

# NATIONAL HEALTH SERVICE ACT 1977

## HEALTH AND MEDICINES ACT 1988

### NATIONAL HEALTH SERVICE LITIGATION AUTHORITY (FUNCTIONS) (ENGLAND) DIRECTIONS 2005

The Secretary of State for Health, in exercise of the powers conferred on him by sections 16D, 17, 18(3) and 126(4) of the National Health Service Act 1977(a), section 7(3) and (4) of the Health and Medicines Act 1988(b) and all other powers enabling him in that behalf, hereby gives the following Directions:

#### Citation, commencement and application

1.—(1) These Directions, which may be cited as the National Health Service Litigation Authority (Functions) (England) Directions 2005, shall come into force on 1<sup>st</sup> April 2005.

(2) These Directions apply in relation to England only.

#### Interpretation

2.—(1) In these Directions—

“the 1977 Act” means the National Health Service Act 1977;

“the 1988 Act” means the Health and Medicines Act 1988;

“the 2003 Directions” means the Directions to Strategic Health Authorities Concerning GP Registrars that came into force on 3rd November 2003(c);

“the Authority” means the National Health Service Litigation Authority established by article 2 of the National Health Service Litigation Authority (Establishment and Constitution) Order 1995(d);

“APMS contract” means arrangements under section 16CC(2)(b) of the 1977 Act(e);

“complaints” means complaints made by a medical practitioner about any matter connected with the decision by the Director to refuse him a period of vocational training for general medical practice—

(a) as a GP Registrar, or

(b) in a specific training location;

“dental list” shall be construed in accordance with regulation 4(1) of the Dental Regulations;

“the Dental Regulations” means the National Health Service (General Dental Services) Regulations 1992(f);

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- (a) 1977 c.49. Section 16D was substituted by the Health Act 1999 (c.8) (“the 1999 Act”), s. 12(1) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c.17) (“the 2002 Act”), s. 3(2) and Schedule 1, paragraph 6; section 17 was substituted by the 1999 Act, s. 12(1), and amended by the Health and Social Care Act 2001 (c.15) (“the 2001 Act”), Schedule 5, paragraph 5(3) and the 2002 Act, Schedule 1, paragraph 7; section 18(3) was amended by the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 9 and Schedule 3, and the 1999 Act, section 12(4); section 126(4) was amended by the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”), section 65(2), the 1999 Act, Schedule 4 paragraph 37(6) and the 2001 Act, Schedule 5 paragraph 5(13)(b). As respects Wales, the powers to give directions under these sections have been transferred to the National Assembly for Wales, *see* article 2 of, and the entry in relation to the National Health Service Act 1977 in, Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672.
- (b) 1988 c.49.
- (c) The 2003 Directions have been amended by the Strategic Health Authorities and GP Registrar (Amendment) Directions 2004 that came into force on 9th July 2004. A copy of both sets of directions can be found on the Department of Health’s website at: <http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsLegislation/PublicationsLegislationArticle/>. Alternatively they can be obtained by writing to the Department of Health, P.O. Box 777, London SE1 6XH.
- (d) S.I. 1995/2800, as amended by S.I. 2002/2621 and S.I. 2005/503.
- (e) Section 16CC was inserted into the 1977 Act by section 174 of the Health and Social Care (Community Health and Standards) Act 2003(c.43) (“the 2003 Act”).
- (f) S.I. 1992/661. Relevant amending instruments are S.I. 1993/3172, 1993/2209, 1995/3092, 1998/1648, 2001/289, 2001/2421, 2001/3741, 2001/3963, 2002/558 and 2002/2469.

“Director” means the Director of Postgraduate General Practice Education against whom a complaint is made, or who is responsible for the recruitment exercise which results in a complaint being made;

“FHSAA (SHA)” means the Family Health Services Appeal Authority (Special Health Authority) established by article 2 of the Family Health Services Appeal Authority (Establishment and Constitution) Order 1995(a);

“GMS contract” means a contract under section 28Q of the 1977 Act(b);

“GP Registrar” means a medical practitioner who is being trained in general practice by a training practitioner;

“local pharmaceutical services” has the meaning given in regulation 2 of the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) Regulations 2002(c);

“the Performers Lists Regulations” means the National Health Service (Performers Lists) Regulations 2004(d);

“the Pharmaceutical Regulations” means the National Health Service (Pharmaceutical Services) Regulations 2005(e);

“pharmacy pilot scheme” has the same meaning as the term “pilot scheme” in section 28(2) of the Health and Social Care Act 2001(f);

“PMS agreement” means an agreement for primary medical services made under section 28C of the 1977 Act(g);

“Statement of Fees and Allowances” means the statement determined and published by the Secretary of State under regulation 34 of the National Health Service (General Medical Services) Regulations 1992(h), as that statement had effect on 31<sup>st</sup> March 2004;

“training practitioner” means a medical practitioner who—

- (a) until the coming into force for all purposes of article 4(5)(d) of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(i), has been approved by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) Regulations 1997(j), and
- (b) from the coming into force for all purposes of that article, has been approved under that article for the purposes of providing training to GP Registrars; and

“the Transitional Order” means the General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004(k).

