



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART II

#### PROVISION OF SERVICES

##### *Provisions as to disqualification of practitioners*

#### [<sup>F1</sup>29] **The NHS tribunal.**

- (1) The tribunal constituted in accordance with Schedule 8 shall continue under the name of “the NHS Tribunal” and that Schedule shall continue to have effect in relation to the Tribunal.
- (2) If the Tribunal receive from a Health 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 receive such representations from any other person, they may inquire into the case.
- (4) Representations under this section 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) Subsections (6) to (11) apply for the purposes of this group of sections.

*Status: Point in time view as at 01/11/2005.*

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- (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 <sup>F2</sup>.
- (a) in relation to a list referred to in subsection (8)(a), perform or undertake to provide;
  - (b) in relation to any other list referred to in subsection (8),] undertake to provide <sup>F3</sup> . . . .
- (7) The second condition for disqualification is that the person concerned—
- (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—
- <sup>F4</sup>(a) a list of health care professionals of a prescribed description performing primary medical services <sup>F5</sup>or approved to assist in the provision of such services;]
  - <sup>F6</sup>(aa) [ a list of medical practitioners approved to perform personal medical services—
    - (i) in accordance with section 17C arrangements; or
    - (ii) in connection with the provision of such services under a pilot scheme;]
    - (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 <sup>F7</sup>or by virtue of this Part or Part I of this Act].
- <sup>F8</sup>(8A) [In subsection (8)(a), “health care professional” has the same meaning as in section 17D.]
- (9) “Health scheme” means—
- (a) any of the health services under section 1(1) or any corresponding enactment extending to England and Wales or Northern Ireland; and
  - (b) any prescribed scheme,
- and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State 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 below as efficiency cases; and cases in which representations are made that the second condition for disqualification is met are referred to below as fraud cases.

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- (12) In this section and sections 29A to 29C—
- (a) “this group of sections” means this and those sections and Schedule 8; and
  - (b) the NHS Tribunal is referred to as the Tribunal.]

#### Textual Amendments

- F1** S. 29 substituted (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 saving for effect of 1999 c. 8, s. 58 by S.S.I. 2004/31, art. 3)
- F2** S. 29(6)(a)(b) inserted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 5(3)(a)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.
- F3** Words in s. 29(6) omitted (1.4.2004) by virtue of The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(1)(a)**
- F4** S. 29(8)(a) substituted for s. 29(8)(a)(aa) (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 5(3)(b)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.
- F5** Words in s. 29(8)(a) added (4.3.2004) by 2002 asp 5, ss. 25, 27(2), **Sch. 2 para. 2(4)(b)(i)**; S.S.I. 2004/33, **art. 2(1)(c)** (with savings for effects of 2002 asp 5, Sch. 2 para. 2(4) by S.S.I. 2004/34, art. 3(2))
- F6** S. 29(8)(aa) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), **Sch. 2 para. 2(4)(b)(ii)**; S.S.I. 2004/33, **art. 2(2)** (with savings for effects of 2002 asp 5, Sch. 2 para. 2(4) by S.S.I. 2004/34, art. 3(2))
- F7** Words in s. 29(8) substituted (4.3.2004 for certain purposes otherwise 1.4.2004) by 2002 asp 5, ss. 25, 27(2), **Sch. 2 para. 2(4)(b)(iii)**; S.S.I. 2004/33, **art. 2(1)(d)**, Sch. (with savings for effects of 2002 asp 5, Sch. 2 para. 2(4) by S.S.I. 2004/34, art. 3(2))
- F8** S. 29(8A) inserted (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), **ss. 5(3)(c)**, 9(1); S.S.I. 2004/58, **art. 2(1)(3)**, Sch.

#### [<sup>F9</sup>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).
- (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 [<sup>F10</sup>, or as the case may be performing,] 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 [<sup>F11</sup>, or performance,] of those services on his behalf.
- (3A) <sup>F12</sup> .....
- (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.

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- (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

- F9** 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)
- F10** Words in s. 29A(3)(a) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(5)(a)(i); S.S.I. 2004/33, **art. 2(2)(b)**
- F11** Words in s. 29A(3)(b) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(5)(a)(ii); S.S.I. 2004/33, **art. 2(2)(b)**
- F12** S. 29A(3A) repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(12)**; S.S.I. 2004/58, **art. 2(3)**

#### [<sup>F13</sup>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—
- (a) shall make a local disqualification, that is disqualify him for inclusion
    - <sup>F14</sup>(i) [ <sup>F15</sup> .....
    - (ii) <sup>F16</sup> .....
 in the list to which the case relates; and
  - (b) may also make a national disqualification, that is disqualify him for inclusion<sup>F17</sup> 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 [<sup>F18</sup>, or as the case may be performance,] of the services to which the lists in question relate (referred to in this group of sections as a declaration of unfitness).

