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STATUTORY INSTRUMENTS

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**1991 No. 553**

**NATIONAL HEALTH SERVICE,  
ENGLAND AND WALES**

**The National Health Service (Appellate Functions)  
(Directions to Authorities) Regulations 1991**

<i>Made</i>	- - - -	<i>8th March 1991</i>
<i>Laid before Parliament</i>		<i>11th March 1991</i>
<i>Coming into force</i>	- -	<i>1st April 1991</i>

The Secretary of State for Health, in exercise of powers conferred by sections 13, 16, 17, 18, 42 and 126(4) of, and paragraph 12 of Schedule 5 to, the National Health Service Act 1977<sup>(1)</sup> and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

**Citation and commencement**

1. These Regulations may be cited as the National Health Service (Appellate Functions) (Directions to Authorities) Regulations 1991 and shall come into force on 1st April 1991.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the National Health Service Act 1977;

“a Family Authority” means a Family Health Services Authority<sup>(2)</sup>;

“a Regional Authority” means a Regional Health Authority;

“relevant appellate functions” means the functions which by virtue of section 13 of the Act and of these Regulations are exercisable by Regional Authorities, including, in the case of the Yorkshire Authority, the functions made exercisable by it under regulation 4;

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(1) 1977 c. 49; section 13 was amended by paragraph 33 of Schedule 1 to the Health Services Act 1980 (c. 53) (“the 1980 Act”); section 16 was amended by paragraph 36 of Schedule 1 to the 1980 Act, and section 3(3) of the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”); section 17 was substituted by paragraph 2 of Schedule 3 to the Health and Social Security Act 1984 (c. 48) and amended by section 3(4) of the 1990 Act; section 18 was amended by paragraph 38 of Schedule 1 to the 1980 Act, and was modified by S.I. 1985/39; section 42 was substituted by section 3(1) of the National Health Service (Amendment) Act 1986 (c. 66), amended by article 4 of S.I. 1987/2202 and further amended by section 12(3) of the 1990 Act; paragraph 12 of Schedule 5 was amended by paragraph 9 of Schedule 1 to the 1990 Act; see, for the definitions of “prescribed” and “regulations”, section 128(1), as amended by section 26(2)(g) and (i) of the 1990 Act.

(2) See section 2(1) of the National Health Service and Community Care Act 1990 (c. 19).

“the relevant Regional Authority” means, in relation to any Family Authority, the Regional Authority in whose region the whole or the greater part of the locality of that Family Authority lies;

“the Schedule” means the Schedule to these Regulations;

“the Yorkshire Authority” means the Regional Authority established for the Counties of Humberside, North Yorkshire and West Yorkshire<sup>(3)</sup>.

(2) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation is a reference to the regulation bearing that number in these Regulations, and any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation.

### **Appellate functions made exercisable by Regional Authorities**

3. Where by virtue of any provision of the National Health Service (General Medical and Pharmaceutical Services) Regulations 1974<sup>(4)</sup> mentioned in the Schedule to these Regulations an appeal lies to the Secretary of State from any decision of a Family Authority in England, the functions of the Secretary of State in relation to the appeal shall, subject to regulation 4, be exercised on his behalf by the Regional Authority which is the relevant Regional Authority in relation to that Family Authority.

### **Exercise of appellate functions by Regional Authorities**

4. A Regional Authority (other than the Yorkshire Authority) shall make arrangements for the exercise of the relevant appellate functions on its behalf by the Yorkshire Authority.

### **Exercise of appellate functions by Yorkshire Regional Authority**

5.—(1) The Yorkshire Authority shall, as respects its relevant appellate functions, make arrangements for the exercise of those functions on its behalf—

- (a) as respects any appeal arising under a provision mentioned in Part I of the Schedule, by an officer of that Authority;
- (b) as respects any appeal arising under a provision mentioned in Part II or Part III of the Schedule, by a committee which shall be established by that Authority for the purpose and constituted in accordance with paragraph (2) or, as the case may be, (3).

(2) Any committee established for the purposes of paragraph (1)(b) in relation to an appeal arising under a provision mentioned in Part II of the Schedule—

- (a) shall consist of no more than 5 members, a majority of whom shall be lay persons; but
- (b) shall not include—
  - (i) in the case of an appeal arising under paragraph 4 of Schedule 4C to the National Health Service (General Medical and Pharmaceutical Services) Regulations 1974, any person whose name is included in a list published under section 42(2)(a) of the Act (lists of persons undertaking to provide pharmaceutical services) or any employee of such a person,
  - (ii) in the case of any appeal in relation to which this paragraph applies, any person whose name is included in any list published under section 29(2)(a) or 42(2)(a) of the Act (lists of persons undertaking to provide general medical services or

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<sup>(3)</sup> See S.I. 1981/1836, article 3 and Schedule.

<sup>(4)</sup> S.I. 1974/160; the relevant amending instruments are S.I. 1975/719, 1983/313, 1985/39, 1987/401, 1425, 1989/1360, 1897, 1990/1757, 2513, 1991/555.

pharmaceutical services) by the Family Authority whose decision is the subject of the appeal, or any employee of such a person.

(3) Subject to paragraph (4), any committee established for the purposes of paragraph (1)(b) in relation to an appeal arising under the provision mentioned in Part III of the Schedule shall comprise a chairman and two other members, of whom—

- (a) the chairman shall be a barrister or a solicitor;
- (b) one of the other members shall be a medical practitioner whose name is included in a list published by a Family Authority under section 29(2)(a) of the Act; and
- (c) the remaining member shall be a medical practitioner.

