
STATUTORY INSTRUMENTS

1992 No. 434 (S. 48)

NATIONAL HEALTH SERVICE, SCOTLAND

**The National Health Service (Service Committees
and Tribunal) (Scotland) Regulations 1992**

<i>Made</i>	- - - -	<i>2nd March 1992</i>
<i>Laid before Parliament</i>		<i>13th March 1992</i>
<i>Coming into force</i>	- -	<i>3rd April 1992</i>

The Secretary of State, in exercise of the powers conferred on him by sections 19(2), 25(2), 26(2), 27(2), 29(1) and (6), 32, 105(7), 106(a) 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 10 of the Tribunals and Inquiries Act 1971(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) Regulations 1992 and shall come into force on 3rd April 1992.

(2) In these Regulations, unless the context otherwise requires—

“the Act” means the National Health Service (Scotland) Act 1978(3);

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- (1) 1978 c. 29; section 19 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (“the 1983 Act”), Schedule 7, paragraph 2, and was extended by the Health and Medicines Act 1988 (c. 49) (“the 1988 Act”), section 17; section 25(2) was extended by the 1988 Act, section 17 and was amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 40(2) and Schedule 9, paragraph 19(6); section 26(2) was amended by the Health and Social Security Act 1984 (c. 48) (“the 1984 Act”), Schedule 1, part II, paragraphs 2, 3 and 4 and Schedule 8, Part I and was extended by the 1988 Act, section 17; section 27(2) was amended by the National Health Service (Amendment) Act 1986 (c. 66), section 3(3) and by the 1990 Act, Schedule 9, paragraph 19(7)(b) and was extended by the 1988 Act, section 17; section 29(1) was amended by the 1984 Act, Schedule 8, Part I; section 105(7), which was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7 and by the 1983 Act, 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.
- (2) 1971 c. 62; see paragraph 41 of Part II of Schedule 1 to that Act, as amended by the National Health Service (Scotland) Act 1972 (c. 58), Schedule 6, paragraph 152 and the National Health Service (Scotland) Act 1978 (c. 29), Schedule 16, paragraph 35.
- (3) 1978 c. 29.

“area dental committee” means the committee of that name for the area of a Health Board recognised under section 9 of the Act;

“area medical committee” means the committee of that name for the area of a Health Board recognised under section 9 of the Act;

“area optical committee” means the committee of that name for the area of a Health Board recognised under section 9 of the Act;

“area pharmaceutical committee” means the committee of that name for the area of a Health Board recognised under section 9 of the Act;

“area professional committee” means an area dental committee, area medical committee, area optical committee or area pharmaceutical committee, as appropriate;

“chairman” includes a deputy chairman acting in his place;

“dental officer” means any dental officer appointed by the Secretary of State for the purpose of advising the Secretary of State, Health Boards, the Scottish Dental Practice Board and practitioners on questions arising in connection with general dental services;

“dentist” means a fully registered dental practitioner;

“doctor” means a fully registered medical practitioner (other than an ophthalmic medical practitioner);

“drugs” includes medicines and such chemical re-agents as are included in a list for the time being approved by the Secretary of State for the purposes of section 27 of the Act;

“drug tariff” means the statement prepared by the Secretary of State under the General Medical and Pharmaceutical Services Regulations;

“estimate” has the same meaning as in the General Dental Services Regulations;

“General Dental Services Regulations” means the National Health Service (General Dental Services) (Scotland) Regulations 1974(4);

“General Manager” means the General Manager of a Health Board or some other officer of the Health Board duly authorised to act on his behalf;

“General Medical and Pharmaceutical Services Regulations” means the National Health Service (General Medical and Pharmaceutical Services) (Scotland) Regulations 1974(5);

“General Ophthalmic Services Regulations” means the National Health Service (General Ophthalmic Services) (Scotland) Regulations 1986(6);

“Health Board” means a Health Board constituted under section 2 of the Act;

“lay member” means—

(a) in relation to a Health Board, a member of the Health Board who is a lay person; and

(b) in relation to a service committee, a lay person appointed by the Health Board;

“lay person” means a person who is not and never has been—

(a) a practitioner, a pharmacist or an optician; nor

(b) a registered dispensing optician within the meaning of the Opticians Act 1989(7); nor

(c) a registered nurse, a registered midwife or a registered health visitor; nor

(d) an officer of, or otherwise employed by, any Health Board or Local Health Council;

(4) S.I. 1974/505; the relevant amending instruments are S.I. 1974/2048, 1981/900, 1984/1491, 1985/1552, 1987/1634, 1989/363 and 851, 1990/1772, 1940 and 2497, 1991/569 and 1349 and 1992/16.

(5) S.I. 1974/506, amended by S.I. 1975/696, 1976/733, 1976/1574, 1978/1762, 1981/56 and 965, 1982/1279, 1985/296, 534, 804, 1625 and 1713, 1986/303, 925, 1507 and 2310, 1987/385, 386 and 1382, 1988/1073, 1454 and 2259, 1989/1883 and 1990, 1990/883 and 2509, 1991/572 and 2241 and 1992/191.

(6) S.I. 1986/965, amended by S.I. 1988/543, 1989/387 and 1177, 1990/1048 and 1991/534.

“list of professional persons” means—

- (a) in the case of a doctor, the medical list;
 - (b) in the case of a dentist, the dental list;
 - (c) in the case of an ophthalmic medical practitioner or an optician, the ophthalmic list; and
 - (d) in the case of a pharmacist, the pharmaceutical list,
- maintained by a Health Board as respects their area;

“medical officer” means any medical practitioner in the service of the Secretary of State;

“ophthalmic medical practitioner” means a doctor having the qualifications prescribed by regulation 3 of the General Ophthalmic Services Regulations;

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

“pharmacist” means a registered pharmacist within the meaning of the Medicines Act 1968⁽⁸⁾ or a person lawfully conducting a retail pharmacy business in accordance with section 69 of that Act;

“practitioner” means a doctor, a dentist or an ophthalmic medical practitioner as the context may require;

“professional person” means a doctor, a dentist, an ophthalmic medical practitioner, an optician or a pharmacist, as the case may be;

“service committee” means a medical, pharmaceutical, dental or ophthalmic service committee or a joint services committee, as appropriate;

“terms of service” means the terms of service for doctors contained in Part I of Schedule 1 to the General Medical and Pharmaceutical Services Regulations, the terms of service for pharmacists contained in Parts I and II of Schedule 3 to the General Medical and Pharmaceutical Services Regulations, the terms of service for dentists contained in Schedule 1 to the General Dental Services Regulations and the terms of service for ophthalmic medical practitioners and opticians contained in Schedule 1 to the General Ophthalmic Services Regulations, as the case may be;

“treatment” in relation to general medical services, has the same meaning as in the General Medical and Pharmaceutical Services Regulations and, in relation to general dental services, means—

- (a) except in the context mentioned in sub-paragraph (b) of this definition—
 - (i) where at the material time the dentist is providing occasional treatment under the General Dental Services Regulations, treatment within the meaning of those Regulations;
 - (ii) in any other case, care and treatment within the meaning of those Regulations;
- (b) in the context of the description of treatment specified under regulation 11(4)(c), treatment within the meaning of the General Dental Services Regulations other than—
 - (i) one examination in the course of any single consultation;
 - (ii) treatment in an emergency within the meaning of those Regulations;
 - (iii) two radiographs, each of a size not exceeding 16 square centimetres, in the course of any single consultation; and

(7) 1989 c. 44.

(8) 1968 c. 67; See the definition of “pharmacist” in section 132(1).

- (iv) treatment for which a dentist is remunerated in accordance with section X (treatment under capitation) of Determination I of the Statement of Dental Remuneration dated 28th August 1990 and amended on 9th January 1992 and for which he receives no remuneration other than a capitation payment;

“the Tribunal” means the Tribunal constituted under section 29 of the Act.

(3) Unless the context otherwise requires, any reference in these Regulations to a numbered regulation is a reference to the regulation bearing that number in these Regulations, any reference in a regulation to a numbered paragraph is a reference to the paragraph bearing that number in that regulation and any reference in a regulation to a numbered Schedule is a reference to the Schedule bearing that number in these Regulations.

PART II

INVESTIGATION OF MATTERS RELATING TO SERVICES

Constitution of service committees

2.—(1) Every Health Board shall establish in accordance with the provisions of this regulation the following service committees:—

- (a) a medical service committee;
 - (b) a pharmaceutical service committee;
 - (c) a dental service committee;
 - (d) an ophthalmic service committee; and
 - (e) a joint services committee.
- (2) The medical service committee shall consist of—
- (a) a chairman appointed by the Health Board from its lay members; and
 - (b) 6 other persons of whom 3 shall be lay persons (of whom at least 1 shall be a woman) appointed by the Health Board and 3 shall be doctors appointed by the area medical committee.
- (3) The pharmaceutical service committee shall consist of—
- (a) a chairman appointed by the Health Board from its lay members; and
 - (b) 6 other persons of whom 3 shall be lay persons (of whom at least 1 shall be a woman) appointed by the Health Board and 3 shall be pharmacists appointed by the area pharmaceutical committee.
- (4) The dental service committee shall consist of—
- (a) a chairman appointed by the Health Board from its lay members; and
 - (b) 6 other persons of whom 3 shall be lay persons (of whom at least 1 shall be a woman) appointed by the Health Board and 3 shall be dentists appointed by the area dental committee.
- (5) The ophthalmic service committee shall consist of—
- (a) a chairman appointed by the Health Board from its lay members; and
 - (b) 7 other persons of whom—
 - (i) 3 shall be lay persons (of whom at least 1 shall be a woman) appointed by the Health Board;

(ii) 2 shall be ophthalmic medical practitioners appointed by the area medical committee; and

(iii) 2 shall be opticians appointed by the area optical committee.

(6) Where the ophthalmic service committee investigates a matter which does not involve a question relating to an ophthalmic medical practitioner, one only of the members who are ophthalmic medical practitioners may take part in the investigation.

(7) Where the ophthalmic service committee investigates a matter which does not involve a question relating to an optician, one only of the members who are opticians may take part in the investigation.

(8) The joint services committee shall consist of—

(a) a chairman appointed by the Health Board from its lay members; and

(b) 12 other persons of whom—

(i) 4 shall be lay persons (of whom at least 1 shall be a woman) appointed by the Health Board;

(ii) 2 shall be appointed by the medical service committee from their members or deputies who are doctors;

(iii) 2 shall be appointed by the pharmaceutical service committee from their members or deputies who are pharmacists;

(iv) 2 shall be appointed by the dental service committee from their members or deputies who are dentists; and

(v) 2 shall be appointed by the ophthalmic service committee from their members or deputies who are ophthalmic medical practitioners or opticians.

(9) Where an appropriate area professional committee—

(a) is unable to appoint any member of a service committee; or

(b) has not been recognised for the area of a Health Board,

the Health Board may arrange for any member of a service committee who requires to be appointed by the appropriate area professional committee to be appointed by the appropriate area professional committee for the area of another Health Board.

(10) When any matter stands referred under regulation 9 to the joint services committee—

(a) the members of the joint services committee appointed by the medical service committee shall not take part in the investigation unless the matter involves a question relating to a doctor;

(b) the members of the joint services committee appointed by the dental service committee shall not take part in the investigation unless the matter involves a question relating to a dentist;

(c) the members of the joint services committee appointed by the pharmaceutical service committee shall not take part in the investigation unless the matter involves a question relating to a pharmacist; and

(d) the members of the joint services committee appointed by the ophthalmic service committee shall not take part in the investigation unless the matter involves a question relating to an ophthalmic medical practitioner or optician.

(11) As respects each service committee, not fewer than 3 lay persons and not fewer than 3 professional persons shall be appointed as deputies, according to the same provisions as apply to the appointment of members of that committee other than the chairman.

(12) Where a member of a service committee, other than the chairman, is absent a deputy appointed according to the same provisions as that member may act in his place.

(13) As respects each service committee, a person shall be appointed by the Health Board from the lay members of that committee to act as deputy for the chairman of the committee and the person so appointed may, in the absence of the chairman, act in his place.

(14) The Health Board may make standing orders with respect to the term of office of the chairman, deputy chairman, members and deputy members of a service committee:

Provided that the term of office of the chairman shall not exceed 1 year without prejudice to his eligibility for re-appointment.

Submission of complaints relating to terms of service

3.—(1) A person who desires to make a complaint to a Health Board involving an allegation of a failure by a professional person to comply with his terms of service shall submit the complaint to the General Manager, subject to regulations 6 and 7, in accordance with the following paragraphs of this regulation.

(2) A complainer shall submit a complaint involving—

- (a) a doctor;
- (b) a pharmacist;
- (c) an ophthalmic medical practitioner; or
- (d) an optician,

within 13 weeks after the event which gave rise to the complaint.

(3) A complainer shall submit a complaint involving a dentist—

- (a) within 13 weeks after the event which gave rise to the complaint; or
- (b) within 6 months after the completion of the treatment in which the failure is alleged to have arisen,

whichever is the sooner.

(4) A complaint—

- (a) shall be submitted in writing unless the General Manager is satisfied that the complainer is unable whether by reason of physical disability or otherwise to write in the English language, in which case the complaint may be made orally;
- (b) shall contain sufficient information as to the substance of the complaint; and
- (c) if made orally in accordance with sub-paragraph (a), shall be—
 - (i) made by the complainer at the principal office of the Health Board or any other office of the Health Board which they designate for the purpose of this sub-paragraph;
 - (ii) received by the General Manager; and
 - (iii) transcribed by an officer of the Health Board.

(5) Where, on consideration of a complaint which has been submitted in writing, it appears to the General Manager that insufficient information as to the substance of the complaint has been given, he shall send a notice in writing to the complainer requiring him to provide a statement of further information as to the substance of the complaint within 3 weeks from the date of the notice.

Investigation of complaints relating to terms of service

4.—(1) Subject to the following provisions of this regulation and to regulation 9, any complaint made in accordance with regulation 3 shall be referred to the appropriate service committee for investigation.

(2) For the purposes of paragraph (1), the appropriate service committee means—

- (a) in relation to a doctor, the medical service committee;
- (b) in relation to a dentist, the dental service committee;
- (c) in relation to an ophthalmic medical practitioner or an optician, the ophthalmic service committee; and
- (d) in relation to a pharmacist, the pharmaceutical service committee.

(3) Where the name of the professional person against whom a complaint is made was, at the time of—

- (a) the event; or
- (b) where regulation 3(3)(b) applies, the completion of the treatment,

which gave rise to the complaint, included in the relevant list of professional persons, the complaint shall, subject to the provisions of this Part, be referred to the appropriate service committee under paragraph (1), notwithstanding that the name of the professional person has since been removed from that list.

Withdrawal and termination of complaints

5.—(1) A complaint which has been made in accordance with regulation 3 may be withdrawn by the complainer at any time before the service committee present their report to the Health Board under Schedule 1 subject—

- (a) to the complainer giving written notice to the General Manager of his intention to withdraw the complaint; and
- (b) where such notice is given after the General Manager has referred the complaint to the appropriate service committee pursuant to regulation 4, to the chairman of the service committee consenting to the withdrawal of the complaint.

(2) Where, at any time after notice of a complaint has been made in accordance with regulation 3, but before the Health Board concerned make a decision under regulation 11 in relation to that complaint, the professional person to whom the complaint refers dies, no further action shall be taken under these Regulations in relation to that complaint.

Late submission of complaints relating to terms of service

6.—(1) Where a complaint is made after the expiry of the period specified in regulation 3(2) or (3) in relation to that matter, the complainer shall furnish to the General Manager, in addition to the complaint, a statement of the reasons for the failure to submit the complaint in time.

(2) Where a complaint is made after the expiry of the period specified in regulation 3(2) or (3) in relation to that matter, the appropriate service committee shall not investigate the complaint unless—

- (a) they are satisfied that the failure to submit the complaint within the period specified and on any subsequent day falling before the date on which the complaint was made was occasioned by illness or by some other reasonable cause; and
- (b) they have obtained—
 - (i) the consent of the professional person concerned; or
 - (ii) if such consent is not given, the consent of the Secretary of State.

(3) If an application for the Secretary of State's consent to an investigation is made, the General Manager shall furnish to the Secretary of State and the professional person concerned a copy of—

- (a) the complaint;
- (b) the statement of the reasons for the failure to submit the complaint in time; and
- (c) any further information which the Secretary of State may require,

and the professional person concerned shall be entitled, within 4 weeks from the date of receipt by him of copies of such complaint, statement and further information (if any), to submit to the Secretary of State a statement of the grounds on which he contends that the investigation should not take place.

