
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 118

The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 2005

Amendment of the principal Regulations

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

(2) In regulation 1 (citation, commencement and interpretation)(1)–

(a) in paragraph (2)–

(i) in the definition of “complaint” after “providing” insert “or performing services under Part I of the Act or providing”;

(ii) for the definition of “doctor” substitute–

““doctor” means a fully registered medical practitioner excluding an ophthalmic medical practitioner unless performing primary medical services;”

(iii) in the definition of “doctor’s panel” for “provision of general medical services” substitute “performance of primary medical services” in both places where it occurs;

(iv) for the definition of “drug tariff” substitute–

““drug tariff” means the statement prepared under regulation 9 (payments to pharmacists and standards of drugs and appliances) of the Pharmaceutical Services Regulations;”

(v) for the definition of “General Dental Services Regulations” substitute–

““General Dental Services Regulations” means the National Health Service (General Dental Services) (Scotland) Regulations 1996(2);”

(vi) in the definition of “list of professional persons” omit paragraph (a);

(vii) for the definition of “terms of service” substitute–

““terms of service” means–

(a) the requirements with which a doctor included in the primary medical services performers list must comply under or by virtue of regulation 8 of the Primary Medical Services Performers Lists Regulations;

(b) the terms of service for dentists contained in Schedule 1 to the General Dental Services Regulations;

(c) the terms of service for ophthalmic medical practitioners and opticians contained in Schedule 1 to the General Ophthalmic Services Regulations;
or

(d) the terms of service for pharmacists contained in Schedule 1 to the Pharmaceutical Services Regulations,

as the case may be;”;

(1) Regulation 1 was amended by S.I.1996/938 and 1998/1424 and S.S.I. 1999/53. The definition of “doctor” is prospectively amended by S.I. 2002/3135.

(2) S.I. 1996/177.

- (viii) in the definition of “treatment”–
- (aa) omit “in relation to general medical services, has the same meaning as in the General Medical and Pharmaceutical Services Regulations and,”;
 - (bb) in sub-paragraph (b) for “regulation 11(4)(c)” substitute “regulation 7(5)(b)(i)”;
 - (cc) for sub paragraph (b)(iv) substitute–
 - “(iv) treatment under a capitation arrangement for which the dentist is only to be remunerated in accordance with a scale of fees for treatment under a capitation arrangement in Determination I of the Statement of Dental Remuneration;”;
- (ix) omit the definitions of “drugs”, “General Medical and Pharmaceutical Services Regulations” and “primary care NHS trust”; and
- (x) insert the following definitions at the appropriate place in alphabetical order–
- ““Pharmaceutical Services Regulations” means the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995(3);”;
 - ““primary medical services performers list” means the list maintained by a Health Board under the Primary Medical Services Performers Lists Regulations;”;
 - ““Primary Medical Services Performers Lists Regulations” means the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004(4);”;
 - ““section 17C agreement” means an agreement under section 17C of the Act(5);”;
 - ““Statement of Dental Remuneration” means the statement published under regulation 22 (statement of dental remuneration) of the General Dental Services Regulations (6);”;
- (b) for paragraph (4)(b) substitute–
- “(b) the terms of a general medical services contract which give effect to Part 6 of Schedule 5 to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(7) or the terms of a section 17C agreement which give effect to Part 6 of Schedule 1 to the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004(8);”.
- (3) In regulation 3 (provisions relating to the start of disciplinary proceedings)(9)–
- (a) for paragraph (5) substitute–
 - “(5) In these Regulations “appropriate Health Board”–
 - (a) in relation to a doctor, is–
 - (i) the Health Board in whose primary medical services performers list the name of the doctor was included at the relevant time; or

(3) S.I. 1995/414.

(4) S.S.I. 2004/114.

(5) Section 17C was inserted by the 1997 Act, section 21(2) and amended by the 2004 Act, section 2(2).

(6) Regulation 22 was amended by S.S.I. 2000/352, 2001/368, 2002/99 and 268, 2003/131 and 422 and 2004/ .

(7) S.S.I. 2004/115.

(8) S.S.I. 2004/116.

(9) Regulation 3 was amended by S.I. 1994/3038 and 1996/938 and S.S.I. 1999/53.

