17. SERVICE COMMITTEES AND TRIBUNAL

The National Health Service (Medical and Pharmaceutical Service Committees and Tribunal) (Scotland) Regulations, 1948

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In exercise of the powers conferred on me by sections 33, 34, 40, 43 and 72 of, and the Sixth and Eighth Schedules to, the National Health Service (Scotland) Act, 1947, and of all other powers enabling me in that behalf, I hereby make the following regulations:—

PART I

General

Short title and commencement.

1. These regulations may be cited as the National Health Service (Medical and Pharmaceutical Service Committees and Tribunal) (Scotland) Regulations, 1948, and shall come into operation on the 21st day of June, 1948.

Interpretation.

2.—(1) In these regulations, unless the context otherwise requires, the following expressions have the respective meanings hereby assigned to them:—

" the Act " means the National Health Service (Scotland) Act, 1947;

" council " means the Executive Council constituted for any area;

" the drug tariff " means the drug tariff prepared under the General Services Regulations;

" drugs " includes medicines and such chemical re-agents as are or may be prescribed;

" the General Services Regulations " means the National Health Service (General Medical and Pharmaceutical Services) (Scotland) Regulations, 1948(a);

" medical officer " means any medical officer appointed by the Secretary of State for a district in which general medical services are provided;

" practitioner " means a registered medical practitioner;

(a) S.I. 1948 No. 1258, p. 2393 above.

" the terms of service " means the terms of service for medical practitioners contained in Part I of the First Schedule to the General Services Regulations, or the terms of service for chemists contained in Part I of the Fourth Schedule to the General Services Regulations, as the case may be;

" treatment " has the same meaning as in the General Services Regulations;

" the Tribunal " means the Tribunal constituted under Section 43 of the Act.

(2) In these regulations the expression " chemist " means a registered pharmacist or authorised seller of poisons within the meaning of the Pharmacy and Poisons Act, 1933, who provides pharmaceutical services, and the regulations shall also apply (except so far as the context may otherwise require) to any other person, firm or body corporate (other than a practitioner) providing pharmaceutical services as if that person, firm or body were a chemist as so defined. 23 & 24 Geo. 5. c. 25.

(3) The Interpretation Act, 1889, applies to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament. 52 & 53 Vict. c. 63.

Part II

Provisions relating to investigations, disputes, appeals, etc.

Constitution of service committees.

3.—(1) Every Council shall establish a medical service committee, a pharmaceutical service committee, and a joint services committee.

(2) (*a*) The medical service committee shall consist of a chairman and six other persons, of whom three shall be appointed by and from the lay members of the Council, and three shall be appointed by the Local Medical Committee.

(*b*) The pharmaceutical service committee shall consist of a chairman and six other persons, of whom three shall be appointed by and from the lay members of the Council, and three shall be appointed by the Local Pharmaceutical Committee.

(*c*) The joint services committee shall consist of a chairman and six other persons, of whom two shall be appointed by and from the lay members of the Council, two shall be appointed by the medical service committee from their members or deputies who are practitioners, and two shall be appointed by the pharmaceutical service committee from their members or deputies who are registered pharmacists.

(*d*) A corresponding number of persons shall be appointed in the same manner to act as deputies for the members (other than the chairman) of the medical, pharmaceutical and joint services committees and in the absence of a member a deputy having the same qualification shall be entitled to act in his place.

(*e*) At least one woman shall be appointed to be a deputy for the lay members of the committee (either as a deputy appointed as aforesaid or as an additional deputy, who may be a person who is not a member of the Council), and for the purposes of any investigation in which a woman or a child under the age of sixteen is concerned the committee making the investigation shall include at least one woman, being either an appointed member of the committee or a deputy taking

the place of an appointed member. In such a case the chairman may nominate a woman deputy to act, and the lay member of the committee in whose place she shall act.

(3) The following provisions shall have effect with regard to the appointment of the chairman of each of the said committees:—

(*a*) The chairman shall be appointed at a meeting of the members of the committee to be specially summoned for the purpose. The chairman of the Council or, if he is a member of the committee or is unable to attend, the vice-chairman or some other member of the Council (not being a member of the committee) to be nominated by the chairman (or in his absence the vice-chairman) shall preside at the meeting but shall not be entitled to vote. The appointment shall be made by a majority of the votes cast at the meeting.

(*b*) The persons eligible for appointment shall be the lay members of the Council and any person appointed as chairman by the Council under the following provisions of this regulation whose term of office has expired.

(*c*) If no appointment is made at the said meeting, the Council shall appoint a person to be chairman.

(*d*) Where an appointment of the chairman of the committee falls to be made by the Council, a person who is not a member of the Council shall be eligible for appointment provided that he is neither a medical or dental practitioner nor a registered pharmacist, and any person not being a member of the Council who is appointed chairman shall be entitled to attend and take part in the proceedings of the meetings of the Council but not to vote.

(*e*) The foregoing provisions with respect to the appointment of a chairman shall apply to the appointment of a deputy chairman.

(*f*) If the person appointed as chairman or deputy chairman of a committee is already a member of the committee, he shall thereupon cease to be a member other than as chairman or deputy chairman, and a new member shall be appointed by and from the lay members of the Council to take his place.

(4) If in the opinion of the chairman any member of a committee is interested, or is partner, principal, assistant or manager to a practitioner or a chemist who is interested, in a question referred to the committee, that member shall take no part in the hearing of the question, but a deputy having the same qualifications shall act in his place.

(5) If the chairman is absent the deputy chairman shall exercise and perform the powers and duties of the chairman; on all other occasions the deputy chairman shall be entitled to be present at, and take part in, the proceedings of the committee, but not to vote.

(6) The Council may make standing orders with respect to the term of office of the chairman, deputy chairman, members and deputy members of the committee: Provided that the term of office of the chairman shall not exceed one year, without prejudice to his eligibility for re-appointment.

