

EXPLANATORY MEMORANDUM TO
THE HEALTH AND SOCIAL CARE (DISCIPLINARY PROCEDURES)
REGULATIONS (NORTHERN IRELAND) 2016

SR 2016 No. 104

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under Articles 61, 62, 63 and 106 of the Health and Personal Social Services (Northern Ireland) Order 1972 and Article 10 of the Health and Medicines (Northern Ireland) Order 1988 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. The Health and Social Care (Disciplinary Procedures) Regulations (Northern Ireland) 2016 ("the 2016 Regulations") revoke and replace the Health and Social Care (Disciplinary Procedures) Regulations (Northern Ireland) 2014 ("the 2014 Regulations") as amended. They provide for the investigation and determination by the Regional Health and Social Care Board (HSC Board), of questions whether chemists, dentists, ophthalmic medical practitioners or opticians have failed to comply with their terms of service.

3. Background

- 3.1. The Examiner of Statutory Rules raised two issues concerning the 2014 Regulations, namely certain drafting errors and the need to restructure the appeal process.
- 3.2. The drafting errors were amended by the Health and Social Care (Disciplinary Procedures) (Amendment) Regulations (Northern Ireland) 2015.
http://www.legislation.gov.uk/nisr/2015/205/pdfs/nisr_20150205_en.pdf
- 3.3. As well as replacing the 2014 Regulations, the 2016 Regulations establish a revised appeal process. Under the 2014 provisions the Department appointed a panel of 3 people to hear an appeal. The Department provided for appeals to be heard by a panel consisting of a legally qualified chair and two other panel members drawn from the relevant health profession (dentists, ophthalmic opticians, ophthalmic medical practitioners or pharmacists, as the case may be) to which the appeal related. That panel heard the appeal, drew up a report, which it presented to the Department who then considered that report and determined the appeal.
- 3.4. When considering the 2014 Regulations, the Examiner was of the view that the appeals procedure required restructuring: the fundamental problem being that a panel hears the appeal but the actual decision is made by the Department on the basis of a report from the panel. The Examiner did not consider this procedure correct in principle.

- 3.5. The Department accepted the Examiner's views and the 2016 Regulations now contain revised appeal provisions so that the panel makes the actual decision on appeal on behalf of the Department. There is no change to the constitution of the panel. Again, at the suggestion of the Examiner, specific provisions have been streamlined in terms of procedure and expressed more clearly. The provision to summarily dismiss an appeal without any hearing has been removed.
- 3.6. Regulation 2 sets out that where the HSC Board receives an allegation that a chemist, dentist, optician or ophthalmic medical practitioner has failed to comply with the terms of their service, it may decide to either take no action, investigate the matter as a disciplinary matter or refer the allegation to the HSC Tribunal, the police or the relevant professional body, i.e. the Pharmaceutical Society of Northern Ireland, General Dental Council, General Optical Council or General Medical Council. Regulation 2(3) & (4) stipulate that the HSC Board may not investigate any allegation where the information it is based upon, is being investigated as a complaint against the practitioner. Regulation 2(5) allows the HSC Board to investigate a matter relating to an overpayment at any time.
- 3.7. Paragraphs (1) to (3) of Regulation 3 set out the timescales within which the HSC Board must decide to investigate a disciplinary matter or refer it to the HSC Tribunal, police or relevant professional body.
- 3.8. Regulation 3(4) explains that where a potential disciplinary matter is reported to the HSC Board by the Regional Business Services Organisation (BSO), within 28 days of the end of the 26 week period, the time limit will be extended so that the HSC Board has at least 28 days to consider the BSO's report.
- 3.9. Regulation 4 deals with the outcomes of the HSC Board's investigation; setting out what actions it may take, if it is determined that a practitioner has failed to comply with their terms of service. The HSC Board may issue a warning, determine an amount to be recovered or (for dentists) a requirement to seek the approval of the BSO Dental Committee prior to providing dental treatment for a specified period. The HSC Board is able to take any previous disciplinary determinations from the last 6 years into account when deciding on what action to take. The HSC Board must notify both the practitioner and the Department of its findings and may not take any action until the practitioner has had an opportunity to appeal the HSC Board's determination.
- 3.10. Regulations 5 and 6 set out the right of practitioners to appeal to the Department against a determination of the HSC Board and the procedures and timescales for appeals proceedings. They contain the revised appeal provisions so that the panel makes the actual decision on appeal on behalf of the Department.
- 3.11. Regulation 7 specifies the procedure for the HSC Board and BSO to recover an amount from a practitioner following an unsuccessful appeal to the Department.
- 3.12. Regulation 8 sets out how, if a dentist has made an unsuccessful appeal to the Department, they can be required to submit treatment plans for the

prior approval of the BSO Dental Committee for a specified period of time. It also allows the dentist to apply to the Department to have the prior approval requirement waived after a 6 month period.

- 3.13. Regulation 9 states that if a practitioner dies whilst being investigated by the HSC Board but before the HSC Board has decided what action to take, no further action shall be taken.
- 3.14. Regulation 10 allows the Department to dispense with certain procedural requirements if it appears to be just and proper to do so.
- 3.15. Regulation 11 enables any person, who is required to provide input to a disciplinary investigation within a certain time limit, to apply in writing to the Department for an extension to that time limit.
- 3.16. Regulation 12 sets out the circumstances under which the Department may make a fresh appointment to an appeal panel constituted under Regulation 6.
- 3.17. Regulation 13 explains how the HSC Board or Department may refer a disciplinary matter and any connected documents to the relevant professional body.
- 3.18. Regulation 14 contains consequential amendments to the General Dental Services Regulations (Northern Ireland) 1993, the Pharmaceutical Services Regulations (Northern Ireland) 1997 and the General Ophthalmic Services Regulations (Northern Ireland) 2007.
- 3.19. Regulation 15 revokes the Health and Social Care (Disciplinary Procedures) Regulations (Northern Ireland) 2014 and the Health and Social Care (Disciplinary Procedures) (Amendment) Regulations (Northern Ireland) 2015.

4. Consultation

- 4.1. The Department of Health, Social Services and Public Safety consulted with the HSC Board, BSO and a range of stakeholders that represent the views of chemists, dentists, opticians and ophthalmic medical practitioners in Northern Ireland. Responses to the consultation supported the introduction of revised regulations.

5. Equality Impact

- 5.1. Consideration has been given to the equality and human rights implications of the Regulations. They are considered to be compliant with section 75 of the Northern Ireland Act 1998.

6. Regulatory Impact

- 6.1. These Regulations are considered to have no impact on small businesses, charities or voluntary bodies.

7. Financial Implications

- 7.1. There are no financial implications associated with these Regulations.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. Considered compliant with section 24 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable

10. Parity or Replicatory Measure

10.1. The decision to introduce new updated regulations is particular to Northern Ireland.

11. Additional Information

11.1. Not applicable