

2004 No. 122

NATIONAL HEALTH SERVICE

**The National Health Service (Tribunal) (Scotland) Amendment
Regulations 2004**

Made - - - - - *10th March 2004*

Laid before the Scottish Parliament *11th March 2004*

Coming into force - - - *1st April 2004*

The Scottish Ministers in exercise of the powers conferred by sections 29(4) and (8)(a), 29A(5), 32, 32C(2), 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978(a) and of all other powers enabling them in that behalf, and after consultation with the Council on Tribunals and its Scottish Committee in accordance with sections 8(1) and (3) of the Tribunal and Inquiries Act 1992(b), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the National Health Service (Tribunal) (Scotland) Amendment Regulations 2004 and shall come into force on 1st April 2004.

Amendment of the National Health Service (Tribunal) (Scotland) Regulations 2004

2.—(1) The National Health Service (Tribunal) (Scotland) Regulations 2004(c) are amended as follows.

(2) In regulation 2(1), 8, 9(2) to (4), 11(2) to (6), 12, 18(1), 20(2), 21(4), 22(1), 23(2), 24(4) to (8), 25(3), 26(1) and (2), 29(1) and (3) to (6) and 31(1), paragraph 8 of Schedule 1 and in Form 1, 2, 3, 4, 6, and 7 in Schedule 2 omit “or primary care NHS trust” in every place where it occurs.

(3) In regulation 2 (interpretation and forms)—

- (a) omit the definitions of “the 1997 Act”, “doctor” and “primary care NHS trust”;
- (b) in the definitions of “ophthalmic medical practitioner”, “practitioner” and “relevant professional body” for “doctor” substitute “medical practitioner”;

(a) 1978 c.29. Section 29(4) was inserted by the Health Act 1999 (c.8) (“the 1999 Act”), section 58(1); section 29(8)(a) was inserted by the 1999 Act, section 58(1), amended by the Community Care and Health (Scotland) Act 2002 (asp 5), schedule 2, paragraph 2(4) and substituted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 5(3); section 29A was inserted by the 1999 Act, section 58; section 32 was amended by the National Health Service (Amendment) Act 1995 (c.31) (“the 1995 Act”), section 11 and Schedule, and by the 1999 Act, Schedule 4, paragraph 50; section 32C was inserted by the 1995 Act, section 8; section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7 and by the Health Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, paragraph 24; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of 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.49).

(b) 1992 c.53.

(c) S.S.I. 2004/38

- (c) after “practitioner” insert–
 - ““primary medical services performers list” means a list maintained 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(a);”;
 - (d) in the definition of “representations” omit “or representations under paragraph 3(1) or (2) of Schedule 1 to the 1997 Act (representations against preferential treatment)”;
 - (e) in the definition of “review” omit “or an inquiry into whether or not to give a direction under paragraph 5 (termination of directions) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act.
- (4) After regulation 3 (health schemes) insert–

“List of health care professionals of a prescribed description

3A. In section 29(8)(a) of the 1978 Act health care professionals of a prescribed description are medical practitioners.”.

