

2006 No. 2084

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Complaints) Amendment
Regulations 2006**

<i>Made</i>	- - - -	<i>27th July 2006</i>
<i>Laid before Parliament</i>		<i>1st August 2006</i>
<i>Coming into force</i>	- -	<i>1st September 2006</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 113(1), (3) and (4), 115(1), (2), (5) and (6) and 195(1) of the Health and Social Care (Community Health and Standards) Act 2003(a):

Citation, commencement and application

1.—(1) These Regulations may be cited as the National Health Service (Complaints) Amendment Regulations 2006 and shall come into force on 1st September 2006.

(2) These Regulations apply in relation to England only.

Interpretation

2. In these Regulations, “the Principal Regulations” means the National Health Service (Complaints) Regulations 2004(b).

Amendment of regulation 2 of the Principal Regulations

3. In regulation 2 (interpretation) of the Principal Regulations, in paragraph (1), in the appropriate alphabetical position, insert—

““NHS Bursary Scheme” means the NHS Bursary Scheme established pursuant to section 63 of the Health Services and Public Health Act 1968(c); and

(a) 2003 c.43. Section 113(4) was amended by the Public Services Ombudsman (Wales) Act 2005 (c.10), section 39 and Schedule 6, paragraphs 74 and 75.
(b) S.I. 2004/1768.
(c) 1968 c.46. Section 63 was amended by the National Health Service (Scotland) Act 1972 (s.58), Schedule 7, Part 11, the National Service Reorganisation Act 1973 (c.32) (“the 1973 Act”), section 57, Schedule 4 and Schedule 5, paragraph 124, the National Health Service Act 1977 (c.49), section 129, Schedule 15, paragraph 45 and Schedule 16, the National Health Service (Scotland) Act 1978 (c.29), section 109, Schedule 16, paragraph 26 and Schedule 17, the Local Government Act 1985 (c.51), Schedule 17, the Health and Medicines Act 1988 (c.49), section 20, the Local Government etc (Scotland) Act 1994 (c.39), Schedule 13, paragraph 74(2), the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 95(2), the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2, paragraph 1(4), the Health Act 1999 (c.8), Schedule 4, paragraph 3, the Health and Social Care Act 2001 (c.15) Schedule 5, paragraph 1, the National Health Service Reform and Health Care Professions Act 2002 (c.17), section 6(2), Schedule 2, paragraph 40(2) and Schedule 5, paragraph 2, the Health and Social Care (Community Health and Standards Act) 2003 (c.43), Schedule 11, paragraphs 2 and 4 and Schedule 14, Parts 1 and 4, the Children Act 2004 (c.31), section 55(3), S.I. 1996/1008, S.I. 2002/2469, S.I. 2004/957 and S.I. 2006/1056.

“Social Services Complaints Regulations” means the Local Authority Social Services Complaints (England) Regulations 2006(a);”.

Insertion of new regulations 3A and 3B into the Principal Regulations

4. After regulation 3 (arrangements for the handling and consideration of complaints) of the Principal Regulations, insert—

“Complaints made to an NHS body relating in part to a local authority

3A.—(1) Paragraph (2) applies where it appears to an NHS body considering a complaint made in accordance with regulation 9 on or after 1st September 2006 that the complaint contains material which, had the complainant sent it to a local authority, would be a complaint which would fall to be handled by that authority under the Social Services Complaints Regulations.

(2) The NHS body must, as regards that part of the complaint which would appear to be a complaint for the purposes of the Social Services Complaints Regulations (“the local authority complaint”)—

- (a) within 10 working days of receipt of the complaint, ask the complainant whether he wishes details of the local authority complaint to be sent to the local authority to which it relates; and
- (b) if the complainant does so wish, send details of the local authority complaint to that local authority as soon as reasonably practicable.

(3) In the case of a complaint to which paragraph (2) applies, the NHS body must notify the complainant—

- (a) which part of the complaint will be handled in accordance with the procedure described in these Regulations; and
- (b) in a case where it has sent details of the local authority complaint to the local authority, that it has sent such details.

(4) Where a local authority handles a complaint under the Social Services Complaints Regulations in consequence of having been sent details under paragraph (2)(b), the local authority and the NHS body must cooperate with a view to the complainant receiving a coordinated response to his complaint.

(5) The duty to cooperate in paragraph (4) includes, in particular, a duty to—

- (a) provide information relevant to the consideration of a complaint which is reasonably requested;
- (b) attend any meeting reasonably required in connection with the consideration of a complaint; and
- (c) seek to agree which of the two bodies should take the lead in—
 - (i) coordinating the handling of the complaints against them, and
 - (ii) dealing with the complainant.

