



# National Health Service (Wales) Act 2006

## 2006 CHAPTER 42

### PART 6

#### OPHTHALMIC SERVICES

##### *General ophthalmic services*

#### **71 Arrangements for general ophthalmic services**

- (1) Each Local Health Board must, in accordance with regulations, arrange as respects its area—
  - (a) with medical practitioners having the prescribed qualifications, and
  - (b) with optometrists,for securing sight tests by them of the persons mentioned in subsection (2).
- (2) The persons are—
  - (a) a child,
  - (b) a person whose resources fall to be treated under the regulations as being less than or equal to his requirements, or
  - (c) a person of such other description as may be prescribed.
- (3) In subsection (2)—

“child” means—

  - (a) a person who is under the age of 16 years, or
  - (b) a person who is under the age of 19 years and receiving qualifying full-time education, and

“qualifying full-time education” means full-time instruction at a recognised educational establishment or by other means accepted as comparable by the Welsh Ministers.
- (4) For the purposes of subsection (3)—

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- (a) “recognised educational establishment” means an establishment recognised by the Welsh Ministers as being, or as comparable to, a school, college or university, and
  - (b) regulations may prescribe the circumstances in which a person must, or must not, be treated as receiving full-time instruction.
- (5) Regulations under this section may direct how a person's resources and requirements must be calculated and may, in particular, direct that they must be calculated—
- (a) by a method set out in the regulations,
  - (b) by a method described by reference to a method of calculating or estimating income or capital specified in an enactment other than this section or in an instrument made under an Act of Parliament or by reference to such a method but subject to prescribed modifications,
  - (c) by reference to an amount applicable for the purposes of a payment under an Act of Parliament or an instrument made under an Act of Parliament, or
  - (d) by reference to the person's being or having been entitled to payment under an Act of Parliament or an instrument made under an Act of Parliament.
- (6) Descriptions of persons may be prescribed for the purposes of subsection (1) by reference to any criterion and, in particular, by reference to any of the following criteria—
- (a) their age,
  - (b) the fact that a prescribed person or a prescribed body accepts them as suffering from a prescribed medical condition,
  - (c) the fact that a prescribed person or a prescribed body accepts that a prescribed medical condition from which they suffer arose in prescribed circumstances,
  - (d) their receipt of benefit in money or in kind under any enactment or their entitlement to receive any such benefit, and
  - (e) the receipt of any such benefit by other persons satisfying prescribed conditions or the entitlement of other persons satisfying prescribed conditions to receive such benefits.
- (7) Regulations which refer to an Act of Parliament or an instrument made under an Act of Parliament may direct that the reference is to be construed as a reference to that Act or instrument—
- (a) as it has effect at the time when the regulations are made, or
  - (b) both as it has effect at that time and as amended subsequently.
- (8) Regulations may provide that a person—
- (a) whose sight is tested by a person who provides general ophthalmic services, and
  - (b) who is shown during the test or within a prescribed time after it to fall within subsection (1),
- must be taken for the purposes of the test to have fallen within subsection (1) immediately before the test.
- (9) For the purposes of subsection (8), the test must be treated as a sight test under this Act—
- (a) for the purposes of any arrangements under this section,
  - (b) for the purposes of remuneration in respect of the test, and
  - (c) for any such other purpose as may be prescribed.

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- (10) Regulations must define the services for the provision of which arrangements under this section must be made, and the services so defined are in this Act referred to as “general ophthalmic services”.

