STATUTORY INSTRUMENTS

1965 No. 1366

NATIONAL HEALTH SERVICE, ENGLAND AND WALES

The National Health Service (Service Committees and Tribunal) Amendment Regulations 1965

Made - - - -	*5th July* 1965
Laid before Parliament	*9th July* 1965
Coming into Operation	*2nd August* 1965

The Minister of Health, in exercise of the powers conferred on him by sections 32, 33, 38, 40, 41 and 42 of, and schedules 5 and 7 to, the National Health Service Act 1946(a), as amended by the National Health Service (Amendment) Act 1949(b), and of all other powers enabling him in that behalf and after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1958(c), hereby makes the following regulations:—

1. These regulations may be cited as the National Health Service (Service Committees and Tribunal) Amendment Regulations 1965, and shall come into operation on 2nd August 1965.

2. The Interpretation Act 1889(d) applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

3. The National Health Service (Service Committees and Tribunal) Regulations 1956(e) shall be amended as follows:—

(1) In regulation 2(1), for the definitions of " dispensing optician ", " General Dental Regulations ", " General Service Regulations ", " ophthalmic medical practitioner " and " ophthalmic optician ", there shall be respectively substituted the following definitions:—

" " dispensing optician " means a person or body qualified as a dispensing optician in accordance with regulation 4(4) of the Ophthalmic Services Regulations ; " ;

" " General Dental Regulations " means the National Health Service (General Dental Services) Regulations 1964(f) ; " ;

" " General Service Regulations " means the National Health Service (General Medical and Pharmaceutical Services) Regulations 1962(g) ;" ;

" " ophthalmic medical practitioner " means a medical practitioner having the qualifications prescribed by regulation 4(1), (2) or (3) of the Ophthalmic Services Regulations ; " ;

" " ophthalmic optician " means a person or body qualified as an ophthalmic optician in accordance with regulation 4(5) of the Ophthalmic Services Regulations ; ".

(2) For the proviso to regulation 3(2)(*d*) (which provides for the constitution of the ophthalmic investigation committee) there shall be substituted the following proviso:—

(a) 9 & 10 Geo. 6. c. 81. (b) 12, 13 & 14 Geo. 6. c. 93. (c) 6 & 7 Eliz. 2. c. 66.
(d) 52 & 53 Vict. c. 63. (e) S.I. 1956/1077 (1956 I, p. 1554).
(f) S.I. 1964/755 (1964 II, p. 1519). (g) S.I. 1962/2248 (1962 III, p. 3092).

" Provided that one of the two ophthalmic medical practitioners shall not take part in the investigation unless the matter involves a question relating to an ophthalmic medical practitioner, one of the two ophthalmic opticians shall not take part in the investigation unless the matter involves a question relating to an ophthalmic optician and one of the two dispensing opticians shall not take part in the investigation unless the matter involves a question relating to a dispensing optician.".

(3) After regulation 4(7) there shall be inserted the following paragraph:—

" (7A) Where a complaint, or a matter referred to the ophthalmic investigation committee, involves a question relating to an ophthalmic medical practitioner and a dispensing optician, or to an ophthalmic optician and a dispensing optician, or to an ophthalmic medical practitioner and an ophthalmic optician, the committee shall if the practitioner and optician concerned, or opticians concerned, so agree investigate the matter in relation to both persons at the same time.".

(4) For regulation 6(*e*) (which provides for action by the Council in the case of dentists) there shall be substituted the following:—

" (*e*) The Council may recommend to the Minister that owing to the failure of a dental practitioner to comply with his terms of service he should be required for a specified period, in respect of all or any specific treatment other than examination or emergency treatment, to submit for prior approval to the Dental Estimates Board estimates in respect thereof.".

(5) In regulation 7(1) (which regulation provides for appeals to the Minister from decisions of Executive Councils) for the words " in lieu of " to the end of the paragraph, there shall be substituted the words " under the provisions of paragraph (4) of this regulation.".