(7) In this regulation the expression " the lay members of the Council " means the members appointed by a local health authority or the Secretary of State, not being medical or dental practitioners or registered pharmacists, and in this regulation and in regulation 5 the expression " the lay members of the committee " means the members of the committee appointed by the lay members of the Council.

Investigations by service committees.

4.—(1) Subject as hereinafter provided any complaint made by a person against a practitioner in respect of an alleged failure to comply with the terms of service shall be investigated by the medical service committee.

(2) Subject as hereinafter provided any complaint made by a person against a chemist in respect of an alleged failure to comply with the terms of service shall be investigated by the pharmaceutical service committee.

(3) (*a*) A person desiring to make a complaint under this regulation against a practitioner or a chemist shall within six weeks after the event which gave rise to the complaint give written notice to the clerk of the Council stating the substance of the matter which it is desired to have investigated.

(*b*) Notwithstanding failure to give notice within the period specified in the preceding sub-paragraph, the committee may investigate the matter if they are satisfied that such failure was occasioned by illness or other reasonable cause and either—

(i) the complaint is made within two months after the said event; or

(ii) the practitioner or chemist, as the case may be, consents to the investigation taking place, notwithstanding the failure to give notice in time; or

(iii) the consent of the Secretary of State to the investigation has been obtained. In applying for such consent the committee shall furnish the Secretary of State and the practitioner or chemist, as the case may be, with a copy of the said notice, a statement of the reasons for the failure to give notice in time and with any further information which the Secretary of State may require, and the practitioner or chemist, as the case may be, shall be entitled within fourteen days after the receipt by him of such statement or further information to forward to the Secretary of State a statement of the grounds on which he contends that the investigation should not take place.

(4) Subject as hereinafter provided the medical service committee shall in relation to practitioners, and the pharmaceutical service committee shall in relation to chemists, investigate any matters referred to them by the Council (or any committee of the Council duly authorised in that behalf by the Council) relating to the administration of general medical services or pharmaceutical services whether or not any such matter has been raised on complaint under the foregoing provisions of this regulation:

Provided that no question which involves an allegation against a practitioner of a breach of the terms of service shall, except with the consent of the Secretary of State, or of the practitioner concerned, be referred for investigation under this paragraph, except within the period specified in sub-paragraph (*a*) of the last preceding paragraph, and the provisions of sub-paragraph (*b*) of that paragraph with reference to the procedure to be adopted on application for the consent of the Secretary of State shall *mutatis mutandis* apply to any application for his consent under this paragraph.

(5) The pharmaceutical service committee shall perform such duties in connection with the testing of drugs and appliances as may be imposed on them by the scheme made for that purpose under regulation 24 of the General Services Regulations.

(6) If in the opinion of the medical service committee, any matter referred to that committee involves a question relating to a chemist, or if in the opinion of the pharmaceutical service committee any matter referred to that committee involves a question relating to a practitioner, the committee shall, instead of dealing with the matter themselves, refer it to the joint services committee.

(7) Any matter which would otherwise be referred by the Council or any committee duly authorised in that behalf by the Council to the medical service committee or pharmaceutical service committee for investigation may, if the Council or committee are satisfied that it is appropriate to the joint services committee, be referred by them to that committee.

Procedure of service committees

5.—(1) A party to an investigation may be assisted in the presentation of his case by some other person: Provided that no person shall be entitled in the capacity of counsel, solicitor or other paid advocate to conduct the case for any party by addressing the committee or examining or cross-examining witnesses.

(2) The proceedings at the hearing before the committee shall be private and no person shall be admitted to those proceedings except—

(*a*) the parties to the investigation and any persons assisting them;

(*b*) the secretary or other officer of the Local Medical or the Local Pharmaceutical Committee, whichever is concerned;

(*c*) persons attending for the purpose of giving evidence, who shall, unless the committee otherwise direct, be excluded from the hearing except when they are actually giving evidence; and

(*d*) such officers of the Council as they may appoint for the purpose.

(3) The First Schedule to these regulations shall apply with respect to the investigation of complaints, and the procedure of the committee.

(4) The committee shall draw up a report stating such relevant facts as appear to them to be established by the evidence placed before them and the inferences which in their opinion may properly be drawn from the facts, together with a recommendation as to the action, if any, which should be taken and shall present the report to the Council and the Council shall accept as conclusive any finding of fact contained in the report. In presenting such report to the Council the committee may, if they think fit, draw the attention of the Council to any previous reports made in connection with the practitioner or chemist and to any action taken by the Secretary of State on such reports and may recommend that account should be taken thereof by the Council in reaching their decision.

(5) Notwithstanding anything herein contained, a service committee may, where a hearing is required and where, in consequence of difficulties of securing the attendance of witnesses owing to distance or inadequacy of means of communication or other special circumstances, they are of opinion that such hearing should be held at a place outwith the town in which the office of the Council is situated, delegate to three of their number, of whom one shall be the chairman or the deputy chairman, one shall be selected from the lay members of the committee, and one shall be selected from the members of the committee appointed by the Local Medical Committee or the Local Pharmaceutical Committee, as the case may be, to take the hearing and to draw up a report

stating such relevant facts as appear to them to be established by the evidence placed before them and the inferences which in their opinion may properly be drawn from the facts:

Provided that—

(*a*) in the case of an investigation by the joint services committee the delegation shall be to four members, of whom one shall be the chairman or the deputy chairman, one shall be selected from the lay members of the committee, one from the members appointed by the Local Medical Committee, and one from those appointed by the Local Pharmaceutical Committee; and

(*b*) instead of delegating as aforesaid the committee may, if owing to special circumstances they consider such a course to be justified, and subject to the consent of the Secretary of State, delegate to their chairman or deputy chairman to take the hearing and to draw up the report.

On such report being presented to the committee they shall accept as conclusive any findings of fact and shall otherwise deal with the case as if they themselves had conducted the hearing.

The provisions of this paragraph shall apply with the necessary modifications to enable the committee to delegate to the chairman or the deputy chairman or others to take the evidence of one or more witnesses who for medical or other sufficient reasons cannot attend a hearing and whose evidence the committee consider essential.

