
WELSH STATUTORY INSTRUMENTS

2002 No. 1883 (W.192)

NATIONAL HEALTH SERVICE, WALES

National Health Service (General Ophthalmic Services) (Amendment) (Wales) Regulations 2002

Made - - - - 18th July 2002

Coming into force - - 26th August 2002

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 38, 39, 43ZA, 49F, 49I, 49L, 49M, 49N, 49O, 49P, 49Q, 49R and 126(4) of the National Health Service Act 1977(1) and section 65 of the Health and Social Care Act 2001(2), and all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the National Health Service (General Ophthalmic Services) (Amendment) (Wales) Regulations 2002 and shall come into force on 26th August 2002.

(2) These Regulations extend to Wales only.

(3) In these Regulations “the principal Regulations” means the National Health Service (General Ophthalmic Services) Regulations 1986(3).

(4) The principal Regulations shall be amended in accordance with the following provisions of these Regulations.

(1) 1977 c. 49; see section 128(1) as amended by the National Health Service and Community Care Act 1990 (c. 19), section 26(2) (g) and (i), for the definitions of “prescribed” and “regulations”. Section 38 was amended by the Health Services Act 1980 (c. 53) (“the Health Services Act”), section 1 and Schedule 1, paragraph 51; by the Health and Social Security Act 1984 (c. 48) (“the Health and Social Security Act”), section 1(3); by S.I. 1985/39, article 7(11); by the Health and Medicines Act 1988 (c. 49) (“the Health and Medicines Act”), section 13(1); and by the Health Authorities Act 1995 (c. 17) (“the Health Authorities Act”), Schedule 1, paragraph 27. Section 39 was extended by the Health and Medicines Act, section 17; and amended by the Health Services Act, section 1 and Schedule 1, paragraph 52; by the Health and Social Security Act, section 1(4), Schedule 1, Part I, paragraph 1 and Schedule 8, Part I; by S.I. 1985/39, article 7(12); by the Health Authorities Act, Schedule 1, paragraph 28; by the Health Act 1999 (c. 8), section 9(4) and the Health and Social Care Act 2001 (c. 15), (“the 2001 Act”) section 20(5) and 23(4). As regards Wales, the functions of the Secretary of State under sections 38, 39 and 126(4) of the 1977 Act are transferred to the National Assembly for Wales under article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; section 68 of the 2001 Act provides that Schedule 1 shall be construed so as to include the amendments made by that Act to the 1977 Act, which are sections 43ZA and 49F to 49R; those Regulations therefore extend only to Wales.

(2) 2001 c. 15.

(3) S.I. 1986/975; relevant amending Regulations are 1988/486, 1989/395, 1990/1051, 1991/583, 1992/404, 1995/558, 1996/705, 1996/2320, 1999/2562, 1999/2841 and 2001/414.

Amendment of regulation 2

2.—(1) In regulation 2 (interpretation)—

(a) insert the following definitions in the appropriate alphabetical positions—

““Abolition of the Tribunal Regulations” means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002(4);”;

““corresponding decision” means a decision of the Tribunal in England, Scotland and Northern Ireland to impose a local or national disqualification on an ophthalmic medical practitioner or optician;”;

““director” means—

(a) a director of a body corporate; or

(b) a member of the body of persons controlling a body corporate (whether or not a limited liability partnership);”;

““employment” means any employment whether paid or unpaid and whether under a contract of service, and “employed” and “employer” shall be construed accordingly;”;

““equivalent body” means a Health Authority in England, a Health Board or an NHS Trust in Scotland or a Health and Social Services Board in Northern Ireland;”;

““equivalent lists” means lists kept by an equivalent body;”;

““FHSAA” means the Family Health Services Appeal Authority constituted under section 49S of the Act(5);”;

““fraud case” means a case where a person satisfies the second condition for removal from the ophthalmic list, set out in section 49F(3) of the Act, or by virtue of section 49H of the Act is treated as doing so;”;

““licensing or regulatory body” means a body such as the General Medical Council or the General Optical Council that licenses or regulates any profession of which the ophthalmic medical practitioner or optician is or has been a member and includes an approved training institution for ophthalmic medical practitioners or opticians;”;

““lists” means lists referred to in section 49N(1)(a) to (c);”;

““Medical Supplementary List” means a list prepared by a Health Authority in accordance with section 43D of the Act, of doctors approved by the Health Authority for the purposes of assisting in the provision of General Medical Services;”;

““a national disqualification” means—

(a) a decision made by the FHSAA in relation to an ophthalmic medical practitioner or optician under section 49N of the Act,

(b) a decision under provisions in force in Scotland or Northern Ireland corresponding to section 49N of the Act,

(c) a decision by the Tribunal which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4) of the Abolition of the Tribunal Regulations,

(d) a decision by the Tribunal”;

(4) S.I. 2002/1920

(5) Section 49S was inserted by the Health and Social Care Act 2001 (c. 15), section 27(1).

““the National Health Service Counter Fraud Service” means the service provided by the Secretary of State to deal with inquiries and investigations in relation to any allegations of fraud or corruption in the health service(6);”;

““professional conduct” includes matters relating both to professional conduct and professional performance;”;

““professional registration number” means the number against the ophthalmic medical practitioner’s or optician’s name in the register maintained by the General Medical Council or the General Optical Council;”;

““originating events” means the events that gave rise to the conviction, investigation, proceedings, suspension, refusal to admit, conditional inclusion, removal or contingent removal that took place;”;

““suspended” means—

- (a) suspended by a Health Authority under sections 49I or 49J of the Act, or under Regulations made under sections 28DA or 43D of the Act, or section 8ZA of the National Health Service (Primary Care) Act 1997(7),
- (b) suspended by the Tribunal,
- (c) in relation to Scotland or Northern Ireland, suspended under provisions in force corresponding to those in section 49I or 49J of the Act,

and shall be treated as including a case where a person is treated as suspended by a Health Authority in Wales by virtue of Regulation 6(2) of the Abolition of the Tribunal Regulations,

and “suspends” and “suspension” shall be construed accordingly;”;

- (b) for the definition of “the Tribunal” substitute “the Tribunal” means the Tribunal constituted under section 46 of the Act(8) for England and Wales;”;
- and
- (c) omit the definitions of “Committee” and “suspended by direction of the Tribunal”.

(2) In the provisions of the principal Regulations listed in the Schedule to these Regulations, for “the Committee” wherever it appears substitute “Health Authority”.

Amendment of regulation 7

3. In regulation 7(1) (application for inclusion in ophthalmic list) for sub-paragraph (c) substitute—

- “(c) the information and undertakings set out in Schedule 1A.”.

Insertion of new regulations

4. —After regulation 7 (application for inclusion in ophthalmic list) insert—

“Grounds for refusal

7A.—(1) The grounds on which a Health Authority may refuse to include an ophthalmic medical practitioner or optician under regulation 7 are—

- (a) that the Health Authority has considered the information provided under paragraph 7 of Schedule 1A and any other information in its possession in relation

(6) The National Health Service Counter Fraud Service may be contacted by writing to them at Hannibal House, Elephant and Castle, London SE1 6TE, or e-mailing them on DCFS@doh.gov.UK.

(7) 1997 c. 46.

