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STATUTORY INSTRUMENTS

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**1992 No. 664**

**The National Health Service (Service  
Committees and Tribunal) Regulations 1992**

**PART II**

**PROVISIONS RELATING TO INVESTIGATIONS, DISPUTES, APPEALS, ETC.**

**Establishment of committees**

**3.—**(1) Every FHSA—

- (a) shall have—
  - (i) a medical service committee,
  - (ii) a dental service committee,
  - (iii) an ophthalmic service committee,
  - (iv) a pharmaceutical service committee, and
  - (v) a joint services committee; and
- (b) may have a denture conciliation committee,

and may, where it sees fit, have two or more of any of the committees mentioned in heads (i) to (iv) of sub-paragraph (a) of this paragraph.

(2) Schedule 2 shall have effect with respect to committees referred to in paragraph (1).

**Appropriate committee**

**4.—**(1) Complaints and other matters investigated under this Part of these Regulations shall, subject to paragraph 5(2) to (4), be investigated by the appropriate committee, that is to say—

- (a) where the complaint or matter relates to a doctor, the medical service committee;
- (b) where—
  - (i) the complaint or matter relates to a dentist, and
  - (ii) sub-paragraph (e) of this paragraph does not apply,the dental service committee;
- (c) where the complaint or matter relates to an ophthalmic medical practitioner or an optician, the ophthalmic service committee;
- (d) where the complaint or matter relates to a chemist, the pharmaceutical service committee;
- (e) where—
  - (i) the complaint or matter relates to a dentist and concerns only the fit or efficiency of a denture provided by him, and
  - (ii) the FHSA has a denture conciliation committee,

the denture conciliation committee.

(2) A complaint or other matter which, under paragraph (1), is required to be investigated by two service committees may instead be investigated by the joint services committee, and where it is decided that the joint services committee shall investigate the complaint or matter, it shall be the appropriate committee in relation to that complaint or matter.

(3) If, in the opinion of a service committee, a matter referred to it involves a matter which is required, by virtue of paragraph (1), to be investigated also by another service committee, it shall refer the matter to the joint services committee instead of dealing with the matter itself.

(4) Where, in the course of its investigation of any complaint or matter, a denture conciliation committee considers that, by reason of—

- (a) the nature of the allegations made against the dentist; or
- (b) the number of cases in which complaints have been made against the dentist,

the complaint or matter should more appropriately be investigated by the dental service committee, it shall refer the complaint or matter to that committee for investigation in accordance with regulation 7.

(5) Where a complaint, or a matter referred to the ophthalmic service committee, involves a question relating to an ophthalmic medical practitioner and an optician, that service committee shall, where the practitioner and the optician so agree, investigate the complaint or matter in relation to both persons at the same time.

### **Making of complaints**

5.—(1) A person may complain—

- (a) about an alleged failure by a doctor, dentist, ophthalmic medical practitioner, optician or chemist to comply with his terms of service; or
- (b) about the fit or efficiency of a denture provided for him by a dentist;

by giving notice to the FHSA in accordance with the following provisions of this regulation, stating the substance of the matter he wishes to have investigated.

(2) Notice of a complaint against a doctor, ophthalmic medical practitioner, optician or chemist shall, subject to the provisions of paragraph (4) and of Schedule 3, be given within thirteen weeks after the event which is the subject of the complaint.

(3) Notice of a complaint against a dentist shall, subject to the provisions of paragraph (4) and of Schedule 3, be given within—

- (a) six months after the completion of the treatment which is the subject of the complaint; or
- (b) thirteen weeks after the matter which is the subject of the complaint comes to the complainant's notice,

whichever is the earlier.

(4) Schedule 3 shall have effect with respect to the investigation of complaints in so far as notice of the complaint is not, in relation to any event or matter which is the subject of the complaint, given within the relevant period specified in paragraph (2) or (3).

(5) Any notice given for the purposes of this regulation—

- (a) shall be given in writing, unless the FHSA is satisfied that the person wishing to make the complaint is unable, whether by reason of physical disability or otherwise, to read and write in the English language, in which case the notice may be given orally; and
- (b) if required to be given in writing shall be sent to—
  - (i) any office of the FHSA, or

- (ii) in England, the principal office of the Regional Health Authority in whose region the locality of the FHSA is included or, in Wales, the Welsh Office, Cathays Park, Cardiff, or
  - (iii) the principal office of any District Health Authority whose district is in whole or in part situated in, or is the same as, the locality of the FHSA;
  - (c) if given orally by virtue of sub-paragraph (a) of this paragraph, shall be recorded by tape recorder, and (as soon as practicable thereafter) transcribed, by the FHSA.
- (6) In its application to a complaint which is made to an FHSA whose locality is in Wales, paragraph (5)(a) shall have effect as if for the words “the English” there were substituted the words “neither the English nor the Welsh”.

### **Investigation of complaints**

6.—(1) A complaint made in accordance with regulation 5 shall be investigated if it is made by the Board, or if, in the opinion of the chairman of the appropriate committee—

- (a) it relates to—
  - (i) an alleged failure by the practitioner to comply with the terms of service, or
  - (ii) the fit or efficiency of any denture provided by the practitioner,in respect of a person who was, or who claimed to be, entitled to the provision of a Part II service; and
- (b) it is made—
  - (i) by or with the authority of that person,
  - (ii) on behalf of that person because he is under the age of 16 or is incapable, by reason of old age, sickness or other infirmity, of making the complaint himself, or
  - (iii) in respect of such a person who has died.

(2) Where, at the beginning of the hearing of a complaint before the appropriate committee, or at any time thereafter, it appears that the complaint was not made in accordance with paragraph (1), it shall be deemed to have been properly referred to the committee for investigation under the provisions of regulation 7.

(3) A complaint made against either—

- (a) a doctor in respect of the acts or omissions of a deputy whose name is also included in the medical list at the time of the event, treatment or matter which is the subject of the complaint; or
- (b) a doctor whose name is included in the medical list at the time of the event, treatment or matter which is the subject of the complaint, in respect of his acts or omissions whilst acting as deputy to a doctor whose name is also included in the medical list,

shall be taken as a complaint against both doctors and shall be investigated accordingly.

(4) Where, at any time after notice of a complaint has been given but before the FHSA makes a decision under regulation 9 in relation to that complaint, the practitioner to whom the complaint relates dies, no further action shall be taken under these Regulations in relation to that practitioner.

(5) A complainant may withdraw his complaint—

- (a) at any time in the course of, or immediately following, conciliation, by giving written notice to the FHSA of its withdrawal;
- (b) at any other time before the appropriate committee presents its report to the FHSA—
  - (i) by giving written notice to the FHSA of his intention to withdraw it, and

(ii) with the consent of the appropriate committee.

(6) Where the name of the practitioner against whom a complaint is made was, at the time of the event, treatment or matter which gave rise to a complaint, included in a list maintained by the FHSA under section 29, 36, 39 or 42 of the Act, the appropriate committee shall, subject to the provisions of this Part, investigate the complaint, notwithstanding that the name of the practitioner in question has since been removed from the list in question.

(7) Schedule 4 shall have effect with respect to the procedure for investigating complaints under this Part.

### **Other investigations by, and duties of, appropriate committees**

7.—(1) Subject to regulation 8(1), the appropriate committee shall investigate any matter relating to the administration of a Part II service, whether or not the matter has been raised by way of complaint under regulation 5, which is referred to it by—

- (a) the FHSA;
- (b) a duly authorised committee of the FHSA; or
- (c) the Board.

(2) A matter which involves an allegation that a doctor, dentist, ophthalmic medical practitioner, optician or chemist has failed to comply with his terms of service, or which relates solely to the fit or efficiency of any denture provided by a dentist under general dental services, shall, subject to paragraph (3) and regulation 8(2), be investigated only to the extent that—

- (a) in the case of a doctor, ophthalmic medical practitioner, optician or chemist, it is referred within thirteen weeks after the event which is the subject of the allegation;
- (b) in the case of a dentist—
  - (i) it is referred within six months after completion of the treatment which is the subject of the complaint, or within thirteen weeks after the matter which is the subject of the allegation came to the notice of the referring body, whichever is the earlier, and
  - (ii) where the matter in question was reported to the FHSA by the Board, it was so reported within thirteen weeks of the date on which it came to the notice of the Board.

