
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 38

**The National Health Service (Tribunal)
(Scotland) Regulations 2004**

PART VI

MISCELLANEOUS PROVISIONS

Practitioner subject to inquiry in a fraud case

26.—(1) A Health Board or primary care NHS trust that receives notice pursuant to regulation 9(3) may not add the practitioner subject to the inquiry to any list until proceedings in that case are finally concluded.

(1) In relation to a practitioner subject to an inquiry in a fraud case, the provisions of—

- (a) section 20 (applications to provide general medical services) of the 1978 Act are modified to the extent that such a practitioner shall not be entitled to the inclusion of the practitioner's name in a medical list;
- (b) section 25(2)(b) of the 1978 Act are modified to the extent that regulations need not confer a right for such a practitioner who wishes to be included in a list of dental practitioners who undertake to provide general dental services to be so included;
- (c) section 26(2)(b) of the 1978 Act are modified to the extent that regulations need not confer a right for such a practitioner who wishes to be included in the appropriate list to be so included; and
- (d) section 27 of the 1978 Act are modified to the extent that nothing in section 27(3) and (5) shall require regulations to provide for a Health Board or primary care NHS trust to include such a practitioner in a list or to confer on such a practitioner rights of appeal against a Health Board or primary care NHS trust from a refusal to add such a practitioner to a list,

until proceedings in that case are finally concluded.

Discharge of suspension functions by chairman

27. The functions of the Tribunal under sections 32A or 32B(1)(1) of the 1978 Act (which deal with applications for interim suspension and continuation of suspension pending appeal respectively) may be carried out by the chairman of the Tribunal; and where the chairman does carry them out, any reference to the Tribunal in these Regulations shall be construed as a reference to the chairman.

Publication of decisions of the Tribunal, etc

28. The Scottish Ministers shall publish in such manner as they think fit notice of—

- (a) any decision of the Tribunal in relation to an inquiry under these Regulations; and

(1) Section 32B of the 1978 Act was inserted by the National Health Service (Amendment) Act 1995 (c. 31), section 8 and amended by the Health Act 1999 (c. 8), Schedule 4, paragraph 51 and Schedule 5 and the [Community Care and Health \(Scotland\) Act 2002 asp 5](#), Schedule 2, paragraph 2.

- (b) the imposition of any disqualification, or conditional disqualification, pursuant to section 29B(2) or section 30(2) or (5) of the 1978 Act and any conditions imposed or of the removal or variation of such disqualification or conditions;
- (c) any declaration of unfitness made by the Tribunal under section 29B(3) or section 30(6) of the 1978 Act;
- (d) any direction of the Tribunal under paragraph 4(1) or 5 of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act;
- (e) any imposition or removal of any disqualification or declaration of unfitness referred to in section 31 of the 1978 Act (disqualification provisions in England or Wales or Northern Ireland)(2) and any conditions or variation of such conditions imposed in consequence of a notice given by the Scottish Ministers in accordance with section 31(2);
- (f) any imposition or removal of a disqualification made in accordance with the provisions of paragraph 6 (direction in Northern Ireland) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act.

Recovery of amounts from practitioners

29.—(1) Where the Scottish Ministers receive a copy of the decision of the Tribunal pursuant to regulation 21(3) or regulation 25(2)(a) and—

- (a) the statement of the Tribunal pursuant to regulation 21(3) contains a statement in accordance with regulation 21(1)(c),(d), (e) or (f); or
- (b) the statement of the Tribunal pursuant to regulation 25(2)(a) contains a statement that—
 - (i) in the case of a conditional disqualification, the conditions are to be varied or the disqualification is to be unconditional pursuant to section 30(2)(c) or 30(5) of the 1978 Act;
 - (ii) there is to be any further disqualification, or conditional disqualification which the Tribunal considers appropriate pursuant to section 30(2) or 30(5) of the 1978 Act; or
 - (iii) the Tribunal is making a declaration of unfitness pursuant to section 30(6) of the 1978 Act,

and the Scottish Ministers are satisfied that the decision of the Tribunal was in consequence of the acts or omissions of a practitioner while that practitioner was included on a list, then the Scottish Ministers shall determine (in relation to every appropriate Health Board or primary care NHS trust, if more than one) whether any, and if so, what amount shall be recovered from the practitioner by an appropriate Health Board or primary care NHS trust, whether by way of deduction from the practitioner's remuneration or otherwise.

