituted under, respectively, sections 4, 10 or 12A of that Act(h),
  - (c) the Secretary of State,
  - (d) the Commission for Healthcare Audit and Inspection(i),
  - (e) the Dental Practice Board constituted under section 37(1) of the 1977 Act(j),
  - (f) the Health Protection Agency(k),
  - (g) the Independent Regulator of NHS Foundation Trusts(l),
  - (h) the National Assembly for Wales,
  - (i) the Wales Centre for Health(m),
  - (j) the Northern Ireland Central Services Agency for Health and Social Services established under the Health and Personal Social Services (Northern Ireland) Order 1972(n),
  - (k) a special health and social services agency established under the Health and Personal Services (Special Agencies) (Northern Ireland) Order 1990(o),
  - (l) a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972,
  - (m) a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991(p),
  - (n) the Department of Health, Social Services and Public Safety for Northern Ireland,
  - (o) a body in relation to which a direction has been given under section 58, 60 or 61 of the Act(q), or
  - (p) a body which falls within paragraph (3);
- “health service hospital” has the meaning given by section 128(1) of the 1977 Act;
- “non-executive member” means a non-executive member of the Commission(r);
- “national NHS disqualification” means—

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- (a) See section 8 of the 1977 Act.
  - (b) See section 11 of the 1977 Act.
  - (c) See section 16A of the 1977 Act.
  - (d) See section 16BA of the 1977 Act.
  - (e) See section 5 of the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”).
  - (f) See section 1 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43) (“the 2003 Act”).
  - (g) 1978 c.29.
  - (h) Section 4 was amended by section 12(3) of, and Schedule 3 to, the Health and Medicines Act 1988 (c.49) (“the 1988 Act”); section 10 was amended by paragraph 2 of Schedule 6 to the Health Services Act 1980 (c.53) and Schedule 10 to the 1990 Act; section 12A was inserted by section 31 of the 1990 Act and amended by section 46(1) of the 1999 Act.
  - (i) See section 41 of the 2003 Act.
  - (j) 1977 c.49. Section 37(1) was amended by section 12 of the 1988 Act and repealed in part by section 25 of, and Schedule 3 to, that Act, and amended by section 2(1) of, and paragraph 26 of Schedule 1 to, the 1995 Act and section 1(3) of, and paragraphs 1 and 17 of Schedule 1 to, the 2002 Act. The Dental Practice Board was abolished by sections 181 and 196 of, and Schedule 14 to, the 2003 Act.
  - (k) See section 1(1) of the Health Protection Agency Act 2004 (c.17).
  - (l) See section 2 of the 2003 Act.
  - (m) See the Health (Wales) Act 2003 (c.4).
  - (n) S.I. 1972/1265 (N.I. 14).
  - (o) S.I. 1990/247 (N.I. 3).
  - (p) S.I. 1991/194 (N.I. 1).
  - (q) A list of the bodies referred to in paragraphs (o) and (p) of the definition of “health service body” is available from the Appointments Commission, Blenheim House, West One, Duncombe Street, Leeds LS1 4PL (telephone 0113 394 2950).
  - (r) See paragraph 2(b) of Schedule 4 to the Act.

- (a) a decision made by the FHSAA under section 49N of the 1977 Act<sup>(a)</sup> or under regulations corresponding to that section made under section 28X(4) of that Act<sup>(b)</sup> (persons performing primary medical and dental services), or
- (b) a decision by the NHS Tribunal which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4)(b) of the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2001<sup>(c)</sup> or regulation 6(4)(b) of the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2002<sup>(d)</sup>;

“the NHS Tribunal” means the Tribunal constituted under section 46 of the 1977 Act for England and Wales;

