
STATUTORY INSTRUMENTS

1995 No. 3201 (S.239)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1995

<i>Made</i>	- - - -	<i>7th December 1995</i>
<i>Laid before Parliament</i>		<i>11th December 1995</i>
<i>Coming into force</i>	- -	<i>1st January 1996</i>

The Secretary of State, in exercise of the powers conferred on him by sections 32, 32C(2), 105(7) and 108(1) of, and paragraph 7 of Schedule 8 to, the National Health Service (Scotland) Act 1978(1) and of all other powers enabling him in that behalf and after consulting the Council on Tribunals and its Scottish Committee in accordance with section 8 of the Tribunals and Inquiries Act 1992(2), hereby makes the following Regulations

PART I
GENERAL

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1995 and shall come into force on 1st January 1996.

(2) In these Regulations, “the principal Regulations” means the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992(3).

(1) 1978 c. 29; section 32 was amended by the National Health Service (Amendment) Act 1995 (c. 31) (“the 1995 Act”) Schedule; section 32C was introduced by the 1995 Act, section 8; section 105(7), which was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24, contains provisions relevant to the making of Regulations; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made; Schedule 8 was amended by the 1995 Act, section 12.

(2) 1992 c. 53.

(3) S.I. 1992/434 to which there are amendments not relevant to these Regulations.

PART II

CONSTITUTION OF TRIBUNAL

Tenure of office of members of Tribunal

2. In regulation 22 of the principal Regulations (tenure of office of chairman and members of Tribunal) after “chairman” there shall be inserted “and deputy chairmen”.

Tenure of office of officers of Tribunal

3. For regulation 23 of the principal Regulations (officers of the Tribunal) there shall be substituted—

“23. The chairman of the Tribunal shall appoint the following persons, who shall hold office during the pleasure of the chairman—

- (a) a person approved by the Secretary of State to act as clerk to the Tribunal; and
- (b) such other officers as may be necessary.”.

Decisions of Tribunal

- (a) (a) In regulation 36(b) of the principal Regulations (provisions as to inquiry) for the words “the chairman of the Tribunal” there shall be substituted “the person (being the chairman or a deputy chairman of the Tribunal) who presided over the inquiry”, and
- (b) in regulation 38(1) of the principal Regulations (statement by the Tribunal) for the words “the chairman” there shall be substituted “the person (being the chairman or a deputy chairman of the Tribunal) who presided over the inquiry”.

PART III

ABOLITION OF APPEALS AND OF APPLICATIONS TO SECRETARY OF STATE

Abolition of appeal and of application for removal of disqualification to Secretary of State

5.—(1) The principal Regulations shall be amended as follows.

(2) In regulation 21(1) (interpretation and forms), in the definition of “application” the words “or the Secretary of State” shall be omitted.

(3) In regulation 38 (statement by the Tribunal), paragraph (2)(b) shall be omitted.

(4) Regulation 39 (appeal to Secretary of State) and regulation 40 (procedure on appeal) shall be omitted.

(5) In regulation 41 (procedure in regard to application to the Tribunal for removal of disqualification) paragraph (7)(d)(iv) shall be omitted.

(6) Regulation 42 (procedure in regard to application to the Secretary of State for removal of disqualification) shall be omitted.

(7) In regulation 43(a) (publication of decisions), the words “or by him” and “or an appeal” shall be omitted.

(8) In regulation 46 (attendance by member of Council on Tribunals), paragraph (e) shall be omitted.

(9) In Schedule 4 (forms for use in proceedings in connection with representations and applications) forms 8, 9 and 10 shall be omitted.

PART IV

SUSPENSION OF PRACTITIONERS

Applications for interim suspension

6. After regulation 25 of the principal Regulations (power to require verification of representation) there shall be inserted the following new regulation—

“Applications for interim suspension

25A.—(1) An application for interim suspension under section 32A of the Act shall—

- (a) be made in writing;
- (b) be signed by a person authorised by the Health Board;
- (c) include a statement of the alleged facts and the grounds on which the Health Board intends to rely; and
- (d) include 2 copies of any document which the Health Board proposes to put in evidence,

and shall be sent to the clerk to the Tribunal.

(2) The clerk to the Tribunal shall send to the respondent:—

- (a) notice in writing informing him of the application, of the intention to hold an oral hearing on a date to be fixed and that he may within 2 weeks from the date of receipt of the notice submit a written statement-in-answer; and
- (b) a copy of the application made by the complainer and of each document, if any, which accompanied it.

(3) The Tribunal may, if they think fit, accept a statement-in-answer by the respondent after the period within which it is required to be submitted in terms of paragraph (2)(a).

(4) Where a respondent submits a statement-in-answer he shall send to the clerk to the Tribunal with 2 copies of the statement-in-answer and of each document which he proposes to put in evidence, and the clerk to the Tribunal shall send to the complainer a copy of each of any such statement or document.

(5) After the expiry of the period within which a respondent may submit a statement-in-answer the clerk to the Tribunal shall fix a date and time at which the hearing shall commence and the place where it will be held, and not less than 2 weeks before the date fixed shall inform the complainer and respondent of the date, time and place of the hearing.

(6) At the conclusion of proceedings relating to the application, the Tribunal shall, as soon as practicable, issue a decision in writing, signed by the person (being the chairman or a deputy chairman) who presided over the proceedings, containing—

- (a) any directions it decides to give under section 32A(2) of the Act;
- (b) a statement of reasons for its decision; and
- (c) any order it decides to make as to expenses.

