
STATUTORY INSTRUMENTS

1995 No. 3091

**NATIONAL HEALTH SERVICE,
ENGLAND AND WALES**

**The National Health Service (Service Committees
and Tribunal) Amendment Regulations 1995**

Made - - - - *30th November 1995*
Laid before Parliament *30th November 1995*
Coming into force - - *21st December 1995*

The Secretary of State for Health, in exercise of powers conferred on him by sections 49, 49C(2) and 126(4) of, and paragraph 6 of Schedule 9 to, the National Health Service Act 1977(1) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(2), hereby makes the following Regulations:—

PART I

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Service Committees and Tribunal) Amendment Regulations 1995 and shall come into force on 21st December 1995.

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

(1) 1977 c. 49; see section 128(1) as amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 26(2)(g) and (i), for the definitions of “prescribed” and “regulations”. Section 49 was amended by the National Health Service (Amendment) Act 1995 (c. 31) (“the 1995 Act”), section 2(1). Section 49C was inserted by section 2(1) of the 1995 Act. Section 126(4) was amended by the 1990 Act, section 65(2). Schedule 9 was amended by the 1995 Act, section 6.

(2) 1992 c. 53.

(3) S.I. 1992/664, to which there are amendments not relevant to these Regulations.

PART II

CONSTITUTION OF TRIBUNAL

Tenure of office of members of Tribunal

2.—(1) Regulation 22 of the principal Regulations (tenure of office of chairman and member of Tribunal) shall be amended as follows.

(2) In paragraph (1), after “chairman” there shall be inserted “and deputy chairmen”.

(3) For paragraph (2) there shall be substituted—

“(2) The other members of the Tribunal shall hold office during the pleasure of the Secretary of State.”.

Tenure of office of officers of Tribunal

3. In regulation 23 of the principal Regulations (officers of the Tribunal), after “appoint” there shall be inserted “the following persons, who shall hold office during the pleasure of the chairman”.

Decisions of Tribunal

4. In each of regulation 26(3) (inquiry as to representations) and regulation 29(6) (applications for restoration) of the principal Regulations, for “the chairman” there shall be substituted “the person (being the chairman or a deputy chairman) who presided over the inquiry”.

PART III

ABOLITION OF APPEALS AND OF APPLICATIONS TO SECRETARY OF STATE

Abolition of appeal and of application for removal of disqualification to Secretary of State

5.—(1) The principal Regulations shall be amended as follows.

(2) In regulation 21 (interpretation and forms), the definition of “appellant” shall be omitted.

(3) In regulation 26 (inquiry as to representations), in paragraph (5), for “to the Secretary of State under section 46(3) of the Act” there shall be substituted “under section 11(1) of the Tribunals and Inquiries Act 1992(4).

(4) Regulation 27 (appeals to Secretary of State as to representations) shall be omitted.

(5) In regulation 28 (applications for removal of disqualification), “or to the Secretary of State” shall be omitted.

(6) Regulation 30 (applications to the Secretary of State) shall be omitted.

(7) In regulation 31 (publication of decisions)—

(a) paragraph (b) shall be omitted; and

(b) in paragraph (c), “or the Secretary of State” shall be omitted.

(8) In regulation 33 (attendance by member of Council on Tribunals), in paragraph (d), for “14(8), 15(3), or (22), 27(2) or 30(4)” there shall be substituted “14(8) or 15(3) or (22)”.

(4) 1992 c. 53.

(9) In regulation 35 (power to extend time limits), in paragraph (3)(c), for “17(10) or 27(1)” there shall be substituted “or 17(10)”.

(10) In regulation 36 (fresh appointments), for “13, 14, 27 or 30” there shall be substituted “13 or 14”.

(11) In Schedule 9 (hearings under Part III), for paragraph 10(b) there shall be substituted—

“(b) references to the person holding the inquiry are (subject to regulation 26A) to the Tribunal.”.

PART IV

SUSPENSION OF PRACTITIONERS

Applications for interim suspension

6. After regulation 24 of the principal Regulations there shall be inserted the following new regulation—

“Applications for interim suspension

24A.—(1) An application for interim suspension under section 49A of the Act shall—

- (a) be made in writing;
- (b) be signed by some person authorised by the FHSA;
- (c) include a statement of the alleged facts and the grounds upon which the FHSA intends to rely; and
- (d) include a copy of each document which the FHSA proposes to put in evidence,

and shall be sent to the Tribunal.

(2) The statement mentioned in paragraph (1)(c) may be made by reference to any other document already before the Tribunal.

(3) The application shall be dealt with by way of oral hearing, and Schedule 9 shall apply with respect to that hearing.

(4) The Tribunal shall give the respondent notice in writing of the application and of its intention to hold an oral hearing on a date to be fixed, and shall include a copy of—

- (a) the FHSA’s application;
- (b) any document provided under paragraph (1)(d); and
- (c) where paragraph (2) applies, any document which is referred to in the statement.

