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WELSH STATUTORY INSTRUMENTS

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**2006 No. 181**

The National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services) (Amendment and Consequential Amendment) (Wales) Regulations 2006

**PART 1**

Supplementary List

**Interpretation**

**2.—(1)** In this Part—

“Abolition of the Tribunal Regulations” (*“Diddymu Rheoliadau'r Tribiwnlys”*) means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001(1);

“Abolition of the Tribunal (Wales) Regulations” (*“Diddymu Rheoliadau'r Tribiwnlys”* (Cymru)) means the Abolition of National Health Service Tribunal (Consequential Provisions) Regulations 2002(2);

“director” (*“cyfarwyddwr”*) means—

- (a) a director of a body corporate; or
- (b) a member of the body of persons controlling a body corporate (whether or not a limited liability partnership);

“employment” (*“cyflogaeth”*) means any employment, whether paid or unpaid and whether under a contract for services or a contract of service, and “employed” and “employer” should be construed accordingly;

“equivalent body” (*“corff cyfatebol”*) means—

- (a) a Primary Care Trust in England;
- (b) a Health Board or NHS Trust in Scotland;
- (c) a Health and Social Services Board in Northern Ireland;
- (d) in relation to any time prior to 1 October 2002, a Health Authority in England; or
- (e) in relation to any time prior to 1 April 2003, a Health Authority in Wales;

“equivalent list” (*“rhestr gyfatebol”*) means a list kept by an equivalent body;

“FHSAA” means the Family Health Services Appeal Authority constituted under section 49S;

“fraud case” (“*achos o dwyll*”) means a case where the person satisfies the second condition for removal from the ophthalmic list, set out in section 49F(3), or by virtue of section 49H, is treated as doing so;

“general ophthalmic services” (“*gwasanaethau offthalmig cyfredinol*”) means the services which a person whose name is included in an ophthalmic list had undertaken to provide, pursuant to paragraph 10 of Schedule 1 to the Ophthalmic Regulations;

“licensing or regulatory body” (“*corff trwyddedu neu reoleiddio*”) means a body that licenses or regulates any profession to which the ophthalmic medical practitioner or optician belongs, or has formerly belonged, including a body regulating or licensing the education, training or qualifications of that profession, and includes any body which licenses or regulates any such profession, its education, training or qualifications, outside the United Kingdom;

“list” (“*rhestr*”), unless the context otherwise requires, means—

- (a) a list referred to in section 49N(1)(a) to (c) ;
- (b) a list of persons undertaking to provide general medical services prepared in accordance with regulations under section 29, as the list existed on or before 31 March 2004;
- (c) a list of persons approved by a Local Health Board for the purpose of assisting in the provision of general medical services prepared in accordance with regulations under section 43D(1) as the list existed on or before 31 March 2004; or
- (d) a services list referred to in section 8ZA(1)(a) of the Primary Care Act as the list existed on or before 31 March 2004;

“a national disqualification” (“*anghymwysiad cenedlaethol*”) means a decision—

- (a) made by the FHSAA to nationally disqualify a ophthalmic medical practitioner or optician under section 49N;
- (b) to nationally disqualify an ophthalmic medical practitioner or optician under provisions in force in Scotland or Northern Ireland corresponding to section 49N; or
- (c) by the Tribunal, which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4) of the Abolition of the Tribunal Regulations, or regulation 6(4) of the Abolition of the Tribunal (Wales) Regulations;

“the NCAA” means the National Clinical Assessment Authority;

“the NHS Counter Fraud and Security Management Service” (“*Gwasanaeth Gwrth Dwyll a Rheoli Diogelwch y Gwasanaeth Iechyd Gwladol*”) means the body with responsibility for the policy and operational matters relating to the prevention, detection and investigation of fraud or corruption and the management of security in the National Health Service, established by the Counter Fraud and Security Management Service Establishment and Constitution Order 2002(3);

“notice” (“*hysbysiad*”) means an notice in writing (including electronic) and “notify” shall be construed accordingly;

“the NPSA” means the National Patient Safety Agency established as a Special Health Authority under section 11;

“ophthalmic list” (“*rhestr offthalmig*”) means the list prepared by a Local Health Board under regulation 6(4) of the Ophthalmic Regulations;

“ophthalmic medical practitioner” (“*ymarferydd meddygol offthalmig*”) means a registered medical practitioner, whose qualifications have, in accordance with regulations 3, 4 or 5 of the Ophthalmic Regulations, been approved as prescribed qualifications;

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(3) [S.I.2002/3039](#). The NHS Counter Fraud and Security Management Service replaces the National Health Service Counter Fraud Service.

(4) Regulation 6 was amended by [S.I.2001/1423 \(W.98\)](#) and [S.I.2002/1883 \(W.192\)](#)

“Ophthalmic Regulations” (“*Rheoliadau Offthalmig*”) means the National Health Service (General Ophthalmic Services) Regulations 1986(5);

“optician” (“*optegydd*”) means an natural person, who is an ophthalmic optician;

“Opticians Act” (“*y Ddeddf Optegwyr*”) means the Opticians Act 1989(6);

“originating events” (“*digwyddiadau sy'n cychwynnol*”) means the events that gave rise to the conviction, investigation, proceedings, suspension, refusal to admit, conditional inclusion, removal or contingent removal that took place;

“practitioner” (“*ymarferydd*”), except where the context otherwise requires, means an ophthalmic medical practitioner or an optician;

“professional conduct” (“*ymddygiad proffesiynol*”) includes matters relating both to professional conduct and professional performance;

“Primary Care Act” (“*Ddeddf Gofal Sylfaenol*”) means the National Health Service (Primary Care) Act 1997(7);

“professional registration number” (“*Rhif cofrestru proffesiynol*”) means the number against the ophthalmic medical practitioner or optician’s name in the register;

“the register” (“*gofrestr*”), except where the context otherwise requires, means in relation to an ophthalmic medical practitioner, a register maintained by the General Medical Council or, in relation to an optician, a register maintained by the General Optical Council;

“suspended” (“*atal dros dro*”) means—

- (a) suspended by a Local Health Board or equivalent body under section 49I or 49J, or regulations made under section 28DA or 43D or under section 8ZA of the Primary Care Act(8);
- (b) in relation to Scotland or Northern Ireland, suspended under provisions in force corresponding to those in or made under sections 28DA, 43D, 49I, 49J or under section 8ZA of the Primary Care Act,

and shall be treated as including a case where a person is treated as suspended by a Local Health Board, or prior to 1 April 2003, by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal (Wales) Regulations, or in England, by a Primary Care Trust, or prior to 1 October 2002, by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations, and “suspends” and “suspension” should be construed accordingly; and

“the Tribunal” (“*y Tribiwnlys*”) means the Tribunal constituted under section 46(9) for England and Wales, and which, except for prescribed cases, had effect in relation to Wales until 26 August 2002 and in relation to England until 14 December 2001(10).

(2) All references in this Part to sections are to sections of the National Health Service Act 1977, except where specified otherwise.

### Supplementary List

3.—(1) A Local Health Board must prepare and publish a supplementary list of all practitioners approved by the Local Health Board for the purposes of assisting in the provision of general ophthalmic services.

(5) [S.I.1986/975](#)

(6) [1989 c. 44](#)

(7) [1997 c. 46](#)

(8) Section 8ZA was inserted by the 2001 Act, section 26(2) and amended by the 2002 Act, Schedule 3, paragraph 3.

(9) Section 46 was revoked by the 2001 Act, section 67 and Schedule 5, paragraph 5, and Schedule 6, Part 1.

