

1990 No. 538

NATIONAL HEALTH SERVICE, ENGLAND AND
WALES

The National Health Service (Service Committees and
Tribunal) Amendment Regulations 1990

<i>Made</i> - - - -	<i>8th March 1990</i>
<i>Laid before Parliament</i>	<i>9th March 1990</i>
<i>Coming into force</i> -	<i>2nd April 1990</i>

The Secretary of State for Health, in exercise of powers conferred on him by sections 29, 36, 39, 42, 45, 46, 49, 127(a) and 128(1) of, and paragraphs 12(b) and (c) and 16 of Schedule 5 to, the National Health Service Act 1977(a) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals in accordance with section 10 of the Tribunal and Inquiries Act 1971(b), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Service Committees and Tribunal) Amendment Regulations 1990 and shall come into force on 2nd April 1990.

(2) In these Regulations, “the principal Regulations” means the National Health Service (Service Committees and Tribunal) Regulations 1974(c).

Amendment of regulation 2 of the principal Regulations

2. In regulation 2(1) of the principal Regulations (interpretation)—

(a) the definition of “Administrator” shall be omitted;

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- (a) 1977 c.49; see section 128(1) for the definition of “prescribed” and “regulations”; sections 29, 36, 39 and 42 were extended by section 17 of the Health and Medicines Act 1988 (c.49) (“the 1988 Act”); section 29 was amended by the Health Services Act 1980 (c.53) (“the 1980 Act”), section 7 and Schedule 1, paragraphs 42 and 93, and by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 14 and Schedule 6, and modified by S.I. 1985/39, article 7(3); section 36 was amended by S.I. 1981/432, article 3(3), by the Health and Social Security Act 1984 (c.48), (“the 1984 Act”), Schedule 3, paragraph 5, and by the 1988 Act, Schedule 2, paragraph 4, and was modified by S.I. 1985/39, article 7(10); section 39 was amended by the 1984 Act, Schedule 1, paragraph 1 and modified by S.I. 1985/39, article 7(12); section 42 was substituted by the National Health Service (Amendment) Act 1986 (c.66), section 3(1) and amended by S.I. 1987/2202, article 4; section 45 was amended by the 1980 Act, Schedule 1, paragraph 57 and by the 1984 Act, Schedule 3, paragraph 7; section 46 was amended by the 1984 Act, Schedule 8.
- (b) 1971 c.62; see paragraph 17 of Part I of Schedule 1 to that Act, as amended by the National Health Service Reorganisation Act 1973 (c.32), Schedule 4, paragraph 134, and the National Health Service Act 1977 (c.49), Schedule 15, paragraph 53.
- (c) S.I. 1974/455; the relevant amending instruments are S.I. 1974/907, 1982/288, 1985/39, 1987/445 and 1989/1630.

- (b) the following definitions shall be inserted in the appropriate places in the alphabetical order:-

““conciliation” means the process of conciliation established and maintained by the Committee, pursuant to a direction under section 17 of the National Health Service Act 1977, with a view to resolving a matter giving rise to a complaint without recourse to an investigation under these Regulations;

“General Manager” means the officer appointed by a Committee to act as its chief officer, or some other officer of the Committee duly authorised to act on his behalf;

“Local Dental Committee”, “Local Medical Committee”, “Local Optical Committee” and “Local Pharmaceutical Committee” mean the committees of those names which are recognised by the Secretary of State in relation to a locality in pursuance of section 44 of the National Health Service Act 1977(a);”;

- (c) in the definition of “optician”, the words after “ophthalmic optician” shall be omitted.

Amendment of regulation 3 of the principal Regulations

3. In regulation 3 of the principal Regulations (constitution of service committees)-

- (a) in paragraph (2)(d)-

(i) for the words “ten” and “four”, there shall be substituted the words “seven” and “three” respectively,

(ii) the words “and two shall be dispensing opticians appointed by the Local Optical Committee” shall be omitted,

(iii) in the proviso, the words after “an ophthalmic optician” shall be omitted;

- (b) for sub-paragraph (f) of paragraph (2) there shall be substituted the following sub-paragraph:-

“(f) To act as deputies for the members (other than the Chairman) of any service committee, there shall be-

(i) in the case of lay members, a number of persons corresponding to that of the lay members, and

(ii) in the case of the other members, a number of persons no fewer than that of those other members,

appointed in each case in the like manner as those members for whom they are to act as deputies, and in the absence of any member a deputy so appointed shall be entitled to act in his place.”;

- (c) in paragraph (4)-

(i) the words “or deputy chairman” shall be omitted in both instances where they occur,

(ii) at the end, there shall be added the following words:-

“, but nothing in this paragraph shall prevent a member of a service committee who is appointed as its deputy chairman from exercising his right to attend and take part in the proceedings of the service committee on any occasion when he is not acting as its chairman”;

- (d) in paragraph (5), for the proviso, there shall be substituted the following proviso:-

“Provided that no such term of office shall exceed one year in duration unless the office holder is re-appointed.”;

- (e) in paragraph (6), after the words “members of the service committee” there shall be inserted the words “who are not doctors, dentists, ophthalmic opticians, dispensing opticians or registered pharmaceutical chemists, and who are”.

(a) 1977 c.49; section 44 was amended by the Health Services Act 1980 (c.53), Schedule 1, paragraph 56, and the Health and Social Security Act 1984 (c.48), Schedule 3, paragraph 6, and Schedule 8.