(8) Section 46 was substituted by the Health Act 1999 c. 8.

to this application and considers the ophthalmic medical practitioner or optician is unsuitable to be included in the list;

- (b) that having checked the information provided by the ophthalmic medical practitioner or optician in paragraphs 5 and 6 of Schedule 1A, the Health Authority is not satisfied with the information;
- (c) that having contacted referees, in accordance with paragraph 9 of that Schedule the Health Authority is not satisfied with the information provided by the referees;
- (d) that having checked with the National Health Service Counter Fraud Service for any facts that they consider relevant relating to past or current investigations into a fraud case involving the ophthalmic medical practitioner or optician, and having considered these and any fraud case relating to the ophthalmic medical practitioner or optician, the Health Authority considers these justify such refusal;
- (e) that there are any grounds for the Health Authority to consider that admitting the ophthalmic medical practitioner or optician to the list would be prejudicial to the efficiency of the service which the ophthalmic medical practitioner or optician would undertake.

(2) The grounds on which a Health Authority must refuse to include an ophthalmic medical practitioner or optician are—

- (a) where the ophthalmic medical practitioner or optician has been convicted in the United Kingdom of murder;
- (b) where, after 30th July 2002, the ophthalmic medical practitioner or optician has been convicted in the United Kingdom of a criminal offence and sentenced to a term of imprisonment of over six months;
- (c) where the ophthalmic medical practitioner or optician is the subject of a national disqualification;
- (d) where the ophthalmic medical practitioner or optician has not updated his or her application in accordance with regulation 7B(4);
- (e) where the ophthalmic medical practitioner or optician does not notify the Health Authority under regulation 7D(11) that the ophthalmic medical practitioner or optician wishes to be included in the list subject to the specified conditions.

(3) Where the Health Authority is considering refusal of an ophthalmic medical practitioner or optician under paragraph (1), it shall consider all facts which appear to it to be relevant and shall in particular take into consideration in relation to paragraph (1)(a), (b) and (d) above—

- (a) the nature of any offence, investigation or incident;
- (b) the length of time since any such offence, incident, conviction or investigation;
- (c) whether there are other offences, incidents or investigations to be considered;
- (d) any action or penalty imposed by any licensing, regulatory or other body, the police or the courts as a result of any such offence, incident or investigation;
- (e) the relevance of any offence, investigation or incident to the provision by the ophthalmic medical practitioner or optician of general ophthalmic services and any likely risk to his or her patients or public finances;
- (f) whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997(9) applies;

- (g) whether the ophthalmic medical practitioner or optician has been refused admittance to or conditionally included in, removed, contingently removed or is currently suspended from any of a Health Authority's lists or from equivalent lists, and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action; and
 - (h) whether the ophthalmic medical practitioner or optician was is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which refused admittance to, conditionally included in, removed or contingently removed from other Health Authority lists or equivalent lists, or is currently suspended from such lists, and if so, the facts relating to the matter which led to such actions and the reasons given by the Health authority or equivalent body for such action.
- (4) When the Health Authority takes into consideration the matters set out in paragraph (3), it shall consider the overall effect of all the matters being considered.
- (5) When refusing an application from an ophthalmic medical practitioner or optician, the Health Authority shall notify the ophthalmic medical practitioner or optician of its decision and the reasons for it (including any facts relied upon) and of any right of appeal under regulation 7C.

Deferment of decision

7B.—(1) A Health Authority may defer consideration of a decision on an application by an ophthalmic medical practitioner or optician to be included in the ophthalmic list—

- (a) where there are legal proceedings that are criminal proceedings in the United Kingdom, or where there are legal proceedings in respect of conduct which, had it occurred in the United Kingdom would constitute a criminal offence, and that if successful would be likely to lead to the removal of the ophthalmic medical practitioner or optician from the Health Authority list if the ophthalmic medical practitioner or optician had been included;
- (b) where there are legal proceedings that are criminal proceedings in the United Kingdom against a body corporate of which the ophthalmic medical practitioner or optician is, has in the preceding six months been, or was at the time of the originating events a director, or where there are criminal proceedings in respect of conduct which, if it had occurred in the United Kingdom would constitute a criminal offence, and that if successful would be likely to lead to the removal of the ophthalmic medical practitioner or optician from the Health Authority list if the ophthalmic medical practitioner or optician had been included;
- (c) where there is an investigation anywhere in the world by the ophthalmic medical practitioner's or optician's licensing or regulatory body or any other investigation (including one by another Health Authority or equivalent body) relating to the ophthalmic medical practitioner or optician in his or her professional capacity that if adverse would be likely to lead to the removal of the ophthalmic medical practitioner or optician from the Health Authority list if the ophthalmic medical practitioner or optician were to be included;
- (d) where the ophthalmic medical practitioner or optician is suspended from any of the lists or equivalent lists;
- (e) where a body corporate of which the ophthalmic medical practitioner or optician is, has in the preceding six months been, or was at the time of the originating events a director, is suspended from any of the lists or equivalent lists;

- (f) where the FHSAA is considering an appeal by the ophthalmic medical practitioner or optician against a decision of a Health Authority to refuse to admit to its list the said ophthalmic medical practitioner or optician, or to conditionally include in or to contingently remove from, or to remove the said medical ophthalmic practitioner or optician from any list kept by a Health Authority, and if that appeal is unsuccessful the Health Authority would be likely to remove the said ophthalmic medical practitioner or optician from the Health Authority list if the said ophthalmic medical practitioner or optician had been included the list;
 - (g) where the FHSAA is considering an appeal by a body corporate of which the ophthalmic medical practitioner or optician is, has in the preceding six months been, or was at the time of the originating events a director, against a decision of a Health Authority to refuse to admit the body corporate to its list, or to conditionally include in or to contingently remove from, or to remove from any list kept by a Health Authority or equivalent body, and if that appeal is unsuccessful the Health Authority would be likely to remove the ophthalmic medical practitioner or optician from the Health Authority list if the said ophthalmic medical practitioner or optician had been included in the list;
 - (h) where the ophthalmic medical practitioner or optician is being investigated by the National Health Service Counter Fraud Service in relation to any fraud case, where the result if adverse would be likely to lead to the removal of the ophthalmic medical practitioner or optician from the Health Authority list if the ophthalmic medical practitioner or optician had been included;
 - (i) where a body corporate, of which the ophthalmic medical practitioner or optician is, has in the preceding six months been, or was at the time of the originating events a director, is being investigated by the National Health Service Counter Fraud Service in relation to any fraud case, where the result if adverse would be likely to lead to the removal of the ophthalmic medical practitioner or optician from the Health Authority list if the ophthalmic medical practitioner or optician had been included;
 - (j) where the FHSAA is considering an application from a Health Authority for a national disqualification of the ophthalmic medical practitioner or optician;
 - (k) where the FHSAA is considering an application from a Health Authority for a national disqualification of a body corporate of which the ophthalmic medical practitioner or optician is, has in the preceding six months been, or was at the time of the originating events a director.
- (2) A Health Authority may only defer consideration under paragraph (1) above until the outcome of the relevant event mentioned in sub-paragraphs (a); (b); (c); (f); (g); (h); (j) or (k) is known or whilst the ophthalmic medical practitioner or optician or body corporate is suspended under sub-paragraph (d) or (e).
- (3) A Health Authority must notify the ophthalmic medical practitioner or optician of a decision to defer a decision on an application and the reasons for this.
- (4) Once the outcome of the relevant event mentioned in sub-paragraphs (a); (b); (c); (f); (g); (h); (i); (j) or (k) of paragraph (1) is known or the suspension referred to in sub-paragraphs (d) or (e) has come to an end, the Health Authority shall notify the ophthalmic medical practitioner or optician in writing that the ophthalmic medical practitioner or optician must:—
- (a) update his or her application within 28 days of the date of the notification (or such longer period as the Health Authority may agree);

