



National Health Service Act 1977

1977 CHAPTER 49

PART II

GENERAL MEDICAL, GENERAL DENTAL, GENERAL OPHTHALMIC, AND PHARMACEUTICAL SERVICES

Provisions as to disqualification of practitioners

46 Disqualification of practitioners.

- (1) There shall be a tribunal (in this section and sections 47 to 49 below referred to as “the Tribunal”) which shall be constituted in accordance with Schedule 9 to this Act to inquire into cases where representations are made in the prescribed manner to the Tribunal by [^{F1}a Family Practitioner Committee] or any other person that the continued inclusion of a person’s name in a list prepared under this Part of this Act—
- (a) of medical practitioners undertaking to provide general medical services,
 - (b) of medical practitioners undertaking to provide general ophthalmic services,
 - (c) of dental practitioners undertaking to provide general dental services,
 - (d) of ophthalmic opticians undertaking to provide general ophthalmic services,
 - (e)
 - (f) of persons undertaking to provide pharmaceutical services,

would be prejudicial to the efficiency of the services in question.

The supplementary provisions contained in Schedule 9 apply in relation to the Tribunal.

- (2) The Tribunal, on receiving representations from [^{F3}a family Practitioner Committee] shall, and in any other case may, inquire into the case, and, if they are of opinion that the continued inclusion of that person’s name in any list to which the representations relate would be prejudicial to the efficiency of those services—
- (a) shall direct that his name be removed from that list; and

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- (b) may also, if they think fit, direct that his name be removed from, or not be included in, any corresponding list kept by any other [^{F4}Family Practitioner Committee] under this Part.
- (3) An appeal shall lie to the Secretary of State from any direction of the Tribunal under subsection (2) above, and the Secretary of State may confirm or revoke that direction.
- (4) Where the Tribunal direct that the name of any person be removed from or not included in any list or lists the [^{F5}Family Practitioner Committee or Committees] concerned shall—
- (a) if no appeal is brought, at the end of the period for bringing an appeal, or
- (b) if an appeal is brought and the decision of the Tribunal is confirmed by the Secretary of State, on receiving notice of the Secretary of State's decision, remove the name of the person concerned from the list or lists in question.

Textual Amendments

- F1** Words substituted by [S.I. 1985/39, art. 7\(16\)\(a\)](#)
- F2** [S. 46\(1\)\(e\)](#) repealed by [Health and Social Security Act 1984 \(c. 48, SIF 113:1\)](#), s. 24, [Sch. 8 Pt. I](#)
- F3** Words substituted by [S.I. 1985/39, art. 7\(16\)\(b\)\(i\)](#)
- F4** Words substituted by [S.I. 1985/39, art. 7\(16\)\(b\)\(ii\)](#)
- F5** Words substituted by [S.I. 1985/39, art. 7\(16\)\(c\)](#)

47 Removal of disqualification.

- (1) Any person whose name has been removed by a direction under section 46 above from any list or lists shall be disqualified for inclusion in any list to which that direction relates until the Tribunal or the Secretary of State direct under this section to the contrary.
- (2) For the purpose of deciding whether or not to issue a direction under this section (or under paragraph 8 of Schedule 14 to this Act), the Tribunal or the Secretary of State, as the case may be, may hold an inquiry.

48 Disqualification provisions in Scotland or Northern Ireland.

Where—

- (a) under any provisions in force in Scotland or Northern Ireland corresponding to the provisions of this Part of this Act a person is for the time being disqualified for inclusion in all lists prepared under those provisions of persons undertaking to provide services of one or more of the kinds specified in section 46(1) above, then
- (b) that person shall, so long as that disqualification is in force, be disqualified for inclusion in a list prepared under this Part of persons undertaking to provide services of those kinds, and the name of that person shall be removed from every such list in which his name is included.

