
STATUTORY INSTRUMENTS

1996 No. 938 (S.103)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1996

<i>Made</i>	- - - -	<i>25th March 1996</i>
<i>Laid before Parliament</i>		<i>27th March 1996</i>
<i>Coming into force</i>	- -	<i>1st April 1996</i>

The Secretary of State, in exercise of powers conferred on him by sections 19(2), 25(2), 26(2), 27(2), 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(1) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals and its Scottish Committee in accordance with section 8(1) of the Tribunals and Inquiries Act 1992(2), hereby makes the following Regulations

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1996 and shall come into force on 1st April 1996.

(2) In these Regulations “the principal Regulations” means the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992(3).

(1) 1978 c. 29; section 19(2) was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (“the 1983 Act”), Schedule 7, paragraph 2, and was extended by the Health and Medicines Act 1988 (c. 49) (“the 1988 Act”), section 17; section 25(2) was extended by the 1988 Act, section 17 and was amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 40(2) and Schedule 9, paragraph 19(6); section 26(2) was amended by the Health and Social Security Act 1984 (c. 48), Schedule 1, Part II, paragraphs 2, 3 and 4 and Schedule 8, Part I and was extended by the 1988 Act, section 17; section 27(2) was amended by the National Health Service (Amendment) Act 1986 (c. 66), section 3(3) and by the 1990 Act, Schedule 9, paragraph 19(7)(b) and was extended by the 1988 Act, section 17; section 105(7), which was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7 and by the 1983 Act, Schedule 9, paragraph 24 contains provisions relevant to the making of regulations; section 108(1) contains a definition of “regulations” relevant to the exercise of the statutory powers under which these Regulations are made.

(2) 1992 c. 53.

(3) S.I. 1992/434, amended by S.I. 1994/3038 and 1995/3201.

Amendment of regulation 1 of the principal Regulations

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

- (a) there shall be inserted the following definitions in the order which will maintain alphabetical order:—

““appropriate Health Board” has the meaning it bears in regulation 3(5);

“complaint” means a complaint made in accordance with directions concerning the establishment and operation of procedures for dealing with complaints against practitioners providing Part II services given under section 2(5) of the Act(4) or in accordance with the provisions specified in paragraph (4);

“dental discipline committee” means a committee referred to in regulation 2(1)(b);

“dentists' panel” means the panel of dentists who are, or who have been, engaged in the provision of general dental services and who have been nominated to the panel for the purposes of these Regulations by a body which is, in the Secretary of State's opinion, representative of the dental profession;

“disciplinary matter” means a matter referred under regulation 4(1);

“discipline committee” has the meaning it bears in regulation 2(2);

“doctors' panel” means the panel of doctors who are, or who have been, engaged in the provision of general medical services and who have been nominated to the panel for the purposes of these Regulations by a body which is, in the Secretary of State's opinion, representative of doctors engaged in the provision of general medical services;

“joint discipline committee” means a committee referred to in regulation 2(1)(e);

“medical discipline committee” means a committee referred to in regulation 2(1)(a);

“ophthalmic discipline committee” means a committee referred to in regulation 2(1)(c);

“Part II Services” means services provided under Part II of the Act;

“pharmaceutical discipline committee” means a committee referred to in regulation 2(1)(d);

“pharmacist contractor” means a contractor who provides pharmaceutical services, or a person lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968(5);

“Practice Board” means the Scottish Dental Practice Board constituted under section 4 of the Act(6);

“relevant professional body” means—

- (a) in relation to a doctor or an ophthalmic medical practitioner, the General Medical Council(7);
- (b) in relation to a dentist, the General Dental Council(8);
- (c) in relation to an optician, the General Optical Council(9);
- (d) in relation to a pharmacist, the Royal Pharmaceutical Society of Great Britain;

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

(5) 1968 c. 67.

(6) Section 4 was amended by the Health and Medicines Act 1988, section 12(3) and Schedule 3.

(7) See the Medical Act 1983 (c. 54), section 1.

(8) See the Dentists Act 1984 (c. 24), section 1.

(9) See the Opticians Act 1989 (c. 44), section 1.

“statement of case” means a statement sent by the appropriate Health Board to the practitioner and the discipline committee in accordance with paragraph 1 of Schedule 1A;” and

(b) the definition of “service committee” shall be deleted.

(2) The following paragraph shall be added after regulation 1(3) of the principal Regulations—

“(4) The provisions referred to in the definition of “complaint” in paragraph (1) are—

- (a) paragraphs 31A and 31B of Schedule 1 to the National Health Service (General Dental Services) (Scotland) Regulations 1996⁽¹⁰⁾;
- (b) paragraphs 12A and 12B of Schedule 1 to the National Health Service (General Medical Services) (Scotland) Regulations 1995⁽¹¹⁾;
- (c) paragraphs 9A and 9B of Schedule 1 to the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995⁽¹²⁾;
- (d) paragraphs 8A to 8C of Schedule 1 to the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986⁽¹³⁾.”

Amendment of Part II of the principal Regulations

3. For regulations 2 to 15 of the principal Regulations there shall be substituted the following regulations:—

“Establishment of committees

2.—(1) Subject to paragraph (3), every Health Board shall have—

- (a) a medical discipline committee;
- (b) a dental discipline committee;
- (c) an ophthalmic discipline committee;
- (d) a pharmaceutical discipline committee; and
- (e) a joint discipline committee; and

may, where it sees fit, have two or more of any of those committees.

(2) The committees mentioned in paragraph (1) shall be known as discipline committees.

(3) Three or more Health Boards may appoint discipline committees jointly and in these Regulations a reference to a discipline committee of a Health Board includes a reference to a discipline committee jointly appointed by three or more Health Boards.

(4) A Health Board may have a reference committee which shall include one member who is both an officer and a member of that Health Board and which may exercise the Health Board’s functions under these Regulations with respect to the referral of disciplinary matters.

(5) Schedule 1 shall have effect with respect to the committees mentioned in paragraph (1).

