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## STATUTORY INSTRUMENTS

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### 2005 No. 480

# The National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005

## PART I

### SUPPLEMENTARY LIST

#### Interpretation

**2.—**(1) In this Part—

“Abolition of the Tribunal Regulations” means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001<sup>(1)</sup>;

“Abolition of the Tribunal (Wales) Regulations” means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002<sup>(2)</sup>;

“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 for services or a contract of service, and “employed” and “employer” shall be construed accordingly;

“equivalent body” means—

- (a) a Local Health Board in Wales;
- (b) a Health Board or an NHS trust in Scotland;
- (c) a Health and Social Services Board in Northern Ireland;
- (d) in relation to any time prior to 1st October 2002, a Health Authority in England; or
- (e) in relation to any time prior to 1st April 2003, a Health Authority in Wales;

“equivalent list” means a list kept by an equivalent body;

“FHSAA” means the Family Health Services Appeal Authority constituted under section 49S<sup>(3)</sup>;

“fraud case” means a case where a person satisfies the second condition for removal from the ophthalmic list, set out in section 49F(3)<sup>(4)</sup> or, by virtue of section 49H, is treated as doing so;

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(1) [S.I. 2001/ 3744](#).

(2) [S.I. 2002/1920](#).

(3) Section 49S was inserted by the 2001 Act, section 27(1) and amended by the 2002 Act, Schedule 1, paragraph 18.

(4) Sections 49F and 49H were inserted by the 2001 Act, section 25; section 49F was amended by the 2002 Act, Schedule 2, paragraph 21.

“general ophthalmic services” means the services which a person whose name is included in an ophthalmic list has undertaken to provide, pursuant to paragraph 10 of Schedule 1 to the Ophthalmic Regulations;

“licensing or regulatory body” means a body that licenses or regulates any profession of which the ophthalmic medical practitioner or optician is, or has been a member, including a body regulating or licensing the education, training or qualifications of that profession, and includes any body which licences or regulates any such profession, its education, training or qualifications, outside the United Kingdom;

“list”, unless the context otherwise requires, means—

- (a) a list referred to in section 49N(1)(a) to (c);
- (b) a list of persons undertaking to provide general medical services prepared in accordance with regulations under section 29, as the list existed on or before 31st March 2004;
- (c) a list of persons approved by a Primary Care Trust for the purpose of assisting in the provision of general medical services prepared in accordance with regulations under section 43D(1) as the list existed on or before 31st March 2004; or
- (d) a services list referred to in section 8ZA(1)(a) of the Primary Care Act as the list existed on or before 31st March 2004;

“a national disqualification” means a decision—

- (a) made by the FHSAA to nationally disqualify an ophthalmic medical practitioner or optician under section 49N;
- (b) to nationally disqualify an ophthalmic medical practitioner or optician under provisions in force in Scotland or Northern Ireland corresponding to section 49N; or
- (c) 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 or regulation 6(4)(b) of the Abolition of the Tribunal (Wales) Regulations;

“the NCAA” means the National Clinical Assessment Authority;

“the NHS Counter Fraud and Security Management Service” means the body with responsibility for policy and operational matters relating to the prevention, detection and investigation of fraud or corruption and the management of security in the National Health Service, established by the Counter Fraud and Security Management Service Establishment and Constitution Order 2002(5);

“notice” means a notice in writing (including electronic) and “notify” shall be construed accordingly;

“ophthalmic list” means the list prepared by a Primary Care Trust under regulation 6 of the Ophthalmic Regulations(6);

“ophthalmic medical practitioner” means a registered medical practitioner, whose qualifications have, in accordance with regulations 3, 4 or 5 of the Ophthalmic Regulations, been approved as prescribed qualifications;

“Ophthalmic Regulations” means the National Health Service (General Ophthalmic Services) Regulations 1986(7);

“optician” means a natural person, who is an ophthalmic optician;

“Opticians Act” means the Opticians Act 1989(8);

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(5) [S.I. 2002/3039](#). The NHS Counter Fraud and Security Management Service replaces the National Health Service Counter Fraud Service.

(6) Regulation 6 was amended by [S.I. 2001/414](#), [3739](#) and [2002/2469](#).

(7) [S.I. 1986/975](#).

(8) [1989 c. 44](#).

“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;

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

“Primary Care Act” means the National Health Service (Primary Care) Act 1997<sup>(9)</sup>;

“professional registration number” means the number against the ophthalmic medical practitioner or optician’s name in the register;

“the register”, except where the context otherwise requires, means, in relation to an ophthalmic medical practitioner, a register maintained by the General Medical Council or, in relation to an optician, a register maintained by the General Optical Council;

“suspended” means—

- (a) suspended by a Primary Care Trust or equivalent body under section 49I or 49J, regulations made under sections 28DA or 43D or under section 8ZA of the Primary Care Act<sup>(10)</sup>, including these Regulations;
- (b) in relation to Scotland or Northern Ireland, suspended under provisions in force corresponding to those in or made under sections 28DA, 43D, 49I, 49J or under section 8ZA of the Primary Care Act,

and shall be treated as including a case where a person is treated as suspended by a Primary Care Trust or, prior to 1st October 2002, by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations, or, in Wales, by a Local Health Board or, prior to 1st April 2003, a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal (Wales) Regulations, and “suspends” and “suspension” shall be construed accordingly; and

“the Tribunal” means the Tribunal constituted under section 46<sup>(11)</sup> for England and Wales, and which, except for prescribed cases, had effect in relation to England until 14th December 2001 and in relation to Wales until 26th August 2002<sup>(12)</sup>.

