SCOTTISH STATUTORY INSTRUMENTS

2004 No. 38

NATIONAL HEALTH SERVICE

The National Health Service (Tribunal) (Scotland) 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 by sections 19, 24B, 25(2), 26(2), 27(2), 29(4) and (9), 29A(5), 32, 32C(2), 105(7), 106(a) and 108(1) of, and paragraph 7 of Schedule 8 to, the National Health Service (Scotland) Act 1978(**1**) and sections 39 and 40(2) of, and paragraphs

(**1**) 1978 c29
; 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 Act
1990 (c. 19)
("the 1990 Act") section 37, by the Medical (Professional Performance) Act
1995 (c. 51)
, Schedule, paragraph 29(a), was extended by the Health and Medicines Act
1988 (c. 49)
("the 1988 Act"), section 17, and repealed in part by the National Health Service (Primary Care) Act
1997 (c. 46)
("the 1997 Act"), Schedule 2, paragraph 39 and Schedule 3, Part I; section 24B was inserted by the
Community Care and Health (Scotland) Act 2002 (asp 5)
("the 2002 Act"), Part 3, section 18; section 25(2) was extended by the 1988 Act, section 17, amended by the 1990 Act, Schedule 9, paragraph 19, repealed in part by the 1997 Act, Schedule 2, paragraph 43 and Schedule 3, Part I, and amended by the Health Act
1999 (c. 8)
("the 1999 Act"), section 56; section 26(2) was amended by the Health and Social Security Act
1984 (c. 48)
, Schedule 1, Part II, paragraphs 2, 3, 4 and Schedule 8, was extended by the 1988 Act, section 17 and amended by the 1999 Act, section 56; section 27(2) was amended by the National Health Service (Amendment) Act
1986 (c. 66)
, section 3, was extended by the 1988 Act, section 17, and was amended by the 1990 Act, Schedule 9, paragraph 19; section 29(4) and (9) were inserted by the 1999 Act, section 58; section 29A was inserted by the 1999 Act, section 58; section 32 was amended by the National Health Service (Amendment) Act
1995 (c. 31)
("the 1995 Act"), section 11 and Schedule, and by the 1999 Act, Schedule 4, paragraph 50; section 32C was inserted by the 1995 Act, section 8; section 105 was amended by the 1980 Act, Schedule 6, paragraph 5 and Schedule 7 and by the 1983 Act, Schedule 9, paragraph 24; section 108(1) contains definitions of "prescribed" and "regulations" relevant to the exercise of 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. 49)

3(4) and (5), and 7 of Schedule 1 to, the National Health Service (Primary Care) Act 1997(**2**) and of all other powers enabling them in that behalf, and after consultation with the Council on Tribunals and its Scottish Committee in accordance with sections 8(1) and (3) of the Tribunal and Inquiries Act 1992(**3**), hereby make the following Regulations:

PART I

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the National Health Service (Tribunal) (Scotland) Regulations 2004 and shall come into force on 4th March 2004.

(2) These Regulations extend to Scotland only.

Interpretation and forms

2.—(1) In these Regulations–

"the 1978 Act" means the National Health Service (Scotland) Act 1978;

"the 1997 Act" means the National Health Service (Primary Care) Act 1997;

"applicant" means a person who has made an application;

"application" means, unless the context otherwise requires, an application for a review;

"chairman" includes a deputy chairman acting in the chairman's place;

"Chief Executive" means the Chief Executive or equivalent of a Health Board or primary care NHS trust or some other officer of the Health Board or primary care NHS trust duly authorised to act on behalf of the Chief Executive or equivalent;

"complainer" means a Health Board or primary care NHS trust or any other person who makes representations to the Tribunal;

"conditional disqualification" has the meaning indicated in section 29C(1) of the 1978 Act(**4**);

"dentist" means a fully registered dental practitioner;

"disqualification" means local or national disqualification but does not include conditional disqualification;

"doctor" means a fully registered medical practitioner;

"document" means a document in writing and includes–

(a) any map, plan, graph or drawing;

(**2**) 1997 c. 46 ; section 40(2) contains definitions of "prescribed" and "regulations" relevant to the exercise of 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. 49) .

(**3**) 1992 c. 53 .

(**4**) Section 29C(1) was inserted by the Health Act 1999 (c. 8) , section 88.

(b) any photograph;

(c) any disk, tape, sound track or other device in which sounds or other data (not being visual images) are recorded so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(d) any film (including any microfilm), negative, tape or other device in which one or more visual images are recorded so as to be capable (as aforesaid) of being reproduced therefrom;

"efficiency case" has the meaning indicated in section 29(11) of the 1978 Act(**5**);

"first condition for disqualification" has the meaning indicated in section 29(6) of the 1978 Act(**6**);

"fraud case" has the meaning indicated in section 29(11) of the 1978 Act;

"Health Board" means a Health Board constituted under section 2 of the 1978 Act(**7**);

"inquiry" means an inquiry held in accordance with the provisions of these Regulations and includes any hearing relating to suspension proceedings;

"in writing" does not include transmission by electronic means;

"list" has, unless the context otherwise requires, the meaning assigned to it in section 29(8) of the 1978 Act(**8**);

"local or national disqualification" has the meaning indicated in section 29B(2)(a) and (b) of the 1978 Act(**9**);

"ophthalmic medical practitioner" means a doctor having the qualifications prescribed by regulation 3 of the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986(**10**);

"optician" means a person registered in either of the registers kept under section 7 (registers of opticians) of the Opticians Act 1989(**11**) of ophthalmic opticians or a body corporate enrolled in the list kept under section 9 (list of bodies corporate carrying on business as opticians) of that Act of such bodies carrying on business as ophthalmic opticians;

(**5**) Section 29(11) was substituted by the Health Act 1999 (c. 8), section 58.