(4) The Secretary of State, after considering an application for consent to an investigation and any statement in answer, shall—

- (a) either dismiss the application or give his consent to the investigation for the purposes of paragraph (2)(b); and
- (b) inform the complainer, the Health Board and the professional person concerned of his decision.

Appeal to Secretary of State to require an investigation

7.—(1) Where, for the purposes of regulation 6(2), the appropriate service committee decide neither to investigate a complaint nor to obtain consent to investigate a complaint, the General Manager shall—

- (a) notify the complainer of their decision and the reasons for it and inform him of his right of appeal to the Secretary of State under paragraph (2); and
- (b) notify the Secretary of State of their decision and the reasons for it and furnish him with a copy of—
 - (i) the complaint; and
 - (ii) the statement of the reasons for the failure to submit the complaint in time.

(2) A complainer may appeal to the Secretary of State against the decision of an appropriate service committee, for the purposes of regulation 6(2), neither to investigate the complaint nor to obtain consent to investigate the complaint within a period of 4 weeks beginning on the day after the date on which notification of the Health Board's decision was sent to him by sending written notice of appeal containing a statement of the reasons why he contends that such an investigation should take place.

(3) Where an appeal is made by a complainer in accordance with paragraph (2), the Secretary of State—

- (a) where he is of the opinion that there were no reasonable grounds for the failure to submit the complaint in time, may dismiss the appeal forthwith; or
- (b) if he does not so dismiss the appeal, shall send to the service committee and the professional person concerned a copy of the notice of appeal and statement furnished by the complainer for the purposes of paragraph (2) and shall allow them to submit a statement-in-answer within such period as he may specify.

(4) The Secretary of State, after considering the notice of appeal and any statement-in-answer, shall—

- (a) either dismiss the appeal or require the service committee to investigate the complaint; and
- (b) inform the complainer, the Health Board and the professional person concerned of his decision and the reasons for it.

Investigation of matters relating to provision of general services

8.—(1) Subject to regulation 9 and the following paragraphs of this regulation, a Health Board (which in this regulation shall include any committee of a Health Board duly authorised by it in that behalf) may refer for investigation—

- (a) to the appropriate service committee, any matter relating to the provision of general medical services, general dental services, general ophthalmic services or pharmaceutical services under the appropriate provisions of section 19, 25, 26 or 27 of the Act whether or not any such matter has been raised on complaint made in accordance with regulation 3; and
- (b) to the pharmaceutical service committee, any matter which a Health Board is required to refer to that committee in accordance with their scheme prepared under regulation 29 of the General Medical and Pharmaceutical Services Regulations for testing the quality and checking the amounts of drugs and listed appliances supplied.

(2) For the purposes of paragraph (1), the appropriate service committee means—

- (a) in relation to general medical services, the medical service committee;
- (b) in relation to general dental services, the dental service committee;
- (c) in relation to general ophthalmic services, the ophthalmic service committee; and
- (d) in relation to pharmaceutical services, the pharmaceutical service committee.

(3) Subject to paragraph (5), a Health Board shall not, without the consent of the professional person concerned or of the Secretary of State, refer under paragraph (1) a matter for investigation which involves an allegation of a failure by—

- (a) a doctor;
- (b) an ophthalmic medical practitioner;
- (c) an optician; or
- (d) a pharmacist,

to comply with his terms of service unless the reference is made within 13 weeks after the event which gave rise to the allegation.

(4) Subject to paragraph (5), a Health Board shall not, without the consent of the dentist concerned or of the Secretary of State, refer under paragraph (1) a matter for investigation which involves an allegation of a failure by a dentist to comply with his terms of service unless the reference is made—

- (a) within 13 weeks after the event which gave rise to the allegation; or
- (b) within 6 months after the completion of the treatment in which the failure is alleged to have arisen,

whichever is the sooner.

(5) The provisions of regulation 6(3) with reference to the procedure for an application for the Secretary of State's consent to an investigation following such a complaint as is referred to in regulation 3(1) shall apply to an application for his consent for the purposes of paragraph (3) or (4) with the substitution—

- (a) of the word "complaint" wherever it occurs in regulation 6(3), with the words "terms of the proposed reference"; and
- (b) of the words "for the failure to submit the complaint in time" where they occur in regulation 6(3)(b), with the words "why the proposed reference could not have been made before the periods specified in regulation 8(3) or (4)".

(6) Where the name of the professional person in respect of whom a matter involves an allegation of a failure to comply with his terms of service was, at the time of—

- (a) the event; or
- (b) where regulation 8(4)(b) applies, the completion of the treatment,

which gave rise to the allegation, included in the relevant list of professional persons, the matter may, subject to the provisions of this Part, be referred to the appropriate service committee under paragraph (1), notwithstanding that the name of the professional person has since been removed from that list.

(7) A matter in respect of which—

- (a) an investigation may be made under regulation 16; or
- (b) a question arises to which regulation 19 applies,

shall not be referred to a service committee under paragraph (1).

Referral of investigations to the joint services committee

9.—(1) Where—

- (a) in the opinion of a Health Board any complaint which requires to be referred in terms of regulation 4(1) to the appropriate service committee; or
- (b) in the opinion of a Health Board, or any committee of a Health Board duly authorised in that behalf, any matter which it may refer under regulation 8(1) to the appropriate service committee,

is appropriate for investigation by the joint services committee, the Health Board or, as the case may be, the committee duly authorised in that behalf, may refer the complaint or matter to the joint services committee for investigation and such a reference shall for the purposes of these Regulations be treated as if it were a reference under regulation 4(1) or, as the case may be, a reference under regulation 8(1).

(2) Where, in the opinion of a service committee, any matter referred to it involves a question relating to a professional person other than the category of professional person in relation to which the service committee would be the appropriate service committee for the purposes of investigating a complaint made in accordance with regulation 3, or involves a matter relating to the provision of services other than those in relation to which the service committee is the appropriate service committee for the purposes of regulation 8(1), the service committee shall—

- (a) take no further action for the purposes of investigating the matter referred; and
- (b) refer the matter to the joint services committee for investigation and such a reference shall for the purposes of these Regulations be treated as if it were a reference under regulation 4(1) or, as the case may be, a reference under regulation 8(1).

Procedure and reports of service committees

10. Schedule 1 shall have effect for the purposes of—

- (a) the procedure of; and
- (b) the submission of reports to Health Boards by,

service committees in relation to any investigation required to be made following a reference under regulation 4(1) or 8(1).

Decision of Health Board

11.—(1) A Health Board, after due consideration of a report submitted to them by a service committee by virtue of Schedule 1, shall—

- (a) accept as conclusive the findings of fact made by the service committee;

- (b) draw such inferences from those findings of fact as they see fit, having regard to such extent as they think fit to the service committee's report as it relates to the inferences which may properly be drawn from those findings;
 - (c) determine whether the professional person to whom the report relates, where it is in relation to a complaint made in accordance with regulation 3 or a reference under regulation 8(1) which involves an allegation of a failure to comply with terms of service, has failed to comply with any one or more of his terms of service identified to him by the chairman of the service committee pursuant to paragraph 5(2) or 6(2) of Schedule 1; and
 - (d) determine—
 - (i) in the case of a complaint made in accordance with regulation 3 or a reference under regulation 8(1) which involves an allegation of a failure to comply with terms of service, the action to be taken in relation to the professional person concerned in accordance with either or both of paragraphs (2) and (4) having regard to any recommendation made by the service committee pursuant to paragraph 21(2) of Schedule 1;
 - (ii) in the case of a reference made under regulation 8(1) which does not involve an allegation of a failure to comply with terms of service, whether to take action in relation to the professional person concerned in accordance with paragraph (2); or
 - (iii) in any case to which the report of the service committee relates, that no further action shall be taken in relation to that report.
- (2) Where, in the case of any doctor to whom a report of a service committee relates, a Health Board are satisfied—
- (a) after consideration of the report in accordance with paragraph (1);
 - (b) whether or not they have found him to have failed to comply with his terms of service; and
 - (c) after consultation with the area medical committee,
- that, because of the number of persons included in his list, the doctor is unable to give adequate treatment to all of those persons, they may impose a special limit on the number of persons for whom the doctor may undertake to provide treatment.
- (3) Where, pursuant to paragraph (2), a Health Board impose a special limit on the number of patients for whom a doctor may undertake to provide treatment, paragraphs (4) to (8) of regulation 17 of the General Medical and Pharmaceutical Services Regulations (limitation of number of persons in doctors' lists) shall have effect in his case with suitable modifications and, in particular, as if references in those paragraphs—
- (a) to a maximum number were references to the special limit imposed under paragraph (2) of this regulation; and
 - (b) to an excess were references to the extent to which the number of patients in the doctor's list exceeds that special limit.
- (4) Where they have determined that a professional person to whom the report of a service committee relates has failed to comply with any one or more of his terms of service, the Health Board concerned may—
- (a) without prejudice to sub-paragraph (b), determine that there should be recovered from him, whether by way of a deduction from his remuneration or otherwise, any expenses (other than expenses incurred in connection with the investigation by the service committee) which, by reason of such failure, have been reasonably and necessarily incurred or, where the report relates to a dentist, are likely to be so incurred, by any person in obtaining further treatment, and that any such sums so recoverable shall be paid to that person;

- (b) recommend to the Secretary of State that an amount should be recovered from the professional person concerned, whether by way of withholding from his remuneration or otherwise;
 - (c) where the professional person is a dentist, require the dentist until further notice to submit to the Scottish Dental Practice Board for prior approval estimates in respect of any description of treatment specified by that Board;
 - (d) determine that the professional person should be warned to comply with his terms of service in future;
 - (e) where they are of the opinion that the continued inclusion of the name of a professional person to whom the report of the service committee relates in the appropriate list of professional persons would be prejudicial to the efficiency of the category of services relevant to that list, make representations to that effect to the Tribunal.
- (5) As soon as may be practicable after a Health Board have made their decision on the report of a service committee, the General Manager shall—
- (a) send a copy of that report and the Health Board's decision thereon and their reasons for it—
 - (i) in the case of a complaint made in accordance with regulation 3, to the complainer;
 - (ii) to the professional person concerned;
 - (iii) to the Secretary of State; and
 - (iv) if so requested by the complainer or the professional person concerned, to any patient concerned in the report, if that patient is not the complainer, and to any adviser to the complainer or professional person;
 - (b) where applicable, inform in writing the complainer or the professional person concerned of his right of appeal to the Secretary of State under regulation 12 and of the power of the Secretary of State on such an appeal to award expenses.
- (6) Any amount determined under paragraph (4)(a) as being recoverable shall—
- (a) be a debt owing by the professional person concerned to the Health Board making the determination; and
 - (b) be recoverable from that professional person whether or not his name has, since—
 - (i) the event; or
 - (ii) where regulation 3(3)(b) or 8(4)(b) applies, the completion of the treatment, which gave rise to the determination that he has failed to comply with his terms of service, ceased to be included in the relevant list of professional persons.
- (7) Where a Health Board make a determination under paragraph (4)(a), no action shall be taken on that determination before—
- (a) if no appeal is brought, the end of the period for bringing an appeal specified in regulation 12(2); or
 - (b) if an appeal is brought, they have received the notice of the Secretary of State's decision of the appeal.

Appeal to Secretary of State from decision of Health Board

12.—(1) An appeal may be made to the Secretary of State—

- (a) by a complainer or a professional person, against a determination by a Health Board under regulation 11(1)(c) which is adverse to him; or

- (b) by a professional person, against any determination by a Health Board under regulation 11(1)(d)(i) to take action in accordance with any one or more of paragraphs (2) or (4)(a) or (c) of regulation 11; or
- (c) by a complainer who has asserted to the Health Board that, by reason of the failure by the professional person concerned to comply with his terms of service, he has incurred or is likely to incur any such expenses as might be the subject of a determination under regulation 11(4)(a), against a determination by the Health Board under regulation 11(1)(d)(i) which is adverse to him in that respect.

(2) A notice of an appeal under this regulation shall be sent in writing to the Secretary of State within a period of 4 weeks beginning on the day after the date on which notification of the Health Board's decision was sent to the appellant and shall contain a concise statement of facts and the grounds of appeal upon which the appellant intends to rely.

(3) Where a Health Board have made a recommendation in terms of regulation 11(4)(b), a professional person may, in lieu of exercising his right of appeal under paragraph (1), within a period of 4 weeks beginning on the day after the date on which notification of the decision of the Health Board was sent to him, make representations to the Secretary of State against such a recommendation.

(4) Subject to paragraph (5), the Secretary of State may, on application by a person desiring to appeal under paragraph (1) or to make representations under paragraph (3), extend the time for sending the notice of appeal or, as the case may be, making representations.

(5) An application under paragraph (4) may be made before or after the expiration of the period of 4 weeks mentioned in paragraphs (2) and (3) and shall—

- (a) be made in writing to the Secretary of State; and
- (b) state the grounds upon which it is made.

(6) Where, pursuant to regulation 11(4)(e), a Health Board have made representations to the Tribunal following their consideration of a report of a service committee, the Secretary of State may, for the purpose of any appeal under paragraph (1)(a), treat as conclusive any relevant finding of fact of the Tribunal.

Procedure on appeal to Secretary of State

13.—(1) Subject to paragraph (2), if the Secretary of State, after considering the notice of appeal sent pursuant to regulation 12(2), is of the opinion that—

- (a) the notice of appeal discloses no reasonable grounds of appeal; or
- (b) the appeal is otherwise trivial or vexatious,

he may determine the appeal by dismissing it forthwith.

(2) Paragraph (1) shall not apply to an appeal by a professional person against a decision by a Health Board in which they have determined to take action under paragraph (2) or (4)(a), (b) or (c) of regulation 11.

(3) The Secretary of State shall, unless he dismisses the appeal under paragraph (1), send a copy of the notice of appeal—

- (a) to the other person who was a party to the proceedings before the service committee (in this regulation being referred to as “the respondent”); and
- (b) to the Health Board.

(4) The respondent and the Health Board may, within 4 weeks from the date of receipt of the copy of the notice of appeal sent pursuant to paragraph (3), submit a statement-in-answer to the Secretary of State.

(5) The Secretary of State shall send a copy of any statement-in-answer submitted pursuant to paragraph (4) to each of—

- (a) the appellant; and
- (b) the Health Board or the respondent, as the case may be,

and shall inform them that they may, within 4 weeks from the date of receipt of that copy, submit written comments thereon to the Secretary of State.

(6) The Secretary of State shall send to the Health Board a copy of any written comments submitted pursuant to paragraph (5) by the appellant or the respondent and inform the Health Board that they may, within 4 weeks from the date of receipt of the copy of such comments, submit any further written comments which they may wish to make.

(7) Where—

- (a) after the expiry of the periods specified in paragraphs (4), (5) and (6), or the last of such periods as is applicable in the circumstances; and
- (b) after due consideration of the notice of appeal and any statement-in-answer and written comments submitted,

the Secretary of State is of the opinion that the appeal is of such a nature that it can properly be determined without a hearing, he may dispense with a hearing and determine the appeal summarily.

(8) Where the Secretary of State decides that a hearing should be held he shall—

- (a) fix a time and place for the hearing;
- (b) give not less than 2 weeks' notice thereof to the appellant, the respondent and the Health Board; and
- (c) inform those persons that they may attend the hearing and take such part in the proceedings as the persons holding the hearing think proper.

(9) Subject to paragraph (10), for the purposes of a hearing, the Secretary of State shall appoint—

- (a) either 2 or 3 persons, whether officers of the Secretary of State or not, to hold the hearing (such persons being referred to in this regulation and in regulation 14 as the reporters); and
- (b) a person to act as clerk to the reporters.

(10) At least one of the reporters shall—

- (a) where the professional person concerned in the appeal is a doctor or a dentist, be a doctor or a dentist respectively selected by the Secretary of State from the panels of doctors and dentists referred to in paragraphs (6) and (10) of regulation 15;
- (b) where the professional person concerned in the appeal is an ophthalmic medical practitioner, an optician or a pharmacist, be a member of the same category of professional person as that professional person.

