



# National Health Service (Wales) Act 2006

## 2006 CHAPTER 42

### PART 8 **E+W**

#### QUALIFICATIONS TO PRACTICE

### CHAPTER 1 **E+W**

#### CONDITIONAL INCLUSION AND SUPPLEMENTARY LISTS

#### 104 **Conditional inclusion in ophthalmic and pharmaceutical lists** **E+W**

- (1) Regulations may provide—
  - (a) that if a person is included in an ophthalmic list or a pharmaceutical list he is subject, while he remains included in the list, to conditions determined by the Local Health Board in whose list he is included,
  - (b) for the Local Health Board to vary that person's terms of service for the purpose of or in connection with the imposition of any such conditions,
  - (c) for the Local Health Board to vary the conditions or impose different ones,
  - (d) for the consequences of failing to comply with a condition (including removal from the list), and
  - (e) for the review by the Local Health Board of any decision made by virtue of the regulations.
- (2) The imposition of conditions must be with a view to—
  - (a) preventing any prejudice to the efficiency of the services in question, or
  - (b) preventing any acts or omissions within section 107(3)(a).
- (3) If regulations provide for a practitioner's removal from the list for breach of condition—
  - (a) the regulations may provide that he may not withdraw from the list while the Local Health Board is investigating whether there are grounds for exercising

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- their power to remove him, or after the Local Health Board has decided to remove him but before it has given effect to that decision, and
- (b) the regulations must include provision—
- (i) requiring the practitioner to be given notice of any allegation against him,
  - (ii) giving him the opportunity of putting his case at a hearing before the Local Health Board makes any decision as to his removal from the list, and
  - (iii) requiring him to be given notice of the decision of the Local Health Board and the reasons for it and of his right of appeal under subsection (4).
- (4) If regulations provide as mentioned in subsection (1), they must also provide for an appeal by the person in question to the [F1First-tier Tribunal] against the decision of the Local Health Board—
- (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to vary his terms of service,
  - (d) on any review of an earlier such decision of the Local Health Board,
  - (e) to remove him from the list for breach of condition,
- and the appeal must be by way of redetermination of the decision of the Local Health Board.
- (5) The regulations may provide for any such decision not to have effect until the determination by the [F1First-tier Tribunal] of any appeal against it, and must so provide in relation to a decision referred to in subsection (4)(e).
- (6) Regulations under this section may provide for the disclosure by a Local Health Board, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description—
- (a) about persons whose inclusion in an ophthalmic or pharmaceutical list is subject to conditions imposed under this section, and
  - (b) about the removal of such persons from such a list for breach of condition.
- (7) In this Part, “terms of service” means the terms upon which, by virtue of regulations, a person undertakes to provide pharmaceutical services.

#### Textual Amendments

**F1** Words in s. 104(4)(5) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), [Sch. 2 para. 133](#)

## 105 Supplementary lists **E+W**

- (1) The Welsh Ministers may make regulations providing for the preparation and publication by each Local Health Board of one or more lists of persons approved by the Local Health Board for the purpose of assisting in the provision of general ophthalmic services and pharmaceutical services.
- (2) Such a list is referred to in this section, section 106 and section 115 as a “supplementary list”.