(10) See [S.I.2001/3738](#), article 2(5) and (6)(b), which sets out the prescribed cases for England and [S.I.2002/1919](#), article 2(2) and (3)(b), which sets out the prescribed cases for Wales.

(2) The supplementary list must be divided into two parts, of which the first part will relate to ophthalmic medical practitioners and the second part to opticians.

(3) Subject to regulation 21, a practitioner is not eligible to assist in the provision of general ophthalmic services, unless his or her name is included in an ophthalmic list or a supplementary list.

(4) In respect of any practitioner, whose name is included in the supplementary list, the list will include that practitioner's—

- (a) full name;
  - (b) professional registration number, and
    - (i) suffixed to that number, the organisational code given by the National Assembly for Wales to the Local Health Board, and
    - (ii) prefixed to that number, the initials SOL;
  - (c) date of birth, where the practitioner has given consent, or if consent is not given, the date of the practitioner's first registration in the register; and
  - (d) date when his or her name was first included in the supplementary list.
- (5) The supplementary list must be available for public inspection.

#### **Application for inclusion in the supplementary list**

4.—(1) Subject to paragraphs (7) to (11), an application by a practitioner for the inclusion of his or her name in the supplementary list must be made by sending to the Local Health Board an application in writing, which must include the information mentioned in paragraph (2), the undertakings and consents required by paragraphs (3) and (6) and any declaration required under paragraphs (4) and (5).

- (2) The practitioner must provide the following information—
- (a) full name;
  - (b) sex;
  - (c) date of birth;
  - (d) private address and telephone number;
  - (e) details of qualifications and where they were obtained;
  - (f) a declaration that he or she is a fully registered ophthalmic medical practitioner or optician, included in the register;
  - (g) professional registration number and the date of first registration in the register;
  - (h) chronological details of professional experience (including the starting and finishing dates of each appointment together with an explanation of any gaps between appointments), with any additional supporting particulars, and an explanation of why he or she was dismissed from any post;
  - (i) names and addresses of two referees, who are willing to provide references in respect of two recent posts (which may include any current post) as an ophthalmic medical practitioner or optician, which lasted for at least three months without a significant break, and where this is not possible, a full explanation and the names and addresses of alternative referees;
  - (j) whether the practitioner has any outstanding application, including a deferred application, to be included in a list or an equivalent list, and if so, particulars of that application;
  - (k) details of any Local Health Board or equivalent list from which the practitioner has been removed or contingently removed, or to which the practitioner has been refused admission or in which he or she has been conditionally included, with an explanation as to why;

- (l) if the practitioner is the director of any body corporate that is included in any list or equivalent list, or which has an outstanding application (including a deferred application) for inclusion in such a list, the name and the address of the registered office of that body and details of the Local Health Board or equivalent body concerned; and
  - (m) where the practitioner is, or was in the preceding six months, or was at the time of the originating events, a director of a body corporate, details of any list or equivalent list to which that body has been refused admission, in which it has been conditionally included, from which it has been removed, contingently removed or from which it is currently suspended, with an explanation as to why and details of the Local Health Board or equivalent body concerned.
- (3) The practitioner must provide the following undertakings and consent—
- (a) an undertaking to provide the declarations and document, if applicable, required by regulation 9;
  - (b) an undertaking not to assist in the provision of general ophthalmic services in the area of another Local Health Board or equivalent body from whose ophthalmic or supplementary list he or she has been removed, except where that removal was at his or her request or in accordance with regulation 10(7) or 21(12) of these Regulations, or regulation 9(2) of the Ophthalmic Regulations, without the consent, in writing, of that Local Health Board or equivalent body;
  - (c) an undertaking to notify the Local Health Board within 7 days of any material changes to the information provided in the application until the application is finally determined;
  - (d) an undertaking to notify the Local Health Board if he or she is included, or applies to be included, in any other list or equivalent list held by a Local Health Board or equivalent body; and
  - (e) consent to the disclosure of information in accordance with regulation 16 and 20 of these Regulations.
- (4) The practitioner must send with the application a declaration as to whether he or she—
- (a) has any criminal conviction in the United Kingdom;
  - (b) has been bound over following a criminal conviction in the United Kingdom;
  - (c) has accepted a police caution in the United Kingdom;
  - (d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995<sup>(11)</sup> (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992<sup>(12)</sup> (penalty as alternative to prosecution);
  - (e) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him or her absolutely;
  - (f) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
  - (g) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Local Health Board;
  - (h) has been subject to any investigation into his or her professional conduct by any licensing, regulatory or other body, where the outcome was adverse;

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(11) 1995 c. 46

(12) 1992 c. 5

- (i) is currently subject to any investigation into his or her professional conduct by any licensing, regulatory or other body;
- (j) is to his or her knowledge, or has been where the outcome was adverse, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud;
- (k) is the subject of any investigation by another Local Health Board or equivalent body, which might lead to his or her removal from any list or equivalent list;
- (l) is, or has been where the outcome was adverse, the subject of any investigation into his or her professional conduct in respect of any current or previous employment;
- (m) has been removed or contingently removed from, refused admission to, or conditionally included in any list or equivalent list kept by another Local Health Board or equivalent body, or is currently suspended from such a list and if so, why and the name of that Local Health Board or equivalent body; or
- (n) is, or has ever been, subject to a national disqualification,

and, if so, the practitioner must give details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(5) If the practitioner is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate, he or she must in addition make a declaration to the Local Health Board as to whether the body corporate—

- (a) has any criminal convictions in the United Kingdom;
- (b) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (c) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Local Health Board
- (d) has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body, where the outcome was adverse;
- (e) is currently subject to any investigation into its provision of professional services by any licensing, regulatory or other body;
- (f) is to the practitioner's knowledge, or has been where the outcome was adverse, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud;
- (g) is the subject of any investigation by another Local Health Board or equivalent body, which might lead to its removal from any list or equivalent list; or
- (h) has been removed or contingently removed from, refused admission to, or conditionally included in any list or equivalent list or is currently suspended from such a list,

and, if so, the practitioner must give the name and the address of the registered office of the body corporate and details, including approximate dates, or when any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(6) The practitioner must consent to a request being made by the Local Health Board to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, into the practitioner or a body corporate referred to in paragraphs (2) and (5) and, for the purposes of this paragraph, "employer" includes any partnership of which the ophthalmic medical practitioner or optician is or was a member;

(7) If, in the case of any application, the Local Health Board finds that the information, references or documentation supplied by the practitioner are not sufficient for it to decide the practitioner's

application, it must seek from the practitioner such further information, references or documentation as it may reasonably require in order to make a decision and the practitioner must supply the material so sought to the Local Health Board.

(8) In the case of an application to a Local Health Board by a practitioner, who is included in its ophthalmic list, seeking to withdraw from that list and to include his or her name in its supplementary list, the practitioner will only be required to provide the information required by paragraphs (2), (4) and (5) insofar as—

- (a) it has not already been supplied to that Local Health Board; or
- (b) it has changed since it was provided.

(9) Any person, who is not an optician, but expects to become so on successful completion of his or her training, may make an application to a Local Health Board not less than 3 months before he or she anticipates being entered on the register.

(10) An application under paragraph (9) must contain—

- (a) all information mentioned in paragraph (2), except that required by sub-paragraphs (f) and (g);
- (b) the undertakings and consents required by paragraphs (3) and (6);
- (c) any declaration required under paragraph (4) or (5), and

in the application of these Regulations to any such application, any reference to an optician is to be taken as being a reference to an applicant under paragraph (9).

