STATUTORY INSTRUMENTS

1982 No. 276

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The National Health Service (Appointment of Consultants) Regulations 1982

Made - - - -	1*st March* 1982
Laid before Parliament	10*th March* 1982
Coming into Operation	1*st April* 1982

The Secretary of State for Social Services, in exercise of powers conferred on him by paragraph 10 of Schedule 5 to the National Health Service Act 1977 (**a**) and of powers conferred by section 14(2) of the National Health Service Act 1946 (**b**), and preserved pursuant to the provisions of section 15 of the National Health Service Reorganisation Act 1973 (**c**) (**d**), and now vested in him (**e**), and of all other powers enabling him in that behalf, after consultation in accordance with paragraph 11(1) of the said Schedule 5 with bodies recognised by him as representing persons likely to be affected, hereby makes the following regulations:—

Citation and commencement

1. These regulations may be cited as the National Health Service (Appointment of Consultants) Regulations 1982 and shall come into operation on 1st April 1982.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires—

"appropriate body" in relation to a proposed appointment, means such of the following bodies, namely, the Royal College of Physicians of London and its associated Faculty of Occupational Medicine, the Royal College of Surgeons of England and its associated Faculties of Anaesthetists and Dental Surgery, the Royal College of Obstetricians and Gynaecologists, the Royal College of Pathologists, the Royal College of Psychiatrists or the Royal College of Radiologists, as, in the opinion of the Authority concerned, is substantially concerned with the specialty in which the appointment will be made;

"Authority" (except in the expressions "relevant District Authority" and "District Health Authority") means a Regional Health Authority, a Teaching Authority or two or more such Authorities;

"Committee" means an Advisory Appointments Committee constituted pursuant to the provisions of regulation 6;

(**a**) 1977 c.49.
(**b**) 1946 c.81; section 14(2) was amended by the Health Services and Public Health Act 1968 (c.46), section 9(1).
(**c**) 1973 c.32.
(**d**) *See* S.I. 1974/281, articles 3 and 4 and Schedules 1 and 2.
(**e**) *See* S.I. 1968/1699, article 2.

"consultant" in relation to a relevant specialty, means a consultant specialising or who has recently specialised in the relevant specialty, or where such specialty has not yet been established, a consultant specialising or who has recently specialised in a specialty which in the opinion of the appropriate body is closely related to the relevant specialty;

"hospital" means premises in which or an institution to or for which an Authority or District Health Authority provides facilities or staff for the provision of personal services to a patient for the purpose of the prevention, diagnosis and treatment of illness;

"lay member" means a person who is not a registered medical or dental practitioner or an officer of any Authority or District Health Authority;

"member of the clinical staff", in relation to a proposed appointment, means a person of consultant status on the medical or dental staff of a hospital or a group of hospitals in which the duties or the major part of the duties of the appointment will be performed, or where there is no such person, a person of consultant status employed in a hospital;

"professional member", in relation to a proposed appointment, means, if it is a medical appointment, a registered medical practitioner and, if it is a dental appointment, a registered dental practitioner;

"relevant District Authority" means the District Health Authority responsible for the provision of services at any hospital in which an applicant will, if appointed, be employed;

"relevant specialty", in relation to a proposed appointment, means the branch of medicine or dentistry in which it is proposed to make the appointment;

"relevant University" means

(a) for an appointment involving a preserved Board, the University of London;

(b) for all other cases, the University nominating a member or members to the relevant District Authority;

"Teaching Authority" means — as the case may require—

(a) a preserved Board (**a**),

(b) a District Health Authority the membership of which specified in the Order establishing it includes more than one member nominated by the University so specified as being associated with the provision of the health services in that Authority's district;

"University" means a University providing substantial facilities for undergraduate or postgraduate clinical teaching.

(2) For the purposes of these regulations and Schedule 4 a body shall be deemed to have a substantial interest in an appointment where the duties of the appointment include duties on behalf of that body or duties which will be carried out in association with that body, or where that body proposes to invite the person appointed to undertake duties on behalf of that body otherwise than as part of the duties of the appointment.