- (b) confirm in writing within the period mentioned in sub-paragraph (a) that the ophthalmic medical practitioner or optician wishes to proceed with the application.
- (5) Provided any additional information has been received within the 28 days or the time agreed, the Health Authority shall notify the ophthalmic medical practitioner or optician as soon as possible—
 - (a) that the ophthalmic medical practitioner's or optician's application has been successful; or
 - (b) that the Health Authority has decided to refuse the application or impose conditions on the inclusion of the ophthalmic medical practitioner or optician, and the reasons for it (including any facts relied on), and of any right of appeal under regulation 7C.

Appeal to the FHSAA

7C.—(1) An ophthalmic medical practitioner or optician may appeal to the FHSAA against a decision of a Health Authority to refuse to include the ophthalmic medical practitioner or optician in the ophthalmic list pursuant to regulation 7.

- (2) Such appeal shall be by way of redetermination.

Conditional Inclusion

7D.—(1) A Health Authority may determine that if a person is to be included in the list, the ophthalmic medical practitioner or optician is to be subject, while the ophthalmic medical practitioner or optician remains included in the list, to conditions imposed on the inclusion of the ophthalmic medical practitioner or optician, having regard to the requirements of section 43ZA(2) of the Act.

(2) A Health Authority may vary the terms of service as provided for in Schedule 1 to these Regulations in relation to the applicant for the purpose of, or in connection with, the imposition of those conditions.

(3) The Health Authority may of its own volition or at the request of the ophthalmic medical practitioner or optician concerned review any decision made under this regulation.

(4) An ophthalmic medical practitioner or optician may not request a review of a Health Authority decision until the expiry of a three month period beginning with the date the Health Authority includes the ophthalmic medical practitioner or optician in the list.

(5) After a review has taken place, the ophthalmic medical practitioner or optician cannot request another review before the expiry of six months from the date of the decision on the previous review.

(6) On such a review, the Health Authority may vary the conditions, impose different conditions or remove the ophthalmic medical practitioner or optician from the list.

(7) Failure to comply with a condition may lead to removal of the ophthalmic medical practitioner or optician from the list.

- (8) There shall be an appeal to the FHSAA from any decision of the Health Authority—
 - (a) to impose conditions, or any particular condition, on an ophthalmic medical practitioner or optician;
 - (b) to vary a condition;
 - (c) to vary terms of service of the ophthalmic medical practitioner or optician;
 - (d) on any review of an earlier such decision of the Health Authority;

- (e) to remove the ophthalmic medical practitioner or optician from the list for breach of condition,

and the appeal shall be by way of redetermination of the Health Authority decision.

(9) On appeal the FHSAA may make any decision which the Health Authority could have made.

(10) Where the decision of the FHSAA on appeal is that conditions be imposed on the ophthalmic medical practitioner or optician, whether or not those conditions are identical with the conditions imposed by the Health Authority, the Health Authority shall ask the ophthalmic medical practitioner or optician to notify it within 28 days of the decision, (or such longer period as the Health Authority may agree) whether the ophthalmic medical practitioner or optician wishes to be included in the ophthalmic list subject to these conditions.

(11) If the ophthalmic medical practitioner or optician notifies the Health Authority that the ophthalmic medical practitioner or optician does wish to be included in the ophthalmic list subject to the conditions, the Health Authority shall so include the ophthalmic medical practitioner or optician.

(12) Any decision of the Health Authority that may be the subject of an appeal under paragraph (8) shall not have effect until the FHSAA has determined any appeal against it or any time for appeal has expired.

(13) A Health Authority shall disclose to those persons or bodies specified in paragraph (15) below, information of the kind mentioned in paragraph (14) about ophthalmic medical practitioners or opticians whose inclusion in the list is subject to conditions imposed under this regulation and about the removal of such persons from the list for breach of such a condition.

(14) The information referred to in paragraph (13) is—

- (a) identifying details of the ophthalmic medical practitioner or optician;
- (b) professional registration number;
- (c) date and copy of the decision of the Health Authority;
- (d) the contact name of a person in the Health Authority for further enquiries.

(15) Persons or bodies to whom information shall be disclosed under paragraph (13) are—

- (a) the National Assembly for Wales;
- (b) any Health Authority in Wales that has the ophthalmic medical practitioner or optician or a body corporate of which the ophthalmic medical practitioner or optician is a director, in any of its lists, or any Health Authority in Wales that is considering an application for inclusion in any of its lists from the ophthalmic medical practitioner or optician or a body corporate of which he or she is known to be a director;
- (c) the Scottish Executive;
- (d) the Secretary of State;
- (e) the Northern Ireland Executive;
- (f) the General Medical Council or the General Optical Council or any other appropriate regulatory body;
- (g) any other organisation that, to the knowledge of the Health Authority, employs or uses the services of the ophthalmic medical practitioner or optician in a professional capacity;

(h) where it is a fraud case, the National Health Service Counter Fraud Service.

(16) The Health Authority shall notify any persons or bodies of the information specified in paragraph (14) if those persons or bodies can establish that it is considering employing the ophthalmic medical practitioner or optician and the Health Authority receives a written request (including an electronic request) to do so.

(17) The Health Authority shall send to the ophthalmic medical practitioner or optician concerned a copy of any information about the ophthalmic medical practitioner or optician provided to the persons or bodies referred to in paragraphs (15) and (16), and any correspondence with those persons or bodies relating to that information.

(18) Where the Health Authority has notified any of the persons or bodies mentioned in paragraph (15) or (16) of the matters set out in paragraph (14), it may in addition notify that person or body of any evidence that was considered, including representations of the ophthalmic medical practitioner or optician if so requested.

(19) Where a Health Authority is notified by the FHSAA that it has imposed a national disqualification on an ophthalmic medical practitioner or optician whom the Health Authority had removed from its ophthalmic list, it shall notify the persons or bodies listed in paragraph (15)(b), (g) and (h) and paragraph (16).

(20) Where a decision is changed on review or appeal, or a suspension lapses, the Health Authority shall notify any person or body that was notified of the original decision of the later decision.”

Amendment of regulation 8

5. In regulation 8 (withdrawal from ophthalmic list), for paragraph (2) substitute—

“(2) Where a Health Authority is investigating an ophthalmic medical practitioner or optician—

- (a) for the purpose of deciding whether or not to exercise its powers under section 49F, 49G or 49I of the Act;
- (b) in order to see whether the ophthalmic medical practitioner or optician has failed to comply with a condition imposed on his or her inclusion under regulation 7D so as to justify removal of the ophthalmic medical practitioner or optician from the list; or
- (c) who has been suspended under section 49I(1)(a) of the Act,

the ophthalmic medical practitioner or optician may not withdraw from any list kept by any Health Authority in which the ophthalmic medical practitioner or optician is included, except where the National Assembly has given its consent, until the matter has been finally determined by the Health Authority.

