
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 330

The National Health Service (Discipline Committees) (Scotland) Regulations 2006

**PART I
GENERAL**

Citation, commencement and extent

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

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the National Health Service (Scotland) Act 1978⁽¹⁾;

“the Agency” means the Common Services Agency for the Scottish Health Service constituted under section 10 of the Act⁽²⁾;

“appropriate Health Board” means;

(a) in relation to a doctor—

(i) a 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 1 such list, the Health Board which was, under section 2C(1) of the Act⁽³⁾ 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—

(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 the relevant time on more than one such list, one of the Health Boards by arrangement with which the Part II services giving rise to the allegation were provided.

“area dental committee” means the committee of that name for the area of a Health Board recognised under section 9 of the Act⁽⁴⁾;

(1) 1978 c. 29.

(2) Section 10 was amended by the 1990 Act, section 66(2) and Schedule 10; the 1999 Act section 65(1) and Schedule 4, paragraph 44(a); S.S.I. 1999/90, Article 2(a)(b) and Schedule 1, and the 2005 Act, Schedule 2, paragraph 2(a).

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

(4) Section 9 was amended by the 1990 Act, section 29, the 1999 Act, section 65 and Schedule 4, paragraph 43, and the 2004 Act, Schedule 2.

“area medical committee” means the committee of that name for the area of a Health Board recognised under section 9 of the Act;

“area optical committee” means the committee of that name for the area of a Health Board recognised under section 9 of the Act;

“area pharmaceutical committee” means the committee of that name for the area of a Health Board recognised under section 9 of the Act;

“area professional committee” means an area dental committee, area medical committee, area optical committee or area pharmaceutical committee, as appropriate;

“chairperson” includes a deputy chairperson acting in his or her place;

“Chief Executive” means the Chief Executive of a Health Board, or some other officer of the Health Board duly authorised to act on behalf of the Chief Executive;

“complaint” means a complaint made in accordance with procedures established and operated under directions given under section 2(5) of the Act⁽⁵⁾ for dealing with complaints against practitioners providing or performing services under Part I of the Act or providing Part II services or in accordance with the provisions specified in paragraph (2);

“dental discipline committee” means a committee referred to in regulation 3(1)(b);

“dentist” means a registered dental practitioner;

“dentists' panel” means the panel of dentists who are, or who have been, engaged in the provision of general dental services and who have been nominated to the panel for the purposes of these Regulations by a body which is, in the Scottish Ministers' opinion, representative of the dental profession;

“disciplinary matter” means a matter referred under regulation 5(1);

“discipline committee” has the meaning given in regulation 3(2);

“doctor” means a registered medical practitioner excluding an ophthalmic medical practitioner unless performing primary medical services;

“doctors' panel” means the panel of doctors who are, or who have been, engaged in the performance of primary medical services and who have been nominated to the panel for the purposes of these Regulations by a body which is, in the Scottish Ministers' opinion, representative of doctors engaged in the performance of primary medical services;

“General Dental Services Regulations” means the National Health Service (General Dental Services) (Scotland) Regulations 1996⁽⁶⁾;

“General Ophthalmic Services Regulations” means in respect of the period prior to 1st April 2006 the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986⁽⁷⁾ and in respect of the period from 1st April 2006 the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006⁽⁸⁾;

“Health Board” means a Health Board constituted under section 2 of the Act⁽⁹⁾;

“in writing” does not include transmission by electronic means;

“joint discipline committee” means a committee constituted in accordance with paragraph 2 of Schedule 1;

“medical discipline committee” means a committee referred to in regulation 3(1)(a);

(5) Section 2(5) was amended by the 1990 Act, Schedule 9, paragraph 19(1).

(6) S.I.1996/177 amended by S.I. 1996 and 2060, 1998/1663, 2224 and 2259, 1999/724, S.S.I. 1999/51, 2000/188, 352 and 394, 2001/57 and 368, 2002/991, 192 and 268, 2003/131 and 422, 2004/37, 2005/95 and 2006/137.

(7) S.I. 1986/965 amended by S.I. 1988/543, 1989/387 and 1177, 1990/1048, 1995/704 and 843, 1996/2353, 1999/725, S.S.I. 1999/55, 2001/62, 2003/201 and 432, 2004/36, 169 and 212, 2005/128, 2006/42.

(8) S.S.I. 2006/135.

(9) Section 2 was amended by the [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\)](#), Schedule 1, paragraph 1(2).

