
WELSH STATUTORY INSTRUMENTS

2023 No. 1053

The National Health Service (Ophthalmic Services) (Wales) Regulations 2023

PART 4

Combined lists

CHAPTER 4

Removal etc. from, and readmission to, a list

Removal from a list

17.—(1) A Local Health Board must remove a qualified practitioner from its ophthalmic or supplementary list (as appropriate) when—

- (a) it becomes aware that the qualified practitioner has been convicted in the United Kingdom of murder;
- (b) it becomes aware that the qualified practitioner is subject to a national disqualification;
- (c) it becomes aware that the qualified practitioner has died;
- (d) it becomes aware that the qualified practitioner has otherwise ceased to be a qualified practitioner;
- (e) in the case of a qualified practitioner in the Local Health Board's ophthalmic list, it becomes aware that the qualified practitioner has been included in the supplementary list of any Local Health Board;
- (f) in the case of a qualified practitioner in the Local Health Board's supplementary list, it becomes aware that the qualified practitioner has been included in any Local Health Board's ophthalmic list or the supplementary list of another Local Health Board;
- (g) where the qualified practitioner is an ophthalmic medical practitioner, it becomes aware that the ophthalmic medical practitioner is the subject of—
 - (i) a direction given by a Medical Practitioners Tribunal under section 35D(2)(a) or (b) of the Medical Act 1983(1) (functions of a Medical Practitioners Tribunal);
 - (ii) an order or direction made by the Medical Practitioners Tribunal under section 38(1) of the Medical Act 1983 (power to order immediate suspension etc.);
 - (iii) from the coming into force of article 13 of the Medical Act 1983 (Amendment) Order 2002(2), a direction by a Medical Practitioners Tribunal for erasure or immediate suspension under section 35D(2)(a) or (b), (5)(a) or (b), (10)(a) or (b), or (12)(a) or

(1) Section 35D was inserted by article 13 of [S.I. 2002/3135](#), and the title of the section was further amended by article 5 of [S.I. 2015/794](#). Section 35D(2) was amended by [S.I. 2014/1101](#), article 7 and [S.I. 2015/794](#), article 5. There are other amendments to this section which are not relevant to these Regulations.

(2) [S.I. 2002/3135](#), to which there are amendments not relevant to these Regulations.

- (b) (functions of a Medical Practitioners Tribunal), or section 38(1) (power to order immediate suspension etc.) of the Medical Act 1983;
- (h) in the case of an optometrist, it becomes aware that the qualified practitioner is the subject of a direction made by the Fitness to Practise Committee of the General Optical Council other than in a health case to erase the practitioner's name from the appropriate register or suspend the practitioner's registration under section 13F(3)(a) or (b), (7)(a) or (b) or (13)(a) or (b) of the Opticians Act 1989(3) (powers of the Fitness to Practise Committee);
- (i) it is notified by the First-tier Tribunal that it has considered an appeal by that qualified practitioner against their conditional inclusion in the Local Health Board's supplementary list and that qualified practitioner had been conditionally included pending the outcome of the appeal, and the First-tier Tribunal has decided not to include the qualified practitioner in the supplementary list;
- (j) it is notified by the First-tier Tribunal that it has considered an appeal by that qualified practitioner against their contingent removal from the Local Health Board's supplementary list, and the First-tier Tribunal has decided to remove the qualified practitioner from that supplementary list instead.
- (2) Except in a case to which paragraph (1)(c) applies, where a qualified practitioner is removed from a Local Health Board's list under paragraph (1), the Local Health Board must immediately inform the qualified practitioner that they have been removed from that list.
- (3) A Local Health Board may remove a qualified practitioner from its ophthalmic or supplementary list (as appropriate) where—
- (a) the qualified practitioner is included in the Local Health Board's ophthalmic list and has failed to comply with the terms of service;
- (b) the qualified practitioner has failed to comply with a condition imposed under regulation 14;
- (c) the qualified practitioner has been convicted in the United Kingdom of a criminal offence (other than murder), committed on or after 30 July 2002 in the case of the ophthalmic list, or on or after 1 February 2006 in the case of the supplementary list, and the qualified practitioner has been sentenced to a term of imprisonment (whether suspended or not) of over 6 months;
- (d) the qualified practitioner is included in the Local Health Board's supplementary list and the Local Health Board considers any of the conditions set out below is met in relation to the qualified practitioner—
- (i) the continued inclusion of that qualified practitioner in its supplementary list would be prejudicial to the efficiency of the services which those included in that list assist in providing (“an efficiency case”);
- (ii) the qualified practitioner has (whether together with someone else or on their own) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for themselves or someone else any financial or other benefit and knew that they, or the other person, were not entitled to that benefit (“a fraud case”);
- (iii) the qualified practitioner is unsuitable to be included in that part of that list (“an unsuitability case”);
- (e) in accordance with paragraphs (4) and (5), it determines that a qualified practitioner that has been included in the Local Health Board's combined list for the preceding twelve months has not provided (or assisted in providing, as applicable) primary ophthalmic services for persons in its locality within that period.

(3) Section 13F was added by [S.I. 2005/848](#), article 16.

(4) In calculating the period of twelve months referred to in paragraph (3)(e), the Local Health Board must disregard—

- (a) any period during which the qualified practitioner was suspended from the Local Health Board's list;
- (b) any period during which the qualified practitioner was performing whole-time service in the armed forces in a national emergency (as a volunteer or otherwise), compulsory whole-time service in the armed forces (including service resulting from reserve liability), or any equivalent service, if liable for compulsory whole-time service in the armed forces;
- (c) any period which the Local Health Board reasonably determines.

(5) A Local Health Board which is considering removing a qualified practitioner from its ophthalmic or supplementary list (as appropriate) under paragraph (3) must, before making that decision, follow the procedure in paragraph 12 of Schedule 3.

(6) Where a Local Health Board is considering a removal under section 107 of the Act (disqualification of practitioners) or under paragraph (3)(d) of this regulation, it must consider the factors set out in paragraphs 14 to 17 of Schedule 3 that are applicable to the grounds for removal being considered.

(7) A Local Health Board must notify the qualified practitioner of its decision under this regulation or under section 107 of the Act within 7 days beginning with the day it makes that decision.

(8) The notification in paragraph (7) must contain—

- (a) the Local Health Board's decision;
- (b) the reasons for that decision (including any facts relied upon);
- (c) details of how to exercise a right of appeal under regulation 28;
- (d) where paragraph (10) applies, notification of the information in that paragraph;
- (e) when making a decision under paragraph (3)(d) of this regulation or under section 107 of the Act, the condition (or conditions) in regulation 17(3)(d) or section 107 on which it relies.

(9) A Local Health Board which decides to remove a qualified practitioner from its ophthalmic or supplementary list (as the case may be) under paragraph (3) must not remove that qualified practitioner until the later of—

- (a) the end of a period of 28 days beginning with the day on which the Local Health Board makes that decision, or
- (b) the date any appeal is determined by the First-tier Tribunal.

(10) Paragraph 13 of Schedule 3 makes provision in relation to the procedure for removals from an ophthalmic list under section 107 of the Act (disqualification of practitioners).

(11) Nothing in this regulation will prejudice the right of a qualified practitioner to have their name included again in an ophthalmic or supplementary list.

(12) In this regulation—

“health case” (“*achos iechyd*”) has the meaning given to it in section 13G(6) of the Opticians Act 1989(4) (provisions supplementary to section 13F);

“health scheme” (“*cynllun iechyd*”) means the services covered by the definition in section 107 of the Act (disqualification of practitioners) and those prescribed by regulation 18.