EXPLANATORY MEMORANDUM TO

THE HEALTH AUTHORITIES (MEMBERSHIPAND PROCEDURE) AMENDMENT REGULATIONS 2011

2011 No. 2200

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 The Health Authorities (Membership and Procedure) Amendment Regulations 2011 ("the Regulations") amend the Health Authorities (Membership and Procedure) Regulations 1996 that make provision about appointments to, and the procedure of, Strategic Health Authorities (SHAs).

2.2 The Regulations provide for the following:

- Changing the disqualification provisions to enable an SHA chair or member (whether an officer or non-officer member) to be appointed to more than one SHA Board;
- The power for SHA boards or the Secretary of State (depending on the circumstances) to appoint two vice-chairs (rather than one);
- An increase in the number of SHA non-officer members from seven to eight (this does not include the chair who is also a non-officer member);
- Changing the disqualification provisions to enable a chair or member of a Special Health Authority (SpHA) to be appointed to be a chair or non-officer member of a SHA.

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

None

4. Legislative Context

4.1 The Health Authorities (Membership and Procedure) Regulations 1996 (the 1996 Regulations) make provision concerning the membership and procedure of SHAs in England, established under the National Health Service Act 2006.

4.2 The Regulations amend the 1996 Regulations by removing the restriction which prevented chairs, non-officer and officer members of SHAs from being appointed to more than one SHA board at any one time; and by changing the disqualification provisions to enable a chair or member of a Special Health Authority (SpHA) to be appointed to be a chair or non-officer member of a SHA.

4.3 They also provide powers to enable two vice-chairs to be appointed to a SHA by the chair and members, or by the Secretary of State if the chair has been suspended by the Secretary of State, and sets out which of the two vice-chairs (if there are two) is to carry out the chair's functions in certain circumstances, such as the chair's suspension, death or absence. Additionally, the number of non-officer members on a SHA board is raised to eight (plus the Chair).

5. Territorial Extent and Application

5.1 This instrument applies to England.

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

7.1 The Government's response to the NHS Future Forum report (14 June 2011) announced that the ten SHAs will be formed in to a smaller number of clusters for management purposes. A further announcement (14 July 2011) was made by David Nicholson, Chief Executive of the NHS, stating that four clusters of SHAs would be created, with single executive teams to consolidate leadership capacity whilst continuing, legally, to have ten separate SHAs.

7.2 The amendments made by these Regulations to enable SHA chairs, non-officer and officer members to hold office on more than one SHA Board; and to enable two vice-chairs and an additional non-executive member to be appointed to an SHA board, will help in the practical management of SHA board membership during the transition period for the NHS. To enable there to be further flexibility, and to help maintain stability for NHS organisations during the transition of the NHS, these Regulations will also enable a chair or member of a SpHA to be appointed as a chair or non-officer member of a SHA.

8. Consultation outcome

8.1 Kathryn Riddle, Chair of Yorkshire & Humber SHA, was asked by the NHS Management Board to lead on consultation with SHAs on the new cluster arrangements. DH has also consulted with the Appointments Commission who make appointments to SHAs and SpHAs on behalf of the Secretary of State for Health. SHAs and the Appointments Commission agree that the policy will benefit the NHS by ensuring boards remain effective, quorate and functional. There is no legal requirement to hold a formal consultation prior to amending the 1996 Regulations.

9. Guidance

9.1 Notification of the change in policy will be sent to current chairs, non-officer and officer members of SHAs, and to chairs and members of SpHAs.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sectors is foreseen. The impact on the public sector relates to the current chairs, non-officer and officer members of SHAs, and chairs and members of SpHAs.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The purpose of the Regulations is to ensure that SHA and SpHA boards remain effective, quorate and functional. SHAs will be abolished from April 2013.

12.2 The Appointments Commission will report to the Department of Health on cases where this policy is implemented.

13. Contact

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