(11) An applicant under paragraph (9) must provide the information required by paragraph (2) (f) and (g) as soon as he or she has been notified by the General Optical Council whether he or she has been admitted to the register and the Local Health Board will then, provided—

- (a) the requirements of paragraphs (9) and (10) have been complied with;
- (b) it has not sought further information, references or documentation under paragraph (7); and
- (c) it has not deferred the application under regulation 7,

decide the application within 7 days of receiving the information required under paragraph (2)(f) and (g).

### **Readmission**

5.—(1) Where a practitioner has been removed from its supplementary list by a Local Health Board on the grounds that he or she had been convicted of a criminal offence, and that conviction is overturned on appeal, it may agree to include that practitioner in its supplementary list without a full application if it—

- (a) is satisfied that there are no other matters that need to be considered; and
- (b) has received an undertaking from the practitioner to comply with the requirements of these Regulations.

(2) In a case to which paragraph (1) applies, if the conviction is reinstated on a further appeal, the previous determination of the Local Health Board to remove that practitioner from its supplementary list will once again have effect.

### **Decisions and grounds for appeal**

6.—(1) The grounds on which a Local Health Board may refuse to include a practitioner in its supplementary list are that—

- (a) having considered the declaration required by regulation 4(4) and, if applicable, regulation 4(5), and any other information or documents in its possession relating to the practitioner, it considers that he or she is unsuitable to be included in its supplementary list;
  - (b) having checked the information provided by the practitioner under regulation 4(2)(e), (f) and (g), it considers that he or she is unsuitable to be included in its supplementary list;
  - (c) having contacted the referees provided by the practitioner under regulation 4(2)(i), it is not satisfied with the references;
  - (d) having checked with the NHS Counter Fraud and Security Management Service for any facts that it considers relevant to past or current fraud investigations involving or related to the practitioner and, having considered these and any other facts in its possession relating to fraud involving or relating to the practitioner, it considers these justify such a refusal;
  - (e) having checked with the National Assembly for Wales for any facts that it considers relevant relating to past or current investigations or proceedings involving or related to the practitioner and, having considered these and any other facts in its possession involving or relating to the practitioner, it considers these justify such a refusal; or
  - (f) there are grounds for considering that admitting the practitioner to its supplementary list would be prejudicial to the efficiency of the service which he or she would undertake.
- (2) The grounds on which a Local Health Board must refuse to include a practitioner in its supplementary list are that—
- (a) the practitioner has not provided satisfactory evidence that he or she intends to assist in the provision of general ophthalmic services in its area;
  - (b) the practitioner is included in the ophthalmic list of any Local Health Board, unless he or she has given notice in writing to that Local Health Board that he or she wishes to withdraw from that list;
  - (c) the practitioner is included in the supplementary list of another Local Health Board, unless the practitioner has given notice in writing to that Local Health Board that he or she wishes to withdraw from that list;
  - (d) it is not satisfied that the practitioner has the knowledge of English, which, in the practitioner's own interests or those of the practitioner's patients, is necessary in assisting in the provision of general ophthalmic services in its area;
  - (e) the practitioner has been convicted in the United Kingdom of murder;
  - (f) the practitioner has been convicted in the United Kingdom of a criminal offence, other than murder, committed on or after 1 February 2006 and has been sentenced to a term of imprisonment of over six months;
  - (g) the practitioner is subject to a national disqualification;
  - (h) the practitioner has not updated his or her application in accordance with regulation 7(4); or
  - (i) in a case to which regulation 15(4) applies, the practitioner does not notify the Local Health Board under regulation 15(5) that he or she wishes to be included in its supplementary list subject to the specified conditions.
- (3) Before making a decision on the application submitted by the practitioner, the Local Health Board must—
- (a) check, as far as reasonably practicable, the information that has been provided, in particular that provided under regulation 4(2), (4) and, if applicable, (5), and ensure that it has sight of relevant documents;
  - (b) check with the NHS Counter Fraud and Security Management Service whether it has any record of fraud in relation to the practitioner;



- (c) check with the National Assembly for Wales as to any information held by it as to any record about past or current investigations or proceedings involving or related to that practitioner; and
  - (d) take up the references were provided under regulation 4(2)(i).
- (4) Where the Local Health Board is considering a refusal under paragraph (1) or (2), it must consider all the facts which appear to it to be relevant, and must in particular take into consideration, in relation to paragraph (1)(a), (d), or (e)—
- (a) the nature of any offence, investigation or incident;
  - (b) the length of time since any offence, incident, conviction or investigation;
  - (c) whether there are other offences, incidents or investigations to be considered;
  - (d) any action or penalty imposed by any licensing, regulatory or other body, the police or the courts as a result of any such offence, incident or investigation;
  - (e) the relevance of any offence, investigation or incident to the provision by the practitioner of general ophthalmic services and any likely risk to his or her patients or to public finances;
  - (f) whether any offence was a sexual offence for the purposes of Part 2 of the Sexual Offences Act 2003(13), or if it had been committed in England and Wales, would have constituted such an offence;
  - (g) whether the practitioner has been refused admission to, or conditionally included in, removed or contingently removed or is currently suspended from, any list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action; and
  - (h) whether the practitioner was at the time, has in the preceding six months been, or as at the time of the originating events, a director of a body corporate, which was refused admission to, conditionally included in, removed or contingently removed from, any list or equivalent list or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Local Health Board or equivalent body in each case.
- (5) When the Local Health Board takes into consideration any of the matters set out in paragraph (4), it must consider the overall effect of all the matters being considered.
- (6) The Local Health Board will give notice in writing of its decision whether or not to include the practitioner in its supplementary list with 7 days of that decision.
- (7) Any notice in which the Local Health Board advises of its refusal of an application for inclusion in its supplementary list, must contain—
- (a) a statement of the reasons for its decision (including any facts relied upon);
  - (b) details of any right of appeal arising under regulation 15; and
  - (c) notice that any right of appeal must be exercised within the period of 28 days beginning with the date on which it gave notice of its decision.

### **Deferment of decision on application**

7.—(1) A Local Health Board may defer a decision on the application of a practitioner to be included in its supplementary list, where—

- (a) there are, in respect of that practitioner—
  - (i) criminal proceedings in the United Kingdom, or
  - (ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence,

which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to that practitioner's removal from its supplementary list, if he or she were to be included in it;

- (b) in respect of a body corporate of which the practitioner is, has in the preceding 6 months been, or was at the time of the originating events a director there are—

- (i) criminal proceedings in the United Kingdom, or
- (ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence,

which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to the practitioner's removal from its supplementary list, if he or she were to be included in it;

- (c) there is an investigation anywhere in the world by the practitioner's licensing or regulatory body or any other investigation (including one by another Local Health Board or equivalent body) relating to the practitioner in his or her professional capacity that, if adverse, would be likely to lead to the practitioner's removal from the Local Health Board's supplementary list, if he or she were to be included in it;
- (d) the practitioner is suspended from any list or equivalent list;
- (e) a body corporate of which the practitioner is, has in the preceding six months been, or was at the time of the originating events, a director, is suspended from any list or equivalent list;
- (f) the FHSAA is considering an appeal by the practitioner against a decision of a Local Health Board to refuse to include the practitioner in its supplementary list, or to conditionally include the practitioner in or to contingently remove him or her from any list kept by a Local Health Board and if that appeal is unsuccessful the Local Health Board would be likely to remove the practitioner from its supplementary list, if he or she were to be included in it;
- (g) the FHSAA is considering an appeal by a body corporate of which the practitioner is, has in the preceding six months been, or was at the time of the originating events a director, against a decision of a Local Health Board or equivalent body to refuse to admit the body corporate to its list, or to conditionally include it in or to contingently remove it from any list kept by the Local Health Board or equivalent body, and if that appeal is unsuccessful the Local Health Board would be likely to remove the practitioner from its supplementary list, if the practitioner were to be included in it;
- (h) the practitioner is being investigated by the NHS Counter Fraud and Security Management Service in relation to any fraud, where the result, if adverse, would be likely to lead to the practitioner's removal from the Local Health Board's list if the practitioner were to be included in it;
- (i) a body corporate, of which the practitioner is, has in the preceding six months been, or was at the time of the originating events, a director, is being investigated in relation to any fraud, where the result, if adverse, would be likely to lead to the practitioner's removal from the Local Health Board's supplementary list, if he or she were to be included in it; and
- (j) the FHSAA is considering an application by a Local Health Board for a national disqualification of the practitioner or of a body corporate of which the practitioner is, has in the preceding six months been, or was at the time of the originating events, a director.

