



*The National Health Service  
(Appointment of Consultants)  
Regulations*

Good Practice Guidance

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# 1. Establishing the Post<sup>1</sup>

## Introduction

- 1.1 This guidance is for use by NHS Trusts, Primary Care Trusts and Strategic Health Authorities when making appointments to consultant posts. It provides good practice guidance on the NHS (Appointment of Consultants) Regulations 1996<sup>2</sup>, as amended. The 1996 Regulations and subsequent amendments do not apply to NHS Foundation Trusts although they can follow this guidance when appointing to a consultant post if they so choose.

## Planning the Post

- 1.2 It takes time to appoint a consultant. Planning for an appointment should begin as early as possible – in the case of a replacement post this should be as soon as it is known that a vacancy is to arise. It is good practice to look to plan the timetable for the whole process at the outset, so that all involved – Trust staff<sup>3</sup>, Colleges, Faculties, Universities, AAC members and potential applicants – know the timetable for appointment. The timetable should be confirmed after prospective AAC members have been contacted (Annex A summarises the stages in the AAC process; Annex B details the roles and responsibilities of those involved in the process).
- 1.3 Employers should begin by considering the service needs to be supported by the post. They should also consider:
- continuing educational requirements;
  - teaching;
  - training;
  - supervision of junior staff;
  - research; and
  - special interests,
- although not all will necessarily apply to every post.
- 1.4 It is important to consider the post with regard to other posts within the clinical team and to take into account the views of other consultant staff within that team. Obtaining appropriate, professional advice at this early stage will reduce the potential for delay later in the process.

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1 This guidance is intended only for medical and dental consultant posts. Posts that are open to both medically qualified people and to people qualified in disciplines other than medicine (for example, the majority of appointments in public health) should follow similar processes, even though they fall outside the regulatory framework. In these cases, employers are advised to consult the relevant College or Faculty website.

2 S.I. 1996/701 as amended by S.I. 2002/2469, S.I. 2003/1250, S.I. 2004/696 and S.I. 2004/3365.

3 References to 'Trusts' include Primary Care Trusts and Strategic Health Authorities, throughout this guidance.

- 1.5 There should be a presumption that all consultant posts are suitable for those wishing to work less than full-time (eg, job sharers and flexible workers). If there are specific reasons why the post is deemed inappropriate for someone wishing to work less than full-time, this decision should be justified.
- 1.6 All potential applicants will need to be given:
- job description;
  - person specification;
  - information on the Trust with details of units, clinics;
  - details of the staffing and relevant services;
  - where appropriate, information about associated undergraduate or medical/dental teaching or research work; and
  - the relevant terms and conditions of service, including pay and any local terms of service.
- 1.7 The preparation of the job description, person specification and advertisement is the responsibility of the employer. It is important these documents include all information relevant to the post and are as informative as possible for potential applicants.

## Preparing the Job Description

- 1.8 The Trust is responsible for drawing up the job description for a consultant post. When drawing up a job description it should consult the Regional Adviser<sup>4</sup> of the relevant Royal College or Faculty at an early stage and well before a job description is finalised. Advisers can provide helpful input to employers on professional aspects of the job description based on their knowledge of other consultant posts in the specialty. The role of Regional Advisers in relation to job descriptions is set out more fully at Annex C.
- 1.9 In discussing the job description with the Regional Adviser, employers should set out clearly the purpose of the post, the balance of work to be carried out, how this fits with the roles of other consultants in the team and the facilities available to enable the consultant to carry out his or her duties. This will enable Advisers to comment constructively and quickly.
- 1.10 Trusts should seek to respond positively to comments from Regional Advisers but it is for them to decide whether or not to amend a job description in the light of the Adviser's comments. Where a Regional Adviser is concerned that an employer has chosen not to accept their advice they may wish to raise the issue with the College President. This will not, however, prevent an employer advertising the post.
- 1.11 The final job description should be sent to the Regional Adviser for information.

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<sup>4</sup> The names, addresses, telephone and fax numbers of the Colleges' Regional Advisers will be published annually by each College and distributed to all relevant parties. Contact details for the Royal Colleges can be found in Annex C.

## Posts Involving Teaching and/or Research Commitments

- 1.12 In Trusts with a significant teaching commitment, and where individual consultants will undertake teaching of undergraduate medical or dental students, the Trust should liaise with the University over the job description (and person specification) through the Head or Dean of the relevant Medical or Dental school.
- 1.13 Where the post involves a research commitment that involves a university, the Trust should liaise with the university over the job description (and person specification) through the relevant 'responsible officer'.

