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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 122**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Tribunal)  
(Scotland) Amendment Regulations 2006**

<i>Made</i>	- - - -	<i>7th March 2006</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>9th March 2006</i>
<i>Coming into force</i>	- -	<i>1st April 2006</i>

The Scottish Ministers, in exercise of the powers conferred by sections 29(4), 29A(5), 32, 32C(2), 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978(1) 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 section 8(1) and (3) of the Tribunal and Inquiries Act 1992(2), hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Tribunal) (Scotland) Amendment Regulations 2006 and shall come into force on 1st April 2006.

(2) In these Regulations, “the principal Regulations” means the National Health Service (Tribunal) (Scotland) Regulations 2004(3).

**Amendment of the principal Regulations**

2.—(1) The principal Regulations are amended in accordance with the following paragraphs.

(2) In regulation 2(1) (interpretation and forms)(4)–

(a) omit the definition of “local or national disqualification”;

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(1) 1978 c. 29; section 29(4) was inserted by the Health Act 1999 (c. 8) (“the 1999 Act”) section 58 and amended by section 26(1) and (2) of the [Smoking, Health and Social Care \(Scotland\) Act 2005 \(2005 asp 13\)](#) (“the 2005 Act”); section 29A was inserted by the 1999 Act, section 58 and amended by the 2005 Act, section 26(3); section 32 was amended by the National Health Service (Amendment) Act 1995 (c. 31), (“the 1995 Act”), section 11 and Schedule, by the 1999 Act, Schedule 4, paragraph 50 and by the 2005 Act, section 26(6); section 32C was inserted by the 1995 Act, section 8, and amended by the 2005 Act, section 26(7); section 105(7) was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7, the Health and Social Services 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).

(2) 1992 c. 53; section 8(3) was amended by S.I.2001/3649, article 335(3).

(3) S.S.I. 2004/38.

(4) Regulation 2 was amended by S.S.I. 2004/122 and 2005/335.

- (b) insert each of the following definitions at the appropriate alphabetical place–
- “any of the conditions for disqualification” means any of the first condition for disqualification, the second condition for disqualification or the third condition for disqualification;”;
- “ophthalmic body corporate” means a body corporate registered in the register of bodies corporate maintained under section 9 of the Opticians Act 1989;”(5);
- “third condition for disqualification” has the meaning indicated in section 29(7A) of the 1978 Act;”(6);
- “unsuitability case” has the meaning indicated in section 29(11) of the 1978 Act;”(7);
- (c) in the definition of “disqualification” for “means local or national disqualification” substitute “has the meaning indicated in section 29B(2) of the 1978 Act”(8);
- (d) in the definition of “ophthalmic medical practitioner” for “regulation 3 of the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986” substitute “by regulations made under section 26(1) of the 1978 Act”(9); and
- (e) in the definition of “representations” for “the first or second condition” substitute “any of the conditions”.
- (3) In regulation 6(3) and (3A) (submission of representations)(10) for “the second condition” substitute “any of the conditions”.
- (4) In regulation 6(3A)–
- (a) after “primary medical services performers list” insert “or an ophthalmic list”;
- (b) omit “in accordance with regulation 7(4) of the Primary Medical Services Performers Lists Regulations”; and
- (c) omit “, pursuant to regulation 7(6) of those Regulations”.
- (5) In regulation 9(3) (notices to be sent to respondent etc in case of an inquiry)(11)–
- (a) omit “In relation to a fraud case”;
- (b) for “the” where it first occurs substitute “The”; and
- (c) omit “in a fraud case” in sub-paragraph (a).
- (6) In regulation 15(3)(c) (withdrawal of representations)(12) omit from “in the case” to “in a fraud case,”.
- (7) In regulation 17(1)(a) (suspension of procedures) for “both an efficiency case and a fraud case” substitute “an efficiency case and a fraud case or an unsuitability case or any other combination of more than one such category of case,”.
- (8) In regulation 21(1) (statement by the Tribunal)(13)–
- (a) in sub paragraph (c) for “the first or second condition” substitute “any of the conditions”; and

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(5) 1989 c. 44; section 9 was amended by S.I. 2005/848, article 10.