Amendment of regulation 4 of the principal Regulations

4. In regulation 4 of the principal Regulations (time limits for complaining and notice of complaint)–

- (a) for the words “eight weeks”, in both instances where they occur, there shall be substituted the words “thirteen weeks”;
- (b) for the words “written notice to the Administrator”, in both instances where they occur, there shall be substituted the word “notice”;
- (c) after paragraph (2), there shall be inserted the following paragraphs:–

“(3) Any notice given for the purposes of this regulation–

- (a) shall be given in writing, unless the General Manager is satisfied that the person desiring to make the complaint is unable, whether by reason of physical disability or otherwise, to read and write in the English language, in which case the notice may be given orally; and
- (b) if required to be given in writing, shall be sent to–
 - (i) the General Manager, at any office of the Committee,
 - (ii) in England, the principal office of the Regional Health Authority in whose region the locality of the Committee is included, or, in Wales, the Welsh Office, Cathays Park, Cardiff, or
 - (iii) the principal office of any District Health Authority whose district is in whole or in part situated in, or is the same as, the locality of the Committee;
- (c) if given orally in accordance with sub-paragraph (a)–
 - (i) shall be given, by the person desiring to make the complaint, at any office of the Committee, and
 - (ii) shall be recorded by tape recorder, and (as soon as practicable thereafter) transcribed, by the Committee.

(4) In its application to a complaint which is made to a Committee whose locality is in Wales, paragraph (3)(a) shall have effect as if for the words “the English” there were substituted the words “neither the English nor the Welsh.”.

Amendment of regulation 5 of the principal Regulations

5. In regulation 5 of the principal Regulations (late complaints)–

- (a) for the word “Administrator”, in both instances where it occurs, there shall be substituted the words “General Manager”;
- (b) for paragraph (1) there shall be substituted the following paragraph:–

“(1) Where notice of a complaint is given after the expiry of the period specified in regulation 4(1) or (2) in relation to that notice, the service committee shall not investigate the matter giving rise to the complaint unless–

- (a) they are satisfied that the failure to give such notice immediately before the expiry of that period and on any subsequent day falling before the date on which such notice was in fact given was occasioned by illness or by some other reasonable cause; and
- (b) they have obtained–
 - (i) the consent of the practitioner, chemist, or as the case may be, optician, or
 - (ii) if such consent is refused, the consent of the Secretary of State.”;

- (c) after paragraph (6), there shall be added the following paragraph:–

“(7) Where the Committee have established a denture conciliation committee pursuant to regulation 13 (denture conciliation committees), this regulation shall, as respects any complaint which relates solely to the fit

and efficiency of a denture provided as part of general dental services, have effect as if for any reference to a service committee there were substituted a reference to a denture conciliation committee.”.

Amendment of regulation 6 of the principal Regulations

6. In regulation 6 of the principal Regulations (investigation by service committees)–

(a) in sub-paragraph (b) of paragraph (3), for the word “eighteen” there shall be substituted the word “sixteen”;

(b) after paragraph (3), there shall be inserted the following paragraphs:–

“(3A) Where, at any time after notice of a complaint has been given but before the Committee make a decision under regulation 10 of these Regulations in relation to that complaint, the practitioner, chemist or, as the case may be, optician to whom the complaint relates dies, no further action shall be taken under these Regulations in relation to that complaint.

(3B) A complainant may withdraw his complaint–

(a) at any time in the course of, or immediately following, conciliation, by giving written notice to the Committee of its withdrawal;

(b) at any other time before the service committee present their report to the Committee–

(i) by giving written notice to the Committee of his intention to withdraw it, and

(ii) with the consent of the service committee.

(3C) Where the name of the practitioner, chemist or, as the case may be, optician against whom a complaint is made was, at the time of the event, treatment or matter which gave rise to the complaint, included in a list maintained by the Committee under section 29, 36, 39 or 42 of the National Health Service Act 1977, the service committee shall, subject to the provisions of these Regulations, investigate the complaint, notwithstanding that the name of the practitioner, chemist or optician in question has since had his name removed, or has since withdrawn his name, from the list in question.”;

(c) in paragraph (4), after the word “list”, there shall be inserted the words “at the time of the event, treatment or matter which gives rise to the complaint”;

(d) for paragraph (5) there shall be substituted the following paragraph:–

“(5) Where a complaint is made against a doctor whose name is included in the medical list at the time of the event, treatment or matter which gives rise to the complaint, in respect of his acts or omissions whilst acting as deputy to a doctor whose name is also included in the list at that time, the complaint shall be deemed to have been made against both doctors.”;

(e) in the proviso to paragraph (6)(a)–

(i) for the words “eight weeks”, in each instance where they occur, there shall be substituted the words “thirteen weeks”,

(ii) after the word “practitioner”, in each instance where it occurs, there shall be inserted the word “, chemist”;

(f) in paragraph (6)(b), for the word “Administrator”, in both instances where it occurs, there shall be substituted the words “General Manager”;

(g) for paragraph (9) there shall be substituted the following paragraph:–

“(9) Where a complaint, or a matter referred to the ophthalmic service committee, involves a question relating to an ophthalmic medical practitioner and an optician, that service committee shall, where the practitioner and the optician so agree, investigate the complaint or matter in relation to both persons at the same time.”;

(h) after paragraph (10), there shall be inserted the following paragraph:–

“(11) Where–

(a) the complainant or the practitioner, chemist or, as the case may be, optician against whom a complaint is made is a member of either the Committee or one of their service committees, or

- (b) sub-paragraph (20) of paragraph 1 of Schedule 1 cannot be complied with by reason of the operation of sub-paragraph (13) of that paragraph; or
- (c) the matter to be investigated is one which would, but for the operation of this paragraph, fall to be referred to the service committee, either by the Committee themselves or by any duly authorised sub-committee thereof, pursuant to regulation 6(6)(a), the Committee shall arrange with another Family Practitioner Committee for the complaint or the matter to be investigated and determined under these Regulations by that other Committee pursuant to regulation 11 of the National Health Service Functions (Directions to Authorities and Administration Arrangements) Regulations 1989(a).”.