## Person Specification

- 1.14 The person specification should be drawn from the job description and outline the minimum qualifications, skills and experience required to perform the job. It should distinguish between what is essential and what is desirable. All candidates should be expected to meet the requirements of the GMC's "Good Medical Practice".
- 1.15 It is a legal requirement for all doctors to be on the GMC's specialist register before being able to take up a consultant appointment. However, trainees may explore the possibility of post-CCST careers as soon as it is apparent that a CCST will be awarded in the near future. Consequently, Specialist Registrars will be able to apply for a consultant appointment provided the expected date of award of their CCST (or recognised equivalent, if outside the UK) falls no more than 6 months after the date of interview for the consultant post. There will be some other instances (for example, when considering applicants trained outside the UK) where an AAC may choose to interview a candidate prior to Specialist Register entry although, in these circumstances, it will wish to be satisfied that subsequent Specialist Register entry is likely.

## Advertising the Post

- 1.16 All posts must be advertised, unless either the appointment is exempted by the regulations or the prior consent of the Secretary of State not to advertise has been obtained.
- 1.17 A minimum of two advertisements must normally appear. These may be in nationally distributed journals or on nationally available Internet sites commonly used for similar advertisements relating to the profession concerned. At least one of the advertisements must appear in a printed journal. The advertisement should include:
- the closing date for applications (a minimum of three weeks from the date the advertisement is placed); and
  - the date of interview.

Where the date of interview has yet to be firmed up, but doing so would delay publication of the advertisement, the Information Pack for potential applicants should contain that information.

- 1.18 Advertisements must be consistent with the job description/person specification. They should also be drafted to encourage applications from suitable candidates of both sexes and from all sections of the community. Advertisements should avoid prescribing unnecessary requirements, such as length of residence or experience in the UK. Where a particular type of qualification is essential, care should be taken not to exclude overseas qualifications comparable to those obtained in the UK.

- 1.19 Where a Trust considers it has grounds for making an appointment without advertising the post, it may apply to the Secretary of State. This might arise where, for example, a consultant post in a shortage specialty has been advertised unsuccessfully on two separate occasions, and a suitable candidate becomes available. The application should include a detailed statement of the circumstances giving rise to it and details of local professional support of the application. In all cases where an exemption from advertising is approved Trusts must still ensure that an AAC is convened to consider any applicant's suitability for appointment. Applications should be sent to:

Department of Health  
NHS Pay Branch  
Room 2N35D  
Quarry House  
Quarry Hill  
Leeds LS2 7UE

- 1.20 Certain appointments are exempt from both the need to advertise and the need to hold an Appointments Committee. Details of such exemptions are given in Annex D.

## Preliminary visits

- 1.21 Neither Trusts, individual applicants nor other persons should canvass support for any application for a consultant post. However, applicants or prospective applicants should feel able to visit the relevant place of work and meet some of their prospective colleagues before the AAC selects its shortlist and holds interviews. The opportunity to make such visits should be drawn to the attention of candidates for the post, and a list of relevant contacts (such as the Medical Director and Chief Executive) provided. It should be made clear to applicants or prospective applicants that such visits form no part of the selection process.

## 2. Membership of the Advisory Appointments Committee

### AAC Membership

2.1 The Regulations set out the provisions governing the membership of AACs . In meeting these provisions, Trusts should seek to secure a balanced Committee. The core membership of Advisory Appointments Committees, as specified in Regulations, is set out below:

- a lay member<sup>5</sup> (*often the chair of the Trust or another non-executive director*);
- an external professional assessor, appointed after consultation with the relevant college or Faculty;
- the Chief Executive of the appointing body (*or a Board level Executive or Associate Director*);<sup>6</sup>
- the medical or dental director of the Trust (*or person who acts in a similar capacity at that hospital*) or the relevant director of public health for public health appointments;
- a consultant from the Trust, who, if available, should be from the relevant specialty;
- in the case of appointments to posts which have either teaching or research commitments or both, the committee must also include a professional member nominated after consultation with the relevant university.

An AAC may not proceed if any core member (or their appointed deputy) is not present.

2.2 In cases where the teaching and / or research commitment does not require an additional professional member, the chair should ensure that any interests of the university are represented by one of the other members of the Committee.

2.3 Trusts are free to add additional members, but the balance of the AAC must continue to have both a local and a medical/dental majority. Trusts should seek to ensure that the size of AACs is, in all cases, kept to a minimum.

