
 STATUTORY INSTRUMENTS

1974 No. 504 (S.39)

NATIONAL HEALTH SERVICE, SCOTLAND

**The National Health Service (Service Committees and Tribunal)
(Scotland) Regulations 1974**

<i>Made - - - -</i>	19th March 1974
<i>Laid before Parliament</i>	29th March 1974
<i>Coming into Operation</i>	1st April 1974

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In exercise of the powers conferred on me by the provisions set out in Column 1 of Schedule 4 to these regulations as amended by the provisions set out in Column 2 of the said Schedule and of all other powers enabling me in that behalf, and after consultation with the Council on Tribunals, I hereby make the following regulations:

PART I
GENERAL

Citation and commencement

1. These regulations may be cited as the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1974, and shall come into operation on 1 April 1974.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires:-

“the Act” means the National Health Service (Scotland) Act 1947(a);

“the Act of 1972” means the National Health Service (Scotland) Act 1972(b);

“area dental committee” means the committee of that name for the area of a Board recognised under section 16 of the Act of 1972;

“area medical committee” means the committee of that name for the area of a Board recognised under section 16 of the Act of 1972;

“area optical committee” means the committee of that name for the area of a Board recognised under section 16 of the Act of 1972 and may include a joint area optical committee recognised in terms of the National Health Service (Joint Ophthalmic Committees) (Scotland) Order 1974(c);

“area pharmaceutical committee” means the committee of that name for the area of a Board recognised under section 16 of the Act of 1972;

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

“Board” means the Health Board constituted for any area under section 13 of the Act of 1972;

“chairman” includes a deputy chairman acting in his place;

“chemist” means a registered pharmacist within the meaning of the Medicines Act 1968(d) who provides pharmaceutical services, or a person lawfully conducting a retail pharmacy business in accordance with section 69 of that Act who provides such services;

“dental officer” means any dental officer appointed by the Secretary of State for the purpose of advising the Secretary of State, Health Boards, the Scottish Dental Estimates Board and practitioners on questions arising in connection with general dental services;

“drugs” includes medicines and such chemical reagents as are included in a list for the time being approved by the Secretary of State for the purposes of section 40(1) of the Act;

“drug tariff” means the statement prepared by the Secretary of State under the General Services Regulations;

“enactment” includes a provision in a statutory instrument;

(a) 1947 c. 27. (b) 1972 c. 58. (c) S.I. 1974/503 (1974 I, p. 1788).. (d) 1968 c. 67.

“estimate” means a dental estimate form duly completed in the manner provided by or under the General Dental Regulations and in accordance with instructions for the completion of such form setting out a course of treatment for a patient;

“General Dental Regulations” means the National Health Service (General Dental Services) (Scotland) Regulations 1974(a);

“general dental practitioner” means a dental practitioner who provides general dental services;

“general medical practitioner” means a medical practitioner who provides general medical services;

“General Services Regulations” means the National Health Service (General Medical and Pharmaceutical Services) (Scotland) Regulations 1974(b);

“Joint Ophthalmic Committee” means a committee established in accordance with the National Health Service (Joint Ophthalmic Committees) (Scotland) Order 1974;

“lay member” means (a) in relation to the Board or Joint Ophthalmic Committee, a member who is not a registered medical practitioner, a registered dental practitioner, a registered pharmaceutical chemist, an ophthalmic medical practitioner or an optician and (b) in relation to a service committee, a member appointed by the Board or by the Joint Ophthalmic Committee who is not a registered medical practitioner, a registered dental practitioner, a registered pharmaceutical chemist, an ophthalmic medical practitioner or an optician;

“medical officer” means any medical practitioner in the service of the Secretary of State;

“ophthalmic medical practitioner” means a medical practitioner having the qualifications prescribed by the Ophthalmic Services Regulations;

“ophthalmic optician” and “dispensing optician” have the same meanings as in section 80(1) of the Act;

“Ophthalmic Services Regulations” means the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1974(c);

“optician” means an ophthalmic optician or a dispensing optician as the context may require;

“practitioner” means a medical or dental practitioner as the context may require;

“service committee” means a medical, pharmaceutical, dental or ophthalmic service committee or a joint services committee, as the context may require;

“the terms of service” means the terms of service for general medical practitioners contained in Part I of Schedule 1 to the General Services Regulations, the terms of service for chemists contained in Parts I and II of Schedule 3 to the General Services Regulations, the terms of service for general dental practitioners contained in Parts I, II and III of Schedule 1 to the General Dental Regulations, and the terms of service for ophthalmic medical practitioners, ophthalmic opticians and dispensing opticians con-

(a) S.I. 1974/505 (1974 I, p. 1842).

(b) S.I. 1974/506 (1974 I, p. 1869).

(c) S.I. 1974/507 (1974 I, p. 1912).

tained in Parts I, II, III and IV of Schedule 1 to the Ophthalmic Services Regulations as the case may be;

“treatment” in relation to general medical services has the same meaning as in the General Services Regulations and in relation to general dental services has the same meaning as in the General Dental Regulations;

“the Tribunal” means the Tribunal constituted under section 43 of the Act;

(2) Unless the context otherwise requires, references in these regulations to any enactment shall be construed as references to that enactment as amended or re-enacted by any subsequent enactment.

(3) The Interpretation Act 1889(a) shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament, and section 38 of that Act shall apply as if these regulations were an Act of Parliament and as if any regulations revoked by these regulations were Acts of Parliament repealed by an Act of Parliament.

(4) Without prejudice to the said section 38, any proceedings initiated or other things done under any regulations revoked by these regulations shall not be invalidated by such revocation and shall, in so far as they could have been initiated or done under any provision of these regulations, have effect as if they had been initiated or done under that provision.

PART II

PROVISIONS RELATING TO INVESTIGATIONS, DISPUTES, APPEALS, ETC.
MEDICAL, DENTAL AND PHARMACEUTICAL SERVICE COMMITTEES*Constitution of service committees*

3.—(1) Every Board shall establish a medical service committee, a pharmaceutical service committee, a dental service committee and a joint services committee.

- (2)(a) The medical service committee shall consist of a chairman appointed by the Board from its lay members and six other persons of whom three shall be appointed by the Board from the lay members of the Board, and three shall be general medical practitioners appointed by the area medical committee.
- (b) The pharmaceutical service committee shall consist of a chairman appointed by the Board from its lay members and six other persons of whom three shall be appointed by the Board from the lay members of the Board and three shall be chemists appointed by the area pharmaceutical committee.
- (c) The dental service committee shall consist of a chairman appointed by the Board from its lay members and six other persons of whom three shall be appointed by the Board from the lay members of the Board and three shall be general dental practitioners appointed by the area dental committee.
- (d) The joint services committee shall consist of a chairman appointed by the Board from its lay members and ten other persons of whom four shall be appointed by the Board from the lay members of the Board, two shall be appointed by the medical service committee from their members or deputies who are general medical practitioners, two shall be appointed by the dental service committee from their members or deputies who are general dental practitioners, and two shall be appointed by the pharmaceutical service committee from their members or deputies who are chemists.
- (e) Persons with like qualifications shall be appointed in the like manner to act as deputies for the chairman and members of any service committee and in the absence of a member a deputy appointed in the like manner shall be entitled to act in his place.
- (f) If members are not appointed to a committee by the appropriate area professional committee, the Board may arrange for them to be appointed by the area professional committee for an adjoining area.
- (g) For the purpose of any investigation in which a woman or a child under the age of sixteen is concerned the committee making the investigation shall include at least one woman lay member. If the committee as constituted for such an investigation does not include a woman lay member, the chairman shall nominate a woman lay member to act as deputy, and the lay member of the committee in whose place she shall act; such a deputy need not be a member of the Board.
- (h) When any matter stands referred under paragraphs (3) or (4) of regula-

tion 7 of these regulations to the joint services committee, the members of that committee appointed by the medical service committee shall not take part in the hearing unless the matter involves a question relating to a general medical practitioner, the members appointed by the dental service committee shall not take part in the hearing unless the matter involves a question relating to a general dental practitioner, and the members appointed by the pharmaceutical service committee shall not take part in the hearing unless the matter involves a question relating to a chemist.

(3) Prior to the commencement of a hearing before the committee, the chairman shall ask the members thereof whether any of them has a personal interest, either directly or indirectly, in a question coming before the committee. If in the opinion of the chairman any member is so interested, that member shall take no part in the hearing of the question, but a deputy appointed in the same manner may act in his place.

(4) If the chairman is absent the deputy chairman shall exercise and perform the powers and duties of the chairman; on all other occasions the deputy chairman shall be entitled to be present at, and take part in, the proceedings but shall not vote.

(5) The Board may make standing orders with respect to the term of office of the chairman, deputy chairman, members and deputy members of the committee:

Provided that the term of office of the chairman shall not exceed one year without prejudice to his eligibility for re-appointment.

Investigation of complaints by service committees

4. Subject as hereinafter provided, any complaint made by a person against a general medical practitioner in respect of an alleged failure to comply with the terms of service shall be investigated by the medical service committee, any complaint made by a person against a chemist in respect of an alleged failure to comply with the terms of service shall be investigated by the pharmaceutical service committee, and any complaint made by a person against a general dental practitioner in respect of an alleged failure to comply with the terms of service shall be investigated by the dental service committee.

Time limit for complaint and notice of complaint

5.—(1) A person desiring to make a complaint against a general medical practitioner or a chemist shall within six weeks after the matter which gave rise to the complaint came to the complainer's notice give written notice to the secretary of the Board stating the substance of the matter which it is desired to have investigated.

(2) A person desiring to make a complaint against a general dental practitioner shall within six months after completion of the treatment or within six weeks after the matter which gave rise to the complaint came to the complainer's notice, whichever is the sooner, give written notice to the secretary of the Board stating the substance of the matter which it is desired to have investigated.

Late complaints

6.—(1) A person desiring to make a complaint, who does not submit it within the period permitted by the preceding regulation, shall furnish to the secretary of the Board in addition to a written notice stating the substance of

the matter which it is desired to have investigated, a statement of the reasons for the failure to give such notice in time.

(2) Notwithstanding failure to give notice within the periods specified in regulation 5 the committee may investigate the matter if they are satisfied after considering the statement furnished under the preceding paragraph that such failure was occasioned by illness or other reasonable cause and either—

(a) in the case of a complaint against a general medical practitioner or chemist, the complaint is made within two months after the matter came to the complainer's notice, or

(b) in the case of a complaint against a general dental practitioner, the complaint is made within six months after the completion of the treatment or within two months after the matter came to the complainer's notice, whichever is the sooner, or

(c) the practitioner, or chemist, as the case may be, consents to the investigation taking place notwithstanding the failure to give notice in time, or

(d) the consent of the Secretary of State to the investigation has been obtained. In applying for such consent the committee shall furnish the Secretary of State and the practitioner or chemist with a copy of the said notice, a statement of the reasons for the failure to give notice in time and any further information which the Secretary of State may require, and the practitioner or chemist shall be entitled within fourteen days after the receipt by him of such statement or further information to forward to the Secretary of State a statement of the grounds on which he contends that the investigation should not take place. The Secretary of State shall, after considering the application and any statement in answer either dismiss the application or give his consent to the investigation of the matter by the committee.

(3) (a) Where the committee decide not to investigate nor to seek consent to investigate a complaint in accordance with the preceding paragraph they shall notify their decision and the reasons for it to the complainer and shall inform him of his right to apply to the Secretary of State to require the committee to investigate the matter and they shall also notify their decision and the reasons for it to the Secretary of State and furnish him with a copy of the written notice and statement referred to in paragraph (1).

