
STATUTORY INSTRUMENTS

1992 No. 434

**The National Health Service (Service Committees
and Tribunal) (Scotland) Regulations 1992**

PART III

INQUIRIES BY, AND APPEALS FROM, THE TRIBUNAL

Interpretation and forms

21.—(1) In this Part of these Regulations, unless the context otherwise requires—

“application” means an application made to the Tribunal or the Secretary of State by a professional person for a direction under section 30 of the Act that he should no longer be disqualified for inclusion in any list to which a direction under section 29 of the Act relates and which remains in effect in his case, and “applicant” shall be construed accordingly;

“complainer” means a Health Board or any other person who makes a representation to the Tribunal;

“document” includes, in addition to a document in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disk, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (d) any film (including any microfilm), negative, tape or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom;

“inquiry” means an inquiry held in accordance with the provisions of this Part of these Regulations;

“representation” means a representation made to the Tribunal that the continued inclusion of any professional person in any list of professional persons applicable to him would be prejudicial to the efficiency of the services in question;

“respondent” means—

- (a) in the case of a representation, any professional person in respect of whom a representation is made; and
- (b) in the case of an application, the complainer in respect of whose representation the direction to which the application relates was made.

(2) The forms set out in Schedule 4, or forms substantially to the like effect, shall be used in all cases to which those forms are applicable by virtue of the provisions of this Part of these Regulations and a reference to a numbered form is a reference to the form of that number set out in Schedule 4.

Term of office of members of the Tribunal

22. The chairman of the Tribunal shall hold office during the pleasure of the Lord President of the Court of Session and the other members shall hold office during the pleasure of the Secretary of State.

Officers of the Tribunal

23. The chairman of the Tribunal shall appoint a person approved by the Secretary of State to act as clerk to the Tribunal and shall also appoint such other officers of the Tribunal as may be necessary.

Submission of a representation

24.—(1) Subject to paragraph (2), a representation shall—

- (a) be made in terms of Form 1 and shall—
 - (i) contain a concise statement of the alleged facts and grounds upon which the complainer intends to rely;
 - (ii) be signed by the complainer or on his behalf by some person authorised by him;
- (b) be accompanied by 2 copies of each document which the complainer proposes to put in evidence;
- (c) be sent together with the copies of the documents relevant to it to the clerk to the Tribunal.

(2) If a document which the complainer proposes to put in evidence is of a nature which renders it difficult to make or obtain a copy of it, the complainer shall not be required to submit copies of it.

Power to require verification of representation

25. The Tribunal may, if they think fit, require a complainer—

- (a) to furnish such further particulars relating to the facts and grounds upon which a representation is made as they may think necessary; and
- (b) where a fact is not within the personal knowledge of the complainer, to state the source of his information and the grounds for his belief in its truth; and
- (c) to verify the allegations contained in the representation by affidavit.

Power of the Tribunal to refuse an inquiry

26. If it appears to the Tribunal, after due consideration of a representation by any complainer other than a Health Board, that no good cause has been shown why an inquiry should be held, they may refuse to hold an inquiry and shall inform the complainer accordingly.

Notices to be sent to respondent and any other Health Board in case of an inquiry

27.—(1) The Tribunal shall, unless it refuses to hold an inquiry in terms of regulation 26, send to the respondent—

- (a) a notice in terms of Form 2 informing him that a representation has been made in respect of him and that he may, within 4 weeks from the date of receipt of the notice, submit to the clerk to the Tribunal a written statement-in-answer in accordance with regulation 29(1);
- (b) 1 copy of the representation made by the complainer and of each document, if any, which accompanied it.