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- (3) The regulations may, in particular, include provision as to—
- (a) the Local Health Board to which an application for inclusion in a supplementary list must be made,
  - (b) the procedure for applying for inclusion, including any information to be supplied to the Local Health Board (whether by the applicant or by arrangement with him),
  - (c) grounds on which the Local Health Board may, or must, refuse a person's application for inclusion in a supplementary list (including his unsuitability for inclusion in such a list), or on which it may defer its decision on the application,
  - (d) requirements with which a person included in a supplementary list must comply (including the declaration of financial interests and of gifts and other benefits),
  - (e) grounds on which a Local Health Board may, or must, suspend or remove a person from a supplementary list, the procedure for doing so, and the consequences of doing so,
  - (f) payments to or in respect of persons who are suspended from a supplementary list (including provision for the amount of the payments, or the method of calculating the amount, to be determined by the Welsh Ministers or by another person appointed for the purpose by the Welsh Ministers),
  - (g) the supply to the Local Health Board by an applicant for inclusion in a supplementary list, or by a person included in one, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under [F2section 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,]
  - (h) circumstances in which a person included in a supplementary list may not withdraw from it,
  - (i) criteria to be applied in making decisions under the regulations,
  - (j) appeals against decisions of Local Health Boards under the regulations,
  - (k) 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 a supplementary list, refusals of such applications, and suspensions and removals from that list.
- (4) The regulations may, in particular, also provide for—
- (a) a person's inclusion in a supplementary list to be subject to conditions determined by the Local Health Board,
  - (b) the Local Health Board to vary the conditions or impose different ones,
  - (c) the consequences of failing to comply with a condition (including removal from the list), and
  - (d) the review by the Local Health Board of its decisions made by virtue of regulations under this subsection.
- (5) The imposition of such conditions must be with a view to—
- (a) preventing any prejudice to the efficiency of the services to which the supplementary list relates, or
  - (b) preventing any acts or omissions of the type described in section 107(3)(a).

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- (6) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 107 to 115.
- (7) If the regulations provide under subsection (3)(e) or (4) that a Local Health Board may suspend or remove a person from a supplementary list, they must include provision—
- (a) requiring him to be given notice of any allegation against him,
  - (b) giving him the opportunity of putting his case at a hearing before the Local Health Board make any decision as to his suspension or removal, and
  - (c) requiring him to be given notice of the decision of the Local Health Board and the reasons for it and of any right of appeal under subsection (8) or (9).
- (8) If the regulations provide under subsection (3)(c) or (e) that a Local Health Board may refuse a person's application for inclusion in a supplementary list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the [<sup>F3</sup>First-tier Tribunal] against the decision of the Local Health Board.
- (9) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the [<sup>F3</sup>First-tier Tribunal] against the decision of the Local Health Board—
- (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to remove him from the supplementary list for breach of condition,
  - (d) on any review of an earlier such decision of the Local Health Board.

#### Textual Amendments

- F2** Words in s. 105(3)(g) substituted (17.6.2013) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 9 para. 128** (with s. 97); S.I. 2013/1180, art. 2(e)(v)
- F3** Words in s. 105(8)(9) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(1), 5(1), **Sch. 2 para. 134**

### 106 Further provision about regulations under section 105 **E+W**

- (1) Regulations under section 105 may require a person (“A”) included in—
- (a) an ophthalmic list,
  - (b) a pharmaceutical list, or
  - (c) a list under section 86(3) (provision of drugs, medicines or listed appliances),
- not to employ or engage a person (“B”) to assist him in the provision of the service to which the list relates unless B is included in a list mentioned in subsection (2).
- (2) The lists are—
- (a) a list referred to in subsection (1),
  - (b) a supplementary list,
  - (c) a list under section 49 or 63,
  - (d) a list corresponding to a list under section 49 or section 63 and prepared by a Local Health Board by virtue of regulations made under section 103,
  - <sup>F4</sup>(e) .....
  - <sup>F5</sup>(f) a list corresponding to a list mentioned in any of paragraphs (a) to (d) prepared by the National Health Service Commissioning Board under or by virtue of the National Health Service Act 2006.]

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or, in any of the cases in paragraphs (a) to (e), such a list of a prescribed description.

- (3) If regulations do so require, they—
- (a) need not require both A and B to be included in lists prepared by the same Local Health Board, but
  - (b) may, in particular, require that both A and B be included in lists prepared by Local Health Boards.