(b) A complainer may within fourteen days of receipt of the notification of the committee's decision apply to the Secretary of State to require the committee to investigate the matter and shall furnish him with a statement of the reasons why he contends that such an investigation should take place.

(c) If the Secretary of State after considering an application together with the information submitted by the committee is of the opinion that there were no reasonable grounds for failure to give notice in time he may dismiss the application forthwith.

(d) The Secretary of State shall, unless he dismisses the application on the grounds aforesaid, send to the committee and to the practitioner or chemist, as the case may be, a copy of the statement furnished by the complainer. The committee and the practitioner or chemist, as the case may be, shall be entitled to submit to the Secretary of State, within such time as he may allow, a statement in answer to the application furnished by the complainer.

- (e) The Secretary of State shall after considering the application and any statement in answer together with the information submitted by the committee either dismiss the application or require the committee to investigate the matter.

Investigation of other matters by service committees

- 7.—(1) (a) Subject as hereinafter provided, the medical service committee in relation to general medical practitioners, the pharmaceutical service committee in relation to chemists and the dental service committee in relation to general dental practitioners shall investigate any matters referred to them by the Board, or any committee of the Board duly authorised in that behalf by the Board, relating to the administration of general medical, pharmaceutical or general dental services, whether or not any such matter has been raised on complaint:

Provided that no question which involves an allegation against a practitioner or chemist of a breach of the terms of service shall, without the consent of the Secretary of State or the practitioner or chemist concerned, be referred for investigation under this paragraph except in the case of a general medical practitioner or chemist within six weeks after the matter which gave rise to the allegation came to the notice of the referring body, or in the case of a general dental practitioner within six months after completion of the treatment or within six weeks after the matter which gave rise to the allegation came to the notice of the referring body, whichever is the sooner.

- (b) The provisions of regulation 6(2)(d) with reference to the procedure to be adopted on application for the consent of the Secretary of State shall with the necessary adaptations apply to any application for his consent under the preceding sub-paragraph.

(2) The pharmaceutical service committee shall perform such duties in connection with the testing of drugs and appliances as may be imposed on them by the scheme made for that purpose under the General Services Regulations.

(3) If in the opinion of the medical service committee any matter referred to that committee involves a question relating to a general dental practitioner or a chemist, or if in the opinion of the dental service committee any matter referred to that committee involves a question relating to a general medical practitioner or a chemist, or if in the opinion of the pharmaceutical service committee any matter referred to that committee involves a question relating to a general medical practitioner or a general dental practitioner, the committee shall, in lieu of dealing with the matter themselves, refer it to the joint services committee.

(4) Any matter which would otherwise be referred by the Board or any committee duly authorised in that behalf by the Board to the medical service committee, the pharmaceutical service committee or the dental service committee for investigation may, if the Board or committee are satisfied that it is appropriate to the joint services committee, be referred by them to that committee.

Procedure of service committees

8. Schedule 1 to these regulations shall apply with respect to the investigation of complaints by, and the procedure of, service committees and to the submission of reports to the Board.

Action by the Board

9. (1) When a report is submitted to the Board by a service committee, the Board shall accept as conclusive any findings of fact in that report and shall consider that report and any recommendations made by the service committee before reaching a decision which may include action in any one or more of the following ways:

- (a) If the investigation relates to the conduct of a general medical practitioner and the Board are satisfied, after consultation with the area medical committee, that owing to the number of persons included in his list the practitioner is unable to give adequate treatment to all those persons, they may impose a special limit on the number of persons for whom the practitioner may undertake to provide treatment, and in that event any number in excess of that limit shall be dealt with as though the list of the practitioner was by that number in excess of the general limit fixed for the list of practitioners in the area.
- (b) The Board may recover:
 - (i) from a general medical practitioner or chemist as the case may be, by a deduction from his remuneration or otherwise, any expenses (other than expenses incurred in connection with an investigation by the appropriate service committee) which have been reasonably and necessarily incurred by any person owing to the failure of the practitioner or chemist to comply with the terms of service, and any sum so recovered shall be paid to that person;
 - (ii) from a dental practitioner, by a deduction from his remuneration or otherwise, any expenses (other than expenses incurred in connection with an investigation by the service committee) reasonably and necessarily incurred or to be incurred by any person owing to the failure of the practitioner to comply with the terms of service, and any sum so recovered shall be paid to that person:

Provided that the maximum amount which may be recovered in respect of expenses incurred or to be incurred in obtaining further treatment shall not exceed the cost of such treatment so given calculated in accordance with the rate of remuneration in force for general dental services provided under the Act, and the amount so recovered may include any contribution towards the cost of the further treatment which may have been paid or be payable by the patient under the the National Health Service (Scotland) Acts 1947 to 1973(a).
- (c) The Board may make representations to the Secretary of State that, owing to the failure of the practitioner or chemist to comply with the terms of service, an amount should be withheld from his remuneration.
- (d) If the Board are of the opinion that the continued inclusion of the general medical practitioner on the medical list or of the chemist on the pharmaceutical list or of the general dental practitioner on the dental list would be prejudicial to the efficiency of the services in question, they may make representation to that effect to the Tribunal.
- (e) In the case of a general dental practitioner the Board may until further notice require the practitioner, in respect of any treatment other than an

examination or emergency treatment, to submit for prior approval to the Scottish Dental Estimates Board estimates in respect thereof.

(2) The Board shall furnish the parties to an investigation and the Secretary of State with a copy of the service committee's report and of the Board's decision together with their reasons for it as soon as may be after they have reached their decision and shall also inform the parties where appropriate of their right of appeal to the Secretary of State, in terms of the next following regulation, and of the power of the Secretary of State on such an appeal to award expenses.

Appeal to the Secretary of State from decision of the Board

10.—(1) Any party aggrieved by such decision shall be entitled to appeal to the Secretary of State by sending to him notice of appeal which shall contain a concise statement of the facts and contentions upon which the appellant intends to rely within one month from the date on which notification of the decision was received:

Provided that no appeal shall lie against a decision to take action under paragraph (1)(d) of the last preceding regulation.

(2) The Secretary of State may, on the application of any person desiring to appeal, extend the time for giving notice of appeal and may do so although the application is not made until after the expiration of one month from the date on which notice of the Board's decision was received.

(3) An application for an extension of time for giving notice of appeal must be made in writing to the Secretary of State stating the grounds for the application.

(4) If a Board decide to make a representation with regard to the continued inclusion in any list of the name of any practitioner or chemist and an appeal to the Secretary of State is made against their decision on other matters, the Secretary of State may treat as conclusive for the purpose of the appeal any relevant findings of the Tribunal.

Procedure on appeal to the Secretary of State

11.—(1) If the Secretary of State, after considering the notice of appeal including the statement of facts and contentions furnished by the appellant, is of opinion that the said notice and statement disclose no reasonable grounds of appeal or that the appeal is otherwise trivial or vexatious he may dismiss the appeal forthwith and inform the parties of his decision and of his reasons for the decision which shall be final and conclusive:

Provided that an appeal against a decision of the Board to take action under sub-paragraphs (a), (b), (c) or (e) of regulation 9(1) shall not be dismissed without a hearing unless the appellant does not desire such a hearing.

(2) The secretary of State shall, unless he dismisses the appeal on the ground aforesaid, send a copy of the notice of appeal and statement furnished by the appellant to the Board and to the person or persons, if any, who were parties to the proceedings before the service committee and who appear to him to be interested in the appeal, and in the event of a hearing the Board and any such person or persons may appear and take such part in the proceedings as the person or persons holding the hearing think proper. The Board shall be entitled to submit a statement to the Secretary of State in answer to the notice of appeal and statement furnished by the appellant, and the Secretary of State shall send to the appellant and to any parties who appear to him to have an interest in the appeal a copy of any statement so submitted.

(3) Subject to the proviso to paragraph (1) of this regulation, the Secretary of State may, if he is of opinion that the case is of such a nature that it can properly be determined without a hearing, dispense with a hearing and determine the appeal summarily and inform the parties of his decision and of his reasons for the decision which shall be final and conclusive.

(4) If the Secretary of State decides that the appeal shall be heard he shall fix a time and place for the hearing and shall give not less than fourteen days' notice thereof to the appellant, the Board and any other parties concerned.

(5) For the purpose of a hearing the Secretary of State shall appoint a person or persons, not exceeding three in number, and whether officers of the Secretary of State or not, to hold the hearing and report to him, and shall also appoint a fit person to act as clerk:

Provided that (a) where one of the parties to an appeal is a general medical practitioner or a general dental practitioner, the persons appointed to hear the appeal shall include a medical practitioner or a dental practitioner, as the case may be, selected by the Secretary of State from the panels of medical and dental practitioners referred to in paragraphs (3) and (5) of regulation 13 of these regulations and (b) where one of the parties to an appeal is a chemist, the persons appointed to hear the appeal shall include a chemist.

(6) The Secretary of State, after taking into consideration the report of the person or persons who have heard the appeal, shall give his decision informing the parties of his reasons for the decision which shall be final and conclusive.

(7) At any hearing—

(a) a party to the appeal shall be entitled to appear and be heard in person or by counsel or solicitor, or by any officer or member of any organisation of which he is a member, or by any member of his family, or by any friend;

(b) a Board or other body being a party to the appeal shall be entitled to appear and be heard by a member or by their secretary or other officer duly appointed for the purpose, or by counsel or solicitor.

Provisions as to hearing

12.—(1) The hearing of an appeal shall be in private and no person shall be admitted except the persons mentioned in the preceding regulation and such other persons who appear to the person or persons appointed to hear the appeal to have an interest.

(2) A party to any appeal shall not, except with the consent of the Secretary of State or, in the case of a hearing, of the person or persons before whom the hearing takes place, be entitled to rely upon any facts or contentions which do not appear to the Secretary of State or to the person or persons holding the hearing to have been raised before the service committee in the course of the proceedings in respect of which the appeal is brought:

Provided that this paragraph shall not apply in the case of a hearing if at least seven days before the hearing notice is given in writing to the Secretary of State or to the person or persons holding the hearing of any new facts or contentions upon which the party intends to rely; the Secretary of State or the persons or persons holding the hearing shall send copies of such new facts and contentions to the other parties to the appeal.

(3) The Board may, with the consent of the Secretary of State, make such contribution as they think fit, and shall if directed by the Secretary of State

make such contribution as he may determine, towards the expenses incurred in the appeal by any person present at the hearing.

(4) The provisions of the Tenth Schedule to the Act (which relate to the attendance of witnesses, orders as to expenses and other matters) shall apply to any hearing held under the preceding regulation as they apply to an inquiry held under the Act with the omission of paragraphs 1, 2 and 6 of the said Schedule.

Procedure on withholding money

13.—(1) If the Secretary of State is satisfied

- (a) after considering any report made by a service committee under paragraph 2(9) of Schedule 1 to these regulations and the decision of the Board thereon to the effect that there has been a breach of the terms of service, or the report of a person or persons appointed under paragraph (5) of regulation 11 of these regulations, or any report of the Tribunal after an inquiry under Part IV of these regulations, that a practitioner or chemist has failed or neglected to comply with the terms of service applicable to him; or
- (b) after considering the report of a medical officer that a general medical practitioner has failed to comply with paragraph 19 of the terms of service applicable to him; or
- (c) after considering the report of a dental officer that a dental practitioner has failed to keep records as required by the terms of service applicable to him;

he may direct any Board on whose list the practitioner is included to recover such amount as he thinks fit either by deduction from the remuneration of the practitioner or chemist or otherwise, and such sum shall be a debt due by the practitioner or chemist to the Board:

Provided that, except in cases in which the facts have already been the subject of an investigation in the course of an appeal made to the Secretary of State, the Secretary of State shall, before directing that any such amount shall be withheld, afford the practitioner or chemist concerned a reasonable opportunity of making representations to him on the matter.