(6) After regulation 7(3) there shall be inserted the following paragraph:—

" (4) A practitioner, chemist, or optician may, in lieu of exercising his right of appeal, within one month from the date on which notification of the decision of the Council is received by him, make representations to the Minister against a recommendation of the Council under regulation 6(*c*) of these regulations that a specified amount should be withheld from his remuneration.".

(7) For regulation 11(2)(*a*) (which enables representations to be made against a proposed withholding) there shall be substituted the following:—

" (*a*) Before directing the recovery of any such amount, the Minister shall afford the practitioner, chemist or optician a reasonable opportunity of making representations to him on the matter, except in cases in which the facts have already been the subject of an oral hearing in the course of an appeal to the Minister, or in cases in which the practitioner, chemist or optician had the right to make representations under regulation 7(4) of these regulations and the Minister does not propose to direct the recovery of a larger amount than that specified by the Council.".

(8) In regulation 11(2)(*b*) (which provides for oral representations) for the words " If the practitioner, chemist or optician desires to make representations orally " there shall be substituted the words:—

" Where the practitioner, chemist or optician desires to make representations orally, whether under sub-paragraph (*a*) of this paragraph or under regulation 7(4) of these regulations ".

(9) In regulation 11(4) (which provides for the constitution of the medical advisory committee) for the words " the Chief Medical Officer of the Ministry of Health or his deputy " and " The Chief Medical Officer, or in his absence his deputy ", there shall be respectively substituted the words " the Chief Medical Officer or a Deputy Chief Medical Officer of the Ministry of Health " and " The Chief Medical Officer or a Deputy Chief Medical Officer ".

(10) In regulation 11(6) (which provides for the constitution of the dental advisory committee) for the words " the Principal Dental Officer of the Ministry of Health or his deputy " and " The Principal Dental Officer, or in his absence his deputy " there shall be respectively substituted the words " the Chief Dental Officer or the Deputy Chief Dental Officer " and " The Chief Dental Officer or the Deputy Chief Dental Officer ".

(11) After regulation 11 there shall be inserted the following regulation:—

" *Procedure in dental prior approval cases*

11A.—(1) If the Minister is of the opinion, after considering any report by a dental service committee under regulation 5(4) of these regulations and the decision of the Council thereon to the effect that there has been a breach of the terms of service, or the report of a person or persons holding an inquiry under regulation 9(5) of these regulations, or any report of the Tribunal after an inquiry under part III of these regulations, that a dental practitioner should, in respect of any treatment other than an examination or emergency treatment, be required by the Minister to submit for prior approval to the Dental Estimates Board estimates in respect thereof (which requirement is hereinafter referred to as a prior approval requirement) the Minister may notify the practitioner of a prior approval requirement for such period as he thinks fit:

Provided that—

(*a*) where the Council have made a recommendation under regulation 6(*e*) of these regulations, and the facts of the case have not been the subject of an oral hearing in the course of an appeal made to the Minister, a prior approval requirement shall not exceed the period recommended by the Council or widen the range of treatment proposed to be covered, unless the Minister first affords the practitioner a reasonable opportunity of making representations to him on the matter;

(*b*) where the Council have not made such a recommendation (and whether or not the case has been the subject of an oral hearing) the Minister shall not notify the practitioner of a prior approval requirement unless he first affords the practitioner a reasonable opportunity of making representations to him against the proposed requirement.

(2) The provisions of regulation 11(2)(*b*) shall apply where the practitioner desires to make representations orally."

(12) For regulation 12 there shall be substituted the following regulation :—

" *Investigation of excessive prescribing by general medical practitioners*

12.—(1)(*a*) Where it appears to the Minister after an investigation of the orders for drugs and appliances given by one or more general medical practitioners (including any assistant of any such practitioner) to persons provided with general medical services and of the accounts furnished by any such practitioner for drugs and appliances supplied

to such persons that there is a prima facie case for considering that by reason of the character or quantity of the drugs or appliances so ordered or supplied the cost is in excess of what was reasonably necessary for the proper treatment of these persons, the Minister may refer the matter to the Local Medical Committee for their consideration.

