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STATUTORY INSTRUMENTS

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**1992 No. 664**

**NATIONAL HEALTH SERVICE,  
ENGLAND AND WALES**

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

<i>Made</i>	- - - -	<i>10th March 1992</i>
<i>Laid before Parliament</i>		<i>11th March 1992</i>
<i>Coming into force</i>	- -	<i>1st April 1992</i>

The Secretary of State, in exercise of powers conferred by the provisions set out in column (1) of Schedule 1 to this instrument (as amended in particular by the provisions set out in column (2) of that Schedule), and of all other powers enabling him in that behalf, and after consultation with such organisations as appear to him to be representative of persons providing general dental services<sup>(1)</sup>, and with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971<sup>(2)</sup>, hereby makes the following Regulations:

**PART I  
GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the National Health Service (Service Committees and Tribunal) Regulations 1992 and shall come into force on 1st April 1992.

**Interpretation**

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

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- (1) See section 37(1B) of the National Health Service Act 1977 (c. 49), as inserted by section 12(3) of the Health and Medicines Act 1988 (c. 49).
- (2) 1971 c. 62; see paragraph 17 of Part I of Schedule 1 to that Act, as amended by the National Health Service Reorganisation Act 1973 (c. 32), Schedule 4, paragraph 134, and the National Health Service Act 1977 (c. 49), Schedule 15, paragraph 53. By virtue of section 2(1)(b) of the National Health Service and Community Care Act 1990 (c. 19) references in any Act to a Family Practitioner Committee fall to be construed as references to a Family Health Services Authority.

- “the Act” means the National Health Service Act 1977<sup>(3)</sup>;
- “appliance” means an appliance which is included in a list for the time being approved by the Secretary of State for the purposes of section 41 of the Act;
- “appropriate committee” means, in relation to a matter to be investigated under Part II, whichever of the committees referred to in regulation 3(1) is the appropriate committee by virtue of regulation 4;
- “assistant” has, in relation to a dentist, the same meaning as in the Dental Regulations;
- “the Board” means the Dental Practice Board<sup>(4)</sup>;
- “chemist” has the same meaning as in the Pharmaceutical Regulations;
- “complaint”, except in regulation 20 and Part III, means a complaint made in accordance with regulations 5 and 6;
- “conciliation” means the process of conciliation established and maintained by the FHSA, pursuant to a direction under section 17 of the Act, with a view to resolving a matter giving rise to a complaint without recourse to an investigation under these Regulations;
- “Dental Advisory Committee” has the meaning given to it in Part III of Schedule 5;
- “dental list” means the list prepared by an FHSA under regulation 4 of the Dental Regulations;
- “dental officer” means—
- (a) for the purposes of regulation 17 (investigation of record keeping), a dentist in the service of the Department of Health, the Board or the Welsh Office, as the case may be,
  - (b) for all other purposes, a dentist in the service of the Department of Health or the Welsh Office, as the case may be;
- “Dental Regulations” means the National Health Service (General Dental Services) Regulations 1992<sup>(5)</sup>;
- “dental service committee” means the committee referred to in regulation 3(1)(a)(ii);
- “dentist” means a registered dental practitioner;
- “dentists' panel”, except in regulation 19(7), means the panel of dentists who are, or who have been, engaged in the provision of general dental services and who have been nominated to the panel for the purposes of these Regulations by a body which is, in the Secretary of State’s opinion, representative of the dental profession;
- “denture conciliation committee” means the committee referred to in regulation 3(1)(b);
- “deputy”—
- (a) in relation to a doctor, means a person to whom the doctor has, under paragraph 19 of his terms of service, delegated the treatment of his patient,
  - (b) in relation to a dentist, has the same meaning as in the Dental Regulations;
- “doctor” means a registered medical practitioner, other than one acting in the capacity of an ophthalmic medical practitioner;
- “doctors' panel”, except in regulation 15, means the panel of doctors who are, or who have been, engaged in the provision of general medical services and who have been nominated to the panel for the purposes of these Regulations by a body which is, in the Secretary of State’s opinion, representative of doctors engaged in the provision of general medical services;
- “drug” includes medicine;

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(3) 1977 c. 49.

(4) See section 12(1) of the Health and Medicines Act 1988 (c. 49).

(5) S.I. 1992/661.

- “estimate” has the same meaning as in the Dental Regulations;
- “FHSA” means the Family Health Services Authority constituted for any locality;
- “investigation” means the investigation, under Part II, of a complaint or of a matter referred under regulation 7 or 8;
- “joint services committee” means the committee referred to in regulation 3(1)(a)(v);
- “Local Dental Committee”, “Local Medical Committee”, “Local Optical Committee” and “Local Pharmaceutical Committee” mean the committees of those names which are recognised by the FHSA in relation to its locality under section 44 of the Act(6), and “Local Representative Committee” means any of those committees;
- “Medical Advisory Committee” has the meaning given to it in Part II of Schedule 5;
- “medical list” has the same meaning as in the Medical Regulations;
- “medical officer” means a doctor in the service of the Department of Health or the Welsh Office, as the case may be;
- “Medical Regulations” means the National Health Service (General Medical Services) Regulations 1992(7);
- “medical service committee” means the committee referred to in regulation 3(1)(a)(i);
- “ophthalmic list” has the same meaning as in the Ophthalmic Regulations;
- “ophthalmic medical practitioner” has the same meaning as in the Ophthalmic Regulations;
- “Ophthalmic Regulations” means the National Health Service (General Ophthalmic Services) Regulations 1986(8);
- “ophthalmic service committee” means the committee referred to in regulation 3(1)(a)(iii);
- “optician” means—
- (a) in the context of any provision requiring a member of a body constituted under these Regulations to be an optician, a registered ophthalmic optician within the meaning of the Opticians Act 1989(9);
  - (b) in any other context, a registered ophthalmic optician within the meaning of that Act, or a body corporate enrolled in the list mentioned in section 9(1)(a) of that Act;
- “Part II service” means any of the services to be provided under Part II of the Act, that is to say general medical services, general dental services, general ophthalmic services or pharmaceutical services;
- “party” means, in relation to—
- (a) an investigation, the complainant, the practitioner or the body which has referred a matter under regulation 7 or 8;
  - (b) an appeal under regulation 10, the appellant or the respondent;
- “patient”, except in Part III, means any person who is or who claims to be, entitled to the provision of a Part II service;
- “pharmaceutical list” has the same meaning as in the Pharmaceutical Regulations;
- “Pharmaceutical Regulations” means the National Health Service (Pharmaceutical Services) Regulations 1992(10);
- “pharmaceutical service committee” means the committee referred to in regulation 3(1)(a)(iv);

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(6) Section 44 was amended by section 12 of the National Health Service and Community Care Act 1990 (c. 19).

(7) S.I. 1992/635.

(8) S.I. 1986/975.

(9) 1989 c. 44.

(10) S.I. 1992/662.

“pharmacist” means a registered pharmacist;

“practitioner” means a doctor, dentist, ophthalmic medical practitioner, optician or chemist against whom a complaint has been made or in respect of whom a matter has been referred under regulation 7 or 8;

“prescription form” has the same meaning as in the Pharmaceutical Regulations;

“prior approval requirement” has the meaning given to it in regulation 14(1);

“relevant local representative committee” means—

- (a) in relation to a doctor, or the medical service committee, the Local Medical Committee;
- (b) in relation to a dentist, or the dental service committee, the Local Dental Committee;
- (c) in relation to an ophthalmic medical practitioner or an optician, or the ophthalmic service committee, the Local Optical Committee;
- (d) in relation to a chemist, or the pharmaceutical service committee, the Local Pharmaceutical Committee,

recognised in relation to the locality in question;

“respondent”, in relation to an appeal under regulation 10—

- (a) where the appeal is brought by the practitioner, means the complainant or, as the case may be, the FHSA which was a party to the investigation;
- (b) in any other case, means the practitioner;

“salaried dentist” has the same meaning as in the Dental Regulations;

“service committee” means any committee referred to in regulation 3(1)(a)(i) to (iv);

“Statement of Dental Remuneration” has the same meaning as in the Dental Regulations;

“terms of service” has the same meaning—

- (a) in relation to a doctor—
  - (i) as respects the provision of general medical services, as in the Medical Regulations,
  - (ii) as respects the provision of pharmaceutical services, as in the Pharmaceutical Regulations;
- (b) in relation to a dentist, as in the Dental Regulations;
- (c) in relation to an ophthalmic medical practitioner or an optician, as in the Ophthalmic Regulations;
- (d) in relation to a chemist, as in the Pharmaceutical Regulations;

“treatment”, in relation to general medical services, has the same meaning as in the Medical 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 Dental 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 to be specified under regulation 9(5)(d) or 14(2)(a), treatment within the meaning of the Dental 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

- (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 1st June 1991 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 46 of the Act.

(2) Unless the context otherwise requires—

(a) any reference in these Regulations—

- (i) to a numbered regulation is a reference to the regulation bearing that number in these Regulations,
- (ii) to a numbered Part or Schedule is a reference to the Part of, or Schedule to, these Regulations bearing that number;

(b) any reference in a regulation in, or in a Schedule to, these Regulations to a numbered paragraph is a reference to the paragraph bearing that number in that regulation or Schedule;

(c) any reference, in a paragraph in a Schedule to these Regulations, to a numbered sub-paragraph is a reference to the sub-paragraph bearing that number in that paragraph.

(3) Where, by virtue of directions given under section 13 of the Act, or by virtue of any arrangements made pursuant to Regulations made under the Act<sup>(11)</sup>, a function of the Secretary of State is exercisable by some other person or body, a reference in these Regulations in relation to that function—

- (a) to the Secretary of State includes a reference to the person or body exercising that function on behalf of the Secretary of State; and
- (b) to the principal office of the Secretary of State includes a reference to the principal office of that person or body.

## PART II

### PROVISIONS RELATING TO INVESTIGATIONS, DISPUTES, APPEALS, ETC.

#### **Establishment of committees**

3.—(1) Every FHSA—

(a) shall have—

- (i) a medical service committee,
- (ii) a dental service committee,
- (iii) an ophthalmic service committee,
- (iv) a pharmaceutical service committee, and
- (v) a joint services committee; and

(b) may have a denture conciliation committee,

and may, where it sees fit, have two or more of any of the committees mentioned in heads (i) to (iv) of sub-paragraph (a) of this paragraph.

(2) Schedule 2 shall have effect with respect to committees referred to in paragraph (1).

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(11) See S.I. 1992/660.

### **Appropriate committee**

4.—(1) Complaints and other matters investigated under this Part of these Regulations shall, subject to paragraph 5(2) to (4), be investigated by the appropriate committee, that is to say—

- (a) where the complaint or matter relates to a doctor, the medical service committee;
- (b) where—
  - (i) the complaint or matter relates to a dentist, and
  - (ii) sub-paragraph (e) of this paragraph does not apply,the dental service committee;
- (c) where the complaint or matter relates to an ophthalmic medical practitioner or an optician, the ophthalmic service committee;
- (d) where the complaint or matter relates to a chemist, the pharmaceutical service committee;
- (e) where—
  - (i) the complaint or matter relates to a dentist and concerns only the fit or efficiency of a denture provided by him, and
  - (ii) the FHSA has a denture conciliation committee,the denture conciliation committee.

(2) A complaint or other matter which, under paragraph (1), is required to be investigated by two service committees may instead be investigated by the joint services committee, and where it is decided that the joint services committee shall investigate the complaint or matter, it shall be the appropriate committee in relation to that complaint or matter.

(3) If, in the opinion of a service committee, a matter referred to it involves a matter which is required, by virtue of paragraph (1), to be investigated also by another service committee, it shall refer the matter to the joint services committee instead of dealing with the matter itself.

(4) Where, in the course of its investigation of any complaint or matter, a denture conciliation committee considers that, by reason of—

- (a) the nature of the allegations made against the dentist; or
- (b) the number of cases in which complaints have been made against the dentist,

the complaint or matter should more appropriately be investigated by the dental service committee, it shall refer the complaint or matter to that committee for investigation in accordance with regulation 7.

(5) Where a complaint, or a matter referred to the ophthalmic service committee, involves a question relating to an ophthalmic medical practitioner and an optician, that service committee shall, where the practitioner and the optician so agree, investigate the complaint or matter in relation to both persons at the same time.

### **Making of complaints**

5.—(1) A person may complain—

- (a) about an alleged failure by a doctor, dentist, ophthalmic medical practitioner, optician or chemist to comply with his terms of service; or
- (b) about the fit or efficiency of a denture provided for him by a dentist;

by giving notice to the FHSA in accordance with the following provisions of this regulation, stating the substance of the matter he wishes to have investigated.

(2) Notice of a complaint against a doctor, ophthalmic medical practitioner, optician or chemist shall, subject to the provisions of paragraph (4) and of Schedule 3, be given within thirteen weeks after the event which is the subject of the complaint.

(3) Notice of a complaint against a dentist shall, subject to the provisions of paragraph (4) and of Schedule 3, be given within—

- (a) six months after the completion of the treatment which is the subject of the complaint; or
- (b) thirteen weeks after the matter which is the subject of the complaint comes to the complainant's notice,

whichever is the earlier.

(4) Schedule 3 shall have effect with respect to the investigation of complaints in so far as notice of the complaint is not, in relation to any event or matter which is the subject of the complaint, given within the relevant period specified in paragraph (2) or (3).

(5) Any notice given for the purposes of this regulation—

- (a) shall be given in writing, unless the FHSA is satisfied that the person wishing to make the complaint is unable, whether by reason of physical disability or otherwise, to read and write in the English language, in which case the notice may be given orally; and
- (b) if required to be given in writing shall be sent to—
  - (i) any office of the FHSA, or
  - (ii) in England, the principal office of the Regional Health Authority in whose region the locality of the FHSA is included or, in Wales, the Welsh Office, Cathays Park, Cardiff, or
  - (iii) the principal office of any District Health Authority whose district is in whole or in part situated in, or is the same as, the locality of the FHSA;
- (c) if given orally by virtue of sub-paragraph (a) of this paragraph, shall be recorded by tape recorder, and (as soon as practicable thereafter) transcribed, by the FHSA.

(6) In its application to a complaint which is made to an FHSA whose locality is in Wales, paragraph (5)(a) shall have effect as if for the words “the English” there were substituted the words “neither the English nor the Welsh”.

### **Investigation of complaints**

**6.—(1)** A complaint made in accordance with regulation 5 shall be investigated if it is made by the Board, or if, in the opinion of the chairman of the appropriate committee—

- (a) it relates to—
  - (i) an alleged failure by the practitioner to comply with the terms of service, or
  - (ii) the fit or efficiency of any denture provided by the practitioner,in respect of a person who was, or who claimed to be, entitled to the provision of a Part II service; and
- (b) it is made—
  - (i) by or with the authority of that person,
  - (ii) on behalf of that person because he is under the age of 16 or is incapable, by reason of old age, sickness or other infirmity, of making the complaint himself, or
  - (iii) in respect of such a person who has died.

(2) Where, at the beginning of the hearing of a complaint before the appropriate committee, or at any time thereafter, it appears that the complaint was not made in accordance with paragraph (1), it shall be deemed to have been properly referred to the committee for investigation under the provisions of regulation 7.

(3) A complaint made against either—

- (a) a doctor in respect of the acts or omissions of a deputy whose name is also included in the medical list at the time of the event, treatment or matter which is the subject of the complaint; or
- (b) a doctor whose name is included in the medical list at the time of the event, treatment or matter which is the subject of the complaint, in respect of his acts or omissions whilst acting as deputy to a doctor whose name is also included in the medical list,

shall be taken as a complaint against both doctors and shall be investigated accordingly.

(4) Where, at any time after notice of a complaint has been given but before the FHSA makes a decision under regulation 9 in relation to that complaint, the practitioner to whom the complaint relates dies, no further action shall be taken under these Regulations in relation to that practitioner.

(5) A complainant may withdraw his complaint—

- (a) at any time in the course of, or immediately following, conciliation, by giving written notice to the FHSA of its withdrawal;
- (b) at any other time before the appropriate committee presents its report to the FHSA—
  - (i) by giving written notice to the FHSA of his intention to withdraw it, and
  - (ii) with the consent of the appropriate committee.

(6) Where the name of the practitioner against whom a complaint is made was, at the time of the event, treatment or matter which gave rise to a complaint, included in a list maintained by the FHSA under section 29, 36, 39 or 42 of the Act, the appropriate committee shall, subject to the provisions of this Part, investigate the complaint, notwithstanding that the name of the practitioner in question has since been removed from the list in question.

(7) Schedule 4 shall have effect with respect to the procedure for investigating complaints under this Part.

### **Other investigations by, and duties of, appropriate committees**

7.—(1) Subject to regulation 8(1), the appropriate committee shall investigate any matter relating to the administration of a Part II service, whether or not the matter has been raised by way of complaint under regulation 5, which is referred to it by—

- (a) the FHSA;
- (b) a duly authorised committee of the FHSA; or
- (c) the Board.

