
Status: Point in time view as at 01/04/2009.

Changes to legislation: There are currently no known outstanding effects for the Health and Personal Social Services Act (Northern Ireland) 2001, SCHEDULE 2. (See end of Document for details)

Schedules

SCHEDULE 2

Section 49.

SCHEDULE 11 TO THE PRINCIPAL ORDER, AS SUBSTITUTED

“SCHEDULE 11

DISQUALIFICATION OF PERSONS PROVIDING PART VI SERVICES

PART I

THE TRIBUNAL

The Tribunal: general provisions

1.—(1) There shall continue to be a tribunal (“the Tribunal”) constituted in accordance with Part II for the purposes set out in this Part.

(2) If the Tribunal receives from a Health and Social Services Board representations that—

- (a) a person who is included in any list meets either of the conditions for disqualification; or
- (b) a person who has applied to be included in any list meets the second condition for disqualification,

the Tribunal shall inquire into the case.

(3) If the Tribunal receives such representations from any other person, it may inquire into the case.

(4) Representations under this paragraph shall be made—

- (a) in the prescribed manner; and
- (b) where the representations are that the second condition for disqualification is met and regulations prescribe the time within which such representations are to be made, within that time.

(5) Sub-paragraphs (6) to (11) apply for the purposes of this Schedule.

(6) The first condition for disqualification is that the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide.

(7) The second condition for disqualification is that the person concerned—

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- (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit; and
 - (b) knew that he or (as the case may be) the other was not entitled to the benefit.
- (8) A “list” means—
- (a) a list of medical practitioners undertaking to provide general medical services;
 - (b) a list of medical practitioners undertaking to provide general ophthalmic services;
 - (c) a list of dental practitioners undertaking to provide general dental services;
 - (d) a list of ophthalmic opticians undertaking to provide general ophthalmic services; or
 - (e) a list of persons undertaking to provide pharmaceutical services,
- prepared (in each case) under Part VI of this Order.
- (9) “Health scheme” means—
- (a) any of the [F¹health care] under Article 4(a) or any corresponding statutory provision extending to Scotland or England and Wales; and
 - (b) any prescribed scheme,
- and regulations may prescribe any scheme for the purposes of this subparagraph which appears to the Department to be a health or medical scheme paid for out of public funds.
- (10) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.
- (11) Cases in which representations are made that the first condition for disqualification is met are referred to as efficiency cases; and cases in which representations are made that the second condition for disqualification is met are referred to as fraud cases.

The Tribunal: supplementary

2.—(1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this Schedule as meeting the second condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).

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(2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this Schedule as meeting the second condition for disqualification if any one of the body of persons controlling the body corporate meets that condition (whether or not he first met that condition when he was one of them).

(3) A person who is included in any list (“the practitioner”) is to be treated for the purposes of this Schedule as meeting the second condition for disqualification if—

- (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in paragraph 1(8) on the practitioner's behalf, meets that condition; and
- (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within paragraph 1(7)(a) occurring in the course of the provision of those services on his behalf.

(4) The Tribunal is not required to inquire into a fraud case if it has previously inquired into representations in respect of the person concerned and the same acts or omissions.

(5) In a fraud case, regulations may make provision (including provision modifying the effect of Part VI of this Order and this Schedule) for the purpose of securing that the person subject to the inquiry is not added to any list until proceedings in that case are finally concluded.

(6) For the purposes of this Schedule, in a fraud or efficiency case proceedings are finally concluded—

- (a) if the Tribunal determines not to disqualify, or conditionally disqualify, him, when it makes that determination;
- (b) if it determines to disqualify, or conditionally disqualify, him and no appeal is brought against the determination, at the end of the period for bringing an appeal;
- (c) if it determines to disqualify, or conditionally disqualify, him and an appeal is brought against the determination, when the appeal process is exhausted.

(7) An inquiry under paragraph 1 is not affected by the person subject to the inquiry withdrawing from, withdrawing any application to be included in or being removed from the list to which the case relates.

Powers of the Tribunal

3.—(1) Sub-paragraph (2) applies where the Tribunal is of the opinion—

- (a) on inquiring into an efficiency case, that the person meets the first condition for disqualification;

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- (b) on inquiring into a fraud case, that the person meets the second condition for disqualification.
- (2) The Tribunal—
 - (a) shall make a local disqualification, that is disqualify him for inclusion in the list to which the case relates; and
 - (b) may also make a general disqualification, that is disqualify him for inclusion in all lists within the same head of paragraph 1(8) as that list.
- (3) If the Tribunal makes a general disqualification it may also declare that the person is not fit to be engaged in any capacity in the provision of the services to which the lists in question relate (referred to in this Schedule as a declaration of unfitness).
- (4) The Tribunal shall not make any disqualification or declaration under this paragraph if it is of the opinion that it would be unjust to do so.
- (5) A disqualification under this paragraph shall have effect when proceedings in the case are finally concluded.
- (6) If a person is disqualified for inclusion in any list prepared by a Health and Social Services Board, the Board shall not enter him in the list and (if he is already included in the list) shall remove him from the list.