⁽¹⁰⁾ S.I. 1996/177; relevant amending instrument is S.I. 1996/841.

⁽¹¹⁾ S.I. 1995/416; relevant amending instrument is S.I. 1996/842.

⁽¹²⁾ S.I. 1995/414; relevant amending instrument is S.I. 1996/840.

⁽¹³⁾ S.I. 1986/965; relevant amending instrument is S.I. 1996/843.

Provisions relating to the start of disciplinary proceedings

3.—(1) Where an appropriate Health Board receives information which it considers could amount to an allegation that a practitioner has failed to comply with his terms of service, it shall decide either to take no action or to take one or both of the courses of action set out in paragraph (2).

(2) The courses of action referred to in paragraph (1) are—

- (a) to refer the matter to another Health Board for investigation in accordance with regulation 4(1);
- (b) to refer the information to, as it considers appropriate, the Tribunal, the relevant professional body or the police.

(3) The appropriate Health Board shall not proceed under paragraph (2)(a) in any case where the allegation and information on which it is based is the subject of a complaint which is being investigated.

(4) For the purposes of these Regulations an allegation remains the subject of a complaint which is being investigated until—

- (a) the procedure for investigating the complaint is completed by the delivery of a report of the investigation to a Health Board by a panel appointed in accordance with directions given under section 2(5) of the Act; or
- (b) the complaint is withdrawn or abandoned by the person bringing it.

(5) In these Regulations “appropriate Health Board” in relation to a practitioner is the Health Board—

- (a) in whose medical, dental, ophthalmic or pharmaceutical list the name of the practitioner was included; or
- (b) where the matter relates to the act or omissions of a doctor when acting as a deputy to another doctor, in whose medical list the name of that other doctor was included,

at the relevant time or, where the practitioner referred to in sub-paragraph (a) or other doctor referred to in sub-paragraph (b) was at that time on more than one such list, the Health Board by arrangement with which the Part II services giving rise to the allegation were provided.

(6) An allegation made against either—

- (a) a doctor in respect of the acts or omissions of a deputy whose name is included in a medical list at the relevant time; or
- (b) a doctor whose name is included in a medical list at the relevant time, in respect of his acts or omissions whilst acting as deputy to a doctor whose name is included in the medical list,

shall be taken as an allegation made against the deputy except where there are reasonable grounds for believing that the doctor for whom the deputy was acting has failed to comply with his obligations under his terms of service in relation to ensuring the provision of services to his patients, in which case the matter shall be treated as concerning allegations made against both doctors and investigated accordingly.

(7) Where a Health Board considers that a payment has been made to a practitioner which was not due and the practitioner does not admit that overpayment, the Health Board may refer the overpayment under regulation 4(1).

(8) In this regulation “the relevant time” means the time of the event, treatment or other matter giving rise to the allegation.

Referral to discipline committee

4.—(1) Where an appropriate Health Board decides to proceed under regulation 3(2) (a) or (7) it shall, subject to paragraph (2), refer the matter to another Health Board for investigation by that Health Board's appropriate discipline committee.

(2) The appropriate Health Board shall not refer the matter to another Health Board which has appointed any discipline committee jointly with the appropriate Health Board.

(3) Subject to paragraph (6), the appropriate discipline committee referred to in paragraph (1) is—

- (a) where the matter relates to a doctor, a medical discipline committee;
- (b) where the matter relates to a dentist, a dental discipline committee;
- (c) where the matter relates to an ophthalmic medical practitioner or optician, an ophthalmic discipline committee;
- (d) where the matter relates to a pharmacist, a pharmaceutical discipline committee.

(4) A matter which, under paragraph (1), is required to be investigated by two discipline committees, may instead be referred for investigation by a joint discipline committee.

(5) If, in the opinion of a discipline committee, a matter referred to it includes allegations which are required, by virtue of paragraph (1), to be investigated also by another discipline committee, it shall refer the matter to the joint discipline committee instead of dealing with the matter itself.

(6) Where a matter is referred for investigation by a joint discipline committee under paragraph (4) or paragraph (5), that committee shall be the appropriate discipline committee instead of any other committee.

Time limits

5.—(1) Where the disciplinary matter concerns an allegation which has been the subject of a complaint, the appropriate Health Board shall refer it under regulation 4(1) within 28 days of the allegation having ceased to be the subject of a complaint which is being investigated.

(2) Where the disciplinary matter does not concern an allegation which has been the subject of a complaint, the appropriate Health Board shall refer it under regulation 4(1) within the time limits specified in paragraph (3).

(3) The time limits referred to in paragraph (2) are—

- (a) in the case of a doctor, ophthalmic medical practitioner, optician or pharmacist contractor, thirteen weeks after the event or matter which is the subject of the allegation;
- (b) in the case of a dentist—
 - (i) subject to paragraph (4), where the matter concerns the treatment of a patient, six months after the completion of the course of treatment during which that treatment was given;
 - (ii) subject to paragraph (4), where the matter does not concern the treatment of a patient and is reported to the appropriate Health Board by the Practice Board, thirteen weeks after the date on which the matter came to the notice of the Practice Board;
 - (iii) where the matter does not concern the treatment of a patient and comes to the notice of the appropriate Health Board other than by a report from the

Practice Board, thirteen weeks after the date on which the matter came to the notice of the Health Board.

(4) Where the Board reports a matter to the appropriate Health Board in circumstances in which the time limits mentioned in paragraph (3)(b)(i) or (ii) would otherwise expire within 28 days of the date on which the Health Board received the report, the relevant time limit shall be extended so that it expires on the 28th day after the date on which the Health Board received the report.

(5) For the purposes of paragraph (3), “treatment” has the same meaning as in regulation 2(1) of the National Health Service (General Dental Services) (Scotland) Regulations 1996.

Investigations by discipline committees

6.—(1) A discipline committee shall investigate any matter which is referred to it.

(2) Schedule 1A shall have effect with respect to the procedure for investigating disciplinary matters under this Part.