(2) A matter which involves an allegation that a doctor, dentist, ophthalmic medical practitioner, optician or chemist has failed to comply with his terms of service, or which relates solely to the fit or efficiency of any denture provided by a dentist under general dental services, shall, subject to paragraph (3) and regulation 8(2), be investigated only to the extent that—

- (a) in the case of a doctor, ophthalmic medical practitioner, optician or chemist, it is referred within thirteen weeks after the event which is the subject of the allegation;
- (b) in the case of a dentist—
  - (i) it is referred within six months after completion of the treatment which is the subject of the complaint, or within thirteen weeks after the matter which is the subject of the allegation came to the notice of the referring body, whichever is the earlier, and
  - (ii) where the matter in question was reported to the FHSA by the Board, it was so reported within thirteen weeks of the date on which it came to the notice of the Board.

(3) In so far as any matter is not referred or reported within the relevant period specified in paragraph (2), that aspect of the matter may nevertheless be investigated if the practitioner consents, or, where the practitioner does not give his consent, the Secretary of State consents, to the referral.



(4) Paragraph 2 of Schedule 3 shall apply to an application for the Secretary of State's consent under paragraph (3) as it applies to an application for his consent under paragraph 1(2)(b) of that Schedule, but as if for the references to the complainant and the complaint there were substituted references to the body proposing to refer the matter and to the matter respectively.

(5) Schedule 4 shall have effect with respect to the procedure for investigating matters referred under this regulation to an appropriate committee.

(6) Any matter which would otherwise be referred by the FHSA or any duly authorised committee thereof for investigation by a service committee may, if the FHSA or, as the case may be, the duly authorised committee is satisfied that it is appropriate to the joint services committee, be referred to that committee.

### **Arrangements for investigations and determinations by other FHSAs**

**8.—**(1) Where—

(a) in the case of any complaint made to an FHSA—

(i) the complainant or the practitioner is a member or officer of either the FHSA or one of its committees mentioned in regulation 3(1), or

(ii) paragraph 4(1) of Schedule 4 has been complied with by that FHSA but subparagraph (1) or (2) of paragraph 8 of that Schedule cannot be complied with by reason of the operation of paragraph 6(3) of that Schedule; or

(b) in the opinion of the FHSA or one of its duly authorised committees, a matter of a kind referred to in regulation 7(1) ought to be investigated by an appropriate committee,

the FHSA shall arrange with another FHSA for the complaint or the matter to be investigated and determined under these Regulations by that other FHSA pursuant to regulation 11 of the National Health Service Functions (Directions to Authorities and Administration Arrangements) Regulations 1991(12), and that other FHSA shall, subject to paragraph (2), refer the matter to its appropriate committee.

(2) In a case to which—

(a) paragraph (1)(a)(ii) applies, the appropriate committee of the other FHSA referred to in that paragraph shall proceed to hold a hearing and report to that other FHSA in accordance with paragraphs 4 to 9 of Schedule 4;

(b) paragraph (1)(b) applies, the reference in regulation 7(2)(b) to the referring body shall be construed as a reference to the FHSA, or to the duly authorised committee of the FHSA, first referred to in that paragraph (1)(b).

(3) Schedule 4 shall have effect with respect to the procedure for investigating matters referred under this regulation to an appropriate committee.

### **Decision of FHSA**

**9.—**(1) The FHSA, after due consideration of the report presented to it by the appropriate committee pursuant to paragraph 7 of Schedule 4, shall—

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

(b) draw such inferences from those findings of fact as it sees fit, having regard to that committee's report as it relates to the inferences which may properly be drawn from those findings;

(c) determine—

- (i) in the case of a report of a service committee or the joint services committee, whether the practitioner has failed to comply with any one or more of the terms of service identified to him by the chairman of the appropriate committee pursuant to paragraph 3(3) of Schedule 4,
  - (ii) in the case of a report of a denture conciliation committee, whether the dentist has failed to secure and maintain the oral health of the patient; and
- (d) determine—
  - (i) that no further action should be taken in relation to the report, or
  - (ii) in a case to which sub-paragraph (c)(i) of this paragraph applies, the action to be taken, in accordance with any one or more of the provisions of paragraphs (3) and (5) (but subject to paragraph (6)), in relation to the practitioner, or
  - (iii) in a case to which sub-paragraph (c)(ii) of this paragraph applies, the action which should be taken in accordance with paragraph (7) in relation to the parties,having regard to any recommendation made by the appropriate committee pursuant to paragraph 7 of Schedule 4.
- (2) If the FHSA decides either not to adopt the recommendation of the appropriate committee or to take any action not recommended by the appropriate committee, it shall record in writing its reasons for that decision.
- (3) Where, in the case of any doctor to whom a report of a service committee relates, the FHSA is satisfied, after consultation with the Local 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, it may impose a special limit on the number of persons for whom the doctor may undertake to provide treatment.
- (4) Where, pursuant to paragraph (3), the FHSA imposes a special limit on the number of persons for whom a doctor may undertake to provide treatment, paragraphs (6) to (8) of regulation 24 of the Medical Regulations (limitation of number of persons on 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 (3) of this regulation; and
  - (b) to an excess were references to the extent to which the number of patients on the doctor's list exceeds that special limit.
- (5) Where it has been determined that a practitioner to whom the report of the service committee relates has failed to comply with any of his terms of service the FHSA may—
  - (a) subject to paragraph (8) but without prejudice to sub-paragraph (b) of this paragraph, determine that—
    - (i) 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
    - (ii) that any such sums so recovered shall be paid to that person;
  - (b) determine that an amount not exceeding £500 shall be recovered from the practitioner, whether by way of deduction from his remuneration or otherwise;
  - (c) recommend to the Secretary of State that an amount in excess of £500 should be recovered from the practitioner, whether by way of deduction from his remuneration or otherwise;

- (d) where the practitioner is a dentist, recommend to the Secretary of State that the dentist should be required to submit estimates for the prior approval of the Board—
    - (i) in respect of any treatment of such description, and
    - (ii) during such a period,as shall be specified in the recommendation;
  - (e) determine that the practitioner should be warned to comply more closely with his terms of service in future.
- (6) Where the FHSA determines to make a recommendation under either or both of sub-paragraphs (c) and (d) of paragraph (5), it shall not determine that action should also be taken under sub-paragraph (a), (b) or (e) of that paragraph, but it may—
- (a) where it makes a recommendation under sub-paragraph (c) of that paragraph, recommend in addition that action should also be taken under either or both of sub-paragraphs (a) and (e) of that paragraph;
  - (b) where it makes a recommendation under sub-paragraph (d) of that paragraph, recommend in addition that action should also be taken under any of subparagraphs (a), (b) and (e) of that paragraph.
- (7) Where, following a report of a denture conciliation committee, it has been determined by the FHSA that a dentist has failed to secure and maintain the oral health of a patient, the FHSA may—
- (a) recommend to the parties that the patient should, by agreement with the dentist, attend him for adjustment of, or other treatment in relation to, the denture; or
  - (b) where it is satisfied that—
    - (i) the dentist is not willing to provide further treatment to the patient, or
    - (ii) the patient has reasonably refused to attend the dentist for further treatment, or
    - (iii) it is otherwise undesirable that the dentist should provide further treatment for the patient,determine, subject to paragraph (8), 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 appropriate committee) which, by reason of such failure, have been reasonably and necessarily incurred, or are likely to be so incurred, by any person in obtaining further treatment, and that any such sums so recovered shall be paid to that person.
- (8) Where, pursuant to paragraph (5)(a) or (7)(b), the FHSA determines that there should be recovered from any dentist an amount in respect of any expenses referred to in that provision, that amount shall not exceed the cost, or the likely cost, of the further treatment to which it relates, calculated in accordance with the rate of remuneration in force for general dental services under the Act, and the amount so recovered may include any such contribution towards the cost of treatment as may have been paid, or may be payable, by the patient under that Act.
- (9) The FHSA shall give notice in writing of its determination under this regulation to the parties to the investigation, to the Secretary of State and, where reasonably requested to do so by either party, to any member of either House of Parliament, and shall include with the notice—
- (a) a copy of the report of the appropriate committee;
  - (b) a statement of any reasons recorded by the FHSA under paragraph (2); and
  - (c) a statement as to the rights of appeal to the Secretary of State under regulation 10, and of his power under regulation 11 to award costs.
- (10) Subject to paragraph (11), where an FHSA determines under this regulation that action should be taken in accordance with any of the provisions of paragraphs (3), (5)(a), (b) and (e) and

(7)(b), that action shall be taken by the FHSA in whose list the name of the practitioner was included at the time of the event which gave rise to the complaint or reference; except that where, at the time when such action falls to be taken, the practitioner's name is no longer included in that FHSA's list but is included in the list of some other FHSA, that action shall be taken by that other FHSA.

(11) Where in the case of a dentist, an FHSA—

- (a) has determined under this regulation that action should be taken in accordance with—
  - (i) paragraph (5)(a) or (7)(b), by recovery of an amount from a dentist and the payment of such amount to a person mentioned in that provision; or
  - (ii) paragraph (5)(b), by recovery of an amount from a dentist; and
- (b) is of the opinion that such recovery should be effected by deduction of the amount from the dentist's remuneration,

that FHSA shall notify the Board, and the Board shall take that action.

(12) Any amount determined under paragraph (5)(a) or (b) or (7)(b) as being recoverable shall, to the extent that it is not recovered from the practitioner's remuneration, be a debt owed by the practitioner to the FHSA by which it is recoverable.

(13) Where the FHSA makes a determination under the provisions of paragraph (5)(a), (b) or (c) or (7)(b) of this regulation, no action shall be taken in consequence of that determination—

- (a) if no appeal is brought, before the end of the period specified in regulation 10(2) for bringing an appeal; or
- (b) if an appeal is brought, before it has received notice—
  - (i) that the appeal has been withdrawn, or
  - (ii) of the Secretary of State's decision of the appeal.

### **Appeal to the Secretary of State**

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

- (a) by any party to an investigation, against a determination of an FHSA under regulation 9(1)(c) which is adverse to that party;
- (b) by a practitioner against any determination by an FHSA under regulation 9(1)(d) to take action in accordance with any one or more of paragraphs (3), (5)(a) and (b) and (7)(b) of regulation 9;
- (c) in respect of any determination by an FHSA that an overpayment has or has not been made in respect of a person's remuneration, by—
  - (i) that person, or
  - (ii) the FHSA referred to in regulation 8(1)(b);
- (d) by a complainant who has asserted to an FHSA that, by reason of a practitioner's failure to comply with his terms of service, he has incurred or is likely to incur expenses in circumstances mentioned in regulation 9(5)(a) or (7)(b), against a determination by the FHSA under regulation 9(1)(d) which is adverse to him in that respect,

by giving notice of appeal in accordance with paragraph (2).

(2) A notice of an appeal under this regulation shall be sent in writing to the Secretary of State within 30 days beginning on the date on which notice of the FHSA's decision was sent to the appellant under regulation 9(9), and shall contain a concise statement of the grounds of appeal upon which the appellant intends to rely.

(3) Subject to paragraph (6), on an appeal to which paragraph (1)(a) or (c) applies, the Secretary of State shall inquire into the whole of the complaint or reference, on the basis of such evidence as

was available to the appropriate committee and of such further evidence as shall have been adduced on the appeal, and shall—

- (a) make such findings of fact as he sees fit; and
  - (b) draw such inferences from those findings as he sees fit; and
  - (c) in the case of an appeal to which paragraph (1)(a) applies—
    - (i) determine whether or not the practitioner has failed to comply with any one or more of his terms of service, and
    - (ii) determine in accordance with any one or more of regulations 9(3), (4), (5)(a) and (e), (7) and (8) (as modified in accordance with paragraph (5) of this regulation), 13 and 14 whether any, and if so what, action should be taken in relation to that practitioner; or
  - (d) in the case of an appeal to which paragraph (1)(c) applies, determine whether there has been an overpayment and, if so, of what amount.
- (4) On an appeal to which paragraph (1)(b) or (d) applies, the Secretary of State shall—
- (a) accept as conclusive—
    - (i) those findings of fact made by the appropriate committee which were necessary for the purpose of the FHSA’s determination under regulation 9(1)(c),
    - (ii) the inferences drawn by the FHSA under regulation 9(1)(b), and
    - (iii) any determination made by the FHSA under regulation 9(1)(c) in relation to any failure mentioned in that provision; and
  - (b) determine—
    - (i) in the case of an appeal to which paragraph (1)(b) applies, in accordance with any one or more of regulations 9(3), (4), (5)(a) and (e), (7) and (8) (as modified in accordance with paragraph (5) of this regulation), 13 and 14, the action to be taken in relation to the practitioner,
    - (ii) in the case of an appeal to which paragraph (1)(d) above applies, whether an amount should be recovered and paid as mentioned in regulation 9(5)(a) or (7)(b), and if so, what amount, or
    - (iii) in either case, that no further action should be taken in relation to the report of the appropriate committee.
- (5) For the purposes of paragraphs (3)(c)(ii) and (4)(b)(i) of this regulation, paragraphs (3), (4), (5)(a) and (e), (7) and (8) of regulation 9 shall have effect as if for any reference to “the FHSA” there were substituted a reference to “the Secretary of State”.
- (6) Any 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.

### **Procedure on appeal**

**11.—**(1) Subject to paragraph (5), if the Secretary of State, after considering a notice of appeal and any further particulars furnished by the appellant, is of the opinion that the notice and particulars disclose no reasonable grounds of appeal or that the appeal is otherwise vexatious or frivolous, he may determine the appeal by dismissing it forthwith.

(2) The Secretary of State shall, unless he dismisses the appeal under paragraph (1), send a copy of the notice of appeal and of any further particulars furnished by the appellant—

- (a) in the case of an appeal under—

- (i) regulation 10(1)(a),
  - (ii) regulation 10(1)(b) against a determination of the FHSA that action should be taken under regulation 9(5)(a) or (7)(b), or
  - (iii) regulation 10(1)(d),
- to any person who was a party to the proceedings before the service committee;
- (b) in the case of an appeal under regulation 10(1)(c) brought—
    - (i) by the practitioner, to the FHSA referred to in regulation 8(1)(b);
    - (ii) by that FHSA, to the practitioner;
  - (c) in the case of any appeal, to the FHSA,
- and shall invite them to submit their observations on the appeal within 30 days of their being sent the copy of the notice of appeal.
- (3) Where observations are made under paragraph (2), the Secretary of State shall send a copy of those observations to the appellant and shall invite him to submit his comments on the observations within 21 days of his being sent that copy.
- (4) Subject to paragraph (5), the Secretary of State may—
- (a) after the period allowed—
    - (i) for the making of observations under paragraph (2), or
    - (ii) where such observations are made, for the making of comments under paragraph (3),
 has expired; and
  - (b) where he is of the opinion that the appeal is of such a nature that it can properly be determined without an oral hearing,
- dispense with an oral hearing and determine the appeal.
- (5) An appeal by a practitioner under regulation 10(1)(a) against a decision in which the FHSA have determined to take action under paragraph (3), (5)(a), (b), (c) or (d) or (7)(b) of regulation 9 shall not be dismissed without an oral hearing unless the practitioner has stated in writing that he does not want such a hearing.
- (6) Where there is to be an oral hearing the Secretary of State shall appoint three persons to hold an inquiry, of whom—
- (a) one shall be a barrister or a solicitor, and shall act as chairman; and
  - (b) two shall be selected in accordance with paragraphs (7) and (8).
- (7) The persons appointed under paragraph (6)(b) shall be—
- (a) where the practitioner is a doctor, two doctors;
  - (b) where the practitioner is a dentist, two dentists;
  - (c) where the practitioner is an ophthalmic medical practitioner, two ophthalmic medical practitioners;
  - (d) where the practitioner is an optician, two opticians;
  - (e) where the practitioner is a chemist, two registered pharmacists.
- (8) In a case to which—
- (a) paragraph (7)(a) applies, one of the doctors shall be selected from the doctors' panel;
  - (b) paragraph (7)(b) applies, one of the dentists shall be selected from the dentists' panel.

(9) The Secretary of State shall appoint a day for the hearing and shall give, to the appellant and to any other person or body to whom a copy of the notice of appeal was sent under paragraph (2), not less than 21 days' notice in writing of the date, time and place of the hearing.

(10) Subject to the provisions of regulation 33 (attendance by representative of Council on Tribunals), no person shall, without the consent of the appellant, the respondent and the persons appointed under paragraph (6), be admitted to a hearing before those persons unless he is—

- (a) the appellant, the respondent or a member or an officer of the FHSA which made the determination against which the appeal has been brought;
- (b) a person (who may be counsel, a solicitor or any other person) engaged by a person or body mentioned in sub-paragraph (a) of this paragraph to represent them before the persons appointed under paragraph (6); or
- (c) a person whose attendance is required for the purpose of giving evidence to the persons so appointed.

(11) A party to an appeal shall not rely at an oral hearing on any facts or contentions which do not appear to the Secretary of State or the persons holding the inquiry to have been raised in the course of the proceedings before the appropriate committee unless—

- (a) he has, not less than seven days before the hearing, given notice in writing to the Secretary of State of such facts or contentions; or
- (b) the Secretary of State or persons holding the inquiry give their consent.

(12) The persons holding the inquiry shall draw up a report and present it to the Secretary of State, who shall take it into consideration and determine the appeal.