(2) A Local Health Board may only defer a decision under paragraph (1) until the outcome of the relevant event in any of the sub-paragraphs (a) to (j) of that paragraph is known.

(3) The Local Health Board must notify the practitioner that it has deferred a decision on the application and the reasons for it.

(4) Once the outcome of the relevant event mentioned in paragraph (1) is known, the Local Health Board must notify the practitioner that he or she must within 28 days of the notification of the requirement (or such longer period as the Local Health Board may agree)—

- (a) update his or her application; and
- (b) confirm in writing that he or she wishes to proceed with the application.

(5) Provided any additional information has been received within 28 days or the time agreed, the Local Health Board will notify the practitioner as soon as possible—

- (a) that the practitioner's application to be included has been successful; or
- (b) that it has decided to refuse the practitioner's application or to impose conditions on the practitioner's inclusion, and the reasons for it (including any facts relied upon), and of any right of appeal under regulation 15.

### **Conditional inclusion**

**8.—(1)** A Local Health Board may determine that if a practitioner is to be included in the supplementary list, the practitioner is to be subject, whilst he or she remains included in that list, to the imposition of conditions, having regard to the requirements of section 43D(5) (purpose of conditions).

(2) If a practitioner fails to comply with a condition, which has been imposed by the Local Health Board, it may remove that practitioner from its supplementary list.

(3) Where the Local Health Board is considering the removal of a practitioner from its supplementary list for breach of a condition, it must give the practitioner—

- (a) notice of any allegation against him or her;
- (b) notice of the grounds for the action it is considering;
- (c) the opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put his or her case at an oral hearing before it, if the practitioner requests one within the 28 day period mentioned in sub-paragraph (c).

(4) If the practitioner does not make any representations within the period specified in paragraph (3)(c), the Local Health Board will decide the matter and inform the practitioner of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15

within 7 days of making that decision.

(5) If the practitioner does make representations, the Local Health Board must take them into account before reaching its decision, it will then notify the practitioner of—

- (a) its decision and the reasons for making it (including any facts relied upon); and
- (b) any right of appeal under regulation 15

within 7 days of making that decision.

(6) If the practitioner requests an oral hearing, this must take place before the Local Health Board reaches its decision and it must then notify the practitioner of—

- (a) its decision and the reasons for making it (including any facts relied upon); and
- (b) any right of appeal under regulation 15

within 7 days of making that decision.

(7) When the Local Health Board notifies the practitioner of any decision made in accordance with this regulation, it must inform the practitioner that if he or she wishes to exercise a right of

appeal, the practitioner must do so within 28 days, beginning with the date on which notice of the decision was given, and it must tell the practitioner how to exercise any such right.

(8) The Local Health Board must also notify the practitioner of the practitioner's right to have the decision reviewed in accordance with regulation 14.

(9) Where the Local Health Board determines that a practitioner—

- (a) may be included in its supplementary list, but subject to conditions imposed under this regulation; or
- (b) is to be subject to conditions while the practitioner remains included in its supplementary list,

the practitioner's name may be included (or continue to be included) in its supplementary list during the period for bringing any appeal to the FHSAA pursuant to regulation 15, of if an appeal is brought, until such time as the appeal has been decided, provided the practitioner agrees in writing to be bound by the conditions imposed until the time for appeal has expired or the appeal is decided.

### **Requirements with which a practitioner in the supplementary list must comply**

9.—(1) A practitioner, who is included in the supplementary list of a Local Health Board, must make a declaration in writing to that Local Health Board within 7 days of its occurrence if he or she—

- (a) is convicted of any criminal offence in the United Kingdom;
- (b) is bound over following a criminal conviction in the United Kingdom;
- (c) accepts a police caution in the United Kingdom;
- (d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);
- (e) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him or her absolutely;
- (f) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (g) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales, would constitute a criminal offence;
- (h) is informed by any licensing, regulatory or other body of the outcome of any investigation into the practitioner's professional conduct, and there is a finding against the practitioner;
- (i) becomes the subject of any investigation into his or her professional conduct by any licensing, regulatory or other body;
- (j) becomes subject to an investigation into the practitioner's professional conduct in respect of any current or previous employment, or is informed of the outcome of any such investigation, where it is adverse;
- (k) becomes, to the practitioner's knowledge, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or the practitioner is informed of the outcome of such an investigation, where it is adverse;
- (l) becomes the subject of any investigation by another Local Health Board, which might lead to the practitioner's removal from any list or equivalent list; or
- (m) is removed, contingently removed or suspended from, refused admission to, or conditionally included in any list or equivalent list,

and, if so, the practitioner must give details, including approximate dates, and where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(2) A practitioner who is included in the supplementary list of a Local Health Board and is, or was in the preceding six months, or was at the time of the originating events, a director of a body corporate, must make a declaration in writing to that Local Health Board within 7 days of its occurrence if that body corporate—

- (a) is convicted of any criminal offence in the United Kingdom;
- (b) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (c) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales would constitute a criminal offence;
- (d) is informed by any licensing, regulatory or other body of the outcome of any investigation into its provision of professional services, and there is an finding against the body corporate;
- (e) becomes the subject of any investigation into its provision of professional services by any licensing, regulatory or other body;
- (f) becomes to the practitioner’s knowledge the subject of any investigation in relation to fraud, or is informed of the outcome of such an investigation, where it is adverse;
- (g) becomes the subject of any investigation by another Local Health Board or equivalent body, which might lead to its removal from any list or equivalent list; or
- (h) is removed, contingently removed or suspended from, refused admission to, or conditionally included in any list or equivalent list,

and, if so, give the name and registered address of the body corporate and details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(3) A practitioner who is included in the supplementary list of a Local Health Board must consent to a request being made by that Local Health Board to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by that employer or body into the practitioner or a body corporate referred to in paragraph (1) or (2) and, for the purposes of this paragraph, “employer” includes any partnership of which the practitioner is or was a member.

(4) A practitioner who is included in the supplementary list of a Local Health Board must supply that Local Health Board with an enhanced criminal record certificate under section 115 of the Police Act 1997(14) in relation to the practitioner, if the Local Health Board at any time, for reasonable cause, gives him or her notice to provide such a certificate.

### **Removal from supplementary list**

**10.—**(1) The Local Health Board must remove a practitioner from its supplementary list where it becomes aware that the practitioner—

- (a) has been convicted in the United Kingdom of murder;
- (b) has been convicted in the United Kingdom of a criminal offence, other than murder, committed on or after 1 February 2006, and has been sentenced to a term of imprisonment of over six months;

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(14) 1997 c. 50; relevant amendments are the 2001 Act, section 19(1), (2) and (3); and the 2002 Act, section 2(5) and paragraph 54 of Schedule 2.

