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STATUTORY INSTRUMENTS

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**1996 No. 841 (S.96)**

**NATIONAL HEALTH SERVICE, SCOTLAND**

**The National Health Service (General Dental Services) (Scotland) Amendment Regulations 1996**

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|-------------------------------|---------|------------------------|
| <i>Made</i>                   | - - - - | <i>18th March 1996</i> |
| <i>Laid before Parliament</i> |         | <i>19th March 1996</i> |
| <i>Coming into force</i>      | - -     | <i>1st April 1996</i>  |

The Secretary of State, in exercise of the powers conferred on him by sections 4(1), (1A) and (1B), 25(1), (2), (2B) and (5) and 105(7) of the National Health Service (Scotland) Act 1978(1), 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 (General Dental Services) (Scotland) Amendment Regulations 1996 and shall come into force on 1st April 1996.

**Amendment of the National Health Service (General Dental Services) (Scotland) Regulations 1996**

2. The National Health Service (General Dental Services) (Scotland) Regulations 1996(2) shall be amended in accordance with the following provisions of these Regulations.

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(1) 1978 c. 29; section 4(1) was amended by the Health and Medicines Act 1988 (c. 49) ("the 1988 Act"), section 25(2); section 4(1A) and (1B) was inserted by the 1988 Act, section 12(3); Schedule 9, paragraph 19(1); section 25(2) was amended by the 1988 Act, Schedule 2, paragraph 11 and by the National Health Service and Community Care Act 1990 (c. 19) ("the 1990 Act"), section 40(2) and Schedule 9, paragraph 19(6) and was extended by the 1988 Act, section 17; section 25(2B) was inserted by the 1990 Act, section 40(3); section 25(5) was inserted by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 16; section 28(1) was amended by the National Health Service (Amendment) Act 1986 (c. 66), section 3(4); section 105(7), which was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983, Schedule 9, paragraph 24, contains provisions relevant to the making of Regulations.

(2) S.I. 1996/177.

**PART I**  
**APPEALS FROM DECISIONS OF THE**  
**SCOTTISH DENTAL PRACTICE BOARD**

**Amendment of regulation 33**

3. In regulation 33 (prior approval—patterns of treatment), in paragraph (3) for “regulation 20 of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992” there shall be substituted “regulation 34A”.

4.—(1) After regulation 34 there shall be inserted the following new Part—

**“PART VIIA**  
**APPEALS FROM DECISIONS OF THE**  
**SCOTTISH DENTAL PRACTICE BOARD**

**Appeals from decisions of the Board**

**34A.**—(1) This regulation applies to appeals which are permitted by paragraph (2) against decisions of the Board.

(2) Subject to paragraph (3), an appeal may be made to a Health Board in whose dental list the name of the dentist concerned is included—

- (a) by any person aggrieved by a decision of the Board concerning the treatment or intended treatment by the dentist concerned of a patient; or
- (b) by any dentist aggrieved by a decision of the Board—
  - (i) concerning fees in respect of his provision or intended provision of general dental services; or
  - (ii) under regulation 33 (prior approval—patterns of treatment).

(3) Where the name of the dentist concerned in any appeal under paragraph (2) is included in the dental list of more than one Health Board, the appeal may be made—

- (a) in the case of an appeal under paragraph (2)(a), to the Health Board in whose area the treatment or intended treatment of the patient is or would be provided;
- (b) in the case of an appeal by a dentist under paragraph (2)(b)(i), to the Health Board in whose area the treatment or intended treatment of the patient is or would be provided;
- (c) in the case of an appeal by a dentist under paragraph (2)(b)(ii)—
  - (i) in which the decision of the Board under regulation 33 was based on their opinion that the dentist’s pattern of treatment in question differed substantially from the local pattern of treatment of other dentists, to the Health Board in whose area the pattern of treatment of other dentists has been the subject of comparison; or
  - (ii) in which the decision of the Board under regulation 33 was based on their opinion that the dentist’s pattern of treatment in question differed substantially from the pattern of treatment of other dentists throughout Scotland, to any of the Health Boards in whose dental list the dentist’s name is included.

(4) For the purposes of this regulation, the parties to an appeal are the Board and the appellant, being the aggrieved person or dentist as the case may be.

(5) Notice of appeal shall—

- (a) be given to the Health Board in writing;
- (b) except where the Health Board are satisfied that the lateness of the appeal is due to illness or other reasonable cause, be given within 4 weeks from the date on which the appellant received notice of the decision of the Board;
- (c) state the date on which the appellant was informed of that decision; and
- (d) contain a concise statement of the facts and contentions upon which it is intended to rely.

(6) The Health Board shall, within 4 weeks from the date of receipt of the notice of appeal, request from the Board a written statement of the reasons for their decision and the Board shall, within 4 weeks from the date of receipt of that request, send such a statement to the Health Board.