(13) Where an FHSA has made representations to the Tribunal following its consideration of a report of an appropriate committee, the Secretary of State may, for the purpose of any appeal under regulation 10(1)(a) against a decision of that FHSA following its consideration of that report, treat as conclusive any relevant finding of fact of the Tribunal.

(14) The Secretary of State shall give notice in writing to the parties to the appeal of his determination under paragraph (1), (4) or (12) and shall include with the notice a statement of his reasons for the determination.

(15) The FHSA may, with the consent of the Secretary of State, make such contribution as it thinks fit, and if directed by the Secretary of State shall make such contribution as he may determine, towards the cost of the appeal incurred by any other party to the appeal.

(16) The provisions of subsections (2), (3) and (5) of section 250 of the Local Government Act 1972<sup>(13)</sup> (which relate to the summoning of witnesses, the awarding of costs and other matters) shall apply to an inquiry held under this regulation as if in that subsection (5) for the words “The Minister causing an inquiry to be held under this section” there were substituted the words “The Secretary of State”.

### **Sanctions available following recommendation for recovery or prior approval**

**12.—**(1) Where an FHSA has made, in relation to any practitioner, a recommendation under regulation 9(5)(c), the Secretary of State—

- (a) shall dispose of the matter in accordance with regulation 13; and
- (b) may (whether or not he makes any direction under regulation 13(11)) take action in accordance with any of—
  - (i) where the practitioner is a dentist, regulation 14,
  - (ii) regulation 9(5)(a) (as modified in accordance with regulation 10(5)), and

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<sup>(13)</sup> 1972 c. 70, as amended by Part IV of Schedule 1 to the Statute Law (Repeals) Act 1989 (c. 43).

(iii) regulation 9(5)(e) (as modified in accordance with regulation 10(5)).

(2) Where an FHSA has made, in relation to any dentist, a recommendation under regulation 9(5)(d), the Secretary of State—

- (a) shall dispose of the matter in accordance with regulation 14; and
- (b) may (whether or not he determines under regulation 14(1) that a prior approval requirement should be imposed in relation to that dentist) take action in accordance with any of—
  - (i) regulation 13,
  - (ii) regulation 9(5)(a) (as modified in accordance with regulation 10(5)), and
  - (iii) regulation 9(5)(e) (as modified in accordance with regulation 10(5)).

(3) Where, notwithstanding regulation 9(6), an FHSA in addition to making a recommendation under regulation 9(5)(c) or (d), determines that action should also be taken under some other provision of regulation 9(5), the Secretary of State shall set aside that determination and substitute his own determination under and in accordance with this regulation.

### **Recovery of amounts from practitioners**

**13.**—(1) Where—

- (a) an FHSA has recommended pursuant to regulation 9(5)(c) that an amount in excess of £500 should be recovered from a practitioner, and no appeal has been made under regulation 10(1)(a) against the decision of the FHSA;
- (b) in the case of an appeal under regulation 10(1)(a), the Secretary of State determines that a practitioner has failed to comply with one or more of his terms of service; or
- (c) an appeal is made under regulation 10(1)(b),

the Secretary of State shall, subject to the following provisions of this regulation, determine whether any, and if so what, amount shall be recovered from the practitioner, whether by way of deduction from his remuneration or otherwise.

(2) The Secretary of State shall not consider the question of the recovery of an amount from a doctor or dentist whose failure to comply with his terms of service (as determined under regulation 9(1)(c) or 10(3)(c)(i)) is a failure specified in relation to him in Part I of Schedule 5 unless he has referred the question of recovery to the appropriate advisory committee and has received the advice of that committee.

(3) For the purposes of this regulation “the appropriate advisory committee” means—

- (a) where the practitioner is a doctor, the Medical Advisory Committee constituted in accordance with Part II of Schedule 5; and
- (b) where the practitioner is a dentist, the Dental Advisory Committee constituted in accordance with Part III of that Schedule.

(4) Before considering the question of the recovery of any amount from a doctor or dentist, the Secretary of State may, notwithstanding that the case is not one to which paragraph (2) applies, seek advice on that question from the committee which is, for the purposes of that paragraph, the appropriate advisory committee in relation to that practitioner.

(5) Subject to paragraph (6), where the Secretary of State is of the view that an amount should be recovered from a practitioner—

- (a) he shall give notice in writing to the practitioner of—
  - (i) the amount which he considers should be recovered from him, and



- (ii) his right to make representations under paragraph (7) against the recovery of that amount; and
- (b) he shall not make any determination under paragraph (1) until—
  - (i) the time allowed in paragraph (7) for making representations under that paragraph has expired, or
  - (ii) where the practitioner gives notice under paragraph (7) that he wishes to make representations orally, persons appointed under paragraph (8) to hear the representations have made their report to the Secretary of State.
- (6) Paragraph (5) shall not apply in a case where—
  - (a) the question of recovery of an amount arises following an appeal to the Secretary of State under regulation 10(1)(a) or (b); and
  - (b) there has been a hearing of that appeal under regulation 11.
- (7) A practitioner who has received a notice under paragraph (5) may within 30 days of its being sent to him—
  - (a) make representations in writing to the Secretary of State against the recovery of the amount in question; or
  - (b) give notice in writing to the Secretary of State that he wishes to make such representations orally.
- (8) Where the Secretary of State receives a notice under paragraph (7)(b) he shall appoint persons to hold a hearing of the representations and to report to him with their recommendations on the question of the recovery of an amount from the practitioner.
- (9) Schedule 6 shall have effect with respect to the appointment of persons, the holding of a hearing and the making of a report for the purposes of paragraph (8).
- (10) The Secretary of State shall give notice in writing of his determination under paragraph (1) to the practitioner and the FHSA, and shall include with the notice a statement of the reasons for his determination.
- (11) Where the Secretary of State has determined under paragraph (1) that an amount shall be recovered from a practitioner, he shall direct the FHSA to recover that amount either by deduction from the practitioner's remuneration or otherwise and, subject to paragraph (12), the FHSA shall comply with that direction.
- (12) Where, in the case of a dentist, the FHSA determines that any amount which it has been directed to recover under paragraph (11) is to be recovered by deduction from the dentist's remuneration, it shall notify the Board of the amount in question and the Board shall deduct that amount from the dentist's remuneration.
- (13) Any sum which falls by virtue of paragraph (11) to be recovered by an FHSA shall, to the extent that it is not recovered by deduction from the practitioner's remuneration, be a debt owed by the practitioner to the FHSA.

### **Prior approval in dental cases**

- 14.—(1) Where—
- (a) an FHSA has recommended pursuant to regulation 9(5)(d) that a dentist should be required to submit estimates of treatment for the prior approval of the Board, and no appeal has been made under regulation 10(1)(a) against the decision of the FHSA;
  - (b) in the case of an appeal under regulation 10(1)(a), the Secretary of State determines that a dentist has failed to comply with one or more of his terms of service;
  - (c) an appeal is made by a dentist under regulation 10(1)(b); or

(d) the Secretary of State receives a copy of a decision of the Tribunal issued under regulation 26(3),

the Secretary of State shall, subject to the following provisions of this regulation, determine whether a prior approval requirement should be imposed in relation to the dentist, that is to say that the dentist should, in respect of all or any specific description of treatment, be required to submit estimates for the prior approval of the Board.

(2) Where the Secretary of State determines under paragraph (1) that a prior approval requirement should be imposed, he shall also determine—

- (a) whether that requirement shall apply in the case of all treatment to be provided by the dentist, or only in relation to such treatment as the Secretary of State shall specify;
- (b) the period (to be specified as a number of months) for which the dentist is to be subject to the requirement; and
- (c) the date on which that period is to begin, being a date falling no earlier than 28 days after the date on which notice of the requirement is given to the dentist under paragraph (10).

(3) The Secretary of State shall not consider the question whether a prior approval requirement should be imposed in relation to a dentist unless he has referred the question to the Dental Advisory Committee and has received the advice of that committee.

(4) Subject to paragraph (5), where the Secretary of State is of the view that a prior approval requirement should be imposed in relation to a dentist, he shall give notice to the dentist in accordance with paragraph (6) and shall not make any determination under paragraph (1) until—

- (a) the time allowed in paragraph (7) for making representations under that paragraph has expired; or
- (b) where the respondent gives notice under paragraph (7) that he wishes to make representations orally, persons appointed under paragraph (8) to hear the representations have made their report to the Secretary of State.

(5) Paragraph (4) shall not apply in a case where the question whether a prior approval requirement should be imposed arises following an appeal to the Secretary of State under regulation 10(1)(a) or (b) and—

- (a) in the case of an appeal under regulation 10(1)(a), the determination under appeal was accompanied by a recommendation by the FHSA under regulation 9(5)(d); and
- (b) in either case, there has been a hearing of that appeal under regulation 11.

(6) A notice under paragraph (4) shall be given in writing and shall include—

- (a) a statement—
  - (i) that the Secretary of State is of the view that a prior approval requirement should be imposed in relation to the dentist; and
  - (ii) of the period for which he considers the dentist should be subject to the requirement; and
- (b) details of the description of treatment to which the Secretary of State considers the requirement should apply.

(7) A respondent who has received a notice under paragraph (4) may within 30 days of being sent it—

- (a) make representations in writing to the Secretary of State against any matter mentioned in sub-paragraph (a) or (b) of paragraph (6); or
- (b) give notice in writing to the Secretary of State that he wishes to make such representations orally.

(8) Where the Secretary of State receives a notice under paragraph (7)(b) he shall appoint persons to hold a hearing of the representations and to report to him with their recommendations on the questions—

- (a) whether a prior approval requirement should be imposed in relation to the dentist; and
- (b) if so—
  - (i) what should be the period for which the dentist should be subject to the requirement, and
  - (ii) what should be the description of treatment to which it should apply.

(9) Schedule 6 shall have effect with respect to the appointment of persons, the holding of a hearing and the making of a report for the purposes of paragraph (8).

(10) The Secretary of State shall give notice in writing of his determination under paragraph (1) to the dentist, the FHSA and the Board, and shall include with the notice a statement of his reasons for the determination.

(11) A dentist who is subject to a prior approval requirement under this regulation may at any time after the expiry of a period of 6 months from the date on which notice of the requirement was given under paragraph (10), apply to the Secretary of State in accordance with paragraph (12) for a direction that the requirement cease to have effect before the period specified therein has elapsed.

(12) An application under paragraph (11) shall be made in writing and shall state the grounds on which the dentist contends that the requirement should cease to have effect.

(13) The Secretary of State shall, before he determines an application under paragraph (11)—

- (a) send a copy of it to the FHSA and the Board, inviting them to submit their comments in writing on it within 21 days of the copy being sent to them; and
- (b) where such comments are made by the FHSA or the Board within the time allowed under sub-paragraph (a) of this paragraph, send a copy of them to the dentist, inviting him to submit his observations in writing on them within 21 days of the copy being sent to him,

and shall not determine the application until the time allowed under sub-paragraph (a), or, where sub-paragraph (b) applies, that sub-paragraph, has expired.

(14) The Secretary of State shall determine the application under paragraph (11) by—

- (a) directing that the prior approval requirement shall terminate on a specified date falling before the end of the period specified under paragraph (1); or
- (b) dismissing the application;

and shall give notice in writing to the dentist, the FHSA and the Board of his determination and of his reasons for it.

(15) Where, on the date specified under paragraph (2)(c), the name of the dentist in respect of whom the relevant determination is made under paragraph (1) is not included in any dental list, the period specified under paragraph (2)(b) shall not begin until the next day on which his name is again included in a dental list.

(16) For the purpose of computing the date on which a period specified under paragraph (2)(b) is to end, no account shall be taken of any day on which the name of the dentist in respect of whom the relevant determination is made is not included in any dental list.

### **Excessive prescribing by doctors**

**15.—(1)** Where it appears to an FHSA that a question arises whether the cost of any drug or appliance ordered by a doctor on a prescription form in relation to any patient is, by reason of the character of the drug or appliance in question or the quantity in which it was so ordered, in excess of that which was reasonably necessary for the proper treatment of that patient, the FHSA may refer

that question for investigation and determination by a committee (in these Regulations known as “the professional committee”) which shall be appointed in accordance with paragraph (3).

(2) No question shall be referred to a professional committee under paragraph (1) after the expiry of a period of two years beginning with the date on which the drug or appliance in question was ordered by the doctor.

(3) The professional committee shall be appointed by the FHSA and shall consist of three doctors—

(a) one of whom is to be nominated by the Secretary of State from a panel of doctors who—

(i) appear to the Secretary of State to have substantial experience of clinical pharmacology, and

(ii) have been selected for the panel by the Secretary of State with the agreement of a body which is, in his opinion, representative of doctors engaged in the provision of general medical services; and

(b) the other two of whom are engaged in the provision of general medical services, one of whom shall have been nominated by the Local Medical Committee.

(4) The three doctors appointed under paragraph (3) shall, by agreement, select a chairman of the professional committee from among their number.

(5) The FHSA shall give notice in writing to the doctor of any question referred by it under paragraph (1) and shall include with the notice an invitation to the doctor to send to the FHSA, within 30 days of the notice being sent to him, his observations on that question.

(6) Where the doctor submits observations under paragraph (5), the FHSA shall, if it does not withdraw the question under paragraph (7), forward a copy of the observations to the professional committee.

(7) The FHSA may, by giving notice in writing to the doctor and the professional committee at any time before the hearing begins, withdraw any question referred under paragraph (1), in which case no further action shall be taken under this regulation in relation to that question.

(8) Before determining any question referred under paragraph (1), the professional committee shall hold a hearing, and where more than one question has been referred to the professional committee on the same occasion in respect of the same doctor, a single hearing shall be held in relation to all such questions.

(9) The FHSA shall, after consultation with the professional committee, appoint a day for the hearing and shall, not less than 21 days before that day, give notice in writing to the doctor of the date, time and place of the hearing.

(10) The professional committee may, whether or not on an application by the doctor or the FHSA, postpone the date of the hearing, in which case—

(a) it shall inform the FHSA; and

(b) the FHSA shall give notice in writing to the doctor of the postponement;

and the provisions of paragraph (9) shall apply as respects the postponed hearing.

(11) Subject to regulation 33 (attendance by representative of Council on Tribunals), the only persons who may be admitted to a hearing before the professional committee are—

(a) the doctor;

(b) not more than two persons who are members or officers of the FHSA;

(c) any person accompanying the doctor for the purpose of assisting him with the presentation of his case before the professional committee;

(d) any person whose attendance is required for the purpose of giving evidence to the professional committee; and

- (e) not more than one person who is a member or officer of the Local Medical Committee and who is authorised by that committee to attend the hearing as an observer only.
- (12) Any person mentioned in paragraph (11)(a) or (b), and any person mentioned in paragraph (11)(c) who is not a barrister or a solicitor, may address the professional committee, but a person mentioned in paragraph (11)(a) or (b) shall not put questions directly to any other such person.
- (13) Subject to the provisions of paragraphs (11) and (12), the procedure at any hearing shall be such as the professional committee may determine.
- (14) The professional committee shall determine whether any question which has been referred to it under paragraph (1) is to be answered in the affirmative or in the negative.
- (15) Where the professional committee determines that any question under paragraph (1) is to be answered in the affirmative, it may also determine that a single amount, calculated in accordance with paragraph (16), shall be recovered from the doctor in respect of such questions.
- (16) When determining the level of an amount to be specified under paragraph (15), the professional committee—
- (a) shall estimate in relation to each question the amount of the excess cost referred to in paragraph (1);
  - (b) shall have regard to the aggregate of amounts estimated under sub-paragraph (a) of this paragraph; and
  - (c) subject to paragraph (17), may, if it sees fit, have regard to—
    - (i) the particular character or quality of any drug or appliance to which any such question relates; and
    - (ii) the circumstances which gave rise to any affirmative determinations by a professional committee or an appeal body under this regulation in respect of that doctor.
- (17) The professional committee shall not, for the purposes of paragraph (16)(c)(ii), have regard to—
- (a) any determination of a professional committee—
    - (i) made less than 30 days before the date of its hearing, or
    - (ii) in respect of which an appeal under paragraph (19) is pending; or
  - (b) any determination made more than 6 years before the date of its hearing.
- (18) The professional committee shall—
- (a) give to the FHSA and to the doctor notice in writing of its determination (which shall specify any amount which it has determined shall be recovered from the doctor); and
  - (b) include with the notice—
    - (i) a statement of the reasons for its determination, and
    - (ii) where it determines that a question is to be answered in the affirmative, a statement of the doctor's right of appeal under paragraph (19).
- (19) A doctor in respect of whom a professional committee has, under paragraph (14), determined any question in the affirmative may appeal to the Secretary of State—
- (a) against that determination and against any further determination made in respect of him under paragraph (15); or
  - (b) only against any determination made in respect of him under paragraph (15),
- by giving notice of appeal in accordance with paragraph (20) no later than 30 days after notice of the determination was sent to him under paragraph (18).

(20) A notice of appeal shall be given in writing, shall include a concise statement of the grounds for the appeal, and shall be sent to the Secretary of State.