49 Regulations as to ss. 46 to 48.

Regulations shall provide—

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- (a) for prescribing the procedure for the holding of inquiries by the Tribunal or the Secretary of State under sections 46 to 48 above, and for the making and determining of appeals to the Secretary of State under that procedure, and, in particular for securing that any person who is the subject of such an inquiry shall have an opportunity—
 - (i) of appearing, either in person or by counsel or solicitor or such other representative as may be prescribed, before the Tribunal and, in the case of an inquiry by, or appeal to, the Secretary of State before a person appointed by the Secretary of State, and
 - (ii) of being heard by the Tribunal or the person so appointed and of calling witnesses and producing other evidence on his behalf,

and that the hearing, whether by the Tribunal or the person so appointed shall be in public if the person who is the subject of the inquiry so requests;

- (b) for conferring on the Tribunal and on any person so appointed such powers as the Secretary of State considers necessary, and for that purpose to apply, with any necessary modifications, any of the provisions of section 250 of the ^{M1}Local Government Act 1972; and
- (c) for the publication of the decisions of the Tribunal and the Secretary of State under this section and of the imposition and removal of any disqualifications imposed under section 48 above.

Marginal Citations

M1 1972 c. 70(81:1).

[^{F6}49A Applications for interim suspension.

- (1) A Health Authority who have made representations under section 46 above may, at any time before the case is disposed of by the Tribunal, apply to the Tribunal for a direction to be made under subsection (2) below in relation to the person to whom the case relates.

[A Health Authority may, if they have requested a review of a conditional ^{F7}(1A) disqualification on the ground mentioned in section 47(3)(b) or (c) above, at any time before the review is concluded apply to the Tribunal for a direction to be made under subsection (2) below in relation to the person to whom the review relates.]

- (2) If, on an application under this section, the Tribunal are satisfied that [^{F8}either of the conditions for doing so is satisfied], they shall direct that subsection (3) below shall apply to the person concerned as respects services of the kind to which the case in question [^{F9}or the case to which the review in question,] relates.

[The conditions for giving such a direction are—

- ^{F10}(2A) (a) that it is necessary to do so in order to protect persons who are, or may be, provided with services under this Part of this Act to which the case in question, or the case to which the review in question, relates,
- (b) in, or in the case of a review relating to, a fraud case, that unless they do so there is a significant risk that—
 - (i) an act or omission within section 46(7)(a) above will occur, or
 - (ii) the investigation of the case or the review will be prejudiced.]

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- (3) A person to whom this subsection applies shall—
- (a) be deemed to have been removed from any relevant list in which his name is included,
 - (b) be disqualified for inclusion in any relevant list in which his name is not included, and
 - (c) be deemed to be a person in relation to whom there is in force a declaration ^{F11}[of unfitness in relation to] the provision of services of the relevant kind.
- (4) A direction under subsection (2) above shall cease to have effect on the Tribunal's disposing of the case ^{F12}[or review] in connection with which it is made.
- [In subsection (2) above, the reference to patients is to persons to whom services of ^{F13}(5) the kind to which the case in question relates are, or may be, provided under this Part of this Act.]
- (6) In the application of subsection (3) above to any person—
- (a) “relevant list” means a list ^{F14}[prepared under this Part of this Act] of persons undertaking to provide services of the kind to which the direction applying the subsection to him relates, and
 - (b) “services of the relevant kind” means services of the kind to which that direction relates.]

Textual Amendments

- F6** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, Sch. (subject to art. 3); S.I. 1996/552, art. 2
- F7** S. 49A(1A) inserted (*prosp.*) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 20(a)
- F8** Words in s. 49A(2) substituted (*prosp.*) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 20(b)
- F9** Words in s. 49A(2) inserted (*prosp.*) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 20(b)
- F10** S. 49A(2A) inserted (*prosp.*) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 20(c)
- F11** Words in s. 49A(3)(c) substituted (*prosp.*) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 20(d)
- F12** Words in s. 49A(4) substituted (*prosp.*) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 20(e)
- F13** S. 49A(5) repealed (*prosp.*) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 20(f), Sch. 5
- F14** Words in s. 49A(6)(a) repealed (*prosp.*) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 20(g), Sch. 5

^{F15}[^{F15}^{F16}49B] Suspension pending appeal.

- (1) Where, on disposing of a case under section 46B above, the Tribunal make a national disqualification, they may, if they consider that either of the conditions mentioned in section 49A(2A) above is satisfied, direct that section 49A(3) above shall apply or, if a direction has been given under section 49A(2) above, shall continue to apply to him as respects services of the kind to which the disqualification relates.]]
- (2) A direction under subsection (1) above shall cease to have effect—
- (a) where no appeal against the ^{F17}[national disqualification] is brought, at the end of the period for bringing an appeal, and
 - (b) where an appeal against ^{F17}[the disqualification] is brought, when the appeal process has been exhausted.
- (3) Where the power conferred by subsection (1) above is exercisable by virtue of a ^{F18}[disqualification which is not coupled with a declaration of unfitness], section 49(A)

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(3) above shall have effect, in relation to the exercise of that power, with the omission of paragraph (c).