(6) Where a complaint is referred to a local authority in accordance with paragraph (2)(b) the complainant shall be deemed to have made a complaint under regulation 3 (duty to deal with complaints) of the Social Services Complaints Regulations for the purposes of those Regulations.

Complaints made to an NHS body relating only to a local authority

3B.—(1) Where an NHS body receives a complaint on or after 1st September 2006 which does not fall within regulation 6 and it appears to the NHS body that the complaint contains

(a) S.I. 2006/1681.

material which, had the complainant sent it to a local authority, would be a complaint which would fall to be handled by that body under the Social Services Complaints Regulations, it must—

- (a) within 5 working days of receipt of the complaint, ask the complainant whether he wishes that material to be sent to the local authority to which it relates; and
- (b) if the complainant does so wish, send that material to that local authority as soon as reasonably practicable.

(2) Where a complaint is referred to a local authority in accordance with paragraph (1) the complainant shall be deemed to have made a complaint under regulation 3 (duty to deal with complaints) of the Social Services Complaints Regulations for the purposes of those Regulations.”.

Amendment of regulation 5 of the Principal Regulations

5. In regulation 5 (complaints manager) of the Principal Regulations, at the end add—

“(3) A complaints manager may be—

- (a) a person who is not an employee of the NHS body; or
- (b) appointed as complaints manager for more than one NHS body.”.

Amendment of regulation 7 of the Principal Regulations

6. In regulation 7 (matters excluded from consideration under the arrangements) of the Principal Regulations—

- (a) omit the “and” at the end of paragraph (h); and
- (b) at the end, add—

“(j) a complaint the subject matter of which has already been investigated under these Regulations; and

- (k) a complaint which relates to any scheme established under section 10 (superannuation of persons engaged in health services, etc) or section 24 (compensation for loss of office, etc) of the Superannuation Act 1972(a), or to the administration of those schemes.”.

Amendment of regulation 13 of the Principal Regulations

7. In regulation 13 (response) of the Principal Regulations, for paragraph (3) substitute—

“(3) Subject to paragraph (4), the response must be sent to the complainant within 25 working days beginning on the date on which the complaint was made, unless the complainant agrees to a longer period in which case the response may be sent within that longer period.”.

Amendment of regulation 14 of the Principal Regulations

8. In regulation 14 (general complaints remit of the Healthcare Commission) of the Principal Regulations—

- (a) in paragraph (1), for “In any case” substitute “Subject to paragraph (1A), in any case”;
- (b) after paragraph (1), insert—

(a) 1972 c.11. Section 10 was amended by the 1973 Act, sections 57 and 58 and Schedule 5, the Pensions (Miscellaneous Provisions) Act 1990 (c.7), sections 4(2), 8(5), 8(6) and Schedule 8, paragraph 7 and S.I. 2001/3649. Section 24 was amended by the Police Pensions Act 1976 (c.35), section 13(1) and Schedule 2, paragraph 10, the Fire and Rescue Services Act 2004 (c.21), section 53(1) and Schedule 1, paragraph 37, S.I. 2004/2306 and S.I. 2004/2918.

“(1A) Paragraph (1) does not apply in the case of a complaint, or part of a complaint, that was made to an NHS body in accordance with regulation 9 on or after 1st September 2006 which relates to the NHS Bursary Scheme, or the administration of that scheme.”; and

(c) in paragraph (3), for “2 months” substitute “6 months”.

Amendment of regulation 15 of the Principal Regulations

9. In regulation 15 (remit of the Healthcare Commission in relation to complaints about NHS foundation trusts) of the Principal Regulations—

- (a) in paragraph (2)(a), after “a patient” insert “or any other person who is affected by, or likely to be affected by, the action or omission of the NHS foundation trust which forms the subject matter of the complaint”;
- (b) in paragraph (2)(b), for “patients” substitute “such persons”;
- (c) in paragraph (6), for “2 months” substitute “6 months”;
- (d) for paragraph (7), substitute—

“(7) The Healthcare Commission shall make a report to the Independent Regulator each month and when the Independent Regulator shall otherwise require, which—

- (a) specifies the number of complaints received about NHS foundation trusts in that month, or other period specified in the request;
- (b) identifies the subject matter of those complaints; and
- (c) summarises how any complaints concluded during that month, or other period specified in the request, were handled, including their outcome.”; and

(e) at the end, add—

“(8) The Healthcare Commission may, provided that it has the consent, which may be either express or implied, of the complainant send a copy of any complaint that it has received about an NHS foundation trust to the Independent Regulator.