(11) At any hearing of an appeal—

- (a) the appellant and the respondent shall be entitled to attend and take part in the proceedings in person or be represented by any one of the following persons:—
 - (i) counsel;
 - (ii) a solicitor;
 - (iii) an officer or member of any organisation of which he is a member;
 - (iv) a member of his family;
 - (v) a friend;
- (b) the Health Board shall be entitled to take part in the proceedings and be represented by a member, their General Manager, or by counsel or solicitor.

(12) After the hearing, the reporters shall draw up a report and present it to the Secretary of State, who shall, after due consideration of the report, determine the appeal.

(13) After the Secretary of State determines an appeal pursuant to paragraph (1), (7) or (12), he shall notify the complainer, the professional person concerned and the Health Board of his decision, which shall be final and conclusive, and the reasons for it.

(14) An appellant may withdraw his appeal at any time before it is determined—

- (a) by giving written notice to the Secretary of State of his intention to do so; and
- (b) with the consent of the Secretary of State.

Provisions as to a hearing

14.—(1) The provisions of the following paragraphs of this regulation shall apply in respect of any hearing held in relation to an appeal which the Secretary of State decides pursuant to regulation 13(8) shall be held.

(2) A hearing shall be in private and no person shall be admitted other than—

- (a) the reporters and the clerk;
- (b) those persons mentioned in regulation 13(11);
- (c) such other persons who appear to the reporters to have an interest;
- (d) a member of the Council on Tribunals or of the Scottish Committee thereof when acting in that capacity.

(3) Subject to paragraph (4) below, no person who in terms of regulation 13(11) is entitled to attend and take part in a hearing shall, except with the consent of the reporters, be entitled to introduce new evidence or make new contentions in relation to the subject matter of the appeal at the hearing which do not appear to the reporters to have been raised before the service committee in the course of the proceedings in respect of which the appeal is made.

(4) A person who in terms of regulation 13(11) is entitled to attend and take part in a hearing may introduce new evidence or make new contentions in relation to the subject matter of the appeal at the hearing if he gives not less than 1 week's notice in writing prior to the date of the hearing to the Secretary of State or to the reporters of the nature of the new evidence or contentions which he intends to introduce or make and submits copies of any relevant documents in support of the same.

(5) Where a person gives notice in terms of paragraph (4), the Secretary of State or the reporters shall send copies of the notice and any documents submitted with it to the other persons to whom notice of the hearing has been given pursuant to regulation 13(8).

(6) The Health Board—

- (a) may, with the consent of the Secretary of State, make such contribution as they think fit; or
- (b) shall, if directed by the Secretary of State to do so, make such contribution as he may determine,

towards the expenses incurred in the appeal by any person present at the hearing.

(7) The provisions of Schedule 2 shall have effect with regard to the hearing of an appeal.

Procedure on recovery of sums by withholding remuneration or otherwise

15.—(1) Subject to paragraph (2), if the Secretary of State is satisfied—

(a) after considering—

- (i) where neither an appeal has been made under regulation 12(1) nor representations made under regulation 12(3) within the period specified in regulation 12(2) or (3), any report of a service committee and decision of the Health Board thereon sent

pursuant to regulation 11(5)(a) to the effect that the professional person concerned has failed to comply with his terms of service;

(ii) whether in the course of an appeal to him under regulation 12(1)(a) or (b) which he determines without a hearing or in connection with representations made to him under regulation 12(3), any report of a service committee and decision of the Health Board thereon to the effect that the professional person concerned has failed to comply with his terms of service;

(iii) a report under regulation 13(12) of the reporters holding a hearing (if any); or

(iv) a statement of the Tribunal after any inquiry under Part III of these Regulations, that a professional person to whom the report or statement relates has failed to comply with his terms of service;

(b) after considering any report of a medical officer that a doctor has failed to comply with paragraph 19 of his terms of service; or

(c) after considering any report of a dental officer that a dentist has failed to keep records as required by paragraph 23 of his terms of service,

he may, subject to the following provisions of this regulation, direct the Health Board to recover such amount as he thinks fit either by deduction from the remuneration of the professional person or otherwise and such sum shall be a debt due by the professional person to the Health Board.

(2) The Secretary of State shall not make a direction under paragraph (1) where the Health Board concerned have made a determination—

(a) under regulation 11(1)(d)(iii); or

(b) under regulation 11(4)(d),

and no appeal has been made under regulation 12(1)(a) within the period specified in regulation 12(2).

(3) Subject to paragraph (4), before making a direction under paragraph (1), the Secretary of State shall notify the professional person concerned -

(a) that the Secretary of State is considering making a direction under paragraph (1); and

(b) that the professional person concerned may make written representations on the matter by submitting them to the Secretary of State within 4 weeks from the date of receipt of the notification.

(4) Paragraph (3) shall not apply in a case where the professional person exercised the right to make representations under regulation 12(3).

(5) The Secretary of State shall constitute a medical advisory committee for the purpose of assisting him in the discharge of his duties under paragraph (1) in relation to doctors.

(6) The medical advisory committee shall consist of 2 medical practitioners of whom—

(a) 1 shall be in the service of the Secretary of State and who shall act as chairman; and

(b) 1 shall be selected by the Secretary of State from a panel of doctors nominated by a body which is in his opinion representative of doctors.

(7) Before making a direction under paragraph (1) in respect of a doctor, the Secretary of State—

(a) shall, where the failure to comply with the doctor's terms of service is of a kind specified in paragraph (8); or

(b) may, in the case of any other failure to comply with those terms of service,

refer the matter to the medical advisory committee and shall consider the report which they make to him thereon.

(8) The following kinds of failure to comply with terms of service applicable to doctors are specified in this paragraph:—

- (a) failure to exercise reasonable skill and care in the treatment of a patient;
- (b) failure to visit or treat a patient whose condition so requires;
- (c) failure to order or supply any necessary drug or appliance for the use of a patient; or
- (d) failure to discharge the obligations imposed on a doctor to give a patient the requisite assistance to enable him to obtain any treatment which is not within the scope of the doctor's obligations under the terms of service.

(9) The Secretary of State shall constitute a dental advisory committee for the purpose of assisting him in the discharge of his duties under paragraph (1) in relation to dentists.

(10) The dental advisory committee shall consist of 2 dental practitioners of whom—

- (a) 1 shall be in the service of the Secretary of State and who shall act as chairman; and
- (b) 1 shall be selected by the Secretary of State from a panel of dentists nominated by a body which is in his opinion representative of dentists.

(11) Before making a direction under paragraph (1) in respect of a dentist, the Secretary of State—

- (a) shall, where the failure to comply with the dentist's terms of service consists of failure to employ a proper degree of skill and attention in the dental treatment of a patient; or
- (b) may, in the case of any other failure to comply with those terms of service,

refer the matter to the dental advisory committee and shall consider the report which they make to him thereon.

(12) Any amount which a Health Board are directed under paragraph (1) to recover from a professional person shall—

- (a) be a debt owing by the professional person concerned to the Health Board to whom the direction is given; and
- (b) be recoverable from that professional person whether or not his name has, since—
 - (i) the event; or
 - (ii) where regulation 3(3)(b) or 8(4)(b) applies, the completion of the treatment, which gave rise to the determination that he has failed to comply with his terms of service, ceased to be included in the relevant list of professional persons.

Investigation of apparently excessive prescribing by doctors

16.—(1) An area medical committee shall from time to time investigate the character and quantity of the drugs and listed appliances ordered or supplied by doctors for persons for whose treatment the doctor is responsible under paragraph 4 of his terms of service.

(2) Where, after investigation under paragraph (1), the area medical committee are of the opinion, by reason of the character or quantity of the drugs or listed appliances ordered or supplied by a doctor for his patient, that the cost of such drugs or listed appliances is in excess of what was reasonably necessary for the adequate treatment of that patient, they shall make a report to the Health Board in accordance with paragraphs (3) and (4).

(3) Where an area medical committee intend to make a report in circumstances as mentioned in paragraph (2), they shall—

- (a) furnish the doctor concerned with a statement indicating the grounds upon which they propose to make a report; and
- (b) inform the doctor that he may either—

- (i) submit to the committee a written statement-in-answer; or
- (ii) appear before the committee in person for the purpose of being heard in relation to the statement furnished by the committee.

(4) After due consideration of any statement-in-answer submitted or oral representations made by a doctor pursuant to paragraph (3), an area medical committee shall prepare and submit to the relevant Health Board a report on the matter which shall—

- (a) state fully the facts of the case as ascertained by the committee;
- (b) state whether the committee are of the opinion and, if so, on what grounds, that the cost of drugs or listed appliances is in excess of what was reasonably necessary for the adequate treatment of the doctor's patient; and
- (c) if the committee are of the opinion as mentioned in sub-paragraph (b), contain a recommendation as to the sum, if any, which, in their opinion, might properly be recovered from the doctor.

(5) If, at any time, it appears to a Health Board that the area medical committee have delayed or failed to carry out their duties under paragraphs (1) to (4), the Health Board may, after giving not less than 2 weeks' prior notice in writing to the area medical committee, appoint some fit and proper person or persons not exceeding 2 in number for the purpose of holding an investigation for the same purposes as mentioned in paragraph (1) in relation to an area medical committee.

(6) For the purposes of an investigation held pursuant to paragraph (5), the person or persons appointed to hold it shall—

- (a) have the same powers and duties as are conferred and imposed on an area medical committee by paragraphs (2) to (4); and
- (b) be entitled to require the relevant area medical committee to furnish him or them, as the case may be, with any statistical or other information which is available to that committee and is relevant to the investigation.

(7) The person or persons appointed by the Health Board under paragraph (5) shall, following the investigation, prepare a report for submission to the Health Board and on receipt of that report the Health Board shall refer it to the medical service committee for consideration and for submission to the Health Board of a recommendation as to the action to be taken.

(8) After due consideration of a report submitted to them pursuant to paragraph (4) or (7), and any recommendation by the medical service committee pursuant to paragraph (7), a Health Board—

- (a) shall determine whether the cost of the drugs or listed appliances ordered or supplied by the doctor to whom the report relates is in excess of what was reasonably necessary for the adequate treatment of the patient concerned; and
- (b) may, where they have determined that the cost of such drugs or listed appliances is excessive, recover from the doctor concerned, whether by deduction from his remuneration or otherwise, such sum as they think fit.

(9) As soon as may be practicable after a Health Board have made their decision on the report of the area medical committee or other person or persons, the General Manager shall—

- (a) send a copy of that report and of the Health Board's decision thereon to the doctor to whom it relates and to the Secretary of State;
- (b) send a copy of their decision to the area medical committee; and
- (c) where applicable, inform in writing the doctor and the area medical committee concerned of their right of appeal to the Secretary of State under regulation 17 and of the power of the Secretary of State in such an appeal to award expenses.

(10) Where it appears to the Secretary of State that there has been—

- (a) delay or failure by an area medical committee to carry out fully their duties under paragraphs (1) to (4); and
- (b) a failure by the relevant Health Board to appoint a person or persons in pursuance of paragraph (5) to carry out an investigation in accordance with that paragraph,

he may appoint a person or persons, not exceeding 2 in number, for the purpose of holding an investigation for the same purposes as mentioned in paragraph (1) in relation to an area medical committee.

(11) The person or persons appointed by the Secretary of State under paragraph (10) shall hold an investigation and thereafter make a report to the Secretary of State.

(12) For the purposes of an investigation under paragraph (11), the person or persons appointed shall—

- (a) have the same powers and duties as are conferred and imposed on an area medical committee by paragraphs (2) to (4); and
- (b) be entitled to require the area medical committee and Health Board to furnish him or them, as the case may be, with any statistical or other information which is available to that committee or Health Board and is relevant to the investigation.

(13) After due consideration of a report submitted to him pursuant to paragraph (11), the Secretary of State—

- (a) shall determine whether the cost of the drugs or listed appliances ordered or supplied by the doctor to whom the report relates is in excess of what was reasonably necessary for the adequate treatment of the patient concerned; and
- (b) may, where he has determined that the cost of such drugs or listed appliances is excessive, direct the Health Board on whose medical list the name of that doctor is included, whether by deduction from his remuneration or otherwise, to recover such sum as the Secretary of State thinks fit,

and the Secretary of State's decision under this paragraph shall be final and conclusive.

Appeal on prescribing

17.—(1) Subject to paragraph (2), an appeal may be made to the Secretary of State—

- (a) by a doctor against a decision of a Health Board under regulation 16(8) which is adverse to him; or
- (b) by an area medical committee against a decision of a Health Board under regulation 16(8) which does not give effect to their recommendation,

by sending notice of appeal in writing to the Secretary of State within 4 weeks from the date on which notification of the Health Board's decision was received by him.

(2) Subject to paragraph (3), the Secretary of State may entertain an appeal under paragraph (1), notwithstanding that the notice of appeal is received after the expiry of the period mentioned in paragraph (1), where he is satisfied that by reason of exceptional circumstances it is expedient to do so.

(3) Where the Secretary of State receives a notice of appeal after the expiry of the period mentioned in paragraph (1), before deciding whether to entertain the appeal pursuant to paragraph (2) he shall—

- (a) send a copy of the notice of appeal to the doctor or area medical committee concerned who is not the appellant; and
- (b) inform that person or committee that he or they, as the case may be, may submit to the Secretary of State written representations why the appeal should not be entertained.

(4) The appellant shall submit within such period as the Secretary of State may allow a concise statement of the facts and contentions upon which he intends to rely.

(5) Where a notice of appeal is sent pursuant to paragraph (1), or where the Secretary of State decides to entertain a notice of appeal pursuant to paragraph (2), the Secretary of State shall—

- (a) send a copy of the notice of appeal and of the statement submitted by the appellant to—
 - (i) the Health Board concerned;
 - (ii) the doctor or area medical committee concerned who is not the appellant;
- (b) inform the Health Board and that person or committee that they or he may submit a statement-in-answer to the Secretary of State,

and where a statement-in-answer is received by the Secretary of State in accordance with this paragraph he shall send a copy of it to the appellant and to the other party concerned who is not the appellant.

(6) After due consideration of a notice of appeal and any statement-in-answer relating to it, the Secretary of State—

- (a) may, in the case of an appeal—
 - (i) by an area medical committee; or
 - (ii) by a doctor where that doctor does not desire that a hearing be held, dispense with a hearing and determine the appeal summarily if he is of the opinion that the appeal is of such a nature that it can properly be determined without a hearing; or
- (b) unless he determines the appeal pursuant to sub-paragraph (a), shall—
 - (i) fix a time and place for a hearing;
 - (ii) give not less than 2 weeks' notice thereof to the appellant, the Health Board and the other party concerned who is not the appellant; and
 - (iii) inform those persons that they may attend the hearing and take part in the proceedings as the person or persons holding the hearing think proper.

(7) For the purposes of a hearing, the Secretary of State shall appoint—

- (a) a person or persons, not exceeding 3 in number, and whether an officer or officers of the Secretary of State or not, to hold the hearing; and
- (b) a person to act as clerk.

(8) As soon as may be practicable after a hearing, the person or persons holding the hearing shall draw up a report and present it to the Secretary of State who shall, after considering the report, determine the appeal.

(9) After the Secretary of State determines an appeal pursuant to paragraph (6) or (8), he shall notify the appellant, the Health Board and the other party concerned who is not the appellant of his decision, which shall be final and conclusive, and the reasons for it.

(10) The provisions of regulations 13(11) and 14 shall, subject to any necessary modifications, apply to an appeal under this regulation as if it were an appeal under regulation 12.

Determination whether a fee may be charged by a doctor

18.—(1) Subject to paragraph (2), the following provisions of this regulation shall apply to the determination of any question arising, either in the course of any investigation by a medical service committee or otherwise, as to whether any treatment by a doctor given to a person for whose treatment the doctor is responsible under paragraph 4 of his terms of service is treatment for which he may demand or accept a fee or remuneration under those terms of service.