- (c) is subject to a national disqualification;
- (d) has died;
- (e) has otherwise ceased to be a practitioner;
- (f) in the case of a practitioner who is an ophthalmic medical practitioner, is the subject of—
  - (i) a direction given by the Professional Conduct Committee of the General Medical Council under section 36(1)(i) or (ii) of the Medical Act 1983(15) (professional misconduct and criminal offences),
  - (ii) an order or a direction made by that Committee under section 38(1) of the Medical Act 1983 (order for immediate suspension), or
  - (iii) from the coming into force of article 13 of the Medical Act 1983 (Amendment) Order 2002, a direction by a Fitness to Practise Panel of the General Medical Council for erasure or immediate suspension under section 35D(2)(a) or (b), 10(a) or (b), or 12(a) or (b) (functions of a Fitness to Practise Panel), or section 38(1) (power to order immediate suspension etc.) of the Medical Act 1983;
- (g) in the case of a practitioner who is an optician, is the subject of a suspension order under section 17 of the Opticians Act;
- (h) in the case of a practitioner who is an optician, is the subject of a direction made by the Fitness to Practise Committee of the General Optical Council other than in a health case to erase the practitioner’s name from the appropriate register or suspend the practitioner’s registration under section 13F(3)(a) or (b), 7(a) or (b) or 13(a) or (b) (powers of the Fitness to Practise Committee) of the Opticians Act;
- (i) is included in the ophthalmic list of any Local Health Board, or the supplementary list of another Local Health Board,

and must, except in a case falling within sub-paragraph (d), notify the practitioner immediately that it has done so.

(2) In paragraph (1), “health case” has the meaning given to it in section 13G(6) of the Opticians Act.

(3) Where the Local Health Board is notified by the FHSAA that it has considered an appeal by a practitioner against—

- (a) a contingent removal by the Local Health Board and it has decided to remove the practitioner instead; or
- (b) a conditional inclusion, where the practitioner has been conditionally included in the supplementary list until the appeal has been decided, and has decided not to include the practitioner,

the Local Health Board must remove the practitioner from its supplementary list and must notify the practitioner immediately that it has done so.

(4) The Local Health Board may remove a practitioner from its supplementary list where any of the conditions set out in paragraph (5) is satisfied.

(5) The conditions mentioned in paragraph (4) are that—

- (a) the continued inclusion of that practitioner in the supplementary list would be prejudicial to the efficiency of the services which those included in the list assist in providing (“an efficiency case”);
- (b) the practitioner is involved in a fraud case in relation to any health scheme; or
- (c) the practitioner is unsuitable to be included in that list (“an unsuitability case”).

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(15) 1983 c. 54; section 36 was amended by S.I.2000/1803

(6) For the purposes of this regulation, in addition to the services covered by the definition of “health scheme” in section 48F(8), the following are also health schemes—

- (a) health services, including medical and surgical treatment, provide by Her Majesty’s Forces;
- (b) services provided by Port Health Authorities constituted under the Public Health (Control of Diseases) Act 1984(16);
- (c) health services provided to a prisoner in the care of a medical officer or such officer of a prison appointed for the purposes of section 7 of the Prison Act 1952(17); and
- (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

(7) Where the practitioner cannot demonstrate that he or she assisted in the provision of general ophthalmic services within the Local Health Board’s area during the preceding six months, it may remove the practitioner from its supplementary list.

(8) In calculating the period of six months referred to in paragraph (7), the Local Health Board will disregard any period during which the practitioner was—

- (a) suspended under these Regulations; or
- (b) performing whole-time service in the Armed Forces of the Crown—
  - (i) in a national emergency as a volunteer or otherwise; or
  - (ii) which was compulsory, including service resulting from any reserve liability or equivalent service by a person liable for whole-time service in those forces.

(9) Where a Local Health Board is considering removing a practitioner from its supplementary list under paragraphs (4) to (7), regulation 8, 12(4)(c) or 15(6) or contingently removing the practitioner under regulation 12, it must give the practitioner—

- (a) notice of any allegation against him or her;
- (b) notice of what action it is considering and on what grounds;
- (c) the opportunity to make written representations to it within 28 days of the date of notification under sub-paragraph (b); and
- (d) the opportunity to put his or her case at an oral hearing before it, if the practitioner so requests within the 28 day period referred to in sub-paragraph (c).

(10) If there are no representations within the period specified in paragraph (9)(c), the Local Health Board must notify the practitioner of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15

within 7 days of making that decision.

(11) If the practitioner makes representations the Local Health Board must take them into account before reaching its decision, and must notify the practitioner of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(12) If the practitioner requests an oral hearing, this must take place before the Local Health Board reaches its decision and it must then notify the practitioner of—

- (a) its decision and the reasons for it (including any facts relied upon); and

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(16) 1984 c. 22  
(17) 1952 c. 52

(b) any right of appeal under regulation 15, within 7 days of making that decision.

(13) When the Local Health Board notifies the practitioner of any decision it must inform the practitioner that if he or she wishes to exercise a right of appeal then he or she must do so within the period of 28 days beginning with the date on which it informed the practitioner of its decision and it must also tell the practitioner how to exercise any such right.

(14) The Local Health Board must also notify the practitioner of the practitioner's right to have the decision reviewed in accordance with regulation 14.

(15) Where the Local Health Board decides to remove a practitioner under paragraph (4) or (7), the practitioner will not be removed from its supplementary list until—

(a) the end of a period of 28 days starting with the day on which the Local Health Board reaches its decision; or

(b) any appeal is disposed of by the FHSAA, whichever is the later.

#### **Criteria for a decision on removal**

**11.—**(1) Where a Local Health Board is considering whether to remove a practitioner from its supplementary list under regulation 10(4) and (5)(c) (“an unsuitability case”) it must—

- (a) consider any information relating to the practitioner which it has received in accordance with any provision of regulation 9;
- (b) consider any information held by the National Assembly for Wales as to any record about past or current investigations or proceedings involving or related to the practitioner; and
- (c) in reaching its decision, take into consideration the matters set out in paragraph (2).

(2) The matters referred to in paragraph (1)(c) are—

- (a) the nature of any offence, investigation or incident;
- (b) the length of time since any offence, incident conviction or investigation occurred or was concluded;
- (c) whether there are other offences, incidents or investigations to be considered;
- (d) any action taken or penalty imposed by any licensing or regulatory body, the police or the courts as a result of any such offence, incident or investigation;
- (e) the relevance of any offence, incident or investigation in respect of the practitioner's provision of general ophthalmic services and any likely risk to any patients or to public finances;
- (f) whether any criminal offence was a sexual offence for the purposes of Part 2 of the Sexual Offences Act 2003, or if it had been committed in England and Wales, would have been such an offence;
- (g) whether the practitioner has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from, any list or any equivalent list, and if so, the reasons relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action; and
- (h) whether the practitioner was at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which was refused admission to, conditionally included in, removed or contingently removed from any list or equivalent list or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Local Health Board or equivalent body in each case for such action.



