
STATUTORY INSTRUMENTS

2001 No. 3743

The Family Health Services Appeal Authority
(Primary Care Act) Regulations 2001

PART II

PROCEDURE AND HEARINGS

Directions as to procedure

3. The President may give practice directions applying generally to proceedings under these Regulations, and subject to any such directions, a Chairman presiding over any such proceedings may give procedural directions, order pre-hearing reviews and generally determine the procedure to be followed.

Making of representations and preliminary matters

4.—(1) Representations to the FHSAA under paragraph 3 of Schedule 1 to the Primary Care Act that the inclusion of a practitioner's name in a medical list would be prejudicial to the efficiency of general medical services shall be made in the form of a notice in accordance with this regulation.

(2) Subject to paragraphs (3) and (4), the representations referred to in paragraph (1) shall—

- (a) be made in writing;
- (b) be signed by or on behalf of the complainant; and
- (c) include the following information—
 - (i) the name and address of the doctor and his professional registration number, if known,
 - (ii) the name and address of the complainant,
 - (iii) where relevant, the name and address of any solicitor or other representative of the complainant and whether the FHSAA should correspond with that person instead of with the complainant,
 - (iv) a concise statement of the alleged facts and the grounds on which the complainant relies in asserting that the doctor's inclusion in a Health Authority's medical list would be prejudicial to the efficiency of the service,

and shall be sent to the FHSAA⁽¹⁾.

(3) The notice shall be sent to the FHSAA before the end of the period of two weeks beginning with the date of publication by the Health Authority under regulation 14(a) of information about the practitioner's application for his name to be included in the medical list.

(4) The complainant shall, if required to do so by the FHSAA, send within 14 days of being so required a further statement setting out—

(1) The FHSAA's office is at 30 Victoria Avenue, Harrogate HG1 5PR.

- (a) more detail about the alleged facts or the grounds on which the representations are made;
 - (b) where a fact is not within the personal knowledge of the person signing the representations, the source of the information and why it is considered to be true; and
 - (c) such further particulars as the FHSAA may require.
- (5) Where an inquiry is to be held, the FHSAA shall give—
- (a) to the doctor, notice in writing that the FHSAA is holding an inquiry as to the representations made by the complainant;
 - (b) to the complainant, notice in writing that the FHSAA is holding an inquiry as to the representations and requiring the complainant, within a time specified in the notice, to send to the FHSAA a copy of any document which is proposed to be put in evidence.
- (6) The FHSAA shall, as soon as is practicable, send to the doctor—
- (a) a copy of the notice provided by the complainant under paragraph (2)(c);
 - (b) a copy of any further statement furnished under paragraph (4);
 - (c) a copy of any document provided by the complainant in accordance with paragraph (5)(b); and
 - (d) a notice informing him that he may, by a statement in writing to be sent to the FHSAA within a time specified in the notice, admit or dispute the truth of all or any of the allegations appearing in any statement sent to him under sub-paragraph (a) or (b) of this paragraph.
- (7) Once a case has been allocated to a panel in accordance with regulation 5(2), the complainant or the doctor may, with the leave of the panel, amend any written statement at any time, including at the hearing and the panel may grant leave on such terms as it thinks fit.

Composition of panels and allocation of cases

5.—(1) The President shall ensure that any panel to which a case is allocated under paragraph (2) for the purpose of these Regulations comprises three members, including, unless the President decides otherwise—

- (a) one member who is a medical practitioner within paragraph 6(a) of Schedule 9A to the 1977 Act, and
- (b) one member who does not fall within any of sub-paragraphs (a) to (d) of paragraph 6 of that Schedule and does not have a legal qualification.

(2) After the FHSAA has sent a doctor the copy notice referred to in regulation 4(6)(a), the President shall allocate the case to a panel.

Withdrawal of representations and suspension of procedures

6.—(1) The complainant may at any time before the inquiry, with the consent of the FHSAA and on such terms as it thinks fit, withdraw any representations by giving notice of withdrawal to the FHSAA.

(2) If the complainant fails to comply within the time allowed by the FHSAA for such compliance, with any requirement imposed under regulation 4, or fails, without having previously offered a reasonable excuse, to appear at a hearing of which due notice was given under regulation 7, the FHSAA may treat the representations as having been withdrawn.

(3) Subject to paragraph (4), where representations are withdrawn or treated as withdrawn the FHSAA shall immediately so inform the doctor in writing.

(4) The FHSAA 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 FHSAA that it would be appropriate so to direct.

