

## **EXECUTIVE NOTE**

### **THE NATIONAL HEALTH SERVICE (TRIBUNAL) (SCOTLAND) AMENDMENT REGULATIONS 2006 S.S.I. 2006/122**

The above instrument was made 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 (“the 1978 Act”). The instrument is subject to negative resolution procedure.

#### **Background**

The NHS Tribunal inquires into representations about persons included or applying to be included on family health service lists held by NHS Boards. The provisions in the 1978 Act which set out its powers and duties were amended by the Smoking, Health and Social Care (Scotland) Act 2005 (“the 2005 Act”), section 26 .

At present the Tribunal may consider two grounds against a practitioner – efficiency and fraud – the former for persons who are already listed and the latter for both list applicants and persons who are already listed. The 2005 Act adds a third – that of unsuitability due to professional or personal conduct. This is intended to deal with any practitioner who has harmed, or may harm, patients by behaviour which does not come within the existing grounds. The amendments in the 2005 Act also enable Boards to refer list applicants to the Tribunal on efficiency grounds.

The sanctions currently available to the Tribunal are to direct that a practitioner should be disqualified from a list of a health board (local disqualification) or from all lists (national disqualification). If a national disqualification is made the Tribunal may also declare that the practitioner is not fit to be engaged in any capacity so that they could not be employed as an unlisted deputy to another practitioner. The 2005 Act removes the option of local disqualification. It is not reasonable, in the interests of patients, that a practitioner who is not considered fit to treat patients in one area should be free to practice in another. The Act also removes the power of the Tribunal to make declarations of unfitness in respect of a disqualified person since it is the Executive’s intention that no practitioner should be able to work in family health services in an area unless his or her name is on the relevant Health Board list.

#### **Policy Objectives**

The procedures for the Tribunal are set out in the NHS (Tribunal)(Scotland) Regulations 2004. The main purpose of this instrument is to ensure that those procedures are aligned with the new provisions described above.

#### **Consultation**

The new provisions were themselves the subject of a wide ranging consultation exercise leading to the passage of the 2005 Act. The professional representative bodies have been made aware of the regulatory amendments required and copies of the draft amendment Regulations were sent to the statutory consultee, the Scottish Committee of the Council on Tribunals, which is content.

## **Consolidation**

The Executive is aware of the number of times the 2004 Regulations have been amended and the need for their consolidation. They require to be considered for amendment each time there is a change in the contractual arrangements for any of the family health service professions. There are however no immediate plans to consolidate them bearing in mind the need to balance the time and resources required for consolidation against the other demands made on the Health Department.

## **Financial effects**

Only a small number of cases are referred to the Tribunal i.e. cases of a serious nature. We anticipate these measures may increase that slightly but there should be no substantial increase in costs to the Executive or to NHS Boards. There is indemnity cover for family health service practitioners in respect of potential disciplinary or court action against them.

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