- “ophthalmic discipline committee” means a committee referred to in regulation 3(1)(c);
- “ophthalmic medical practitioner” means a doctor having the qualifications prescribed by regulation 3 of the General Ophthalmic Services Regulations;
- “ophthalmic officer” means an ophthalmic medical practitioner, ophthalmic optician or ophthalmologist in the service of the Agency;
- “optician” means an ophthalmic optician;
- “Part II Services” means services provided under Part II of the Act;
- “pharmaceutical discipline committee” means a committee referred to in regulation 3(1)(d);
- “Pharmaceutical Services Regulations” means the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995(10);
- “pharmacist” means a person registered with the Royal Pharmaceutical Society of Great Britain in the register of pharmaceutical chemists;
- “pharmacist contractor” means a contractor who provides pharmaceutical services, or a person lawfully conducting a retail pharmacy business in accordance with section 69 (general provisions) of the Medicines Act 1968(11);
- “Practice Board” means the Scottish Dental Practice Board constituted under section 4 of the Act(12);
- “practitioner” means, except in Schedules 1 and 2, a doctor, a dentist, an ophthalmic medical practitioner, an optician, a pharmacist or a pharmacist contractor, as the case may be;
- “primary medical services performers' list” means the list maintained by a Health Board under the Primary Medical Services Performers' Lists Regulations;
- “Primary Medical Services Performers' Lists Regulations” means the National Health Service (Primary Medical Services Performers' Lists) (Scotland) Regulations 2004(13);
- “section 17C agreement” means an agreement under section 17C of the Act(14);
- “statement of case” means a statement sent by the appropriate Health Board to a practitioner and the discipline committee in accordance with paragraph 1 of Schedule 2;
- “Statement of Dental Remuneration” means the statement published under regulation 22 (statement of dental remuneration) of the General Dental Services Regulations(15);
- “supplements” means prisms, tints, photochromic lenses, small glasses and complex appliances;
- “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;

(10) S.I. 1995/414 amended by S.I. 1996/840 and 1504, 1997/696, 1998/2224 and 3031, S.S.I. 1999/157, 2001/70, 2002/111 and 1531, 2003/296, 2004/139 and 212, S.I. 2004/1771, 2005/327 and 618, 2006/143 and 2006/245.

(11) Section 69 was amended by S.I. 1976/1213, and repealed in part by the Statute Law (Repeals) Act 1993 (c. 50), Schedule, Part XII.

(12) Section 4 was amended by the 1988 Act, section 12(3) and Schedule 3.

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

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

(15) Regulation 22 was amended by S.S.I. 2000/352, 2001/368, 2002/99 and 268, 2003/131 and 422 and 2005/95.

- (d) the terms of service for pharmacists contained in Schedule 1 to the Pharmaceutical Services Regulations; or
- (e) the terms under which additional pharmaceutical services are provided under arrangements made in accordance with directions under section 27A of the Act⁽¹⁶⁾, as the case may be;
- “treatment” in relation to general dental services, except in relation to regulation 6(7)(c), means—
- (i) where at the material time the dentist is providing occasional treatment under the General Dental Services Regulations, treatment within the meaning of those Regulations;
- (ii) in any other case, care and treatment within the meaning of those Regulations;
- “the Tribunal” means the Tribunal constituted under section 29 of and Schedule 8 to, the Act⁽¹⁷⁾.
- (2) The provisions referred to in the definition of “complaint” in paragraph (1) are—
- (a) paragraphs 31A and 31B of Schedule 1 to the General Dental Services Regulations⁽¹⁸⁾;
- (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⁽¹⁹⁾ 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⁽²⁰⁾;
- (c) paragraphs 9A and 9B of Schedule 1 to the Pharmaceutical Services Regulations⁽²¹⁾;
- (d) paragraphs 8A and 8C of Schedule 1 to the National Health Service (General Ophthalmic Services) (Scotland) 1986 Regulations⁽²²⁾ and paragraph 11 of Schedule 1 to the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006⁽²³⁾;
- (e) the terms of any arrangements made in relation to the provision of additional pharmaceutical services in accordance with directions made under section 27A of the Act.
- (3) In these Regulations any reference to a numbered regulation or a numbered Schedule is, unless otherwise expressly provided, a reference to a regulation or a Schedule bearing that number in these Regulations.