(2) This regulation shall not apply to a question—

- (a) which arises in relation to paragraph 20(1)(a) or (e) of his terms of service; or
 - (b) whether a certificate is reasonably required by a person for whose treatment a doctor is responsible under paragraph 4 of the doctor's terms of service under or for the purposes of any enactment.
- (3) Where, in relation to treatment given by a doctor, a question to which this regulation applies arises, the matter shall be referred by the Health Board concerned to the area medical committee for determination.
- (4) An area medical committee to whom a matter has been referred under paragraph (3) shall—
- (a) send to the doctor to whom the matter relates a written statement indicating the nature of the matter referred to the committee for determination;
 - (b) inform the doctor that he may—
 - (i) submit to the committee, within 4 weeks from the date of receipt of the statement sent under sub-paragraph (a), a statement-in-answer; or
 - (ii) appear in person before the committee for the purpose of making representations.
- (5) An area medical committee shall—
- (a) where the doctor submits a statement-in-answer, send a copy of it to the Health Board concerned and inform them that they may submit to the committee, within 4 weeks from the date of receipt of the copy of such statement, written representations;
 - (b) where the doctor wishes to appear before and is heard by the committee, allow representatives of the Health Board concerned to appear before the committee for the purpose of making representations.
- (6) Where, pursuant to paragraph (5), the Health Board concerned submit written representations, the area medical committee shall send a copy of them to the doctor concerned.
- (7) After due consideration of any statement-in-answer or representations made pursuant to paragraph (4) or (5), an area medical committee shall determine the question referred and shall inform the doctor and the Health Board concerned and also the Secretary of State of their determination by sending to each of them a copy of it.
- (8) Where in relation to a determination of an area medical committee under paragraph (7)—
- (a) the Health Board concerned notifies the Secretary of State within 4 weeks from the date on which they receive notification of the determination that they disagree with it, the Secretary of State shall; or
 - (b) the Health Board concerned are satisfied with the determination but the Secretary of State decides to do so, the Secretary of State may,
- refer the question for determination by 3 referees appointed under this paragraph, of whom 2 shall be doctors (not being officers of the Secretary of State), and 1 shall be a practising advocate or solicitor.
- (9) The rules of procedure set out in Schedule 3 shall apply to the procedure in relation to a question referred to them pursuant to paragraph (8) and of the decision of the referees in relation to it.

Determination whether a substance is a drug and recovery of cost

19.—(1) The provisions of this regulation shall apply to the determination of any question arising as to whether a substance supplied by a doctor, or by a pharmacist on the prescription of a doctor, was a drug for the purposes of pharmaceutical services.

(2) If a Health Board are of the opinion that any substance supplied by a doctor or a pharmacist on the prescription of a doctor was not a drug for the purposes of pharmaceutical services, they shall—

- (a) notify the doctor in writing of their opinion; and

(b) inform him that he may, within 1 week from the date of receipt of such notice, require the Health Board to refer the question for determination under this regulation.

(3) Any question to which this regulation applies—

(a) shall, if the doctor concerned so requires pursuant to paragraph (2); or

(b) may, in any other case in which a Health Board think fit,

be referred by the Health Board concerned to the area medical committee for determination.

(4) Where a question is referred to an area medical committee pursuant to paragraph (3), the Health Board concerned shall inform the area pharmaceutical committee of the referral.

(5) As soon as may be practicable after a question is referred to an area medical committee, that committee shall—

(a) send to the doctor to whom the question relates a written statement indicating the nature of the question referred;

(b) inform the doctor that he may—

(i) submit to the committee a statement-in-answer; or

(ii) appear in person before the committee for the purposes of making representations.

(6) An area medical committee shall, where the doctor wishes to appear before and is heard by the committee, allow representatives of the Health Board concerned to appear before the committee for the purpose of making representations.

(7) After due consideration of any statement-in-answer or representations, whether made in writing or orally, made pursuant to paragraph (5) or (6), an area medical committee shall determine the question referred and shall inform the doctor and the Health Board concerned and also the Secretary of State of their determination by sending them a copy of it.

(8) Where in relation to a determination made by an area medical committee under paragraph (7)

(a) the doctor concerned notifies the Secretary of State within 4 weeks from the date on which he receives notification of the determination that he is dissatisfied with the determination;

(b) the Health Board concerned notify the Secretary of State within 4 weeks from the date on which they receive notification of the determination that they are dissatisfied with the determination; or

(c) whether or not the doctor or the Health Board concerned notify him under subparagraph (a) or (b), the Secretary of State is dissatisfied with the determination,

the Secretary of State shall refer the question for determination by a referee or referees not exceeding 3 in number.

(9) For the purposes of paragraph (8), the referee or referees appointed shall not be an officer or officers of the Secretary of State and—

(a) where 1 referee only is appointed, he shall be a doctor; and

(b) where more than 1 referee is appointed, at least 1 shall be a doctor.

(10) Where in relation to a question to which this regulation applies there is a determination—

(a) by an area medical committee pursuant to paragraph (7); or

(b) by a referee or referees pursuant to paragraph (8),

that a substance concerned was not a drug for the purposes of pharmaceutical services, the Health Board concerned shall, in respect of that substance, recover from the doctor concerned a sum calculated in accordance with paragraph (11).

(11) For the purposes of paragraph (10), the sum to be recovered by a Health Board shall be—

- (a) where the substance concerned was an ingredient in a preparation of which other ingredients were drugs for the purposes of pharmaceutical services, the cost of that substance calculated in accordance with sub-paragraph (b) together with half the amount of the dispensing fee payable in respect of the supply of the preparation; or
- (b) in other cases, a sum calculated in accordance with the method set forth in the drug tariff for calculating the payment for drugs and preparations not specified therein.

Appeals from decisions of Scottish Dental Practice Board

20.—(1) This regulation applies to appeals which are permitted by paragraph (2) against decisions of the Scottish Dental Practice Board (in this regulation being referred to as “the Practice Board”).

(2) Subject to paragraph (3), an appeal may be made to a Health Board in whose dental list the name of the dentist concerned is included—

- (a) by any person aggrieved by a decision of the Practice Board concerning the treatment or intended treatment by the dentist concerned of a patient; or
- (b) by any dentist aggrieved by a decision of the Practice Board—
 - (i) concerning fees in respect of his provision or intended provision of general dental services; or
 - (ii) under regulation 12A of the General Dental Services Regulations (prior approval — patterns of treatment)(9).

(3) Where the name of the dentist concerned in any appeal under paragraph (2) is included in the dental list of more than one Health Board, the appeal may be made—

- (a) in the case of an appeal under paragraph (2)(a), to the Health Board in whose area the treatment or intended treatment of the patient is or would be provided;
- (b) in the case of an appeal by a dentist under paragraph (2)(b)(i), to the Health Board in whose area the treatment or intended treatment of the patient is or would be provided;
- (c) in the case of an appeal by a dentist under paragraph (2)(b)(ii)—
 - (i) in which the decision of the Practice Board under regulation 12A of the General Dental Services Regulations was based on their opinion that the dentist’s pattern of treatment in question differed substantially from the local pattern of treatment of other dentists, to the Health Board in whose area the pattern of treatment of other dentists has been the subject of comparison; or
 - (ii) in which the decision of the Practice Board under regulation 12A of the General Dental Services Regulations was based on their opinion that the dentist’s pattern of treatment in question differed substantially from the pattern of treatment of other dentists throughout Scotland, to any of the Health Boards in whose dental list the dentist’s name is included.

(4) For the purposes of this regulation, the parties to an appeal are the Practice Board and the appellant, being the aggrieved person or dentist as the case may be.

(5) Notice of appeal shall—

- (a) be given to the Health Board in writing;
- (b) except where the Health Board are satisfied that the lateness of the appeal is due to illness or other reasonable cause, be given within 4 weeks from the date on which the appellant received notice of the decision of the Practice Board;
- (c) state the date on which the appellant was informed of that decision; and

(9) 1974/505; regulation 12A was inserted by S.I. 1990/1772 and amended by S.I. 1992/16.

- (d) contain a concise statement of the facts and contentions upon which it is intended to rely.
- (6) The Health Board shall, within 4 weeks from the date of receipt of the notice of appeal, request from the Practice Board a written statement of the reasons for their decision and the Practice Board shall, within 4 weeks from the date of receipt of that request, send such a statement to the Health Board.
- (7) Subject to paragraph (8), the Health Board shall consider the notice of appeal and the statement of the Practice Board and—
- (a) where the appeal is against a refusal of the Practice Board to approve an estimate or a claim for remuneration on the ground that the services to which the estimate or claim relate cannot be provided as part of general dental services, they shall refer the notice of appeal and the Practice Board's statement to the Secretary of State, and on referring the appeal the Health Board shall inform the parties of the referral;
 - (b) where in an appeal by a dentist against a decision of the Practice Board concerning fees, the Practice Board certifies in its statement that it authorised those fees and that they were fees or maximum fees prescribed by Determination I of the Statement of Dental Remuneration published by the Secretary of State under regulation 26 of the General Dental Services Regulations (statement of dental remuneration) for the services provided or to be provided, the Health Board shall dismiss the appeal forthwith unless they are of the opinion that it involves a dispute as to the item or sub-item of treatment in that Determination applicable to those services;
 - (c) except where an appeal is dismissed or referred in accordance with the preceding provisions of this paragraph, the Health Board shall, within 4 weeks from the date of receipt of the Practice Board's statement, appoint—
 - (i) where the appeal is made under paragraph (2)(b)(ii), 3 dentists;
 - (ii) in an appeal under paragraph (2)(a) or (b)(i), 2 dentists,as referees to determine the appeal, one of whom they shall select from a panel of dental practitioners who are or have been engaged in the provision of general dental services and who is nominated by the area dental committee, failing which the area dental committee for the area of another Health Board.
- (8) Where, after considering the notice of appeal and the statement of the Practice Board, the Health Board are of the opinion that the notice of appeal discloses no reasonable grounds of appeal or that the appeal is otherwise trivial or vexatious, the Health Board shall—
- (a) consult with the area dental committee; and
 - (b) following such consultation, either—
 - (i) determine the appeal by dismissing it forthwith; or
 - (ii) if the Health Board consider it desirable to do so, appoint referees in terms of paragraph (7)(c) to determine the appeal.
- (9) Where the Health Board dismiss an appeal pursuant to paragraph (7) or (8), they shall—
- (a) inform the parties of their decision by sending them a copy of it together with their reasons for it; and
 - (b) in the case of a dismissal under paragraph (7)(b), send to the appellant a copy of the Practice Board's statement.
- (10) Where an appeal is referred to the Secretary of State pursuant to paragraph (7)(a), the Secretary of State shall—
- (a) determine the appeal in such manner as he thinks fit; and

- (b) as soon as may be practicable after he has determined the appeal, which shall be final and conclusive, inform the parties and the Health Board of his decision by sending them a copy of it together with his reasons for it.
- (11) Where, pursuant to paragraph (7)(c), the Health Board appoint referees to determine the appeal, the Health Board shall—
- (a) at least 2 weeks before the hearing (or within such shorter period as the parties may agree), give written notice to the parties of the date, time and place of the hearing and of the names of the referees;
- (b) at least 7 days before the hearing (or within such shorter period as the parties may agree), provide—
- (i) the referees and the appellant with a copy of the Practice Board’s statement; and
- (ii) the referees and the Practice Board with a copy of the notice of appeal.
- (12) Where the parties to an appeal, to whom notice of a hearing has been sent pursuant to paragraph (11), notify the Health Board in writing prior to the date of the hearing, that they do not intend to make oral representations at a hearing—
- (a) the Health Board shall inform the referees forthwith; and
- (b) the referees shall thereafter determine the appeal without holding a hearing.
- (13) Subject to paragraph (14), if in the course of a hearing a party introduces any issue which in the opinion of the referees was not sufficiently disclosed in the notice of appeal by the appellant or statement by the Practice Board, the referees may as they think fit admit such issue.
- (14) Where the referees intend to admit an issue pursuant to paragraph (13), the hearing shall be adjourned for such period as the referees consider necessary unless the other party requests that the hearing should proceed and the referees agree to do so.
- (15) As soon as may be practicable after—
- (a) receiving notification under paragraph (12) that a hearing is not necessary; or
- (b) a hearing has been held,
- the referees shall determine the appeal and notify the Health Board in writing of their decision, which shall be final and conclusive, and their reasons for it.
- (16) After the Health Board receive notice of the referees' decision pursuant to paragraph (15), they shall, within 2 weeks from the date of receipt of that notice, send a copy of it to each of the parties.

PART III

INQUIRIES BY, AND APPEALS FROM, THE TRIBUNAL

Interpretation and forms

21.—(1) In this Part of these Regulations, unless the context otherwise requires—

“application” means an application made to the Tribunal or the Secretary of State by a professional person for a direction under section 30 of the Act that he should no longer be disqualified for inclusion in any list to which a direction under section 29 of the Act relates and which remains in effect in his case, and “applicant” shall be construed accordingly;

“complainer” means a Health Board or any other person who makes a representation to the Tribunal;

“document” includes, in addition to a document in writing—

- (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 aforesaid) of being reproduced therefrom;

“inquiry” means an inquiry held in accordance with the provisions of this Part of these Regulations;

“representation” means a representation made to the Tribunal that the continued inclusion of any professional person in any list of professional persons applicable to him would be prejudicial to the efficiency of the services in question;

“respondent” means—

- (a) in the case of a representation, any professional person in respect of whom a representation is made; and
- (b) in the case of an application, the complainer in respect of whose representation the direction to which the application relates was made.

(2) The forms set out in Schedule 4, 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 this Part of these Regulations and a reference to a numbered form is a reference to the form of that number set out in Schedule 4.

Term of office of members of the Tribunal

22. The chairman of the Tribunal shall hold office during the pleasure of the Lord President of the Court of Session and the other members shall hold office during the pleasure of the Secretary of State.

Officers of the Tribunal

23. The chairman of the Tribunal shall appoint a person approved by the Secretary of State to act as clerk to the Tribunal and shall also appoint such other officers of the Tribunal as may be necessary.

Submission of a representation

24.—(1) Subject to paragraph (2), a representation shall—

- (a) be made in terms of Form 1 and shall—
 - (i) contain a concise statement of the alleged facts and grounds upon which the complainer intends to rely;
 - (ii) be signed by the complainer or on his behalf by some person authorised by him;
- (b) be accompanied by 2 copies of each document which the complainer proposes to put in evidence;
- (c) be sent together with the copies of the documents relevant to it to the clerk to the Tribunal.

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

Power to require verification of representation

25. The Tribunal may, if they think fit, require a complainer—
- (a) to furnish such further particulars relating to the facts and grounds upon which a representation is made as they may think necessary; and
 - (b) where a fact is not within the personal knowledge of the complainer, to state the source of his information and the grounds for his belief in its truth; and
 - (c) to verify the allegations contained in the representation by affidavit.

Power of the Tribunal to refuse an inquiry

26. If it appears to the Tribunal, after due consideration of a representation by any complainer other than a Health Board, that no good cause has been shown why an inquiry should be held, they may refuse to hold an inquiry and shall inform the complainer accordingly.

Notices to be sent to respondent and any other Health Board in case of an inquiry

27.—(1) The Tribunal shall, unless it refuses to hold an inquiry in terms of regulation 26, send to the respondent—

- (a) a notice in terms of Form 2 informing him that a representation has been made in respect of him and that he may, within 4 weeks from the date of receipt of the notice, submit to the clerk to the Tribunal a written statement-in-answer in accordance with regulation 29(1);
- (b) 1 copy of the representation made by the complainer and of each document, if any, which accompanied it.

(2) The clerk to the Tribunal shall, unless the Tribunal refuse to hold an inquiry in terms of regulation 26, send to each Health Board, not being the complainer but in whose list of professional persons the name of the respondent is included, at the same time as he sends a notice to the respondent in terms of paragraph (1)—

- (a) a notice in terms of Form 3 informing them that a representation has been made in respect of the respondent and that they may, within 4 weeks from the date of receipt of the notice, submit to the clerk to the Tribunal a written statement in accordance with regulation 29(2);
- (b) 1 copy of the representation made by the complainer and of each document, if any, which accompanied it.

(3) The Tribunal may, if they think fit, accept—

- (a) a statement-in-answer by the respondent; or
- (b) a statement by any other Health Board concerned,

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

Amendment of representation

28. The Tribunal may, at any time before the conclusion of any inquiry, allow a complainer to amend the terms of his representation upon such conditions as they may think fit.

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

29.—(1) Where, pursuant to regulation 27(1), a respondent submits a statement-in-answer, he shall send to the clerk to the Tribunal with the statement-in-answer 2 copies of each document which he proposes to put in evidence.

(2) Where, pursuant to regulation 27(2), any other Health Board concerned submits a statement, they shall send to the clerk to the Tribunal with the statement 2 copies of each document which they propose to put in evidence.

(3) As soon as may be practicable following receipt of—

- (a) statement-in-answer and copies of documents in terms of paragraph (1); and
- (b) where applicable, a statement by any other Health Board concerned and copies of documents in terms of paragraph (2),

the clerk to the Tribunal shall send to the complainer a copy of each of any such statement or document.

