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Statutory Instruments

2012 No. 1640

National Health Service, England

Social Care, England

Public Health, England

The Care Quality Commission (Healthwatch England Committee) Regulations 2012

Made

21st June 2012

Laid before Parliament

27th June 2012

Coming into force in accordance with regulation 1(1)

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by section 161(3) and (4) of, and paragraph 6(1A) and (5A) to (5D) of Schedule 1 to, the Health and Social Care Act 2008⁽¹⁾.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Care Quality Commission (Healthwatch England Committee) Regulations 2012 and come into force immediately after the commencement of section 181 of the Health and Social Care Act 2012⁽²⁾.

(2) In these Regulations—

“the Committee” means the Healthwatch England committee of the Commission⁽³⁾; and

“member”, except in the expression “member of the Commission”, means a member of the Committee, including the chair.

Members

2.—(1) The Committee is to consist of—

(a) a chair appointed by the Secretary of State; and

(b) not less than six and not more than twelve other members appointed by the chair.

(2) Before appointing the first members, the chair must consult the chair of the Commission⁽⁴⁾.

(3) For the purposes of paragraph (2), “the first members”, in relation to the Committee, means those members, other than the chair, whose membership of the Committee takes effect from 1st October 2012.

Appointment of members

3.—(1) The Secretary of State must exercise the function in regulation 2(1)(a) so as to secure that the chair is a person who is a member of the Commission at the time when the appointment as chair takes effect⁽⁵⁾.

(2) The chair must exercise the function in regulation 2(1)(b) so as to secure that—

(a) a majority of members are not members of the Commission;

(b) so far as reasonably practicable, the persons appointed include persons with knowledge or experience relevant to the discharge, by the Committee, of functions under section 45A of the Health and Social Care Act 2008⁽⁶⁾ (functions to be exercised by Healthwatch England); and

(c) arrangements for the selection and appointment of persons as members take into account—

(i) the principle that the selection and appointment of members should be open and transparent; and

(ii) the principles laid down in the Commissioner for Public Appointments’ Code of Practice for Ministerial Appointments to Public Bodies of 1st April 2012⁽⁷⁾.

(3) In exercising the function in regulation 2(1)(b), the chair must have regard to the need to encourage diversity in the range of persons who may be appointed.

(4) In exercising that function, the chair may, subject to the conditions specified in paragraph (5), appoint up to four members who are directors of Local Healthwatch organisations⁽⁸⁾.

(5) The conditions are that—

(a) those persons are not members of the Commission at the time of the appointment; and

(b) in relation to each region of England, no more than one member is appointed from directors of Local Healthwatch organisations for the areas of English local authorities⁽⁹⁾ in that region.

(6) For the purposes of paragraph (5)(b), the regions of England are listed in column (1) of the Table in Schedule 1 and comprise the areas specified in column (2) of the Table.

Co-option

4.—(1) The Committee may appoint members in addition to those appointed under regulation 2 (“Co-opted Members”).

(2) A Co-opted Member is appointed for such period as the Committee considers appropriate and a Co-opted Member who has ceased to hold office may be re-appointed.

(3) A Co-opted Member does not count as a member for the purposes of regulations 5 to 9.

(4) A Co-opted Member may not vote on any matter.

(5) The Committee must exercise its power under paragraph (1) so as to secure that a majority of members are not members of the Commission.

(6) The membership of a Co-opted Member may be withdrawn at any time by the Committee.

Tenure

5.—(1) Subject to regulations 8 and 10, the term of office of a member must be such period, not exceeding four years, as is specified by the person making the appointment at the time of the appointment.

(2) Subject to regulation 6 and paragraph (3), a member who has ceased to hold office may be re-appointed.

(3) A member may not hold office for more than two consecutive terms without an intervening period of at least four years.

Disqualification for appointment or from holding office

6. Subject to regulation 7, a person is disqualified for appointment or from holding office as a member where that person falls within one or more of paragraphs 1 to 6 of Schedule 2.

