

**2004 No. 38**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Tribunal) (Scotland) Regulations  
2004**

*Made* - - - - - *2nd February 2004*

*Laid before the Scottish Parliament* *3rd February 2004*

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### SCHEDULES

1. Provisions as to inquiry.
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The Scottish Ministers, in exercise of the powers conferred by sections 19, 24B, 25(2), 26(2), 27(2), 29(4) and (9), 29A(5), 32, 32C(2), 105(7), 106(a) and 108(1) of, and paragraph 7 of Schedule 8 to, the National Health Service (Scotland) Act 1978(a) and sections 39 and 40(2) of, and paragraphs 3(4) and (5), and 7 of Schedule 1 to, the National Health Service (Primary Care)

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(a) 1978 c.29; section 19 was amended by the Health Services Act 1980 (c.53) ("the 1980 Act"), section 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c.41) ("the 1983 Act"), Schedule 7, paragraph 2, by the Medical Act 1983 (c.54), Schedule 5, paragraph 17(a), by the National Health Service and Community Care Act 1990 (c.19) ("the 1990 Act") section 37, by the Medical (Professional Performance) Act 1995 (c.51), Schedule, paragraph 29(a), was extended by the Health and Medicines Act 1988 (c.49) ("the 1988 Act"), section 17, and repealed in part by the National Health Service (Primary Care) Act 1997 (c.46) ("the 1997 Act"), Schedule 2, paragraph 39 and Schedule 3, Part I; section 24B was inserted by the Community Care and Health (Scotland) Act 2002 (asp 5) ("the 2002 Act"), Part 3, section 18; section 25(2) was extended by the 1988 Act, section 17, amended by the 1990 Act, Schedule 9, paragraph 19, repealed in part by the 1997 Act, Schedule 2, paragraph 43 and Schedule 3, Part I, and amended by the Health Act 1999 (c.8) ("the 1999 Act"), section 56; section 26(2) was amended by the Health and Social Security Act 1984 (c.48), Schedule 1, Part II, paragraphs 2, 3, 4 and Schedule 8, was extended by the 1988 Act, section 17 and amended by the 1999 Act, section 56; section 27(2) was amended by the National Health Service (Amendment) Act 1986 (c.66), section 3, was extended by the 1988 Act, section 17, and was amended by the 1990 Act, Schedule 9, paragraph 19; section 29(4) and (9) were inserted by the 1999 Act, section 58; section 29A was inserted by the 1999 Act, section 58; section 32 was amended by the National Health Service (Amendment) Act 1995 (c.31) ("the 1995 Act"), section 11 and Schedule, and by the 1999 Act, Schedule 4, paragraph 50; section 32C was inserted by the 1995 Act, section 8; section 105 was amended by the 1980 Act, Schedule 6, paragraph 5 and Schedule 7 and by the 1983 Act, Schedule 9, paragraph 24; section 108(1) contains definitions of "prescribed" and "regulations" relevant to the exercise of statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.49).

Act 1997(a) and of all other powers enabling them in that behalf, and after consultation with the Council on Tribunals and its Scottish Committee in accordance with sections 8(1) and (3) of the Tribunal and Inquiries Act 1992(b), hereby make the following Regulations:

## PART I GENERAL

### Citation, commencement and extent

1.—(1) These Regulations may be cited as the National Health Service (Tribunal) (Scotland) Regulations 2004 and shall come into force on 4th March 2004.

(2) These Regulations extend to Scotland only.

### Interpretation and forms

2.—(1) In these Regulations—

“the 1978 Act” means the National Health Service (Scotland) Act 1978;

“the 1997 Act” means the National Health Service (Primary Care) Act 1997;

“applicant” means a person who has made an application;

“application” means, unless the context otherwise requires, an application for a review;

“chairman” includes a deputy chairman acting in the chairman’s place;

“Chief Executive” means the Chief Executive or equivalent of a Health Board or primary care NHS trust or some other officer of the Health Board or primary care NHS trust duly authorised to act on behalf of the Chief Executive or equivalent;

“complainer” means a Health Board or primary care NHS trust or any other person who makes representations to the Tribunal;

“conditional disqualification” has the meaning indicated in section 29C(1) of the 1978 Act(c);

“dentist” means a fully registered dental practitioner;

“disqualification” means local or national disqualification but does not include conditional disqualification;

“doctor” means a fully registered medical practitioner;

“document” means a document in writing and includes—

(a) any map, plan, graph or drawing;

(b) any photograph;

(c) any disk, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(d) any film (including any microfilm), negative, tape or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom;

“efficiency case” has the meaning indicated in section 29(11) of the 1978 Act(d);

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(a) 1997 c.46; section 40(2) contains definitions of “prescribed” and “regulations” relevant to the exercise of statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.49).

(b) 1992 c.53.

(c) Section 29C(1) was inserted by the Health Act 1999 (c.8), section 88.

(d) Section 29(11) was substituted by the Health Act 1999 (c.8), section 58.

“first condition for disqualification” has the meaning indicated in section 29(6) of the 1978 Act(a);

“fraud case” has the meaning indicated in section 29(11) of the 1978 Act;

“Health Board” means a Health Board constituted under section 2 of the 1978 Act(b);

“inquiry” means an inquiry held in accordance with the provisions of these Regulations and includes any hearing relating to suspension proceedings;

“in writing” does not include transmission by electronic means;

“list” has, unless the context otherwise requires, the meaning assigned to it in section 29(8) of the 1978 Act(c);

“local or national disqualification” has the meaning indicated in section 29B(2)(a) and (b) of the 1978 Act(d);

“ophthalmic medical practitioner” means a doctor having the qualifications prescribed by regulation 3 of the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986(e);

“optician” means a person registered in either of the registers kept under section 7 (registers of opticians) of the Opticians Act 1989(f) of ophthalmic opticians or a body corporate enrolled in the list kept under section 9 (list of bodies corporate carrying on business as opticians) of that Act of such bodies carrying on business as ophthalmic opticians;

“pharmacist” means a registered pharmacist within the meaning of the Medicines Act 1968(g);

“pharmacist contractor” means a contractor who provides pharmaceutical services or a person lawfully conducting a retail pharmacy business in accordance with section 69 (general provisions) of the Medicines Act 1968(h);

“practitioner” means, unless the context otherwise requires, the doctor, dentist, ophthalmic medical practitioner, optician, pharmacist or pharmacist contractor, who is the subject of representations by a complainer or who is the subject of an application;

“primary care NHS trust” means an NHS trust to which functions referred to in section 12AA (additional functions of NHS trusts) of the 1978 Act(i) are delegated by the Health Board;

“representations” means, except in regulation 28(2), representations made to the Tribunal that a person meets the first or second condition for disqualification or representations under paragraph 3(1) or (2) of Schedule 1 to the 1997 Act (representations against preferential treatment)(j);

“relevant professional body” means—

- (a) in relation to a practitioner who is a doctor or an ophthalmic medical practitioner, the General Medical Council;
- (b) in relation to a practitioner who is a dentist, the General Dental Council;
- (c) in relation to a practitioner who is an optician, the General Optical Council; and
- (d) in relation to a practitioner who is a pharmacist, the Royal Pharmaceutical Society of Great Britain;

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(a) Section 29(6) was substituted by the Health Act 1999 (c.8), section 58 and amended by the Community Care and Health (Scotland) Act 2002 asp 5, schedule 2, paragraph 2.

(b) Section 2 was amended by the National Health Service and Community Care Act 1990 (c.19), section 28, Schedule 9 and Schedule 10.

(c) Section 29(8) was substituted by the Health Act 1999 (c.8), section 58, and amended by the Community Care and Health (Scotland) Act 2002 asp 5, schedule 2, paragraph 2.

(d) Section 29B(2)(a) and (b) were inserted by the Health Act 1999 (c.8), section 58, and amended by the Community Care and Health (Scotland) Act 2000 asp 5, Schedule 2, paragraph 2.

(e) S.I. 1986/965; the relevant amending instrument is S.I. 1999/725.

(f) 1989 c.44.

(g) 1968 c.67. See the definition of “pharmacist” in section 132(1) which was amended by S.I. 1976/1213.

(h) Section 69 was amended by S.I. 1976/1213, and repealed in part by the Statute Law (Repeals) Act 1993 (c.50), Schedule, Part XII.

(i) Section 12AA was inserted by the Health Act 1999 (c.8), section 47.

(j) Paragraph 3(1) of Schedule 1 to the 1997 Act was amended by the Community Care and Health (Scotland) Act 2002 asp 5, section 19.