(21) On receipt of a notice of appeal the Secretary of State shall—

- (a) send to the FHSA a copy of the notice, inviting it to submit observations in writing on the appeal within 30 days of the copy being sent to it;
- (b) where observations are received from the FHSA within the time allowed under sub-paragraph (a) of this paragraph, send to the doctor a copy of those observations, inviting him to submit his comments in writing on those observations within 30 days of the copy being sent to him; and
- (c) after the expiry of the period mentioned in sub-paragraph (a) or, where subparagraph (b) applies, in that sub-paragraph, refer the notice of appeal, and observations or comments submitted under sub-paragraph (a) or (b), for consideration and determination by an appeal body appointed in accordance with paragraph (22).

(22) An appeal body shall be appointed by the Secretary of State and shall, subject to paragraph (23), consist of three doctors of whom—

- (a) one shall be nominated by the Secretary of State from the panel of doctors mentioned in paragraph (3)(a); and
- (b) the other two shall be engaged in the provision of general medical services, of whom one shall be nominated by the body mentioned in paragraph (3)(a)(ii), and the other shall be nominated—
  - (i) in relation to any appeal in connection with a question referred under paragraph (1) by an FHSA whose locality is in England, by the Regional Health Authority which is the relevant Regional Health Authority(14) in relation to the FHSA which referred the question under paragraph (1),
  - (ii) in any other case, by the Secretary of State.

(23) No person who was a member of a professional committee which has made a determination under paragraph (14) or (15) in respect of any doctor shall be a member of an appeal body appointed in relation to any appeal against that determination.

(24) The three doctors appointed under paragraph (22) shall, by agreement, select a chairman of the appeal body from among their number.

(25) A doctor may withdraw his appeal by giving notice in writing to the Secretary of State at any time before the date of the hearing, in which case—

- (a) the Secretary of State shall so inform the FHSA and the appeal body in writing; and
- (b) no further action shall be taken under this regulation in relation to the appeal.

(26) Before determining any appeal, the appeal body shall hold a hearing, and where more than one appeal has been brought by the same doctor in respect of the determination by the professional committee of several questions referred to it under paragraph (1) on the same occasion, a single hearing shall be held of all those appeals.

(27) The provisions of paragraphs (9) to (13) shall apply to the hearing before the appeal body as they apply to a hearing before the professional committee, save that—

- (a) for any reference in those paragraphs to the professional committee there shall be substituted a reference to the appeal body;
- (b) for any reference in paragraph (9), and in sub-paragraphs (a) and (b) of paragraph (10), to the FHSA there shall be substituted a reference to the Secretary of State; and

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(14) See section 15(1A) of the National Health Service Act 1977 (c. 49), as inserted by section 12(1)(c) of the National Health Service and Community Care Act 1990 (c. 19).

(c) the words “who is not a barrister or a solicitor” in paragraph (12) shall not apply.

(28) The appeal body shall—

(a) where the appeal is made under paragraph (19)(a) determine—

(i) whether any question referred to the professional committee under paragraph (1), and to which the appeal relates, is to be answered in the affirmative or the negative, and

(ii) in relation to any such question which it has answered in the affirmative, whether any single amount, and if so what amount, is to be recovered from the doctor in respect of all such questions;

(b) where the appeal is made under paragraph (19)(b), determine, in relation to any question which the professional committee has answered in the affirmative, whether any single amount, and if so what amount, is to be recovered from the doctor in respect of such questions;

and shall determine the appeal accordingly by allowing it or dismissing it.

(29) When determining the level of any amount to be specified under paragraph (28)(a)(ii) or (b), the appeal body—

(a) shall estimate in respect of each question the amount of the excess cost referred to in paragraph (1);

(b) shall have regard to the amount which represents the aggregate of the amounts estimated under sub-paragraph (a) of this paragraph; and

(c) subject to paragraph (30), may, if it thinks fit, have regard to—

(i) the particular character or quality of any drug or appliance to which any such question relates, and

(ii) the circumstances which gave rise to any affirmative determinations by a professional committee or an appeal body under this regulation in respect of that doctor.

(30) The appeal body shall not, for the purposes of paragraph (29)(c)(ii) have regard to—

(a) any determination of a professional committee—

(i) made less than 30 days before the date of the appeal body’s hearing, or

(ii) in respect of which an appeal under paragraph (19) is pending; or

(b) any determination made more than 6 years before the date of the appeal body’s hearing.

(31) The appeal body shall give notice in writing to the FHSA and to the doctor of its determination as to any question mentioned in paragraph (28)(a)(i), and as to the recovery of any amount under paragraph (28)(a)(ii) or (b), and shall include with the notice a statement of its reasons for its determination.

(32) Subject to paragraph (34), where under this regulation a professional committee or an appeal body determines that an amount is to be recovered from a doctor, that amount may be recovered by the FHSA, either by deduction from that doctor’s remuneration or otherwise.

(33) Any amount determined under this regulation as being recoverable from a doctor shall, to the extent that it is not recovered from his remuneration, be a debt owed by the doctor to the FHSA.

(34) No amount shall be recovered by an FHSA under paragraph (32) by virtue of a determination of a professional committee unless—

(a) the time allowed under paragraph (19) for an appeal against that determination has expired, and no such appeal has been made; or

(b) an appeal has been made and has been withdrawn or dismissed.

### **Investigation of certification**

16.—(1) Where it appears to the Secretary of State, after an investigation of the medical certificates issued under and for the purposes of the Social Security Act 1975(15) by a doctor to persons for whose treatment he is responsible under his terms of service, that the doctor has failed to exercise reasonable care in the issue of such certificates, the Secretary of State may refer the matter for consideration to the Local Medical Committee, or to a joint committee of two or more Local Medical Committees constituted in such manner as he may approve, and any reference in this regulation to the Local Medical Committee shall be construed as including any such joint committee.

(2) Any reference made under paragraph (1) shall be accompanied by a statement indicating the matters on which it appears to the Secretary of State that an explanation is required.

(3) The Local Medical Committee shall furnish the doctor concerned with a copy of the statement submitted under paragraph (2), and shall afford him reasonable opportunity of submitting to them a statement in writing and of appearing before, and being heard by, them.

(4) A copy of any statement by the doctor under paragraph (3) shall be forwarded to the Secretary of State by the Local Medical Committee for his observations, and a representative or representatives of the Secretary of State shall be entitled, in the event of a hearing, to attend and be heard by the Local Medical Committee.

(5) After considering the case, the Local Medical Committee shall draw up a report of their findings on the question whether there has been a failure on the part of the doctor to exercise reasonable care in certification and, if so, what is the extent and gravity of the failure, together with a recommendation as to the action, if any, which should be taken by the Secretary of State.

(6) The Local Medical Committee shall—

- (a) forward the report to the Secretary of State;
- (b) furnish the doctor with a copy of the report; and
- (c) notify the doctor in writing of his right of appeal to the Secretary of State.

(7) The doctor may appeal against any finding of the Local Medical Committee contained in the report, by sending to the Secretary of State notice of appeal within 30 days from the date on which a copy of the report was sent to him.

(8) On his receipt of an appeal made under paragraph (7), the Secretary of State shall appoint as a referee a doctor who is not a medical officer, or as referees persons who—

- (a) shall not exceed three in number; and
- (b) shall include a doctor who is not a medical officer,

and shall refer the appeal to the referee or referees for hearing and determination.

(9) Where three referees are appointed under paragraph (8), the determination of the referees may be that reached by the majority of them.

(10) If the Secretary of State is dissatisfied with any findings of the Local Medical Committee he may refer the matter for hearing and determination by a referee or referees.

(11) Paragraphs (8) and (9) shall apply in the case of a matter referred under paragraph (10) as they apply in the case of an appeal under paragraph (7).

(12) After consideration of the findings and recommendation—

- (a) of the Local Medical Committee; or
- (b) if—
  - (i) an appeal has been made under paragraph (7), or



(ii) the matter has been referred for hearing and determination under paragraph (10), of the person or persons determining the appeal or matter,

the Secretary of State may, if he is satisfied that there has been a failure on the part of the doctor to exercise reasonable care in certification consider, subject to paragraph (13), whether an amount should be recovered from the doctor, by deduction from his remuneration or otherwise.

(13) The provisions of paragraphs (3)(a), (4), (5), and (7) to (10) of regulation 13, and of Schedule 6, shall apply to the determination of the question of recovery arising under paragraph (12) of this regulation as if—

- (a) that question had arisen in any of the circumstances mentioned in paragraph (1) of that regulation; and
- (b) the references to the FHSA in paragraph (10) of that regulation, and in paragraphs 2 and 3 of Schedule 6, were references to the Local Medical Committee.

### **Investigation of record keeping**

17.—(1) Where it appears to the Secretary of State, after an examination by a medical officer of any record cards held by a doctor, that the doctor has failed to carry out his obligations under paragraph 36 of his terms of service in so far as such obligations involve the recording of clinical data regarding his patients, the Secretary of State may refer the matter for consideration by the Local Medical Committee.

(2) Where it appears to the Secretary of State, after an examination by a dental officer of any record cards held by a dentist other than a salaried dentist, that the dentist has failed to carry out his obligations under paragraph 25 of his terms of service, the Secretary of State may refer the matter for consideration by the Local Dental Committee.

(3) In this regulation—

- (a) “the relevant Local Committee” means the Local Medical Committee or the Local Dental Committee as the case may be;
- (b) “the relevant practitioner” means a doctor in respect of whom a reference is made under paragraph (1) or, as the case may be, a dentist in respect of whom a reference is made under paragraph (2);
- (c) “record cards” means—
  - (i) in the case of a doctor, the cards on which he is required, under paragraph 36 of his terms of service, to keep records of the illnesses of his patients and of his treatment of them,
  - (ii) in the case of a dentist, the records which he is required, under paragraph 25 of his terms of service, to keep as to the treatment provided by him for any person for whom he is providing general dental services.

(4) Any reference of a matter to the relevant Local Committee under paragraph (1) or (2) shall be accompanied by a statement of the Secretary of State’s grounds for considering that the obligations mentioned in that paragraph have not been fulfilled.

(5) The relevant Local Committee shall—

- (a) furnish the relevant practitioner with a copy of the statement made under paragraph (4); and
- (b) afford him a reasonable opportunity of—
  - (i) submitting to them a statement in writing, and
  - (ii) appearing before, and being heard by, them.

(6) A copy of any statement submitted by the practitioner under paragraph (5)(b) shall be forwarded by the relevant Local Committee to the Secretary of State for his observations, and a representative or representatives of the Secretary of State shall, in the event of a hearing, be entitled to attend and be heard by the relevant Local Committee.

(7) If so required by notice in writing signed by the chairman of the relevant Local Committee, the relevant practitioner shall—

(a) produce at the hearing all record cards held by him or such of these record cards as may be specified in the notice;

(b) afford—

(i) in the case of a doctor, to any such member of the Local Medical Committee as may be specified in the notice, or

(ii) in the case of a dentist, to a dental officer,

access at all reasonable times to the surgery or other place where the record cards are kept, for the purpose of enabling the inspection of such record cards; and

(c) furnish such persons as may have been specified under sub-paragraph (b) of this paragraph with any such record cards and with such other necessary information with regard to those record cards as they may reasonably require.

(8) After considering the matter referred to them, the relevant Local Committee shall—

(a) report to the Secretary of State whether there has been a failure on the part of the practitioner to carry out his obligations, and, if so, as to the extent or gravity of any such failure; and

(b) make a recommendation as to the action, if any, which should be taken by the Secretary of State in relation to any such failure.

(9) The relevant Local Committee shall—

(a) forward to the relevant practitioner a copy of any report made under paragraph (8); and

(b) notify that practitioner in writing of his right of appeal to the Secretary of State under paragraph (10).

(10) The relevant practitioner may appeal against any findings contained in the report of the relevant Local Committee by sending to the Secretary of State notice of appeal within 30 days from the date on which a copy of the report was sent to him.

(11) The provisions of regulation 16(8) and (9) shall apply in the case of an appeal by a relevant practitioner under paragraph (10) of this regulation as they apply in the case of an appeal under paragraph (7) of that regulation, and where the relevant practitioner is a dentist, those provisions shall have effect as if for references to a doctor and a medical officer there were substituted references to a dentist and a dental officer respectively.

(12) If the Secretary of State is dissatisfied with the findings of the relevant Local Committee he may refer the matter for hearing and determination by a referee or referees.

(13) Paragraphs (8) and (9) of regulation 16 shall apply in the case of a matter referred under paragraph (12) of this regulation as they apply in the case of an appeal under paragraph (10).

(14) After consideration of the findings and recommendation—

(a) of the relevant Local Committee; or

(b) if—

(i) an appeal has been made under paragraph (10) or

(ii) the matter has been referred for hearing and determination under paragraph (12),  
of the person or persons determining the appeal or matter,

the Secretary of State may, if he is satisfied that there has been a failure on the part of the relevant practitioner to comply with his obligations as mentioned in paragraph (1) or, as the case may be, paragraph (2), consider, subject to paragraph (15), whether an amount should be recovered from the relevant practitioner, by deduction from his remuneration or otherwise.

(15) The provisions of paragraphs (3), (4), (5), and (7) to (10) of regulation 13, and of Schedule 6, shall apply to the determination of any question of recovery arising under paragraph (14) of this regulation as if—

- (a) that question had arisen in any of the circumstances mentioned in paragraph (1) of that regulation; and
- (b) the references to the FHSA in paragraph (10) of that regulation, and in paragraphs 2 and 3 of Schedule 6 were references to the relevant Local Committee.

### **Decision as to treatment for which fees may be charged by doctors**

**18.**—(1) If any question arises, either in the course of an investigation by a medical service committee or otherwise, whether any treatment given by a doctor to a patient is treatment for which he may demand or accept a fee from the patient (unless it arises in relation to sub-paragraph (d) or (f) of paragraph 38 of his terms of service, or as to whether a certificate is reasonably required by the patient under or for the purposes of any enactment), the question shall be referred to and determined by the Local Medical Committee.

(2) Where the FHSA is dissatisfied with the determination of the Local Medical Committee it shall notify the Secretary of State in writing of its dissatisfaction and the matter shall be submitted to referees appointed under paragraph (3) for decision.

(3) For the purposes of giving effect to this regulation, the Secretary of State shall, on being notified under paragraph (2) of an FHSA's dissatisfaction, appoint as referees—

- (a) two doctors, not being medical officers, who shall be selected—
  - (i) from a panel of doctors set up by the Secretary of State for the purpose, or
  - (ii) where no such panel exists, from among doctors in actual practice; and
- (b) one barrister or solicitor in actual practice.

(4) The referees shall determine any matter submitted to them under paragraph (2), and their determination—

- (a) shall be given after hearing such parties and taking such evidence as they think proper; and
- (b) may be by a majority.

(5) Subject to the provisions of this regulation and of Schedule 7, the procedure to be followed by referees shall be such as they may determine.

(6) Where the FHSA is satisfied with a determination of the Local Medical Committee under paragraph (1), it shall report the matter to the Secretary of State who may, if he thinks fit, refer the question for decision to referees appointed in accordance with paragraph (3).

(7) The foregoing provisions of this regulation shall apply in the case of a question referred under paragraph (6) as they apply to a matter submitted under paragraph (2).

(8) Schedule 7 shall have effect with respect to the procedure for the determination of questions referred and matters submitted under this regulation.

### **Appeals from decisions of the Board**

**19.**—(1) Where—

- (a) any person is aggrieved by a decision of the Board concerning the treatment or intended treatment of a patient as part of general dental services; or
- (b) any dentist is aggrieved by a decision of the Board concerning fees payable to him in respect of his provision or intended provision of general dental services,

that person or, as the case may be, that dentist may, in accordance with paragraphs (3) and (4) appeal against the Board's decision to the FHSA administering the arrangements under which the services were, or were intended to be, provided.

(2) Any dentist who is aggrieved by a decision of the Board under regulation 29 of the Dental Regulations (prior approval — patterns of treatment) may, in accordance with paragraphs (3) and (4), appeal against that decision—

- (a) where the name of the dentist is included in the dental list of only one FHSA, to that FHSA;
- (b) where the name of the dentist is included in the dental list of more than one FHSA, to any such FHSA.

(3) An appeal under paragraph (1) or (2) shall be brought by giving notice of appeal in writing to the FHSA within 30 days of the date on which the decision of the Board was sent to the aggrieved person.

(4) A notice of appeal under paragraph (3) shall—

- (a) contain a concise statement of the facts and contentions upon which the appellant intends to rely; and
- (b) be given by or with the authority of the aggrieved person, unless—
  - (i) the aggrieved person is, by reason of age, sickness or other infirmity, incapable of acting, in which case notice of appeal may be given by some other person on his behalf although without his authority;
  - (ii) the appeal is brought under paragraph (1)(b) and concerns the fees of a dentist who has died, in which case the notice of appeal may be given by the personal representatives of that dentist.

(5) The FHSA shall, within 30 days of receiving a notice of appeal, request from the Board a written statement of the reasons for its decision, and the Board shall within 30 days of being sent the request send such a statement to the FHSA.

