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The NHS (Scotland) Act 1978

29.— The NHS tribunal.

(1) The tribunal constituted in accordance with Schedule 8 shall continue under the name of “the NHS Tribunal” and that Schedule shall continue to have effect in relation to the Tribunal.

(2) If the Tribunal receive from a Health Board representations that a person—

(a) who has applied to be included; or

(b) who is included,

in any list meets any of the conditions for disqualification, the Tribunal shall inquire into the case.

(3) If the Tribunal receive such representations from any other person, they may inquire into the case.

(4) Representations under this section shall be made—

(a) in the prescribed manner; and

(b) where regulations prescribe the time within which such representations are to be made, within that time.

(5) Subsections (6) to (11) apply for the purposes of this group of sections.

(6) The first condition for disqualification is that the inclusion or continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list-

(a) in relation to a list referred to in subsection (8)(a), perform;

(b) in relation to a list referred to in subsection (8) (c), (d) or (e), undertake to provide or are approved to assist in providing.

(7) The second condition for disqualification is that the person concerned—

(a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit; and

(b) knew that he or (as the case may be) the other was not entitled to the benefit.

(7A) The third condition for disqualification is that the person concerned is unsuitable (by virtue of professional or personal conduct) to be included, or to continue to be included, in the list.

(8) A “list” means—

(a) a list of health care professionals of a prescribed description performing primary medical services;

[(b) repealed;]

(c) a list of dental practitioners and bodies corporate referred to in section 25(1) undertaking to provide, and of persons who are approved to assist in providing, general dental services;

(d) a list of medical practitioners and ophthalmic opticians undertaking to provide, and of persons who are approved to assist in providing, general ophthalmic services; or

(e) a list of persons undertaking to provide pharmaceutical services,

prepared (in each case) under or by virtue of this Part or Part I of this Act .

(8A) In subsection (8)(a), “health care professional” has the same meaning as in section 17P.

(9) “Health scheme” means —

(a) any of the health services under section 1(1) or any corresponding enactment extending to England and Wales or Northern Ireland; and

(b) any prescribed scheme,

and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.

(10) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.

(11) Cases in which representations are made that the first condition for disqualification is met are referred to below as efficiency cases; cases in which representations are made that the second condition for disqualification is met are referred to below as fraud cases and cases in which representations are made that the third condition for disqualification is met are referred to below as unsuitability cases.

(12) In this section and sections 29A to 29C—

(a) “this group of sections” means this and those sections and Schedule 8; and

(b) the NHS Tribunal is referred to as the Tribunal.

29A.— The NHS Tribunal: supplementary.

(1) Where an ophthalmic optician is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification or, as the case may be, the third condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).

(1A) A body corporate entitled, by virtue of section 43 of the Dentists Act 1984 (c.24), to carry on the business of dentistry is to be treated for the purposes of this group of sections as meeting the second condition for disqualification or, as the case may be, the third condition for disqualification if any director meets that condition (whether or not he first met that condition when he was a director).

(2) Where a body corporate carries on a retail pharmacy business, the body corporate is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if any one of the body of persons controlling the body corporate meets that condition (whether or not he first met that condition when he was one of them).

(3) A person who is included in any list (“the practitioner”) is to be treated for the purposes of this group of sections as meeting the second condition for disqualification if—

(a) another person, because of an act or omission of his occurring in the course of providing, assisting in providing, or as the case may be performing, any services mentioned in section 29(8) on the practitioner's behalf, meets that condition; and

(b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 29(7)(a) occurring in the course of the provision, assistance in provision, or performance, of those services on his behalf.

(4) The Tribunal is not required to inquire into a fraud case if they have previously inquired into representations in respect of the person concerned and the same acts or omissions.

(5) In an unsuitability case, a fraud case or an efficiency case, regulations may make provision for the purpose of securing that the person subject to the inquiry is not added to any list until proceedings in that case are finally concluded.

(6) For the purposes of this group of sections, in an unsuitability, a fraud or efficiency case proceedings are finally concluded—

(a) if the Tribunal determine not to disqualify or conditionally disqualify him when they make that determination;

(b) if they determine to disqualify or conditionally disqualify him and no appeal is brought against the determination, at the end of the period for bringing an appeal;

(c) if they determine to disqualify or conditionally disqualify him and an appeal is brought against the determination, when the appeal process is exhausted.