“respondent” means–

- (a) in the case of representations or an application for interim suspension, any practitioner in respect of whom representations are, or an application for interim suspension is, made;
- (b) in the case of an application by a practitioner, the complainer in respect of whose representations the decision to which the application relates was made; and
- (c) in the case of an application by a person other than a practitioner, the practitioner;

“review” means a review by the Tribunal under section 30 of the 1978 Act<sup>(a)</sup> (review etc. of disqualification) or an inquiry into whether or not to give a direction under paragraph 5 (termination of directions) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act;

“second condition for disqualification” has the meaning indicated in section 29(7) of the 1978 Act<sup>(b)</sup>;

“the Tribunal” means the Tribunal constituted under section 29 of the 1978 Act (the NHS tribunal).

(2) In these Regulations, any reference to a numbered regulation or a numbered Schedule is, unless otherwise expressly provided, a reference to a regulation or a Schedule bearing that number in these Regulations.

(3) The forms set out in Schedule 2, (forms for use in proceedings in connection with representations and applications) or forms substantially to the like effect, shall be used in all cases to which those forms are applicable by virtue of the provisions of these Regulations and a reference to a numbered form in these Regulations is a reference to the form bearing that number set out in Schedule 2.

### **Health schemes**

**3.** The schemes prescribed for the purposes of section 29(9) of the 1978 Act (definition of “health scheme”)<sup>(c)</sup> are–

- (a) health services, including dental, medical and surgical treatment, provided by Her Majesty’s Forces;
- (b) services provided by port local authorities and joint port local authorities constituted under section 172 (constitution of port local authorities) of the Public Health (Scotland) Act 1897<sup>(d)</sup>;
- (c) health services provided to a prisoner in accordance with section 3A (medical services in prisons) of the Prisons (Scotland) Act 1989<sup>(e)</sup>; and
- (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

## **PART II**

### **CONSTITUTION OF TRIBUNAL**

#### **Term of office of members of the Tribunal**

**4.** The chairman and deputy chairmen of the Tribunal shall hold office during the pleasure of the Lord President of the Court of Session and the other members shall hold office during the pleasure of the Scottish Ministers.

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<sup>(a)</sup> Section 30 of the 1978 Act was substituted by the Health Act 1999 (c.8), section 58 and amended by the Community Care and Health (Scotland) Act 2002 asp 5, schedule 2, paragraph 2.

<sup>(b)</sup> Section 29(7) was substituted in the Health Act 1999 (c.8), section 58.

<sup>(c)</sup> Section 29(9) was substituted by the Health Act 1999 (c.8), section 58.

<sup>(d)</sup> 1897 c.38 (60 & 61 Vict.); section 172 was expanded by the Clean Air Act 1993 (c.11), section 61(2).

<sup>(e)</sup> 1989 c.45. Section 3A was inserted by the Crime and Punishment (Scotland) Act 1997 (c.48), section 43 and amended by S.I. 1998/251, and the Scotland Act 1998 (c.46), Schedule 8, paragraph 27.

## **Officers of the Tribunal**

5. The chairman of the Tribunal shall appoint the following persons, who shall hold office during the pleasure of the chairman:–

- (a) a person approved by the Scottish Ministers to act as clerk to the Tribunal; and
- (b) such other officers as may be necessary.

## **PART III**

### **PROCEDURE FOR DEALING WITH REPRESENTATIONS**

#### **Submission of representations**

6.—(1) Subject to paragraph (4), representations shall–

- (a) be made in terms of Form 1 and shall–
  - (i) contain a concise statement of the alleged facts and grounds upon which the complainer intends to rely;
  - (ii) be signed by the complainer or on the complainer's behalf by some person authorised by the complainer;
- (b) be accompanied by 2 copies of each document which the complainer proposes to put in evidence; and
- (c) be sent together with the copies of the documents relevant to it to the clerk to the Tribunal.

(2) Subject to paragraph (5), where the representations are made under paragraph 3 (representations against preferential treatment) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act they shall be sent to the Tribunal within two weeks of the date of publication by the Scottish Ministers under regulation 30 (publication of information about applications for preferential treatment) of information about the application.

(3) Subject to paragraph (5), where representations are made that the second condition of disqualification is met and relate to a practitioner who has applied to join a list but whose name is not yet on such a list, they shall be sent to the clerk to the Tribunal within 30 days of receipt of the application for the practitioner's name to be included.

(4) If a document which the complainer proposes to put in evidence is of a nature which renders it difficult to make or obtain a copy of it, the complainer shall not be required to submit copies of it.

(5) Where a complainer is required to make representations within a time specified in paragraph (2) or (3) and the complainer–

- (a) makes an application (whether before or after the expiry of the time so specified) to the Tribunal for an extension of that time; and
- (b) includes in that application a statement of the grounds for making it,

the Tribunal may, where it is satisfied that it is in all the circumstances reasonable to do so, extend that time by such further period as it shall specify.

#### **Power of the Tribunal to require further statement**

7. The Tribunal may, if it thinks fit, require the complainer–

- (a) to furnish such further particulars relating to the facts and grounds upon which the representations are made as it may think necessary;
- (b) where a fact is not within the personal knowledge of the complainer, to state the source of the complainer's information and the grounds for the complainer's belief in its truth; and
- (c) to support the allegations contained in the representations by affidavit.

### **Power of the Tribunal to refuse an inquiry**

8. If it appears to the Tribunal, after due consideration of representations by any complainer other than a Health Board or primary care NHS trust, that no good cause has been shown why an inquiry should be held, it may refuse to hold an inquiry and shall inform the complainer of its refusal to hold an inquiry, together with the reasons for its refusal, in writing.

### **Notices to be sent to respondent etc in case of an inquiry**

9.—(1) The Tribunal shall, unless it refuses to hold an inquiry in terms of regulation 8 (power of the Tribunal to refuse an inquiry), send to the respondent—

- (a) a notice in terms of Form 2 informing the respondent that representations have been made and that the respondent may, within 4 weeks from the date of receipt of the notice, submit to the clerk to the Tribunal a written statement-in-answer in accordance with regulation 11(1);
- (b) 1 copy of the representations made by the complainer and of each document, if any, which accompanied them;
- (c) information as to arrangements by which any document which the complainer proposes to put in evidence, but which the complainer is not required to submit copies of in accordance with regulation 6(4), may be examined by the respondent; and
- (d) 1 copy of any further statement furnished by the complainer under regulation 7 (power of the Tribunal to require further statement).

(2) The clerk to the Tribunal shall, unless the Tribunal refuses to hold an inquiry in terms of regulation 8 (power of the Tribunal to refuse an inquiry), send to each Health Board or primary care NHS trust, not being the complainer but in whose list the name of the respondent is included, at the same time as the clerk to the Tribunal sends a notice to the respondent in terms of paragraph (1)—

- (a) a notice in terms of Form 3 informing them that representations have been made in respect of the respondent and that they may, within 4 weeks from the date of receipt of the notice, submit to the clerk to the Tribunal a written statement in accordance with regulation 11(2);
- (b) 1 copy of the representations made by the complainer and of each document, if any, which accompanied them;
- (c) information as to arrangements by which any document which the complainer proposes to put in evidence, but which the complainer is not required to submit copies of in accordance with regulation 6(4), may be examined by the Health Board or primary care NHS trust; and
- (d) 1 copy of any further statement furnished by the complainer under regulation 7 (power of Tribunal to require further statement).

(3) In relation to a fraud case, the clerk to the Tribunal shall, at the same time as the clerk sends notice to the respondent in terms of paragraph (1), inform the Scottish Ministers in writing, and the Scottish Ministers shall send to the respondent and every Health Board and primary care NHS Trust, notice—

- (a) that the respondent is subject to an inquiry in a fraud case; and
- (b) that no Health Board or primary care NHS Trust may add the respondent to any list until the proceedings in that case are finally concluded.

(4) The Tribunal may, if it thinks fit, accept—

- (a) a statement-in-answer by the respondent; or
- (b) a statement by any other Health Board or primary care NHS trust concerned,

after the period within which it is required to be submitted in terms of paragraph (1)(a) or (2)(a).

### **Amendment of representations**

**10.** The Tribunal may, at any time before the conclusion of any inquiry, allow a complainer to amend the terms of the representations upon such conditions as it may think fit.

### **Submission of statement-in-answer or other statement and supporting documents**

**11.**—(1) Where, pursuant to regulation 9(1), a respondent submits a statement-in-answer, the respondent shall, subject to paragraph (3), send to the clerk to the Tribunal with the statement-in-answer 2 copies of each document which the respondent proposes to put in evidence.

(2) Where, pursuant to regulation 9(2), any other Health Board or primary care NHS trust concerned submits a statement, they shall, subject to paragraph (3), send to the clerk to the Tribunal with the statement 2 copies of each document which they propose to put in evidence.