2.4 In selecting the AAC, employers should approach the appropriate Royal College or Faculty for names of potential external assessors. It is important that employers make contact with Colleges immediately after the job description/person specification has been agreed. This will ensure that an assessor is identified for the proposed interview date *before* advertisements are placed. This recognises that employers will want notice of such commitments by those consultants who are acting as assessors. Colleges adopt different approaches to identifying and providing names of assessors but responsibility for ensuring an assessor has been identified and secured rests with the employer. The assessor must not be employed by the recruiting Trust and should, where possible, be employed by a Trust geographically distant from the recruiting Trust.

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<sup>5</sup> The definition of a lay member is given in the Statutory Instrument.

<sup>6</sup> This should in most cases be the nominated senior manager who normally deputises for the Chief Executive. It may, in certain circumstances, be another Executive or Associate director but, in all cases, should be a senior officer of the Trust.



- 2.5 Particular care needs to be taken in relation to AAC membership when appointing to posts across two or more Trusts, or to appointments made in conjunction with universities. For example, it is possible to contract an employee jointly between two Trusts or between a Trust and a PCT, Health Authority or local authority. When constituting the AAC in such cases, the requirements in the Regulations for joint appointments will need to be met.
- 2.6 Trusts must ensure that no close relative of any candidate or candidate's partner serves on an AAC. If it becomes apparent during the short-listing of candidates that any member of the committee is a close relative or partner of a candidate, that member should be invited to stand down and a replacement nomination sought.
- 2.7 Occasionally, one of the candidates will be well known to the 'local' members of the AAC. Such prior experience must not be allowed to interfere with an objective assessment of the candidates. A member may also have provided a reference for a candidate. On such occasions, the member must declare an interest and be careful not to show a bias
- 2.8 An outgoing consultant should not be a member of the AAC set up to select his/her successor.

## Late Unavailability of AAC Members

- 2.9 Prospective members of an AAC should notify the Trust *immediately* they become aware they are no longer able to attend the AAC on the set date. The Trust should then find an appropriate replacement. If the College assessor is unable to attend the interview at short notice, eg because of illness, the employer should contact the College urgently and it will endeavour to provide an alternative. Contact details are at Annex C. Only in extreme circumstances should it be necessary to cancel an AAC.

## Training

- 2.10 All members of AACs should have received appropriate training. This should cover all aspects of the appointments process and concentrate on those areas where difficulties may arise:
- equal opportunities (see Annex E); and
  - matters which should not be discussed at the interview other than in exceptional circumstances.

It is the responsibility of the nominating body (eg Trust, Royal College or Faculty) to ensure that such training has been provided.

# 3. The Pre-Interview Process

## Processing Application Forms

- 3.1 It is for employers to ensure that arrangements are made for providing information to intending applicants and for receiving and acknowledging applications. However, applicants should be asked to complete a standard application form, so that basic information is available to committee members in a standard format. This does not preclude the submission of a personal CV in addition.
- 3.2 Trusts may wish to allow the submission of electronic application forms. Whilst such decisions rest with individual Trusts, it should be made clear in the advertisement that standard, written applications are also acceptable and the timetable should not discriminate against this.
- 3.3 Applicants should be asked to provide details of three referees, at least one of whom should be connected with the applicant's current or most recent employment. Applicants should not be asked to provide multiple copies of applications.
- 3.4 Trusts should undertake equal opportunities monitoring of all applicants, short-listed candidates and successful candidates at interviews. The Commission for Racial Equality recommends collecting such information by means of a tear off slip on the application form. Trusts should analyse ethnic monitoring data to identify areas of concern.
- 3.5 All staff dealing with either applicants or applications (including those arranging pre-interview visits to the Trust) should receive training in fair recruitment and selection procedures.
- 3.6 As each application is received, the employer should arrange an initial check to ensure the candidate has provided all basic information and that inclusion, or eligibility for inclusion, on the Specialist Register is confirmed.
- 3.7 Shortly after the closing date, copies of all applications received, together with the job description and person specification, should be sent to each member of the AAC for consideration.

## Shortlisting of Candidates

- 3.8 Each member of the Committee including the lay members must have the opportunity to contribute to the selection of candidates to be interviewed. Short-listing should be carried out against the person specification.
- 3.9 Individual members of AACs are advised to make contemporaneous records, throughout the process, of their reasons for rejecting candidates or ranking suitable candidates. In the event of a challenge, the Courts and employment tribunals (who may order the production of contemporaneous notes) can question individual members, or the Committee as a whole, about the reason or reasons why a particular candidate was accepted or rejected.