**Modifications etc. (not altering text)**

- C1** Ss. 71, 72, 78, 80, 109, 198, 206 modified (temp.) (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 5, 8(2), [Sch. 3 para. 4](#) (with [Sch. 3 Pt. 1](#))
- C2** S. 71(1): Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, [Sch.](#)

## 72 Regulations as to general ophthalmic services

- (1) Regulations may provide as to the arrangements to be made under section 71, and must include provision—
- (a) for the preparation and publication by each Local Health Board of a list of medical practitioners and a list of optometrists who undertake to provide general ophthalmic services for persons in the area of the Local Health Board,
  - (b) for conferring a right on any medical practitioner having the prescribed qualifications, and on any optometrist, who wishes to be included in an ophthalmic list, to be included,
  - (c) for conferring on any person a right to choose in accordance with the prescribed procedure the medical practitioner or optometrist by whom his sight will be tested, or from whom any prescription for the supply of optical appliances will be obtained,
  - (d) for the removal from an ophthalmic list for any area of the name of any person in whose case it has been determined in such manner as may be prescribed that he has never provided, or has ceased to provide, general ophthalmic services for persons in that area.
- (2) Subsection (1)(b) is subject to subsections (3) and (4) and Part 8.
- (3) The regulations may, in particular, make provision in relation to—
- (a) grounds on which a Local Health Board may, or must, refuse to include a medical practitioner or an optometrist in an ophthalmic list (including grounds corresponding to the conditions referred to in section 107(2), (3) and (4) as read with section 109),
  - (b) information which must be supplied to a Local Health Board by a person included or seeking inclusion in an ophthalmic list (or by arrangement with him),
  - (c) the supply to a Local Health Board by an individual—
    - (i) who is included, or seeking inclusion, in an ophthalmic list, or
    - (ii) who is a director of a body corporate or who is a member of a limited liability partnership included, or seeking inclusion, in such a list, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under <sup>F1</sup>section 113A of that Act, an enhanced criminal record certificate under section 113B of that Act or up-date information within the meaning given by section 116A of that Act,]
  - (d) grounds on which a Local Health Board may defer a decision whether or not to include a person in an ophthalmic list,

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- (e) the disclosure by a Local Health Board, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in an ophthalmic list, and refusals by the Local Health Board to include them, and
  - (f) criteria to be applied in making decisions under the regulations.
- (4) If regulations made by virtue of subsection (3)(a) provide that a Local Health Board may refuse to include a person in an ophthalmic list, they must also provide for an appeal (by way of redetermination) to the [F2First-tier Tribunal] against the decision of the Local Health Board.
- (5) The regulations may include provision as to the making of declarations about—
- (a) financial interests,
  - (b) gifts above a prescribed value, and
  - (c) other benefits received.
- (6) Before making regulations by virtue of subsection (5), the Welsh Ministers must consult such organisations as they consider appropriate appearing to them to represent persons providing general ophthalmic services.
- (7) In this Act an “ophthalmic list” means a list published in accordance with regulations made under subsection (1)(a).

#### Textual Amendments

- F1** Words in s. 72(3)(c) substituted (17.6.2013) by [Protection of Freedoms Act 2012 \(c. 9\), s. 120, Sch. 9 para. 125](#) (with s. 97); S.I. 2013/1180, art. 2(e)(v)
- F2** Words in s. 72(4) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\), arts. 1\(1\), 5\(1\), Sch. 2 para. 130](#)

#### Modifications etc. (not altering text)

- C3** Ss. 71, 72, 78, 80, 109, 198, 206 modified (temp.) (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\), ss. 5, 8\(2\), Sch. 3 para. 4](#) (with Sch. 3 Pt. 1)

### 73 Medical practitioners with qualifications prescribed under section 71

The power conferred by section 71 to prescribe the qualifications to be possessed by any medical practitioner includes a power to—

- (a) prescribe a requirement that the practitioner must show to the satisfaction of a committee recognised by the Welsh Ministers for the purpose that he possesses such qualifications, including qualifications as to experience, as may be mentioned in the regulations, and
- (b) confer on a person who is dissatisfied with the determination of such a committee, a right of appeal to a committee appointed by the Welsh Ministers, and to provide for any matter for which it appears to the Welsh Ministers to be requisite or expedient to provide in consequence of the conferring of that right.

### 74 Exercise of choice of practitioner

Regulations may provide that, where a right is conferred to choose the person by whom general ophthalmic services will be provided under this Part, that right must, in the case of prescribed persons, be exercised on their behalf by other prescribed persons.