PART II

INVESTIGATION OF DISCIPLINARY MATTERS

Establishment of committees

- 3.—(1) Subject to paragraph (3), every Health Board shall have—
- (a) a medical discipline committee;

(16) Section 27A was inserted by the 1997 Act, section 27(2).

(17) Section 29 was substituted by the 1999 Act, section 58, amended by the 2004 Act, section 5(3) and the 2005 Act, section 26; Schedule 8 was amended by the 1995 Act, section 12, S.I. 1995/3214; the 1997 Act, section 41(10), and Schedule 2, Part II, paragraph 58; S.I. 1998/631; the 1999 Act, section 653 and Schedule 4, paragraph 64, and by the 2005 Act, Schedule 2, paragraph 2.

(18) S.I. 1996/177; relevant amending instrument is S.I. 1996/841.

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

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

(21) S.I. 1995/414; relevant amending instrument is S.I. 1996/840.

(22) S.I. 1986/965; relevant amending instrument is S.I. 1996/843.

(23) S.S.I. 2006/135.

- (b) a dental discipline committee;
- (c) an ophthalmic discipline committee;
- (d) a pharmaceutical discipline committee; and
- (e) a joint discipline committee,

and may, where it sees fit, have 2 or more of any of those committees.

(2) The committees mentioned in paragraph (1) shall be known as discipline committees.

(3) Three or more Health Boards may appoint discipline committees jointly and in these Regulations a reference to a discipline committee of a Health Board includes a reference to a discipline committee jointly appointed by 3 or more Health Boards.

(4) A Health Board may have a reference committee which shall include one member who is both an officer and a member of that Health Board and which may exercise the Health Board's functions under these Regulations with respect to the referral of disciplinary matters.

(5) Schedule 1 shall have effect with respect to the constitution of discipline committees.

Provisions relating to the start of disciplinary proceedings

4.—(1) Where an appropriate Health Board receives information which it considers could amount to an allegation that a practitioner has failed to comply with his or her terms of service, it shall decide either to take no action or to take one or both of the courses of action set out in paragraph (2).

(2) The courses of action referred to in paragraph (1) are—

- (a) to refer the matter to another Health Board for investigation in accordance with regulation 5(1);
- (b) to refer the information to, as it considers appropriate, the Tribunal, the relevant professional body or the police.

(3) Without prejudice to any other rights or remedies which it may have, where an appropriate Health Board considers that a payment has been made to a practitioner which was not due and the practitioner does not admit that overpayment, the appropriate Health Board may refer the overpayment under regulation 5(1).

(4) The appropriate Health Board shall not proceed under paragraph (2)(a) in any case where the allegation and information on which it is based is the subject of a complaint which is being investigated.

(5) For the purposes of these Regulations an allegation remains the subject of a complaint which is being investigated until—

- (a) the complainant, the person who is the subject of the complaint and the Health Board have been notified in writing of the results of the conciliation process by the conciliator appointed in accordance with directions given under section 2(5) of the Act;
- (b) the complaint is withdrawn or abandoned by the person bringing it; or
- (c) the appropriate Health Board has requested the complainant in writing to confirm whether or not he or she wishes to pursue the complaint, and the complainant has not confirmed to the appropriate Health Board that he or she wishes to do so within 28 days of that request being sent.

(6) In this regulation—

- (a) “relevant professional body” means—

- (i) in relation to a doctor or an ophthalmic medical practitioner, the General Medical Council⁽²⁴⁾;
 - (ii) in relation to a dentist, the General Dental Council⁽²⁵⁾;
 - (iii) in relation to an optician, the General Optical Council⁽²⁶⁾; or
 - (iv) in relation to a pharmacist, the Royal Pharmaceutical Society of Great Britain;
- (b) “the relevant time” means the time of the event, treatment or other matter giving rise to the allegation.

Referral to discipline committee

5.—(1) Where an appropriate Health Board decides to proceed under regulation 4(2)(a) or (3) it shall, subject to paragraph (2), refer the matter to another Health Board for investigation by that Health Board’s appropriate discipline committee.

(2) The appropriate Health Board shall not refer the matter to another Health Board which has appointed any discipline committee jointly with the appropriate Health Board.

(3) Subject to paragraph (6), the appropriate discipline committee referred to in paragraph (1) is—

- (a) where the matter relates to a doctor, a medical discipline committee;
- (b) where the matter relates to a dentist, a dental discipline committee;
- (c) where the matter relates to an ophthalmic medical practitioner or optician, an ophthalmic discipline committee;
- (d) where the matter relates to a pharmacist, a pharmaceutical discipline committee.