“primary care list” means—

- (a) a list referred to in section 49N(1)(a) to (c) of the 1977 Act;
- (b) a list of persons undertaking to provide general medical services prepared in accordance with regulations under section 29 of the 1977 Act<sup>(e)</sup> as the list existed on or before 31st March 2004,
- (c) a list of persons undertaking to provide general dental services prepared in accordance with regulations under section 36 of the 1977 Act<sup>(f)</sup> as the list existed on or before 31st March 2006,
- (d) a list of persons approved by a Primary Care Trust for the purpose of assisting in the provision of general medical services prepared in accordance with regulations under section 43D(1) of the 1977 Act<sup>(g)</sup> as the list existed on or before 31st March 2004,
- (e) a list of persons approved by a Primary Care Trust for the purpose of assisting in the provision of general dental services prepared in accordance with regulations under section 43D(1) of the 1977 Act as the list existed on or before 31st March 2006, or
- (f) a services list referred to in section 8ZA(1)(a) of the National Health Service (Primary Care) Act 1997<sup>(h)</sup> as the list existed on or before 31st March 2004;

“sentence of imprisonment” does not include a committal—

- (a) in default of payment of any sum of money,
- (b) for want of sufficient distress to satisfy any sum of money, or
- (c) for failure to do or abstain from doing anything required to be done or left undone.

(3) A body falls within this paragraph if arrangements providing for the Commission to assist in the exercise of any power relating to appointment of the body’s chairman, or any non-executive member of the body, have been entered into under section 63(4) of the Act and remain in force.

## Membership of the Commission

2.—(1) For the purposes of paragraph 2(b) of Schedule 4 to the Act, the prescribed number of non-executive members is five.

(2) For the purposes of paragraph 2(d) of Schedule 4 to the Act, the prescribed number of executive members is four.

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(a) Section 49N was inserted by section 25 of the 2001 Act and amended by section 2(5) of, and paragraphs 1 and 25 of Schedule 2 to, the 2002 Act and section 184 of, and paragraph 24(a) and (b) of Schedule 11 to, the 2003 Act.

(b) Section 28X was inserted by section 179(1) of the 2003 Act and amended by article 2 of and paragraphs 1 and 17 of Schedule 1 to, S.I. 2006/1407.

(c) S.I. 2001/3744, as modified and amended by S.I. 2002/2469.

(d) S.I. 2002/1920, as amended by S.I. 2004/865.

(e) Section 29 was repealed by section 196 of, and Schedule 14 to, the 2003 Act.

(f) Section 36 was repealed by section 196 of, and Schedule 14 to, the 2003 Act.

(g) 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; section 43D(10)(a) and (b) was repealed by, and other parts of section 43D(10) were amended (in relation to Wales for certain purposes on a date to be appointed) by section 184 of, and paragraph 20 of Schedule 11 to, the 2003 Act.

(h) 1997 c.46; section 8ZA was inserted by section 26(2) of the 2001 Act and was amended by section 4(3) of, and paragraphs 1 and 3 of Schedule 3 to, the 2002 Act; and was repealed by section 196 of, and Schedule 14 to, the 2003 Act in relation to England and, in relation to Wales, repealed for certain purposes and otherwise repealed on a date to be appointed.

## Membership of the Health and Social Care Appointments Committee

3. The prescribed maximum number of persons to be appointed to the Health and Social Care Appointments Committee<sup>(a)</sup> for the purposes of paragraph 10(3)(c) of Schedule 4 to the Act is nine<sup>(b)</sup>.

## Period of office of chairman, non-executive members and commissioners

4.—(1) Subject to regulation 7 (termination of office of chairman, non-executive members and commissioners), the period of office of the chairman, non-executive members and commissioners shall be such period, not exceeding four years, as the Secretary of State shall specify on making the appointment.

(2) Where the chairman or a non-executive member ceases to hold office on the expiry of his period of office, or under regulation 7, he shall cease to be a member of the Commission.

(3) Subject to regulation 5 (disqualification for appointment), the chairman and any non-executive member or commissioner shall, on the expiry of his period of office, be eligible for re-appointment.