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## 75 Inadequate provision of ophthalmic services

- (1) Subsection (2) applies if the Welsh Ministers are satisfied, after such inquiry as they consider appropriate, that—
  - (a) as respects the area, or part of the area, of a Local Health Board, the persons whose names are included in any ophthalmic list are not such as to secure the adequate provision of general ophthalmic services in that area or part, or
  - (b) for any other reason any considerable number of persons in any such area or part are not receiving satisfactory services under the arrangements in force under this Part.
- (2) Where this subsection applies, the Welsh Ministers—
  - (a) may authorise the Local Health Board to make such other arrangements as the Welsh Ministers may approve, or may themselves make such other arrangements, and
  - (b) may dispense with any of the requirements of regulations made under this Part or Part 8 so far as appears to the Welsh Ministers necessary to meet exceptional circumstances and enable such arrangements to be made.

### Modifications etc. (not altering text)

- C4 S. 75: Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, [Sch.](#)

## Remuneration

## 76 Remuneration for persons providing general ophthalmic services

- (1) The remuneration to be paid to persons who provide general ophthalmic services under this Part must be determined by determining authorities.
- (2) Determining authorities may also determine the remuneration to be paid to persons who provide those services in respect of the instruction of any person in matters relating to those services.
- (3) For the purposes of this section and section 77 determining authorities are—
  - (a) the Welsh Ministers, and
  - (b) so far as authorised by the Welsh Ministers to exercise the functions of determining authorities, any Local Health Board or other person appointed by them in an instrument.
- (4) The instrument mentioned in subsection (3)(b) is called in this section an “instrument of appointment”.
- (5) An instrument of appointment—
  - (a) may contain requirements with which a determining authority appointed by that instrument must comply in making determinations, and
  - (b) may be contained in regulations.
- (6) Subject to this section and section 77, regulations may make provision about determining remuneration under this section and may in particular impose requirements with which determining authorities must comply in making, or in

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connection with, determinations (including requirements as to consultation and publication).

- (7) Regulations may provide that determinations may be made by reference to any of—
- (a) rates or conditions of remuneration of any persons or any descriptions of persons which are fixed or determined, or will be fixed or determined, otherwise than by way of a determination under this section,
  - (b) scales, indices or other data of any description specified in the regulations.
- (8) Where regulations provide as mentioned in subsection (7)(b), they may provide that any determination which falls to be made by reference to a scale, index or other data may be made by reference to the scale, index or data—
- (a) in the form current at the time of the determination, and
  - (b) in any subsequent form taking effect after that time.
- (9) Regulations may—
- (a) provide that determining authorities may make determinations which have effect in relation to remuneration in respect of a period beginning on or after a date specified in the determination, which may be the date of the determination or an earlier or later date, but may be an earlier date only if, taking the determination as a whole, it is not detrimental to the persons to whose remuneration it relates,
  - (b) provide that any determination which does not specify such a date has effect in relation to remuneration in respect of a period beginning—
    - (i) if it is required to be published, on the date of publication,
    - (ii) if it is not so required, on the date on which it is made.
- (10) A reference in this section or section 77 to a determination is to a determination of remuneration under this section.

## 77 Section 76: supplementary

- (1) Before a determination is made by the Welsh Ministers which relates to all persons who provide general ophthalmic services or a category of such services, they—
- (a) must consult a body appearing to them to be representative of persons to whose remuneration the determination would relate, and
  - (b) may consult such other persons as they consider appropriate.
- (2) Determinations may make different provision for different cases, including different provision for any particular case, class of case or area.
- (3) Determinations may be—
- (a) made in more than one stage,
  - (b) made by more than one determining authority,
  - (c) varied or revoked by subsequent determinations.
- (4) A determination may be varied—
- (a) to correct an error, or
  - (b) where it appears to the determining authority that it was made in ignorance of or under a mistake as to a relevant fact.
- (5) Determinations may, in particular, provide that the whole or any part of the remuneration—

