STATUTORY RULES OF NORTHERN IRELAND

# 2004 No. 259

# HEALTH AND PERSONAL SOCIAL SERVICES

## Tribunal Regulations (Northern Ireland) 2004

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| *Made - - - -* | *8th June 2004* |
| *Coming into operation* | *1st July 2004* |

The Department of Health, Social Services and Public Safety(**1**) in exercise of the powers conferred on it by Articles 65, 106(b) of 107(6) of, and paragraphs 1, 2, 8 and 11 and 19 of Schedule 11 to, the Health and Personal Social Services (Northern Ireland) Order 1972(**2**) and of all other powers enabling it in that behalf, and in conjunction with the Department of Finance and Personnel, hereby makes the following Regulations:

## PART I

## GENERAL

### Citation and commencement

**1.** These Regulations may be cited as the Tribunal Regulations (Northern Ireland) 2004 and shall come into operation on 1st July 2004.

### Interpretation

**2.**—(1) In these regulations –

"application" means an application for a review;

"Board" means a Health and Social Services Board;

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

"Chief Executive" means a chief officer of a Board or officer of a Board duly authorised to act on behalf of the chief officer;

"complainant" means a Board or any other person who makes representations to the Tribunal;

"conditional disqualification" shall be construed in accordance with paragraph 4 of Schedule 11 to the Order;

(**1**) *See*S.I. 1999/283(N.I.1) Article 3(6)
(**2**) S.I. 1972/1265 (N.I.14) – relevant amending instruments are 2001 c. 3 (N.I.) and S.I. 2004/311 (N.I. 2)

"dentist" means dental practitioner;

"dental list" means a list prepared by the Agency under regulation 4 of the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993(**3**);

"document" means a document in writing and includes –

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

(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 foresaid) of being reproduced therefrom;

"first condition for disqualification" has the meaning indicated in paragraph 1(6) of Schedule 11 to the Order;

"fraud case" has the meaning indicated in paragraph 1(11) of Schedule 11 to the Order;

"general medical practitioner" has the same meaning as in the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004(**4**);

"Health Scheme" has the meaning indicated in paragraph 1(9) of Schedule 11 to the Order;

"inquiry" means an inquiry held under Part I of Schedule 11 to the Order;

"list" has the meaning indicated in paragraph 1(8) of Schedule 11 to the Order;

"local or general disqualification" has the meaning indicated in paragraph 3(2)(a) and (b) of Schedule 11 to the Order;

"medical list" has the same meaning as in the Health and Personal Social Services (Primary Medical Services Performers List) Regulations (Northern Ireland) 2004(**5**);

"ophthalmic list" has the same meaning as in regulation 8(1) of the General Ophthalmic Services Regulations (Northern Ireland) 1986(**6**);

"ophthalmic medical practitioner" has the same meaning as in the General Ophthalmic Services Regulations (Northern Ireland) 1986;

"optician" means ophthalmic optician;

"the Order" means the Health and Personal Social Services (Northern Ireland) Order 1972;

"pharmaceutical list" has the same meaning as in the Pharmaceutical Services Regulations (Northern Ireland) 1997(**7**);

"pharmacist" has the same meaning as in the Pharmaceutical Services Regulations (Northern Ireland) 1997;

"practitioner" means the general medical practitioner, dentist, ophthalmic medical practitioner, optician or pharmacist who is the subject of representations by a complainant or who is subject of an application;

"relevant professional body" means –

(**3**) S.R. 1993 No. 421
(**4**) S.R. 2004 No. 140
(**5**) S.R. 2004 No. 149
(**6**) S.R. 1986 No. 163
(**7**) S.R. 1997 No. 381

(a) in relation to a general medical practitioner or an ophthalmic medical practitioner, the General Medical Council(**8**);

(b) in relation to a practitioner who is a dentist, the General Dental Council(**9**);

(c) in relation to a practitioner who is an optician, the General Optical Council(**10**); and

(d) in relation to a practitioner who is a pharmacist, the Royal Pharmaceutical Society of Northern Ireland(**11**);

"representations" means representations made to the Tribunal under paragraph 1of Part I of Schedule 11 to the Order;

"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 complainant in respect of whose representations the decision to which the application relates was made; and

(c) in the case of an application by a person other than a practitioner, the practitioner.

"second condition for disqualification" has the meaning indicated in paragraph 1(7) of Schedule 11 to the Order;

(2) In these regulations, references to "proceedings" before the Tribunal are to any such proceedings, whether relating to representations, applications for review or for interim suspension, and include inquiries, hearings and preliminary matters.

(3) A reference to a numbered form in these regulations is a reference to the form bearing that number set out in Schedule 2.

# PART II

## CONSTITUTION OF TRIBUNAL

### Term of office of members of the Tribunal

**3.**—(1) The chairman and deputy chairmen of the Tribunal shall hold office during the pleasure of the Lord Chief Justice.