Notice of hearing

7.—(1) The FHSAA shall, whether or not on an application by any party, appoint a day for the hearing and shall, not less than 14 days before that day, send notice to the parties of the date, time and place of the hearing.

(2) The FHSAA may send to any Health Authority which is not a party to the proceedings but on whose list the doctor's name is included, or on whose list the doctor is seeking to be included, a notice of the date, time and place of the hearing.

(3) The FHSAA may, whether or not on an application by any party to the proceedings, postpone the date of the hearing, and the provisions of paragraphs (1) and (2) shall apply as respects the postponed hearing.

Hearings

8.—(1) Subject to paragraph (2), the hearing shall be in public.

(2) A hearing, or any part of it, may be in private where the panel consider it reasonable in all the circumstances, but it must not be in private if the doctor has requested that it be in public.

(3) Subject to paragraph (5), where the hearing or any part of it is in private, no person shall be admitted to it unless he is—

- (a) a party to the proceedings,
- (b) an officer of a Health Authority to which notice has been sent under regulation 7(2), or
- (c) a person entitled to represent a party to the proceedings, or a Health Authority to which a notice has been sent under regulation 7(2).

(4) A panel, with the consent of the parties, may permit any other person to attend a hearing or any part of a hearing which is held in private.

(5) A Health Authority may be represented at the hearing by a member or an officer or by counsel or solicitor and any other party may be represented at the hearing by counsel or solicitor or by any other person.

(6) The following persons shall be entitled to attend a hearing under these Regulations, whether or not it is held in public—

- (a) the President or any member of the FHSAA, notwithstanding that he is not a member of the panel for the purposes of the hearing,
- (b) a member of the Council on Tribunals,

but such persons shall not take part in the proceedings or in the making of any decision by a panel.

Procedure at hearings

9. At a hearing either party may—

- (a) address the panel;
- (b) call witnesses and produce other evidence, including evidence not produced prior to the hearing; and
- (c) put questions to any person giving evidence on behalf of the other party.

Participation of other Health Authorities at hearings

10. A Health Authority to which notice has been sent under regulation 7(2) may take such part in the proceedings as the panel considers is appropriate.

Hearings in a party's absence

11.—(1) Where any party to whom notice of the hearing has been sent in accordance with regulation 7 fails to appear at the hearing, either in person or by a representative, the panel may, taking into account all the circumstances, including any explanation offered for the absence, proceed with the hearing notwithstanding that party's absence.

(2) Subject to any directions, orders or other instructions given under regulation 3 and to any other provisions of this Part, the procedure at the hearing shall be for the panel to decide.

Application of section 250(2) and (3) of the Local Government Act 1972

12. Section 250(2) and (3) of the Local Government Act 1972(2) (summoning of witnesses, evidence, etc.) shall apply to an inquiry and hearing under these Regulations as though the FHSAA were a person appointed to hold a local inquiry under that section.

Inquiry into representations

13.—(1) Subject to paragraph (2), the inquiry shall proceed by way of an oral hearing before a panel in accordance with regulations 8 to 12.

(2) Where a doctor has stated in writing that he does not want an oral hearing, the panel may decide the case on such documentary evidence as may have been submitted to the FHSAA.

(3) At the conclusion of the inquiry the FHSAA shall, as soon as is practicable, issue a decision in writing, signed by the Chairman of the panel which presided over the inquiry, containing—

- (a) the panel's findings of fact;
- (b) its conclusions;
- (c) any decision that the FHSAA give a direction under paragraph 4(1) or 5, as the case may be, of Schedule 1 to the Primary Care Act; and
- (d) a statement of the reasons for the decision.

(4) The FHSAA shall send a copy of the decision to the doctor, the complainant, the Secretary of State and any Health Authority which was sent notice of the hearing under regulation 7(2).

(5) Where the decision contains a direction under paragraph 4(1) of Schedule 1 to the Primary Care Act, the FHSAA shall include with the decision a notice to the doctor of his right of appeal under section 11(1) of the Tribunals and Inquiries Act 1992(3) in respect of that decision.

(2) 1972 c. 70. Section 250(2) was amended by the Statute Law (Repeals) Act 1989 (c. 43) Schedule 1, Part IV; and section 250(3) was modified by virtue of the Criminal Justice Act 1982 (c. 48), sections 38 and 46.

(3) 1992 c. 53. A reference to the FHSAA was substituted for one to the NHS Tribunal in paragraph 33(b) of Schedule 1, by the Health and Social Care Act 2001 (c. 15), Schedule 5, paragraph 10.