[^{F19}(4) In subsection (1) above, the reference to patients is to persons to whom services of the kind to which the direction under section 46(2)(b) above relates are, or may be, provided under this Part of this Act.]

Textual Amendments

- F15** S. 49B(1) and preceding sidenote substituted (*prosp.*) by 1999 c. 8, ss. 65(1), 67(1), **Sch. 4 para. 21(a)**
- F16** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, **Sch.** (subject to art. 3); S.I. 1996/552, art. 2
- F17** Words in s. 49B(2) substituted (*prosp.*) by 1999 c. 8, ss. 65(1), 67(1), **Sch. 4 para. 21(b)**
- F18** Words in s. 49B(3) substituted (*prosp.*) by 1999 c. 8, ss. 65(1), 67(1), **Sch. 4 para. 21(c)**
- F19** S. 49B(4) repealed (*prosp.*) by 1999 c. 8, ss. 65, 67(1), Sch. 4 para. 21(d), **Sch. 5**

VALID FROM 21/12/1995

[^{F20}49C Sections 49A and 49B: procedure etc.

- (1) Before making a direction under section 49A(2) or 49B(1) above in relation to any person, the Tribunal shall give him an opportunity—
- (a) to appear before them, either in person or by counsel or solicitor or such other representative as may be prescribed, and
 - (b) to be heard and to call witnesses and produce other evidence.
- (2) Regulations may—
- (a) make provision for, or for the determination of, procedure in relation to determining applications under section 49A above or the exercise of the power conferred by section 49B(1) above, and
 - (b) provide for the functions of the Tribunal under section 49A or 49B above to be carried out, or to be carried out in prescribed circumstances, by the chairman or a deputy chairman of the Tribunal.]

Textual Amendments

- F20** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, **Sch.** (subject to art. 3); S.I. 1996/552, art. 2

[^{F21}49D Suspension provisions in Scotland or Northern Ireland.

- (1) This section applies where, under any provisions in force in Scotland or Northern Ireland corresponding to section 49A or 49B above, a person (“the practitioner”) is disqualified for inclusion in all lists prepared under the provisions in force there corresponding to the provisions of this Part of this Act of persons undertaking to provide services of one or more of the kinds specified in section [^{F22}46(8)] above, other than those in which his name is included.
- (2) The practitioner shall, while he is so disqualified—

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- (a) be disqualified for inclusion in any list prepared under this Part of this Act of persons undertaking to provide services of the same kinds (“relevant list”) in which his name is not included, and
- (b) be deemed to have been removed from any relevant list in which his name is included.

Textual Amendments

- F21** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, Sch. (subject to art. 3); S.I. 1996/552, art. 2
- F22** Words in s. 49D substituted (*prosp.*) by 1999 c. 8, ss. 65(1), 67(1), Sch. 4 para. 22

VALID FROM 21/12/1995

[^{F23}49E Payments in consequence of suspension.

- (1) Regulations may provide for the making to persons to whom section 49A(3) or 49D(2) above applies of payments in consequence of the application of that provision.
- (2) Regulations under subsection (1) above may provide for the determination by the Secretary of State in a prescribed manner of anything for which provision may be made by regulations under that subsection.]

Textual Amendments

- F23** Ss. 49A-49E inserted (E.W.) (21.12.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 31, s. 2(1) (with s. 14(5)); S.I. 1995/3090, art. 2, Sch. (subject to art. 3); S.I. 1996/552, art. 2

VALID FROM 22/11/2001

[^{F24}49F Disqualification of practitioners

- (1) If it appears to a Health Authority that any of the conditions set out in subsections (2) to (4) is established in relation to a person included in any of the following prepared by them—
 - (a) a list of medical practitioners undertaking to provide general medical services,
 - (b) a list of medical practitioners undertaking to provide general ophthalmic services,
 - (c) a list of dental practitioners and dental corporations undertaking to provide general dental services,
 - (d) a list of ophthalmic opticians undertaking to provide general ophthalmic services, or
 - (e) a list of persons undertaking to provide pharmaceutical services,

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(such a person being referred to in this group of sections as a “practitioner”), they may (or, in cases falling within subsection (6), must) decide to remove him from that list.