(2) All references in this Part to sections are to sections of the National Health Service Act 1977, except where specified otherwise.

### Supplementary list

3.—(1) A Primary Care Trust shall prepare and publish a supplementary list of all ophthalmic medical practitioners or opticians approved by the Primary Care Trust for the purposes of assisting in the provision of general ophthalmic services.

(2) The supplementary list shall be divided into two parts, of which the first part shall relate to ophthalmic medical practitioners and the second part to opticians.

(3) Subject to regulation 21, an ophthalmic medical practitioner or optician may not assist in the provision of general ophthalmic services, unless his name is included in an ophthalmic list or a supplementary list.

(4) In respect of any ophthalmic medical practitioner or optician, whose name is included in the supplementary list, the list shall include—

- (a) his full name;
- (b) his professional registration number with,

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<sup>(9)</sup> 1997 c. 46.

<sup>(10)</sup> Section 8ZA was inserted by the 2001 Act, section 26(2) and amended by the 2002 Act, Schedule 3, paragraph 3.

<sup>(11)</sup> Section 46 was revoked by the 2001 Act, s. 67, Schedule 5, paragraph 5 and Schedule 6, part I.

<sup>(12)</sup> See [S.I. 2001/3738](#), article 2(5) and (6)(b), which sets out the prescribed cases for England and [S.I. 2002/1919](#), article 2(2) and (3)(b), which sets out the prescribed cases for Wales.

- (i) suffixed to that number, the organisational code given by the Secretary of State to the Primary Care Trust, and
  - (ii) prefixed to that number, the initials SOL;
  - (c) his date of birth, where he consents, or if not, his date of first registration in the register; and
  - (d) the date that his name was included in the supplementary list.
- (5) The supplementary list shall be available for public inspection.

#### **Application for inclusion in the supplementary list**

4.—(1) Subject to paragraphs (7) to (11), an application by an ophthalmic medical practitioner or optician for the inclusion of his name in the supplementary list shall be made by sending the Primary Care Trust an application in writing, which shall include the information mentioned in paragraph (2), the undertakings and consents required by paragraphs (3) and (6) and any declaration required under paragraph (4) or (5).

- (2) The ophthalmic medical practitioner or optician shall provide the following information—
- (a) his full name;
  - (b) his sex;
  - (c) his date of birth;
  - (d) his private address and telephone number;
  - (e) his qualifications and where they were obtained;
  - (f) a declaration that he is a fully registered ophthalmic medical practitioner or optician, included in the register;
  - (g) his professional registration number and date of first registration in the register;
  - (h) chronological details of his professional experience (including the starting and finishing dates of each appointment together with an explanation of any gaps between appointments), with any additional supporting particulars, and an explanation of why he was dismissed from any post;
  - (i) 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 the names and addresses of alternative referees;
  - (j) whether he has any outstanding application, including a deferred application, to be included in a list or an equivalent list, and if so, particulars of that application;
  - (k) details of any Primary Care Trust list or equivalent list from which he has been removed or contingently removed, or to which he has been refused admission or in which he has been conditionally included, with an explanation as to why;
  - (l) if he is the director of any body corporate that is included in any list or equivalent list, or which has an outstanding application (including a deferred application) for inclusion in such a list, the name and the address of the registered office of that body and details of the Primary Care Trust or equivalent body concerned; and
  - (m) where he is, or was in the preceding six months, or was at the time of the originating events, a director of a body corporate, details of any list or equivalent list to which that body has been refused admission, in which it has been conditionally included, from which it has been removed, contingently removed or from which it is currently suspended, with an explanation as to why and details of the Primary Care Trust or equivalent body concerned.

(3) The ophthalmic medical practitioner or optician shall provide the following undertakings and consent—

- (a) undertaking to provide the declarations and document, if applicable, required by regulation 9;
- (b) undertaking not to assist in the provision of general ophthalmic services in the area of another Primary Care Trust or equivalent body from whose ophthalmic or supplementary list he has been removed, except where that removal was at his request or in accordance with regulation 10(6) or 21(12) of these Regulations, or regulation 9(2) of the Ophthalmic Regulations, without the consent, in writing, of that Trust or equivalent body;
- (c) undertaking to notify the Primary Care Trust within 7 days of any material changes to the information provided in the application until the application is finally determined;
- (d) undertaking to notify the Primary Care Trust if he is included, or applies to be included, in any other list or equivalent list held by a Primary Care Trust or equivalent body; and
- (e) consent to the disclosure of information in accordance with regulations 9 and 20.

(4) The ophthalmic medical practitioner or optician shall send with the application a declaration as to whether he—

- (a) has any criminal convictions in the United Kingdom;
- (b) has been bound over following a criminal conviction in the United Kingdom;
- (c) has accepted a police caution in the United Kingdom;
- (d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995<sup>(13)</sup> (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution)<sup>(14)</sup>;
- (e) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely;
- (f) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (g) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Primary Care Trust;
- (h) has been subject to any investigation into his professional conduct by any licensing, regulatory or other body, where the outcome was adverse;
- (i) is currently subject to any investigation into his professional conduct by any licensing, regulatory or other body;
- (j) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud;
- (k) is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any list or equivalent list;
- (l) is, or has been where the outcome was adverse, the subject of any investigation into his professional conduct in respect of any current or previous employment;
- (m) has been removed or contingently removed from, refused admission to, or conditionally included in any list or equivalent list kept by another Primary Care Trust or equivalent

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<sup>(13)</sup> 1995 c. 46.

