
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 38

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

PART III

PROCEDURE FOR DEALING WITH REPRESENTATIONS

Submission of representations

6.—(1) Subject to paragraph (4), representations 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 the complainer's behalf by some person authorised by the complainer;
- (b) be accompanied by 2 copies of each document which the complainer proposes to put in evidence; and
- (c) be sent together with the copies of the documents relevant to it to the clerk to the Tribunal.

(2) Subject to paragraph (5), where the representations are made under paragraph 3 (representations against preferential treatment) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act they shall be sent to the Tribunal within two weeks of the date of publication by the Scottish Ministers under regulation 30 (publication of information about applications for preferential treatment) of information about the application.

(3) 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 list but whose name is not yet on such a list, they shall be sent to the clerk to the Tribunal within 30 days of receipt of the application for the practitioner's name to be included.

(4) 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.

(5) Where a complainer is required to make representations within a time specified in paragraph (2) or (3) and the complainer—

- (a) makes an application (whether before or after the expiry of the time so specified) to the Tribunal for an extension of that time; and
- (b) includes in that application a statement of the grounds for making it,

the Tribunal may, where it is satisfied that it is in all the circumstances reasonable to do so, extend that time by such further period as it shall specify.

Power of the Tribunal to require further statement

7. The Tribunal may, if it thinks fit, require the complainer—

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

Power of the Tribunal to refuse an inquiry

8. If it appears to the Tribunal, after due consideration of representations by any complainer other than a Health Board or primary care NHS trust, that no good cause has been shown why an inquiry should be held, it may refuse to hold an inquiry and shall inform the complainer of its refusal to hold an inquiry, together with the reasons for its refusal, in writing.

Notices to be sent to respondent etc in case of an inquiry

9.—(1) The Tribunal shall, unless it refuses to hold an inquiry in terms of regulation 8 (power of the Tribunal to refuse an inquiry), send to the respondent—

- (a) a notice in terms of Form 2 informing the respondent that representations have been made and that the respondent 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 11(1);
- (b) 1 copy of the representations made by the complainer and of each document, if any, which accompanied them;
- (c) information as to arrangements by which any document which the complainer proposes to put in evidence, but which the complainer is not required to submit copies of in accordance with regulation 6(4), may be examined by the respondent; and
- (d) 1 copy of any further statement furnished by the complainer under regulation 7 (power of the Tribunal to require further statement).

(2) The clerk to the Tribunal shall, unless the Tribunal refuses to hold an inquiry in terms of regulation 8 (power of the Tribunal to refuse an inquiry), send to each Health Board or primary care NHS trust, not being the complainer but in whose list the name of the respondent is included, at the same time as the clerk to the Tribunal sends a notice to the respondent in terms of paragraph (1)—

- (a) a notice in terms of Form 3 informing them that representations have 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 11(2);
- (b) 1 copy of the representations made by the complainer and of each document, if any, which accompanied them;
- (c) information as to arrangements by which any document which the complainer proposes to put in evidence, but which the complainer is not required to submit copies of in accordance with regulation 6(4), may be examined by the Health Board or primary care NHS trust; and
- (d) 1 copy of any further statement furnished by the complainer under regulation 7 (power of Tribunal to require further statement).

(3) In relation to a fraud case, the clerk to the Tribunal shall, at the same time as the clerk sends notice to the respondent in terms of paragraph (1), inform the Scottish Ministers in writing, and the Scottish Ministers shall send to the respondent and every Health Board and primary care NHS Trust, notice—

- (a) that the respondent is subject to an inquiry in a fraud case; and
- (b) that no Health Board or primary care NHS Trust may add the respondent to any list until the proceedings in that case are finally concluded.

- (4) The Tribunal may, if it thinks fit, accept—
- (a) a statement-in-answer by the respondent; or
 - (b) a statement by any other Health Board or primary care NHS trust concerned,
- after the period within which it is required to be submitted in terms of paragraph (1)(a) or (2)(a).

Amendment of representations

10. The Tribunal may, at any time before the conclusion of any inquiry, allow a complainer to amend the terms of the representations upon such conditions as it may think fit.

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

11.—(1) Where, pursuant to regulation 9(1), a respondent submits a statement-in-answer, the respondent shall, subject to paragraph (3), send to the clerk to the Tribunal with the statement-in-answer 2 copies of each document which the respondent proposes to put in evidence.

(2) Where, pursuant to regulation 9(2), any other Health Board or primary care NHS trust concerned submits a statement, they shall, subject to paragraph (3), send to the clerk to the Tribunal with the statement 2 copies of each document which they propose to put in evidence.

