

2005 No.118

NATIONAL HEALTH SERVICE

**The National Health Service (Service Committees and Tribunal)
(Scotland) Amendment Regulations 2005**

<i>Made</i> - - - -	<i>2nd March 2005</i>
<i>Laid before the Scottish Parliament</i>	<i>3rd March 2005</i>
<i>Coming into force</i> - -	<i>1st April 2005</i>

The Scottish Ministers, in exercise of the powers conferred by sections 17P, 25(2), 26(2), 27(2), 105(7), section 106(a) and 108(1) of the National Health Service (Scotland) Act 1978(a) and of all other powers enabling them in that behalf, and after consultation with the Council on Tribunals and its Scottish Committee in accordance with sections 8(1) and (3) of the Tribunal and Inquiries Act 1992(b), hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 2005 and shall come into force on 1st April 2005.

(2) In these Regulations “the principal Regulations” mean the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992(c).

Amendment of the principal Regulations

2.—(1) The principal Regulations shall be amended as follows.

(2) In regulation 1 (citation, commencement and interpretation)(d)–

(a) in paragraph (2)–

(i) in the definition of “complaint” after “providing” insert “or performing services under Part I of the Act or providing”;

(a) 1978 c.29; section 17P was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1) (“the 2004 Act”), section 5(2) and is extended by the Health and Medicines Act 1988 (c.49) (“the 1988 Act”), section 17 by virtue of S.S.I. 2004/167; section 25(2) was amended by the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), section 40(2) and Schedule 9, paragraph 19, the National Health Service (Primary Care) Act 1997 (c.46) (“the 1997 Act”), Schedule 2, paragraph 43 and Schedule 3, and the Health Act 1999 (c.8) (“the 1999 Act”), section 56 and was extended by the 1988 Act, section 17; section 26(2) was amended by the Health and Social Security Act 1984 (c.48), Schedule 1, paragraphs 2, 3 and 4 and Schedule 8, the 1999 Act, section 56 and extended by the 1988 Act, section 17; section 27(2) was substituted by the National Health Service (Amendment) Act 1986 (c.66), section 3, and amended by the 1990 Act, Schedule 9, paragraph 19 and extended by the 1988 Act, section 17; section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7, the Health and Social Security and Social Security Adjudications Act 1983 (c.41), Schedule 9, paragraph 24 and the 1999 Act, Schedule 4, paragraph 60; section 108(1) defines “prescribed” and “regulations”. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) 1992 c.53.

(c) S.I. 1992/434. Relevant amending instruments are S.I. 1994/3038, 1995/3201, 1996/841 and 938, 1998/1424 and S.S.I. 1999/53 and 2004/38.

(d) Regulation 1 was amended by S.I. 1996/938 and 1998/1424 and S.S.I. 1999/53. The definition of “doctor” is prospectively amended by S.I. 2002/3135.

- (ii) for the definition of “doctor” substitute–
““doctor” means a fully registered medical practitioner excluding an ophthalmic medical practitioner unless performing primary medical services;”
- (iii) in the definition of “doctor’s panel” for “provision of general medical services” substitute “performance of primary medical services” in both places where it occurs;
- (iv) for the definition of “drug tariff” substitute–
““drug tariff” means the statement prepared under regulation 9 (payments to pharmacists and standards of drugs and appliances) of the Pharmaceutical Services Regulations;”
- (v) for the definition of “General Dental Services Regulations” substitute–
““General Dental Services Regulations” means the National Health Service (General Dental Services) (Scotland) Regulations 1996(a);”
- (vi) in the definition of “list of professional persons” omit paragraph (a);
- (vii) for the definition of “terms of service” substitute–
““terms of service” means–
 - (a) the requirements with which a doctor included in the primary medical services performers list must comply under or by virtue of regulation 8 of the Primary Medical Services Performers Lists Regulations;
 - (b) the terms of service for dentists contained in Schedule 1 to the General Dental Services Regulations;
 - (c) the terms of service for ophthalmic medical practitioners and opticians contained in Schedule 1 to the General Ophthalmic Services Regulations; or
 - (d) the terms of service for pharmacists contained in Schedule 1 to the Pharmaceutical Services Regulations,
as the case may be;”;
- (viii) in the definition of “treatment”–
 - (aa) omit “in relation to general medical services, has the same meaning as in the General Medical and Pharmaceutical Services Regulations and;”;
 - (bb) in sub-paragraph (b) for “regulation 11(4)(c)” substitute “regulation 7(5)(b)(i)”; and
 - (cc) for sub-paragraph (b)(iv) substitute–
““(iv) treatment under a capitation arrangement for which the dentist is only to be remunerated in accordance with a scale of fees for treatment under a capitation arrangement in Determination I of the Statement of Dental Remuneration;”;
- (ix) omit the definitions of “drugs”, “General Medical and Pharmaceutical Services Regulations” and “primary care NHS trust”; and
- (x) insert the following definitions at the appropriate place in alphabetical order–
““Pharmaceutical Services Regulations” means the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995(b);”;
““primary medical services performers list” means the list maintained by a Health Board under the Primary Medical Services Performers Lists Regulations;”;