#### Textual Amendments

- F4** S. 106(2)(e) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 21 para. 30\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F5** S. 106(2)(f) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 21 para. 30\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

PROSPECTIVE

## [<sup>F6</sup>CHAPTER 1A **E+W**

### NOTICES AND PENALTIES

#### Textual Amendments

- F6** Pt. 8 Ch. 1A inserted (prosp.) by [Health Act 2009 \(c. 21\)](#), [ss. 31\(1\)](#), 40

#### 106A Notices and penalties **E+W**

- (1) The Welsh Ministers may by regulations provide that where a practitioner who provides pharmaceutical services or general ophthalmic services under arrangements with a Local Health Board breaches a term of those arrangements, the Local Health Board may—
- (a) by a notice require the practitioner to do, or not do, specified things or things of a specified description within a specified period, or
  - (b) in prescribed circumstances or for a prescribed period, withhold all or part of a payment due to the practitioner under the arrangements.
- (2) Regulations under this section must include provision conferring on such persons as may be prescribed rights of appeal from decisions of Local Health Boards made by virtue of this section.
- (3) In this section—
- “practitioner” means a person included in an ophthalmic list or a pharmaceutical list, and
- “specified” means specified in a notice under paragraph (a) of subsection (1).]

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## CHAPTER 2 **E+W**

### DISQUALIFICATION

#### 107 Disqualification of practitioners **E+W**

- (1) If it appears to a Local Health Board that any of the conditions set out in subsections (2) to (4) is established in relation to a person included in an ophthalmic list or a pharmaceutical list it may (or, in cases falling within subsection (5), must) decide to remove him from that list.
- (2) The first condition is that the continued inclusion of the practitioner in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide (and such a case is referred to in this Chapter as an “efficiency case”).
- (3) The second condition is that the practitioner—
  - (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit, and
  - (b) knew that he or the other was not entitled to the benefit, (and such a case is referred to in this Chapter as a “fraud case”).
- (4) The third condition is that the practitioner is unsuitable to be included in the list (and such a case is referred to in this Chapter as an “unsuitability case”).
- (5) In unsuitability cases, the Local Health Board must remove the practitioner from the list in prescribed circumstances.
- (6) The Local Health Board must state which condition (or conditions) it is relying on when removing a practitioner from a list.
- (7) “Health scheme” means—
  - (a) any of the health services under section 1(1) of this Act, section 1(1) of the National Health Service Act 2006 (c. 41) or any enactment corresponding to section 1(1) of this Act and extending to Scotland or Northern Ireland, and
  - (b) any prescribed scheme,
 and regulations may prescribe any scheme for the purposes of this subsection which appears to the Welsh Ministers to be a health or medical scheme paid for out of public funds.
- (8) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.
- (9) In this Chapter a “practitioner” means a person included in a pharmaceutical list.

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

- C1** S. 107: 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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## 108 Contingent removal **E+W**

- (1) In an efficiency case or a fraud case, the Local Health Board may, instead of deciding to remove a practitioner from its list, decide to remove him contingently.
- (2) If it so decides, it must impose such conditions as it may decide on his inclusion in the 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 within section 107(3)(a) (in a fraud case).
- (3) If the Local Health Board determines that the practitioner has failed to comply with a condition, it may decide to—
  - (a) vary the conditions, or impose different conditions, or
  - (b) remove him from its list.
- (4) The Local Health Board may decide to vary the terms of service of the person concerned for the purpose of or in connection with the imposition of any conditions by virtue of this section.

### Modifications etc. (not altering text)

- C2** S. 108: 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.](#)

## 109 Fraud and unsuitability cases: supplementary **E+W**

- (1) Where the practitioner is a body corporate, the body corporate must be treated for the purposes of this Chapter as meeting a condition referred to in section 107(3) or (4)—
  - (a) in the case of an optometrist not referred to in paragraph (b), if any director meets that condition (whether or not he first did so when he was a director), and
  - (b) in the case of a body corporate providing pharmaceutical services or an optometrist which is a limited liability partnership, if any one of the body of persons controlling the body meets that condition (whether or not he first did so when he was such a person).
- (2) A practitioner must be treated for the purposes of this Chapter as meeting the condition referred to in section 107(3) if—
  - (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 107(1) on the practitioner's behalf, meets that condition, and
  - (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 107(3)(a) occurring in the course of the provision of those services on his behalf.