(4) Where, pursuant to regulation 27(2), any other Health Board concerned has submitted a statement, the clerk to the Tribunal shall also send to the respondent and each of the other such Health Boards, if any, a copy of the statement submitted by that Health Board together with a copy of each of the documents, if any, which accompanied it.

Notice of inquiry

30. After the expiry of the period within which a respondent may submit a statement-in-answer pursuant to regulation 27(1) or any other Health Board concerned may submit a statement pursuant to regulation 27(2), the clerk to the Tribunal shall—

- (a) fix a date and time at which an inquiry shall commence and the place where it will be held; and
- (b) not less than 2 weeks before the date fixed for the inquiry to commence, send a notice in terms of Form 4 containing that information to -
 - (i) the complainer;
 - (ii) the respondent; and
 - (iii) any other Health Board to whom a notice in terms of Form 3 has been sent pursuant to regulation 27(2).

Power to postpone inquiry

31. The Tribunal may, if they think fit, or on the application of the complainer or respondent, postpone the date fixed for the holding of an inquiry.

Power to treat representation as withdrawn in certain cases

32. If the complainer fails—

- (a) without showing good cause, to appear in person or by a representative at any inquiry of which he was sent due notice under regulation 30; or
- (b) to comply with any other requirement of this Part of these Regulations,

the Tribunal may treat the representation as having been withdrawn.

Withdrawal of representation

33.—(1) The complainer may at any time before the inquiry commences, with the consent of the Tribunal and on such terms as they think fit, withdraw the representation by giving notice of withdrawal in writing to the clerk to the Tribunal.

(2) Where before the inquiry is concluded the respondent dies, the representation shall be treated by the Tribunal as having been withdrawn with immediate effect.

(3) Where the representation has been withdrawn, or is treated by the Tribunal as having been withdrawn, the Tribunal shall forthwith inform—

- (a) in the case of a withdrawal in terms of regulation 32 or 33(1), the respondent; or
- (b) in the case of a withdrawal in terms of paragraph (2), the personal representative of the respondent.

Representation and evidence at inquiry

34.—(1) At any inquiry—

- (a) a Health Board shall be entitled to be represented by their General Manager, or by counsel or solicitor; and
- (b) the complainer (not being a Health Board) and the respondent shall be entitled to attend and take part in the proceedings in question or be represented by any one of the following persons:—
 - (i) counsel;
 - (ii) a solicitor;
 - (iii) an officer or member of any organisation of which he is a member;
 - (iv) a member of his family;
 - (v) a friend.

(2) The complainer and the respondent or their representatives shall be entitled at an inquiry to produce evidence and to call witnesses to whom questions may be put by or on behalf of any party.

Procedure at inquiry

35.—(1) The proceedings at an inquiry shall be held in private unless the respondent has applied in writing to the clerk to the Tribunal for the inquiry to be held in public.

(2) Subject to the provisions of this Part of these Regulations, the procedure at an inquiry shall be within the discretion of the Tribunal.

(3) The Tribunal may adjourn from time to time as they think fit and hold adjourned sittings at such time and place as may appear to them to be suitable.

(4) The Tribunal may if they think fit call for such documents and examine such witnesses as appear to them likely to afford evidence relevant and material to the issue, although not tendered by either party.

(5) A Health Board to whom notices in terms of Forms 3 and 4 are sent pursuant to regulations 27(2) and 30 shall be entitled to take such part in the proceedings of the inquiry as the Tribunal shall think proper.

Provisions as to inquiry

36. The provisions of Schedule 2 shall have effect with regard to an inquiry under this Part of these Regulations as they have in relation to appeal hearings held pursuant to regulation 13 as if—

- (a) references to “appeal” and to “hearing” were references to such an inquiry;
- (b) references to the Reporters were references to the chairman of the Tribunal; and
- (c) references to the Secretary of State were references to the Tribunal.

Power to dispense with oral inquiry

37. Notwithstanding anything in this Part of these Regulations, where—

- (a) the grounds on which a representation is based consist solely of an allegation that the respondent has been convicted of a criminal offence; and
- (b) the respondent admits the truth of such allegation,

the Tribunal may, with the consent of the respondent, dispense with an oral inquiry and determine the representation upon such documentary evidence as may be submitted to them.

Statement by the Tribunal

38.—(1) As soon as may be practicable after the conclusion of an inquiry in relation to a representation, the Tribunal shall prepare a statement under the hand of the chairman stating—

- (a) their findings of fact;
- (b) the conclusions which they have reached; and
- (c) where they are of the opinion that the continued inclusion of the respondent in any list to which the representation relates would be prejudicial to the efficiency of the services in question, such directions as they make under section 29(3) of the Act.

(2) The clerk to the Tribunal shall—

- (a) send a copy of the statement prepared pursuant to paragraph (1) to—
 - (i) the Secretary of State;
 - (ii) the complainer; and
 - (iii) the respondent;
- (b) inform the respondent of his right of appeal to the Secretary of State under section 29(4) of the Act.

(3) Except for a Health Board to whom a copy of the statement has been sent pursuant to paragraph (2), the Secretary of State shall send a copy of the statement to such Health Boards as appear to him concerned.

Appeal to Secretary of State

39.—(1) An appeal may be made to the Secretary of State by the respondent in an inquiry in relation to a representation against any direction which the Tribunal has made under section 29(3) of the Act following the inquiry by sending notice of appeal in writing to him within a period of 4 weeks beginning on the day after the date on which a copy of the statement of the Tribunal was sent pursuant to regulation 38(2), or such further period as the Secretary of State may allow.

(2) A notice of appeal by a respondent under this regulation shall contain a concise statement of the facts and contentions upon which he intends to rely.

(3) As soon as may be practicable after receipt of a notice of appeal sent pursuant to paragraph (1), the Secretary of State shall send a copy of it to—

- (a) the complainer;
- (b) such Health Boards as appear to him concerned.

Procedure on appeal

40.—(1) The following provisions of this regulation shall apply to an appeal made by a respondent (in this regulation being referred to as “the appellant”) pursuant to regulation 39.

(2) As soon as may be practicable after receipt of a notice of appeal, the Secretary of State shall appoint—

- (a) 1 person to hear the appeal; and

- (b) another person to assist the person hearing the appeal which other person shall be—
 - (i) where the appellant is a doctor, a doctor selected from the panel of doctors referred to in regulation 15(6);
 - (ii) where the appellant is a dentist, a dentist selected from the panel of dentists referred to in regulation 15(10);
 - (iii) where the appellant is an ophthalmic medical practitioner or an optician, a person belonging to the same category of professional person as the appellant; or
 - (iv) where the appellant is a pharmacist, a pharmacist.
- (3) The Secretary of State shall—
 - (a) fix a date and time at which the hearing shall commence and the place where it will be held; and
 - (b) not less than 2 weeks before the date fixed for the hearing to commence, send a notice containing that information to—
 - (i) the appellant;
 - (ii) the complainer; and
 - (iii) any other Health Board as appear to him concerned.
- (4) The provisions of regulations 31 (power to postpone inquiry), 34 (representation and evidence at inquiry) and 35 (procedure at inquiry) shall have effect with respect to the hearing of an appeal as they apply to an inquiry held in relation to a representation as if—
 - (a) in regulation 31—
 - (i) the reference to the Tribunal were a reference to the Secretary of State; and
 - (ii) the word “respondent” read “appellant”;
 - (b) in regulation 34(1)(b) and (2), the word “respondent” read “appellant”;
 - (c) in regulation 35—
 - (i) in paragraph (1) the word “respondent” read “appellant”;
 - (ii) references to the Tribunal or the clerk to the Tribunal were references to the person hearing the appeal; and
 - (iii) in paragraph (5) for the words “notices in terms of Forms 3 and 4 are sent pursuant to regulations 27(2) and 30” there were substituted the words “notice is sent pursuant to regulation 40(3)”.
- (5) The provisions of Schedule 2 shall have effect with regard to an appeal to which this regulation applies as they have in relation to appeal hearings held pursuant to regulation 13 as if—
 - (a) references to “appeal” and to “hearings” were references to an appeal to which this regulation applies;
 - (b) references to the Reporters were references to the person hearing the appeal; and
 - (c) the words “Secretary of State” read “Secretary of State or the person hearing the appeal”.
- (6) As soon as may be practicable after a hearing of an appeal has been held, the person hearing the appeal shall make a report to the Secretary of State.
- (7) Before determining an appeal in which the appellant is a doctor or a dentist, the Secretary of State shall—
 - (a) refer the report submitted to him pursuant to paragraph (6)—
 - (i) in the case of a doctor, to the medical advisory committee constituted under regulation 15(6);

(ii) in the case of a dentist, to the dental advisory committee constituted under regulation 15(10); and

(b) invite any such committee to make recommendations in relation to the report.

(8) After due consideration of a report submitted to him pursuant to paragraph (6) and, where applicable, any recommendation made pursuant to paragraph (7), the Secretary of State shall determine the appeal and send notice of that determination to—

- (a) the appellant;
- (b) the Tribunal;
- (c) the complainer; and
- (d) such Health Boards as appear to him concerned.

(9) If the appellant fails, without showing good cause, to appear in person or by a representative at the hearing of an appeal of which he was sent due notice under this regulation, the Secretary of State may determine the appeal without a hearing.

(10) An appellant may at any time before the hearing of his appeal commence withdraw the appeal by giving notice of withdrawal in writing to the Secretary of State.

Procedure in regard to application to the Tribunal for removal of disqualification

41.—(1) Subject to paragraph (2), an application to the Tribunal shall—

- (a) be made in terms of Form 5 and shall—
 - (i) contain a concise statement of the alleged facts and grounds upon which the applicant intends to rely;
 - (ii) be signed by the applicant or on his behalf by some person authorised by him;
- (b) be accompanied by 2 copies of each document which the applicant proposes to put in evidence;
- (c) be sent together with the copies of each document relevant to it to the clerk to the Tribunal.

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

(3) If it appears to the Tribunal, after due consideration of an application, that no good cause has been shown why an inquiry should be held, they may refuse to hold an inquiry and shall inform the applicant accordingly.

(4) Where the Tribunal consider that an inquiry should be held, the clerk to the Tribunal shall send to the respondent and to any Health Board (not being the respondent) which was represented at the inquiry following which a direction was made in respect of the applicant under section 29(3) of the Act—

- (a) a notice in terms of Form 6 informing him or them that an application has been made by the applicant and that the Tribunal consider that an inquiry should be held; and
- (b) 1 copy of the application and of each document, if any, which accompanied it.

(5) As soon as may be practicable after sending a copy of the application in terms of paragraph (4), the clerk to the Tribunal shall—

- (a) fix a date and time at which an inquiry shall commence and the place where it will be held; and
- (b) not less than 2 weeks before the date fixed for the inquiry to commence, send to—
 - (i) the applicant;
 - (ii) the respondent; and

(iii) any Health Board to whom a notice in terms of Form 6 has been sent pursuant to paragraph (4),

a notice in terms of Form 7 containing the information referred to in subparagraph (a) and informing them that they may attend and take such part in the proceedings at the inquiry as the Tribunal may think proper.

(6) An applicant may at any time before the inquiry commences, with the consent of the Tribunal and on such terms as they think fit, withdraw his application by giving notice of withdrawal in writing to the clerk to the Tribunal.

(7) The provisions of regulations 31 (power to postpone inquiry), 34 (representation and evidence at inquiry), 35 (procedure at inquiry), 36 (provisions as to inquiry) and 38 (statement by the Tribunal) shall have effect with respect to an inquiry held in relation to an application as they apply to an inquiry held in relation to a representation as if—

- (a) in regulation 31 the word “complainer” read “applicant”;
- (b) in regulation 34—
 - (i) in paragraph (1)(b), the words from “complainer” to “respondent” read “applicant and the respondent (not being a Health Board)”; and
 - (ii) in paragraph (2), the word “complainer” read “applicant”;
- (c) in regulation 35—
 - (i) in paragraph (1) the word “respondent” read “applicant”; and
 - (ii) in paragraph (5) for the words “notices in terms of Forms 3 and 4 are sent pursuant to regulations 27(2) and 30” there were substituted the words “notice is sent pursuant to regulation 41(4)”;
- (d) in regulation 38—
 - (i) in paragraph (1), the words “a representation” read “an application”;
 - (ii) in paragraph (1)(c), for the words after “opinion” there were substituted the words “that the disqualification of the applicant for inclusion in any list to which a direction under section 29(3) of the Act relates should be removed, a direction under section 30 of the Act to that effect”;
 - (iii) in paragraph (2)(a)(ii), the word “complainer” read “applicant”; and
 - (iv) paragraph (2)(b) were deleted.

Procedure in regard to application to the Secretary of state for removal of disqualification

42.—(1) Subject to paragraph (2), an application to the Secretary of State shall—

- (a) be made in terms of Form 8 and shall—
 - (i) contain a concise statement of the alleged facts and grounds upon which the applicant intends to rely;
 - (ii) be signed by the applicant or on his behalf by some person authorised by him;
- (b) be accompanied by 2 copies of each document which the applicant proposes to put in evidence;
- (c) be sent together with the copies of each document relevant to it to the Secretary of State.

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

(3) If it appears to the Secretary of State, after due consideration of an application, that no good cause has been shown why an inquiry should be held, he may refuse to hold an inquiry and shall inform the applicant accordingly.

(4) Where the Secretary of State considers that an inquiry should be held, he shall send to the respondent and to any Health Board (not being the respondent) which was represented at the inquiry following which a direction was made in respect of the applicant under section 29(3) of the Act—

- (a) a notice in terms of Form 9 informing him or them that an application has been made by the applicant and that the Secretary of State considers that an inquiry should be held; and
- (b) 1 copy of the application and of each document, if any, which accompanied it.

(5) Where the Secretary of State considers that an inquiry should be held, he shall appoint—

- (a) 1 person to hold the inquiry in relation to the application;
- (b) another person to assist the person holding the inquiry which other person shall be—
 - (i) where the applicant is a doctor, a doctor selected from the panel of doctors referred to in regulation 15(6);
 - (ii) where the applicant is a dentist, a dentist selected from the panel of dentists referred to in regulation 15(10);
 - (iii) where the applicant is an ophthalmic medical practitioner or an optician, a person belonging to the same category of professional person as the applicant; or
 - (iv) where the applicant is a pharmacist, a pharmacist.

(6) As soon as may be practicable after sending a copy of the application in terms of paragraph (4), the Secretary of State shall—

- (a) fix a date and time at which an inquiry shall commence and the place where it will be held; and
- (b) not less than 2 weeks before the date fixed for the inquiry to commence, send to—
 - (i) the applicant;
 - (ii) the respondent; and
 - (iii) any Health Board to whom a notice in terms of Form 9 has been sent pursuant to paragraph (4),

a notice in terms of Form 10 containing the information referred to in sub-paragraph (a) and informing them that they may attend and take such part in the proceedings at the inquiry as the person holding the inquiry may think proper.

(7) An applicant may at any time before the inquiry commences, with the consent of the Secretary of State and on such terms as he thinks fit, withdraw his application by giving notice of withdrawal in writing to the Secretary of State.

(8) The provisions of regulations 31 (power to postpone inquiry), 34 (representation and evidence at inquiry) and 35 (procedure at inquiry) shall have effect with respect to the holding of an inquiry in relation to an application as they apply to an inquiry held in relation to a representation as if—

- (a) in regulation 31—
 - (i) the reference to the Tribunal were a reference to the Secretary of State; and
 - (ii) the word “complainer” read “applicant”;
- (b) in regulation 34—
 - (i) in paragraph (1)(b), the words from “complainer” to “respondent” read “applicant and the respondent (not being a Health Board)”;
 - (ii) in paragraph (2) the word “complainer” read “applicant”;

- (c) in regulation 35—
 - (i) in paragraph (1), the word “respondent” read “applicant”;
 - (ii) in paragraph (5) for the words “notices in terms of Forms 3 and 4 are sent pursuant to regulations 27(2) and 30” there were substituted the words “notice is sent pursuant to regulation 42(4)”; and
 - (iii) references to the Tribunal or the clerk to the Tribunal were references to the person holding the inquiry.
- (9) The provisions of Schedule 2 shall have effect with regard to an inquiry to which this regulation applies as they have in relation to appeal hearings held pursuant to regulation 13 as if—
 - (a) references to “appeal” and to “hearings” were references to an inquiry to which this regulation applies;
 - (b) references to the reporters were references to the person holding the inquiry; and
 - (c) the words “Secretary of State” read “Secretary of State or the person holding the inquiry”.
- (10) The provisions of regulation 40(6) and (8) shall have effect with respect to an inquiry to which this regulation applies as they apply to an appeal to which regulation 40 applies as if—
 - (a) in regulation 40(6) the word “appeal” read “inquiry”;
 - (b) in regulation 40(8)—
 - (i) for the words from “pursuant to paragraph (6)” to “pursuant to paragraph (7)” there were substituted the words “by the person holding the inquiry”;
 - (ii) the word “appeal” read “application”;
 - (iii) the word “appellant” read “applicant”; and
 - (iv) the word “complainer” read “respondent”.