(6) The FHSA shall consider the notice of appeal and the Board's statement and—

- (a) where, after consulting the Local Dental Committee, the FHSA is of the opinion that the notice discloses no reasonable grounds of appeal, or that the appeal is otherwise vexatious or frivolous, it may dismiss it forthwith;
- (b) where the appeal is against a refusal of the Board to approve a claim for remuneration or an estimate on grounds that the services to which the claim or estimate relates cannot be provided as part of general dental services, the FHSA shall refer the notice of appeal and the Board's statement to the Secretary of State, and shall inform the parties in writing that it has done so;
- (c) where—
  - (i) an appeal is brought under paragraph (1)(b) against a decision of the Board concerning a dentist's fees, and
  - (ii) the Board has certified in its statement under paragraph (5) that it has authorised those fees and that they were the fees or maximum fees prescribed by Determination I of the Statement of Dental Remuneration for the services provided or to be provided,

the FHSA shall dismiss the appeal forthwith unless it is of the opinion that the appeal involves a dispute as to the item or sub-item of treatment in that Determination applicable to the services provided or intended to be provided;

(d) except where an appeal is dismissed or referred in accordance with the preceding provisions of this paragraph, the FHSA shall, within 30 days of being sent the Board's statement under paragraph (5), appoint, in accordance with paragraph (7)—

(i) where the appeal is brought under paragraph (2), three dentists,

(ii) in any other case, two dentists,

as referees to determine the appeal.

(7) One of the dentists appointed for the purposes of paragraph (6)(d) shall be selected from a panel of dentists who—

(a) are, or have been, engaged in the provision of general dental services; and

(b) have been nominated to the panel by the Local Dental Committee or by the Local Dental Committee constituted for another locality.

(8) Where the FHSA dismisses an appeal under paragraph (6) it shall give notice in writing to the person who brought the appeal and to the Board that the appeal has been dismissed, and, where the appeal is dismissed under sub-paragraph (c) of that paragraph, the FHSA shall include with the notice to the appellant a copy of the Board's statement under paragraph (5) and a statement of its reasons for dismissing the appeal.

(9) Where an appeal is referred to the Secretary of State, he shall determine it in such manner as he thinks fit, and shall give notice of his decision, and of the reasons for it, to the appellant, the Board and the FHSA.

(10) Where referees are appointed under paragraph (6)(d) they shall, subject to paragraph (12), hear the representations of the parties on a date appointed by the FHSA for that purpose, and the FHSA shall—

(a) not less than 14 days before that date (or within such shorter period as the parties may agree), give notice in writing to the parties of the date, time and place of the hearing and of the names of the referees; and

(b) not less than 7 days before that date (or within such shorter period as the parties may agree), provide the referees and the appellant with a copy of the Board's statement and the notice of appeal.

(11) A party to an appeal which is to be determined by referees following a hearing shall not be entitled to rely upon any facts or contentions not contained in the notice of appeal or the statement of the Board unless—

(a) that party gives notice in writing of those facts or contentions to the referees and to the other party to the appeal at least 7 days before the date of the hearing; or

(b) the referees consent (either before or during the hearing).

(12) Where both parties to an appeal have given written notice to the FHSA that they do not intend to make representations at a hearing, the FHSA shall inform the referees accordingly, and the referees shall determine the appeal without a hearing.

(13) The referees shall within 7 days after determining an appeal give notice in writing to the FHSA of their decision and of the reasons for it, and the FHSA shall within 14 days of receiving the notice send copies of it to the parties.

(14) For the purposes of this regulation, the parties to an appeal are the Board and the appellant, that is to say the aggrieved person or, where another person has given notice of appeal in accordance with paragraph (4), that other person.

### **Power of Local Representative Committees to consider complaints**

**20.**—(1) A Local Medical Committee may consider any complaint made to it by any doctor against a doctor providing general medical services in the relevant locality involving any question of the efficiency of such services in that locality.

(2) A Local Dental Committee may consider any complaint made to it by any dentist against a dentist providing general dental services in the relevant locality involving any question of the efficiency of such services in that locality.

(3) A Local Optical Committee may consider any complaint made to it by any optician against an optician providing general ophthalmic services in the relevant locality involving any question of the efficiency of such services in that locality.

(4) A Local Pharmaceutical Committee may consider any complaint made to it by any chemist against a chemist providing pharmaceutical services in the relevant locality involving any question of the efficiency of such services in that locality.

(5) In this regulation “the relevant locality” means the locality in respect of which the Local Representative Committee in question is recognised under section 44 of the Act(16).

## **PART III**

### **INQUIRIES BY, AND APPEALS FROM, THE TRIBUNAL**

#### **Interpretation and forms**

**21.**—(1) In this Part—

- “appellant” means a person who has given notice of an appeal under regulation 27(1);
- “applicant” means a person who has made an application;
- “application” means an application for a direction under section 47 of the Act;
- “complainant” means a person who, or a body which, has made representations;
- “inquiry” means an inquiry held under the provisions of this Part;
- “representations” means representations made to the Tribunal under section 46(1) of the Act;
- “respondent” means—
  - (a) in relation to representations, the doctor, dentist, ophthalmic medical practitioner, optician or chemist in relation to whom the representations are made;
  - (b) in relation to an application, the FHSAs from whose list the name of the applicant was removed pursuant to a direction under section 46(2)(a) of the Act.

(2) Any reference in this Part to a form prescribed in Schedule 8 includes a form substantially to like effect.

#### **Tenure of office of chairman and member of the Tribunal**

**22.**—(1) The chairman of the Tribunal shall hold office during the pleasure of the Lord Chancellor.

(2) The member of the Tribunal appointed pursuant to paragraph 3 of Schedule 9 to the Act (after consultation with associations representative of FHSAs) shall hold office during the pleasure of the Secretary of State.

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(16) Section 44 was amended by section 12(4) of the National Health Service and Community Care Act 1990 (c. 19).

## **Officers of the Tribunal**

23. The chairman of the Tribunal shall appoint—

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

## **Making of representations and preliminary matters**

24.—(1) Representations to the Tribunal under section 46(1) of the Act that the continued inclusion of a person's name in a medical list, dental list, ophthalmic list or pharmaceutical list would be prejudicial to the efficiency of the services in question shall—

- (a) be made in writing;
- (b) be signed by the complainant or on his behalf by some person authorised by him; and
- (c) include a preliminary statement of the alleged facts and the grounds upon which he intends to rely,

and shall be sent to the Tribunal.

(2) The complainant shall, if so required by the Tribunal, send to it, within 30 days of being so required, a further statement setting out—

- (a) the alleged facts;
- (b) the grounds on which the representations are made;
- (c) where a fact is not within the personal knowledge of the person signing the representations, the source of the information and why it is considered to be true; and
- (d) such further particulars as the Tribunal may require,

and shall, if so required by the Tribunal, verify the preliminary statement provided under paragraph (1)(c) by statutory declaration.

(3) Where the complainant is not an FHSA the Tribunal shall consider the representations and any statement furnished under paragraph (2) and if it declines to inquire into the case, it shall so inform the complainant in writing.

(4) Where an inquiry is to be held, the Tribunal shall give—

- (a) to the respondent notice in writing in the form set out in Part I of Schedule 8 that the Tribunal intends to hold an inquiry as to the representations made by the complainant;
- (b) to the complainant notice in writing in the form set out in Part II of Schedule 8 that the Tribunal intends to hold an inquiry as to his representations and requiring him, within a time specified in the notice, to send to the Tribunal a copy of any document which he proposes to put in evidence.

(5) The complainant shall comply with any requirement of a notice given to him under paragraph (4)(b) within the time stated in it.

(6) The Tribunal shall send to the respondent—

- (a) a copy of the preliminary statement provided by the complainant under paragraph (1)(c);
- (b) a copy of any further statement furnished under paragraph (2);
- (c) copies of documents which have been provided by the complainant under paragraph (5); and
- (d) a notice informing him that he may, by a statement in writing to be sent to the Tribunal within a time specified in the notice, admit or dispute the truth of all or any of the allegations appearing in a statement sent to him under sub-paragraph (a) or (b) of this paragraph.

(7) The Tribunal may at any time before the conclusion of the inquiry allow the statement of complaint to be amended, upon such conditions as it may think just, on the application of the complainant.

### **Withdrawal of representations and suspension of procedures**

**25.**—(1) The complainant may at any time before the inquiry, with the consent of the Tribunal and on such terms as the Tribunal thinks fit, withdraw his representations by giving notice of withdrawal in writing to the Tribunal.

(2) If the complainant fails to comply, within the time allowed by the Tribunal for such compliance, with any requirement imposed under regulation 24 or 26, or fails, without having previously offered a reasonable excuse, to appear at an inquiry of which due notice was given under paragraph 1 of Schedule 9, the Tribunal may treat the representations as having been withdrawn.

(3) Where representations are withdrawn or treated as withdrawn the Tribunal shall immediately so inform the respondent in writing (without prejudice to its power to determine any question as to costs under paragraph 9 of Schedule 9).

(4) Where it appears to the Tribunal that the alleged facts on which any representations are based are being or may be investigated by some other tribunal, body or person, it may direct that no further steps shall be taken under this Part pending the result of the other investigation.

### **Inquiry as to representations**

**26.**—(1) Subject to paragraph (2), the inquiry shall be held by way of an oral hearing, and Schedule 9 shall apply with respect to that hearing.

(2) Where the grounds on which representations are based are solely that the respondent has been convicted of a criminal offence and the respondent states in writing that—

- (a) he admits the conviction; and
- (b) he does not want an oral hearing,

the Tribunal may decide the case on such documentary evidence as may be submitted to it.

(3) At the conclusion of the inquiry the Tribunal shall, as soon as practicable, issue a decision in writing, signed by the chairman, containing—

- (a) its findings of fact;
- (b) its conclusions;
- (c) any directions it decides to give under section 46(2) of the Act;
- (d) a statement of the reasons for its decision; and
- (e) any order it decides to make as to costs.

(4) The Tribunal shall send a copy of its decision to the respondent, the complainant and the Secretary of State; and the Secretary of State shall send a copy of the decision to any FHSAs which appear to him to be concerned.

(5) Where the decision contains a direction under section 46(2) of the Act the Tribunal shall include with the decision a notice to the respondent of his right of appeal to the Secretary of State under section 46(3) of the Act.

### **Appeals to Secretary of State as to representations**

**27.**—(1) A respondent wishing to appeal under section 46(3) of the Act against a decision of the Tribunal under section 46(2) shall, within 30 days of being sent the notice under regulation 26(5),



give to the Secretary of State notice of appeal in writing which shall contain a statement of the grounds of appeal on which he intends to rely.

- (2) There shall be an oral hearing of the appeal, and the Secretary of State shall appoint—
  - (a) a person to hear the appeal and report to him on it; and
  - (b) in accordance with paragraph (3), a person to assist the person appointed under subparagraph (a) of this paragraph.
- (3) The person appointed under paragraph (2)(b) shall be—
  - (a) where the appellant is a doctor, a doctor selected from the doctors' panel;
  - (b) where the appellant is a dentist, a dentist selected from the dentists' panel;
  - (c) where the appellant is an ophthalmic medical practitioner, an ophthalmic medical practitioner;
  - (d) where the appellant is an optician, an optician;
  - (e) where the appellant is a chemist, a registered pharmacist.
- (4) The provisions of Schedule 9 shall apply with respect to the hearing of an appeal.
- (5) An appeal may, at any time before the date appointed for the hearing, be withdrawn by the appellant giving notice in writing of withdrawal to the Secretary of State; and where an appeal is withdrawn the Secretary of State shall forthwith confirm the Tribunal's direction.
- (6) The Secretary of State shall—
  - (a) consider the report of the person hearing the appeal;
  - (b) make a decision on the appeal; and
  - (c) give notice in writing of that decision to the appellant, the Tribunal, the complainant and any FHSA which appears to him to be concerned.
- (7) The notice given under paragraph (6)(c) shall include—
  - (a) a statement of the Secretary of State's reasons for his decision; and
  - (b) where the person hearing the appeal has made an order as to costs, details of that order.

### **Applications for removal of disqualification**

**28.** An application for a direction under section 47 of the Act that a person shall no longer be disqualified for inclusion in any list to which a direction under section 46 of the Act relates may be made to the Tribunal or to the Secretary of State and shall—

- (a) be in writing;
- (b) be signed by or on behalf of the applicant;
- (c) contain a statement of the grounds on which it is made; and
- (d) include a copy of each document which the applicant proposes to put in evidence.

### **Applications to the Tribunal**

- 29.**—(1) An application made to the Tribunal shall be sent to the Tribunal.
- (2) The Tribunal shall send to the respondent a copy of the application, together with a copy of any document included with it under regulation 28(d).
  - (3) The Tribunal shall consider the application and—
    - (a) if it considers that no good cause has been shown for an inquiry, it may decline to hold an inquiry and to make a direction under section 47 of the Act and shall give notice in writing to the applicant and the respondent accordingly;

(b) if it considers that an inquiry should be held, it shall give notice in writing to the applicant and the respondent accordingly.

(4) The applicant may at any time before the inquiry, with the consent of the Tribunal and on such terms as it thinks fit, withdraw his application by giving notice of withdrawal in writing to the Tribunal; and where an application is withdrawn the Tribunal shall so inform the respondent in writing.

(5) Where an inquiry is to be held by way of an oral hearing, the provisions of Schedule 9 shall apply with respect to that hearing.

(6) At the conclusion of the inquiry the Tribunal shall, as soon as practicable, issue a decision in writing, signed by the chairman, containing—

- (a) its findings of fact;
- (b) its conclusions;
- (c) any direction it decides to give under section 47 of the Act; and
- (d) any order it decides to make as to costs.

(7) The Tribunal shall send a copy of the Tribunal's decision to the applicant, the respondent and the Secretary of State; and the Secretary of State shall send a copy of the decision to any other FHSA which appears to him to be concerned.

### **Applications to the Secretary of State**

**30.**—(1) An application made to the Secretary of State shall be sent to him.

(2) The provisions of paragraphs (2) to (4) of regulation 29 shall apply to applications made to the Secretary of State as they apply to applications made to the Tribunal, but as though any reference in them to the Tribunal were a reference to the Secretary of State.

(3) Where an inquiry is to be held it shall be by way of an oral hearing and the provisions of Schedule 9 shall apply with regard to that hearing.

(4) The Secretary of State shall appoint—

- (a) a person to hold an inquiry and report to him on the application; and
- (b) in accordance with paragraph (5), a person to assist the person holding the inquiry.

(5) The provisions of regulation 27(3) shall apply to appointments under paragraph (4)(b) as they apply to appointments under regulation 27(2), but as though the references in them to the appellant were references to the applicant.

(6) The Secretary of State shall—

- (a) consider the report of the person holding the inquiry;
- (b) make a decision on the application; and
- (c) give notice in writing of that decision to the applicant, the respondent, the Tribunal and any other FHSA which appears to him to be concerned.

(7) The notice given under paragraph (6)(c) shall include—

- (a) a statement of the Secretary of State's reasons for his decision; and
- (b) where the person holding the inquiry makes an order as to costs, details of that order.

### **Publication of decisions**

**31.** The Secretary of State shall publish in such manner as he thinks fit—

- (a) any direction of the Tribunal under section 46(2) of the Act;

- (b) any confirmation or revocation by the Secretary of State under section 46(3) of the Act of such a direction of the Tribunal;
- (c) any direction of the Tribunal or the Secretary of State under section 47 of the Act;
- (d) any imposition or removal of a disqualification referred to in section 48 of the Act (corresponding provisions for Scotland and Northern Ireland).

## PART IV

### MISCELLANEOUS PROVISIONS

#### Service of documents

**32.** Any notice or other document required or authorised by any provision of these Regulations to be served on any person or to be given or sent to any person may be served, given or sent—

- (a) by delivering it or sending it by post to him at his usual or last-known address, which in the case of a doctor, dentist, ophthalmic medical practitioner, optician or chemist may be the address given in the medical, dental, ophthalmic or pharmaceutical list in which his name is included;
- (b) in the case of the Tribunal, an FHSA, a Local Representative Committee or a committee mentioned in regulation 3, by delivering it or sending it by post to their Clerk, chief officer or secretary at its principal office;
- (c) in the case of the Secretary of State, by delivering it or sending it by post to his principal office;
- (d) in the case of a person represented by—
  - (i) a solicitor, by delivering it or sending it by post to that solicitor at his professional address,
  - (ii) an officer of a Community Health Council, by delivering it or sending it by post to the Council's secretary at its principal office,
  - (iii) any other person, by delivering it or sending it by post to that other person at his usual or last-known address.

#### Attendance by member of Council on Tribunals

**33.** A member of the Council on Tribunals may attend in that capacity—

- (a) a hearing before the Tribunal;
- (b) a hearing before any committee mentioned in regulation 3;
- (c) a meeting of an FHSA while it is considering a report of such a committee;
- (d) a hearing before persons appointed under regulation 11(6), 13(8), 14(8), 15(3), or (22), 27(2) or 30(4);

and may remain with the Tribunal, committee, FHSA or persons appointed during, but may take no part in, their deliberations as to their decision or recommendations, notwithstanding that other persons present at the hearing have been required to withdraw.