(9) The Independent Regulator may request that the Healthcare Commission send him any complaint about an NHS foundation trust that the Healthcare Commission receives.

(10) For the purposes of paragraph (9) the Independent Regulator may make a standing request that identifies a type of complaint that he wishes to receive.

(11) Where the Healthcare Commission receives a request under paragraph (9) it must, provided that it has the consent, which may be either express or implied, of the complainant, send a copy of the complaint to the Independent Regulator—

- (a) in the case of an individual request, within two days of receiving the request; or
- (b) in the case of a standing request, within two days of receipt of a complaint which falls within the terms of that request.

(12) On receipt of a copy of a complaint under paragraph (8) or (11) the Independent Regulator may give his views on the complaint or its handling to the Healthcare Commission and, where he wishes to give such views, must do so as soon as reasonably practicable.”.

Amendment of regulation 16 of the Principal Regulations

10. In regulation 16 (decision on handling of complaint) of the Principal Regulations, for paragraph (1)(c) substitute—

“(c) in the case of a complaint about an NHS foundation trust which falls within regulation 15(2), any views given by the Independent Regulator pursuant to regulation 15(12);”.

Amendment of regulation 18 of the Principal Regulations

11. In regulation 18 (panels) of the Principal Regulations—

- (a) for paragraph (1), substitute—
“(1) The Healthcare Commission may use an independent panel to hear and consider complaints.”;
- (b) in paragraph (2), omit “lay”;
- (c) omit paragraph (3);
- (d) in paragraph (4), for “ to (7)” substitute “and (6)”;
- (e) in paragraph (5), after “informed” insert “in a timely manner”; and
- (f) omit paragraph (7).

Amendment of regulation 19 of the Principal Regulations

12. In regulation 19 (report of investigation by the Healthcare Commission) of the Principal Regulations—

- (a) for paragraph (3)(e), substitute—
“(e) in the case of a complaint involving an NHS foundation trust, the Independent Regulator, where he so requests.”; and
- (b) after paragraph (3), insert—
“(3A) For the purposes of paragraph (3)(e) the Independent Regulator may make an individual request for a report to be sent to him, or a standing request that identifies a type of complaint of which he wishes to receive the report.”.

Signed by authority of the Secretary of State for Health

27th July 2006

Rosie Winterton
Minister of State
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend, from 1st September 2006, the National Health Service (Complaints) Regulations 2004 (“the Principal Regulations”), which detail the procedure for the handling of complaints made relating to NHS bodies and prescribe the Healthcare Commission’s role in respect of NHS complaints.

Regulation 4 inserts two new regulations into the Principal Regulations which provide for the transfer to the appropriate local authority of complaints made to NHS bodies that relate either solely, or in part, to matters that are functions of local authorities.

Regulation 5 amends regulation 5 of the Principal Regulations to enable NHS bodies to designate as complaints managers persons who are not employees of the NHS body and who may also be complaints managers for other NHS bodies.

Regulation 6 amends regulation 7 of the Principal Regulations to exclude complaints that have already been investigated and complaints that relate to schemes established under section 10 or 24 of the Superannuation Act 1972.

Regulation 7 amends regulation 13 of the Principal Regulations to increase the time limit for an NHS body to respond to a complaint from 20 to 25 working days and provides for the complainant to be able to agree to a longer period.

Regulation 8 amends regulation 14 of the Principal Regulations to increase the time within which a complainant may request the consideration of a complaint by the Healthcare Commission. It also prevents the Healthcare Commission from considering a complaint where it relates to the NHS Bursary Scheme.

Regulation 9 amends regulation 15 of the Principal Regulations by broadening the remit of the Healthcare Commission in respect of complaints relating to NHS foundation trusts and increases the time within which a complainant may request the consideration of such a complaint by the Healthcare Commission. It replaces the Healthcare Commission’s obligation to send copies of all complaints to the Independent Regulator with a regular reporting requirement. It enables the Healthcare Commission to send copies of complaints to the Independent Regulator, provided it has the consent of the complainant, either of its own volition, or at the request of the Independent Regulator.

Regulation 10 amends regulation 16 of the Principal Regulations by only requiring the Healthcare Commission to consider any views given by Independent Regulator in determining how to handle a complaint, where it has sent a copy of the complaint to the Independent Regulator.

Regulation 11 amends regulation 18 of the Principal Regulations by reducing the prescription of the management of independent panels used by the Healthcare Commission to hear and consider complaints.

Regulation 12 amends regulation 19 of the Principal Regulations by only requiring the Healthcare Commission to send an investigation report of a complaint to the Independent Regulator where the Independent Regulator requests.

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