(*b*) Where any practitioner is on more than one medical list the Minister may refer the matter to the Local Medical Committee for the area of the responsible Council (being the Council defined as such in paragraph 1 of part III of schedule 1 to the General Service Regulations) and that Committee shall consider the matter in relation to all the lists concerned.

(2)(*a*) Where any reference has been made to a Committee under the preceding paragraph, the Committee shall furnish any practitioner concerned with a statement indicating the matters on which an explanation is required and shall afford him reasonable opportunity of appearing before and being heard by them, or, if he thinks fit, of submitting to them any statement in writing; and a representative or representatives of the Minister shall be entitled, in the event of a hearing, to attend and be heard by the Committee.

(*b*) Where any reference is made in relation to orders or accounts given or furnished by a practitioner as a deputy for another practitioner the Committee may, to such extent as they consider material, require information concerning the orders or accounts given or furnished in respect of the persons concerned by the practitioner for whom he was deputising.

(*c*) Where references are made in relation to two or more practitioners the Committee may if the practitioners so agree consider them during the same proceedings.

(3) After considering the case the Committee shall decide whether by reason of the character or quantity of the drugs or appliances ordered or supplied as aforesaid by the practitioner or practitioners concerned any cost has been incurred in excess of what was reasonably necessary and, if so, what sum is in the opinion of the Committee a reasonable estimate of the excess cost incurred by each practitioner.

(4) Where the Committee have decided that excess cost has been so incurred by reason of the drugs or appliances ordered or supplied by any practitioner, they shall inform the Council, the practitioner or practitioners concerned and the Minister of their decision and may add a statement of any considerations to which in their opinion the Council and the Minister should have regard in making any recommendation or decision with reference to the withholding of money from the practitioner or practitioners concerned.

(5) Any aggrieved practitioner shall be entitled to appeal against the decision of the Committee by sending to the Minister notice of appeal within one month from the date on which notice of the Committee's decision was received. The Minister shall appoint as referee or referees a person or persons (not exceeding three in number and not being an officer or officers of the Ministry of Health) of whom at least one shall be a general medical practitioner, who shall hear and determine the appeal. They shall have power to determine the appeal by a majority.

(6) If the Minister is dissatisfied with the decision of the Committee in any case referred to them under paragraph (1) of this regulation he may appoint as referee or referees a person or persons to hear

and determine the matter in the manner provided in the last preceding paragraph, and the provisions of that paragraph including those relating to the person or persons to be appointed shall apply accordingly.

(7) After consideration of the decision of the Committee or, if an appeal has been made or the matter has been referred for hearing and determination under the last foregoing paragraph, after consideration of the decision of the person or persons determining the appeal or matter, the Council shall, if such decision is that excessive cost has been incurred, make a recommendation to the Minister with regard to the withholding of money from any practitioner concerned, and the Minister may direct the Council to withhold such sum as he thinks fit, and the provisions of regulation 11 of these regulations, including the right of the practitioner to make representations to the Minister, shall apply accordingly.

(8) Where under the provisions of paragraph (1) of this regulation, a matter has been referred to the Local Medical Committee for the area of the responsible Council, paragraphs (4) and (7) hereof shall have effect as if the reference to " the Council " was a reference to the Council of each of the areas in which the practitioner is on the medical list."

(13) For regulation 19 there shall be substituted the following regulation:—

" *Investigation of excessive dental treatment*

19.—(1) Where it appears to the Minister after an investigation of a number of the dental estimate forms submitted by a dental practitioner to the Dental Estimates Board that, by reason of the character and volume of the treatment (not being treatment specified in column B of schedule 2 to the General Dental Regulations) for which the practitioner has claimed payment, there is a prima facie case for considering that the practitioner has regularly provided excessive dental treatment, the Minister may refer the matter for consideration to the Local Dental Committee or to a joint committee of two or more Local Dental Committees constituted in such manner as he may approve, and any reference in this regulation to the Committee shall be construed as including any such joint committee.