Cessation of disqualification

7.—(1) Subject to paragraph (2), a person who is disqualified under paragraph 4 or 6 of Schedule 2 may, after the expiry of a period of two years beginning on the date of the dismissal or removal, apply in writing to the chair to remove the disqualification, and the chair may direct that the disqualification is to cease.

(2) Where the chair refuses an application to remove a disqualification, no further application may be made by that person until the expiry of a period of two years beginning on the date of the application, and this paragraph applies to any subsequent application.

Termination of tenure of office

8.—(1) A member may resign at any time by giving notice in writing to the Appointing Authority.

(2) If the chair ceases to be a member of the Commission, the chair's tenure of office as chair terminates on the date of the cessation⁽¹⁰⁾.

(3) If a member other than the chair is appointed to be the chair, that member's tenure of office as such a member terminates when the appointment as chair takes effect.

(4) The tenure of office of a member other than the chair terminates upon being notified in writing by the chair—

(a) that the chair is satisfied that one of the conditions specified in paragraph (5) is met in relation to that member; and

(b) of the reason why the chair is so satisfied.

(5) The conditions are that that member—

(a) is unable or unfit to carry out the duties of that office;

(b) is failing to carry out those duties; or

(c) is disqualified from holding office (or was disqualified at the time of appointment).

(6) Without prejudice to paragraph (4) and subject to regulation 10, the tenure of office of a member appointed under regulation 3(4) terminates—

(a) where that member ceases to be a director of a Local Healthwatch organisation, on the date of the cessation;

(b) where that member becomes a member of the Commission, on the date on which that member's appointment as such a member takes effect; and

(c) where the condition specified in regulation 3(5)(b) ceases to be satisfied as a result of that member becoming a director of a Local Healthwatch organisation other than that of which that member is currently a director, on the date of the cessation.

(7) Where a person has been appointed as a member under regulation 3(4), that person must give notice in writing to the chair if that person's tenure of office as a member is terminated under paragraph (6).

(8) For the purposes of paragraph (1), "the Appointing Authority"—

(a) in relation to a member who is the chair, means the Secretary of State; and

(b) in relation to any other member, means the chair.

Suspension of members

9.—(1) Paragraph (2) applies where the chair is suspended from office as a member of the Commission(11).

(2) The Secretary of State must suspend the chair from office as chair, for the duration of that suspension, by giving the chair notice in writing.

(3) Paragraphs (4) and (5) apply where it appears to the chair in relation to another member that one of the conditions in regulation 8(5) is or may be satisfied.

(4) The chair may suspend the member from office by giving that member notice in writing.

(5) The chair may, by giving that member notice in writing—

(a) before the period referred to in paragraph (8) has expired, extend, or further extend, the suspension for a further specified period; or

(b) if it has expired, impose a further suspension for a specified period.

(6) Where the chair suspends a member under this regulation, the chair may, on application by the suspended member or otherwise, remove a suspension before the period referred to in paragraph (8) has expired, or reduce its period.

(7) Where the chair removes, or reduces the period of, suspension under paragraph (6), the chair must notify the member in writing to that effect.

(8) A notice given under paragraph (2) or (4) must give the reason for, and the period of, the suspension and the date that it is to begin.

(9) The chair or other member must cease to perform functions as the chair or member for the period of the suspension but the period of the chair or member's term of office is not affected by the suspension.

Transitional provision

10.—(1) In relation to appointments made during the period beginning on 1st October 2012 and ending on 31st March 2013—

(a) the reference, in regulation 3(4), to directors of Local Healthwatch organisations is to be read as a reference to the persons mentioned in paragraph (2); and

(b) the conditions specified in paragraph (5) of that regulation do not apply.

(2) The persons are—

(a) persons whom the chair recognises as persons representing Local Involvement Networks; or

(b) persons who, under arrangements made by an English local authority, are providing advice, assistance or other support to that authority in relation to that authority's preparations

for making arrangements with Local Healthwatch organisations under section 221 of the 2007 Act⁽¹²⁾ (local arrangements in relation to health services and social services).