(4) A matter which, under paragraph (1), is required to be investigated by 2 discipline committees, may instead be referred for investigation by a joint discipline committee.

(5) If, in the opinion of a discipline committee, a matter referred to it includes allegations which are required, by virtue of paragraph (1), to be investigated by another discipline committee, it shall refer the matter to the joint discipline committee instead of dealing with the matter itself.

(6) Where a matter is referred for investigation by a joint discipline committee under paragraph (4) or paragraph (5), that committee shall be the appropriate discipline committee instead of any other committee.

Time limits

6.—(1) Where the disciplinary matter concerns an allegation which has been the subject of a complaint, the appropriate Health Board shall refer it under regulation 5(1) within 28 days of the allegation having ceased to be the subject of a complaint which is being investigated.

(2) Where the disciplinary matter concerns an allegation which has been the subject of an investigation by the Agency, or of an investigation by any other person or body, the appropriate Health Board shall refer it under regulation 5(1) within 28 days of the Health Board having received the final report on the matter under investigation from the Agency or such other person or body.

(3) Where the disciplinary matter relates to a matter which is the subject of an inquiry in terms of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976⁽²⁷⁾ the appropriate Health Board shall refer it under regulation 5 (1) within 28 days of the conclusion of that inquiry.

⁽²⁴⁾ See the Medical Act 1983 (c. 54), section 1.

⁽²⁵⁾ See the Dentists Act 1984 (c. 24), section 1.

⁽²⁶⁾ See the Opticians Act 1989 (c. 44), section 1.

⁽²⁷⁾ 1976 c. 14.

(4) Where the disciplinary matter relates to a matter which is the subject of any other proceedings before a court or tribunal, (including any appeal procedures) the appropriate Health Board shall refer it under regulation 5(1) within 28 days of the final conclusion of those proceedings

(5) Where none of paragraph (1), (2), (3 or (4) applies, the appropriate Health Board shall refer the disciplinary matter under regulation 5(1) within the time limits specified in paragraph (7).

(6) Where the disciplinary matter concerns an alleged overpayment made to a practitioner pursuant to regulation 4(3), the appropriate Health Board may refer it under regulation 5(1) at any time.

(7) The time limits referred to in paragraph (5) are—

(a) in the case of a doctor, pharmacist or pharmacist contractor, 13 weeks after the event or matter which is the subject of the allegation occurred, or 13 weeks after the latest in a series of events or matters which are the subject of the allegation occurred;

(b) in the case of an ophthalmic medical practitioner or optician, 13 weeks after the event or matter which is the subject of the allegation occurred, or 13 weeks after the latest in a series of events or matters which are the subject matter of the allegation occurred;

(c) in the case of a dentist—

(i) subject to paragraph (8), where the matter concerns the treatment of a patient, either 6 months after the last date of submission by the dentist of the claim forms for that course of treatment to the Practice Board or the Agency on behalf of the Practice Board, or, where the allegation relates to a series of courses of treatment, 6 months after the last date of submission by the dentist of claim forms for the latest course of treatment in that series;

(ii) subject to paragraph (8), where the matter does not concern the treatment of a patient and is reported to the appropriate Health Board by the Practice Board, 13 weeks after the date on which the matter, or after the latest in a series of matters, came to the notice of the Practice Board;

(iii) where the matter does not concern the treatment of a patient and comes to the notice of the appropriate Health Board other than by a report from the Practice Board, 13 weeks after the date on which the matter or after the latest in a series of matters came to the notice of the Health Board.

(8) Where the Practice Board reports a matter to the appropriate Health Board in circumstances in which the time limits mentioned in paragraph (7)(c)(i) or (ii) would otherwise expire within 28 days of the date on which the Health Board received the report, the relevant time limit shall be extended so that it expires on the 28th day after the date on which the Health Board received the report.

(9) For the purposes of paragraph (7)(c), “treatment” has the same meaning as in regulation 2(1) of the General Dental Services Regulations.

Investigations by discipline committees

7.—(1) A discipline committee shall investigate any matter which is referred to it.

(2) Schedule 2 shall have effect with respect to the procedure for investigating disciplinary matters under this Part.