- (2) (a) An advisory committee hereinafter referred to as the medical advisory committee shall be constituted for the purpose of assisting the Secretary of State in the discharge of his duties under this regulation in relation to general medical practitioners. Before directing the Board to withhold money in respect of an alleged breach of the terms of service applicable to practitioners the Secretary of State shall, where such breach is of a kind specified in the following sub-paragraph, and may in any other case, refer the matter to such committee and shall consider any report which they may make to him thereon.
- (b) Breaches of the terms of service to which the last preceding sub-paragraph of this regulation relates are failure to exercise reasonable skill and care in the treatment of a patient, failure to visit or treat a patient whose condition so requires, failure to order or supply any necessary drug or appliance for the use of a patient or failure to discharge the obligations imposed on a practitioner to give a patient the requisite assistance to enable him to obtain any treatment which is not within the scope of the practitioner's obligations under the terms of service.

(3) The medical advisory committee shall consist of a medical practitioner in the service of the Secretary of State, who shall act as chairman, and a medical practitioner selected by the Secretary of State from a panel of practitioners nominated by a body which is in his opinion representative of practitioners engaged in the provision of general medical services.

(4) An advisory committee hereinafter referred to as the dental advisory committee shall be constituted for the purpose of assisting the Secretary of State in the discharge of his duties under this regulation in relation to dental practitioners. Before directing the Board to withhold money in respect of a breach of the terms of service applicable to dental practitioners the Secretary of State shall, where such breach consists of failure to complete dental treatment satisfactorily, or failure to exercise reasonable care and skill in the dental treatment of a patient, and may in any other case, refer the case to such committee and shall consider any report which they may make to him thereon.

(5) The dental advisory committee shall consist of a dental practitioner in the service of the Secretary of State, who shall act as chairman, and a dental practitioner selected by the Secretary of State from a panel of practitioners nominated by a body which is in his opinion representative of practitioners engaged in the provision of general dental services.

Investigation of excessive prescribing by general medical practitioners

14.—(1) The area medical committee shall from time to time investigate the character and quantity of the drugs and appliances ordered or supplied by general medical practitioners for persons on their list (other than drugs and appliances so supplied for which payment is made on a capitation basis) and where it appears to the committee in the case of any general medical practitioner that by reason of the character or quantity of the drugs or appliances so ordered or supplied the cost is in excess of what was reasonably necessary for the adequate treatment of those persons, they shall make a report thereon to the Board, and the report shall state fully the facts of the case as ascertained by them and the grounds upon which their opinion is based, and shall contain a recommendation as to the sum, if any, which, in their opinion, might properly be recovered from the general medical practitioner:

Provided that before making a report to the Board the area medical committee shall furnish the general medical practitioner concerned with a statement indicating the grounds upon which they propose to make a report as aforesaid and shall afford him reasonable opportunity of appearing before and being heard by them or, if he thinks fit, of submitting to them any statement in writing.

(2) (a) If at any time it appears to the Board that the area medical committee have delayed or failed to carry out their duties under this regulation, the Board may, after giving not less than fourteen days' previous notice in writing to the area medical committee, appoint some fit and proper person or persons not exceeding two in number for the purpose of holding an investigation under this regulation and reporting to them, and the report of such person or persons shall stand referred to the medical service committee for consideration and for submission to the Board of a recommendation as to the action to be taken.

(b) The person or persons so appointed shall have the same powers and duties with respect to an investigation into the character and quantity of the drugs and appliances ordered or supplied by general medical practitioners as aforesaid as are conferred and imposed on the area medical committee, and shall be entitled to require the area medical

committee to furnish him or them with any relevant statistical or other information available to that committee.

(3) The Board shall consider the report of the area medical committee or, in the case where the Board have appointed a person or persons as aforesaid, the report of such person or persons and of the medical service committee, and if they are of opinion that the cost of the drugs or appliances ordered or supplied by a general medical practitioner is excessive by reason of their character or quantity, they may decide to recover from the general medical practitioner, by deduction from his remuneration or otherwise, such sum as they think fit.

(4) The Board shall send to the Secretary of State and to the practitioner copies of every report made by the area medical committee or by any person or persons appointed by the Board as aforesaid (including where any report is made by such person or persons the recommendation by the medical service committee) and shall inform the Secretary of State, the practitioner and the area medical committee of the decision of the Board thereon. The Board shall also inform the practitioner of his right of appeal to the Secretary of State, and of the power of the Secretary of State in such an appeal to award expenses.

(5) If at any time it appears to the Secretary of State that, notwithstanding the default of the area medical committee, the Board have not taken steps to cause an investigation to be made by a person or persons appointed by them as aforesaid, or if the Secretary of State is not satisfied that the obligations laid on the committee and the Board by this regulation have been adequately fulfilled, the Secretary of State may appoint a person or persons, not exceeding two in number, for the purpose of holding an investigation under this regulation, and the person or persons so appointed shall have the same powers and duties with respect to an investigation into the character and quantity of the drugs and appliances ordered or supplied by general medical practitioners as are conferred and imposed on the area medical committee, and shall be entitled to require the area medical committee and the Board to furnish them with any relevant statistical or other information available.

(6) Any report made by the person or persons so appointed shall be made to the Secretary of State, and if the Secretary of State is of opinion that the cost of the drugs or appliances ordered or supplied by any general medical practitioner is excessive owing to their being extravagant in character or quantity, he may direct that such sum as he thinks fit shall be recovered from the general medical practitioner by the Board, whether by deduction from his remuneration or otherwise, and the decision of the Secretary of State shall be final and conclusive.

Appeal on prescribing

15.—(1) The practitioner and the area medical committee shall be entitled to appeal to the Secretary of State against a decision of the Board under paragraph (3) of the immediately preceding regulation by sending to him notice of appeal within one month from the date on which the decision was received:

Provided that (a) where the Secretary of State is satisfied that in the exceptional circumstances of a particular case it is expedient to do so, he may entertain an appeal notwithstanding that notice has not been sent to him within this period; and (b) before the Secretary of State entertains an appeal where notice has not been sent to him within the period so specified he shall give the practitioner, or the area medical committee as the case may be, an opportunity of lodging representations that the appeal should not be entertained.

(2) The appellant shall furnish within such period as the Secretary of State may allow a concise statement of the facts and contentions upon which he intends to rely.

(3) The Secretary of State shall send a copy of the notice of appeal and of the statement furnished by the appellant to the Board and to the area medical committee or the practitioner, as the case may be, who shall be a party to the appeal.

(4) The Board shall be entitled to submit a statement to the Secretary of State in answer to the notice of appeal and statement furnished by the appellant, and the Secretary of State shall send to the appellant and to the other party to the appeal a copy of any statement so submitted.

(5) If the Secretary of State is of opinion that the case can properly be determined without a hearing he may dispense with a hearing and determine the appeal summarily and his decision shall be final and conclusive:

Provided that an appeal by a practitioner shall not be determined without a hearing unless the practitioner does not desire a hearing.

(6) If the Secretary of State decides that the appeal shall be heard he shall appoint a person or persons, not exceeding three in number, and whether officers of the Secretary of State or not, to hold the hearing and report to him, and shall also appoint a fit person to act as clerk. The person or persons appointed to hold the hearing may, if he or they think fit, proceed by way of re-hearing.

(7) The Secretary of State after taking into consideration the report of the person or persons who heard the appeal shall give his decision and the reasons for his decision which shall be final and conclusive.

(8) The provisions of paragraphs 4 and 7 of regulation 11 and regulation 12 of these regulations shall apply to appeals under paragraph (1) of this regulation.

Decision as to treatment for which fees may be charged by general medical practitioners

~~16.~~ (1) If any question arises, either in the course of an investigation by the medical service committee or otherwise as to whether any treatment given by a general medical practitioner to a patient is treatment for which he may demand or accept a fee or remuneration the question shall be referred to the area medical committee for determination, unless it is a question which arises in relation to sub-paragraph (1)(a) or (e) of paragraph 20 of the terms of service, or is a question whether a certificate is reasonably required by the patient under or for the purposes of any enactment.

(2) The area medical committee shall furnish the general medical practitioner concerned with a statement indicating the nature of the question referred to them under this regulation and shall afford him reasonable opportunity of appearing before and being heard by them, or if he thinks fit, of submitting to them any statement in writing. The committee shall also consider any representations made to them by the Board or the Secretary of State, and if the general medical practitioner appears before and is heard by them shall afford an opportunity to representatives of the Board and the Secretary of State of appearing before and being heard by them.

(3) The committee shall inform the general medical practitioner, the Board and the Secretary of State of their findings on the question referred to them.

(4) If the Board disagree with the findings of the committee, and in any other case where the Secretary of State so decides, the question shall be referred to referees appointed by the Secretary of State under this regulation for decision in accordance with the rules set out in Schedule 2 to these regulations; and the

decision of the referees, given after hearing such parties and taking such evidence as they think just, shall be final.

(5) The referees to be appointed by the Secretary of State for the purpose of this regulation shall be two practitioners, not being officers of the Secretary of State, together with a practising advocate or solicitor.

Determination of question whether a substance was a drug

17.—(1) Any question whether a substance supplied by a general medical practitioner or by a chemist on the prescription of a general medical practitioner was a drug for purposes of pharmaceutical services provided under the Act shall if the general medical practitioner concerned so desires in accordance with regulation 18 of these regulations and may, in any other case in which the Board or the Secretary of State think fit, be referred to the area medical committee, and the Board or the Secretary of State, as the case may be, shall inform the area pharmaceutical committee that the question has been so referred.

(2) The area medical committee shall furnish the general medical practitioner concerned with a statement indicating the question referred to them under this regulation and shall afford him reasonable opportunity of appearing before and being heard by them or, if he thinks fit, of submitting to them any statement in writing. The committee shall also consider any representations made to them by the Board or the Secretary of State, and if the general medical practitioner appears before and is heard by them shall afford an opportunity to representatives of the Board and the Secretary of State of appearing before and being heard by them.

(3) The committee shall inform the general medical practitioner, the Board and the Secretary of State of their findings.

(4) If the general medical practitioner or the Board are dissatisfied with the findings of the committee and inform the Secretary of State accordingly within one month from the date on which they were informed of the findings, the Secretary of State shall and if he is dissatisfied with the findings of the committee may, refer the question for decision to a referee or referees appointed by him under this regulation.

(5) The referee or referees to be appointed by the Secretary of State for the purpose of this regulation shall be a person or persons, not exceeding three in number and not being an officer or officers of the Secretary of State, of whom at least one shall be a general medical practitioner.

Recovery of cost of substance held not to be a drug

18.—(1) If a Board are of opinion that any substance supplied by a general medical practitioner or chemist was not a drug for purposes of pharmaceutical services provided under the Act, the Board shall in respect of such substance recover from the general medical practitioner, by deduction from his remuneration or otherwise, a sum calculated in accordance with the method set forth in the drug tariff for calculating the payment for drugs and preparations not specified therein:

Provided that if any such substance was an ingredient in a preparation of which other ingredients were such drugs as aforesaid, the sum to be recovered shall be the price of that substance calculated as aforesaid, together with half the amount of the dispensing fee payable in respect of the supply of the preparation.