(3) Where the disciplinary matter concerns an alleged overpayment made to a practitioner pursuant to regulation 3(7), the appropriate Health Board may refer it under regulation 4(1) at any time.

Determination of appropriate Health Board

7.—(1) The appropriate Health Board, after due consideration of a report presented to it by the discipline committee pursuant to paragraph 7(1) of Schedule 1A, shall—

- (a) accept as conclusive the findings of fact made by that committee;
- (b) accept as conclusive the inferences from those findings of fact which that committee considered could properly be drawn from those findings as to whether the practitioner has failed to comply with any of the terms of service detailed in the appropriate Health Board’s statement of case; and
- (c) determine, having regard to any recommendation made by the discipline committee pursuant to paragraph 7(1)(e) of Schedule 1A, either—
 - (i) that no further action should be taken in relation to the report, or
 - (ii) that action should be taken in relation to the practitioner, in accordance with any one or more of the provisions of paragraphs (3) and (5).

(2) If the appropriate Health Board decides either not to adopt the recommendation of the discipline committee or to take any action not recommended by that committee, it shall record in writing its reasons for that decision.

(3) Where, in the case of any doctor to whom a report of a discipline committee relates, the appropriate Health Board is satisfied, after consultation with the Area Medical Committee, that, because of the number of persons included in his list, the doctor is unable to give adequate treatment to all those persons, it 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 appropriate Health Board imposes a special limit on the number of persons for whom a doctor may undertake to provide treatment, paragraphs (7), (8) and (12) of regulation 21 of the National Health Service (General Medical Services) (Scotland) Regulations 1995 (limitation of number of persons in 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 on the doctor's list exceeds that special limit.
- (5) Where it has been determined that a practitioner to whom the report of the discipline committee relates has failed to comply with any of his terms of service, the appropriate Health Board may—
- (a) determine that an amount shall be recovered from the practitioner, whether by way of deduction from his remuneration or otherwise;
 - (b) where the practitioner is a dentist, determine that that dentist should be required to submit estimates for the prior approval of the Board—
 - (i) in respect of any treatment of such description, and
 - (ii) during such a period,as shall be specified in the determination;
 - (c) determine that the practitioner should be warned to comply more closely with his terms of service in future.
- (6) In acting under paragraph (5), the appropriate Health Board may take into consideration—
- (a) any determination made by any Health Board before 1st April 1996 under these Regulations as they were in force prior to that date; or
 - (b) any determination, finding or inference under paragraph (1) since 1st April 1996, that the practitioner had, on some other occasion, failed to comply with his terms of service, so long as such a determination, finding or inference has not been overturned on appeal and was not made more than six years prior to the date of the referral under regulation 4(1).
- (7) The appropriate Health Board shall give notice in writing of its determination under paragraph (1) and any determination under paragraph (5) to the practitioner, any person who is treated as a party pursuant to paragraph 2(3) of Schedule 1A, the discipline committee, and the Secretary of State, and shall include with the notice—
- (a) a copy of the report of the discipline committee;
 - (b) a statement of any reasons recorded by the Health Board under paragraph (2); and
 - (c) a statement as to the rights of appeal to the Secretary of State under regulation 8.
- (8) Where an appropriate Health Board determines under this regulation that action should be taken in accordance with any of the provisions of paragraphs (3) or (5)(a), (b) or (c), that action shall be taken by the appropriate Health Board except that where, at the time when such action falls to be taken, the practitioner's name is no longer included in that Health Board's list but is included in the list of some other Health Board, that action shall be taken by that other Health Board.
- (9) Any amount determined under paragraph (5)(a) as being recoverable shall, to the extent that it is not recovered from the practitioner's remuneration, be a debt owed by the practitioner to the Health Board by which it is recoverable.
- (10) Where the appropriate Health Board makes a determination under the provisions of paragraph (5)(a), (b) or (c), no action shall be taken in consequence of that determination—
- (a) if no appeal is brought, before the end of the period specified in regulation 8(2) for bringing an appeal; or
 - (b) if an appeal is brought, before it has received notice—

- (i) that the appeal has been withdrawn, or
- (ii) of the Secretary of State's determination of the appeal.

Appeal to the Secretary of State

8.—(1) An appeal may be made to the Secretary of State by a practitioner—

- (a) against a finding of fact, or an inference drawn from a finding of fact, which (in either case) is adverse to him pursuant to regulation 7(1)(a) or (b);
- (b) against any determination by a Health Board under regulation 7(1)(c)(ii);
- (c) in respect of a determination by a Health Board that an overpayment has or has not been made in respect of his remuneration;

by giving notice of appeal in accordance with paragraph (2).

(2) A notice of an appeal under this regulation shall be in writing and sent to the Secretary of State within 30 days beginning on the date on which notice of the appropriate Health Board's decision was given to the practitioner under regulation 7(7), and shall contain a concise statement of the grounds of appeal upon which the practitioner intends to rely in respect of each ground of appeal.

(3) Subject to paragraph (6), on an appeal to which paragraph (1)(a) or (c) applies, the Secretary of State shall consider the appeal on the basis of such evidence as was available to the discipline 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;
- (b) draw such inferences from those findings as he sees fit;
- (c) in the case of an appeal to which paragraph (1)(a) applies—
 - (i) determine whether or not the practitioner has failed to comply with any one or more of the terms of service detailed in the appropriate Health Board's statement of case, and
 - (ii) determine in accordance with any one or more of the following provisions, that is paragraphs (3) or (5)(a), (b) and (c) (as modified in accordance with paragraph (5) of this regulation) of regulation 7 or regulation 10, whether any, and if so what, action should be taken in relation to that practitioner; and
- (d) in the case of an appeal to which paragraph (1)(c) applies, determine whether there has been an overpayment and, if so, of what amount.

