

2001 No. 3743

NATIONAL HEALTH SERVICE, ENGLAND

**The Family Health Services Appeal Authority (Primary
Care Act) Regulations 2001**

Made - - - - - 22nd November 2001

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Coming into force - - 14th December 2001

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The Secretary of State for Health, in exercise of the powers conferred upon him by section 39(2) of, and paragraphs 3(4) and (5) and 7 of Schedule 1 to, the National Health Service (Primary Care) Act 1997(a) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(b), hereby makes the following Regulations:

PART I GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Family Health Services Appeal Authority (Primary Care Act) Regulations 2001 and shall come into force on 14th December 2001.

(2) These Regulations extend to England only.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the 1977 Act” means the National Health Service Act 1977(c);

“Chairman” means the chairman of a panel to which a case is allocated;

“the complainant” means a Health Authority or other person who has made representations under paragraph 3 of Schedule 1 to the Primary Care Act;

“the FHSAA” means the Family Health Services Appeal Authority constituted under section 49S of the 1977 Act(d);

“doctor” means a registered medical practitioner, other than one acting in the capacity of an ophthalmic medical practitioner;

“inquiry” means an inquiry held under the provisions of these Regulations;

“panel” shall be construed in accordance with regulation 5(1);

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

“the President” means the President of the FHSAA and includes any Deputy President;

“proceedings” means any proceedings before the FHSAA relating to representations and includes inquiries, hearings and hearings of preliminary matters; and

“representations” means representations made by a complainant to the FHSAA in accordance with these Regulations under paragraph 3(1) or (2) of Schedule 1 to the 1997 Act.

(2) In these Regulations—

(a) any reference to any document being signed by a party to proceedings shall include signature on behalf of such a person by a person who is properly authorised to do so; and

(b) a reference—

(i) to a numbered Part is to the Part bearing that number,

(ii) to a numbered regulation is to the regulation bearing that number, and

(a) 1997 c. 46 (“the 1997 Act”). Schedule 1 was amended transitionally by S.I 1998/631, article 4, and further amended so as to apply to the Family Health Service Appeal Authority (FHSAA) by the Health and Social Care Act 2001 (c. 15), section 27(5)(b) (“the 2001 Act”). See section 40(2) for the definition of “prescribed” and “regulations”.

(b) 1992 c. 53.

(c) 1977 c. 49.

(d) Section 49S was inserted into the National Health Service Act 1977 (c. 49) (“the 1977 Act”) by the 2001 Act, section 27(1). By virtue of the amendment made to the 1997 Act by the 2001 Act, section 27(5)(b), “the Tribunal” in Schedule 1 means the FHSAA constituted under section 49S of the 1977 Act.

- (iii) to a numbered paragraph in a regulation is to the paragraph bearing that number in that regulation.

PART II

PROCEDURE AND HEARINGS

Directions as to procedure

3. The President may give practice directions applying generally to proceedings under these Regulations, and subject to any such directions, a Chairman presiding over any such proceedings may give procedural directions, order pre-hearing reviews and generally determine the procedure to be followed.

Making of representations and preliminary matters

4.—(1) Representations to the FHSAA under paragraph 3 of Schedule 1 to the Primary Care Act that the inclusion of a practitioner's name in a medical list would be prejudicial to the efficiency of general medical services shall be made in the form of a notice in accordance with this regulation.

- (2) Subject to paragraphs (3) and (4), the representations referred to in paragraph (1) shall—
 - (a) be made in writing;
 - (b) be signed by or on behalf of the complainant; and
 - (c) include the following information—
 - (i) the name and address of the doctor and his professional registration number, if known,
 - (ii) the name and address of the complainant,
 - (iii) where relevant, the name and address of any solicitor or other representative of the complainant and whether the FHSAA should correspond with that person instead of with the complainant,
 - (iv) a concise statement of the alleged facts and the grounds on which the complainant relies in asserting that the doctor's inclusion in a Health Authority's medical list would be prejudicial to the efficiency of the service,

and shall be sent to the FHSAA^(a).

(3) The notice shall be sent to the FHSAA before the end of the period of two weeks beginning with the date of publication by the Health Authority under regulation 14(a) of information about the practitioner's application for his name to be included in the medical list.