Amendment of regulation 7 of the principal Regulations

7. In the proviso to regulation 7 of the principal Regulations (representation at hearing), for the words “shall be entitled in the capacity of Counsel, solicitor or other paid advocate” there shall be substituted the words “who is a barrister or solicitor shall be entitled”.

Amendment of regulation 10 of the principal Regulations

8. For regulation 10 of the principal Regulations (decision of Committee), there shall be substituted the following regulation:—

“Decision of Committee

10.—(1) The Committee, after due consideration of the report presented to them by the service committee pursuant to paragraph 1(19) of Schedule 1, shall—

- (a) accept as conclusive the findings of fact made by the service committee;
- (b) draw such inferences from those findings of fact as they see fit, having regard to the service committee’s report as it relates to the inferences which may properly be drawn from those findings;
- (c) determine whether the practitioner, chemist or, as the case may be, optician to whom the report relates has failed to comply with any one or more of his terms of service identified to him by the Chairman of the service committee pursuant to these Regulations; and
- (d) determine—
 - (i) in accordance with any one or more of paragraphs (3), (5) and (8), but subject to paragraph (7), the action to be taken in relation to the practitioner, chemist or, as the case may be, optician, having regard to any recommendation made by the service committee pursuant to paragraph 1(19) of Schedule 1, or
 - (ii) that no further action should be taken in relation to the report.

(2) If the Committee decide either not to adopt the recommendation of the service committee or to take any action not recommended by the service committee, they shall record in writing their reasons for that decision.

(3) Where, in the case of any doctor to whom a report of a service committee relates, the Committee are satisfied, after consultation with the Local Medical Committee, that, because of the number of persons included in his list, the doctor is unable to give adequate treatment to all of those persons, they may impose a special limit on the number of persons for whom the doctor may undertake to provide treatment.

(4) Where, pursuant to paragraph (3), the Committee impose a special limit on the number of patients for whom a doctor may undertake to provide treatment, paragraphs (3) to (6) of regulation 17 of the National Health Service (General Medical and Pharmaceutical Services) Regulations 1974(b) (limitation of number of

(a) S.I. 1989/51.

(b) S.I. 1974/160; regulation 17 was amended by S.I. 1975/719, 1985/39 and 1989/1897.

persons on doctors' lists) shall have effect in his case with suitable modifications and, in particular, as if references in those paragraphs—

- (a) to a maximum number were references to the special limit imposed under paragraph (3) of this regulation; and
- (b) to an excess were references to the extent to which the number of patients in the doctor's list exceeds that special limit.

(5) Where it has been determined that a practitioner, chemist or, as the case may be, optician to whom the report of the service committee relates has failed to comply with any of his terms of service, the Committee may—

- (a) subject to paragraph (6) but without prejudice to sub-paragraph (b) of this paragraph, determine that there should be recovered from him, whether by way of a deduction from his remuneration or otherwise, any expenses (other than expenses incurred in connection with the investigation by the service committee) which, by reason of such failure, have been reasonably and necessarily incurred or, where the report relates to a dentist, are likely to be so incurred, by any person in obtaining further treatment, and that any such sums so recovered shall be paid to that person;
- (b) determine that an amount not exceeding £500 shall be recovered from the practitioner, chemist or, as the case may be, optician, whether by way of withholding from his remuneration or otherwise;
- (c) recommend to the Secretary of State that an amount in excess of £500 should be recovered from the practitioner, chemist or, as the case may be, optician, whether by way of withholding from his remuneration or otherwise;
- (d) where the practitioner is a dentist, recommend to the Secretary of State that he should be required to submit to the Dental Practice Board for prior approval estimates in respect of all or any specified description of treatment other than an examination or emergency treatment;
- (e) determine that the practitioner, chemist or, as the case may be, optician should be warned to comply more closely with his terms of service in future.

(6) Where, pursuant to paragraph (5)(a), the Committee determine that there should be recovered from any dentist to whom the report of the service committee relates, an amount in respect of any expenses referred to in that provision, that amount shall not exceed the cost of the further treatment to which it relates, calculated in accordance with the rate of remuneration in force for general dental services under the National Health Service Act 1977, and the amount so recovered may include any contribution towards the cost of treatment which may be paid or be payable by the patient under that Act.

(7) Where the Committee determine to make a recommendation under either or both of sub-paragraphs (c) or (d) of paragraph (5), they shall not determine that action should be taken under any other provision of that paragraph.

(8) Where the Committee are of the opinion that the continued inclusion of the name of a practitioner, chemist or, as the case may be, optician in a list maintained by the Committee pursuant to any of sections 29, 36, 39 and 42 of the National Health Service Act 1977 would be prejudicial to the efficiency of the services referred to in the section in question, they may make representations to that effect to the Tribunal.

(9) As soon as may be practicable after the Committee have made their decision on the report of a service committee, the General Manager shall send to the parties to the investigation, to the Secretary of State and, where reasonably requested to do so by either party, to any member of either House of Parliament a copy of that report and of the Committee's decision thereon, and shall—

- (a) where appropriate, inform the parties in writing of their right of appeal to the Secretary of State and of his power to award costs; and
- (b) where they have made a recommendation under paragraph (5)(c) or (d), inform the practitioner, chemist or, as the case may be, optician of his right to make representations to the Secretary of State under the provisions of regulation 11(3).