### **Functions exercisable by the Authority in relation to land transactions**

**3.—**(1) Subject to paragraph (2), the Authority shall exercise the powers of the Secretary of State under section 87(1) and (2) of the 1977 Act and under section 7(2)(b) of the 1988 Act(l) to acquire or to dispose of land or any interest therein, for the purpose of carrying out its functions, subject to such limitations as the Secretary of State may direct with respect to the exercise of those powers and in accordance with any directions which he may give.

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- (a) S.I.1995/621. The name of the Family Health Services Appeal Authority was changed to the Family Health Services Appeal Authority (Special Health Authority) by S.I. 2001/3562.
  - (b) Section 28Q was inserted into the 1977 Act by section 175(1) of the 2003 Act.
  - (c) S.I. 2002/888.
  - (d) S.I. 2004/585, as amended by S.I. 2004/2694.
  - (e) S.I. 2005/641.
  - (f) 2001 c.15; section 28(2) was amended by the 2002 Act, Schedule 2, paragraph 73(3).
  - (g) Section 28C was inserted into the 1977 Act by the National Health Service (Primary Care) Act 1997 (c.46), section 21(1) and amended by the 1999 Act, Schedule 4, paragraph 15, the 2001 Act, Schedule 5, paragraph 11(4), the 2002 Act, Schedule 3, paragraph 7(2) and the 2003 Act, Schedule 11, paragraph 14.
  - (h) S.I. 1992/635. Regulation 34 was amended by S.I. 1993/540, 1997/2468, 2000/601 and 2002/2469.
  - (i) S.I. 2003/1250 as amended by S.I. 2004/865, 1016(W.113), 2261 and 3038 and S.R. 2004/156.
  - (j) S.I. 1997/2817 as amended by S.I. 1998/669 and 2003/3148 and modified by article 118 of S.I. 2004/865. The whole Regulations are prospectively revoked by S.I. 2003/1250, article 31(5) and Part 2 of Schedule 10.
  - (k) S.I. 2004/865.
  - (l) Section 7(2)(b) has been amended by the 1990 Act, Schedule 9, paragraph 34.

(2) The Authority shall not exercise the functions of the Secretary of State under section 87(1) of the Act with respect to the compulsory acquisition of land.

#### **Exercise of functions by the Authority in relation to land transactions**

4.—(1) The Authority in exercising its functions relating to land shall do so in accordance with the procedures or instructions in the document “Estate code: Essential Guidance on Estates and Facilities Management”(a) issued by the Department of Health and any other instructions which may be given in writing by that Department.

(2) Where the exercise by the Authority of the functions referred to in direction 3(1) of acquiring or disposing of land or any interest in land on behalf of the Secretary of State necessitates the execution of any document, the Authority shall make arrangements for a member or officer of the Authority duly authorised for that purpose to sign the document for the Authority on behalf of the Secretary of State.

#### **Functions exercisable by the Authority in relation to GP Registrars**

5. The functions of the Secretary of State set out in paragraphs 8(a), 13(a)(ii), 62, 63, 64 and 65 of Schedule 1 to the 2003 Directions shall be exercised on his behalf by the Authority.

#### **The GP Registrar complaints procedure**

6.—(1) The functions of the Secretary of State in relation to the determination of complaints shall be exercised on his behalf by the Authority.

(2) In exercising its functions under paragraph (1) the Authority shall issue a statement setting out the procedure relating to the determination of complaints.

(3) A copy of the statement mentioned in paragraph (2) shall be given or sent, free of charge, to any person who makes a request for it.

#### **Miscellaneous functions exercisable by the Authority**

7.—(1) Where, by virtue of any provision which is specified in the Schedule, a matter arises for determination by the Secretary of State or his consent is required to be given, the functions of the Secretary of State in relation to the determination of that matter or, as the case may be, the giving of that consent, shall be exercised on his behalf by the Authority.

(2) The Authority shall also exercise the powers of the Secretary of State under section 2 of the 1977 Act, but only to such extent as is necessary for the proper exercise of one or more other functions which the Secretary of State has directed the Authority to exercise on his behalf.