(4) The complainant shall, if required to do so by the FHSAA, send within 14 days of being so required a further statement setting out—

- (a) more detail about the alleged facts or the grounds on which the representations are made;
 - (b) where a fact is not within the personal knowledge of the person signing the representations, the source of the information and why it is considered to be true; and
 - (c) such further particulars as the FHSAA may require.
- (5) Where an inquiry is to be held, the FHSAA shall give—
- (a) to the doctor, notice in writing that the FHSAA is holding an inquiry as to the representations made by the complainant;
 - (b) to the complainant, notice in writing that the FHSAA is holding an inquiry as to the representations and requiring the complainant, within a time specified in the notice, to send to the FHSAA a copy of any document which is proposed to be put in evidence.
- (6) The FHSAA shall, as soon as is practicable, send to the doctor—
- (a) a copy of the notice provided by the complainant under paragraph (2)(c);
 - (b) a copy of any further statement furnished under paragraph (4);

(a) The FHSAA's office is at 30 Victoria Avenue, Harrogate HG1 5PR.

- (c) a copy of any document provided by the complainant in accordance with paragraph (5)(b); and
- (d) a notice informing him that he may, by a statement in writing to be sent to the FHSAA within a time specified in the notice, admit or dispute the truth of all or any of the allegations appearing in any statement sent to him under sub-paragraph (a) or (b) of this paragraph.

(7) Once a case has been allocated to a panel in accordance with regulation 5(2), the complainant or the doctor may, with the leave of the panel, amend any written statement at any time, including at the hearing and the panel may grant leave on such terms as it thinks fit.

Composition of panels and allocation of cases

5.—(1) The President shall ensure that any panel to which a case is allocated under paragraph (2) for the purpose of these Regulations comprises three members, including, unless the President decides otherwise—

- (a) one member who is a medical practitioner within paragraph 6(a) of Schedule 9A to the 1977 Act, and
- (b) one member who does not fall within any of sub-paragraphs (a) to (d) of paragraph 6 of that Schedule and does not have a legal qualification.

(2) After the FHSAA has sent a doctor the copy notice referred to in regulation 4(6)(a), the President shall allocate the case to a panel.

Withdrawal of representations and suspension of procedures

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

(2) If the complainant fails to comply within the time allowed by the FHSAA for such compliance, with any requirement imposed under regulation 4, or fails, without having previously offered a reasonable excuse, to appear at a hearing of which due notice was given under regulation 7, the FHSAA may treat the representations as having been withdrawn.

(3) Subject to paragraph (4), where representations are withdrawn or treated as withdrawn the FHSAA shall immediately so inform the doctor in writing.

(4) The FHSAA may also direct that no further steps shall be taken for the time being under this Part in any other circumstances where it appears to the FHSAA that it would be appropriate so to direct.

Notice of hearing

7.—(1) The FHSAA shall, whether or not on an application by any party, appoint a day for the hearing and shall, not less than 14 days before that day, send notice to the parties of the date, time and place of the hearing.

(2) The FHSAA may send to any Health Authority which is not a party to the proceedings but on whose list the doctor's name is included, or on whose list the doctor is seeking to be included, a notice of the date, time and place of the hearing.

(3) The FHSAA may, whether or not on an application by any party to the proceedings, postpone the date of the hearing, and the provisions of paragraphs (1) and (2) shall apply as respects the postponed hearing.

Hearings

8.—(1) Subject to paragraph (2), the hearing shall be in public.

(2) A hearing, or any part of it, may be in private where the panel consider it reasonable in all the circumstances, but it must not be in private if the doctor has requested that it be in public.

(3) Subject to paragraph (5), where the hearing or any part of it is in private, no person shall be admitted to it unless he is—

- (a) a party to the proceedings,
- (b) an officer of a Health Authority to which notice has been sent under regulation 7(2), or

(c) a person entitled to represent a party to the proceedings, or a Health Authority to which a notice has been sent under regulation 7(2).

(4) A panel, with the consent of the parties, may permit any other person to attend a hearing or any part of a hearing which is held in private.

(5) A Health Authority may be represented at the hearing by a member or an officer or by counsel or solicitor and any other party may be represented at the hearing by counsel or solicitor or by any other person.

(6) The following persons shall be entitled to attend a hearing under these Regulations, whether or not it is held in public—

- (a) the President or any member of the FHSAA, notwithstanding that he is not a member of the panel for the purposes of the hearing,
- (b) a member of the Council on Tribunals,

but such persons shall not take part in the proceedings or in the making of any decision by a panel.

Procedure at hearings

9. At a hearing either party may—

- (a) address the panel;
- (b) call witnesses and produce other evidence, including evidence not produced prior to the hearing; and
- (c) put questions to any person giving evidence on behalf of the other party.

Participation of other Health Authorities at hearings

10. A Health Authority to which notice has been sent under regulation 7(2) may take such part in the proceedings as the panel considers is appropriate.