(2) Before recovering any such sum the Board shall, unless it has already been decided in accordance with the last foregoing regulation that the substance supplied in that case was not such a drug, bring the question to the general medical practitioner's notice in writing and inquire whether he desires it to be referred for decision under that regulation; and if the general medical practitioner within one week after the receipt of such notice informs the Board that he desires the question to be so referred, the Board shall refer it to the area medical committee and the provisions of regulation 17 shall apply accordingly.

Appeal from Scottish Dental Estimates Board

19.—(1) Any person aggrieved by a decision of the Scottish Dental Estimates Board concerning the treatment of a patient or the fees payable to a practitioner shall be entitled to appeal by sending to the Secretary of State notice of appeal within one month from the date on which notice of the decision of the Scottish Dental Estimates Board was received by that person:

Provided that where in the opinion of the Secretary of State no dispute arises as to the category of the treatment for the purposes of Determination 1 of the Statement of Dental Remuneration published by the Secretary of State pursuant to the General Dental Regulations, no appeal shall lie against a decision of the Scottish Dental Estimates Board refusing a request from a practitioner for a fee higher than the fee, or maximum fee, prescribed by the said Determination in respect of that treatment.

(2) The notice of appeal shall contain a concise statement of the facts and contentions upon which the appellant intends to rely:

Provided, however, that where an appeal is heard by referees under the provisions of paragraph (4) hereof, the appellant may rely upon facts and contentions not contained in the statement submitted by him.

(3) Where in the opinion of the Secretary of State the appeal is against a refusal of the Scottish Dental Estimates Board to approve an estimate for treatment or appliances provided or to be provided for a person on the ground that such services are not of a type that can be supplied as part of general dental services, the appeal shall be determined by the Secretary of State in such manner as he shall think fit.

(4) In other cases the Secretary of State shall appoint as referees two dental practitioners, of whom one shall be selected from a panel of dental practitioners referred to in paragraph (5) of regulation 13 of these regulations. The referees shall hear the representations of the appellant and the Scottish Dental Estimates Board and determine the appeal in accordance with any relevant provisions of these and the General Dental Regulations or the Statement of Dental Remuneration including any provisions prescribing maximum fees.

Investigation of excessive dental treatment

20.—(1) Where it appears to the Secretary of State after an investigation of a number of the dental estimate forms submitted by a dental practitioner to the Scottish Dental Estimates Board that, by reason of the character and volume of the treatment (not being treatment for which the prior approval of the said Board is required under the General Dental Regulations) for which the practitioner has claimed payment, there is a *prima facie* case for considering that the practitioner has regularly provided excessive dental treatment, the Secretary of State may refer the matter for consideration to the area dental committee or to a joint committee of two or more area dental committees

constituted in such manner as he may approve, and any reference in this regulation to the committee shall be construed as including any such joint committee.

(2) For the purpose of this regulation "excessive dental treatment" means treatment which is in excess of what was reasonably necessary to secure the dental fitness of the persons concerned, or which involved the Board in cost in excess of what was reasonably necessary to secure the proper treatment of those persons.

(3) Where a case has been referred to the committee under the preceding paragraph, the committee shall furnish the practitioner concerned with a statement indicating the matters on which an explanation is required and shall afford him reasonable opportunity of appearing before and being heard by them, or, if he thinks fit, of submitting to them any statement in writing; and a representative or representatives of the Secretary of State shall be entitled, in the event of a hearing, to attend and be heard by the committee.

(4) After considering the case the committee shall decide whether the practitioner has in their opinion regularly provided excessive dental treatment, and where they so decide, they shall inform the Board, the practitioner and the Secretary of State of their decision. The committee shall also inform the practitioner of his right of appeal to the Secretary of State.

(5) The practitioner shall be entitled to appeal against the decision of the committee by sending to the Secretary of State notice of appeal within one month from the date on which notice of the committee's decision was received. The Secretary of State shall appoint as referees persons (not exceeding three in number and not being officers of the Secretary of State) of whom at least one shall be a dental practitioner, who shall hear and determine the appeal. They shall have power to determine the appeal by a majority.

(6) If the Secretary of State is dissatisfied with the decision of the committee in any case referred to them under paragraph (1) of this regulation, he shall appoint as referees persons to hear and determine the matter in the manner provided in the last preceding paragraph; and the provisions of that paragraph, including those relating to the persons to be appointed, shall apply accordingly.

(7) Where the committee or the referees, as the case may be, decide that the practitioner has regularly provided excessive dental treatment, the practitioner shall be required by the Secretary of State to submit to the Scottish Dental Estimates Board for prior approval estimates in respect of all or any specific treatment (other than examination or emergency treatment) for a period of 12 months from such date as the Secretary of State may notify to him (not being earlier than one month from the date on which notice of the decision is received).

(8) A practitioner who is subject to a prior approval requirement under this regulation may, at any time 6 months after the receipt of the notification of the Secretary of State under paragraph (6) of this regulation, apply to the Secretary of State for a direction that the requirement should be terminated before the period of 12 months has elapsed. Any such application shall state the grounds on which it is made. The Secretary of State shall request the comments of the Board and the committee on the application and the observations of the practitioner on such comments, if any, before giving such decision as he thinks fit.

Power of area medical and pharmaceutical committees to consider complaints

21. (1) The area medical committee shall have power to consider any

complaint being a complaint relating to the efficiency of the general medical services made to them by any medical practitioner against a medical practitioner practising in the area for which the committee is constituted.

(2) The area pharmaceutical committee shall have power to consider any complaint being a complaint relating to the efficiency of the pharmaceutical services made to them by any chemist against a chemist carrying on business in the area for which the committee is constituted.

PART III

PROVISIONS RELATING TO INVESTIGATIONS, DISPUTES, APPEALS ETC
OPHTHALMIC SERVICE COMMITTEE*Interpretation*

22. In this Part of these regulations, unless the context otherwise requires:—
“appropriate Board” means the Board for the area in which the premises of the ophthalmic medical practitioner or optician who is concerned in an investigation are situated;
“appropriate Committee” means the Joint Ophthalmic Committee established for the group of areas in which the said area is included;
“ophthalmic list” means a list of ophthalmic medical practitioners, ophthalmic opticians and dispensing opticians prepared by a Joint Ophthalmic Committee under regulation 6 of the National Health Service (General Ophthalmic Services) (Scotland) Regulations, 1974(a).

Constitution of ophthalmic service committee

- 23.—(1) Every Joint Ophthalmic Committee shall establish an ophthalmic service committee.
- (2) (a) The ophthalmic service committee shall consist of a chairman appointed by the Joint Ophthalmic Committee from its lay members and six other members of whom three members shall be appointed by the Joint Ophthalmic Committee from the lay members appointed to the Joint Ophthalmic Committee by the constituent Boards, one member, who shall be an ophthalmic medical practitioner, shall be appointed by the area medical committees for the areas of the constituent Boards, and two members, of whom one shall be an ophthalmic optician and the other a dispensing optician, shall be appointed by the area optical committee or committees for such areas.
- (b) Persons with like qualifications shall be appointed in the like manner to act as deputies for the chairman and members and in the absence of a member a deputy appointed in the like manner shall be entitled to act in his place.
- (c) For the purpose of any investigation in which a woman or a child under the age of sixteen is concerned the committee making the investigation shall include at least one woman lay member. If the committee as constituted for such an investigation does not include a woman lay member, the chairman shall nominate a woman lay member to act as deputy, and the lay member of the committee in whose place she shall act; such a deputy need not be a member of the Joint Ophthalmic Committee.
- (3) Prior to the commencement of a hearing before the ophthalmic service committee, the chairman shall ask the members thereof whether any of them has a personal interest, either directly or indirectly, in a question coming before the committee. If in the opinion of the chairman any member is so interested, that member shall take no part in the hearing of the question, but a deputy appointed in the same manner may act in his place.

(a) S.I. 1974/507 (1974 I, p. 1912).

(4) If the chairman is absent the deputy chairman shall exercise and perform the powers and duties of the chairman; on all other occasions the deputy chairman shall be entitled to be present at, and take part in, the proceedings but shall not vote.

(5) The Joint Ophthalmic Committee may make standing orders with respect to the term of office of the chairman, members and deputy members of the ophthalmic service committee:

Provided that the term of office of the chairman shall not exceed one year without prejudice to his eligibility for re-appointment.

Investigation of complaints by ophthalmic service committee

24. Subject as hereinafter provided, any complaint made by a person against an ophthalmic medical practitioner or optician in respect of an alleged failure to comply with the terms of service shall be investigated by the ophthalmic service committee.

Time limit for complaint and notice of complaint

25. A person desiring to make a complaint against an ophthalmic medical practitioner or optician shall within six weeks after the matter which gave rise to the complaint came to the complainer's notice give written notice to the secretary of the Joint Ophthalmic Committee or to the secretary of the Board for the area in which that person is resident stating the substance of the matter which it is desired to have investigated.

Late complaints

26.—(1) A person desiring to make a complaint, who does not submit it within the period permitted by the preceding regulation, shall furnish to the secretary of the Committee or to the secretary of the appropriate Board, in addition to a written notice stating the substance of the matter which it is desired to have investigated, a statement of the reasons for the failure to give such notice in time.

(2) Notwithstanding failure to give notice within the period specified in regulation 25, the ophthalmic service committee may investigate the matter if they are satisfied after considering the statement furnished under the preceding paragraph that such failure was occasioned by illness or other reasonable cause and either—

- (a) the complaint is made within two months after the matter came to the complainer's notice, or
- (b) the ophthalmic medical practitioner or optician as the case may be consents to the investigation taking place notwithstanding the failure to give notice in time, or
- (c) the consent of the Secretary of State to the investigation has been obtained. In applying for such consent the ophthalmic service committee shall furnish the Secretary of State and the ophthalmic medical practitioner or optician with a copy of the said notice, a statement of the reasons for the failure to give notice in time and any further information which the Secretary of State may require, and the ophthalmic medical practitioner or optician shall be entitled within fourteen days after the receipt by him of such statement or further information to forward to the Secretary of State a statement of the grounds on which he contends that the investigation should not take place. The Secretary of State shall, after

considering the application and any statement in answer, either dismiss the application or give his consent to the investigation of the matter by the committee.

- (3) (a) Where the ophthalmic service committee decide not to investigate nor to seek consent to investigate a complaint in accordance with the preceding paragraph they shall notify their decision to the complainer and shall inform him of his right to apply to the Secretary of State to require the committee to investigate the matter and they shall also notify their decision and the reasons for it to the Secretary of State and furnish him with a copy of the written notice and statement referred to in paragraph (1).
- (b) A complainer may within fourteen days of receipt of the notification of the ophthalmic service committee's decision apply to the Secretary of State to require the committee to investigate the matter and shall furnish him with a statement of the reasons why he contends that such an investigation should take place.
- (c) If the Secretary of State after considering an application together with the information submitted by the committee is of opinion that there were no reasonable grounds for failure to give notice in time he may dismiss the application forthwith.
- (d) The Secretary of State shall, unless he dismisses the application on the grounds aforesaid, send to the ophthalmic service committee and to the ophthalmic medical practitioner or optician, as the case may be, a copy of the statement furnished by the complainer. The ophthalmic service committee and the ophthalmic medical practitioner or optician, as the case may be, shall be entitled to submit to the Secretary of State, within such time as he may allow, a statement in answer to the application furnished by the complainer.
- (e) The Secretary of State shall after considering the application and any statement in answer together with the information submitted by the committee either dismiss the application or require the ophthalmic service committee to investigate the matter.