(7) The Tribunal shall send a copy of its decision to the respondent, the Health Board and the Secretary of State, and the Secretary of State shall send a copy of the decision to any other Health Board which appears to him to be concerned.

(8) Where the decision includes a direction under section 32A(2) of the Act, the Tribunal shall include with the decision a notice to the respondent of his right to appeal under section 11 of the Tribunals and Inquiries Act 1992(4).

(9) The provisions of regulations 31 (power to postpone inquiry), 34 (representation and evidence at inquiry), 35 (procedure at inquiry), 36 (provisions as to inquiry), 37 (power to dispense with oral hearing) and Schedule 2 (provisions as to appeal hearings) shall have effect with respect to a hearing held in relation to an application for interim suspension as they apply in relation to a representation.”.

Withdrawal of representation

7.—(1) Regulation 33 of the principal Regulations (withdrawal of representation) shall be amended as follows.

(2) In paragraph (3), at the beginning there shall be inserted “Subject to paragraph (3A),”.

(3) After paragraph (3) there shall be inserted the following new paragraph:—

“(3A) Where representations are withdrawn or treated as withdrawn after the Tribunal has made a direction under section 32A(2) of the Act, that direction shall cease to have effect; and—

- (a) the Tribunal shall include this information also in its notice under paragraph (3);
- (b) the Tribunal shall immediately also so inform the Secretary of State in writing; and
- (c) the Secretary of State shall so inform anyone to whom he sent a copy of the Tribunal’s decision pursuant to regulation 25A(7).”.

Continuation of suspension pending appeal

8.—(1) Regulation 37 of the principal Regulations (power to dispense with oral inquiry) shall be amended as follows.

(2) In paragraph (1), at the beginning there shall be inserted “Subject to paragraph (2),”.

(3) After paragraph (1) there shall be inserted—

“(2) Where the Tribunal has determined to decide the case on documentary evidence pursuant to paragraph (1), but proposes to give a direction under section 32B(1) of the Act, it shall before doing so give notice to the Health Board and the respondent of its intention to hold an oral hearing relating to that proposal, and shall then hold an oral hearing.”.

9.—(1) Regulation 38 of the principal Regulations (statement by the Tribunal) shall be amended as follows.

(2) In paragraph (1), after sub-paragraph (c) there shall be added the following new sub-paragraph:—

“(d) such directions as they make under section 32B(1) of the Act.”.

(3) In paragraph (2), after sub-paragraph (a) there shall be added the following new sub-paragraph:—

“(b) where the statement contains a direction under section 29(3) of the Act or directions under sections 29(3) and 32B(1) of the Act inform the respondent of his right of appeal under section 11 of the Tribunal and Inquiries Act 1992 in respect of any direction under the said section 29(3) or a direction under the said section 32B(1), or both.”.

Functions of the Tribunal

10. After regulation 37 of the principal Regulations (power to dispense with oral inquiry) there shall be inserted the following new regulation:—

“Discharge of suspension functions by chairman or deputy chairman

37A. The functions of the Tribunal under sections 32A or 32B of the Act may be carried out by the chairman or a deputy chairman of the Tribunal; and where the chairman or a deputy chairman does carry them out, any reference to the Tribunal in this Part shall be construed as a reference to that person.”.

PART V

OTHER AMENDMENTS AND TRANSITIONAL PROVISIONS

Proceedings before the Tribunal

11. In regulation 21 (interpretation and forms), in paragraph (1)—

- (a) at the end of the definition of “inquiry” there shall be added the words “and includes any hearing relating to suspension proceedings,” and
- (b) in the definition of “respondent”, sub-paragraph (a) shall be deleted and there shall be inserted—

“(a) in the case of a representation or an application for interim suspension, any professional person in respect of whom the representation or application for interim suspension is made.”.

Transitional provisions

12.—(1) The amendments made by regulation 5 above shall not have effect in relation to—

- (a) any appeal to the Secretary of State under regulation 39 of the principal Regulations; or
- (b) any application to the Secretary of State for removal of disqualification under regulation 42 of the principal Regulations,

made before the date on which these Regulations come into force.

(2) The amendments made by Part IV above, and so much of the amendments made elsewhere in these Regulations as relates to the suspension of practitioners, shall apply only in relation to respondents who are doctors or dentists.

St Andrew’s House,
Edinburgh
7th December 1995

James Douglas-Hamilton
Minister of State, Scottish Office

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992 to implement the provisions of the National Health Service (Amendment) Act 1995, which amended the provisions of the National Health Service (Scotland) Act 1978 dealing with the National Health Service Tribunal (“the Tribunal”) and provided the Tribunal with power to suspend doctors, dentists, pharmacists, ophthalmic medical practitioners and opticians from providing respectively general medical services, general dental services, pharmaceutical services and general ophthalmic services.

Part II makes provision for the appointment of deputy chairmen and makes other minor amendments relating to members or officers of the Tribunal.

Part III abolishes rights of appeal to the Secretary of State against decisions of the Tribunal, and applications to the Secretary of State for the lifting of any disqualification directed by the Tribunal.

Part IV provides for the procedure relating to applications for interim suspension and for continuation of suspension pending appeal, and makes provision for the chairman or a deputy chairman to carry out Tribunal functions in connection with suspension applications.

Part V makes transitional provisions for outstanding appeals to the Secretary of State under the 1992 Regulations and provides that Part IV of these Regulations, which relate to suspension of practitioners, shall apply only to doctors and dentists.