(7) An inquiry under section 29 is not affected by the person subject to the inquiry withdrawing from, withdrawing any application to be included in or being removed from the list to which the case relates.

29B.— Powers of NHS Tribunal.

(1) Subsection (2) applies where the Tribunal are of the opinion—

(a) on inquiring into an efficiency case, that the person meets the first condition for disqualification;

(b) on inquiring into a fraud case, that the person meets the second condition for disqualification;

(c) on inquiring into an unsuitability case, that the person meets the third condition for disqualification.

(2) The Tribunal shall disqualify him for inclusion in—

(a) the list to which the case relates;

(b) all lists within the same paragraph of subsection (8) of section 29 as that list.

[(3) repealed.]

(4) The Tribunal shall not make a disqualification under this section if they are of the opinion that it would be unjust to do so.

(5) A disqualification under this section shall have effect when the case is finally concluded.

(6) If a person is disqualified for inclusion in any list prepared by a Health Board, the Board must not enter him in the list and (if he is already included in the list) must remove him from the list.

29C.— Conditional disqualification etc.

(1) The functions of making disqualifications under section 29B include making a conditional disqualification, that is, a disqualification which is to come into effect only if the Tribunal determine (on a review under section 30) that the person subject to the inquiry has failed to comply with any conditions imposed by them.

(2) Conditions may be imposed by virtue of subsection (1) with a view to—

(a) removing any prejudice to the efficiency of the services in question;

(b) preventing any acts or omissions within section 29(7)(a);

(c) ensuring that the person—

(i) performs, undertakes to provide or assists in providing only services specified (or of a description specified) in the condition;

(ii) undertakes an activity (or course of activity) of a personal or professional nature, or refrains from conduct of a personal or professional nature, so specified (or of a description so specified), (as the case may be).

(3) Conditions so imposed shall have effect when proceedings in the case are finally concluded.

(4) Section 29B(4) applies to a conditional disqualification as it applies to a disqualification.

(5) The Tribunal may by directions—

(a) vary the terms of service of the person subject to the inquiry (including terms imposed by regulations under this Part);

(aa) vary any requirements to which the person subject to the inquiry is subject under or by virtue of section 17F or 17P or this Part;

(b) confer functions on any Health Board,

for the purpose of or in connection with the imposition of any conditions by virtue of this section.

(6) References in any enactment to a disqualification by the Tribunal do not include a conditional disqualification.

30.— Review etc. of disqualification.

(1) The Tribunal may review a disqualification or conditional disqualification —

(a) if the disqualified or conditionally disqualified person requests a review; or

(b) in any other circumstances in which they consider it appropriate.

(2) On a review under subsection (1), the Tribunal may—

(a) remove a disqualification;

(b) make a disqualification conditional;

(c) in the case of a conditional disqualification, remove it, vary the conditions or make it unconditional,

(3) If any Health Board request a review of a conditional disqualification on the ground that—

(a) there has been a change in the circumstances by reference to which the conditions were imposed;

(b) the person concerned has failed to comply with the conditions; or

(c) in a fraud case, the person concerned has since the Tribunal imposed the conditions (or made the disqualification conditional) again satisfied the second condition for disqualification,

the Tribunal shall review the conditional disqualification.

[(4) Repealed.]

(5) On a review under subsection (3) of a conditional disqualification, the Tribunal may remove it, vary the conditions or make it unconditional.

[(6) Repealed.]

(7) The Tribunal shall not under this section—

(a) in the case of a conditional disqualification, make it unconditional or vary the conditions;

if they are of the opinion that it would be unjust to do so.

(8) A determination by the Tribunal under this section shall have effect—

(a) if no appeal is brought against it, at the end of the period for bringing an appeal;

(b) if an appeal is brought against it, when the appeal process is exhausted.

(9) The Tribunal may hold an inquiry for the purposes of any review under this section.

32.--- Regulations as to sections 29 to 31.

