



NHS Management Executive
St. Andrew's House
Edinburgh EH1 3DG
26 March 1996

Dear Colleague

IMPLEMENTATION OF NEW NHS COMPLAINTS PROCEDURES: DIRECTIONS UNDER THE NATIONAL HEALTH SERVICE (SCOTLAND) ACT 1978

Summary

1. I attach a copy of Directions to Health Boards covering complaints against Health Boards, or about independent sector services purchased by them or by GP fundholders which together with Regulations which are being published separately, provide the legal framework for the new NHS complaints procedures. Directions to Health Boards and NHS Trusts on Hospital Complaints Procedures were issued on 22 March. Directions to Health Boards on primary care services practitioners' complaints will be published separately.

Action

2. Board General Managers are asked to bring the Directions to the attention of managers responsible for complaints and associated training and to take appropriate measures locally to ensure successful implementation and development of the new procedures. Board General Managers are also asked to ensure that the Directions are brought to the attention of GP fundholders within the Board area and of the Secretary of the GP Sub-Committee of their Area Medical, Dental, Optical and Pharmaceutical Committees.

Other Information

3. These Directions supersede earlier guidance and Directions on complaints procedures set out in SOHHD/DGM(1991)74; NHS Circular: GEN(1992)27 and NHS Circular GEN(1992)27 (Amendment).

Yours sincerely

KEVIN J WOODS
Director of Purchasing

Addressees

For action:

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Health Boards

General Manager,
Common Services Agency

General Manager,
State Hospitals Board for Scotland

For information:

General Manager,
Health Education Board for Scotland

Executive Director, SCPMDE

Health Service Commissioner for
Scotland

Scottish Association of Health
Councils

Chief Officers/Secretaries
Local Health Councils

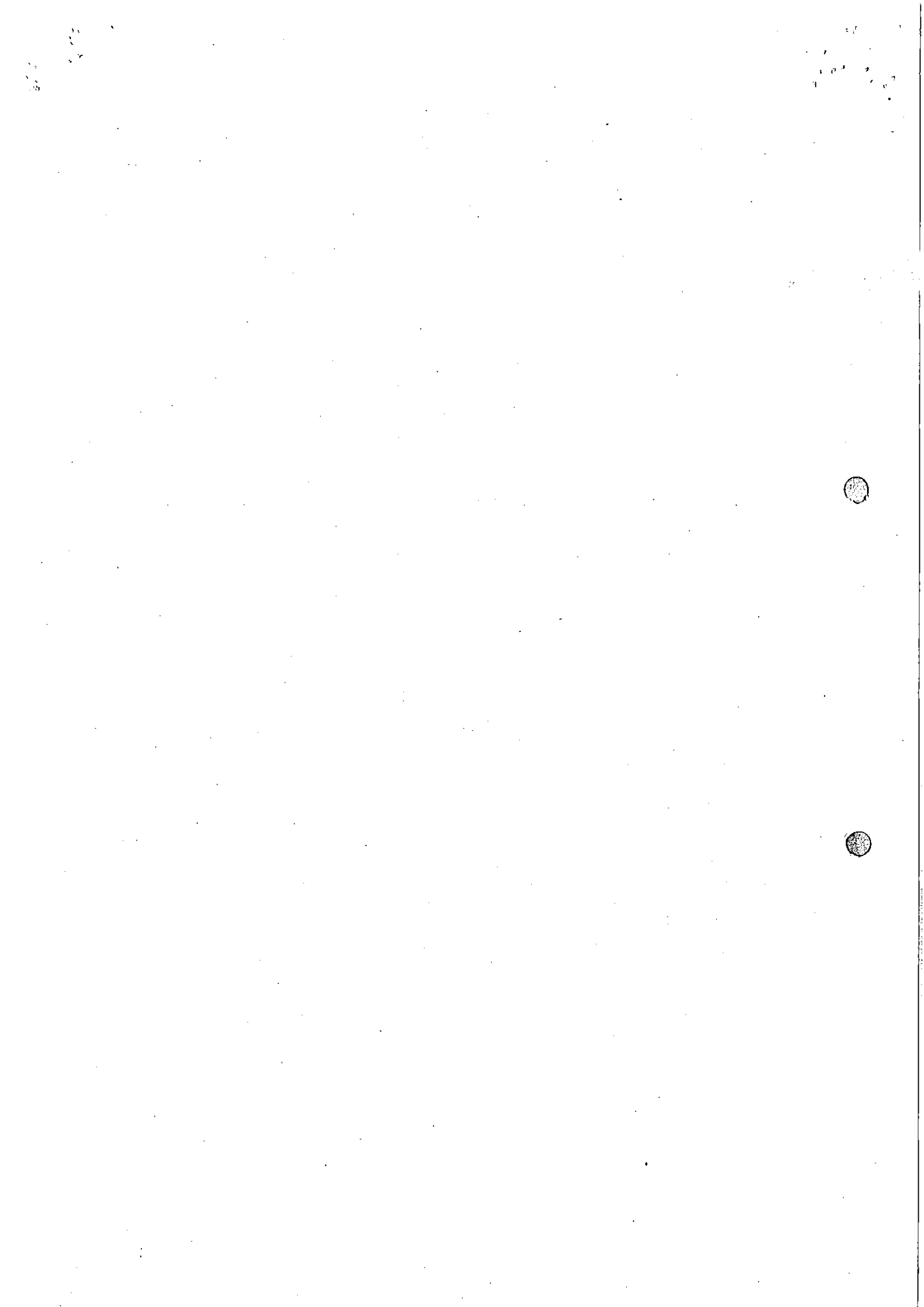
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NATIONAL HEALTH SERVICE, SCOTLAND