### 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](#))

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## 110 Suspension **E+W**

- (1) If the 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 list—
  - (a) while it decides whether or not to exercise its powers under section 107 or 108 (other than in circumstances falling within paragraph (b)), or
  - (b) while it waits for a decision affecting the practitioner of a court or of a body which regulates—
    - (i) the practitioner's profession,
    - (ii) the profession of a person providing any of the services mentioned in section 107(1) on the practitioner's behalf, or
    - (iii) if the practitioner is a body corporate, the profession of one of its directors, or one of the body of persons controlling it or (if it is a limited liability partnership) one of its members,
 or one of that regulatory body's committees.
- (2) The references in subsection (1)(b) to a court or regulatory body are to a court or such a body anywhere in the world.
- (3) In a case falling within subsection (1)(a), the Local Health Board must specify the length of the period of suspension.
- (4) In a case falling within subsection (1)(b), the Local Health Board may specify that the practitioner remains suspended after the decision referred to there for an additional period which the Local Health Board must specify.
- (5) In either case—
  - (a) before that period expires it may extend, or further extend, the suspension for a further specified period, or
  - (b) if that period has expired, it may impose a further suspension, for a period which it must specify.
- (6) The period of suspension (in a subsection (1)(a) case) or the additional period (in a subsection (1)(b) case), including in both cases the period of any further suspension imposed under subsection (5)(b), may not exceed six months in aggregate, except—
  - (a) in prescribed circumstances, when it may not extend beyond any prescribed event (which may be the expiry of a prescribed period),
  - (b) if, on the application of the Local Health Board, the [F7First-tier Tribunal] orders accordingly before the expiry of the period of suspension, or
  - (c) if the Local Health Board has applied under paragraph (b) before the expiry of the period of suspension, but the [F7First-tier Tribunal] has not made an order by the time it expires, in which case it continues until the FHSAA has made an order.
- (7) If the [F7First-tier Tribunal] does so order, it must specify—
  - (a) the date on which the period of suspension will end, or
  - (b) an event beyond which it will not continue.
- (8) The [F7First-tier Tribunal] may, on the application of the Local Health Board, make a further order (complying with subsection (7)) at any time while the period of suspension pursuant to the earlier order is still continuing.



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- (9) The Welsh Ministers may make regulations providing for payments to practitioners who are suspended.
- (10) Those regulations may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Welsh Ministers or by another person appointed for the purpose by them.

#### Textual Amendments

**F7** Words in s. 110(6)(b)(c)(7)(8) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), **Sch. 2 para. 135**

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

**C4** [S. 110\(1\)\(3\)\(4\)\(5\)\(6\)\(8\)](#): 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.**

## 111 Suspension pending appeal **E+W**

- (1) This section applies if the Local Health Board decides to remove a practitioner from a list under section 107.
- (2) In such a case it may also decide to suspend the practitioner from the list pending any appeal by him, if 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.
- (3) If it does suspend the practitioner under this section, the suspension has effect from the date when the Local Health Board gave him notice of the suspension.
- (4) The suspension has effect until its revocation under subsection (5) or (6) or, if later, until the expiry of the period of 28 days referred to in section 114(1), or, if the practitioner appeals under section 114, until the [<sup>F8</sup>First-tier Tribunal] has disposed of the appeal.
- (5) The Local Health Board may revoke a suspension imposed under this section.
- (6) If the practitioner appeals under section 114 against the decision of the Local Health Board to remove him from the list, the [<sup>F8</sup>First-tier Tribunal] may also revoke a suspension imposed on him under this section.
- (7) Subsections (9) and (10) of section 110 apply for the purposes of this section as they apply for the purposes of that.