(6) Section 29(7A) was inserted by the 2005 Act, section 26(2)(d).

(7) Section 29(11) was substituted by the 1999 Act, section 58, and amended by the 2005 Act, section 26(2)(f).

(8) Section 29B(2) was inserted by the 1999 Act, section 58, and amended by the [Community Care and Health \(Scotland\) Act 2000 \(2000 asp 2\)](#), Schedule 2, paragraph 2, and by the 2005 Act, section 26(4)(b).

(9) Section 26(1) was amended by the Health and Social Security Act 1984 (c. 48), section 1(5), Schedule 1, Part II, paragraphs 1-4, and Schedule 8, by the Health and Medicines Act 1988 (c. 49), section 13(4), and by the 2005 Act, section 13.

(10) Regulation 6(3A) was inserted by S.S.I. 2004/122 and amended by S.S.I. 2004/271.

(11) Regulation 9(3) was amended by S.S.I. 2004/122.

(12) Regulation 15(3)(c) was amended by S.S.I. 2004/122.

(13) Regulation 21(1) was amended by S.S.I. 2004/122.

- (b) omit sub paragraph (d).
- (9) In regulation 21(3)(b) (statement by the Tribunal)(14) omit “or a declaration of unfitness under section 29B(3)”.
- (10) In regulation 25(2)(b) (statement by the Tribunal following review)(15)–
  - (a) omit “–(i)”;
  - (b) omit “; or” at the end of sub sub-paragraph(i)”;
  - (c) omit sub-sub-paragraph (ii).
- (11) In regulation 26 (Practitioner subject to inquiry in a fraud case), in the heading omit “in a fraud case”.
- (12) Omit regulation 26(2).
- (13) In regulation 28 (publication of decisions of the Tribunal, etc)(16)–
  - (a) at the end of paragraph (b) insert “and”;
  - (b) omit paragraph (c); and
  - (c) in paragraph (e) omit “or declaration of unfitness”.
- (14) In regulation 29(1)(a) (recovery of amounts from practitioners)(17) omit “(d);”.
- (15) In regulation 29(1)(b) (recovery of amounts from practitioners)–
  - (a) at the end of sub-sub-paragraph (i) insert “or”;
  - (b) omit “or” at the end of sub-sub-paragraph (ii); and
  - (c) omit sub-sub-paragraph (iii).
- (16) In regulation 31(1)(c) (service of forms, etc)–
  - (a) after “practitioner” where it first occurs insert “who is not an ophthalmic body corporate”; and
  - (b) after “concerned” insert “, or in the case of an ophthalmic body corporate its registered office”.
- (17) The forms 1, 2, 3, 4, 5 and 6 set out in the Schedule to these regulations are substituted for the forms 1, 2, 3, 4, 5 and 6 set out in Schedule 2 to the principal Regulations (forms for use in proceedings in connection with representations and applications)(18).

### Savings

- 3. Where, before the date on which these regulations come into force–
  - (a) a representation has been made to the Tribunal under regulation 6 of the principal Regulations (submission of representations)(19); or
  - (b) an application for interim suspension has been made to the Tribunal, under regulation 22 of the principal Regulations (applications for interim suspension),

the provisions of the principal Regulations shall, notwithstanding the amendments made by these regulations, continue to apply on and after that date as respects any inquiry, hearing, determination or direction which by virtue of any provision of the principal Regulations falls to be undertaken,

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(14) Regulation 21(3)(b) was amended by [S.S.I. 2004/122](#).

(15) Regulation 25(2)(b) was amended by [S.S.I. 2004/122](#).

(16) Regulation 28 was amended by [S.S.I. 2004/122](#).

(17) Regulation 29(1) was amended by [S.S.I. 2004/122](#) and [2004/271](#).

(18) Schedule 2 was amended by [S.S.I. 2004/122](#).

(19) Regulation 6 was amended by [S.S.I. 2004/122](#) and [2004/271](#).

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held or made in relation to any such representation or application or in relation to an appeal from any such determination or direction.

St Andrew's House,  
Edinburgh  
7th March 2006

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulation 2(17)

FORM 1

Regulation 6(1)(a)

REPRESENTATIONS

To the Tribunal constituted in terms of section 29 (the NHS tribunal) of the National Health Service (Scotland) Act 1978.