(2A) Where a Health Authority has decided to remove an ophthalmic medical practitioner or optician from a list under section 49F or 49G of the Act, or contingently remove under section 49G of the Act, or remove the ophthalmic medical practitioner or optician for breach of a condition imposed on inclusion under regulation 7D, but has not yet given effect to its decision, the ophthalmic medical practitioner or optician may not withdraw from any list kept by any Health Authority in which the ophthalmic medical practitioner or optician is included, except where the National Assembly has given its consent.

(2B) Where a Health Authority has suspended an ophthalmic medical practitioner or optician under section 49I(1)(b), the ophthalmic medical practitioner or optician may not withdraw from any list kept by any Health Authority in which the ophthalmic medical practitioner or optician is included, except where the National Assembly has given its

consent, until the decision of the relevant court or body is known and the matter has been considered and finally determined by the Health Authority.”.

Insertion of new regulations

6. After regulation 9 (removal from ophthalmic list) insert the following new regulations—

“Supplementary matters relating to removal

9A. In addition to the services covered by the definition of “health scheme” in section 49F(8) of the Act, the following shall also be health schemes—

- (a) health services, including medical and surgical treatment, provided by Her Majesty’s Forces;
- (b) services provided by Port Health Authorities constituted under the Public Health (Control of Disease) Act 1984⁽¹⁰⁾;
- (c) health services provided to a prisoner in the care of the medical officer or any other such officer of a prison appointed for the purposes of section 7 of the Prison Act 1952⁽¹¹⁾;
- (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

Criteria for decisions on removal

9B.—(1) Where a Health Authority is considering whether to remove an ophthalmic medical practitioner or optician using the power in section 49F(4) of the Act it shall consider the information from the ophthalmic medical practitioner or optician supplied under paragraph 7 of Schedule 1A to these Regulations and must apply the criteria set out in paragraph (2).

(2) The criteria referred to in paragraph (1) are—

- (a) the nature of any criminal offence, investigation or incident;
- (b) the length of time since any such offence, incident, conviction or investigation;
- (c) whether there are other criminal offences to be considered;
- (d) the penalty imposed on any criminal conviction or the outcome of any investigation;
- (e) the relevance of any criminal offence or investigation into professional conduct on the provision by the ophthalmic medical practitioner or optician of general ophthalmic services and the likely risk to patients;
- (f) whether any criminal offence was a sexual offence to which Part I of the Sexual Offences Act 1997⁽¹²⁾ applies; and
- (g) whether the ophthalmic medical practitioner or optician has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from other Health Authority lists or equivalent lists, and if so, what the facts were in those cases and what were the reasons given by the Health Authority or equivalent body in the case; and

⁽¹⁰⁾ 1984 c. 22.

⁽¹¹⁾ 1952 c. 52.

⁽¹²⁾ 1997 c. 51.

(h) whether the ophthalmic medical practitioner or optician is, has in the preceding six months been, or was at the time of the originating events a director of a body corporate, which was refused admittance to, conditionally included in, removed or contingently removed from other Health Authority lists or equivalent lists, or is currently suspended from such lists, and if so, what the facts were in those cases and what were the reasons given by the Health Authority or equivalent body in the case.

(3) Where a Health Authority is considering removal of an ophthalmic medical practitioner or optician under section 49F (3) of the Act, it shall consider the information from the ophthalmic medical practitioner or optician supplied under paragraph 7 of Schedule 1A, and must apply the criteria set out in paragraph (4).

(4) The criteria referred to in paragraph (3) are—

- (a) the nature of any fraud case;
- (b) the length of time since the incident of fraud (if any) occurred, and since any investigation into that incident of fraud was concluded;
- (c) whether there are other incidents of fraud cases or other criminal offences to be considered;
- (d) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident;
- (e) the relevance of any incident of fraud to the provision by the ophthalmic medical practitioner or optician of general ophthalmic services and the likely risk to patients or to public finances;
- (f) whether the ophthalmic medical practitioner or optician has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from other Health Authority lists or equivalent lists, and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action; and
- (g) whether the ophthalmic medical practitioner or optician is, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, conditionally included in, removed or contingently removed from other Health Authority lists or equivalent lists, or is currently suspended from such lists, and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action.

(5) Where a Health Authority is considering removal of an ophthalmic medical practitioner or optician under section 49F (2) of the Act, it shall consider the information from the ophthalmic medical practitioner or optician supplied under paragraph 7 of Schedule 1A, and must apply the criteria set out in paragraph (6).

(6) The criteria referred to in paragraph (5) are—

- (a) whether the continued inclusion in the list of the ophthalmic medical practitioner or optician would be prejudicial to the efficiency of the general ophthalmic services provided by the ophthalmic medical practitioner or optician;
- (b) the length of time since any incident occurred, and since the investigation of the incident was concluded;
- (c) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident;
- (d) the nature of the incident and whether there is a likely risk to patients;

- (e) whether the ophthalmic medical practitioner or optician has ever failed to comply with a request by the Health Authority to undertake an assessment by the National Clinical Assessment Authority⁽¹³⁾;
- (f) whether the ophthalmic medical practitioner or optician has previously failed to supply information or comply with an undertaking required by these Regulations;
- (g) whether the ophthalmic medical practitioner or optician has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from other Health Authority lists or equivalent lists, and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action; and
- (h) whether the ophthalmic medical practitioner or optician was at the time, has in the preceding six months been, or was at the time of the originating events a director of a body corporate which was refused admittance to, conditionally included in, removed or contingently removed from other Health Authority lists or equivalent lists, or is currently suspended from such lists, and if so, the facts relating to the matter which led to such action and the reasons given by the Health authority or equivalent body for the such action.

(7) In making any decision under section 49F of the Act, the Health Authority shall take into account the effect of all relevant incidents and offences relating to the ophthalmic medical practitioner or optician of which it is aware, whichever condition it relies on.

(8) When making a decision on any condition in section 49F of the Act, the Health Authority shall state in its decision on which condition (or conditions) in section 49F it relies.

Cases where the Health Authority must remove an ophthalmic medical practitioner or optician

9C.—(1) The Health Authority must remove the ophthalmic medical practitioner or optician from the ophthalmic list where it becomes aware that the ophthalmic medical practitioner or optician—

- (a) has been convicted in the United Kingdom of murder; or
- (b) has been convicted in the United Kingdom since 30th July 2002 of a criminal offence and sentenced to a term of imprisonment of over six months.

(2) The Health Authority shall notify the ophthalmic medical practitioner or optician immediately that the ophthalmic medical practitioner or optician has been removed from the list.

Notifications by Health Authorities

9D.—(1) Where a Health Authority—

- (a) refuses to include an ophthalmic medical practitioner or optician under regulation 7A;
- (b) imposes conditions on the inclusion of the ophthalmic medical practitioner or optician in the ophthalmic list under regulation 7D;
- (c) removes an ophthalmic medical practitioner or optician under section 49F of the Act;

(13) The National Clinical Assessment Authority is a Special Health Authority established under section 11 of the Act by S.I. 2000/2961.

