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National Health Service (Scotland) Act 1978

1978 CHAPTER 29

PART II

PROVISION OF SERVICES

Provisions as to disqualification of practitioners

29 Disqualification of persons providing services.

- (1) There shall be constituted a tribunal (hereafter in this Act referred to as “the Tribunal”) for the purpose of inquiring into cases where representations are made in the prescribed manner to the Tribunal by a Health Board or any other person that the continued inclusion of any person in any list prepared under this Part—
 - (a) of medical practitioners undertaking to provide general medical services;
 - (b) of medical practitioners undertaking to provide general ophthalmic services;
 - (c) of dental practitioners undertaking to provide general dental services;
 - (d) of ophthalmic opticians undertaking to provide general ophthalmic services;
 - (e)
 - ^{F1}(f) of persons undertaking to provide pharmaceutical services, would be prejudicial to the efficiency of the services in question.
- (2) Schedule 8 shall have effect in relation to the Tribunal.
- (3) The Tribunal, on receiving representations from a Health Board, shall, and in any other case may, inquire into the case and, if they are of the opinion that the continued inclusion of the said person in any list to which the representations relate would be prejudicial to the efficiency of the said services,
 - ^{F2}(a) shall direct that his name be removed from that list]

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- [^{F2}(b) may also, if they think fit, direct that his name be removed from, or not be included in, any corresponding list kept by any other Health Board under this Part][^{F3},and
- (c) where they make a direction under paragraph (b) above, may also, if they think fit, declare that he is not fit to be engaged in any capacity in the provision of those services.]

^{F4}(4)

[^{F5}(5) Subject to subsection (5A) below, where the Tribunal direct that the name of any person be removed from or not included in any list or lists, the Health Board or Health Boards concerned shall remove the name of the person concerned from the list or lists in question.

^{F5}(5A) Subsection (5) above shall not apply—

- (a) where no appeal is brought against the decision to make the direction, until the end of the period for bringing an appeal, and
- (b) where an appeal is brought against that decision, until the appeal process has been exhausted.]

(6) The references in subsections (1), (3) and (5) to a Health Board shall include a reference to such committee or joint committee as may be prescribed.

Textual Amendments

- F1** S. 29(1)(e) repealed by Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 24, **Sch. 8 Pt. I**
- F2** S. 29(3) “(a)”
“(b)” inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 7(a)(b); S.I. 1995/3214, art. 2, **Sch.** (with art. 3); S.I. 1996/552, **art. 2**
- F3** S. 29(3)(C) and preceeding word “and” inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 7(c); S.I. 1995/3214, art. 2, **Sch.** (with art. 3); S.I. 1996/552, **art. 2**
- F4** S. 29(4) repealed (1.1.1996) by 1995 c. 31, ss. 9, 14(2), **Sch.**; S.I. 1995/3214, art. 2, **Sch.** (with art. 3)
- F5** S. 29(5)(5A) substituted for s. 5 (1.1.1996) by 1995 c. 31, s. 9(2); S.I. 1995/3214, art. 2, **Sch.** (with art. 3)

VALID FROM 31/01/2004

[^{F6}29A The NHS Tribunal: supplementary.

- (1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this group of sections 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).
- (2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this group of sections 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).

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- (3) A person who is included in any list (“the practitioner”) is to be treated for the purposes of this group of sections 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 section 29(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 section 29(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 they have 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 this Part) 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 group of sections, in a fraud or efficiency case proceedings are finally concluded—
 - (a) if the Tribunal determine not to disqualify or conditionally disqualify him when they make that determination;
 - (b) if they determine 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 they determine to disqualify or conditionally disqualify him and an appeal is brought against the determination, when the appeal process is exhausted.
- (7) An inquiry under section 29 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.]

Textual Amendments

- F6** Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, **art. 2(1)(2)** (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

VALID FROM 31/01/2004

[^{F7}29B Powers of NHS Tribunal.

- (1) Subsection (2) applies where the Tribunal are of the opinion—
 - (a) on inquiring into an efficiency case, that the person meets the first condition for disqualification;
 - (b) on inquiring into a fraud case, that the person meets the second condition for disqualification.
- (2) The Tribunal—

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- (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 national disqualification, that is disqualify him for inclusion in all lists within the same paragraph of section 29(8) as that list.
- (3) If the Tribunal make a national disqualification they 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 group of sections as a declaration of unfitness).
 - (4) The Tribunal shall not make any disqualification or declaration under this section if they are of the opinion that it would be unjust to do so.
 - (5) A disqualification under this section shall have effect when the case is finally concluded.
 - (6) If a person is disqualified for inclusion in any list prepared by a Health Board, the Board must not enter him in the list and (if he is already included in the list) must remove him from the list.]

Textual Amendments

- F7** Ss. 29, 29A-29C and sidenotes substituted for s. 29 and sidenote (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, art. 2(1)(2) (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

VALID FROM 31/01/2004

[^{F8}29C Conditional disqualification etc.