(4) On an appeal to which paragraph (1)(b) applies, the Secretary of State shall—

- (a) accept as conclusive—
 - (i) those findings of fact made by the discipline committee which were necessary for the purpose of the Health Board's determination under regulation 7(1)(c)(ii); and
 - (ii) the inferences specified in the discipline committee's report pursuant to paragraph 7(1)(c) of Schedule 1A; and
- (b) determine in accordance with any one or more of the following provisions, that is paragraphs (3) or (5)(a), (b) and (c) (as modified in accordance with paragraph (5) of this regulation) of regulation 7 or regulation 10, whether any, and if so, what action should be taken in relation to the practitioner.

(5) For the purposes of paragraphs (3)(c)(ii) and (4)(b) of this regulation, paragraphs (3), (5) and (6) of regulation 7 shall have effect as if for any reference to “the appropriate Health Board” there were substituted a reference to “the Secretary of State”.

- (6) The practitioner 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.

Procedure on appeal

9.—(1) Without prejudice to paragraph (5), if the Secretary of State, after considering a notice of appeal and any further particulars furnished by the practitioner, is of the opinion that the notice and particulars disclose no reasonable grounds of appeal or that the appeal is otherwise vexatious or frivolous, he may determine the appeal by dismissing it forthwith.

(2) The Secretary of State shall, unless he dismisses the appeal under paragraph (1), send a copy of the notice of appeal and of any further particulars furnished by the practitioner to the appropriate Health Board, and shall invite that Board to submit its observations on the appeal within 28 days of being sent the copy of the notice of appeal.

(3) Where observations are made under paragraph (2), the Secretary of State shall send a copy of those observations to the practitioner and shall invite him to submit his comments on the observations within 21 days of his being sent that copy.

(4) The Secretary of State shall hold an oral hearing to determine the appeal except in the circumstances described in paragraph (5).

(5) Where a practitioner who is not appealing under regulation 8(1)(a) appeals under regulation 8(1)(b), his appeal may be dismissed without an oral hearing if the practitioner has stated in writing that he does not want such a hearing.

(6) Where there is to be an oral hearing the Secretary of State shall appoint three persons to hear the appeal, of whom—

- (a) one shall be an advocate or a solicitor, and shall act as chairman; and
- (b) two shall be selected in accordance with paragraphs (7) and (8).

(7) The persons appointed under paragraph (6)(b) shall be—

- (a) where the practitioner is a doctor, two doctors;
- (b) where the practitioner is a dentist, two dentists;
- (c) where the practitioner is an ophthalmic medical practitioner, two ophthalmic medical practitioners;
- (d) where the practitioner is an optician, two opticians;
- (e) where the practitioner is a pharmacist contractor, two pharmacists.

(8) In a case to which—

- (a) paragraph (7)(a) applies, one of the doctors shall be selected from the doctors' panel;
- (b) paragraph (7)(b) applies, one of the dentists shall be selected from the dentists' panel.

(9) The Secretary of State shall appoint a day for the hearing and shall give the practitioner and the appropriate Health Board not less than 21 days' notice in writing of the day, time and place of the hearing.

(10) Subject to the provisions of regulation 46 (attendance by member of Council on Tribunals) no person shall, without the consent of the practitioner and the persons appointed under paragraph (6), be admitted to a hearing before those persons unless he is—

- (a) the practitioner;
- (b) a representative of the appropriate Health Board who is an officer or a member of it;
- (c) a person (who may be counsel, a solicitor or any other person) engaged by a person or body mentioned in sub-paragraph (a) or (b) of this paragraph to represent them before the persons appointed under paragraph (6); or
- (d) a person whose attendance is required for the purpose of giving evidence to the persons so appointed.

(11) The practitioner and appropriate Health Board shall not rely on any facts or contentions which do not appear to the Secretary of State or the persons hearing the appeal to have been raised in the course of the proceedings before the discipline committee unless—

- (a) not less than seven days before the hearing, notice in writing was given to the Secretary of State of such facts or contentions; and
- (b) the Secretary of State or the persons hearing the appeal give their consent.

(12) The persons hearing the appeal shall draw up a report and present it to the Secretary of State who shall take it into consideration and determine the appeal.

(13) Where a Health Board has made representations to the Tribunal following its consideration of a report of a discipline committee, the Secretary of State may, for the purpose of any appeal under regulation 8(1)(a), treat as conclusive any relevant findings of fact of the Tribunal.

(14) The Secretary of State shall give notice in writing to the practitioner and the Health Board of his determination under paragraphs (1) or (12) of the matters mentioned in paragraphs (3)(c), (3)(d) or (4)(b) of regulation 8 and shall include with the notice a statement of his reasons for the determination.

(15) The provisions of Schedule 2 shall have effect with regard to the hearing of an appeal.

Recovery of amounts from practitioners following appeal

10.—(1) Where—

- (a) in the case of an appeal under regulation 8(1)(a), the Secretary of State determines that a practitioner has failed to comply with one or more of his terms of service; or
- (b) an appeal is made under regulation 8(1)(b) or (c),

the Secretary of State shall, subject to the following provisions of this regulation, determine whether any, and if so, what amount shall be recovered from the practitioner, whether by way of deduction from his remuneration or otherwise.

(2) The Secretary of State shall not consider the question of the recovery of an amount from a doctor or dentist whose failure to comply with his terms of service (as determined under these Regulations) is a failure specified in relation to him in Part I of Schedule 1B unless he has referred the question of recovery to the appropriate advisory committee and has received the advice of that committee.