Investigation of other matters by the ophthalmic service committee

- 27.—(1) (a) Subject as hereinafter provided, the ophthalmic service committee shall investigate any matters referred to them by the Joint Ophthalmic Committee or by any Board, or any committee of the Board duly authorised in that behalf by the Board relating to the administration of general ophthalmic services, whether or not any such matter has been raised on complaint:

Provided that no question which involves an allegation against an ophthalmic medical practitioner or optician of a breach of the terms of service shall, without the consent of the Secretary of State or the ophthalmic medical practitioner or optician concerned, be referred for investigation under this paragraph except within six weeks after the matter which gave rise to the allegation came to the notice of the referring body.

- (b) The provisions of regulation 26(2)(c) with reference to the procedure to be adopted on application for the consent of the Secretary of State shall with the necessary adaptations apply to any application for his consent under the preceding sub-paragraph.

(2) Where a complaint, or a matter referred to the ophthalmic service committee, involves a question relating to an ophthalmic medical practitioner and a dispensing optician, or to an ophthalmic optician and a dispensing optician, or to an ophthalmic medical practitioner and an ophthalmic optician, the service committee shall if the practitioner and optician or opticians concerned so agree investigate the matter in relation to both persons at the same time.

Procedure of ophthalmic service committee

28. Schedule 1 to these regulations shall apply with respect to the investigation of complaints by, and the procedure of, the ophthalmic service committee and to the submission of reports to the Joint Ophthalmic Committee.

Action by the Joint Ophthalmic Committee

29.—(1) When a report is submitted to the Joint Ophthalmic Committee by the ophthalmic service committee, the Joint Ophthalmic Committee shall accept as conclusive any findings of fact in that report and shall consider that report and any recommendations made by the service committee before reaching a decision which may include action in any one or more of the following ways:—

- (a) The Committee may make a recommendation to the appropriate Board to recover from the ophthalmic medical practitioner or optician as the case may be, by deduction from his remuneration or otherwise, any expenses (other than expenses incurred in connection with an investigation by the ophthalmic service committee) which have been reasonably and necessarily incurred by any person owing to the failure of the ophthalmic medical practitioner or optician to comply with the terms of service, and the Board shall give effect to such recommendation and any sum so recovered shall be paid to that person.
- (b) The Committee may make representations to the Secretary of State that, owing to the failure of the ophthalmic medical practitioner or optician to comply with the terms of service, an amount should be withheld from his remuneration.
- (c) If the Committee are of the opinion that the continued inclusion of the ophthalmic medical practitioner or optician on the ophthalmic list of the Committee would be prejudicial to the efficiency of the services in question, they may make representation to that effect to the Tribunal.

(2) The Joint Ophthalmic Committee shall furnish the parties to an investigation and the Secretary of State with a copy of the ophthalmic service committee's report and of the Committee's decision together with their reasons for it as soon as may be after they have reached their decision and shall also inform the parties where appropriate of their right of appeal to the Secretary of State, in terms of the next following regulation, and of the power of the Secretary of State on such an appeal to award expenses.

Appeal to the Secretary of State from decision of the Joint Ophthalmic Committee

30.—(1) Any party aggrieved by such decision shall be entitled to appeal to the Secretary of State by sending to him notice of appeal which shall contain a concise statement of the facts and contentions upon which the appellant intends to rely within one month from the date on which notification of the decision was received:

Provided that no appeal shall lie against a decision to take action under paragraph 1(c) of the last preceding regulation.

(2) The Secretary of State may, on the application of any person desiring to appeal, extend the time for giving notice of appeal and may do so although the application is not made until after the expiration of one month from the date on which notice of the Committee's decision was received.

(3) An application for an extension of time for giving notice of appeal must be made in writing to the Secretary of State stating the grounds for the application.

(4) If a Joint Ophthalmic Committee decide to make a representation with regard to the continued inclusion in any list of the name of any ophthalmic medical practitioner or optician and an appeal to the Secretary of State is made against their decision on other matters, the Secretary of State may treat as conclusive for the purpose of the appeal any relevant findings of the Tribunal.

Procedure on appeal to the Secretary of State

31.—(1) If the Secretary of State, after considering the notice of appeal including the statement of facts and contentions furnished by the appellant, is of opinion that the said notice and statement disclose no reasonable grounds of appeal or that the appeal is otherwise trivial or vexatious, he may dismiss the appeal forthwith and inform the parties of his decision and of his reasons for the decision which shall be final and conclusive:

Provided that an appeal against a decision of the Joint Ophthalmic Committee to take action under sub-paragraphs (a) or (b), of regulation 29(1) shall not be dismissed without a hearing unless the appellant does not desire such a hearing.

(2) The Secretary of State shall, unless he dismisses the appeal on the ground aforesaid, send a copy of the notice of appeal and statement furnished by the appellant to the Joint Ophthalmic Committee and to the person or persons, if any, who were parties to the proceedings before the ophthalmic service committee and who appear to him to be interested in the appeal, and in the event of a hearing the Joint Ophthalmic Committee and any such person or persons may appear and take such part in the proceedings as the person or persons holding the hearing think proper. The Joint Ophthalmic Committee shall be entitled to submit a statement to the Secretary of State in answer to the notice of appeal and statement furnished by the appellant, and the Secretary of State shall send to the appellant and to any parties who appear to him to have an interest in the appeal a copy of any statement so submitted.

(3) Subject to the proviso to paragraph (1) of this regulation, the Secretary of State may, if he is of opinion that the case is of such a nature that it can properly be determined without a hearing, dispense with a hearing and determine the appeal summarily and inform the parties of his decision and of his reasons for the decision which shall be final and conclusive.

(4) If the Secretary of State decides that the appeal shall be heard he shall fix a time and place for the hearing and shall give not less than fourteen days' notice thereof to the appellant, the Joint Ophthalmic Committee and any other parties who may be concerned.

(5) For the purpose of a hearing the Secretary of State shall appoint a person or persons, not exceeding three in number, and whether officers of the Secretary of State or not, to hold the hearing and report to him, and shall also appoint a fit person to act as clerk:

Provided that where one of the parties to an appeal is an ophthalmic medical practitioner, an ophthalmic optician or a dispensing optician the persons

appointed to hear the appeal shall include an ophthalmic medical practitioner, an ophthalmic optician or a dispensing optician, as the case may be, selected by the Secretary of State from the appropriate panel of practitioners and opticians nominated by organisations which are in his opinion representative of the appropriate profession.

(6) The Secretary of State, after taking into consideration the report of the person or persons who have heard the appeal, shall give his decision informing the parties of his reasons for the decision which shall be final and conclusive.

(7) At any hearing—

(a) a party to the appeal shall be entitled to appear and be heard in person or by counsel or solicitor, or by any officer or member of any organisation of which he is a member, or by any member of his family, or by any friend;

(b) a Joint Ophthalmic Committee or other body being a party to the appeal shall be entitled to appear and be heard by a member or by their secretary or other officer duly appointed for the purpose, or by counsel or solicitor.

Provisions as to hearing

32.—(1) The hearing of an appeal shall be in private and no person shall be admitted except the persons mentioned in the preceding regulation and such other persons who appear to the person or persons appointed to hear the appeal to have an interest.

(2) A party to any appeal shall not, except with the consent of the Secretary of State or, in the case of a hearing, of the person or persons before whom the hearing takes place, be entitled to rely upon any facts or contentions which do not appear to the Secretary of State or to the person or persons holding the hearing to have been raised before the ophthalmic service committee in the course of the proceedings in respect of which the appeal is brought:

Provided that this paragraph shall not apply in the case of a hearing if at least seven days before the hearing notice is given in writing to the Secretary of State or to the person or persons holding the hearing of any new facts or contentions upon which the party intends to rely; the Secretary of State or the person or persons holding the hearing shall send copies of such new facts and contentions to the other parties to the appeal.

(3) The Joint Ophthalmic Committee may, with the consent of the Secretary of State, make such contribution as they think fit, and shall if directed by the Secretary of State make such contributions as he may determine, towards the expenses incurred in the appeal by any person present at the hearing.

(4) The provisions of the Tenth Schedule to the Act (which relate to the attendance of witnesses, orders as to expenses and other matters) shall apply to any hearing held under the preceding regulation as they apply to an inquiry held under the Act with the omission of paragraphs 1, 2 and 6 of the said Schedule.

Procedure on withholding money

33. If the Secretary of State is satisfied after considering any report made by an ophthalmic service committee under paragraph 2(9) of schedule 1 to these regulations and the decision of the Joint Ophthalmic Committee thereon to the

effect that there has been a breach of the terms of service, or the report of a person or persons appointed under paragraph (5) of regulation 31 of these regulations, or any report of the Tribunal after an inquiry under Part IV of these regulations that an ophthalmic medical practitioner or optician has failed or neglected to comply with the terms of service applicable to him, he shall inform the Joint Ophthalmic Committee of his decision and may direct the appropriate Board to recover such amount as he thinks fit either by deduction from the remuneration of the ophthalmic medical practitioner or optician or otherwise; and such sum shall be a debt due by the ophthalmic medical practitioner or optician to the Board:

Provided that, except in cases in which the facts have already been the subject of an investigation in the course of an appeal made to the Secretary of State, the Secretary of State shall, before directing that any such amount shall be withheld, afford the ophthalmic medical practitioner or optician concerned a reasonable opportunity of making representations to him on the matter.

Investigation of excessive prescribing of optical appliances

34.—(1) The Joint Ophthalmic Committee shall from time to time examine the forms which have been completed by an ophthalmic medical practitioner or an ophthalmic optician after testing the sight of persons applying for general ophthalmic services, and where it appears to the Committee that, by reason of the number of optical appliances and type of lenses prescribed in relation to the number of sight tests undertaken and to the degree of refractive error detected, the cost incurred by the appropriate Board is materially in excess of what was reasonably necessary for the adequate treatment of those persons, they shall prepare a report thereon stating fully the facts of the case as ascertained by them, the grounds upon which their opinion is based and their decision, which may include a requirement that a sum should be recovered from the ophthalmic medical practitioner or the ophthalmic optician as the case may be:

Provided that before making the report the Committee shall furnish the ophthalmic medical practitioner or the ophthalmic optician concerned with a statement indicating the grounds on which an investigation has appeared necessary and shall afford him reasonable opportunity of appearing before and being heard by them or, if he thinks fit, of submitting to them any statement in writing.

(2) The Committee shall send to the Secretary of State copies of every report made by them under this regulation.

(3) The Committee shall inform the appropriate Board and the ophthalmic medical practitioner or ophthalmic optician, as the case may be, of any decisions made by them, and the ophthalmic medical practitioner or ophthalmic optician shall be entitled to appeal against the decision of the Committee to the Secretary of State, and the foregoing provisions of these regulations relating to the procedure on appeal from a decision of the Committee made under regulation 29 and to the hearing and expenses of the appeal shall apply.

(4) If the Secretary of State is not satisfied that the obligations laid on the Committee by this regulation have been adequately fulfilled, he may appoint a person or persons, not exceeding two in number, for the purpose of holding an investigation under this regulation, and the person or persons so appointed shall have the same powers and duties in respect of the investigation into the number of optical appliances and type of lenses prescribed in relation to the number of sight tests undertaken and to the degree of refractive error detected, as are conferred and imposed on the Committee, and shall be entitled to require the Committee to furnish any relevant statistics or other information available.

(5) Any report made by the person or persons so appointed shall be made to the Secretary of State, and if he is of the opinion that, by reason of the number of optical appliances and type of lenses prescribed in relation to the number of sight tests undertaken and to the degree of refractive error detected, the cost incurred is materially in excess of what was reasonably necessary for the adequate treatment of persons whose sight was tested, he may direct that such sum as he thinks fit shall be recovered from the ophthalmic medical practitioner or ophthalmic optician, as the case may be, by the appropriate Board and the decision of the Secretary of State shall be final and conclusive.