#### Textual Amendments

**F8** Words in s. 111(4)(6) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), **Sch. 2 para. 136**

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

**C5** [S. 111](#): 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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## 112 Effect of suspension **E+W**

While a practitioner is suspended (whether under section 110 or under section 111) he must be treated as not being included in the list from which he has been suspended even though his name appears in it.

## 113 Review of decisions **E+W**

- (1) The Local Health Board may, and (except in prescribed cases) if requested in writing to do so by the practitioner must, review a contingent removal or a suspension (other than a contingent removal or a suspension imposed by, or a suspension continuing pursuant to, an order of the [<sup>F9</sup>First-tier Tribunal], or a suspension imposed under section 111).
- (2) The practitioner may not request a review before the expiry of the period of—
  - (a) three months beginning with the date of the decision of the Local Health Board to suspend or contingently remove him, or (as appropriate),
  - (b) six months beginning with the date of its decision on the previous review.
- (3) On such a review, the Local Health Board may—
  - (a) confirm the contingent removal or the suspension,
  - (b) in the case of a suspension, terminate it,
  - (c) in the case of a contingent removal, vary the conditions, impose different conditions, revoke the contingent removal, or remove the practitioner from the list.

### Textual Amendments

**F9** Words in s. 113(1) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), **Sch. 2 para. 137**

### Modifications etc. (not altering text)

**C6** [S. 113\(1\)\(3\)](#): 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.**

## 114 Appeals **E+W**

- (1) A practitioner may appeal to the [<sup>F10</sup>First-tier Tribunal] against a decision of a Local Health Board mentioned in subsection (2) [<sup>F11</sup>. . . .
- (2) The Local Health Board decisions in question are—
  - (a) to remove the practitioner from a list (under section 107 or 108(3) or under subsection (5)(b) of this section),
  - (b) to remove him contingently (under section 108),
  - (c) to impose any particular condition under section 108, or to vary any condition or to impose any different condition under that section,
  - (d) to vary his terms of service (under section 108(4)),
  - (e) any decision on a review of a contingent removal under section 113.
- (3) The appeal must be by way of redetermination of the decision of the Local Health Board.

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- (4) On an appeal, the [<sup>F12</sup>First-tier Tribunal] may make any decision which the Local Health Board could have made.
- (5) If the [<sup>F12</sup>First-tier Tribunal] decides to remove the practitioner contingently—
  - (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 him from its list if it determines that he has failed to comply with a condition.
- (6) The Local Health Board may not remove a person from a list, or impose a contingent removal—
  - (a) until the expiry of the period of 28 days referred to in subsection (1), or
  - (b) if the practitioner appeals within that period, until the [<sup>F12</sup>First-tier Tribunal] has disposed of the appeal.
- (7) Regulations may provide for payments by Local Health Boards to practitioners who are removed from lists pursuant to decisions of the [<sup>F12</sup>First-tier Tribunal] under this section, but whose appeals against those decisions are successful.
- (8) Regulations under subsection (7) may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Welsh Ministers or by another person appointed for the purpose by them.

#### Textual Amendments

- F10** Words in s. 114(1) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), **Sch. 2 para. 138(a)(i)**
- F11** Words in s. 114(1) omitted (18.1.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), **Sch. 2 para. 138(a)(ii)**
- F12** Words in s. 114(4)(5)(6)(b)(7) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), **Sch. 2 para. 138(b)**

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

- C7** [S. 114\(5\)\(6\)](#): 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.**

## 115 National disqualification **E+W**

- (1) If the [<sup>F13</sup>First-tier Tribunal] removes the practitioner from a list, it may also decide to disqualify him from inclusion in—
  - (a) the pharmaceutical lists and ophthalmic lists prepared by each Local Health Board,
  - (b) the supplementary lists prepared by each Local Health Board,
  - (c) the lists under section 49 or 63 prepared by each Local Health Board,
  - (d) the lists corresponding to the lists under section 49 prepared by each Local Health Board by virtue of regulations made under section 103,
  - <sup>F14</sup>(e) .....
  - <sup>F15</sup>(f) the lists corresponding to the lists mentioned in paragraphs (a) to (d) prepared by the National Health Service Commissioning Board under or by virtue of the National Health Service Act 2006,]