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- (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

- F13** 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**)
- F14** Words in s. 29B(2)(a) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(6)(a); S.S.I. 2004/33, **art. 2(2)(b)**
- F15** Words in s. 29B(2)(a)(i) and succeeding word repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(13)(a)(i)**; S.S.I. 2004/58, **art. 2(3)**
- F16** Words in s. 29B(2)(a)(ii) repealed (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(13)(a)(ii)**; S.S.I. 2004/58, **art. 2(3)**
- F17** Words in s. 29B(2)(b) substituted for s. 29B(2)(b)(i)(ii) (1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 8, 9(1), **Sch. para. 1(13)(b)**; S.S.I. 2004/58, **art. 2(3)**
- F18** Words in s. 29B(3) inserted (1.4.2004) by 2002 asp 5 ss. 25, 27(2), Sch. 2 para. 2(6)(c); S.S.I. 2004/33, **art. 2(2)(b)**

#### [<sup>F19</sup>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);
  - [ vary any requirements to which the person subject to the inquiry is subject
  - <sup>F20</sup>(aa) under or by virtue of section 17P;]
  - (b) confer functions on any Health Board,  
for the purpose of or in connection with the imposition of any conditions by virtue of this section.

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

#### Textual Amendments

- F19** 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)
- F20** S. 29C(5)(aa) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, Sch. para. 1(1)(b)

#### [<sup>F21</sup>30] Review etc. of disqualification.

- (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 they consider it appropriate.
- (2) On a review under subsection (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 they consider appropriate.
- (3) If any Health Board request 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 [<sup>F22</sup>, or as the case may be performing,]services in England and Wales or Northern Ireland, the reference in subsection (3) to a Health Board includes [<sup>F23</sup>a reference to any authority which] under the provisions in force in England and Wales or Northern Ireland corresponding to this Part [<sup>F24</sup>would be entitled to request a review corresponding to that mentioned in the subsection].
- (5) On a review under subsection (3) of a conditional disqualification, the Tribunal may 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 they consider appropriate.
- (6) If, on a review under this section of a fraud case—
- (a) there is a national disqualification which the Tribunal do not remove or make conditional;

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- (b) there is a national disqualification which is conditional and which the Tribunal make unconditional; or
  - (c) the Tribunal make a national disqualification, they may also make a declaration of unfitness.
- (7) The Tribunal shall not under this section—
- (a) in the case of a conditional disqualification, make it unconditional or vary the conditions; or
  - (b) make any further disqualification or conditional disqualification;
  - (c) make a declaration of unfitness,
- if they are of the opinion that it would be unjust to do so.
- (8) A determination by the Tribunal under this section 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 section.]

#### Textual Amendments

- F21** S. 30 substituted (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 58(2), 67(1); S.S.I. 2004/32, art. 2(1)(a)(2)(a)
- F22** Words in s. 30(4) inserted (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(7)(a); S.S.I. 2004/33, art. 2(1)(c)
- F23** Words in s. 30(4) substituted (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(7)(b); S.S.I. 2004/33, art. 2(1)(c)
- F24** Words in s. 30(4) added (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(7)(c); S.S.I. 2004/33, art. 2(1)(c)

### 31 Disqualification provisions in England or Wales or Northern Ireland.

<sup>F25</sup>(1) If—

- (a) under [<sup>F26</sup>or by virtue of] 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 [<sup>F27</sup>or by virtue of—
  - [<sup>F27</sup>(i) those provisions so in force; or
  - (ii) provisions so in force corresponding to the provisions of Part I of this Act,]  
of persons [<sup>F28</sup>performing,] undertaking to provide [<sup>F29</sup>, approved to assist in providing or approved to perform][<sup>F30</sup>any of the services mentioned in one of the paragraphs of section 29(8)], then
- (b) [<sup>F31</sup>in relation to the services in question] that person shall, so long as that disqualification is in force, be disqualified for inclusion in [<sup>F32</sup>any list and (if also the subject of such 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].

