



# National Health Service (Wales) Act 2006

## 2006 CHAPTER 42

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

#### QUALIFICATIONS TO PRACTICE

### 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.

*Status: Point in time view as at 21/01/2021.*

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- (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.](#)

**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.](#)

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## 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](#))

## 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.

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- (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 [F1First-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 [F1First-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 [F1First-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 [F1First-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.
- (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

**F1** 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.

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- (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 [F<sup>2</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 [F<sup>2</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

- F2** 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.](#)

## 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 [F<sup>3</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.

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### Textual Amendments

- F3** 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>F4</sup>First-tier Tribunal] against a decision of a Local Health Board mentioned in subsection (2) <sup>F5</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.
- (4) On an appeal, the [<sup>F6</sup>First-tier Tribunal] may make any decision which the Local Health Board could have made.
- (5) If the [<sup>F6</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>F6</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>F6</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.

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#### Textual Amendments

- F4** 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)**
- F5** 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)**
- F6** 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>F7</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>F8</sup>(e) .....
  - <sup>F9</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,]
- or only from inclusion in one or more descriptions of such lists prepared by each Local Health Board [<sup>F10</sup>and the National Health Service Commissioning Board]<sup>F11</sup>..., the description being specified by the [<sup>F7</sup>First-tier Tribunal] in its decision.
- (2) A decision by the [<sup>F7</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>F7</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>F7</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>F7</sup>First-tier Tribunal] imposes a national disqualification on a person—
- (a) no Local Health Board <sup>F12</sup>... [<sup>F13</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



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- (b) if he is included<sup>F14</sup>, and the National Health Service Commissioning Board,] in such a list, each Local Health Board<sup>F15</sup>... in whose list he is included must remove him from it.
- (7) The <sup>F7</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>F16</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

- F7** 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)**
- F8** 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)
- F9** 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)
- F10** 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)
- F11** 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)
- F12** 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)
- F13** 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)
- F14** 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)
- F15** 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)
- F16** 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.



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## **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.

## **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.

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