(2) The clerk to the Tribunal shall, unless the Tribunal refuse to hold an inquiry in terms of regulation 26, send to each Health Board, not being the complainer but in whose list of professional

persons the name of the respondent is included, at the same time as he sends a notice to the respondent in terms of paragraph (1)—

- (a) a notice in terms of Form 3 informing them that a representation has been made in respect of the respondent and that they may, within 4 weeks from the date of receipt of the notice, submit to the clerk to the Tribunal a written statement in accordance with regulation 29(2);
 - (b) 1 copy of the representation made by the complainer and of each document, if any, which accompanied it.
- (3) The Tribunal may, if they think fit, accept—
- (a) a statement-in-answer by the respondent; or
 - (b) a statement by any other Health Board concerned,

after the period within which it is required to be submitted in terms of paragraph (1)(a) or (2)(a).

Amendment of representation

28. The Tribunal may, at any time before the conclusion of any inquiry, allow a complainer to amend the terms of his representation upon such conditions as they may think fit.

Submission of statement-in-answer or other statement and supporting documents

29.—(1) Where, pursuant to regulation 27(1), a respondent submits a statement-in-answer, he shall send to the clerk to the Tribunal with the statement-in-answer 2 copies of each document which he proposes to put in evidence.

(2) Where, pursuant to regulation 27(2), any other Health Board concerned submits a statement, they shall send to the clerk to the Tribunal with the statement 2 copies of each document which they propose to put in evidence.

- (3) As soon as may be practicable following receipt of—
- (a) statement-in-answer and copies of documents in terms of paragraph (1); and
 - (b) where applicable, a statement by any other Health Board concerned and copies of documents in terms of paragraph (2),

the clerk to the Tribunal shall send to the complainer a copy of each of any such statement or document.

(4) Where, pursuant to regulation 27(2), any other Health Board concerned has submitted a statement, the clerk to the Tribunal shall also send to the respondent and each of the other such Health Boards, if any, a copy of the statement submitted by that Health Board together with a copy of each of the documents, if any, which accompanied it.

Notice of inquiry

30. After the expiry of the period within which a respondent may submit a statement-in-answer pursuant to regulation 27(1) or any other Health Board concerned may submit a statement pursuant to regulation 27(2), the clerk to the Tribunal shall—

- (a) fix a date and time at which an inquiry shall commence and the place where it will be held; and
- (b) not less than 2 weeks before the date fixed for the inquiry to commence, send a notice in terms of Form 4 containing that information to -
 - (i) the complainer;
 - (ii) the respondent; and

- (iii) any other Health Board to whom a notice in terms of Form 3 has been sent pursuant to regulation 27(2).

Power to postpone inquiry

31. The Tribunal may, if they think fit, or on the application of the complainer or respondent, postpone the date fixed for the holding of an inquiry.

Power to treat representation as withdrawn in certain cases

32. If the complainer fails—

- (a) without showing good cause, to appear in person or by a representative at any inquiry of which he was sent due notice under regulation 30; or
- (b) to comply with any other requirement of this Part of these Regulations,

the Tribunal may treat the representation as having been withdrawn.

Withdrawal of representation

33.—(1) The complainer may at any time before the inquiry commences, with the consent of the Tribunal and on such terms as they think fit, withdraw the representation by giving notice of withdrawal in writing to the clerk to the Tribunal.

(2) Where before the inquiry is concluded the respondent dies, the representation shall be treated by the Tribunal as having been withdrawn with immediate effect.

(3) Where the representation has been withdrawn, or is treated by the Tribunal as having been withdrawn, the Tribunal shall forthwith inform—

- (a) in the case of a withdrawal in terms of regulation 32 or 33(1), the respondent; or
- (b) in the case of a withdrawal in terms of paragraph (2), the personal representative of the respondent.

Representation and evidence at inquiry

34.—(1) At any inquiry—

- (a) a Health Board shall be entitled to be represented by their General Manager, or by counsel or solicitor; and
- (b) the complainer (not being a Health Board) and the respondent shall be entitled to attend and take part in the proceedings in question or be represented by any one of the following persons:—
 - (i) counsel;
 - (ii) a solicitor;
 - (iii) an officer or member of any organisation of which he is a member;
 - (iv) a member of his family;
 - (v) a friend.