MISCELLANEOUS DIRECTIONS TO HEALTH BOARDS FOR DEALING WITH COMPLAINTS

The Secretary of State, in exercise of powers conferred by section 2(5) of the National Health Service (Scotland) Act 1978(a), hereby gives the following directions:—

PART I

COMMENCEMENT AND INTERPRETATION

Commencement

1. These Directions shall come into force on 1st April 1996.

Interpretation

2.— (1) In these Directions “the Hospital Directions” means the Directions to NHS Trusts, Health Boards and Special Health Boards on Hospital Complaints Procedures dated 20th March 1996.

(2) Any reference in any Part of these Directions to arrangements is a reference to the arrangements which are required to be made under that Part.

(3) Unless the context otherwise requires, any reference in these Directions to a numbered article is a reference to the article bearing that number in these Directions and any

(a)Section 2(5) was amended by the Hospital Complaints Procedure Act 1985, Section 1(1) and by the National Health Service and Community Care Act 1990, Schedule 9, paragraph 19(1).

reference in an article to a numbered paragraph is a reference to the paragraph bearing that number in that article.

PART II

GENERAL

Arrangements in writing

3. Any arrangements which are required to be made by these Directions shall be in writing and a copy of the arrangements shall be given, free of charge, to any person who makes a request for them.

Objectives

4. Arrangements made under Part III and Part IV of these Directions shall be such as to ensure that complainants are treated courteously and sympathetically by any person to whom they make their complaints and their complaints are properly addressed.

Complaints officer

5.— (1) Every Health Board shall appoint a complaints officer—

- (a) to perform the functions of the complaints officer under the arrangements required to be made under these Directions;
- (b) to provide assistance to complainants; and

- (c) generally to manage the operation of the procedures for dealing with complaints under the arrangements required to be made under these Directions.
- (2) Different persons may be appointed to perform the functions of the complaints officer under different Parts of these Directions.
- (3) The functions of the complaints officer under paragraph (1) may be performed personally or by a person authorised by the Health Board to act on his behalf.

PART III

COMPLAINTS ABOUT THE ACTIONS OF HEALTH BOARDS

Interpretation of Part III

6. In Part III of these Directions—

“any action of the Health Board” includes any decision taken by a Health Board and any failure to act;

“complainant” means a person who makes a complaint about any action of a Health Board and “complaint” shall be construed accordingly;

“independent provider” has the same meaning as in Part IV of these Directions;

“primary care services practitioner” means a person who provides any of the services to be provided under Part II of the National Health Service (Scotland) Act 1978, that is to say, general medical services, general dental services, general ophthalmic services or pharmaceutical services.

Requirement to make arrangements for dealing with complaints

7. Every Health Board shall make arrangements in accordance with the following provisions of this Part of these Directions for dealing with complaints about any action of the Health Board.