(1) Regulations shall make provision—

(a) for inquiries under sections 29 to 30 to be held in accordance with such procedure as may be prescribed by or determined under the regulations and, in particular, for any person who is the subject of such an inquiry to be informed, as soon as may be, of the substance of any charge or complaint to which the inquiry relates and to have an opportunity—

(i) of appearing, either in person or by counsel or solicitor or such other representative as may be prescribed, before the Tribunal, and

(ii) of being heard by the Tribunal, and of calling witnesses and producing other evidence on his behalf,

and for the hearing to be in public if the person who is the subject of the inquiry so requests;

(b) for conferring on the Tribunal such powers as the Scottish Ministers consider necessary for the purpose of holding such inquiries, including power to require the attendance of witnesses and the production of documents and to administer oaths; and

(c) for the publication of decisions of the Tribunal under this section and of the imposition and removal of any disqualification or condition imposed by virtue of this section, and for the intimation to any person who is the subject of such an inquiry of the grounds upon which any disqualification or condition has been imposed in his case.

(2) Regulations under subsection (1)(a) may in particular provide that, where (apart from the regulations) it would be the duty of the Tribunal to inquire into an efficiency case and a fraud case or an unsuitability case or any other combination of more than one such category of case in respect of the same person, they may inquire into one case before inquiring into the other and, after proceedings in the first case are finally disposed of, may if they think it appropriate adjourn the other case indefinitely.

32A.— Applications for interim suspension.

(1) A Health Board who have made representations under section 29 may, at any time before the case is disposed of by the Tribunal, apply to the Tribunal for a direction to be made under subsection (2) below in relation to the person to whom the case relates.

(1A) A Health Board may, if they have requested a review of a conditional disqualification on the ground mentioned in section 30(3)(b) or (c), at any time before the review is concluded apply to the Tribunal for a direction to be made under subsection (2) in relation to the person to whom the review relates.

(2) If, on an application under this section, the Tribunal are satisfied that either of the conditions for doing so is satisfied, they shall direct that subsection (3) below shall apply to the person concerned as respects services -

(a) services of the kind to which the case in question, or the case to which the review in question, relates; and

(b) if the services are either general dental services or personal dental services, both general dental services and personal dental services.

(2A) The conditions for giving such a direction are—

(a) that it is necessary to do so in order to protect persons who are, or may be, provided with primary medical services, pharmaceutical care services or services under this Part, section 17C arrangements or a pilot scheme to which the case in question, or the case to which the review in question, relates; or

(b) that it is otherwise in the public interest to do so.

(3) A person to whom this subsection applies shall—

(a) be deemed to have been removed from any relevant list in which his name is included, and

(b) be disqualified for inclusion in any relevant list in which his name is not included.

(4) A direction under subsection (2) above shall cease to have effect on the Tribunal's disposing of the case or review in connection with which it is made.

[(5) Repealed.]

(6) In the application of subsection (3) above to any person—

(a) “relevant list” means –

(i) a list of persons performing;

(ii) a list of persons undertaking to provide and of persons approved to assist in providing,

services of the kind to which the direction applying the subsection to him relates.

(7) Regulations may provide that where a Health Board, in accordance with regulations made under section 17F, 17P, 25(2) or 26(2), suspend a person from a list prepared under regulations made under the section in question and the Board apply to the Tribunal for a direction to be made under subsection (2) in relation to the person to whom the suspension applies, the suspension may continue until the Tribunal determine the application.

32B.— Suspension pending appeal.

(1) Where, on disposing of a case under section 29B, the Tribunal make a disqualification, they may, if they consider that either of the conditions mentioned in section 32A(2A) is satisfied, direct that section 32A(3) shall apply or, if a direction has been given under section 32A(2), shall continue to apply to him as respects services of the kind to which the disqualification relates.

(2) A direction under subsection (1) above shall cease to have effect—

(a) where no appeal against the disqualification is brought, at the end of the period for bringing an appeal, and

(b) where an appeal against the disqualification is brought, when the appeal process has been exhausted.

[(3) repealed.]

[4. repealed.]

32C.— Sections 32A and 32B: procedure etc.

(1) Before making a direction under section 32A(2) or 32B(1) in relation to any person, the Tribunal shall give him an opportunity—

(a) to appear before them, either—

(i) in person; or

(ii) by counsel or solicitor or such other representative as may be prescribed; and

(b) to be heard and to call witnesses and produce other evidence.