(3) The term of office of a member appointed in accordance with this regulation must be such period, not extending beyond 30th September 2013, as the chair specifies at the time of the appointment.

(4) The membership of a person appointed in accordance with this regulation may be withdrawn at any time by the chair.

(5) In this regulation—

“the 2007 Act” means the Local Government and Public Involvement in Health Act 2007; and

“Local Involvement Network” has the meaning given by section 222(2) of the 2007 Act⁽¹³⁾ (arrangements under section 221(1)).

Signed by authority of the Secretary of State for Health.

Earl Howe

Parliamentary Under-Secretary of State,

Department of Health

21st June 2012

Regulation 3(6)

SCHEDULE 1 REGIONS IN ENGLAND

1. The regions in England are listed in column (1) of the Table below and comprise the areas specified in column (2) of the Table.

2. A reference to an area specified in column (2) of the Table is a reference to that area as it is for the time being.

Table

(1) Name of Region	(2) Area Included
London	Greater London
North	County of Darlington County of Durham

	County of Hartlepool
	County of Middlesbrough
	County of Northumberland
	County of Redcar and Cleveland
	County of Stockton-on-Tees
	County of Tyne and Wear
	County of Blackburn with Darwen
	County of Blackpool
	County of Cheshire East
	County of Cheshire West and Chester
	County of Cumbria
	County of Greater Manchester
	County of Halton
	County of Lancashire
	County of Merseyside
	County of Warrington
	County of the City of Kingston upon Hull
	County of the East Riding of Yorkshire
	County of North East Lincolnshire
	County of North Lincolnshire
	County of North Yorkshire
	County of South Yorkshire
	County of West Yorkshire
	County of York

Midlands	County of Derby
	County of Derbyshire
	County of Leicester
	County of Leicestershire
	County of Lincolnshire
	County of Northamptonshire
	County of Nottingham
	County of Nottinghamshire
	County of Rutland
	County of Bedford
	County of Central Bedfordshire
	County of Cambridgeshire
	County of Essex
	County of Hertfordshire
	County of Luton
	County of Norfolk
	County of Peterborough
	County of Southend-on-Sea
	County of Suffolk
	County of Thurrock
	County of Herefordshire
	County of Shropshire
	County of Staffordshire
	County of Stoke-on-Trent

South	County of Telford and Wrekin
	County of Warwickshire
	County of West Midlands
	County of Worcestershire
South	County of Berkshire
	County of Brighton and Hove
	County of Buckinghamshire
	County of East Sussex
	County of Hampshire
	County of Isle of Wight
	County of Kent
	County of the Medway Towns
	County of Milton Keynes
	County of Oxfordshire
	County of Portsmouth
	County of Southampton
	County of Surrey
	County of West Sussex
	County of Bath and North East Somerset
	County of Bournemouth
	County of the City of Bristol
	County of Cornwall
	County of Devon
	County of Dorset

	County of Gloucestershire
	County of North Somerset
	County of Plymouth
	County of Poole
	County of Somerset
	County of South Gloucestershire
	County of Swindon
	County of Torbay
	County of Wiltshire
	Isles of Scilly

Regulation 6

SCHEDULE 2 GROUNDS FOR DISQUALIFICATION

1. The person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged.
2. The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(14), Schedule 2A to the Insolvency (Northern Ireland) Order 1989(15) or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985(16) (which relate to bankruptcy restrictions orders and undertakings).
3. The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.
4. The person has been dismissed (without being re-instated) by reason of misconduct from any paid employment where that dismissal has not been the subject of a finding of unfair dismissal by a tribunal or court.
5. The person is subject to—
 - (a) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986(17);
 - (b) a disqualification order under Part 2 of the Companies (Northern Ireland) Order 1989(18) or a disqualification order or disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002(19); or

(c)an order made under section 429(2) of the Insolvency Act 1986(20) (disabilities on revocation of administration order against an individual).

