

REGULATORY APPRAISAL

NATIONAL HEALTH SERVICE, WALES

THE LOCAL HEALTH BOARDS (CONSTITUTION, MEMBERSHIP AND PROCEDURES) (WALES) (AMENDMENT) REGULATIONS 2007

Background

1. The Local Health Boards (Constitution, Membership & Procedures) (Wales) Regulations 2003 made provision for the constitution and membership of Local Health Boards (LHBs). Since the LHBs have been established it has become apparent that the original Regulations were silent on the issue of tenure for Chairs and Non-Officer Board Members, although this was covered in supporting guidance.
2. The original supporting guidance confirmed that tenure of appointments should be between three-five years. In the interim there have been local authority elections and it has become apparent that some local authority nominated Non-Officer Members did not have anything built into their letters of appointment confirming either tenure, or what should happen if their nomination was no longer supported by the majority of the Council.
3. This has resulted in some local authority Non-Officer Members who, although they no longer have the support of the majority of their Councils, have refused to surrender their LHB posts. This issue was further compounded because these Non-Officer Members do not have a period of tenure included in their appointment letters.
4. These Regulations also address the issue of terminating Chair and Non-Officer Member appointments as well as some other minor issues.

Purpose and intended effect of the measure

5. These Regulations primarily seek to address the issues of tenure and termination of appointment of LHB Chairs and Non-Officer Members, which were not addressed in the original Regulations.
6. These Regulations specify that initial appointments should be up to 4 years, with the possibility of a further term of appointment, subject to satisfactory performance appraisal, which outlines the main skills and qualities required. In the case of the Chairs, the Welsh Assembly Government will approve the performance appraisals and offer re-appointments for a period of time as is appropriate. Performance appraisals of Non-Officer Members will be approved and re-appointments offered by the Chair of the LHB. Appointments should not last longer than 10 years in total, in line with the Office for the Commissioner for Public Appointments' Code of Practice for Public Appointments.

7. A provision has been included to extend an appointment in excess of 10 years, primarily to accommodate the board membership of the senior social services officer. The local authority are expected to have four representatives on the LHB, one of whom should be a senior social services officer who quite possibly will be in post for longer than 10 years. Welsh Assembly Government approval would be required to extend an appointment beyond 10 years.
8. Provision has also been made for the Assembly, LHBs and Local Authorities to terminate their respective appointees at any time if it is considered that it is not in the interests of the NHS for the appointee to continue in post, or if their attendance has not been satisfactory, or if it comes to the attention of the Assembly that the person is ineligible for appointment. This will also allow local authorities to terminate those appointments, which do not currently have tenure clauses written into their letters of appointment.
9. The proposed amendments also confirm:
 - the status of Chairs, Vice Chairs (those appointed by the Minister and those appointed by the LHB), Non-Officer and Officer Members;
 - that local authorities will appoint their own nominations to the LHB, having complied with the appropriate appointment procedure;
 - that LHBs will appoint all Non-Officer Members other than local authority nominations;
 - that while LHBs must make all efforts to fill vacancies on their Boards they can still operate with vacancies or with a defective appointment; and
 - that LHBs may make arrangements, in exercise of its functions, to work with other LHBs.

Risk Assessment

10. Currently some LHBs have local authority members who, following the last local elections, no longer have the support of the majority of the Council. Some of these local authority representatives do not have periods of tenure in their appointment letters. Some LHBs affected by these developments have been reluctant to co-opt those local authority nominations who have the support of the majority of the Council as an interim measure.
11. The proposed amendments will assist local authorities to remove any of their appointees when they are no longer eligible to sit on the LHB and to remove any of their nominations who do not have periods of tenure in their appointment letters.

12. These Regulations also specify when Chairs and other Non-Officer Members can have their appointments terminated and clarify what should be done when a Board member wishes to resign.
13. In view of the joint working that LHBs are being asked to consider when commissioning for services, it is vital that an amendment is made to Regulation 16 – ‘Arrangements by Boards for the Exercise of their Functions’ to permit them to work with other LHBs.

