

2002 No. 1920

NATIONAL HEALTH SERVICE

The Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2002

Made - - - - - 24th July 2002

Laid before Parliament 1st August 2002

Coming into force 26th August 2002

The Secretary of State for Health, in exercise of the powers conferred on him by section 65(1) and (2) of the Health and Social Care Act 2001^(a) and all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2002 and shall come into force on 26th August 2002.

(2) Regulations 1 to 7 apply to Wales only.

(3) Regulations 8 to 11 apply to England only.

Interpretation

2. In these Regulations—

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

“the 2001 Act” means the Health and Social Care Act 2001;

“the appeal period” means the period of 14 days within which an appellant must file his notice of appeal against a decision of the Tribunal in accordance with the Civil Procedure Rules 1998^(c);

“the applicant Health Authority” means the Health Authority in Wales which made an application to the Tribunal which led to any Tribunal direction being made;

“the effective date” is the date (being after the relevant date) which immediately follows—

(a) the date on which an appeal period ended in respect of a local or national disqualification decision, without any appeal being filed,

(b) the date on which any appeal was withdrawn,

(c) the date on which a court upheld the Tribunal’s local or national disqualification decision on appeal,

as the case may be;

^(a) 2001 c.15.

^(b) 1977 c.49.

^(c) See RSC Order 94, rule 8(3), Schedule 1 to the Civil Procedure Rules 1998.

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

“a local disqualification decision” means a direction of the Tribunal under section 46(2)(a) of the 1977 Act in relation to a Health Authority in Wales to which section 47(1) of that Act applies;

“a national disqualification decision” means a direction of the Tribunal under section 46(2)(b) of the 1977 Act to which section 47(1) of that Act applies;

“the Order” means the Health and Social Care Act 2001 (Commencement No. 3) (Wales) Order 2002(b);

“a pharmacist case” means a case before the Tribunal in relation to a person undertaking to provide pharmaceutical services under Part II of the 1977 Act;

“the relevant date” means—

(a) 26th August 2002, or

(b) in a pharmacist case, the date on which the first regulations made under section 42 of the 1977 Act come into force after the commencement of section 20(6) of the 2001 Act;

“a review decision” means a decision by the Tribunal under section 47 of the 1977 Act not to direct that a disqualification be ended;

“a suspension direction” means a direction of the Tribunal under section 49A(2) of the 1977 Act(c) that subsection (3) of that section applies;

“a suspension pending appeal direction” means a direction of the Tribunal under section 49B(1) of the 1977 Act(d); and

“the Tribunal” means the tribunal constituted under section 46 of the 1977 Act(e).

Local disqualification decisions made before the relevant date

3. Where a person was subject to a local disqualification decision immediately before the relevant date and—

(a) the appeal period had ended by that date, or

(b) an appeal against that disqualification was concluded before that date and was not successful or was withdrawn before that date,

he shall be treated from the relevant date as having been removed from a Health Authority’s list in accordance with section 49M(6)(a) of the 1977 Act(f).

National disqualification decisions made before the relevant date

4.—(1) Where a person was subject to a national disqualification decision immediately before the relevant date and—

(a) the appeal period had ended by that date, or

(b) an appeal was concluded before that date and was not successful or was withdrawn before that date,

he shall be treated from the relevant date as having had a national disqualification imposed on him by the FHSAA under section 49N(1) of the 1977 Act.

(2) Where a person is treated as having had a national disqualification imposed on him by the FHSAA in accordance with paragraph (1)—

(a) where no review decision has been made he may request a review by the FHSAA under section 49N(8)(a) of the 1977 Act not less than two years after—

(a) Section 49S was inserted into the National Health Service Act 1977 (c.49) (“the 1977 Act”) by the Health and Social Care Act 2001 (“the 2001 Act”), section 27(1).

(b) S.I. 2002/1919 (c.60).

(c) Section 49A was inserted into the 1977 Act by the National Health Service (Amendment) Act 1995 (c.31) (“the 1995 Act”).

(d) Section 49B was inserted into the 1977 Act by the 1995 Act, section 2(1).

(e) Section 46 of the 1977 Act was amended by the Health and Social Security Act 1984 (c.48), section 24 and Schedule 8, Part I, the Health Authorities Act 1995 (c.17), section 2(1) and Schedule 1, paragraph 34 and by the 1995 Act, sections 1, 2(2) and 3(2). The Tribunal is abolished by section 16 of the 2001 Act, with effect from 26th August 2002 subject to provision made by S.I. 2002/1919 (c.60), article 2(2) and (3).

(f) Sections 49F to 49R were inserted into the 1977 Act by section 25 of the 2001 Act.