Publication of decisions of the Tribunal and the Secretary of State

- 43.** The Secretary of State shall publish in such manner as he thinks fit notice of—
- (a) any decision of the Tribunal or by him in relation to an inquiry or an appeal under this Part of these Regulations; and
 - (b) the imposition of any disqualification pursuant to section 31 of the Act or of the removal of such disqualification.

PART IV

MISCELLANEOUS

Service of notices, etc.

- 44.—**(1) Any notice or document which is required or authorised by these Regulations to be sent to or served on any person or body may be sent or served as follows:—
- (a) in the case of the Secretary of State, by delivering it to him or sending it by post addressed to him at St Andrew’s House, Edinburgh;
 - (b) in the case of the Tribunal or a Health Board, by delivering it to their clerk or General Manager, or by sending it by post addressed to such person at their principal office or the usual or last known address of such person;

- (c) in the case of a professional person, by delivering it to him or by sending it by post addressed to him at any address set opposite his name in the list of professional persons of the Health Board concerned;
- (d) in the case of any other person, by delivering it to him or by sending it by post addressed to him at his usual or last known address.

(2) Where a party to any investigation, appeal or inquiry is represented by a solicitor it shall be a sufficient compliance with this regulation if the notice or document is sent by post addressed to the solicitor at his professional address.

(3) Until the contrary is proved, any notice or document sent as aforesaid shall be deemed to be received at the time at which a letter would be delivered in the ordinary course of post.

Power to dispense with requirements as to notices

45. The Secretary of State or the Tribunal may dispense with any requirements of these Regulations applicable to notices, applications, documents or otherwise in any case where it appears to the Secretary of State or the Tribunal just and proper to do so.

Attendance by member of Council on Tribunals

46. Nothing in these Regulations shall prevent a member of the Council on Tribunals or of the Scottish Committee thereof in that capacity from attending any hearing before—

- (a) the Tribunal;
- (b) a service committee;
- (c) a Health Board when the Health Board are considering a report of a service committee;
- (d) reporters when acting pursuant to appointment under regulation 13(9);
- (e) a person when acting pursuant to appointment under regulation 40(2) or 42(5).

PART V

REVOCATIONS AND TRANSITIONAL PROVISIONS

Revocations

47. Subject to regulation 48, the Regulations specified in column 1 of Schedule 5 are hereby revoked to the extent specified in relation thereto in column 3 of that Schedule.

Transitional provisions

48. The provisions of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1974 shall continue to apply—

- (a) to any matter which falls to be investigated, considered, referred or determined (whether by a service committee, a Health Board, an area professional committee, the Secretary of State or otherwise) under Part II of those Regulations in relation to—
 - (i) a complaint under regulation 4 of those Regulations of which notice was given;
 - (ii) a reference under regulation 7 of those Regulations which was made;
 - (iii) the making of a direction under regulation 13 of those Regulations where the relevant report was received;

- (iv) a matter in respect of which an investigation of whatever nature by an area professional committee was commenced;
- (v) a complaint relating to the efficiency of general medical, general ophthalmic or pharmaceutical services which pursuant to regulation 21 of those Regulations was made; or
- (vi) any appeal or referral to referees under that Part of those Regulations of which notice was given or referral made,

before the date on which these Regulations come into force or in relation to any appeal or referral to referees under the said Regulations of 1974 from the determination of any such complaint, reference or matter where that determination is made after that date;

- (b) to any matter which falls to be determined (whether by the Tribunal, the Secretary of State or otherwise) under Part IV of those Regulations following a representation or an application in writing received by the clerk to the Tribunal or, as the case may be, the Secretary of State before the date on which these Regulations come into force or in relation to any appeal under regulation 55 of the said Regulations of 1974 from the statement of the Tribunal made after that date in relation to any such representation,

as if these Regulations had not come into force.

St. Andrew's House, Edinburgh
2nd March 1992

Michael B. Forsyth
Minister of State, Scottish Office

SCHEDULE 1

Regulation 10

RULES OF PROCEDURE OF SERVICE COMMITTEES

PART I
GENERAL

Interpretation

- 1.—(1) In this Schedule, unless the context otherwise requires—
- (a) any reference to a numbered regulation is a reference to the regulation bearing that number in these Regulations;
 - (b) any reference to a numbered paragraph is a reference to the paragraph bearing that number in this Schedule, and any reference in a paragraph to a numbered sub-paragraph is a reference to the sub-paragraph bearing that number in that paragraph;
 - (c) “professional member” means—
 - (i) in the case of a service committee (other than an ophthalmic service committee or a joint services committee), a member appointed by whichever of the area professional committees is the appropriate committee by virtue of regulation 2(2) to (4);
 - (ii) in the case of an ophthalmic service committee, a member appointed by the area medical committee or by the area optical committee; or
 - (iii) in the case of a joint services committee, a member appointed by the appropriate service committee in terms of regulation 2(8)(b)(ii) to (v).
- (2) For the purposes of a hearing in relation to an investigation which is arranged pursuant to paragraph 7(3), the parties shall consist of—
- (a) in the case of a complaint made in accordance with regulation 3—
 - (i) the complainer; and
 - (ii) the professional person concerned;
 - (b) in the case of a reference made under regulation 8(1)—
 - (i) the Health Board or the committee of the Health Board concerned; and
 - (ii) the professional person concerned,and “party” and “parties” shall be construed accordingly.

Application

2. Subject to such exceptions and qualifications as are mentioned, the provisions of this Schedule shall apply to the investigation by the appropriate service committee of—
- (a) any complaint made in accordance with regulation 3 which requires to be referred to that committee pursuant to regulation 4; and
 - (b) any matter which a Health Board or a committee of a Health Board may refer to that committee pursuant to regulation 8.

PART II

PRELIMINARY CONSIDERATION BY SERVICE COMMITTEES OF COMPLAINTS AND OTHER REFERENCES

Transmission of papers to chairman of service committee

3. The General Manager shall send to the chairman of the appropriate service committee as soon as practicable—

- (a) in the case of a complaint made in accordance with regulation 3, copies of—
 - (i) the complaint; and
 - (ii) where applicable, any statement of further information submitted for the purposes of regulation 3(5);
- (b) in the case of a matter referred under regulation 8(1), copies of the written terms of reference and any documents referred to by them.

Further statement in respect of complaints relating to terms of service

4.—(1) Where, in the case of a complaint made in accordance with regulation 3, the chairman of the appropriate service committee is of the opinion that the complaint discloses no reasonable grounds for believing that the professional person concerned has failed to comply with his terms of service, or is trivial or vexatious, he shall notify the General Manager of that opinion.

(2) In the event of receiving notification for the purposes of sub-paragraph (1), the General Manager shall send written notice to the complainer—

- (a) informing him of the chairman's opinion; and
 - (b) inviting him to submit within 2 weeks a further statement in amplification of his complaint.
- (3) Where after the expiry of the period referred to in the notice under sub-paragraph (2)—
- (a) no further statement has been submitted; or
 - (b) such a statement having been submitted, the chairman is of the opinion that it does not render a hearing of the case necessary,

the complaint shall be brought before a meeting of the service committee which shall have the power to dispense with a hearing and make a report on the complaint to the Health Board forthwith.

(4) The quorum at a meeting of a service committee at which a complaint is considered for the purposes of sub-paragraph (3) shall be the same as that specified in paragraph 14(1) in relation to a hearing of a service committee.

Comments and observations in respect of complaints

5.—(1) This paragraph applies to a complaint made in accordance with regulation 3 where either

- (a) the chairman of the appropriate service committee is; or
 - (b) notwithstanding any opinion of the chairman to the contrary, the service committee are,
- of the opinion that the complaint discloses reasonable grounds for believing that the professional person may have failed to comply with his terms of service.

(2) In the case of a complaint to which this paragraph applies, the chairman of the service committee shall notify the General Manager of any provision of the terms of service which the chairman has, or where appropriate the service committee have, grounds for believing the

professional person concerned may have failed to comply with and the General Manager shall thereafter send to that professional person—

- (a) copies of the relevant papers sent to the chairman in terms of paragraph 3 and any further statement in terms of paragraph 4;
- (b) details of any provision of the terms of service identified by the chairman in accordance with this sub-paragraph;
- (c) a notice informing the professional person that he may submit written comments within 4 weeks or such longer period as the chairman of the service committee may for reasonable cause allow.

(3) The General Manager shall, following receipt of any comments submitted in terms of subparagraph (2)(c), send to the complainer—

- (a) a copy of the comments;
- (b) a notice informing the complainer—
 - (i) that he may submit observations on those comments within 4 weeks or such longer period as the chairman of the service committee may for reasonable cause allow;
 - (ii) that a professional person belonging to the same category of a professional person as the person submitting the comments, but who has no interest, either directly or indirectly, in the complaint, is available to explain to the complainer, if he so requires, any technical terms used in those comments.

(4) Where the General Manager sends a notice in terms of either sub-paragraph (2)(c) or (3)(b) he shall include a statement in the notice to the person that copies of any documents, including any comments or observations, submitted in connection with the complaint will be furnished to the other party and may be produced in evidence at a hearing where one is held in respect of the complaint.

Comments and observations in respect of other references

6.—(1) Except as otherwise provided, this paragraph applies to any reference made under regulation 8(1) whether or not the reference involves an allegation of a failure by a professional person to comply with his terms of service.

(2) In the case of a reference which involves an allegation of a failure by a professional person to comply with his terms of service, the chairman of the service committee shall notify the General Manager of any provision of the terms of service which the chairman has grounds for believing the professional person concerned may have failed to comply with and the General Manager shall thereafter send to that professional person—

- (a) copies of the relevant papers sent to the chairman in terms of paragraph 3;
- (b) details of any provision of the terms of service identified by the chairman in accordance with this sub-paragraph;
- (c) a notice informing the professional person that he may submit written comments within 4 weeks or such longer period as the chairman of the service committee may for reasonable cause allow.

(3) In the case of a reference which does not involve an allegation of a failure by the professional person concerned to comply with his terms of service, the General Manager shall send to that professional person—

- (a) copies of the relevant papers sent to the chairman in terms of paragraph 3;
- (b) a notice informing the professional person that he may submit written comments within 4 weeks or such longer period as the chairman of the service committee may for reasonable cause allow.

(4) The General Manager shall, following receipt of any comments submitted in terms of subparagraph (2)(c) or (3)(b), send to the officer of the Health Board or to the committee of the Health Board as appears to the General Manager to be concerned with the reference—

- (a) a copy of the comments;
- (b) a notice informing that officer or that committee that the Health Board or the committee may submit observations on those comments within 4 weeks or such longer period as the chairman of the service committee may for reasonable cause allow.

(5) Where the General Manager sends a notice in terms of sub-paragraph (2)(c) or (3)(b) or (4)(b) he shall include a statement in the notice to the person that copies of any documents, including any comments or observations, submitted in connection with the reference will be furnished to the other party and may be produced in evidence at a hearing where one is held in respect of the reference.

Preliminary consideration by service committee

7.—(1) Where following the submission of—

- (a) comments by a professional person in terms of paragraph 5(2)(c) or 6(2)(c) or (3)(b);
- (b) if any, observations by—
 - (i) a complainer in terms of paragraph 5(3)(b); or
 - (ii) a Health Board or a committee of a Health Board in terms of paragraph 6(4)(b),

the chairman of the service committee is of the opinion that a hearing of the complaint or matter referred is unnecessary, the case shall be brought before a meeting of the service committee which shall have power to dispense with a hearing and make a report on the case to the Health Board forthwith.

(2) The quorum at a meeting of a service committee at which a case is considered for the purposes of sub-paragraph (1) shall be the same as that specified in paragraph 14(1) in relation to a hearing of a service committee.

(3) Where the General Manager—

- (a) has received no comments within the period allowed in terms of paragraph 5(2)(c) or 6(2)(c) or (3)(b); or
- (b) is notified by the chairman of the service committee that, following the submission of comments by the professional person in terms of paragraph 5(2)(c) or 6(2)(c) or (3)(b) and, as the case may be, any observations by the complainer in terms of paragraph 5(3)(b) or by the Health Board or the committee of the Health Board in terms of paragraph 6(4)(b)—
 - (i) the chairman is; or
 - (ii) notwithstanding any opinion of the chairman to the contrary, the service committee are,

of the opinion that a hearing of the complaint or matter referred is necessary,

he shall arrange a hearing in respect of the complaint or matter referred.

PART III

ARRANGEMENTS FOR A HEARING

Notice of hearing

8. The General Manager shall, where he is required by virtue of paragraph 7(3) to arrange a hearing, give not less than 3 weeks' written notice to—

- (a) in the case of a complaint made in accordance with regulation 3, the complainer;
- (b) in the case of a reference made under regulation 8(1), the officer of the Health Board as appears to him to be concerned with the reference;
- (c) in the case of a complaint or a reference—
 - (i) the professional person concerned; and
 - (ii) the secretary of the appropriate area professional committee,of the date when the service committee will hold a hearing.

Notice by complainer of intention to be present

9.—(1) In the case of a complaint made in accordance with regulation 3, the complainer shall within 2 weeks from the date of the written notice sent pursuant to paragraph 8 notify the General Manager of his intention to attend or be represented at the hearing.

(2) Where the service committee are satisfied that a complainer to whom notice has been sent pursuant to paragraph 8 has failed, within 2 weeks from the date on which such notice was sent to him, to notify his intention to attend or be represented at the hearing, they may, subject to sub-paragraph (3), proceed to consider the complaint and to make a report to the Health Board without holding a hearing.

(3) A report made pursuant to sub-paragraph (2) shall not contain any recommendation which is adverse to the professional person concerned unless he shall have previously consented in writing to the matter being disposed of by the service committee without a hearing.

Intimation of particulars of witnesses and representatives

10. A party to an investigation shall, within 2 weeks from the date of the written notice sent to him pursuant to paragraph 8, send to the General Manager—

- (a) a note of the name of—
 - (i) each witness whom he intends calling to give evidence at the hearing;
 - (ii) if he intends to be represented at the hearing, the person who will so represent him;
- (b) in the case of a person whose evidence he intends to found upon but who will not be present at the hearing, a copy of a statement of that person in relation to the matter under investigation.

Application for postponement of a hearing

11.—(1) The chairman of the service committee may, upon the application of either party, postpone the date of the hearing if he is satisfied that the attendance on that date of the applicant or any witness he may intend calling is not reasonably practicable or if for any other reason he thinks fit.

(2) An application under sub-paragraph (1) shall be made in writing to the General Manager and shall state concisely the reasons for which it is made.

Provision of relevant papers

12. The General Manager shall, not less than 1 week before the hearing, supply copies of all relevant correspondence and papers to—

- (a) each member of the service committee;
- (b) the secretary of the appropriate area professional committee;
- (c) the Scottish Committee of the Council on Tribunals;

- (d) each of the parties.

PART IV

PROCEDURE IN RELATION TO HEARINGS

Determination of procedure by a service committee

13. Subject to the following provisions of this Part, the procedure at a hearing shall be such as the service committee may determine.

Quorum for a service committee

14.—(1) The quorum at a hearing of a service committee shall be—

- (a) except for a joint services committee, the chairman, 2 lay members and 2 professional members; and
- (b) in the case of a joint services committee, the chairman together with—
 - (i) 2 lay members; and
 - (ii) for each category of professional person concerned in the hearing, 1 professional member in the same category.

(2) Prior to the commencement of a hearing, the chairman shall ask the members of the service committee whether any of them has a personal interest, either directly or indirectly, in the complaint or reference which is the subject of the hearing and any such member who has, or considers that he might have, such an interest shall inform the chairman.