(3) In so far as any matter is not referred or reported within the relevant period specified in paragraph (2), that aspect of the matter may nevertheless be investigated if the practitioner consents, or, where the practitioner does not give his consent, the Secretary of State consents, to the referral.

(4) Paragraph 2 of Schedule 3 shall apply to an application for the Secretary of State's consent under paragraph (3) as it applies to an application for his consent under paragraph 1(2)(b) of that Schedule, but as if for the references to the complainant and the complaint there were substituted references to the body proposing to refer the matter and to the matter respectively.

(5) Schedule 4 shall have effect with respect to the procedure for investigating matters referred under this regulation to an appropriate committee.

(6) Any matter which would otherwise be referred by the FHSA or any duly authorised committee thereof for investigation by a service committee may, if the FHSA or, as the case may be, the duly authorised committee is satisfied that it is appropriate to the joint services committee, be referred to that committee.

### **Arrangements for investigations and determinations by other FHSAs**

8.—(1) Where—

- (a) in the case of any complaint made to an FHSA—

- (i) the complainant or the practitioner is a member or officer of either the FHSA or one of its committees mentioned in regulation 3(1), or
  - (ii) paragraph 4(1) of Schedule 4 has been complied with by that FHSA but sub-paragraph (1) or (2) of paragraph 8 of that Schedule cannot be complied with by reason of the operation of paragraph 6(3) of that Schedule; or
- (b) in the opinion of the FHSA or one of its duly authorised committees, a matter of a kind referred to in regulation 7(1) ought to be investigated by an appropriate committee,
- the FHSA shall arrange with another FHSA for the complaint or the matter to be investigated and determined under these Regulations by that other FHSA pursuant to regulation 11 of the National Health Service Functions (Directions to Authorities and Administration Arrangements) Regulations 1991(1), and that other FHSA shall, subject to paragraph (2), refer the matter to its appropriate committee.
- (2) In a case to which—
- (a) paragraph (1)(a)(ii) applies, the appropriate committee of the other FHSA referred to in that paragraph shall proceed to hold a hearing and report to that other FHSA in accordance with paragraphs 4 to 9 of Schedule 4;
  - (b) paragraph (1)(b) applies, the reference in regulation 7(2)(b) to the referring body shall be construed as a reference to the FHSA, or to the duly authorised committee of the FHSA, first referred to in that paragraph (1)(b).
- (3) Schedule 4 shall have effect with respect to the procedure for investigating matters referred under this regulation to an appropriate committee.

### **Decision of FHSA**

- 9.—**(1) The FHSA, after due consideration of the report presented to it by the appropriate committee pursuant to paragraph 7 of Schedule 4, shall—
- (a) accept as conclusive the findings of fact made by that committee;
  - (b) draw such inferences from those findings of fact as it sees fit, having regard to that committee's report as it relates to the inferences which may properly be drawn from those findings;
  - (c) determine—
    - (i) in the case of a report of a service committee or the joint services committee, whether the practitioner has failed to comply with any one or more of the terms of service identified to him by the chairman of the appropriate committee pursuant to paragraph 3(3) of Schedule 4,
    - (ii) in the case of a report of a denture conciliation committee, whether the dentist has failed to secure and maintain the oral health of the patient; and
  - (d) determine—
    - (i) that no further action should be taken in relation to the report, or
    - (ii) in a case to which sub-paragraph (c)(i) of this paragraph applies, the action to be taken, in accordance with any one or more of the provisions of paragraphs (3) and (5) (but subject to paragraph (6)), in relation to the practitioner, or
    - (iii) in a case to which sub-paragraph (c)(ii) of this paragraph applies, the action which should be taken in accordance with paragraph (7) in relation to the parties,

having regard to any recommendation made by the appropriate committee pursuant to paragraph 7 of Schedule 4.

(2) If the FHSA decides either not to adopt the recommendation of the appropriate committee or to take any action not recommended by the appropriate committee, it shall record in writing its reasons for that decision.

(3) Where, in the case of any doctor to whom a report of a service committee relates, the FHSA is satisfied, after consultation with the Local Medical Committee, that, because of the number of persons included in his list, the doctor is unable to give adequate treatment to all of those persons, it may impose a special limit on the number of persons for whom the doctor may undertake to provide treatment.

(4) Where, pursuant to paragraph (3), the FHSA imposes a special limit on the number of persons for whom a doctor may undertake to provide treatment, paragraphs (6) to (8) of regulation 24 of the Medical Regulations (limitation of number of persons on doctors' lists) shall have effect in his case with suitable modifications and, in particular, as if references in those paragraphs—

- (a) to a maximum number were references to the special limit imposed under paragraph (3) of this regulation; and
- (b) to an excess were references to the extent to which the number of patients on the doctor's list exceeds that special limit.

(5) Where it has been determined that a practitioner to whom the report of the service committee relates has failed to comply with any of his terms of service the FHSA may—

- (a) subject to paragraph (8) but without prejudice to sub-paragraph (b) of this paragraph, determine that—
  - (i) there should be recovered from him, whether by way of a deduction from his remuneration or otherwise, any expenses (other than expenses incurred in connection with the investigation by the service committee) which, by reason of such failure, have been reasonably and necessarily incurred or, where the report relates to a dentist, are likely to be so incurred, by any person in obtaining further treatment, and
  - (ii) that any such sums so recovered shall be paid to that person;
- (b) determine that an amount not exceeding £500 shall be recovered from the practitioner, whether by way of deduction from his remuneration or otherwise;
- (c) recommend to the Secretary of State that an amount in excess of £500 should be recovered from the practitioner, whether by way of deduction from his remuneration or otherwise;
- (d) where the practitioner is a dentist, recommend to the Secretary of State that the dentist should be required to submit estimates for the prior approval of the Board—
  - (i) in respect of any treatment of such description, and
  - (ii) during such a period,
 as shall be specified in the recommendation;
- (e) determine that the practitioner should be warned to comply more closely with his terms of service in future.

(6) Where the FHSA determines to make a recommendation under either or both of sub-paragraphs (c) and (d) of paragraph (5), it shall not determine that action should also be taken under sub-paragraph (a), (b) or (e) of that paragraph, but it may—

- (a) where it makes a recommendation under sub-paragraph (c) of that paragraph, recommend in addition that action should also be taken under either or both of sub-paragraphs (a) and (e) of that paragraph;

- (b) where it makes a recommendation under sub-paragraph (d) of that paragraph, recommend in addition that action should also be taken under any of subparagraphs (a), (b) and (e) of that paragraph.
- (7) Where, following a report of a denture conciliation committee, it has been determined by the FHSA that a dentist has failed to secure and maintain the oral health of a patient, the FHSA may—
- (a) recommend to the parties that the patient should, by agreement with the dentist, attend him for adjustment of, or other treatment in relation to, the denture; or
  - (b) where it is satisfied that—
    - (i) the dentist is not willing to provide further treatment to the patient, or
    - (ii) the patient has reasonably refused to attend the dentist for further treatment, or
    - (iii) it is otherwise undesirable that the dentist should provide further treatment for the patient,determine, subject to paragraph (8), that there should be recovered from him, whether by way of a deduction from his remuneration or otherwise, any expenses (other than expenses incurred in connection with the investigation by the appropriate committee) which, by reason of such failure, have been reasonably and necessarily incurred, or are likely to be so incurred, by any person in obtaining further treatment, and that any such sums so recovered shall be paid to that person.
- (8) Where, pursuant to paragraph (5)(a) or (7)(b), the FHSA determines that there should be recovered from any dentist an amount in respect of any expenses referred to in that provision, that amount shall not exceed the cost, or the likely cost, of the further treatment to which it relates, calculated in accordance with the rate of remuneration in force for general dental services under the Act, and the amount so recovered may include any such contribution towards the cost of treatment as may have been paid, or may be payable, by the patient under that Act.
- (9) The FHSA shall give notice in writing of its determination under this regulation to the parties to the investigation, to the Secretary of State and, where reasonably requested to do so by either party, to any member of either House of Parliament, and shall include with the notice—
- (a) a copy of the report of the appropriate committee;
  - (b) a statement of any reasons recorded by the FHSA under paragraph (2); and
  - (c) a statement as to the rights of appeal to the Secretary of State under regulation 10, and of his power under regulation 11 to award costs.
- (10) Subject to paragraph (11), where an FHSA determines under this regulation that action should be taken in accordance with any of the provisions of paragraphs (3), (5)(a), (b) and (e) and (7)(b), that action shall be taken by the FHSA in whose list the name of the practitioner was included at the time of the event which gave rise to the complaint or reference; except that where, at the time when such action falls to be taken, the practitioner's name is no longer included in that FHSA's list but is included in the list of some other FHSA, that action shall be taken by that other FHSA.
- (11) Where in the case of a dentist, an FHSA—
- (a) has determined under this regulation that action should be taken in accordance with—
    - (i) paragraph (5)(a) or (7)(b), by recovery of an amount from a dentist and the payment of such amount to a person mentioned in that provision; or
    - (ii) paragraph (5)(b), by recovery of an amount from a dentist; and
  - (b) is of the opinion that such recovery should be effected by deduction of the amount from the dentist's remuneration,
- that FHSA shall notify the Board, and the Board shall take that action.