- (i) the date on which a national disqualification decision was made, where that decision has not been appealed, or
- (ii) the date on which a national disqualification decision was upheld by a court, whichever is the later; or
- (b) where he has had a review decision, he may request a review by the FHSAA under section 49N(8)(a) of the 1977 Act not less than one year after the date of that review decision,

and thereafter, subject to paragraph (3), section 49N(8)(b) of the 1977 Act shall apply in his case.

(3) 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 the Tribunal 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 (2) which applies before a review may be undertaken shall be reduced to the period that has already elapsed.

Cases under the 1977 Act where the appeal period has not ended or an appeal is not concluded by the relevant date

5.—(1) In any case where the Tribunal makes a local or a national disqualification decision before the relevant date but the appeal period does not end, an appeal is not withdrawn, or an appeal is not concluded until after that date, the following paragraphs shall apply.

(2) Where a person who is the subject of a local disqualification decision does not file an appeal by the end of the appeal period he shall be treated as having been removed from the applicant Health Authority's list from the effective date.

(3) Where a person who is the subject of a national disqualification decision does not file an appeal against that decision by the end of the appeal period, any suspension pending appeal direction shall cease to apply and he shall be treated as having had a national disqualification imposed on him by the FHSAA from the effective date and, subject to paragraph (4), section 49N(8) of the 1977 Act shall apply in his case.

(4) 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 the Tribunal 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 of two years specified in section 49N(8)(a) of the 1977 Act which applies before a first review may be undertaken shall be reduced to the period that has already elapsed.

(5) Where a person who is the subject of a local or national disqualification decision—

- (a) has filed an appeal which is not concluded by the relevant date,
- (b) withdraws an appeal after that date, or
- (c) files an appeal within an appeal period ending after that date,

any suspension pending appeal direction, if given, shall continue to apply, and paragraphs (3) and (4) of regulation 6 shall apply in his case.

Other cases under the 1977 Act not disposed of by the relevant date

6.—(1) Subject to paragraph (2), where a Health Authority made representations to the Tribunal in respect of a person under section 46 of the 1977 Act on or after 1st July 2002 and the case has not been disposed of by the Tribunal by the relevant date—

- (a) any proceedings against him before the Tribunal shall cease, and
- (b) the Health Authority may proceed in relation to the person under section 49F of the 1977 Act.

(2) Where before the relevant date the Tribunal has given a suspension direction in respect of a person to whom paragraph (1) applies, that person shall be treated with effect from the relevant date as having been suspended by the Health Authority under section 49I of the 1977 Act.

(3) Where a Health Authority made an application to the Tribunal in respect of a person under section 46 of the 1977 Act before 1st July 2002, article 2(2) of the Order shall apply until the effective date and the Tribunal may make any directions they could have made before the relevant date.

(4) In a case to which paragraph (3) applies and the Tribunal impose—

- (a) a local disqualification on a person, he shall be treated as having been removed from a Health Authority list from the effective date, or
- (b) a national disqualification on a person, he shall be treated as having had a national disqualification imposed on him by the FHSAA from the effective date and, subject to paragraph (5), section 49N(8)(a) of the 1977 Act shall apply in his case.

(5) 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 the Tribunal 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 of two years specified in section 49N(8)(a) of the 1977 Act which applies before a first review may be undertaken shall be reduced to the period that has already elapsed.

Disposal of case files held by the Tribunal

7.—(1) In any case to which regulation 4(1) applies, the Tribunal shall transfer the case file to the FHSAA as soon as may be practicable after the relevant date.

(2) In any case to which regulation 6(4) applies, the Tribunal shall transfer the case file to the FHSAA within two weeks of the effective date which applies to the case in question.

Consequential amendments of regulations

8. In the National Health Service (General Medical Services) Regulations 1992(a), in regulation 2 (interpretation)—

- (a) in the appropriate alphabetical position, insert ““Abolition of the Tribunal (Wales) Regulations” means the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2002(b);”;
- (b) under the definition of “a national disqualification”—
 - (i) in sub-paragraph (c), after “Abolition of the Tribunal Regulations”, insert “or regulation 6(4)(b) of the Abolition of the Tribunal (Wales) Regulations;”;
 - (ii) delete sub-paragraph (d);
- (c) under the definition of “suspended”—
 - (i) delete sub-paragraph (b); and
 - (ii) from “and shall be treated” to the end, substitute “and shall be treated as including a case where a person is treated as suspended by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations, or by virtue of regulation 6(2) of the Abolition of the Tribunal (Wales) Regulations, and “suspends” and “suspension” shall be construed accordingly;”
- (d) for the definition of “the Tribunal”, substitute ““the Tribunal” means the Tribunal constituted under section 46 of the Act(c) for England and Wales, and which, except for prescribed cases, had effect in relation to England only until 14th December 2001 and in relation to Wales, only until 26th August 2002(d).”.