(6) In this regulation the expression " the lay members of the committee " has the meaning assigned to it in regulation 3 of these regulations.

Action by Council.

6. The Council shall furnish the Secretary of State with a copy of the report of the service committee and a statement of the Council's decision thereon, which may include action in any one or more of the following ways:—

(*a*) If the investigation relates to the conduct of a practitioner and the Council are satisfied, after consultation with the Local Medical Committee, that owing to the number of persons included in his list the practitioner is unable to give adequate treatment to all those persons they may impose a special limit on the number of persons for whom the practitioner may undertake to provide treatment, and in that event any number in excess of that limit shall be dealt with as though the list of the practitioner was by that number in excess of the general limit fixed for the list of practitioners in the area.

(*b*) The Council may recover from the practitioner or chemist as the case may be, by deduction from his remuneration or otherwise, any expenses (other than expenses incurred in connection with an investigation by the appropriate committee) which have been reasonably and necessarily incurred by any person owing to the failure of the practitioner or chemist to comply with the terms of service, and any sum so recovered shall be paid to that person.

(*c*) The Council may make representations to the Secretary of State that owing to the failure of the practitioner or chemist to comply with the terms of service, an amount should be withheld from his remuneration.

(*d*) If the Council are of the opinion that the continued inclusion of the practitioner on the medical list or of the chemist on the pharmaceutical list would be prejudicial to the efficiency of the service in question, they may make a representation to that effect to the Tribunal.

Appeal to Secretary of State from decision of Council.

7.—(1) The Council shall furnish the parties to an investigation with a copy of the service committee's report and of their decision, and shall inform them of their right to appeal to the Secretary of State, in terms of the next following paragraph of this regulation, and of the power of the Secretary of State on such an appeal to award expenses.

(2) Any party aggrieved by such decision shall be entitled to appeal to the Secretary of State by sending to him notice of appeal within one month from the date on which notification of the decision was received: Provided that no appeal shall lie against a decision to take action under paragraph (*d*) of the last preceding regulation.

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

(4) The Secretary of State may, on the application of any person desiring to appeal, extend the time for giving notice of appeal and may do so although the application is not made until after the expiration of one month from the date on which notice of the Council's decision was received.

(5) An application for an extension of the time for giving notice of appeal must be made in writing to the Secretary of State stating the grounds for the application.

Representation by Council to Tribunal.

8. If a Council decide to make a representation with regard to the continued inclusion in any list of the name of any practitioner or chemist and an appeal to the Secretary of State is made against their decision on other matters, the Secretary of State may treat as conclusive for the purpose of the appeal any relevant findings of the Tribunal.

Procedure on appeal

9.—(1) If the Secretary of State, after considering the notice of appeal and the statement of facts and contentions furnished by the appellant, is of opinion that the said notice and statement disclose no reasonable grounds of appeal or that the appeal is otherwise vexatious or frivolous, he may dismiss the appeal forthwith: Provided that an appeal against a decision of the Council to take action under paragraphs (*a*), (*b*) or (*c*) of regulation 6 of these regulations shall not be dismissed without a hearing unless the appellant does not desire such a hearing.

(2) The Secretary of State shall, unless he dismisses the appeal on the ground aforesaid, send a copy of the notice of appeal and of the statement furnished by the appellant to the Council and to the person or persons, if any, who were parties to the proceedings before the service committee and who appear to him to be interested in the appeal, and in the event of a hearing the Council and any such person or persons may appear and take such part in the proceedings as the persons holding the hearing think proper. The Council shall be entitled to submit a statement to the Secretary of State in answer to the notice of appeal and statement furnished by the appellant, and the Secretary of State shall send to the appellant a copy of any statement so submitted.

(3) Subject to the proviso to paragraph (1) of this regulation, the Secretary of State may, if he is of opinion that the case is of such a nature that it can properly be determined without a hearing, dispense with a hearing and determine the appeal summarily.

(4) If the Secretary of State decides that the appeal shall be heard he shall fix a time and place for the hearing and shall give not less than fourteen days' notice thereof to the appellant, the Council and any other parties concerned.

(5) For the purpose of a hearing the Secretary of State shall appoint a person or persons, not exceeding three in number, and whether officers of the Secretary of State or not, to hold the hearing and report to him, and shall also appoint a fit person to act as clerk: Provided that where one of the parties to an appeal is a practitioner, and the decision of the Council involves a finding that the practitioner has been guilty of any breach of the terms of service referred to in paragraph (2) (*b*) of regulation 11 of these regulations, the persons appointed to hear the appeal shall include a practitioner selected by the Secretary of State from the panel of practitioners referred to in paragraph (3) of that regulation.

(6) The Secretary of State, after taking into consideration the report of the persons who have heard the appeal, shall give his decision, which shall be final and conclusive.

(7) At any hearing—

(*a*) a party to the appeal shall be entitled to appear and be heard in person or by counsel or solicitor, or by any officer or member of any organisation of which he is a member, or by any member of his family, or by any friend; and

(*b*) a Council or other body being a party to the appeal shall be entitled to appear and be heard by a member or by their clerk or other officer duly appointed for the purpose, or by counsel or solicitor.

(8) A party to any appeal shall not, except with the consent of the Secretary of State or, in the case of a hearing, of the person or persons before whom the hearing takes place, be entitled to rely upon any facts or contentions which do not appear to the Secretary of State or to the person or persons holding the hearing to have been raised before the committee in the course of the proceedings in respect of which the appeal is brought: Provided that this paragraph shall not apply in the case of a hearing if at least seven days before the hearing notice is given in writing to the Secretary of State or to the person or persons holding the hearing of any new facts or contentions upon which the party intends to rely.

(9) The Council may, with the consent of the Secretary of State make such contribution as they think fit, and shall if directed by the Secretary of State make such contribution as he may determine, towards the cost of the appeal incurred by the complainer or by the practitioner or chemist.

Provisions as to hearing.