(3) Where the case is not one to which paragraph (2) applies, the Secretary of State, before considering the question of recovery of—

- (a) any amount from a doctor or dentist, may consult the appropriate advisory committee;
 - (b) any amount in excess of £500, shall consult the appropriate advisory committee.
- (4) For the purposes of this regulation “the appropriate advisory committee” means—
- (a) where the practitioner is a doctor, the Medical Advisory Committee constituted in accordance with Part II of Schedule 1B; and
 - (b) where the practitioner is a dentist, the Dental Advisory Committee constituted in accordance with Part III of that Schedule.
- (5) The Secretary of State shall give notice in writing of his determination under paragraph (1) to the practitioner and the appropriate Health Board, and shall include with the notice a statement of the reasons for his determination.
- (6) Where the Secretary of State has determined under paragraph (1) that an amount shall be recovered from a practitioner, he shall direct the appropriate Health Board to recover that amount either by deduction from the practitioner’s remuneration or otherwise and, subject to regulation 7(8) (as modified by paragraph (7) of this regulation), that Health Board shall comply with that direction.
- (7) For the purposes of paragraph (6), regulation 7(8) shall have effect as if for the words “an appropriate Health Board determines under this regulation that action should be taken in accordance with any of the provisions of paragraphs (3) or (5)(a), (b) or (c), that action shall be taken” there were substituted the words “the Secretary of State determines under regulation 10(1) that an amount should be recovered, that amount shall be recovered”.
- (8) Any sum which falls by virtue of paragraph (6) to be recovered by a Health Board shall, to the extent that it is not recovered by deduction from the practitioner’s remuneration, be a debt owed by the practitioner to that Health Board.

Death of practitioner

11. Where, at any time after a disciplinary matter has been referred under regulation 4(1) but before the appropriate Health Board makes a determination under regulation 7 in relation to that matter, the practitioner to whom the matter relates dies, no further action shall be taken under these Regulations in relation to that practitioner.”.

Amendment of regulation 46 of the principal Regulations

4. In regulation 46(d) of the principal Regulations for the words “regulation 13(9)” there shall be substituted the words “regulation 9(6)”.

New Schedules for the principal Regulations

5. For Schedule 1 to the principal Regulations, there shall be substituted the Schedules set out in the Schedule to these Regulations.

Transitional provision

6. The amendments made to the principal Regulations by these Regulations shall not have effect in relation to—
- (a) any complaint made under regulation 3 of the principal Regulations before 1st April 1996;
or
 - (b) any other matter referred under regulation 8 of those Regulations before that date.

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

Revocations

7. Regulation 20 of the principal Regulations and the National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1994(14) are hereby revoked.

St Andrew's House,
Edinburgh
25th March 1996

James Douglas-Hamilton
Minister of State, Scottish Office

SCHEDULE

Regulation 5

SCHEDULES TO BE SUBSTITUTED IN THE PRINCIPAL REGULATIONS

“SCHEDULE 1

Regulation 2(5)

CONSTITUTION OF DISCIPLINE COMMITTEES

1. A discipline committee other than a joint discipline committee shall consist of—
 - (a) a chairman appointed in accordance with paragraph 4;
 - (b) two or three lay persons appointed by the Health Board; and
 - (c) two or three professional persons appointed by the Health Board from a list of nominees provided by the Area Professional Committee for the Health Board’s area.

- 2.—(1) A joint discipline committee shall consist of—
 - (a) a chairman appointed in accordance with paragraph 4; and
 - (b) ten other members of whom—
 - (i) two shall be lay persons appointed by the Health Board;
 - (ii) two shall be doctors appointed in accordance with sub-paragraph (2) by the medical discipline committee;
 - (iii) two shall be dentists appointed in accordance with sub-paragraph (2) by the dental discipline committee;
 - (iv) two shall be pharmacists appointed in accordance with sub-paragraph (2) by the pharmaceutical discipline committee;
 - (v) two shall be ophthalmic medical practitioners or opticians appointed in accordance with sub-paragraph (2) by the ophthalmic discipline committee.

(2) A member of a joint discipline committee appointed by a discipline committee under sub-paragraph (1)(b)(ii) to (v) shall already be a member of the discipline committee which appoints him or a deputy for such a member.

(3) A member of the joint discipline committee appointed by a discipline committee shall not take part in an investigation by the joint discipline committee unless the matter to be investigated involves a question relating to a relevant practitioner.

(4) For the purposes of sub-paragraph (3) a relevant practitioner is—
 - (a) in relation to a member appointed by the medical discipline committee, a doctor;
 - (b) in relation to a member appointed by the dental discipline committee, a dentist;
 - (c) in relation to a member appointed by the ophthalmic discipline committee, an ophthalmic medical practitioner or an optician;
 - (d) in relation to a member appointed by the pharmaceutical discipline committee, a pharmacist.

- 3.—(1) As respects each discipline committee not fewer than three lay persons and not fewer than three professional persons shall be appointed as deputies, according to the same provisions as apply to the appointment of members of that committee other than the chairman.

- (2) Where a member of a discipline committee, other than the chairman, is absent, a deputy appointed according to the same provisions as that member may act in his place.

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4.—(1) The chairman of a discipline committee shall be a practising solicitor or advocate appointed by the Health Board.

(2) The Health Board shall, within 14 days of making an appointment under sub-paragraph (1), give notice in writing of the appointment to the other members of the discipline committee.

(3) Where, within 14 days of notice being sent under sub-paragraph (2), a statement duly signed in accordance with sub-paragraph (4) is sent to the Health Board asserting that the chairman appointed by the Health Board is not acceptable to the signatories of the statement, the Health Board shall within 30 days of receipt of that statement refer the matter of the appointment to the Secretary of State.

(4) For the purposes of sub-paragraph (3) a statement must be signed—

(a) in the case of a discipline committee other than a joint discipline committee, by a majority of its lay members, or by a majority of its other members;

(b) in the case of a joint discipline committee, by both of its lay members or by both of the members appointed by any one of the discipline committees.

(5) Where the matter of the appointment is referred to the Secretary of State under sub-paragraph (3), he may, after consultation with the Health Board and the relevant Area Professional Committee, appoint another person to be chairman of the discipline committee; and the chairman appointed by the Health Board shall cease immediately to hold office as chairman and member of that committee.

(6) A person appointed as chairman of a discipline committee who is already a member of that discipline committee shall, on his appointment as chairman, cease to be a member otherwise than in his capacity as chairman and a new member shall be appointed to take his place.

5.—(1) A person shall be appointed to act as deputy for the chairman of any discipline committee and the provisions of paragraph 4 shall apply to that appointment as they apply to the appointment of the chairman.

(2) The deputy chairman may, in the absence of the chairman, act in his place and may, if when appointed he was already a member of the committee, continue as a member but when acting as chairman shall act only in that capacity.

