



National Health Service (Amendment) Act 1995

1995 CHAPTER 31

An Act to make provision in relation to persons disqualified, or subject to proceedings for disqualification, under section 46 of the National Health Service Act 1977; to make provision about the constitution of the tribunal under that section; to make corresponding provision for Scotland; and for connected purposes. [19th July 1995]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

England and Wales

1 Disqualified practitioners: engagement in provision of services by others

In section 46(2) of the National Health Service Act 1977 (functions of Tribunal on finding that the inclusion of a person's name in a list under Part II of that Act would be prejudicial to the efficiency of the services to which the list relates) there shall be inserted at the end “, and

- (c) where they make a direction under paragraph (b) above, may also, if they think fit, declare that he is not fit to be engaged in any capacity in the provision of those services.”

2 Interim suspension of practitioners

- (1) After section 49 of the National Health Service Act 1977 there shall be inserted the following sections—

“49A Applications for interim suspension

- (1) A Health Authority who have made representations under section 46 above may, at any time before the case is disposed of by the Tribunal, apply to the Tribunal for a direction to be made under subsection (2) below in relation to the person to whom the case relates.
- (2) If, on an application under this section, the Tribunal are satisfied that it is necessary to do so in order to protect patients, they shall direct that subsection (3) below shall apply to the person concerned as respects services of the kind to which the case in question relates.
- (3) A person to whom this subsection applies shall—
 - (a) be deemed to have been removed from any relevant list in which his name is included,
 - (b) be disqualified for inclusion in any relevant list in which his name is not included, and
 - (c) be deemed to be a person in relation to whom there is in force a declaration under section 46(2)(c) above concerning his fitness to be engaged in the provision of services of the relevant kind.
- (4) A direction under subsection (2) above shall cease to have effect on the Tribunal’s disposing of the case in connection with which it is made.
- (5) In subsection (2) above, the reference to patients is to persons to whom services of the kind to which the case in question relates are, or may be, provided under this Part of this Act.
- (6) In the application of subsection (3) above to any person—
 - (a) “relevant list” means a list prepared under this Part of this Act of persons undertaking to provide services of the kind to which the direction applying the subsection to him relates, and
 - (b) “services of the relevant kind” means services of the kind to which that direction relates.

49B Continuation of suspension pending appeal

- (1) Where—
 - (a) on disposing of a case under section 46 above, the Tribunal make a direction under subsection (2)(b) of that section, and
 - (b) the person to whom the direction relates is a person to whom section 49A(3) above would, apart from this section, cease to apply on the disposal of the case,

the Tribunal may, if they consider it necessary to do so in order to protect patients, direct that that provision shall continue to apply to him as respects services of the kind to which the direction under section 46(2)(b) above relates.
- (2) A direction under subsection (1) above shall cease to have effect—
 - (a) where no appeal against the direction under section 46(2)(b) above is brought, at the end of the period for bringing an appeal, and

- (b) where an appeal against that direction is brought, when the appeal process has been exhausted.
- (3) Where the power conferred by subsection (1) above is exercisable by virtue of a direction which is not coupled with a declaration under section 46(2)(c) above, section 49(A)(3) above shall have effect, in relation to the exercise of that power, with the omission of paragraph (c).
- (4) In subsection (1) above, the reference to patients is to persons to whom services of the kind to which the direction under section 46(2)(b) above relates are, or may be, provided under this Part of this Act.

49C Sections 49A and 49B: procedure etc

- (1) Before making a direction under section 49A(2) or 49B(1) above in relation to any person, the Tribunal shall give him an opportunity—
 - (a) to appear before them, either in person or by counsel or solicitor or such other representative as may be prescribed, and
 - (b) to be heard and to call witnesses and produce other evidence.
- (2) Regulations may—
 - (a) make provision for, or for the determination of, procedure in relation to determining applications under section 49A above or the exercise of the power conferred by section 49B(1) above, and
 - (b) provide for the functions of the Tribunal under section 49A or 49B above to be carried out, or to be carried out in prescribed circumstances, by the chairman or a deputy chairman of the Tribunal.

49D Suspension provisions in Scotland or Northern Ireland

- (1) This section applies where, under any provisions in force in Scotland or Northern Ireland corresponding to section 49A or 49B above, a person (“the practitioner”) is disqualified for inclusion in all lists prepared under the provisions in force there corresponding to the provisions of this Part of this Act of persons undertaking to provide services of one or more of the kinds specified in section 46(1) above, other than those in which his name is included.
- (2) The practitioner shall, while he is so disqualified—
 - (a) be disqualified for inclusion in any list prepared under this Part of this Act of persons undertaking to provide services of the same kinds (“relevant list”) in which his name is not included, and
 - (b) be deemed to have been removed from any relevant list in which his name is included.