10. The provisions of the Tenth Schedule to the Act (which relate to the attendance of witnesses, orders as to expenses and other matters) shall apply to any hearing held under the last foregoing regulation as they apply to an inquiry held under the Act, with the omission of paragraphs 1, 2, and 6 of the said Schedule.

Procedure on withholding money.

11.—(1) If the Secretary of State is satisfied:—

(*a*) after considering any report made by a service committee under paragraph (4) of regulation 5 of these regulations and the decision of the Council thereon, or the report of a person or persons appointed under paragraph (5) of regulation 9 of these regulations, or any report of the Tribunal after an inquiry under Part III of these regulations, that a practitioner or chemist has failed or neglected to comply with the terms of service applicable to him; or

(*b*) after considering the report of a medical officer that a practitioner has failed to comply with paragraph (13) of clause 7 of the terms of service applicable to him;

he may direct the Council to recover such amount as he thinks fit either by deduction from the remuneration of the practitioner or chemist or otherwise, and such sum shall be a debt due by the practitioner or chemist to the Council:

Provided that, except in cases in which the facts have already been the subject of an investigation in the course of an appeal made to the Secretary of State, the Secretary of State shall, before directing that any such amount shall be withheld, afford the practitioner or chemist concerned a reasonable opportunity of making representations to him on the matter.

(2) (*a*) An advisory committee hereinafter referred to as the medical advisory committee shall be constituted for the purpose of assisting the Secretary of State in the discharge of his duties under this regulation in relation to practitioners. Before directing the Council to withhold money in respect of an alleged breach of the terms of service applicable to practitioners the Secretary of State shall, where such breach is of a kind specified in the following sub-paragraph, and may in any other case refer the matter to such committee and shall consider any report which they may make to him thereon.

(*b*) Breaches of the terms of service to which the last preceding sub-paragraph of this regulation relates are failure to exercise reasonable skill and care in the treatment of a patient, failure to visit or treat a patient whose condition so requires, failure to order or supply any necessary drug or appliance for the use of a patient or failure to discharge the obligations imposed on a practitioner to give a patient the requisite assistance to enable him to obtain any treatment which is not within the scope of the practitioner's obligations under the terms of service.

(3) The medical advisory committee shall consist of a practitioner in the service of the Secretary of State, who shall act as chairman, and a practitioner selected by the Secretary of State from a panel of practitioners nominated by a body which is in his opinion representative of practitioners engaged in the provision of general medical services.

Investigation of excessive prescribing.

12.—(1) The Local Medical Committee shall from time to time investigate the character and quantity of the drugs and appliances ordered or supplied by practitioners for persons on their lists (other than drugs and appliances so supplied for which payment is made on a capitation basis), and where it appears to the Committee in the case of any practitioner 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 adequate treatment of those persons, they shall make a report thereon to the Council, and the report shall state

fully the facts of the case as ascertained by them and the grounds upon which their opinion is based, and shall contain a recommendation as to the sum, if any, which, in their opinion, might properly be recovered from the practitioner:

Provided that before making a report to the Council the Local Medical Committee shall furnish the practitioner concerned with a statement indicating the grounds on which an investigation has appeared necessary 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.

(2) (*a*) If at any time it appears to the Council that the reports by the Local Medical Committee as a result of investigations made under this regulation are not such as to enable the Council properly to perform the duties imposed on them with reference thereto, or that in any other respect the Local Medical Committee have delayed or failed to carry out their duties under this regulation, the Council may, after giving not less than fourteen days' previous notice in writing to the Local Medical Committee, appoint some fit and proper person or persons not exceeding two in number for the purpose of holding an investigation under this regulation and reporting to them, and the report of such person or persons shall stand referred to the medical service committee for consideration and for submission to the Council of a recommendation as to the action to be taken.

(*b*) The person or persons so appointed shall have the same powers and duties with respect to an investigation into the character and quantity of the drugs and appliances ordered or supplied by practitioners as aforesaid as are conferred and imposed on the Local Medical Committee, and shall be entitled to require the Local Medical Committee to furnish them with any relevant statistical or other information available to that Committee.

(3) The Council shall consider the report of the Local Medical Committee or, in the case where the Council have appointed a person or persons as aforesaid, the report of such person or persons and of the medical service committee, and if they are of opinion that the cost of the drugs or appliances ordered or supplied by a practitioner is excessive, owing to their being extravagant in character or quantity, they may, if they think fit, recover from the practitioner, whether by deduction from his remuneration or otherwise, such sum as they think fit.

(4) The Council shall send to the Secretary of State copies of every report made by the Local Medical Committee or by a person or persons appointed by the Council as aforesaid (including where any report is made by such a person or persons the recommendation by the medical service committee) and of the decision of the Council thereon.

(5) The Council shall inform the Local Medical Committee and the practitioner of any decision made by them, and the practitioner in any case and the Local Medical Committee, where they have made a report, shall be entitled to appeal therefrom to the Secretary of State, and the foregoing provisions relating to the procedure on appeal from a decision of the Council made on a report of the medical service committee, and the hearing and expenses of the appeal shall apply, save that the Local Medical Committee shall have the right to appear before and be heard by the person or persons appointed to hear and determine

the appeal, who may hear further evidence and may, if he or they think fit, remit the matter to the Council and the Local Medical Committee for further facts to be ascertained by them or for reconsideration.

(6) If at any time it appears to the Secretary of State that, notwithstanding the default of the Local Medical Committee, the Council have not taken steps to cause an investigation to be made by a person or persons appointed by them as aforesaid, or if the Secretary of State is not satisfied that the obligations laid on the Committee and the Council by this regulation have been adequately fulfilled, the Secretary of State may appoint a person or persons, not exceeding two in number, for the purpose of holding an investigation under this regulation, and the person or persons so appointed shall have the same powers and duties with respect to an investigation into the character and quantity of the drugs and appliances ordered or supplied by practitioners as are conferred and imposed on the Local Medical Committee, and shall be entitled to require the Local Medical Committee and the Council to furnish them with any relevant statistical or other information available.