(3) If a document which the respondent, or any other Health Board or primary care NHS trust, proposes to put in evidence is of a nature which renders it difficult to make or obtain a copy of it, the respondent, or (as the case may be) Health Board or primary care NHS trust, shall not be required to submit copies of it.

(4) As soon as may be practicable following receipt of—

- (a) a statement-in-answer and copies of documents in terms of paragraph (1); and
- (b) where applicable, a statement by any other Health Board or primary care NHS trust concerned and copies of documents in terms of paragraph (2),

the clerk to the Tribunal shall send to the complainer, or in the case of a statement and copies of documents referred to in sub-paragraph (a), any other Health Board or primary care NHS trust concerned, a copy of each of any such statement or document.

(5) Where, pursuant to regulation 9(2), any other Health Board or primary care NHS trust concerned has submitted a statement, the clerk to the Tribunal shall also send to the respondent and each of the other such Health Boards or primary care NHS trusts, if any, a copy of the statement submitted by that Health Board or primary care NHS trust together with a copy of each of the documents, if any, which accompanied it.

(6) Where any document which—

- (a) the respondent, or (as the case may be) any other Health Board or primary care NHS trust proposes to put in evidence; and
- (b) the respondent, or (as the case may be) such other Health Board or primary care NHS trust is not required to submit copies of, in accordance with paragraph (3),

has been submitted, the clerk to the Tribunal shall send to the complainer, each of the other such Health Boards or primary care NHS trusts (if any) and, in the case of a document which any other Health Board or primary care NHS trust proposes to put in evidence, the respondent, information as to arrangements by which that document may be examined.

### **Notice of inquiry**

**12.** After the expiry of the period within which a respondent may submit a statement-in-answer pursuant to regulation 9(1) or any other Health Board or primary care NHS trust concerned may submit a statement pursuant to regulation 9(2), the clerk to the Tribunal shall—

- (a) fix a date and time at which an inquiry shall commence and the place where it will be held; and
- (b) not less than 2 weeks before the date fixed for the inquiry to commence, send a notice in terms of Form 4 containing that information to—
  - (i) the complainer;
  - (ii) the respondent; and
  - (iii) any other Health Board or primary care NHS trust to whom a notice in terms of Form 3 has been sent pursuant to regulation 9(2).



### **Power to postpone inquiry**

13. The Tribunal may, if it thinks fit, or on the application of the complainer or respondent, postpone the date fixed for the holding of an inquiry.

### **Power to treat representations as withdrawn in certain cases**

14. If the complainer fails—

- (a) without showing good cause, to appear in person or by a representative at any inquiry of which the complainer was sent due notice under regulation 12 (notice of inquiry); or
- (b) to comply with any other requirement of these Regulations,

the Tribunal may treat the representations as having been withdrawn.

### **Withdrawal of representations**

15.—(1) The complainer may at any time before the inquiry commences, with the consent of the Tribunal and on such terms as it thinks fit, withdraw the representations by giving notice of withdrawal to the clerk to the Tribunal.

(2) Where before the inquiry is concluded the respondent dies, the representations shall be treated by the Tribunal as having been withdrawn with immediate effect.

(3) Subject to paragraph (4), where the representations have been withdrawn, or treated by the Tribunal as having been withdrawn, the Tribunal shall forthwith inform in writing—

- (a) in the case of a withdrawal in terms of regulation 14 (power to treat representation as withdrawn in certain cases) or paragraph (1), the respondent;
- (b) in the case of a withdrawal in terms of paragraph (2), the personal representative of the respondent; and
- (c) in the case where the clerk to the Tribunal has informed the Scottish Ministers pursuant to regulation 9(3) that the respondent is subject to an inquiry in a fraud case, the Scottish Ministers, and the Scottish Ministers shall inform in writing every Health Board and primary care NHS trust.

(4) Where the representations are withdrawn or treated as withdrawn after the Tribunal has made a direction under section 32A(2) of the 1978(a) Act (which deals with directions on applications for interim suspension), that direction shall cease to have effect, and—

- (a) the Tribunal shall include this information also in its notice under paragraph (3);
- (b) the Tribunal shall immediately also so inform the Scottish Ministers in writing; and
- (c) the Scottish Ministers shall so inform anyone to whom they sent a copy of the Tribunal's decision pursuant to regulation 23(2).

### **Failure to appear at inquiry**

16.—(1) Notwithstanding the provisions of regulation 14 (power to treat representations as withdrawn in certain cases), where any party to whom notice of the inquiry has been sent in accordance with regulation 12 (notice of inquiry) fails to appear at the inquiry, either in person or by a representative, the Tribunal may, if it is satisfied that such notice was received by that party, and taking into account all the circumstances, including any explanation offered for the absence, proceed with the inquiry, notwithstanding that absence.

(2) Where any party fails to appear at the inquiry because of a physical or mental condition, the Tribunal may request that party to be further medically examined, and may take into account the result of that further medical examination or any refusal of that party to be further medically examined, in determining whether or not to proceed with the inquiry under paragraph (1).

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(a) 1978, c.29; section 32A(2) was amended by the Health Act 1999 (c.8), Schedule 4, paragraph 51.

### **Suspension of procedures**

17.—(1) In any case where—

- (a) representations are made to the Tribunal in relation to both an efficiency case and a fraud case in respect of the same practitioner; and
- (b) the Tribunal has not refused to hold an inquiry in terms of regulation 8 (power of the Tribunal to refuse an inquiry),

the Tribunal may direct that it will inquire into one case before inquiring into the other and, after proceedings in that inquiry are finally disposed of, may if it thinks appropriate, adjourn the inquiry into the other indefinitely.

(2) In relation to any inquiry, the Tribunal may not adjourn the inquiry solely for the reason that the alleged facts on which representations are based are being or may be investigated by the practitioner's relevant professional body.

### **Representations and evidence at inquiry**

18.—(1) At any inquiry—

- (a) a Health Board or primary care NHS trust shall be entitled to be represented by their Chief Executive, or by counsel or solicitor; and
- (b) the complainer (not being a Health Board or primary care NHS trust) and the respondent shall be entitled to attend and take part in the proceedings in question or be represented by any one of the following persons:—
  - (i) counsel;
  - (ii) a solicitor;
  - (iii) an officer or member of any organisation of which the complainer or the respondent is a member;
  - (iv) a member of the complainer or the respondent's family;
  - (v) a friend.

(2) The complainer and the respondent or their representatives shall be entitled at an inquiry to produce evidence and to call witnesses to whom questions may be put by or on behalf of any party.

### **Procedure at and provisions as to inquiry**

19. The provisions of Schedule 1 (provisions as to inquiry) shall have effect with regard to an inquiry under these Regulations.

### **Power to dispense with oral inquiry**

20.—(1) Subject to paragraph (2), notwithstanding anything in these Regulations, where—

- (a) the grounds on which representations are based consist solely of an allegation that the respondent has been convicted of a criminal offence; and
- (b) the respondent admits the truth of such allegation,

the Tribunal may, with the consent of the respondent, dispense with an oral inquiry and determine the representations upon such documentary evidence as may be submitted to it.

(2) Where the Tribunal has determined to decide the case on documentary evidence pursuant to paragraph (1), but proposes to give a direction under section 32B(1) of the 1978 Act (continuation of suspension pending appeal)(a), it shall before doing so give notice to the Health Board or

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(a) Section 32B(1) of the 1978 Act was inserted by National Health Service (Amendment) Act 1995 (c.31), section 8 and amended by the Health Act 1999 (c.8), Schedule 4, paragraph 51 and Schedule 5.

primary care NHS trust and the respondent of its intention to hold an oral inquiry relating to that proposal, and shall then hold an oral inquiry.

### Statement by the Tribunal

**21.**—(1) As soon as may be practicable after the conclusion of an inquiry in relation to representations, the Tribunal shall prepare a statement under the hand of the chairman of the Tribunal who presided over the inquiry stating—

- (a) its findings of fact;
- (b) the conclusions which it has reached;
- (c) where it is of the opinion that the respondent meets the first or second condition for disqualification, the disqualification (including any conditional disqualification) as it makes under section 29B(2) of the 1978 Act<sup>(a)</sup>;
- (d) where it is of the opinion that the respondent meets the first or second condition for disqualification any declaration of unfitness it makes under section 29B(3) of the 1978 Act<sup>(b)</sup>;
- (e) such directions as it makes under section 32B(1) of the 1978 Act (continuation of suspension pending appeal);
- (f) such directions as it may make under paragraph 4(1) (power of Tribunal to give directions) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act<sup>(c)</sup>; and
- (g) any order it makes as to expenses.

(2) Where the Tribunal makes a conditional disqualification, the statement referred to in paragraph (1) shall set out the conditions which are imposed on the respondent and any directions made by the Tribunal under section 29C(5) of the 1978 Act<sup>(d)</sup>.