(d) contingently removes an ophthalmic medical practitioner or optician under section 49G of the Act; or

(e) suspends an ophthalmic medical practitioner or optician,

it shall notify the persons and bodies listed in paragraph (2) and shall additionally notify those specified in paragraph (3) if so requested by those persons or bodies in writing (including electronically), of the matters set out in paragraph (4).

(2) Where paragraph (1) applies, a Health Authority shall notify—

(a) the National Assembly for Wales;

(b) any Health Authority in Wales that has the ophthalmic medical practitioner or optician, or a body corporate of which the ophthalmic medical practitioner or optician is a director, on any of its lists, or is considering an application for inclusion in any of its lists by such an ophthalmic medical practitioner or optician or body corporate;

(c) the Scottish Executive;

(d) the Secretary of State;

(e) the Northern Ireland Executive;

(f) the General Optical Council, General Medical Council or any other appropriate professional regulatory body;

(g) any other organisation that, to the knowledge of the Health Authority, employs or uses the services of the ophthalmic medical practitioner or optician in a professional capacity;

(h) where it is a fraud case, the National Health Service Counter Fraud Service.

(3) The persons or bodies who shall be additionally notified in accordance with paragraph (1) are persons or bodies that can establish that they are considering employing the ophthalmic medical practitioner or optician in a professional capacity.

(4) The matters referred to in paragraph (1) are—

(a) identifying details of the ophthalmic medical practitioner or optician;

(b) professional registration number;

(c) date and copy of the decision of the Health Authority;

(d) a contact name of a person in the Health Authority for further enquiries.

(5) The Health authority shall send the ophthalmic practitioner or optician concerned a copy of any information about the ophthalmic medical practitioner or optician provided to the persons or bodies specified in paragraph (2) or (3) and any correspondence with those persons or bodies relating to that information.

(6) Where the Health Authority has notified any of the persons or bodies mentioned in paragraph (2) or (3) of the matters set out in paragraph (4), it may in addition, if so requested by that person or body, notify that person or body of any evidence that was considered, including representations of the ophthalmic medical practitioner or optician.

(7) Where a Health Authority is notified by the FHSAA that it has imposed a national disqualification on an ophthalmic medical practitioner or optician whom the Health Authority had removed from its list, it shall notify the persons or bodies listed in paragraph (2)(b), (g) and (h) and paragraph (3).

(8) Where a decision is changed on review or appeal, or a suspension lapses, the Health Authority shall notify any person or body that was notified of the original decision of the later decision.

Procedure on removal

9E.—(1) Where a Health Authority is considering—

- (a) removing an ophthalmic medical practitioner or optician under section 49F of the Act (other than in cases specified in regulation 9C);
- (b) contingently removing an ophthalmic medical practitioner or optician under section 49G of the Act; or
- (c) removing an ophthalmic medical practitioner or optician for breach of a condition imposed under regulation 7D,

it shall follow the procedure set out in paragraphs (3) to (8) below.

(2) Where a Health Authority is notified by the FHSAA that it has considered—

- (a) an appeal by an ophthalmic medical practitioner or optician against a contingent removal by the Health Authority and has decided to remove the ophthalmic medical practitioner or optician instead; or
- (b) an appeal by an ophthalmic medical practitioner or optician against a conditional inclusion, where the ophthalmic medical practitioner or optician has been conditionally included in the list until the appeal has been decided, and has decided not to include the ophthalmic medical practitioner or optician,

the Health Authority shall remove the ophthalmic medical practitioner or optician and shall notify the ophthalmic medical practitioner or optician immediately that it has done so.

(3) Before reaching a decision of the kind mentioned in paragraph (1), the Health Authority shall—

- (a) give the ophthalmic medical practitioner or optician notice in writing of any allegation against the ophthalmic medical practitioner or optician;
- (b) give the ophthalmic medical practitioner or optician notice of what action the Health Authority is considering and on what grounds;
- (c) give the ophthalmic medical practitioner or optician the opportunity to make written representations to the Health Authority within 28 days of the date of the notification under sub-paragraph (b);
- (d) give the ophthalmic medical practitioner or optician the opportunity to put his or her case at an oral hearing before the Health Authority, if the ophthalmic medical practitioner or optician so requests within the 28 day period mentioned in sub-paragraph (c).

(4) If there are no representations within the period specified in paragraph (3)(c), the Health Authority shall inform the ophthalmic medical practitioner or optician of its decision, the reasons for it (including any facts relied upon), and of any right of appeal.

(5) If there are representations, the Health Authority must take them into account before reaching its decision, and notifying the ophthalmic medical practitioner or optician of its decision, the reasons for it (including any facts relied upon), and of any right of appeal.

(6) If the ophthalmic medical practitioner or optician requests an oral hearing, this must take place before the Health Authority reaches its decision, and the Health Authority must then notify the ophthalmic medical practitioner or optician of its decision, the reasons for it (including any facts relied upon) and of any right of appeal.

(7) When the Health Authority notifies the ophthalmic medical practitioner or optician of any decision, it shall inform the ophthalmic medical practitioner or optician that if the ophthalmic medical practitioner or optician wishes to exercise a right of appeal, the ophthalmic medical practitioner or optician has 28 days from the date of the decision to do so, and shall tell the ophthalmic medical practitioner or optician how to do so.

(8) The Health Authority shall also notify the ophthalmic medical practitioner or optician of his or her right to have the decision reviewed in accordance with section 49L of the Act.

Procedure on suspension

9F.—(1) Before reaching a decision to suspend an ophthalmic medical practitioner or optician under section 49I or 49J of the Act, the Health Authority shall—

- (a) give the ophthalmic medical practitioner or optician notice in writing of any allegation against the ophthalmic medical practitioner or optician;
- (b) give the ophthalmic medical practitioner or optician notice of what action the Health Authority is considering and on what grounds;
- (c) give the ophthalmic medical practitioner or optician the opportunity to put his or her case at an oral hearing before the Health Authority on a specified day, provided at least 24 hours' notice of the hearing is given.

(2) If the ophthalmic medical practitioner or optician does not wish to have an oral hearing, or does not attend the oral hearing, the Health Authority shall inform the ophthalmic medical practitioner or optician of its decision and the reasons for it (including any facts relied upon).

(3) If an oral hearing takes place, the Health Authority shall take into account any representations made before it reaches its decision.

(4) The Health Authority may suspend the ophthalmic medical practitioner or optician with immediate effect following the hearing.

(5) The Health Authority shall notify the ophthalmic medical practitioner or optician of its decision and the reasons for it (including any facts relied upon).

Procedure on review of Health Authority decision

9G.—(1) If a Health Authority decides to review its decision to conditionally include, contingently remove or suspend an ophthalmic medical practitioner or optician, it shall—

- (a) notify the ophthalmic medical practitioner or optician in writing that it intends to review its decision;
- (b) notify the ophthalmic medical practitioner or optician of what action it has in mind and the reasons for it;
- (c) give the ophthalmic medical practitioner or optician the opportunity to make written representations to the Health Authority within 28 days of the date of the notification under sub-paragraph (b);
- (d) give the ophthalmic medical practitioner or optician the opportunity to put his or her case at an oral hearing before the Health Authority if the ophthalmic medical practitioner or optician requests one within the 28 day period mentioned above.