49E Payments in consequence of suspension

- (1) Regulations may provide for the making to persons to whom section 49A(3) or 49D(2) above applies of payments in consequence of the application of that provision.

- (2) Regulations under subsection (1) above may provide for the determination by the Secretary of State in a prescribed manner of anything for which provision may be made by regulations under that subsection.”

- (2) In section 46(1) of that Act for “49” there shall be substituted “49C”.

3 Appeals against disqualification: removal of appeal to Secretary of State

- (1) In section 46 of the National Health Service Act 1977 (disqualification of persons providing services), subsection (3) (right of appeal to Secretary of State from direction of Tribunal) shall cease to have effect.

- (2) In that section, for subsection (4) there shall be substituted—

“(4) Subject to subsection (5) below, where the Tribunal direct that the name of any person be removed from or not included in any list or lists, the Health Authority or Health Authorities concerned shall remove the name of the person concerned from the list or lists in question.

- (5) Subsection (4) above shall not apply—

- (a) where no appeal is brought against the decision to make the direction, until the end of the period for bringing an appeal, and
- (b) where an appeal is brought against that decision, until the appeal process has been exhausted.”

4 Removal of disqualification

- (1) In section 47 of the National Health Service Act 1977 (power of the Tribunal or the Secretary of State to remove disqualification imposed by virtue of section 46 of that Act), in subsection (1), the words “or the Secretary of State” shall be omitted.

- (2) In paragraph 8 of Schedule 14 to that Act (power of the Tribunal or the Secretary of State to remove disqualification imposed by virtue of section 42(8) of the National Health Service Act 1946), for “the Tribunal or the Secretary of State directs” there shall be substituted “the Tribunal direct”.

5 Procedure relating to disqualification

- (1) In section 49 of the National Health Service Act 1977 (regulations as to sections 46 to 48) the power conferred by paragraph (a) (under which regulations are to provide for prescribing the procedure for the holding of inquiries) shall include power to provide for the procedure to be determined under regulations.

- (2) Accordingly, that provision shall be amended as follows—

- (a) the words “prescribing the procedure for the holding of”, “by the Tribunal” and “securing that” shall be omitted,
- (b) after “48 above” there shall be inserted “to be held in accordance with such procedure as may be prescribed by or determined under the regulations”, and
- (c) for “shall have” there shall be substituted “to have”, for “that the hearing” there shall be substituted “for the hearing” and for “shall be” there shall be substituted “to be”.

6 Constitution of the Tribunal

(1) Schedule 9 to the National Health Service Act 1977 (which makes provision about the tribunal under section 46 of that Act) shall be amended as follows.

(2) For paragraphs 1 to 5 (constitution) there shall be substituted—

- “1 The Tribunal shall consist of—
- (a) a chairman appointed by the Lord Chancellor,
 - (b) such number of deputy chairmen as the Lord Chancellor may appoint,
 - (c) such number of persons as the Secretary of State may appoint for the purposes of this sub-paragraph,
 - (d) such number of medical practitioners as the Secretary of State may appoint for the purposes of this sub-paragraph,
 - (e) such number of medical practitioners having the qualifications prescribed under section 38 above as the Secretary of State may appoint for the purposes of this sub-paragraph,
 - (f) such number of dental practitioners as the Secretary of State may appoint for the purposes of this sub-paragraph,
 - (g) such number of ophthalmic opticians as the Secretary of State may appoint for the purposes of this sub-paragraph, and
 - (h) such number of registered pharmacists as the Secretary of State may appoint for the purposes of this sub-paragraph.
- 2 A person appointed as the chairman or a deputy chairman shall be a person who has a 10 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990).
- 3 Any appointment for the purposes of paragraph 1(c) above shall be made after consultation with such associations of Health Authorities as the Secretary of State may recognise as representative of Health Authorities.
- 4 Any appointment for the purposes of any of sub-paragraphs (d) to (h) of paragraph 1 above shall be made after consultation with such organisations as the Secretary of State may recognise as representative of the profession or calling concerned.”