(3) The clerk to the Tribunal shall—

- (a) send a copy of the statement prepared pursuant to paragraph (1) to—
  - (i) the Scottish Ministers;
  - (ii) the complainer; and
  - (iii) the respondent;
- (b) where the statement contains a disqualification (including any conditional disqualification) under section 29B(2) of the 1978 Act or a declaration of unfitness under section 29B(3) or a direction under section 32B(1) of the 1978 Act or a direction under paragraph 4(1) of Schedule 1 to the 1997 Act, inform the respondent of the respondent's right of appeal under section 11 (appeals from certain Tribunals) of the Tribunal and Inquiries Act 1992<sup>(e)</sup> in respect of that decision.

(4) Except for a Health Board or primary care NHS trust to whom a copy of the statement has been sent pursuant to paragraph (3), the Scottish Ministers shall send a copy of the statement to such Health Boards or primary care NHS trusts or relevant professional body as appear to them concerned.

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<sup>(a)</sup> Section 29B(2) of the 1978 Act was inserted by the Health Act 1999 (c.8), section 58 and amended by the Community Care and Health (Scotland) Act 2002 asp 5 Schedule 2, paragraph 2.

<sup>(b)</sup> Section 29B(3) of the 1978 Act was inserted by the Health Act 1999 (c.8), section 58 and amended by the Community Care and Health (Scotland) Act 2002 asp 5 Schedule 2, paragraph 2.

<sup>(c)</sup> 1997, c.46; paragraph 4(1) of Schedule 1 to the 1997 Act was amended by the Community Care and Health (Scotland) Act 2002 asp 5, section 19.

<sup>(d)</sup> Section 29C(5) of the 1978 Act was inserted by the Health Act 1999 (c.8), section 58.

<sup>(e)</sup> 1992 c.53 to which there are amendments not relevant to these Regulations.

**PART IV**  
**PROCEDURE FOR DEALING WITH APPLICATION FOR INTERIM  
SUSPENSION**

**Applications for interim suspension**

**22.**—(1) An application for interim suspension under section 32A (applications for interim suspension) of the 1978 Act<sup>(a)</sup> shall—

- (a) be signed by a person authorised by the Health Board or primary care NHS trust;
- (b) include a statement of the alleged facts and the grounds on which the Health Board or primary care NHS trust intends to rely; and
- (c) include 2 copies of any document which the Health Board or primary care NHS trust proposes to put in evidence,

and shall be sent to the clerk to the Tribunal.

(2) The statement mentioned in paragraph (1)(b) may make reference to any other document already sent to the Tribunal.

(3) Subject to paragraph (7), the clerk to the Tribunal shall send to the respondent—

- (a) notice informing the respondent of the application, of the intention to hold an inquiry on a date to be fixed and that the respondent may, within 2 weeks from the date of receipt of the notice, submit a written statement-in-answer;
- (b) a copy of the application made by the complainer and of each document, if any, which accompanied it; and
- (c) where paragraph (2) applies, any document which is referred to in the statement.

(4) The Tribunal may, if it thinks fit, accept a statement-in-answer by the respondent after the period within which it is required to be submitted in terms of paragraph (3)(a).

(5) Where a respondent submits a statement-in-answer the respondent shall send to the clerk to the Tribunal 2 copies of the statement-in-answer and of each document which the respondent proposes to put in evidence, and the clerk to the Tribunal shall send to the complainer a copy of each of any such statement or document.

(6) Subject to paragraph (7), after the expiry of the period within which a respondent may submit a statement-in-answer the clerk to the Tribunal shall fix a date and time at which the inquiry shall commence and the place where it will be held, and not less than 2 weeks before the date fixed shall inform the complainer and respondent of the date, time and place of the inquiry.

(7) At any time before the inquiry commences, notwithstanding the provisions of paragraphs (3) or (6), the Tribunal may, on the application of the complainer, including a statement of grounds for the application, if it is satisfied that there are exceptional reasons to do so—

- (a) fix a date and time at which an inquiry shall commence, and place where it will be heard, as soon as may be practicable; and
- (b) give such opportunity to the respondent to submit a statement-in-answer and give such notice to the complainer and the respondent of the date, time and place of the inquiry as it considers just and proper to give the respondent an opportunity to appear before the Tribunal either—
  - (i) in person;
  - (ii) by counsel or solicitor; or
  - (iii) by such other representative referred to in regulation 18(1)(b)(iii) to (v), and to be heard and to call witnesses and produce other evidence.

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<sup>(a)</sup> Section 32A of the 1978 Act was inserted by the National Health Service (Amendment) Act 1995 (c.31), section 8 and amended by the Health Act 1999 (c.8), Schedule 4, paragraph 51 and Schedule 5, and the Community Care and Health (Scotland) Act 2002 asp 5, Schedule 2, paragraph 2.

(8) The Tribunal may, at any time before the conclusion of any inquiry, allow the complainer to amend the terms of the application upon such conditions as it may think fit.

(9) The provisions of regulations 13 (power to postpone inquiry), 16 (failure to appear at inquiry), 18 (representations and evidence at inquiry), 19 (procedure at and provisions as to inquiry) and 20 (power to dispense with oral inquiry) shall have effect with respect to an inquiry held in relation to an application for interim suspension as they apply in relation to representations, as if—

- (a) in regulation 16 “regulation 12 (notice of inquiry)” read “regulation 22(6) or (7); and
- (b) in regulation 20—
  - (i) in paragraph (1)—
    - (aa) “Subject to paragraph (2),” were omitted;
    - (bb) “representations are” read “an application for interim suspension is”; and
    - (cc) “representations” in the second place where it occurs read “application for interim suspension”; and
  - (ii) paragraph (2) were omitted.

### **Statement by the Tribunal following an inquiry on interim suspension**

**23.**—(1) At the conclusion of proceedings relating to the application for interim suspension, the Tribunal shall, as soon as practicable, issue a decision, signed by the chairman who presided over the proceedings, containing—

- (a) any directions it decides to give under section 32A(2) of the 1978 Act;
- (b) a statement of reasons for its decision; and
- (c) any order it decides to make as to expenses.

(2) The Tribunal shall send a copy of its decision to the respondent, the complainer and the Scottish Ministers, and the Scottish Ministers shall send a copy of the decision to any other Health Board or primary care NHS trust or relevant professional body which appears to them to be concerned.

(3) Where the decision includes a direction under section 32A(2) of the 1978 Act, the Tribunal shall include with the decision a notice to the respondent of the respondent’s right to appeal under section 11 (appeals from certain tribunals) of the Tribunals and Inquiries Act 1992(a).

## **PART V**

### **PROCEDURE FOR DEALING WITH REVIEW**

#### **Procedure in regard to application to the Tribunal for a review**

**24.**—(1) An application to the Tribunal shall—

- (a) be made in terms of Form 5 and shall—
  - (i) contain a concise statement of the alleged facts and grounds upon which the applicant intends to rely; and
  - (ii) be signed by the applicant or on the applicant’s behalf by some person authorised by the applicant;
- (b) subject to paragraph (2), be accompanied by 2 copies of each document which the applicant proposes to put in evidence; and
- (c) be sent together with the copies of each document relevant to it to the clerk to the Tribunal.

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(a) 1992, c.53.

(2) If a document which the applicant proposes to put in evidence is of a nature which renders it difficult to make or obtain a copy of it, the applicant shall not be required to submit copies of it.

(3) If it appears to the Tribunal, after due consideration of an application, that no good cause has been shown why an inquiry should be held for the purposes of any review, it may refuse to hold an inquiry and shall inform the applicant of its refusal to hold an inquiry, and its reasons for that refusal in writing.

(4) Where the Tribunal considers that an inquiry should be held, the clerk to the Tribunal shall send to the respondent and to any Health Board or primary care NHS trust (not being the applicant or the respondent) which was represented at the inquiry following which the decision, in respect of which the application relates, was made—

- (a) a notice in terms of Form 6 informing the respondent or the Health Board or primary care NHS trust that an application has been made by the applicant and that the Tribunal considers that an inquiry should be held;
- (b) 1 copy of the application and of each document, if any, which accompanied it; and
- (c) information as to arrangements by which any document which the applicant proposes to put in evidence, but which the applicant is not required to submit copies of in accordance with paragraph (2), may be examined by the respondent and any such Health Board or primary care NHS trust.

(5) As soon as may be practicable after sending a copy of the application in terms of paragraph (4), the clerk to the Tribunal shall—

- (a) fix a date and time at which an inquiry shall commence and the place where it will be held; and
- (b) not less than 2 weeks before the date fixed for the inquiry to commence, send to—
  - (i) the applicant;
  - (ii) the respondent; and
  - (iii) any Health Board or primary care NHS trust to whom a notice in terms of Form 6 has been sent pursuant to paragraph (4),

a notice in terms of Form 7 containing the information referred to in sub-paragraph (a).