(12) Any amount determined under paragraph (5)(a) or (b) or (7)(b) as being recoverable shall, to the extent that it is not recovered from the practitioner's remuneration, be a debt owed by the practitioner to the FHSA by which it is recoverable.

(13) Where the FHSA makes a determination under the provisions of paragraph (5)(a), (b) or (e) or (7)(b) of this regulation, no action shall be taken in consequence of that determination—

- (a) if no appeal is brought, before the end of the period specified in regulation 10(2) for bringing an appeal; or
- (b) if an appeal is brought, before it has received notice—
  - (i) that the appeal has been withdrawn, or
  - (ii) of the Secretary of State's decision of the appeal.

### **Appeal to the Secretary of State**

**10.**—(1) An appeal may be made to the Secretary of State—

- (a) by any party to an investigation, against a determination of an FHSA under regulation 9(1)(c) which is adverse to that party;
- (b) by a practitioner against any determination by an FHSA under regulation 9(1)(d) to take action in accordance with any one or more of paragraphs (3), (5)(a) and (b) and (7)(b) of regulation 9;
- (c) in respect of any determination by an FHSA that an overpayment has or has not been made in respect of a person's remuneration, by—
  - (i) that person, or
  - (ii) the FHSA referred to in regulation 8(1)(b);
- (d) by a complainant who has asserted to an FHSA that, by reason of a practitioner's failure to comply with his terms of service, he has incurred or is likely to incur expenses in circumstances mentioned in regulation 9(5)(a) or (7)(b), against a determination by the FHSA under regulation 9(1)(d) which is adverse to him in that respect,

by giving notice of appeal in accordance with paragraph (2).

(2) A notice of an appeal under this regulation shall be sent in writing to the Secretary of State within 30 days beginning on the date on which notice of the FHSA's decision was sent to the appellant under regulation 9(9), and shall contain a concise statement of the grounds of appeal upon which the appellant intends to rely.

(3) Subject to paragraph (6), on an appeal to which paragraph (1)(a) or (c) applies, the Secretary of State shall inquire into the whole of the complaint or reference, on the basis of such evidence as was available to the appropriate committee and of such further evidence as shall have been adduced on the appeal, and shall—

- (a) make such findings of fact as he sees fit; and
- (b) draw such inferences from those findings as he sees fit; and
- (c) in the case of an appeal to which paragraph (1)(a) applies—
  - (i) determine whether or not the practitioner has failed to comply with any one or more of his terms of service, and
  - (ii) determine in accordance with any one or more of regulations 9(3), (4), (5)(a) and (e), (7) and (8) (as modified in accordance with paragraph (5) of this regulation), 13 and 14 whether any, and if so what, action should be taken in relation to that practitioner; or



- (d) in the case of an appeal to which paragraph (1)(c) applies, determine whether there has been an overpayment and, if so, of what amount.
- (4) On an appeal to which paragraph (1)(b) or (d) applies, the Secretary of State shall—
  - (a) accept as conclusive—
    - (i) those findings of fact made by the appropriate committee which were necessary for the purpose of the FHSA’s determination under regulation 9(1)(c),
    - (ii) the inferences drawn by the FHSA under regulation 9(1)(b), and
    - (iii) any determination made by the FHSA under regulation 9(1)(c) in relation to any failure mentioned in that provision; and
  - (b) determine—
    - (i) in the case of an appeal to which paragraph (1)(b) applies, in accordance with any one or more of regulations 9(3), (4), (5)(a) and (e), (7) and (8) (as modified in accordance with paragraph (5) of this regulation), 13 and 14, the action to be taken in relation to the practitioner,
    - (ii) in the case of an appeal to which paragraph (1)(d) above applies, whether an amount should be recovered and paid as mentioned in regulation 9(5)(a) or (7)(b), and if so, what amount, or
    - (iii) in either case, that no further action should be taken in relation to the report of the appropriate committee.
- (5) For the purposes of paragraphs (3)(c)(ii) and (4)(b)(i) of this regulation, paragraphs (3), (4), (5)(a) and (e), (7) and (8) of regulation 9 shall have effect as if for any reference to “the FHSA” there were substituted a reference to “the Secretary of State”.
- (6) Any appellant may withdraw his appeal, at any time before it is determined—
  - (a) by giving written notice to the Secretary of State of his intention to do so, and
  - (b) with the consent of the Secretary of State.

### **Procedure on appeal**

- 11.**—(1) Subject to paragraph (5), if the Secretary of State, after considering a notice of appeal and any further particulars furnished by the appellant, is of the opinion that the notice and particulars disclose no reasonable grounds of appeal or that the appeal is otherwise vexatious or frivolous, he may determine the appeal by dismissing it forthwith.
- (2) The Secretary of State shall, unless he dismisses the appeal under paragraph (1), send a copy of the notice of appeal and of any further particulars furnished by the appellant—
- (a) in the case of an appeal under—
    - (i) regulation 10(1)(a),
    - (ii) regulation 10(1)(b) against a determination of the FHSA that action should be taken under regulation 9(5)(a) or (7)(b), or
    - (iii) regulation 10(1)(d),to any person who was a party to the proceedings before the service committee;
  - (b) in the case of an appeal under regulation 10(1)(c) brought—
    - (i) by the practitioner, to the FHSA referred to in regulation 8(1)(b);
    - (ii) by that FHSA, to the practitioner;
  - (c) in the case of any appeal, to the FHSA,

and shall invite them to submit their observations on the appeal within 30 days of their being sent the copy of the notice of appeal.

(3) Where observations are made under paragraph (2), the Secretary of State shall send a copy of those observations to the appellant and shall invite him to submit his comments on the observations within 21 days of his being sent that copy.

(4) Subject to paragraph (5), the Secretary of State may—

(a) after the period allowed—

(i) for the making of observations under paragraph (2), or

(ii) where such observations are made, for the making of comments under paragraph (3),

has expired; and

(b) where he is of the opinion that the appeal is of such a nature that it can properly be determined without an oral hearing,

dispense with an oral hearing and determine the appeal.

(5) An appeal by a practitioner under regulation 10(1)(a) against a decision in which the FHSA have determined to take action under paragraph (3), (5)(a), (b), (c) or (d) or (7)(b) of regulation 9 shall not be dismissed without an oral hearing unless the practitioner has stated in writing that he does not want such a hearing.

(6) Where there is to be an oral hearing the Secretary of State shall appoint three persons to hold an inquiry, of whom—

(a) one shall be a barrister or a solicitor, and shall act as chairman; and

(b) two shall be selected in accordance with paragraphs (7) and (8).

(7) The persons appointed under paragraph (6)(b) shall be—

(a) where the practitioner is a doctor, two doctors;

(b) where the practitioner is a dentist, two dentists;

(c) where the practitioner is an ophthalmic medical practitioner, two ophthalmic medical practitioners;

(d) where the practitioner is an optician, two opticians;

(e) where the practitioner is a chemist, two registered pharmacists.