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- or only from inclusion in one or more descriptions of such lists prepared by each Local Health Board <sup>F16</sup>and the National Health Service Commissioning Board<sup>F17</sup>..., the description being specified by the <sup>F13</sup>First-tier Tribunal] in its decision.
- (2) A decision by the <sup>F13</sup>First-tier Tribunal] to do what is mentioned in subsection (1) is referred to in this section as the imposition of a national disqualification.
- (3) The <sup>F13</sup>First-tier Tribunal] may also impose a national disqualification on a practitioner if it dismisses an appeal by him against the refusal by a Local Health Board to include him in such a list.
- (4) The Local Health Board may apply to the <sup>F13</sup>First-tier Tribunal] for a national disqualification to be imposed on a person after the Local Health Board has—
- (a) removed him from a list prepared by it of any of the kinds referred to in subsection (1)(a) to (d), or
  - (b) refused to include him in such a list.
- (5) Any such application must be made before the end of the period of three months beginning with the date of the removal or of the Local Health Board's refusal.
- (6) If the <sup>F13</sup>First-tier Tribunal] imposes a national disqualification on a person—
- (a) no Local Health Board <sup>F18</sup>...<sup>F19</sup>or the National Health Service Commissioning Board] may include him in a list of any of the kinds prepared by it from which he has been disqualified from inclusion, and
  - (b) if he is included<sup>F20</sup>, and the National Health Service Commissioning Board,] in such a list, each Local Health Board<sup>F21</sup>... in whose list he is included must remove him from it.
- (7) The <sup>F13</sup>First-tier Tribunal] may at the request of the person upon whom it has been imposed review a national disqualification, and on a review may confirm it or revoke it.
- (8) Subject to subsection (9), the person may not request such a review before the end of the period of—
- (a) two years beginning with the date on which the national disqualification was imposed, or
  - (b) one year beginning with the date of the <sup>F22</sup>First-tier Tribunal's] decision on the last such review.
- (9) The Welsh Ministers may provide in regulations for subsection (8) to have effect in prescribed circumstances as if the reference there to “two years” or “one year” were a reference to a different period specified in the regulations.

#### Textual Amendments

- F13** Words in s. 115(1)-(4)(6)(7) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), **Sch. 2 para. 139(a)**
- F14** S. 115(1)(e) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 21 para. 31(2)(a)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F15** S. 115(1)(f) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 21 para. 31(2)(b)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F16** Words in s. 115(1) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), **Sch. 21 para. 31(2)(c)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)

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- F17** Words in s. 115(1) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 31(2)(d)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F18** Words in s. 115(6)(a) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 31(3)(a)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F19** Words in s. 115(6)(a) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 31(3)(a)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F20** Words in s. 115(6)(b) inserted (1.4.2013) by Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 31(3)(b)(ii)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F21** Words in s. 115(6)(b) omitted (1.4.2013) by virtue of Health and Social Care Act 2012 (c. 7), s. 306(4), **Sch. 21 para. 31(3)(b)(i)**; S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F22** Words in s. 115(8)(b) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), arts. 1(1), 5(1), **Sch. 2 para. 139(b)**

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

- C8** S. 115(4)(5)(6): 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.**

### **116 Notification of decisions** **E+W**

Regulations may require a Local Health Board to notify prescribed persons, or persons of prescribed descriptions, of any decision it makes under this Chapter, and of any information relevant to the decision which it considers appropriate to include in the notification.

