

2007 No. 1770

MENTAL HEALTH, ENGLAND AND WALES

The Public Guardian Board Regulations 2007

Made - - - - - *19th June 2007*

Laid before Parliament *21st June 2007*

Coming into force - - - *1st October 2007*

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by section 59(6) of the Mental Capacity Act 2005(a):

Title and Commencement

1. These Regulations may be cited as the Public Guardian Board Regulations 2007 and shall come into force on 1st October 2007.

Interpretation

2. In these Regulations—

“the Act” means the Mental Capacity Act 2005;

“the Board” means the Public Guardian Board established by section 59(1) of the Act; and

“court” means the Court of Protection.

Selection of chairman of the Board

3. The Lord Chancellor shall select one of the members of the Board to be its chairman.

Term of office for members of the Board

4.—(1) The members of the Board shall be appointed for a fixed term of office not exceeding four years.

(2) On the expiry of a member’s term of office the Lord Chancellor, or where the member appointed under paragraph (1) is a judge of the court, the Lord Chief Justice in consultation with the Lord Chancellor, may, subject to paragraph (3), re-appoint that member to serve a further fixed term not exceeding four years.

(3) A member may not be re-appointed more than once.

(a) 2005 c.9. Section 59 is amended by S.I. 2006/1016 to provide that where a person to be appointed as a member of the Board is a judge of the court, the appointment is to be made by the Lord Chief Justice after consulting the Lord Chancellor.

Term of office of chairman of the Board

5.—(1) The member selected to be the chairman of the Board shall be appointed by the Lord Chancellor to hold that office for a fixed term not exceeding four years.

(2) On the expiry of a member's first term of office as chairman, the Lord Chancellor may re-appoint that member to serve a further fixed term not exceeding four years as chairman.

(3) Regulation 4 does not prevent a member who has been appointed or re-appointed as chairman from serving for the duration of that appointment or re-appointment.

(4) The chairman of the Board may resign from that office at any time by giving notice in writing to the Lord Chancellor.

(5) Where the Lord Chancellor gives notice in writing under regulation 6 suspending or removing the chairman's membership of the Board, his term of office as chairman shall also be suspended or cease from the date on which the notice is given by the Lord Chancellor.

Resignation, suspension and removal of members of the Board who are not judges of the court

6.—(1) This regulation has effect in relation to a member of the Board who is not a judge of the court.

(2) A member of the Board may resign his office at any time by giving notice in writing to the Lord Chancellor.

(3) The Lord Chancellor may, by giving notice in writing, suspend or remove from office a member of the Board on any of the following grounds—

- (a) that he has failed to attend three consecutive meetings of the Board without the prior approval of the chairman of the Board;
- (b) that he is unable or unfit to carry out his functions as a member of the Board; or
- (c) that he has otherwise failed to carry out his functions as a member of the Board or acted in a manner incompatible with his membership.

(4) Where the Lord Chancellor gives notice in writing suspending or removing a member from office, that member's term of office shall be suspended or cease, as the case may be, from the date on which the notice is given by the Lord Chancellor.

Procedure of the Board

7.—(1) The Board must decide the number of its members, not being fewer than half of its full membership, that will constitute a quorum.

(2) Where a decision of the Board is to be made by voting—

- (a) each member present at the meeting has one vote; and
- (b) where there is an equality of votes, the member presiding at the meeting has an additional, casting vote.

(3) Meetings of the Board shall be presided over by—

- (a) the chairman; or
- (b) where the chairman is not present, a member chosen to preside by those members present at the meeting.

Validity of proceedings of the Board

8. Proceedings of the Board shall not be invalidated by any of the following reasons—

- (a) a vacancy among its members; or
- (b) a defect in the appointment of a member or in the selection of its chairman.

Meeting open to the public

9. The Board must hold at least one meeting each year that is open to members of the public to attend.

Signed by authority of the Lord Chancellor

19th June 2007

Catherine Ashton
Parliamentary Under-Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 59 of the Mental Capacity Act 2005 (c.9) establishes a Public Guardian Board to oversee the functions of the Public Guardian. These Regulations make provision in relation to tenure of office of members and as to the procedure of the Board.

Regulations 3, 4, 5 and 6 make provision as to the selection of the chairman, tenure of office of the chairman and members of the Board and procedures for resignation, suspension and removal.

Regulation 7 makes provision about the procedure of the Board (including quorum and voting). Regulation 8 provides for the validity of proceedings notwithstanding a vacancy in the membership or a defect in a member's appointment or in the chairman's selection. Regulation 9 provides that the Board must hold at least one meeting each year that is open to members of the public to attend.

£3.00

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E0909 6/2007 170909T 19585

