SCOTTISH STATUTORY INSTRUMENTS

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(**1**) 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:

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(**2**);

"the 1968 Act" means the Social Work (Scotland) Act 1968(**3**);

"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.

(**1**) 2001 asp 8.
(**2**) 1938 c. 73.
(**3**) 1968 c. 49.

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:–

(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(**4**);

(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(**5**);

(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(**6**) extends;

(g) a registered osteopath as defined by section 41 of the Osteopaths Act 1993(**7**); or

(h) a registered chiropractor as defined by section 43 of the Chiropractors Act 1994(**8**).

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–

(**4**) 1978 c. 29.
(**5**) 1989 c. 44.
(**6**) 1960 c. 66.
(**7**) 1993 c. 21.
(**8**) 1994 c. 17.

(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;

(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–