<sup>F33</sup>(2) Where under the conditional disqualification provisions in England and Wales or Northern Ireland—



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- (a) any conditions are imposed in relation to the provision [F34, assistance in provision or performance] by any person of any of the services mentioned in section 29(8); or
- (b) any conditions so imposed are varied,
- the Secretary of State may, by a notice in writing given to each Health Board and to the person in question, impose those conditions in relation to the provision [F34F35 . . . or performance] by that person of those services under this Part [F36, [F37Part 1 of this Act,] section 17C arrangements or a pilot scheme].
- (3) A notice under subsection (2) may make such modifications of the conditions as the Secretary of State considers necessary for them to have the like effect in relation to Scotland as they have in relation to England and Wales or (as the case may be) Northern Ireland, but only if the Secretary of State 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 subsection (2) shall cease to have effect if the Secretary of State withdraws the notice by giving written notice to the person concerned.
- (5) In this section, “the conditional disqualification provisions in England and Wales or Northern Ireland” means any provisions in force in England and Wales or Northern Ireland corresponding to sections 29C and (so far as relating to conditional disqualifications) 30.]

#### Textual Amendments

- F25** S. 31 renumbered as s. 31(1) (4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 49; S.S.I. 2004/32, **art. 2(2)(b)(c)**
- F26** Words in s. 31(1)(a) inserted (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(8)(a)(i); S.S.I. 2004/33, **art. 2(1)(c)**
- F27** Words in s. 31(1)(a) inserted (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(8)(a)(ii); S.S.I. 2004/33, **art. 2(1)(c)**
- F28** Word in s. 31(1)(a) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(2)(a)**
- F29** Words in s. 31(1)(a) inserted (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(8)(a)(iii); S.S.I. 2004/33, **art. 2(1)(c)**
- F30** Words in s. 31(1)(a) substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 49(a); S.S.I. 2004/32, **art. 2(2)(b)(c)**
- F31** Words in s. 31(1)(b) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 49(b); S.S.I. 2004/32, **art. 2(2)(b)(c)**
- F32** Words in s. 31(1)(b) substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 49(b); S.S.I. 2004/32, **art. 2(2)(b)(c)**
- F33** S. 31(2)-(5) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 49(c); S.S.I. 2004/32, **art. 2(2)(b)(c)**
- F34** Words in s. 31(2) inserted (4.3.2004 for certain purposes otherwise 1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(8)(b)(i); S.S.I. 2004/33, **art. 2(1)(d)(2)(b)**, Sch.
- F35** Words in s. 31(2) omitted (1.4.2004) by virtue of The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(2)(b)(i)**
- F36** Words in s. 31(2) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(8)(b)(ii); S.S.I. 2004/33, **art. 2(2)(b)**



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**F37** Words in s. 31(2) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(2)(b)(ii)**

## 32 Regulations as to sections 29 to 31.

[<sup>F38</sup>(1)] Regulations shall make provision—

- (a) [<sup>F39</sup>for inquiries]. . . under sections 29 to 31 [<sup>F40</sup>to be held in accordance with such procedure as may be prescribed by or determined under the regulations]. . . and, in particular, for <sup>F41</sup>. . . any person who is the subject of such an inquiry [<sup>F42</sup>to be] informed, as soon as may be, of the substance of any charge or complaint to which the inquiry relates and [<sup>F43</sup>to have] an opportunity—
- (i) of appearing, either in person or by counsel or solicitor or such other representative as may be prescribed, before the Tribunal <sup>F44</sup>. . . , and
  - (ii) of being heard by the Tribunal <sup>F44</sup>. . . , and of calling witnesses and producing other evidence on his behalf,
- and [<sup>F45</sup>for the hearing], <sup>F44</sup>. . . [<sup>F42</sup>to be] in public if the person who is the subject of the inquiry so requests;
- (b) for conferring on the Tribunal <sup>F44</sup>. . . 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 <sup>F44</sup>. . . under this section and of the imposition and removal of any disqualification [<sup>F46</sup>or condition]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 [<sup>F46</sup>or condition]has been imposed in his case.

[<sup>F47</sup>(2) Regulations under subsection (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, they may inquire into one case before inquiring into the other and, after proceedings in the first case are finally disposed of, may if they think it appropriate adjourn the other case indefinitely.]