(3) If, having been informed by a member of the service committee in accordance with subparagraph (2), the chairman is of the opinion that the member has such an interest as mentioned in that subparagraph, he shall notify that member accordingly and that member shall take no part in the hearing but a deputy may act in his place.

(4) Where the chairman of a service committee is of the opinion that a hearing is likely to be concerned with the interests of a woman or of a child under the age of 16 years, he shall ensure that the service committee which hears the complaint or other matter includes at least 1 woman lay member.

Attendance at hearing by a complainer or professional person

15. Each party shall be entitled to be present at the hearing and may—

- (a) give and call such evidence as the service committee may think relevant to the matters in issue;
- (b) put questions relevant to the matters in issue to the other party or any witness called by that party either directly or, if the service committee so direct, through the chairman of the committee.

Failure to attend hearing

16.—(1) Subject to sub-paragraph (2), if a party fails to attend or be represented at a hearing of which he has been duly notified, the service committee may—

- (a) unless they are satisfied that his absence is due to illness or other reasonable cause, hold the hearing in the party's absence; or
- (b) adjourn the hearing.

(2) Subject to sub-paragraph (3), if in the case of a complaint made in accordance with regulation 3—

- (a) the complainer fails to attend the hearing having sent notice of his intention to attend pursuant to paragraph 9(1); and
- (b) the service committee have not been informed of the reason for the failure to attend,

the service committee shall treat the complaint as abandoned with immediate effect.

(3) A complaint shall be deemed not to have been treated as abandoned pursuant to sub-paragraph (2) if, within a period of 2 days after the date on which the service committee determined that the complaint be treated as abandoned in terms of that sub-paragraph, the complainer has provided evidence which in the opinion of the chairman of the service committee shows that his failure to attend the hearing was due to illness or other reasonable cause.

(4) A complainer who intends to provide evidence in terms of sub-paragraph (3) shall submit that evidence within the period specified in sub-paragraph (3) to the General Manager who shall forthwith send the evidence to the chairman of the service committee.

(5) Where the chairman of the service committee is satisfied in terms of sub-paragraph (3) that the failure of the complainer to attend the hearing was due to illness or other reasonable cause, the General Manager shall arrange a new date for the hearing.

Assistance in presentation of case

17.—(1) A party may be accompanied at a hearing by some other person who may assist him in the presentation of his case, but, if that other person is legally qualified, he shall not address the committee or put questions to witnesses.

(2) For the purposes of sub-paragraph (1), a person who is legally qualified shall mean a person who is or has been—

- (a) a solicitor; or
- (b) an advocate or a barrister.

Proceedings to be in private

18. The proceedings at the hearing shall be private and no person shall be admitted to those proceedings except—

- (a) the parties and any persons assisting them in the presentation of their case;
- (b) a professional person authorised by the appropriate area professional committee;
- (c) any person whose attendance is required for the purpose of giving evidence, but such a person shall, unless the service committee otherwise direct, be excluded from the hearing except while he is actually giving evidence;
- (d) such officers of the Health Board as may be appointed for the purpose; and
- (e) any member of the Council on Tribunals or the Scottish Committee thereof.

Introduction of issues not previously disclosed

19.—(1) Subject to sub-paragraph (2), if—

- (a) in the course of a hearing in relation to a complaint, the complainer introduces any issue which in the opinion of the chairman was not sufficiently disclosed in the complaint or any further statement or observations submitted pursuant to paragraphs 4(2) and 5(3) respectively; or

(b) in the course of a hearing in relation to a matter referred under regulation 8(1), the Health Board or the committee of the Health Board concerned introduce any issue which in the opinion of the chairman was not sufficiently disclosed in the written terms of reference or any observations submitted pursuant to paragraph 6(4),
the chairman may as he thinks fit exclude or admit such issue.

(2) Where the chairman of the service committee intends to admit an issue pursuant to sub-paragraph (1), the hearing shall be adjourned for such period as the service committee consider necessary unless the professional person concerned requests that the hearing should proceed and the chairman agrees to do so.

Withdrawal from a hearing

20.—(1) Subject to sub-paragraph (2), when all the evidence has been heard and any closing submissions have been made, all persons entitled to be admitted in terms of paragraph 18, other than those referred to in sub-paragraph (d), shall withdraw.

(2) If the service committee and parties agree, any member of the Council on Tribunals or the Scottish Committee thereof who was admitted in terms of paragraph 18 may remain during consideration of the report required to be made by the service committee in terms of paragraph 21.

Submission of report by service committee to Health Board

21.—(1) The service committee shall prepare a report after the hearing in accordance with the following sub-paragraphs.

(2) The report, which shall be submitted to the Health Board, shall—

- (a) state such relevant facts as appear to the service committee to be established by the evidence placed before them;
- (b) in respect of each provision of the terms of service identified by the chairman pursuant to paragraph 5(2) or 6(2), state such inferences which, whether of a failure to comply with the terms of service or otherwise, in their opinion may properly be drawn from the facts and their reasons for reaching that opinion; and
- (c) make a recommendation as to the action, if any, which should be taken and state their reasons for making that recommendation.

(3) Subject to sub-paragraph (4), in presenting their report to the Health Board, where it relates to a complaint or reference in which they infer a failure by the professional person concerned to comply with his terms of service, the service committee may—

- (a) draw the attention of the Health Board to any previous reports based on a finding of a failure to comply with the terms of service applicable to that professional person and to any action taken by the Secretary of State on such reports; and
- (b) recommend that account should be taken thereof by the Health Board in reaching their decision.

(4) In sub-paragraph (3), the expression “previous reports” shall not include—

- (a) any report made more than 5 years prior to the date of the complaint or reference; or
- (b) any report in connection with which an appeal is pending under regulation 12.

Chairman’s vote

22. The chairman of a service committee shall have a vote in the case of equality of votes but otherwise shall not be entitled to vote.

Adjourned hearings

23. Where the hearing of a service committee is adjourned for the purpose of—

- (a) hearing further evidence; or
- (b) preparing or considering the report,

a member of the service committee who was not present at the hearing shall not be entitled to be present at, or take part in, the proceedings at the adjourned hearing and it shall not be necessary for the General Manager to send him notice of such hearing.

Alternative procedure in certain circumstances

24.—(1) The following provisions of this paragraph shall apply where a service committee are of the opinion that the hearing in respect of a complaint or reference should be held at a place other than the locality in which the office of the Health Board is situated because—

- (a) there are in the opinion of the service committee difficulties in securing the attendance of witnesses owing to distance or inadequacy of means of communication; or
- (b) other special circumstances exist.

(2) Where a service committee are of the opinion as mentioned in sub-paragraph (1), they may delegate—

- (a) except where sub-paragraph (2)(b) may apply, to the chairman together with—
 - (i) in the case of a service committee other than a joint services committee, 1 lay member and 1 professional member; or
 - (ii) in the case of a joint services committee, 1 lay member and for each category of professional person concerned in the hearing, 1 professional member in the same category; or
- (b) where there are special circumstances and the Secretary of State consents, to the chairman acting on his own,

to hold a hearing at a suitable alternative locality and make a report to the service committee.

(3) Where a hearing is held and a report made to the service committee pursuant to a delegation made under sub-paragraph (2), the service committee shall accept as conclusive any findings of fact and shall otherwise deal with the complaint or reference as if they themselves had conducted the hearing.

SCHEDULE 2

Regulations 14(7), 36, 40(5) and 42(9)

PROVISIONS AS TO APPEAL HEARINGS

1. The reporters may by notice require any person—

- (a) to attend at the time and place set forth in the notice, to give evidence or to produce any books or documents in his custody or under his control which relate to any matter in question at the hearing; or
- (b) to furnish within such reasonable period as is specified in the notice such information relating to any matter in question at the hearing as the reporters may think fit, and as the person so required is able to furnish; but—
 - (i) no person shall be required in obedience to such a notice to attend at any place which is more than 10 miles from the place where he resides unless the necessary expenses are paid or tendered to him; and

(ii) nothing in this paragraph shall empower the reporters to require any person to produce any book or document or to answer any question which he would be entitled, on the ground of privilege or confidentiality, to refuse to produce or to answer if the hearing were a proceeding in a court of law.

2. The reporters may administer oaths and examine witnesses on oath and may accept in lieu of evidence on oath by any person a statement in writing by that person.

3. Any person who refuses or wilfully neglects to attend in obedience to a notice under paragraph 1, or to give evidence, or who wilfully alters, suppresses, conceals, destroys or refuses to produce any book or document which he may be required to furnish under paragraph 1(b), shall be liable on summary conviction to a fine not exceeding level one on the standard scale or to imprisonment for a period not exceeding 3 months.

4. The Secretary of State may make orders as to the expenses incurred by the parties appearing at any such hearing and as to the parties by whom such expenses shall be paid.

5. Any order by the Secretary of State under paragraph 4 may be enforced in like manner as a recorded decree arbitral.

SCHEDULE 3

Regulation 18(9)

RULES OF PROCEDURE APPLICABLE TO DETERMINATION OF MATTERS REFERRED TO REFEREES UNDER REGULATION 18

Provisions applicable to a reference at request of a Health Board

1.—(1) Where a Health Board notify the Secretary of State that they disagree with a determination of the area medical committee under regulation 18(7), the Health Board shall within 4 weeks from the date on which they send such notification prepare and send to the area medical committee a written statement containing—

- (a) details of the matter in respect of which a question has arisen and any decision given by the Health Board and the grounds upon which that decision was based; and
- (b) any contentions upon which the Health Board intend to rely in relation to that matter.

(2) Within 4 weeks after receipt of a statement sent pursuant to sub-paragraph (1), an area medical committee may send a statement-in-answer to the Health Board concerned.

(3) As soon as may be practicable after the expiry of the period mentioned in sub-paragraph (2), the Health Board concerned shall send to the Secretary of State—

- (a) a copy of the statement sent by the Health Board pursuant to sub-paragraph (1); and
- (b) where a statement-in-answer has been submitted by the area medical committee pursuant to sub-paragraph (2), a copy of that statement-in-answer.

(4) The Secretary of State may, if he thinks fit, require the Health Board or area medical committee concerned to submit, within such reasonable period as he may allow, a supplementary statement in amplification of their respective statements.

Provisions applicable where reference is required by the Secretary of State

2. Where the Secretary of State decides pursuant to regulation 18(8) to refer a question to which regulation 18 applies, he—

- (a) shall notify in writing the Health Board and the area medical committee concerned of the grounds upon which he has decided to refer the question;
- (b) may require the Health Board or the area medical committee concerned to submit within such reasonable period as he may allow a written statement in connection with the question.

Submission of documents to referees

3. The Secretary of State shall provide to the referees appointed by him under regulation 18(8) for determination of the question copies of—

- (a) the statement of the area medical committee concerned prepared pursuant to regulation 18(4);
- (b) any statement-in-answer or written representations made by the doctor or Health Board concerned pursuant to regulation 18(4) or (5);
- (c) the determination of the area medical committee concerned pursuant to regulation 18(7);
- (d) in the case of a reference where the Health Board concerned disagree with the determination of the area medical committee—
 - (i) the statement of the Health Board prepared pursuant to paragraph 1(1);
 - (ii) any statement-in-answer submitted by the area medical committee pursuant to paragraph 1(2);
 - (iii) any supplementary statement submitted pursuant to paragraph 1(4);
- (e) in the case of a reference which the Secretary of State makes pursuant to regulation 18(8)—
 - (i) the written notification of reasons made by the Secretary of State pursuant to paragraph 2(a);
 - (ii) any statement of the area medical committee or the Health Board concerned submitted pursuant to paragraph 2(b).

Determination by referees of question referred

4.—(1) After due consideration of the documents provided to them under paragraph 3, the referees—

- (a) where they are of the opinion that the question referred to them involves a question similar to a question previously determined by referees in a reference under regulation 18, may dispense with a hearing and determine the question referred summarily and make a report to the Secretary of State together with the reasons for it;
- (b) except where they have determined the matter pursuant to sub-paragraph (1)(a), shall request the Secretary of State to fix a time and place for a hearing.

(2) Where the Secretary of State is requested to fix a hearing by the referees, he shall do so by giving not less than 3 weeks' notice of the hearing to the area medical committee and the Health Board concerned.

(3) At any hearing held under this paragraph—

- (a) the Health Board concerned shall be entitled to be represented by a member, their General Manager, or by counsel or solicitor;
- (b) the area medical committee concerned shall be entitled to be represented at the hearing by a member or an officer, or by counsel or solicitor;
- (c) the Secretary of State shall be entitled to be represented by one of his officers.

(4) The area medical committee and the Health Board concerned and the Secretary of State may lead such evidence at the hearing as in the opinion of the referees may be relevant to the question referred.

(5) As soon as may be practicable after the hearing, the referees shall determine the question referred and make a report to the Secretary of State together with their reasons for it.

(6) After the Secretary of State receives a report pursuant to sub-paragraph (1)(a) or (5), he shall notify the area medical committee and the Health Board concerned of the decision of the referees and their reasons for it.

SCHEDULE 4

Regulation 21(2)

FORMS FOR USE IN PROCEEDINGS IN CONNECTION
WITH REPRESENTATIONS AND APPLICATIONS

FORM 1 REPRESENTATION

Regulation 24(1)(a)

To the Tribunal constituted in terms of section 29 of the National Health Service (Scotland) Act 1978.
Representation of-

..... Complainer

against

..... Respondent

a (1) on the (2) list of Health Board

1. The complainer represents the continued inclusion of the respondent in the list referred to would be prejudicial to the efficiency of (3) services provided under Part II of the above Act.

2. The facts and grounds upon which the representation is based are as follows:-
[.....] (4)

3. The documents of which 2 copies of each accompany this representation shall be produced in evidence in support of the representation(5).

Signed,
Complainer

Dated

Notes

(1) State whether the respondent is a doctor, dentist, ophthalmic medical practitioner, optician or a pharmacist.

(2) State whether the list is the medical, dental, ophthalmic or pharmaceutical list.

(3) State whether the services are general medical, general dental, general ophthalmic or pharmaceutical services.

(4) Paragraph 2 of the representation must contain a concise statement of the alleged facts and grounds upon which the complainer intends to rely.

(5) If any document to be put in evidence is of a nature which renders it difficult to make or obtain a copy of it, you are not required to submit copies of any such document.

FORM 2 NOTICE OF REPRESENTATION

*Status: This is the original version (as it was originally made). UK
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Regulation 27(1)(a)

Notice to(1) of a representation.

Representation of-

..... Complainer

against

..... Respondent

a (2) on the (3) list of Health Board

1. On behalf of the Tribunal constituted in terms of section 29 of the National Health Service (Scotland) Act 1978 I enclose-

- (a) a copy of a representation that your continued inclusion in the list referred to would be prejudicial to the efficiency of (4) services provided under Part II of the Act, which representation was submitted to the Tribunal by the complainer on (5);
- (b) a copy of each document which accompanied the representation(6).

2. The Tribunal intend to hold an inquiry in relation to the representation and notice will be sent to you not less than 2 weeks before the date on which the inquiry will commence.

3. You may, if you so desire, submit to me within 4 weeks from the date of receipt of this notice a written statement-in-answer and 2 copies of each document which you propose to put in evidence(7).

Signed

Clerk to the Tribunal

Dated

Notes

- (1) The full name of the respondent or, as the case may be, the appropriate Health Board should be inserted.
- (2) State whether the respondent is a doctor, dentist, ophthalmic medical practitioner, optician or a pharmacist.
- (3) State whether the list is the medical, dental, ophthalmic or pharmaceutical list.
- (4) State whether the services are general medical, general dental, general ophthalmic or pharmaceutical services.
- (5) State the date on which the representation was submitted.
- (6) The complainer may intend to put in evidence documents or material which it is difficult to make or obtain a copy of. If this is the case, the clerk to the Tribunal will inform you accordingly.
- (7) If any document to be put in evidence is of a nature which renders it difficult to make or obtain a copy of it, you are not required to submit copies of any such document.

FORM 3NOTICE OF A REPRESENTATION

Regulation 27(2)(a)

Notice to (1) Health Board of a representation.

Representation of-

..... Complainer

against

..... Respondent

a (2) on the list(3) of Health Board(s) (4)

1. On behalf of the Tribunal constituted in terms of section 29 of the National Health Service (Scotland) Act 1978, I hereby give you notice that a representation has been made by to the Tribunal that the continued inclusion of in the list referred to would be prejudicial to the efficiency of (5) services provided under Part II of the Act. I enclose a copy of the representation and a copy of each document which accompanied it.