(10) Where a Committee determine under this regulation that action should be taken in accordance with any of the provisions of paragraphs (3) and (5)(a), (b) and (e), that action shall be taken—

- (a) by the Committee in whose list the name of the practitioner, chemist or, as the case may be, optician was included at the time of the event which gave rise to the complaint or reference; but this sub-paragraph shall not apply where, at the time when such action falls to be taken, his name is no longer included in that Committee's list but is included in the list of some other Committee; or
- (b) where sub-paragraph (a) does not apply, by a Committee in whose list the name of the practitioner, chemist or, as the case may be, optician is included at the time when such action falls to be taken.

(11) Any amount determined under paragraph (5)(a) or (b) as being recoverable shall be a debt owing by the practitioner, chemist or, as the case may be, optician to the Committee by which it is recoverable.

(12) Where the Committee make a determination under the provisions of sub-paragraph (a), (b) or (e) of paragraph (5) of this regulation, no action shall be taken on that determination before—

- (a) if no appeal is brought, the end of the period for bringing an appeal specified in regulation 11(2); or
- (b) if an appeal is brought, they have received the notice of the Secretary of State's decision of the appeal.”.

Amendment of regulation 11 of the principal Regulations

9. In regulation 11 of the principal Regulations (appeal to Secretary of State from decision of Committee)—

(a) for paragraphs (1) and (2), there shall be substituted the following paragraphs:—

“(1) An appeal may be made to the Secretary of State—

- (a) by any party to an investigation, against a determination of the Committee under regulation 10(1)(c) which is adverse to him;
- (b) by a practitioner, chemist or, as the case may be, optician, against any determination by a Committee under regulation 10(1)(d) to take action in accordance with any one or more of paragraphs (3) or (5)(a) or (b);
- (c) by a practitioner, chemist or, as the case may be, optician, against any determination by a Committee that an overpayment has been made in respect of his remuneration; or
- (d) by a complainant who has asserted to the Committee that, by reason of the respondent's failure to comply with his terms of service, he has incurred or is likely to incur expenses in circumstances mentioned in regulation 10(5)(a), against a determination by the Committee under regulation 10(1)(d) which is adverse to him in that respect.

(1A) Subject to paragraph (4), on an appeal to which paragraph (1)(a) or (c) applies, the Secretary of State shall inquire into the whole of the complaint or reference, on the basis of such evidence as was available to the service committee and of such further evidence as shall have been adduced on the appeal, and shall—

- (a) make such findings of fact as he sees fit; and
- (b) draw such inferences from those findings as he sees fit; and
- (c) in the case of an appeal to which paragraph (1)(a) above applies—
 - (i) determine whether or not the practitioner, chemist or, as the case may be, optician is in breach of any one or more of his terms of service, and
 - (ii) determine in accordance with any one or more of regulations 10(3), (4), (5)(a) and (e) and (6) (as modified in accordance with paragraph (1C) of this regulation), 14 and 15 whether

any, and if so, what action should be taken in relation to that practitioner, chemist or, as the case may be, optician; or

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

(1B) On an appeal to which paragraph (1)(b) or (d) above applies, the Secretary of State shall—

(a) accept as conclusive—

- (i) the findings of fact made by the service committee necessary for the purpose of the Committee's determination under regulation 10(1)(c),
- (ii) the inferences drawn by the Committee under regulation 10(1)(b), and
- (iii) any determination made by the Committee under regulation 10(1)(c) in relation to a failure to comply with the terms of service; and

(b) determine—

- (i) in the case of an appeal to which paragraph (1)(b) above applies, in accordance with any one or more of regulations 10(3), (4), (5)(a) and (e) and (6) (as modified in accordance with paragraph (1C) of this regulation), 14 and 15, the action to be taken in relation to the practitioner, chemist or, as the case may be, optician to whom the report of the service committee relates,
- (ii) in the case of an appeal to which paragraph (1)(d) above applies, whether an amount should be recovered and paid as mentioned in regulation 10(5)(a), and if so, what amount, or
- (iii) in either case, that no further action should be taken in relation to that report.

(1C) For the purposes of paragraphs (1A)(c)(ii) and (1B)(b)(i) of this regulation, paragraphs (3), (4), (5)(a) and (e) and (6) of regulation 10 shall have effect as if for any reference to "the Committee" there were substituted a reference to "the Secretary of State".

(2) A notice of an appeal under this regulation shall be sent in writing to the Secretary of State within one month beginning on the date on which notification of the Committee's decision was sent to the appellant and shall contain a concise statement of facts and the grounds of appeal upon which the appellant intends to rely.;

(b) in paragraph (3)—

- (i) for the words "is received by him", there shall be substituted the words "was sent to him",
- (ii) for the words "paragraph (2)(c) or (e)", there shall be substituted the words "paragraph (5)(c) or (d)";

(c) for paragraph (4) there shall be substituted the following paragraph:—

"(4) Where, pursuant to regulation 10(8), a Committee have made representations to the Tribunal following their consideration of a report of a service committee, the Secretary of State may, for the purpose of any appeal under regulation 11(1)(a) against a decision of that Committee following their consideration of that report, treat as conclusive any relevant finding of fact of the Tribunal."