No investigation of complaint

8.— (1) Article 7 of the Hospital Directions shall apply to a complaint made under this Part of these Directions as though it applies to a complaint made under the Hospital Directions.

(2) A Health Board shall not deal with a complaint made under this Part of these Directions if the complaint is made by—

- (a) an officer of the Health Board about any action of the Health Board relating to his contract of employment;
- (b) a primary care services practitioner about any action of the Health Board relating to arrangements made by the Health Board for the provision of services under Part II of the National Health Service (Scotland) Act 1978;
- (c) an independent provider about any action of the Health Board relating to arrangements made with the independent provider under that Act.

Requirement to deal with complaint

9. A complaint shall be dealt with in accordance with the arrangements if it is made—

- (a) after 1st April 1996;

- (b) orally or in writing to any member or officer of the Health Board;
- (c) by a person specified in article 10; and
- (d) within the period specified in article 11.

Person who may make a complaint

10.— (1) Subject to paragraphs (2), (3) and (4), a complaint may be made—

- (a) by a person who has been affected by or is likely to be affected by any action of the Health Board;
- (b) on behalf of a person who has been affected by or is likely to be affected by any action of the Health Board with the consent of that person;
- (c) by any person in respect of a person who has died where the person who has died was affected by any action of the Health Board.

(2) Where a person is unable to act, his consent shall not be required under paragraph (1)(b).

(3) If the complaints officer is of the opinion that the person acting on behalf of a person who is unable to act or in respect of a person who has died is not a suitable person to pursue the complaint he may either refuse to deal with the complaint or nominate another person to act with respect to the complaint.

Time limits

11.— (1) Subject to paragraph (2), the period for making a complaint is—

(a) six months from the date on which the matter which is the subject of complaint occurred; or

(b) six months from the date on which the matter which is the subject of the complaint comes to the complainant's notice provided that the complaint is made no later than twelve months after the date on which the matter which is the subject of complaint occurred.

(2) Where a complaint is not made during the period specified in paragraph (1) it shall be referred to the complaints officer and if he is of the opinion that—

(a) having regard to all the circumstances of the case, it would have been unreasonable for the complainant to make the complaint within that period; and

(b) notwithstanding the time that has elapsed since the date on which the matter which is the subject of the complaint occurred, it is still possible to investigate the complaint properly,

the complaint shall be treated as though it had been received during the period specified in paragraph (1).

Referral to complaints officer

12. Article 12 of the Hospital Directions shall apply to a complaint made under this Part of these Directions as though in paragraph (5)(b) the words "Health Board" were substituted for the words "trust or board".

Investigation and report

13. Article 13 of the Hospital Directions shall apply to a complaint made under this Part of these Directions as though in paragraph (3) the words "Health Board" were substituted for the words "trust or board".

Convening

14.— (1) Part IV of the Hospital Directions shall apply to a complaint under this Part of these Directions with the modifications specified in paragraph (2).

(2) The modifications of Part IV of the Hospital Directions are—

(a) for the words "trust or board" wherever they occur there shall be substituted the words "Health Board";

(b) for article 14 there shall be substituted the following article—

"14. Every Health Board—

(a) shall appoint one of its members who is not an officer of the Board; and

(b) may appoint any other person who is not an officer of the Board,

to carry out the functions of the convener under the arrangements."

The panel

15.— (1) Part V of the Hospital Directions shall apply to a complaint under this Part of these Directions with the modifications specified in paragraph (2).

(2) The modifications referred to in paragraph (1) are—

- (a) for the words “trust or board” wherever they occur there shall be substituted the words “Health Board”;
- (b) for article 22 there shall be substituted the following article—

“22.— (1) A panel shall consist of three members of whom—

- (a) one shall be a person nominated by the Health Board (who shall be the chairman of the panel) from a list of persons kept by the Board for the purposes of this subparagraph;
 - (b) one shall be the convener; and
 - (c) one shall be a person nominated by the Health Board from a list of persons kept by the Board for the purpose of this subparagraph.”;
- (c) in article 26, after paragraph (9) there shall be added the following paragraphs—

“(10) The panel shall consider whether any action of the Health Board which is the subject of the complaint was properly taken, that is to say, whether in taking the action the Health Board had regard to all matters that were relevant to the taking of the action and disregarded all matters that were irrelevant.