## Disqualification for appointment

5.—(1) Subject to regulation 6 (cessation of disqualification), a person shall be disqualified for appointment as the chairman or as a non-executive member or commissioner if—

- (a) he has, within the preceding 5 years—
  - (i) been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom would constitute a criminal offence; and
  - (ii) been sentenced to a sentence of imprisonment (whether suspended or not), and neither the conviction has been quashed nor the sentence reduced to a sentence other than a sentence of imprisonment (whether suspended or not) on appeal;
- (b) he is the subject of a bankruptcy restrictions order<sup>(c)</sup> or interim bankruptcy restrictions order;
- (c) he has had a sequestration of his estate awarded and has not been discharged;
- (d) he has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- (e) he—
  - (i) is the subject of a national NHS disqualification,
  - (ii) was refused nomination or approval to fill a vacancy for a medical practitioner pursuant to regulations made under section 29B(2A) of the 1977 Act<sup>(d)</sup> and was not subsequently nominated or approved or included in a primary care list,
  - (iii) has been refused admission to a primary care list under section 49F of the 1977 Act<sup>(e)</sup>, or on grounds corresponding to any of the conditions referred to in section 49F(2), (3) or (4) of the 1977 Act, and has not subsequently been included in a primary care list,
  - (iv) is conditionally included in a primary care list<sup>(f)</sup>,
  - (v) has been removed from a primary care list under section 49F of the 1977 Act, or on grounds corresponding to any of the conditions referred to in section 49F(2), (3) or (4) of the 1977 Act, or by a direction of the NHS Tribunal, and has not subsequently been included in such a list,

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(a) The Health and Social Care Appointments Committee is established by paragraph 10(1) of Schedule 4 to the Act.

(b) By paragraph 10(4) of Schedule 4 to the Act, the persons so appointed are to be known as “health and social care commissioners”. See also the definition of “commissioner” in regulation 1(2).

(c) See Schedule 4A to the Insolvency Act 1986 (c.45), inserted by Schedule 20 to the Enterprise Act 2002 (c.40). See also Schedule 2A to the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) inserted by Schedule 5 to the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)).

(d) Section 29B is repealed by section 196 of, and Schedule 14 to, the 2003 Act.

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

(f) See section 43ZA of the Act for conditional inclusion. See also sections 28X(5) and 43D(4) of the 1977 Act and section 8ZA(4)(a) of the 1997 Act.

- (vi) is contingently removed from a primary care list<sup>(a)</sup>, or
  - (vii) is suspended from a primary care list<sup>(b)</sup> or treated as so suspended by virtue of regulation 6(2) of the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2001 or regulation 6(2) of the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2002,
- and in this sub-paragraph any reference to a provision in the 1977 Act includes a reference to the provision corresponding to that provision in legislation relating to Scotland or Northern Ireland;
- (f) he is a chairman or a member of—
    - (i) a Strategic Health Authority,
    - (ii) a Special Health Authority,
    - (iii) a Primary Care Trust, or
    - (iv) a Local Health Board;
  - (g) he is a chairman or a director of an NHS trust;
  - (h) he is a chairman or a non-executive director of an NHS foundation trust;
  - (i) he is a chairman or a member of an Executive Committee;
  - (j) he is a person whose tenure of office as the chairman or as a member, director or governor of a health service body 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 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 for a period of three months or more,
    - (iii) he failed to declare a pecuniary interest or withdraw from consideration of any matter in respect of which he had a pecuniary interest;
  - (k) he holds any paid appointment or office with a health service body;
  - (l) he holds an appointment as—
    - (i) a special trustee for a health service hospital,
    - (ii) a trustee for an NHS trust or NHS foundation trust, or
    - (iii) a trustee for a Primary Care Trust;
  - (m) he is the chairman or another member of the Independent Regulator of NHS Foundation Trusts;
  - (n) he is subject to a disqualification order under the Company Directors Disqualification Act 1986<sup>(c)</sup>, the Companies (Northern Ireland) Order 1989<sup>(d)</sup> or the Company Directors Disqualification (Northern Ireland) Order 2002<sup>(e)</sup> or to an order made under section 429(2)(b) of the Insolvency Act 1986<sup>(f)</sup> (disabilities on revocation of administration order against an individual);
  - (o) 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 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

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(a) See section 49G of the Act for contingent removal. See also sections 28X(4) and 43D(6) of the 1977 Act.