(6) Where the decision of the Committee includes a requirement or where the decision of the Secretary of State, either on appeal or under the last preceding paragraph, contains a direction that a sum should be recovered from an ophthalmic medical practitioner or ophthalmic optician, as the case may be, the appropriate Board shall recover such sum whether by deduction from his remuneration or otherwise; and such sum shall be a debt due by the ophthalmic medical practitioner or ophthalmic optician to the appropriate Board.

Power of area medical and optical committees to consider complaints

35.—(1) The area medical committee shall have power to consider any complaint being a complaint relating to the efficiency of the general ophthalmic services made to them by any ophthalmic medical practitioner against an ophthalmic medical practitioner practising in the area for which the committee is constituted.

(2) The area optical committee shall have power to consider any complaint being a complaint relating to the efficiency of the general ophthalmic services made to them by any optician against an optician practising in the area for which the committee is constituted.

PART IV

INQUIRIES IN CONNECTION WITH REPRESENTATIONS TO THE TRIBUNAL

Interpretation and forms

36.—(1) In this Part of these regulations, unless the context otherwise requires:—

“inquiry” means an inquiry held in accordance with the provisions of this Part of these regulations;

“representation” means a representation made to the Tribunal that the continued inclusion of a general medical practitioner in any medical list or a chemist in any pharmaceutical list or a dental practitioner in any dental list or an ophthalmic medical practitioner or optician in any ophthalmic list would be prejudicial to the efficiency of the general medical, pharmaceutical, general dental or general ophthalmic services as the case may be;

“application” means an application made to the Tribunal or the Secretary of State by a practitioner, a chemist, an ophthalmic medical practitioner or an optician for a direction that he should no longer be disqualified for inclusion in any list or lists to which a still effective direction by the Tribunal or the Secretary of State relates, and “applicant” shall be construed accordingly;

“complainer” means any person or body making a representation to the Tribunal;

“respondent” means in the case of a representation any practitioner, chemist or optician against whom a representation is made, and, in the case of an application, any person or body upon whose representation the direction to which the application relates was made.

(2) The forms set out in Schedule 3 to these regulations or forms substantially to the like effect shall be used in all cases to which these forms are applicable.

Term of office of members of Tribunal

37. The chairman of the Tribunal shall hold office during the pleasure of the Lord President of the Court of Session, and the other members shall hold office during the pleasure of the Secretary of State.

Officers of Tribunal

38. The chairman of the Tribunal shall appoint a person approved by the Secretary of State to act as clerk to the Tribunal and shall also appoint such other officers as may be necessary.

Terms of representation

39. A representation shall contain a concise statement (Form 1) of the alleged facts and grounds on which it is based, and also a list of all the documents which the complainer proposes to put in evidence, and it shall be signed by or on behalf of the complainer and sent to the clerk to the Tribunal.

Power to require verification of representation

40. The Tribunal may, if they think fit, require the complainer to verify the allegations contained in the representation by statutory declaration, or where a fact is not within the personal knowledge of the complainer to state the source of his information and the grounds for his belief in its truth and to furnish such other particulars as the Tribunal may think necessary.

Power to refuse inquiry

41. If it appears to the Tribunal after due consideration of any representation other than a representation made by a Board or a Joint Ophthalmic Committee, that no good cause has been shown why an inquiry should be held, they may refuse to hold an inquiry, and shall inform the complainer accordingly.

Notices to be sent in case of inquiry

42. The Tribunal shall in all cases where an inquiry is to be held following a representation send to the complainer a notice (Form 3) informing him that an inquiry is to be held and they shall also forthwith send (Form 2) a copy of the representation to the respondent, together with a notice (Form 3) informing him that an inquiry is to be held into the representation, and that he may, if he so desires, within a time specified in the notice, by a statement in writing addressed to the clerk to the Tribunal, admit or dispute the truth of all or any of the allegations appearing in the representation.

Amendment of representation

43. The Tribunal may, at any time before the conclusion of the inquiry, allow the representation to be amended upon such conditions as they may think just.

Right of respondent to inspect documents

44.—(1) The respondent may on giving due notice in writing to the complainer inspect, either personally or by an agent authorised in writing, the documents included in the list contained in the representation, and the complainer shall give reasonable facilities for the purpose.

(2) The respondent shall be entitled on making application to the Tribunal, either personally or by an agent, to make a copy of any document in that list at the office of the Tribunal or such other place as they may appoint, and the Tribunal may, for the purpose of enabling the respondent or his agent to make copies of any such documents, require the complainer to deposit with them, within a specified time, any of the documents for copies of which application has been made, and shall return the documents to the complainer as soon as may be.

Power to treat representation as withdrawn in certain cases

45. If the complainer fails to comply with any requirement of this Part of these regulations, the Tribunal may treat the representation as having been withdrawn.

Notice of inquiry to be given

46.—(1) The Tribunal shall appoint a day for the holding of the inquiry, and shall not less than fourteen days before the appointed day send notices (Form 3) to the complainer and the respondent informing them of the date, time and place of the inquiry.

(2) The Tribunal shall also send to any other Board or Joint Ophthalmic Committee on whose medical, dental or pharmaceutical or ophthalmic list the name of the respondent appears, notice (Form 4) of the date, time and place of the inquiry, and each such Board or Joint Ophthalmic Committee may appear and take such part in the proceedings at the inquiry as the Tribunal shall think proper.

Power to postpone inquiry

47. The Tribunal may, if they think fit, or on the application of either party, postpone the date for the holding of the inquiry.

Withdrawal of representation

48.—(1) The complainer may at any time before the inquiry, with the consent of the Tribunal and on such terms as they think fit, withdraw the representation by giving notice of withdrawal in writing to the clerk to the Tribunal.

(2) Where the representation has been withdrawn or is treated by the Tribunal as having been withdrawn, the Tribunal shall forthwith inform the respondent accordingly.

Appearances and evidence

49.—(1) Any Board, Joint Ophthalmic Committee or other body (whether corporate or unincorporate) entitled to appear at the inquiry may be represented by counsel or solicitor or by their secretary, clerk or other officer duly appointed for the purpose and they or their representatives may call witnesses and produce other evidence.

(2) The complainer (not being one of the bodies mentioned above) and the respondent may appear at the inquiry in person or may each be represented by counsel or solicitor or by any officer or member of any organisation of which he is a member, or by any member of his family or by any friend; and he or his representative may call witnesses and produce other evidence.

Procedure at inquiry

50.—(1) The proceedings at an inquiry following a representation shall be held in private unless the respondent has applied for the inquiry to be held in public but otherwise the procedure at the inquiry shall be within the discretion of the Tribunal.

(2) The Tribunal may adjourn the inquiry from time to time as they think fit, and hold adjourned sittings at such time and place as may appear to them suitable.

(3) The Tribunal may if they think fit call for such documents and examine such witnesses as appear to them likely to afford evidence relevant and material to the issue, although not tendered by either party.

Provisions as to inquiry

51. The provisions of the Tenth Schedule to the Act (which relate to the attendance of witnesses, orders as to expenses and other matters) shall apply to any inquiry or hearing held under this Part of these regulations as they apply to an inquiry held under the Act, with the substitution of the Tribunal for the Secretary of State and the omission of paragraphs 1, 2 and 6 of the said Schedule.

Procedure in regard to applications for re-instatement on list

52.—(1) An application shall be in writing signed by or on behalf of the applicant and addressed to the clerk to the Tribunal.

(2) Every application shall contain a concise statement of the alleged facts and grounds upon which it is based and a list of the documents which the applicant proposes to put in evidence.

(3) The clerk to the Tribunal shall send to the respondent a copy of the application and of the list of documents which the applicant proposes to put in evidence, but nothing in this regulation shall preclude an applicant, with the consent of the Tribunal, from putting in evidence a document not included in such list.

(4) If it appears to the Tribunal, after due consideration of any application, that no good cause has been shown why an inquiry should be held, they may refuse to hold an inquiry and shall inform the applicant accordingly, but if the Tribunal decide to hold an inquiry in connection with an application, they shall send a notice that it is proposed to hold such an inquiry to the applicant and to the respondent.

(5) The Tribunal shall appoint a day for the holding of the inquiry and not less than fourteen days before the appointed day the Tribunal shall give notice of the date, place and time of the inquiry to the applicant and the respondent, and the respondent may appear and take such part in the proceedings at the inquiry as the Tribunal think proper.

(6) The applicant may at any time before the inquiry, with the consent of the Tribunal and on such terms as the Tribunal think fit, withdraw his application by giving notice of withdrawal in writing to the clerk to the Tribunal and on receipt of such notice of withdrawal the Tribunal shall give such notices as they may think fit.

(7) Regulations 44 (Rights of respondent to inspect documents), 47 (Power to postpone inquiry), 49 (Appearances and evidence), 50 (Procedure at inquiry) and 51 (Provisions as to inquiry) shall have effect with any necessary modifications in respect of an inquiry held by the Tribunal under this regulation.

(8) Subject to the following provisions of this regulation, the foregoing provisions of this regulation shall with any necessary modifications apply in respect of the Secretary of State and of persons appointed by him to hold an inquiry in respect of an application as they apply in respect of the Tribunal.

(9) Regulations 56 (1) and (3) shall apply in respect of an application to the Secretary of State as if the references (however expressed) to hearing the appeal were references to the holding of an inquiry in connection with an application, as if the references to the appellant were references to the applicant and as if the reference to the complainer were deleted, but the Secretary of State shall not be required to refer a report received by him under this regulation to the medical or dental advisory committee.

(10) Regulation 60 (Attendance by member of Council on Tribunals) shall apply in respect of an inquiry under section 26 of the Health Services and Public Health Act 1968 held by a person appointed by the Secretary of State.

Power to dispense with oral hearing

53. Notwithstanding anything in this Part of these regulations, where the grounds on which any representation is based consist solely of an allegation that the respondent has been convicted of a criminal offence and he admits the truth of such allegation, the Tribunal may, with the consent of the respondent, dispense with an oral inquiry and determine the case upon such documentary evidence as may be submitted to them.

Report by Tribunal

54. (1) At the conclusion of the inquiry the Tribunal shall, as soon as may be,

issue a statement under the hand of the chairman containing their findings of fact, the conclusion which they have reached and such directions as they may give under sub-sections (3) and (5) of section 43 of the Act and any order they may decide to make with respect to the expenses of the parties.

(2) The Tribunal shall send a copy of such statement to the Secretary of State, the respondent and the complainer or the applicant, as the case may be, and at the same time shall in the case of an inquiry following a representation inform the respondent of his right of appeal to the Secretary of State against any direction given by them for the removal of his name from any list. The Secretary of State shall send a copy of the statement to such Boards or Joint Ophthalmic Committees, as appear to him to be concerned.

Appeal to the Secretary of State

55.—(1) The respondent in an inquiry following a representation may appeal to the Secretary of State by submitting to him notice of appeal within one month from the date on which a copy of the statement issued by the Tribunal was served on him, or within such further time as the Secretary of State may allow.

(2) The notice of appeal shall contain a concise statement of the facts and contentions upon which the appellant intends to rely. The Secretary of State shall send a copy of the appeal and statement to the complainer and to such Boards or Joint Ophthalmic Committees as appear to him to be concerned.