Options

Option 1: Do Nothing

14. This will mean that the original Regulations do not specify the expected tenure of Chairs and Non-Officer Members or the provision for the termination of Chair appointments or local authority appointments. It would also not support the expectation for LHBs to work jointly to exercise their functions.

Option 2: Make the Legislation

15. This ensures that there is clarity over appropriate tenure periods; to have provision to terminate the appointments of Chairs; for local authorities to appoint and terminate their representatives on LHBs and to support the joint working of LHBs.

Benefits

16. These Regulations will confirm appropriate tenure periods; provide for the termination of LHB Chair appointments; provide for local authorities to appoint their representatives and terminate their appointments at any time. Those local authority Non-Officer Members, who no longer have the support of the majority of their Council but have refused to surrender their LHB posts, can be immediately removed.

Costs

17. There are no additional financial implications for the Assembly or local authorities arising from these Regulations. The Assembly is currently responsible for appointing the Chairs of LHBs and these are existing appointments. The cost of advertising is approximately £10,000 per recruitment process, with a maximum of two recruitment rounds per year. The cost of advertising is met from the current budget held within the Local Health Boards and Trusts and Central Budgets Revenue Expenditure Budget Expenditure Line.
18. Although the Assembly retains the power to appoint the Vice Chairs of LHBs, all current Vice-Chairs have been appointed by the incumbent Chair and Board, incurring no costs for the Assembly. LHBs will continue to be responsible for the appointment of all other LHB members, apart from local authority members, which are the responsibility of each individual local authority. There are no financial implications for local authorities as a result of making these Regulations.

Consultation

With Stakeholders

19. These Regulations were subject to a formal 12 week consultation from 16 October to 8 January 2007. All relevant stakeholders were consulted and a list of consultees is attached at Annex A. There were 24 responses, the majority of which supported the Regulations as drafted. A summary of consultation responses is attached at Annex B. There were no changes to the draft Regulations as a result of the consultation.

With Subject Committee

20. These Regulations were notified to the Health and Social Services Committee, via the list of forthcoming legislation, on 5 October 2005 (HSS(2)-10-05(p.3), item no: HSS 24 (05)) and have remained on the list ever since.

21. The Regulations were identified for detailed scrutiny on 5 October 2005 and the Health & Social Services Committee considered the Regulations at its meeting on 7 February 2007. No amendments to the Regulations were proposed. However, several points of clarification were raised and a full transcript of the Committee discussion is attached at Annex C:

- Chairs and Non-Officer Members may be offered an appointment for up to 4 years in the first instance, subject to a maximum of 10 years. Provision has been built to extend beyond 10 years but Welsh Assembly Government approval would be needed; and
- Local Authorities will be able to terminate the appointments of their nominated LHB Non-Officer Members (be they local authority Executive Members or backbenchers) at any time. One of the reasons for these Regulations has been to accommodate any changes that might need to be made following local elections, when the existing nominations may no longer have the support of the majority party.

Review

22. There are no formal plans to review these Regulations. However, the Assembly's NHS Public Appointments Unit deals with the appointments and terminations of LHB Chairs and Vice Chairs. These Regulations will provide the necessary clarification to LHBs and local authorities and, as public bodies, they will be expected to abide by these Regulations.

Summary

23. The amended Regulations will clarify the status of LHB Non-Officer Members; confirm appropriate tenure periods; build in provision for the termination and resignation of Chairs and Non-officer Members and support future joint working of LHBs in exercise of their functions.