(2) Before making a determination under paragraph (1) the Scottish Ministers shall notify the practitioner concerned that—

- (a) the Scottish Ministers are considering making a determination under paragraph (1); and
- (b) the practitioner concerned may make written representations on the matter by submitting them to the Scottish Ministers within 4 weeks from the date of receipt of the notification.

(3) The Scottish Ministers shall give notice of their determination under paragraph (1) to the practitioner and every appropriate Health Board or primary care NHS trust, and shall include with the notice a statement of reasons for their determination.

(2) Section 31 of the 1978 Act was amended by the Health Act 1999 (c. 8), Schedule 4, paragraph 49 and the [Community Care and Health \(Scotland\) Act 2002 asp 5](#), Schedule 2, paragraph 2.

(4) Any amount which the Scottish Ministers determine under paragraph (1) shall be recovered from a practitioner by a Health Board or primary care NHS trust shall be a debt owed by the practitioner to that Health Board or primary care NHS trust.

(5) Where the Scottish Ministers have determined under paragraph (1) that, in respect of an appropriate Health Board or primary care NHS trust, an amount shall be recovered from a practitioner, they shall direct that Health Board or primary care NHS trust to recover that amount either by deduction from the practitioners remuneration or otherwise and the Health Board or primary care NHS trust shall comply with that direction.

(6) In this regulation, “appropriate Health Board or primary care NHS trust” is a Health Board or primary care NHS trust in whose list the practitioner was included at the time of the acts or omissions in consequence of which the Tribunal decision was made.

Publication of information about applications for preferential treatment

30. The Scottish Ministers shall publish in such a manner as they think fit information about—

- (a) applications made to Health Boards or primary care NHS trusts for inclusion in their medical list of the names of medical practitioners ceasing to perform personal medical services in respect of whom Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act applies; and
- (b) the right of persons to make representations against applications referred to in paragraph (a).

Service of forms, etc.

31.—(1) Any form, notice, application, statement, statement-in-answer, decision or document which is required or authorised by these Regulations to be sent to or served on any person shall be in writing and shall be sent or served as follows:—

- (a) in the case of the Scottish Ministers, by delivering it to them or sending it by registered post or the first class recorded delivery service addressed to them at St Andrew’s House, Edinburgh;
- (b) in the case of the Tribunal or a Health Board or primary care NHS trust, by delivering it to their clerk or Chief Executive, or by sending it by registered post or the first class recorded delivery service addressed to such person at their principal office or the usual or last known address of such person;
- (c) in the case of a practitioner, by delivering it to the practitioner or by sending it by registered post or the first class recorded delivery service addressed to the practitioner at the practitioner’s usual or last-known address or any address set opposite the practitioner’s name in the list of the Health Board or primary care NHS trust concerned;
- (d) in the case of any other person, by delivering it to that person or by sending it by registered post or the first class recorded delivery service addressed to that person at that person’s usual or last known address.

(2) Where a party to any inquiry is represented by a solicitor it shall be a sufficient compliance with this regulation if the notice or document is sent by registered post or the first class recorded delivery service addressed to the solicitor at the solicitor’s professional address.

Power to dispense with requirements as to notices

32. The Tribunal may dispense with any requirements of these Regulations applicable to notices, applications, documents or otherwise in any case where it appears to the Tribunal just and proper to do so.

Attendance by member of Council on Tribunals

33. Nothing in these Regulations shall prevent a member of the Council on Tribunals or of the Scottish Committee thereof in that capacity from attending any inquiry before the Tribunal.

Transitional provisions

34. Where, before the date on which these Regulations come into force—

- (a) a representation has been made to the Tribunal under regulation 24 (submission of a representation) of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992⁽³⁾; or
- (b) an application for interim suspension has been made to the Tribunal under regulation 25A (application for interim suspension) of those regulations⁽⁴⁾,

the provisions of those Regulations shall, notwithstanding regulation 35 (revocations), continue to apply on and after that date, as respects any inquiry, hearing, determination or direction which by virtue of any provision of those Regulations falls to be undertaken, held or made in relation to any such representation or application or in relation to an appeal from any such determination or direction.

Revocations

35. The Regulations specified in column (1) of Schedule 3 are hereby revoked to the extent specified in column (3) of that Schedule.

⁽³⁾ 1992/434; relevant amending instruments of regulation 24 are S.I.1998/657 and 1424.

⁽⁴⁾ Regulation 25A was inserted by S.I. 1995/3201 and amended by S.S.I. 1999/53.