(3) After paragraph 5 there shall be inserted—

“Sittings of Tribunal

- 5A (1) The functions of the Tribunal shall be exercised by three members consisting of—
- (a) the chairman or a deputy chairman,
 - (b) a person appointed under paragraph 1(c) above, and
 - (c) a person appointed under such one of sub-paragraphs (d) to (h) of paragraph 1 above as provides for the appointment of persons of the same profession or calling as that of the person concerned.
- (2) In sub-paragraph (1)(c) above, the reference to the person concerned is—
- (a) in the case of functions under section 46 above, to the person to whom the representations in question relate,

- (b) in the case of functions under section 47 above (or paragraph 8 of Schedule 14 to this Act), to the person whose disqualification is under consideration,
 - (c) in the case of functions under section 49A above, to the person to whom the application in question relates, and
 - (d) in the case of functions under section 49B above, to the person in relation to whom the application of section 49A(3) above may be continued.
- (3) In the case of functions under section 49A or 49B above, subparagraph (1) above is subject to section 49C(2)(b) above.”

Scotland

7 **Disqualified practitioners: engagement in provision of services by others**

In section 29(3) of the National Health Service (Scotland) Act 1978 (functions of Tribunal on finding that the inclusion of a person’s name in a list under Part II of that Act would be prejudicial to the efficiency of the services to which the list relates)—

- (a) the words “shall direct that his name be removed from that list” shall be paragraph (a);
- (b) the words “may also, if they think fit, direct that his name be removed from, or not be included in, any corresponding list kept by any other Health Board under this Part” shall be paragraph (b); and
- (c) there shall be added at the end—

“, and

- (c) where they make a direction under paragraph (b) above, may also, if they think fit, declare that he is not fit to be engaged in any capacity in the provision of those services.”

8 **Interim suspension of practitioners**

After section 32 of the National Health Service (Scotland) Act 1978 there shall be inserted the following sections—

“32A Applications for interim suspension

- (1) A Health Board who have made representations under section 29 may, at any time before the case is disposed of by the Tribunal, apply to the Tribunal for a direction to be made under subsection (2) below in relation to the person to whom the case relates.
- (2) If, on an application under this section, the Tribunal are satisfied that it is necessary to do so in order to protect patients, they shall direct that subsection (3) below shall apply to the person concerned as respects services of the kind to which the case in question relates.
- (3) A person to whom this subsection applies shall—
 - (a) be deemed to have been removed from any relevant list in which his name is included,

- (b) be disqualified for inclusion in any relevant list in which his name is not included, and
 - (c) be deemed to be a person in relation to whom there is in force a declaration under section 29(3)(c) concerning his fitness to be engaged in the provision of services of the relevant kind.
- (4) A direction under subsection (2) above shall cease to have effect on the Tribunal's disposing of the case in connection with which it is made.
- (5) In subsection (2) above, the reference to patients is to persons to whom services of the kind to which the case in question relates are, or may be, provided under this Part of this Act.
- (6) In the application of subsection (3) above to any person—
 - (a) “relevant list” means a list prepared under this Part of this Act of persons undertaking to provide services of the kind to which the direction applying the subsection to him relates, and
 - (b) “services of the relevant kind” means services of the kind to which that direction relates.

32B Continuation of suspension pending appeal

- (1) Where—
 - (a) on disposing of a case under section 29, the Tribunal make a direction under subsection (3)(b) of that section, and
 - (b) the person to whom the direction relates is a person to whom section 32A(3) above would, apart from this section, cease to apply on the disposal of the case,the Tribunal may, if they consider it necessary to do so in order to protect patients, direct that that provision shall continue to apply to him as respects services of the kind to which the direction under section 29(3)(b) relates.
- (2) A direction under subsection (1) above shall cease to have effect—
 - (a) where no appeal against the direction under section 29(3)(b) is brought, at the end of the period for bringing an appeal, and
 - (b) where an appeal against that direction is brought, when the appeal process has been exhausted.
- (3) Where the power conferred by subsection (1) above is exercisable by virtue of a direction which is not coupled with a declaration under section 29(3)(c), section 32(A)(3) shall have effect, in relation to the exercise of that power, with the omission of paragraph (c).
- (4) In subsection (1) above, the reference to patients is to persons to whom services of the kind to which the direction under section 29(3)(b) relates are, or may be, provided under this Part of this Act.