(5) The Tribunal may at any time before the conclusion of the proceedings relating to the application allow it to be amended, upon such conditions as it may think just, on the application of the FHSA.

(6) At the conclusion of proceedings relating to the application, the Tribunal shall, as soon as practicable, issue a decision in writing, signed by the person (being the chairman or a deputy chairman) who presided over the proceedings, containing—

- (a) any directions it decides to give under section 49A(2) of the Act;
- (b) a statement of reasons for its decision; and
- (c) any order it decides to make as to costs.

(7) The Tribunal shall send a copy of its decision to the respondent, the FHSA, and the Secretary of State; and the Secretary of State shall send a copy of the decision to any other FHSA which appears to him to be concerned.

(8) Where the decision includes a direction under section 49A(2) of the Act, the Tribunal shall include with the decision a notice to the respondent of his right to appeal under section 11(1) of the Tribunals and Inquiries Act 1992(5).”.

Withdrawal of representations and suspension of procedures

7.—(1) Regulation 25 of the principal Regulations (withdrawal of representations and suspension of procedures) shall be amended as follows.

(2) In paragraph (3), at the beginning there shall be inserted “Subject to paragraph (3A),”.

(3) After paragraph (3) there shall be inserted the following new paragraph—

“(3A) Where representations are withdrawn or treated as withdrawn after the Tribunal has given a direction under section 49A(2) of the Act, that direction shall cease to have effect; and—

- (a) the Tribunal shall include this information also when informing the respondent under paragraph (3);
- (b) the Tribunal shall immediately also so inform the Secretary of State in writing that the direction has ceased to have effect; and
- (b) the Secretary of State shall so inform anyone to whom he sent a copy of the Tribunal’s decision pursuant to regulation 24A(7).”.

(4) In paragraph (4), at the beginning there shall be inserted “Except where the Tribunal has made a direction under section 49A(2) of the Act,”.

Continuation of suspension pending appeal

8.—(1) Regulation 26 of the principal Regulations (inquiry as to representations) shall be amended as follows.

(2) In paragraph (2), at the beginning there shall be inserted “Subject to paragraph (2A),”.

(3) After paragraph (2) there shall be inserted the following new paragraph—

“(2A) Where the Tribunal has determined to decide the case on documentary evidence pursuant to paragraph (2), but proposes to give a direction under section 49B(1) of the Act, it shall before doing so give notice to the FHSA and the respondent of its intention to hold an oral hearing relating to that proposal, and shall then hold an oral hearing to which Schedule 9 shall apply.”.

(4) In paragraph (3)(c), after “46(2)” there shall be inserted “or 49B(1)”.

(5) In paragraph (5)—

- (a) after “section 46(2) of the Act” there shall be inserted “, or directions under both sections 46(2) and 49B(1) of the Act,”; and
- (b) at the end there shall be inserted “in respect of any direction under section 49B(1) of the Act or a direction under section 46(2) of the Act, or both”.

Functions of the Tribunal

9. After regulation 26 of the principal Regulations there shall be inserted the following new regulation—

“Discharge of suspension functions by chairman or deputy chairman

26A. The functions of the Tribunal under section 49A or 49B of the Act may be carried out by the chairman or a deputy chairman of the Tribunal; and where the chairman or a deputy chairman does carry them out, any reference to the Tribunal in this Part or in Schedule 9 shall be construed as a reference to that person.”

Publication of decisions

10. In regulation 31 of the principal Regulations (publication of decisions), after paragraph (d) there shall be inserted—

“(e) any direction of the Tribunal under section 49A(2) or 49B(1) of the Act.”

Hearings

- 11.—(1) Schedule 9 (hearings under Part III) shall be amended as follows.
- (2) In paragraph 2, after “representations” there shall be inserted “or suspension proceedings”.
- (3) In paragraph 4(a), after “representations” there shall be inserted “or suspension proceedings”.
- (4) In paragraph 10(a)(i), after “representations” there shall be inserted “or suspension proceedings”.
- (5) After paragraph 10 there shall be inserted the following new paragraph—
- “11. In this Schedule—
- (a) “suspension proceedings” means proceedings relating to an application for interim suspension under section 49A of the Act or a proposal to give a direction under section 49B(1) of the Act; and
- (b) “inquiry” includes any hearing relating to suspension proceedings.”

PART V

OTHER AMENDMENTS AND TRANSITIONAL PROVISIONS

Proceedings before the Tribunal

- 12.—(1) The principal Regulations shall be amended as follows.
- (2) In regulation 21 (interpretation and forms), after paragraph (1) there shall be inserted the following new paragraph—
- “(1A) In this Part, references to “proceedings” before the Tribunal are to any such proceedings, whether relating to representations, applications, or suspension, and include inquiries, hearings and preliminary matters.”
- (3) After regulation 23 there shall be inserted the following new regulation—

“Procedure of the Tribunal

23A. The chairman of the Tribunal may give practice directions applying generally to any Tribunal proceedings, and subject to any such directions, the person (being the chairman or a deputy chairman) presiding over any such proceedings may give procedural directions, order pre-hearing reviews, and generally determine the procedure to be followed.”.