<sup>(14)</sup> 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

body, or is currently suspended from such a list and if so, why and the name of that Primary Care Trust or equivalent body; or

(n) is, or has ever been, subject to a national disqualification,

and, if so, he shall give details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(5) 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, he shall in addition make a declaration to the Primary Care Trust 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 would constitute a criminal offence if committed in England and Wales;
- (c) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Primary Care Trust;
- (d) has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body, 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;
- (f) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud;
- (g) is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to its removal from any list or equivalent list; or
- (h) has been removed or contingently removed from, refused admission to, or conditionally included in any list or equivalent list or is currently suspended from such a list,

and, if so, he shall give the name and the address of the registered office of the body corporate and details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(6) The ophthalmic medical practitioner or optician shall consent to a request being made by the Primary Care Trust 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, into him or a body corporate referred to in paragraphs (2) and (5) and, for the purposes of this paragraph, “employer” includes any partnership of which the ophthalmic medical practitioner or optician is or was a member.

(7) If, in the case of any application, the Primary Care Trust finds that the information, references or documentation supplied by the ophthalmic medical practitioner or optician are not sufficient for it to decide his application, it shall seek from him such further information, references or documentation as it may reasonably require in order to make a decision and he shall supply the material so sought to the Trust.

(8) In the case of an application to a Primary Care Trust by an ophthalmic medical practitioner or optician, who is included in its ophthalmic list, seeking to withdraw from that list and to include his name in its supplementary list, he shall only be required to provide the information required by paragraphs (2), (4) and (5) insofar as—

- (a) he has not already supplied it to that Trust; or
- (b) it has changed since it was provided.

(9) Any person, who is not an optician, but expects to become so on successful completion of his training, may make an application to a Primary Care Trust not less than 3 months before he anticipates his being entered on the register.

(10) An application under paragraph (9) shall contain—

- (a) all information mentioned in paragraph (2), except that required by sub-paragraphs (f) and (g);
- (b) the undertakings and consents required by paragraphs (3) and (6);
- (c) any declaration required under paragraph (4) or (5), and

in the application of these Regulations to any such application, any reference to an optician shall be taken as being a reference to an applicant under paragraph (9).

(11) An applicant under paragraph (9) shall provide the information required by paragraph (2)(f) and (g) as soon as he has been notified by the General Optical Council whether he has been admitted to the register and the Primary Care Trust shall then, provided—

- (a) the requirements of paragraphs (9) and (10) have been complied with;
- (b) it has not sought further information, references or documentation under paragraph (7) from him; and
- (c) it has not deferred the application under regulation 7,

decide his application within 7 days of receiving the information required under paragraph (2)(f) and (g).

## **Readmission**

**5.—**(1) Where an ophthalmic medical practitioner or optician has been removed from its supplementary list by a Primary Care Trust on the grounds that he had been convicted of a criminal offence, and that conviction is overturned on appeal, it may agree to include him in its supplementary list without a full application if it—

- (a) is satisfied that there are no other matters that need to be considered; and
- (b) has received an undertaking from him to comply with the requirements of these Regulations.

(2) In a case to which paragraph (1) applies, if the conviction is reinstated on a further appeal, the previous determination of the Primary Care Trust to remove that ophthalmic medical practitioner or optician from its supplementary list shall once again have effect.

## **Decisions and grounds for refusal**

**6.—**(1) The grounds on which a Primary Care Trust may refuse to include an ophthalmic medical practitioner or optician in its supplementary list are that—

- (a) having considered the declaration required by regulation 4(4) and (if applicable) regulation 4(5), and any other information or documents in its possession relating to him, it considers that he is unsuitable to be included in its supplementary list;
- (b) having checked the information he provided under regulation 4(2)(e), (f) and (g), it considers he is unsuitable to be included in its supplementary list;
- (c) having contacted the referees provided by him under regulation 4(2)(i), it is not satisfied with the references;
- (d) having checked with the NHS Counter Fraud and Security Management Service for any facts that it considers relevant relating to past or current fraud investigations involving or

related to him and, having considered these and any other facts in its possession relating to fraud involving or relating to him, it considers these justify such refusal;

- (e) having checked with the Secretary of State for any facts that he considers relevant relating to past or current investigations or proceedings involving or related to the ophthalmic medical practitioner or optician and, having considered these and any other facts in its possession involving or relating to him, it considers these justify such refusal; or
- (f) there are grounds for considering that admitting him to its supplementary list would be prejudicial to the efficiency of the service which he would undertake.