#### **Exercise of miscellaneous functions by the Authority**

8.—(1) The Authority shall, as respects its functions under direction 7(1), make arrangements for the exercise of those functions on its behalf—

- (a) as respects any function under regulation 6(7), 7(7), 14(9), 29(8), (10), (13) or (18), 32(5) or (10), 38(6), (9) or (14) and 45(14) and the function of determining the appeal under regulation 45(12) of the Pharmaceutical Regulations by a committee established for the purpose and constituted in accordance with paragraph (2); and
- (b) except as provided for in paragraph (a), as respects any function arising under any provision specified in the Schedule by an officer of the Authority(b).

(2) A committee established for the purposes of paragraph (1)(a)—

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(a) A copy of this document can be obtained from The Stationery Office, PO Box 29, Norwich, NR3 1GN. The document is also available online at [http://www.nhsestates.gov.uk/download/publications\\_guidance/](http://www.nhsestates.gov.uk/download/publications_guidance/)

(b) By virtue of regulation 5(5) of the National Health Service (Functions of Health Authorities and Administration Arrangements) Regulations 1996 (S.I. 1996/708), any delegated function of a Special Health Authority may be exercised by a committee or officer of the Authority.

- (a) may, but need not, be composed wholly or partly of officers of the Authority; and
  - (b) shall consist of no more than five members, of whom—
    - (i) in the case of a committee consisting of two members, both members shall be lay persons, or
    - (ii) in the case of a committee consisting of more than two members, either all, or a majority of, the members shall be lay persons; but
  - (c) shall not, when exercising any function conferred by—
    - (i) regulation 6(7), 7(7) or 29(10), (13) or (18) of the Pharmaceutical Regulations, include any person specified in paragraph (3); or
    - (ii) any other provision specified in paragraph (1)(a), include any person specified in paragraph (3) or (4).
- (3) The persons referred to in paragraph (2)(c)(i) are any person—
- (a) whose name is included in a list published under section 42(2)(a) of the 1977 Act (lists of persons undertaking to provide pharmaceutical services);
  - (b) whose name was so included within the period of 12 months ending with the date on which the committee is established;
  - (c) who is, or was within the period of twelve months ending with the date on which the committee is established—
    - (i) a director, officer or employee of a person specified in sub-paragraph (a) or (b), and
    - (ii) provides or assists in providing (or, as the case may be, provided or assisted in providing) pharmaceutical services;
  - (d) who is, or was within the period of twelve months ending with the date on which the committee is established, a party to a pharmacy pilot scheme; or
  - (e) who is, or was within the period of twelve months ending with the date on which the committee is established—
    - (i) a director, officer or employee of a person specified in sub-paragraph (d); and
    - (ii) provides or assists in providing (or, as the case may be, provided or assisted in providing) local pharmaceutical services under the pilot scheme.
- (4) The persons referred to in paragraph (2)(c)(ii) are any person—
- (a) whose name is included in a medical performers list published under regulation 3(1) of the Performers Lists Regulations (performers lists) or a list published under section 42(2)(a) of the Act;
  - (b) whose name was so included within the period of 12 months ending with the date on which the committee is established;
  - (c) who is, or was within the period of twelve months ending with the date on which the committee is established, a party to a GMS contract, PMS agreement or APMS contract;
  - (d) who is, or was within the period of twelve months ending with the date on which the committee is established—
    - (i) a director, officer or employee of a person specified in sub-paragraphs (a) to (c), and
    - (ii) performs or assists in performing (or, as the case may be, performed or assisted in performing) primary medical services.
- (5) In paragraph (2), “lay person” means a person who is not, and never has been—
- (a) a medical practitioner;
  - (b) a dental practitioner;
  - (c) a registered pharmacist;

- (d) a registered ophthalmic optician or a registered dispensing optician within the meaning of the Opticians Act 1989(a); or
  - (e) a registered nurse or registered midwife(b).
- (6) In paragraphs (3) and (4), “officer” means a person who holds office in a company.

### **Transitional provisions**

9.—(1) Where, despite its revocation(c), an appeal is made to the Secretary of State after 31<sup>st</sup> March 2005 pursuant to paragraph 80 of the Statement of Fees and Allowances by virtue of—

- (a) article 42 of the General Medical Services Transitional and Consequential Provisions Order 2004(d); or
- (b) article 41 of the Transitional Order,

the Secretary of State’s functions under that paragraph shall be exercisable by the Authority, which shall make arrangements for those functions to be exercised on its behalf by an officer of the Authority.