(2) The complainer and the respondent or their representatives shall be entitled at an inquiry to produce evidence and to call witnesses to whom questions may be put by or on behalf of any party.

Procedure at inquiry

35.—(1) The proceedings at an inquiry shall be held in private unless the respondent has applied in writing to the clerk to the Tribunal for the inquiry to be held in public.

(2) Subject to the provisions of this Part of these Regulations, the procedure at an inquiry shall be within the discretion of the Tribunal.

(3) The Tribunal may adjourn from time to time as they think fit and hold adjourned sittings at such time and place as may appear to them to be suitable.

(4) The Tribunal may if they think fit call for such documents and examine such witnesses as appear to them likely to afford evidence relevant and material to the issue, although not tendered by either party.

(5) A Health Board to whom notices in terms of Forms 3 and 4 are sent pursuant to regulations 27(2) and 30 shall be entitled to take such part in the proceedings of the inquiry as the Tribunal shall think proper.

Provisions as to inquiry

36. The provisions of Schedule 2 shall have effect with regard to an inquiry under this Part of these Regulations as they have in relation to appeal hearings held pursuant to regulation 13 as if—

- (a) references to “appeal” and to “hearing” were references to such an inquiry;
- (b) references to the Reporters were references to the chairman of the Tribunal; and
- (c) references to the Secretary of State were references to the Tribunal.

Power to dispense with oral inquiry

37. Notwithstanding anything in this Part of these Regulations, where—

- (a) the grounds on which a representation is based consist solely of an allegation that the respondent has been convicted of a criminal offence; and
- (b) the respondent admits the truth of such allegation,

the Tribunal may, with the consent of the respondent, dispense with an oral inquiry and determine the representation upon such documentary evidence as may be submitted to them.

Statement by the Tribunal

38.—(1) As soon as may be practicable after the conclusion of an inquiry in relation to a representation, the Tribunal shall prepare a statement under the hand of the chairman stating—

- (a) their findings of fact;
- (b) the conclusions which they have reached; and
- (c) where they are of the opinion that the continued inclusion of the respondent in any list to which the representation relates would be prejudicial to the efficiency of the services in question, such directions as they make under section 29(3) of the Act.

(2) The clerk to the Tribunal shall—

- (a) send a copy of the statement prepared pursuant to paragraph (1) to—
 - (i) the Secretary of State;
 - (ii) the complainer; and
 - (iii) the respondent;

(b) inform the respondent of his right of appeal to the Secretary of State under section 29(4) of the Act.

(3) Except for a Health Board to whom a copy of the statement has been sent pursuant to paragraph (2), the Secretary of State shall send a copy of the statement to such Health Boards as appear to him concerned.

Appeal to Secretary of State

39.—(1) An appeal may be made to the Secretary of State by the respondent in an inquiry in relation to a representation against any direction which the Tribunal has made under section 29(3) of the Act following the inquiry by sending notice of appeal in writing to him within a period of 4 weeks beginning on the day after the date on which a copy of the statement of the Tribunal was sent pursuant to regulation 38(2), or such further period as the Secretary of State may allow.

(2) A notice of appeal by a respondent under this regulation shall contain a concise statement of the facts and contentions upon which he intends to rely.

(3) As soon as may be practicable after receipt of a notice of appeal sent pursuant to paragraph (1), the Secretary of State shall send a copy of it to—

- (a) the complainer;
- (b) such Health Boards as appear to him concerned.

Procedure on appeal

40.—(1) The following provisions of this regulation shall apply to an appeal made by a respondent (in this regulation being referred to as “the appellant”) pursuant to regulation 39.

(2) As soon as may be practicable after receipt of a notice of appeal, the Secretary of State shall appoint—

- (a) 1 person to hear the appeal; and
- (b) another person to assist the person hearing the appeal which other person shall be—
 - (i) where the appellant is a doctor, a doctor selected from the panel of doctors referred to in regulation 15(6);
 - (ii) where the appellant is a dentist, a dentist selected from the panel of dentists referred to in regulation 15(10);
 - (iii) where the appellant is an ophthalmic medical practitioner or an optician, a person belonging to the same category of professional person as the appellant; or
 - (iv) where the appellant is a pharmacist, a pharmacist.