6. The person has been removed—

(a)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 for which that person was responsible or to which that person was privy, or which that person, by their conduct, contributed to or facilitated; or

(b)under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990(21) (powers of the Court of Session to deal with management of charities) or section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005(22) (powers of the Court of Session to deal with management of charities) from being concerned in the management or control of any body.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the appointment of the Healthwatch England committee (“the Committee”) of the Care Quality Commission (“the Commission”). The Committee was provided for in section 181 of the Health and Social Care Act 2012 (“the 2012 Act”) which made various amendments to Part 1 of, and Schedule 1 to, the Health and Social Care Act 2008 in relation to the appointment and functions of the Committee.

Regulation 2 makes provision as to the membership of the Committee.

Regulation 3 makes provision as to the appointment of members, including results to be secured by persons with powers to appoint members. This includes a requirement to secure that the majority of the members are not members of the Commission.

Regulation 4 makes provision for the appointment of co-opted members by the Committee.

Regulations 5 to 9 make provision as to the tenure of office of members (regulation 5), disqualification for appointment or from holding office as a member (regulation 6), cessation of disqualification (regulation 7), termination of tenure (regulation 8) and suspension of members (regulation 9).

Regulation 10 makes transitional provision to ensure that, until the provisions of the 2012 Act relating to Local Healthwatch organisations are commenced, specified persons, such as representatives of Local Involvement Networks, can be appointed as members in place of directors of Local Healthwatch organisations.

A full Impact Assessment has not been produced for this instrument as no impact on the private sector or civil society organisations is foreseen.

(1)

2008 c.14 ("the 2008 Act"). See the definition of "regulations" in section 97(1) of that Act. There are no relevant amendments to section 161 of the 2008 Act. Sub-paragraphs (1A) and (5A) to (5D) were inserted into paragraph 6 of Schedule 1 to the 2008 Act by subsections (2) and (3), respectively, of section 181 of the Health and Social Care Act 2012 (c.7) ("the 2012 Act").

(2)

2012 c.7.

(3)

The reference to "the Commission" is a reference to the Care Quality Commission – see section 1(1) of the 2008 Act which made provision for the establishment of the Commission.

(4)

See paragraph 3(1)(a) of Schedule 1 to the 2008 Act as to the appointment of the chair of the Commission.

(5)

See paragraph 3 of Schedule 1 to the 2008 Act and S.I. 2008/2252, as amended by S.I. 2011/2547, as to the membership of the Commission.

(6)

Section 45A was inserted into Part 1 of the 2008 Act by section 181(4) of the 2012 Act. Subsection (1) of section 45A provides that the functions set out in subsections (2) to (5) are functions of the Commission but that the Commission must arrange for the Healthwatch England committee to exercise the functions on its behalf.

(7)

A copy of the Code of Practice of April 2012 is available to download from the Commissioner for Public Appointments' website at <http://publicappointmentscommissioner.independent.gov.uk/>.

(8)

As to the meaning of "Local Healthwatch organisation", see subsection (2A) of section 222 of the Local Government and Public Involvement in Health Act 2007 (c.28) ("the 2007 Act"), which is to be inserted by section 183(2) of the 2012 Act on a date to be appointed under section 306 of the 2012 Act.

(9)

See section 97(1) of the 2008 Act as to the definition of "English local authority".

(10)

Section 429(2) was amended by paragraph 15 of Schedule 23 to the Enterprise Act 2002, and is to be substituted by paragraph 3 of Schedule 16 to the Tribunal, Courts and Enforcement Act [2007 \(c.15\)](#), on a date to be appointed under section 148 of that Act.