Hearings in a party's absence

11.—(1) Where any party to whom notice of the hearing has been sent in accordance with regulation 7 fails to appear at the hearing, either in person or by a representative, the panel may, taking into account all the circumstances, including any explanation offered for the absence, proceed with the hearing notwithstanding that party's absence.

(2) Subject to any directions, orders or other instructions given under regulation 3 and to any other provisions of this Part, the procedure at the hearing shall be for the panel to decide.

Application of section 250(2) and (3) of the Local Government Act 1972

12. Section 250(2) and (3) of the Local Government Act 1972(a) (summoning of witnesses, evidence, etc.) shall apply to an inquiry and hearing under these Regulations as though the FHSAA were a person appointed to hold a local inquiry under that section.

Inquiry into representations

13.—(1) Subject to paragraph (2), the inquiry shall proceed by way of an oral hearing before a panel in accordance with regulations 8 to 12.

(2) Where a doctor has stated in writing that he does not want an oral hearing, the panel may decide the case on such documentary evidence as may have been submitted to the FHSAA.

(3) At the conclusion of the inquiry the FHSAA shall, as soon as is practicable, issue a decision in writing, signed by the Chairman of the panel which presided over the inquiry, containing—

- (a) the panel's findings of fact;
- (b) its conclusions;
- (c) any decision that the FHSAA give a direction under paragraph 4(1) or 5, as the case may be, of Schedule 1 to the Primary Care Act; and

(a) 1972 c. 70. Section 250(2) was amended by the Statute Law (Repeals) Act 1989 (c. 43) Schedule 1, Part IV; and section 250(3) was modified by virtue of the Criminal Justice Act 1982 (c. 48), sections 38 and 46.

(d) a statement of the reasons for the decision.

(4) The FHSAA shall send a copy of the decision to the doctor, the complainant, the Secretary of State and any Health Authority which was sent notice of the hearing under regulation 7(2).

(5) Where the decision contains a direction under paragraph 4(1) of Schedule 1 to the Primary Care Act, the FHSAA shall include with the decision a notice to the doctor of his right of appeal under section 11(1) of the Tribunals and Inquiries Act 1992(a) in respect of that decision.

PART III

MISCELLANEOUS PROVISIONS

Publication of information about applications involving preferential treatment

14. Health Authorities shall publish in such manner as they think fit information about—
- (a) applications made to them for inclusion in their medical lists, including the name of any doctor to whom paragraph 1 of Schedule 1 to the Primary Care Act applies; and
 - (b) the rights of persons to make representations against such applications.

Publication of directions

15. The FHSAA shall publish any direction it has given under paragraph 4(1) or 5 of Schedule 1 to the Primary Care Act, or any disqualification imposed or removed to which paragraph 6 of that Schedule applies, in such manner as it thinks fit.

Costs

16. All parties and any Health Authorities to which notice has been sent under regulation 7(2) shall bear their own costs in, and section 250(5) of the Local Government Act 1972(b) (costs) shall not apply to, FHSAA proceedings under Schedule 1 to the Primary Care Act.

Service of documents

17. Any notice or other document required or authorised by any provision of these Regulations to be served on any person or to be given or sent to any person may be served, given or sent—

- (a) by delivering it or sending it by post to him at his usual or last-known address;
- (b) in the case of the FHSAA by delivering it or sending it by post to its office(c);
- (c) in the case of a Health Authority, by delivering or sending it by post to their chief officer at their principal office;
- (d) in the case of a person represented by—
 - (i) a solicitor, by delivering it or sending it by post to that solicitor at his professional address,
 - (ii) any other person, by delivering it or sending it by post to that other person at his usual or last-known address.

Power to dispense with requirements as to notices

18. Notwithstanding the preceding provisions of these Regulations, the FHSAA may dispense with any requirements of these Regulations respecting notices, applications, documents or otherwise in any case where it appears to it to be just and proper to do so.

(a) 1992 c. 53. A reference to the FHSAA was substituted for one to the NHS Tribunal in paragraph 33(b) of Schedule 1, by the Health and Social Care Act 2001 (c. 15), Schedule 5, paragraph 10.

(b) 1972 c. 70.

(c) The FHSAA's office is at 30 Victoria Avenue, Harrogate HG1 5PR.

Power to extend time limits

19.—(1) Where, by virtue of provisions of these Regulations—

(a) a person is required—

- (i) to provide documents or reasons,
 - (ii) to make any statement or representations, or
 - (iii) to admit or dispute the truth of an allegation,
- within a time specified in or under that provision; and

(b) that person applies (whether before or after the expiry of the time so specified) to the FHSAA in accordance with paragraph (2) for that time to be extended,

the FHSAA 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.

