STATUTORY INSTRUMENTS

2009 No. 2722

HEALTH CARE AND ASSOCIATED PROFESSIONS

The Office of the Health Professions Adjudicator Regulations 2009

Made - - - -	*8th October 2009*
Laid before Parliament	*9th October 2009*
Coming into force - -	*1st November 2009*

The Privy Council makes the following Regulations in exercise of the powers conferred by section 161(3) and (4) of, and paragraphs 5 and 7 of Schedule 6 to, the Health and Social Care Act 2008(**a**).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Office of the Health Professions Adjudicator Regulations 2009.

(2) These Regulations come into force on 1st November 2009.

(3) In these Regulations—

"the Act" means the Health and Social Care Act 2008;

"final outcome", in relation to any proceedings where there are rights of appeal, means the outcome of proceedings—

(a) once the period for bringing an appeal has expired without an appeal being brought; or

(b) if an appeal is brought in accordance with those rights, once those rights have been exhausted;

"licensing body" means any body anywhere in the world which licenses or regulates any profession;

"spent conviction" means—

(a) in relation to a court in Great Britain, a spent conviction within the meaning of the Rehabilitation of Offenders Act 1974(**b**);

(b) in relation to a court in Northern Ireland, a spent conviction within the meaning of the Rehabilitation of Offenders (Northern Ireland) Order 1978(**c**).

Number of non-executive and executive members

2.—(1) This regulation specifies the number of non-executive and executive members of the OHPA that there are to be at any one time.

(**a**) 2008 c.14.
(**b**) 1974 c.53.
(**c**) S.I. 1978/1908 (N.I. 27).

(2) In addition to the chair of the OHPA appointed under paragraph 4(a) of Schedule 6 to the Act—

(a) the number of non-executive members appointed under paragraph 4(b) of Schedule 6 to the Act is to be three, and

(b) the number of executive members appointed under paragraph 4(c) of Schedule 6 to the Act is to be one.

Requirements applying to any person appointed to the OHPA

3.—(1) In relation to any person ("B") who is to be appointed as a member of the OHPA—

(a) requirements 1 to 12 apply where the appointment is as—

(i) a non-executive member, or

(ii) the chair (to whom the requirement specified in paragraph 6 of Schedule 6 to the Act also applies);

(b) requirements 3 to 12 apply where the appointment is as an executive member.

(2) Requirement 1 is that B lives or works wholly or mainly in the United Kingdom.

(3) Requirement 2 is that the aggregate period for which B may be a member of the OHPA must not exceed 8 years in any 20 year period.

(4) Requirement 3 is that B is not, and has never been, registered as a member of a profession regulated under—

(a) the Chiropractors Act 1994(**a**),

(b) the Dentists Act 1984(**b**),

(c) the Health Professions Order 2001(**c**),

(d) the Nursing and Midwifery Order 2001(**d**),

(e) the Medical Act 1983(**e**),

(f) the Osteopaths Act 1993(**f**),

(g) the Opticians Act 1989(**g**),

(h) the Pharmacists and Pharmacy Technicians Order 2007(**h**), or

(i) the Pharmacy (Northern Ireland) Order 1976(**i**),

and does not hold a qualification entitling B to apply for registration under any of those Acts or Orders.

(5) Requirement 4 is that B is not a member of—

(a) the Council of a regulatory body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(**j**),

(b) a Council that is a regulatory body mentioned in that section, or

(c) the Council for Healthcare Regulatory Excellence(**k**).

(6) Requirement 5 is that B has not at any time been convicted of—

(**a**) 1994 c.17.
(**b**) 1984 c.24.
(**c**) S.I. 2002/254.
(**d**) S.I. 2002/253.
(**e**) 1983 c.54.
(**f**) 1993 c.21.
(**g**) 1989 c.44.
(**h**) S.I. 2007/289.
(**i**) S.I. 1976/1213 (N.I. 22).
(**j**) 2002 c.17. Section 25(3) was amended by paragraph 17 of Schedule 10 to the Health and Social Care Act 2008 (c.14).
(**k**) The Council for Healthcare Regulatory Excellence is established under Part 2 of the National Health Service Reform and Health Care Professions Act 2002 (c. 17). The Council's name was changed by section 113 of the Health and Social Care Act 2008 from the Council for the Regulation of Health Care Professionals to the Council for Healthcare Regulatory Excellence.

(a) an offence in the United Kingdom involving dishonesty or deception, or

(b) an offence in the United Kingdom where the final outcome of the proceedings was a sentence of imprisonment or detention (whether suspended or not) of over three months,

unless (in either case) the conviction is a spent conviction.