(4) A medical practitioner shall not be appointed as a member of a committee mentioned in paragraph (3) if his name is included in the list published under section 29(2)(a) of the Act by the Family Authority whose decision is the subject of the appeal in relation to which the committee is established.

(5) In this regulation, “lay person” means a person who is not, and never has been—

- (a) a medical practitioner;
- (b) a dental practitioner;
- (c) a registered pharmacist;
- (d) a registered ophthalmic optician or a registered dispensing optician within the meaning of the Opticians Act 1989(5);
- (e) a registered nurse, a registered midwife or a registered health visitor(6).

### **Transitional provisions**

6.—(1) Where, before 1st April 1991, an appeal has been brought under any provision mentioned in the Schedule as then in force, the provisions of Regulations governing the consideration and determination of such an appeal immediately before that date shall continue to have effect in relation to that appeal as if these Regulations had not come into force.

(2) Where, after 1st April 1991, an appeal is made under regulation 33C(8) of the National Health Service (General Medical and Pharmaceutical Services) Regulations 1974(7) in respect of the determination by a Local Medical Committee on or after that date of a question arising under regulation 20 of the National Health Service (Service Committees and Tribunal) Regulations 1974(8), that appeal shall be treated for the purposes of regulations 3 and 5(4) of these Regulations as if it were an appeal against the decision of the Family Authority for the locality in respect of which that Local Medical Committee is recognised(9).

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(5) 1989 c. 44.

(6) See the Nurses, Midwives and Health Visitors Act 1979 (c. 36), section 10(7).

(7) S.I. 1974/160; regulation 33C was inserted by S.I. 1991/555.

(8) S.I. 1974/455; see S.I. 1991/555, regulations 12 and 13(1)(a) and (2).

(9) See section 44 of the National Health Service Act 1977 (c. 49), as amended by paragraph 56 of Schedule 1 to the Health Services Act 1980 (c. 53), and paragraph 6 of Schedule 3, and Schedule 8, to the Health and Social Security Act 1984 (c. 48).

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Signed by authority of the Secretary of State for Health.

8th March 1991

*Virginia Bottomley*  
Minister of State,  
Department of Health

## SCHEDULE

Regulation 3

PROVISIONS OF REGULATIONS CONFERRING RIGHTS OF  
APPEAL TO THE SECRETARY OF STATE, IN RELATION TO WHICH  
FUNCTIONS ARE TO BE EXERCISED BY REGIONAL AUTHORITIES

## PART I

Provision of Regulations	Nature of appeal
The National Health Service (General Medical and Pharmaceutical Services) Regulations 1974—	
regulation 3A(9)	appeal against Family Authority's refusal to include name in child health surveillance list
regulation 3A(14)	appeal against Family Authority's decision to remove name from child health surveillance list
regulation 3B(9)	appeal against Family Authority's refusal to include name in minor surgery list
regulation 3B(14)	appeal against Family Authority's decision to remove name from minor surgery list
regulation 5(5)	appeal against Family Authority's decision to remove name from medical list
regulation 17(1)	appeal against Family Authority's decision as to size of doctor's list of patients
regulation 17(1A)	appeal against Family Authority's decision that doctor is to be treated for the purposes of his list size as an assistant rather than a partner
Schedule 1, paragraph 13B(8)	appeal against Family Authority's refusal to approve deferment of doctor's obligations in relation to new patients, or against conditional approval
Schedule 1, paragraph 19(3)	appeal against Family Authority's refusal, or withdrawal, of consent to deputising arrangement, or against imposition or variation of condition
Schedule 1, paragraph 25(11)	appeal against Family Authority's refusal to approve times and places at which doctor proposes to be available to patients, or against conditional approval
Schedule 1, paragraph 25(21)	appeal against Family Authority's directions requiring re-allocation of doctor's hours of availability
Schedule 1, paragraph 29(1)	appeal against Family Authority's refusal to consent to doctor's alteration to practice area

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## PART II

Provision of Regulations	Nature of appeal
The National Health Service (General Medical and Pharmaceutical Services) Regulations 1974—	
regulation 29(4A)	appeal against Family Authority's scheme for securing proper pharmaceutical services
regulation 30F(1)	appeal against Family Authority's decision, or refusal to consider question, in connection with rurality of area
regulation 30G(1)	appeal against Family Authority's decision in respect of, or refusal to consider, application relating to controlled locality
Schedule 4C, paragraph 4	appeal against Family Authority's decision of application for inclusion in pharmaceutical list

## PART III

Provision of Regulations	Nature of appeal
The National Health Service (General Medical and Pharmaceutical Services) Regulations 1974—	
regulation 33C(8)	appeal against Family Authority's decision as to whether or not substance is a drug

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations confer on Regional Health Authorities certain appellate functions exercised by the Secretary of State (under provisions of Regulations listed in the Schedule) in connection with decisions and functions of Family Health Services Authorities (regulation 3). Provision is also made requiring Regional Health Authorities to make arrangements for the exercise on their behalf by the Yorkshire Regional Health Authority of the functions conferred on them under the Regulations (regulation 4), and requiring the Yorkshire Regional Health Authority to make arrangements for the functions conferred on it under the Regulations to be discharged on its behalf either by an officer of the Authority or by a committee established in accordance with the Regulations (regulation 5).

These Regulations also make transitional provision for the determination of appeals made before 1st April 1991 which have not been determined by that date, and of appeals made after that date against certain decisions of Local Medical Committees (regulation 6).

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