- 3.10 The Chair can usually agree a short list by correspondence, taking into account the views expressed by all the members of the Committee – though it may be necessary to convene a meeting, video-link or telephone conference. Members should give their reasons for not short-listing particular candidates. In all cases, the Chair should confirm that the members are content with the shortlist. Candidates unsuccessful at this stage should be notified in writing and offered feedback.
- 3.11 The Committee and candidates should be fully aware of the process for selection and interview. Where the employer wishes to use selection techniques in addition to interview, all AAC members should be appropriately skilled in these techniques.
- 3.12 The Committee, before interviewing, should ensure a common understanding of the criteria, drawn from job description and person specification, against which the candidates are to be considered. Decisions on the suitability of candidates should relate to the agreed selection criteria. Reliance on facts rather than impressions is less likely to lead to discrimination.
- 3.13 Pre and post-appointment checks should be undertaken in accordance with Circular HSC 2002/008. Short-listed candidates invited for interview should be asked to return a confidential health questionnaire. This should be kept unopened until a candidate is recommended for appointment, when it will be forwarded to the Occupational Health Physician who will notify the Trust of the assessment of the candidate's fitness, or otherwise, for employment.

# 4. The Role of the AAC

## Function of the AAC

- 4.1 The AAC decides which, if any, of the applicants is suitable for appointment and recommends a name, or names to the Trust. It is normal (and acceptable) practice for the Trust to delegate the decision on appointment to its representatives on the AAC in order to enable decisions to be made speedily.

## Procedure

- 4.2 In performing its function, the AAC determines its own procedures, subject to the provisions of the regulations and of current legislation on employment practices. It must, however, pay clear regard to the general selection procedures and equal opportunity policies of the Trust.
- 4.3 The procedure and ordering of the questioning is at the discretion of the Chair, subject to prior collective discussion. However, it is good practice to consider individual candidates only after all interviews have taken place.
- 4.4 No candidate can be recommended for appointment (unless the appointment is an exempt appointment) without having been before an AAC. On occasions, a candidate may, for good reason, be unable to attend the interview on the set date. In these circumstances, the committee may consider the absent candidate. If he or she is considered potentially stronger than those candidates interviewed on the day, the AAC will have to reconvene and interview at a later date. Nonetheless, every attempt should be made to interview all candidates on the same day to minimise any undesirable variations that might otherwise occur.
- 4.5 Exceptionally, candidates may be interviewed by video or audio-link when they cannot be physically present. However, the AAC will wish to reassure itself that a candidate interviewed in this way is not given an unfair advantage or disadvantage over a candidate interviewed face-to-face. It is important that the AAC satisfies itself as to the candidate's identity.

## Decision Making

- 4.6 When considering which candidate(s) to recommend for appointment, the over-riding consideration of the AAC must be to recommend the best candidate for the post. Selection should be based solely on the candidate's suitability for the post when compared with the person specification. AACs should always make a clear recommendation of the most appropriate candidate. This recommendation does not need to be unanimous and no member of the AAC has a right to veto an appointment. The Trust should make decisions on disputed appointments in full knowledge of all the views put forward by the AAC and/or its individual members.
- 4.7 It is important to focus discussion on information obtained through the appointment process (application form and interview). Members should not refer to third party comment or hearsay about the candidates.

- 4.8 Members should be made aware that a candidate who feels he or she has been unfairly treated under anti-discrimination legislation is entitled to ask an employment tribunal or, in appropriate cases, a court to examine the proceedings of the appointment process. They should also be aware that the proceedings of the committee, any notes of discussions and any references or documents put before it are confidential. Members of the AAC and members or officers of Trusts must strictly observe this confidentiality.

## **Administrative Support**

- 4.9 It is often helpful for an administrative officer of the Trust to be present at the AAC to take a note of proceedings and to provide any assistance (for example, providing factual information about local facilities) required by members. It is preferable for this support to be provided by someone involved in the recruitment procedure. Such a person is not a member of the Committee, has no voting rights and should not contribute to the discussion or ask questions, unless by agreement of the Chair.
- 4.10 In addition, it is good practice for a senior personnel manager to be available for consultation in case of unforeseen problems.

# 5. The Post Interview Process

## After the AAC

- 5.1 A brief report of the AAC should be prepared and signed by the Chair of the AAC.
- 5.2 References should be taken up at the time of the conditional offer of employment. Details of current GMC/GDC registration should also be checked at this stage.
- 5.3 All records and documents in connection with the short-listing and interviewing, including formal records of the decision and informal notes taken by members of the AAC, should be retained by the Trust for a minimum of five years, confidentiality being secured. If an applicant were to bring a claim against a Trust (e.g. alleging discrimination), an employment tribunal may require these papers.

## Members' Complaints

- 5.4 Any member of the AAC may express concern to the Trust if he or she is unhappy with the conduct of the committee or the decisions made.

