SCOTTISH STATUTORY INSTRUMENTS

2001 No. 302

NATIONAL HEALTH SERVICE

The Health Boards (Membership and Procedure) (Scotland) Regulations 2001

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

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SCHEDULE: Meetings and proceedings of the Board and committees

The Scottish Ministers, in exercise of the powers conferred by sections 2(10), 105(7) and 108(1) of, and by paragraphs 2A, 4, 6 and 11 of Schedule 1 to the National Health Service (Scotland) Act 1978(**a**), 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 Health Boards (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 1997 Act" means the National Health Service Act 1977(**b**);

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

"Board" means a Health Board constituted under section 2(1) of the Act;

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

"Chief Officer" means the person or persons holding the post of Chief Executive;

"committee" means a committee of a Board and includes "sub-committee"

"contract" includes any arrangement including a NHS contract;

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

"meeting" means a meeting of the Board or of any committee;

"member" means a member of a Board and includes the chairperson;

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

(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 the Schedule is to the Schedule to these Regulations.

(a) 1978 c.29; section 105(7), which was amended by the Health Services Act 1980 (c.53) ("the 1980 Act"), Schedule 6, paragraph 5(1)(a) and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c.41) ("the 1983 Act"), Schedule 9, paragraph 24, contains provisions relevant to the exercise of the statutory powers under which these Regulations are made; section 108(1) contains definitions of "prescribed" and "regulations" relevant to the exercise of the statutory powers under which these Regulations are made; paragraph 2A of Schedule 1 was inserted by the National Health Service and Community Care Act 1990 (c.19) ("the 1990 Act"), Schedule 5, paragraph 2; paragraph 4 of Schedule 1 was amended by the 1990 Act, Schedule 5, paragraph 3; and paragraph 11 of Schedule 1 was amended by the 1980 Act, Schedule 6, paragraph 7 and Schedule 7 and by the 1990 Act, Schedule 5, paragraph 7. 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).

(b) 1977 c.49.

(c) 1993 c.10.

(d) Section 17A(2) was inserted by the 1990 Act, section 30 and amended by the Health Act 1999 (c.8), Schedule 1.

(e) Section 12A was inserted by the 1990 Act, section 31 and amended by the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2, paragraph 46 and by the Health Act 1999 (c.8), sections 46 and 48 and Schedule 4, paragraph 45.

PART II

MEMBERSHIP

Appointment and term of office

2.—(1) All members shall be appointed by the Scottish Ministers.

(2) The term of office of the members shall, subject to regulation 5, be for such period as the Scottish Ministers shall specify on making the appointment.

(3) After the expiration of a term of office a member shall, subject to regulation 6, be eligible for re-appointment.

University members

3. For the purposes of paragraph 2A of Schedule 1 to the Act(**a**) the Boards in which at least one of the persons appointed to be chairperson or a member must hold a post in a university with a medical or dental school are the Boards in Grampian, Greater Glasgow, Lothian and Tayside.

Remuneration of members

4. Remuneration may be paid, in accordance with such determination as may be made by the Scottish Ministers, under paragraph 4 of Schedule 1 to the Act(**b**), to the chairperson, a member appointed under paragraph 2A of Schedule 1 to the Act holding a post in a university and any of the other members, except any members holding the position of Chief Officer, Chief Finance Officer or Director of Public Health of a Board, or Chief Officer of a National Health Service trust.

Resignation and removal of members

5.—(1) A member may resign office at any time during the period of 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 member of a Board should continue to hold that office they may forthwith terminate that person's appointment.

(3) If a member has not attended any meeting of the Board, or of any committee 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 member will be able to attend meetings within such period as the Scottish Ministers consider reasonable.

(4) Where a member who was appointed for the purposes of paragraph 2A of Schedule 1 to the Act ceases to hold the post in a university with a medical or dental school, which was held at the time of appointment for those purposes, the Scottish Ministers may terminate the appointment of that person as a member.

(5) Where any member becomes disqualified in terms of regulation 6 that member shall forthwith cease to be a member.

Disqualification

6.—(1) Subject to paragraphs (2) and (3), a person shall be disqualified for being a member, 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 adjudged bankrupt elsewhere than in Scotland, they have granted a trust deed for the benefit of

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(a) Paragraph 2A was inserted by the 1990 Act, Schedule 5, paragraph 2.

(b) Paragraph 4 was amended by the 1990 Act, Schedule 5, paragraph 3.