(3) If a document which the respondent, or any other Health Board or primary care NHS trust, proposes to put in evidence is of a nature which renders it difficult to make or obtain a copy of it, the respondent, or (as the case may be) Health Board or primary care NHS trust, shall not be required to submit copies of it.

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

the clerk to the Tribunal shall send to the complainer, or in the case of a statement and copies of documents referred to in sub-paragraph (a), any other Health Board or primary care NHS trust concerned, a copy of each of any such statement or document.

(5) Where, pursuant to regulation 9(2), any other Health Board or primary care NHS trust concerned has submitted a statement, the clerk to the Tribunal shall also send to the respondent and each of the other such Health Boards or primary care NHS trusts, if any, a copy of the statement submitted by that Health Board or primary care NHS trust together with a copy of each of the documents, if any, which accompanied it.

- (6) Where any document which—
- (a) the respondent, or (as the case may be) any other Health Board or primary care NHS trust proposes to put in evidence; and
 - (b) the respondent, or (as the case may be) such other Health Board or primary care NHS trust is not required to submit copies of, in accordance with paragraph (3),

has been submitted, the clerk to the Tribunal shall send to the complainer, each of the other such Health Boards or primary care NHS trusts (if any) and, in the case of a document which any other Health Board or primary care NHS trust proposes to put in evidence, the respondent, information as to arrangements by which that document may be examined.

Notice of inquiry

12. After the expiry of the period within which a respondent may submit a statement-in-answer pursuant to regulation 9(1) or any other Health Board or primary care NHS trust concerned may submit a statement pursuant to regulation 9(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 or primary care NHS trust to whom a notice in terms of Form 3 has been sent pursuant to regulation 9(2).

Power to postpone inquiry

13. The Tribunal may, if it thinks fit, or on the application of the complainer or respondent, postpone the date fixed for the holding of an inquiry.

Power to treat representations as withdrawn in certain cases

14. If the complainer fails—

- (a) without showing good cause, to appear in person or by a representative at any inquiry of which the complainer was sent due notice under regulation 12 (notice of inquiry); or
- (b) to comply with any other requirement of these Regulations,

the Tribunal may treat the representations as having been withdrawn.

Withdrawal of representations

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

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

(3) Subject to paragraph (4), where the representations have been withdrawn, or treated by the Tribunal as having been withdrawn, the Tribunal shall forthwith inform in writing—

- (a) in the case of a withdrawal in terms of regulation 14 (power to treat representation as withdrawn in certain cases) or paragraph (1), the respondent;
- (b) in the case of a withdrawal in terms of paragraph (2), the personal representative of the respondent; and
- (c) in the case where the clerk to the Tribunal has informed the Scottish Ministers pursuant to regulation 9(3) that the respondent is subject to an inquiry in a fraud case, the Scottish Ministers, and the Scottish Ministers shall inform in writing every Health Board and primary care NHS trust.

(4) Where the representations are withdrawn or treated as withdrawn after the Tribunal has made a direction under section 32A(2) of the 1978(1) Act (which deals with directions on applications for interim suspension), that direction shall cease to have effect, and—

- (a) the Tribunal shall include this information also in its notice under paragraph (3);
- (b) the Tribunal shall immediately also so inform the Scottish Ministers in writing; and
- (c) the Scottish Ministers shall so inform anyone to whom they sent a copy of the Tribunal's decision pursuant to regulation 23(2).

(1) 1978, c. 29; section 32A(2) was amended by the Health Act 1999 (c. 8), Schedule 4, paragraph 51.

Failure to appear at inquiry

16.—(1) Notwithstanding the provisions of regulation 14 (power to treat representations as withdrawn in certain cases), where any party to whom notice of the inquiry has been sent in accordance with regulation 12 (notice of inquiry) fails to appear at the inquiry, either in person or by a representative, the Tribunal may, if it is satisfied that such notice was received by that party, and taking into account all the circumstances, including any explanation offered for the absence, proceed with the inquiry, notwithstanding that absence.

(2) Where any party fails to appear at the inquiry because of a physical or mental condition, the Tribunal may request that party to be further medically examined, and may take into account the result of that further medical examination or any refusal of that party to be further medically examined, in determining whether or not to proceed with the inquiry under paragraph (1).