(3) Unless the context otherwise requires, any reference in these regulations to a numbered regulation or Schedule is a reference to the regulation in, or, as the case may be, the Schedule to these regulations which bears that number, and any reference in a regulation or Schedule to a numbered paragraph is a reference to the paragraph bearing that number in that regulation or Schedule.

(**a**) *See* section 15(6) of the National Health Service Reorganisation Act 1973 (c.32).

Regulated appointments

3. These regulations apply to appointments of whatever nature to consultant posts on the staff of an Authority in England except appointments which are exempted appointments under regulation 4.

Exempted appointments

4.—(1) Appointments which are exempted appointments are of:—

(a) professors, readers or other members of the academic staff of a University who will receive no remuneration from an Authority in respect of their tenure of their post;

(b) consultants who have reached the age of 65, or in the case of mental health officers as defined in the National Health Service (Superannuation) Regulations 1980(**a**), the age of 60, and who will receive no remuneration from an Authority in respect of their tenure of their post;

(c) clinical teachers who are already officers of any Teaching Authority and whose appointment is to be made by a Regional Health Authority primarily to enable them to give clinical instruction to students;

(d) persons who are primarily engaged in research which necessitates their appointment to the staff of an Authority and who will receive no remuneration from an Authority in respect of their tenure of their post;

(e) persons whose employment in a post will be limited in duration to carry out the duties of that post—

(i) until a permanent appointment to it can properly be made provided that such employment shall not be for a period exceeding 12 months; or

(ii) the duties of or continued existence of which is subject to a review as part of a local reorganisation of the health service: Provided that such employment shall not without the express prior consent of the Secretary of State be for a period exceeding two years;

(f) persons whose last employment by an Authority, a Health Board in Scotland or District Health Authority in Wales was in a post as consultant, the termination of which employment was certified by the Secretary of State to be by reason of redundancy and who is appointed to a consultant post in England within two years of that termination of employment;

(g) persons who are transferred, with the approval of the Secretary of State, from employment as a consultant by an Authority to another such post with that Authority or to employment by another Authority where the employment of the officer would otherwise be terminated by reason of redundancy;

(h) persons whose employment is, with the approval of the Secretary of State, transferred from one Authority to another Authority without any significant alteration in the duties of the post, as part of a local reorganisation of the health service;

(i) persons who are engaged in providing medical or dental services but are employed by bodies referred to in paragraph 1*(b)* or *(c)* of Schedule 4 in posts equivalent to posts in the health service to which consultants are normally appointed, on transfer with the approval of the Secretary of State to the employment of an Authority to fill posts the duties of which are substantially the same as those of the posts in which they were employed immediately before the date of such transfer;

(**a**) S.I. 1980/362; the amending regulations are not relevant to the subject matter of these regulations.

(j) persons employed as consultants by an Authority other than an appointing Authority and whose duties for the appointing Authority will be limited to the equivalent of one day's work in each fortnight;

(k) a person whose last employment with an Authority was terminated by reason of—

(i) an order of interim suspension of registration under section 13(3)(b) of the Medical Act 1978 (**a**) in a case which is subsequently disposed of by the Health Committee (**b**) of the General Medical Council; or

(ii) a direction under section 8(1)*(a)* or (2) (suspension of registration) of that Act or a direction made on appeal from any such direction or an order under section 9 (immediate suspension of registration) of that Act—

where the proposed appointment will take effect as soon as possible after the expiry of a period of suspension, pursuant to a direction or order under the said sections 8(1)*(a)* or (2) or 9 not exceeding 12 months or after the earlier disposal by the said Health Committee of the reference to it pursuant to section 6 of the said Act in relation to that person, and where the proposed appointment will be to a post not significantly different from that which that person held immediately before that termination.

(2) In this regulation—

(a) "employment" includes part-time employment, whether or not the person is also employed by another Authority, and "employed" shall be construed accordingly;

(b) "remuneration" does not include any distinction award or the defrayment of expenses involved in the carrying out of the duties of a hospital appointment.

Advertisement of proposed appointment

5.—(1) When an Authority proposes to make an appointment to which these regulations apply, it shall arrange for advertisements setting out the general duties of the post and the closing date for receipt of applications to appear in not less than two publications circulating throughout England which are commonly used for similar advertisements relating to the profession concerned:
Provided that where compliance with the foregoing provisions of this paragraph is not reasonably practicable the Authority shall arrange for such advertisements to appear in such other publications as it thinks appropriate.