(8) In a case to which—

(a) paragraph (7)(a) applies, one of the doctors shall be selected from the doctors' panel;

(b) paragraph (7)(b) applies, one of the dentists shall be selected from the dentists' panel.

(9) The Secretary of State shall appoint a day for the hearing and shall give, to the appellant and to any other person or body to whom a copy of the notice of appeal was sent under paragraph (2), not less than 21 days' notice in writing of the date, time and place of the hearing.

(10) Subject to the provisions of regulation 33 (attendance by representative of Council on Tribunals), no person shall, without the consent of the appellant, the respondent and the persons appointed under paragraph (6), be admitted to a hearing before those persons unless he is—

(a) the appellant, the respondent or a member or an officer of the FHSA which made the determination against which the appeal has been brought;

(b) a person (who may be counsel, a solicitor or any other person) engaged by a person or body mentioned in sub-paragraph (a) of this paragraph to represent them before the persons appointed under paragraph (6); or

(c) a person whose attendance is required for the purpose of giving evidence to the persons so appointed.

(11) A party to an appeal shall not rely at an oral hearing on any facts or contentions which do not appear to the Secretary of State or the persons holding the inquiry to have been raised in the course of the proceedings before the appropriate committee unless—

- (a) he has, not less than seven days before the hearing, given notice in writing to the Secretary of State of such facts or contentions; or
- (b) the Secretary of State or persons holding the inquiry give their consent.

(12) The persons holding the inquiry shall draw up a report and present it to the Secretary of State, who shall take it into consideration and determine the appeal.

(13) Where an FHSA has made representations to the Tribunal following its consideration of a report of an appropriate committee, the Secretary of State may, for the purpose of any appeal under regulation 10(1)(a) against a decision of that FHSA following its consideration of that report, treat as conclusive any relevant finding of fact of the Tribunal.

(14) The Secretary of State shall give notice in writing to the parties to the appeal of his determination under paragraph (1), (4) or (12) and shall include with the notice a statement of his reasons for the determination.

(15) The FHSA may, with the consent of the Secretary of State, make such contribution as it thinks fit, and if directed by the Secretary of State shall make such contribution as he may determine, towards the cost of the appeal incurred by any other party to the appeal.

(16) The provisions of subsections (2), (3) and (5) of section 250 of the Local Government Act 1972<sup>(2)</sup> (which relate to the summoning of witnesses, the awarding of costs and other matters) shall apply to an inquiry held under this regulation as if in that subsection (5) for the words “The Minister causing an inquiry to be held under this section” there were substituted the words “The Secretary of State”.

### **Sanctions available following recommendation for recovery or prior approval**

**12.**—(1) Where an FHSA has made, in relation to any practitioner, a recommendation under regulation 9(5)(c), the Secretary of State—

- (a) shall dispose of the matter in accordance with regulation 13; and
- (b) may (whether or not he makes any direction under regulation 13(11)) take action in accordance with any of—
  - (i) where the practitioner is a dentist, regulation 14,
  - (ii) regulation 9(5)(a) (as modified in accordance with regulation 10(5)), and
  - (iii) regulation 9(5)(e) (as modified in accordance with regulation 10(5)).

(2) Where an FHSA has made, in relation to any dentist, a recommendation under regulation 9(5)(d), the Secretary of State—

- (a) shall dispose of the matter in accordance with regulation 14; and
- (b) may (whether or not he determines under regulation 14(1) that a prior approval requirement should be imposed in relation to that dentist) take action in accordance with any of—
  - (i) regulation 13,
  - (ii) regulation 9(5)(a) (as modified in accordance with regulation 10(5)), and
  - (iii) regulation 9(5)(e) (as modified in accordance with regulation 10(5)).

(3) Where, notwithstanding regulation 9(6), an FHSA in addition to making a recommendation under regulation 9(5)(c) or (d), determines that action should also be taken under some other

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(2) 1972 c. 70, as amended by Part IV of Schedule 1 to the Statute Law (Repeals) Act 1989 (c. 43).

provision of regulation 9(5), the Secretary of State shall set aside that determination and substitute his own determination under and in accordance with this regulation.

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

13.—(1) Where—

- (a) an FHSA has recommended pursuant to regulation 9(5)(c) that an amount in excess of £500 should be recovered from a practitioner, and no appeal has been made under regulation 10(1)(a) against the decision of the FHSA;
- (b) in the case of an appeal under regulation 10(1)(a), the Secretary of State determines that a practitioner has failed to comply with one or more of his terms of service; or
- (c) an appeal is made under regulation 10(1)(b),

the Secretary of State shall, subject to the following provisions of this regulation, determine whether any, and if so what, amount shall be recovered from the practitioner, whether by way of deduction from his remuneration or otherwise.

(2) The Secretary of State shall not consider the question of the recovery of an amount from a doctor or dentist whose failure to comply with his terms of service (as determined under regulation 9(1)(c) or 10(3)(c)(i)) is a failure specified in relation to him in Part I of Schedule 5 unless he has referred the question of recovery to the appropriate advisory committee and has received the advice of that committee.

(3) For the purposes of this regulation “the appropriate advisory committee” means—

- (a) where the practitioner is a doctor, the Medical Advisory Committee constituted in accordance with Part II of Schedule 5; and
- (b) where the practitioner is a dentist, the Dental Advisory Committee constituted in accordance with Part III of that Schedule.

(4) Before considering the question of the recovery of any amount from a doctor or dentist, the Secretary of State may, notwithstanding that the case is not one to which paragraph (2) applies, seek advice on that question from the committee which is, for the purposes of that paragraph, the appropriate advisory committee in relation to that practitioner.

(5) Subject to paragraph (6), where the Secretary of State is of the view that an amount should be recovered from a practitioner—

- (a) he shall give notice in writing to the practitioner of—
  - (i) the amount which he considers should be recovered from him, and
  - (ii) his right to make representations under paragraph (7) against the recovery of that amount; and
- (b) he shall not make any determination under paragraph (1) until—
  - (i) the time allowed in paragraph (7) for making representations under that paragraph has expired, or
  - (ii) where the practitioner gives notice under paragraph (7) that he wishes to make representations orally, persons appointed under paragraph (8) to hear the representations have made their report to the Secretary of State.

(6) Paragraph (5) shall not apply in a case where—

- (a) the question of recovery of an amount arises following an appeal to the Secretary of State under regulation 10(1)(a) or (b); and
- (b) there has been a hearing of that appeal under regulation 11.

(7) A practitioner who has received a notice under paragraph (5) may within 30 days of its being sent to him—

- (a) make representations in writing to the Secretary of State against the recovery of the amount in question; or
- (b) give notice in writing to the Secretary of State that he wishes to make such representations orally.

(8) Where the Secretary of State receives a notice under paragraph (7)(b) he shall appoint persons to hold a hearing of the representations and to report to him with their recommendations on the question of the recovery of an amount from the practitioner.

(9) Schedule 6 shall have effect with respect to the appointment of persons, the holding of a hearing and the making of a report for the purposes of paragraph (8).

(10) The Secretary of State shall give notice in writing of his determination under paragraph (1) to the practitioner and the FHSA, and shall include with the notice a statement of the reasons for his determination.

(11) Where the Secretary of State has determined under paragraph (1) that an amount shall be recovered from a practitioner, he shall direct the FHSA to recover that amount either by deduction from the practitioner's remuneration or otherwise and, subject to paragraph (12), the FHSA shall comply with that direction.

(12) Where, in the case of a dentist, the FHSA determines that any amount which it has been directed to recover under paragraph (11) is to be recovered by deduction from the dentist's remuneration, it shall notify the Board of the amount in question and the Board shall deduct that amount from the dentist's remuneration.

(13) Any sum which falls by virtue of paragraph (11) to be recovered by an FHSA shall, to the extent that it is not recovered by deduction from the practitioner's remuneration, be a debt owed by the practitioner to the FHSA.