Determination of appropriate Health Board

8.—(1) The appropriate Health Board, after due consideration of a report presented to it by the discipline committee pursuant to paragraph 7(1) of Schedule 2, shall—

(a) accept as conclusive the findings of fact made by that committee;

- (b) accept as conclusive the inferences from those findings of fact which that committee considered could properly be drawn from those findings as to whether the practitioner has failed to comply with any of the terms of service detailed in the appropriate Health Board's statement of case; and
- (c) determine, having regard to any recommendation made by the discipline committee pursuant to paragraph 7(1)(e) of Schedule 2, either—
- (i) that no further action should be taken in relation to the report; or
 - (ii) that action should be taken in relation to the practitioner, in accordance with any one or more of the provisions of paragraph (3).
- (2) If the appropriate Health Board determines either not to adopt the recommendation of the discipline committee or to take any action not recommended by that committee, it shall record in writing its reasons for that determination.
- (3) Where it has been determined that a practitioner to whom the report of the discipline committee relates has failed to comply with any of his or her terms of service, the appropriate Health Board may—
- (a) without prejudice to sub-paragraph (b), determine that there should be recovered from him or her, whether by way of deduction from his or her remuneration or otherwise, any expenses (other than expenses incurred in connection with the investigation by the discipline committee) which, by reason of such failure, have been reasonably and necessarily incurred or, where the report relates to a dentist, are likely to be so incurred, by any person in obtaining further treatment, and that any such sums so recoverable shall be paid to that person;
 - (b) determine that an amount shall be recovered from the practitioner, whether by way of deduction from his or her remuneration or otherwise;
 - (c) where the practitioner is a dentist, determine that that dentist should be required to submit estimates for the prior approval of the Practice Board in respect of any treatment of such description and during such a period as shall be specified in the determination;
 - (d) determine that the practitioner should be warned to comply more closely with his or her terms of service in future;
 - (e) refer the matter to, as it considers appropriate, the Tribunal, the relevant professional body or the police.
- (4) In acting under paragraph (3) the appropriate Health Board may take into consideration any determination that the practitioner had, on some other occasion, failed to comply with the practitioner's terms of service, so long as such a determination, finding or inference has not been overturned on appeal and was not made more than six years prior to the date of referral under regulation 5(1).
- (5) No later than 13 weeks after receipt of the report from the discipline committee, the appropriate Health Board shall give notice in writing of its determination under paragraph (1) and any determination under paragraph (3) to the practitioner, any person who is treated as a party pursuant to paragraph 2(3) of Schedule 2, the discipline committee, and the Scottish Ministers, and shall include with the notice—
- (a) a copy of the report of the discipline committee;
 - (b) a statement of reasons recorded by the Health Board under paragraph (2); and
 - (c) a statement as to the rights of appeal to the Scottish Ministers under regulation 9.
- (6) Subject to paragraph (8), where an appropriate Health Board determines under this regulation that action should be taken in accordance with paragraph 3(a), (b), (c), (d) or (e), that action shall be taken by the appropriate Health Board.

(7) Any amount determined under paragraph (3)(a) or (b) as being recoverable shall, to the extent that it is not recovered from the practitioner's remuneration, be a debt owed by the practitioner to the Health Board by which it is recoverable.

(8) Where the appropriate Health Board makes a determination under paragraph (3)(a), (b), (c), (d) or (e) no action shall be taken in consequence of that determination—

(a) if no appeal is brought, before the end of the period specified in regulation 9(2) for bringing an appeal; or

(b) if an appeal is brought, before the Health Board has received notice—

(i) that the appeal has been withdrawn, or

(ii) of the Scottish Ministers' determination of the appeal.

(9) For the purpose of paragraph (3) “estimate” has the same meaning as in regulation 2(1) of the General Dental Services Regulations.

Appeal to Scottish Ministers

9.—(1) A practitioner may appeal to the Scottish Ministers—

(a) against a finding of fact, or an inference drawn from a finding of fact pursuant to regulation 8(1)(a) or (b), which (in either case) is adverse to the practitioner;

(b) against any determination by a Health Board under regulation 8(1)(c)(ii);

(c) in respect of a determination by a Health Board that an overpayment has or has not been made in respect of the practitioner's remuneration;

by giving notice of an appeal in accordance with paragraph (2).

(2) A notice of an appeal under this regulation shall—

(a) be in writing;

(b) be sent to the Scottish Ministers within 30 days beginning on the date on which notice of the appropriate Health Board's determination was given to the practitioner under regulation 8(5); and

(c) contain a concise statement of the grounds of appeal upon which the practitioner intends to rely in respect of each ground of appeal.