(a) S.I. 1996/177.

(b) S.I. 1995/414.

““Primary Medical Services Performers Lists Regulations” means the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004(a);”;

““section 17C agreement” means an agreement under section 17C of the Act(b);”;
and

““Statement of Dental Remuneration” means the statement published under regulation 22 (statement of dental remuneration) of the General Dental Services Regulations (c);”;

(b) for paragraph (4)(b) substitute–

“(b) the terms of a general medical services contract which give effect to Part 6 of Schedule 5 to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(d) or the terms of a section 17C agreement which give effect to Part 6 of Schedule 1 to the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004(e);”.

(3) In regulation 3 (provisions relating to the start of disciplinary proceedings)(f)–

(a) for paragraph (5) substitute–

“(5) In these Regulations “appropriate Health Board”–

(a) in relation to a doctor, is–

- (i) the Health Board in whose primary medical services performers list the name of the doctor was included at the relevant time; or
- (ii) where the doctor was at the relevant time on more than one such list, the Health Board which was, under section 2C(1) of the Act(g) under a duty to provide or secure the provision of the primary medical services giving rise to the allegation;

(b) in relation to any other practitioner is–

- (i) the Health Board in whose dental, ophthalmic or pharmaceutical list the name of the practitioner was included at the relevant time; or
- (ii) where the practitioner was at relevant time on more than one such list, the Health Board by arrangement with which the Part II services giving rise to the allegation were provided.”; and

(b) omit paragraph (6).

(4) In regulation 4(2) (referral to discipline committee)(h) omit “which has delegated functions to the primary care NHS trust”.

(5) In regulation 7 (determination of appropriate Health Board or primary care NHS trust)(i)–

(a) in paragraph (1)(c)(ii) for “paragraphs (3) and” substitute “paragraph”;

(b) omit paragraphs (3) and (4);

(c) in paragraph (8)–

- (i) for “Where” substitute “Subject to paragraph (8A), where”; and
- (ii) for “paragraphs (3) or” substitute “paragraph”; and

(d) after paragraph (8) insert–

“(8A) Where an appropriate Health Board determines under this regulation that an amount shall be recovered from a doctor in accordance with the provisions of

(a) S.S.I. 2004/114.

(b) Section 17C was inserted by the 1997 Act, section 21(2) and amended by the 2004 Act, section 2(2).

(c) Regulation 22 was amended by S.S.I. 2000/352, 2001/368, 2002/99 and 268, 2003/131 and 422 and 2004/

(d) S.S.I. 2004/115.

(e) S.S.I. 2004/116.

(f) Regulation 3 was amended by S.I. 1994/3038 and 1996/938 and S.S.I. 1999/53.

(g) Section 2C was inserted by the 2004 Act, section 1(2).

(h) Regulation 4 was substituted by S.I. 1996/938 and amended by S.S.I. 1999/53.

(i) Regulation 7 was substituted by S.I. 1996/938 and amended by S.S.I. 1999/53.

paragraph (5)(a), paragraph (8) shall not apply and that amount shall be recoverable by the appropriate Health Board.”;

(6) In regulation 8 (appeal to Secretary of State)(a)–

- (a) in paragraphs (3)(c)(ii) and (4)(b) for “paragraphs (3) or” substitute “paragraph”; and
- (b) in paragraph (5) omit “(3).”