- (2) The first condition is that the continued inclusion of the person concerned 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 group of sections as an “efficiency case”).
- (3) The second condition is that the person concerned—
 - (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 (as the case may be) the other was not entitled to the benefit, (and such a case is referred to in this group of sections as a “fraud case”).
- (4) The third condition is that the person concerned is unsuitable to be included in the list (and such a case is referred to in this group of sections as an “unsuitability case”).
- (5) “This group of sections” means this section and sections 49G to 49R below.
- (6) In unsuitability cases, the Health Authority must remove the practitioner from the list in prescribed circumstances.
- (7) The Health Authority must state which condition (or conditions) they are relying on when removing a practitioner from a list.
- (8) In subsection (3), “health scheme” means—
 - (a) any of the health services under section 1(1) above or any corresponding enactment 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 Secretary of State to be a health or medical scheme paid for out of public funds.
- (9) 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.]

Textual Amendments

- F24** S. 49F inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), Sch. 1 Pt. II; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

Modifications etc. (not altering text)

- C1** S. 49F(8): definition extended (W.) (26.8.2002) by [National Health Service \(General Ophthalmic Services\) Regulations 1986 \(S.I. 1986/975\)](#), reg. 9A (as inserted (26.8.2002) by [National Health Service \(General Ophthalmic Services\) \(Amendment\) \(Wales\) Regulations 2002 \(S.I. 2002/1883\)](#)), [reg. 6](#)

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[^{F25}49G Contingent removal

- (1) In an efficiency case or a fraud case, the Health Authority may, instead of deciding to remove a practitioner from their list, decide to remove him contingently.
- (2) If they so decide, they must impose such conditions as they 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 49F(3)(a) above (in a fraud case).
- (3) If the Health Authority determine that the practitioner has failed to comply with a condition, they may decide to—
 - (a) vary the conditions, or impose different conditions, or
 - (b) remove him from their list.
- (4) The Health Authority 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.]

Textual Amendments

- F25** S. 49G inserted (14.12.2001 for E. for all purposes except those relating to the provision of pharmaceutical services under the 1977 Act and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(3), Sch. 1 Pt. III; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 14/12/2001

[^{F26}49H Fraud and unsuitability cases: supplementary

- (1) Where the practitioner is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second or third condition referred to in section 49F(3) and (4) above—
 - (a) in the case of an ophthalmic optician not referred to in paragraph (b) or a dental corporation, 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 carrying on a retail pharmacy business or an ophthalmic optician 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 is to be treated for the purposes of this group of sections as meeting the condition referred to in section 49F(3) above if—
 - (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 49F(1) above on the practitioner's behalf, meets that condition; and

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- (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 49F(3)(a) above occurring in the course of the provision of those services on his behalf.]

Textual Amendments

F26 S. 49H inserted (14.12.2001 for E. for all purposes except those relating to the provision of pharmaceutical services under the 1977 Act and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(3), Sch. 1 Pt. III; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 22/11/2001

[^{F27}49I Suspension

- (1) If the Health Authority are satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, they may suspend a practitioner from their list—
- (a) while they decide whether or not to exercise their powers under section 49F or 49G (other than in circumstances falling within paragraph (b)), or
 - (b) while they wait 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 49F(1) on the practitioner’s behalf, or
 - (iii) if the practitioner is a body corporate, the profession of one of its directors or, as the case may be, 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 Health Authority must specify how long the period of suspension is to be.
- (4) In a case falling within subsection (1)(b), the Health Authority may specify that the practitioner shall remain suspended after the decision referred to there for an additional period which the Health Authority must specify.
- (5) In either case—
- (a) before that period expires they may extend, or further extend, the suspension for a further specified period, or
 - (b) if that period has expired, they may impose a further suspension, for a period which they 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—

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- (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 Health Authority, the FHSAA orders accordingly before the expiry of the period of suspension, or
 - (c) if the Health Authority have applied under paragraph (b) 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 has made an order.
- (7) If the FHSAA does so order, it shall specify—
- (a) the date on which the period of suspension is to end, or
 - (b) an event beyond which it is not to continue.
- (8) The FHSAA may, on the application of the Health Authority, make a further order (complying with subsection (7)) at any time while the period of suspension pursuant to the earlier order is still continuing.
- (9) The Secretary of State 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 Secretary of State or by another person appointed for the purpose by the Secretary of State.]