- (1) The functions of making disqualifications under section 29B include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determine (on a review under section 30) that the person subject to the inquiry has failed to comply with any conditions imposed by them.
- (2) Conditions may be imposed by virtue of subsection (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 section 29(7)(a),
 (as the case may be).
- (3) Conditions so imposed shall have effect when proceedings in the case are finally concluded.
- (4) Section 29B(4) applies to a conditional disqualification as it applies to a disqualification.
- (5) The Tribunal may by directions—
 - (a) vary the terms of service of the person subject to the inquiry (including terms imposed by regulations under this Part);
 - (b) confer functions on any Health Board,

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for the purpose of or in connection with the imposition of any conditions by virtue of this section.

- (6) References in any enactment to a disqualification by the Tribunal do not include a conditional disqualification.]

Textual Amendments

- F8** Ss. 29, 29A-29C and sidenotes substituted for s. 29 and sidenote (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, art. 2(1)(2) (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

30 Removal of disqualification.

- (1) Any person whose name has been removed by a direction under section 29 from any list or lists shall be disqualified for inclusion in any list to which that direction relates until the Tribunal^{F9}. . . direct under this section to the contrary.
- (2) For the purpose of deciding whether or not to issue a direction under this section (or under paragraph 6 of Schedule 15) the Tribunal^{F10}. . . , may hold an inquiry.

Textual Amendments

- F9** Words in s. 30(1) repealed (1.1.1996) by 1995 c. 31, ss. 10(1), 14(2), Sch.; S.I. 1995/3214, art. 2, Sch.(with art. 3)
- F10** Words in s. 30(2) repealed (1.1.1996) by 1995 c. 31, s. 14(2), Sch.; S.I. 1995/3214, art. 2, Sch. (with art. 3)

31 Disqualification provisions in England or Wales or Northern Ireland.

If—

- (a) under any provisions in force in England or Wales or Northern Ireland corresponding to the provisions of this Part, a person is for the time being disqualified for inclusion in all lists prepared under those provisions of persons undertaking to provide services of one or more of the kinds specified in section 29(1), then
- (b) that person shall, so long as that disqualification is in force, be disqualified for inclusion in a list prepared under this Part of persons undertaking to provide services of that kind or those kinds, and the name of that person shall be removed from any such list in which his name is included.

32 Regulations as to sections 29 to 31.

Regulations shall make provision—

- (a) [F11for inquiries]. . . under sections 29 to 31 [F12to be held in accordance with such procedure as may be prescribed by or determined under the regulations]. . . and, in particular, for F13. . . any person who is the subject of such an inquiry [F14to be] informed, as soon as may be, of the substance of any charge or complaint to which the inquiry relates and [F15to have] an opportunity—

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- (i) of appearing, either in person or by counsel or solicitor or such other representative as may be prescribed, before the Tribunal ^{F16}. . . , and
- (ii) of being heard by the Tribunal ^{F16}. . . , and of calling witnesses and producing other evidence on his behalf, and [^{F17}for the hearing], ^{F16}. . . [^{F14}to be] in public if the person who is the subject of the inquiry so requests;
- (b) for conferring on the Tribunal ^{F16}. . . such powers as the Secretary of State considers necessary for the purpose of holding such inquiries, including power to require the attendance of witnesses and the production of documents and to administer oaths; and
- (c) for the publication of decisions of the Tribunal ^{F16}. . . under this section and of the imposition and removal of any disqualification imposed by virtue of this section, and for the intimation to any person who is the subject of such an inquiry of the grounds upon which any disqualification has been imposed in his case.

Textual Amendments

- F11** Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, s. 11(2)(a); S.I. 1995/3214, art. 2, Sch.(with art. 3)
- F12** Words in s. 32(a) inserted (1.1.1996) by 1995 c. 31, s. 11(2)(b); S.I. 1995/3214, art. 2, Sch. (with art. 3)
- F13** Words in s. 32(a) repealed (1.1.1996) by 1995 c. 31, ss. 11(2)(c), 14(2), Sch.; S.I. 1995/3214, art. 2, Sch.(with art. 3)
- F14** Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, s. 11(2)(d); S.I. 1995/3214, art. 2, Sch. (with art. 3)
- F15** Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, s. 11(2)(e); S.I. 1995/3214, art. 2, Sch. (with art. 3)
- F16** Words in s. 32(a)(i)(ii)(b)(c) repealed (1.1.1996) by 1995 c. 31, s. 14(2), Sch.; S.I. 1995/3214, art. 2, Sch. (with art. 3)
- F17** Words in s. 32(a) substituted (1.1.1996) by 1995 c. 31, s. 11(2)(f); S.I. 1995/3214, art. 2, Sch. (with art. 3)

Modifications etc. (not altering text)

- C1** S. 32(a) extended (1.1.1996) by 1995 c. 31, s. 11(1); S.I. 1995/3214, art. 2 Sch.(with art. 3)

[32A] ^{F18} Applications for interim suspension.

