

HEALTH ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II - the National Health Service: Scotland

Section 58: Disqualification of practitioners for fraud etc.

317. *Section 58* substitutes new sections 29, 29A, 29B, 29C and 30 for sections 29 and 30 of the 1978 Act, as amended by the NHS (Amendment) Act 1995, mirroring changes being made to the equivalent English and Welsh provisions. Consequential amendments in Schedule 4 (paragraphs 49 to 53 and 64) amend sections 31, 32, 32A, 32B and 32D and paragraph 8 of Schedule 8 to the 1978 Act. These provisions give new powers to the NHS Tribunal to disqualify practitioners in the family health services who have caused or risked causing detriment to any health scheme by securing financial or other benefits to which they knew they were not entitled. (In addition to the NHS, a “health scheme” can include other publicly funded schemes such as the prison medical service and the defence medical service, where these have been prescribed by virtue of the power in new section 29(9)(b).)
318. The NHS Tribunal is an independent statutory body with strictly defined duties and powers. Its existing role is to decide whether the continued presence of a practitioner on the list of family health service contractors (either nationally or locally) would prejudice FHS efficiency and, where proven, to remove such practitioners from the list and, if it chooses, prevent them from being employed by other FHS practitioners. Such cases are defined as “efficiency cases” in new sections 29(6) and (11). The Tribunal is also able to suspend practitioners pending inquiries in order to protect patients.
319. Practitioners must join family health service lists to offer general medical, dental, ophthalmic or pharmaceutical services and representations to the Tribunal about removal from such lists are usually made by Health Boards. Section 58 gives effect to the recommendation in the Report of an Efficiency Scrutiny on Prescription Fraud, published in June 1997, that Health Authorities (and therefore, in Scotland, Health Boards) should have discretion to refuse to accept onto family health service lists practitioners found guilty of serious financial irregularity. This section enables Health Boards to make representations about such cases (defined as “fraud cases” at new sections 29(7) and (11)) to the NHS Tribunal and extends the Tribunal’s powers to deal with these.
320. *New section 29* gives the NHS Tribunal new powers to inquire into cases where it is alleged that a practitioner has acted in a way detrimental to any NHS service by securing, or attempting to secure, benefits to which he knew he was not entitled. This includes securing, or attempting to secure, benefits for another who the practitioner knows is not entitled to them. Detriment to a health service is defined in section 29(10) as including detriment not only to any patient, but also to another person working in that scheme.
321. *New section 29A* allows the Tribunal to disqualify pharmaceutical and ophthalmic bodies corporate from FHS lists where any director or, in the case of a pharmacy business, any person controlling the body corporate meets the condition for

disqualification, whether or not he was a director or person controlling the company at the time. It also provides for liability for the conduct of employees or deputies in fraud cases where the practitioner failed to take reasonable steps to prevent the acts or omissions concerned.

322. *New section 29B* sets out, for both efficiency and fraud cases, the sanctions the Tribunal already has in efficiency cases:
- to disqualify the practitioner from the list(s) in respect of which representations have been made;
 - to disqualify the practitioner from the corresponding lists of other Health Boards;
 - to make a declaration that the disqualified practitioner should not be engaged in any capacity connected with provision of family health services.
323. In fraud cases representations may also be made to the Tribunal in respect of applicants to family health service lists as well as those already on such lists (new section 29(2)(b)).
324. *New section 29C* contains a new power enabling the Tribunal to make a conditional disqualification in efficiency or fraud cases. It can make an order for disqualification which does not come into effect unless the practitioner breaches conditions which are also specified by the Tribunal. Where necessary, the Tribunal may vary the practitioner's terms of service and confer functions on the Health Board to give effect to the conditions.
325. *New section 30* provides that the Tribunal may review, where it considers appropriate, any declaration or disqualification, including the conditions attached to a conditional disqualification. It may also review them at the request of the disqualified practitioner or review conditions attached to a conditional disqualification at the request of a Health Board. It can then remove a disqualification, make it conditional, or, in the case of a conditional qualification, vary the conditions (e.g. where circumstances have changed) or make it unconditional (e.g. where the conditions have been breached). In fraud cases only, the Tribunal may also impose for the first time on review a disqualification from the lists of the Health Boards, or a declaration of unfitness.
326. The amended section 32A extends the Tribunal's current power of interim suspension to fraud cases. The Tribunal may direct suspension in order to prevent further fraud or prejudice to the investigation of the case or review (new section 32A(2A)(b)).
327. In addition to the NHS Tribunal in Scotland, there are separate NHS Tribunals under corresponding legislation in England and Wales, and in Northern Ireland. Decisions by any of the NHS Tribunals for national disqualification already apply automatically in each country. Section 31(1) now provides for a decision for total disqualification (a declaration of unfitness to practice) by the Tribunals for England and Wales, and for Northern Ireland to be recognised similarly (see paragraph 49 of Schedule 4 to the Act). New section 31(2) provides for the conditions specified in a conditional disqualification made by the Tribunal in England and Wales or in Northern Ireland to be translated for equivalent effect in Scotland. Schedule 4 to the Act also contains provisions for dealing with overlapping cases.