
STATUTORY INSTRUMENTS

1993 No. 2972

**NATIONAL HEALTH SERVICE,
ENGLAND AND WALES**

**The National Health Service (Service Committees
and Tribunal) Amendment Regulations 1993**

<i>Made</i>	- - - -	<i>1st December 1993</i>
<i>Laid before Parliament</i>		<i>9th December 1993</i>
<i>Coming into force</i>	- -	<i>1st January 1994</i>

The Secretary of State for Health, in exercise of powers conferred on her by the provisions set out in column (1) of the Schedule to this instrument (as amended in particular by the provisions set out in column (2) of that Schedule), and of all other powers enabling her in that behalf, and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(1), 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 Regulations 1993 and shall come into force on 1st January 1994.

(2) In these Regulations, “the principal Regulations” means the National Health Service (Service Committees and Tribunal) Regulations 1992(2).

Amendment of regulation 9 of the principal Regulations

2.—(1) Regulation 9 of the principal Regulations is amended as follows.

(2) In paragraph (1)—

- (a) for “the report” there is substituted “a report”;
- (b) for “paragraph 7” in both places where it occurs there is substituted “paragraph 7(1)”; and
- (c) in sub-paragraph (c)(i), for “identified to him by the chairman of the appropriate committee pursuant to paragraph 3(3) of Schedule 4” there is substituted “specified pursuant to paragraph 3(3) (whether or not as modified by paragraph 3(3A)) of Schedule 4 or, where

(1) 1992 c. 53.
(2) S.I. 1992/664.

that paragraph does not apply, sent to the practitioner pursuant to paragraph 3(1) of that Schedule”.

(3) After paragraph (2) there is inserted—

“(2A) The FHSA, after due consideration of a report presented to it by the appropriate committee pursuant to sub-paragraph (1A) of paragraph 7 of Schedule 4, shall —

- (a) if it agrees with the committee’s view as mentioned in that sub-paragraph, determine that no further action should be taken in relation to the report; or
- (b) if it does not agree with the committee’s view as mentioned in that sub-paragraph, specify every provision of the terms of service with which it considers that the practitioner may have failed to comply.

(2B) In a case falling within paragraph (2A)(b)—

- (a) the investigation shall continue in accordance with paragraphs 3 to 10 of Schedule 4 as if the FHSA had been notified of the relevant terms of service under paragraph 1(7) of that Schedule by the chairman of the appropriate committee; and
- (b) paragraphs 3 to 10 of Schedule 4 shall accordingly have effect with appropriate modifications and, in particular, references in paragraphs 3(3) and 4(1)(b)(i) of that Schedule to the chairman shall be construed as references to the FHSA.”.

Amendment of regulation 10 of the principal Regulations

3.—(1) Regulation 10 of the principal Regulations is amended as follows.

(2) In paragraph (1), after sub-paragraph (a) there is inserted—

“(aa) by a complainant, against a determination of an FHSA under regulation 9(2A)(a) which is adverse to him;”.

(3) After paragraph (3) there is inserted—

“(3A) Subject to paragraph (6), on an appeal to which paragraph (1)(aa) applies, the Secretary of State shall determine —

- (a) in a case falling within paragraph 1(6A) of Schedule 4, whether there are reasonable grounds for believing that the practitioner has failed to comply with his terms of service; and
- (b) in a case falling within paragraph 2(5A) of Schedule 4, whether he confirms the conclusions mentioned in paragraph 2(5)(a) and (b) of that Schedule;

and if, in either case, he determines that there are reasonable grounds for believing that the practitioner has failed to comply with any of his terms of service, the Secretary of State shall specify those terms of service in his determination.”.

Amendment of regulation 11 of the principal Regulations

4.—(1) Regulation 11 of the principal Regulations is amended as follows.

(2) After paragraph (2)(a) there is inserted—

“(aa) in the case of an appeal under regulation 10(1)(aa), to the practitioner, together with a copy of the complainant’s statement and any further statement provided pursuant to paragraph 1 of Schedule 4;”.

(3) In paragraph (4), for “paragraph (5)” there is substituted “paragraphs (5) and (5A)”.

(4) After paragraph (5) there is inserted—

“(5A) The Secretary of State shall determine an appeal under regulation 10(1)(aa) without an oral hearing.”

(5) In paragraph (14), after “(4)” there is inserted “,(5A)”.

(6) After paragraph (14) there is inserted—

“(14A) Where, in the case of an appeal under regulation 10(1)(aa), the Secretary of State determines that there are reasonable grounds for believing that the practitioner has failed to comply with the terms of service specified in the determination, he shall refer the matter back to the FHSA, which shall continue the investigation as if it had been notified of those terms of service under paragraph 1(7) of Schedule 4 by the chairman of the appropriate committee, or as the case may be under paragraph 2(5B) by the appropriate committee itself, and there must be a hearing of the complaint.

(14B) Accordingly, paragraph 3(1) and (2) and paragraphs 4 to 10 of Schedule 4 shall apply in such a case with appropriate modifications.”.

Amendment of Schedule 4 to the principal Regulations

5.—(1) Schedule 4 to the principal Regulations is amended as follows.

(2) In paragraph 1—

(a) in sub-paragraph (6), the words from “who” to the end are omitted;

(b) after sub-paragraph (6) there is inserted—

“(6A) The committee, if it agrees with—

(a) the chairman’s view as mentioned in sub-paragraph (6)(a); or

(b) in any case falling within sub-paragraph (6)(b), his view as mentioned in sub-paragraph (5);

shall report on the matter in accordance with paragraph 7(1A) without holding a hearing.”; and

(c) in sub-paragraph (7)—

(i) after “considers” there is inserted “(or, if the committee does not agree with his view as mentioned in sub-paragraph (5) or (6)(a), whichever is applicable, the committee considers)”, and

(ii) after “he” there is inserted “or the committee (as the case may be)”.