Representations of-

..... Complainer

against

..... Respondent

a ..... (1) [on / applying for inclusion on (2)] the ..... (3) list of ..... Health Board.

1. The complainer represents: (4)
  - (a) the inclusion/continued inclusion (2) of the respondent in the list referred to would be prejudicial to the efficiency of services which those included in the list perform or undertake to provide or are approved to assist in providing;
  - (b) the respondent has (whether on the respondent's own or together with another) by an act or omission caused, or risked causing, detriment to a health scheme by securing or trying to secure for the respondent or another a financial or other benefit, and knew that the respondent or (as the case may be) the other was not entitled to the benefit;
  - (c) the respondent is unsuitable (by virtue of professional or personal conduct) to be included/continue to be included (2) in the list.
2. The facts and grounds upon which the representations are based are as follows:-  
..... (5).
3. The documents of which 2 copies of each accompany this representation shall be produced in evidence in support of the representation (6).

Signed .....

Complainer

Dated .....

**Notes**

- (1) State whether the respondent is a medical practitioner, dentist, ophthalmic medical practitioner, optician, pharmacist or pharmacist contractor.
- (2) Delete whichever is inapplicable.
- (3) State whether the list is the primary medical services performers, dental, ophthalmic, or pharmaceutical list.
- (4) Delete whichever of (a), (b) or (c) is inapplicable (if any).
- (5) Paragraph 2 of the representation must contain a concise statement of the alleged facts and grounds upon which the complainer intends to rely.

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(6) If any document to be put in evidence is of a nature which renders it difficult to make or obtain a copy of it, you are not required to submit copies of any such document.

FORM 2

Regulation 9(1)(a)

NOTICE OF REPRESENTATIONS

Notice to ..... (1) of representations.

Representations of-

..... Complainer

against

..... Respondent

a ..... (2) [on / applying for inclusion on (3)] the ..... (4) list of ..... Health Board.

1. On behalf of the Tribunal constituted in terms of section 29 (the NHS tribunal) of the National Health Service (Scotland) Act 1978 I enclose-

- (a) a copy of representations that (5)
  - (i) your inclusion/continued inclusion (3) in the list referred to would be prejudicial to the efficiency of services which those included in the list perform or undertake to provide or are approved to assist in providing;
  - (ii) you have (whether on your own or together with another) by an act or omission caused, or risked causing, detriment to a health scheme by securing or trying to secure for yourself or another a financial or other benefit and knew that you or (as the case may be) the other was not entitled to the benefit;
  - (iii) you are unsuitable (by virtue of professional or personal conduct) to be included/continue to be included (3) in the list,
 which representation was submitted to the Tribunal by the complainer on ..... (6);
- (b) a copy of each document which accompanied the representation (7).

(2) The Tribunal intends to hold an inquiry in relation to the representation and notice will be sent to you not less than 2 weeks before the date on which the inquiry will commence.

(3) You may, if you so desire, submit to me within 4 weeks from the date of receipt of this notice a written statement-in-answer and 2 copies of each document which you propose to put in evidence (8).

Signed .....

Clerk to the Tribunal

Dated .....

**Notes**

- (1) The full name of the respondent should be inserted.
- (2) State whether the respondent is a medical practitioner, dentist, ophthalmic medical practitioner, optician, pharmacist or pharmacist contractor.
- (3) Delete whichever is inapplicable.
- (4) State whether the list is the primary medical services performers, dental, ophthalmic, or pharmaceutical list.
- (5) Delete whichever of (i), (ii) or (iii) is inapplicable (if any).

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- (6) State the date on which the representation was submitted.
- (7) The complainer may intend to put in evidence documents or material which it is difficult to make or obtain a copy of. If this is the case, the clerk to the Tribunal will inform you accordingly.
- (8) If any document to be put in evidence is of a nature which renders it difficult to make or obtain a copy of it, you are not required to submit copies of any such document.



FORM 3

Regulation 9(2)(a)

NOTICE OF REPRESENTATIONS

Notice to ..... (1) Health Board.