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 been 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;

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

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

(g) 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;

(h) they have had their name removed, by a direction under section 46 of the 1977 Act(b) from any list prepared under Part II of the 1977 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 1977 Act, and whose name has been withdrawn from the list on their own application;

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

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

(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–

(i) that appointment is recalled; or

(ii) 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 Board 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

7.—(1) For the purpose of enabling the business of a Board to be conducted in the absence of the chairperson, each Board shall appoint a member who does not also hold the position of Chief Officer, Chief Finance Officer or Director of Public Health of a Board, or Chief Officer of a National Health Service trust to be vice-chairperson and any person so appointed shall, so long as they remain a member of the Board, hold office as vice-chairperson for such period as the Board may decide.

(a) 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.

(b) 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.

(c) 1986 c.46.

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

(3) Where the chairperson of a Board has died or has ceased to hold office of 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 Board 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

PROCEEDINGS

Meetings and minutes

8.—(1) The meetings and proceedings of the Board shall be conducted in accordance with standing orders made pursuant to regulation 9.

(2) At every meeting of a Board, the chairperson, if present, shall preside.

(3) If the chairperson is absent from any meeting, the vice-chairperson, if present, shall preside, and if the chairperson and vice-chairperson are both absent, the members present at the meeting shall elect from among themselves a person, who does not also hold the position of Chief Officer, Chief Finance Officer or Director of Public Health of a Board, or Chief Officer of a National Health Service trust, to act as chairperson for that meeting.

(4) All acts of, and all questions coming and arising before, a Board shall be done and decided by a majority of the members of the Board present and voting at a meeting of the Board and, in the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

(5) The proceedings of a Board or of any committee shall not be invalidated by any vacancy in its membership or by any defect in the appointment of any member of such committee.

Standing orders

9.—(1) Subject to paragraph (2) and to such directions as may be given by the Scottish Ministers, each Board shall make, and may vary and revoke, standing orders for the regulation of the procedure and business of the Board and of any committee.

(2) Standing Orders under paragraph (1) should include the matters set out in the Schedule.

Appointment and functions of committees

10.—(1) A Board may, and if so directed by the Scottish Ministers shall, appoint committees for such purposes as the Board may determine, subject to such restrictions or conditions as the Board may think fit, or as the Scottish Ministers may direct.

(2) Any committee, but not including any sub-committee, appointed under paragraph (1) shall include at least one member of the Board and may include persons, including trustees of a NHS trust, who are co-opted, and may consist wholly or partly of members of the Board.

(3) Any sub-committee appointed under paragraph (1) may include persons who are co-opted and may consist wholly or partly of members of the Board or wholly of persons who are not members of the Board.

Conflict of interest

11.—(1) Subject to such exceptions and qualifications as may, with the approval of the Scottish Ministers, be specified in standing orders, if a member, or associate of theirs has any pecuniary or other interest, direct or indirect, in any contract or proposed contract (not being a contract for the provision of any of the services mentioned in Part II of the Act) or other matter, and that member is present at a meeting of the Board or of a committee at which the contract or other matter is the subject of consideration, they shall at the meeting, and as soon as practicable after its

commencement, disclose the fact, and shall not take part in the consideration and discussion of, the contract, proposed contract or other matter or vote on any question with respect to it.

(2) The Scottish Ministers may, subject to such conditions as they may think fit to impose, remove any disability imposed by this regulation in any case in which it appears to them in the interests of the health service that the disability should be removed.

(3) Any remuneration, compensation or allowances payable to a chairperson or other member by virtue of paragraphs 4, 5 or 13 of Schedule 1 to the Act shall not be treated as a pecuniary interest for the purpose of this regulation.

(4) A member shall not be treated as having an interest in any contract, proposed contract or other matter by reason only that they, or an associate of theirs, has an interest in any company, body or person which is so remote or insignificant that they cannot reasonably be regarded as likely to effect any influence in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

(5) This regulation applies to a committee as it applies to the Board and applies to any member of any such committee (whether or not they are also a member of the Board) as it applies to a member of the Board.

(6) For the purposes of this regulation, the word "associate" has the meaning given by section 74 of the Bankruptcy (Scotland) Act 1985(**a**).

PART IV

MISCELLANEOUS

Revocations

12. The following Regulations are hereby revoked:–

(a) the Health Boards (Membership and Procedure) (No. 2) Regulations 1991(**b**)

(b) the Health Boards (Membership and Procedure) (No. 2) Amendment Regulations 1993(**c**)

(c) the Health Boards (Membership and Procedure) (No. 2) Amendment Regulations 1998(**d**)

(d) the Health Boards (Membership and Procedure) (No. 2) Amendment Regulations 1999(**e**).

SUSAN C DEACON
A member of the Scottish Executive

St Andrew's House,
Edinburgh
6th September 2001

(a) 1985 c.66. Section 74 was amended by the Bankruptcy (Scotland) Regulations 1985 (S.I. 1985/1925), regulation 11.
(b) S.I 1991/809.
(c) S.I. 1993/1615.
(d) S.I. 1998/1459.
(e) S.I. 1999/132.