(2) Where such an advertisement is in respect of a whole-time post, the advertisement shall include a statement to the effect that applicants for appointment for less time than is required to carry out the full duties of the post will be considered if they are unable to undertake whole-time professional work, unless that advertisement appears in a publication which states the effect of this paragraph in such manner that it applies to the advertisement.

(3) The Secretary of State may if he thinks fit authorise an Authority to dispense with the requirements of paragraph (1) in relation to an appointment to any post or class of post.

(**a**) 1978 c.12.
(**b**) *See* section 6 of the Medical Act 1978.

Constitution of Committees

6. For the purposes of making any appointment to which these regulations apply a Committee to be called an Advisory Appointments Committee shall, subject to any applicable provisions of Schedule 4 be constituted—

(a) where the appointment is to be made by a single Regional Health Authority, in accordance with Schedule 1;

(b) where the appointment is to be made by a single Teaching Authority, in accordance with Schedule 2;

(c) where two or more Authorities agree to combine in the selection of a person for appointment to employment by one or more of those authorities, in accordance with Schedule 3.

Selection by Committees

7.—(1) An appointing Authority shall refer to the Committee all applications received by the Authority on or before the advertised closing date and any received after that date but before the Committee has met pursuant to the requirements of paragraph 6(1) of Schedule 4 if the Authority is satisfied that there is a reasonable explanation for their late receipt.

(2) The Committee, acting in accordance with Schedule 4, shall consider all applications so referred to them, shall select from the applicants any persons whom the Committee consider suitable for the appointment and submit their names to the Authority, together with such comments as they consider appropriate.

(3) The Committee shall not submit the name of any person under paragraph (2) without having interviewed him.

(4) Where an Authority proposes to make an appointment to a whole-time post but in the opinion of the Committee one or more of the applicants would be suitable for appointment for less than whole-time they shall submit to the Authority the names of any such applicants and may add such comments as they consider appropriate.

(5) If in the opinion of the Committee none of the applicants is suitable for appointment they shall so inform the Authority.

Appointment by Authority

8.—(1) An Authority shall not make an appointment to which these regulations apply—

(a) except from persons whose names have been submitted to it by a Committee under regulation 7;

(b) of any person who has canvassed, in respect of his application for an appointment to which these regulations apply, any member of the Authority, the Committee or a relevant District Authority.

(2) In any case where an Authority has been informed as provided for by regulation 7(4), it may appoint for less than whole-time employment one or more of the persons named as suitable for such employment.

(3) Where an Authority decides not to make an appointment from persons named by a Committee or where an Authority is informed pursuant to regulation 7(5) that none of the applicants is suitable, the Committee shall be discharged and these regulations shall apply to any further proposal by the Authority to make an appointment to the relevant post as they applied to the original proposal.

Travelling and subsistence

9. Members of the Committee shall be entitled to receive from the Authority or, where Authorities are acting jointly, from the Authority by which is employed the administrator specified in paragraph 12 of Schedule 4, such payments in respect of travelling and subsistence allowances as are payable to members of the Authority performing an approved duty.

Revocation of Regulations

10. The National Health Service (Appointment of Consultants) Regulations 1969 (**a**) and 1974 (**b**) are hereby revoked.

Transitional provisions

11.—(1) Where before 1st April 1982 an Advisory Appointments Committee has been constituted under the National Health Service (Appointment of Consultants) Regulations 1969 or 1974 to select a person for appointment after that date to an employment to which these regulations apply, the selection shall be made by that Committee in accordance with those regulations and the appointment shall be made by the appropriate authority.

(2) Subject to paragraph 1 anything done or begun for the purposes of those regulations in relation to such an appointment shall be treated as having been begun or done under the corresponding provisions of these regulations.

Signed by authority of the Secretary of State for Social Services,

Gerard Vaughan,
Minister of State,
Department of Health and
Social Security.

1st March 1982.

(**a**) S.I. 1969/163. (**b**) S.I. 1974/361.