(b) See section 49I of the 1977 Act for suspension. See also sections 28X(4) and 43D(6) of the 1977 Act and section 8ZA(7) of the 1997 Act.

(c) 1986 c.46.

(d) S.I. 1989/2404 (N.I. 18).

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

(f) 1986 c.45.

- (ii) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(a)</sup> (powers of Court of Session to deal with management of charities) from being concerned in the management or control of any body;

- (iii) removed as a director, trustee or committee member of a registered social landlord<sup>(b)</sup>.

(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)(d), a person shall not be treated as having been in paid employment by reason only of his having been—

- (a) the chairman or a non-executive director of an NHS trust;
- (b) the chairman, or a governor or non-executive director, of an NHS foundation trust; or
- (c) in the case of any other health service body, the chairman or a non-officer member of the body.

### **Cessation of disqualification**

6.—(1) Subject to paragraph (2), a person who is disqualified under regulation 5(1)(d) or (o) may, after the expiry of two years beginning on the date on which he was dismissed or removed, 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 5(1)(j), the disqualification shall cease on the expiry of the period of two years beginning on the date of the termination of his tenure of office or such longer period as the Secretary of State specifies when terminating his period of office, but the Secretary of State may, on application being made to him by that person, reduce the period of disqualification.

### **Termination of office of chairman, non-executive members and commissioners**

7.—(1) The chairman or a non-executive member or commissioner may resign his office at any time during his period of office by giving notice in writing to the Secretary of State.

(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 Commission or of the health service that the chairman or a non-executive member or commissioner should continue to hold office, the Secretary of State may immediately remove that person from the office of chairman, non-executive member or commissioner (as the case may be) by giving him notice in writing to that effect.

(3) If the chairman or a non-executive member fails to attend any meeting of the Commission for a period of three months the Secretary of State shall immediately remove him from 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 Commission within such a period as the Secretary of State considers reasonable.

(4) If a commissioner fails to attend any meeting of the Health and Social Care Appointments Committee for a period of three months the Secretary of State shall immediately remove him from 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 that committee within such a period as the Secretary of State considers reasonable.

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<sup>(a)</sup> 1990 c.40.

<sup>(b)</sup> See paragraph 4 of Schedule 1 to the Housing Act 1996 (c.52).

(5) Where a person has been appointed to be the chairman or a non-executive member or commissioner, and he becomes disqualified for appointment under regulation 5, he shall notify the Secretary of State in writing of such disqualification.

(6) Where a person has been appointed to be the chairman or a non-executive member or commissioner, and it comes to the notice of the Secretary of State (whether under paragraph (5) or otherwise) that at the time of his appointment or later he was disqualified for appointment under regulation 5—

- (a) the Secretary of State shall declare that the person in question was not duly appointed or (as the case may be) became disqualified after appointment;
- (b) the Secretary of State shall remove him from office by notifying him in writing to that effect; and
- (c) upon receipt of such notification, he shall cease to act as chairman, non-executive member or commissioner.

(7) This paragraph applies to any provision made by the Commission under paragraph 11 of Schedule 4 to the Act that requires the chairman or a non-executive member or commissioner—

- (a) to disclose any pecuniary interest in any contract, proposed contract or other matter that is the subject of consideration of any meeting of the Commission, or of a committee or sub-committee of the Commission; or
- (b) not to take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

(8) Where it appears to the Secretary of State that the chairman or a non-executive member or commissioner has failed to comply with a provision to which paragraph (7) applies, the Secretary of State may immediately remove him from office by giving him notice in writing to that effect.