32C Sections 32A and 32B: procedure etc

- (1) Before making a direction under section 32A(2) or 32B(1) in relation to any person, the Tribunal shall give him an opportunity—
 - (a) to appear before them, either—
 - (i) in person; or

- (ii) by counsel or solicitor or such other representative as may be prescribed; and
 - (b) to be heard and to call witnesses and produce other evidence.
- (2) Regulations may—
- (a) make provision for, or for the determination of, procedure in relation to determining applications under section 32A or the exercise of the power conferred by section 32B(1), and
 - (b) provide for the functions of the Tribunal under section 32A or 32B to be carried out, or to be carried out in prescribed circumstances, by the chairman or a deputy chairman of the Tribunal.

32D Suspension provisions in England and Wales or in Northern Ireland

- (1) This section applies where, under any provisions in force in England and Wales or in Northern Ireland corresponding to section 32A or 32B, a person (“the practitioner”) is disqualified for inclusion in all lists prepared under the provisions in force there corresponding to the provisions of this Part of this Act of persons undertaking to provide services of one or more of the kinds specified in section 29(1), other than those in which his name is included.
- (2) The practitioner shall, while he is so disqualified—
 - (a) be disqualified for inclusion in any list prepared under this Part of this Act of persons undertaking to provide services of the same kinds (“relevant list”) in which his name is not included, and
 - (b) be deemed to have been removed from any relevant list in which his name is included.

32E Payments in consequence of suspension

- (1) Regulations may provide for the making to persons to whom section 32A(3) or 32D(2) applies of payments in consequence of the application of that provision.
- (2) Regulations under subsection (1) above may provide for the determination by the Secretary of State in a prescribed manner of anything for which provision may be made by regulations under that subsection.”

9 Appeals against disqualification: removal of appeal to Secretary of State

- (1) In section 29 of the National Health Service (Scotland) Act 1978 (disqualification of persons providing services), subsection (4) shall cease to have effect.
- (2) In that section, for subsection (5) there shall be substituted—
 - “(5) Subject to subsection (5A) below, where the Tribunal direct that the name of any person be removed from or not included in any list or lists, the Health Board or Health Boards concerned shall remove the name of the person concerned from the list or lists in question.
- (5A) Subsection (5) above shall not apply—
 - (a) where no appeal is brought against the decision to make the direction, until the end of the period for bringing an appeal, and

- (b) where an appeal is brought against that decision, until the appeal process has been exhausted.”

10 Removal of disqualification

- (1) In section 30 of the National Health Service (Scotland) Act 1978 (power of the Tribunal or the Secretary of State to remove disqualification imposed by virtue of section 29 of that Act), in subsection (1), the words “or the Secretary of State” shall be omitted.
- (2) In paragraph 6 of Schedule 15 to that Act (power of the Tribunal or the Secretary of State to remove disqualification imposed by virtue of section 43(8) of the National Health Service (Scotland) Act 1947), for the words “the Tribunal or the Secretary of State directs” there shall be substituted “the Tribunal direct”.

11 Procedure relating to disqualification

- (1) In section 32 of the National Health Service (Scotland) Act 1978 (regulations as to sections 29 to 31) the power conferred by paragraph (a) (under which regulations are to provide for prescribing the procedure for the holding of inquiries) shall include power to provide for the procedure to be determined under regulations.
- (2) Accordingly, that provision shall be amended as follows—
 - (a) for the words from the beginning to “by the Tribunal” there shall be substituted the words “for inquiries”;
 - (b) after “31” there shall be inserted “to be held in accordance with such procedure as may be prescribed by or determined under the regulations”;
 - (c) the words “securing that” shall be omitted;
 - (d) for “shall be”, in both places where those words occur, there shall be substituted “to be”;
 - (e) for “shall have” there shall be substituted “to have”;
 - (f) for “that the hearing” there shall be substituted “for the hearing”.

12 Constitution of the Tribunal

- (1) Schedule 8 to the National Health Service (Scotland) Act 1978 (which makes provision about the tribunal under section 29 of that Act) shall be amended as follows.
- (2) For paragraphs 1 to 6 (constitution) there shall be substituted—
 - “1 The Tribunal shall consist of—
 - (a) a chairman appointed by the Lord President of the Court of Session,
 - (b) such number of deputy chairmen as may be so appointed,
 - (c) such number of persons as the Secretary of State may appoint for the purposes of this sub-paragraph,
 - (d) such number of medical practitioners as the Secretary of State may appoint for the purposes of this sub-paragraph,
 - (e) such number of medical practitioners having the qualifications prescribed under section 26 as the Secretary of State may appoint for the purposes of this sub-paragraph,

- (f) such number of dental practitioners as the Secretary of State may appoint for the purposes of this sub-paragraph,
- (g) such number of ophthalmic opticians as the Secretary of State may appoint for the purposes of this sub-paragraph, and
- (h) such number of registered pharmacists as the Secretary of State may appoint for the purposes of this sub-paragraph.

