SCOTTISH STATUTORY INSTRUMENTS

2004 No. 40

NATIONAL HEALTH SERVICE

The National Health Service (General Medical Services Supplementary Lists) (Scotland) Amendment Regulations 2004

Made - - - -	*2nd February 2004*
Laid before the Scottish Parliament - - - -	*3rd February 2004*
Coming into force - -	*4th March 2004*

The Scottish Ministers, in exercise of the powers conferred on them by sections 19, 24B, 32E, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the National Health Service (General Medical Services Supplementary Lists) (Scotland) Amendment Regulations 2004 and shall come into force on 4th March 2004.

Amendment of the National Health Service (General Medical Services Supplementary Lists) (Scotland) Regulations 2003

2.—(1) The National Health Service (General Medical Services Supplementary Lists) (Scotland) Regulations 2003(**2**) are amended as follows.

(2) In regulation 2 (interpretation)–

(**1**) 1978 c. 29. Section 19 was amended by the Health Services Act 1980 (c. 53) ("the 1980 Act"), section 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) ("the 1983 Act"), Schedule 7, paragraph 2, by the Medical Act 1983 (c. 54), Schedule 5, paragraph 17(a), by the National Health Service and Community Care 1990 (c. 19), section 37, by the Medical (Professional Performance) Act 1995 (c. 51), Schedule, paragraph 29(a), and by the National Health Service (Primary Care) Act 1997 (c. 46), section 41(10), schedule 2, Part I, paragraph 39 and Schedule 3, Part I and was extended by the Health and Medicines Act 1988 (c. 49), section 17; section 24B was inserted by the Community Care and Health (Scotland) Act 2002, asp 5, Part 3, section 18; section 32E was inserted by the National Health Service (Amendment) Act 1985 (c. 31), section 8; section 105(7), which contains provisions relevant to the making of regulations, was amended by the 1980 Act, Schedule 6, paragraph 5 and Schedule 7, by the 1983 Act, Schedule 9, Part I, paragraph 24 and by the Health Act 1999 (c. 8), Schedule 4, paragraph 60; section 108(1) contains a definition of "regulations" relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(**2**) S.S.I. 2003/64 which was amended by S.S.I. 2003/298.

(a) in the definition of "nationally disqualified" for "section 29(3)" substitute "sections 29B(2) or 30(2) or (5)"(**3**); and

(b) in the definition of "suspended", after "provision" insert ", or assisting in the provision,".

(3) In regulation 5 (amendment of or withdrawal from supplementary list)(**4**)–

(a) in paragraph (3) for "The" substitute "Subject to paragraph (5) the"; and

(b) after paragraph (4) insert–

"(5) Where, in relation to any medical practitioner, representations are made to the Tribunal under section 29 of the Act (the NHS Tribunal)(**5**), or a request for a review has been made to the Tribunal or a review is to be made by the Tribunal under section 30 of the Act (review etc. of disqualification), that medical practitioner's name shall not, except with the consent of the Scottish Ministers and subject to such conditions as they may impose, be entitled to be removed from the list until the proceedings on such representations, request for review or review have been determined.".

(4) In regulation 9 (consideration of applications)–

(a) in paragraph (2) for "A" substitute "Without prejudice to the provisions of regulation 26(1) (practitioners subject to inquiry in a fraud case) of the National Health Service (Tribunal) (Scotland) Regulations 2004(**6**), a"; and

(b) in paragraph (4)(c)–

(i) after "list" in the first place where it occurs, insert "or a supplementary list"; and

(ii) for "list" in the second place where it occurs, substitute "lists".

(5) After regulation 13 (payments) insert–

"**Payments to suspended medical practitioners**

13A.—(1) The Agency shall make payments, in accordance with any determination by the Scottish Ministers, to any medical practitioner whose name appears on a supplementary list and who is suspended by direction of the Tribunal.

(2) Any determination under paragraph (1) shall be made in accordance with paragraph (3) after consultation with such persons as they consider appropriate, and published with the Statement referred to in regulation 35(1) of the 1995 Regulations (payments)(**7**).

(3) Any determination under paragraph (1)–

(a) shall, in determining any sum payable, do so by reference to remuneration which the medical practitioner might have received during the period of such suspension following the coming to an end of the contract or agreement under which assistance in the provision of the general medical services was rendered; and

(b) may also determine any sum payable by reference to any other payment which the medical practitioner received, or might have received, during that period.

(4) Any determination under paragraph (1) may be amended from time to time by the Scottish Ministers after consultation with such persons as they consider appropriate and shall be published with the Statement referred to in regulation 35(1) of the 1995 Regulations.".

(**3**) Section 29B was inserted by the Health Act 1999 (c. 8) ("the 1999 Act"), section 58(1) and amended by the Community Care and Health (Scotland) Act 2002 asp 5 ("the 2002 Act"), schedule 2, paragraph 2(b). Section 30 was substituted by the 1999 Act, section 58(2) and amended by the 2002 Act, schedule 2, paragraph 2(7).

(**4**) Regulation 5 was amended by S.S.I. 2003/298.

(**5**) Section 29 was substituted by the Health Act 1999 (c. 8), section 58(1) and amended by the Community Care and Health (Scotland) Act 2002 asp 5, schedule 2, paragraph 2(4).

(**6**) S.S.I. 2004/38.

(**7**) S.I.1995/416. Relevant amending instruments are S.I. 1998/1600 and 1999/749 and S.S.I. 1999/54 and 2002/111.