(7) Any report made by the person or persons so appointed shall be made to the Secretary of State, and if the Secretary of State is of opinion that the cost of the drugs or appliances ordered or supplied by any practitioner is excessive owing to their being extravagant in character or quantity, he may direct that such sum as he thinks fit shall be recovered from the practitioner by the Council, whether by deduction from his remuneration or otherwise, and the decision of the Secretary of State shall be final.

Decisions as to treatment for which fees may be charged.

13.—(1) If any question arises, either in the course of an investigation by the medical service committee or otherwise as to whether any treatment given by a practitioner to a patient is treatment for which he may demand or accept a fee or remuneration the question shall be referred to the Local Medical Committee for determination, unless it is a question which arises in relation to sub-paragraph (1) (*a*) or (*e*) of paragraph 10 of the terms of service, or is a question whether a certificate is reasonably required by the patient under or for the purposes of any enactment.

(2) The Local Medical Committee shall furnish the practitioner concerned with a statement indicating the nature of the question referred to them under this regulation 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. The Committee shall also consider any representations made to them by the Council or the Secretary of State, and if the practitioner appears before and is heard by them shall afford an opportunity to representatives of the Council and the Secretary of State of appearing before and being heard by them.

(3) The Committee shall inform the practitioner, the Council and the Secretary of State of their findings on the question referred to them.

(4) If the Council disagree with the finding of the Committee, and in any other case where the Secretary of State so decides, the question shall be referred to referees appointed by the Secretary of State under this regulation for decision in accordance with the rules set out in the Second Schedule to these regulations; and the decision of the referees, given after hearing such parties and taking such evidence as they think just, shall be final.

(5) The referees to be appointed by the Secretary of State for the purpose of this regulation shall be two practitioners, not being officers of the Secretary of State, together with a practising advocate or solicitor.

Determination of question whether a substance was a drug.

14.—(1) Any question whether a substance supplied by a practitioner or by a chemist on the prescription of a practitioner was a drug forming part of pharmaceutical services provided under the Act, shall if the practitioner concerned so desires in accordance with regulation 15 of these regulations and may, in any other case in which the Council or the Secretary of State think fit, be referred to the Local Medical Committee, and the Council or the Secretary of State, as the case may be, shall inform the Local Pharmaceutical Committee that the question has been so referred.

(2) The Local Medical Committee shall furnish the practitioner concerned with a statement indicating the nature of the question referred to them under this regulation 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. The Committee shall also consider any representations made to them by the Council or the Secretary of State, and if the practitioner appears before and is heard by them shall afford an opportunity to representatives of the Council and the Secretary of State of appearing before and being heard by them.

(3) The Committee shall inform the practitioner, the Council and the Secretary of State of their findings at which they have arrived on the question referred to them.

(4) If the practitioner or the Council are dissatisfied with the findings of the Committee and inform the Secretary of State accordingly within one month from the date on which they were informed of the findings, the Secretary of State shall and if he is dissatisfied with the findings of the Committee may refer the question for decision to referees nominated by him under this regulation.

(5) The referees to be appointed by the Secretary of State for the purpose of this regulation shall be a person or persons, not exceeding three in number and not being an officer or officers of the Secretary of State, of whom at least one shall be a practitioner.

Recovery of cost of substance held not to be a drug.

15.—(1) If a Council are of opinion that any substance supplied by a practitioner or chemist was not a drug forming part of pharmaceutical services provided under the Act, the Council shall recover from the practitioner, by deduction from his remuneration or otherwise, a sum calculated in accordance with the method set forth in the drug tariff for calculating the payment for drugs not specified therein:

Provided that if any such substance was an ingredient in a preparation of which other ingredients were such drugs as aforesaid, the sum to be recovered shall be the price of that substance calculated as aforesaid, together with half the amount of the dispensing fee payable in respect of the supply of the preparation.

(2) Before recovering any such sum the Council shall, unless it has already been decided in accordance with the last foregoing regulation that the substance supplied in that case was not such a drug, bring the question to the practitioner's notice in writing and inquire whether he desires it to be referred for decision under that regulation; and if the practitioner within one week after the receipt of such notice informs

the Council that he desires the question to be so referred, the Council shall refer it to the Local Medical Committee and the provisions of regulation 14 shall apply accordingly.

Power of Local Medical Committee to consider complaints.

16. The Local Medical Committee shall have power to consider any complaint made to them by any practitioner against a practitioner practising in the area for which the Committee is constituted involving any question of the efficiency of the general medical services.

Power of Local Pharmaceutical Committee to consider complaints.

17. The Local Pharmaceutical Committee shall have power to consider any complaint made to them by any chemist against a chemist carrying on business in the area for which the Committee is constituted involving any question of the efficiency of the pharmaceutical services.

PART III

Inquiries relating to practitioners and chemists

Interpretation and forms.

18.—(1) In this Part of these regulations, unless the context otherwise requires, the following expressions have the respective meanings hereby assigned to them:—

" inquiry " means an inquiry held in accordance with the provisions of this Part of these regulations;

" representation " means a representation made to the Tribunal that the continued inclusion of a practitioner in any medical list or a chemist in any pharmaceutical list would be prejudicial to the efficiency of the general medical or pharmaceutical services as the case may be;

" complainer " means any person or body making a representation to the Tribunal;

" respondent " means any practitioner or chemist against whom a representation is made.

(2) The forms set out in the Third Schedule to these regulations or forms substantially to the like effect shall be used in all cases to which these forms are applicable.

Term of office of members of Tribunal.

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

Officers of Tribunal.

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

Terms of representation.

Form 1.

21. A representation shall contain a concise statement of the alleged facts and grounds on which it is based, and also a list of all the documents which the complainer proposes to put in evidence, and it shall be signed by or on behalf of the complainer and sent to the clerk to the Tribunal.

Power to require verification of representation.

22. The Tribunal may, if they think fit, require the complainer to verify the allegations contained in the representation by statutory declaration, or where a fact is not within the personal knowledge of the complainer to state the source of his information and the grounds for his belief in its truth and to furnish such other particulars as the Tribunal may think necessary.