(21)

[1990 c.40](#). Section 7 was repealed by paragraph 7(b) of Schedule 4 to the Charities and Trustee Investment (Scotland) Act [2005 \(asp 10\)](#). The functions of the Lord Advocate transferred to the Secretary of State by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999 ([S.I. 1999/678](#)), article 2(1) and the Schedule. See the entry in the Schedule for the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

(22)

Section 34 was amended by section 122 of the Public Services Reform (Scotland) Act [2010 \(asp 8\)](#).

See [S.I. 2008/2252](#), regulations 3 and 6 as to the tenure of office and the termination of tenure of office, respectively, of members of the Commission.

(11)

See [S.I. 2008/2252](#), regulation 7 as to the suspension of members of the Commission.

(12)

[2007 c.28](#). Section 221 of the 2007 Act is to be amended by section 182 of the 2012 Act on a date to be appointed under section 306 of the 2012 Act. By virtue of the amendments to section 222 of the 2007 Act by section 183 of the 2012 Act, such arrangements must be made with Local Healthwatch organisations.

(13)

A reference in section 222 of the 2007 Act to a “local involvement network” is to a person who, in pursuance of any particular arrangements made under section 221(1) of that Act by a local authority, is to carry on, in that authority’s area, activities specified in section 221(2) for that area – see section 222(2).

(14)

[1986 c.45](#). Schedule 4A was inserted by Schedule 20 to the Enterprise Act [2002 \(c.40\)](#).

(15)

[S.I. 1989/2405 \(N.I. 19\)](#). Schedule 2A was inserted by article 13(2) of the Insolvency (Northern Ireland) Order 2005 ([S.I. 2005/1455](#)) (N.I. 10).

(16)

[1985 c.66](#). Sections 56A to 56K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act [2007 \(asp 3\)](#).

(17)

[1986 c.46](#).

(18)

[S.I. 1989/2404 \(N.I. 18\)](#).

(19)

[S.I. 2002/3150 \(N.I. 4\)](#).

(20)

"Healthwatch England and Local Healthwatch organisations

45A Functions to be exercised by Healthwatch England

(1) The Commission has the functions set out in subsections (2) to (5), but must arrange for the Healthwatch England committee to exercise the functions on its behalf.

(2) The function in this subsection is to provide Local Healthwatch organisations with general advice and assistance in relation to—

(a) the making of arrangements under section 221(1) of the Local Government and Public Involvement in Health Act 2007 (local care services);

(b) the making of arrangements in pursuance of arrangements made under section 221(1) of that Act (see section 222(2B) of that Act);

(c) the carrying-on of activities specified in section 221(2) of that Act.

(3) The function in this subsection is a power to make recommendations of a general nature to English local authorities about the making of arrangements under section 221(1) of that Act.

(4) The function in this subsection is a power, where the Healthwatch England committee is of the opinion that the activities specified in section 221(2) of that Act are not being carried on properly in an English local authority's area, to give the authority concerned written notice of its opinion.

(5) The function in this subsection is to provide the persons mentioned in subsection (6) with information and advice on—

(a) the views of people who use health or social care services and of other members of the public on their needs for and experiences of health and social care services, and

(b) the views of Local Healthwatch organisations and of other persons on the standard of provision of health and social care services and on whether or how the standard could or should be improved.

(6) The persons referred to in subsection (5) are—

(a) the Secretary of State;

(b) the National Health Service Commissioning Board;

(c) Monitor;

(d) English local authorities.

(7) A person provided with advice under subsection (5) must inform the Healthwatch England committee in writing of its response or proposed response to the advice.

(8) The Healthwatch England committee may provide the Commission with information and advice on the matters mentioned in subsection (5)(a) and (b); and the Commission must inform the committee in writing of its response or proposed response to the advice.

(9) The Commission must publish details of arrangements it makes under subsection (1) (including details of payments of remuneration or other amounts); and inclusion of the details in a report under section 83 is not to be regarded as a discharge of the duty imposed by this subsection.

(10) In performing functions under this section, the Healthwatch England committee must have regard to such aspects of government policy as the Secretary of State may direct.