### Textual Amendments

- F38** S. 32 renumbered as s. 32(1) (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 50; S.S.I. 2004/32, **art. 2(1)(c)(2)(c)**
- F39** 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)
- F40** 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)
- F41** 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)
- F42** 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)
- F43** 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)
- F44** 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)

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- F45** 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)
- F46** Words in s. 32(1)(c) inserted (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 50(a); S.S.I. 2004/32, art. 2(1)(c)(2)(c)
- F47** S. 32(2) inserted (31.1.2004 for certain purposes otherwise 4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 50(b); S.S.I. 2004/32, art. 2(1)(c)(2)(c)

**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)

**[<sup>F48</sup>32A 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.

<sup>F49</sup>(1A) [ A Health Board may, if they have requested a review of a conditional disqualification on the ground mentioned in section 30(3)(b) or (c), at any time before the review is concluded apply to the Tribunal for a direction to be made under subsection (2) in relation to the person to whom the review relates.]]

- (2) If, on an application under this section, the Tribunal are satisfied that [<sup>F50</sup>either of the conditions for doing so is satisfied], 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 [<sup>F51</sup>or the case to which the review in question ]relates.

<sup>F52</sup>(2A) 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 [<sup>F53</sup>primary medical services or] services under this Part [<sup>F54</sup>, section 17C arrangements or a pilot scheme] 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 they do so there is a significant risk that—
- (i) an act or omission within section 29(7)(a) will occur; or
- (ii) the investigation of the case or the review will be prejudiced.]

(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,
- (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 [<sup>F55</sup>of unfitness in relation to ]the provision [<sup>F56</sup>or performance ]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 [<sup>F57</sup>or review] in connection with which it is made.

<sup>F58</sup>(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—

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- (a) “relevant list” means a list [<sup>F59</sup>prepared under this Part of this Act] of persons [<sup>F60</sup>performing or] undertaking to provide <sup>F61</sup>. . . 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

- F48** 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**
- F49** S. 32A(1A) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(a); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)
- F50** Words in s. 32A(2) substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(b); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)
- F51** Words in s. 32A(2) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(b); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)
- F52** S. 32A(2A) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(c); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)
- F53** Words in s. 32A(2A)(a) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(3)(a)**
- F54** Words in s. 32A(2A)(a) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(9)(a); S.S.I. 2004/33, **art. 2(2)(b)** (with savings for effects of 2002 asp 5, Sch. 2 para. 2(9) by S.S.I. 2004/34, art. 3(2))
- F55** Words in s. 32A(3)(c) substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(d); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)
- F56** Words in s. 32A(3)(c) inserted (1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(9)(b); S.S.I. 2004/33, **art. 2(2)(b)** (with savings for effects of 2002 asp 5, Sch. 2 para. 2(9) by S.S.I. 2004/34, art. 3(2))
- F57** Words in s. 32A(4) inserted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 51(e); S.S.I. 2004/32, **art. 2(2)(b)(c)** (with S.S.I. 2004/31, art. 3)
- F58** S. 32A(5) repealed (4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 51(f), Sch. 5; S.S.I. 2004/32, **art. 2(2)(b)(c)(d)** (with S.S.I. 2004/31, art. 3)
- F59** Words in s. 32A(6) repealed (4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 51(g), Sch. 5; S.S.I. 2004/32, **art. 2(2)(b)(c)(d)** (with S.S.I. 2004/31, art. 3)
- F60** Words in s. 32A(6)(a) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(3)(b)(i)**
- F61** Words in s. 32A(6)(a) omitted (1.4.2004) by virtue of The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), art. 2, **Sch. para. 1(3)(b)(ii)**

#### Modifications etc. (not altering text)

- C2** S. 32A functions modified (4.3.2004) by The National Health Service (Tribunal) (Scotland) Regulations 2004 (S.S.I. 2004/38), **reg. 27** (with savings in regs. 32-34)

#### [<sup>F62</sup>32B <sup>F63</sup>Suspension pending appeal.

<sup>F62</sup>(1) Where, on disposing of a case under section 29B, the Tribunal make a national disqualification, they may, if they consider that either of the conditions mentioned in section 32A(2A) is satisfied, direct that section 32A(3) shall apply or, if a direction has been given under section 32A(2), shall continue to apply to him as respects services of the kind to which the disqualification relates.]