(2) If there are representations, the Health Authority must take them into account before reaching its decision.

(3) If the ophthalmic medical practitioner or optician requests an oral hearing, this must take place before the Health Authority reaches its decision.

(4) The Health Authority shall notify the ophthalmic medical practitioner or optician of any decision and the reasons for it (including any facts relied upon).

(5) When the Health Authority notifies the ophthalmic medical practitioner or optician of any decision, it shall inform the ophthalmic medical practitioner or optician of any right of appeal, that the ophthalmic medical practitioner or optician has 28 days from the date of

the decision to exercise that right if the ophthalmic medical practitioner or optician wishes to do so, and tell the ophthalmic medical practitioner or optician how to do so.

(6) The Health Authority shall also notify the ophthalmic medical practitioner or optician of the right of the ophthalmic medical practitioner or optician to have the decision further reviewed in accordance with section 49L of the Act.

National Disqualification

9H.—(1) if on making a decision to impose a national disqualification, the FHSAA states that it is of the opinion that the criminal or professional conduct of the ophthalmic medical practitioner or optician is such that there is no realistic prospect of a further review being successful if held within the period specified in section 49N(8)(a) of the Act, the reference to “two years” in that provision shall be a reference to five years;

(2) if on the last review by the FHSAA of a national disqualification the ophthalmic medical practitioner or optician was unsuccessful and the FHSAA states that it is of the opinion that there is no realistic prospect of a further review being successful if held within a period of three years beginning with the date of its decision on that review, the reference to “one year” in section 49N(8)(b) of the Act shall be a reference to three years;

(3) if the FHSAA states that it is of the opinion that because a criminal conviction considered by the FHSAA in reaching its decision has been quashed or the penalty reduced on appeal, there is a need for an immediate review, the reference to “two years” or “one year” in section 49N(8) of the Act shall be a reference to the period that has already elapsed;

(4) if the FHSAA is of the opinion that because the decision of a licensing, regulatory or other body has been quashed or the penalty reduced on appeal, there is a need for an immediate review, the reference to “two years” or “one year” in section 49N(8) of the Act shall be a reference to the period that has already elapsed.”.

Substitution of regulation 12A

7. For regulation 12A (payments to contractors suspended by direction of the Tribunal), substitute—

“12A.—(1) The Health Authority shall make payments to any ophthalmic medical practitioner or optician who is suspended in accordance with the National Assembly’s determination for the time being in force in relation to such payments.

(2) The National Assembly shall make the determination in accordance with paragraph (3) after consultation with the organisations referred to in regulation 10(1) and it shall be published with the Statement referred to in regulation 10(1).

(3) Subject to paragraphs (4) and (5), the National Assembly’s determination shall be such as to secure that, as far as reasonably practicable, the suspended ophthalmic medical practitioner or optician receives payments at a rate corresponding to the remuneration of the ophthalmic medical practitioner or optician by virtue of regulation 10 during the 12 months ending with the suspension of the ophthalmic medical practitioner or optician.

(4) The National Assembly’s determination may include provision that payments in accordance with the determination are not to exceed a specified amount in any specified period.

(5) The determination shall provide for a deduction to take account of any payments which the suspended doctor receives for providing general ophthalmic services otherwise than as a principal.

(6) Regulation 10(2) shall apply to determinations under this regulation as it applies to determinations under that regulation.

(7) Regulation 12(2) shall apply to payments made under this regulation as it applies to payments made under that regulation.”.

Amendment of Schedule 1

8.—(1) Schedule 1 (terms of service) shall be amended in accordance with the following provisions.

(2) After paragraph 6 (records) insert—

Declarations of Convictions

6A.—(1) A contractor shall by 31st October 2002 supply in writing information to the Health Authority as to whether the ophthalmic medical practitioner or optician—

- (a) has any criminal convictions in the United Kingdom;
- (b) has been bound to keep the peace in the United Kingdom;
- (c) has accepted a police caution in the United Kingdom;
- (d) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (e) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Health Authority;
- (f) has been subject to any investigation into his or her professional conduct by any licensing, regulatory or other body anywhere in the world, where the outcome was adverse;
- (g) is currently subject to any investigation into his or her professional conduct by any licensing, regulatory or other body anywhere in the world;
- (h) is, to the knowledge of the ophthalmic medical practitioner or optician, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud Service in relation to a fraud case;
- (i) is the subject of any investigation by another Health Authority or equivalent body, which might lead to the removal of the ophthalmic medical practitioner or optician from any of that Health Authority’s lists or equivalent lists;
- (j) is, or has been where the outcome was adverse, subject to an investigation into the professional conduct of the ophthalmic medical practitioner or optician in respect of any current or previous employment;
- (k) has been removed, contingently removed, refused admission to, or conditionally included in any list or equivalent list kept by another Health Authority or equivalent body, or is currently suspended from such a list,

and if so, give details of any investigation or proceedings which were or are to be brought, including the nature of the investigation or proceedings, where and approximately when the investigation or those proceedings took place or are to take place and any outcome.

(2) If the contractor is, has in the preceding six months been, or was at the time of the originating events a director of a body corporate, the ophthalmic medical practitioner or optician shall in addition by 31st October 2002 supply in writing information to the Health Authority as to whether the body corporate—

- (a) has any criminal convictions in the United Kingdom;

- (b) has been convicted elsewhere of an offence, or what, if committed in the United Kingdom, would constitute a criminal offence or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (c) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Health Authority;
- (d) has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body anywhere in the world, where the outcome was adverse;
- (e) is currently subject to any investigation into its provision of professional services by any licensing, regulatory or other body anywhere in the world;
- (f) is to the knowledge of the ophthalmic medical practitioner or optician, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud Service in relation to a fraud case;
- (g) is the subject of any investigation by another Health Authority or equivalent body, which might lead to its removal from any of that Health Authority's lists or equivalent lists;
- (h) has been removed, contingently removed, refused admission to, or conditionally included in any list or equivalent list kept by another Health Authority or equivalent body, or is currently suspended from such a list,

and if so give details of the name and registered office of the body corporate, any investigation or proceedings which were or are to be brought, the nature of the investigation or proceedings, where and approximately when the investigation or those proceedings took place or are to take place, and any outcome.

(3) The contractor shall provide all necessary authority to enable a request to be made by the Health Authority to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by them into the contractor referred to in sub-paragraph (5).