(7) Requirement 6 is that, if B has at any time been convicted of an offence outside the United Kingdom, the person making the appointment is nevertheless satisfied that B's membership of the OHPA would not be liable to undermine public confidence in the OHPA.

(8) Requirement 7 is that—

(a) B has not been adjudged bankrupt, or a sequestration of B's estate has not been awarded, unless (in either case) B has been discharged or the bankruptcy order has been annulled,

(b) B has not been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under—

(i) Schedule 4A to the Insolvency Act 1986(**a**), or

(ii) Schedule 2A to the Insolvency (Northern Ireland) Order 1989(**b**),

unless that order has ceased to have effect or has been annulled, or

(c) B has not made a composition or arrangement with, or granted a trust deed for, B's creditors unless B has been discharged in respect of it.

(9) Requirement 8 is that B has not at any time been removed from office as the chair, a member, convenor or director of any public body on the grounds, in terms, that it was not in the interests, or conducive to the good management, of that body for B to continue to hold that office.

(10) Requirement 9 is that if B—

(a) is the subject of any investigation or proceedings concerning B's professional conduct (including B's fitness to practise) conducted by any licensing body, or

(b) has at any time been the subject of such an investigation or proceedings,

the person making the appointment is nevertheless satisfied that it would be appropriate for B to be appointed to the OHPA.

(11) Requirement 10 is that B is not subject to—

(a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986(**c**),

(b) a disqualification order under Part II of the Companies (Northern Ireland) Order 1989(**d**),

(c) a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002(**e**), or

(d) an order made under section 429(2) of the Insolvency Act 1986(**f**) (disabilities on revocation of a county court administration order).

(12) Requirement 11 is that B has not at any time been—

(a) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners, the Charity Commission, the Charity Commission for Northern Ireland or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity—

(i) for which B was responsible or to which B was privy, or

(ii) which was contributed to, or facilitated by, B's conduct, or

(b) removed from being concerned with the management or control of any body in any case where removal was by virtue of–

(**a**) 1986 c.45. Schedule 4A was inserted by the Enterprise Act 2002 (c.40).
(**b**) S.I. 1989/2405 (N.I. 19); Schedule 2A was inserted by S.I. 2005/1455 (N.I. 10).
(**c**) 1986 c.46.
(**d**) S.I. 1989/2404 (N.I. 18).
(**e**) S.I. 2002/3150 (N.I. 4); the relevant amending instrument is S.I. 2005/1454 (N.I. 9).
(**f**) Section 429(2) was amended by the Enterprise Act 2002, Schedule 23, paragraph 15.

(i) section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(**a**) (powers of Court of Session to deal with management of charities), or

(ii) section 34(5)(e) of the Charities and Trustees Investment (Scotland) Act 2005(**b**) (powers of Court of Session).

(13) Requirement 12 is that B has not at any time been included in—

(a) any barred list within the meaning of the Safeguarding Vulnerable Groups Act 2006(**c**),

(b) any barred list within the meaning of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007(**d**), or

(c) the children's list or the adults' list maintained under the Protection of Vulnerable Groups (Scotland) Act 2007(**e**),

unless B was removed from the list either on the grounds that it was not appropriate for B to have been included in it or as the result of a successful appeal.

Judith Simpson
Clerk of the Privy Council

(**a**) 1990 c.40; section 7 was repealed by the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).
(**b**) 2005 asp 10.
(**c**) 2006 c.47.
(**d**) S.I. 2007/1351 (N.I. 11).
(**e**) 2007 asp 14.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision with regard to membership of the Office of the Health Professions Adjudicator ("the OHPA").

Regulation 2 specifies that there is to be one executive member and three non-executive members of the OHPA. This will result in a total of five members as paragraph 4(a) of Schedule 6 to the Health and Social Care Act 2008 (c. 14) contains provision for the appointment of the chair of the OHPA, who will also be a member of the OHPA.

The requirements for the appointment of the members of the OHPA are set out in regulation 3. Requirements 1 and 2 apply only to the chair and non-executive members, requiring that they live or work in the United Kingdom and limiting the total period for which they may serve as members of the OHPA.

Requirements 3 to 12 apply to all persons appointed as members of the OHPA, including executive members. These requirements will, for example, exclude from membership any person who is, or has qualified as, a healthcare professional or who is a member of bodies involved in the regulation of healthcare. There are other exclusions for criminal convictions, bankruptcy, insolvency, having been disqualified from certain positions (such as company director, trustee etc) and certain other conduct.

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