(7) In regulation 10 (recovery of amounts from practitioners following appeal)(b)–

- (a) in paragraph (6)–
 - (i) after “7(8)” insert “and (8A)”; and
 - (ii) after “(7)” insert “and (7A)”;
- (b) in paragraph (7) for “paragraphs (3) or” substitute “paragraph”; and
- (c) after paragraph (7) insert–

“(7A) For the purposes of paragraph (6), regulation 7(8A) shall have effect as if for the words “an appropriate Health Board determines under this regulation that an amount shall be recovered from a doctor in accordance with the provisions of paragraph (5)(a)” there were substituted the words “there is a determination under regulation 10(1) that an amount shall be recovered from a doctor””.

(8) Omit regulations 16 (investigation of apparently excessive prescribing by doctors) to 19 (determination whether a substance is a drug and recovery of cost)(c).

(9) In regulation 44(1)(c) (services of notices, etc.) after “practitioner” insert “other than a doctor”.

(10) In Schedule 1A (procedure for investigation by discipline committees)(d)–

- (a) in paragraph 2 (disciplinary matters in relation to deputies) omit paragraph (1)(a) and (4); and
- (b) in paragraph 9 (interpretation) omit sub-paragraph (c).

(11) In Schedule 1B (advisory committees) for paragraph 1(e) substitute–

“1. A failure to exercise a reasonable standard of professional or clinical judgement, behaviour, skill, knowledge or care towards patients who receive primary medical services from the doctor, or in the prescribing or dispensing of any drugs, medicines or appliances to them, is specified for the purposes of regulation 10(2) in relation to a doctor.”.

(12) Omit Schedule 3 (rules of procedure applicable to determination of matters referred to referees under regulation 18)(f).

(13) In regulations 1(2), 2(4), 3(1), (3), (4) and (7), 4(1) and (2), 5(1) to (4), 6(3), 7, 8(1) to (5), 9(2), (9) to (11), (13) and (14), 10(5) to (8), 11, 20(2) and (3), 44(1), 46, and in paragraphs 6(3) and 8 of Schedule 1, and paragraphs 1, 2(1) to (3), 3(1), 4(2) and (4), 5(2), 6(7), (9) and (10), 7(1) and 9 of Schedule 1A(g), omit “or primary care NHS trust” in every place where it occurs.

(a) Regulation 8 was amended by S.I. 1994/3038 and 1996/938 and S.S.I. 1999/53.

(b) Regulation 10 was substituted by S.I. 1996/938 and amended by S.S.I. 1999/53.

(c) Regulations 16, 17, 18 and 19 were amended by S.S.I. 1999/53.

(d) Schedule 1A was inserted by S.I. 1996/938. Paragraph 2 was amended by S.S.I. 1999/53. Paragraph 9 was amended by S.I. 1998/1424 and S.S.I. 1999/53.

(e) Schedule 1B, paragraph 1 was inserted by S.I. 1996/938.

(f) Schedule 3 was amended by S.S.I. 1999/53.

(g) Regulations 2, 5, 6, 9 and 11 and Schedule 1 were substituted by S.I. 1996/938. Regulation 20 was revoked by S.I. 1996/841 and inserted by S.S.I. 1999/53. Schedule 1A was inserted by S.I. 1996/938, and paragraph 9 was amended by S.I. 1998/1424. References to “or primary care NHS trust” were inserted by S.S.I. 1999/53.

Transitional provisions

3. The provisions of the principal Regulations shall continue to apply in relation to any matter which falls to be dealt with under those Regulations by virtue of the provisions of Part 7 of the General Medical Services and Section 17C Agreements (Transitional and Other Ancillary Provisions) (Scotland) Order 2004^(a), as if these Regulations had not come into force.

St. Andrew's House,
Edinburgh
2nd March 2005

ANDREW P KERR
A member of the Scottish Executive

(a) S.S.I. 2004/163.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992 (“the principal Regulations”) which make provision as to the investigation of matters relating to services provided by doctors, dentists, pharmacists, ophthalmic medical practitioners and opticians under arrangements with Health Boards and primary care NHS trusts.