### **Suspension of chairman, non-executive members and commissioners**

**8.—**(1) The Secretary of State may suspend the chairman or a non-executive member or commissioner from office while the Secretary of State considers whether—

- (a) to remove him from office under regulation 7(2) or (8); or
- (b) the person is disqualified for appointment under regulation 5, or was so disqualified for the purposes of regulation 7(6).

(2) The Secretary of State shall notify a person suspended under paragraph (1) of the decision to suspend him from office, and the decision shall take effect upon receipt of such notification.

(3) Subject to paragraphs (4) and (5), a period of suspension under paragraph (1) shall not exceed 6 months.

(4) The Secretary of State may at any time review a suspension and shall review a suspension after 3 months if so requested by the person who has been suspended.

(5) Where the Secretary of State reviews a suspension he may—

- (a) revoke the suspension, in which case it shall cease to have effect, or
- (b) suspend the person from office for a further period of not more than 6 months from the expiry of the current period of suspension.

### **Remuneration and allowances of chairman, non-executive members and commissioners**

**9.—**(1) The Secretary of State may determine the amount of the remuneration and allowances that the Commission is to pay the chairman, non-executive members and commissioners.

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

### **Functions of the Commission**

**10.—**(1) The Commission may—

- (a) administer schemes relating to the payment, to chairmen and non-executive members of relevant bodies, of remuneration and allowances falling to be determined by the Secretary of State;
- (b) publish or otherwise make available information as to the terms and conditions applying to chairmen and non-executive members of relevant bodies, including information as to such remuneration and allowances;
- (c) assist the Secretary of State in connection with the implementation of decisions as to the payment of such remuneration and allowances;
- (d) advise the Secretary of State in connection with the payment of such allowances to such persons;
- (e) advise the Secretary of State generally on matters relating to appointments to—
  - (i) relevant bodies;
  - (ii) NHS foundation trusts; or
  - (iii) bodies which fall within paragraph (3).

(2) For the purposes of paragraph (1), “relevant body” means a body in relation to which a direction may be given under section 58, 60 or 61 of the Act.

(3) A body falls within this paragraph if arrangements providing for the Commission to assist in the exercise of any power relating to appointment of the body’s chairman, or any non-executive member of the body, may be entered into under section 63(4) of the Act.

#### **Payments by Secretary of State**

**11.** The functions that the Commission may exercise under regulation 10(1) are prescribed as functions for the purposes of paragraph 18(2)(b) of Schedule 4 to the Act (prescribed functions in respect of the performance of which the Secretary of State may make annual payments to the Commission under paragraph 18(1)(a) of that Schedule).

#### **Revocation**

**12.** The National Health Service Appointments Commission Regulations 2001<sup>(a)</sup> are hereby revoked.

Signed by authority of the Secretary of State for Health

4th September 2006

*Andy Burnham*  
Minister of Health  
Department of Health

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<sup>(a)</sup> S.I. 2001/794.

## **EXPLANATORY NOTE**

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

These Regulations make provision concerning the membership and functions of the Appointments Commission, which is established under section 57 of the Health Act 2006.

The Regulations prescribe the number of members of the Commission (regulation 2) and of persons to be appointed to the Health and Social Care Appointments Committee of the Commission (regulation 3). They provide for the period of office of the chairman and non-executive members of the Commission and of persons appointed to the Health and Social Care Appointments Committee (regulation 4), for disqualification for appointment (regulations 5 and 6), termination of office (regulation 7) and suspension from office (regulation 8), and for the Secretary of State to determine their remuneration and allowances (regulation 9). The Regulations confer functions on the Commission (in addition to functions that may otherwise be conferred by or under the Act) in relation to appointments to certain bodies and matters relating to such appointments (regulation 10). They also make provision for payments by the Secretary of State to the Commission (in addition to provision made for such payments under the Act) (regulation 11).

The Regulations revoke certain regulations relating to the NHS Appointments Commission, which is abolished by section 57(4) of the Health Act 2006 (regulation 12).

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**PUBLIC HEALTH**

**NATIONAL HEALTH SERVICE, ENGLAND**

**SOCIAL CARE**

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