(**6**) Section 29(6) was substituted by the Health Act 1999 (c. 8), section 58 and amended by the Community Care and Health (Scotland) Act 2002 asp 5, schedule 2, paragraph 2.

(**7**) Section 2 was amended by the National Health Service and Community Care Act 1990 (c. 19), section 28, Schedule 9 and Schedule 10.

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

(**9**) Section 29B(2)(a) and (b) were inserted by the Health Act 1999 (c. 8), section 58, and amended by the Community Care and Health (Scotland) Act 2000 asp 5, Schedule 2, paragraph 2.

(**10**) S.I. 1986/965; the relevant amending instrument is S.I. 1999/725.

(**11**) 1989 c. 44.

"pharmacist" means a registered pharmacist within the meaning of the Medicines Act 1968(**12**);

"pharmacist contractor" means a contractor who provides pharmaceutical services or a person lawfully conducting a retail pharmacy business in accordance with section 69 (general provisions) of the Medicines Act 1968(**13**);

"practitioner" means, unless the context otherwise requires, the doctor, dentist, ophthalmic medical practitioner, optician, pharmacist or pharmacist contractor, who is the subject of representations by a complainer or who is the subject of an application;

"primary care NHS trust" means an NHS trust to which functions referred to in section 12AA (additional functions of NHS trusts) of the 1978 Act(**14**) are delegated by the Health Board;

"representations" means, except in regulation 28(2), representations made to the Tribunal that a person meets the first or second condition for disqualification or representations under paragraph 3(1) or (2) of Schedule 1 to the 1997 Act (representations against preferential treatment)(**15**);

"relevant professional body" means–

(a) in relation to a practitioner who is a doctor or an ophthalmic medical practitioner, the General Medical Council;

(b) in relation to a practitioner who is a dentist, the General Dental Council;

(c) in relation to a practitioner who is an optician, the General Optical Council; and

(d) in relation to a practitioner who is a pharmacist, the Royal Pharmaceutical Society of Great Britain;

"respondent" means–

(a) in the case of representations or an application for interim suspension, any practitioner in respect of whom representations are, or an application for interim suspension is, made;

(b) in the case of an application by a practitioner, the complainer in respect of whose representations the decision to which the application relates was made; and

(b) in the case of an application by a person other than a practitioner, the practitioner;

"review" means a review by the Tribunal under section 30 of the 1978 Act(**16**) (review etc. of disqualification) or an inquiry into whether or not to give a direction under paragraph 5 (termination of directions) of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act;

(**12**) 1968 c. 67
. See the definition of "pharmacist" in section 132(1) which was amended by S.I. 1976/1213
.

(**13**) Section 69 was amended by S.I. 1976/1213
, and repealed in part by the Statute Law (Repeals) Act 1993 (c. 50)
, Schedule, Part XII.

(**14**) Section 12AA was inserted by the Health Act 1999 (c. 8)
, section 47.

(**15**) Paragraph 3(1) of Schedule 1 to the 1997 Act was amended by the Community Care and Health (Scotland) Act 2002 asp 5
, section 19.

(**16**) Section 30 of the 1978 Act was substituted by the Health Act 1999 (c. 8)
, section 58 and amended by the Community Care and Health (Scotland) Act 2002 asp 5
, schedule 2, paragraph 2.

"second condition for disqualification" has the meaning indicated in section 29(7) of the 1978 Act(**17**);

"the Tribunal" means the Tribunal constituted under section 29 of the 1978 Act (the NHS tribunal).

(2) In these Regulations, any reference to a numbered regulation or a numbered Schedule is, unless otherwise expressly provided, a reference to a regulation or a Schedule bearing that number in these Regulations.

(3) The forms set out in Schedule 2, (forms for use in proceedings in connection with representations and applications) or forms substantially to the like effect, shall be used in all cases to which those forms are applicable by virtue of the provisions of these Regulations and a reference to a numbered form in these Regulations is a reference to the form bearing that number set out in Schedule 2.

Health schemes

3. The schemes prescribed for the purposes of section 29(9) of the 1978 Act (definition of "health scheme")(**18**) are–

(a) health services, including dental, medical and surgical treatment, provided by Her Majesty's Forces;

(b) services provided by port local authorities and joint port local authorities constituted under section 172 (constitution of port local authorities) of the Public Health (Scotland) Act 1897(**19**);

(c) health services provided to a prisoner in accordance with section 3A (medical services in prisons) of the Prisons (Scotland) Act 1989(**20**); and

(d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

(**17**) Section 29(7) was substituted in the Health Act 1999 (c. 8), section 58.
(**18**) Section 29(9) was substituted by the Health Act 1999 (c. 8), section 58.
(**19**) 1897 c. 38 (60 & 61 Vict.); section 172 was expanded by the Clean Air Act 1993 (c. 11), section 61(2).
(**20**) 1989 c. 45. Section 3A was inserted by the Crime and Punishment (Scotland) Act 1997 (c. 48), section 43 and amended by S.I. 1998/251, and the Scotland Act 1998 (c. 46), Schedule 8, paragraph 27.