(4) Having supplied the information referred to in paragraph (1), the contractor shall inform the Health Authority within 7 days if the ophthalmic medical practitioner or optician—

- (a) is convicted of any criminal offence in the United Kingdom;
- (b) is bound over to keep the peace in the United Kingdom;
- (c) accepts a police caution in the United Kingdom;
- (d) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (e) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales, would constitute a criminal offence;
- (f) is notified by any licensing, regulatory or other body anywhere in the world, of the outcome of any investigation into the professional conduct of the ophthalmic medical practitioner or optician, and there is a finding against the ophthalmic medical practitioner or optician;
- (g) becomes the subject of any investigation into the professional conduct of the ophthalmic medical practitioner or optician by any licensing, regulatory or other body;
- (h) becomes subject to an investigation into the professional conduct of the ophthalmic medical practitioner or optician in respect of any current or previous employment, or is notified of the outcome of any such investigation and any finding against the ophthalmic medical practitioner or optician;
- (i) becomes the subject of any investigation by the National Health Service Counter Fraud Service in relation to a fraud case;

(j) becomes the subject of any investigation by another Health Authority or equivalent body, which might lead to the removal of the ophthalmic medical practitioner or optician from any of that Health Authority's lists or equivalent lists;

(k) is removed, contingently removed, suspended, refused admission to, or conditionally included in any list or equivalent list kept by another Health Authority or equivalent body, and if so, give details of any investigation or proceedings which were or are to be brought, including the nature of the investigation or proceedings, where and approximately when that investigation or those proceedings took place or are to take place, and any outcome.

(5) Having supplied the information referred to in paragraph (2), the contractor shall inform the Health Authority within 7 days if the body corporate of which the ophthalmic medical practitioner or optician is, or was in the preceding six months or was at the time of the originating events a director—

- (a) is convicted of any criminal offence in the United Kingdom;
- (b) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (c) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales, would constitute a criminal offence;
- (d) is notified by any licensing, regulatory or other body anywhere in the world, of the outcome of any investigation into its provision of professional services, and there is a finding against the body corporate;
- (e) becomes the subject of any investigation by its professional body into its provision of professional services by any licensing, regulatory or other body anywhere in the world;
- (f) becomes the subject of any investigation by the National Health Service Counter Fraud Service in relation to a fraud case or is notified of the outcome of such an investigation where it is adverse;
- (g) becomes the subject of any investigation by another Health Authority or equivalent body, which might lead to its removal from any of that Health Authority's lists or equivalent lists;
- (h) is removed, contingently removed, suspended, refused admission to, or conditionally included in any list or equivalent list kept by another Health Authority or equivalent body,

and if so, give the name and registered office of the body corporate and details, of any investigation or proceedings which were or are to be brought, including the nature of the investigation or proceedings, where and approximately when the investigation or proceedings took place or are to take place, and any outcome.

(6) Where paragraphs (4) or (5) apply, the ophthalmic medical practitioner or optician shall provide all necessary authority to enable a request to be made by the Health Authority to any employer (or former employer), licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by them into the ophthalmic medical practitioner or optician or a body corporate referred to in sub-paragraph (5).

Applications to other lists

6B. An ophthalmic medical practitioner or optician shall inform the Health Authority—

- (a) if the ophthalmic medical practitioner or optician, or a body corporate of which the ophthalmic medical practitioner or optician is a director, applies to be included in any list held by another Health Authority or equivalent body, and of the outcome of any such application; and

- (b) if the ophthalmic medical practitioner or optician becomes a director of a body corporate that is included in any list held by a Health Authority, or applies to be included in such a list, and the outcome of any such application.”.

Insertion of Schedule 1A

9. After Schedule 1, insert—

“Schedule 1A

regulation 7(1)

Information, undertakings and authority to be given when applying to be included in the ophthalmic list

1. Full name
2. Sex
3. Date of birth
4. Private address
5. Qualifications and where obtained
6. Professional registration number
 - (a) Information on whether—
 - (i) the ophthalmic medical practitioner or optician has any criminal convictions in the United Kingdom;
 - (ii) the ophthalmic medical practitioner or optician has been bound over following a criminal conviction in the United Kingdom;
 - (iii) the ophthalmic medical practitioner or optician has accepted a police caution in the United Kingdom;
 - (iv) the ophthalmic medical practitioner or optician has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in the United Kingdom, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
 - (v) the ophthalmic medical practitioner or optician is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Health Authority;
 - (vi) the ophthalmic medical practitioner or optician has been subject to any investigation into the professional conduct of the ophthalmic medical practitioner or optician by any licensing, regulatory or other body anywhere in the world, where the outcome was adverse;
 - (vii) the ophthalmic medical practitioner or optician is currently subject to any investigation into the professional conduct of the ophthalmic medical practitioner or optician by any licensing, regulatory or other body anywhere in the world;
 - (viii) the ophthalmic medical practitioner or optician has been subject to an investigation into the professional conduct of the ophthalmic medical practitioner or optician in respect of any current or previous employment where the outcome was adverse;
 - (ix) the ophthalmic medical practitioner or optician is currently subject to an investigation into the professional conduct of the ophthalmic medical practitioner or optician in respect of any current or previous employment;

- (x) the ophthalmic medical practitioner or optician is to the knowledge of the ophthalmic medical practitioner or optician, or has been where the outcome was adverse, subject to any investigation by National Health Service Counter Fraud Service in relation to a fraud case,
 - (xi) and if so, give details of any investigation or proceedings which were or are to be brought, including the nature of the investigation or proceedings, where and approximately when that investigation or those proceedings took place or are to take place, and any outcome;
- (b) if the ophthalmic medical practitioner or optician is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate, information on whether—
- (i) it has any criminal convictions in the United Kingdom;
 - (ii) it has been convicted elsewhere of an offence, or what if committed in the United Kingdom, would constitute a criminal offence or is subject to a penalty which will be the equivalent of being bound over or cautioned;
 - (iii) it is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Health Authority;
 - (iv) it has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body anywhere in the world, where the outcome was adverse;
 - (v) it is currently subject to any investigation into its provision of professional services by any licensing, regulatory or other body anywhere in the world;
 - (vi) it has been, to the knowledge of the ophthalmic medical practitioner or optician, subject to any investigation by the National Health Service Counter Fraud Service in relation to a fraud case where the outcome was adverse,
- and if so, give the name and registered office of the body corporate and details of any investigation or proceedings which were or are to be brought, including the nature of the investigation or proceedings, where and approximately when that investigation or those proceedings took place or are to take place, and any outcome.

8. Professional experience (including starting and finishing dates of each appointment, with an explanation of any gaps between appointments), and an explanation of why the ophthalmic medical practitioner or optician was dismissed from any post.

9. Names and addresses of two referees who are willing to provide references in respect of two recent posts (which may include any current post) as an ophthalmic medical practitioner or optician, which lasted for at least three months without a significant break, and where this is not possible, a full explanation and alternative referees.

10. If the ophthalmic medical practitioner or optician is not in the Health Authority's ophthalmic list, the name of any Health Authority in whose dental, medical, pharmaceutical, supplementary or services list the ophthalmic medical practitioner or optician is included, or from any of whose lists the ophthalmic medical practitioner or optician has been removed or contingently removed or is currently suspended, or to any of whose lists the ophthalmic medical practitioner or optician has been refused admission or conditionally included, with an explanation as to why, and particulars of any outstanding or deferred application for inclusion in the ophthalmic list, or any other list of a Health Authority, with the name of the Health Authority in question.

11. If the applicant is the director of any body corporate that is included in any list of any Health Authority, or equivalent lists, or which has an outstanding application (including a deferred

application) for inclusion in any list of any Health Authority or equivalent list, the name and registered office of any such body.

12. Any other information the Health Authority may reasonably require.

13. An undertaking to—

- (a) be bound by the terms of service;
- (b) notify the Health Authority within 7 days of any material changes to the information provided in the application until that application is finally determined;
- (c) supply the information required by paragraph 6A in Schedule 1.