Regulation 6(*a*)

SCHEDULE 1

APPOINTMENTS BY A REGIONAL HEALTH AUTHORITY

1. The Authority shall, subject to paragraph 3 below, constitute a Committee of seven members.

2. All the members shall be appointed by the Authority and of those members—

(1) one shall be a lay member,

(2) four shall be professional members and of those four—

(a) one shall be appointed after consultation with the relevant University, and

(b) one shall be a consultant in the relevant speciality, not being employed within the region of the Regional Health Authority, appointed after consultation with the appropriate body, and

(3) subject to the provisions of paragraph 3 below, two members shall be appointed after consultation with the relevant District Authority, and of these two, one shall be a lay member and the other a member of the clinical staff of the Authority.

3. Where more than one District Health Authority is a relevant District Authority

(a) the Authority shall after consultation with the relevant District Authorities acting jointly, appoint the lay member referred to in paragraph 2(3) and after consultation with each relevant District Authority appoint a member of the clinical staff of each such Authority, and the Committee shall accordingly consist of more than seven members;

(b) the professional member appointed under 2(2)*(a)* shall be appointed after consultation with all the relevant Universities.

Regulation 6(*b*)

SCHEDULE 2

APPOINTMENTS BY A TEACHING AUTHORITY

1. The Authority shall constitute a Committee of seven members.

2. All the members shall be appointed by the Authority and of those members—

(1) two shall be lay members, one of whom shall be appointed after consultation with the relevant University,

(2) two shall be consultants in the relevant specialty who are not members of the clinical staff of the Authority and of those two—

(a) one shall be appointed after consultation with the Regional Health Authority, and

(b) one, not being employed within the region of the Regional Health Authority, shall be appointed after consultation with the appropriate body,

(3) one shall be a professional member who is a member of the clinical staff of the Authority, and

(4) two shall be professional members appointed after consultation with the relevant University.

3. Where the Teaching Authority exercises functions in hospitals situated in one region only, the Regional Health Authority for the purposes of this Schedule shall be the Regional Health Authority for that region; and where the appointment is to be made by a preserved Board which exercises functions in the region of more than one Regional Health Authority, the Regional Health Authority for the purposes of paragraphs 2(2)*(a)* and *(b)* shall be the Regional Health Authority in the region in which the greater part of the duties of the appointment will be carried out.

SCHEDULE 3 Regulation 6(c)

APPOINTMENTS BY AUTHORITIES ACTING TOGETHER

1. The Authorities acting together shall constitute a Committee.

2. Where the Authorities acting together are a Regional Health Authority and a Teaching Authority they shall appoint a Committee of nine members of which—

(1) five members shall be appointed by the Authorities jointly the five consisting of—

(a) two lay members, one appointed after consultation with the relevant University or Universities,

(b) three professional members of whom—

(i) one shall be a consultant in the relevant specialty not being employed within the region of the Regional Health Authority or by the Teaching Authority, appointed after consultation with the appropriate body;

(ii) two shall be appointed after consultation with the relevant University or Universities, and

(2) two professional members shall be appointed by each Authority one of each pair being a member of the clinical staff of that authority.

3. Where the Authorities acting together are—

(a) more than two in number; and

(b) not all Regional Health Authorities or all Teaching Authorities

then they shall comply with paragraph 2 with Authorities of the same description acting jointly as though they were a single Authority.

4. Where the Authorities acting together are two or more Regional Health Authorities they shall comply jointly with Schedule 1 as though their Regions were a single region.

5. Where the Authorities acting jointly are two or more Teaching Authorities they shall comply jointly with Schedule 2 modified so that "the Regional Health Authority" for the purposes of paragraph 2(2) of that Schedule shall be construed as being the Regional Health Authority or Regional Health Authorities arrived at by applying paragraph 3 of that Schedule in relation to each of the Teaching Authorities; and the members appointed after consultation with the relevant University shall be appointed after consultation with all the relevant Universities.