## Employment

- 5.5 The Trust may appoint only from persons recommended by the AAC. They may not appoint anyone who has not been found suitable. An employer is not required to make an appointment and it may decide to re-advertise the post.
- 5.6 If the Trust decides not to make an appointment from any candidate recommended, the Chair of the Committee should be informed of the reasons for non-appointment.
- 5.7 Good practice is formally to offer the post in writing to the successful candidate, subject to the results of checks on professional qualifications, criminal record check and health clearance, within two working days of the decision to appoint. As indicated above it is normal practice for this decision to be delegated to the employer representatives on the AAC. An appointment must not be confirmed until the appropriate pre-appointment checks have been made – see Circular HSC 2002/008.

## Feedback to Candidates

- 5.8 The AAC should agree in advance how feedback is to be offered to candidates. Where this is to be done orally on the day, the AAC should determine who is best placed to do this.
- 5.9 If feedback is not to be given on the day, candidates should be advised of this towards the end of the interview. In these circumstances, and those where a candidate prefers not to wait for immediate feedback, the Trust should write to unsuccessful candidates to confirm the outcome of the AAC and should offer feedback to them. The letter should make clear who should be contacted for this.

# 6. General

## Expenses

- 6.1 It is for the Trust to determine arrangements for the payment of expenses to candidates, whether for pre-interview visits or for interview, subject to the provisions of their terms and conditions of service.
- 6.2 Members of the AAC will be reimbursed their actual expenses including travel, hotel accommodation and other subsistence allowances in accordance with the rules of the Trust.