(2) Where, on 31<sup>st</sup> March 2005, the FHSAA(SHA) was exercising any function relating to the National Health Service (Pharmaceutical Services) Regulations 1992 pursuant to direction 2(1)of the Family Health Services Appeal Authority (Special Health Authority) (Miscellaneous Functions) Directions 2004(e), that function shall, from 1<sup>st</sup> April 2005, be exercised by the Authority in accordance with direction 3 of those directions as they had effect on 31<sup>st</sup> March 2005.

(3) Where, on 31<sup>st</sup> March 2005, the FHSAA (SHA) was exercising any function pursuant to direction 4(1) of the Family Health Services Appeal Authority (Special Health Authority) (Miscellaneous Functions) Directions 2004, that function shall, from 1<sup>st</sup> April 2005, be exercised by the Authority in accordance with direction 4 of those directions as they had effect on 31<sup>st</sup> March 2005.

(4) Where, pursuant to regulation 73(2) and (3) of the Pharmaceutical Regulations, an appeal is made under the provisions of the National Health Service (Pharmaceutical Services) Regulations 1992, that function shall be exercised by the Authority in accordance with direction 3 of the Family Health Services Appeal Authority (Special Health Authority)(Miscellaneous Provisions) Direction 2004 as they had effect on 31<sup>st</sup> March 2005.

(5) Where, pursuant to article 18 (provision for continuity in the exercise of function) of the Special Health Authorities Abolition Order 2005, the Authority is continuing to consider an appeal made to the FHSAA(SHA) which the FHSAA (SHA) had appointed a committee to determine under direction 3 of the Family Health Services Appeal Authority (Special Health Authority) (Miscellaneous Functions) Directions 2004, that appeal shall continue to be determined on behalf of the Authority by that committee as constituted on 31<sup>st</sup> March 2005.

(6) Paragraph (5) shall not prevent the Authority from taking any necessary steps to vary the composition of the committee referred to in that paragraph on or after 1<sup>st</sup> April 2005.

### **Revocations**

10. The following Directions are revoked, in so far as they relate to England—

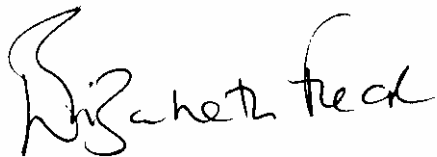
- (a) The Family Health Services Appeal Authority Land Transactions Directions 1995, which came into force on 1<sup>st</sup> July 1995.
- (b) The Family Health Services Appeal Authority – Powers of Income Generation Directions, which came into force on 1<sup>st</sup> July 1995.

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(a) 1989 c.44.  
(b) See the Nursing and Midwifery Order 2001 (S.I. 2002/253), Part 3.  
(c) The Statement of Fees and Allowances lapsed on repeal of regulation 34 of the National Health Service (General Medical Services) Regulations 1992 (S.I. 1992/635) by S.I. 2004/865.  
(d) S.I. 2004/433 as amended by S.I. 2004/865.  
(e) Dated 20<sup>th</sup> September 2004. These directions are published on the Department of Health’s website or a copy can be obtained by writing to the Department of Health, P.O. Box 777, London SE1 6XH.

- (c) The Directions to the Family Health Services Appeal Authority on the GP Registrar Complaints Procedure, which came into force on 21<sup>st</sup> December 2000.
- (d) The Directions to the Family Health Services Appeal Authority on Appeals from Dentists Refused Inclusion in a Health Authority's Dental List and General Anaesthesia List, which came into force on 19<sup>th</sup> March 2001.
- (e) The Family Health Services Appeal Authority (Special Health Authority) Functions Directions 2001, which came into force on 24<sup>th</sup> November 2001.
- (f) The Directions as to the Functions of the Family Health Services Appeal Authority (Special Health Authority) 2003, which came into force on 3<sup>rd</sup> November 2003.
- (g) The Directions as to the Functions of the Family Health Services Appeal Authority (Special Health Authority) 2003 (No.2), which came into force on 7<sup>th</sup> November 2003.
- (h) The Directions as to the Functions of the Family Health Services Appeal Authority (Special Health Authority) 2003 (No.3), which came into force on 20<sup>th</sup> November 2003.
- (i) The Family Health Services Appeal Authority (Special Health Authority) (Miscellaneous Functions) Directions 2004, which came into force on 21<sup>st</sup> September 2004.

Signed by authority of the Secretary of State

A handwritten signature in black ink, appearing to read "Elizabeth Teale". The signature is written in a cursive, flowing style.