Conditional disqualification

- 4.—(1) The functions of making disqualifications under paragraph 3 include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determines (on a review under paragraph 5) that the person subject to the inquiry has failed to comply with any conditions imposed by the Tribunal.
- (2) Conditions may be imposed by virtue of sub-paragraph (1) with a view to—
 - (a) removing any prejudice to the efficiency of the services in question; or
 - (b) preventing any acts or omissions within paragraph 1(7)(a),(as the case may be).
 - (3) Conditions so imposed shall have effect when proceedings in the case are finally concluded.
 - (4) Paragraph 3(4) applies to a conditional disqualification as it applies to a disqualification.
 - (5) The Tribunal may by directions—

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- (a) vary the terms of service of the person subject to the inquiry (including terms imposed by regulations under Part VI of this Order);
 - (b) confer functions on any Health and Social Services Board,
- for the purpose of or in connection with the imposition of any conditions by virtue of this paragraph.
- (6) References in any statutory provision to a disqualification by the Tribunal do not include a conditional disqualification.

Review etc. of disqualification

5.—(1) The Tribunal may review any disqualification, conditional disqualification or declaration of unfitness—

- (a) if the disqualified or conditionally disqualified person requests a review; or
 - (b) in any other circumstances in which it considers it appropriate.
- (2) On a review under sub-paragraph (1), the Tribunal may—
- (a) remove a disqualification or provide that a declaration of unfitness is to cease to have effect;
 - (b) make a disqualification conditional;
 - (c) in the case of a conditional disqualification, remove it, vary the conditions or make it unconditional,

and, on a review of a fraud case, may make any further disqualification or conditional disqualification which it considers appropriate.

(3) If any Health and Social Services Board requests a review of a conditional disqualification on the ground that—

- (a) there has been a change in the circumstances by reference to which the conditions were imposed;
- (b) the person concerned has failed to comply with the conditions; or
- (c) in a fraud case, the person concerned has since the Tribunal imposed the conditions (or made the disqualification conditional) again satisfied the second condition for disqualification,

the Tribunal shall review the conditional disqualification.

(4) In the case of a person who is providing services in Scotland or England and Wales, the reference in sub-paragraph (3) to a Health and Social Services Board includes any corresponding authority under the provisions in force in Scotland or England and Wales corresponding to Part VI of this Order.

(5) On a review under sub-paragraph (3) of a conditional disqualification, the Tribunal may remove it, vary the conditions or make it unconditional

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and, on a review of a fraud case, may make any further disqualification or conditional disqualification which it considers appropriate.

(6) If, on a review under this paragraph of a fraud case—

- (a) there is a general disqualification which the Tribunal does not remove or make conditional;
- (b) there is a general disqualification which is conditional and which the Tribunal makes unconditional; or
- (c) the Tribunal makes a general disqualification,

it may also make a declaration of unfitness.

(7) The Tribunal shall not under this paragraph—

- (a) in the case of a conditional disqualification, make it unconditional or vary the conditions;
- (b) make any further disqualification or conditional disqualification; or
- (c) make a declaration of unfitness,

if it is of the opinion that it would be unjust to do so.

(8) A determination of the Tribunal under this paragraph shall have effect—

- (a) if no appeal is brought against it, at the end of the period for bringing an appeal;
- (b) if an appeal is brought against it, when the appeal process is exhausted.

(9) The Tribunal may hold an inquiry for the purposes of any review under this paragraph.

Appeals

6. Any person aggrieved by any determination of the Tribunal under this Part may appeal to the Court of Appeal in accordance with rules of court; and the decision given on any such appeal shall be final and conclusive.

Disqualification provisions in Scotland or England and Wales

7.—(1) Where, under any provision in force in Scotland or England and Wales corresponding to the provisions of this Schedule, a person is for the time being disqualified for inclusion in all lists prepared under those provisions of persons undertaking to provide any of the services mentioned in paragraph 1(8), then, in relation to the services in question, that person shall, so long as that disqualification is in force, be disqualified for inclusion in any list and (if also the subject of a declaration under those provisions corresponding to a declaration of unfitness) be treated as if a declaration of unfitness had been made in respect of him.

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(2) Where under the conditional disqualification provisions in Scotland or England and Wales—

- (a) any conditions are imposed in relation to the provision by any person of any services mentioned in paragraph 1(8); or
- (b) any conditions so imposed are varied,

the Department may, by a notice in writing given to each Health and Social Services Board and to the person in question, impose those conditions in relation to the provision by that person of those services under Part VI of this Order.