(2) The grounds on which a Primary Care Trust must refuse to include an ophthalmic medical practitioner or optician in its supplementary list are that—

- (a) he has not provided satisfactory evidence that he intends to assist in the provision of general ophthalmic services in its area;
- (b) he is included in the ophthalmic list of any Primary Care Trust, unless he has given notice in writing to that Trust that he wishes to withdraw from that list;
- (c) he is included in the supplementary list of another Primary Care Trust, unless he has given notice in writing to that Trust that he wishes to withdraw from that list;
- (d) it is not satisfied he has the knowledge of English which, in his own interests or those of his patients, is necessary in assisting in the provision of general ophthalmic services in its area;
- (e) he has been convicted in the United Kingdom of murder;
- (f) he has been convicted in the United Kingdom of a criminal offence, other than murder, committed on or after 1st April 2005 and has been sentenced to a term of imprisonment of over six months;
- (g) he is subject to a national disqualification;
- (h) he has not updated his application in accordance with regulation 7(4); or
- (i) in a case to which regulation 15(4) applies, he does not notify the Primary Care Trust under regulation 15(5) that he wishes to be included in its supplementary list subject to the specified conditions.

(3) Before making a decision on the ophthalmic medical practitioner or optician's application, the Primary Care Trust shall—

- (a) check, as far as reasonably practicable, the information he provided, in particular that provided under regulation 4(2), (4) and (if applicable) (5), and ensure that it has sight of relevant documents;
- (b) check with the NHS Counter Fraud and Security Management Service whether it has any record of fraud by him;
- (c) check with the Secretary of State as to any information held by him as to any record about past or current investigations or proceedings involving or related to that ophthalmic medical practitioner or optician; and
- (d) take up the references he provided under regulation 4(2)(i).

(4) Where the Primary Care Trust is considering a refusal under paragraph (1) or (2), 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), (d) or (e)—

- (a) the nature of any offence, investigation or incident;
- (b) the length of time since any 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 him of general ophthalmic services and any likely risk to his patients or to public finances;
  - (f) whether any offence was a sexual offence for the purposes of Part 2 of the Sexual Offences Act 2003<sup>(15)</sup>, or if it had been committed in England and Wales, would have been such an offence;
  - (g) whether he has been refused admission to, or conditionally included in, removed or contingently removed or is currently suspended from, any list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action; and
  - (h) whether he 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 admission to, conditionally included in, removed or contingently removed from, any list or equivalent list or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Primary Care Trust or equivalent body in each case.
- (5) When the Primary Care Trust takes into consideration any of the matters set out in paragraph (4), it shall consider the overall effect of all the matters being considered.
- (6) When the Primary Care Trust has decided whether or not to include an ophthalmic medical practitioner or optician in its supplementary list, it shall notify him within 7 days of that decision of—
- (a) that decision; and
  - (b) if it has decided not to include him, the reasons for that (including any facts relied upon) and of any right of appeal under regulation 15 against that decision.

### **Deferment of decision on application**

7.—(1) A Primary Care Trust may defer a decision on an ophthalmic medical practitioner or optician's application to be included in its supplementary list, where—

- (a) there are, in respect of him—
  - (i) criminal proceedings in the United Kingdom, or
  - (ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence,which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to his removal from its supplementary list, if he were to be included in it;
- (b) in respect of a body corporate of which he is, has in the preceding 6 months been, or was at the time of the originating events a director there are—
  - (i) criminal proceedings in the United Kingdom, or
  - (ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence,which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to his removal from its supplementary list, if he were to be included in it;
- (c) there is an investigation anywhere in the world by his licensing or regulatory body or any other investigation (including one by another Primary Care Trust or equivalent body) relating to him in his professional capacity that, if adverse, would be likely to lead to his removal from the Primary Care Trust's supplementary list, if he were to be included in it;

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(15) 2003 c. 42.

- (d) he is suspended from any list or equivalent list;
  - (e) a body corporate of which he is, has in the preceding six months been, or was at the time of the originating events, a director, is suspended from any list or equivalent list;
  - (f) the FHSAA is considering an appeal by him against a decision of a Primary Care Trust to refuse to include him in its supplementary list, or to conditionally include him in or to contingently remove him from, or to remove him from, any list kept by a Primary Care Trust and if that appeal is unsuccessful the Primary Care Trust would be likely to remove him from its supplementary list, if he were to be included in it;
  - (g) the FHSAA is considering an appeal by a body corporate of which he is, has in the preceding six months been, or was at the time of the originating events a director, against a decision of a Primary Care Trust or equivalent body to refuse to admit the body corporate to its list, or to conditionally include it in or to remove or contingently remove it from any list kept by a Primary Care Trust or equivalent body, and if that appeal is unsuccessful the Primary Care Trust would be likely to remove him from its supplementary list, if he were to be included in it;
  - (h) he is being investigated by the NHS Counter Fraud and Security Management Service in relation to any fraud, where the result, if adverse, would be likely to lead to his removal from the Primary Care Trust's supplementary list if he were to be included in it;
  - (i) a body corporate, of which he is, has in the preceding six months been, or was at the time of the originating events, a director, is being investigated in relation to any fraud, where the result, if adverse, would be likely to lead to his removal from the Primary Care Trust's supplementary list if he were to be included in it; and
  - (j) the FHSAA is considering an application from a Primary Care Trust for a national disqualification of him or of a body corporate of which he is, has in the preceding six months been, or was at the time of the originating events, a director.
- (2) A Primary Care Trust may only defer a decision under paragraph (1) until the outcome of the relevant event mentioned in any of sub-paragraphs (a) to (j) of that paragraph is known.
- (3) The Primary Care Trust must notify the ophthalmic medical practitioner or optician that it has deferred a decision on the application and the reasons for it.
- (4) Once the outcome of the relevant event mentioned in paragraph (1) is known, the Primary Care Trust shall notify the ophthalmic medical practitioner or optician that he must within 28 days of the date of the notification (or such longer period as it may agree)—
- (a) update his application; and
  - (b) confirm in writing that he wishes to proceed with his application.
- (5) Provided any additional information has been received within the 28 days or the time agreed, the Primary Care Trust shall notify the ophthalmic medical practitioner or optician as soon as possible—
- (a) that his application to be included has been successful; or
  - (b) that it has decided to refuse the application or impose conditions on his inclusion, and the reasons for that (including any facts relied upon), and of any right of appeal under regulation 15.