A Member of the Senior Civil Service  
Department of Health

31<sup>st</sup> March 2005

## SCHEDULE

Direction 7(1)

### PROVISIONS OF REGULATIONS CONFERRING FUNCTIONS ON THE SECRETARY OF STATE WHICH ARE TO BE EXERCISED BY THE AUTHORITY

<i>Provision of Regulations</i>	<i>Nature of function</i>
<b>The Pharmaceutical Regulations</b>	
Regulations 6(5), (7) and (8) and 7(5), (7) and (8)	To receive an appeal against a Primary Care Trust's decision to consider a minor relocation as if it were a minor relocation of 500 metres or more; to determine appeal and to notify decision
Regulation 14(7), (9) and (10)	To receive an appeal against a Primary Care Trust's decision in relation to the variation of directed services in respect of exempted premises; to determine appeal and to notify decision.
Regulation 29	To receive an appeal against a Primary Care Trust's determination of an application for inclusion in a pharmaceutical list; or against its refusal to amend original application or to extend time allowed for commencement of provision of services or to require commencement of provision of services; to send a copy of the notice of appeal; to receive representations; to appoint persons to hear the appeal; to direct time and place of hearing and to send notice of hearing; to determine appeal and to send notice of decision
Regulation 32	To receive an appeal against a Primary Care Trust's decision that, or its refusal to consider whether, an area is or is not rural in character, or against its decision as to postponement of making or termination of arrangements for provision of pharmaceutical services by a doctor; to send a copy of the notice of appeal; to receive representations; to appoint persons to hear the appeal; to direct time and place of hearing and to send notice of hearing; to determine appeal and to send notice of decision.
Regulation 38	To receive an appeal against a Primary Care Trust's determination or refusal as set out in regulation 38(2); to send a copy of the notice of appeal; to receive representations; to appoint persons to hear the appeal; to direct time and place of hearing and to send notice of hearing; to determine appeal and to send notice of decision.
Regulation 45(12) and (14)	To receive and determine appeal against a Primary Care Trust's decision to remove name from a pharmaceutical list

<i>Provision of Regulations</i>	<i>Nature of function</i>
Regulation 53(2) and (4)	To consent to withdrawal of a chemist from a list
Regulation 60(6) and (12) to (15)	To receive and determine appeal in connection with the decision of a Primary Care Trust to require a doctor to provide pharmaceutical services; to receive representations and to send notice of decision.
Schedule 1, paragraphs 24(7) to (9) and 25(9) to (11)	To receive and determine appeal in connection with a Primary Care Trust's direction as to hours during which a pharmacist is obliged to provide pharmaceutical services; and to send notice of decision.
Schedule 3, paragraphs 12(7) to (9) and 13(9) to (11)	To receive and determine appeal in connection with a Primary Care Trust's direction as to hours during which a supplier of appliances is obliged to provide pharmaceutical services; and to send notice of decision.
<b>The National Health Service (Service Committees and Tribunal) Regulations 1992(a)</b>	
Regulation 8(7)	To receive notice of determination of a Primary Care Trust following report of appropriate committee
Regulations 9 and 10	To entertain and determine appeal against a determination of a Primary Care Trust following report by discipline committee
Regulations 11 and 12	To determine action to be taken (in the form of recovery of amount or of prior approval requirement) in relation to person found on appeal to have failed to comply with terms of service
Regulation 36	To exercise power to rescind appointments and appoint further persons
Regulation 37(2) and (3)	To exercise power to refer case to professional body
Schedule 2, paragraph 4(3)	To receive reference in relation to Primary Care Trust's appointment of chairman of committee
Schedule 2, paragraph 4(5)	To exercise power to appoint new chairman of committee
Schedule 5, Part 3	To appoint Dental Advisory Committee and chairman and deputy chairman of that Committee
<b>The Dental Regulations</b>	
Regulation 5(2A) to (2E)	To receive an appeal by a dentist against a determination by a Primary Care Trust to refuse him inclusion in the dental list on grounds of dissatisfaction with his practice

(a) S.I. 1992/664. Relevant amending instruments are S.I. 1996/703, 2002/2469 and 2004/865.

<i>Provision of Regulations</i>	<i>Nature of function</i>
<b>The National Health Service (Performers Lists) Regulations 2004(a)</b>	premises, to arrange for an inspection of the proposed premises, to determine the appeal and to notify the Primary Care Trust of the decision.
Regulation 13(20) to (24)	To receive and determine appeal against decisions of a Primary Care Trust as to payments to a suspended doctor and give directions to the Primary Care Trust
Regulation 18	To consent to the withdrawal of a performer from a list

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(a) S.I. 2004/585.