Textual Amendments

F27 S. 49I inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), **Sch. 1 Pt. II**; S.I. 2002/1475, art. 2(1), **Sch. Pt. 1**

VALID FROM 14/12/2001

[^{F28}49J Suspension pending appeal

- (1) This section applies if the Health Authority decide to remove a practitioner from a list under section 49F.
- (2) In such a case they may also decide to suspend the practitioner from the list pending any appeal by him, if they are 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 they do suspend the practitioner under this section, the suspension has effect from the date when the Health Authority 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 49M(1) below, or, if the practitioner appeals under section 49M, until the FHSAA has disposed of the appeal.
- (5) The Health Authority may revoke a suspension imposed under this section.

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(6) If the practitioner appeals under section 49M against the Health Authority's decision to remove him from the list, the FHSAA may also revoke a suspension imposed on him under this section.

(7) Subsections (9) and (10) of section 49I above apply for the purposes of this section as they apply for the purposes of that.]

Textual Amendments

F28 S. 49J inserted (14.12.2001 for E. for all purposes except those relating to the provision of pharmaceutical services under the 1977 Act and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(3), Sch. 1 Pt. III; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 14/12/2001

[^{F29}49K Effect of suspension

While a practitioner is suspended (whether under section 49I or under section 49J above) he is to be treated as not being included in the list from which he has been suspended even though his name appears in it.]

Textual Amendments

F29 S. 49K inserted (14.12.2001 for E. for all purposes except those relating to the provision of pharmaceutical services under the 1977 Act and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(3), Sch. 1 Pt. III; S.I. 2002/1475, art. 2(1), Sch. Pt. 1

VALID FROM 22/11/2001

[^{F30}49L Review of decisions

(1) The Health Authority 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 FHSAA, or a suspension imposed under section 49J above).

(2) The practitioner may not request a review before the expiry of the period of—

- (a) three months beginning with the date of the Health Authority's decision to suspend or contingently remove him, or (as appropriate),
- (b) six months beginning with the date of their decision on the previous review.

(3) On such a review, the Health Authority may—

- (a) confirm the contingent removal or the suspension,
- (b) in the case of a suspension, terminate it,

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- (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

F30 S. 49L inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), Sch. 1 Pt. II; S.I. 2002/1475, art. 2(1)

VALID FROM 22/11/2001

[^{F31}49M Appeals

- (1) A practitioner may appeal to the FHSAA against a decision of a Health Authority mentioned in subsection (2) by giving notice in writing to the FHSAA within the period of 28 days beginning with the date on which the Health Authority gave him notice of the decision.
- (2) The Health Authority decisions in question are—
 - (a) to remove the practitioner from a list (under section 49F or 49G(3) or under subsection (5)(b) of this section),
 - (b) to remove him contingently (under section 49G),
 - (c) to impose any particular condition under section 49G, or to vary any condition or to impose any different condition under that section,
 - (d) to vary his terms of service (under section 49G(4)),
 - (e) any decision on a review of a contingent removal under section 49L.
- (3) The appeal shall be by way of redetermination of the Health Authority's decision.
- (4) On an appeal, the FHSAA may make any decision which the Health Authority could have made.
- (5) If the FHSAA decides to remove the practitioner contingently—
 - (a) the Health Authority 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 Health Authority may remove him from their list if they determine that he has failed to comply with a condition.
- (6) The Health Authority shall 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 FHSAA has disposed of the appeal.
- (7) Regulations may provide for payments by Health Authorities to practitioners who are removed from lists pursuant to decisions of the FHSAA under this section, but whose appeals against those decisions are successful.]