### **Power to dispense with requirements as to notices**

**34.** The Secretary of State or the Tribunal may dispense with any requirements of these Regulations respecting 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.

### **Power to extend time limits**

**35.—**(1) Where, by virtue of a provision of these Regulations mentioned in paragraph (3)—

(a) a person or body is required—

- (i) to give notice of an appeal or of a wish to make representations orally, or otherwise to signify any wish or intention,
  - (ii) to provide documents or reasons,
  - (iii) to submit observations or comments,
  - (iv) to make any statement or representations, or
  - (v) to admit or dispute the truth of an allegation,
- within a time specified in or under that provision; and

(b) that person applies (whether before or after the expiry of the time so specified) to the relevant authority in accordance with paragraph (2) for that time to be extended,

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

(2) An application under paragraph (1) shall—

- (a) where it seeks the extension of the time allowed for the giving of a notice of appeal, be made in writing;
- (b) in any other case, be made either orally or in writing,

and shall include a statement of the grounds for the application.

(3) For the purposes of this regulation, the relevant authority is, in relation to any application in connection with a time specified in—

- (a) regulation 15(5) or 19(3) or (5), or paragraph 1(2) or (5), 2(2), 3(1)(b) or (2)(b) or 4(1)(c) or (3)(a) of Schedule 4, the FHSA;
- (b) regulation 24(2), (4)(b) or (6)(d), the Tribunal;
- (c) regulation 10(2), 11(2) or (3), 13(7), 14(7) or (13)(a) or (b), 15(19) or (21)(a) or (b), 16(7), 17(10) or 27(1), or paragraph 4(1) of Schedule 3, the Secretary of State.

### **Fresh appointments**

**36.—**(1) Where a person appointed by the Secretary of State for any purpose of any provision of regulation 11, 13, 14, 27 or 30 or of Schedule 5—

- (a) dies or resigns before the completion of that purpose; or
- (b) is unable or refuses to complete that purpose,

the Secretary of State may rescind that appointment together with that of any other person so appointed in relation to the same matter, and appoint different persons in accordance with the provision in question.

(2) Where different persons are appointed pursuant to paragraph (1), any matter referred to them shall be considered afresh.

(3) For the purposes of this regulation a person has completed the purpose for which he was appointed if he has indicated to any other person also appointed for that purpose the decision to be given or recommendation to be made, even if he has not signed a report embodying the decision or recommendation.

### **Referral of matters to professional bodies**

**37.**—(1) Where, in relation to any complaint or reference investigated by an appropriate committee under regulation 6, 7 or 8—

- (a) an FHSa makes a determination under regulation 9(1); and
- (b) having regard to the facts found by the service committee in relation to that matter, that FHSa considers that the matter should be brought to the attention of the relevant professional body,

it may refer to that body any documents in its possession connected with that complaint or reference.

(2) Where, in relation to any such complaint or reference—

- (a) the Secretary of State—
  - (i) receives, pursuant to regulation 9(9) a copy of the report of an appropriate committee and the decision of an FHSa thereon, or
  - (ii) makes a determination following a recommendation by an FHSa under regulation 9(5)(c) or (d) or an appeal under regulation 10; and
- (b) that matter has not been the subject of a referral by the FHSa under paragraph (1); and
- (c) the Secretary of State considers that the matter should be brought to the attention of the relevant professional body,

he may refer to that body any documents in his possession connected with that complaint or reference.

(3) In this regulation, “the relevant professional body” means—

- (a) in relation to a doctor or an ophthalmic medical practitioner, the General Medical Council<sup>(17)</sup>;
- (b) in relation to a dentist, the General Dental Council<sup>(18)</sup>;
- (c) in relation to an optician, the General Optical Council<sup>(19)</sup>;
- (d) in relation to a pharmacist, the Royal Pharmaceutical Society of Great Britain.

### **Transitional provisions**

**38.** Where, before 1st April 1992—

- (a) a complaint has been made under regulation 4, or a matter has been referred under regulation 6(6), of the National Health Service (Service Committees and Tribunal) Regulations 1974<sup>(20)</sup>;
- (b) an application has been made to the Secretary of State under regulation 15(3) of those Regulations;
- (c) a matter has been referred to a Local Representative Committee, or to a joint committee of Local Medical Committees, under regulation 16(1)(a), 17, 18 or 19 of those Regulations;

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<sup>(17)</sup> See the Medical Act 1983 (c. 54), section 1.

<sup>(18)</sup> See the Dentists Act 1984 (c. 24), section 1.

<sup>(19)</sup> See the Opticians Act 1989 (c. 44), section 1.

<sup>(20)</sup> S.I. 1974/455, as amended by S.I. 1974/907, 1982/288, 1985/39, 1987/445, 1989/1630, 1990/538, 1638, 1752, 1938, 1991/555, 581, 1992/24.

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- (d) an appeal has been made under regulation 21 of those Regulations;
- (e) a matter has been referred to an ophthalmic service committee under regulation 23(1) of those Regulations; or
- (f) representations have been made to the Tribunal under regulation 28, or an application has been made to the Tribunal or the Secretary of State under regulation 43, of those Regulations,

the provisions of those Regulations shall, notwithstanding regulation 39, continue to apply on and after that date, as respects any investigation, consideration, hearing, referral, report or determination which, by virtue of any provision of those Regulations, falls to be undertaken, held or made in relation to any such application, reference, appeal or representations, or in relation to any appeal under those Regulations from any determination of such application, reference or representations.

### **Revocations**

**39.** The Regulations specified in column (1) of Schedule 10 are hereby revoked to the extent specified in column (3) of that Schedule.

10th March 1992

*William Waldegrave*  
One of Her Majesty's Principal Secretaries of  
State

## SCHEDULE 1

### PROVISIONS CONFERRING POWERS EXERCISED IN MAKING THESE REGULATIONS

(1) Provision	(2) Relevant amendments
National Health Service Act 1977 <b>(21)</b>	
section 29 <b>(22)</b>	Health Services Act 1980 <b>(23)</b> (“the 1980 Act”), section 7 and Schedule 1, paragraphs 42 and 93  Health and Social Services and Social Security Adjudications Act 1983 <b>(24)</b> , section 14 and Schedule 6, paragraph 2  Family Practitioner Committees (Consequential Modifications) Order 1985 <b>(25)</b> (“the 1985 Order”), article 7(3)
section 36 <b>(22)</b>	European Communities (Medical, Dental and Nursing Professions) (Linguistic Knowledge) Order 1981 <b>(26)</b> , article 3(3)  Health and Social Security Act 1984 <b>(27)</b> (“the 1984 Act”), Schedule 3, paragraph 5  the 1985 Order, article 7(10)  Health and Medicines Act 1988 <b>(28)</b> (“the 1988 Act”), section 25(1) and Schedule 2, paragraph 4  National Health Service and Community Care Act 1990 <b>(29)</b> (“the 1990 Act”), section 24
section 37(1B) <b>(30)</b>	
section 39 <b>(22)</b>	the 1984 Act, section 1(4) and Schedule 1, paragraph 1  the 1985 Order, article 7(12)
section 42 <b>(22)</b>	the 1980 Act, section 21(1) and Schedule 1, paragraph 54  the 1985 Order, article 7(14)

**(21)** 1977 c. 49; see section 128(1) for the definitions of “prescribed” and “regulations”.

**(22)** See section 17 of the Health and Medicines Act 1988 (c. 49) (“the 1988 Act”).

**(23)** 1980 c. 53.

**(24)** 1983 c. 41.

**(25)** S.I. 1985/39.

**(26)** See section 17 of the Health and Medicines Act 1988 (c. 49) (“the 1988 Act”).

**(27)** S.I. 1981/432.

**(28)** 1984 c. 48.

**(29)** 1988 c. 49.

**(30)** 1990 c. 19.

**(30)** Subsection (1B) was inserted in section 37 by section 12(3) of the 1988 Act.

**(22)** See section 17 of the Health and Medicines Act 1988 (c. 49) (“the 1988 Act”).

**(22)** See section 17 of the Health and Medicines Act 1988 (c. 49) (“the 1988 Act”).

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(1) Provision	(2) Relevant amendments
section 45(1)	National Health Service (Amendment) Act 1986(31), section 3(1) Pharmaceutical Qualifications (EEC Recognition) Order 1987(32), article 4 the 1990 Act, section 12(3) the 1980 Act, Schedule 1, paragraph 57
section 46(1)	the 1984 Act, Schedule 3, paragraph 7 the 1984 Act, Schedule 8
section 49	the 1985 Order, article 7(16)
section 126(4)	the 1990 Act, section 65(2)
section 127(a)	
Schedule 5, paragraph 12	the 1985 Order, article 7(22)(b)
Schedule 5, paragraph 16	the 1990 Act, Schedule 1, paragraph 9

SCHEDULE 2

regulation 3(2)

CONSTITUTION OF COMMITTEES TO CONDUCT INVESTIGATIONS

1. The medical, dental and pharmaceutical service committees shall each consist of—
  - (a) a chairman appointed in accordance with paragraph 5; and
  - (b) six other members, of whom—
    - (i) three shall be lay persons appointed by the FHSA, and
    - (ii) three shall be professional persons appointed by the relevant Local Representative Committee.
  
- 2.—(1) The ophthalmic service committee shall consist of—
  - (a) a chairman appointed in accordance with paragraph 5;
  - (b) seven other members, of whom—
    - (i) three shall be lay persons appointed by the FHSA,
    - (ii) two shall be ophthalmic medical practitioners appointed by the Local Medical Committee, and
    - (iii) two shall be opticians appointed by the Local Optical Committee.

(2) 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.

(31) 1986 c. 66.

(32) S.I. 1987/2202.



(3) 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.

**3.—(1)** The joint services committee shall consist of—

- (a) a chairman appointed in accordance with paragraph 5; and
- (b) ten other members of whom—
  - (i) two shall be lay persons appointed by the FHSA,
  - (ii) two shall be doctors appointed in accordance with sub-paragraph (2) by the medical service committee,
  - (iii) two shall be dentists appointed in accordance with sub-paragraph (2) by the dental service committee,
  - (iv) two shall be pharmacists appointed in accordance with sub-paragraph (2) by the pharmaceutical service committee,
  - (v) two shall be ophthalmic medical practitioners or opticians appointed in accordance with sub-paragraph (2) by the ophthalmic service committee.

(2) A member of the joint services committee appointed by a service committee under subparagraph (1)(b)(ii) to (v) shall be a member of the service committee which appoints him or a deputy for such a member.

(3) A member of the joint services committee appointed by a service committee shall not take part in an investigation by the joint services committee unless the matter to be investigated involves a question relating to a relevant practitioner.

(4) For the purposes of sub-paragraph (3) a relevant practitioner is—

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

**4.—(1)** As respects each committee referred to in regulation 3(1)(a), not fewer than three lay persons and not fewer than three 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.

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

**5.—(1)** The chairman of a committee referred to in regulation 3(1)(a) shall be a lay person appointed by the FHSA.

(2) The FHSA shall, within 14 days of making an appointment under sub-paragraph (1), give notice in writing of the appointment to the other members of the committee.

(3) Where, within 14 days of notice being sent under sub-paragraph (1), a statement duly signed in accordance with sub-paragraph (4) is sent to the FHSA asserting that the chairman appointed by the FHSA is not acceptable to the signatories of the statement, the FHSA shall within 30 days of receipt of that statement refer the matter of the appointment to the Secretary of State.

(4) For the purposes of sub-paragraph (3) a statement must be signed—

- (a) in the case of a service committee, by a majority of its lay members, or by a majority of its other members;

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(b) in the case of a joint services committee, by both of its lay members or by both of the members appointed by any one of the service committees.

(5) Where the matter of the appointment is referred to the Secretary of State under subparagraph (3), he may, after consultation with the FHSA and the relevant Local Representative Committee, appoint another person to be chairman of the committee; and the chairman appointed by the FHSA shall cease immediately to hold office as chairman and member of the committee.

(6) A person appointed as chairman of such a committee who is already a member of that committee shall, on his appointment as chairman, cease to be a member otherwise than as chairman and a new member shall be appointed to take his place.

**6.—(1)** A person shall be appointed to act as deputy for the chairman of any committee referred to in regulation 3(1)(a), and the provisions of paragraph 5 shall apply to that appointment as they apply to the appointment of the chairman.

(2) The deputy chairman may, in the absence of the chairman, act in his place and may, if when appointed already a member of the committee, continue as a member but when acting as chairman shall act only in that capacity.

**7.—(1)** Where an FHSA elects to have a denture conciliation committee, that committee shall be appointed by the FHSA and shall consist of—

- (a) a chairman who shall be a lay person; and
- (b) two other members both of whom shall be dentists, and of whom
  - (i) one shall be selected from a panel of dentists nominated for the purpose by the Local Dental Committee, and
  - (ii) the other shall be selected from a panel of dentists nominated for the purpose by the FHSA.

(2) the FHSA shall also appoint—

- (a) a lay person who shall be the deputy of the chairman and shall act in the place of the chairman in his absence; and
- (b) two dentists, one of whom shall be selected from the panel referred to in sub-paragraph (1)(b)(i) and the other of whom shall be selected from the panel referred to in subparagraph (1)(b)(ii), who shall be the deputies of the members appointed under subparagraph (1)(b) and shall act in their place in their absence.

**8.** Where a member or deputy member of a dental service committee has been a member of a denture conciliation committee who have, in accordance with regulation 4(4), referred a complaint or matter for investigation by the dental service committee, the member or deputy member shall take no part in the hearing thereof but a deputy appointed in the like manner may act in his place.

**9.—(1)** Subject to the other provisions of this Schedule, the FHSA may make standing orders with respect to the term of office of any members and deputy members of any committee constituted in accordance with this Schedule.

(2) Subject to any re-appointment, the term of office of any member or deputy member of such a committee shall not exceed one year.

(3) A chairman of a committee referred to in regulation 3(1)(a) who is not a member of the FHSA may attend and take part in any proceedings of the FHSA at which a report of that committee is being considered, but may not vote.

**10.** A person who is a member of a committee constituted under this Schedule shall cease to hold office—

- (a) where he is the chairman or a lay member, on his ceasing to be a lay person;
- (b) where he is a member not mentioned in sub-paragraph (a), on his ceasing to be a professional person.

**11.** In this Schedule—

- (a) “lay member” means, in relation to a service committee or joint services committee, any member (other than the chairman) who is a lay person;
- (b) “lay person” means a person who is not and never has been—
  - (i) a doctor, a dentist, an ophthalmic medical practitioner, an optician or a chemist, nor
  - (ii) a registered dispensing optician within the meaning of the Opticians Act 1989<sup>(33)</sup>, nor
  - (iii) a registered nurse, a registered midwife or a registered health visitor<sup>(34)</sup>, nor
  - (iv) an officer of, or otherwise employed by, any Family Health Services Authority, Regional Health Authority or District Health Authority, or a Community Health Council established under section 20 of the Act<sup>(35)</sup>;
- (c) “professional person” means—
  - (i) in the case of the medical service committee, a doctor,
  - (ii) in the case of the dental service committee or the denture conciliation committee, a dentist,
  - (iii) in the case of the pharmaceutical service committee, a pharmacist,
  - (iv) in the case of the ophthalmic service committee, an ophthalmic medical practitioner or an optician,
  - (v) in the case of the joint services committee, a member appointed by a service committee.

SCHEDULE 3

regulation 5(4)

LATE COMPLAINTS

**1.—(1)** In so far as notice of a complaint is not given within the relevant period specified in regulation 5(2) or (3), the complaint may nevertheless be investigated if—

- (a) having considered any reasons given pursuant to paragraph 1(2) of Schedule 4, the appropriate committee is satisfied that the failure to give notice of the complaint immediately before the expiry of that period and on any subsequent day falling before the date on which such notice was in fact given was occasioned by illness or other reasonable cause; and
- (b) the practitioner or the Secretary of State consents to the investigation of the complaint.

**(2)** Where the appropriate committee is satisfied as mentioned in sub-paragraph (1), the FHSA shall—

- (a) seek, in writing, the consent of the practitioner, or
- (b) where such consent is not given, seek, in accordance with paragraph 2, the consent of the Secretary of State,

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<sup>(33)</sup> 1989 c. 44.

<sup>(34)</sup> See section 10(7) of the Nurses, Midwives and Health Visitors Act 1979 (c. 36).

<sup>(35)</sup> Section 20 was amended by paragraph 40 of Schedule 1 to the Health Services Act 1980 (c. 53).

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to the investigation of the complaint.

**2.—(1)** Where an application is made for the consent of the Secretary of State under paragraph 1(2)(b), the FHSA shall—

(a) send to the practitioner—

(i) a copy of the notice of the complaint; and

(ii) a copy of any statement by the complainant giving reasons for the failure to give notice in time;

and shall notify the practitioner in writing that he may, within 14 days of receiving the notification, send to the Secretary of State a statement in writing of the grounds on which he contends that an investigation should not take place; and

(b) send to the Secretary of State a copy of the notification, and of the notice and any statement, sent to the practitioner under head (a) of this sub-paragraph.