SCHEDULE

MATTERS TO BE INCLUDED IN STANDING ORDERS REGULATING MEETINGS AND PROCEEDINGS OF THE BOARD AND COMMITTEES

Calling meetings

1.—(1) The first meeting of the Board shall be held on such day and at such place as may be fixed by the chairperson and that person shall be responsible for convening the meeting.

(2) The chairperson may call a meeting of the Board at any time and the chairperson of a committee may call a meeting of that committee at any time or and shall call a meeting when required to do so by the Board.

(3) If the chairperson refuses to call a meeting of the Board after a requisition for that purpose specifying the business proposed to be transacted, signed by at least one third of the whole number of members, has been presented to the chairperson or if, without so refusing, the chairperson does not call a meeting within 7 days after such requisition has been presented, those members who presented the requisition may forthwith call a meeting provided that no business shall be transacted at the meeting other than that specified in the requisition.

Notice of Meetings

2.—(1) Before each meeting of the Board, a notice of the meeting, specifying the time, place and business proposed to be transacted at it and signed by the chairperson, or by a member authorised by the chairperson to sign on that person's behalf, shall be delivered to every member or sent by post to the usual place of residence of such members so as to be available to them at least three clear days before the meeting.

(2) Lack of service of the notice on any member shall not affect the validity of a meeting.

(3) In the case of a meeting of the Board called by members in default of the chairperson, the notice shall be signed by those members who requisitioned the meeting in accordance with paragraph 1(3).

Conflict of interests

3.—(1) A member shall be excluded from a meeting of the Board or committee in accordance with regulation 11 while any contract, proposed contract, or other matter in which they or an associate of theirs has an interest is under consideration.

(2) The exceptions and qualifications referred to in regulation 11(1) shall be specified.

Quorum

4. No business shall be transacted at a meeting of the Board unless there are present, and entitled to vote, at least one third of the whole number of members including at least two members who do not also hold the position of Chief Officer, Chief Finance Officer or Director of Public Health of a Board, or Chief Officer of a National Health Service trust.

Conduct of meetings

5.—(1) At any meeting of a committee the chairperson of that committee, if present, shall preside.

(2) If both the chairperson and vice-chairperson (if any) are absent from a meeting of the Board a member, who does not also hold the position of Chief Officer, Chief Finance Officer or Director of Public Health of a Board, or Chief Officer of a National Health Service trust, chosen at the meeting by the members present shall preside.

(3) If both the chairperson and vice-chairperson (if any) of a committee are absent from a meeting of that committee a member of the committee chosen at the meeting by the other members present shall preside.

(4) If it is necessary or expedient to do so a meeting may be adjourned to another day, time and place.

Voting

6. Every question at a meeting shall be determined by a majority of the votes of the members present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.

Records

7.—(1) The names of the members present at a meeting shall be recorded.

(2) The minutes of the proceedings of a meeting including any decision or resolution made at that meeting shall be drawn up and submitted to the next ensuing meeting for agreement after which they will be signed by the person presiding at that meeting.

Suspension and disqualification

8. Any member of the Board may on reasonable cause shown be suspended from the Board or disqualified for taking part in any business of the Board in specified circumstances.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations supersede and revoke the Health Boards (Membership and Procedure) (No. 2) Regulations 1991 ("the 1991 Regulations") and their amendments, the Health Boards (Membership and Procedure) (No. 2) Amendment Regulations 1993, the Health Boards (Membership and Procedure) (No. 2) Amendment Regulations 1998 and the Health Boards (Membership and Procedure) (No. 2) Amendment Regulations 1999.

The Regulations, make provision in relation to Boards established under the National Health Service (Scotland) Act 1978 as to the membership and procedure of these Boards.

Regulation 2 makes provision with regard to the terms of office of members of Boards and regulation 3 makes provision for those Boards which must have at least one member who holds a post in a University with a medical or a dental school.

Regulation 4 deals with the remuneration of the members of Boards and regulation 5 with their resignation and removal from office.

Regulation 6 provides for the circumstances in which a person may be disqualified from membership of a Board. Regulation 7 deals with the appointment of a vice-chairperson of committees and sub-committees of Boards.

In Part III there are various provisions with regard to procedure including provisions as to the meetings of the Boards. Regulation 9 makes provision for standing orders regulating the procedure of meetings of Boards and of committees and sub-committees. Regulation 10 makes provision about the appointment and functions of committees. Regulation 11 makes provision with regard to conflict of interest.

Regulation 12 revokes the 1991 Regulations and all amending instruments as mentioned above which provided for membership and procedure of Boards referred to above.

The Schedule sets out the detail of the matters that must be included in the standing orders made pursuant to regulation 9.

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