- (ii) where the doctor was at the relevant time on more than one such list, the Health Board which was, under section 2C(1) of the Act⁽¹⁰⁾ under a duty to provide or secure the provision of the primary medical services giving rise to the allegation;
- (b) in relation to any other practitioner is–
 - (i) the Health Board in whose dental, ophthalmic or pharmaceutical list the name of the practitioner was included at the relevant time; or
 - (ii) where the practitioner was at relevant 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.”; and
- (b) omit paragraph (6).
- (4) In regulation 4(2) (referral to discipline committee)⁽¹¹⁾ omit “which has delegated functions to the primary care NHS trust”.
- (5) In regulation 7 (determination of appropriate Health Board or primary care NHS trust)⁽¹²⁾–
 - (a) in paragraph (1)(c)(ii) for “paragraphs (3) and” substitute “paragraph”;
 - (b) omit paragraphs (3) and (4);
 - (c) in paragraph (8)–
 - (i) for “Where” substitute “Subject to paragraph (8A), where”; and
 - (ii) for “paragraphs (3) or” substitute “paragraph”; and
 - (d) after paragraph (8) insert–

“(8A) Where an appropriate Health Board determines under this regulation that an amount shall be recovered from a doctor in accordance with the provisions of paragraph (5) (a), paragraph (8) shall not apply and that amount shall be recoverable by the appropriate Health Board.”;
- (6) In regulation 8 (appeal to Secretary of State)⁽¹³⁾–
 - (a) in paragraphs (3)(c)(ii) and (4)(b) for “paragraphs (3) or” substitute “paragraph”; and
 - (b) in paragraph (5) omit “(3).”.
- (7) In regulation 10 (recovery of amounts from practitioners following appeal)⁽¹⁴⁾–
 - (a) in paragraph (6)–
 - (i) after “7(8)” insert “and (8A)”; and
 - (ii) after “(7)” insert “and (7A)”; and
 - (b) in paragraph (7) for “paragraphs (3) or” substitute “paragraph”; and
 - (c) after paragraph (7) insert–

“(7A) For the purposes of paragraph (6), regulation 7(8A) shall have effect as if for the words “an appropriate Health Board determines under this regulation that an amount shall be recovered from a doctor in accordance with the provisions of paragraph (5)(a)” there were substituted the words “there is a determination under regulation 10(1) that an amount shall be recovered from a doctor””.

⁽¹⁰⁾ Section 2C was inserted by the 2004 Act, section 1(2).

⁽¹¹⁾ Regulation 4 was substituted by S.I. 1996/938 and amended by S.S.I. 1999/53.

⁽¹²⁾ Regulation 7 was substituted by S.I. 1996/938 and amended by S.S.I. 1999/53.

⁽¹³⁾ Regulation 8 was amended by S.I. 1994/3038 and 1996/938 and S.S.I. 1999/53.

⁽¹⁴⁾ Regulation 10 was substituted by S.I. 1996/938 and amended by S.S.I. 1999/53.

(8) Omit regulations 16 (investigation of apparently excessive prescribing by doctors) to 19 (determination whether a substance is a drug and recovery of cost)(**15**).

(9) In regulation 44(1)(c) (services of notices, etc.) after “practitioner” insert “other than a doctor”.

(10) In Schedule 1A (procedure for investigation by discipline committees)(**16**)–

(a) in paragraph 2 (disciplinary matters in relation to deputies) omit paragraph (1)(a) and (4); and

(b) in paragraph 9 (interpretation) omit sub-paragraph (c).

(11) In Schedule 1B (advisory committees) for paragraph 1(**17**) substitute–

“**1.** A failure to exercise a reasonable standard of professional or clinical judgement, behaviour, skill, knowledge or care towards patients who receive primary medical services from the doctor, or in the prescribing or dispensing of any drugs, medicines or appliances to them, is specified for the purposes of regulation 10(2) in relation to a doctor.”.

(12) Omit Schedule 3 (rules of procedure applicable to determination of matters referred to referees under regulation 18)(**18**).

(13) In regulations 1(2), 2(4), 3(1), (3), (4) and (7), 4(1) and (2), 5(1) to (4), 6(3), 7, 8(1) to (5), 9(2), (9) to (11), (13) and (14), 10(5) to (8), 11, 20(2) and (3), 44(1), 46, and in paragraphs 6(3) and 8 of Schedule 1, and paragraphs 1, 2(1) to (3), 3(1), 4(2) and (4), 5(2), 6(7), (9) and (10), 7(1) and 9 of Schedule 1A(**19**), omit “or primary care NHS trust” in every place where it occurs.

(15) Regulations 16, 17, 18 and 19 were amended by [S.S.I. 1999/53](#).

(16) Schedule 1A was inserted by S.I. [1996/938](#). Paragraph 2 was amended by [S.S.I. 1999/53](#). Paragraph 9 was amended by S.I. [1998/1424](#) and [S.S.I. 1999/53](#).

(17) Schedule 1B, paragraph 1 was inserted by S.I. [1996/938](#).

(18) Schedule 3 was amended by [S.S.I. 1999/53](#).

(19) Regulations 2, 5, 6, 9 and 11 and Schedule 1 were substituted by S.I. [1996/938](#). Regulation 20 was revoked by S.I. [1996/841](#) and inserted by [S.S.I. 1999/53](#). Schedule 1A was inserted by S.I. [1996/938](#), and paragraph 9 was amended by S.I. [1998/1424](#). References to “or primary care NHS trust” were inserted by [S.S.I. 1999/53](#).