14. Provide all necessary authority to enable a request to be made by the Health Authority to any employer (or former employer), licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by them into the doctor or a body corporate referred to in subparagraph (5).”.

Savings

10.—(1) Notwithstanding the amendments made to the principal Regulations by the provisions of the regulations listed in paragraph (2) (“the listed amendments”), where by virtue of regulation 6(3) of the Abolition of the Tribunal Regulations a case continues before the Tribunal after 31st July 2002, the listed amendments shall not apply to an ophthalmic medical practitioner or optician in relation to the ophthalmic medical practitioner’s or optician’s case until such time as the case has been concluded and the time for making an appeal has ended, or any appeal has been withdrawn, or the ophthalmic medical practitioner or optician has exhausted his or her rights of appeal, as the case may be.

(2) For the purposes of paragraph (1) the listed amendments are those made by—

- (a) regulation 2(1)(b) and (c);
- (b) regulation 4
- (c) regulation 6
- (d) regulation 7.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(14)

18th July 2002

John Marek
The Deputy Presiding Officer of the National
Assembly

SCHEDULE

Regulation 2(2)

Substitution of references to Health Authority

In regulation 2(1) (interpretation), the definition “locality”.

Regulation 6 (ophthalmic list)(15).

Regulation 7 (application for inclusion in ophthalmic list)(16).

Regulation 8 (withdrawal from ophthalmic list).

Regulation 9 (removal from ophthalmic list)(17).

Regulation 10 (the Statement).

Regulation 11 (terms of service).

Regulation 12 (payment for services)(18).

Regulation 13A (sight tests — applications)(19).

Regulation 13B (sight tests treated as tests)(20).

Regulation 15 (publication of particulars).

Regulation 16 (service of documents).

In Schedule 1 (terms of service)—

Paragraphs 4(21), 6(22), 7(23), 8(24) and 9(25).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service (General Ophthalmic Services) Regulations 1986 (“the principal Regulations”), which regulate the terms on which ophthalmic medical practitioners or opticians provide general ophthalmic services under the National Health Service Act 1977 (“the 1977 Act”) in order to implement certain provisions in the Health and Social Care Act 2001.

Regulation 2 adds some additional definitions to regulation 2 of the principal Regulations.

Regulation 3 inserts new regulations 7A to 7D.

Regulation 7A sets out the grounds on which a Health Authority may or must refuse to include an ophthalmic medical practitioner or optician in the ophthalmic list, and the criteria to which they must have regard.

(15) Regulation 6 was amended by [S.I. 1996/705](#).

(16) Regulation 7 was amended by [S.I. 1996/705](#).

(17) Regulation 9 was amended by [S.I. 1996/705](#).

(18) Regulation 12 was amended by [S.I. 1989/395](#) and [1996/705](#).

(19) Regulation 13A was inserted by [S.I. 1989/395](#).

(20) Regulation 13B was inserted by [S.I. 1989/395](#).

(21) Paragraph 4 was amended by [S.I. 1988/486](#).

(22) Paragraph 6 was amended by [S.I. 1988/486](#).

(23) Paragraph 7 was amended by [S.I. 1988/486](#) and [1996/705](#).

(24) Paragraph 8 was amended by [S.I. 1988/486](#) and [1999/705](#).

(25) Paragraph 9 was amended by [S.I. 1990/1051](#).

Status: This is the original version (as it was originally made).

Regulation 7B sets out the circumstances in which a Health Authority may defer consideration of an application to include an ophthalmic medical practitioner or optician in the ophthalmic list, and the procedure to be followed.

Regulation 7C provides for an appeal to the FHSAA against a decision to refuse to include an ophthalmic medical practitioner or optician.

Regulation 7D allows Health Authorities to impose conditions on an ophthalmic medical practitioner or optician when including the ophthalmic medical practitioner or optician or in the ophthalmic list. The Health Authority may review such conditions and there is an appeal to the FHSAA. The Health Authority may remove the ophthalmic medical practitioner or optician for breach of a condition.

Regulation 4 amends regulation 8 of the principal Regulations to set out the additional circumstances where an ophthalmic medical practitioner or optician cannot withdraw from the ophthalmic list, without the consent of the National Assembly.

Regulation 5 amends regulation 9 of the principal Regulations to add additional grounds for the mandatory removal of an ophthalmic medical practitioner or optician from the list.

Regulation 6 adds new regulations 9A to 9H to give effect to sections 49F to 49R of the Act.

Regulation 9A extends the definition of a “health scheme” in section 49(8) of the Act.

Regulation 9B sets out the criteria the Health Authority must take into account when exercising its discretionary powers of removal under section 49F of the Act.

Regulation 9C sets out the grounds for mandatory removal by the Health Authority of an ophthalmic medical practitioner or optician from the ophthalmic list.

Regulation 9D provides for a Health Authority to notify specified persons of specified information relating to decisions to remove or suspend an ophthalmic medical practitioner or optician from the medical list.

Regulation 9E provides the procedure to be followed by Health Authorities on removal of an ophthalmic medical practitioner or optician from the ophthalmic list.

Regulation 9F provides the procedure to be followed by Health Authorities on suspension of an ophthalmic medical practitioner or optician from the ophthalmic list.

Regulation 9G provides the procedure to be followed by Health Authorities where the Health Authority decides to review a decision to conditionally include, conditionally remove, or suspend an ophthalmic medical practitioner or optician from the ophthalmic list.

Regulation 9H amends the statutory period for review set out in section 49N of the Act in specified circumstances.

Regulation 6 substitutes a new regulation 12A into the principal Regulations because the power on which it relies, section 49E of the Act was revoked in the Health and Social Care Act, Schedule 5, paragraph 5. New provision for paying suspended practitioners is made instead.

Regulation 6 also inserts a new regulation 12B into the principal Regulations. This requires an ophthalmic medical practitioner or optician to inform a Health Authority if the ophthalmic medical practitioner or optician applies to be included in another Health Authority list.

Regulation 7 amends Schedule 1 to the principal Regulations (the General Practitioners' terms of service).

A new requirement is added at paragraph 6A to require an ophthalmic medical practitioner or optician to notify the Health Authority in writing as to whether or not the ophthalmic medical practitioner or optician, or a company of which the ophthalmic medical practitioner or optician is a director, has any criminal convictions or other specified matters by 31st October 2002, and to report any subsequent events of this nature within 7 days.

Paragraph 6B requires an ophthalmic medical practitioner or optician on the ophthalmic list of a Health Authority to inform it if the ophthalmic medical practitioner or optician, or a company of which the ophthalmic medical practitioner or optician is a director, applies to join another list, or if the ophthalmic medical practitioner or optician becomes a director of a company that is so included, or is applying to be included.

Regulation 8 adds a Schedule 1A to the principal Regulations (information and undertakings to be given when applying to be included in the ophthalmic list). This provides for specified information to be provided. An undertaking is required that the ophthalmic medical practitioner or optician will inform the Health Authority of any changes to the information provided with the application, and to continue to supply prescribed information to the Health Authority once included. The ophthalmic medical practitioner or optician is also required to consent to the Health Authority requesting the ophthalmic medical practitioner's or optician's regulatory body to give specified information to the Health Authority.