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Textual Amendments

- F31** [S. 49M](#) inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by [2001 c. 15, ss. 25, 70\(2\)](#) (with [ss. 64\(9\), 65\(4\)](#)); [S.I. 2001/3738, art. 2\(2\), Sch. 1 Pt. II](#); [S.I. 2002/1475, art. 2\(1\)](#)

VALID FROM 22/11/2001

^{F32}49N National disqualification

- (1) If the FHSAA removes the practitioner from a list, it may also decide to disqualify him from inclusion in—
 - (a) all lists referred to in section 49F(1)(a) to (e) prepared by all Health Authorities,
 - (b) all supplementary lists prepared by all Health Authorities, and
 - (c) all services lists prepared by all Health Authorities under section 28DA above or under section 8ZA of the National Health Service (Primary Care) Act 1997 (c. 46), or any list corresponding to a services list prepared by any Health Authority by virtue of regulations made under section 41 of the Health and Social Care Act 2001,
 or only from inclusion in one or more descriptions of such lists prepared by all Health Authorities, the description being specified by the FHSAA in its decision.
- (2) A decision by the FHSAA to do what is mentioned in subsection (1) is referred to in this section as the imposition of a national disqualification.
- (3) The FHSAA may also impose a national disqualification on a practitioner if it dismisses an appeal by him against a Health Authority's refusal to include him in such a list (or, in the case of a medical list, to nominate or approve him for inclusion in it).
- (4) The Health Authority may apply to the FHSAA for a national disqualification to be imposed on a person after they have—
 - (a) removed him from a list of theirs of any of the kinds referred to in subsection (1)(a) to (c), or
 - (b) refused to include him in such a list (or, in the case of a medical list, to nominate or approve him for inclusion in it).
- (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 their refusal.
- (6) If the FHSAA imposes a national disqualification on a person—
 - (a) no Health Authority may include him in a list of any of the kinds from which he has been disqualified from inclusion prepared by them, and
 - (b) if he is included in such a list, each Health Authority in whose list he is included must remove him from it.
- (7) The FHSAA 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.

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- (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 FHSAA’s decision on the last such review.
- (9) The Secretary of State 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

F32 S. 49N inserted (22.11.2001 for certain purposes for E., 14.12.2001 for all other purposes (except those relating to the provision of pharmaceutical services under the 1977 Act) for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(2), Sch. 1 Pt. II; S.I. 2002/1475, art. 2(1) Sch. Pt. 1

Modifications etc. (not altering text)

C2 S. 49N(8) modified (W.) (26.8.2002) by S.I. 1992/635, reg. 7H (as inserted (26.8.2002) by The National Health Service (General Medical Services) (Amendment) (Wales) (No. 2) Regulations 2002 (S.I. 2002/1896), reg. 5)

VALID FROM 22/11/2001

^{F33} 49O Notification of decisions

Regulations may require a Health Authority to notify prescribed persons, or persons of prescribed descriptions, of any decision they make under this group of sections, and of any information relevant to the decision which they consider it appropriate to include in the notification.]

Textual Amendments

F33 S. 49O inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1)

VALID FROM 22/11/2001

^{F34} 49P Withdrawal from lists

Regulations may provide for circumstances in which a practitioner—

- (a) whom a Health Authority are investigating in order to see whether there are grounds for exercising their powers under section 49F, 49G or 49I,

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- (b) whom a Health Authority have decided to remove from a list under section 49F or 49G, or contingently remove under section 49G, but who has not yet been removed or contingently removed, or
 - (c) who has been suspended under section 49I,
- may not withdraw from a list in which he is included.]

Textual Amendments

F34 S. 49P inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1)

VALID FROM 22/11/2001

[^{F35}49Q Regulations

- (1) Any decision by a Health Authority referred to in this group of sections shall be reached in accordance with regulations made by the Secretary of State about such decisions.
- (2) The regulations shall 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 Health Authority make any decision affecting him under this group of sections,
 - (c) requiring him to be given notice of the Health Authority's decision 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 Health Authority must apply when making decisions in unsuitability cases.]

Textual Amendments

F35 S. 49Q inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, ss. 25, 70(2) (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), Sch. 1 Pt. I; S.I. 2002/1475, art. 2(1)

VALID FROM 22/11/2001

[^{F36}49R Corresponding provision in Scotland and Northern Ireland

- (1) This section applies where it appears to the Secretary of State 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 group of sections.
- (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 Secretary of State may make regulations providing for the effect to be given in England and Wales to a corresponding decision.

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- (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 England and Wales.]

Textual Amendments

F36 S. 49R inserted (22.11.2001 for E. and 1.7.2002 for W.) by 2001 c. 15, **ss. 25, 70(2)** (with ss. 64(9), 65(4)); S.I. 2001/3738, art. 2(1), **Sch. 1 Pt. I**; S.I. 2002/1475, **art. 2(1)**

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