



National Health Service (Wales) Act 2006

2006 CHAPTER 42

PART 8

QUALIFICATIONS TO PRACTICE

CHAPTER 1

CONDITIONAL INCLUSION AND SUPPLEMENTARY LISTS

104 Conditional inclusion in ophthalmic and pharmaceutical lists

- (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

- (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 section 113 of that Act or an enhanced criminal record certificate under section 115 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).
- (6) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 107 to 115.

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- (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 [^{F2}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 [^{F2}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(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

- (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,
 - ^{F3}(e)
 - ^{F4}(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,]
- 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—

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- (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

- F3** 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)
- F4** 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)

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