- (1) A Health Board who have made representations under section 29 may, at any time before the case is disposed of by the Tribunal, apply to the Tribunal for a direction to be made under subsection (2) below in relation to the person to whom the case relates.
- (2) If, on an application under this section, the Tribunal are satisfied that it is necessary to do so in order to protect patients, they shall direct that subsection (3) below shall apply to the person concerned as respects services of the kind to which the case in question relates.
- (3) A person to whom this subsection applies shall—
 - (a) be deemed to have been removed from any relevant list in which his name is included,

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- (b) be disqualified for inclusion in any relevant list in which his name is not included, and
 - (c) be deemed to be a person in relation to whom there is in force a declaration under section 29(3)(c) concerning his fitness to be engaged in the provision of services of the relevant kind.
- (4) A direction under subsection (2) above shall cease to have effect on the Tribunal's disposing of the case in connection with which it is made.
- (5) In subsection (2) above, the reference to patients is to persons to whom services of the kind to which the case in question relates are, or may be, provided under this Part of this Act.
- (6) In the application of subsection (3) above to any person—
- (a) “relevant list” means a list prepared under this Part of this Act of persons undertaking to provide services of the kind to which the direction applying the subsection to him relates, and
 - (b) “services of the relevant kind” means services of the kind to which that direction relates.]

Textual Amendments

F18 S. 32A inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 8; S.I. 1995/3214, art. 2, Sch.(with art. 3); S.I. 1996/552, art. 2

^{F19}32B Continuation of suspension pending appeal.

- (1) Where—
- (a) on disposing of a case under section 29, the Tribunal make a direction under subsection (3)(b) of that section, and
 - (b) the person to whom the direction relates is a person to whom section 32A(3) above would, apart from this section, cease to apply on the disposal of the case, the Tribunal may, if they consider it necessary to do so in order to protect patients, direct that that provision shall continue to apply to him as respects services of the kind to which the direction under section 29(3)(b) relates.
- (2) A direction under subsection (1) above shall cease to have effect—
- (a) where no appeal against the direction under section 29(3)(b) is brought, at the end of the period for bringing an appeal, and
 - (b) where an appeal against that direction is brought, when the appeal process has been exhausted.
- (3) Where the power conferred by subsection (1) above is exercisable by virtue of a direction which is not coupled with a declaration under section 29(3)(c), section 32(A)(3) shall have effect, in relation to the exercise of that power, with the omission of paragraph (c).
- (4) In subsection (1) above, the reference to patients is to persons to whom services of the kind to which the direction under section 29(3)(b) relates are, or may be, provided under this Part of this Act.

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Textual Amendments

F19 S. 32B inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 8; S.I. 1995/3214, art. 2, Sch. (with art. 3); S.I. 1996/552, art. 2

[^{F20F21}32(Sections 32A and 32B: procedure etc.

- (1) Before making a direction under section 32A(2) or 32B(1) in relation to any person, the Tribunal shall give him an opportunity—
 - (a) to appear before them, either—
 - (i) in person; or
 - (ii) 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—
 - (a) make provision for, or for the determination of, procedure in relation to determining applications under section 32A or the exercise of the power conferred by section 32B(1), and
 - (b) provide for the functions of the Tribunal under section 32A or 32B to be carried out, or to be carried out in prescribed circumstances, by the chairman or a deputy chairman of the Tribunal.]

Textual Amendments

F20 Ss. 29, 29A-29C substituted for s. 29 (31.1.2004 for certain purposes and otherwise 4.3.2004) by 1999 c. 8, ss. 58(1), 67(1); S.S.I. 2004/32, art. 2(1)(2) (with savings for effect of 1999 c. 58 by S.S.I. 2004/31, art. 3)

F21 S. 32C inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 8; S.I. 1995/3214, art. 2, Sch.(with art. 3); S.I. 1996/552, art. 2

^{F22}32D Suspension provisions in England and Wales or in Northern Ireland.

- (1) This section applies where, under any provisions in force in England and Wales or in Northern Ireland corresponding to section 32A or 32B, a person (“the practitioner”) is disqualified for inclusion in all lists prepared under the provisions in force there corresponding to the provisions of this Part of this Act of persons undertaking to provide services of one or more of the kinds specified in section 29(1), 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 this Part of this Act 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.

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Textual Amendments

F22 S. 32D inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 8; S.I. 1995/3214, art. 2, Sch. (with art. 3); S.I. 1996/552, art. 2

^{F23} 32E Payments in consequence of suspension.

- (1) Regulations may provide for the making to persons to whom section 32A(3) or 32D(2) applies of payments in consequence of the application of that provision.
- (2) Regulations under subsection (1) above may provide for the determination by the Secretary of State in a prescribed manner of anything for which provision may be made by regulations under that subsection.

Textual Amendments

F23 S. 32E inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 8; S.I. 1995/3214, art. 2, Sch. (with art. 3); S.I. 1996/552, art. 2

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