Annex A

Distribution List

Assembly Members	National Assembly for Wales
Chairs & Chief Executives	Local Health Boards
Chairs & Chief Executives	NHS Trusts
Director & HR Director	Business Services Centre
Director	NHS Confederation in Wales
Chair & Chief Officer	Association of Welsh Community Health Councils
Director	Welsh Local Government Association
Chairs & Chief Executives	Local Authorities in Wales
Dean	University of Wales, Bangor
Chief Executive	Commission for Racial Equality
Chief Executive	National Leadership & Innovation Agency for Health Care
Secretary	British Dental Association in Wales
Postgraduate Dean	Wales College of Medicine, Cardiff University
Director Information Services	Wales College of Medicine, Cardiff University
Secretary	British Medical Association, Wales
Regional Head of Health	UNISON
Director	Royal College of Nursing (Wales)
Welsh Council Representative	British Dietetic Association
Wales Secretary	British Orthoptic Society
Wales Secretary	AMICUS MSF
Regional Secretary	The GMB
Regional Secretary	Transport & General Workers Union
Chair	Community Pharmacy Wales
Chair	Royal College of General Practitioners
General Secretary	Wales TUC
Assistant Director	Chartered Society of Physiotherapists
Officer for Wales	Society of Radiographers
IR Officer	Society of Chiropractors and Podiatrists
Regional Secretary	Union of Construction Allied Trades and Technicians
Board Secretary for Wales	Royal College of Midwives
Officer for Wales	AMICUS Electrical & Engineering Staff Association
Regional Secretary	AMICUS Amalgamated Electrical and Engineering Union
Welsh Executive	Royal Pharmaceutical Society of Great Britain
Information Officer	Wales Council for Voluntary Action
National Member for Wales	AMICUS – Guild of Health Care Pharmacists
Business Manager	Institute of Health Care Management Welsh Division
Chief Executive	Association of Optometrists
Librarian	British College of Optometrists
Director General	Wales Audit Office

Patch Managers
Secretariat
Regional Directors
Chief Executive
Director
Librarian
Chief Executive
Librarian
Chief Executive
Chairs and Chief Officers

Business Service Centres Across Wales (6 copies each)
Statutory Health Advisory Committees
NHS Wales Regional Offices
Health Commission Wales (Specialist Services)
National Public Health Service
National Public Health Service
Welsh Language Board/Bwrdd yr Iaith Gymraeg
Health Promotion Library
Healthcare Inspectorate Wales
Community Health Councils in Wales
NHS Centre for Equality & Human Rights
Department of Health
Scottish Executive
Northern Ireland Office
Carers Wales

Annex B – Summary of consultation responses

	QUESTION 1 Are you aware of any issues relating to the recruitment of community lay members and any suggestions about how these issues may be addressed?	QUESTION 2 Are you aware of any issues relating to the appointment of a CHC representative where there is more than 1 CHC in the area of the LHB or where the CHC covers more than 1 LHB? If so, how have these problems been resolved?	QUESTION 3 Do you agree that the Wales TUC should continue to nominate the Trade Union Member from its Trade Union Members.	QUESTION 4 Appointments/discontinuation of tenure of Local Authority members - will the proposed arrangements address issues that have arisen at the time of Local Authority elections?	QUESTION 5 Do you agree with the proposals for dealing with the tenure of appointment of members? Do you have any comment on the proposed transitional arrangements for existing members?	QUESTION 6 Do you have any of the comments or suggestions about how the Regulations may be approved?
Chair Neath/Port Talbot LHB	No	No	Yes	Yes. Would expect LA to consult with LHB Chair if they were considering terminating the appointment of a LHB LA member.	Yes. However considers that existing contracts should be honoured providing they continue to meet satisfactory performance and eligibility criteria.	<ol style="list-style-type: none"> 1. The ref to the NAFW being able to appoint a Vice Chair if it sees fit is deemed unhelpful and unclear. 2. Supports current diversity of Board membership 3. Would like to be able to increase number of Executive Directors on LHB Board.
Associate Director of Corporate	No issues	Not applicable in Cardiff LHB	Yes		No comments.	<ul style="list-style-type: none"> ▪ <u>Conflict of interest</u> A perceived conflict of interest where