(a) S.I. 1992/635. Relevant amending Regulations are S.I. 2001/3742.

(b) S.I. 2002/1920.

(c) Section 46 was substituted by the Health Act 1999 c.8.

(d) See S.I. 2001/3738, article 2(5) and (6)(a) which sets out the prescribed cases for England and S.I. 2002/1919 (c.60), article 2(2) and (3)(a) which sets out the prescribed cases for Wales.

9. In the National Health Service (General Medical Services) (Supplementary List) Regulations 2001(**a**), in regulation 2 (interpretation)—

- (a) in the appropriate alphabetical position, insert ““Abolition of the Tribunal (Wales) Regulations” means the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2002(**b**);”;
- (b) under the definition of “a national disqualification”—
 - (i) in sub-paragraph (c), after “Abolition of the Tribunal Regulations”, insert “or regulation 6(4)(b) of the Abolition of the Tribunal (Wales) Regulations;”;
 - (ii) delete sub-paragraph (d);
- (c) under the definition of “suspended”—
 - (i) delete sub-paragraph (b); and
 - (ii) from “and shall be treated” to the end, substitute “and shall be treated as including a case where a person is treated as suspended by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations, or by virtue of regulation 6(2) of the Abolition of the Tribunal (Wales) Regulations, and “suspends” and “suspension” shall be construed accordingly;”
- (d) for the definition of “the Tribunal”, substitute ““the Tribunal” means the Tribunal constituted under section 46 of the Act(**c**) for England and Wales, and which, except for prescribed cases, had effect in relation to England only until 14th December 2001 and in relation to Wales, only until 26th August 2002(**d**).”.

10. In the National Health Service (General Dental Services) Regulations 1992(**e**), in regulation 2 (interpretation)—

- (a) in the appropriate alphabetical position, insert ““the Abolition of the Tribunal (Wales) Regulations” means the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2002(**f**);”;
- (b) under the definition of “a national disqualification”—
 - (i) in sub-paragraph (c), after “Abolition of the Tribunal Regulations”, insert “or regulation 6(4)(b) of the Abolition of the Tribunal (Wales) Regulations;”;
 - (ii) delete sub-paragraph (d);
- (c) under the definition of “suspended”—
 - (i) delete sub-paragraph (b); and
 - (ii) from “and shall be treated” to the end, substitute “and shall be treated as including a case where a person is treated as suspended by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations, or by virtue of regulation 6(2) of the Abolition of the Tribunal (Wales) Regulations, and “suspends” and “suspension” shall be construed accordingly;”.
- (d) for the definition of “the Tribunal”, substitute ““the Tribunal” means the Tribunal constituted under section 46 of the Act(**g**) for England and Wales, and which, except for prescribed cases, had effect in relation to England only until 14th December 2001 and in relation to Wales, only until 26th August 2002(**h**).”.

11. In the National Health Service (General Ophthalmic Services) Regulations 1986(**i**), in regulation 2 (interpretation)—

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- (a) S.I. 2001/3740. Relevant amending Regulations are S.I. 2002/848.
 - (b) S.I. 2002/1920.
 - (c) Section 46 was substituted by the Health Act 1999 c.8.
 - (d) See S.I. 2001/3738, article 2(5) and (6)(a) which sets out the prescribed cases for England and S.I. 2002/1919 (c.60), article 2(2) and (3)(a) which sets out the prescribed cases for Wales.
 - (e) S.I. 1992/661. Relevant amending Regulations are S.I. 2001/3741.
 - (f) S.I. 2002/1920.
 - (g) Section 46 was substituted by the Health Act 1999 c.8.
 - (h) See S.I. 2001/3738, article 2(5) and (6)(a) which sets out the prescribed cases for England and S.I. 2002/1919 (c.60), article 2(2) and (3)(a) which sets out the prescribed cases for Wales.
 - (i) S.I. 1986/975. Relevant amending Regulations are S.I. 2001/3739.

- (a) in the appropriate alphabetical position, insert ““the Abolition of the Tribunal (Wales) Regulations” means the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2002(a);”;
- (b) under the definition of “corresponding decision”, delete the word “Wales,”;
- (c) under the definition of “national disqualification”—
 - (i) in sub-paragraph (c), after “Abolition of the Tribunal Regulations”, insert “or regulation 6(4)(b) of the Abolition of the Tribunal (Wales) Regulations,”; and
 - (ii) delete sub-paragraph (d);
- (d) under the definition of “suspended”—
 - (i) delete sub-paragraph (b); and
 - (ii) from “and shall be treated” to the end, substitute “and shall be treated as including a case where a person is treated as suspended by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations, or by virtue of regulation 6(2) of the Abolition of the Tribunal (Wales) Regulations, and “suspends” and “suspension” shall be construed accordingly;”
- (e) for the definition of “the Tribunal”, substitute ““the Tribunal” means the Tribunal constituted under section 46 of the Act(b) for England and Wales, and which, except for prescribed cases, had effect in relation to England only until 14th December 2001 and in relation to Wales, only until 26th August 2002(c).”.