Representations of-

..... Complainer

against

..... Respondent

a ..... (2) on the ..... list (3) of ..... Health Board(s)(4).

1. On behalf of the Tribunal constituted in terms of section 29 (the NHS tribunal) of the National Health Service (Scotland) Act 1978, I hereby give you notice that representations have been made by ..... to the Tribunal that (5)-

- (a) the inclusion/continued inclusion (6) of the respondent in the list referred to would be prejudicial to the efficiency of services which those included in the list perform or undertake to provide or are approved to assist in providing;
- (b) the respondent has (whether on the respondent's own or together with another) by an act or omission caused, or risked causing, detriment to a health scheme by securing or trying to secure for the respondent or another a financial or other benefit, and knew that the respondent or (as the case may be) the other was not entitled to the benefit;
- (c) the respondent is unsuitable (by virtue of professional or personal conduct) to be included, or to continue to be included (6) in the list.

I enclose a copy of the representations and a copy of each document which accompanied them.

2. The Tribunal intends to hold an inquiry in relation to the representations and notice will be sent to you not less than 2 weeks before the date on which the inquiry will commence.

3. .... Health Board may, if they so desire, submit to me within 4 weeks from the date of receipt of this notice a written statement.

4. If any documents are to be put in evidence in support of the statement, 2 copies of each such document must accompany the statement (7).

5. .... Health Board are entitled to be represented and take part in the proceedings at the inquiry as the Tribunal shall think proper.

Signed .....

Clerk to the Tribunal

Dated .....

**Notes**

- (1) State the name of the Health Board to which the notice is being sent.
- (2) State whether the respondent is a medical practitioner, dentist, ophthalmic medical practitioner, optician, pharmacist or pharmacist contractor.
- (3) State whether the list is the primary medical services performers, dental, ophthalmic, or pharmaceutical list.
- (4) State the name of each Health Board in whose list the respondent's name is included.

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- (5) Delete whichever of (a), (b) or (c) is inapplicable (if any).
- (6) Delete whichever is inapplicable.
- (7) If any document to be put in evidence is of a nature which renders it difficult to make or obtain a copy of it, the Health Board is not required to submit copies of any such document.

FORM 4

Regulation 12(b)

NOTICE OF INQUIRY

Notice to ..... (1) of date fixed for an inquiry to commence.

Representations of-

..... Complainer

against

..... Respondent

a ..... (2) [on / applying for inclusion on (3)] the .....list(4) of ..... Health Board.

On behalf of the Tribunal constituted in terms of section 29 (the NHS tribunal) of the National Health Service (Scotland) Act 1978, I hereby give you notice that an inquiry in relation to the representation made-

[by you with respect to .....](5)

[by ..... with respect to you,](6)

[by ..... with respect to the respondent,](7)

will commence on ..... day,

the ..... day of ..... 20..... at ..... a.m./p.m. at .....

Signed .....

Clerk to the Tribunal

Dated .....

**Notes**

(1) The full name of the complainer, the respondent or any other Health Board concerned, as the case may be, should be inserted.

(2) State whether the respondent is a medical practitioner, dentist, ophthalmic medical practitioner, optician, pharmacist or pharmacist contractor.

(3) Delete whichever is inapplicable.

(4) State whether the list is the primary medical services performers, dental, ophthalmic, or pharmaceutical list.

(5) Delete these words in a notice being sent to the respondent or, where applicable, any other Health Board concerned.

(6) Delete these words in a notice being sent to the complainer, or where applicable, any other Health Board concerned.

(7) Delete these words in notices being sent to the complainer and respondent.

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## FORM 5

Regulation 24(1)(a)

### APPLICATION TO THE TRIBUNAL FOR A REVIEW

To the Tribunal constituted in terms of section 29 (the NHS tribunal) of the National Health Service (Scotland) Act 1978.

Application of—

.....

1. The applicant applies to the Tribunal for a review under section 30 (review etc. of disqualification) of the said Act of the decision of the Tribunal made on .....(1) in respect of .....(2).

2. The facts and grounds upon which the application is based are as follows:—

..... (3).

3. The documents of which 2 copies of each accompany this application shall be produced in evidence in support of the application (4).

Signed .....

Applicant

Dated .....