### **Prior approval in dental cases**

**14.—**(1) Where—

- (a) an FHSA has recommended pursuant to regulation 9(5)(d) that a dentist should be required to submit estimates of treatment for the prior approval of the Board, and no appeal has been made under regulation 10(1)(a) against the decision of the FHSA;
- (b) in the case of an appeal under regulation 10(1)(a), the Secretary of State determines that a dentist has failed to comply with one or more of his terms of service;
- (c) an appeal is made by a dentist under regulation 10(1)(b); or
- (d) the Secretary of State receives a copy of a decision of the Tribunal issued under regulation 26(3),

the Secretary of State shall, subject to the following provisions of this regulation, determine whether a prior approval requirement should be imposed in relation to the dentist, that is to say that the dentist should, in respect of all or any specific description of treatment, be required to submit estimates for the prior approval of the Board.

(2) Where the Secretary of State determines under paragraph (1) that a prior approval requirement should be imposed, he shall also determine—

- (a) whether that requirement shall apply in the case of all treatment to be provided by the dentist, or only in relation to such treatment as the Secretary of State shall specify;
- (b) the period (to be specified as a number of months) for which the dentist is to be subject to the requirement; and

- (c) the date on which that period is to be begin, being a date falling no earlier than 28 days after the date on which notice of the requirement is given to the dentist under paragraph (10).
- (3) The Secretary of State shall not consider the question whether a prior approval requirement should be imposed in relation to a dentist unless he has referred the question to the Dental Advisory Committee and has received the advice of that committee.
- (4) Subject to paragraph (5), where the Secretary of State is of the view that a prior approval requirement should be imposed in relation to a dentist, he shall give notice to the dentist in accordance with paragraph (6) and shall not make any determination under paragraph (1) until—
- (a) the time allowed in paragraph (7) for making representations under that paragraph has expired; or
  - (b) where the respondent gives notice under paragraph (7) that he wishes to make representations orally, persons appointed under paragraph (8) to hear the representations have made their report to the Secretary of State.
- (5) Paragraph (4) shall not apply in a case where the question whether a prior approval requirement should be imposed arises following an appeal to the Secretary of State under regulation 10(1)(a) or (b) and—
- (a) in the case of an appeal under regulation 10(1)(a), the determination under appeal was accompanied by a recommendation by the FHSA under regulation 9(5)(d); and
  - (b) in either case, there has been a hearing of that appeal under regulation 11.
- (6) A notice under paragraph (4) shall be given in writing and shall include—
- (a) a statement—
    - (i) that the Secretary of State is of the view that a prior approval requirement should be imposed in relation to the dentist; and
    - (ii) of the period for which he considers the dentist should be subject to the requirement; and
  - (b) details of the description of treatment to which the Secretary of State considers the requirement should apply.
- (7) A respondent who has received a notice under paragraph (4) may within 30 days of being sent it—
- (a) make representations in writing to the Secretary of State against any matter mentioned in sub-paragraph (a) or (b) of paragraph (6); or
  - (b) give notice in writing to the Secretary of State that he wishes to make such representations orally.
- (8) Where the Secretary of State receives a notice under paragraph (7)(b) he shall appoint persons to hold a hearing of the representations and to report to him with their recommendations on the questions—
- (a) whether a prior approval requirement should be imposed in relation to the dentist; and
  - (b) if so—
    - (i) what should be the period for which the dentist should be subject to the requirement, and
    - (ii) what should be the description of treatment to which it should apply.
- (9) Schedule 6 shall have effect with respect to the appointment of persons, the holding of a hearing and the making of a report for the purposes of paragraph (8).

(10) The Secretary of State shall give notice in writing of his determination under paragraph (1) to the dentist, the FHSA and the Board, and shall include with the notice a statement of his reasons for the determination.

(11) A dentist who is subject to a prior approval requirement under this regulation may at any time after the expiry of a period of 6 months from the date on which notice of the requirement was given under paragraph (10), apply to the Secretary of State in accordance with paragraph (12) for a direction that the requirement cease to have effect before the period specified therein has elapsed.

(12) An application under paragraph (11) shall be made in writing and shall state the grounds on which the dentist contends that the requirement should cease to have effect.

(13) The Secretary of State shall, before he determines an application under paragraph (11)—

(a) send a copy of it to the FHSA and the Board, inviting them to submit their comments in writing on it within 21 days of the copy being sent to them; and

(b) where such comments are made by the FHSA or the Board within the time allowed under sub-paragraph (a) of this paragraph, send a copy of them to the dentist, inviting him to submit his observations in writing on them within 21 days of the copy being sent to him,

and shall not determine the application until the time allowed under sub-paragraph (a), or, where sub-paragraph (b) applies, that sub-paragraph, has expired.

(14) The Secretary of State shall determine the application under paragraph (11) by—

(a) directing that the prior approval requirement shall terminate on a specified date falling before the end of the period specified under paragraph (1); or

(b) dismissing the application;

and shall give notice in writing to the dentist, the FHSA and the Board of his determination and of his reasons for it.

(15) Where, on the date specified under paragraph (2)(c), the name of the dentist in respect of whom the relevant determination is made under paragraph (1) is not included in any dental list, the period specified under paragraph (2)(b) shall not begin until the next day on which his name is again included in a dental list.

(16) For the purpose of computing the date on which a period specified under paragraph (2)(b) is to end, no account shall be taken of any day on which the name of the dentist in respect of whom the relevant determination is made is not included in any dental list.

### **Excessive prescribing by doctors**

**15.—**(1) Where it appears to an FHSA that a question arises whether the cost of any drug or appliance ordered by a doctor on a prescription form in relation to any patient is, by reason of the character of the drug or appliance in question or the quantity in which it was so ordered, in excess of that which was reasonably necessary for the proper treatment of that patient, the FHSA may refer that question for investigation and determination by a committee (in these Regulations known as “the professional committee”) which shall be appointed in accordance with paragraph (3).

(2) No question shall be referred to a professional committee under paragraph (1) after the expiry of a period of two years beginning with the date on which the drug or appliance in question was ordered by the doctor.

(3) The professional committee shall be appointed by the FHSA and shall consist of three doctors—

(a) one of whom is to be nominated by the Secretary of State from a panel of doctors who—

(i) appear to the Secretary of State to have substantial experience of clinical pharmacology, and

- (ii) have been selected for the panel by the Secretary of State with the agreement of a body which is, in his opinion, representative of doctors engaged in the provision of general medical services; and
- (b) the other two of whom are engaged in the provision of general medical services, one of whom shall have been nominated by the Local Medical Committee.
- (4) The three doctors appointed under paragraph (3) shall, by agreement, select a chairman of the professional committee from among their number.
- (5) The FHSA shall give notice in writing to the doctor of any question referred by it under paragraph (1) and shall include with the notice an invitation to the doctor to send to the FHSA, within 30 days of the notice being sent to him, his observations on that question.
- (6) Where the doctor submits observations under paragraph (5), the FHSA shall, if it does not withdraw the question under paragraph (7), forward a copy of the observations to the professional committee.
- (7) The FHSA may, by giving notice in writing to the doctor and the professional committee at any time before the hearing begins, withdraw any question referred under paragraph (1), in which case no further action shall be taken under this regulation in relation to that question.
- (8) Before determining any question referred under paragraph (1), the professional committee shall hold a hearing, and where more than one question has been referred to the professional committee on the same occasion in respect of the same doctor, a single hearing shall be held in relation to all such questions.
- (9) The FHSA shall, after consultation with the professional committee, appoint a day for the hearing and shall, not less than 21 days before that day, give notice in writing to the doctor of the date, time and place of the hearing.
- (10) The professional committee may, whether or not on an application by the doctor or the FHSA, postpone the date of the hearing, in which case—
  - (a) it shall inform the FHSA; and
  - (b) the FHSA shall give notice in writing to the doctor of the postponement;and the provisions of paragraph (9) shall apply as respects the postponed hearing.
- (11) Subject to regulation 33 (attendance by representative of Council on Tribunals), the only persons who may be admitted to a hearing before the professional committee are—
  - (a) the doctor;
  - (b) not more than two persons who are members or officers of the FHSA;
  - (c) any person accompanying the doctor for the purpose of assisting him with the presentation of his case before the professional committee;
  - (d) any person whose attendance is required for the purpose of giving evidence to the professional committee; and
  - (e) not more than one person who is a member or officer of the Local Medical Committee and who is authorised by that committee to attend the hearing as an observer only.
- (12) Any person mentioned in paragraph (11)(a) or (b), and any person mentioned in paragraph (11)(c) who is not a barrister or a solicitor, may address the professional committee, but a person mentioned in paragraph (11)(a) or (b) shall not put questions directly to any other such person.
- (13) Subject to the provisions of paragraphs (11) and (12), the procedure at any hearing shall be such as the professional committee may determine.
- (14) The professional committee shall determine whether any question which has been referred to it under paragraph (1) is to be answered in the affirmative or in the negative.