2 A person appointed as the chairman or a deputy chairman shall be a practising—

- (a) advocate; or
- (b) solicitor,

of not less than ten years' standing.

3 Any appointment for the purposes of paragraph 1(c) above shall be made after consultation with such body as the Secretary of State may recognise as representative of Health Boards.

4 Any appointment for the purposes of any of sub-paragraphs (d) to (h) of paragraph 1 above shall be made after consultation with such organisations as the Secretary of State may recognise as representative of the profession or calling concerned.”

(3) After paragraph 7 there shall be added—

“8 (1) The functions of the Tribunal shall be exercised by three members consisting of—

- (a) the chairman or a deputy chairman,
- (b) a person appointed under paragraph 1(c) above, and
- (c) a person appointed under such one of sub-paragraphs (d) to (h) of paragraph 1 above as provides for the appointment of persons of the same profession or calling as that of the person concerned.

(2) In sub-paragraph (1)(c) above, the reference to the person concerned is—

- (a) in the case of functions under section 29, to the person to whom the representations in question relate,
- (b) in the case of functions under section 30 (or paragraph 6 of Schedule 15), to the person whose disqualification is under consideration,
- (c) in the case of functions under section 32A, to the person to whom the application in question relates, and
- (d) in the case of functions under section 32B, to the person in relation to whom the application of section 32A(3) may be continued.

(3) In the case of functions under section 32A or 32B, sub-paragraph (1) above is subject to section 32C(2)(b).”

Miscellaneous and supplementary

13 Orders in Council making corresponding provision for Northern Ireland

An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made for purposes corresponding to those of sections 1, 2, 5 and 6 above—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament), but
- (b) shall be subject to annulment in pursuance of a resolution of either House.

14 Short title, etc

- (1) This Act may be cited as the National Health Service (Amendment) Act 1995.
- (2) The enactments specified in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) Sections 1 to 12 above and subsection (2) above shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint; and different days may be so appointed for different purposes.
- (4) An order under subsection (3) above may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient in connection with the coming into force of this Act.
- (5) References in the amendments made by sections 2, 3 and 6 to a Health Authority or to Health Authorities shall, until 1st April 1996, be construed as references to a Family Health Services Authority or to Family Health Services Authorities.
- (6) This Act, except section 13 above, subsection (1) above and this subsection, does not extend to Northern Ireland.

Status: This is the original version (as it was originally enacted).

SCHEDULE

Section 14.

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1977 c. 49.	The National Health Service Act 1977.	<p>Section 46(3).</p> <p>In section 47, in subsection (1), the words “or the Secretary of State” and, in subsection (2), the words “or the Secretary of State, as the case may be,”.</p> <p>In section 49, in paragraph (a), the words “prescribing the procedure for the holding of”, “by the Tribunal or the Secretary of State”, “, and for the making and determining of appeals to the Secretary of State under that procedure,” “securing that”, “and, in the case of an inquiry by, or appeal to, the Secretary of State before a person appointed by the Secretary of State”, “or the person so appointed” and “, whether by the Tribunal or the person so appointed,”; in paragraph (b), the words “and on any person so appointed”; and, in paragraph (c), the words “and the Secretary of State”.</p>
1978 c. 49.	The National Health Service (Scotland) Act 1978.	<p>Section 29(4).</p> <p>In section 30, in subsection (1), the words “or the Secretary of State” and, in subsection (2), the words “or the Secretary of State, as the case may be,”.</p> <p>In section 32, in paragraph (a), the words “or the Secretary of State”, “and for the making and determining of appeals to the Secretary of State under that procedure,” “securing</p>

Status: This is the original version (as it was originally enacted).

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		that”, “and, in the case of an inquiry by, or appeal to, the Secretary of State, before a person appointed by the Secretary of State”, “or the person so appointed” where those words first occur, and “whether by the Tribunal or the person so appointed,”; in paragraph (b), the words “and on any person so appointed”; and, in paragraph (c), the words “and the Secretary of State”.
1995 c. 17.	The Health Authorities Act 1995.	In Schedule 1, paragraphs 34(c) and 63.