#### Notes

- (1) State the date on which the Tribunal made the relevant decision.
- (2) State the full name of the practitioner in respect of which the application relates.
- (3) Paragraph 2 of the application must contain a concise statement of the alleged facts and grounds upon which the Applicant intends to rely.
- (4) If any document to be put in evidence is of a nature which renders it difficult to make or obtain a copy of it, you are not required to submit copies of any such document.

## FORM 6

Regulation 24(4)(a)

### NOTICE OF AN APPLICATION

Notice to ..... (1) of an application.

Application of–

.....

1. On behalf of the Tribunal constituted in terms of section 29 (the NHS tribunal) of the National Health Service (Scotland) Act 1978 I enclose–

- (a) a copy of an application for a review under section 30 (review etc. of disqualification) of the said Act of the decision of the Tribunal made on .....(2) in respect of .....(3);
- (b) a copy of each document which accompanied the application(4).

2. The Tribunal intends to hold an inquiry in relation to the application. A notice will be sent to you not less than 2 weeks before the date on which the inquiry will commence.

Signed .....

Clerk to the Tribunal

Dated .....

#### Notes

- (1) The full name of the respondent or, as the case may be, the appropriate Health Board should be inserted.
- (2) State the date on which the Tribunal made the relevant direction.
- (3) State the full name of the practitioner in respect of which the application relates.
- (4) The applicant may intend to put in evidence documents or material which it is difficult to make or obtain a copy of. If this is the case, the clerk to the Tribunal will inform you accordingly.

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#### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (Tribunal) (Scotland) Regulations 2004 (“the principal Regulations”) which make provision relating to the NHS Tribunal and representation to and procedures before it.

These Regulations are consequential upon the coming into force of certain amendments made to the National Health Service (Scotland) Act 1978 (“the 1978 Act”) by the Smoking, Health and Social Care (Scotland) Act 2005 (“the 2005 Act”). Section 26 of the 2005 Act amends section 29 of the 1978 Act by adding a third condition for disqualification by the Tribunal, namely that the person

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concerned is unsuitable (by virtue of professional or personal conduct) to be included, or continue to be included in a list specified in section 29(8) of the 1978 Act.

Regulation 2(2)(a) deletes from regulation 2(1) of the principal Regulations the definition of “local or national disqualification” which is removed from section 29B(2) of the 1978 Act by section 26(4)(b) of the 2005 Act.

Regulation 2(2)(b) inserts new definitions of “any of the conditions for disqualification”, “ophthalmic body corporate”, “third condition for disqualification” and “unsuitability case” into regulation 2(1) of the principal Regulations. The definition of “ophthalmic body corporate” is by reference to section 9 of the Opticians Act 1989, as amended by the Opticians Act 1989 (Amendment) Order 2005.

Regulation 2(2)(c) amends the definition of “disqualification” in the principal Regulations to reflect the amendment to the 1978 Act.

Regulation 2(2)(d) amends the definition of “ophthalmic medical practitioner” to refer to the relevant provisions in the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006.

The Regulations amend the principal Regulations to substitute “any of the conditions” for disqualification for “the first or second condition” for disqualification to reflect the fact that there are now three conditions for disqualification rather than two (regulations 2(2)(e), 3, 8(a)).

Regulation 2(4) amends regulation 6(3A) of the principal Regulations to include practitioners who have applied to join an ophthalmic list, but whose application has been deferred.

Regulations 2(5), (6) and (7) amend regulations 9(3), 15(3)(c) and 17(1)(a) of the principal Regulations to reflect the fact that the provisions will now apply to all cases.

The Regulations delete all reference to the principal Regulations to a “declaration of unfitness”, since the references to “declaration of unfitness” in section 30 of the 1978 Act are repealed by the 2005 Act.

Regulation 2(17) substitutes the forms 1, 2, 3, 4, 5 and 6 in the Schedule to the Regulations for forms 1, 2, 3, 4, 5 and 6 in Schedule 2 to the principal Regulations.

Regulation 3 is a savings provision which provides that any submission of representations or applications for interim suspensions which were made before 1st April 2006 shall be dealt with in terms of the principal Regulations as unamended by these Regulations.