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<p>Services on behalf of Cardiff LHB</p> <p>Associate Director of</p>						<p>professional practitioners are appointed to the Board while also holding office. Positions in their representative professional associations.</p> <ul style="list-style-type: none"> ▪ <u>Recruitment problems & associated issues</u> <p>Have been problems recruiting to GP and Optometrist posts - same reasons given are - eligibility criteria, expected time commitment, remuneration and no money for back filling.</p> <ul style="list-style-type: none"> ▪ <u>Quorum</u>

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<p>Corporate Services on behalf of Cardiff LHB</p>						<p><u>requirements</u> - need clarification</p> <p>When would a Board proceedings be considered invalidated due to the number of vacancies. ministerial appointment of Vice Chairs - when would this be used?</p> <ul style="list-style-type: none"> ▪ <u>Should remunerate Vice Chairs and Committee Chairs</u> ▪ <u>Eligibility criteria</u> <p>Consider that those members who no longer satisfy the eligibility criteria during their period of appointment therefore they retire or that a carer no longer is a carer should remain members and be supported by</p>

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						<p>'corrective mechanisms'. Continuation appraisal, training to update knowledge etc.</p> <ul style="list-style-type: none"> ▪ <u>Skills & Experience</u> Person specification needs to be reviewed. ▪ <u>Termination and Suspensions</u> This section should also make reference to disciplinary action.
Associate Director of Corporate Services on behalf of Cardiff LHB						<ul style="list-style-type: none"> ▪ <u>Non-Officer Member Designation</u> Suggest Board Member for NOMS and Executive Board Members for Officers.
Chief Executive, Vale of	No specific issues	Have not encountered any difficulties	Agree that existing requirements continue	Support proposals	Support proposals	Although WAG handled initial appointments to LHBs. As LHBs are now

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Glamorgan LHB						expected to handle appointments, would welcome guidance on appointment procedures & resources to manage function.
Chair Chief Executive, Blaenau Gwent LHB	No specific issues	No problems encountered	Yes. The LHB agrees it is important to have trade union membership	Support proposals	Support proposals	
Chair & Chief Executive Caerphilly LHB	Not aware of any specific issues	Gwent CHC covers 5 LHB areas. Gwent CHC has an area committee for the Caerphilly County Borough area. The CHC rep is drawn from this committee. No problems with	Yes	Support proposals	Support proposals	The Vice Chair role description remains unclear.

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Chair & Chief Executive Anglesey LHB	No specific issues. Have always had good response to filling community lay member posts.	this arrangement. No problems	Would welcome engagement with Wales TUC to try to identify pragmatic way forward and consider whether alternative methods of appointment TU rep.	No opposition to proposals	Does the 10 year limit include appointments on <u>any</u> board?	
Chair, Gwynedd LHB	No problems encountered - in fact this category has been the most competitive.	No problems. Gwynedd LHB has 2 CHCs and both are represented on LHB Board.	Support	Support		<ul style="list-style-type: none"> ▪ LHBs should be allowed to have as many associate members as they wish. ▪ Co-opted members should not be restricted to 1 year tenure. ▪ Vice Chair's should be remunerated for

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						<p>their enhanced responsibilities.</p> <ul style="list-style-type: none"> Eligibility Criteria - considers that appointing someone for 3/ 4 years when they have retired from their profession within the last year, cannot continue to satisfy the eligibility requirement during their tenure.
Rhondda Cynon Taf LHB	No particular issues encountered	RCT LHB has 2 CHCs - no problems encountered	Yes	Support proposals	Support proposals	Vice Chair position - needs clarification.
Chairman, Welsh Therapies Advisory Committee	Not aware of any particular issues	No aware of any issues	Suggest that there should be local nominations from those trade unions recognised under	Support proposals	Support proposals. Will 10 year limit apply to all prior years in total, or	Trusts should receive financial recompense to back fill.