Amendment of regulation 12 of the principal Regulations

10. In regulation 12 of the principal Regulations (procedure on appeal)—

- (a) in the proviso to paragraph (1), for the words "against a decision" to "under paragraph (2)(a), (b), (c) or (e)", there shall be substituted the words "under regulation 11(1)(a) against a decision in which the Committee have determined to take action under paragraphs (3) or (5)(a), (b), (c) or (d)";

- (b) for paragraph (2), there shall be substituted the following paragraphs:-
- “(2) The Secretary of State shall, unless he dismisses the appeal under paragraph (1), send a copy of the notice of appeal and any further particulars furnished by the appellant-
- (a) in the case of an appeal under-
- (i) regulation 11(1)(a),
- (ii) regulation 11(1)(b) against a determination of the Committee that action should be taken under regulation 10(5)(a), or
- (iii) regulation 11(1)(d),
- to the person or persons, if any, who were parties to the proceedings before the service committee or who appear to him to be interested;
- (b) in the case of any appeal, to the Committee.
- (2A) Any appellant may withdraw his appeal, at any time before it is determined-
- (a) by giving written notice to the Secretary of State of his intention to do so, and
- (b) with the consent of the Secretary of State.”;
- (c) in paragraph (6)(b), for the word “Administrator”, there shall be substituted the words “General Manager”.

Insertion of new regulation 12A in the principal Regulations

11. After regulation 12 of the principal Regulations there shall be inserted the following regulation:-

“Procedure following Committee’s recommendation for withholding or prior approval

12A.—(1) Where a Committee has made, in relation to any practitioner, chemist or, as the case may be, optician, a recommendation under regulation 10(5)(c), the Secretary of State-

- (a) shall dispose of the matter in accordance with regulation 14; and
- (b) may (whether or not he makes any direction under regulation 14(1)) take action in accordance with any of-
- (i) where the practitioner is a dentist, regulation 15,
- (ii) regulation 10(5)(a) (as modified in accordance with regulation 11(1C)), and
- (iii) regulation 10(5)(e) (as modified in accordance with regulation 11(1C)).

(2) Where a Committee has made, in relation to any dentist, a recommendation under regulation 10(5)(d), the Secretary of State-

- (a) shall dispose of the matter in accordance with regulation 15; and
- (b) may (whether or not he imposes a prior approval requirement under regulation 15(1) in relation to that dentist) take action in accordance with any of-
- (i) regulation 14,
- (ii) regulation 10(5)(a) (as modified in accordance with regulation 11(1C)), and
- (iii) regulation 10(5)(e) (as modified in accordance with regulation 11(1C)).

(3) Where, notwithstanding regulation 10(7), a Committee, in addition to making a recommendation under regulation 10(5)(c) or (d), determine to take some other action under the provisions of regulation 10(5), the Secretary of State shall set aside the determination and substitute his own determination under and in accordance with this regulation.”.

Amendment of regulation 14 of the principal Regulations

12. In regulation 14 of the principal Regulations (procedure on withholding)-

- (a) for sub-paragraph (a) of paragraph (1), there shall be substituted the following sub-paragraph:-

“(a) after considering—

- (i) (whether in the course of an appeal to him under regulation 11(1)(b) or in the course of representations made to him under regulation 11(3) or otherwise) any report made by a service committee and the decision of the Committee thereon to the effect that there has been a breach of the terms of service,
 - (ii) the report of the person or persons holding an inquiry under paragraph (5) of regulation 12, or
 - (iii) any report of the Tribunal after an inquiry under Part III of these Regulations,
- that such practitioner, chemist or optician has failed to comply with the terms of service applicable to him; or”;

(b) in paragraph (2)(a)—

- (i) for the words “a reasonable”, there shall be substituted the word “an”,
- (ii) after the word “matter”, there shall be inserted the words “within one month of notice having been sent to him as to the nature of the direction which the Secretary of State is minded to make”.

Amendment of regulation 15 of the principal Regulations

13. In regulation 15 of the principal Regulations (procedure in dental prior approval cases)—

(a) in sub-paragraph (1)(a)—

- (i) for the reference to “regulation 10(2)(e)”, there shall be substituted a reference to “regulation 10(5)(d)”,
- (ii) for the words “a reasonable”, there shall be substituted the word “an”,
- (iii) after the word “matter”, there shall be inserted the words “within one month of the notice having been sent to him as to the nature of the requirement which the Secretary of State is minded to make”;

(b) in sub-paragraph (1)(b)—

- (i) for the words “a reasonable”, there shall be substituted the word “an”,
- (ii) after the words “within one month of the notice having been sent to him as to the nature of the requirement which the Secretary of State is minded to make”.

Substitution of a new regulation 28 in the principal Regulations

14. For regulation 28 of the principal Regulations (representation and preliminary statement), there shall be substituted the following regulation:—

“Representation and preliminary statement

28.—(1) A representation shall—

- (a) be made in writing;
- (b) be signed by the complainant or on his behalf by some person authorised by him;
- (c) include a preliminary statement of the alleged facts and the grounds upon which he intends to rely,

and shall be sent to the clerk of the Tribunal.

(2) The Tribunal may if they think fit—

- (a) direct the complainant to furnish such further particulars of those facts or grounds as they may reasonably require; and
- (b) where a fact does not appear to them to be within the personal knowledge of the complainant, require details of the source of his information about that fact and of the grounds for the complainant’s belief that the information is true; and
- (c) require any preliminary statement under this regulation to be verified by statutory declaration.”.

Amendment of regulation 30 of the principal Regulations

15. In regulation 30 of the principal Regulations (notices to be sent in case of inquiry), for the word "list" in sub-paragraph (b) of paragraph (1), there shall be substituted the word "copy".

Substitution of a new regulation 31 in the principal Regulations

16. For regulation 31 of the principal Regulations (right of respondent to admit or deny allegations), there shall be substituted the following regulation:-

"Right of respondent to admit or deny allegations

31.—(1) The Tribunal shall send to the respondent a copy of the statement of complaint and of the documents which the complainant proposes to put in evidence, together with a notice (Form 3) informing him that he may, if he so desires, within a month from the date of the notice, by a statement in writing addressed to the clerk of the Tribunal, admit or dispute the truth of all or any of the allegations appearing in the statement of complaint.

