EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE BODIES (MEMBERSHIP AND PROCEDURE) AMENDMENT REGULATIONS 2010

2010 No. 2538

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The National Health Service Bodies (Membership and Procedure) Amendment Regulations 2010 amend various regulations set out at paragraph 4.2.

2.2 The purpose of these amendment regulations is to introduce powers for the Secretary of State for Health to suspend the chair and non-executive members of Strategic Health Authorities (SHAs) and Special Health Authorities (SpHAs) to allow time for a considered and balanced investigation to take place prior to any decision being made as to whether to terminate their appointment in accordance with conditions set out in regulations relating to their appointment.

2.3 They also enable the membership of the non-executive board to increase by the number of public appointees suspended (applicable to SHAs only); and for the appointment of the vice-chair to automatically cease when the chair is suspended to allow the Secretary of State to appoint a new vice-chair.

2.4 The amendments made by these Regulations apply in relation to a person appointed at any time, including a time before the coming into force of those amendments.

2.5 The regulations will bring SHAs and SpHAs in line with suspension provisions for the Secretary of State's other public appointments.

2.6 These regulations do not make provisions for Standing Advisory Committees (SAC). At present the only constituted SAC is the Joint Committee on Vaccination and Immunisation (JCVI). Future arrangements for the provision of advice to Ministers on immunisation are being considered as part of the overhaul of public health. In light of the creation of the Public Health Service and the implications that it may have for JCVI, it would be prudent to await those decisions before carrying out further legal work with this Committee.

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

3.1 None.

4. Legislative Background

4.1 Schedule 3 to the Health Act 2009 amended provisions in the National Health Service Act 2006 which relate to membership of chairs and non-executive members for SHAs and SpHAs.

4.2 Chairs and non-executive members of SHAs and SpHAs hold a statutory office under the National Health Service Act 2006. The appointment and tenure of office of chairs, vice-chairs and non-executive members are governed by relevant membership and procedure regulations under the NHS Act 2006:

- The Health Authorities (Membership and Procedure) Regulations 1996
- The Health and Social Care Information Centre Regulations 2005
- The National Institute for Clinical Excellence Regulations 1999
- The National Patient Safety Agency Regulations 2001
- The NHS Business Services Authority Regulations 2005
- The NHS Blood and Transplant Regulations 2005
- The NHS Institute for Innovation and Improvement Regulations 2005
- The National Treatment Agency Regulations 2001
- The National Health Service Litigation Authority Regulations 1995

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 The Secretary of State has the power to appoint, suspend and terminate the appointment of chairs and non-executive members of local and some national NHS bodies.

7.2 Suspension is currently not an option for chairs and non-executive members of SHAs and SpHAs - the only options available are to allow the appointee to continue in their role, to seek a resignation, or to terminate the appointment. This limits the action that can be taken whilst further investigation of a matter takes place. The suspension provisions will allow time for a considered and balanced investigation to take place prior to any decision being made as to whether to terminate an individual's appointment.

7.3 The vice-chairman of SHAs and SpHAs are appointed by the members, not the Secretary of State. Therefore if the chair is suspended, the regulations will allow the Secretary of State to appoint a new vice-chairman to lead the organisation during the period of the chair's suspension. In order for this to happen, the

appointment of any existing vice-chairman would automatically cease when the chair is suspended.

7.4 Whilst an appointee is suspended, a replacement appointment may be made for the period of the suspension. During this time, the maximum number of non-executives can increase by the number of appointees suspended to allow these temporary appointments to be made.

- ***Consolidation***

7.5 This policy will bring suspension provisions in line with the Secretary of State's other public appointments.

8. Consultation outcome

8.1 A formal 12 week consultation exercise[1] was carried out between 17 July and 9 October 2008 on introducing the new suspension powers and processes. Consultation was held with all of the bodies affected by the provisions, DH sponsor branches and the Devolved Administrations. Responses to the consultation revealed no general concerns about introducing the new policy, which was already in place for PCTs and NHS Trusts. The Government's response[2] was published on 16 January 2009.

9. Guidance

9.1 Draft guidance was issued as part of the formal consultation and will be updated and published by the Appointments Commission once suspension provisions come in to force.

9.2 Notification of a change in Terms and Conditions will also be sent to those public appointees affected in advance of the revised terms and conditions being issued.

10. Impact

10.1 The A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen, however the impact on the public sector is outlined in the Impact Assessment carried out for the suspension provisions in the Health Act 2009 (attached).

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These suspension provisions will strengthen the way the healthcare system holds people to account when they fail to meet the requirements of public office, by allowing time for a considered and balanced investigation to take place prior to

[1] "Removing or suspending chairs and non-executives of health bodies: consultation on introducing new powers of suspension, Department of Health."
[2] "Removing or suspending chairs and non-executives of Health Bodies: feedback on the consultation to introduce powers of suspension."

any decision being made as to whether to commence procedures for termination of an individual's appointment.

12.2 They will be reviewed 18 months after the suspension provisions come in to force.

13. Contact

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