For the purpose of this regulation " excessive dental treatment " means treatment which is in excess of what was reasonably necessary to secure the dental fitness of the persons concerned, or which involved the Council in cost in excess of what was reasonably necessary to secure the proper treatment of those persons.

(2) Where a case has been referred to the Committee under the preceding paragraph, the Committee shall furnish the practitioner concerned with a statement indicating the matters on which an explanation is required and shall afford him reasonable opportunity of appearing before and being heard by them, or, if he thinks fit, of submitting to them any statement in writing; and a representative or representatives of the Minister shall be entitled, in the event of a hearing, to attend and be heard by the Committee.

(3) After considering the case the Committee shall decide whether the practitioner has in their opinion regularly provided excessive dental treatment, and where they so decide, they shall inform the Council, the practitioner and the Minister of their decision.

(4) The practitioner shall be entitled to appeal against the decision of the Committee by sending to the Minister notice of appeal within one month from the date on which notice of the Committee's decision was received. The Minister shall appoint as referees persons (not exceeding three in number and not being officers of the Ministry of Health) of whom at least one shall be a dental practitioner, who shall hear and determine the appeal. They shall have power to determine the appeal by a majority.

(5) If the Minister is dissatisfied with the decision of the Committee in any case referred to them under paragraph (1) of this regulation, he shall appoint as referees persons to hear and determine the matter in the manner provided in the last preceding paragraph; and the provisions of that paragraph, including those relating to the persons to be appointed, shall apply accordingly.

(6) Where the Committee or the referees, as the case may be, decide that the practitioner has regularly provided excessive dental treatment, the practitioner shall be required by the Minister to submit to the Board for prior approval estimates in respect of all or any specific treatment (other than examination or emergency treatment) for a period of 12 months from such date as the Minister may notify to him (not being earlier than one month from the date on which notice of the decision is received).

(7) A practitioner who is subject to a prior approval requirement under this regulation may, at any time 6 months after the receipt of the notification of the Minister under paragraph (6) of this regulation, apply to the Minister for a direction that the requirement should be terminated before the period of 12 months has elapsed. Any such application shall state the grounds on which it is made. The Minister shall request the comments of the Council and the Committee on the application and the observations of the practitioner on such comments, if any, before giving such decision as he thinks fit."

(14) After regulation 47 there shall be inserted the following regulation:—

"*Attendance by member of Council on Tribunals*

47A. Nothing in these regulations shall prevent a member of the Council on Tribunals in that capacity from attending any hearing before the Tribunal, a service committee, an Executive Council when the Council are considering reports of service committees, or a person or persons holding a hearing under regulation 9, 11 or 42 of these regulations."

4. Any requirement made or direction given under regulations 6(*e*), 12 or 19 of the National Health Service (Service Committees and Tribunal) Regulations 1956 and in force immediately before 2nd August 1965 shall continue to have effect, and any complaint or reference concerning a dental practitioner made under regulation 4, and any reference made by the Minister under regulations 12 or 19 of the said regulations, before that date, shall be or continue to be investigated in accordance with, and be subject to the provisions of, the regulations in force immediately before that date.

Given under the official seal of the Minister of Health on 5th July 1965.

(L.S.) *Kenneth Robinson,*
Minister of Health.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations amend the National Health Service (Service Committees and Tribunal) Regulations 1956.

The main amendments relate to:—

(*a*) the constitution and jurisdiction of ophthalmic investigation committees (regulation 3(2) and (3));

(*b*) provisions for requiring a dentist to submit for prior approval estimates of treatment to the Dental Estimates Board (regulation 3(4), (10) and (13));

(*c*) the right of a practitioner, chemist or optician to make representations to the Minister of Health concerning proposed withholdings from his remuneration (regulation 3(5), (6), (7) and (8));

(*d*) the constitution of the medical and dental advisory committees (regulation 3(9) and (10));

(*e*) the investigation of excessive prescribing by general medical practitioners (regulation 3(12)); and

(*f*) the admission of members of the Council on Tribunals to certain National Health Service hearings (regulation 3(14)).