- (5) In regulation 6 (submission of representations)–
 - (a) omit paragraph (2);
 - (b) in paragraph (3) after “paragraph” insert “(3A) or”;
 - (c) after paragraph (3) insert–
 - “(3A) Subject to paragraph (5), where representations are made that the second condition of disqualification is met and relate to a practitioner who has applied to join a primary medical services performers list but whose application has been deferred in accordance with regulation 6(3) of the Primary Medical Services Performers Lists Regulations, they shall be sent to the clerk to the Tribunal within 30 days of receipt of the confirmation that the applicant wishes to proceed with the application, and has provided details of any changes to the application and any information included in the application together with any changes to the application and information provided, pursuant to regulation 6(5) of those Regulations.”; and
 - (d) in paragraph (5) for “(2) or (3)” substitute “(3) or (3A)”.
- (6) In regulation 9(3) omit “and primary care NHS Trust”.
- (7) In regulation 11(5) and (6) omit “or primary care NHS trusts” in each place where it occurs.
- (8) In regulation 15(3)(c) omit “and primary care NHS trust”.
- (9) In regulation 21 (statement by the Tribunal)–
 - (a) in paragraph (1)–
 - (i) after sub-paragraph (e) insert “and”; and
 - (ii) omit sub paragraph (f);
 - (b) in paragraph (3)(b) omit “or a direction under paragraph 4(1) of Schedule 1 to the 1997 Act”; and
 - (c) in paragraph (4) omit “or primary care NHS trusts”.
- (10) In regulation 25 (statement by the Tribunal following review)–
 - (a) in paragraph (1)(c) omit “, or where it is of the opinion that the disqualification of the applicant for inclusion in any list to which a direction under paragraph 4(1) of Schedule 1 (preferential treatment on transferring medical lists) to the 1997 Act related should be removed, a direction under paragraph 5 (termination of directions) of the said Schedule to that effect”;

- (b) in paragraph (2)–
 - (i) after sub-paragraph (b)(i) insert “or”; and
 - (ii) in subparagraph (b) omit–
 - “; or
 - (iii) in the case of a practitioner subject to a direction under paragraph 4(1) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act, does not make a direction under paragraph (5) (termination of directions) of Schedule 1 to the 1997 Act”; and
- (c) in paragraph (3) omit “or primary care NHS trusts”.
- (11) In regulation 26(2) (practitioner subject to inquiry in a fraud case) omit sub-paragraph (a).
- (12) In regulation 28 (publication of decisions of the Tribunal etc.)–
 - (a) after paragraph (c) insert “and”;
 - (b) omit paragraph (d); and
 - (c) omit–
 - “;
 - (f) any imposition or removal of a disqualification made in accordance with the provisions of paragraph 6 (direction in Northern Ireland) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act”.
- (13) In regulation 29(1)–
 - (a) in paragraph (a) for “,(e) or (f)” substitute “or (e)”; and
 - (b) after “list” insert “(other than a primary medical services performers list)”.
- (14) Omit regulation 30 (publication of information about applications for preferential treatment).
- (15) In Schedule 2 (forms for use in proceedings in connection with representations and applications)–
 - (a) in Form 1–
 - (i) in paragraph 1(a)–
 - (aa) for “[continued (5)]” substitute “continued”; and
 - (bb) for “undertake to provide or are approved to assist in providing” substitute “perform or undertake to provide”;
 - (ii) in note (1) to the Form for “doctor” substitute “medical practitioner”;
 - (iii) in note (3) to the Form–
 - (aa) for “medical” substitute “primary medical services performers”; and
 - (bb) for “, pharmaceutical or supplementary” substitute “ or pharmaceutical”; and
 - (iv) omit note (5) to the Form.
 - (b) in Form 2–
 - (i) in paragraph 1(a)(i)–
 - (aa) for “[continued(6)]” substitute “continued”; and
 - (bb) for “undertake to provide or are approved to assist in providing” substitute “perform or undertake to provide”;
 - (ii) in note (2) to the Form for “doctor” substitute “medical practitioner”;
 - (iii) in note (4) to the Form–
 - (aa) for “medical” substitute “primary medical services performers”; and
 - (bb) for “, pharmaceutical or supplementary” substitute “or pharmaceutical”; and
 - (iv) omit note (6) to the Form;