### **Conditional inclusion**

**8.—(1)** A Primary Care Trust may determine that, if an ophthalmic medical practitioner or optician is to be included in its supplementary list, he is to be subject, while he remains included in that list, to the imposition of conditions, having regard to the requirements of section 43D(5) (purpose of conditions).

(2) If an ophthalmic medical practitioner or optician fails to comply with a condition, which has been imposed by the Primary Care Trust, it may remove him from its supplementary list.

(3) Where the Primary Care Trust is considering the removal of an ophthalmic medical practitioner or optician from its supplementary list for breach of a condition, it shall give him—

- (a) notice of any allegation against him;
- (b) notice of the grounds for the action it is considering;
- (c) the opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put his case at an oral hearing before it, if he requests one within the 28 day period mentioned in sub-paragraph (c).

(4) If there are no representations within the period specified in paragraph (3)(c), it shall decide the matter and inform the ophthalmic medical practitioner or optician of—

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(5) If there are representations, the Primary Care Trust must take them into account before reaching its decision, and shall then notify the ophthalmic medical practitioner or optician of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(6) If the ophthalmic medical practitioner or optician requests an oral hearing, this must take place before the Primary Care Trust reaches its decision and it must then notify him of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) of any right of appeal under regulation 15,

within 7 days of making that decision.

(7) When the Primary Care Trust notifies the ophthalmic medical practitioner or optician of any decision, it shall inform him that, if he wishes to exercise a right of appeal, he must do so within the period of 28 days, beginning with the date on which it gave him the notice informing him of its decision, and shall tell him how to exercise any such right.

(8) The Primary Care Trust shall also notify the ophthalmic medical practitioner or optician of his right to have the decision reviewed in accordance with regulation 14.

(9) Where the Primary Care Trust determines that an ophthalmic medical practitioner or optician—

- (a) may be included in its supplementary list, but subject to conditions imposed under this regulation; or
- (b) is to be subject to conditions while he remains included in its supplementary list,

his name may be included (or continue to be included) in its supplementary list during the period for bringing any appeal to the FHSAA pursuant to regulation 15, or if an appeal is brought, until such time as that appeal has been decided, provided he agrees in writing to be bound by the conditions imposed until the time for appeal has expired or the appeal is decided.

### **Requirements with which an ophthalmic medical practitioner or optician in the supplementary list must comply**

9.—(1) An ophthalmic medical practitioner or optician, who is included in the supplementary list of a Primary Care Trust, shall make a declaration to that Trust in writing within 7 days of its occurrence if he—

- (a) is convicted of any criminal offence in the United Kingdom;
- (b) is bound over following a criminal conviction in the United Kingdom;
- (c) accepts a police caution in the United Kingdom;
- (d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995<sup>(16)</sup> (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution)<sup>(17)</sup>;
- (e) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 discharging him absolutely;
- (f) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (g) 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;
- (h) is informed by any licensing, regulatory or other body of the outcome of any investigation into his professional conduct, and there is a finding against him;
- (i) becomes the subject of any investigation into his professional conduct by any licensing, regulatory or other body;
- (j) becomes subject to an investigation into his professional conduct in respect of any current or previous employment, or is informed of the outcome of any such investigation, where it is adverse;
- (k) becomes, to his knowledge, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is informed of the outcome of such an investigation, where it is adverse;
- (l) becomes the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any list or equivalent list; or
- (m) is removed, contingently removed or suspended from, refused admission to, or conditionally included in any list or equivalent list,

and, if so, he shall give details, including approximate dates, and where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(2) An ophthalmic medical practitioner or optician, who is included in the supplementary list of a Primary Care Trust, and is, was in the preceding six months, or was at the time of the originating events, a director of a body corporate, shall make a declaration to that Trust in writing within 7 days of its occurrence if that body corporate—

- (a) is convicted of any criminal offence in the United Kingdom;
- (b) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;

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<sup>(16)</sup> 1995 c. 46.

<sup>(17)</sup> 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

- (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 informed by any licensing, regulatory or other body 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 into its provision of professional services by any licensing, regulatory or other body;
- (f) becomes to his knowledge the subject of any investigation in relation to fraud, or is informed of the outcome of such an investigation, where it is adverse;
- (g) becomes the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to its removal from any list or equivalent list; or
- (h) is removed, contingently removed or suspended from, refused admission to, or conditionally included in any list or equivalent list,

and, if so, he shall give the name and registered address of the body corporate and details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(3) An ophthalmic medical practitioner or optician, who is included in the supplementary list of a Primary Care Trust, shall consent to a request being made by that Trust 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 that employer or body into him or a body corporate referred to in paragraph (1) and (2) and, for the purposes of this paragraph, “employer” includes any partnership of which the ophthalmic medical practitioner or optician is or was a member.