Suspension of procedures

17.—(1) In any case where—

- (a) representations are made to the Tribunal in relation to both an efficiency case and a fraud case in respect of the same practitioner; and
- (b) the Tribunal has not refused to hold an inquiry in terms of regulation 8 (power of the Tribunal to refuse an inquiry),

the Tribunal may direct that it will inquire into one case before inquiring into the other and, after proceedings in that inquiry are finally disposed of, may if it thinks appropriate, adjourn the inquiry into the other indefinitely.

(2) In relation to any inquiry, the Tribunal may not adjourn the inquiry solely for the reason that the alleged facts on which representations are based are being or may be investigated by the practitioner's relevant professional body.

Representations and evidence at inquiry

18.—(1) At any inquiry—

- (a) a Health Board or primary care NHS trust shall be entitled to be represented by their Chief Executive, or by counsel or solicitor; and
- (b) the complainer (not being a Health Board or primary care NHS trust) 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 the complainer or the respondent is a member;
 - (iv) a member of the complainer or the respondent's 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 and provisions as to inquiry

19. The provisions of Schedule 1 (provisions as to inquiry) shall have effect with regard to an inquiry under these Regulations.

Power to dispense with oral inquiry

20.—(1) Subject to paragraph (2), notwithstanding anything in these Regulations, where—

- (a) the grounds on which representations are 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 representations upon such documentary evidence as may be submitted to it.

(2) Where the Tribunal has determined to decide the case on documentary evidence pursuant to paragraph (1), but proposes to give a direction under section 32B(1) of the 1978 Act (continuation of suspension pending appeal)(2), it shall before doing so give notice to the Health Board or primary care NHS trust and the respondent of its intention to hold an oral inquiry relating to that proposal, and shall then hold an oral inquiry.

Statement by the Tribunal

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

- (a) its findings of fact;
- (b) the conclusions which it has reached;
- (c) where it is of the opinion that the respondent meets the first or second condition for disqualification, the disqualification (including any conditional disqualification) as it makes under section 29B(2) of the 1978 Act(3);
- (d) where it is of the opinion that the respondent meets the first or second condition for disqualification any declaration of unfitness it makes under section 29B(3) of the 1978 Act(4);
- (e) such directions as it makes under section 32B(1) of the 1978 Act (continuation of suspension pending appeal);
- (f) such directions as it may make under paragraph 4(1) (power of Tribunal to give directions) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act(5); and
- (g) any order it makes as to expenses.

(2) Where the Tribunal makes a conditional disqualification, the statement referred to in paragraph (1) shall set out the conditions which are imposed on the respondent and any directions made by the Tribunal under section 29C(5) of the 1978 Act(6).

(3) The clerk to the Tribunal shall—

- (a) send a copy of the statement prepared pursuant to paragraph (1) to—
 - (i) the Scottish Ministers;
 - (ii) the complainer; and

(2) Section 32B(1) of the 1978 Act was inserted by National Health Service (Amendment) Act 1995 (c. 31), section 8 and amended by the Health Act 1999 (c. 8), Schedule 4, paragraph 51 and Schedule 5.

(3) Section 29B(2) of the 1978 Act was inserted by the Health Act 1999 (c. 8), section 58 and amended by the [Community Care and Health \(Scotland\) Act 2002 asp 5](#) Schedule 2, paragraph 2.

(4) Section 29B(3) of the 1978 Act was inserted by the Health Act 1999 (c. 8), section 58 and amended by the [Community Care and Health \(Scotland\) Act 2002 asp 5](#) Schedule 2, paragraph 2.

(5) 1997, c. 46; paragraph 4(1) of Schedule 1 to the 1997 Act was amended by the [Community Care and Health \(Scotland\) Act 2002 asp 5](#), section 19.

(6) Section 29C(5) of the 1978 Act was inserted by the Health Act 1999 (c. 8), section 58.

- (iii) the respondent;
- (b) where the statement contains a disqualification (including any conditional disqualification) under section 29B(2) of the 1978 Act or a declaration of unfitness under section 29B(3) or a direction under section 32B(1) of the 1978 Act or a direction under paragraph 4(1) of Schedule 1 to the 1997 Act, inform the respondent of the respondent's right of appeal under section 11 (appeals from certain Tribunals) of the Tribunal and Inquiries Act 1992(7) in respect of that decision.
- (4) Except for a Health Board or primary care NHS trust to whom a copy of the statement has been sent pursuant to paragraph (3), the Scottish Ministers shall send a copy of the statement to such Health Boards or primary care NHS trusts or relevant professional body as appear to them concerned.

(7) [1992 c. 53](#) to which there are amendments not relevant to these Regulations.