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

24. The Tribunal shall in all cases where an inquiry is to be held inform the complainer accordingly, and they shall also forthwith send a copy of the representation to the respondent, together with a notice informing him that an inquiry is to be held into the representation, and that he may, if he so desires, within a time specified in the notice, by a statement in writing addressed to the clerk to the Tribunal, admit or dispute the truth of all or any of the allegations appearing in the representation. Notices to be sent in case of inquiry. Form 3. Form 2.

25. The Tribunal may, at any time before the conclusion of the inquiry allow the representation to be amended upon such conditions as they may think just. Amendment of representation.

26.—(1) The respondent may on giving due notice in writing to the complainer inspect, either personally or by an agent authorised in writing, the documents included in the list contained in the representation, and the complainer shall give reasonable facilities for the purpose. Right of respondent to inspect documents.

(2) The respondent shall be entitled on making application to the Tribunal, either personally or by an agent, to make a copy of any document in that list at the office of the Tribunal or such other place as they may appoint, and the Tribunal may, for the purpose of enabling the respondent or his agent to make copies of any such documents, require the complainer to deposit with them, within a specified time, any of the documents for copies of which application has been made, and shall return the documents to the complainer as soon as may be.

27. If the complainer fails to comply with any requirement of this Part of these regulations, the Tribunal may treat the representation as having been withdrawn. Power to treat representation as withdrawn in certain cases.

28.—(1) The Tribunal shall appoint a day for the holding of the inquiry, and shall not less than fourteen days before the appointed day send notices to the complainer and the respondent informing them of the date, time and place of the inquiry. Notice of inquiry to be given. Form 3.

(2) The Tribunal shall also send to any other Council on whose medical or pharmaceutical list the name of the respondent appears, notice of the date, time and place of the inquiry, and each such Council may appear and take such part in the proceedings at the inquiry as the Tribunal shall think proper. Form 4.

29. The Tribunal may, if they think fit, or on the application of either party, postpone the date for the holding of the inquiry. Power to postpone inquiry.

30.—(1) Any Council or other body, whether corporate or unincorporate, entitled to appear at the inquiry, may call witnesses and produce other evidence and may appear by their clerk or other officer duly appointed for the purpose or by counsel or solicitor. Appearance by representatives.

(2) The complainer (not being one of the bodies above mentioned) and the respondent may call witnesses and produce other evidence and may appear in person at the inquiry or—

(*a*) by any member of his family;

(*b*) by counsel or solicitor;

(*c*) by any officer or member of any organisation of which he is a member.

Withdrawal of representation.

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

(2) Where the representation has been withdrawn or is treated by the Tribunal as having been withdrawn, the Tribunal shall forthwith inform the respondent accordingly.

Procedure at inquiry.

32.—(1) The proceedings shall be held *in camera* unless the respondent has applied for the inquiry to be held in public but otherwise the procedure at the inquiry shall be within the discretion of the Tribunal.

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

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

Provisions as to inquiry.

33. The provisions of the Tenth Schedule to the Act (which relate to the attendance of witnesses, orders as to expenses and other matters) shall apply to any hearing held under this Part of these regulations as they apply to an inquiry held under the Act, with the substitution of the Tribunal for the Secretary of State and the omission of paragraphs 1, 2, and 6 of the said Schedule.

Power to dispense with oral inquiry.

34. Notwithstanding anything in this Part of these regulations, where the grounds on which any representation is based consist solely of an allegation that the respondent has been convicted of a criminal offence and he admits the truth of such allegation, the Tribunal may, with the consent of the respondent, dispense with an oral inquiry and determine the case upon such documentary evidence as may be submitted to them.

Report by Tribunal.

35.—(1) At the conclusion of the inquiry the Tribunal shall, as soon as may be, issue a statement under the hand of the chairman containing their findings of fact, the conclusion which they have reached and such directions as they may give under sub-section (3) of section 43 of the Act, and any order they may decide to make with respect to the expenses of the parties.

(2) The Tribunal shall send a copy of such statement to the Secretary of State, the respondent and the complainer, and at the same time shall inform the respondent of his right of appeal to the Secretary of State against any direction given by them for the removal of his name from any list. The Secretary of State shall send a copy of the statement to such Councils as appear to him to be concerned.

Appeal to Secretary of State.

36.—(1) The respondent may appeal to the Secretary of State by submitting to him a notice of appeal within one month from the date on which a copy of the statement issued by the Tribunal was served on him, or within such further time as the Secretary of State may allow.

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

Procedure on appeal.

37.—(1) The Secretary of State shall appoint a person to hear the appeal and report thereon to him. He shall also appoint:—

(*a*) where the appellant is a practitioner, a practitioner from the panel of practitioners referred to in regulation 11 of these regulations; or

(*b*) where the appellant is a chemist, a registered pharmacist

for the purpose of assisting the person hearing the appeal.

(2) Regulations 26, 28, 29, 30 and 32 of these regulations shall, with the necessary modifications, apply to the hearing of appeals under this regulation in like manner as to an inquiry.

(3) The Secretary of State, after considering the report made by the person hearing the appeal, and in the case of a practitioner any recommendation made by the medical advisory committee constituted under regulation 11 of these regulations (to whom he shall refer such report), shall give his decision, and shall send a notice thereof to the appellant, the Tribunal, the complainer and such Councils as may appear to him to be concerned.

(4) The appellant may, at any time before the day appointed for the hearing, withdraw the appeal by giving notice of such withdrawal in writing to the Secretary of State. When an appeal has been withdrawn the Secretary of State shall forthwith confirm the direction of the Tribunal.

Publication of decisions of Tribunal, etc.

38. The Secretary of State shall publish in such manner as he thinks fit notice of any decision by the Tribunal or by him under section 43 of the Act, or of the imposition or removal of any disqualification imposed by virtue of sub-section (6) of the said section (which provides for the removal from lists in Scotland of persons who have been disqualified for inclusion in similar lists in England and Wales).

Power to dispense with requirements as to notices.