(6) Except where the application is made by a Health Board or primary care NHS trust under section 30(3)(b) or (c) of the 1978 Act<sup>(a)</sup>, an applicant may at any time before the inquiry commences, with the consent of the Tribunal and on such terms as it thinks fit, withdraw the application by giving notice of withdrawal to the clerk to the Tribunal and the clerk to the Tribunal shall so inform the rest of the parties in writing.

(7) Where the application is made by a Health Board or primary care NHS trust under section 30(3)(b) or (c) of the 1978 Act the provisions of regulations 7 (power of the Tribunal to require further statement), 14 (power to treat representations as withdrawn in certain cases), 15 (withdrawal of representations), 20 (power to dispense with oral inquiry), 22 (applications for interim suspension) and 23 (statement by the Tribunal following an inquiry on interim suspension) shall have effect with respect to an application as they apply to representations as if—

- (a) in regulation 7—
  - (i) “complainer” read “applicant” in both places where it appears;
  - (ii) in paragraph (a) “representations are” read “application is”;
  - (iii) in paragraph (b) “complainer’s” read “applicant’s” in both places where it appears; and
  - (iv) in paragraph (c) “representations” read “application”;
- (b) in regulation 14—
  - (i) “complainer” read “applicant” in both places where it appears;
  - (ii) in paragraph (a) “regulation 12 (notice of inquiry)” read “regulation 24(5)”; and

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<sup>(a)</sup> 1978, c.29; section 30(3)(b) and (c) of the 1978 Act were substituted by the Health Act 1999 (c.8), section 58.

- (iii) “representation” read “application”;
- (c) in regulation 15–
  - (i) in paragraph (1) “complainer” read “applicant”;
  - (ii) in paragraphs (1) and (2) “representations” read “application”;
  - (iii) in paragraph (3)–
    - (aa) “representations have” read “application has”;
    - (bb) sub-paragraph (c) were omitted; and
  - (iv) paragraph (4) were omitted;
- (d) in regulation 20–
  - (i) in paragraph (1)–
    - (aa) “Subject to paragraph (2),” were omitted;
    - (bb) “representations are” read “an application is”; and
    - (cc) “representations” in the second place where it occurs read “application”; and
  - (ii) paragraph (2) were omitted;
- (e) in regulation 22–
  - (i) “complainer” read “applicant” at every place where it appears; and
  - (ii) the provisions referred to in paragraph (9) shall have effect as indicated but, additionally, as if “complainer” read “applicant”; and
- (f) in regulation 23(2) “complainer” read “applicant”.

(8) The provisions of regulations 13 (power to postpone inquiry), 16 (failure to appear at inquiry), 18 (representation and evidence at inquiry) and 19 (procedure at and provisions as to inquiry) shall have effect with respect to an inquiry held in relation to an application as they apply to an inquiry held in relation to a representation as if–

- (a) in regulation 13 “complainer” read “applicant”;
- (b) in regulation 16(1) “regulation 12 (notice of inquiry)” read “regulation 24(5)”; and
- (c) in regulation 18–
  - (i) in paragraph (1)(b), “complainer (not being a Health Board or primary care NHS trust) and the respondent” read “applicant and the respondent (other than an applicant or respondent which is a Health Board or primary care NHS trust)”; and
  - (ii) in paragraphs (1)(b)(iii),(iv) and (2) “complainer” read “applicant”.

### **Statement by the Tribunal following review**

**25.**—(1) As soon as may be practicable after the conclusion of an inquiry in relation to an application, the Tribunal shall prepare a statement under the hand of the chairman of the Tribunal who presided over the inquiry stating–

- (a) its findings of fact;
- (b) the conclusions it has reached;
- (c) any determination it makes in accordance with section 30(2) or (5), and where applicable, subsection (6), of the 1978 Act, or where it is of the opinion that the disqualification of the applicant for inclusion in any list to which a direction under paragraph 4(1) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act related should be removed, a direction under paragraph 5 (termination of directions) of the said Schedule to that effect; and
- (d) any order it makes as to expenses.

(2) The clerk to the Tribunal shall–

- (a) send a copy of the statement prepared pursuant to paragraph (1) to–

- (i) the Scottish Ministers;
  - (ii) the applicant; and
  - (iii) the respondent;
- (b) where the Tribunal, following a review –
- (i) in the case of a practitioner subject to a disqualification, or a conditional disqualification, does not remove the disqualification or conditional disqualification, under section 30(2) or (5) of the 1978 Act;
  - (ii) in the case of a practitioner subject to a declaration of unfitness, does not provide that a declaration of unfitness is to cease to have effect under section 30(2) of the 1978 Act; or
  - (iii) in the case of a practitioner subject to a direction under paragraph 4(1) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act, does not make a direction under paragraph 5 (termination of directions) of Schedule 1 to the 1997 Act<sup>(a)</sup>,

inform the practitioner of the practitioner's right of appeal under section 11 of the Tribunal and Inquiries Act 1992 in respect of the Tribunal's decision.

(3) Except for a Health Board or primary care NHS trust to whom a copy of the statement has been sent pursuant to paragraph (2)(a), the Scottish Ministers shall send a copy of the statement to such Health Boards or primary care NHS trusts or relevant professional body as appear to them concerned.

## PART VI

### MISCELLANEOUS PROVISIONS

#### **Practitioner subject to inquiry in a fraud case**

**26.**—(1) A Health Board or primary care NHS trust that receives notice pursuant to regulation 9(3) may not add the practitioner subject to the inquiry to any list until proceedings in that case are finally concluded.

- (2) In relation to a practitioner subject to an inquiry in a fraud case, the provisions of—
- (a) section 20 (applications to provide general medical services) of the 1978 Act are modified to the extent that such a practitioner shall not be entitled to the inclusion of the practitioner's name in a medical list;
  - (b) section 25(2)(b) of the 1978 Act are modified to the extent that regulations need not confer a right for such a practitioner who wishes to be included in a list of dental practitioners who undertake to provide general dental services to be so included;
  - (c) section 26(2)(b) of the 1978 Act are modified to the extent that regulations need not confer a right for such a practitioner who wishes to be included in the appropriate list to be so included; and
  - (d) section 27 of the 1978 Act are modified to the extent that nothing in section 27(3) and (5) shall require regulations to provide for a Health Board or primary care NHS trust to include such a practitioner in a list or to confer on such a practitioner rights of appeal against a Health Board or primary care NHS trust from a refusal to add such a practitioner to a list,

until proceedings in that case are finally concluded.

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<sup>(a)</sup> 1997, c.46.



### **Discharge of suspension functions by chairman**

27. The functions of the Tribunal under sections 32A or 32B(1)(a) of the 1978 Act (which deal with applications for interim suspension and continuation of suspension pending appeal respectively) may be carried out by the chairman of the Tribunal; and where the chairman does carry them out, any reference to the Tribunal in these Regulations shall be construed as a reference to the chairman.

### **Publication of decisions of the Tribunal, etc**

28. The Scottish Ministers shall publish in such manner as they think fit notice of—

- (a) any decision of the Tribunal in relation to an inquiry under these Regulations; and
- (b) the imposition of any disqualification, or conditional disqualification, pursuant to section 29B(2) or section 30(2) or (5) of the 1978 Act and any conditions imposed or of the removal or variation of such disqualification or conditions;
- (c) any declaration of unfitness made by the Tribunal under section 29B(3) or section 30(6) of the 1978 Act;
- (d) any direction of the Tribunal under paragraph 4(1) or 5 of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act;
- (e) any imposition or removal of any disqualification or declaration of unfitness referred to in section 31 of the 1978 Act (disqualification provisions in England or Wales or Northern Ireland)(b) and any conditions or variation of such conditions imposed in consequence of a notice given by the Scottish Ministers in accordance with section 31(2);
- (f) any imposition or removal of a disqualification made in accordance with the provisions of paragraph 6 (direction in Northern Ireland) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act.

