SCOTTISH STATUTORY INSTRUMENTS

2001 No. 301

NATIONAL HEALTH SERVICE

The National Health Service Trusts (Membership and Procedure) (Scotland) Regulations 2001

Made - - - -	*6th September 2001*
Laid before the Scottish Parliament - - - -	*7th September 2001*
Coming into force - -	*28th September 2001*

The Scottish Ministers, in exercise of the powers conferred by sections 12A(5), 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

PART I

GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service Trusts (Membership and Procedure) (Scotland) Regulations 2001 and shall come into force on 28th September 2001.

(2) In these Regulations unless the context otherwise requires–

"the 1977 Act" means the National Health Service Act 1977(**2**);

"the Act" means the National Health Service (Scotland) Act 1978;

"the Charity Commissioners" means the Charity Commissioners constituted in accordance with section 1 of the Charities Act 1993(**3**);

(**1**) 1978 c. 29; section 12A was inserted by the National Health Service and Community Care Act 1990 (c. 19) ("the 1990 Act"), section 31 and amended by the National Health Service (Primary Care) Act 1997 (c. 46) ("the 1997 Act"), Schedule 2, paragraph 46 and by the Health Act 1999 (c. 8) ("the 1999 Act"), sections 46 and 48 and Schedule 4, paragraph 45; section 105(7), which was amended by the Health Services Act 1980 (c. 53) ("the 1980 Act"), Schedule 6, paragraph 5 and Schedule 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41)("the 1983 Act"), Schedule 9, paragraph 24, and by the 1999 Act, Schedule 4, paragraph 60, contains provisions relevant to the exercise of the statutory powers under which these Regulations are made; section 108(1) contains a definition of "regulations" relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(**2**) 1977 c. 49.

(**3**) 1993 c. 10.

"chief finance officer" in relation to a NHS trust means the person or persons holding the post of Director of Finance of the;

"chief officer" in relation to a NHS trust means the person or persons holding the post of Chief Executive of the trust;

"committee" means a committee of a NHS trust and includes sub-committee;

"contract" includes any arrangement including a NHS contract;

"director" in relation to a NHS trust includes its chairperson, trustees and executive directors, which have the meanings indicated by section 12A(3)(a) of the Act(**4**);

"health service body" means a person or body specified in section 17A(2) of the Act(**5**);

"management team" means the board of directors of a NHS trust designated by section 12A(3)(a) of the Act;

"meeting" means a meeting of the management team or of any committee;

"NHS trust" means a National Health Service trust established under section 12A of the Act.

(3) A reference in these Regulations to a numbered regulation is to the regulation bearing that number in these Regulations and a reference in a regulation to a numbered paragraph is to the paragraph bearing that number in that regulation and a reference to a numbered Schedule is to a Schedule bearing that number to these Regulations.

PART II

MEMBERSHIP: CHAIRPERSON AND TRUSTEES

Appointment and term of office

2.—(1) The chairperson and trustees of a NHS trust shall be appointed by the Scottish Ministers.

(2) The term of office of the chairperson and trustees of a NHS trust shall, subject to regulation 3, be for such period as the Scottish Ministers shall specify on making the appointment.

(3) After the expiration of their term of office, the chairperson or a trustee of a NHS trust shall, subject to regulation 4, be eligible for re-appointment.

Resignation and removal

3.—(1) The chairperson or a trustee of a NHS trust may resign office at any time during the period of the appointment by giving notice in writing to the Scottish Ministers to this effect.

(2) If the Scottish Ministers consider that it is not in the interests of the health service that a person who is appointed as chairperson or trustee of a NHS trust should continue to hold that office they may forthwith terminate that person's appointment.

(3) If a chairperson or trustee of a NHS trust has not attended any meeting of the management team, or of any committee of the trust of which they are a member, for a period of six consecutive months, the Scottish Ministers shall forthwith terminate that person's appointment unless the Scottish Ministers are satisfied that–

(a) the absence was due to illness or other reasonable cause; and

(b) the chairperson or trustee will be able to attend meetings within such period as the Scottish Ministers consider reasonable.