6.—(1) Subject to the other provisions of this Schedule, a Health Board may make standing orders with respect to the term of office of any members and deputy members of any discipline committee.

(2) Subject to any re-appointment, the term of office of any member or deputy member of such a committee shall not exceed one year.

(3) A chairman of a discipline committee may attend and take part in any proceedings of the appropriate Health Board at which a report of that committee is being considered, but may not vote.

7. A person who is a member of a discipline committee constituted under this Schedule shall cease to hold office—

(a) where he is the chairman or a lay member, on his ceasing to be a lay person;

(b) where he is a member not mentioned in sub-paragraph (a), on his ceasing to be a professional person.

8. In this Schedule—

(a) “lay member” means, in relation to a discipline committee or joint discipline committee, any member (other than the chairman) who is a lay person;

(b) “lay person” means a person who is not and never has been—

(i) a doctor, a dentist, an ophthalmic medical practitioner, an optician or a pharmacist;

- (ii) a registered dispensing optician within the meaning of the Opticians Act 1989⁽¹⁵⁾;
 - (iii) a registered nurse, a registered midwife or a registered health visitor⁽¹⁶⁾; or
 - (iv) an officer of, or otherwise employed by, any Health Board or a Local Health Council established under section 7 of the Act⁽¹⁷⁾;
- (c) “professional person” means—
- (i) in the case of the medical discipline committee, a doctor;
 - (ii) in the case of the dental discipline committee, a dentist;
 - (iii) in the case of the pharmaceutical discipline committee, a pharmacist;
 - (iv) in the case of the ophthalmic discipline committee, an ophthalmic medical practitioner or optician;
 - (v) in the case of the joint discipline committee, a member appointed by a discipline committee;
- (d) references to a “Health Board” include references to a Health Board which has jointly appointed a discipline committee in accordance with regulation 2(3);
- (e) where three or more Health Boards have jointly appointed a discipline committee in accordance with regulation 2(3), references to the “relevant Area Professional Committee” include references to any of the Area Professional Committees for the areas of those three or more Health Boards.

SCHEDULE 1A

Regulation 6(2)

PROCEDURE FOR INVESTIGATION BY DISCIPLINE COMMITTEES

Health Board’s statement of case

- 1.—(1) Where a disciplinary matter is referred to the appropriate discipline committee in accordance with regulation 4(1), the appropriate Health Board shall—
- (a) send notice of the referral to the practitioner who is the subject of the matter within 2 working days of the referral;
 - (b) subject to sub-paragraph (4), send a statement of its case to the discipline committee and the practitioner within 28 days of the referral;
 - (c) where sub-paragraph (1) of paragraph 2 applies, send any notice under that sub-paragraph within 2 working days of the referral.
- (2) The statement of case shall include—
- (a) details of each provision of the practitioner’s terms of service with which it is alleged he has failed to comply, specifying for each of those provisions the details of the alleged failure to comply;
 - (b) subject to sub-paragraph (3), copies of all relevant documentary evidence;
 - (c) the name and address of any witness the appropriate Health Board intends shall give evidence at a hearing before the discipline committee and a copy of any statement made by any such witness.

⁽¹⁵⁾ 1989 c. 44.

⁽¹⁶⁾ See section 10(7) of the Nurses, Midwives and Health Visitors Act 1979 (c. 36).

⁽¹⁷⁾ Section 7 was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 1 and by the National Health Service and Community Care Act 1990 (c. 19), section 29(3) and Schedule 10.

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(3) The appropriate Health Board shall not in its statement of case include or refer to copies of documents which were created for the purposes of a complaint unless such documents concern evidence brought into issue by the practitioner.

(4) Where the appropriate Health Board requests an extension of the 28 day period mentioned in sub-paragraph (1)(b) before it expires, the chairman of the discipline committee may grant an extension of that period for a further 28 days from the day on which the period would otherwise expire.

Disciplinary matters in relation to deputies

2.—(1) Where a disciplinary matter which is investigated in relation to—

- (a) a doctor concerns the conduct of a deputy whose name is not included in a medical list;
- (b) a dentist concerns the conduct of a deputy whose name is not included in a dental list, or an assistant;
- (c) a pharmacist contractor concerns the conduct of a pharmacist employed by him,

the appropriate Health Board shall send a notice in writing in accordance with sub-paragraph (2) to the deputy, assistant or employed pharmacist.

(2) A notice given under sub-paragraph (1) shall—

- (a) invite the recipient of the notice to send to the appropriate Health Board within 28 days of that notice being sent to him if he wishes to be treated as a party to the investigation notwithstanding that no action may be taken in relation to him under regulation 7—
 - (i) written notification of his wish;
 - (ii) his written comments on the disciplinary matter;
- (b) include details of each provision of the terms of service identified pursuant to paragraph 1(2)(a) and—
 - (i) a copy of the appropriate Health Board's statement of case; or
 - (ii) notification of the date by which the statement of case is due under paragraph 1(1)(b) or, where an extension has been granted, under paragraph 1(4);
- (c) inform the recipient of the notice that copies of any comments or other documents he may submit in connection with the investigation will be sent to the practitioner and may be produced at any hearing.

(3) Where the recipient of a notice given under sub-paragraph (1) informs the appropriate Health Board that he wishes to be treated as a party to the investigation in accordance with sub-paragraph (2)(a)(i), and submits comments as mentioned in sub-paragraph (2)(a)(ii), he shall be treated for the purposes of this Schedule as if he were a practitioner in relation to whom the allegation, the subject of the disciplinary matter, is made, although no action may be taken in relation to him under regulation 7, and the following paragraphs of this Schedule (except paragraph 3(1)) shall apply to him accordingly.

(4) A disciplinary matter of the type mentioned in regulation 3(6)(a) or (b) shall be brought as soon as practicable before the medical discipline committee.

