

1990 No. 1752

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The National Health Service (Service Committees and Tribunal) Amendment (No.2) Regulations 1990

<i>Made</i> - - - -	<i>22nd August 1990</i>
<i>Laid before Parliament</i>	<i>24th August 1990</i>
<i>Coming into force</i>	<i>17th September 1990</i>

The Secretary of State for Health, in exercise of powers conferred by sections 29, 36, 39, 42 and 45 of, and paragraph 12(b) of Schedule 5 to, the National Health Service Act 1977(a) and of all other powers enabling him in that behalf, and after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971(b), hereby makes the following Regulations:-

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Service Committees and Tribunal) Amendment (No.2) Regulations 1990, and shall come into force on 17th September 1990.

(2) In these Regulations, “the principal Regulations” means the National Health Service (Service Committees and Tribunal) Regulations 1974(c).

Amendment of regulation 2 of the principal Regulations

2. In regulation 2(1) of the principal Regulations (interpretation) for the definition of “optician” there shall be substituted the following definitions:-

““optician” means -

(a) 1977 c.49; see section 128(1) for the definition of “prescribed” and “regulations”; sections 29, 36, 39 and 42 were extended by section 17 of the Health and Medicines Act 1988 (c.49) (“the 1988 Act”); section 29 was amended by the Health Services Act 1980 (c.53) (“the 1980 Act”), section 7 and Schedule 1, paragraphs 42 and 93, and by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 14 and Schedule 6, and modified by S.I.1985/39, article 7(3); section 36 was amended by S.I.1981/432, article 3(3), by the Health and Social Security Act 1984 (c.48) (“the 1984 Act”), Schedule 3, paragraph 5, by the 1988 Act, Schedule 2, paragraph 4, and by the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), section 24, and was modified by S.I.1985/39, article 7(10); section 39 was amended by the 1984 Act, Schedule 1, paragraph 1, and modified by S.I.1985/39, article 7(12); section 42 was substituted by the National Health Service (Amendment) Act 1986 (c.66), section 3(1), and amended by S.I.1987/2202, article 4, and by the 1990 Act, section 12(3); section 45 was amended by the 1980 Act, Schedule 1, paragraph 57 and by the 1984 Act, Schedule 3, paragraph 7; paragraph 12(b) of Schedule 5 was amended by the 1990 Act, Schedule 1, paragraph 9(c).

(b) 1971 c.62; see paragraph 17 of Part I of Schedule 1 to that Act, as amended by the National Health Service Reorganisation Act 1973 (c.32), Schedule 4, paragraph 134, the National Health Service Act 1977 (c.49), Schedule 15, paragraph 53; and see the National Health Service and Community Care Act 1990 (c.19), section 2(1)(b).

(c) S.I.1974/455; the relevant amending instruments are S.I.1982/288, 1985/39, 1990/538 and 1638. By section 2(1) of the National Health Service and Community Care Act 1990 (c.19) references in the Regulations to a Family Practitioner Committee are to be construed as references to a Family Health Services Authority: see S.I.1990/1329, article 2(5)(b).

- (a) in the context of regulation 3(2)(d) and (e) and (6)(c)(iv), a registered ophthalmic optician within the meaning of the Opticians Act 1989(a);
- (b) in any other context, a registered ophthalmic optician within the meaning of that Act, or a body corporate enrolled in the list mentioned in section 9(1)(a) of that Act;

“pharmacist” means a registered pharmacist;”.

Amendment of regulation 3 of the principal Regulations

3. In regulation 3 of the principal Regulations (constitution of service committees) –

(a) in paragraph (1) for the words “with the consent of the Secretary of State” there shall be substituted the words “where it sees fit”;

(b) in paragraph (2) –

(i) in sub-paragraph (a) for the words from “of whom three shall be” to “and three shall be” there shall be substituted the words “of whom three shall be lay persons appointed by the Family Health Services Authority and three shall be doctors”,

(ii) in sub-paragraph (b) for the words from “of whom three shall be” to “and three shall be” there shall be substituted the words “of whom three shall be lay persons appointed by the Family Health Services Authority and three shall be pharmacists”,

(iii) in sub-paragraph (c) for the words from “of whom three shall be” to “and three shall be” there shall be substituted the words “of whom three shall be lay persons appointed by the Family Health Services Authority and three shall be dentists”,

(iv) in sub-paragraph (d) for the words from “three” to “lay members of” there shall be substituted the words “three shall be lay persons appointed by”,

(v) in sub-paragraph (e) for the words from “of whom two” to “lay members of” there shall be substituted the words “of whom two shall be lay persons appointed by”,

(vi) in sub-paragraph (f) for heads (i) and (ii) there shall be substituted the following heads:–

“(i) in the case of the lay members, not fewer than three lay persons,

(ii) in the case of the other members, not fewer than three professional persons,”,

(vii) sub-paragraph (g) shall be omitted,

(viii) in sub-paragraph (h) for the word “hearing” in each instance where it occurs there shall be substituted the word “investigation”;

(c) in paragraph (3) –

(i) for sub-paragraphs (a) and (b) there shall be substituted the following sub-paragraphs:–

“(a) The chairman shall be appointed by the Family Health Services Authority.

(b) Any lay person shall be eligible for appointment as chairman.”,

(ii) sub-paragraph (c) shall be omitted;

(d) in paragraph (5) for the words “The Committee” there shall be substituted the words “Subject to paragraph (5A), the Family Health Services Authority”;

(e) for paragraph (6) there shall be substituted the following paragraphs:–

(a) 1989 c.44.

office – “(5A) A person who is a member of a service committee shall cease to hold

- (a) where he is the chairman or a lay member, on his ceasing to be a lay person;
- (b) where he is a member not mentioned in sub-paragraph (a), on his ceasing to be a professional person.