(15) Where the professional committee determines that any question under paragraph (1) is to be answered in the affirmative, it may also determine that a single amount, calculated in accordance with paragraph (16), shall be recovered from the doctor in respect of such questions.

(16) When determining the level of an amount to be specified under paragraph (15), the professional committee—

- (a) shall estimate in relation to each question the amount of the excess cost referred to in paragraph (1);
- (b) shall have regard to the aggregate of amounts estimated under sub-paragraph (a) of this paragraph; and
- (c) subject to paragraph (17), may, if it sees fit, have regard to—
  - (i) the particular character or quality of any drug or appliance to which any such question relates; and
  - (ii) the circumstances which gave rise to any affirmative determinations by a professional committee or an appeal body under this regulation in respect of that doctor.

(17) The professional committee shall not, for the purposes of paragraph (16)(c)(ii), have regard to—

- (a) any determination of a professional committee—
  - (i) made less than 30 days before the date of its hearing, or
  - (ii) in respect of which an appeal under paragraph (19) is pending; or
- (b) any determination made more than 6 years before the date of its hearing.

(18) The professional committee shall—

- (a) give to the FHSA and to the doctor notice in writing of its determination (which shall specify any amount which it has determined shall be recovered from the doctor); and
- (b) include with the notice—
  - (i) a statement of the reasons for its determination, and
  - (ii) where it determines that a question is to be answered in the affirmative, a statement of the doctor's right of appeal under paragraph (19).

(19) A doctor in respect of whom a professional committee has, under paragraph (14), determined any question in the affirmative may appeal to the Secretary of State—

- (a) against that determination and against any further determination made in respect of him under paragraph (15); or
- (b) only against any determination made in respect of him under paragraph (15),

by giving notice of appeal in accordance with paragraph (20) no later than 30 days after notice of the determination was sent to him under paragraph (18).

(20) A notice of appeal shall be given in writing, shall include a concise statement of the grounds for the appeal, and shall be sent to the Secretary of State.

(21) On receipt of a notice of appeal the Secretary of State shall—

- (a) send to the FHSA a copy of the notice, inviting it to submit observations in writing on the appeal within 30 days of the copy being sent to it;
- (b) where observations are received from the FHSA within the time allowed under sub-paragraph (a) of this paragraph, send to the doctor a copy of those observations, inviting him to submit his comments in writing on those observations within 30 days of the copy being sent to him; and

- (c) after the expiry of the period mentioned in sub-paragraph (a) or, where subparagraph (b) applies, in that sub-paragraph, refer the notice of appeal, and observations or comments submitted under sub-paragraph (a) or (b), for consideration and determination by an appeal body appointed in accordance with paragraph (22).
- (22) An appeal body shall be appointed by the Secretary of State and shall, subject to paragraph (23), consist of three doctors of whom—
- (a) one shall be nominated by the Secretary of State from the panel of doctors mentioned in paragraph (3)(a); and
  - (b) the other two shall be engaged in the provision of general medical services, of whom one shall be nominated by the body mentioned in paragraph (3)(a)(ii), and the other shall be nominated—
    - (i) in relation to any appeal in connection with a question referred under paragraph (1) by an FHSA whose locality is in England, by the Regional Health Authority which is the relevant Regional Health Authority<sup>(3)</sup> in relation to the FHSA which referred the question under paragraph (1),
    - (ii) in any other case, by the Secretary of State.
- (23) No person who was a member of a professional committee which has made a determination under paragraph (14) or (15) in respect of any doctor shall be a member of an appeal body appointed in relation to any appeal against that determination.
- (24) The three doctors appointed under paragraph (22) shall, by agreement, select a chairman of the appeal body from among their number.
- (25) A doctor may withdraw his appeal by giving notice in writing to the Secretary of State at any time before the date of the hearing, in which case—
- (a) the Secretary of State shall so inform the FHSA and the appeal body in writing; and
  - (b) no further action shall be taken under this regulation in relation to the appeal.
- (26) Before determining any appeal, the appeal body shall hold a hearing, and where more than one appeal has been brought by the same doctor in respect of the determination by the professional committee of several questions referred to it under paragraph (1) on the same occasion, a single hearing shall be held of all those appeals.
- (27) The provisions of paragraphs (9) to (13) shall apply to the hearing before the appeal body as they apply to a hearing before the professional committee, save that—
- (a) for any reference in those paragraphs to the professional committee there shall be substituted a reference to the appeal body;
  - (b) for any reference in paragraph (9), and in sub-paragraphs (a) and (b) of paragraph (10), to the FHSA there shall be substituted a reference to the Secretary of State; and
  - (c) the words “who is not a barrister or a solicitor” in paragraph (12) shall not apply.
- (28) The appeal body shall—
- (a) where the appeal is made under paragraph (19)(a) determine—
    - (i) whether any question referred to the professional committee under paragraph (1), and to which the appeal relates, is to be answered in the affirmative or the negative, and
    - (ii) in relation to any such question which it has answered in the affirmative, whether any single amount, and if so what amount, is to be recovered from the doctor in respect of all such questions;

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(3) See section 15(1A) of the National Health Service Act 1977 (c. 49), as inserted by section 12(1)(c) of the National Health Service and Community Care Act 1990 (c. 19).

- (b) where the appeal is made under paragraph (19)(b), determine, in relation to any question which the professional committee has answered in the affirmative, whether any single amount, and if so what amount, is to be recovered from the doctor in respect of such questions;

and shall determine the appeal accordingly by allowing it or dismissing it.

(29) When determining the level of any amount to be specified under paragraph (28)(a)(ii) or (b), the appeal body—

- (a) shall estimate in respect of each question the amount of the excess cost referred to in paragraph (1);
- (b) shall have regard to the amount which represents the aggregate of the amounts estimated under sub-paragraph (a) of this paragraph; and
- (c) subject to paragraph (30), may, if it thinks fit, have regard to—
  - (i) the particular character or quality of any drug or appliance to which any such question relates, and
  - (ii) the circumstances which gave rise to any affirmative determinations by a professional committee or an appeal body under this regulation in respect of that doctor.

(30) The appeal body shall not, for the purposes of paragraph (29)(c)(ii) have regard to—

- (a) any determination of a professional committee—
  - (i) made less than 30 days before the date of the appeal body’s hearing, or
  - (ii) in respect of which an appeal under paragraph (19) is pending; or
- (b) any determination made more than 6 years before the date of the appeal body’s hearing.

(31) The appeal body shall give notice in writing to the FHSA and to the doctor of its determination as to any question mentioned in paragraph (28)(a)(i), and as to the recovery of any amount under paragraph (28)(a)(ii) or (b), and shall include with the notice a statement of its reasons for its determination.

(32) Subject to paragraph (34), where under this regulation a professional committee or an appeal body determines that an amount is to be recovered from a doctor, that amount may be recovered by the FHSA, either by deduction from that doctor’s remuneration or otherwise.

(33) Any amount determined under this regulation as being recoverable from a doctor shall, to the extent that it is not recovered from his remuneration, be a debt owed by the doctor to the FHSA.

(34) No amount shall be recovered by an FHSA under paragraph (32) by virtue of a determination of a professional committee unless—

- (a) the time allowed under paragraph (19) for an appeal against that determination has expired, and no such appeal has been made; or
- (b) an appeal has been made and has been withdrawn or dismissed.

### **Investigation of certification**

**16.—(1)** Where it appears to the Secretary of State, after an investigation of the medical certificates issued under and for the purposes of the Social Security Act 1975(4) by a doctor to persons for whose treatment he is responsible under his terms of service, that the doctor has failed to exercise reasonable care in the issue of such certificates, the Secretary of State may refer the matter for consideration to the Local Medical Committee, or to a joint committee of two or more

Local Medical Committees constituted in such manner as he may approve, and any reference in this regulation to the Local Medical Committee shall be construed as including any such joint committee.