(11) Where the panel consider that the action which is the subject of the complaint was properly taken it shall not determine that a different decision should have been made.”.

(d) in article 27, paragraphs (2)(a)(i) and (4)(f) and (g) shall be omitted and for paragraph (4)(c) there shall be substituted the following subparagraph—

“(c) any person on whose behalf a complaint is made;”

Monitoring and Publicity

16.— (1) Part VI of the Hospital Directions shall apply to a complaint under this Part of these Directions with the modifications specified in paragraph (2).

(2) The modifications referred to in paragraph (1) are—

(a) in article 29—

(i) in paragraph (1)(a), for the words from “hospitals” to the end of the subparagraph there shall be substituted the words “the actions of the Health Board”, and for the words “trust or board” in the second place where they occur there shall be substituted the words “Health Board”,

(ii) in paragraph (2) the words “Health Board” shall be substituted for the words “trust and board” and paragraph (c) shall be omitted,

(iii) in paragraph (3), for the words from “within” to the end of the paragraph there shall be substituted the words “whose district is (wholly or partly) within the area of the Health Board”;

(b) in article 30, for paragraph (1) there shall be substituted the following paragraph—

“(1) Every Health Board shall take such steps as are necessary to ensure that—

- (a) staff working at the Health Board;
- (b) any relevant local Health Council;
- (c) any primary care services practitioner with whom the Health Board has made arrangements under Part II of the National Health Service (Scotland) Act 1978;
- (d) every NHS trust with whom it has made an NHS contract; and
- (e) every independent provider with whom the Health Board has made arrangements under the National Health Service (Scotland) Act 1978,

are fully informed of the arrangements for dealing with complaints at the Health Board and are informed of the name of the complaints officer and the address where he can be contacted.”.

PART IV

COMPLAINTS ABOUT INDEPENDENT PROVIDERS

Interpretation of Part IV

17. In Part IV of these Directions—

“complainant” means a person who makes a complaint about services provided by an independent provider and “complaint” shall be construed accordingly;

“independent provider” means a person (whether an individual or a body) who is not a Health Board, an NHS trust or a recognised fund-holding practice;

“recognised fund-holding practice” shall be construed in accordance with section 87A of the National Health Service (Scotland) Act 1978.

Requirement to make arrangements for dealing with complaints about independent providers

18.— (1) Every Health Board shall make arrangements in accordance with the following provisions of this Part of these Directions for dealing with complaints about independent providers who have provided services as a result of arrangements made with the Health Board under section 87A of the National Health Service (Scotland) Act 1978 or with a recognised fund-holding practice whose practice is in the area of the Health Board and in either case the conditions specified in paragraph (2) are satisfied.

(2) The conditions referred to in paragraph (1) are that—

(a) a complaint has been made—

- (i) by or on behalf of a person who has been provided with services under the arrangements referred to in paragraph (1) or in respect of a person who has died and who was provided with such services,
 - (ii) after 1st April 1996,
 - (iii) to the independent provider concerned; and
- (b) the complaint was made in writing or was written on the complainant's behalf and in either case signed by the complainant; and
 - (c) the independent provider has had a reasonable time to investigate the complaint and report the result of the investigation to the complainant; and
 - (d) article 7 of the Hospital Directions shall apply to a complaint made under this Part of these Directions as though paragraphs 1(b) and (2) and the words "and of any start of or continuing of an investigation under paragraph (2)" in paragraph (3) were omitted.

Convening

19.— (1) Part IV of the Hospital Directions shall apply to a complaint under this Part of these Directions with the modifications specified in paragraph (2).

(2) The modifications referred to in paragraph (1) are that—

(a) for article 14 there shall be substituted the following article—

"14. Every Health Board—

(a) shall appoint one of its members who is not an officer of the Board; and

(b) may appoint any other person who is not an officer of the Board,

to carry out the functions of the convener under the arrangements.”.