### **Recovery of amounts from practitioners**

29.—(1) Where the Scottish Ministers receive a copy of the decision of the Tribunal pursuant to regulation 21(3) or regulation 25(2)(a) and—

- (a) the statement of the Tribunal pursuant to regulation 21(3) contains a statement in accordance with regulation 21(1)(c),(d), (e) or (f); or
- (b) the statement of the Tribunal pursuant to regulation 25(2)(a) contains a statement that—
  - (i) in the case of a conditional disqualification, the conditions are to be varied or the disqualification is to be unconditional pursuant to section 30(2)(c) or 30(5) of the 1978 Act;
  - (ii) there is to be any further disqualification, or conditional disqualification which the Tribunal considers appropriate pursuant to section 30(2) or 30(5) of the 1978 Act; or
  - (iii) the Tribunal is making a declaration of unfitness pursuant to section 30(6) of the 1978 Act,

and the Scottish Ministers are satisfied that the decision of the Tribunal was in consequence of the acts or omissions of a practitioner while that practitioner was included on a list, then the Scottish Ministers shall determine (in relation to every appropriate Health Board or primary care NHS trust, if more than one) whether any, and if so, what amount shall be recovered from the practitioner by an appropriate Health Board or primary care NHS trust, whether by way of deduction from the practitioner's remuneration or otherwise.

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(a) Section 32B of the 1978 Act was inserted by the National Health Service (Amendment) Act 1995 (c.31), section 8 and amended by the Health Act 1999 (c.8), Schedule 4, paragraph 51 and Schedule 5 and the Community Care and Health (Scotland) Act 2002 asp 5, Schedule 2, paragraph 2.

(b) Section 31 of the 1978 Act was amended by the Health Act 1999 (c.8), Schedule 4, paragraph 49 and the Community Care and Health (Scotland) Act 2002 asp 5, Schedule 2, paragraph 2.

(2) Before making a determination under paragraph (1) the Scottish Ministers shall notify the practitioner concerned that—

- (a) the Scottish Ministers are considering making a determination under paragraph (1); and
- (b) the practitioner concerned may make written representations on the matter by submitting them to the Scottish Ministers within 4 weeks from the date of receipt of the notification.

(3) The Scottish Ministers shall give notice of their determination under paragraph (1) to the practitioner and every appropriate Health Board or primary care NHS trust, and shall include with the notice a statement of reasons for their determination.

(4) Any amount which the Scottish Ministers determine under paragraph (1) shall be recovered from a practitioner by a Health Board or primary care NHS trust shall be a debt owed by the practitioner to that Health Board or primary care NHS trust.

(5) Where the Scottish Ministers have determined under paragraph (1) that, in respect of an appropriate Health Board or primary care NHS trust, an amount shall be recovered from a practitioner, they shall direct that Health Board or primary care NHS trust to recover that amount either by deduction from the practitioners remuneration or otherwise and the Health Board or primary care NHS trust shall comply with that direction.

(6) In this regulation, “appropriate Health Board or primary care NHS trust” is a Health Board or primary care NHS trust in whose list the practitioner was included at the time of the acts or omissions in consequence of which the Tribunal decision was made.

### **Publication of information about applications for preferential treatment**

**30.** The Scottish Ministers shall publish in such a manner as they think fit information about—

- (a) applications made to Health Boards or primary care NHS trusts for inclusion in their medical list of the names of medical practitioners ceasing to perform personal medical services in respect of whom Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act applies; and
- (b) the right of persons to make representations against applications referred to in paragraph (a).

### **Service of forms, etc.**

**31.—**(1) Any form, notice, application, statement, statement-in-answer, decision or document which is required or authorised by these Regulations to be sent to or served on any person shall be in writing and shall be sent or served as follows:—

- (a) in the case of the Scottish Ministers, by delivering it to them or sending it by registered post or the first class recorded delivery service addressed to them at St Andrew's House, Edinburgh;
- (b) in the case of the Tribunal or a Health Board or primary care NHS trust, by delivering it to their clerk or Chief Executive, or by sending it by registered post or the first class recorded delivery service addressed to such person at their principal office or the usual or last known address of such person;
- (c) in the case of a practitioner, by delivering it to the practitioner or by sending it by registered post or the first class recorded delivery service addressed to the practitioner at the practitioner's usual or last-known address or any address set opposite the practitioner's name in the list of the Health Board or primary care NHS trust concerned;
- (d) in the case of any other person, by delivering it to that person or by sending it by registered post or the first class recorded delivery service addressed to that person at that person's usual or last known address.

(2) Where a party to any inquiry is represented by a solicitor it shall be a sufficient compliance with this regulation if the notice or document is sent by registered post or the first class recorded delivery service addressed to the solicitor at the solicitor's professional address.

### **Power to dispense with requirements as to notices**

**32.** The Tribunal may dispense with any requirements of these Regulations applicable to notices, applications, documents or otherwise in any case where it appears to the Tribunal just and proper to do so.

### **Attendance by member of Council on Tribunals**

**33.** Nothing in these Regulations shall prevent a member of the Council on Tribunals or of the Scottish Committee thereof in that capacity from attending any inquiry before the Tribunal.

### **Transitional provisions**

**34.** Where, before the date on which these Regulations come into force—

- (a) a representation has been made to the Tribunal under regulation 24 (submission of a representation) of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992<sup>(a)</sup>; or
- (b) an application for interim suspension has been made to the Tribunal under regulation 25A (application for interim suspension) of those regulations<sup>(b)</sup>,

the provisions of those Regulations shall, notwithstanding regulation 35 (revocations), continue to apply on and after that date, as respects any inquiry, hearing, determination or direction which by virtue of any provision of those Regulations falls to be undertaken, held or made in relation to any such representation or application or in relation to an appeal from any such determination or direction.

### **Revocations**

**35.** The Regulations specified in column (1) of Schedule 3 are hereby revoked to the extent specified in column (3) of that Schedule.

*MALCOLM CHISHOLM*  
Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
2nd February 2004

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<sup>(a)</sup> 1992/434; relevant amending instruments of regulation 24 are S.I. 1998/657 and 1424.  
<sup>(b)</sup> Regulation 25A was inserted by S.I. 1995/3201 and amended by S.S.I. 1999/53.

## PROVISIONS AS TO INQUIRY

1. Subject to the provisions of these Regulations, the procedure at an inquiry shall be within the discretion of the Tribunal.
2. The proceedings at an inquiry shall be held in private unless the practitioner has applied in writing to the clerk to the Tribunal for the inquiry to be held in public.
3. The Tribunal may if it thinks fit call for such documents and examine such witnesses as appear to it likely to afford evidence relevant and material to the issue, although not tendered by either party.
4. The chairman of the Tribunal who presides over the inquiry may by notice require any person—
  - (a) to attend at the time and place set forth in the notice, to give evidence or to produce any books or documents in that person's custody or under that person's control which relate to any matter in question at the inquiry; or
  - (b) to furnish within such reasonable period as is specified in the notice such information relating to any matter in question at the inquiry as the chairman of the Tribunal who presides over the inquiry may think fit, and as the person so required is able to furnish; but—
    - (i) no person shall be required in obedience to such a notice to attend at any place which is more than 10 miles from the place where that person resides unless the necessary expenses are paid or tendered to that person; and
    - (ii) nothing in this paragraph shall empower the chairman to require any person to produce any book or document or to answer any question which that person would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the hearing were a proceeding in a court of law.
5. The chairman of the Tribunal who presides over the inquiry may administer oaths and examine witnesses on oath, and may accept in lieu of evidence on oath by any person, a statement in writing by that person.
6. Any person who refuses or wilfully neglects to attend in obedience to a notice under paragraph 4, or to give evidence, or who wilfully alters, suppresses, conceals, destroys or refuses to produce any book or document which that person may be required to furnish under paragraph 4(b), shall be liable on summary conviction to a fine not exceeding level five on the standard scale or to imprisonment for a period not exceeding 3 months.
7. Subject to the provisions of these Regulations, the Tribunal may adjourn from time to time as it thinks fit and hold adjourned sittings at such time and place as may appear to it to be suitable.
8. A Health Board or primary care NHS trust to whom notices in terms of Forms 3 and 4 are sent pursuant to regulations 9(2) and 12 (notice of inquiry), or to whom notice is sent pursuant to regulation 24(4) shall be entitled to take such part in the proceedings of the inquiry as the Tribunal shall think proper.
9. The Tribunal may make orders as to the expenses incurred by the parties appearing at any such inquiry and as to the parties by whom such expenses shall be paid.
10. Any order by the Tribunal under paragraph 9 may be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

## SCHEDULE 2

Regulation 2(3)

### FORMS FOR USE IN PROCEEDINGS IN CONNECTION WITH REPRESENTATIONS AND APPLICATIONS

#### FORM 1

Regulation 6(1)(a)

#### REPRESENTATIONS

To the Tribunal constituted in terms of section 29 (the NHS tribunal) of the National Health Service (Scotland) Act 1978.

Representations of—

..... Complainer

against

..... Respondent

a ..... (1) [on / applying for inclusion on (2)] the ..... (3) list of .....  
Health Board or primary care NHS trust.