(**4**) Section 12A(3) was inserted by the 1990 Act, section 31, and amended by the 1999 Act, section 48.
(**5**) Section 17A(2) was inserted by the 1990 Act, section 30 and amended by the 1999 Act, Schedule 1.

(4) Where, during the period of their appointment, a trustee of a NHS trust is appointed chairperson of the trust, their period of office as trustee shall terminate on the date when their appointment as chairperson takes effect.

(5) Where a chairperson or trustee becomes disqualified in terms of regulation 4 that person shall forthwith cease to hold such appointment.

Disqualification

4.—(1) Subject to paragraphs (2) and (3) a person shall be disqualified for appointment as the chairperson or a trustee of a NHS trust if–

(a) they have within the period of five years immediately preceding the proposed date of appointment been convicted in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic of any offence in respect of which they have received a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;

(b) their estate has been sequestrated in Scotland or they have otherwise been made or become bankrupt elsewhere than in Scotland, they have granted a trust deed for the benefit of their creditors, or entered into any arrangement with their creditors, or a curator bonis or judicial factor has been appointed over their affairs;

(c) they have resigned or been removed or dismissed, otherwise than by reason of redundancy, from any paid employment or office with a health service body;

(d) they are a person whose appointment as the chairperson, member or director of a health service body has been terminated other than by the expiration of their term of office; or

(e) they are a chairperson, member, director or employee of a health service body;

(f) they are a general medical practitioner, who is providing general medical services in accordance with arrangements made under section 19 of the Act(**6**) or personal medical services in accordance with an agreement made under section 17C of the Act(**7**), or general dental practitioner, who is providing general dental services in accordance with arrangements made under section 25 of the Act, or an employee of either of those;

(g) they are a general medical practitioner or general dental practitioner, who is providing personal medical services or, as the case may be, personal dental services, under a pilot scheme entered into pursuant to Part I of the National Health Service (Primary Care) Act 1997(**8**), or an employee of either of those;

(h) they have had their name removed, by a direction under section 29 of the Act(**9**) from any list prepared under Part II of the Act and have not subsequently had their name included in such a list;

(i) they are a person whose name has been included in any list prepared under Part II of the Act, and whose name has been withdrawn from the list on their own application;

(j) they are a general medical practitioner, who is providing general medical services in accordance with arrangements made under section 29 of the 1977 Act(**10**) or general dental

(**6**) Section 19 was amended by the Health Services Act 1980 (c. 53), section 7, the 1983 Act, section 14(2), the Health and Medicines Act 1988 (c. 49), section 17(1) and Schedule 7, paragraph 2, the 1990 Act, section 37, the Medical (Professional Performance) Act 1995 (c. 51) ("the 1995 Act"), Schedule and the 1997 Act, Schedule 2.

(**7**) Section 17C was inserted by the 1997 Act, section 21.

(**8**) 1997 c. 46.

(**9**) Section 29 was amended by the Health and Social Security Act 1984 (c. 48), Schedule 8 and by the National Health Service (Amendment) Act 1995 (c. 31), section 7 and the Schedule.

(**10**) Section 29 of the 1977 Act was amended by Health Authorities Act 1995 (c. 17), Schedule 1, the 1995 Act, Schedule and the 1997 Act, Schedule 2, paragraph 71.

practitioner, who is providing general dental services in accordance with arrangements made under section 35 of the 1977 Act(**11**), or an employee of either of those;

(k) they have had their name removed, by a direction under section 46 of the 1977 Act(**12**) from any list prepared under Part II of the 1977 Act and have not subsequently had their name included in such a list;

(l) they are a person whose name has been included in any list prepared under Part II of the 1977 Act, and whose name has been withdrawn from the list on their own application;

(m) they are a person who is subject to a disqualification order under the Company Directors Disqualification Act 1986(**13**); or

(n) they are a person who has been removed from the position of trustee of a charity, whether by the court or by the Charity Commissioners.