Signed by authority of the Secretary of State for Health

24th July 2002

John Hutton
Minister of State,
Department of Health

(a) S.I. 2002/1920.

(b) Section 46 was substituted by the Health Act 1999 c.8.

(c) See S.I. 2001/3738, article 2(5) and (6)(a) which sets out the prescribed cases for England and S.I. 2002/1919 (c.60), article 2(2) and (3)(a) which sets out the prescribed cases for Wales.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make consequential provision in connection with the abolition of the NHS Tribunal in Wales with effect from 26th August 2002, the abolition being however subject to savings in accordance with article 2(2) and (3) of the Health and Social Care Act 2001 (Commencement No. 3) (Wales) Order 2002. They provide for the Tribunal to continue dealing with certain cases which were not concluded by that date, give effect to decisions in respect of such cases and also give continuing effect to decisions of the Tribunal made before that date.

The Tribunal has powers under sections 46 to 49E of the National Health Service Act 1977 (“the 1977 Act”) to suspend and to disqualify practitioners from the lists maintained by Health Authorities under Part II of the 1977 Act (“Part II lists”) of practitioners in their areas who provide general medical, general dental, general ophthalmic or pharmaceutical services.

However, with effect from 26th August 2002 Health Authorities in Wales will themselves have new powers in respect of such practitioners other than those providing pharmaceutical services, including powers to suspend or remove them from their Part II lists. Such practitioners then have a right of appeal to the Family Health Services Appeal Authority (“FHSAA”) which also has the power to impose national disqualification on practitioners which prevents them joining any list provided for in section 49N(1) of the 1977 Act. Health Authorities will have these powers in relation to those providing pharmaceutical services at a future date, and these Regulations will then apply from that date in such cases.

A person who has been disqualified by the Tribunal under the 1977 Act in relation to a single Health Authority before 26th August 2002, and whose right of appeal to the High Court has either lapsed or been exhausted by that date, will be treated from that date as having been removed by the Health Authority in question from its Part II list (regulation 3).

A person who has been disqualified by the Tribunal under the 1977 Act in relation to all Health Authorities before 26th August 2002, and whose right of appeal to the High Court has either lapsed or been exhausted by that date, will be treated from that date as having had a national disqualification imposed on him by the FHSAA. Such a person also has the right to have that disqualification reviewed by the FHSAA subject to certain periods of time having first ended (regulation 4).

Where the Tribunal has made a local or national disqualification under the 1977 Act before 26th August 2002 but the period within which an appeal to the High Court must be filed has not ended by that date, but no appeal is then filed, is filed and withdrawn or is unsuccessful, a person subject to a local disqualification will be treated as having been removed from a Health Authority’s Part II list from the day after whichever of those events occurs (“the effective date”). A person subject to a national disqualification will be treated from the effective date as having had a national disqualification imposed by the FHSAA and will also have the right to have that disqualification reviewed by the FHSAA subject to certain periods of time having elapsed (regulation 5).

Where proceedings under the 1977 Act commenced on or after 1st July 2002 they will cease to be dealt with by the Tribunal from 26th August 2002. Any suspension direction will be treated as a suspension by a Health Authority from that date and it becomes a matter for the Health Authority as to whether they exercise their new powers in relation to the practitioner (regulation 6(1) and (2)).

Where proceedings commenced before 1st July 2002 they will continue to be dealt with by the Tribunal until they are finally concluded. Thereafter, any local disqualification imposed by the Tribunal will be treated as a removal from a Health Authority list. A national disqualification will be treated as having been imposed by the FHSAA and the person then has the right to have that disqualification reviewed by the FHSAA subject to certain periods of time having elapsed (regulation 6(3) to (5)).

All case files held by the Tribunal will be transferred to the FHSAA once cases are finally concluded (regulation 7).

Regulations 8 to 11 provide for consequential amendments to the interpretation provisions in the National Health Service (General Medical Services) Regulations 1992, the National Health

Service (General Medical Services) (Supplementary List) Regulations 2001, the National Health Service (General Dental Services) Regulations 1992 and the National Health Service (General Ophthalmic Services) Regulations 1986. These consequential amendments apply to England only.

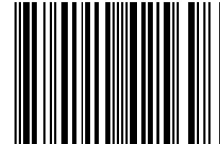
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