1. The complainer represents: (4)
  - (a) the [continued (5)] inclusion of the respondent in the list referred to would be prejudicial to the efficiency of services which those included in the list undertake to provide or are approved to assist in providing.
  - (b) the respondent has (whether on the respondent's own or together with another) by an act or omission caused, or risked causing, detriment to a health scheme by securing or trying to secure for the respondent or another a financial or other benefit, and knew that the respondent or (as the case may be) the other was not entitled to the benefit.
2. The facts and grounds upon which the representations are based are as follows:—  
..... (6)
3. The documents of which 2 copies of each accompany this representation shall be produced in evidence in support of the representation (7).

Signed .....

Complainer

Dated .....

#### Notes

- (1) State whether the respondent is a doctor, dentist, ophthalmic medical practitioner, optician, pharmacist or pharmacist contractor.
- (2) Delete whichever is inapplicable.
- (3) State whether the list is the medical, dental, ophthalmic, pharmaceutical or supplementary list.
- (4) Delete whichever of (a) or (b) is inapplicable (if either).

(5) Delete in the case of a representation under paragraph 3 (representations against preferential treatment) of Schedule 1 (preferential treatment on transferring to medical lists) to the National Health Service (Primary Care) Act 1997.

(6) Paragraph 2 of the representation must contain a concise statement of the alleged facts and grounds upon which the complainer intends to rely.

(7) If any document to be put in evidence is of a nature which renders it difficult to make or obtain a copy of it, you are not required to submit copies of any such document.

## NOTICE OF REPRESENTATIONS

Notice to ..... (1) of representations.

Representations of–

..... Complainer

against

..... Respondent

a ..... (2) [on / applying for inclusion on (3)] the ..... (4) list of ..... Health Board or primary care NHS trust.

1. On behalf of the Tribunal constituted in terms of section 29 (the NHS tribunal) of the National Health Service (Scotland) Act 1978 I enclose–

(a) a copy of representations that (5)

(i) your [continued (6)] inclusion in the list referred to would be prejudicial to the efficiency of services which those included in the list undertake to provide or are approved to assist in providing;

(ii) you have (whether on your own or together with another) by an act or omission caused, or risked causing, detriment to a health scheme by securing or trying to secure for yourself or another a financial or other benefit and knew that you or (as the case may be) the other was not entitled to the benefit

which representation was submitted to the Tribunal by the complainer on ..... (7);

(b) a copy of each document which accompanied the representation (8).

(2) The Tribunal intends to hold an inquiry in relation to the representation and notice will be sent to you not less than 2 weeks before the date on which the inquiry will commence.

(3) You may, if you so desire, submit to me within 4 weeks from the date of receipt of this notice a written statement-in-answer and 2 copies of each document which you propose to put in evidence (9).

Signed .....

Clerk to the Tribunal

Dated .....

### Notes

(1) The full name of the respondent should be inserted.

(2) State whether the respondent is a doctor, dentist, ophthalmic medical practitioner, optician, pharmacist or pharmacist contractor.

(3) Delete whichever is inapplicable.

(4) State whether the list is the medical, dental, ophthalmic, pharmaceutical or supplementary list.

(5) Delete whichever of (i) or (ii) is inapplicable (if either).

(6) Delete in the case of a representation under paragraph 3 (representations against preferential treatment) of Schedule 1 (preferential treatment on transferring to medical lists) to the National Health Service (Primary Care) Act 1997.

(7) State the date on which the representation was submitted.

(8) The complainer may intend to put in evidence documents or material which it is difficult to make or obtain a copy of. If this is the case, the clerk to the Tribunal will inform you accordingly.

(9) If any document to be put in evidence is of a nature which renders it difficult to make or obtain a copy of it, you are not required to submit copies of any such document.



NOTICE OF REPRESENTATIONS

Notice to ..... (1) Health Board or primary care NHS trust of representations.

Representations of-

..... Complainer

against

..... Respondent

a ..... (2) on the ..... list(4) of ..... Health Board(s) or primary care NHS trust(s)(4).

1. On behalf of the Tribunal constituted in terms of section 29 (the NHS tribunal) of the National Health Service (Scotland) Act 1978, I hereby give you notice that representations have been made by ..... to the Tribunal that (5)

- (a) the [continued (6)] inclusion of the respondent in the list referred to would be prejudicial to the efficiency of services which those included in the list undertake to provide or are approved to assist in providing;
- (b) the respondent has (whether on the respondent's own or together with another) by an act or omission caused, or risked causing, detriment to a health scheme by securing or trying to secure for the respondent or another a financial or other benefit, and knew that the respondent or (as the case may be) the other was not entitled to the benefit.

I enclose a copy of the representations and a copy of each document which accompanied them.

2. The Tribunal intends to hold an inquiry in relation to the representations and notice will be sent to you not less than 2 weeks before the date on which the inquiry will commence.

3. .... Health Board or primary care NHS trust may, if they so desire, submit to me within 4 weeks from the date of receipt of this notice a written statement.

4. If any documents are to be put in evidence in support of the statement, 2 copies of each such document must accompany the statement (7).

5. .... Health Board or primary care NHS trust are entitled to be represented and take part in the proceedings at the inquiry as the Tribunal shall think proper.

Signed .....

Clerk to the Tribunal

Dated .....

**Notes**

- (1) State the name of the Health Board or primary care NHS trust to which the notice is being sent.
- (2) State whether the respondent is a doctor, dentist, ophthalmic medical practitioner, optician, pharmacist or pharmacist contractor.
- (3) State whether the list is the medical, dental, ophthalmic, pharmaceutical or supplementary list.

- (4) State the name of each Health Board or primary care NHS trust in whose list the respondent's name is included.
- (5) Delete whichever of (a) or (b) is inapplicable (if either).
- (6) Delete in the case of a representation under paragraph 3 (representations against preferential treatment) of Schedule 1 (preferential treatment on transferring to medical lists) to the National Health Service (Primary Care) Act 1997.
- (7) If any document to be put in evidence is of a nature which renders it difficult to make or obtain a copy of it, the Health Board or primary care NHS trust are not required to submit copies of any such document.

NOTICE OF INQUIRY

Notice to ..... (1) of date fixed for an inquiry to commence.

Representations of-

..... Complainer

against

..... Respondent

a ..... (2) [on / applying for inclusion on (3)] the .....list(4) of ..... Health Board or primary care NHS trust.

On behalf of the Tribunal constituted in terms of section 29 (the NHS tribunal) of the National Health Service (Scotland) Act 1978, I hereby give you notice that an inquiry in relation to the representation made-

[by you with respect to .....](5)

[by ..... with respect to you,](6)

[by ..... with respect to the respondent,](7)

will commence on ..... day,

the ..... day of ..... 20..... at ..... a.m./p.m. at .....

Signed .....

Clerk to the Tribunal

Dated .....

Notes

- (1) The full name of the complainer, the respondent or any other Health Board or primary care NHS trust concerned, as the case may be, should be inserted.
- (2) State whether the respondent is a doctor, dentist, ophthalmic medical practitioner, optician, pharmacist or pharmacist contractor.
- (3) Delete whichever is inapplicable.
- (4) State whether the list is the medical, dental, ophthalmic, pharmaceutical or supplementary list.
- (5) Delete these words in a notice being sent to the respondent or, where applicable, any other Health Board or primary care NHS trust concerned.
- (6) Delete these words in a notice being sent to the complainer, or where applicable, any other Health Board or primary care NHS trust concerned.
- (7) Delete these words in notices being sent to the complainer and respondent.

APPLICATION TO THE TRIBUNAL FOR A REVIEW

To the Tribunal constituted in terms of section 29 (the NHS tribunal) of the National Health Service (Scotland) Act 1978.

Application of-

.....

1. The applicant applies to the Tribunal for a review under section 30 (review etc. of disqualification) of the said Act / paragraph 5 (termination of directions) of Schedule 1 (preferential treatment on transferring to medical lists) to the National Health Service (Primary Care) Act 1997 of the decision of the Tribunal made on .....(1) in respect of .....(2).

2. The facts and grounds upon which the application is based are as follows:-

..... (3).

3. The documents of which 2 copies of each accompany this application shall be produced in evidence in support of the application (4).

Signed .....

Applicant

Dated .....

Notes

- (1) State the date on which the Tribunal made the relevant decision.
- (2) State the full name of the practitioner in respect of which the application relates.
- (3) Paragraph 2 of the application must contain a concise statement of the alleged facts and grounds upon which the Applicant intends to rely.
- (4) If any document to be put in evidence is of a nature which renders it difficult to make or obtain a copy of it, you are not required to submit copies of any such document.

NOTICE OF AN APPLICATION

Notice to ..... (1) of an application.

Application of-

.....