(2) Where the Secretary of State requests the FHSA to provide further information regarding the complaint or the reasons for the delay in making the complaint, the FHSA shall send that information to the Secretary of State and to the practitioner and shall also notify the practitioner that he may, within 14 days of receiving the notification, make further representations in writing to the Secretary of State.

(3) The Secretary of State shall not determine an application under paragraph 1(2)(b)—

(a) unless the time allowed under sub-paragraph (1)(a) (for the submission of a statement by the practitioner) has expired; or

(b) where further information is provided under sub-paragraph (2), until the time allowed under that sub-paragraph (for the submission of representations) has expired.

(4) The Secretary of State shall give notice in writing to the complainant, the practitioner and the FHSA of his decision on the application for his consent, giving his reasons for the decision.

**3.** Where the appropriate committee is not satisfied as mentioned in paragraph 1(1)(a), it shall give reasons for the decision, and the FHSA shall give notice in writing to the complainant of the decision, of the reasons for it and of the complainant's right of appeal under paragraph 4.

**4.—(1)** A complainant may, within 14 days after the notice mentioned in paragraph 3 is sent to him, appeal to the Secretary of State against a decision of an appropriate committee under that paragraph by giving notice of appeal in writing to the Secretary of State, setting out the grounds for the appeal.

(2) On receiving the notice of appeal the Secretary of State shall send a copy of it to the practitioner, and the practitioner may, within 14 days of the copy being sent to him, send to the Secretary of State a statement of the grounds on which he contends that an investigation should not take place.

(3) Where, on consideration of the appeal, the Secretary of State is satisfied that the failure (to give notice of the complaint immediately before the expiry of the relevant period specified in regulation 5(2) or (3) or on any subsequent day falling before the date on which such notice was in fact given) was occasioned by illness or other reasonable cause, he may also decide to give his consent to the investigation of the complaint.

(4) The Secretary of State shall give notice in writing to the complainant, the practitioner and the FHSA of his decision on the appeal, giving his reasons for the decision.

**5.** Where the Secretary of State gives his consent under paragraph 2(4) or 4(3), the appropriate committee shall investigate the complaint.

SCHEDULE 4

regulations 6(7), 7(5) and 8(3)

PROCEDURE FOR INVESTIGATIONS BY APPROPRIATE COMMITTEES

**Preliminary consideration of complaint**

1.—(1) Where, on consideration of a complaint, it appears to the FHSA that—

(a) as respects any event or other matter which is the subject of the complaint, the notice of the complaint—

(i) was not given within the relevant period specified in regulation 5(2) or (3) in relation to that notice, and

(ii) does not include a statement of the complainant's reasons for the delay,

it shall as soon as practicable in writing request the complainant to provide his reasons in writing for the delay.

(b) where notice of the complaint was given in writing, the substance of the matter which the complainant wishes to have investigated is not sufficiently particularised in the statement, it shall as soon as practicable in writing request the complainant to provide such further particulars of the complaint as it may reasonably require.

(2) Where a complainant receives a request under sub-paragraph (1) he shall within 21 days of the date on which the request was sent to him, furnish the FHSA in writing with his reasons for the delay or with such further particulars as may be requested of him.

(3) Subject to sub-paragraph (4), the FHSA shall, as soon as practicable—

(a) where sub-paragraph (1) does not apply; or

(b) where that sub-paragraph applies, after the period allowed by sub-paragraph (2) has expired,

send to the chairman of the appropriate committee a copy of the statement and of any reasons or particulars furnished under sub-paragraph (2).

(4) Sub-paragraph (3) of this paragraph shall not apply where, and for so long as, the FHSA and the complainant agree that, pending conciliation of the matter giving rise to it, the complaint should not be investigated under these Regulations.

(5) If, in the opinion of the chairman, the statement does not disclose reasonable grounds for believing that the practitioner has failed to comply with his terms of service, he shall so inform the FHSA who shall notify the complainant of the chairman's opinion and invite him to submit a further statement in amplification of his complaint within 14 days of the date on which that notification was sent to him.

(6) Where—

(a) after consideration of any further statement which has been submitted pursuant to subparagraph (5), the chairman remains of the view that the complaint does not disclose reasonable grounds for believing that the practitioner has failed to comply with his terms of service; or

(b) such further statement has been invited but has not been submitted within the period specified in that sub-paragraph,

the chairman shall, as soon as practicable, bring the case before the appropriate committee who may report on the matter in accordance with paragraph 7 without holding a hearing.

(7) Where the chairman considers that the complaint discloses reasonable grounds for believing that the practitioner may have failed to comply with any provision of his terms of service, he shall identify each provision in question and notify the FHSA accordingly.

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## **Complaints in relation to deputies**

2.—(1) Where a complaint—

- (a) against a doctor concerns the conduct of a deputy whose name is not included in the medical list;
- (b) against a dentist concerns the conduct of a deputy whose name is not included in the dental list, or an assistant;
- (c) against a chemist concerns the conduct of a pharmacist employed by him,

the FHSA shall give notice in writing in accordance with sub-paragraph (2) to the deputy, assistant or employed pharmacist.

(2) A notice given under sub-paragraph (1) shall—

- (a) invite the recipient of the notice—
  - (i) to so inform the FHSA in writing, within 30 days of the notice being sent to him, if he wishes to be treated as a party to the investigation notwithstanding that no action may be taken in relation to him under regulation 9, and
  - (ii) where he so informs the FHSA, to submit at the same time his comments in writing on the complaint;
- (b) include—
  - (i) a copy of the complainant's statement and any further statement; and
  - (ii) details of each provision of the terms of service identified by the chairman pursuant to paragraph 1(7); and
- (c) inform the recipient of the notice that copies of any comments or other documents he may submit in connection with the investigation will be sent to the complainant and produced at any hearing.

(3) Where the recipient of a notice given under sub-paragraph (1) informs the FHSA, and submits comments as mentioned in sub-paragraph (2)(a), he shall be treated for the purposes of this Schedule as if he were a practitioner in relation to whom the complaint is made, though no action may be taken in relation to him under regulation 9, and the following paragraphs of this Schedule (except paragraph 3(1)) shall apply to him accordingly.

(4) Where a complaint against a doctor concerns the conduct of a deputy whose name is also included in the medical list, the deputy shall be a party to the investigation and the provisions of these Regulations shall apply to him accordingly.

(5) Where, in a case to which sub-paragraph (4) applies, the chairman of the medical service committee considers that—

- (a) the notice of complaint and other documents disclose no reasonable grounds for believing that the doctor personally has failed to comply with his terms of service; and
- (b) the doctor has complied with his obligations under the terms of service in relation to ensuring the provision of services for his patients,

the matter shall be brought as soon as practicable before the service committee who may, in accordance with paragraph 7, report on the matter as respects that doctor without holding a hearing, though the investigation may continue as respects the deputy.

## **Exchange of parties' statements etc.**

3.—(1) On being notified as mentioned in paragraph 1(7) the FHSA shall—

- (a) send to the practitioner—
  - (i) a copy of the complainant's statement, and of any further statement, and

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- (ii) details of each provision of the terms of service identified by the chairman pursuant to paragraph 1(7); and
- (b) in writing—
  - (i) invite the practitioner to submit his comments on the complaint in writing to the FHSA within 30 days from the date of the invitation, and
  - (ii) inform him that copies of any comments or other documents he may submit in connection with the investigation will be sent to the complainant and produced at any hearing.
- (2) Where, in response to the invitation made under sub-paragraph (1)(b), the FHSA receives from the practitioner comments with regard to the complaint, it shall—
  - (a) send to the complainant—
    - (i) a copy of those comments, and
    - (ii) details of each provision of the terms of service identified by the chairman pursuant to paragraph 1(7); and
  - (b) in writing—
    - (i) invite the complainant to submit his observations on those comments in writing to the FHSA within 14 days of the date of the invitation, and
    - (ii) inform him that copies of any observations or other documents he may submit in connection with the investigation will be sent to the practitioner and produced at any hearing.
- (3) Where—
  - (a) the practitioner has not made comments within the period allowed under sub-paragraph (1)(b); or
  - (b) after consideration of any such comments, and of any observations, made pursuant to sub-paragraph (2)(b), the chairman is of the opinion that—
    - (i) there is a material difference between the parties with regard to the facts of the complaint, or
    - (ii) for some other reason a hearing of the complaint is necessary,the chairman shall specify every provision of the terms of service with which, in his opinion, the complaint discloses reasonable grounds for believing that there may have been a failure to comply, and shall inform the FHSA accordingly, and paragraph 4(1) shall apply.
- (4) Where sub-paragraph (3) does not apply, the complaint shall be brought before the appropriate committee who may then report on the matter in accordance with paragraph 7 without holding a hearing.

### **Preparation for the hearing**

- 4.—(1) The FHSA shall in writing—
  - (a) inform the parties—
    - (i) that there will be a hearing,
    - (ii) of the names of the members and deputy members of the appropriate committee;
  - (b) send to the parties—
    - (i) details of all provisions of the terms of service specified by the chairman pursuant to paragraph 3(3), and

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- (ii) copies of all correspondence relevant to the complaint; and
  - (c) require each party to forward to the FHSA within 14 days from the date of the request, copies of any documentary evidence, and of the names of any witnesses, which the party proposes to produce or call at the hearing.
- (2) Except where, pursuant to paragraph 1(6), 2(5) or 3(4), a report is made without holding a hearing, the FHSA shall give to the parties and the Secretary of the relevant Local Representative Committee, not less than 21 days' notice in writing of the date, time and place of the meeting of the appropriate committee at which the matter will be heard, and shall include with the notice to each party—
- (a) a copy of any documents supplied by the other party under sub-paragraph (1)(c);
  - (b) a request to that party to signify in writing to the FHSA whether or not he intends to attend the hearing; and
  - (c) a statement of the effect of sub-paragraph (3).
- (3) Where the appropriate committee is satisfied that a complainant to whom notice has been sent pursuant to sub-paragraph (2)—
- (a) has failed, within 14 days of the date on which such notice was sent to him, to signify his intention to attend the hearing; or
  - (b) has, without reasonable cause, refused to attend the hearing,
- it may, subject to sub-paragraph (4), proceed to consider the complaint at its meeting and to report on the matter in accordance with paragraph 7 without holding a hearing.
- (4) A report made pursuant to sub-paragraph (3) shall not contain any recommendation which is adverse to the practitioner unless he shall have previously consented in writing to the matter being disposed of by the appropriate committee without a hearing.
- (5) The chairman of the appropriate committee may, upon the application of either party, postpone the hearing if he is satisfied that the attendance of the party or any witness on the date fixed for the hearing is not reasonably practicable or, for any other reason he thinks fit, in which case the provisions of sub-paragraph (2) shall apply as respects the postponed hearing.
- (6) The FHSA shall, not less than 7 days before the date fixed for the hearing, supply—
- (a) to each member of the appropriate committee; and
  - (b) to the relevant Local Representative Committee,
- copies of the statement and any further statement, of any comments or observations, and of any further correspondence between the FHSA and either party relating to the complaint.

### **Attendance at hearing**

**5.—**(1) Subject to the provisions of regulation 33 (attendance by representative of Council on Tribunals), the hearing before the appropriate committee shall be in private, and no person shall be admitted to it unless he is a person specified in sub-paragraph (2).

- (2) The persons specified for the purposes of sub-paragraph (1) are—
- (a) subject to sub-paragraph (3), any party;
  - (b) any person permitted under sub-paragraph (4) to accompany a party;
  - (c) not more than one person who is a member or officer of the relevant Local Representative Committee and who is authorised by that committee to attend the hearing on its behalf as an observer only;
  - (d) subject to sub-paragraph (6), any person whose attendance is required for the purpose of giving evidence to the appropriate committee;



- (e) not more than two officers of the FHSA who have been authorised by the FHSA to attend for the purpose of assisting the appropriate committee in the discharge of its functions.
- (3) Where an FHSA is a party, one member or officer of that FHSA may attend on its behalf.
- (4) Subject to sub-paragraph (5), a party may be accompanied at the hearing by one other person who may assist him in the presentation of his case, but, if that other person is a barrister or solicitor, he shall not address the committee or put questions to witnesses.
- (5) Except where the party in question is an FHSA, no officer or member of any FHSA or of any of its committees referred to in regulation 3(1) shall be permitted under sub-paragraph (4) to accompany a party at a hearing.
- (6) Any person permitted to attend the hearing under sub-paragraph (1)(d) for the purpose of giving evidence shall, unless the appropriate committee otherwise directs, be excluded from the hearing except while he is actually giving evidence.

### **Procedure at the hearing**

- 6.—(1) At any hearing before the appropriate committee, any person mentioned in subparagraph (2)(a) or (b) of paragraph 5 may, subject to sub-paragraph (4) of that paragraph—
- (a) address the committee; and
  - (b) put questions to witnesses, either directly or, where the chairman of the committee so directs, through him.
- (2) If either party fails to appear at the hearing, and the appropriate committee is satisfied that his absence is due to illness or other reasonable cause, or if for any other reason the committee thinks fit, it may, after considering the observations of any party who is present, adjourn the hearing, in which case the provisions of paragraph 4(2) shall apply as respects the resumed hearing.
- (3) Prior to the commencement of a hearing, the chairman shall ask the other members of the appropriate committee whether any of them is interested in a question referred to them, either directly or through association with a party, and if, in the opinion of the chairman, any member is so interested, that member shall take no part in the hearing, but a deputy appointed in the like manner may act in his place.
- (4) Where, in the course of a hearing, any issue arises in relation to an event or matter which, in the opinion of the chairman—
- (a) is the subject of the complaint but was not sufficiently disclosed to the practitioner prior to the hearing, the chairman may direct that the issue is to be excluded from the investigation of the complaint;
  - (b) is not the subject of the complaint, the issue shall be excluded from the investigation of the complaint.
- (5) Where no direction is made under sub-paragraph (4)(a) in relation to an issue to which that provision applies, the hearing shall be adjourned unless the practitioner and the chairman agree that the hearing may proceed.
- (6) Before being invited to give his agreement for the purposes of sub-paragraph (5), a practitioner who is not accompanied by a person mentioned in sub-paragraph (2)(b) of paragraph 5 shall be afforded an opportunity to consult any person who may be present at the hearing pursuant to sub-paragraph (2)(c) of that paragraph.
- (7) Subject to the provisions of this Schedule, the procedure at a hearing of an appropriate committee shall be such as the committee may determine.

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### **The committee's report**

7.—(1) The appropriate committee shall present to the FHSA a report in writing which shall contain—

- (a) details of the material evidence given to it;
- (b) its findings on all relevant questions of fact;
- (c) the inferences which, in the view of the committee, may properly be drawn from such findings of fact as to—
  - (i) in the case of a denture conciliation committee, whether or not the respondent has failed to secure and maintain the oral health of any person, or
  - (ii) in any other case, whether or not the respondent has failed to comply with his terms of service;
- (d) its reasons for drawing such inferences; and
- (e) its recommendations as to the action which should be taken by the FHSA under regulation 9.

(2) Where a committee is aware of any earlier determination of the FHSA that the respondent has on some other occasion failed to comply with his terms of service, it may—

- (a) draw the attention of the FHSA to—
  - (i) any previous report of a service committee on which such determination was based, and
  - (ii) any action taken by an FHSA or the Secretary of State in connection with that determination; and
- (b) recommend that account should be taken by the FHSA of such previous report when determining what, if any, action should be taken under regulation 9(5).

(3) In this paragraph, the expression “previous report” shall not include—

- (a) any report made more than six years prior to the date of the complaint; or
- (b) any report in connection with which an appeal is pending under regulation 10(1).

### **Provisions as to, quorum, composition and voting**

8.—(1) At any meeting of a service committee, the quorum shall consist of a chairman, two lay members and two members who are professional persons.

(2) At any meeting of a joint services committee, the quorum shall consist of the chairman, two lay members and two other members—

- (a) who are professional persons; and
- (b) in relation to—
  - (i) one of whom one of the practitioners is a relevant practitioner, and
  - (ii) the other of whom the other of the practitioners is a relevant practitioner.

(3) The proceedings at any meeting of a service committee or joint services committee shall be suspended if, and for so long as—

- (a) the number of members present falls below the quorum specified in sub-paragraph (1) or (2); or
- (b) the number of lay members who are present exceeds, or is exceeded by, the number of other members (apart from the chairman) who are present.

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(4) Where, after the commencement of a hearing before a service committee or joint services committee, the meeting is adjourned for the purposes of hearing further evidence or for preparing or considering the report, no member of the committee who was not present at the earlier meeting shall be present at the proceedings at the resumed meeting.

(5) Where there is an equality of votes among members of an appropriate committee, the chairman shall have a casting vote, but shall not otherwise be entitled to vote.

### **Modification in respect of matters referred under regulation 7 or 8**

9.—(1) The provisions of this Schedule shall, subject to any necessary modifications, apply to the investigation of any matter which is referred to an appropriate committee under regulation 7 or 8 as they apply to the investigation of a complaint.

(2) Where the FHSA, in connection with a reference, or a possible reference, of a matter under regulation 7 or 8, seeks the comments of the practitioner concerned, it shall inform him of—

- (a) its reason for requesting the comments;
- (b) the nature of any alleged breach of the terms of service; and
- (c) unless it decides otherwise, the source of the information before it as to the matter in question.