- (3) Where a Local Health Board is considering whether to remove a practitioner from its supplementary list under regulation 10(4) and (5)(b) (“a fraud case”), it must consider—
- (a) any information relating to the practitioner which it has received in accordance with any provision of regulation 9;
  - (b) any information held by the National Assembly for Wales as to any record about past or current investigations or proceedings involving or relating to the practitioner; and
  - (c) the matters set out in paragraph (4).
- (4) The matters referred to in paragraph (3)(c) are—
- (a) the nature of any incidents of fraud;
  - (b) the length of time since the last incidence of fraud occurred and since any investigation into it was concluded;
  - (c) whether there are other incidents of fraud or other criminal offences to be considered;
  - (d) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such offence, investigation or incident;
  - (e) the relevance of any investigation into an incident of fraud to the practitioner assisting in the provision of general ophthalmic services and the likely risk to patients or to public finances;
  - (f) whether the practitioner has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from, any list or any equivalent list, and, if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action;
  - (g) whether the practitioner was at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate, which was refused admission to, conditionally included in, removed or contingently removed from, any list or equivalent list, or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Local Health Board or equivalent body in each case.
- (5) Where a Local Health Board is considering removal of a practitioner from its supplementary list under regulation 10(4) and (5)(a) (“an efficiency case”), it must—
- (a) consider any information relating to the practitioner which it has received in accordance with any provision of regulation 9;
  - (b) consider any information held by the National Assembly for Wales as to any record about past or current investigations or proceedings involving or relating to the practitioner; and
  - (c) the matters referred to in paragraph (6).
- (6) The matters referred to in paragraph (5)(c) are—
- (a) the nature of any incident which was prejudicial to the efficiency of the general ophthalmic services that the practitioner assisted in providing;
  - (b) the length of time since the last incident occurred and since any investigation into it was concluded;
  - (c) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident;
  - (d) the nature of the incident and whether there is a likely risk to patients;
  - (e) whether the practitioner has previously failed to supply information, make a declaration or comply with an undertaking required by these Regulations or the Ophthalmic Regulations;

- (f) whether the practitioner has ever failed to comply with a request by the Local Health Board to take an assessment by the NCAA on or before 31 March 2005 or thereafter by the NPSA;
- (g) whether the practitioner has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from, any list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or the equivalent body for such action; and
- (h) whether the practitioner was at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which was refused admission to, conditionally included in, removed or contingently removed from any list or equivalent list, or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Local Health Board or equivalent body in each case for such action.

(7) In making any decision under regulation 10, the Local Health Board must take into account the overall effect of any relevant incidents and offences relating to the practitioner of which it is aware, whichever condition it relies on.

(8) When making a decision on any condition in regulation 10(5), the Local Health Board must state in its decision on which condition it relies.

### **Contingent removal**

**12.**—(1) In an efficiency case or a fraud case the Local Health Board may, instead of deciding to remove a practitioner from its supplementary list, decide to remove the practitioner contingently and regulation 10(13) and (14) will apply to that decision.

(2) If it so decides, it must impose such conditions as it may decide on the practitioner's inclusion in its supplementary list with a view to—

- (a) removing any prejudice to the efficiency of the services in question (in an efficiency case); or
- (b) preventing further acts or omissions (in a fraud case).

(3) Where the Local Health Board decides to contingently remove a practitioner under paragraph (1) that decision will not take effect until—

- (a) the end of a period of 28 days starting with the day on which the Local Health Board reaches its decision; or
- (b) any appeal is disposed of by the FHSAA,

whichever is the later.

(4) If the Local Health Board determines that the practitioner has failed to comply with a condition it may decide to—

- (a) vary the conditions imposed;
- (b) impose new conditions;
- (c) remove the practitioner from its supplementary list.

### **Suspension**

**13.**—(1) If a Local Health Board is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend a practitioner from its supplementary list in accordance with the provisions of this regulation—

- (a) while it decides whether or not to exercise its powers to remove the practitioner under regulation 10 or contingently remove the practitioner under regulation 12;

- (b) while it waits for a decision of a licensing or regulatory body or court anywhere in the world which affects the practitioner;
  - (c) where it has decided to remove the practitioner, but before that decision takes effect; or
  - (d) pending an appeal under these Regulations.
- (2) In a case falling within paragraph (1)(a), the Local Health Board must specify a period, not exceeding six months, as the period of suspension.
- (3) In a case falling within paragraph (1)(b), the Local Health Board may specify that the practitioner remains suspended, after the decision referred to in that sub-paragraph has been made, for an additional period not exceeding six months.
- (4) The period of suspension under paragraph (2) or (3) may extend beyond six months if—
- (a) on the application of the Local Health Board, the FHSAA so orders;
  - (b) the Local Health Board applied under sub-paragraph (a) before the expiry of the period of suspension, but the FHSAA has not made an order by the time it expires, in which case it continues until the FHSAA makes an order.
- (5) If the FHSAA does so order, it must specify—
- (a) the date on which the period of suspension is to end;
  - (b) an event beyond which it is not to continue; or
  - (c) both a date on which it is to end and an event beyond which it is not to continue, in which case it will end on the earlier of that date or that event, as the case may be.
- (6) The FHSAA may, on the application of the Local Health Board, make a further order, which must also comply with paragraph (5), at any time while the period of suspension pursuant to the earlier order is still continuing.
- (7) If the Local Health Board suspends a practitioner in a case falling within paragraph (1)(c) or (d), the suspension has effect from the date the Local Health Board informed the practitioner of the suspension and will continue until—
- (a) the expiry of any appeal period; or
  - (b) if the practitioner appeals under regulation 15, the FHSAA has disposed of the appeal.
- (8) The Local Health Board may extend the period of suspension under paragraph (2) or impose a further period of suspension under paragraph (3), so long as the aggregate does not exceed six months.
- (9) The effect of a suspension is that while a practitioner is suspended under these Regulations that practitioner is to be treated as not being included in the Local Health Board's supplementary list, even though his or her name appears in it.
- (10) The Local Health Board may at any time revoke the suspension and inform the practitioner of its decision.
- (11) Where a Local Health Board is considering suspending a practitioner or varying the period of suspension under this regulation, it must give the practitioner—
- (a) notice of any allegation against the practitioner;
  - (b) notice of what action it is considering and on what grounds;
  - (c) the opportunity to put his or her case at an oral hearing before it, on a specified day, provided that at least 24 hours notice of the hearing is given to the practitioner.
- (12) If the practitioner does not wish to have an oral hearing or does not attend the oral hearing the Local Health Board may suspend the practitioner with immediate effect.
- (13) If an oral hearing does take place, the Local Health Board must take into account any representations made before it reaches its decision.

(14) The Local Health Board may suspend the practitioner with immediate effect following the hearing.

(15) The Local Health Board must notify the practitioner of its decision and the reasons for it (including any facts relied upon) within 7 days of making that decision.

(16) The Local Health Board must notify the practitioner of any right of review under regulation 14.

(17) During a period of suspension payments may be made to or in respect of the practitioner in accordance with a determination by the National Assembly for Wales.

## Reviews

**14.—**(1) A Local Health Board may, and if requested in writing to do so by the practitioner must, review its decision to—

- (a) impose or vary conditions imposed under regulation 8;
- (b) impose or vary conditions imposed under regulation 12; or
- (c) suspend the practitioner under regulation 13(1)(a) or (b), except where a suspension is continuing by order of the FHSAA.

(2) The practitioner may not request a review of the Local Health Board's decision until the expiry of a three month period beginning with the date of its decision, or in the case of a conditional inclusion under regulation 8, beginning with the date it includes the practitioner's name in the supplementary list.

(3) After a review has taken place, the practitioner cannot request a further review before the expiry of six months from the date of the decision on the last review.

(4) If a Local Health Board decides to review its decision under this regulation to conditionally include, contingently remove or suspend a practitioner, it must give the practitioner—

- (a) notice of any allegation against the practitioner;
- (b) notice of what action it is considering and on what grounds;
- (c) with opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put his or her case at an oral hearing before it, if the practitioner so requests within the 28 day period mentioned in sub-paragraph (c).

(5) If there are no representations with the period specified in paragraph (4)(c), the Local Health Board must notify the practitioner of its decision, the reasons for it (including any facts relied upon) and of any right of appeal under regulation 15.