(3) The Secretary of State shall—

- (a) fix a date and time at which the hearing shall commence and the place where it will be held; and
- (b) not less than 2 weeks before the date fixed for the hearing to commence, send a notice containing that information to—
 - (i) the appellant;
 - (ii) the complainer; and
 - (iii) any other Health Board as appear to him concerned.

(4) The provisions of regulations 31 (power to postpone inquiry), 34 (representation and evidence at inquiry) and 35 (procedure at inquiry) shall have effect with respect to the hearing of an appeal as they apply to an inquiry held in relation to a representation as if—

- (a) in regulation 31—
 - (i) the reference to the Tribunal were a reference to the Secretary of State; and
 - (ii) the word “respondent” read “appellant”;
 - (b) in regulation 34(1)(b) and (2), the word “respondent” read “appellant”;
 - (c) in regulation 35—
 - (i) in paragraph (1) the word “respondent” read “appellant”;
 - (ii) references to the Tribunal or the clerk to the Tribunal were references to the person hearing the appeal; and
 - (iii) in paragraph (5) for the words “notices in terms of Forms 3 and 4 are sent pursuant to regulations 27(2) and 30” there were substituted the words “notice is sent pursuant to regulation 40(3)”.
- (5) The provisions of Schedule 2 shall have effect with regard to an appeal to which this regulation applies as they have in relation to appeal hearings held pursuant to regulation 13 as if—
- (a) references to “appeal” and to “hearings” were references to an appeal to which this regulation applies;
 - (b) references to the Reporters were references to the person hearing the appeal; and
 - (c) the words “Secretary of State” read “Secretary of State or the person hearing the appeal”.
- (6) As soon as may be practicable after a hearing of an appeal has been held, the person hearing the appeal shall make a report to the Secretary of State.
- (7) Before determining an appeal in which the appellant is a doctor or a dentist, the Secretary of State shall—
- (a) refer the report submitted to him pursuant to paragraph (6)—
 - (i) in the case of a doctor, to the medical advisory committee constituted under regulation 15(6);
 - (ii) in the case of a dentist, to the dental advisory committee constituted under regulation 15(10); and
 - (b) invite any such committee to make recommendations in relation to the report.
- (8) After due consideration of a report submitted to him pursuant to paragraph (6) and, where applicable, any recommendation made pursuant to paragraph (7), the Secretary of State shall determine the appeal and send notice of that determination to—
- (a) the appellant;
 - (b) the Tribunal;
 - (c) the complainer; and
 - (d) such Health Boards as appear to him concerned.
- (9) If the appellant fails, without showing good cause, to appear in person or by a representative at the hearing of an appeal of which he was sent due notice under this regulation, the Secretary of State may determine the appeal without a hearing.
- (10) An appellant may at any time before the hearing of his appeal commences withdraw the appeal by giving notice of withdrawal in writing to the Secretary of State.

Procedure in regard to application to the Tribunal for removal of disqualification

- 41.—**(1) Subject to paragraph (2), an application to the Tribunal shall—
- (a) be made in terms of Form 5 and shall—

