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DRAFT STATUTORY INSTRUMENTS

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**2014 No. 000**

**NATIONAL HEALTH SERVICE, ENGLAND**

**SOCIAL CARE, ENGLAND**

**PUBLIC HEALTH, ENGLAND**

**Health and Social Care Act 2008 (Regulation of Regulated Activities) (Amendment) Regulations 2014**

*Made* - - - - - \*\*\*

*Coming into force in accordance with regulation 1(2)*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 20 and 161(3) and (4) of the Health and Social Care Act 2008(a).

In accordance with section 20(8) of that Act, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

A draft of these Regulations was laid before Parliament in accordance with section 162(3)(b) of the Health and Social Care Act 2008, and was approved by a resolution of each House of Parliament.

**PART 1**

**General**

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Health and Social Care Act 2008 (Regulation of Regulated Activities) (Amendment) Regulations 2014.

(2) These Regulations come into force immediately after the coming into force of the Health and Social Care Act 2008 (Regulation of Regulated Activities) Regulations 2014.

## Fit and proper persons

2.—(1) The Health and Social Care Act 2008 (Regulation of Regulated Activities) Regulations 2014 are amended as follows.

(2) After regulation 2 (interpretation) insert—

## “PART 1A

### Requirements Relating to Persons Carrying on or Managing a Regulated Activity

#### Fit and proper persons

2A.—(1) This regulation applies to—

- (a) an individual who carries on a regulated activity,
- (b) a partner in a partnership that carries on a regulated activity, and
- (c) a person who is a director of a service provider.

(2) Persons to whom this regulation applies must—

- (a) be of good character,
- (b) have the qualifications, skills and experience which are necessary for carrying on the regulated activity or (as the case may be) for the relevant office or position,
- (c) be capable by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the carrying on of the regulated activity or (as the case may be) the office or position for which they are appointed or, in the case of an executive director, the work for which they are employed,
- (d) not have been responsible for, been privy to, contributed to or facilitated, any misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity, or discharging any functions relating to any office or employment with a service provider, and
- (e) not be prohibited from holding the relevant office or position, or in the case of an individual from carrying on the regulated activity, by or under any enactment.

(3) Where the service provider is a body, that body must have, through the combination of the qualifications, skills and experience of its partners or (as the case may be) directors, the necessary qualifications, skills and experience to carry on the regulated activity.

(4) A person cannot be a person to whom this regulation applies if any of the grounds of unfitness specified in Schedule 1 apply.

(5) The information specified in Schedule 2 and such other information as is appropriate must be available to be supplied to the Commission in relation to each person to whom this regulation applies.

(6) For the purposes of this regulation—

“director” includes any individual who performs the functions of, or functions equivalent or similar to the functions of, a director, by whatever name called, including—

- (a) a director (including the chairman) of an NHS trust established under section 25 of the National Health Service Act 2006(a),
- (b) a director of an NHS foundation trust, and
- (c) a trustee of a charity.

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(a) 2006 c. 41.

## **Cessation of unfitness**

**2B.**—(1) Subject to paragraph (3), a person (“P”) who is deemed unfit on a ground specified in paragraph 1 of Schedule 1, and not on any other ground specified in that Schedule, may apply in writing to the Commission to remove the prohibition under regulation 2A(4), and the Commission may direct that the prohibition is to cease to apply to P.

(2) Where the Commission refuses an application under paragraph (1) to remove that prohibition, no further application may be made by P under that paragraph until the expiry of the period of two years beginning with the date of the application, and this paragraph is to apply to any subsequent application.

(3) Where the Commission proposes to refuse an application under paragraph (1), the Commission must give notice to P.

(4) A notice under paragraph (3) must—

- (a) set out the grounds for the proposal to refuse the application, and
- (b) state that within 28 days of service of the notice written representations with respect to the proposal may be made by P to the Commission.

(5) After the end of the period referred to in paragraph (4)(b), the Commission must decide to accept P’s application or to refuse it and must give P notice of its decision.”

(3) In regulation 14 (fit and proper persons employed), after paragraph (5) insert—

“(6) This regulation shall not apply in a case to which regulation 2A applies.”

(4) In regulation 17(1) (offences), after “regulations” insert “2A or”.

(5) The Schedule (information required in respect of persons involved in carrying on a regulated activity) is to become “Schedule 2” and before that Schedule insert—

## **“SCHEDULE 1**

Regulation 2A

### **Unfit person test**

**1.** The person has within the preceding five years—

- (a) been convicted in the United Kingdom of any criminal offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom would constitute a criminal offence; and
- (b) been sentenced to a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine), and

on appeal the conviction has not been quashed nor the sentence reduced to a sentence other than a sentence of imprisonment or a sentence of imprisonment of less than 3 months (whether suspended or not).

**2.** 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.

**3.** The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland.

**4.** The person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.

**5.** The person is included in the children’s barred list or the adults’ barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland.”

## Revocation

3. Regulation 4 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010(a) is revoked.

Signed by the authority of the Secretary of State for Health

00th \*\*\*\*\* 2014

*Name*  
Minister of State  
Department of Health

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for a new requirement that will apply in relation to the way in which regulated activities for the purposes of Part 1 of the Health and Social Care Act 2008 are carried on. Regulation 2 introduces a requirement for persons involved in the running of a provider of regulated activities to be a fit and proper person.

The new fit and proper person requirement will apply to an individual who carries on a regulated activity, a partner in a partnership that does so and a director of a corporate body (including a trustee of a charity) that does so. The requirement lays down criteria to be met by such persons, including that they are of good character, not prohibited from performing the role by any enactment and that none of the grounds of unfitness specified in Schedule 1 apply. A person will be prohibited from performing the relevant role if they fail the fit and proper person requirement.

The grounds of unfitness in Schedule 1 include having been sentenced to imprisonment for 3 months or more within the last 5 years, being an undischarged bankrupt and being included on the children's barred list or the adult's barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006. In a case where a person fails the first of these grounds (imprisonment for 3 months or more), that person may apply in writing to the Care Quality Commission to remove the prohibition. The Care Quality Commission will then consider whether or not the prohibition should continue to apply to that person.

A full impact assessment of the costs and benefits of this instrument is available from the Department of Health, Richmond House, 79 Whitehall, London SW1A 2NS ([www.gov.uk/government/organisations/department-of-health](http://www.gov.uk/government/organisations/department-of-health)) and is published alongside this instrument and its Explanatory Memorandum at [www.legislation.gov.uk](http://www.legislation.gov.uk).

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(a) S.I. 2010/781.