

2010 No. 226

NATIONAL HEALTH SERVICE

**The National Health Service (Discipline Committees) (Scotland)
Amendment Regulations 2010**

<i>Made</i> - - - -	<i>9th June 2010</i>
<i>Laid before the Scottish Parliament</i>	<i>10th June 2010</i>
<i>Coming into force</i> - -	<i>2nd July 2010</i>

The Scottish Ministers make the following Regulations, in exercise of the powers conferred by sections 17P, 25(2), 26(2), 27(2), 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978(a) and section 17 of the Health and Medicines Act 1988(b) and all other powers enabling them to do so.

In accordance with paragraph 24(1) of Schedule 7 to the Tribunals Courts and Enforcement Act 2007(c), they have consulted the Administrative Justice and Tribunals Council and its Scottish Committee.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Discipline Committees) (Scotland) Amendment Regulations 2010 and come into force on 2nd July 2010.

(2) In these Regulations, “the principal Regulations” means the National Health Service (Discipline Committees) (Scotland) Regulations 2006(d).

Amendment of the principal Regulations

2.—(1) The principal Regulations are amended in accordance with the following paragraphs.

(2) In regulation 2(1) (interpretation)—

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- (a) 1978 c.29; section 17P was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 5(2); section 25(2) 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, the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2, paragraph 43 and Schedule 3, and the Health Act 1999 (c.8) (“the 1999 Act”), section 56, and is substituted by the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) (“the 2005 Act”), section 17 with effect from 20th May 2010 for the purposes of making regulations and with full effect from 2nd July 2010 in terms of S.S.I. 2010/185; section 26(2) was substituted by the 2005 Act, section 19; section 27(2) was substituted by the National Health Service (Amendment) Act 1986 (c.66), section 3, and amended by the 1990 Act, Schedule 9, paragraph 19. Section 105(7), which contains provisions relevant to the making of Regulations, was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, paragraph 24 and the 1999 Act, Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
- (b) 1988 c.49; section 17 was amended by S.S.I. 2004/167.
- (c) 2007 c.15; Discipline Committees of a Health Board, or a joint committee of Health Boards, constituted in accordance with regulation 3 of the principal Regulations are listed tribunals for the purposes of Schedule 7 in terms of S.S.I. 2007/436.
- (d) S.S.I. 2006/330, amended by S.S.I. 2009/183 and 308.

- (a) insert after the definition of “complaint”—
 - ““dental body corporate” means a body corporate entitled by virtue of section 43 of the Dentists Act 1984(a) to carry on the business of dentistry;”;
 - (b) insert after the definition of “doctor’s panel”—
 - ““him or her” includes “it” when referring to a practitioner who is a dental body corporate;
 - “his or her” includes “its” when referring to a practitioner who is a dental body corporate;”;
 - (c) for the definition of “General Dental Services Regulations” substitute ““General Dental Services Regulations” means, in respect of the period to 1st July 2010, the National Health Service (General Dental Services) (Scotland) Regulations 1996(b) and, in respect of the period from 2nd July 2010, the National Health Service (General Dental Services) (Scotland) Regulations 2010(c);”;
 - (d) in the definition of “practitioner”—
 - (i) for “Schedules 1 and 2” substitute “Schedule 1”;
 - (ii) after “dentist”, insert “a dental body corporate;”;
 - (e) in the definition of “terms of service” after “dentists” insert “or dental bodies corporate”;
 - (f) in the definition of “treatment” after “dentist” insert “or dental body corporate”.
- (3) In regulation 2(2)(a) after “Regulations” insert “in respect of the period to 1st July 2010 and paragraph 37 of Schedule 1 to the National Health Service (General Dental Services) (Scotland) Regulations 2010 in respect of the period from 2nd July 2010”.
- (4) In regulation 4(6)(a)(ii) (provisions relating to the start of disciplinary proceedings) after “dentist” insert “or a dental body corporate”.
- (5) In regulation 5(3)(b) (referral to discipline committee) after “dentist” insert “or a dental body corporate”.
- (6) In regulation 6(7)(c) (time limits)—
- (a) after “dentist” where it first occurs insert “or dental body corporate”;
 - (b) omit “by the dentist” in both places, where it appears.
- (7) In regulation 10(7)(b) (procedure on appeal to Scottish Ministers) after “dentist” insert “or a dental body corporate”.
- (8) In regulation 11 (recovery of amounts from practitioners following appeal) after “dentist” in each place where it appears insert “or dental body corporate”.
- (9) In regulation 16 (attendance by member of Council on Tribunals) and the heading to that regulation for “Council on Tribunals” substitute “Administrative Justice and Tribunals Council”.
- (10) In Schedule 1, (constitution of discipline committees) paragraph 2(4)(b) after “dentist” insert “or dental body corporate”.
- (11) In Schedule 2 (procedure for investigation by discipline committees)—
- (a) omit paragraph 2(1)(a) (disciplinary matters in relation to non listed deputy or assistant to a dentist);
 - (b) in paragraph 2(1) omit “deputy, assistant or”;
 - (c) in paragraph 5 (attendance at hearing)—

(a) 1984 c.24; section 43 was substituted by S.I. 2005/2011, article 39.