(2) An application under paragraph (1) shall be made in writing and shall include a statement as to the reasons for making the application.

Reviews of paragraph 4(1) directions

20.—(1) Subject to paragraph (2), where a doctor is subject to a paragraph 4(1) direction he may not request a review before the end of the period of—

- (a) two years beginning with the date the paragraph 4(1) direction was given, or
- (b) one year beginning with the date of the FHSAA's decision on the last such review.

(2) Where the FHSAA states that it is of the opinion that there is a need for an immediate review because—

- (a) a criminal conviction considered by it in reaching its decision has been quashed or the penalty has been reduced on appeal, or
- (b) the decision of a professional, licensing or regulatory body has been quashed or the penalty has been reduced on appeal,

the period specified in paragraph (1)(a) or (b) shall be reduced to the period that has already elapsed.

(3) Where a doctor requests a review under paragraph (1), the President shall issue directions under regulation 3 as to which of the provisions of these Regulations are to apply, including those relating to the holding of an inquiry.

(4) In this regulation—

“a paragraph 4(1) direction” means a direction given by the FHSAA under paragraph 4(1) of Schedule 1 to the Primary Care Act, and includes a direction given by the Tribunal under regulation 7 of the Abolition of the Tribunal (Consequential Provisions) Regulations 2001(a);

“a paragraph 5 direction” means a direction given by the FHSAA under paragraph 5 of that Schedule that a paragraph 4(1) direction be terminated; and

“review” means the making of representations by a doctor to the FHSAA that a paragraph 5 direction be made.

Signed by authority of the Secretary of State for Health

22nd November 2001

John Hutton
Minister of State,
Department of Health

(a) S.I. 2001/3744.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend only to England, make provision about the proceedings of the Family Health Services Appeal Authority (“the FHSAA”) in respect of cases arising under Schedule 1 to the National Health Service (Primary Care) Act 1997 (“the 1997 Act”).

Under the 1997 Act, where Health Authorities do not wish to re-admit to their general medical services list under Part II of the National Health Service Act 1977 (“a Part II list”) a medical practitioner who has been performing personal medical services under a pilot scheme under the 1997 Act, they may apply to the FHSAA for a direction to this effect.

Part I makes provision for citation, commencement and extent and interpretation (regulations 1 and 2).

Part II makes provision for the procedure to be followed and the conduct of hearings. There is provision for the President of the FHSAA and the chairman of any panel dealing with a case to give directions (regulation 3). There is provision for the making of representations to the FHSAA, and the procedure to be followed in doing so, by Health Authorities or any other person, that a practitioner should not be permitted to rejoin a Part II list, and for the FHSAA to notify the practitioner, advising that a written statement may be made (regulation 4).

There is provision for the composition of panels and for the allocation of cases to panels (regulation 5). There is provision for a Health Authority or other person who has made representations to withdraw these and for the practitioner to be informed by the FHSAA if this occurs (regulation 6). There is provision about notice of hearings (regulation 7), hearings and their procedure including representation at a hearing (regulations 7 to 9), for other Health Authorities which have been notified of the hearing to be present (regulation 10) and for hearings in a party’s absence (regulation 11). There is provision for the summoning of witnesses, evidence etc. by virtue of section 250(2) and (3) of the Local Government Act 1972 (regulation 12).

There is provision for a case to proceed on documentary evidence alone if the practitioner has agreed in writing to this, for the FHSAA to issue as soon as possible after the hearing is concluded the decision of the panel, with reasons and any decision that a direction be given which prevents the practitioner from re-joining a Part II list, for the FHSAA to send a copy of the decision in particular to the parties and to the Secretary of State and where the decision is that the practitioner may not re-join the Part II list, information about rights of appeal under section 11(1) of the Tribunals and Inquiries Act 1992 (regulation 13).

Part III makes provision for various general matters. Health Authorities must publish information about applications to re-join their Part II lists and about the rights of persons to make representations against such applications (regulation 14). The FHSAA is required to publish any directions given which prevent a practitioner re-joining a Part II list as well as any subsequent direction which terminates such a direction (regulation 15).

Parties are to bear their own costs (regulation 16), provision is made for the service of documents (regulation 17), for the FHSAA to dispense with requirements regarding notices, applications or documents otherwise required under the Regulations (regulation 18) and for the FHSAA to dispense with any time limits imposed under the Regulations where it is satisfied that it is reasonable to do so (regulation 19). Provision is also made for reviews of FHSAA decisions which prevent a practitioner from re-joining a Part II list, at the request of the practitioner but subject to certain requirements as to time periods first elapsing (regulation 20).

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