- (i) contain a concise statement of the alleged facts and grounds upon which the applicant intends to rely;
 - (ii) be signed by the applicant or on his behalf by some person authorised by him;
 - (b) be accompanied by 2 copies of each document which the applicant proposes to put in evidence;
 - (c) be sent together with the copies of each document relevant to it to the clerk to the Tribunal.
- (2) If a document which the applicant proposes to put in evidence is of a nature which renders it difficult to make or obtain a copy of it, the applicant shall not be required to submit copies of it.
- (3) If it appears to the Tribunal, after due consideration of an application, that no good cause has been shown why an inquiry should be held, they may refuse to hold an inquiry and shall inform the applicant accordingly.
- (4) Where the Tribunal consider that an inquiry should be held, the clerk to the Tribunal shall send to the respondent and to any Health Board (not being the respondent) which was represented at the inquiry following which a direction was made in respect of the applicant under section 29(3) of the Act—
- (a) a notice in terms of Form 6 informing him or them that an application has been made by the applicant and that the Tribunal consider that an inquiry should be held; and
 - (b) 1 copy of the application and of each document, if any, which accompanied it.
- (5) As soon as may be practicable after sending a copy of the application in terms of paragraph (4), the clerk to the Tribunal shall—
- (a) fix a date and time at which an inquiry shall commence and the place where it will be held; and
 - (b) not less than 2 weeks before the date fixed for the inquiry to commence, send to—
 - (i) the applicant;
 - (ii) the respondent; and
 - (iii) any Health Board to whom a notice in terms of Form 6 has been sent pursuant to paragraph (4),a notice in terms of Form 7 containing the information referred to in subparagraph (a) and informing them that they may attend and take such part in the proceedings at the inquiry as the Tribunal may think proper.
- (6) An applicant may at any time before the inquiry commences, with the consent of the Tribunal and on such terms as they think fit, withdraw his application by giving notice of withdrawal in writing to the clerk to the Tribunal.
- (7) The provisions of regulations 31 (power to postpone inquiry), 34 (representation and evidence at inquiry), 35 (procedure at inquiry), 36 (provisions as to inquiry) and 38 (statement by the Tribunal) shall have effect with respect to an inquiry held in relation to an application as they apply to an inquiry held in relation to a representation as if—
- (a) in regulation 31 the word “complainer” read “applicant”;
 - (b) in regulation 34—
 - (i) in paragraph (1)(b), the words from “complainer” to “respondent” read “applicant and the respondent (not being a Health Board)”; and
 - (ii) in paragraph (2), the word “complainer” read “applicant”;
 - (c) in regulation 35—
 - (i) in paragraph (1) the word “respondent” read “applicant”; and

- (ii) in paragraph (5) for the words “notices in terms of Forms 3 and 4 are sent pursuant to regulations 27(2) and 30” there were substituted the words “notice is sent pursuant to regulation 41(4)”;
- (d) in regulation 38—
 - (i) in paragraph (1), the words “a representation” read “an application”;
 - (ii) in paragraph (1)(c), for the words after “opinion” there were substituted the words “that the disqualification of the applicant for inclusion in any list to which a direction under section 29(3) of the Act relates should be removed, a direction under section 30 of the Act to that effect”;
 - (iii) in paragraph (2)(a)(ii), the word “complainer” read “applicant”; and
 - (iv) paragraph (2)(b) were deleted.

Procedure in regard to application to the Secretary of state for removal of disqualification

- 42.**—(1) Subject to paragraph (2), an application to the Secretary of State shall—
- (a) be made in terms of Form 8 and shall—
 - (i) contain a concise statement of the alleged facts and grounds upon which the applicant intends to rely;
 - (ii) be signed by the applicant or on his behalf by some person authorised by him;
 - (b) be accompanied by 2 copies of each document which the applicant proposes to put in evidence;
 - (c) be sent together with the copies of each document relevant to it to the Secretary of State.
- (2) If a document which the applicant proposes to put in evidence is of a nature which renders it difficult to make or obtain a copy of it, the applicant shall not be required to submit copies of it.
- (3) If it appears to the Secretary of State, after due consideration of an application, that no good cause has been shown why an inquiry should be held, he may refuse to hold an inquiry and shall inform the applicant accordingly.
- (4) Where the Secretary of State considers that an inquiry should be held, he shall send to the respondent and to any Health Board (not being the respondent) which was represented at the inquiry following which a direction was made in respect of the applicant under section 29(3) of the Act—
- (a) a notice in terms of Form 9 informing him or them that an application has been made by the applicant and that the Secretary of State considers that an inquiry should be held; and
 - (b) 1 copy of the application and of each document, if any, which accompanied it.
- (5) Where the Secretary of State considers that an inquiry should be held, he shall appoint—
- (a) 1 person to hold the inquiry in relation to the application;
 - (b) another person to assist the person holding the inquiry which other person shall be—
 - (i) where the applicant is a doctor, a doctor selected from the panel of doctors referred to in regulation 15(6);
 - (ii) where the applicant is a dentist, a dentist selected from the panel of dentists referred to in regulation 15(10);
 - (iii) where the applicant is an ophthalmic medical practitioner or an optician, a person belonging to the same category of professional person as the applicant; or
 - (iv) where the applicant is a pharmacist, a pharmacist.
- (6) As soon as may be practicable after sending a copy of the application in terms of paragraph (4), the Secretary of State shall—