(6) In this regulation –

- (a) “lay member” means, in relation to a service committee, any member (other than the chairman) who is a lay person;
- (b) “lay person” means a person who is not and never has been –
 - (i) a practitioner, a chemist or an optician, nor
 - (ii) a registered dispensing optician within the meaning of the Opticians Act 1989, nor
 - (iii) a registered nurse, a registered midwife or a registered health visitor(a), nor
 - (iv) an officer of, or otherwise employed by, any Family Health Services Authority, Regional Health Authority, District Health Authority or Community Health Council;
- (c) “professional person” means –
 - (i) in the case of the medical service committee, a doctor,
 - (ii) in the case of the dental service committee, a dentist,
 - (iii) in the case of the pharmaceutical service committee, a pharmacist,
 - (iv) in the case of the ophthalmic service committee, an ophthalmic medical practitioner or an optician.”.

Amendment of regulation 13 of the principal Regulations

4. In regulation 13(1) (appointment of denture conciliation committees) –

- (a) for the words “a member of the Committee not being a dentist” in both instances where they occur there shall be substituted the words “a lay person”;
- (b) for “paragraph (5)” there shall be substituted “paragraphs (5), (5A) and (6)”.

Amendment of regulation 15 of the principal Regulations

5.—(1) In regulation 15 of the principal Regulations (procedure in dental prior approval cases), in sub-paragraph (b) of the proviso in paragraph (1), there shall be added at the end the words “within one month of notice having been sent to him as to the nature of the requirement which the Secretary of State is minded to make”.

(2) That regulation shall, in its application to any matter which falls to be determined by the Secretary of State following a complaint of which notice was given, or following a reference under regulation 6(6)(a) which was made, before 2nd April 1990, have effect as if this regulation had not come into force.

Insertion of a new regulation 53A in the principal Regulations

6. After regulation 53 of the principal Regulations there shall be inserted the following regulation:–

“Referral of matters to professional bodies

53A.—(1) Where, in relation to any complaint or reference made under Part II of these Regulations –

- (a) a Family Health Services Authority makes a determination under regulation 10(1); and

(a) See the Nurses, Midwives and Health Visitors Act 1979 (c.36), section 10(7).

- (b) having regard to the facts found by the service committee in relation to that matter, that Authority considers that the matter should be brought to the attention of the relevant professional body,

it may refer to that body any documents in its possession connected with that complaint or reference.

- (2) Where, in relation to any complaint or reference under that Part –
 - (a) the Secretary of State –
 - (i) receives, pursuant to regulation 10(9), a copy of the report of a service committee and the decision of a Family Health Services Authority thereon, or
 - (ii) makes a determination following a recommendation by a Family Health Services Authority under regulation 10(5)(c) or (d) or an appeal under regulation 11; and
 - (b) that matter has not been the subject of a reference by the Family Health Services Authority under paragraph (1); and
 - (c) the Secretary of State considers that the matter should be brought to the attention of the relevant professional body,

he may refer to that body any documents in his possession connected with that complaint or reference.

- (3) In this regulation, “the relevant professional body” means –
 - (a) in relation to a doctor, the General Medical Council;
 - (b) in relation to a dentist, the General Dental Council;
 - (c) in relation to a pharmacist, the Royal Pharmaceutical Society of Great Britain;
 - (d) in relation to an optician, the General Optical Council.”.

Signed by authority of the Secretary of State for Health

22nd August 1990

Stephen Dorrell
Parliamentary Under-Secretary of State
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service (Service Committees and Tribunal) Regulations 1974 ("the principal Regulations") which provide for the investigation and determination of questions whether doctors, dentists, chemists and opticians providing services under the National Health Service have failed to comply with their terms of service. The amendments are made principally in consequence of the reconstitution of Family Practitioner Committees as Family Health Services Authorities under the National Health Service and Community Care Act 1990.

Regulation 2(1) of the principal Regulations is amended to substitute a new definition of "optician" and to insert a definition of "pharmacist" (regulation 2).

Regulation 3 amends regulation 3 of the principal Regulations. Paragraph (1) is amended to remove the requirement that the consent of the Secretary of State must be obtained before an Authority may establish more than one of the same kind of service committee. Amendments are made to paragraph (2), in particular to enable an Authority to appoint lay members of a service committee otherwise than from among the lay members of the Authority, and paragraph (3) is amended to require the chairman of a service committee to be appointed in the first instance by the Authority rather than by the members of the service committee. A new paragraph (5A) is inserted to make further provision for the circumstances in which the chairman and members of a service committee are to cease to hold office, and paragraph (6) is substituted to include new definitions of "lay person" and "professional person".

Regulation 13 of the principal Regulations is amended to remove the requirement that the chairman of a Denture Conciliation Committee should be a member of the Authority (regulation 4), and words are added at the end of the proviso in regulation 15(1) of the principal Regulations to require a dentist to submit within one month any representations he may wish to make against a proposal by the Secretary of State to require him to obtain approval from the Dental Practice Board before undertaking certain kinds of treatment (regulation 5). A new regulation 53A is inserted in the principal Regulations to provide for the circumstances in which documents connected with a complaint or reference under Part II of those Regulations may be referred by the Authority or the Secretary of State to the respondent's professional body (regulation 6).