39. The Secretary of State or the Tribunal may dispense with any requirements of this Part 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.

PART IV

Notices

Service of notices, etc.

40.—(1) Any notice or document which is required or authorised by these regulations to be given to or served on any person or body may be given or served as follows:—

(*a*) in the case of the Secretary of State, by delivering it to him or sending it by registered post addressed to him at St. Andrew's House, Edinburgh;

(*b*) in the case of the Tribunal, or any Council or Committee, by delivering it to their Clerk or Secretary, or sending it by registered post addressed to them at their office, or if they have no office, at the usual or last known address of their Clerk or Secretary;

(*c*) in the case of a practitioner or chemist, by delivering it to him or sending it in by registered post addressed to him at any address set opposite his name in the medical list or pharmaceutical list, as the case may be, of the Executive Council concerned;

(*d*) in the case of any other person, by delivering it to him or sending it by registered post addressed to him at his usual or last known address.

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

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

Arthur Woodburn,
One of His Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh 1.
12th June, 1948.

FIRST SCHEDULE

Rules of Procedure under Regulation 5

Procedure of medical and pharmaceutical service committees.

1.—(1) Where under the provisions of the regulations any question or matter is required to be investigated by any medical or pharmaceutical service committee, the following procedure shall be adopted:—

(*a*) If in the opinion of the chairman the statement made by the complainer discloses no *prima facie* ground of complaint, or is frivolous or vexatious, the clerk of the Council shall so inform the complainer and shall invite him within fourteen days to submit a further statement. If no further statement is submitted by the complainer within that period, or if the statement so submitted does not in the opinion of the chairman render a hearing of the case necessary, the case shall be brought before the committee which shall have power to dispense with a hearing and to report on the matter forthwith.

(*b*) The clerk of the Council shall, as soon as practicable, send to the chairman of the appropriate committee and to the practitioner or chemist concerned a copy of the complainer's statement and any ensuing correspondence on the matter.

(*c*) Except in cases dealt with under paragraph (*a*) without a hearing the clerk shall give to both parties and to the secretary of the Local Medical or Local Pharmaceutical Committee, as the case may be, not less than fourteen days' notice of the meeting at which the case will be heard.

(*d*) The chairman 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. He may also postpone the hearing for any other reason he thinks fit.

(*e*) The clerk shall three clear days before the hearing supply to each member of the committee copies of the statement and the reply, if any, thereto, and of any further correspondence relating to the matter which has taken place between the clerk and either party.

(*f*) Either party shall be entitled to be present at the hearing and to give and call such evidence as the committee may think relevant to the matters at issue, and may put questions relevant to the matter in dispute to the other party or to any witness called by him, either directly, or, if the committee so direct, through the chairman of the committee. Subject as aforesaid, the procedure at the hearing shall be such as the committee may determine.

(*g*) If either party fails to appear at the hearing, and the committee are satisfied that his absence is due to illness or other reasonable cause, or if for any other reason the committee think fit, they may adjourn the hearing.

(*h*) If in the course of a hearing the complainer introduces any issue which in the opinion of the chairman was not sufficiently disclosed in the written statement or statements sent to the respondent, it shall be within the discretion of the chairman to admit or exclude such issue as he thinks fit, but if the issue is admitted the hearing will be adjourned if the respondent desires an opportunity of producing further evidence, and requests an adjournment for that purpose.

(*i*) In the case of any medical service committee the chairman, together with one lay member and one medical member, and in the case of any pharmaceutical service committee the chairman, together with one lay member and one pharmacist member, shall form a quorum.

(2) Where a case has been opened before any committee and the meeting is adjourned for the purpose of hearing further evidence or of preparing or considering the report, a member of the committee who was not present at the meeting shall not be entitled to be present or take part in the proceedings at the adjourned meeting, and it shall not be necessary for the clerk to send him notice of such meeting.

(3) The foregoing provisions of this Schedule shall apply to cases which are referred to any medical or pharmaceutical service committee by the Council or by any other committee with such modifications as the circumstances may require.

Procedure of joint services committees.

2. Where any question is referred to any joint services committee the following procedure shall be adopted:—

(*a*) The clerk of the Council shall, as soon as practicable, send to the chairman of the committee, and to the practitioner and chemist concerned a copy of the complainer's statement and any ensuing correspondence on the matter.

(*b*) A quorum shall be formed by the chairman together with one lay member, one medical member and one pharmaceutical member.

(*c*) Subject as aforesaid, the procedure of any joint services committee shall be similar to that of a medical service committee with such modifications as are rendered necessary by the inclusion of a third party.

Interpretation.

3. In these rules, unless the context otherwise requires, the following expressions have the respective meanings hereby assigned to them:—

" chairman " includes a deputy chairman acting in his place;

" member " includes a deputy member acting in the place of a member;

" lay member " means a member, not being a medical or dental practitioner or a registered pharmacist, appointed to the medical or the pharmaceutical service committee or the joint services committee by and from the members of the Council who were appointed by a local health authority or the Secretary of State;

" medical member " or " pharmaceutical member " of a service committee means a member appointed by the Local Medical or Local Pharmaceutical Committee as the case may be, and in the case of a joint services committee a member appointed by and from the medical pharmaceutical members of the medical or pharmaceutical service committee.

SECOND SCHEDULE

RULES OF PROCEDURE UNDER REGULATION 13

1. Where a Council and a Local Medical Committee fail to agree as to the decision of any question—

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

(2) The Committee shall, as soon as may be after receipt of the said statement, furnish to the Council a written statement of the decision given by the Committee and the grounds on which the decision is based and shall inform the Council whether it concurs in the statement of facts prepared by the Council and, if not, in what respects it does not concur in that statement.

(3) The Council shall send the statements prepared by the Council and the Committee to the Secretary of State and he may, if he thinks fit, require both or either of the said bodies to furnish to him further particulars either with regard to the facts of the case or the decision or the grounds thereof.