1. On behalf of the Tribunal constituted in terms of section 29 (the NHS tribunal) of the National Health Service (Scotland) Act 1978 I enclose-

- (a) a copy of an application for a review under section 30 (review etc. of disqualification) of the said Act / paragraph 5 (termination of directions) of Schedule 1 (preferential treatment on transferring to medical lists) to the National Health Service (Primary Care) Act 1997 of the decision of the Tribunal made on .....(2) in respect of .....(3).
- (b) a copy of each document which accompanied the application(4).

2. The Tribunal intends to hold an inquiry in relation to the application. A notice will be sent to you not less than 2 weeks before the date on which the inquiry will commence.

Signed .....

Clerk to the Tribunal

Dated .....

Notes

- (1) The full name of the respondent or, as the case may be, the appropriate Health Board or primary care NHS trust should be inserted.
- (2) State the date on which the Tribunal made the relevant direction.
- (3) State the full name of the practitioner in respect of which the application relates.
- (4) The applicant may intend to put in evidence documents or material which it is difficult to make or obtain a copy of. If this is the case, the clerk to the Tribunal will inform you accordingly.

FORM 7

Regulation 24(5)(b)

NOTICE OF INQUIRY

Notice to ..... (1) of date fixed for an inquiry to commence.

Application of-

.....

On behalf of the Tribunal constituted in terms of section 29 (the NHS tribunal) of the National Health Service (Scotland) Act 1978, I hereby give you notice that an inquiry in relation to the application will commence on ..... day, the ..... day of ..... 20..... at ..... am/pm at .....

Signed .....

Clerk to the Tribunal

Dated .....

**Notes**

(1) The full name of the applicant, the respondent or other appropriate Health Board or primary care NHS trust (not being the applicant or the respondent), as the case may be, should be inserted.

## SCHEDULE 3

Regulation 35

### REVOCATIONS

| <i>(1) Regulations revoked</i>  | <i>(2) References</i> | <i>(3) Extent of Revocation</i>   |
|---|-----------------------|---|
| The National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992                   | S.I. 1992/434         | Regulation 21 to regulation 43B(a); in regulation 44(1)(b) “the Tribunal or”; in regulation 45 the words “or the Tribunal” in both places where they occur; regulation 46(a); regulation 48(b); Schedule 4. |
| The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1995         | S.I. 1995/3201        | The whole Regulations   |
| The National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1998                   | S.I. 1998/657         | The whole Regulations   |
| The National Health Service (Service Committees and Tribunal) (Scotland) Amendment (No. 2) Regulations 1998 | S.I. 1998/1424        | Regulation 3 and 4  |
| The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1999         | S.S.I. 1999/53        | In regulation 2 “21, 26, 29, 30, 34, 35, 37, 38, 41,”; regulation 12 to 14; regulation 19   |

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(a) Regulation 43B was inserted by S.I. 1998/657.

## EXPLANATORY NOTE

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

These Regulations consolidate, with amendments, those provisions of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992 (S.I. 1992/434) (“the 1992 Regulations”) relating to the NHS Tribunal and representations to and procedures before it.

These Regulations are consequential upon the coming into force of amendments made by:

- (a) the Health Act 1999 (“the 1999 Act”) and the Community Care and Health (Scotland) Act 2002 (“the 2002 Act”) to the sections of the National Health Service (Scotland) Act 1978 (“the 1978 Act”), dealing with the NHS Tribunal and the disqualification of practitioners; and
- (b) the 2002 Act to Schedule 1 to the National Health Service (Primary Care) Act 1997 (“the 1997 Act”), dealing with representations to the NHS Tribunal against preferential treatment on transferring to medical lists.

Those provisions of the 1999 Act and the 2002 Act were commenced on 4th March 2004 by Article 2(2) of the Health Act 1999 (Commencement No. 14) (Scotland) Order 2004 (S.S.I. 2004/32) and Article 2 of the Community Care and Health (Scotland) Act 2002 (Commencement No. 3) Order 2004 (S.S.I. 2004/33).

The changes to the 1978 Act by the 1999 Act include powers and duties for the NHS Tribunal to inquire into representations that a practitioner meets a new second condition for disqualification (which are referred to in the Act as “fraud cases”), powers to make a conditional disqualification (a disqualification which is to come into effect only if the NHS Tribunal determine on a review that a person subject to the inquiry has failed to comply with any conditions), and new powers and duties in relation to reviews of disqualifications, conditional disqualifications or declarations of unfitness. The changes to the 1978 Act by the 2002 Act include extending the jurisdiction of the Tribunal to include inquiries into representations concerning a practitioner on a list of persons approved to assist in the provision of general medical services. The changes to the 1997 Act by the 2002 Act give the Tribunal power to inquire into representations that applicants with preferential treatment to be included in a medical list meet the new second condition for disqualification. These Regulations make amendments consequential upon these changes, and other amendments, to the relevant provisions of the 1992 Regulations.

Part I of these Regulations makes general provisions for the purpose of these Regulations. Regulation 3 prescribes the additional health and medical schemes that will be included in the definition of health schemes in section 29 of 1978 Act for the purposes of the new second condition for disqualification.

Part II of these Regulations consolidates the provisions of the 1992 Regulations relating to the appointment of members and officers of the NHS Tribunal.

Part III of these Regulations make provisions for the making of representations to the NHS Tribunal and for the procedure that inquiries under section 29 to 29C of the 1978 Act and paragraph 3 of Schedule 1 to the 1997 Act are to be held in accordance with.

The principal changes in Part III from the provisions of the 1992 Regulations as a result of the coming into force of the amendments made by the 1999 Act are:

- (a) regulation 6(3) prescribes the time within which representations that the second condition for disqualification is met and which relate to a practitioner who has applied to join a list, must be made;
- (b) regulations 9(3) and 15(3)(c) make provision for notifying Health Boards and primary care NHS trusts when a person is subject to an inquiry in a fraud case and when those representations are withdrawn; and
- (c) regulation 17(1) provides that where it would be the duty of the NHS Tribunal to inquire into both an efficiency case and a fraud case in respect of the same person it may inquire into one case before the other.



The other principal changes in Part III from the provisions of 1992 Regulations are:

- (a) regulation 6(5) prescribes that the time limit for submitting representations may be extended by the Tribunal, and confers on the Tribunal power to do so;
- (b) regulations 9(1) and (2) and 11(4) and (6) require the clerk to the Tribunal to give additional information to all parties about documents submitted to the Tribunal;
- (c) regulation 16 makes provision for where any party which has received notice of an inquiry fails to appear at the inquiry;
- (d) regulation 17(2) makes provision that inquiries before the NHS Tribunal may not be adjourned solely because of an investigation into the same facts by the respondent's professional body;
- (e) regulation 21(4) makes additional provision for the Scottish Ministers to publish decisions of the Tribunal by sending them to respondents' professional bodies.

Part IV of these Regulations make provision for, and for the determination of, procedure in relation to determining applications for interim suspension under the 1978 Act. The principal change from the 1992 Regulations is to make provision, in regulation 22(7), for the time limits for submitting a statement-in-answer and for notice of the date and time of an inquiry to be varied, provided that the respondent still has an opportunity to appear before the NHS Tribunal and to be heard and call witnesses and produce other evidence.

Part V of these Regulations makes provision for inquiries for the purposes of a review under the 1978 Act or an inquiry under paragraph 5(2) of Schedule 1 to the 1997 (which relates to the termination of directions by the NHS Tribunal made as a result of representations against preferential treatment). The principal change from the 1992 Regulations is to make provision, in regulation 24(7), for certain applications for review under the 1978 Act of a conditional disqualification by a Health Board or primary care NHS trust.

Part VI of these Regulations consolidate various miscellaneous provisions in the 1992 Regulations. The principal change to those provisions as a result of the coming into force of amendments made by the 1999 Act is provision, in regulation 26, for the purpose of securing that a person subject to an inquiry in a fraud case is not added to any list until proceedings in that case are finally concluded.

The other principal change in Part VI from the 1992 Regulations is to make provision for the Scottish Ministers, in certain circumstances, after notifying the practitioner and giving them an opportunity to make representations, to direct Health Boards and primary care NHS trusts to recover amounts from practitioners where there has been a decision of the NHS Tribunal against that practitioner.

In Part VI also, regulation 34 makes transitional provisions and regulation 35 and Schedule 3 repeal the provisions of the 1992 Regulations relating solely to the NHS Tribunal and amendments made to those provisions.

Schedule 1 makes provisions for procedure at all inquiries before the NHS Tribunal. The principal change to equivalent provisions in the 1992 Regulations is that the maximum level of fine for which a person shall be liable for on summary conviction of an offence under paragraph 6 has been increased to level five on the standard scale.

Schedule 2 sets out the prescribed forms for use in proceedings in connection with representations and applications to the NHS Tribunal.