- (a) fix a date and time at which an inquiry shall commence and the place where it will be held; and
- (b) not less than 2 weeks before the date fixed for the inquiry to commence, send to—
 - (i) the applicant;
 - (ii) the respondent; and
 - (iii) any Health Board to whom a notice in terms of Form 9 has been sent pursuant to paragraph (4),

a notice in terms of Form 10 containing the information referred to in sub-paragraph (a) and informing them that they may attend and take such part in the proceedings at the inquiry as the person holding the inquiry may think proper.

(7) An applicant may at any time before the inquiry commences, with the consent of the Secretary of State and on such terms as he thinks fit, withdraw his application by giving notice of withdrawal in writing to the Secretary of State.

(8) The provisions of regulations 31 (power to postpone inquiry), 34 (representation and evidence at inquiry) and 35 (procedure at inquiry) shall have effect with respect to the holding of an inquiry in relation to an application as they apply to an inquiry held in relation to a representation as if—

- (a) in regulation 31—
 - (i) the reference to the Tribunal were a reference to the Secretary of State; and
 - (ii) the word “complainer” read “applicant”;
- (b) in regulation 34—
 - (i) in paragraph (1)(b), the words from “complainer” to “respondent” read “applicant and the respondent (not being a Health Board)”;
 - (ii) in paragraph (2) the word “complainer” read “applicant”;
- (c) in regulation 35—
 - (i) in paragraph (1), the word “respondent” read “applicant”;
 - (ii) in paragraph (5) for the words “notices in terms of Forms 3 and 4 are sent pursuant to regulations 27(2) and 30” there were substituted the words “notice is sent pursuant to regulation 42(4)”;
 - (iii) references to the Tribunal or the clerk to the Tribunal were references to the person holding the inquiry.

(9) The provisions of Schedule 2 shall have effect with regard to an inquiry to which this regulation applies as they have in relation to appeal hearings held pursuant to regulation 13 as if—

- (a) references to “appeal” and to “hearings” were references to an inquiry to which this regulation applies;
- (b) references to the reporters were references to the person holding the inquiry; and
- (c) the words “Secretary of State” read “Secretary of State or the person holding the inquiry”.

(10) The provisions of regulation 40(6) and (8) shall have effect with respect to an inquiry to which this regulation applies as they apply to an appeal to which regulation 40 applies as if—

- (a) in regulation 40(6) the word “appeal” read “inquiry”;
- (b) in regulation 40(8)—
 - (i) for the words from “pursuant to paragraph (6)” to “pursuant to paragraph (7)” there were substituted the words “by the person holding the inquiry”;
 - (ii) the word “appeal” read “application”;
 - (iii) the word “appellant” read “applicant”; and

(iv) the word “complainer” read “respondent”.

Publication of decisions of the Tribunal and the Secretary of State

- 43.** The Secretary of State shall publish in such manner as he thinks fit notice of—
- (a) any decision of the Tribunal or by him in relation to an inquiry or an appeal under this Part of these Regulations; and
 - (b) the imposition of any disqualification pursuant to section 31 of the Act or of the removal of such disqualification.