(3) A notice under sub-paragraph (2) may make such modifications of the conditions as the Department considers necessary for them to have the like effect in relation to Northern Ireland as they have in relation to Scotland or (as the case may be) England and Wales, but only if the Department has previously given the person concerned written notice of the proposed modifications and an opportunity (in accordance with such requirements, if any, as may be prescribed) to make representations about them.

(4) Conditions imposed by a notice under sub-paragraph (2) shall cease to have effect if the Department withdraws the notice by giving written notice to the person concerned.

(5) In this paragraph “the conditional disqualification provisions in Scotland or England and Wales” means any provision in force in Scotland or England and Wales corresponding to paragraphs 4 and (so far as relating to conditional disqualifications) paragraph 5.

Regulations

8.—(1) Regulations shall make provision—

- (a) for inquiries under this Schedule to be held in accordance with such procedure as may be prescribed by or determined under the regulations and, in particular—
 - (i) for any person who is the subject of any such inquiry to have an opportunity of appearing, either in person or by counsel or solicitor or such other representative as may be prescribed, before, and of being heard by, the Tribunal, and of calling witnesses and producing other evidence on his behalf; and
 - (ii) for the hearing by the Tribunal to be in public if the person who is the subject of the inquiry so requests;
- (b) for conferring on the Tribunal such powers as appear to the Department to be necessary for the purpose of holding inquiries under this Schedule, including power to require the attendance of witnesses and the production of documents, and to administer oaths; and

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(c) for the publication of the decisions of the Tribunal under this Schedule and of the imposition and removal of any disqualification or conditions imposed by virtue of paragraph 7.

(2) Regulations under sub-paragraph (1)(a) may in particular provide that, where (apart from the regulations) it would be the duty of the Tribunal to inquire into both an efficiency case and a fraud case in respect of the same person, it may inquire into one case before inquiring into the other and, after proceedings in the first case are finally disposed of may if it thinks it appropriate adjourn the other case indefinitely.

Applications for interim suspension

9.—(1) A Health and Social Services Board which has made representations under paragraph 1 may, at any time before the case is disposed of by the Tribunal, apply to the Tribunal for a direction to be made under sub-paragraph (3) in relation to the person to whom the case relates.

(2) A Health and Social Services Board may, if it has requested a review of a conditional disqualification on the ground mentioned in paragraph 5(3) (b) or (c), at any time before the review is concluded apply to the Tribunal for a direction to be made under sub-paragraph (3) in relation to the person to whom the review relates.

(3) If, on an application under this paragraph, the Tribunal is satisfied that either of the conditions for doing so is satisfied, it shall direct that sub-paragraph (5) shall apply to the person concerned as respects services of the kind to which the case in question, or the case to which the review in question, relates.

(4) The conditions for giving such a direction are—

- (a) that it is necessary to do so in order to protect persons who are, or may be, provided with services under Part VI of this Order to which the case in question, or the case to which the review in question, relates;
- (b) in, or in the case of a review relating to, a fraud case, that unless it does so there is a significant risk that—
 - (i) an act or omission within paragraph 1(7)(a) will occur; or
 - (ii) the investigation of the case of the review will be prejudiced.

(5) A person to whom this sub-paragraph applies shall—

- (a) be deemed to have been removed from any relevant list in which his name is included;
- (b) be disqualified for inclusion in any relevant list in which his name is not included; and

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- (c) be deemed to be a person in relation to whom there is in force a declaration of unfitness in relation to the provision of services of the relevant kind.
- (6) A direction under sub-paragraph (3) shall cease to have effect on the Tribunal's disposing of the case or review in connection with which it is made.
- (7) In the application of sub-paragraph (5) to any person—
 - (a) “relevant list” means a list of persons undertaking to provide services of the kind to which the direction applying the sub-paragraph to him relates; and
 - (b) “services of the relevant kind” means services of the kind to which that direction relates.

Suspension pending appeal

- 10.**—(1) Where, on disposing of a case under paragraph 3, the Tribunal makes a general disqualification, it may, if it considers that either of the conditions mentioned in paragraph 9(4) is satisfied, direct that paragraph 9(5) shall apply or, if a direction has been given under paragraph 9(3), shall continue to apply to him as respects services of the kind to which the disqualification relates.
- (2) A direction under sub-paragraph (1) shall cease to have effect—
 - (a) where no appeal against the general disqualification is brought, at the end of the period for bringing an appeal; and
 - (b) where an appeal against the disqualification is brought, when the appeal process has been exhausted.
 - (3) Where the power conferred by sub-paragraph (1) is exercisable by virtue of a disqualification which is not coupled with a declaration of unfitness, paragraph 9(5) shall have effect, in relation to the exercise of that power, with the omission of head (c).

