

SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005

EXPLANATORY NOTES

THE ACT

Part 5: Discipline

115. This part makes a number of changes to those sections of the 1978 Act relating to the NHS Tribunal. The Tribunal is the principal NHS disciplinary body for family health service practitioners. It is an independent body comprising a Chair appointed by the Lord President of the Court of Session, a member of the relevant profession and a lay member both appointed by the Scottish Ministers.

Section 26 – Disqualification by the NHS Tribunal

116. A new subsection (2) is substituted in section 29 of the 1978 Act for the existing subsection. The substitution, taken together with the repeal of the words “the representations are that the second condition for disqualification is met and” in subsection (4)(b), enables the Tribunal to inquire into any case referred by a Health Board or other person within prescribed time limits and involving an applicant to any Health Board lists or a person who is already listed who meets any condition for disqualification.
117. Subsection (6) of section 29 sets out the first condition for disqualification by the Tribunal. In subsection (6), the words “inclusion or continued” are substituted for “continued” so that the first condition of disqualification may be satisfied by those applying to be included in a list. Subsection (6)(a) is expanded to cover the list of persons performing personal dental services described in section (8)(cc) and performing pharmaceutical services described in subsection (8)(e).
118. Subsection (6)(b) of section 29 is inserted to make similar provision for the list of persons described in subsection (8)(c) or (d) who provide, and assist in the provision of, services.
119. The new subsection (7A) inserted into section 29 adds a third condition of disqualification – unsuitability (by virtue of professional or personal conduct) – to the existing 2 disqualification conditions of fraud and prejudice to the efficiency of the relevant service. It enables disqualification of both list applicants and listed persons who meet this condition.
120. Subsection (8) of section 29 is amended as follows. The reference to the list of medical practitioners providing general ophthalmic services in paragraph (8)(b) is deleted. The existing paragraphs (8)(c) to (e) are replaced with references to the lists of those who provide, and assist in providing, general dental or general ophthalmic services and perform personal dental or pharmaceutical care services.
121. In subsection (11) of section 29, the insertion of the words “and cases in which representations are made that the third condition for disqualification is met are referred

*These notes relate to the Smoking, Health and Social Care (Scotland)
Act 2005 (asp 13) which received Royal Assent on 5 August 2005*

to below as unsuitability cases”, taken together with the repeal of the word “and”, provides for the categorisation of cases referred by Health Boards or other persons which meet the third condition of disqualification as “unsuitability cases” and adds this category to the other 2 categories of cases regarding the 2 existing disqualification conditions.

122. In section 29A, subsection (1) is amended so that the new third condition of disqualification can be met by any body corporate carrying on business as ophthalmic opticians if a director meets that condition. A new subsection, (1A), is inserted to make similar provision to subsection (1) for any body corporate which carries out dentistry as a business. The Tribunal may direct disqualification of the body corporate on ground of fraud or unsuitability if any director meets those conditions. Subsection (3) is amended to provide that those who assist in the provision of services, as with those who provide or perform services currently, will be treated as meeting the disqualification condition of fraud if someone acting on their behalf meets that condition and they failed to take reasonable steps to prevent that happening. Subsection (5) is amended so that this may be done in efficiency and unsuitability cases also. In subsection (6) the circumstances in which a fraud or efficiency case is finally concluded are set out. It is amended so that it also applies to an unsuitability case.
123. A new paragraph (c) is inserted into section 29B(1). This adds the new third condition of disqualification to the grounds on which the Tribunal shall make a disqualification.
124. A new subsection (2) is substituted in section 29B for the existing subsection. The effect is that the Tribunal shall disqualify a person from all lists of persons delivering those services where it determines a condition of disqualification is met, unless it would be unjust to do so. In the case of dental services, the disqualification is from all lists of persons undertaking to provide and approved to assist in providing general dental services and of persons performing personal dental services.
125. A new paragraph (c) is added to subsection 29C(2) dealing with conditional disqualification which extends the scope of the conditions which the Tribunal may place on those who are permitted to practice conditionally.
126. Subsection (5)(aa) is amended to refer to section 17F, 17P or 17X or Part II of the 1978 Act. This allows the Tribunal, for the purpose of or in connection with the imposition of conditions, to vary any requirements to which a person subject to the inquiry is subject. This is in addition to the Tribunal’s power under subsection (5)(a) to vary any terms of service the person is subject to by virtue of subsection (5)(a).
127. In section 32(2) the words “both an efficiency case and a fraud case” are replaced by “an efficiency case and a fraud case or an unsuitability case or any other combination of more than one such category of case”. Section 32(2) provides that where representations are made to the Tribunal against the same person on grounds of efficiency and fraud, regulations may provide that it may inquire into one or other matter and, when then matter is finally disposed off, it may decide to adjourn the other matter indefinitely. This allows regulations to provide, for example, for situations such as where the Tribunal has decided that a condition for disqualification was met for, say, proven fraud and there would be nothing to be gained by considering other allegations. The amendment extends the regulation-making power to take account of the new ground of unsuitability.
128. Subsection (2) of section 32A is amended so that directions by the Tribunal for suspension of a person as respects services applies, in the case of dental services to both general and personal dental services. A new paragraph (b) is substituted in subsection 32A(2A). This widens the second ground on which the Tribunal may direct interim suspension from one only related to the further perpetration of fraud/ the prejudicing of investigation of a fraud case or review to a public interest ground. This includes cases where suspension is intended to ensure that further fraud is not perpetrated or evidence/witnesses in a fraud case are not interfered with. It will also enable the Tribunal to direct the interim suspension where it is otherwise in the public

*These notes relate to the Smoking, Health and Social Care (Scotland)
Act 2005 (asp 13) which received Royal Assent on 5 August 2005*

interest. It could include, for example, interim suspension to prevent serious disruption to the efficiency of services.

129. Subsection 6(a) is amended so that the definition of “relevant list” now covers persons providing services, and persons performing, undertaking to provide and approved to assist in providing services.
130. A new subsection (7) is inserted into section 32A. This will enable regulations to provide for the continuation of the suspension of a person whom a Health Board has suspended from one of its lists in terms of regulations under sections 17F, 17P, 17X, 25(2) or 26(2) of the 1978 Act and referred to the Tribunal until such time as the Tribunal has decided whether or not to suspend the person.

Section 27 – Corresponding provision in England or Wales or Northern Ireland

131. **Section 27** substitutes a new section 32D of the 1978 Act. At present section 31 governs the effect in Scotland of decisions under provisions in force in England or Wales or Northern Ireland which correspond to provisions in force in Scotland regarding disqualification, and section 32D governs the effect in Scotland of decisions under provisions in force in England and Wales or Northern Ireland which correspond to provisions in force in Scotland regarding suspension by the Tribunal. However provisions in other parts of the UK may not correspond exactly to the provisions in force in Scotland. This new section replaces section 31 and 32D and allows regulations to provide for the effect of such decisions in Scotland, by providing for the effect that is to be given in Scotland to decisions made in other parts of the UK which correspond (whether or not exactly) with decisions made by the Tribunal.