(4) In regulation 24 (making of representations and preliminary matters), in paragraph (2), for “within 30 days of being so required” there shall be substituted “before the end of the period of 28 days beginning with the day on which the Tribunal sent him notice of its requirement”.

(5) In regulation 25 (withdrawal of representations and suspension of procedures), after paragraph (4) there shall be inserted the following new paragraph—

“(5) The Tribunal may also direct that no further steps shall be taken for the time being under this Part in any other circumstances where it appears to the Tribunal that it would be appropriate so to direct.”.

(6) In Schedule 9 (hearings under Part III), in paragraph 8—

(a) in sub-paragraph (1), for “given” there shall be substituted “sent”; and

(b) in sub-paragraph (2), after “Subject to” there shall be inserted “any directions or other orders or instructions given under regulation 23A and to”.

Application of section 250 of the Local Government Act 1972

13.—(1) The principal regulations shall be amended as follows.

(2) After regulation 31 there shall be inserted the following new regulation—

“Costs

31A. Section 250(5) of the Local Government Act 1972(6) (costs) shall apply to Tribunal proceedings as though the reference there to the Minister causing an inquiry to be held under section 250 were to the Tribunal, and as if the reference to the parties at the inquiry were to the parties to Tribunal proceedings.”.

(3) Accordingly, in regulation 25 (withdrawal of representations and suspension of procedures), in paragraph (3), for “paragraph 9 of Schedule 9” there shall be substituted “regulation 31A”.

(4) In Schedule 9 (hearings under Part III), for paragraph 9 there shall be substituted—

“**9.** Section 250(2) and (3) of the Local Government Act 1972(7) (summoning of witnesses, evidence, etc) shall apply to an inquiry as though the Tribunal were a person appointed to hold a local inquiry under that section.”.

Referral of matters to professional bodies

14. In regulation 37 of the principal Regulations (referral of matters to professional bodies), after paragraph (2) there shall be inserted the following new paragraph—

“(2A) Where the Secretary of State receives a copy of a decision of the Tribunal pursuant to regulation 24A(7) or 26(4), and considers that the matter should be brought to the attention of the relevant professional body, he may refer to that body any documents in his possession connected with the representations or the application for interim suspension to which the Tribunal’s decision relates.”.

(6) 1972 c. 70.

(7) Section 250(2) was amended by the Statute Law (Repeals) Act 1989 (c. 43), Schedule 1, Part I; and section 250(3) was modified by virtue of the Criminal Justice Act 1982 (c. 48), sections 38 and 46.

Transitional provisions and application of amendments

15.—(1) The amendments made by regulations 5 and 13 above shall not have effect in relation to—

- (a) any appeal to the Secretary of State under regulation 27 of the principal Regulations; or
- (b) any application to the Secretary of State for removal of disqualification under regulation 28 of the principal Regulations,

made before the date on which these Regulations came into force.

(2) The amendments made by Part IV above, and so much of the amendments made elsewhere in these Regulations as relates to the suspension of practitioners, shall apply only in relation to respondents who are doctors or dentists.

30th November 1995

Stephen Dorrell
Secretary of State for Health

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service (Service Committees and Tribunal) Regulations 1992 to implement the provisions of the National Health Service (Amendment) Act 1995, which amended the provisions of the National Health Service Act 1977 dealing with the National Health Service Tribunal (“the Tribunal”) and provided the Tribunal with power to suspend doctors, dentists, pharmacists, ophthalmic medical practitioners and opticians from providing respectively general medical services, general dental services, pharmaceutical services and general ophthalmic services.

Part II makes provision for the appointment of a deputy chairman and makes other minor amendments relating to members or officers of the Tribunal.

Part III abolishes rights of appeal to the Secretary of State against decisions of the Tribunal, and applications to the Secretary of State for the lifting of any disqualification directed by the Tribunal.

Part IV provides for the procedure relating to applications for interim suspension and for continuation of suspension pending appeal, and makes provision for the chairman or a deputy chairman to carry out Tribunal functions in connection with suspension applications.

Part V makes provision for the chairman of the Tribunal to give practice directions and for the chairman or a deputy chairman to determine Tribunal procedure, and makes amendments relating to costs, evidence, witnesses and referral of matters to professional bodies. It also makes transitional provisions for outstanding appeals to the Secretary of State under the 1992 Regulations and provides that Part IV of these Regulations, which relate to suspension of practitioners, shall apply only to doctors and dentists.