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			Agenda for Change		only to consecutive years/years immediately preceding latest appointment.	
President, The Royal College of Radiologists	Not aware of any particular issues	No comment	Consider that there should be representation from primary and secondary care sectors	Proposal seems reasonable	Proposal seems reasonable.	
Chartered Society of Physiotherapy	Not aware of any issues	Not able to comment on this issue	CSP does not support this approach. TU member should be nominated from those TUs recognised under Agenda for Change by the relevant NHS Trust staff side locally, thereby ensuring accountability and a	Supports proposals	Supports proposals	Resources need to be made available to back fill.

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			direct mechanism for reporting back to local level.			
RCN	No comment	No comment	Affiliation to TUC should not be a prerequisite to LHB membership	Support proposal	Support proposal	
Society of Radiographers in Wales	Not aware of any issues	No comments	Does not support, considers that TU members should be nominated from those TUs recognised under	Supports proposal	Support proposals	Consider that the therapy seat as set out in the Regulations excluded professional groups e.g. radiographers and healthcare
Society of Radiographers in Wales			Agenda for Change and the rep should be from a local employers for accountability purposes.			scientists. Would like to see specific radiographer/healthcare scientist seat on LHBs.
The British Dietetic Association (Welsh)	Not aware of any issues	Not aware of any issues	Do not support. Propose that a local election is used with local nominations	Support proposals	Support proposals	Therapists should be remunerated.

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Board)			invited from TUs recognised under Agenda for Change			
Deputy Chief Executive on behalf of Carmarthen shire NHS Trust	No comment	No comment	No comment	No comment	No comment	No comment
Director of Corporate Services on behalf of North Glamorgan NHS Trust	No comment	No comment	No comment	No comment	No comment	No comment
Executive Director of Ops & Service Improvement on behalf of North West Wales	No comment	No comment	No comment	No comment	No comment	No comment

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NHS Trust Chief Officer, Merthyr CHC	No comment	Merthyr CHC covers 2 LHBs. The CHC rep on RCT LHB is regarded as an associate member while the CHC rep on Merthyr LHB is regarded as a co-opted member.	No comment	No comment	No comment	
Chief Officer, Clwyd CHC	No comment	Clwyd CHC has 3 LHBs in its catchment area - associate members have been nominated from each of the 3 area committees. No problems encountered.	No comment	No comment	No comment	No comment
Board of CHCs in	No comment	No comment in response to	No comment	No comment	Agreed	<ul style="list-style-type: none"> ▪ Suggest re-naming

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Wales		question, but confirm that CHC members should not be voting members as that would implicate the CHC in LHB decisions.				<p>Non-Officers.</p> <ul style="list-style-type: none"> ▪ Consider LHB Boards too large ▪ Is this an opportunity to reflect in the Regs regional commissioning and include some prescription to cover it?
Leader of the Council, Monmouthshire County Council	No comment	No comment	No comment	Support proposals	Support proposals	
Director, Legal & Democratic	No comment	No comment	No comment	No comment	No comment	

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Services on behalf of Rhondda Cynon Taf CBC						
Neath/Port Talbot CBC	Not aware of any particular issues, but consider voluntary sector or lay members should not also be Local Authority Members.	Not aware of any issues.	Agree	<ul style="list-style-type: none"> ▪ Agree that Local Authorities should select LHB members and that this should be done on a proportional representation of political parties as in other boards e.g. Fire Authority, Police Authority. ▪ Current members who have 5 year 	Oppose the proposed method of terminating the appointment of LA member by unity. Considers that a member should be allowed to continue the tenure of appointment (as on other boards e.g. School of Governing Bodies) unless they have broken their Code of Conduct.	

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				appointments should be allowed to continue until local elections in May 2008.		
Plaid Cymru Group Leader, Neath/Port Talbot CBC	Not aware of any issues	Not aware of any issues	Yes	<ul style="list-style-type: none"> ▪ Agree that Local Authority should be appointed by respective council. This should be done via proportionality in relation to political groups. 	Existing members with 5 year appointments should be allowed to continue appointment up until May 2008 Local Government elections.	