(4) An ophthalmic medical practitioner or optician, who is included in the supplementary list of a Primary Care Trust, shall supply that Trust with an enhanced criminal record certificate under section 115 of the Police Act 1997<sup>(18)</sup> in relation to himself, if the Primary Care Trust at any time, for reasonable cause, gives him notice to provide such a certificate.

### **Removal from supplementary list**

**10.—**(1) The Primary Care Trust must remove the ophthalmic medical practitioner or optician from its supplementary list where it becomes aware that he—

- (a) has been convicted in the United Kingdom of murder;
- (b) has been convicted in the United Kingdom of a criminal offence, other than murder, committed on or after 1st April 2005, and has been sentenced to a term of imprisonment of over six months;
- (c) is subject to a national disqualification;
- (d) has died;
- (e) has otherwise ceased to be an ophthalmic medical practitioner or optician;
- (f) in the case of an ophthalmic medical practitioner, is the subject of —
  - (i) a direction given by the Professional Conduct Committee of the General Medical Council under section 36(1)(i) or (ii) of the Medical Act 1983 (professional misconduct and criminal offences)<sup>(19)</sup>,
  - (ii) an order or direction made by that Committee under section 38(1) of that Act (order for immediate suspension)<sup>(20)</sup>, or

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<sup>(18)</sup> 1997 c. 50; relevant amendments are the 2001 Act s. 19(1), (2) and (3) and the 2002 Act s. 2(5) and Schedule 2, paragraph 64.

<sup>(19)</sup> 1983 c. 54; section 36 was amended by S.I. 2000/1803.

<sup>(20)</sup> Section 38(1) was amended by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 7.

(iii) from the coming into force of article 13 of the Medical Act 1983 (Amendment) Order 2002<sup>(21)</sup>, a direction by a Fitness to Practise Panel of the General Medical Council for erasure or immediate suspension under section 35D(2)(a) or (b), (5)(a) or (b), (10)(a) or (b), or (12)(a) or (b) (functions of a Fitness to Practise Panel), or section 38(1) (power to order immediate suspension etc) of that Act<sup>(22)</sup>;

(g) in the case of an optician, is the subject of a suspension order under section 17 of the Opticians Act;

(h) is included in the ophthalmic list of any Primary Care Trust, or the supplementary list of another Primary Care Trust,

and shall, except in a case falling within sub-paragraph (d), notify him immediately that it has done so.

(2) Where a Primary Care Trust is notified by the FHSAA that it has considered an appeal by an ophthalmic medical practitioner or optician against—

(a) a contingent removal by the Trust and has decided to remove him instead; or

(b) a conditional inclusion, where he has been conditionally included in the supplementary list until the appeal has been decided, and has decided not to include him,

the Trust shall remove him from its supplementary list and shall notify him immediately that it has done so.

(3) The Primary Care Trust may remove an ophthalmic medical practitioner or optician from its supplementary list where any of the conditions set out in paragraph (4) is satisfied.

(4) The conditions mentioned in paragraph (3) are that—

(a) the continued inclusion of that ophthalmic medical practitioner or optician in the supplementary list would be prejudicial to the efficiency of the services which those included in the list assist in providing (“an efficiency case”);

(b) he is involved in a fraud case in relation to any health scheme; or

(c) he is unsuitable to be included in that list (“an unsuitability case”).

(5) For the purposes of this regulation, in addition to the services covered by the definition of “health scheme” in section 49F(8), 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<sup>(23)</sup>;

(c) health services provided to a prisoner in the care of the medical officer or other such officer of a

prison appointed for the purposes of section 7 of the Prison Act 1952<sup>(24)</sup>; and

(d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

(6) Where the ophthalmic medical practitioner or optician cannot demonstrate that he has assisted in the provision of general ophthalmic services within the area of the Primary Care Trust during the preceding six months, it may remove him from its supplementary list.

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(21) [S.I. 2002/3135](#).

(22) Sections 35D and 38 are inserted by article 13 of the 2002 Order, with effect from such date as the Secretary of State may specify.

(23) [1984 c. 22](#).

(24) [1952 c. 52](#).

(7) In calculating the period of six months referred to in paragraph (6), the Primary Care Trust shall disregard any period during which he was—

- (a) suspended under these Regulations; or
- (b) performing whole-time service in the Armed Forces of the Crown—
  - (i) in a national emergency as a volunteer or otherwise; or
  - (ii) which was compulsory, including service resulting from any reserve liability or any equivalent service by a person liable for whole-time service in those forces.

(8) Where a Primary Care Trust is considering removing an ophthalmic medical practitioner or optician from its supplementary list under paragraphs (3) to (6), regulation 8, 12(3)(c) or 15(6) or contingently removing him under regulation 12, it shall give him—

- (a) notice of any allegation against him;
- (b) notice of what action it is considering and on what grounds;
- (c) the opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put his case at an oral hearing before it, if he so requests, within the 28 day period mentioned in sub-paragraph (c).

(9) If there are no representations within the period specified in paragraph (8)(c), the Primary Care Trust shall notify the ophthalmic medical practitioner or optician of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(10) If there are representations, the Primary Care Trust must take them into account before reaching its decision, and shall then notify the ophthalmic medical practitioner or optician of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(11) If the ophthalmic medical practitioner or optician requests an oral hearing, this must take place before the Primary Care Trust reaches its decision, and it shall then notify him of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(12) When the Primary Care Trust notifies the ophthalmic medical practitioner or optician of any decision, it shall inform him that, if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which it informed him of its decision and shall tell him how to exercise any such right.