### **117 Withdrawal from lists** **E+W**

Regulations may provide for circumstances in which a practitioner—

- (a) whom a Local Health Board is investigating in order to see whether there are grounds for exercising its powers under section 107, 108 or 110,
- (b) whom a Local Health Board has decided to remove from a list under section 107 or 108, or contingently remove under section 108, but who has not yet been removed or contingently removed, or
- (c) who has been suspended under section 110,

may not withdraw from a list in which he is included.

### **118 Regulations about decisions under this Chapter** **E+W**

- (1) Any decision by a Local Health Board referred to in this Chapter must be reached in accordance with regulations about such decisions.
- (2) The regulations must include provision—
  - (a) requiring the practitioner to be given notice of any allegation against him,
  - (b) giving him the opportunity of putting his case at a hearing before a Local Health Board makes any decision affecting him under this Chapter,
  - (c) requiring him to be given notice of the decision of the Local Health Board and the reasons for it and of any right of appeal which he may have.
- (3) The regulations may, in particular, make provision as to criteria which the Local Health Board must apply when making decisions in unsuitability cases.

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## 119 Corresponding provisions in Scotland and Northern Ireland **E+W**

- (1) This section applies where it appears to the Welsh Ministers that there is provision in Scotland or Northern Ireland under which a person may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under this Chapter.
- (2) A decision in Scotland or Northern Ireland to deal with such a person in such a way is referred to in this section as a “corresponding decision”.
- (3) If this section applies, the Welsh Ministers may make regulations providing for the effect to be given in Wales to a corresponding decision.
- (4) That effect need not be the same as the effect of the decision in the place where it was made.
- (5) The regulations may not provide for a corresponding decision to be reviewed or revoked in Wales.

## CHAPTER 3 **E+W**

### INDEMNITY COVER

## 120 Indemnity cover **E+W**

- (1) The Secretary of State may make regulations for the purpose of securing that, in prescribed circumstances, prescribed persons included in a pharmaceutical list or an ophthalmic list hold approved indemnity cover.
- (2) The regulations may, in particular, make provision as to the consequences of a failure to hold approved indemnity cover, including provision—
  - (a) for securing that a person must not be added to a pharmaceutical list or an ophthalmic list unless he holds approved indemnity cover,
  - (b) for the removal from such a list prepared by a Local Health Board of a person who does not within a prescribed period after the making of a request by the Local Health Board in the prescribed manner satisfy the Local Health Board that he holds approved indemnity cover.
- (3) For the purposes of this section—
 

“approved body” means a person or persons approved in relation to indemnity cover of any description, after such consultation as may be prescribed, by the Secretary of State or by such other person as may be prescribed,

“approved indemnity cover” means indemnity cover made—

  - (a) on prescribed terms, and
  - (b) with an approved body,

“indemnity cover”, in relation to a person included in a pharmaceutical list or an ophthalmic list (or a person who proposes to provide pharmaceutical services or general ophthalmic services), means a contract of insurance or other arrangement made for the purpose of indemnifying him, and any person prescribed in relation to him, to any prescribed extent against any liability which—

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- (a) arises out of the provision of pharmaceutical services or general ophthalmic services in accordance with arrangements made by him with a Local Health Board, and
  - (b) is incurred by him or any such person in respect of the death or personal injury of a person,  
“personal injury” means any disease or impairment of a person's physical or mental condition and includes the prolongation of any disease or such impairment,
- and a person holds approved indemnity cover if he has entered into a contract or arrangement which constitutes approved indemnity cover.
- (4) The regulations may provide that a person of any description who has entered into a contract or arrangement which is—
- (a) in a form identified in accordance with the regulations in relation to persons of that description, and
  - (b) made with a person or persons so identified,
- must be treated as holding approved indemnity cover for the purposes of the regulations.
- (5) Regulations under this section have effect as if made under the National Health Service Act 2006 (c. 41) (and accordingly, section 272 of that Act applies to any such regulations).

**Status:**

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**Changes to legislation:**

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