- (c) in Form 3–
 - (i) in paragraph 1(a)–
 - (aa) for “[continued(6)]” substitute “continued”; and
 - (bb) for “undertake to provide or are approved to assist in providing” substitute “perform or undertake to provide”;
 - (ii) in note (2) to the Form for “doctor” substitute “medical practitioner”;
 - (iii) in note (3) to the Form–
 - (aa) for “medical” substitute “primary medical services performers”; and
 - (bb) for “, pharmaceutical or supplementary” substitute “or pharmaceutical”; and
 - (iv) omit note (6) to the Form;
- (d) in Form 4–
 - (i) in note (2) to the Form for “doctor” substitute “medical practitioner”; and
 - (ii) in note (4) to the Form
 - (aa) for “medical” substitute “primary medical services performers”; and
 - (bb) for “, pharmaceutical or supplementary” substitute “ or pharmaceutical”; and
- (e) in paragraph 1 of Form 5 and paragraph 1(a) of Form 6 omit “/paragraph 5 (termination of directions) of Schedule 1 (preferential treatment on transferring to medical lists) to the National Health Service (Primary Care) Act 1997”.

MALCOLM CHISHOLM
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
10th March 2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Tribunal) (Scotland) Regulations 2004 (“the principal Regulations”) which make provision for relating to the NHS Tribunal and representations to and procedures before it.

These Regulations are consequential upon–

- (a) the coming into force of amendments made to the National Health Service (Scotland) Act 1978 (“the 1978 Act”) and the National Health Service (Primary Care) Act 1997 (“the 1997 Act”) by the Primary Medical Services (Scotland) Act 2004 (“the 2004 Act”); and
- (b) the dissolution of primary care NHS trusts.

As a result of the coming into force of amendments made to the 1978 Act by section 5(3)(b) of the 2004 Act, the Tribunal’s power to inquire into representations regarding persons who are included in a list of medical practitioners undertaking to provide general medical services or approved to assist in the provision of such services has been replaced with a power to inquire into representations regarding persons who are included in a list of health care professionals of a prescribed description performing primary medical services (“primary medical services performers list”). Section 5(3)(a) of the 2004 Act also amends the wording of the first condition for disqualification given in the 1978 Act. These Regulations:

- (a) insert a new regulation 3A into the principal Regulations which prescribes that medical practitioners included in a primary medical services performers list are subject to the Tribunal’s jurisdiction (regulation 2(4));
- (b) amends references to “doctors” in the principal Regulations to references to “medical practitioners” (regulation 2(3)(a) and (b), 2(15)(a)(ii), (b)(ii), (c)(ii) and (d)(i));
- (c) prescribes the time within which representations that the second condition for disqualification are met are to be made (regulation 2(5)(c));
- (d) removes the now unnecessary modification of section 20 of the 1978 Act, which the 2004 Act repeals, in regulation 26 of the principal Regulations (regulation 2(11));
- (e) excludes the power of the Scottish Ministers to direct Health Boards to recover amounts from practitioners in respect of acts or omissions on a primary medical services performers list (regulation 2(13)(b));
- (f) amends references in the Forms, contained in Schedule 2 to the principal Regulations, to reflect the amended wording of the first condition for disqualification (regulation 2(15)(a)(i)(bb), (b)(i)(bb) and (c)(i)(bb)); and
- (g) removes references in the Forms, contained in Schedule 2 to the principal Regulations, to medical and supplementary lists and replaces them with references to primary medical services performers lists (regulation 2(15)(a)(iii), (b)(iii), (c)(iii) and (d)(ii)).

As a result of the coming into force of amendments made to the 1997 Act by paragraph 2(9) of the schedule to the 2004 Act preferential treatment on transferring to medical lists, and the Tribunal’s jurisdiction to inquire into any representations against preferential treatment, has been abolished. These Regulations remove from the principal Regulations references to preferential treatment on transferring to medical lists and the Tribunal’s jurisdiction under the 1997 Act (regulation 2(3)(a), (d) and (e), (5)(a) and (d), (9)(a) and (b), (10)(a) and (b), (11), (12), (13)(a), (14) and (15)(a)(i)(aa) and (iv), (b)(i)(aa) and (iv), (c)(i)(aa) and (iv) and (e)).

Following the dissolution of all primary care NHS trusts, these regulations also remove references in the principal Regulations to these bodies (regulation 2(2), (3)(a), (6), (7) (8), (9)(c) and (10)(c)).

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