Procedure on appeal

56.—(1) The Secretary of State shall appoint a person to hear the appeal and report thereon to him. He shall also appoint:—

- (a) where the appellant is a general medical practitioner, a practitioner from the panel of medical practitioners referred to in regulation 13 of these regulations; or
- (b) where the appellant is a chemist, a registered pharmacist; or
- (c) where the appellant is a dental practitioner, a dental practitioner from the panel of dental practitioners referred to in regulation 13 of these regulations; or
- (d) where the appellant is an ophthalmic medical practitioner or an optician a person belonging to the same branch of the service as the appellant;

for the purpose of assisting the person hearing the appeal.

(2) Regulations 44, 46, 47, 49, 50 and 51 of these regulations shall, with the necessary modifications, apply to the hearing of appeals under this regulation in like manner as to an inquiry.

(3) The Secretary of State shall consider the report made by the person hearing the appeal, and in the case of a medical or dental practitioner any recommendation made by the medical or dental advisory committee constituted under regulation 13 of these regulations (to whom he shall refer such report), and shall thereafter give his decision, and shall send a notice thereof to the appellant, the Tribunal, the complainer and such Boards or Joint Ophthalmic Committees as may appear to him to be concerned.

(4) The appellant may, at any time before the day appointed for the hearing, withdraw the appeal by giving notice of such withdrawal in writing to the Secretary of State. When an appeal has been withdrawn the Secretary of State shall forthwith confirm the direction of the Tribunal.

Publication of decisions of Tribunal etc

57. The Secretary of State shall publish in such manner as he thinks fit notice of any decision by the Tribunal or by him under section 43 of the Act, or of the imposition or removal of any disqualification imposed by virtue of subsection (6) of the said section (which provides for the removal from lists in Scotland of persons who have been disqualified for inclusion in similar lists in England and Wales or Northern Ireland).

PART V

MISCELLANEOUS

Service of notices, etc

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

- (a) in the case of the Secretary of State, by delivering it to him or sending it by registered post or recorded delivery addressed to him at St. Andrew's House, Edinburgh;
- (b) in the case of the Tribunal, any Board or Joint Ophthalmic Committee or any committee, by delivering it to their clerk or secretary, or sending it by registered post or recorded delivery addressed to them at their office, or if they have no office at the usual or last known address of their clerk or secretary;
- (c) in the case of a practitioner, chemist or optician by delivering it to him or sending it by registered post or recorded delivery addressed to him at any address set opposite his name in the medical, pharmaceutical, dental or ophthalmic list, as the case may be, of the Board or Joint Ophthalmic Committee concerned;
- (d) in the case of any other person, by delivering it to him or sending it by registered post or recorded delivery addressed to him at his usual or last known address.

(2) Where a party to any investigation, appeal or inquiry is represented by a solicitor it shall be a sufficient compliance with this regulation if the notice or document is sent by post addressed to the solicitor at his professional address.

(3) Until the contrary is proved, any notice or document sent as aforesaid shall be deemed to be served at the time at which a letter would be delivered in the ordinary course of post.

Power to dispense with requirements as to notices

59. The Secretary of State or the Tribunal may dispense with any requirements of these regulations respecting notices, applications, documents or otherwise in any case where it appears to the Secretary of State or the Tribunal just and proper to do so.

Attendance by member of Council on Tribunals

60. Nothing in these regulations shall prevent a member of the Council on Tribunals or of the Scottish Committee thereof in that capacity from attending any hearing before the Tribunal, a service committee, a Board or a Joint Ophthalmic Committee when the Board or Committee are considering reports of service committees, or a hearing held under regulation 11, 30 or 56.

PART VI
REVOCATION

Revocation of regulations

61. Each of the regulations mentioned in column 1 of Schedule 5 to these regulations is hereby revoked to the extent specified in relation thereto in column 3 of the said Schedule.

(Sgd.) *William Ross*
One of Her Majesty's Principal
Secretaries of State.

St. Andrew's House,
Edinburgh.
19th March 1974.

SCHEDULE 1

RULES OF PROCEDURE UNDER REGULATIONS 8 AND 28

Procedure of service committees

1.—(1) Where under the provisions of the regulations any question or matter is required to be investigated by any medical, pharmaceutical, dental or ophthalmic service committee, the following procedure shall apply.

(2) The secretary of the Board or of the Joint Ophthalmic Committee shall as soon as practicable send to the chairman of the appropriate service committee a copy of the complainer's statement. If in the opinion of the chairman the statement made by the complainer discloses no *prima facie* ground of complaint, or is trivial or vexatious, the secretary shall so inform the complainer and shall invite him to submit within fourteen days a further statement in amplification of his complaint. If no further statement is submitted by the complainer within that period, or if the statement so submitted does not in the opinion of the chairman render a hearing of the case necessary, the case shall be brought before the committee which shall have power to dispense with a hearing and to report on the matter forthwith.

(3) If, however, the chairman considers that the complainer's statement discloses reasonable grounds for believing that the practitioner, chemist or optician may have failed to comply with the terms of service, the secretary shall send to the said practitioner, chemist or optician a copy of the complainer's statement and invite him to submit comments within four weeks or such longer period as the committee may allow. The secretary shall send to the complainer a copy of any comments made by the practitioner, chemist or optician and shall give the complainer a period of fourteen days in which to make observations on those comments. The secretary shall inform both the complainer and the practitioner, chemist or optician that copies of any documents including written comments or observations submitted in connection with a complaint may be furnished to the other party and may be produced in evidence at a hearing of the case if one is held.

(4) If, having considered comments made by the practitioner, chemist or optician and any observations made by the complainer thereon, the chairman is of the opinion that a hearing of the case is unnecessary the case shall be brought before the committee which shall have power to dispense with a hearing and to report on the matter forthwith.

(5) If the secretary receives from the practitioner, chemist or optician no comments on the complainer's statement within the period allowed under the provisions of subparagraph (3), or if such comments have been received and after considering them and any observations made by the complainer thereon the Chairman is of the opinion that a hearing is desirable, the secretary shall arrange a hearing.

(6) The secretary shall give to both parties and to the secretary of the area medical, pharmaceutical, dental or optical committee as the case may be, not less than fourteen days' notice of the meeting at which the case will be heard.

(7) The chairman may, upon the application of either party, postpone the hearing if he is satisfied that the attendance of the party or any witness on the date fixed for the hearing is not reasonably practicable or if for any other reason he thinks fit.

(8) The secretary shall seven clear days before the hearing supply to each

member of the committee, to the secretary of the appropriate area professional committee, to the Scottish Committee of the Council on Tribunals and to the parties concerned in the complaint, copies of any relevant correspondence and reports.

Procedure at a hearing

2.—(1) Subject to the following provisions the procedure at the hearing shall be such as the committee may determine.

(2) The quorum shall consist in the case of any medical service committee of the chairman together with one lay member and one medical member, in the case of any pharmaceutical service committee of the chairman together with one lay member and one pharmaceutical member, in the case of any dental service committee of the chairman together with one lay member and one dental member, and in the case of any ophthalmic service committee of the chairman together with one lay member and a member belonging to the same branch of the service as the respondent.

(3) Either party shall be entitled to be present at the hearing and to give and call such evidence as the committee may think relevant to the matter at issue, and may put questions relevant to the matter in dispute to the other party or to any witness called by him either directly or, if the committee so direct, through the chairman of the committee.

(4) If either party fails to appear at the hearing and the committee are satisfied that his absence is due to illness or other reasonable cause or if for any other reason the committee think fit, they may adjourn the hearing.

(5) Either party to an investigation shall be entitled to be assisted in the presentation of his case by some other person:

Provided that no paid advocate and no person who is a counsel or solicitor, whether or not practising as such, shall conduct the case as a representative for any party by addressing the committee or examining or cross-examining witnesses.

(6) The proceedings at the hearing before the committee shall be private and no person shall be admitted to those proceedings except:—

- (a) the parties to the investigation and any persons assisting them;
- (b) a practitioner, chemist or optician authorised by the area medical, pharmaceutical, dental or optical committee, whichever is concerned;
- (c) persons whose attendance is required for the purpose of giving evidence and who shall, unless the committee otherwise direct, be excluded from the hearing except when they are actually giving evidence;
- (d) such officers of any Board concerned or of the Joint Ophthalmic Committee as may be appointed for the purpose; and
- (e) any member of the Council on Tribunals or the Scottish Committee thereof.

(7) If in the course of a hearing the complainer introduces any issue which in the opinion of the chairman was not sufficiently disclosed in the written statement or statements sent to the respondent, it shall be within the discretion of the chairman to admit or exclude such issue as he thinks fit, but if the issue is admitted the hearing will be adjourned unless the respondent requests that the hearing should proceed and the chairman agrees thereto.

(8) When all the evidence has been heard and any closing submissions have been made all persons referred to in sub-paragraph (6) above except the officers of the Board or Joint Ophthalmic Committee shall withdraw:

Provided that if the committee and both parties agree any member of the Council on Tribunals or the Scottish Committee thereof present in that capacity at the hearing may remain during consideration of the report which the committee are to make under the provisions of the next following sub-paragraph.

(9) The committee shall thereafter draw up a report stating such relevant facts as appear to them to be established by the evidence placed before them and the inferences which in their opinion may properly be drawn from the facts, together with a recommendation as to the action, if any, which should be taken, and shall present the report to the Board or in the case of an ophthalmic service committee to the Joint Ophthalmic Committee. In presenting such report to the Board or Joint Ophthalmic Committee the committee may in cases where they infer a breach of the terms of service draw the attention of the Board or Joint Ophthalmic Committee to any previous reports based on a finding of a breach of the terms of service in connection with the practitioner, chemist or optician and to any action taken by the Secretary of State on such reports and may recommend that account should be taken thereof by the Board or the Joint Ophthalmic Committee in reaching their decision.

(10) The chairman shall have a vote in the case of equality of votes but otherwise shall not be entitled to vote.

(11) Where a case has been opened before any committee and the meeting is adjourned for the purpose of hearing further evidence or of preparing or considering the report, a member of the committee who was not present at the meeting shall not be entitled to be present or take part in the proceedings at the adjourned meeting, and it shall not be necessary for the secretary to send him notice of such meeting.

(12) Notwithstanding anything herein contained a service committee, where a hearing is required and where, in consequence of difficulties of securing the attendance of witnesses owing to distance or inadequacy of means of communication or other special circumstances, they are of opinion that such hearing should be held at a place outwith the town in which the office of the Board is situated, or in the case of an ophthalmic service committee in which the meetings of the committee are normally held, may delegate to three of their number, of whom one shall be the chairman or the deputy chairman, one shall be selected from the lay members of the committee, and one shall be selected from the members of the committee belonging to the same branch of the service as the respondent appointed by the area medical committee, the area dental committee, the area pharmaceutical committee or the area optical committee as the case may be, to take the hearing and to draw up a report stating such relevant facts as appear to them to be established by the evidence placed before them and the inferences which in their opinion may properly be drawn from the facts:

Provided that:—

- (a) in the case of an investigation by the joint services committee the delegation shall be to four members, of whom one shall be the chairman or the deputy chairman, one shall be selected from the lay members of the committee and, in the case of a question relating to
 - (i) a general member practitioner and a chemist, one medical member and one pharmaceutical member;
 - (ii) a chemist and a general dental practitioner, one pharmaceutical member and one dental member;

(iii) a general medical practitioner and a general dental practitioner, one medical member and one dental member.

(b) instead of delegating as aforesaid the committee may, if owing to special circumstances they consider such a course to be justified, and subject to the consent of the Secretary of State, delegate to their chairman or deputy chairman to take the hearing and to draw up the report.

(13) When such a report is presented to the committee they shall accept as conclusive any findings of fact and shall otherwise deal with the case as if they themselves had conducted the hearing.