Annex C – Extract from the transcript of the HSS Committee meeting on 7 February 2007

**Is-Ddeddfwriaeth: Rheoliadau Byrddau Iechyd Lleol (Cyfansoddiad, Aelodaeth a Gweithdrefnau) (Diwygio) (Cymru) 2006
Secondary Legislation: the Local Health Board (Constitution, Membership and Procedures) (Amendment) (Wales) Regulations 2006**

[97] **Rhodri Glyn Thomas:** Mae **Rhodri Glyn Thomas:** Jonathan Morgan wedi codi dau bwynt Morgan has raised two points of o eglurhad ar hyn. Gallwch weld y clarification on this. These can be rheiny ym mhapur 2a. found in paper 2a.

[98] **Brian Gibbons:** On the first question, the regulations will allow for the removal of either the elected or non-elected member. The reason for having a limit of 10 years and an opportunity to apply to the Assembly for an exemption against that 10-year period is predominantly to allow the non-elected member—in other words the director of social services or a senior social services official in a local authority—to continue to serve on the local health board after 10 years, if that is felt to be appropriate and that person is giving added value.

10.30 a.m.

[99] **Jonathan Morgan:** I asked the question because, if a local authority's representative on the LHB is a county councillor, and that person is a member of the executive who has responsibility for health matters, as is often the case, I can see the desirability, where the council leadership and the council governance changes, to remove that person from that position. However, I am sure that there are examples where the representative is a backbencher who has an interest in health matters. I imagine that, for the sake of building up a level of stability and, perhaps, a degree of expertise in health matters among local authority members, it would be desirable for people not to be caught in the usual political ping pong that can occur once the leadership of the council changes political hands. That is why I raised the matter. I can understand why that would happen in the case of an executive member, but you can almost see people being kicked off LHBs simply because their party colour is the wrong one. I am sure that there is flexibility for that. It would be undesirable to see people who have built up expertise and experience, in terms of the local authority's having an input into health matters, losing that.

[100] **Brian Gibbons:** I hope that that will be taken care of after May in this building, namely that people who have built up expertise will not lose their jobs just like that. [*Laughter.*]

[101] **Jonathan Morgan:** We will bear that in mind, Minister.

[102] **Brian Gibbons:** I think that the nature of political change will be, as you

say, that some people who are doing a very good job in a non-partisan way could simply lose their post because the ruling party changes. That is true, and it is just an inevitable consequence of democracy. When I mentioned the exemption to the 10-year limit in terms of the regulations, I gave the example of a non-elected member but, as I understand it, this is not intended to apply only to non-elected members. If somebody was playing a stormer, and that was recognised as a singular contribution to the local health board by local government, and the local authority and perhaps the local health board wanted that person to continue, then again, they would apply to us for permission, and there is nothing in these regulations to prevent that person from continuing. As I said, the primary purpose was to ensure that a director of social services would not be removed simply because he or she had served for 10 years.

[103] **Mr Frodsham:** Yes, that is the case.

[104] **Rhodri Glyn Thomas:** Ac ar yr **Rhodri Glyn Thomas:** And on the ail bwynt, Weinidog, ynglyn ag aelod second point, Minister, with regard to a sydd wedi peidio â bod yn aelod, a'r member who has ceased to be a trefniadau? member, and the arrangements?

[105] **Brian Gibbons:** Ironically, yes, once a person was appointed under the previous regulations, he or she was more or less there for eternity.

[106] **Jonathan Morgan:** I had assumed that a county councillor who was serving on a local health board who then lost his or her county council seat would be automatically removed, but I was not quite sure whether that had been covered in the previous regulations.

[107] **Brian Gibbons:** No; but it is now.

[108] **Jonathan Morgan:** Right; that is fine.

10.33 a.m.