(6) If the practitioner makes representations, the Local Health Board must take them into account before reaching its decision.

(7) The Local Health Board must notify the practitioner of—

- (a) its decision;
- (b) the reasons for it (including any facts relied upon);
- (c) any right of appeal under regulation 15; and
- (d) the right to a further review under this regulation,

within 7 days of making that decision.

(8) When the Local Health Board notifies the practitioner under paragraph (7)(c), it must also inform the practitioner that if he or she wishes to exercise a right of appeal then he or she must do so within the period of 28 days beginning with the date on which it gave notice of its decision and it must also inform the practitioner how to exercise any such right.

(9) If a Local Health Board decides to review its decision to impose conditions under regulation 8, it may vary the conditions, impose different conditions, remove the conditions or remove the practitioner from its supplementary list.

(10) If a Local Health Board decides to review its decision to impose a contingent removal under regulation 12, it may vary the conditions, impose different conditions, or remove the practitioner from its supplementary list.

(11) If a Local Health Board decides to review its decision to suspend a practitioner under regulation 13(1)(a) or (b), it may decide to impose conditions or remove the practitioner from its supplementary list.

(12) A Local Health Board may not review its decision to suspend a practitioner under regulation 13(1)(c) or (d).

## **Appeals**

**15.—**(1) A practitioner may appeal (which will be by way of redetermination) to the FHSAA against a decision of a Local Health Board mentioned in paragraph (2) by giving notice to the FHSAA.

(2) The Local Health Board decisions in question are—

- (a) a decision to refuse admission to the supplementary list under regulation 6(1);
- (b) a decision to impose a particular condition under regulation 8, or to vary any condition or to impose a different condition under that regulation;
- (c) any decision on an review under regulation 14 of a conditional inclusion under regulation 8;
- (d) any decision to remove the practitioner under regulations 8(2), 10(4) or (7), 12(3)(c) or 15(6)(b);
- (e) any decision to impose a particular condition under regulation 12(1), or to vary any condition or to impose a different condition that regulation;
- (f) any decision on a review under regulation 14 of a contingent removal under regulation 12(1); and
- (g) any decision to transfer or move the practitioner under regulation 21(12).

(3) On appeal the FHSAA may make any decision which the Local Health Board could have made.

(4) Where the decision of the FHSAA on appeal is that the appellant practitioner's inclusion in the supplementary list is to be subject to conditions, whether or not those conditions are identical to the conditions imposed by the Local Health Board, the Local Health Board must ask the appellant to notify it within 28 days of the decision (or such longer period as the Local Health Board agrees) whether the practitioner wishes to be included in the supplementary list subject to those conditions.

(5) If the practitioner notifies the Local Health Board that he or she does wish to be included in the supplementary list subject to the conditions, it will so include the practitioner.

(6) Where the FHSAA on appeal decides to impose a contingent removal—

- (a) the Local Health Board and the practitioner may each apply to the FHSAA for the conditions imposed on the practitioner to be varied, for different conditions to be imposed, or for the contingent removal to be revoked; and
- (b) the Local Health Board may remove the practitioner from its supplementary list if it determines that he or she has failed to comply with a condition.

## Notification

16.—(1) Where a Local Health Board decides to—

- (a) refuse to admit a practitioner to its supplementary list on the grounds specified in regulation 6;
- (b) impose conditions on the practitioner’s inclusion in that list under regulation 8;
- (c) remove the practitioner from that list under regulation 10;
- (d) remove the practitioner from that list contingently under regulation 12; or
- (e) suspend the practitioner from that list under regulation 13,

it must notify the persons or bodies specified in paragraph (2) and must additionally notify those included in paragraph (3), if requested to do so by those person or bodies in writing (including electronically), of the matters set out in paragraph (4).

(2) Where paragraph (1) applies, a Local Health Board must, within 7 days of that decision, notify—

- (a) the National Assembly for Wales;
- (b) any Local Health Board or equivalent body that, to the knowledge of the notifying Local Health Board—
  - (i) has the practitioner in any list or equivalent list,
  - (ii) is considering an application for inclusion in any list or equivalent list by the practitioner, or
  - (iii) has in its area any place where the practitioner assists in the provision of general ophthalmic services;
- (c) the Secretary of State;
- (d) the Scottish Executive;
- (e) the Northern Ireland Executive;
- (f) the General Medical Council, General Optical Council or any other appropriate regulatory body;
- (g) the NPSA; and
- (h) where it is a fraud case, the NHS Counter Fraud and Security Management Service.

(3) The persons or bodies to be additionally notified in accordance with paragraph (1) are—

- (a) persons or bodies that can establish that they—
  - (i) are or were employing the practitioner, are using or have used the practitioner’s services, or
  - (ii) are considering employing or using the practitioner’s services in a professional capacity; and
- (b) a partnership, any of whose members provide or assist in the provision of general ophthalmic services, and can establish that the practitioner is or was a member of the partnership or that it is considering inviting the practitioner to become such a member.

(4) The matters referred to in paragraph (1) are—

- (a) the name, address and date of birth of the practitioner;
- (b) the practitioner’s registration number;
- (c) the date and a copy of the decision of the Local Health Board; and
- (d) a contact name of a person in the Local Health Board for further enquiries.

(5) The Local Health Board must send to the practitioner concerned a copy of any information about him or her that it has provided to the persons or bodies listed in paragraph (2) or (3), and any correspondence with that person or body relating to that information.

(6) Where the Local Health Board has notified any of the persons or bodies specified in paragraph (2) or (3) of the matters set out in paragraph (4), it may, in addition, if requested by that person or body, notify that person or body of any evidence that was considered, including any representations from the practitioner.

(7) Where a Local Health Board is notified by the FHSAA that it has imposed a national disqualification on a practitioner who was, or had applied to be, included in its supplementary list, the Local Health Board must notify the persons or bodies listed in paragraph (2)(b), (g) and (h) and paragraph (3).

(8) Where a decision is changed on review or appeal, or a suspension lapses, the Local Health Board must notify the persons or bodies that were notified of the original decision of the later decision or of the fact that the suspension has lapsed.

#### **Amendment of or withdrawal from supplementary lists**

17.—(1) A practitioner must, unless it is impracticable for him or her to do so, give notice in writing to the Local Health Board within 28 days of any occurrence requiring a change in the information recorded about the practitioner in the supplementary list and of any change in his or her private address.

(2) Where a practitioner intends to withdraw from the supplementary list, unless it is impracticable for him or her to do so, the practitioner must give notice in writing to the Local Health Board at least three months in advance of that date.

(3) A practitioner must give notice in writing to the Local Health Board that he or she intends to withdraw from its supplementary list if the practitioner is accepted on to its ophthalmic list, or on to the ophthalmic list or supplementary list of another Local Health Board.

(4) The Local Health Board will, on receiving notice from any practitioner—

(a) pursuant to paragraph (1), amend its supplementary list as soon as possible;

(b) pursuant to paragraph (2), amend its supplementary list either—

(i) on the date which falls 3 months after the date of the notice, or

(ii) on the date from which the Local Health Board has agreed that the withdrawal will take effect,

whichever is the earlier; or

(c) pursuant to paragraph (3), immediately remove the practitioner's name from the list.

(5) A practitioner may withdraw a notice given pursuant to paragraph (1) or (2) at any time before the Local Health Board removes his or her name from its supplementary list.

(6) A notice given pursuant to paragraph (3) may not be withdraw once the practitioner has been accepted on that other list.