(2) Regulations may—

(a) make provision for, or for the determination of, procedure in relation to determining applications under section 32A or the exercise of the power conferred by section 32B(1), and

(b) provide for the functions of the Tribunal under section 32A or 32B(1) to be carried out, or to be carried out in prescribed circumstances, by the chairman or a deputy chairman of the Tribunal.

32D. --- Corresponding provision in England or Wales or Northern Ireland

(1) This section applies where it appears to the Scottish Ministers that there is provision in England or Wales or Northern Ireland under which a person may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under sections 29 to 32B.

(2) A decision in England or Wales or Northern Ireland to deal with such a person in such a way is referred to in this section as a “corresponding decision”.

(3) If this section applies, the Scottish Ministers may make regulations providing for the effect to be given in Scotland to a corresponding decision; and where the decision corresponds (whether or not exactly) with a decision which may be made under section 29C or (so far as relating to conditional disqualification) 30 the regulations may provide for the effect to be given to be determined in the prescribed manner by the Scottish Ministers.

4) That effect need not be the same as the effect of the corresponding decision in the place where it was made.

32E.— Payments in consequence of suspension.

(1) Regulations may provide for the making to persons to whom section 32A(3) or 32D(3) applies of payments in consequence of the application of that provision.

(2) Regulations under subsection (1) above may provide for the determination by the Scottish Ministers in a prescribed manner of anything for which provision may be made by regulations under that subsection.

Schedule 8

THE TRIBUNAL

Section 29

1.

The Tribunal shall consist of---

- (a) a chairman appointed by the Lord President of the Court of Session,
- (b) such number of deputy chairmen as may be so appointed;
- (c) such number of persons as the Scottish Ministers may appoint for the purposes of this sub-paragraph,

- (d) such number of medical practitioners as the Scottish Ministers may appoint for the purposes of this sub-paragraph,
- (e) such number of medical practitioners having the qualifications prescribed under section 26 as the Scottish Ministers may appoint for the purposes of this sub-paragraph,
- (f) such number of dental practitioners as the Scottish Ministers may appoint for the purposes of this sub-paragraph.
- (g) such number of ophthalmic opticians as the Scottish Ministers may appoint for the purposes of this sub-paragraph, and
- (h) such number of registered pharmacists as the Scottish Ministers may appoint for the purposes of this sub-paragraph.

2. A person appointed as the chairman or deputy chairman shall be a practising-

- (a) advocate; or
- (b) solicitor,

of no less than 10 years' standing.

3. Any appointment for the purposes of paragraph 1(c) above shall be made after consultation with such body as the Scottish Ministers may recognise as representative of Health Boards.

4. Any appointment for the purposes of any of sub-paragraphs (d) to (h) of paragraph 1 above shall be made after consultation with such organisations as the Scottish Ministers may recognise as representative of the profession or calling concerned.

[5. Repealed.]

[6. Repealed.]

7. Regulations may make provision---

- (a) with respect to the appointment, tenure of office and vacation of office of members of the Tribunal;
- (b) with respect to the appointment of officers of the Tribunal.

8.

(1) The functions of the Tribunal shall be exercised by three members consisting of ---

- (a) the chairman or deputy chairman,
- (b) a person appointed under paragraph 1(c) above, and

(c) a person appointed under such one of sub-paragraphs (d) to (h) of paragraph 1 above as provides for the appointment of persons of the same profession or calling as that of the person concerned.

(2) In sub-paragraph 1(c) above as it has effect in relation to the functions mentioned below, the reference to the person concerned is---

(a) in the case of functions under sections 29 to 29C, to the person to whom the representations in question relate,

(b) in the case of functions under section 30 or paragraph 6 of Schedule 15, to the person whose disqualification or conditional disqualification is under consideration,

(c) in the case of functions under section 32A, to the person to whom the application in question relates, and

(d) in the case of functions under section 32B, to the person in relation to whom section 32A(3) may be made to apply or continue to apply.

(3) In the case of functions under section 32A or 32B, sub-paragraph (1) above is subject to section 32C(2)(b).

Schedule 15

TRANSITIONAL PROVISIONS AND SAVINGS

Disqualification of practitioners

6.

Where by virtue of section 43(8) of the National Health Service (Scotland) Act 1947 a person's name was disqualified for inclusion in any list referred to in section 43(1) of that Act, that person's name is disqualified for inclusions in any list referred to in section 29(1), until such time as the Tribunal direct to the contrary.