### **Interpretation**

10. In this Schedule, unless the context otherwise requires—

- (a) “lay member” and “professional person” have the meanings given to them in paragraph 11 of Schedule 2;
- (b) “relevant practitioner” has the meaning given to it in paragraph 3(4) of that Schedule;
- (c) “statement” means the statement, included in the notice given pursuant to regulation 5(1), of the substance of the matter which a complainant wishes to have investigated, and includes—
  - (i) where the notice was given orally, both the tape on which it was recorded and the transcript of it, and
  - (ii) where the notice was given in writing, any further particulars of it submitted under paragraph 1(2).

## SCHEDULE 5

regulation 13(2) and (3)

### ADVISORY COMMITTEES

## PART I

### SPECIFIED FAILURES TO COMPLY WITH TERMS OF SERVICE

1. Any of the following failures to comply with terms of service is specified for the purposes of regulation 13(2) in relation to a doctor—

- (a) a failure to exercise reasonable care and skill in the treatment of a patient;
- (b) a failure to visit, or to treat, a patient whose condition so requires;
- (c) a failure to order, or to provide, any necessary drug or appliance for the use of a patient;

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- (d) a failure to discharge any obligation 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 his terms of service.
2. A failure to exercise a proper degree of skill and attention in the treatment of a patient is specified for the purposes of regulation 13(2) in relation to a dentist.

## PART II

### THE MEDICAL ADVISORY COMMITTEE

3. The committee (in these Regulations referred to as the Medical Advisory Committee) which is to advise the Secretary of State on questions referred to it under regulation 13(2) or (4) in relation to doctors shall be constituted in accordance with the following provisions of this Part.
4. The Medical Advisory Committee shall have six members who shall be appointed by the Secretary of State in accordance with paragraphs 5 and 6.
5. The chairman shall be a doctor who—
- (a) has been engaged in the provision of medical services under the Act for not less than 10 years; and
  - (b) has been selected after consultation with a body which is, in the Secretary of State's opinion, representative of doctors engaged in the provision of general medical services.
6. Of the remaining five members—
- (a) three shall be doctors selected from the doctors' panel; and
  - (b) two shall be doctors who are not on the doctors' panel but who have been engaged in the provision of general medical services for not less than 10 years.
7. The Secretary of State shall also appoint a doctor who satisfies the requirements of subparagraphs (a) and (b) of paragraph 5 to act as deputy to the chairman.
8. The quorum for the Medical Advisory Committee shall comprise the chairman or, in his absence, the deputy chairman and—
- (a) two of the members appointed in accordance with paragraph 6(a); and
  - (b) one of the members appointed in accordance with paragraph 6(b).
9. In the event of an equality of voting among members of the Medical Advisory Committee, the chairman or, as the case may be, the deputy chairman shall have a second or casting vote.

## PART III

### THE DENTAL ADVISORY COMMITTEE

10. The committee (in these Regulations referred to as the Dental Advisory Committee) which is to advise the Secretary of State on questions referred to it under regulations 13(2) or (4) or 14(3) in relation to dentists shall be constituted in accordance with the following provisions of this Part.
11. The Dental Advisory Committee shall have six members who shall be appointed by the Secretary of State in accordance with paragraphs 12 and 13.
12. The chairman shall be a dentist selected after consultation with a body which is, in the opinion of the Secretary of State, representative of dentists.

13. The remaining five members shall be dentists, three of whom shall be selected from the dentists' panel.

14. The Secretary of State shall also appoint a dental officer to act as deputy to the chairman.

15. The quorum for the Dental Advisory Committee shall comprise the chairman or, in his absence, the deputy chairman and—

- (a) two of the members selected from the dentists' panel; and
- (b) one of the members who is not on that panel.

16. In the event of an equality of voting among members of the Dental Advisory Committee, the chairman or, as the case may be, the deputy chairman shall have a second or casting vote.

## SCHEDULE 6

regulations 13(9) and 14(9)

### ORAL REPRESENTATIONS

1.—(1) Of the three persons to be appointed under regulation 13(8) or 14(8) for the purpose of hearing oral representations—

- (a) one shall be a barrister or a solicitor, who shall act as chairman; and
- (b) subject to sub-paragraphs (2) and (3), the remaining two shall be—
  - (i) where the practitioner is a doctor, doctors,
  - (ii) where the practitioner is a dentist, dentists,
  - (iii) where the practitioner is an ophthalmic medical practitioner, ophthalmic medical practitioners,
  - (iv) where the practitioner is an optician, opticians,
  - (v) where the practitioner is a chemist, registered pharmacists.

(2) In any case to which sub-paragraph (1)(b)(i) applies, one of the doctors shall be selected from the doctors' panel.

(3) In any case to which sub-paragraph (1)(b)(ii) applies, one of the dentists shall be selected from the dentists' panel.

2. The Secretary of State shall, not later than 21 days before the date on which the oral representations are to be heard, give notice in writing to the practitioner and the FHSA of the date, time and place fixed for the hearing.

3. At any hearing—

- (a) the practitioner may attend in person and may be represented by counsel, solicitor or any other person, and
- (b) the FHSA may—
  - (i) be represented by one of its members or officers, and
  - (ii) take such part in the hearing as the persons appointed to hold the hearing may think proper.

4. The procedure at any hearing shall be such as the persons appointed to hold the hearing may determine.

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5. Following the hearing the persons appointed shall report to the Secretary of State with their recommendations on the questions referred to them under regulation 13(8) or, as the case may be, regulation 14(8).

## SCHEDULE 7

regulation 18(6)

### RULES OF PROCEDURE UNDER REGULATION 18

1.—(1) The FHSA shall prepare and submit to the Local Medical Committee a written statement of the facts in connection with which the question has arisen and of the decision given by the FHSA and the grounds on which it is based.

(2) The Local Medical Committee shall, as soon as may be after receipt of the statement mentioned in sub-paragraph (1)—

(b) furnish the FHSA with a written statement of the decision given by the Local Medical Committee and of the grounds on which the decision is based, and

(b) inform the FHSA whether it concurs in the statement of facts prepared by the FHSA and, if not, in what respect it does not concur in that statement.

(3) The FHSA shall send the statements prepared by itself and by the Local Medical Committee to the Secretary of State and he may, if he thinks fit, require both or either of those bodies to furnish him with further particulars regarding the facts of the case, or the decision, or the grounds for the decision.

2.—(1) Where the Secretary of State thinks fit to refer a matter under regulation 18(7), he may require either the FHSA or the Local Medical Committee to furnish written statements of the facts in connection with which the question has arisen and of its decision and the grounds on which the decision is based.

(2) The Secretary of State shall inform any body which has furnished a statement under subparagraph (1)—

(a) whether he concurs in the statement of facts; and

(b) if he does not so concur, in what respects he does not concur; and

(c) where head (b) applies, of his grounds for disagreeing with the decision.

(3) The Secretary of State shall furnish copies of all documents mentioned in paragraphs (1) or (2) to each of the referees appointed by him under regulation 18(3).

(4) If, on consideration of the documents furnished under paragraph (3), the referees are of the opinion that the question referred to them is similar to a question previously determined by them under regulation 18, they may dispense with a hearing and determine the case summarily.

(5) Except in a case to which paragraph (4) applies, the Secretary of State shall fix the time and place of the hearing, and shall give not less than 21 days' notice in writing thereof to the FHSA and the Local Medical Committee.

(6) The FHSA and the Local Medical Committee shall be entitled to appear at the hearing by a member or officer duly appointed for the purpose, or by counsel or solicitor, and the Secretary of State may appear by one of his officers.

(7) Any person or body entitled by virtue of paragraph (6) to appear at the hearing may produce such evidence as, in the opinion of the referees, may be relevant to the matters in issue.

(8) The referees shall, as soon as may be after the hearing or after determining a case summarily, report to the Secretary of State the decision at which they have arrived.

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SCHEDULE 8

regulation 24(4)

FORMS FOR USE IN PROCEEDINGS BEFORE TRIBUNAL  
PART I NOTICE TO THE RESPONDENT OF INTENTION TO HOLD INQUIRY

In the matter of [ (a) ], a [ (b) ]  
and

In the matter of the National Health Service Act 1977

To [ (a) ] of [ (e) ]

Take notice that representations have been made by [ (d) ] of [ (e) ] to the Tribunal that your continued inclusion in the [ (f) ] list of the Family Health Services Authority would be prejudicial to the efficiency of the [ (g) ] services provided under Part II of the Act, and that it is proposed to hold an inquiry with respect to the above representations.

A statement of the alleged facts and grounds on which the above representations are based will be sent to you as soon as possible, and notice of the date appointed for the holding of the inquiry will follow in due course.

A copy of the National Health Service (Service Committees and Tribunal) Regulations 1992 is enclosed herewith for your information.

(Signed)

Dated .....

Clerk of the Tribunal

Notes

State at—

- (a) name of respondent;
- (b) whether respondent is a doctor, dentist, ophthalmic medical practitioner, optician or chemist;
- (c) address of respondent;
- (d) name of complainant;
- (e) address of complainant;
- (f) whether medical list, dental list, ophthalmic list or pharmaceutical list is in issue;
- (g) whether services in question are general medical services, general dental services, general ophthalmic services or pharmaceutical services.

PART II NOTICE TO COMPLAINANT OF INTENTION TO HOLD INQUIRY

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In the matter of [ (a) ], a [ (b) ]  
and  
In the matter of the National Health Service Act 1977

To [ (c) ] of [ (d) ]

Take notice that it is proposed to hold an inquiry with respect to the representations dated [ (e) ] made by you to the Tribunal to the effect that the continued inclusion of the above-named respondent in the [ (f) ] list of the Family Health Services Authority would be prejudicial to the efficiency of the [ (g) ] services provided under Part II of the Act.

You are hereby required within [ (h) ] days after the date of this notice to forward to me a copy of any document which you propose to put in evidence at the inquiry.

Notice of the day appointed for the holding of the inquiry will be sent to you in due course.

A copy of the National Health Service (Service Committees and Tribunal) Regulations 1992 is enclosed herewith for your information.

(Signed)

Dated ..... Clerk of the Tribunal

Notes

State at—

- (a) name of respondent;
- (b) whether respondent is a doctor, dentist, ophthalmic medical practitioner, optician or chemist;
- (c) name of complainant;
- (d) address of complainant;
- (e) date of representations;
- (f) whether medical list, dental list, ophthalmic list or pharmaceutical list is in issue;
- (g) whether services in question are general medical services, general dental services, general ophthalmic services or pharmaceutical services;
- (h) number of days allowed for forwarding of copies.

SCHEDULE 9 regulations 26(1), 27(4), 29(5) and 30(3)

HEARINGS UNDER PART III

1. The person holding the inquiry shall appoint a day for the hearing and shall, not less than 14 days before that day, send notice to the parties of the date, time and place of the hearing.
2. Where the inquiry concerns representations, the person holding it may send to any FHSA which is not a party but in whose medical, dental, ophthalmic or pharmaceutical list the respondent's name is included a notice of the date, time and place of the hearing.
3. The person holding the inquiry may, whether or not on an application by any party, postpone the date of the hearing, and the provisions of paragraphs 1 and 2 shall apply as respects the postponed inquiry.
4. The hearing shall be in public if—



- (a) in the case of representations, the respondent; or
- (b) in the case of an application, the applicant,

so requests; otherwise, it shall be in private.

**5.—(1)** Subject to regulation 33 (attendance by member of Council on Tribunals), where the hearing is to be in private, no person shall be admitted to it unless he is—

- (a) a person entitled under sub-paragraph (2) to represent an FHSA which—
  - (i) is a party to the inquiry, or
  - (ii) is not a party to which a notice has been sent under paragraph 2;
- (b) a party to the inquiry, other than an FHSA; or
- (c) a person permitted under sub-paragraph (3) to represent a party referred to in head (b) of this sub-paragraph.

(2) An FHSA referred to in sub-paragraph (1)(a) may be represented at the hearing by a member or an officer or by counsel or solicitor.

(3) Any party referred to in paragraph (1)(b) may be represented at the hearing by counsel or solicitor or by any other person.

**6.** At any hearing either party may—

- (a) address the person holding the inquiry;
- (b) call witnesses and produce other evidence, including evidence not produced prior to the inquiry; and
- (c) put questions to any person giving evidence on behalf of the other party.

**7.** An FHSA to whom notice has been sent under paragraph 2 may take such part in the proceedings as the person holding the inquiry thinks proper.

**8.—(1)** Where any party to whom notice of the hearing has been given in accordance with paragraph 1 fails to appear at the hearing, either in person or by a representative, the person holding the inquiry may, after having regard to all the circumstances, including any explanation offered for the absence, proceed with the hearing notwithstanding that party's absence.

(2) Subject to the other provisions of this Schedule, the procedure at the hearing shall be for the person holding the inquiry to decide.

**9.** The provisions of subsections (2), (3) and (5) of section 250 of the Local Government Act 1972<sup>(36)</sup> (summoning of witnesses, evidence, costs, etc.) shall apply to an inquiry under Part III of these Regulations as though the person holding the inquiry were a person appointed to hold a local inquiry under that section and as though the references in subsection (5) to the Minister causing the inquiry to be held under section 250 were to the Secretary of State or the person holding the inquiry.

**10.** For the purposes of this Schedule—

- (a) the parties to an inquiry are—
  - (i) in the case of representations, the complainant and the respondent,
  - (ii) in the case of an application, the applicant and the respondent; and
- (b) the person holding the inquiry is—
  - (i) in the case of an inquiry as to representations under regulation 26 or as to an application made in accordance with regulation 29, the Tribunal,

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(36) 1972 c. 70, as amended by Part IV of Schedule 1 to the Statute Law (Repeals) Act 1989 (c. 43).

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- (ii) in the case of an inquiry as to an appeal to the Secretary of State under regulation 27, the person appointed under regulation 27(2) to hear the appeal,
- (iii) in the case of an application made in accordance with regulation 30, the person appointed under regulation 30(4) to hold the inquiry.

## SCHEDULE 10

regulation 39

## REVOCATIONS

(1) Regulations revoked	(2) References	(3) Extent of revocation
The National Health Service (Service Committees and Tribunal) Regulations 1974	<a href="#">S.I. 1974/455</a>	The whole Regulations
The National Health Service (Service Committees and Tribunal) Amendment Regulations 1974	<a href="#">S.I. 1974/907</a>	The whole Regulations
The National Health Service (Service Committees and Tribunal) Amendment Regulations 1987	<a href="#">S.I. 1987/445</a>	The whole Regulations
The National Health Service (Service Committees and Tribunal) Amendment Regulations 1989	<a href="#">S.I. 1989/1630</a>	The whole Regulations
The National Health Service (Service Committees and Tribunal) Amendment Regulations 1990	<a href="#">S.I. 1990/538</a>	The whole Regulations
The National Health Service (Service Committees and Tribunal) Amendment (No. 2) Regulations 1990	<a href="#">S.I. 1990/1752</a>	The whole Regulations

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations supersede the National Health Service (Service Committees and Tribunal) Regulations 1974 (“the 1974 Regulations”) to provide for the investigation and determination

by Family Health Services Authorities (“FHSAs”) and their committees, of questions whether doctors, dentists, chemists and opticians providing services under Part II of the National Health Service Act 1977 have failed to comply with their terms of service, and for the consideration and determination of related questions. The Regulations also provide for the determination of representations and applications to the National Health Service Tribunal (“the Tribunal”), and for appeals from determinations of FHSAs and the Tribunal.

These Regulations make provision which differs substantially from that made in the 1974 Regulations, in a number of respects. Provision for the constitution, jurisdiction, procedures and powers of denture conciliation committees is included with that governing service committees and the joint services committee of FHSAs (regulations 3 to 9 and Schedules 2 and 4). New provision is made for the procedure to be followed where the Secretary of State is considering whether an amount should be recovered from a practitioner in consequence of a breach of his terms of service (regulation 13 and Schedules 5 and 6), or whether a dentist who has been found in breach of his terms of service should be subject to a requirement to seek the prior approval of the Dental Practice Board before he may carry out certain descriptions of treatment (regulation 14 and Schedules 5 and 6). New procedural provision is made for the investigation and determination of questions as to the excessive prescribing of drugs and appliances by doctors, and also for appeals from such determinations (regulation 15). Provision hitherto made in the 1974 Regulations for the investigation of alleged excessive prescribing of optical appliances is not re-enacted in these Regulations.

Provision is now made for the extension, by the FHSAs, the Tribunal or the Secretary of State, of time limits imposed under the Regulations in relation to the making of appeals, the submission of observations, and other matters (regulation 35). Provision governing the procedure for the investigation of complaints and other matters by service committees, joint services committees and denture conciliation committees is revised (Schedule 4), and procedural provision for hearings of representations and applications to, and of appeals from, the Tribunal is set out in Schedule 9.

Other provisions of these Regulations differ from those of the 1974 Regulations in minor respects, or in consequence of other changes which are mentioned above.

These Regulations, which come into force on 1st April 1992, make transitional provision in relation to the continued application of the 1974 Regulations to proceedings commenced under those Regulations before that date (regulation 38).