#### **Restriction on withdrawal from lists**

18.—(1) Where a Local Health Board is investigating a practitioner—

(a) for the purposes of deciding whether or not to exercise its powers to remove the practitioner under regulation 12; or

(b) who has been suspended under regulation 13,

the practitioner may not withdraw from any list kept by a Local Health Board in which he or she is included, except where the National Assembly for Wales has given its consent, until the matter has been finally determined by the Local Health Board.

(2) Where a Local Health Board has decided to remove a practitioner from its supplementary list under regulation 10(4) to (7) or to contingently remove the practitioner from it under regulation 12, but has not yet given effect to its decision, the practitioner may not withdraw from any list kept by the Local Health Board in which he or she is included, except where the National Assembly for Wales has given its consent.

(3) Where a Local Health Board has suspended a practitioner under regulation 13(1)(b), the practitioner may not withdraw from any list kept by a Local Health Board in which he or she is included, except where the National Assembly for Wales has given its consent, until the decision of the relevant court or body is known and the matter has been considered and finally determined by the Local Health Board

### **Review periods for national disqualification**

**19.** The period for review will be the period specified below, instead of that set out in section 49N(8), where the circumstances are that—

- (a) on making a decision to impose a national disqualification, the FHSAA states that it is of the opinion that the criminal or professional conduct of the practitioner is such that there is no realistic prospect of a further review being successful, if held within the period specified in section 49N(8)(a), in which case the reference to “two years” in that section is a reference to five years;
- (b) on the last review by the FHSAA of a national disqualification the practitioner was unsuccessful and the FHSAA states that it is of the opinion that there is no realistic prospect of a further review being successful if held within a period of three years beginning with the date of its decision on that review, in which case the reference to “one year” in section 49N(8) (b) is a reference to three years;
- (c) the FHSAA states that it is of the opinion that, because a criminal conviction considered by the FHSAA in reaching the decision that has effect has been quashed or the penalty reduced on appeal, there is need for an immediate review, in which case the reference to “two years” or “one year” in section 49N(8) is a reference to the period that has already elapsed; or
- (d) the FHSAA is of the opinion that because the decision of a licensing, regulatory or other body has been quashed or the penalty reduced on appeal, there is a need for an immediate review, in which case the reference to “two years” or “one year” in section 49N(8) is a reference to the period that has already elapsed.

### **Disclosure of information**

**20.—(1)** The Local Health Board may disclose information supplied to it or acquired by it pursuant to these Regulations to any of the following—

- (a) the National Assembly for Wales;
- (b) any other Local Health Board or equivalent body, which to its knowledge—
  - (i) has a practitioner to whom that information relates in any of its lists,
  - (ii) is considering an application from such a practitioner for inclusion in any of its lists,  
or
  - (iii) has in its area any place where the practitioner assists in the provision of general ophthalmic services;



- (c) the Secretary of State;
- (d) the Scottish Executive;
- (e) the Northern Ireland Executive;
- (f) the General Medical Council, General Optical Council or any other licensing or regulatory body;
- (g) any organisation or employer that, to the knowledge of the Local Health Board, employs or uses the services of the practitioner, to whom that information relates, in a professional capacity;
- (h) any partnership, any of whose members provide or assist in the provision of general ophthalmic services and of which, to the knowledge of the Local Health Board, the practitioner is a member or that is considering inviting the practitioner to become a member; and
- (i) where an allegation of fraud is being considered, the NHS Counter Fraud and Security Management Service.

(2) The Local Health Board must disclose to the National Assembly for Wales information supplied to it or acquired by it pursuant to these Regulations, as it may from time to time request.

### **Transitional provisions**

**21.**—(1) Any practitioner, who is not included in an ophthalmic list, but was assisting in the provision of general ophthalmic services on 31 January 2006 may continue to do so, notwithstanding regulation 3(3), until—

- (a) 1 August 2006; or
- (b) the date on which the Local Health Board notifies the practitioner of its decision under regulation 6(6),

whichever is the earlier, provided that the practitioner applies, in accordance with these Regulations, to a Local Health Board to be included in its supplementary list not later than 1 May 2006.

(2) Any practitioner not falling within paragraph (1) who has applied to be included in a supplementary list on or before 1 May 2006, may assist in the provision of general ophthalmic services after the date of that application, notwithstanding regulation 3(3), until—

- (a) 1 August 2006; or
- (b) the date on which the Local Health Board notifies the practitioner of its decision

whichever is the earlier.

(3) Any practitioner to whom paragraph (1) or (2) applies must comply with regulation 9, if any of the events specified occur, as though he or she were included in the supplementary list of the Local Health Board in whose locality the practitioner is assisting in the provision of general ophthalmic services.

(4) An practitioner may not assist in the provision of general ophthalmic services by virtue of paragraph (1) or (2) during any period in which he or she is the subject of a suspension notice given by a Local Health Board under paragraph (5).

(5) A Local Health Board may give a suspension notice to a practitioner to whom paragraph (1) or (2) applies where it is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest.

(6) A Local Health Board may withdraw a suspension notice it has given under paragraph (5) at any time.

(7) During a period of suspension payments may be made to or in respect of the practitioner by the Local Health Board in accordance with a determination by the National Assembly for Wales.

- (8) Where a Local Health Board—
- (a) has received an application from a practitioner to whom paragraph (1) or (2) applies; and
  - (b) becomes aware in respect of the practitioner of any of the matters listed in regulation 10(1),
- it must immediately decide that practitioner’s application to be included in its supplementary list.
- (9) A Local Health Board may publish a list of the practitioners whose applications it has approved for inclusion in its supplementary list prior to 1 August 2006.
- (10) If, on or after 1 February 2006, it appears to the Local Health Board that any practitioner whose name was included in its ophthalmic list on 31 January 2006—
- (a) is not entitled to have his or her name in its ophthalmic list; but
  - (b) would be, if the practitioner so applied, entitled to have his or her name included in its supplementary list,
- it must take the action specified in paragraph (11).
- (11) The Local Health Board must—
- (a) give the practitioner notice to that effect, together with the opportunity to make written representations to it within 28 days of the date of that notification; and
  - (b) consult any other Local Health Board in whose ophthalmic list the practitioner is, to its knowledge, included.
- (12) After considering any representations under paragraph (11)(b), if the Local Health Board is satisfied that the practitioner does not meet the requirements for inclusion in its ophthalmic list, it must—
- (a) remove the practitioner’s name from its ophthalmic list; and
  - (b) unless the practitioner’s name is included in the ophthalmic list or the supplementary list of another Local Health Board, include his or her name in its supplementary list.
- (13) In a case to which paragraph (12) applies, the Local Health Board must notify the practitioner of its decision and the reasons for it (including any facts relied up) with 7 days of making that decision.
- (14) When the Local Health Board notifies the practitioner of its decision under paragraph (13), it must also advise the practitioner that if he or she wishes to exercise a right of appeal then he or she must do so with the period of 28 days beginning with the date on which it gave the practitioner the notice of its decision and it must also tell the practitioner how to exercise any such right.
- (15) When the Local Health Board notifies the practitioner of its decision in accordance with paragraph (13) it must also notify any Local Health Board which it consulted pursuant to paragraph (11)(b).
- (16) The Local Health Board must act under paragraphs (10) to (12), so as to enable it to take a decision under paragraph (12), as soon as is reasonably practical.
- (17) In any case where a Local Health Board—
- (a) received, on or before 31 January 2006, an application for inclusion in its ophthalmic list;
  - (b) has not determined that application before that date; and
  - (c) considers that it is not appropriate to include the applicant practitioner in its ophthalmic list, but that it may be appropriate to include the practitioner in its supplementary list,
- it must treat that application as an application for inclusion in its supplementary list.