(7) Subject to paragraph (8), the Health Board shall consider the notice of appeal and the statement of the Board and—

- (a) where the appeal is against a refusal of the Board to approve an estimate or a claim for remuneration on the ground that the services to which the estimate or claim relate cannot be provided as part of general dental services, they shall refer the notice of appeal and the Board's statement to the Secretary of State, and on referring the appeal the Health Board shall inform the parties of the referral;
- (b) where in an appeal by a dentist against a decision of the Board concerning fees, the Board certifies in its statement that it authorised those fees and that they were fees or maximum fees prescribed by Determination I of the Statement of Dental Remuneration published by the Secretary of State under regulation 22 (statement of dental remuneration) for the services provided or to be provided, the Health Board shall dismiss the appeal forthwith unless they are of the opinion that it involves a dispute as to the item or sub-item of treatment in that Determination applicable to those services;
- (c) except where an appeal is dismissed or referred in accordance with the preceding provisions of this paragraph, the Health Board shall, within 4 weeks from the date of receipt of the Board's statement, appoint—

- (i) where the appeal is made under paragraph (2)(b)(ii), 3 dentists;
- (ii) in an appeal under paragraph (2)(a) or (b)(i), 2 dentists,

as referees to determine the appeal, one of whom they shall select from a panel of dental practitioners who are engaged in the provision of general dental services and who is nominated by the area dental committee, failing which the area dental committee for the area of another Health Board.

(8) Where, after considering the notice of appeal and the statement of the Board, the Health Board are of the opinion that the notice of appeal discloses no reasonable grounds of appeal or that the appeal is otherwise trivial or vexatious, the Health Board shall—

- (a) consult with the area dental committee; and
- (b) following such consultation, either—
  - (i) determine the appeal by dismissing it forthwith; or
  - (ii) if the Health Board consider it desirable to do so, appoint referees in terms of paragraph (7)(c) to determine the appeal.

(9) Where the Health Board dismiss an appeal pursuant to paragraph (7) or (8), they shall—

- (a) inform the parties of their decision by sending them a copy of it together with their reasons for it; and
- (b) in the case of a dismissal under paragraph (7)(b), send to the appellant a copy of the Board's statement.

(10) Where an appeal is referred to the Secretary of State pursuant to paragraph (7)(a), the Secretary of State shall—

- (a) determine the appeal in such manner as he thinks fit; and
- (b) as soon as may be practicable after he has determined the appeal, which shall be final and conclusive, inform the parties and the Health Board of his decision by sending them a copy of it together with his reasons for it.

(11) Where, pursuant to paragraph (7)(c), the Health Board appoint referees to determine the appeal, the Health Board shall—

- (a) at least 2 weeks before the hearing (or within such shorter period as the parties may agree), give written notice to the parties of the date, time and place of the hearing and of the names of the referees;
- (b) at least 7 days before the hearing (or within such shorter period as the parties may agree), provide—
  - (i) the referees and the appellant with a copy of the Board's statement; and
  - (ii) the referees and the Board with a copy of the notice of appeal.

(12) Where the parties to an appeal, to whom notice of a hearing has been sent pursuant to paragraph (11), notify the Health Board in writing prior to the date of the hearing, that they do not intend to make oral representations at a hearing—

- (a) the Health Board shall inform the referees forthwith; and
- (b) the referees shall thereafter determine the appeal without holding a hearing.

(13) Subject to paragraph (14), if in the course of a hearing a party introduces any issue which in the opinion of the referees was not sufficiently disclosed in the notice of appeal by the appellant or statement by the Board, the referees may as they think fit admit such issue.

(14) Where the referees intend to admit an issue pursuant to paragraph (13), the hearing shall be adjourned for such period as the referees consider necessary unless the other party requests that the hearing should proceed and the referees agree to do so.

(15) As soon as may be practicable after—

- (a) receiving notification under paragraph (12) that a hearing is not necessary; or
- (b) a hearing has been held,

the referees shall determine the appeal and notify the Health Board in writing of their decision, which shall be final and conclusive, and their reasons for it.

(16) After the Health Board receive notice of the referees' decision pursuant to paragraph (15), they shall, within 2 weeks from the date of receipt of that notice, send a copy of it to each of the parties.”

(2) Regulation 20 of the National Health Service (Service Committee and Tribunal) (Scotland) Regulations 1992(3) (“the old regulation”) is hereby revoked.

(3) Appeals brought under regulation 20 of the old regulation before 1st April 1996 shall be treated on and after that date as brought under regulation 34A of the National Health Service (General Dental Services) (Scotland) Regulations 1996 (“the new regulation”) except that paragraph (7)(c) of the old regulation, instead of paragraph (7)(c) of the new regulation, shall apply.

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(3) [S.I. 1992/434](#) to which there are amendments not relevant to these Regulations.

## PART II

### COMPLAINTS

#### Complaints

- 5.—(1) Schedule 1 (terms of service for dentists) shall be amended as follows.
- (2) After paragraph 31 (notices), there shall be inserted—

#### “Complaints

**31A.**—(1) Subject to sub-paragraph (2), a dentist shall establish and operate, in accordance with this paragraph, a procedure (in this paragraph and in paragraph 31B referred to as a “practice based complaints procedure”) to deal with any complaints made by or on behalf of his patients and former patients.

