



Health Act 1999

1999 CHAPTER 8

PART II

THE NATIONAL HEALTH SERVICE: SCOTLAND

Fraud

58 Disqualification etc. of Part II practitioners

- (1) For section 29 of the 1978 Act (disqualification of persons providing services) there is substituted—

“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.

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- (5) Subsections (6) to (11) apply for the purposes of this group of sections.
- (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 undertake to provide.
- (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—
- (a) a list of medical practitioners undertaking to provide general medical services;
 - (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 this Part.
- (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.
- (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.

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

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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 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.

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 in the list to which the case relates; and

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- (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.

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,
 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.”
- (2) For section 30 of the 1978 Act (removal of disqualification) there is substituted—

“30 Review etc. of disqualification

- (1) The Tribunal may review any disqualification, conditional disqualification or declaration of unfitness—

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- (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 services in England and Wales or Northern Ireland, the reference in subsection (3) to a Health Board includes any corresponding authority under the provisions in force in England and Wales or Northern Ireland corresponding to this Part.
- (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;
 - (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;

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(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.”

59 Recovery of charges and payments

(1) After section 99 of the 1978 Act there is inserted—

“99ZA Recovery of charges and payments

(1) Where goods or services to which this section applies are provided and either—

- (a) any charge payable by any person under this Act in respect of the provision of the goods or services is reduced, remitted or repaid, but that person is not entitled to the reduction, remission or repayment; or
- (b) any payment under this Act is made to, or for the benefit of, any person in respect of the cost of obtaining the goods or services but that person is not entitled to, or to the benefit of, the payment,

the amount mentioned in subsection (2) is recoverable as a debt from the person in question by the responsible authority.

(2) That amount—

- (a) in a case within subsection (1)(a), is the amount of the charge or (where it has been reduced) reduction;
- (b) in a case within subsection (1)(b), is the amount of the payment.

(3) Where two or more persons are liable under section 99 or this section to pay an amount in respect of the same charge or payment, those persons shall be jointly and severally liable.

(4) For the purposes of this section, the circumstances in which a person is to be treated as not entitled to a reduction, remission or repayment of a charge, or to (or to the benefit of) a payment, include in particular those in which it is received (wholly or partly)—

- (a) on the ground that he or another is a person of a particular description, where the person in question is not in fact of that description;
- (b) on the ground that he or another holds a particular certificate, when the person in question does not in fact hold such a certificate or does hold such a certificate but is not entitled to it;
- (c) on the ground that he or another has made a particular statement, when the person in question has not made such a statement or the statement made by him is false.

(5) In this section and section 99ZB, “responsible authority” means—

- (a) in relation to the recovery of any charge under section 99 in respect of the provision of goods or services to which this section applies, the person by whom the charge is recoverable;
- (b) in relation to the recovery by virtue of this section of the whole or part of the amount of any such charge, the person by whom the charge would have been recoverable;

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- (c) in a case within subsection (1)(b), the person who made the payment.
- (6) But the Secretary of State may by directions provide for—
- (a) the functions of any responsible authority of recovering any charges under this Act in respect of the provision of goods or services to which this section applies;
 - (b) the functions of any responsible authority under this section and section 99ZB,
to be exercised on behalf of the authority by another health service body.
- (7) This section applies to the following goods and services—
- (a) dental treatment and appliances provided in pursuance of this Act;
 - (b) drugs and medicines provided in pursuance of this Act;
 - (c) the testing of sight;
 - (d) optical appliances;
 - (e) any other appliances provided in pursuance of this Act.
- (1) Regulations may provide that, where a person fails to pay—
- (a) any amount recoverable from him under section 99 in respect of the provision of goods or services to which section 99ZA applies; or
 - (b) any amount recoverable from him under section 99ZA,
a notice (referred to in this section as a penalty notice) may be served on the person, by or on behalf of the responsible authority, requiring him to pay to the authority, within a prescribed period, that amount together with a charge (referred to in this section as a penalty charge) of an amount determined in accordance with the regulations.
- (2) The regulations may not provide for the amount of the penalty charge to exceed whichever is the smaller of—
- (a) £100;
 - (b) the amount referred to in subsection (1)(a) or (b) multiplied by 5.
- (3) The Secretary of State may by order provide for subsection (2) to have effect as if, for the sum specified in paragraph (a) or the multiplier specified in paragraph (b) (including that sum or multiplier as substituted by a previous order), there were substituted a sum or (as the case may be) multiplier specified in the order.
- (4) Regulations may provide that, if a person fails to pay the amount he is required to pay under a penalty notice within the period in question, he must also pay to the responsible authority by way of penalty a further sum determined in accordance with the regulations.
- (5) The further sum must not exceed 50 per cent. of the amount of the penalty charge.
- (6) Any sum payable under the regulations (including the amount referred to in subsection (1)(a) or (b)) may be recovered by the responsible authority as a debt.
- (7) But a person is not liable by virtue of a penalty notice—
- (a) to pay at any time so much of any amount referred to in subsection (1) (a) or (b) for which he is jointly and severally liable with another as

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at that time has been paid, or ordered by a court to be paid, by that other; or

- (b) to a penalty charge, or a further sum by way of penalty, if he shows that he did not act wrongfully, or with any lack of care, in respect of the charge or payment in question.

(8) Section 99ZA and this section apply to charges which may be made and recovered under section 20 of the National Health Service (Primary Care) Act 1997 as they apply to charges under this Act which may be recovered under section 99; and the reference to this Act in section 99ZA(7)(a) includes a reference to a pilot scheme (within the meaning of the 1997 Act).”

- (2) In section 105(3) of the 1978 Act (Parliamentary procedure for certain regulations) after “endowments)” there is inserted “or orders under section 99ZB(3)”.