

SCHEDULE 12

PART 4

Transitional provisions relating to the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2001

Interpretation

38. In this Part—

“Abolition Regulations” means the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2001(1);

“appointed date” means 1st October 2002;

“appropriate Primary Care Trust” means any Primary Care Trust that falls within the locality of the Health Authority;

“relevant Primary Care Trust” means a Primary Care Trust in whose list the practitioner’s name is included on the relevant date pursuant to Part 1 of this Schedule by virtue of the fact that the practitioner’s name was included in a particular Health Authority’s list immediately before 1st October 2002; and

“FHSAA”, “local disqualification decision”, “national disqualification decision”, “pharmacist case”, “relevant date”, “suspension pending appeal direction”, “suspension direction” and “the Tribunal” have the same meaning as in regulation 2(1) of the Abolition Regulations.

Local disqualification decisions made before the appointed date

39. Where a person—

- (a) fell within regulation 3 of the Abolition Regulations (local disqualification decisions made before the relevant date);
- (b) was consequently treated as having been removed from a Health Authority’s list in accordance with section 49M(6)(a) of the 1977 Act; and
- (c) is still removed from that list immediately before the appointed date,

that person shall be treated from the appointed date as having been removed from the appropriate Primary Care Trust’s corresponding list or the appropriate Primary Care Trusts’ corresponding lists (as the case may be) pursuant to section 49M(6)(a) of the 1977 Act.

National disqualification decisions made before the appointed date

40. Where a person—

- (a) fell within regulation 4 of the Abolition Regulations (national disqualification decisions made before the relevant date);
- (b) was consequently treated as having had a national disqualification imposed on him by the FHSAA pursuant to section 49N(1) of the 1977 Act; and
- (c) still has that national disqualification imposed on him immediately before the appointed date,

(1) [S.I. 2001/3744](#).

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that person shall be treated from the appointed date as having had a national disqualification imposed on him by the FHSAA in relation to all corresponding lists held by Primary Care Trusts pursuant to section 49N(1) of the 1977 Act.

Cases under the 1977 Act where the appeal period had not ended or an appeal period was not concluded by the relevant date

41. Where regulation 5 of the Abolition Regulations applies (cases under the 1977 Act where the appeal period has not ended or an appeal is not concluded by the relevant date)—

- (a) a person, who under paragraph (2) of that regulation—
 - (i) did not file an appeal against a local disqualification decision by the end of the appeal period,
 - (ii) was consequently deemed to have been removed from a Health Authority’s list, and
 - (iii) still is removed from that Health Authority’s list immediately before the appointed date,

shall be treated, from the appointed date, as having been removed from the appropriate Primary Care Trust’s corresponding list or the appropriate Primary Care Trusts’ corresponding lists (as the case may be);

- (b) a person, who under paragraph (3) of that regulation—
 - (i) did not file an appeal against a national disqualification decision by the end of the appeal period,
 - (ii) was consequently deemed to have had a national disqualification imposed on him, and
 - (iii) still does have a national disqualification imposed on him immediately before the appointed date,

shall be treated, from the appointed date, as having had a national disqualification imposed on him in relation to all corresponding lists held by Primary Care Trusts; and

- (c) a person who falls within paragraph (5)(a), (b) or (c) of that regulation, who had a suspension pending appeal direction imposed on him that is still effective on the appointed date, shall be deemed to have a suspension pending appeal direction imposed on him in relation to the corresponding lists of all appropriate Health Authorities.

Other cases under the 1977 Act not disposed of by the relevant date

42. Where, by virtue of regulation 6(1) of the Abolition Regulations, proceedings before the Tribunal have ceased, the relevant Primary Care Trust (or where there is more than one relevant Primary Care Trust, the relevant Primary Care Trust or Trusts determined in accordance with paragraph 47) on and after the appointed date—

- (a) shall be deemed to have made the prior representations to the Tribunal; and
- (b) may, if proceedings pursuant to regulation 6(1)(b) of the Abolition Regulations have not taken place before the appointed date, or where proceedings are on-going immediately before that date, proceed or continue with proceedings against the person under section 49F of the 1977 Act in respect of the matters that formed those prior representations to the Tribunal.

43. Where the Tribunal has given a suspension direction to a person who—

- (a) falls within regulation 6(2) of the Abolition Regulations;
- (b) was consequently treated as having been suspended by a Health Authority under section 49I of the 1977 Act; and

(c) is still suspended from that Health Authority's list immediately before the appointed date, that person shall be treated as being suspended from the corresponding lists of all appropriate Primary Care Trusts.

44. Where—

- (a) a Health Authority made an application to the Tribunal under section 46 of the 1977 Act before 1st November 2001; and
- (b) regulation 6(3) of the Abolition Regulations therefore applies,

the relevant Primary Care Trust (or where there is more than one relevant Primary Care Trust, the relevant Primary Care Trust or Trusts determined in accordance with paragraph 47) shall, where such proceedings have not been finally concluded before the appointed date, be deemed to have made that application and shall continue to conduct those proceedings until they are concluded.

45. Where—

- (a) a Health Authority made an application to the Tribunal under section 46 of the 1977 Act in respect of a pharmacist case before the appointed date; and
- (b) that application has not been finally determined before that date,

the relevant Primary Care Trust (or where there is more than one relevant Primary Care Trust, the relevant Primary Care Trust or Trusts determined in accordance with paragraph 47) shall be deemed to have made that application and shall continue to conduct those proceedings until they are concluded.

46. Where, in respect of an application falling within paragraph 44 or 45, the Tribunal has made any direction prior to the appointed date, which is still effective immediately before that date, that direction shall be deemed to apply to the relevant Primary Care Trust (or where there is more than one relevant Primary Care Trust, the relevant Primary Care Trust or Trusts determined in accordance with paragraph 47).

General matters relating to the transitional arrangements applying to the Abolition Regulations

47. Where, by virtue of Part 1 of this Schedule, there is more than one relevant Primary Care Trust, the relevant Primary Care Trusts shall determine amongst themselves which one or more of them shall be the relevant Primary Care Trust or Trusts for the purposes of paragraphs 42, 44 or 45.

48. Where in paragraph 47, the relevant Primary Care Trusts are unable to agree amongst themselves, any one of them may request that a Strategic Health Authority, within whose locality the relevant Primary Care Trusts fall, nominates a Primary Care Trust or Trusts for the purposes of one or more of paragraphs 42, 44 or 45.

49. Where a Strategic Health Authority holds any information that a relevant, appropriate or other Primary Care Trust would reasonably require in order to deal with or determine any matter pursuant to paragraphs 39 to 48, that Strategic Health Authority shall provide those Primary Care Trusts with that information and it shall also provide those Primary Care Trusts with any other assistance that they reasonably request in dealing with those matters or proceedings.