(3) Subject to paragraph (6), on an appeal to which paragraph (1)(a) or (c) applies, the Scottish Ministers shall consider the appeal on the basis of the evidence available to the discipline committee and of any further evidence adduced on the appeal, and shall—

(a) make such findings of fact as they see fit;

(b) draw such inferences from those findings as they see fit;

(c) in the case of an appeal to which paragraph (1)(a) applies—

(i) determine whether or not the practitioner has failed to comply with any one or more of the terms of service detailed in the appropriate Health Board's statement of case; and

(ii) determine in accordance with any one or more of the provisions of regulation 8(3)(a), (b), (c), (d) or (e) (as modified in accordance with paragraph (5) of this regulation) or regulation 11, whether any, and if so what, action should be taken in relation to that practitioner; and

(d) in the case of an appeal to which paragraph (1)(c) applies, determine whether there has been an overpayment and, if so, of what amount.

(4) On an appeal to which paragraph (1)(b) applies, the Scottish Ministers shall—

- (a) accept as conclusive–
 - (i) those findings of fact made by the discipline committee which were necessary for the purpose of the Health Board’s determination under regulation 8(1)(c)(ii); and
 - (ii) the inferences specified in the discipline committee’s report pursuant to paragraph 7(1)(c) of Schedule 2; and
- (b) determine in accordance with any one or more of the provisions of regulation 8(3)(a), (b), (c) and (d) (as modified in accordance with paragraph (5) of this regulation) or regulation 11, whether any, and if so, what action should be taken in relation to the practitioner.

(5) For the purposes of paragraphs (3)(c)(ii) and (4)(b) of this regulation, regulation 8(3) and (4) shall have effect as if for any reference to “the appropriate Health Board” there were substituted a reference to “the Scottish Ministers”.

- (6) The practitioner may withdraw his or her appeal at any time before it is determined–
 - (a) by giving notice in writing to the Scottish Ministers of his or her intention to do so; and
 - (b) with the consent of the Scottish Ministers.

Procedure on appeal to Scottish Ministers

10.—(1) Without prejudice to paragraph (5), if the Scottish Ministers, after considering a notice of appeal and any further particulars furnished by the practitioner, are of the opinion that the notice and particulars disclose no reasonable grounds of appeal or that the appeal is otherwise vexatious or frivolous, they may determine the appeal by dismissing it immediately.

(2) The Scottish Ministers shall, unless they dismiss the appeal under paragraph (1), send a copy of the notice of appeal and of any further particulars furnished by the practitioner to the appropriate Health Board, and shall invite that Board to submit its observations on the appeal within 28 days of being sent the copy of the notice of appeal.

(3) Where observations are made under paragraph (2), the Scottish Ministers shall send a copy of those observations to the practitioner and shall invite the practitioner to submit comments on the observations within 21 days of being sent that copy.

(4) The Scottish Ministers shall hold an oral hearing to determine the appeal except in the circumstances described in paragraph (5).

(5) Where a practitioner who is not appealing under regulation 9(1)(a) appeals under regulation 9(1)(b), the appeal may be dismissed without an oral hearing if the practitioner has stated in writing that he or she does not want such a hearing.

(6) Where there is to be an oral hearing the Scottish Ministers shall appoint 3 persons to hear the appeal, of whom–

- (a) one shall be an advocate or a solicitor, and shall act as chairperson; and
- (b) two shall be selected in accordance with paragraphs (7) and (8).

(7) The persons appointed under paragraph (6)(b) shall be–

- (a) where the practitioner is a doctor, 2 doctors;
- (b) where the practitioner is a dentist, 2 dentists;
- (c) where the practitioner is an ophthalmic medical practitioner, 2 ophthalmic medical practitioners;
- (d) where the practitioner is an optician, 2 opticians; and
- (e) where the practitioner is a pharmacist contractor, 2 pharmacists.

(8) In a case to which–

- (a) paragraph (7)(a) applies, one of the doctors shall be selected from the doctors' panel;
- (b) paragraph (7)(b) applies, one of the dentists shall be selected from the dentists' panel.

(9) The Scottish Ministers shall appoint a day for the hearing and shall give the practitioner and the appropriate Health Board not less than 21 days' notice in writing of the day, time and place of the hearing.