(2) Any reference made under paragraph (1) shall be accompanied by a statement indicating the matters on which it appears to the Secretary of State that an explanation is required.

(3) The Local Medical Committee shall furnish the doctor concerned with a copy of the statement submitted under paragraph (2), and shall afford him reasonable opportunity of submitting to them a statement in writing and of appearing before, and being heard by, them.

(4) A copy of any statement by the doctor under paragraph (3) shall be forwarded to the Secretary of State by the Local Medical Committee for his observations, and a representative or representatives of the Secretary of State shall be entitled, in the event of a hearing, to attend and be heard by the Local Medical Committee.

(5) After considering the case, the Local Medical Committee shall draw up a report of their findings on the question whether there has been a failure on the part of the doctor to exercise reasonable care in certification and, if so, what is the extent and gravity of the failure, together with a recommendation as to the action, if any, which should be taken by the Secretary of State.

(6) The Local Medical Committee shall—

- (a) forward the report to the Secretary of State;
- (b) furnish the doctor with a copy of the report; and
- (c) notify the doctor in writing of his right of appeal to the Secretary of State.

(7) The doctor may appeal against any finding of the Local Medical Committee contained in the report, by sending to the Secretary of State notice of appeal within 30 days from the date on which a copy of the report was sent to him.

(8) On his receipt of an appeal made under paragraph (7), the Secretary of State shall appoint as a referee a doctor who is not a medical officer, or as referees persons who—

- (a) shall not exceed three in number; and
- (b) shall include a doctor who is not a medical officer,

and shall refer the appeal to the referee or referees for hearing and determination.

(9) Where three referees are appointed under paragraph (8), the determination of the referees may be that reached by the majority of them.

(10) If the Secretary of State is dissatisfied with any findings of the Local Medical Committee he may refer the matter for hearing and determination by a referee or referees.

(11) Paragraphs (8) and (9) shall apply in the case of a matter referred under paragraph (10) as they apply in the case of an appeal under paragraph (7).

(12) After consideration of the findings and recommendation—

- (a) of the Local Medical Committee; or
- (b) if—
  - (i) an appeal has been made under paragraph (7), or
  - (ii) the matter has been referred for hearing and determination under paragraph (10),of the person or persons determining the appeal or matter,

the Secretary of State may, if he is satisfied that there has been a failure on the part of the doctor to exercise reasonable care in certification consider, subject to paragraph (13), whether an amount should be recovered from the doctor, by deduction from his remuneration or otherwise.

(13) The provisions of paragraphs (3)(a), (4), (5), and (7) to (10) of regulation 13, and of Schedule 6, shall apply to the determination of the question of recovery arising under paragraph (12) of this regulation as if—

- (a) that question had arisen in any of the circumstances mentioned in paragraph (1) of that regulation; and
- (b) the references to the FHSA in paragraph (10) of that regulation, and in paragraphs 2 and 3 of Schedule 6, were references to the Local Medical Committee.

### **Investigation of record keeping**

17.—(1) Where it appears to the Secretary of State, after an examination by a medical officer of any record cards held by a doctor, that the doctor has failed to carry out his obligations under paragraph 36 of his terms of service in so far as such obligations involve the recording of clinical data regarding his patients, the Secretary of State may refer the matter for consideration by the Local Medical Committee.

(2) Where it appears to the Secretary of State, after an examination by a dental officer of any record cards held by a dentist other than a salaried dentist, that the dentist has failed to carry out his obligations under paragraph 25 of his terms of service, the Secretary of State may refer the matter for consideration by the Local Dental Committee.

(3) In this regulation—

- (a) “the relevant Local Committee” means the Local Medical Committee or the Local Dental Committee as the case may be;
- (b) “the relevant practitioner” means a doctor in respect of whom a reference is made under paragraph (1) or, as the case may be, a dentist in respect of whom a reference is made under paragraph (2);
- (c) “record cards” means—
  - (i) in the case of a doctor, the cards on which he is required, under paragraph 36 of his terms of service, to keep records of the illnesses of his patients and of his treatment of them,
  - (ii) in the case of a dentist, the records which he is required, under paragraph 25 of his terms of service, to keep as to the treatment provided by him for any person for whom he is providing general dental services.

(4) Any reference of a matter to the relevant Local Committee under paragraph (1) or (2) shall be accompanied by a statement of the Secretary of State’s grounds for considering that the obligations mentioned in that paragraph have not been fulfilled.

(5) The relevant Local Committee shall—

- (a) furnish the relevant practitioner with a copy of the statement made under paragraph (4); and
- (b) afford him a reasonable opportunity of—
  - (i) submitting to them a statement in writing, and
  - (ii) appearing before, and being heard by, them.

(6) A copy of any statement submitted by the practitioner under paragraph (5)(b) shall be forwarded by the relevant Local Committee to the Secretary of State for his observations, and a representative or representatives of the Secretary of State shall, in the event of a hearing, be entitled to attend and be heard by the relevant Local Committee.

(7) If so required by notice in writing signed by the chairman of the relevant Local Committee, the relevant practitioner shall—

- (a) produce at the hearing all record cards held by him or such of these record cards as may be specified in the notice;
- (b) afford—

- (i) in the case of a doctor, to any such member of the Local Medical Committee as may be specified in the notice, or
    - (ii) in the case of a dentist, to a dental officer,access at all reasonable times to the surgery or other place where the record cards are kept, for the purpose of enabling the inspection of such record cards; and
  - (c) furnish such persons as may have been specified under sub-paragraph (b) of this paragraph with any such record cards and with such other necessary information with regard to those record cards as they may reasonably require.
- (8) After considering the matter referred to them, the relevant Local Committee shall—
- (a) report to the Secretary of State whether there has been a failure on the part of the practitioner to carry out his obligations, and, if so, as to the extent or gravity of any such failure; and
  - (b) make a recommendation as to the action, if any, which should be taken by the Secretary of State in relation to any such failure.
- (9) The relevant Local Committee shall—
- (a) forward to the relevant practitioner a copy of any report made under paragraph (8); and
  - (b) notify that practitioner in writing of his right of appeal to the Secretary of State under paragraph (10).
- (10) The relevant practitioner may appeal against any findings contained in the report of the relevant Local Committee by sending to the Secretary of State notice of appeal within 30 days from the date on which a copy of the report was sent to him.
- (11) The provisions of regulation 16(8) and (9) shall apply in the case of an appeal by a relevant practitioner under paragraph (10) of this regulation as they apply in the case of an appeal under paragraph (7) of that regulation, and where the relevant practitioner is a dentist, those provisions shall have effect as if for references to a doctor and a medical officer there were substituted references to a dentist and a dental officer respectively.
- (12) If the Secretary of State is dissatisfied with the findings of the relevant Local Committee he may refer the matter for hearing and determination by a referee or referees.
- (13) Paragraphs (8) and (9) of regulation 16 shall apply in the case of a matter referred under paragraph (12) of this regulation as they apply in the case of an appeal under paragraph (10).
- (14) After consideration of the findings and recommendation—
- (a) of the relevant Local Committee; or
  - (b) if—
    - (i) an appeal has been made under paragraph (10) or
    - (ii) the matter has been referred for hearing and determination under paragraph (12),of the person or persons determining the appeal or matter,
- the Secretary of State may, if he is satisfied that there has been a failure on the part of the relevant practitioner to comply with his obligations as mentioned in paragraph (1) or, as the case may be, paragraph (2), consider, subject to paragraph (15), whether an amount should be recovered from the relevant practitioner, by deduction from his remuneration or otherwise.
- (15) The provisions of paragraphs (3), (4), (5), and (7) to (10) of regulation 13, and of Schedule 6, shall apply to the determination of any question of recovery arising under paragraph (14) of this regulation as if—
- (a) that question had arisen in any of the circumstances mentioned in paragraph (1) of that regulation; and

- (b) the references to the FHSA in paragraph (10) of that regulation, and in paragraphs 2 and 3 of Schedule 6 were references to the relevant Local Committee.