Response of practitioner

3.—(1) Where the practitioner wishes to respond to the statement of case, he shall send to the appropriate Health Board and the discipline committee his response to the statement of case within 28 days of the date on which the statement of case was sent to him.

(2) Where the practitioner requests an extension of the 28 day period mentioned in sub-paragraph (1) before it expires, the chairman of the appropriate discipline committee may grant an

extension of that period for a further 28 days from the day on which the period would otherwise expire.

Preparation for the hearing

4.—(1) The Health Board which has appointed the discipline committee shall—

- (a) inform the parties in writing—
 - (i) that there will be a hearing;
 - (ii) of the names of the members and deputy members of the discipline committee;
- (b) send to the parties copies of any further correspondence relevant to the disciplinary matter; and
- (c) request in writing each party to forward to the discipline committee, within 14 days from the date of the request, copies of any documentary evidence, and the names of any witnesses, which that party proposes to produce or call at the hearing.

(2) The Health Board which has appointed the discipline committee shall give to the parties and the Secretary of the relevant Area Professional Committee of the appropriate Health Board not less than 21 days' notice in writing of the date, time and place of the hearing and shall include with the notice to each party—

- (a) a copy of any documents supplied by the other party under sub-paragraph (1)(c);
- (b) a request to that party to notify the discipline committee in writing whether or not he intends to attend the hearing.

(3) The chairman of the discipline committee may, upon the application of any 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 for any other reason he thinks fit, in which case the provisions of sub-paragraph (2) shall apply as respects the postponed hearing.

(4) The Health Board which has appointed the discipline committee shall, not less than 7 days before the date fixed for the hearing, supply—

- (a) to each member of the discipline committee; and
- (b) to the relevant Area Professional Committee of the appropriate Health Board,

copies of the appropriate Health Board's statement of case, of any response of the practitioner, of any comments made under paragraph 2(2)(a)(ii), and of any further observations or correspondence between the parties.

Attendance at hearing

5.—(1) Subject to the provisions of regulation 46 (attendance by member of Council on Tribunals), the hearing before the discipline committee shall be in private, and no person shall be admitted to it unless he is a person specified in sub-paragraph (2).

(2) The persons specified for the purposes of sub-paragraph (1) are—

- (a) subject to sub-paragraph (3), no more than one member or officer of the appropriate Health Board and the practitioner;
- (b) any person permitted under sub-paragraph (3) to accompany a party;
- (c) not more than one person who is a member or officer of the relevant Area Professional Committee of the appropriate Health Board and who is authorised by that Committee to attend the hearing on its behalf as an observer only;
- (d) subject to sub-paragraph (5), any person whose attendance is required for the purpose of giving evidence to the discipline committee;

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- (e) not more than two officers of the Health Board which has appointed the discipline committee, who have been authorised by that Health Board to attend for the purpose of assisting the discipline committee in the discharge of its functions;
- (f) where the parties all consent, and the discipline committee considers it appropriate, any other person.

(3) Subject to sub-paragraph (4), a party may be accompanied at the hearing by one other person who may assist him in the presentation of his case, but, if that other person is an advocate or solicitor, he shall not address the committee or put questions to witnesses.

(4) No officer or member of any Health Board or of any of its committees referred to in regulation 2(1) shall be permitted to accompany the practitioner.

(5) Any person permitted to attend the hearing under sub-paragraph (2)(d) for the purpose of giving evidence shall, unless the discipline committee otherwise directs, be excluded from the hearing except while he is actually giving evidence.

Procedure at the hearing

6.—(1) At the hearing, any person mentioned in sub-paragraph (2)(a) or (b) of paragraph 5 may, subject to sub-paragraph (3) of that paragraph—

- (a) address the committee; and
- (b) put questions to witnesses, either directly or, where the chairman of the committee so directs, through him.

(2) Without prejudice to sub-paragraph (3), if a party fails to appear at the hearing and the discipline committee is satisfied that his absence is due to illness or other reasonable cause, or if for any other reason the committee thinks fit, it may, after considering the observations of any party who is present, adjourn the hearing, in which case the provisions of paragraph 4(2) shall apply as respects the resumed hearing.

(3) Where any person to whom notice of the hearing has been given under paragraph 4(2) fails to attend the hearing, either in person or by a representative, the discipline committee may, having regard to the circumstances of which it is aware, proceed with the hearing notwithstanding that person's absence.

(4) Prior to the commencement of a hearing, the chairman shall ask the other members of the discipline committee whether any of them is interested in a question referred to them, either directly or through association with a party, and if, in the opinion of the chairman, any member is so interested, that member shall take no part in the hearing, but a deputy appointed in the like manner may act in his place.

(5) Where, in the course of a hearing, any issue arises in relation to an event or matter which, in the opinion of the chairman—

- (a) is pertinent to the disciplinary matter but was not sufficiently disclosed to the practitioner prior to the hearing, the chairman may direct that the issue is to be excluded from the investigation of the complaint;
- (b) is not pertinent to the disciplinary matter the issue shall be excluded from the investigation.

(6) Subject to sub-paragraph (7), where no direction is made under sub-paragraph (5)(a) in relation to an issue to which that provision applies, the hearing shall be adjourned unless the practitioner and the chairman agree that the hearing may proceed.

(7) Any issue to which sub-paragraph (5) applies which concerns an allegation of failure to comply with a term of service other than the terms of service detailed in the appropriate Health Board's statement of case shall be excluded from the investigation to the extent that it concerns such an allegation.

(8) Before being invited to give his agreement for the purposes of sub-paragraph (6), a practitioner who is not accompanied by a person mentioned in sub-paragraph(2)(b) of paragraph 5 shall be afforded an opportunity to consult any person who may be present at the hearing pursuant to sub-paragraph (2)(c) of that paragraph.

(9) No evidence relating to an alleged breach of the practitioner's terms of service which was not specified in the appropriate Health Board's statement of case in accordance with paragraph 1(2)(a) may be produced at the hearing.

(10) No documentary evidence which was prepared for the purpose of a complaint may be produced by the appropriate Health Board unless it concerns evidence brought into issue by the practitioner.