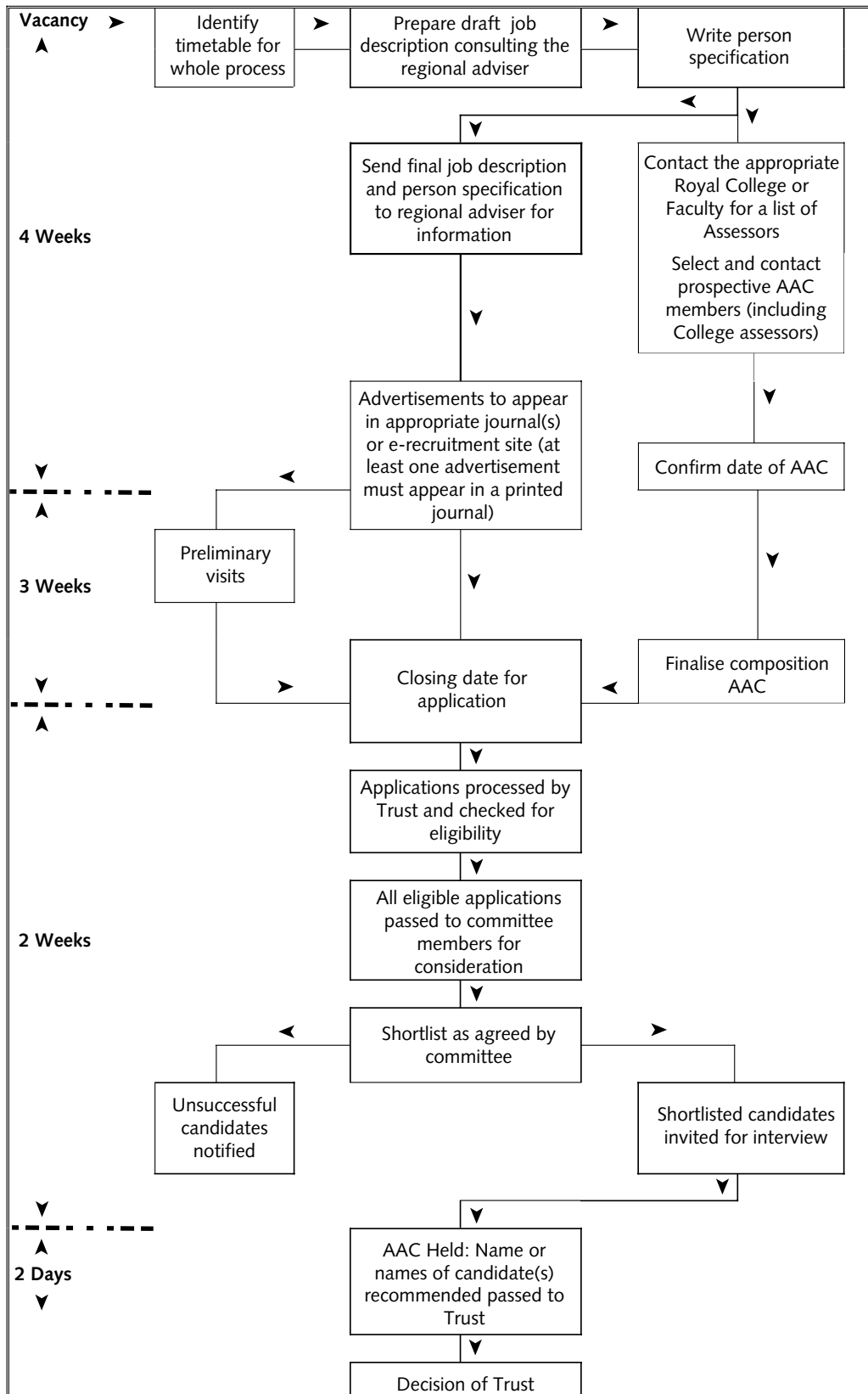
## Release of Consultants for AACs

- 6.3 Trusts should make every effort to release medical and dental practitioners to attend as members of AACs and should give a clear explanation of the reasons to the recruiting Trust if this is not possible.

## Duties Involving Termination of Pregnancy

- 6.4 Trusts are reminded of the need to take account of the guidance contained in HSG(94)39:
  - the job description should be explicit about termination of pregnancy duties;
  - the advertisement should not make reference to termination of pregnancy duties; and
  - unless specified in the job description applicants should not be asked whether they will be prepared to undertake termination of pregnancy.

# Annex A: Stages in the setting up of an Advisory Appointments Committee (AAC)





# Annex B: AAC Process: Roles and Responsibilities

## Trusts

- To begin planning the appointment process as soon as is practicable
- To consult with the regional adviser of medical Royal Colleges and Faculties on the job description
- To ensure appropriate liaison with Universities on the job description and person specification, where the post involves a teaching or research commitment
- To obtain from the appropriate Royal College or Faculty a list of College assessors
- To arrange for appropriate advertising of the post
- To select and contact AAC members
- To identify and provide administrative support to the AAC
- To take up references for shortlisted candidates
- To decide on which candidate, if any, should be appointed

## Medical Royal Colleges and Faculties

- To comment promptly on the employer's draft job description
- To provide the Trust with a list of College assessors

## AAC Chair

- To ensure the timetable set for the AAC process is reasonable
- To oversee the shortlisting of candidates
- To ensure, at the interview stage, that sufficient time is allowed for prior discussion and agreement on the structure of the interviews, a suitable period of time for each interview and adequate time for post-interview discussion.
- To ensure that AAC members:
  - are given an opportunity, prior to interview, to clarify points of detail concerning the job description and/or person specification
  - consider candidates in line with the person specification
  - have equal opportunity to question candidates
  - act fairly and in accordance with the Trust's equal opportunities policy (see Annex E)

- declare, and record, any relationship or personal or business connection with a candidate and that such members do not show bias
- To forward to the Trust the name(s) of selected candidate(s)
- To ensure appropriate feedback is offered to candidates unsuccessful at either the shortlisting or interview stages of the recruitment process

## AAC Members

- To ensure they have the appropriate training before sitting on an AAC
- To be fully aware of the Trust's protocol(s) on Equal Opportunities
- To advise the Trust immediately if they become aware they are no longer able to attend on the agreed AAC date

# Annex C: The Role of Regional Advisers In Relation to Job Descriptions

College and Faculty Regional Advisers can play an important role in helping NHS Trusts to prepare high-quality job descriptions, particularly where they are consulted at an early stage in the process. It is, however, important for their credibility that they respond to draft job descriptions quickly and positively and that they comment only on issues relevant to the College role.

In commenting on job descriptions their central concern should be with the professional content of the post in relation to clinical, teaching and research work. In considering job descriptions, they should look at the proposals in relation to other posts in the same specialty in the Trust, recognising that Trusts will often be seeking consultants with particular interests (eg in service or teaching) or specialisms to balance teams. Posts should be considered on their merits rather than against a standard template for a consultant post in the specialty. It is not the role of Regional Advisers to second-guess what individual employers want but to consider whether the post represents a satisfactory consultant post in the local circumstances of the Trust.

It is not the role of the Regional Adviser to comment on non-professional issues (eg the availability of car parking).

Early discussion with the Trust, and particularly the appropriate clinical director, is likely to be helpful in resolving concerns.

## Contact details for the Royal Colleges

These contact details were correct as of August 2004. For more up to date information please consult the relevant College or Faculty website.