(b) S.I. 1996/177 amended by S.I. 1996/841 and 2060, 1998/1663 and 2259, 1999/724 and 2005/2011 and by S.S.I. 1999/51, 2000/188, 352, 394, 2001/57, 368, 2002/99, 192, 268, 2003/131, 422, 2004/37, 292, 2005/95, 2006/137, 321, 2007/191, 422 2009/96, 183 and 2010/33, and to be revoked by S.S.I. 2010/208 on 2nd July 2010.

(c) S.S.I. 2010/208.

- (i) in sub-paragraph (2)(a) after “practitioner” insert “or, where the practitioner is a dental body corporate, a person who exercises some control over that dental body corporate”;
- (ii) after sub-paragraph (5) insert—
 - “(6) For the purposes of paragraph 5(2)(a) a person who exercises some control over a body corporate is, in the case of a—
 - (a) company, a director,
 - (b) limited liability partnership, a member,
 - (c) partnership, a partner.”;
- (d) in paragraph 9 (interpretation)—
 - (i) for sub-paragraph (a) substitute—
 - ““lay member” has the same meaning given to it in paragraph 8 of Schedule 1”;
 - (ii) in sub-paragraph (b)(ii) after “dentist” where it second occurs, insert “or a dental body corporate”.
- (12) In Schedule 4 (advisory committees)—
 - (a) after paragraph 2 insert—
 - “**2A.** A failure to ensure a proper degree of skill and attention in the treatment of a patient is specified for the purposes of regulation 11(2) in relation to a dental body corporate.”;
 - (b) in paragraph 5 after “dentists” insert “or dental bodies corporate”.

SHONA ROBISON
 Authorised to sign by the Scottish Ministers

St Andrew’s House,
 Edinburgh
 9th June 2010

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Discipline Committees) (Scotland) Regulations 2006 (“the principal Regulations”) which make provision relating to the NHS discipline committees.

These Regulations are consequential upon the coming into force of certain amendments made to the National Health Service (Scotland) Act 1978 (“the 1978 Act”) by the Smoking, Health and Social Care (Scotland) Act 2005 (“the 2005 Act”) as regards dental bodies corporate. They also contain an amendment to the principal Regulations correcting a cross reference to “practitioner” which erroneously included a member of the joint discipline committee for the purposes of that definition in Schedule 2.

Regulation 2(2)(a) inserts a new definition of “dental body corporate”. The definition of “dental body corporate” is by reference to section 43 of the Dentists Act 1984 as amended by the Dentists Act 1984 (Amendment) Order 2005 (S.I. 2005/2011).

Regulation 2(2)(b) inserts new definitions for the phrases “him or her” and “his or her” which modify those phrases to include “it” and “its” respectively when they refer to a dental body corporate.

Regulation 2(2)(c) amends the definition of “General Dental Services Regulations” to take account of the revocation of the National Health Service (General Dental Services) (Scotland) Regulations 1996 (S.I. 1996/177) and their replacement by the National Health Service (General Dental Services) (Scotland) Regulations 2010 (S.S.I. 2010/208), (the “GDS regulations 2010”).

Regulation 2(2)(c) amends the definition of “practitioner” by inserting “dental body corporate”.

Regulation 2(2)(d) limits the exception of the application of the definition of “practitioner” to Schedule 1 and consequently applies that definition to Schedule 2. This, together with the amendment in Regulation 2(11)(d)(i) corrects a cross reference to practitioner in Schedule 2 which erroneously included a member of the joint discipline committee for the purposes of that Schedule.

Regulation 2(2)(e) amends the definition of “terms of service” by inserting “or dental body corporate”.

Regulation 2(2)(f) amends the definition of “treatment” by inserting “or dental body corporate”.

Regulation 2(3) amends regulation 2(2)(a) of the principal Regulations to take account of the revocation of the National Health Service (General Dental Services) (Scotland) Regulations 1996 and their replacement by the GDS Regulations 2010 on 2nd July 2010.

Regulations 2(4), (5), (6), (7), (8), (10) and (11)(d)(ii) amend regulations 4(6)(a), 5(3)(b), 6(7)(c), 10(7)(b) and 11, Schedule 1, paragraph 2(4)(b) and Schedule 2, paragraph 9(b)(ii) respectively of the principal Regulations by inserting references to “dental body corporate”.

Regulation 2(9) amends regulation 16 of the principal Regulations by substituting reference to the Administrative Justice and Tribunals Council for reference to the Council on Tribunals following the replacement of the latter by the former in terms of the Tribunals, Courts and Enforcement Act 2007.

Regulation 2(11)(a) and (b) amends paragraph 2 of Schedule 2 of the principal Regulations in consequence of the GDS Regulations 2010.

Regulation 2(11)(c) amends paragraph 5(2)(a) of Schedule 2 to provide for circumstances where a dental body corporate may be required to attend at discipline committee hearing.

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