2. The Tribunal intend to hold an inquiry in relation to the representation and notice will be sent to you not less than 2 weeks before the date on which the inquiry will commence.

3. Health Board may, if they so desire, submit to me within 4 weeks from the date of receipt of this notice a written statement.

4. If any documents are to be put in evidence in support of the statement, 2 copies of each such document must accompany the statement(6).

5. Health Board are entitled to be represented and take part in the proceedings at the inquiry as the Tribunal shall think proper.

Signed

Clerk to the Tribunal

Dated

Notes

(1) State the name of the Health Board to which the notice is being sent.

(2) State whether the respondent is a doctor, dentist, ophthalmic medical practitioner, optician or a pharmacist.

(3) State whether the list is the medical, dental, ophthalmic or pharmaceutical list.

(4) State the name of each Health Board in whose list (whether medical, dental, ophthalmic or pharmaceutical) the respondent's name is included.

(5) State whether the services are general medical, general dental, general ophthalmic or pharmaceutical services.

(6) If any document to be put in evidence is of a nature which renders it difficult to make or obtain a copy of it, the Health Board are not required to submit copies of any such document.

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Regulation 30(b)

Notice to (1) of date fixed for an inquiry to commence.

Representation of-

..... Complainer

against

..... Respondent

a(2) on the list(3) of Health Board

On behalf of the Tribunal constituted in terms of section 29 of the National Health Service (Scotland) Act 1978, I hereby give you notice that an inquiry in relation to the representation made-

[by you with respect to](4)

[by with respect to you,](5)

[by with respect to the respondent,](6)

will commence on day,

the day of 19... ata.m./p.m. at

Signed

Clerk to the Tribunal

Dated

Notes

(1) The full name of the complainer, the respondent or any other Health Board concerned, as the case may be, should be inserted.

(2) State whether the respondent is a doctor, dentist, ophthalmic medical practitioner, optician or a pharmacist.

(3) State whether the list is the medical, dental, ophthalmic or pharmaceutical list.

(4) Delete these words in a notice being sent to the respondent or, where applicable, any other Health Board concerned.

(5) Delete these words in a notice being sent to the complainer, or where applicable, any other Health Board concerned.

(6) Delete these words in notices being sent to the complainer and respondent.

FORM 5 APPLICATION TO THE TRIBUNAL FOR REMOVAL OF DISQUALIFICATION

Regulation 41(1)(a)

To the Tribunal constituted in terms of section 29 of the National Health Service (Scotland) Act 1978.

Application of-

..... Applicant, formerly a (1) on the (2) list of
..... Health Board.

1. The applicant applies to the Tribunal for a direction under section 30 of the said Act that he should no longer be disqualified for inclusion in the list or lists to which the direction of the Tribunal under section 29 of the said Act made on (3) relates.

2. The facts and grounds upon which the application is based are as follows:-
[.....] (4).

3. The documents of which 2 copies of each accompany this application shall be produced in evidence in support of the application(5).

Signed, Applicant

Dated

Notes

(1) State whether the Applicant is a doctor, dentist, ophthalmic medical practitioner, optician or a pharmacist.

(2) State whether the list was the medical, dental, ophthalmic or pharmaceutical list.

(3) State the date on which the Tribunal made the relevant direction.

(4) Paragraph 2 of the application must contain a concise statement of the alleged facts and grounds upon which the Applicant intends to rely.

(5) If any document to be put in evidence is of a nature which renders it difficult to make or obtain a copy of it, you are not required to submit copies of any such document.

FORM 6NOTICE OF AN APPLICATION

*Status: This is the original version (as it was originally made). UK
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Regulation 41(4)(a)

Notice to (1) of an application.

Application of-

..... Applicant, formerly a (2) on the(3) list of
..... Health Board.

1. On behalf of the Tribunal constituted in terms of section 29 of the National Health Service (Scotland) Act 1978 I enclose-

- (a) a copy of an application for a direction under section 30 of the said Act that the applicant shall no longer be disqualified for inclusion in the list or lists to which the direction of the Tribunal under section 29 of the said Act made on (4) relates;
- (b) a copy of each document which accompanied the application(5).

2. The Tribunal intend to hold an inquiry in relation to the application. A notice will be sent to you not less than 2 weeks before the date on which the inquiry will commence.

Signed

Clerk to the Tribunal

Dated

Notes

- (1) The full name of the respondent or, as the case may be, the appropriate Health Board should be inserted.
- (2) State whether the Applicant is a doctor, dentist, ophthalmic medical practitioner, optician or a pharmacist.
- (3) State whether the list was the medical, dental, ophthalmic or pharmaceutical list.
- (4) State the date on which the Tribunal made the relevant direction.
- (5) The applicant may intend to put in evidence documents or material which it is difficult to make or obtain a copy of. If this is the case, the clerk to the Tribunal will inform you accordingly.

FORM 7NOTICE OF INQUIRY

Regulation 41(5)(b)

Notice to (1) of date fixed for an inquiry to commence.

Application of-

..... Applicant, formerly a (2) on the (3) list of
..... Health Board.

1. On behalf of the Tribunal constituted in terms of section 29 of the National Health Service (Scotland) Act 1978, I hereby give you notice that an inquiry in relation to the application will commence on day, the day of 19... at am/pm at

2. You are entitled to attend or be represented at the inquiry and take such part in the proceedings thereat as the Tribunal may think proper.

Signed,
Clerk to the Tribunal

Dated

Notes

(1) The full name of the applicant, the respondent or other appropriate Health Board (not being the respondent), as the case may be, should be inserted.

(2) State whether the applicant is a doctor, dentist, ophthalmic medical practitioner, optician or a pharmacist.

(3) State whether the list was the medical, dental, ophthalmic or pharmaceutical list.

FORM 8 APPLICATION TO THE SECRETARY OF STATE FOR REMOVAL OF
DISQUALIFICATION

*Status: This is the original version (as it was originally made). UK
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Regulation 42(1)(a)

Application of-

..... Applicant, formerly a (1) on the (2) list of
..... Health Board.

1. The applicant applies to the Secretary of State for a direction under section 30 of the said Act that he should no longer be disqualified for inclusion in the list or lists to which the direction of the Tribunal under section 29 of the said Act made on (3) relates.

2. The facts and grounds upon which the application is based are as follows:-
[.....] (4).

3. The documents of which 2 copies of each accompany this application shall be produced in evidence in support of the application(5).

Signed,
Applicant

Dated

Notes

(1) State whether the applicant is a doctor, dentist, ophthalmic medical practitioner, optician or a pharmacist.

(2) State whether the list was the medical, dental, ophthalmic or pharmaceutical list.

(3) State the date on which the Tribunal made the relevant direction.

(4) Paragraph 2 of the application must contain a concise statement of the alleged facts and grounds upon which the Applicant intends to rely.

(5) If any document to be put in evidence is of a nature which renders it difficult to make or obtain a copy of it, you are not required to submit copies of any such document.

FORM 9NOTICE OF APPLICATION

Regulation 42(4)(a)

Notice to (1) of an application.

Application of-

..... Applicant, formerly a (2) on the (3) list of
..... Health Board.

1. I enclose-

- (a) a copy of an application to the Secretary of State for a direction under section 30 of the National Health Service (Scotland) Act 1978 that the applicant shall no longer be disqualified for inclusion in the list or lists to which the direction of the Tribunal under section 29 of the said Act made on (4) relates;
- (b) a copy of each document which accompanied the application(5).

2. The Secretary of State intends to hold an inquiry in relation to the application and to appoint someone to hold a hearing for this purpose. Notice will be sent to you not less than 2 weeks before the date on which the inquiry will commence.

Signed,
Assistant Secretary
Scottish Office

Dated

Notes

- (1) The full name of the respondent or, as the case may be, the appropriate Health Board should be inserted.
 - (2) State whether the applicant is a doctor, dentist, ophthalmic medical practitioner, optician or a pharmacist.
 - (3) State whether the list was the medical, dental, ophthalmic or pharmaceutical list.
 - (4) State the date on which the Tribunal made the relevant direction.
 - (5) The applicant may intend to put in evidence documents or material which it is difficult to make or obtain a copy of. If this is the case, the Secretary of State will inform you accordingly.
-

FORM 10NOTICE OF INQUIRY

Status: This is the original version (as it was originally made). UK
Statutory Instruments are not carried in their revised form on this site.

Regulation 42(6)(b)

Notice to(1) of the date fixed for an inquiry to commence.

Application of-

..... Applicant, formerly a (2) on the(3) list of
..... Health Board.

1. The Secretary of State gives notice that an inquiry in relation to the application will commence on
..... day, the day of 19... at am/pm at

2. You are entitled to attend or be represented at the inquiry and take such part in the proceedings thereat
as the person holding the inquiry may think proper.

Signed,
Assistant Secretary Scottish Office

Dated

Notes

(1) The full name of the applicant, or the respondent or other appropriate Health Board (not being the respondent), as the case may be, should be inserted.

(2) State whether the applicant is a doctor, dentist, ophthalmic medical practitioner, optician or a pharmacist.

(3) State whether the list was the medical, dental, ophthalmic or pharmaceutical list.

SCHEDULE 5

Regulation 47

REVOCATIONS

(1) Regulations revoked	(2) References	(3) Extent of revocation
The National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1974	S.I. 1974/504	The whole Regulations
The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1974	S.I. 1974/1031	The whole Regulations
The National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 1988	S.I. 1988/878	The whole Regulations
The National Health Service (General Dental Services) (Miscellaneous Amendments) (Scotland) Regulations 1990	S.I. 1990/1772	Regulation 18
The National Health Service (Service Committees	S.I. 1991/1188	The whole Regulations

(1)	(2)	(3)
Regulations revoked and Tribunal) (Scotland) Amendment Regulations 1991	References	Extent of revocation

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations re-enact, with amendments, the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1974 (S.I. 1974/504).

Part II and Schedules 1, 2 and 3 make provision as to the investigation of matters relating to services provided by doctors, dentists, pharmacists, ophthalmic medical practitioners and opticians under arrangements with Health Boards in terms of sections 19, 25, 26 and 27 of the National Health Service (Scotland) Act 1978 (c. 29) (“the Act”). Health Boards are required to constitute service committees for the purpose of investigating complaints concerning allegations of a failure by any such professional person to comply with his terms of service under those arrangements and also to investigate matters relating to such services which are referred by the Health Board.

Each Health Board must have separate medical, dental, pharmaceutical and ophthalmic service committees. Each service committee consists of a chairman appointed from the lay members of the Health Board and 6 other persons of whom 3 are lay persons appointed by the Health Board and 3 (4 in the case of an ophthalmic service committee) are professional persons of the category relevant to the committee and who are appointed by the area medical, dental, pharmaceutical or optical committee as the case may be. Provision is made for a joint services committee and also for deputies to the chairman and members of a service committee (regulation 2).

A complaint involving an allegation of a failure by a professional person to comply with his terms of services requires to be submitted to the General Manager of the relevant Health Board in writing or orally where the complainer is unable by reason of physical disability or otherwise to write in the English language. There are time limits for submitting a complaint. Except where a dentist is the subject of the complaint, the complaint must be made within 13 weeks after the event which gave rise to the complaint. In the case of a dentist, the complaint must be made within that 13 week period or within six months after the completion of the treatment in which the failure is alleged to have arisen, whichever is the sooner. Provision is made for receipt of late complaints subject to certain conditions being satisfied. There is also a right of appeal to the Secretary of State to require an investigation of a complaint where the late complaint has not been accepted (regulations 3, 6 and 7).

Provided that a complaint has been made properly, it must be referred to the appropriate service committee (regulation 4). A complaint may be withdrawn in certain circumstances (regulation 5).

The Health Board is empowered to refer to the appropriate service committee matters relating to services provided as part of general medical services, general dental services, general ophthalmic services or pharmaceutical services. Where there is an allegation of a failure by a professional person to comply with his terms of services, the same time limits as apply to complaints under regulation 3 must be complied with.

Regulation 10 and Schedule 1 provide detailed rules of procedure applicable to investigations by service committees of matters referred to them either on complaint or by the Health Board of its own accord.

Following receipt of a report by a service committee the Health Board must determine the matter in accordance with regulation 11. Various sanctions are specified. These include recovery of any expenses incurred by a patient due to the failure of the professional person to comply with his terms of service; recommending to the Secretary of State that an amount should be recovered from the professional person by way of withholding from his remuneration or otherwise; requiring him to submit estimates to the Scottish Dental Practice Board for prior approval; warning the professional person to comply with his terms of service in the future; and making a representation to the NHS Tribunal.

Provision is made in regulations 12 to 14 for appeals to the Secretary of State by a complainer or by a professional person against a decision of the Health Board relating to an allegation whether there has been a failure to comply with the terms of service which decision is adverse to him. A professional person may also appeal certain sanctions which a Health Board has determined to apply. A complainer may appeal a decision on the issue of expenses which he has incurred in relation to the matter complained of.

The Secretary of State is empowered in certain circumstances to make a direction to a Health Board to recover from a professional person on a relevant list of persons providing services to which the Regulations apply an amount by deduction from remuneration or otherwise (regulation 15).

Part II of the Regulations also contains provisions relating—

- (a) to investigation of excessive prescribing by doctors (regulation 16);
- (b) determination of questions as to whether treatment by a doctor given to a patient on his list is treatment for which he may demand or accept a fee or remuneration under his terms of service (regulation 18);
- (c) determination of questions as to whether a substance supplied by a doctor, or by a pharmacist on the prescription of a doctor, was a drug for the purposes of pharmaceutical services (regulation 19); and
- (d) appeals from decisions of the Scottish Dental Practice Board in relation to general dental services (regulation 20).

Part III of, and Schedule 4 to, the Regulations make provision in connection with representations to the NHS Tribunal that the continued inclusion of any professional person in the relevant list of such persons would be prejudicial to the efficiency of the services in question and also with applications for removal of any disqualification from that list. Schedule 4 prescribes forms in connection with proceedings in relation to representations and applications.

Part IV of the Regulations makes general provision as to the notices to be issued under the Regulations and for attendance at hearings by a member of the Council on Tribunals. Part V of the Regulations provides for revocation of the 1974 Regulations and those Regulations which have amended them. Transitional provisions are specified which in effect mean that the 1974 Regulations will continue to apply in relation to investigations and appeals which have been commenced under the 1974 Regulations but have not been concluded by the date of coming into force of these Regulations.

The principal changes introduced by these Regulations are as follows:—

- (a) the time limit for making a complaint has been increased from 6 to 13 weeks (regulation 3(2) and (3));
- (b) complaints may in certain circumstances be made orally (regulation 3(4));
- (c) the Health Board may seek further information as to the substance of a complaint (regulation 3(5));

- (d) provision is made for withdrawal of complaints either by the complainer or where the respondent dies (regulation 5);
- (e) the Health Board's duties and powers in relation to reports submitted by service committees are further clarified (regulation 11);
- (f) amounts determined as recoverable by Health Boards under regulation 11(4)(a) or by the Secretary of State under regulation 15(1) are recoverable from a professional person even if he is no longer on the relevant list (regulations 11(6) and 15(12));
- (g) provision is made for exchanges of comments among parties in appeals to the Secretary of State (regulation 13(3) to (6));
- (h) a professional person is given the option of making representations about the amount of a withholding from remuneration recommended by a Health Board in lieu of exercising his full right of appeal (regulation 12(3));
- (i) 3 weeks' notice of a hearing of a service committee is required instead of 2 weeks (paragraph 8 of Schedule 1);
- (j) parties to a hearing of a service committee are required to provide names of witnesses and statements of any person whose evidence they rely on but who will not be present (paragraph 10 of Schedule 1);
- (k) the quorum for a service committee has been increased (paragraph 14 of Schedule 1);
- (l) subject to exceptions, a complaint will be treated as abandoned if the complainer fails to attend a hearing (paragraph 16(2) of Schedule 1);
- (m) provisions concerning who may assist a part in presentation of a case at a hearing of a service committee have been altered (paragraph 17 of Schedule 1);
- (n) assistance may be given to a complainer to explain technical terms in comments made by the professional person in relation to the complaint (paragraph 5(3)(b)(ii) of Schedule 1);
- (o) regulation 20A of the 1974 Regulations (investigation of excessive prescribing of optical appliances) is not re-enacted.