(11) Subject to the other provisions of this Schedule, the procedure at the hearing shall be such as the discipline committee may determine.

The committee's report

7.—(1) The discipline committee shall present to the appropriate Health Board a report in writing which shall contain—

- (a) details of the material evidence given to it;
- (b) its findings on all relevant questions of fact;
- (c) the inferences which, in the view of the discipline committee, may properly be drawn from such findings of fact as to whether or not the practitioner has failed to comply with his terms of service;
- (d) its reasons for drawing such inferences; and
- (e) its recommendations as to the action which should be taken by the appropriate Health Board.

(2) In making recommendations in accordance with sub-paragraph (1)(e) the discipline committee shall not take into account any findings of any discipline committee that the practitioner has failed to comply with his terms of service on other occasions;

(3) For the purposes of sub-paragraph (2) "any discipline committee" includes any service committee which investigated a complaint under the provisions of Part II of these Regulations as they were in force before 1st April 1996.

Provisions as to quorum, composition and voting

8.—(1) At any hearing of a discipline committee other than a joint discipline committee the quorum shall consist of a chairman, two lay members and two members who are professional persons.

(2) At any hearing of a joint discipline committee, the quorum shall consist of the chairman, two lay members and two other members—

- (a) who are professional persons; and
- (b) in relation to—
 - (i) one of whom, one of the practitioners is a relevant practitioner, and
 - (ii) the other of whom, the other of the practitioners is a relevant practitioner.

(3) The proceedings at any meeting of a discipline committee or joint discipline committee shall be suspended if, and for so long as—

- (a) the number of members present falls below the quorum specified in sub-paragraph (1) or (2); or

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- (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.
- (4) Where, after the commencement of a hearing before a discipline committee, the hearing is adjourned for the purposes of hearing further evidence or of preparing or considering the report, no member of the committee who was not present at the earlier sitting of the hearing shall be present at the proceedings at the resumed hearing.
- (5) Where there is an equality of votes among members of a discipline committee, the chairman shall have a casting vote, but shall not otherwise be entitled to vote.

Interpretation

- 9.** In this Schedule, unless the context otherwise requires—
- (a) “lay member” and “professional person” have the meanings given to them in paragraph 8 of Schedule 1;
 - (b) “relevant practitioner” means where the practitioner is—
 - (i) a doctor, a doctor,
 - (ii) a dentist, a dentist,
 - (iii) an optician or ophthalmic medical practitioner, an optician or an ophthalmic medical practitioner,
 - (iv) a pharmacist, a pharmacist;
 - (c) “terms of service” means, in relation to a doctor acting as a deputy, the terms of service of the doctor for whom he was acting as a deputy;
 - (d) “parties” means the practitioner, the appropriate Health Board, and any person who is to be treated as a party to the investigation pursuant to paragraph 2(3).

SCHEDULE 1B

Regulation 10(2) and (4)

ADVISORY COMMITTEES

PART I

SPECIFIED FAILURES TO COMPLY WITH TERMS OF SERVICE

- 1.** Any of the following failures to comply with terms of service is specified for the purposes of regulation 10(2) in relation to a doctor—
- (a) a failure to exercise reasonable care and skill in the treatment of a patient;
 - (b) a failure to visit, or to treat, a patient whose condition so requires;
 - (c) a failure to order, or to provide, any necessary drug or appliance for the use of a patient;
 - (d) a failure to discharge any obligation on a doctor to give a patient the requisite assistance to enable him to obtain any treatment which is not within the scope of the doctor’s obligations under his terms of service.
- 2.** A failure to exercise a proper degree of skill and attention in the treatment of a patient is specified for the purposes of regulation 10(2) in relation to a dentist.

PART II

THE MEDICAL ADVISORY COMMITTEE

3. The committee (in these Regulations referred to as the Medical Advisory Committee) which is to advise the Secretary of State on questions referred to it under regulation 10(2) or (3) in relation to doctors shall be constituted in accordance with paragraph 4.

4. The Medical Advisory Committee shall consist of 2 medical practitioners of whom—
- (a) 1 shall be in the service of the Secretary of State and who shall act as chairman; and
 - (b) 1 shall be selected by the Secretary of State from a panel of doctors nominated by a body which is in his opinion representative of doctors.

PART III

THE DENTAL ADVISORY COMMITTEE

5. The committee (in these Regulations referred to as the Dental Advisory Committee) which is to advise the Secretary of State on questions referred to it under regulations 10(2) or (3) in relation to dentists shall be constituted in accordance with paragraph 6.

6. The Dental Advisory Committee shall consist of 2 dental practitioners of whom—
- (a) 1 shall be in the service of the Secretary of State and who shall act as chairman; and
 - (b) 1 shall be selected by the Secretary of State from a panel of dentists nominated by a body which is in his opinion representative of dentists.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992 (“the principal Regulations”) by substituting new regulations for regulations 2 to 15, replacing Schedule 1 and making consequential amendments. These provisions replace the system whereby complaints made against practitioners providing services under Part II of the National Health Service (Scotland) Act 1978 were dealt with by service committees. Service committees are abolished and are replaced by discipline committees to which Health Boards will refer for investigation matters which raise allegations that a practitioner has failed to comply with his terms of service or concern overpayments made to a practitioner (regulation 3). Unlike service committees, discipline committees will not deal with complaints made by or on behalf of patients. Such complaints will be dealt with in accordance with regulations specified in regulation 1(4) of the principal Regulations and directions given under section 2(5) of the National Health Service (Scotland) Act 1978. These directions are available from the Health Gain Division, Scottish Office Department of Health, St Andrew’s House, Edinburgh.

The Regulations provide for the criteria which must be satisfied for a matter to be referred for investigation, the procedure for investigation, appeals and the imposition of, and arrangements to enforce, sanctions. A consequential amendment is made to regulation 46 of the principal Regulations

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(regulation 4). A transitional provision (regulation 6) provides for complaints initiated before 1st April 1996 to proceed as though the principal Regulations had not been amended.