(13) The Primary Care Trust shall also notify the ophthalmic medical practitioner or optician of his right to have the decision reviewed in accordance with regulation 14.

(14) Where the Primary Care Trust decides to remove an ophthalmic medical practitioner or optician under paragraph (3) or (6), he shall not be removed from its supplementary list until—

- (a) the end of a period of 28 days starting with the day on which the Primary Care Trust reaches its decision; or
- (b) any appeal is disposed of by the FHSAA,

whichever is the later.

### Criteria for a decision on removal

**11.—(1)** Where a Primary Care Trust is considering whether to remove an ophthalmic medical practitioner or optician from its supplementary list under regulation 10(3) and (4)(c) (“an unsuitability case”), it shall—

- (a) consider any information relating to him which it has received in accordance with any provision of regulation 9;
- (b) consider any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to him; and
- (c) in reaching its decision, take into consideration the matters set out in paragraph (2).

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

- (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 taken or penalty imposed by any licensing or regulatory body, the police or the courts as a result of any such offence, incident or investigation;
- (e) the relevance of any offence, incident or investigation to his assisting in the provision of general ophthalmic services and any likely risk to any patients or to public finances;
- (f) whether any criminal offence was a sexual offence for the purposes of Part 2 of the Sexual Offences Act 2003<sup>(25)</sup>, or if it had been committed in England and Wales, would have been such an offence;
- (g) whether he has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from, any list or any equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action; and
- (h) whether he 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 admission to, conditionally included in, removed or contingently removed from any list or equivalent list or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Primary Care Trust or equivalent body in each case for such action.

(3) Where a Primary Care Trust is considering whether to remove an ophthalmic medical practitioner or optician from its supplementary list under regulation 10(3) and (4)(b), it shall consider—

- (a) any information relating to him which it has received in accordance with any provision of regulation 9;
- (b) any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to the ophthalmic medical practitioner or optician; and
- (c) the matters set out in paragraph (4).

(4) The matters referred to in paragraph (3)(c) are—

- (a) the nature of any incidents of fraud;
- (b) the length of time since the last incident of fraud occurred, and since any investigation into it was concluded;
- (c) whether there are any other incidents of fraud, or other criminal offences to be considered;

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(25) 2003 c. 42.

- (d) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such offence, investigation or incident;
  - (e) the relevance of any investigation into an incident of fraud to his assisting in the provision of general ophthalmic services and the likely risk to patients or to public finances;
  - (f) whether he has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from, any list or any equivalent list, and, if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action; and
  - (g) whether he 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 admission to, conditionally included in, removed or contingently removed from, any list or equivalent list, or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Primary Care Trust or equivalent body in each case.
- (5) Where a Primary Care Trust is considering removal of an ophthalmic medical practitioner or optician from its supplementary list under regulation 10(3) and (4)(a) (“an efficiency case”), it shall—
- (a) consider any information relating to him which it has received in accordance with any provision of regulation 9;
  - (b) consider any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to the ophthalmic medical practitioner or optician; and
  - (c) in reaching its decision, take into account the matters referred to in paragraph (6).
- (6) The matters referred to in paragraph (5)(c) are—
- (a) the nature of any incident which was prejudicial to the efficiency of the general ophthalmic services that the ophthalmic medical practitioner or optician assisted in providing;
  - (b) the length of time since the last incident occurred and since any investigation into it 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 he has previously failed to supply information, make a declaration or comply with an undertaking required by these Regulations or the Ophthalmic Regulations;
  - (f) whether he has ever failed to comply with a request by the Primary Care Trust to undertake an assessment by the NCAA;
  - (g) whether he has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from, any list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or the equivalent body for such action; and
  - (h) whether he 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 admission to, conditionally included in, removed or contingently removed from any list or equivalent list, or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Primary Care Trust or equivalent body in each case for such action.
- (7) In making any decision under regulation 10, the Primary Care Trust shall take into account the overall effect of any 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 regulation 10(4), the Primary Care Trust shall state in its decision on which condition it relies.

### **Contingent removal**

**12.—**(1) In an efficiency case or a fraud case the Primary Care Trust may, instead of deciding to remove an ophthalmic medical practitioner or optician from its supplementary list, decide to remove him contingently and regulation 10(12) and (13) shall apply to that decision.

(2) If it so decides, it must impose such conditions as it may decide on his inclusion in its supplementary 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 (in a fraud case).

(3) Where the Primary Care Trust decides to contingently remove an ophthalmic medical practitioner or optician under paragraph (1), that decision shall not take effect until—

- (a) the end of a period of 28 days starting with the day on which the Primary Care Trust reaches its decision; or
- (b) any appeal is disposed of by the FHSAA,

whichever is the later.

(4) If the Primary Care Trust determines that the ophthalmic medical practitioner or optician has failed to comply with a condition, it may decide to—

- (a) vary the conditions imposed;
- (b) impose new conditions; or
- (c) remove him from its supplementary list.