(b) in article 15—

(i) in paragraph (1) subparagraph (a) shall be omitted and for subparagraph (b) there shall be substituted the following subparagraph—

“(b) who is either dissatisfied with the result of the investigation by the independent provider or whose complaint has not been investigated by the independent provider”;

(ii) at the end of paragraph (2) there shall be added the words “or, where no investigation of the complaint is carried out by the independent provider, fifty six days from the date on which the complaint was made to the independent provider”;

(iii) after paragraph (2) there shall be inserted the following paragraphs—

“(2A) A convener is not required to deal with a request under paragraph (1) which is made on behalf of a person unless either that person is unable to act or the consent of that person to the making of the request has been given.

(2B) Where a complaint has been made either on behalf of a person who is unable to act or in respect of a person who has died and,

in the opinion of the convener, the complainant is not a suitable person to pursue the complaint he may either refuse to deal with the complaint or nominate another person to act with respect to the complaint.”.

(iv) in paragraph (3), for the words “trust or board” there shall be substituted the words “Health Board”;

(v) for paragraph (7) there shall be substituted the following paragraph—

“(7) In this article “put in writing” has the same meaning as in article 12(5) of the Hospital Directions but as though the words “Health Board or by the convener” were substituted for the words “trust or Board”;

(c) in article 16—

(i) paragraphs (1)(b), (4) and (5) shall be omitted;

(ii) in paragraph (1)(c) and (6), for the words “the complaints officer or the Chief Executive” there shall be substituted the words “the independent provider”;

(iii) in paragraph (3), for the words “trust or board” there shall be substituted the words “independent provider”;

(d) in article 18—

(i) in paragraph (1), for subparagraph (c) there shall be substituted the following subparagraphs—

“(c) the Health Board; and

(d) the independent provider”,

- (ii) in paragraph (3)(a), for the words “trust or board” there shall be substituted the words “independent provider”.

The Panel

20.— (1) Part V of the Hospital Directions shall apply to a complaint under this Part of these Directions with the modifications specified in paragraph (2).

(2) The modifications referred to in paragraph (1) are that—

(a) except in article 27(2), for the words “trust or board” there shall be substituted the words “Health Board” wherever those words occur;

(b) for article 22 there shall be substituted the following paragraph—

“22.— (1) A panel shall consist of three members of whom—

(a) one shall be a person nominated by the Health Board (who shall be the chairman of the panel) from a list of persons kept by the board for the purposes of this subparagraph;

(b) one shall be the convener; and

(c) one shall be a person nominated by the Health Board from a list of persons kept by the Board for the purpose of this subparagraph.”.

(c) in article 27—

- (i) in paragraph (2)(a), for the words "trust or board" in both places where those words occur there shall be substituted the words "independent provider";
- (ii) in paragraph (2)(b), the words "independent provider, Health Board or recognised fund-holding practice" shall be substituted for the words "trust or board";
- (iii) in paragraph (4), subparagraph (f) shall be omitted and for subparagraph (c) there shall be substituted the following subparagraphs—

“(c) the independent provider concerned;

(cc) any person on whose behalf a complaint is made;”.

- (iv) after paragraph (4) there shall be inserted the following paragraph—

“(4A) When the report of the panel is sent to the persons referred to in subparagraphs (a), (b), (c) or (cc) of paragraph (4) it shall be accompanied by a notice explaining the right to complain to the Health Service Commissioner under the Health Service Commissioners Act 1993.”;

- (d) article 28 shall be omitted.

Monitoring and Publicity

21.— (1) Part VI of the Hospital Directions shall apply to a complaint under this Part of these Directions with the modifications specified in paragraph (2).

(2) The modifications referred to in paragraph (1) are that—

(a) article 29 shall be omitted;

(b) in article 30 for paragraph (1) there shall be substituted the following paragraph—

“(1) Each Health Board shall take such steps as are necessary to ensure that—

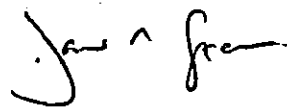
(a) staff working for the Health Board;

(b) any recognised fund-holding practice whose practice is situated in the area of the Health Board;

(c) any independent provider with whom the Health Board has made arrangements under the National Health Service (Scotland) Act 1978; and

(d) any relevant local Health Council,

are fully informed of the arrangements for dealing with complaints about independent providers and are informed of the name of the complaints officer and the address where he can be contacted.”.



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21 March 1996