(14) The provisions of sub-paragraph (12) of this paragraph shall apply with the necessary modifications to enable the committee to delegate to the chairman or the deputy chairman or others to take the evidence of one or more witnesses who for medical or other sufficient reasons cannot attend a hearing and whose evidence the committee consider essential.

3. The foregoing provisions of this schedule shall apply to cases which are referred to any medical, pharmaceutical, dental or ophthalmic service committee by the Board or Joint Ophthalmic Committee or by any other committee, with such modifications as the circumstances may require.

Procedure of joint services committees

4. Where any question is referred to any joint services committee the procedure of the joint services committee shall be similar to that of service committees with such modifications as are rendered necessary by the inclusion of a third party except that a quorum shall consist of the chairman together with one lay member and, in the case of a question relating to

(i) a general medical practitioner and a chemist, one medical member and one pharmaceutical member;

(ii) a chemist and a general dental practitioner, one pharmaceutical member and one dental member;

(iii) a general medical practitioner and a general dental practitioner, one medical member and one dental member.

Interpretation

5. In these rules, unless the context otherwise requires:

“chairman” includes a deputy chairman acting in his place;

“member” includes a deputy member acting in the place of a member;

“lay member” in relation to a service committee or the joint services committee means a member appointed by the Board or by the Joint Ophthalmic Committee not being a medical or dental practitioner, a chemist, an ophthalmic medical practitioner or an optician;

“medical member”, “pharmaceutical member” or “dental member” of a service committee means a member appointed by the area medical, pharmaceutical or dental committee, as the case may be, and in the case of a joint services committee a member appointed by and from the medical, pharmaceutical or dental members of the medical, pharmaceutical or dental service committee.

SCHEDULE 2

RULES OF PROCEDURE UNDER REGULATION 16

1. Where a Board and an area medical committee fail to agree as to the decision of any question under the provisions of regulation 16—

- (1) The Board shall prepare and submit to the committee a written statement of the facts in connection with which the question has arisen and of the decision given by the Board and the grounds on which the decision is based.
- (2) The committee shall, as soon as may be after receipt of the said statement, furnish to the Board a written statement of the decision given by the committee and the grounds on which the decision is based and shall inform the Board whether it concurs in the statement of facts prepared by the Board and, if not, in what respects it does not concur in that statement.
- (3) The Board shall send the statements prepared by the Board and the committee to the Secretary of State and he may, if he thinks fit, require both or either of the said bodies to furnish to him further particulars either with regard to the facts of the case or the decision or the grounds of the decision.

2. Where the Secretary of State thinks fit to refer for decision to referees any question on which the Board and the committee are agreed, the Secretary of State may require either or both of the said bodies to furnish written statements of the facts in connection with which the question has arisen and of their decision and the grounds on which the decision is based, and the Secretary of State shall inform the body or bodies furnishing such statements whether he concurs in the statement of facts contained therein and, if not, in what respect and on what grounds he does not concur therein.

3. The Secretary of State shall furnish copies of all such documents to each of the referees appointed by him for the purpose of deciding the question.

4. If the referees on consideration of such documents are of the opinion that the question referred to them is similar to a question previously determined by referees under regulation 16 they may dispense with a hearing and determine the case summarily.

5. Except in a case in which the referees dispense with a hearing in accordance with the last foregoing rule the Secretary of State shall fix the time and place of the hearing and shall give not less than twenty-one days' notice thereof to the Board and the committee.

6. Each body shall be entitled to appear at the hearing by the chairman, clerk or secretary of the body or by counsel or solicitor, and the Secretary of State may appear by one of his officers, and the bodies and the Secretary of State may produce such evidence as in the opinion of the referees may be relevant to the matters at issue.

7. The referees shall, as soon as may be after the hearing or after determining a case summarily, report their decision to the Secretary of State.

SCHEDULE 3

FORMS FOR USE IN PROCEEDINGS BEFORE TRIBUNAL

Form 1

National Health Service (Scotland) Act, 1947
Representation

To the Tribunal constituted in terms of section 43 of the above Act
Representation of

(1), Complainer,
against

(2), Respondent,
a* on the† list of the

(3) Health Board/
Joint Ophthalmic Committee.

The Complainer represents:—

That the continuance of the respondent upon the said†
list is prejudicial to the efficiency of the‡ services
provided under Part IV of the Act.

The facts and grounds on which the representation is based are as follows:—

(4)

In support of this representation the complainer proposes to put in evidence
the following documents:—

(5)

Signed

Dated

* State whether respondent is a general medical, ophthalmic medical, or dental practitioner,
a chemist or an ophthalmic or dispensing optician.
† State whether medical, pharmaceutical, dental or ophthalmic list.
‡ State whether general medical, pharmaceutical, general dental or general ophthalmic.

Form 2

National Health Service (Scotland) Act, 1947

Notice to* of representation
Representation of

....., Complainer,
against

....., a* Respondent,
To of

I am directed by the Tribunal constituted under section 43 of the above Act to send you a copy of a representation that your continuance on the† list of the Health Board/Joint Ophthalmic Committee is prejudicial to the efficiency of the‡ services provided under Part IV of the Act, which representation was received by the Tribunal from of setting out the alleged facts and grounds on which it is based, and containing a list of all the documents proposed to be put in evidence. It is proposed to hold an inquiry with reference to the above representation. Notice of the date appointed for the holding of the inquiry will be sent to you in due course.

You may, if you so desire, inform the Tribunal, by statement in writing addressed to me within days after receipt of this notice, whether you admit or dispute in whole or in part the truth of the alleged facts and grounds.

You are further entitled to inspect any of the documents mentioned in the above list, either personally or by an agent authorised in writing, on giving due notice to the above-named and, by applying to the Tribunal for that purpose, to be allowed to make copies of any of the said documents.

A copy of the National Health Service (Service Committees and Tribunal (Scotland) Regulations, 1974 is enclosed for your information.

Signed.....
Clerk to the Tribunal

Dated.....

* State whether respondent is a general medical, ophthalmic medical, or dental practitioner, a chemist, or an ophthalmic or dispensing optician.

† State whether medical, pharmaceutical, dental or ophthalmic list.

‡ State whether general medical, pharmaceutical, general dental or general ophthalmic.

Form 3

National Health Service (Scotland) Act, 1947

Notice to complainer or*.....of day appointed for holding of inquiry.
Representation of

.....
against

....., a*

To of

With further reference to the representation made by you with respect
by.....

to the above-named,

of with respect to you,

Take notice that the Tribunal constituted under section 43 of the above Act will on day, the day of 19.. at.....^{a.m.} at....._{p.m.} hold an inquiry to investigate the said representation.

Signed.....
Clerk to the Tribunal

Dated.....

* State whether respondent is a general medical, ophthalmic medical, or dental practitioner, a chemist, or an ophthalmic or dispensing optician.

Form 4

National Health Service (Scotland) Act, 1947

Notice of inquiry to be sent to any other Health Board/Joint Ophthalmic Committee
Representation of

.....
against

....., a*
To the Health Board/Joint Ophthalmic Committee.
Take notice that a representation has been made by the above-named
..... to the Tribunal constituted under section 43
of the above Act to the effect that the continuance of the above-named
..... on the†
list of the Health Board/Joint Ophthalmic
Committee would be prejudicial to the efficiency of the‡
..... services provided under Part IV of the Act.

You are hereby informed that an inquiry to investigate the said representation
will be held by the Tribunal on day, the day of
19....., at a.m. at
.....
and that you are entitled to appear and take such part in the proceedings as the
Tribunal shall think proper.

Signed.....
Clerk to the Tribunal

Dated.....

* State whether respondent is a general medical, ophthalmic medical or dental practitioner,
a chemist, or an ophthalmic or dispensing optician.
† State whether medical, pharmaceutical, dental or ophthalmic list.
‡ State whether general medical, pharmaceutical, general dental or general ophthalmic.

SCHEDULE 4

PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

Column 1 <i>Enactment conferring power</i>		Column 2 <i>Relevant amending enactment</i>
The National Health Service (Scotland) Act 1947(a)	Section 34	The National Health Service (Amendment) Act 1949(b), Section 10 and Schedule, Part II
	Section 39	The National Health Service (Scotland) Act 1972(c), Schedule 6, Part I
	Section 40	—
	Section 42	The National Health Service Reorganisation Act 1973(d), Schedule 4
	Section 43 and Schedule 8	The National Health Service (Amendment) Act 1949, Sections 14(4) and 21 The Health Services and Public Health Act 1968(e), Section 19 and Schedule 4 The National Health Service (Scotland) Act 1972, Schedule 6, Part I and Schedule 7
	Section 72	The National Health Service (Amendment) Act 1949, Section 20 The Health Services and Public Health Act 1968, Section 26 The National Health Service (Scotland) Act 1972, Schedule 6, Part I
The National Health Service (Scotland) Act 1972	Section 13 and Schedule 1	The National Health Service (Scotland) Act 1972, Schedule 6, Part I
	Section 62	—

(a) 1947 c. 27. (b) 1949 c. 93. (c) 1972 c. 58. (d) 1973 c. 32. (e) 1968 c. 46.

SCHEDULE 5

REGULATIONS REVOKED

Column 1	Column 2	Column 3
The National Health Service (General Dental Services) (Scotland) Regulations 1948	S.I. 1948/1257 (Rev. XV, p. 910 1948 I, p. 2354)	The whole of the regulations
The National Health Service (Medical and Pharmaceutical Service Committees and Tribunal) (Scotland) Regulation 1948	S.I. 1948/1259 (Rev. XV, p. 887 1948 I, p. 2455)	The whole of the regulations
The National Health Service (General Dental Services and Fees) (Scotland) Amendment Regulations 1950	S.I. 1950/1945 (1950 I, p. 1443)	The whole of the regulations
The National Health Service (General Dental Services) (Scotland) Amendment Regulations 1951	S.I. 1951/2057 (1951 I, p. 1415)	The whole of the regulations
The National Health Service (Scotland) (Service of Documents) Regulations 1962	S.I. 1962/1977 (1962 III, p. 2424)	The whole of the regulations
The National Health Service (Council on Tribunals) (Scotland) Regulations 1964	S.I. 1964/23 (1964 I, p. 19)	The whole of the regulations
The National Health Service (Tribunal for General Ophthalmic Services) (Scotland) Regulations 1972	S.I. 1972/827 (1972 II, p. 2659)	The whole of the regulations
The National Health Service (Joint Ophthalmic Services Committees) (Scotland) Regulations 1972	S.I. 1972/828 (1972 II, p. 2662)	Part III of the regulations

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations are a consolidation of the National Health Service (Medical and Pharmaceutical Service Committees and Tribunal) (Scotland) Regulations 1948 (as amended) and of Part VI of the National Health Service (General Dental Services) (Scotland) Regulations 1948 (as amended) and of Part III of the National Health Service (Joint Ophthalmic Services Committees) (Scotland) Regulations 1972 and make a number of amendments. The Chairman of a service committee in the case of medical, dental and pharmaceutical committees is appointed by the Health Board; in the case of an ophthalmic service committee he is appointed by the Joint Ophthalmic Committee. A complainer is given a right to apply to the Secretary of State to require a service committee to investigate a late complaint. Provision is made for the investigation of excessive dental treatment. Provision is also made for a doctor, dentist, chemist or optician who has been disqualified from inclusion on any medical, dental, pharmaceutical or ophthalmic list, as the case may be, to apply to the Tribunal or to the Secretary of State for the removal of that disqualification. Other amendments are consequential on the National Health Service reorganisation or are of a minor nature.

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