### **The Royal College of Anaesthetists**

Anita Mattis

Tel: 0207 908 7333

### **The Royal College of Ophthalmologists**

Alex Tytko

Tel: 0207 935 0702

Email: alex.tytko@rcophth.ac.uk

### **The Royal College of Physicians**

Linda Counter

Tel: 0207 935 1174 (Ext. 225)

Email: aac@rcplondon.ac.uk

[www.rcplondon.ac.uk/professional/aac/index.htm](http://www.rcplondon.ac.uk/professional/aac/index.htm)

### **Faculty of Public Health**

Sally Parker

Tel: 0207 935 0243

Email: [sallyparker@fph.org.uk](mailto:sallyparker@fph.org.uk) (for lists of assessors)

[www.fph.org.uk](http://www.fph.org.uk) (for job description queries)

**Faculty of Occupational Medicine**

Louise Heyes

Tel: 0207 317 5895

**Royal College of Surgeons**

Sarah Bendall

Tel: 0207 869 6203

**Faculty of Dental Surgery**

Cathy Cleavin

Tel: 0207 869 6807

Email: ccleavin@rcseng.ac.uk

**Inter Collegiate Faculty of Accident and Emergency Medicine**

Dr Ruth Brown

Tel: 020 7405 7071

**Royal College of Obstetricians and Gynaecologists**

Caroline Allen

Tel: 0207 772 6274

Email: callen@rcog.org.uk

**Royal College of Pathologists**

Workforce Department

Tel: 0207 451 6725

**Royal College of Psychiatrists**

Postgraduate Educational Service

Tel: 0207 235 2351

**Royal College of Radiologists**

Sandy Derbyshire

Tel: 0207 636 4432 (Ext.1150)

**Royal College of Paediatrics and Child Health**

John Pettitt-

Tel: 020 7092 6075

# Annex D: Persons Exempt from AAC Process

## Exemptions from the Regulations

The Statutory Instrument lists appointments exempt from the need to advertise and to be selected by an Advisory Appointments Committee.

## Honorary Contracts

Unpaid appointments are exempt where the person to be appointed is to receive no remuneration in respect of the tenure of the post and is:

- (i) a member of the academic staff of a University;
- (ii) a consultant who is over the age of 65;
- (iii) a mental health officer, as defined in the National Health Service Pension Scheme Regulations 1995<sup>7</sup>, who is over the age of 60;
- (iv) a person who is wholly or mainly engaged in research which requires his or her appointment to the staff of a Trust;
- (v) a medical practitioner who has been appointed to a post in a hospice which is equivalent to a consultant post in the health service.

It is important that a Trust proposing to grant an honorary contract satisfies itself as to the practitioner's competence to carry out the clinical duties required; the employer carries the same liability in law for the actions of its honorary staff as it does for its paid staff. An honorary appointee must also be on the Specialist Register.

## Locum Appointments

Locum appointments are exempt provided the employment is for an initial period not exceeding six months and any extension for a maximum period of a further six months is subject to a satisfactory review by the Trust and to consultation with the relevant College.

It is important that Trusts have satisfactory procedures in place to ensure that locum consultants are of adequate standard. There should always be assessment of the candidates by an 'appointments' committee, including at least two professional members, one in the specialty concerned. Where a locum is to be appointed at short notice and is not already known to the Trust, he or she should be seen by at least one of the hospital consultants before he or she is engaged. It is important that references are obtained for all locum appointments, irrespective of the short-term nature of the post.

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<sup>7</sup> See regulation A2 of S.I. 1995/300

Wherever possible, Trusts should try to appoint as locums doctors or dentists who hold, or have held, posts of consultant status, or else who have completed specialist training.

More detailed guidance is given in the Code of Practice on the appointment and employment of HCCHS locum doctors, issued by the NHS Executive in August 1997.

## Appointments Following Redundancy

Where a consultant has been, or is about to be, made redundant from his or her post by the Trust, the latter has a moral obligation to render him or her, the greatest possible assistance with a view to obtaining comparable work elsewhere. Where this is not possible, the Trust should apply to the Secretary of State for a certificate recognising that this person has been made redundant from a paid appointment, which has been the subject of an AAC recommendation; a copy should be given to the consultant concerned. On presentation of the certificate of redundancy, he or she may be exempted from the AAC procedures, provided an appointment is made within one year of the date of the redundancy.