(2) The practice based complaints procedure to be established by a dentist may be such that it also deals with complaints made in relation to one or more other dentists.

(3) A practice based complaints procedure shall apply to complaints made in relation to any matter reasonably connected with the dentist’s provision of general dental services and within the responsibility or control of—

- (a) the dentist;
- (b) any other dentist either employed by him or engaged as a deputy;
- (c) a former partner of the dentist;
- (d) an employee of the dentist other than one falling within paragraph (b);

and in this paragraph and paragraph 31B, references to complaints are to complaints falling within this sub-paragraph.

(4) A complaint may be made on behalf of a patient or former patient with his consent, or—

- (a) where the patient is a child under 16;
  - (i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child; or
  - (ii) in the care of an authority under Part II of the Social Work (Scotland) Act 1968<sup>(4)</sup> or in the care of a voluntary organisation, by that authority or organisation; or
- (b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.

(5) Where a patient has died a complaint may be made by a relative or other adult person who had an interest in his welfare or, where the patient was as described in head (a)(ii) of sub-paragraph (4), by the authority or voluntary organisation.

(6) A practice based complaints procedure shall comply with the following requirements:—

- (a) the dentist shall specify a person (who need not be connected with the dentist’s practice and who, in the case of an individual, may be specified by his job title) to be responsible for receiving and investigating all complaints;
- (b) all complaints shall be—
  - (i) recorded in writing,

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<sup>(4)</sup> 1968 c. 49; Part II of the Social Work (Scotland) Act 1968 was extended with modification by the Guardianship Act 1973 (c. 29), section 11(5).

- (ii) acknowledged, either orally or in writing, within the period of three days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and other public or local holidays agreed with the Health Board) beginning with the day on which the complaint was received by the person specified in head (a), or where that is not possible, as soon as reasonably practicable, and
  - (iii) properly investigated;
  - (c) within the period of 10 days (excluding Saturdays, Sundays, Christmas Day, New Year's Day and other public or local holidays agreed with the Health Board) beginning with the day on which the complaint was received by the person specified in head (a), or where that is not possible, as soon as reasonably practicable, the complainant shall be given a written summary of the investigation and its conclusions;
  - (d) where the investigation of the complaint requires consideration of the patient's dental records, the person specified in head (a) shall inform the patient or person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the dentist or a partner, a deputy or an employee of the dentist; and
  - (e) the practice shall keep a record of all complaints and copies of all correspondence relating to complaints, but such records shall be kept separate from patients' dental records.
- (7) A dentist shall inform his patients about the practice based complaints procedure which he operates and give the name (or title) and address of the person specified in sub-paragraph (6) (a).

**31B.**—(1) A dentist shall cooperate with any investigation of a complaint by the Health Board in accordance with the procedures which it operates in accordance with directions given under section 2(5) of the Act(5), whether the investigation follows one under the practice based complaints procedure or not.

- (2) The cooperation required by sub-paragraph (1) includes—
  - (a) answering questions reasonably put to the dentist by the Health Board;
  - (b) providing any information relating to the complaint reasonably required by the Health Board; and
  - (c) attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given), if the dentist's presence at the meeting is reasonably required by the Health Board.

## Returns

**31C.**—(1) A dentist whose name is in the dental list shall provide to the Health Board by 30th June each year a return stating the number of complaints received in accordance with paragraph 31A in respect of the period of 12 months ending on 31st March of that year.

(2) In the case of a dentist who practises in partnership with one or more other dentists whose names are included in the dental list, the information referred to in sub-paragraph (1) shall be provided in respect of the partnership as a whole instead of by each dentist in the partnership individually.?"

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(5) Section 2(5) was amended by the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 19(1).

## PART III

### MISCELLANEOUS PROVISIONS

#### **Amendment of Schedule 1**

6.—(1) Schedule 1 (terms of service for dentists) shall be amended as follows.

(2) In paragraph 2 (incorporation of provisions of Regulations), in paragraph (b)(i) for “dental service committee, the joint services committee” there shall be substituted “dental discipline committee and the joint discipline committee”.

(3) For paragraph 31 there shall be substituted—

#### **“Information about NHS charges**

**31.** A dentist shall display in a prominent position at the practice premises such information about charges for general dental services as the Health Board approve in accordance with directions given by the Secretary of State under section 2(5) of the Act.”.

St Andrew’s House,  
Edinburgh  
18th March 1996

*James Douglas-Hamilton*  
Minister of State, Scottish Office

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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## EXPLANATORY NOTE

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

These Regulations amend the National Health Service (General Dental Services) (Scotland) Regulations 1996 ([S.I. 1996/177](#)) (“the 1996 Regulations”).

Part I includes in the 1996 Regulations what was formerly regulation 20 of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992 ([S.I. 1992/434](#)).

Part II amends dentists' terms of service, contained in Schedule 1 to the 1996 Regulations, to require dentists to establish and operate a complaints procedure within their practice.

Part III makes a minor amendments to the dentists' terms of service including information about NHS charges to be displayed in practice premises.