SCHEDULE 4 Regulation 7(1) and 7(2)

GENERAL PROVISIONS APPLYING IN ALL CASES

1. Where—

(a) the person to be appointed will be required to carry out duties on behalf of a local authority; or

(b) the person to be appointed may be required or invited to carry out duties on behalf of the Medical Research Council, the Armed Forces, the Public Health Laboratory Service Board, a Government Department or any body provided or constituted under the National Health Service Act 1977 (a) ; or

(c) a University proposes to invite the person appointed to undertake duties on behalf of the University otherwise than as part of the duties of the appointment by the Authority; or

(d) in the case of an appointment in London, more than one medical school or postgraduate institute have in the view of the Authority, a substantial interest in the appointment; or

(a) 1977 c.49.

(e) the person to be appointed will be required to carry out duties in more than one place within a district of a relevant District Authority and where the appointing Authority feels that the organisation of services in that district is such that the views of all clinical staff with whom the appointee will work for a significant part of his time cannot be represented solely by the member of the clinical staff appointed to the Committee under paragraph 2(3) of Schedule 1, 2(3) of Schedule 2 or 2(2) of Schedule 3;

then the Authority may appoint one or more additional members to the Committee after consultation—

(i) with any of the bodies mentioned in sub-paragraph *(a)* or *(b)* as the case may require, where the Authority feels those bodies have a substantial interest in the appointment; and

(ii) with the University mentioned in sub-paragraph *(c)* in a case to which that sub-paragraph applies; and

(iii) with the University of London in a case to which sub-paragraph *(d)* applies; and

(iv) with that relevant District Authority in a case to which sub-paragraph *(e)* applies, and

so however that the Authority may not under the provisions of this paragraph, appoint to the Committee more than three additional members.

2. Where an appointed member is unwilling or unable to perform his functions another person may be appointed in the same manner to be a member in his place.

3. (1) An Authority or relevant District Authority entitled to appoint any members of the Committee shall send the name of its appointee to the administrator.

(2) If more than one body appoints the same person the administrator shall forthwith inform each of those bodies of the identity of the other or others.

(3) Where any body is so informed, it shall either confirm its appointment or appoint another person in place of the person originally appointed, and if more than one such body confirms its appointment the membership of the Committee shall be reduced accordingly.

4. The administrator shall provide the Committee with such clerical or other assistance as the Committee may require.

5. (1) The Chairman of the Committee shall be the lay member or such one of the lay members (not being an additional member appointed under paragraph 1 above) as shall be so designated by the Authority.

(2) The Chairman shall convene, and if present shall preside at any meeting of the Committee.

(3) If the Chairman is not present at any meeting of the Committee, they shall select one of the members present to preside.

6. (1) For the purposes of regulation 7(2) the Committee shall meet and may adjourn as necessary.

(2) Subject to the provisions of this Schedule the procedure of the Committee shall be such as they think fit.

7. The Committee may invite any applicant to attend before them for the purpose of an interview.

8. In the event of an equality of votes the Chairman shall not have a second or casting vote and no applicant shall be considered suitable for appointment unless a majority of the Committee considers him to be so suitable.

9. The Committee shall not transact any business in the absence of either more than one of the lay members or more than one of the professional members, in each case being members other than additional members appointed under paragraph 1 above.

10. Subject to the provisions of paragraphs 5 and 9 above, the proceedings of the Committee shall not be invalidated by any vacancy in, or failure to appoint to, or defect in the appointment or qualification of any member of, the Committee.

11. When in the opinion of the Authority there is more than one appropriate body, the Authority may appoint for each such body after consultation therewith a member to the Committee who shall be a consultant in a relevant specialty, not being a consultant employed within the region of the Regional Health Authority, and the Committee shall be enlarged accordingly.

12. In this Schedule—

"administrator" means the administrator of the Authority by which the Committee is constituted or where Authorities are acting jointly in constituting the Committee, the administrator of such one of those Authorities as they may agree and includes the secretary to a preserved Board;

"local authority" means a County Council, the Greater London Council, a District Council or a London Borough Council; and

"the Authority" means the Authority or Authorities by which the Committee is constituted.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations make provision for the constitution by Regional Health Authorities, certain District Health Authorities and preserved Boards of Advisory Appointment Committees to select candidates for appointments as clinical consultants. They lay down the procedure to be followed and include provision for the making of part-time appointments. These regulations supersede the National Health Service (Appointment of Consultants) Regulations 1969 and 1974.

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