(2) The Tribunal may, on the application of the respondent, extend, on the grounds of good cause, the time specified in this regulation for sending to them such statement."

Revocation of regulation 33 of the principal Regulations

17. Regulation 33 of the principal Regulations (right of respondent to inspect documents) is hereby revoked.

Amendment of regulation 36 of the principal Regulations

18. In regulation 36 of the principal Regulations (power to treat representation as withdrawn in certain cases), after the words "these regulations", there shall be inserted the words "or if he fails, without having previously offered a reasonable excuse, to appear in person or by a representative at any inquiry of which he was sent due notice under regulation 34(1)".

Amendment of regulation 40 of the principal Regulations

19. In regulation 40 of the principal Regulations (appearance by representative), for the word "Administrator" in paragraph (1), there shall be substituted the words "General Manager".

Substitution of a new regulation 41 in the principal Regulations

20. For regulation 41 of the principal Regulations (evidence), there shall be substituted the following regulation:-

"Evidence

41. The complainant and the respondent or their representatives shall be entitled at the inquiry to produce evidence, including evidence not produced prior to the inquiry, and to call witnesses to whom questions may be put by or on behalf of any party."

Amendment of regulation 43 of the principal Regulations

21. In regulation 43 of the principal Regulations (procedure in regard to applications for reinstatement on list), in paragraph (8), for the words "Regulations 33 (Right of respondent to inspect documents)", there shall be substituted the words "Regulations 31 (Right of respondent to admit or deny allegations)".

Amendment of regulation 47 of the principal Regulations

22. In regulation 47 of the principal Regulations (appeal to Secretary of State), for the words "fourteen days after" in paragraph (1), there shall be substituted the words "one month from the date on which".

Amendment of regulation 48 of the principal Regulations

23. In regulation 48 of the principal Regulations (procedure on appeal from Tribunal)—

- (a) in paragraph (2), for the figure “33”, there shall be substituted the figure “31”;
- (b) after paragraph (2), there shall be inserted the following paragraph:—

“(2A) Where an appellant to whom notice of a hearing has been given in accordance with regulation 34(1) (as modified pursuant to paragraph (2) of this regulation) fails to appear at the hearing, the person hearing the appeal may, after having regard to all the circumstances including any explanation offered for the absence, proceed to hear the appeal notwithstanding the absence.”;
- (c) in paragraph (4), for the words “Secretary of State” there shall be substituted the words “Secretary of State or the person appointed by him to hear the appeal”.

Amendment of regulation 50 of the principal Regulations

24. In regulation 50 of the principal Regulations (service of notice, etc.), for the word “Administrator” in paragraph (1), there shall be substituted the words “General Manager”.

Substitution of a new regulation 53 in the principal Regulations

25. For regulation 53 of the principal Regulations (power of Secretary of State to extend time for appeals), there shall be substituted the following regulation:—

“Power to extend time limits

53.—(1) The Secretary of State may, on the application of any person desiring either—

- (a) to appeal under the provisions of regulation 5(4), 11(1), 13, 16 to 18, 20, 22 or 23; or
- (b) to make representations under the provisions of regulation 11(3), 14(2)(a) or 15(1)(a) or (b),

extend the time for giving notice of appeal or, as the case may be, making representations, and may do so although such application is not made until after the expiration of the time prescribed for giving notice of appeal or making representations.

(2) An application under paragraph (1) shall be in writing to the Secretary of State stating the grounds for the application.”.

Amendment of Schedule 1 to the principal Regulations

26.—(1) Schedule 1 to the principal Regulations (rules of procedure under regulation 9) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph 1 (procedure of service committees)—

- (a) for the word “Administrator”, in each instance where it occurs, there shall be substituted the words “General Manager”;
- (b) for sub-paragraph (1), there shall be substituted the following sub-paragraphs:—

“(1) Where, on consideration of a complaint, it appears to the General Manager that—

- (a) notice of the complaint was not given within the period specified in regulation 4 in relation to that notice, he shall, as soon as practicable, seek the complainant’s reasons for the delay;
- (b) where notice of the complaint was given in writing, the substance of the matter which it is desired to have investigated is not sufficiently particularised in the statement, he may, as soon as practicable, seek from the complainant such further particulars of the complaint as he may reasonably require, and the

complainant shall submit to the General Manager such reasons or particulars requested within twenty-one days from the date the request was sent to him.

(1A) Subject to the provisions of sub-paragraphs (1) and (1B) of this paragraph, the General Manager shall, as soon as practicable after receiving notice of a complaint, send to the chairman of the appropriate service committee a copy of the statement of complaint.

(1B) Sub-paragraph (1A) of this paragraph and sub-paragraph (1) of paragraph 2 of this Schedule shall not apply where, and for so long as, the Committee and the complainant agree that, pending conciliation of the matter giving rise to it, the complaint should not be investigated under these Regulations.

(1C) If, in the opinion of the chairman, the statement does not disclose reasonable grounds for believing that the practitioner, chemist or, as the case may be, optician against whom the complaint has been made has failed to comply with his terms of service, the chairman shall so inform the General Manager who shall notify the complainant of the chairman's opinion and invite him to submit a further statement in amplification of his complaint within fourteen days of the date on which that notification was sent to him.