(2) For the purpose of paragraph (1)–

(a) the disqualification attaching to a person whose estate has been sequestrated shall cease if and when–

(i) the sequestration of their estate is recalled or reduced; or

(ii) the sequestration is discharged;

(b) the disqualification attaching to a person by reason of their having been adjudged bankrupt shall cease if and when–

(i) the bankruptcy is annulled; or

(ii) they are discharged;

(c) the disqualification attaching to a person in relation to whose estate a judicial factor has been appointed shall cease if and when–

(a) that appointment is recalled; or

(b) the judicial factor is discharged;

(d) the disqualification attaching to a person who has granted a trust deed or entered into an arrangement with their creditors shall cease if and when that person pays their creditors in full or on the expiry of five years from the date of their granting the deed or entering into the arrangement.

(3) The Scottish Ministers may direct that in relation to any individual person or NHS trust any disqualification so directed shall not apply in relation thereto.

(4) For the purposes of paragraph (1)(a) the date of conviction shall be deemed to be the date on which the days of appeal expire without any appeal having been lodged, or if an appeal has been made, the date on which the appeal is finally disposed of or treated as having been abandoned.

Appointment and powers of vice-chairperson

5.—(1) For the purpose of enabling the business of the NHS trust to be conducted in the absence of the chairperson, the directors of a trust shall appoint one of the trustees to be vice-chairperson for such a period, not exceeding the remainder of their period as director of the trust, as they may specify on appointment.

(2) Any director so appointed may at any time resign from the office of vice-chairperson by giving notice in writing to the chairperson, and the directors of the trust may appoint another trustee as vice-chairperson in accordance with paragraph (1).

(**11**) Section 35 was amended by the Health Authorities Act 1995 (c. 17), Schedule 1 and the 1997 Act, Schedule 2, paragraph 72.
(**12**) Section 46 was amended by the Health Authorities Act 1995 (c. 17), Schedule 1 and the National Health Service (Amendment) Act 1995 (c. 31), sections 1, 2 and 3.
(**13**) 1986 c. 46.

(3) Where the chairperson of a NHS trust has died or has ceased to hold office or where that person has been unable to perform their duties as chairperson owing to illness, absence from Scotland or any other cause, the vice-chairperson shall take the place of the chairperson in the conduct of the business of the trust and references to the chairperson shall, so long as there is no chairperson able to perform their duties, be taken to include references to the vice-chairperson.

PART III

MEMBERSHIP: EXECUTIVE DIRECTORS

Appointment and term of office

6.—(1) The executive directors of a NHS trust shall include–

(a) the chief officer;

(b) the chief finance officer;

(c) except in the case of a NHS trust which does not provide services directly to patients

(i) medical or a dental practitioner; and

(ii) registered nurse or midwife within the meaning of section 10 (7) of the Nurses, Midwives and Health Visitors Act 1979(**14**).

(2) Where one person is appointed jointly with one or more others to a post in a NHS trust the holder of which qualifies as such to be an executive director, those persons shall become or be appointed jointly as an executive director, and shall count for the purposes of these Regulations as one person.

(3) Subject to regulation 7, an executive director of a NHS trust who is not the chief officer or chief finance officer shall hold office as such during such period as is specified on appointment but for no longer than the period during which they hold a post in the NHS trust.

(4) An executive director of a NHS trust, other than the chief officer and the chief finance officer, shall on the termination of the period of their appointment as such a director be eligible for re-appointment.

(5) An executive director of a NHS trust who holds such office by virtue of being the chief officer or chief finance officer, of the trust shall hold such office for so long as they are chief officer or as the case may be chief finance officer, and shall cease to hold such office forthwith and without notice upon ceasing to be chief officer or the chief finance officer.

Resignation and removal

7.—(1) Except in the case of the chief officer or chief finance officer, if the NHS trust considers that it is not in the interests of the NHS trust that an executive director of the trust should continue to hold office as such then the NHS trust shall forthwith terminate the appointment of that person as a director.

(2) An executive director of a NHS trust who is suspended from their post as an employee of the trust shall be suspended automatically and without notice from performing their functions as a director of the NHS trust during the period of their suspension as such employee.

(3) Except in the case of the chief officer or chief finance officer, an executive director of a NHS trust may resign office as director at any time during the period for which they were appointed as director by giving notice in writing to that effect to the NHS trust.

(**14**) 1979 c. 36.