Paragraphs 9 and 10: procedure

- 11.**—(1) Before making a direction under paragraph 9(3) or 10(1) in relation to any person, the Tribunal shall give him an opportunity—
- (a) to appear before the Tribunal, either in person or by counsel or solicitor or such other representative as may be prescribed; and
 - (b) to be heard and to call witnesses and produce other evidence.
- (2) Regulations may—

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- (a) make provision for, or for the determination of, procedure in relation to determining applications under paragraph 9 or the exercise of the power conferred by paragraph 10(1); and
- (b) provide for the functions of the Tribunal under paragraph 9 or 10 to be carried out, or to be carried out in prescribed circumstances, by the chairman or a deputy chairman of the Tribunal.

Suspension provisions in Scotland or England and Wales

12.—(1) This paragraph applies where, under any provisions in force in Scotland or England and Wales corresponding to paragraph 9 or 10, a person (“the practitioner”) is disqualified for inclusion in all lists prepared under the provisions in force there corresponding to the provisions of Part VI of this Order of persons undertaking to provide services of one or more of the kinds specified in paragraph 1(8), other than those in which his name is included.

- (2) The practitioner shall, while he is so disqualified—
 - (a) be disqualified for inclusion in any list prepared under Part VI of this Order of persons undertaking to provide services of the same kinds (“relevant list”) in which his name is not included; and
 - (b) be deemed to have been removed from any relevant list in which his name is included.

Payments in consequence of suspension

13.—(1) Regulations may provide for the making to persons to whom paragraph 9(5) or 12(2) applies of payments in consequence of the application of that provision.

(2) Regulations under sub-paragraph (1) may provide for the determination by the Department in a prescribed manner of anything for which provision may be made by regulations under that sub-paragraph.

Removal of persons from list

14. Where any of the services mentioned in paragraph 1(8)(a) to (e) is administered pursuant to arrangements made by any Health and Social Services Board, and that Board is satisfied that any person whose name is on the list of persons undertaking to provide those services has never provided or has ceased to provide those services, it may remove his name from that list.

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PART II

CONSTITUTION OF THE TRIBUNAL

Membership

- 15.** The Tribunal shall consist of—
- (a) a chairman appointed by the Lord Chief Justice;
 - (b) such number of deputy chairmen as the Lord Chief Justice may appoint;
 - (c) such number of persons as the Department may appoint for the purposes of this sub-paragraph;
 - (d) such number of medical practitioners as the Department may appoint for the purposes of this sub-paragraph;
 - (e) such number of medical practitioners having the qualifications prescribed under Article 62 as the Department may appoint for the purposes of this sub-paragraph;
 - (f) such number of dental practitioners as the Department may appoint for the purposes of this sub-paragraph;
 - (g) such number of ophthalmic opticians as the Department may appoint for the purposes of this sub-paragraph; and
 - (h) such number of pharmacists as the Department may appoint for the purposes of this sub-paragraph.

Chairman and deputy chairman

16. A person appointed as the chairman or a deputy chairman shall be either a barrister-at-law practising in Northern Ireland or a practising solicitor of the Supreme Court of not less than ten years' standing.

Other members of the Tribunal

17.—(1) Any appointment for the purposes of paragraph 15(c) shall be made after consultation with Health and Social Services Boards.

(2) Any appointment for the purposes of any of sub-paragraphs (d) to (h) of paragraph 15 shall be made after consultation with such organisations as the Department may recognise as representative of the profession or calling concerned.

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Functions of the Tribunal

18.—(1) The functions of the Tribunal shall be exercised by three members consisting of—

- (a) the chairman or a deputy chairman;
- (b) a person appointed under paragraph 15(c); and
- (c) a person appointed under such one of sub-paragraphs (d) to (h) of paragraph 15 as provides for the appointment of persons of the same profession or calling as that of the person concerned.

(2) In sub-paragraph (1)(c) as it has effect in relation to the functions mentioned below, the reference to the person concerned is—

- (a) in the case of functions under paragraphs 1 to 4, to the person to whom the representations in question relate;
- (b) in the case of functions under paragraph 5, to the person whose disqualification, conditional disqualification or declaration of unfitness is under consideration;
- (c) in the case of functions under paragraph 9, to the person to whom the application in question relates; and
- (d) in the case of functions under paragraph 10, to the person in relation to whom paragraph 9(5) may be made to apply or continue to apply.

(3) In sub-paragraph (1)(c) as it has effect in relation to functions of the Tribunal conferred by or under any statutory provision relating to the preferential treatment of medical practitioners on transferring to medical lists, the reference to the person concerned is a reference to the medical practitioner to whom the matter before the Tribunal relates.

(4) In the case of functions under paragraph 9 or 10, sub-paragraph (1) is subject to paragraph 11(2)(b).

Regulations

19. Regulations may provide for the appointment, tenure of office and vacation of office of members of the Tribunal.”

F1 Words in Act substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(b\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

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