(1D) Where—

- (a) after consideration of any further statement which has been submitted pursuant to sub-paragraph (1C) of this paragraph, the chairman considers that a hearing of the case is unnecessary; or
- (b) such further statement has been invited but has not been submitted within the period specified in that sub-paragraph,

the chairman shall, as soon as practicable, bring the case before the service committee who may report on the matter without holding a hearing.”;

(c) for sub-paragraph (2) there shall be substituted the following sub-paragraphs:—

“(2) If the chairman considers that the complainant's statement, or further statement (if any), discloses reasonable grounds for believing that the practitioner, chemist or, as the case may be, optician has failed to comply with any provision of his terms of service, he shall identify the provision in question and notify the General Manager accordingly.

(2A) On being informed by the chairman as mentioned in sub-paragraph (2) of this paragraph, the General Manager shall—

- (a) send to the practitioner, chemist or, as the case may be, optician—
 - (i) a copy of the complainant's statement, and of his further statement (if any), and
 - (ii) details of any provision of the terms of service identified by the chairman pursuant to sub-paragraph (2) of this paragraph;
- (b) invite the comments of the practitioner, chemist or, as the case may be, optician with regard to the complaint; and
- (c) inform him that such comments must be made within a period of four weeks, or within such longer period as the service committee may for reasonable cause allow.

(2B) Where, in response to his invitation under sub-paragraph (2A)(b) of this paragraph, the General Manager receives from the practitioner, chemist or, as the case may be, optician comments with regard to the complaint, he shall—

- (a) send to the complainant—
 - (i) a copy of those comments or details of the substance thereof, and
 - (ii) details of any provision of the terms of service identified by the chairman pursuant to sub-paragraph (2) of this paragraph;

- (b) invite the observations of the complainant on those comments; and
- (c) inform the complainant that such observations must be made within a period of fourteen days, or within such longer period as the service committee may for reasonable cause allow.”;
- (d) for sub-paragraph (4) there shall be substituted the following sub-paragraphs:-

“(4) Where-

- (a) no comments are made within the period allowed under sub-paragraph (2A)(c) of this paragraph; or
- (b) after consideration of the comments, and of any observations, made pursuant to sub-paragraphs (2A) and (2B) of this paragraph, the chairman is of the opinion that-
 - (i) there is a material difference between the parties with regard to the facts of the complaint, or
 - (ii) for some other reason a hearing of the complaint is necessary,
 the chairman shall specify every provision of the terms of service with which, in his opinion, the complaint discloses reasonable grounds for believing that there has been a failure to comply, and shall inform the General Manager accordingly.

(4A) On being informed by the chairman as mentioned in sub-paragraph (4) of this paragraph, the General Manager shall-

- (a) inform the parties that there will be a hearing;
- (b) inform the parties of the names of the members and deputy members of the appropriate service committee;
- (c) require each party to forward to him, within fourteen days from the date of the request, details of any documentary evidence, and of the names of any witnesses, which the party proposes to produce or call at the hearing; and
- (d) send to the parties-
 - (i) details of all provisions of the terms of service specified by the chairman pursuant to sub-paragraph (4) of this paragraph, and
 - (ii) copies of all correspondence relevant to the complaint.”;
- (e) in sub-paragraphs (6) and (7), after the word “statement”, in each instance where it occurs, there shall be inserted the words “and further statement, if any,”;

(f) for sub-paragraph (8), there shall be substituted the following sub-paragraphs:-

“(8) Except in cases disposed of without a hearing, the General Manager shall, not less than twenty-one days before the date fixed for the hearing-

- (a) give to both parties and to the Secretary of the Local Medical, Pharmaceutical, Dental or Optical Committee, as the case may be, notice of the meeting at which the case will be heard; and
- (b) send to both parties any details supplied by the other party in pursuance of sub-paragraph (4A)(c) of this paragraph.

(8A) Where the service committee are satisfied that a complainant to whom notice has been sent pursuant to sub-paragraph (8) of this paragraph-

- (a) has failed, within fourteen days of the date on which such notice was sent to him, to signify his intention to attend the hearing; or
 - (b) has, without reasonable cause, refused to attend the hearing,
- they may, subject to sub-paragraph (8B) of this paragraph, proceed to consider the complaint at their meeting and to report on the matter without holding a hearing.

(8B) A report made pursuant to sub-paragraph (8A) of this paragraph shall not contain any recommendation which is adverse to the practitioner, chemist or, as the case may be, optician unless he shall have previously

consented in writing to the matter being disposed of by the service committee without a hearing.”;

- (g) in sub-paragraph (16), for the words “but shall take no part”, there shall be substituted the words “and take part”;
 - (h) in sub-paragraph (17), for the words “the complainant introduces any issue” there shall be substituted the words “any issue arises”;
 - (i) in sub-paragraph (19)–
 - (i) after the words “placed before them and”, there shall be inserted the words “in respect of each provision of the terms of service identified by the chairman pursuant to this paragraph,”;
 - (ii) after the words “properly drawn from the facts” there shall be inserted the words “and their reasons for reaching that opinion”;
 - (iii) for the words “the service committee may in cases where they infer a breach of the terms of service” there shall be substituted the words “in any case where they infer a breach of the terms of service, the service committee may, subject to sub-paragraph (19A) of this paragraph,”;
 - (j) after sub-paragraph (19) there shall be inserted the following sub-paragraph:–
 - (19A) In sub-paragraph (19) of this paragraph, the expression “previous reports” shall not include–
 - (a) any report made more than six years prior to the date of complaint; or
 - (b) any report in connection with which an appeal is pending under regulation 11(1).”;
 - (k) in sub-paragraph (20) for the words “one” and “member”, wherever they occur, there shall be substituted the words “two” and “members” respectively;
 - (l) after sub-paragraph (20) there shall be inserted the following sub-paragraph:–
 - “(20A) The proceedings at any meeting of a service committee shall be suspended if, and for so long as–
 - (a) the number of members present falls below the quorum specified in sub-paragraph (20) of this paragraph; or
 - (b) the number of lay members who are present exceeds, or is exceeded by, the number of other members (apart from the chairman) who are present.”.
- (3) In paragraph 2 (procedure of joint services committee)–
- (a) in sub-paragraph (1), for the words “The Administrator” there shall be substituted the words “Subject to the provisions of sub-paragraph (1B) of paragraph 1 of this Schedule, the General Manager”;
 - (b) in sub-paragraph (2), for the words “one” and “member” wherever they occur, there shall be substituted the words “two” and “members” respectively;
- (4) At the end of paragraph 3 (interpretation) there shall be added the following definition:–
- ““statement” means the statement, included in the notice given pursuant to regulation 4, of the substance of the matter which a complainant desires to have investigated, and includes–
- (a) where the notice was given orally, both the tape on which it was recorded and the transcript of it; and
 - (b) where the notice was given in writing, any further particulars of it submitted pursuant to paragraph 1(1)(b).”.