## Other Exemptions from the NHS AAC Process

Other exemptions occur where the person to be appointed:

- is transferred from one Trust to another as part of a local reorganisation of the health service, without any significant alteration in the duties of the post; or
- is a consultant transferred within a Trust to another consultant post with that Trust; or
- is a consultant transferred to a consultant post with a different Trust where the employment of the consultant would otherwise be terminated by reason of redundancy;
- is a consultant, working for the Health Protection Agency, the Defence Medical Services or a University, transferred to an NHS post in which the duties are substantially the same as those performed for the Agency, the Defence Medical Services or the University;
- was a consultant who retired as a consultant and returns to work in the same Trust and specialty as the one he or she filled prior to retirement.

# Annex E: Equal Opportunities Issues

## General

All members of the AAC should be trained in fair and non-discriminatory interviewing and selection techniques, and have received appropriate training in the application of equal opportunities legislation to appointment procedures in line with relevant Codes of Practice e.g. EOC and CRE Codes of Practice. It is the responsibility of Trusts, Royal Colleges and Faculties and Universities to ensure that their representatives on the AAC have received such training. It is also the responsibility of individual, potential members of AACs to attend such training as is required.

All NHS Trusts have a commitment to achieving the Improving Working Lives Standard, resulting in the development of comprehensive equality and diversity strategies, policies and practices that commit the organisation and its representatives to a pro-active approach to valuing staff and raising confidence. A key element of this is a commitment to avoiding discrimination (in all its forms) on a range of grounds including race, gender, disability, age, sexual orientation, religion, belief or class. All AAC members should familiarise themselves with the policy of the Trust prior to the interview.

All members of AACs must act fairly in the shortlisting and selection of candidates – they have a duty to avoid direct or indirect discrimination in the selection. In assessing a candidate's suitability for appointment there should be no discrimination, intended or otherwise, on grounds of colour, race, gender, disability, religion, politics, marital status, sexual orientation, gender reassignment, membership or non-membership of trades unions or associations or ethnic origin.

## Legislation

Both the Race Relations Act and the Sex Discrimination Act allow steps to be taken by which people from particular groups are either encouraged to apply for jobs in which they have been under-represented or given training to help them develop their potential and so increase their prospects when competing for particular work. The Race Relations (Amendment) Act goes further and places a duty on public bodies to actively promote race equality. In this respect, as a minimum, Trusts are required to monitor applicants and their progress through the selection process. The Disability Discrimination Act 1995 makes it unlawful to discriminate directly or indirectly on the grounds of a person's disability. Nonetheless, competition based on capability remains paramount.

Indirect discrimination occurs when conditions or requirements, which are applied to all candidates, disproportionately disadvantage candidates of one group or another. Such requirements are unlawful unless justified by the needs of the job.

Candidates who feel they have been unfairly treated under any Act, whether directly or indirectly, are entitled to ask an employment tribunal, or in appropriate cases a court, to examine the proceedings of an AAC.

As a matter of good practice, and to guard against unwitting discrimination, members of the panel should agree the main areas of questioning before the interview commences. It is the Chair's responsibility to ensure that no questions are asked which are, or could be, construed as being biased or prejudicial (see below for examples)

## Unfair Questioning

The following points should be borne in mind in determining whether or not the selection procedures are fair and in accordance with the principles of Equal Opportunities:

- each applicant should be assessed according to personal capability to meet the requirements of the job;
- selection criteria including any tests should relate to job requirements;
- questions at interview should be relevant to the job. It is lawful for an AAC, where necessary, to assess whether a candidate's personal circumstances will affect his or her ability to meet fully the requirements of the job (e.g. where it involves unsocial hours), provided both sexes are treated equally;
- questions about marriage plans or family intentions or family ties should not be asked;
- candidates should not be asked about social customs, political beliefs or religious practices, nor should the different social interests of people from different ethnic groups be permitted to influence the selection process;
- candidates who may reasonably be expected to have family ties abroad should not be asked questions about visits "home";
- information necessary for personal records or on any aspect of equal opportunities policy should not be requested by any member of the AAC.

## Appointment Issues

In relation to pre- and post-appointment checks for persons working in the NHS, information relating to an applicant's criminal record, health or professional status must not be routinely sought from every applicant (HSC 2002/008) – this excludes basic information such as GMC/GDC registration (see paragraph 3.6). Employers need to consider the best way to discharge their duty of care to patients and others and it may be that this can be met by obtaining such information from only either the short-listed candidates or the successful applicant.

Trusts should, when making appointments, be mindful of the Disability Discrimination Act 1995 and best practice in employing people with disabilities, which is set out in detail in the "Code of Good Practice on the Employment of Disabled People", published by the Employment Service and in "Looking Beyond Labels", published by the Department of Health.





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266279/*The National Health Service (Appointment of Consultants) Regulations* can also be made available on request in braille, on audio cassette tape, on disk and in large print.

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