2. Where the Secretary of State thinks fit to refer for decision to referees any question on which the Council and the Committee are agreed, the Secretary of State may require either or both of the said bodies to furnish written statements of the facts in connection with which the question has arisen and of their decision and the grounds on which the decision is based, and the Secretary of State shall inform the body or bodies furnishing such statements whether he concurs in the statement of facts contained therein and, if not, in what respect he does not concur therein and shall further inform the body or bodies of his grounds for disagreeing with their decision.

3. The Secretary of State shall furnish copies of all such documents to each of the referees appointed by him for the purpose of deciding the question.

4. If the referees on consideration of such documents are of the opinion that the question referred to them is similar to a question previously determined by referees under regulation 13 of these regulations they may dispense with a hearing and determine the case summarily.

5. Except in a case in which the referees dispense with a hearing in accordance with the last foregoing rule the Secretary of State shall fix the time and place of the hearing and shall give not less than twenty-one days' notice thereof to the Council and the Committee.

6. Each body shall be entitled to appear at the hearing by the chairman, clerk or secretary of the body or by counsel or solicitor, and the Secretary of State may appear by one of his officers, and the bodies and the Secretary of State may produce such evidence as in the opinion of the referees may be relevant to the matters at issue.

7. 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.

THIRD SCHEDULE

FORMS FOR USE IN PROCEEDINGS BEFORE TRIBUNAL

FORM 1

National Health Service (Scotland) Act, 1947

Representation

To the Tribunal constituted in terms of section 43 of the above Act

Representation of

(1) ....., Complainer,

against

(2) ....., Respondent,

a* on the† list of the Executive Council for (3) .....

The Complainer represents:—

That the continuance of the respondent upon the said† list is prejudicial to the efficiency of the‡ services provided under Part IV of the Act.

The facts and grounds on which the representation is based are as follows:—

(4) .....

In support of this representation the complainer proposes to put in evidence the following documents:—

(5) .....

Signed .....

Dated .....

* State whether respondent is a medical practitioner or chemist.
† State whether medical or pharmaceutical.
‡ State whether general medical or pharmaceutical.

FORM 2

National Health Service (Scotland) Act, 1947

Notice to $\frac{\text{medical practitioner*}}{\text{chemist*}}$ of representation

Representation of

....., Complainer,

against

....., a $\frac{\text{medical practitioner*}}{\text{chemist*}}$, Respondent,

To ..... of .....

I am directed by the Tribunal constituted under section 43 of the above Act to send you a copy of a representation that your continuance on the † ..... list of the Executive Council for ..... is prejudicial to the efficiency of the‡ ..... services provided under Part IV of the Act, which representation was received by the Tribunal from ..... of .....,

* Delete where inappropriate.
† State whether medical or pharmaceutical.
‡ State whether general medical or pharmaceutical.

setting out the alleged facts and grounds on which it is based, and containing a list of all the documents proposed to be put in evidence. It is proposed to hold an inquiry with reference to the above representation. Notice of the date appointed for the holding of the inquiry will be sent to you in due course.

You may, if you so desire, inform the Tribunal, by statement in writing addressed to me within ..... days after receipt of this notice, whether you admit or dispute in whole or in part the truth of the alleged facts and grounds.

You are further entitled to inspect any of the documents mentioned in the above list, either personally or by an agent authorised in writing, on giving due notice to the above-named ..... and, by applying to the Tribunal for that purpose, to be allowed to make copies of any of the said documents.

A copy of the National Health Service (Medical and Pharmaceutical Service Committees and Tribunal) (Scotland) Regulations, 1948, is enclosed for your information.

Signed .....
Clerk to the Tribunal

Dated .....

FORM 3

National Health Service (Scotland) Act, 1947

Notice to complainer or $\frac{\text{medical practitioner*}}{\text{chemist*}}$ of day appointed for holding of inquiry

Representation of

.....

against

..... , a $\frac{\text{medical practitioner*}}{\text{chemist*}}$

To ..... of .....

With further reference to the representation made $\frac{\text{by you with respect}}{\text{by .....}}$, to the above-named, of ..... with respect to you,

Take notice that the Tribunal constituted under section 43 of the above Act will on ..... day, the ..... day of ..... 19 ..... at ..... $\frac{\text{a.m.}}{\text{p.m.}}$ at ..... hold an inquiry to investigate the said representation.

Signed .....
Clerk to the Tribunal

Dated .....

* Delete where inappropriate.

FORM 4

National Health Service (Scotland) Act, 1947

Notice of inquiry to be sent to any Executive Council who are not the complainers

Representation of

.....

against

....., a medical practitioner.* / chemist.*

To the Executive Council for .....

Take notice that a representation has been made by the above-named ..... to the Tribunal constituted under section 43 of the above Act to the effect that the continuance of the above-named ..... on the† ..... list of the Executive Council of ..... would be prejudicial to the efficiency of the ‡ ..... services provided under Part IV of the Act.

You are hereby informed that an inquiry to investigate the said representation will be held by the Tribunal on .....day, the ..... day of ..... 19 ....., at ..... a.m./p.m. at ..... and that you are entitled to appear and take such part in the proceedings as the Tribunal shall think proper.

Signed .....
Clerk to the Tribunal

* Delete where inappropriate.
† State whether medical or pharmaceutical.
‡ State whether general medical or pharmaceutical.

EXPLANATORY NOTE

(This Note is not part of the regulations, but is intended to indicate their general purport.)

The regulations provide for disciplinary matters and the determination of disputes arising in connection with the provision of general medical and pharmaceutical services under Part IV of the National Health Service (Scotland) Act, 1947. Provision is made for the constitution by an Executive Council of service committees, for the investigation by those committees of complaints, and for the action which may be taken against medical practitioners or chemists on such complaints. In certain cases it is provided that disputes may be referred to a Local Medical Committee. The regulations include provisions governing the procedure before the Council, the service committees, and the Local Medical Committee, and for appeals against the decisions of these bodies.

The regulations further prescribe the procedure to be followed in the hearing of representations for the removal of a medical practitioner or chemist from a list under section 43 of the Act.