Transitional provisions

- 27.—(1) The principal Regulations shall, in their application to any matter–
- (a) which falls to be investigated, referred or determined (whether by a service committee, a denture conciliation committee, a Committee, the Secretary of State or otherwise) under Part II of those Regulations following a complaint of which notice was given, or a reference under regulation 6(6)(a) which was made, before 2nd April 1990;

(b) which falls to be determined (whether by the Tribunal, the Secretary of State or otherwise) under Part III of those Regulations following a representation in writing received by the Clerk of the Tribunal before 2nd April 1990, have effect as if these Regulations had not come into force.

(2) In this regulation, the expressions "service committee", "Committee" and "the Tribunal" shall be construed in accordance with regulation 2(1) of the principal Regulations.

Signed by authority of the Secretary of State for Health

Virginia Bottomley
Minister of State,
Department of Health

8th March 1990

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service (Service Committees and Tribunal) Regulations 1974 ("the principal Regulations"), which provide for the investigation and determination by Family Practitioner Committees and their service committees of questions whether doctors, dentists, chemists and opticians providing services under the National Health Service have failed to comply with their terms of service, for the determination of representations to the National Health Service Tribunal, and for appeals from such determinations.

In regulation 3 of the principal Regulations amendments are made to the provisions governing the constitution of ophthalmic service committees, the appointment of deputies for service committee members and the discretion of deputy chairmen, and to limit to one year the terms of office of those appointed to service committees (regulation 3). Amendments are made in regulation 4 of the principal Regulations to extend to 13 weeks the time limit within which complaints may be made and to enable complaints to be made orally in certain circumstances (regulation 4). Regulation 5 of the principal Regulations is amended in relation to the circumstances in which complaints made outside the permitted time limits may nevertheless be investigated, and to extend to denture conciliation committees the same jurisdiction as service committees to determine whether late complaints may be entertained (regulation 5). Regulation 6 of the principal Regulations is amended so as to enable complaints to be made by minors aged 16 and 17 and, in particular to make further provision for the withdrawal of complaints and for proceedings to be discontinued following the death of the respondent to a complaint, and to require that the responsibility for investigating a complaint be transferred in certain circumstances to another Family Practitioner Committee (regulation 6). An amendment is made in regulation 7 of the principal Regulations to restrict those who may not represent parties before service committees to persons who are barristers or solicitors (regulation 7).

A new regulation 10 is substituted in the principal Regulations which enables a Family Practitioner Committee to recover expenses, and amounts of remuneration not exceeding £500, from and to warn any doctor, dentist, chemist or optician whom they have found to be in breach of his terms of service, and makes further provision for the giving of notice of decisions to Members of Parliament, if requested by either party (regulation 8). New paragraphs are substituted in regulation 11 of the principal Regulations to provide for parties' rights of appeal against decisions of Family Practitioner Committees and for the Secretary of State's powers when determining such appeals, and regulation 12 of the principal Regulations is amended to enable appeals to be withdrawn (regulations 9 and 10). Amendments are also made to the procedures under which the Secretary of State determines whether a withholding of remuneration

should be imposed or certain dental work should be made subject to prior approval (regulations 11, 12 and 13).

Part III of the principal Regulations (concerned with the determination of representations to the National Health Service Tribunal and of appeals from that Tribunal) is amended, in particular to require that a preliminary statement of the facts and grounds on which a complainant intends to rely is included in the initial representation to the Tribunal (regulation 14), to treat a representation as having been withdrawn if the complainant fails, without reasonable excuse, to appear at the Inquiry before the Tribunal (regulation 19) and to extend the time within which an appeal may be made to the Secretary of State from a decision of the Tribunal (regulation 22). Other amendments of a minor nature are made in Part III of the principal Regulations (by regulations 15 to 18, 20, 21 and 23).

A new regulation 53 is substituted in the principal Regulations to amplify the powers of the Secretary of State to extend the time limits within which appeals may be brought or representations may be made under those Regulations (regulation 25).

The rules of procedure for service committees in Schedule 1 to the principal Regulations are amended, principally to enable further and better particulars of complaints to be requested, to require the investigation of a complaint to be suspended pending attempts by the parties to reach agreement under an informal conciliation procedure operated by the Family Practitioner Committee and to require the chairman of a service committee to identify, in advance of the hearing, the terms of service which a complaint has put in issue; and changes are also made to provisions governing the quorum of a service committee and a joint services committee (regulation 26).

These Regulations, which come into force on 2nd April 1990, make transitional provision in relation to their application to proceedings commenced under the principal Regulations before that date (regulation 27), and also insert definitions and make amendments in the principal Regulations which are either of a minor nature or are consequential upon the amendments mentioned above.