(10) Subject to the provisions of regulation 16 (attendance by member of Council on Tribunals) no person shall be admitted to a hearing, without the consent of the practitioner and the persons appointed to hear the appeal, unless that person is—

- (a) the practitioner;
- (b) a representative of the appropriate Health Board who is an officer or a member of it;
- (c) a person (who may be an advocate, a solicitor or any other person) engaged by a person or body mentioned in sub-paragraph (a) or (b) of this paragraph to represent them at the hearing; or
- (d) a person whose attendance is required for the purpose of giving evidence at the hearing.

(11) The practitioner and the appropriate Health Board shall not rely on any facts or contentions which do not appear to the Scottish Ministers or the persons hearing the appeal to have been raised in the course of the proceedings before the discipline committee unless—

- (a) not less than 7 days before the hearing, notice in writing was given to the Scottish Ministers of such facts or contentions; and
- (b) the Scottish Ministers or the persons hearing the appeal give their consent.

(12) The persons hearing the appeal shall prepare a report and present it to the Scottish Ministers who shall take it into consideration and determine the appeal.

(13) Where a Health Board has made representations to the Tribunal following its consideration of a report of a discipline committee, the Scottish Ministers may, for the purpose of any appeal under regulation 9(1)(a), treat as conclusive any relevant findings of fact of the Tribunal.

(14) The Scottish Ministers shall give notice in writing to the practitioner and the Health Board of their determination under paragraphs (1) or (12) of the matters mentioned in regulation 9(3)(c) or (d) or (4)(b) and shall include with the notice a statement of their reasons for the determination.

(15) The provisions of Schedule 3 shall have effect with regard to the hearing of an appeal.

Recovery of amounts from practitioners following appeal

11.—(1) Where—

- (a) in the case of an appeal under regulation 9(1)(a), the Scottish Ministers determine that a practitioner has failed to comply with one or more of his or her terms of service; or
- (b) an appeal is made under regulation 9(1)(b) or (c),

the Scottish Ministers shall, subject to the following provisions of this regulation, determine whether any, and if so, what amount shall be recovered from the practitioner, whether by way of deduction from his or her remuneration or otherwise.

(2) The Scottish Ministers shall not consider the question of the recovery of an amount from a doctor or dentist whose failure to comply with his or her terms of service (as determined under these Regulations) is a failure specified in relation to him or her in Part I of Schedule 4 unless they have referred the question of recovery to the appropriate advisory committee and have received the advice of that committee.

(3) Where the case is not one to which paragraph (2) applies, the Scottish Ministers, before considering the question of recovery of—

- (a) any amount from a doctor or dentist, may consult the appropriate advisory committee;
 - (b) any amount in excess of £1000, shall consult the appropriate advisory committee.
- (4) For the purposes of this regulation “the appropriate advisory committee” means–
- (a) where the practitioner is a doctor, the Medical Advisory Committee constituted in accordance with Part II of Schedule 4; and
 - (b) where the practitioner is a dentist, the Dental Advisory Committee constituted in accordance with Part III of that Schedule.
- (5) The Scottish Ministers shall give the practitioner and the appropriate Health Board notice in writing of their determination under paragraph (1), and shall include with the notice a statement of the reasons for their determination.
- (6) Where the Scottish Ministers have determined under paragraph (1) that an amount shall be recovered from a practitioner, they shall direct the appropriate Health Board to recover that amount either by deduction from the practitioner’s remuneration or otherwise and, subject to regulation 8(6) (as modified by paragraph (7) of this regulation), that Health Board shall comply with that direction.
- (7) For the purposes of paragraph (6), regulation 8(6) shall have effect as if for the words “an appropriate Health Board determines under this regulation that action should be taken in accordance with paragraph (3)(a), (b), (c), (d) or (e) that action shall be taken” there were substituted the words “the Scottish Ministers determine under regulation 11(1) that an amount should be recovered, that amount shall be recovered”.
- (8) Any amount which falls to be recovered by a Health Board by virtue of paragraph (6) shall, to the extent that it is not recovered by deduction from the practitioner’s remuneration, be a debt owed by the practitioner to that Health Board.

Death of practitioner

12. Where, at any time after a disciplinary matter has been referred under regulation 5(1) but before the appropriate Health Board makes a determination under regulation 8 in relation to that matter, the practitioner to whom the matter relates dies, no further action shall be taken under these Regulations in relation to that practitioner.