(2) The other members shall hold office during the pleasure of the Department

# PART III

## PROCEDURE FOR DEALING WITH REPRESENTATIONS

### Submission of representations

**4.**—(1) Subject to paragraph (3), representations shall –

(a) be as set out in Form 1 and shall –

(i) contain a concise statement of the alleged facts and grounds upon which the complainant intends to rely;

(**8**) *See* Medical Act 1983 c. 54 – Section 1
(**9**) *See* Dentists Act 1984 c. 24 – Section 1
(**10**) *See* Opticians Act 1989 c. 44 – Section 1
(**11**) S.I. 1976/1213 (N.I. 22) – Article 3

(ii) be signed by the complainant or on the complainant's behalf by some person authorised by the complainant;

(b) be accompanied by 2 copies of each document which the complainant proposes to put in evidence; and

(c) be sent together with the copies of the documents relevant to it to the Tribunal.

(2) Subject to paragraph (4), where representations are made that the second condition of disqualification is met and relate to a practitioner who has applied to join a list but whose name is not yet on such a list, they shall be sent to the Tribunal within 30 days of receipt of the application for the practitioner's name to be included.

(3) If a document which the complainant proposes to put in evidence is of a nature which renders it difficult to make or obtain a copy of it, the complainant shall not be required to submit copies of it.

(4) Where a complainant is required to make representations within a time specified in paragraph (2) and the complainant –

(a) makes an application (whether before or after the expiry of the time so specified) to the Tribunal for an extension of that time; and

(b) includes in that application a statement of the grounds for making it,

the Tribunal may, where it is satisfied that it is in all the circumstances reasonable to do so, extend that time by such further period as it shall specify.

**Power of the Tribunal to require further statement**

**5.** The Tribunal may, if it thinks fit, require the complainant –

(a) to furnish such further particulars relating to the facts and grounds upon which the representations are made as it may think necessary;

(b) where a fact is not within the personal knowledge of the complainant, to state the source of the complainant's information and the grounds for the complainant's belief in its truth; and

(c) to support the allegations contained in the representations by affidavit.

**Power of the Tribunal to refuse an inquiry**

**6.** If it appears to the Tribunal, after due consideration of representations by any complainant other than a Board that no good cause has been shown why an inquiry should be held, it may refuse to hold an inquiry and shall inform the complainant of its refusal to hold an inquiry, together with the reasons for its refusal, in writing.

**Notices to be sent to respondent etc in case of an inquiry**

**7.**—(1) The Tribunal shall, unless it refuses to hold an inquiry under regulation 6 (power of the Tribunal to refuse an inquiry), send to the respondent –

(a) a notice as set out in Form 2 informing the respondent that representations have been made and that the respondent may, within 4 weeks from and including the date of receipt of the notice, submit to the Tribunal a written statement-in-answer in accordance with regulation 9(1);

(b) one copy of the representations made by the complainant and of each document, if any, which accompanied them;

(c) information as to arrangements by which any document which the complainant proposes to put in evidence, but which the complainant is not required to submit copies of in accordance with regulation 4(3), may be examined by the respondent; and

(d) one copy of any further statement furnished by the complainant under regulation 5 (power of the Tribunal to require further statement).

(2) The Tribunal shall, unless it refuses to hold an inquiry under regulation 6 (power of the Tribunal to refuse an inquiry), send to each Board, not being the complainant but in whose list the name of the respondent is included, at the same time as the Tribunal sends a notice to the respondent under paragraph (1) –

(a) a notice as set out in Form 3 informing it that representations have been made in respect of the respondent and that it may, within 4 weeks from and including the date of receipt of the notice, submit to the Tribunal a written statement in accordance with regulation 9(2);

(b) one copy of the representations made by the complainant and of each document, if any, which accompanied them;

(c) information as to arrangements by which any document which the complainant proposes to put in evidence, but which the complainant is not required to submit copies of in accordance with regulation 4(3), may be examined by the Board; and

(d) one copy of any further statement furnished by the complainant under regulation 5 (power of Tribunal to require further statement).

(3) In relation to a fraud case, the Tribunal shall, at the same time it sends notice to the respondent under paragraph (1), inform the Department in writing, and the Department shall send to the respondent and every Board, notice –

(a) that the respondent is subject to an inquiry in a fraud case; and

(b) that no Board may add the respondent to any list until the proceedings in that case are finally concluded.

(4) The Tribunal may, if it thinks fit, accept –

(a) a statement-in-answer by the respondent; or

(b) a statement by any other Board concerned,

after the period within which it is required to be submitted in terms of paragraph (1)(a) or (2)(a).

**Amendment of representations**

**8.** The Tribunal may, at any time before the conclusion of any inquiry, allow a complainant to amend the terms of the representations upon such conditions as it may think fit.

**Submission of statement-in-answer or other statement and supporting documents**

**9.**—(1) Where, pursuant to regulation 7(1), a respondent submits a statement-in-answer, the respondent shall, subject to paragraph (3), send to the Tribunal with the statement-in-answer 2 copies of each document which the respondent proposes to put in evidence.

(2) Where, pursuant to regulation 7(2), any other Board concerned submits a statement, it shall, subject to paragraph (3), send to the Tribunal with the statement 2 copies of each document which it proposes to put in evidence.

(3) If a document which the respondent, or any other Board proposes to put in evidence is of a nature which renders it difficult to make or obtain a copy of it, the respondent, or (as the case may be) Board shall not be required to submit copies of it.

(4) As soon as may be practicable following receipt of –

(a) a statement-in-answer and copies of documents referred to in paragraph (1); and

(b) where applicable, a statement by any other Board concerned and copies of documents referred to in paragraph (2),