(3) In paragraph 2—

(a) in sub-paragraph (2)(b)(ii), “by the chairman” is omitted;

(b) in sub-paragraph (5), the words from “who” to the end are omitted; and

(c) after sub-paragraph (5) there is inserted—

“(5A) The committee, if it agrees with the chairman’s view as mentioned in sub-paragraph (5), shall report on the matter in accordance with paragraph 7(1A) as respects the doctor without holding a hearing, though the investigation may continue as respects the deputy.

(5B) If the committee does not agree with the chairman’s view as mentioned in sub-paragraph (5), it shall identify each provision of the doctor’s terms of service with which it considers he may have failed to comply, and notify the FHSA accordingly.”.

(4) In paragraph 3—

(a) after “1(7)” in each place where it occurs there is inserted “or 2(5B)”;

(b) in sub-paragraphs (1)(a)(ii) and (2)(a)(ii), “by the chairman” is omitted;

- (c) after sub-paragraph (3) there is inserted—
 - “(3A) Where a committee (and not the chairman) has identified terms of service pursuant to paragraph 1(7) or 2(5B), references in sub-paragraph (3) to the chairman shall be construed as references to the committee.”; and
- (d) in sub-paragraph (4)—
 - (i) after “(3)” there is inserted “(whether or not as modified by sub-paragraph (3A))”, and
 - (ii) for “may” there is substituted “shall”.
- (5) In paragraph 4—
 - (a) in sub-paragraph (1)(b)(i), for “the chairman pursuant to paragraph 3(3)” there is substituted “the chairman or the committee (as the case may be) pursuant to paragraph 3(3) or (3A)”; and
 - (b) in sub-paragraph (2), for “1(6), 2(5)” there is substituted “1(6A), 2(5A)”.
- (6) In paragraph 7—
 - (a) in sub-paragraph (1), after “writing which” there is inserted “, except in a case falling within paragraph 1(6A) or 2(5A),”; and
 - (b) after sub-paragraph (1) there is inserted—
 - “(1A) In the cases excepted from sub-paragraph (1)(a) to (e), the report shall state—
 - (a) in a case falling within paragraph 1(6A), why the committee considers that there are no reasonable grounds for believing that the practitioner has failed to comply with his terms of service; and
 - (b) in a case falling within paragraph 2(5A), why the committee has reached the conclusions mentioned in paragraph 2(5)(a) and (b).”.

1st December 1993

Virginia Bottomley
One of Her Majesty’s Principal Secretaries of
State

SCHEDULE

PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

(1) Provision	(2) Relevant amendments
National Health Service Act 1977(3) section 29(4)	Health Services Act 1980(5) (“the 1980 Act”), section 7 and Schedule 1, paragraphs 42 and 93 Health and Social Services and Social Security Adjudications Act 1983(6), section 14 and Schedule 6, paragraph 2 Family Practitioner Committees (Consequential Modifications) Order 1985(7) (“the 1985 Order”), article 7(3)
section 36(4)	European Communities (Medical, Dental and Nursing Professions) (Linguistic Knowledge) Order 1981(8), article 3(3) Health and Social Security Act 1984(9) (“the 1984 Act”), Schedule 3, paragraph 5 the 1985 Order, article 7(10) Health and Medicines Act 1988(10), section 25(1) and Schedule 2, paragraph 4
section 39(4)	National Health Service and Community Care Act 1990(11) (“the 1990 Act”), section 24 the 1984 Act, section 1(4) and Schedule 1, Part I, paragraph 1 the 1985 Order, article 7(12)
section 42(4)	Substituted by the National Health Service (Amendment) Act 1986(12), section 3(1) Pharmaceutical Qualifications (EEC Recognition) Order 1987(13), article 4 the 1990 Act, section 12(3)

(3) 1977 c. 49; see section 128(1) as amended by the National Health Service and Community Care Act 1990 (c. 19), s. 26(1), (2)(g), for the definitions of “prescribed” and “regulations”.

(4) Extended by section 17 of the Health and Medicines Act 1988 (c. 49).

(5) 1980 c. 53.

(6) 1983 c. 41.

(7) S.I. 1985/39.

(4) Extended by section 17 of the Health and Medicines Act 1988 (c. 49).

(8) S.I. 1981/432.

(9) 1984 c. 48.

(10) 1988 c. 49.

(11) 1990 c. 19.

(4) Extended by section 17 of the Health and Medicines Act 1988 (c. 49).

(4) Extended by section 17 of the Health and Medicines Act 1988 (c. 49).

(12) 1986 c. 66.

(13) S.I. 1987/2202

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(1) Provision	(2) Relevant amendments
section 126(4)	the 1990 Act, section 65(2)

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Service Committees and Tribunal) Regulations 1992 so as to provide that, where a complaint is made about a doctor, dentist, optician or chemist providing services under Part II of the National Health Service Act 1977 that he is in breach of his terms of service, there is a right of appeal from the decision of the Family Health Services Authority dealing with the complaint, in the following cases:

- (a) where the committee of the Family Health Services Authority dealing with the complaint has not held an oral hearing of the complaint,
- (b) where it has been decided initially that the complaint as received does not show any grounds for thinking that there has been a possible breach of terms of service by a practitioner, and
- (c) where the complaint is about the conduct of a doctor deputising for a patient’s own doctor, and it has been decided initially that the complaint as received shows no grounds for believing that the doctor with whom the patient is registered was himself in breach of his terms of service.

The Regulations also specify in cases (b) and (c) what must be included in the service committee’s report, what matters the FHSA must determine, what matters the Secretary of State must determine on appeal and what action must then be taken.