Investigation of excessive undertaking of eye examinations, excessive issuing of optical vouchers or excessive prescribing of supplements

13.—(1) An ophthalmic officer shall from time to time examine the eye examination and optical voucher forms which have been completed by an ophthalmic medical practitioner or an ophthalmic optician in respect of persons who may have an eye examination after 1st April 2006 under general ophthalmic services in accordance with the General Ophthalmic Services Regulations.

(2) Where it appears to the ophthalmic officer that the undertaking of eye examinations, issuing of optical vouchers or prescribing of supplements in excess of what was reasonably necessary has taken place, the ophthalmic officer shall prepare a report for submission to the Health Board stating–

- (a) the full facts of the case; and
 - (b) that he or she is of the opinion that the undertaking of eye examinations, issuing of optical vouchers or prescribing of supplements was in excess of what was clinically necessary and on what grounds.
- (3) On receipt of the report, the Health Board shall consider it in terms of regulation 4(1).

PART III

MISCELLANEOUS

Service of notices, etc

14.—(1) Any notice or document which is required or authorised by these Regulations to be sent to or served on any person or body may be sent or served as follows:—

- (a) in the case of the Scottish Ministers, by delivering it to them or sending it by special delivery or first class recorded delivery service addressed to them at St Andrew’s House, Edinburgh;
- (b) in the case of a Health Board by delivering it to the Chief Executive or by sending it by special delivery or first class recorded delivery service addressed to the Chief Executive at the Health Board’s principal office;
- (c) in the case of a practitioner by delivering it to the practitioner or by sending it by special delivery or first class recorded delivery service addressed to the practitioner at the practitioner’s usual or last known practice or private address;
- (d) in the case of any other person, by delivering it to that person or by sending it by special delivery or first class recorded delivery service addressed to that person at that person’s usual or last known address.

(2) Where a party to any investigation, appeal or inquiry is represented by a solicitor this regulation is complied with if the notice or document is sent by special delivery or first class recorded delivery service addressed to the solicitor at the solicitor’s professional address.

(3) Unless the contrary is proved, any notice or document sent in accordance with this regulation shall be deemed to be received at the time at which a letter would be delivered in the ordinary course of post.

Power to dispense with requirements as to notices

15. The Scottish Ministers may dispense with any requirements of these Regulations applicable to notices, applications, documents or otherwise in any case where it appears to the Scottish Ministers appropriate to do so.

Attendance by member of Council on Tribunals

16. Nothing in these Regulations shall prevent a member of the Council on Tribunals or of its Scottish Committee in that capacity from attending any hearing before—

- (a) a discipline committee;
- (b) a Health Board when the Health Board is considering a report of a discipline committee;
- (c) persons appointed under regulation 10(6) when hearing an appeal.

PART IV

TRANSITIONAL PROVISIONS AND REVOCATIONS

Transitional provisions

17.—(1) Where, before the date on which these Regulations come into force a Health Board has referred a matter to another Health Board for investigation by that Health Board’s appropriate

discipline committee under regulation 4 of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992⁽²⁸⁾(“the 1992 Regulations”), the provisions of those Regulations shall, notwithstanding regulation 18 (revocations) continue to apply on or after that date, as respects any investigation, hearing, direction or report which by virtue of any provision of the 1992 Regulations falls to be investigated, held or made in relation to any such matter or in relation to an appeal to the Scottish Ministers.

(2) Notwithstanding regulation 18 (revocations), a Health Board shall be entitled to consider in terms of regulation 4(1) any report prepared by an ophthalmic officer in terms of regulation 20 of the 1992 Regulations (investigation of excessive testing of sight and/or excessive issuing of vouchers)⁽²⁹⁾irrespective of whether such a report was received by the Health Board prior to, or after, the date on which these Regulations come into force.

Revocations

18. The Regulations specified in column (1) of Schedule 5 are revoked to the extent specified in column (3) of that Schedule.

St Andrew’s House,
Edinburgh
7th June 2006

ANDREW P KERR
A member of the Scottish Executive

⁽²⁸⁾ S.I. 1992/434, amended by S.I. 1994/3038, 1995/3201, 1996/938, 1998/1424, S.S.I. 1999/53, S.I. 2000/3135, S.S.I. 2004/38, 2005/118,122 and 334 and 2006/139.

⁽²⁹⁾ Regulation 20 was inserted by S.S.I. 1999/53 and amended by S.S.I. 2005/118.