
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 330

The National Health Service (Discipline Committees) (Scotland) Regulations 2006

PART II

INVESTIGATION OF DISCIPLINARY MATTERS

Procedure on appeal to Scottish Ministers

10.—(1) Without prejudice to paragraph (5), if the Scottish Ministers, after considering a notice of appeal and any further particulars furnished by the practitioner, are of the opinion that the notice and particulars disclose no reasonable grounds of appeal or that the appeal is otherwise vexatious or frivolous, they may determine the appeal by dismissing it immediately.

(2) The Scottish Ministers shall, unless they dismiss the appeal under paragraph (1), send a copy of the notice of appeal and of any further particulars furnished by the practitioner to the appropriate Health Board, and shall invite that Board to submit its observations on the appeal within 28 days of being sent the copy of the notice of appeal.

(3) Where observations are made under paragraph (2), the Scottish Ministers shall send a copy of those observations to the practitioner and shall invite the practitioner to submit comments on the observations within 21 days of being sent that copy.

(4) The Scottish Ministers shall hold an oral hearing to determine the appeal except in the circumstances described in paragraph (5).

(5) Where a practitioner who is not appealing under regulation 9(1)(a) appeals under regulation 9(1)(b), the appeal may be dismissed without an oral hearing if the practitioner has stated in writing that he or she does not want such a hearing.

(6) Where there is to be an oral hearing the Scottish Ministers shall appoint 3 persons to hear the appeal, of whom—

- (a) one shall be an advocate or a solicitor, and shall act as chairperson; and
- (b) two shall be selected in accordance with paragraphs (7) and (8).

(7) The persons appointed under paragraph (6)(b) shall be—

- (a) where the practitioner is a doctor, 2 doctors;
- (b) where the practitioner is a dentist [^{F1}or a dental body corporate], 2 dentists;
- (c) where the practitioner is an ophthalmic medical practitioner, 2 ophthalmic medical practitioners;
- (d) where the practitioner is an optician, 2 opticians; and
- (e) where the practitioner is a pharmacist contractor, 2 pharmacists.

(8) In a case to which—

- (a) paragraph (7)(a) applies, one of the doctors shall be selected from the doctors' panel;
- (b) paragraph (7)(b) applies, one of the dentists shall be selected from the dentists' panel.

(9) The Scottish Ministers shall appoint a day for the hearing and shall give the practitioner and the appropriate Health Board not less than 21 days' notice in writing of the day, time and place of the hearing.

(10) Subject to the provisions of regulation 16 (attendance by member of Council on Tribunals) no person shall be admitted to a hearing, without the consent of the practitioner and the persons appointed to hear the appeal, unless that person is—

- (a) the practitioner;
- (b) a representative of the appropriate Health Board who is an officer or a member of it;
- (c) a person (who may be an advocate, a solicitor or any other person) engaged by a person or body mentioned in sub-paragraph (a) or (b) of this paragraph to represent them at the hearing; or
- (d) a person whose attendance is required for the purpose of giving evidence at the hearing.

(11) The practitioner and the appropriate Health Board shall not rely on any facts or contentions which do not appear to the Scottish Ministers or the persons hearing the appeal to have been raised in the course of the proceedings before the discipline committee unless—

- (a) not less than 7 days before the hearing, notice in writing was given to the Scottish Ministers of such facts or contentions; and
- (b) the Scottish Ministers or the persons hearing the appeal give their consent.

(12) The persons hearing the appeal shall prepare a report and present it to the Scottish Ministers who shall take it into consideration and determine the appeal.

(13) Where a Health Board has made representations to the Tribunal following its consideration of a report of a discipline committee, the Scottish Ministers may, for the purpose of any appeal under regulation 9(1)(a), treat as conclusive any relevant findings of fact of the Tribunal.

(14) The Scottish Ministers shall give notice in writing to the practitioner and the Health Board of their determination under paragraphs (1) or (12) of the matters mentioned in regulation 9(3)(c) or (d) or (4)(b) and shall include with the notice a statement of their reasons for the determination.

(15) The provisions of Schedule 3 shall have effect with regard to the hearing of an appeal.

Textual Amendments

- F1** Words in [reg. 10\(7\)\(b\)](#) inserted (2.7.2010) by [The National Health Service \(Discipline Committees\) \(Scotland\) Amendment Regulations 2010 \(S.S.I. 2010/226\)](#), regs. 1(1), [2\(7\)](#)
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Commencement Information

- I1** Reg. 10 in force at 1.7.2006, see [reg. 1\(1\)](#)

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service (Discipline Committees) (Scotland) Regulations 2006, Section 10.