These Regulations amend the principal Regulations in relation to the investigation of matters relating to doctors. These amendments follow:–

- (a) the repeal of section 19 in Part II of the National Health Service (Scotland) Act 1978 (“the 1978 Act”) by the Primary Medical Services (Scotland) Act 2004 (“the 2004 Act”); and
- (b) the coming into force of section 17P of the 1978 Act (as inserted by section 5(2) of the 2004 Act), and regulations made under it, providing for lists of medical practitioners (“primary medical services performers lists”) who may perform primary medical services under Part I of the 1978 Act which a Health Board is under a duty to provide.

These changes have meant, amongst other things, that arrangements are no longer made by Health Boards with medical practitioners included on a medical list for the provision by them of general medical services. Instead all doctors who perform primary medical services, pursuant to an arrangement made by them or under an arrangement made by another person with a Health Board, must be included in primary medical services performers lists. Doctors included on primary medical services performers lists must comply with certain requirements set out in regulations made under section 17P of the 1978 Act. Accordingly these Regulations substitute or revoke provisions relating to the investigation of matters relating to services provided by doctors under arrangements with Health Boards in the principal Regulations and replace them with provisions relating to the investigation of matters relating to the performance of primary medical services by doctors.

In particular these Regulations amend the principal Regulations in respect of doctors to–

- (a) amend the definition of “complaint” to include complaints made in accordance with certain directions against practitioners providing or performing services under Part I of the 1978 Act, or pursuant to the terms of certain arrangements for the provision of primary medical services (regulation 2(2)(a)(i) and (b));
- (b) amend the definition of “doctor” to exclude all but certain ophthalmic medical practitioners (regulation 2(2)(a)(ii));
- (c) amend who may be a member of a doctor’s panel for the purposes of the principal Regulations (regulation 2(2)(a)(iii));
- (d) amend provision for the service of notices on doctors (regulation 2(2)(a)(vi) and (9));
- (e) amend the definition of “terms of service” to refer to the requirements with which doctors included in primary medical services performers lists must comply (regulation 2(2)(a)(vii));
- (f) amend the provision as to which Health Board will be the appropriate Health Board in relation to an investigation (regulation 2(3)(a));
- (g) revoke provisions regarding the investigation of doctors in respect of the acts or omissions of a deputy and in respect of the acts or omissions of doctors whilst acting as a deputy (regulation 2(3)(b) and (10));
- (h) revoke the sanction of imposing a limit on the number of persons for whom a doctor may undertake to provide treatment (regulation 2(5)(a) and (b), (6) and (7)(b));
- (i) make provision as to which Health Board shall take action where an amount is to be recovered from a doctor (regulation 2(5)(c) and (d), (7)(a) and (c));

- (j) revoke provisions for the investigation of certain matters regarding doctors and circumstances in which special procedures apply (regulation 2(8) and (12));
- (k) amend the failures to comply with requirements that are specified in relation to a doctor, for the purposes of requiring the Scottish Ministers to refer any question of recovery of an amount from the doctor to an advisory committee, before they consider the question of recovery for that failure (regulation 2(11)); and
- (l) insert or omit definitions relevant to these amendments (regulation 2(2)(a)(ix) and (x)).

These Regulations also make transitional provision in respect of investigations in relation to certain matters relating to doctors (regulation 3).

These Regulations also amend the principal Regulations to–

- (a) remove references to primary care NHS trusts, following the dissolution of these bodies (regulation 2(2)(a)(ix), (4) and (13));
- (b) amend the meaning of “treatment” for certain purposes (regulation 2(3)(a)(viii)); and
- (c) amend references to other Regulations, the provisions of other Regulations, or statements published under other Regulations to be references to the Regulations, provisions or statements which have subsequently replaced them (regulation 2(2)(a)(iv), (v), (vii), (ix) and (x)).

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The National Health Service (Service Committees and Tribunal)
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£3.00

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Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
150 03/05 19593

ISBN 0-11-069467-8