### **Decision as to treatment for which fees may be charged by doctors**

**18.**—(1) If any question arises, either in the course of an investigation by a medical service committee or otherwise, whether any treatment given by a doctor to a patient is treatment for which he may demand or accept a fee from the patient (unless it arises in relation to sub-paragraph (d) or (f) of paragraph 38 of his terms of service, or as to whether a certificate is reasonably required by the patient under or for the purposes of any enactment), the question shall be referred to and determined by the Local Medical Committee.

(2) Where the FHSA is dissatisfied with the determination of the Local Medical Committee it shall notify the Secretary of State in writing of its dissatisfaction and the matter shall be submitted to referees appointed under paragraph (3) for decision.

(3) For the purposes of giving effect to this regulation, the Secretary of State shall, on being notified under paragraph (2) of an FHSA's dissatisfaction, appoint as referees—

- (a) two doctors, not being medical officers, who shall be selected—
  - (i) from a panel of doctors set up by the Secretary of State for the purpose, or
  - (ii) where no such panel exists, from among doctors in actual practice; and
- (b) one barrister or solicitor in actual practice.

(4) The referees shall determine any matter submitted to them under paragraph (2), and their determination—

- (a) shall be given after hearing such parties and taking such evidence as they think proper; and
- (b) may be by a majority.

(5) Subject to the provisions of this regulation and of Schedule 7, the procedure to be followed by referees shall be such as they may determine.

(6) Where the FHSA is satisfied with a determination of the Local Medical Committee under paragraph (1), it shall report the matter to the Secretary of State who may, if he thinks fit, refer the question for decision to referees appointed in accordance with paragraph (3).

(7) The foregoing provisions of this regulation shall apply in the case of a question referred under paragraph (6) as they apply to a matter submitted under paragraph (2).

(8) Schedule 7 shall have effect with respect to the procedure for the determination of questions referred and matters submitted under this regulation.

### **Appeals from decisions of the Board**

**19.**—(1) Where—

- (a) any person is aggrieved by a decision of the Board concerning the treatment or intended treatment of a patient as part of general dental services; or
- (b) any dentist is aggrieved by a decision of the Board concerning fees payable to him in respect of his provision or intended provision of general dental services,

that person or, as the case may be, that dentist may, in accordance with paragraphs (3) and (4) appeal against the Board's decision to the FHSA administering the arrangements under which the services were, or were intended to be, provided.

(2) Any dentist who is aggrieved by a decision of the Board under regulation 29 of the Dental Regulations (prior approval — patterns of treatment) may, in accordance with paragraphs (3) and (4), appeal against that decision—

- (a) where the name of the dentist is included in the dental list of only one FHSA, to that FHSA;
  - (b) where the name of the dentist is included in the dental list of more than one FHSA, to any such FHSA.
- (3) An appeal under paragraph (1) or (2) shall be brought by giving notice of appeal in writing to the FHSA within 30 days of the date on which the decision of the Board was sent to the aggrieved person.
- (4) A notice of appeal under paragraph (3) shall—
- (a) contain a concise statement of the facts and contentions upon which the appellant intends to rely; and
  - (b) be given by or with the authority of the aggrieved person, unless—
    - (i) the aggrieved person is, by reason of age, sickness or other infirmity, incapable of acting, in which case notice of appeal may be given by some other person on his behalf although without his authority;
    - (ii) the appeal is brought under paragraph (1)(b) and concerns the fees of a dentist who has died, in which case the notice of appeal may be given by the personal representatives of that dentist.
- (5) The FHSA shall, within 30 days of receiving a notice of appeal, request from the Board a written statement of the reasons for its decision, and the Board shall within 30 days of being sent the request send such a statement to the FHSA.
- (6) The FHSA shall consider the notice of appeal and the Board’s statement and—
- (a) where, after consulting the Local Dental Committee, the FHSA is of the opinion that the notice discloses no reasonable grounds of appeal, or that the appeal is otherwise vexatious or frivolous, it may dismiss it forthwith;
  - (b) where the appeal is against a refusal of the Board to approve a claim for remuneration or an estimate on grounds that the services to which the claim or estimate relates cannot be provided as part of general dental services, the FHSA shall refer the notice of appeal and the Board’s statement to the Secretary of State, and shall inform the parties in writing that it has done so;
  - (c) where—
    - (i) an appeal is brought under paragraph (1)(b) against a decision of the Board concerning a dentist’s fees, and
    - (ii) the Board has certified in its statement under paragraph (5) that it has authorised those fees and that they were the fees or maximum fees prescribed by Determination I of the Statement of Dental Remuneration for the services provided or to be provided,
 the FHSA shall dismiss the appeal forthwith unless it is of the opinion that the appeal involves a dispute as to the item or sub-item of treatment in that Determination applicable to the services provided or intended to be provided;
  - (d) except where an appeal is dismissed or referred in accordance with the preceding provisions of this paragraph, the FHSA shall, within 30 days of being sent the Board’s statement under paragraph (5), appoint, in accordance with paragraph (7)—
    - (i) where the appeal is brought under paragraph (2), three dentists,
    - (ii) in any other case, two dentists,
 as referees to determine the appeal.
- (7) One of the dentists appointed for the purposes of paragraph (6)(d) shall be selected from a panel of dentists who—
- (a) are, or have been, engaged in the provision of general dental services; and



- (b) have been nominated to the panel by the Local Dental Committee or by the Local Dental Committee constituted for another locality.
- (8) Where the FHSA dismisses an appeal under paragraph (6) it shall give notice in writing to the person who brought the appeal and to the Board that the appeal has been dismissed, and, where the appeal is dismissed under sub-paragraph (c) of that paragraph, the FHSA shall include with the notice to the appellant a copy of the Board's statement under paragraph (5) and a statement of its reasons for dismissing the appeal.
- (9) Where an appeal is referred to the Secretary of State, he shall determine it in such manner as he thinks fit, and shall give notice of his decision, and of the reasons for it, to the appellant, the Board and the FHSA.
- (10) Where referees are appointed under paragraph (6)(d) they shall, subject to paragraph (12), hear the representations of the parties on a date appointed by the FHSA for that purpose, and the FHSA shall—
  - (a) not less than 14 days before that date (or within such shorter period as the parties may agree), give notice in writing to the parties of the date, time and place of the hearing and of the names of the referees; and
  - (b) not less than 7 days before that date (or within such shorter period as the parties may agree), provide the referees and the appellant with a copy of the Board's statement and the notice of appeal.
- (11) A party to an appeal which is to be determined by referees following a hearing shall not be entitled to rely upon any facts or contentions not contained in the notice of appeal or the statement of the Board unless—
  - (a) that party gives notice in writing of those facts or contentions to the referees and to the other party to the appeal at least 7 days before the date of the hearing; or
  - (b) the referees consent (either before or during the hearing).
- (12) Where both parties to an appeal have given written notice to the FHSA that they do not intend to make representations at a hearing, the FHSA shall inform the referees accordingly, and the referees shall determine the appeal without a hearing.
- (13) The referees shall within 7 days after determining an appeal give notice in writing to the FHSA of their decision and of the reasons for it, and the FHSA shall within 14 days of receiving the notice send copies of it to the parties.
- (14) For the purposes of this regulation, the parties to an appeal are the Board and the appellant, that is to say the aggrieved person or, where another person has given notice of appeal in accordance with paragraph (4), that other person.

### **Power of Local Representative Committees to consider complaints**

- 20.**—(1) A Local Medical Committee may consider any complaint made to it by any doctor against a doctor providing general medical services in the relevant locality involving any question of the efficiency of such services in that locality.
- (2) A Local Dental Committee may consider any complaint made to it by any dentist against a dentist providing general dental services in the relevant locality involving any question of the efficiency of such services in that locality.
- (3) A Local Optical Committee may consider any complaint made to it by any optician against an optician providing general ophthalmic services in the relevant locality involving any question of the efficiency of such services in that locality.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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(4) A Local Pharmaceutical Committee may consider any complaint made to it by any chemist against a chemist providing pharmaceutical services in the relevant locality involving any question of the efficiency of such services in that locality.

(5) In this regulation “the relevant locality” means the locality in respect of which the Local Representative Committee in question is recognised under section 44 of the Act~~(5)~~.

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(5) Section 44 was amended by section 12(4) of the National Health Service and Community Care Act 1990 (c. 19).