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- (a) is payable only if the determining authority is satisfied as to certain conditions, or
  - (b) must be applied for certain purposes or is otherwise subject to certain conditions.
- (6) Remuneration under section 76 may be determined from time to time and may consist of payments by way of—
- (a) salary,
  - (b) fees,
  - (c) allowances,
  - (d) reimbursement (in full or in part) of expenses incurred or expected to be incurred in connection with the provision of the services or instruction.
- (7) At the time a determination is made or varied, certain matters which require determining may be reserved to be decided at a later time.
- (8) The matters which may be reserved include in particular—
- (a) the amount of remuneration to be paid in particular cases,
  - (b) whether any remuneration is to be paid in particular cases.
- (9) Any determination may be made only after taking into account all the matters which are considered to be relevant by the determining authority.
- (10) Such matters may include in particular—
- (a) the amount or estimated amount of expenses (taking into account any discounts) incurred in the past or likely to be incurred in the future (whether or not by persons to whose remuneration the determination will relate) in connection with the provision of general ophthalmic services or of any category of general ophthalmic services,
  - (b) the amount or estimated amount of any remuneration paid or likely to be paid to persons providing such services,
  - (c) the amount or estimated amount of any other payments or repayments or other benefits received or likely to be received by any such persons,
  - (d) the extent to which it is desirable to encourage the provision, either generally or in particular places, of general ophthalmic services or the category of general ophthalmic services to which the determination will relate,
  - (e) the desirability of promoting general ophthalmic services which are—
    - (i) economic and efficient, and
    - (ii) of an appropriate standard.
- (11) If the determination is of remuneration for a category of general ophthalmic services, the reference in subsection (10)(a) to a category of general ophthalmic services is a reference to the same category of general ophthalmic services or to any other category of general ophthalmic services falling within the same description.

### *Local Optical Committees*

## **78 Local Optical Committees**

- (1) A Local Health Board may recognise a committee formed for its area, or for its area and that of one or more other Local Health Boards, which it is satisfied is representative of the optometrists providing general ophthalmic services in that area.

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- (2) A committee recognised under this section is called the Local Optical Committee for the area for which it is formed.
- (3) Any such committee may delegate any of its functions, with or without restrictions or conditions, to sub-committees composed of members of that committee.
- (4) Regulations may require a Local Health Board, in the exercise of functions under this Part, to consult committees recognised by it under this section on such occasions and to such extent as may be prescribed.
- (5) Subsection (4) does not affect any other power to require a Local Health Board to consult committees recognised by it under this section.
- (6) A committee recognised under this section has such other functions as may be prescribed.
- (7) A Local Health Board may, on the request of any committee recognised by it under this section, allot to that committee such sums for defraying the committee's administrative expenses as may be determined by the Local Health Board.
- (8) Any sums so allotted must be out of the moneys available to the Local Health Board for the remuneration of persons of whom the committee is representative under this section.
- (9) The amount of any such sums must be deducted from the remuneration of those persons in such manner as may be determined by the Local Health Board.
- (10) The administrative expenses of a committee include the travelling and subsistence allowances payable to its members.

**Modifications etc. (not altering text)**

- C5** Ss. 71, 72, 78, 80, 109, 198, 206 modified (temp.) (1.3.2007) by [National Health Service \(Consequential Provisions\) Act 2006 \(c. 43\)](#), ss. 5, 8(2), **Sch. 3 para. 4** (with [Sch. 3 Pt. 1](#))
- C6** [S. 78\(1\)\(7\)\(8\)\(9\)](#): Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, **Sch.**

*Provision of accommodation by the Welsh Ministers*

**79 Use of accommodation: provision of general ophthalmic services**

If the Welsh Ministers consider that any accommodation provided by them by virtue of this Act is suitable for use in connection with the provision of general ophthalmic services, they may make the accommodation available on such terms as they consider appropriate to persons providing those services.

**Modifications etc. (not altering text)**

- C7** [S. 79](#): Functions made exercisable by Local Health Boards (1.10.2009) by [The Local Health Boards \(Directed Functions\) \(Wales\) Regulations 2009 \(S.I. 2009/1511\)](#), reg. 4, **Sch.**



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