(2) A direction under subsection (1) above shall cease to have effect—

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- (a) where no appeal against the <sup>F64</sup>[national disqualification] is brought, at the end of the period for bringing an appeal, and
  - (b) where an appeal against <sup>F64</sup>[the disqualification] is brought, when the appeal process has been exhausted.
- (3) Where the power conferred by subsection (1) above is exercisable by virtue of a <sup>F65</sup>[disqualification which is not coupled with a declaration of unfitness], section <sup>F66</sup>[32A(3)] shall have effect, in relation to the exercise of that power, with the omission of paragraph (c).
- <sup>F67</sup>(4) In subsection (1) above, the reference <sup>F67</sup>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.]

#### Textual Amendments

- F62** S. 32B(1) and preceding side-note substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 52(a); S.S.I. 2004/32, **art. 2(2)(c)** (with savings for effects of 1999 c. 8 by S.S.I. 2004/31, art. 3)
- F63** S. 32B inserted (1.1.1996 for certain purposes and otherwise 1.4.1996) by 1995 c. 31, s. 8; S.I. 1995/3124, art. 2, **Sch.** (with art. 3); S.I. 1996/552
- F64** Words in s. 32B(2)(a)(b) substituted (prosp.) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 52(b) and also same words substituted (4.3.2004) by 2002 asp 5, s. 25, Sch. 2, para. 2(10); S.S.I. 2004/33, **art. 2(1)(c)** (with savings for effects of 2002 asp 5 by S.S.I. 2004/34, art. 3(2))
- F65** Words in s. 32B(3) substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 52(c); S.S.I. 2004/32, **art. 2(2)(c)** (with savings for effects of 1999 c. 8 by S.S.I. 2004/31, art. 3)
- F66** Words in s. 32B(3) substituted (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 2(10)(b); S.S.I. 2004/33, **art. 2(1)(c)** (with savings for effects of 2002 asp 5 by S.S.I. 2004/34, art. 3(2))
- F67** S. 32B(4) repealed (4.3.2004) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 52(d), Sch. 5; S.S.I. 2004/32, **art. 2(2)(c)(d)** (with savings for effects of 1999 c. 8 by S.S.I. 2004/31, art. 3)

#### Modifications etc. (not altering text)

- C3** S. 32B(1) functions modified (4.3.2004) by The National Health Service (Tribunal) (Scotland) Regulations 2004 (S.S.I. 2004/38), **reg. 27** (with regs. 32-34))

### <sup>F68F69</sup>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.]

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#### Textual Amendments

- F68** 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**)
- F69** 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**

#### <sup>F70</sup>**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 [<sup>F71</sup>or by virtue of] the provisions in force there corresponding to the provisions of this Part [<sup>F71</sup>or Part I] of this Act of persons [<sup>F72</sup>performing,] undertaking to provide [<sup>F73</sup>, approved to assist in providing or approved to perform]services of one or more of the kinds specified in section [<sup>F74</sup>29(8)], other than those in which his name is included.
- (2) The practitioner shall, while he is so disqualified—
- be disqualified for inclusion in any list prepared under [<sup>F75</sup>or by virtue of this Part or Part I] of this Act of persons [<sup>F76</sup>performing or] undertaking to provide [<sup>F77</sup> . . . services of the same kinds (“relevant list”) in which his name is not included, and
  - be deemed to have been removed from any relevant list in which his name is included.

#### Textual Amendments

- F70** 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**
- F71** Words in s. 32D(1) inserted (4.3.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 11(a); S.S.I. 2004/33, **art. 2(1)(c)**
- F72** Word in s. 32D(1) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), **art. 2**, **Sch. para. 1(4)(a)**
- F73** Words in s. 32D(1)(2)(a) inserted (4.3.2004 for certain purposes otherwise 1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 11(c); S.S.I. 2004/33, **art. 2(1)(d)(2)(b)**, Sch.
- F74** Words in s. 32D(1) substituted (4.3.2004) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 53; S.S.I. 2004/32, **art. 2(2)(c)**
- F75** Words in s. 32D(2)(a) substituted (4.3.2004 for certain purposes otherwise 1.4.2004) by 2002 asp 5, ss. 25, 27(2), Sch. 2 para. 11(b); S.S.I. 2004/33, **art. 2(1)(d)(2)(b)**, Sch.
- F76** Words in s. 32D(2)(a) inserted (1.4.2004) by The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), **art. 2**, **Sch. para. 1(4)(b)(i)**
- F77** Words in s. 32D(2)(a) omitted (1.4.2004) by virtue of The Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 (S.S.I. 2004/167), **art. 2**, **Sch. para. 1(4)(b)(ii)**

#### <sup>F78</sup>**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.

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- (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.

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**Textual Amendments**

**F78** 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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