### **Suspension**

**13.—**(1) If a Primary Care Trust 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 an ophthalmic medical practitioner or optician from its supplementary list, in accordance with the provisions of this regulation—

- (a) while it decides whether or not to exercise its powers to remove him under regulation 10 or contingently remove him under regulation 12;
- (b) while it waits for a decision affecting him of a court anywhere in the world or of a licensing or regulatory body;
- (c) where it has decided to remove him, but before that decision takes effect; or
- (d) pending appeal under these Regulations.

(2) In a case falling within paragraph (1)(a), the Primary Care Trust must specify a period, not exceeding six months, as the period of suspension.

(3) In a case falling within paragraph (1)(b), the Primary Care Trust may specify that he remains suspended, after the decision referred to in that sub-paragraph has been made, for an additional period not exceeding six months.

(4) The period of suspension under paragraph (1) or (2) may extend beyond six months, if—

- (a) on the application of the Primary Care Trust, the FHSAA so orders; and

- (b) the Primary Care Trust applied under sub-paragraph (a) before the expiry of the period of suspension, but the FHSAA has not made an order by the time it expires, in which case it continues until the FHSAA makes an order.
- (5) If the FHSAA does so order, it shall specify—
  - (a) the date on which the period of suspension is to end;
  - (b) an event beyond which it is not to continue; or
  - (c) both a date on which it is to end and an event beyond which it is not to continue, in which case it shall end on the earlier of that date or that event, as the case may be.
- (6) The FHSAA may, on the application of the Primary Care Trust, make a further order (complying with paragraph (5)) at any time while the period of suspension pursuant to the earlier order is still continuing.
- (7) If the Primary Care Trust suspends an ophthalmic medical practitioner or optician in a case falling within paragraph (1)(c) or (d), the suspension has effect from the date the Primary Care Trust informed him of the suspension until—
  - (a) the expiry of any appeal period; or
  - (b) if he appeals under regulation 15, the FHSAA has disposed of the appeal.
- (8) The Primary Care Trust may extend the period of suspension under paragraph (2) or impose a further period of suspension under paragraph (3), so long as the aggregate does not exceed six months.
- (9) The effect of a suspension is that, while an ophthalmic medical practitioner or optician is suspended under these Regulations, he is to be treated as not being included in the Primary Care Trust's supplementary list, even though his name appears in it.
- (10) The Primary Care Trust may at any time revoke the suspension and inform the ophthalmic medical practitioner or optician of its decision.
- (11) Where a Primary Care Trust is considering suspending an ophthalmic medical practitioner or optician or varying the period of suspension under this regulation, it shall give him—
  - (a) notice of any allegation against him;
  - (b) notice of what action it is considering and on what grounds;
  - (c) the opportunity to put his case at an oral hearing before it, on a specified day, provided that at least 24 hours notice of the hearing is given.
- (12) If the ophthalmic medical practitioner or optician does not wish to have an oral hearing or does not attend the oral hearing, the Primary Care Trust may suspend him with immediate effect.
- (13) If an oral hearing does take place, the Primary Care Trust shall take into account any representations made before it reaches its decision.
- (14) The Primary Care Trust may suspend the ophthalmic medical practitioner or optician with immediate effect following the hearing.
- (15) The Primary Care Trust shall notify the ophthalmic medical practitioner or optician of its decision and the reasons for it (including any facts relied upon) within 7 days of making that decision.
- (16) The Primary Care Trust shall notify the ophthalmic medical practitioner or optician of any right of review under regulation 14.
- (17) During a period of suspension payments may be made to or in respect of the ophthalmic medical practitioner or optician in accordance with a determination by the Secretary of State.

## Reviews

14.—(1) A Primary Care Trust may and if requested in writing to do so by the ophthalmic medical practitioner or optician shall review its decision to—

- (a) impose or vary conditions imposed under regulation 8;
- (b) impose or vary conditions imposed under regulation 12; or
- (c) suspend him under regulation 13(1)(a) or (b), except where a suspension is continuing by order of the FHSAA.

(2) The ophthalmic medical practitioner or optician may not request a review of a Primary Care Trust's decision until the expiry of a three month period beginning with the date of its decision or, in the case of a conditional inclusion under regulation 8, beginning with the date it includes his name in the supplementary list.

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

(4) If a Primary Care Trust decides to review its decision under this regulation to conditionally include, contingently remove or suspend an ophthalmic medical practitioner or optician, it shall give him—

- (a) notice of any allegation against him;
- (b) notice of what action it is considering and on what grounds;
- (c) the opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put his case at an oral hearing before it, if he so requests within the 28 day period mentioned in sub-paragraph (c).

(5) If there are no representations within the period specified in paragraph (4)(c), the Primary Care Trust shall 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 under regulation 15.

(6) If there are representations, the Primary Care Trust must take them into account before reaching its decision.

(7) The Primary Care Trust shall notify the ophthalmic medical practitioner or optician of—

- (a) its decision;
- (b) the reasons for it (including any facts relied upon);
- (c) any right of appeal under regulation 15; and
- (d) the right to a further review under this regulation,

within 7 days of making that decision.

(8) If a Primary Care Trust decides to review its decision to impose conditions under regulation 8, it may vary the conditions, impose different conditions, remove the conditions or remove the ophthalmic medical practitioner or optician from its supplementary list.

(9) If a Primary Care Trust decides to review its decision to impose a contingent removal under regulation 12, it may vary the conditions, impose different conditions, or remove the ophthalmic medical practitioner or optician from its supplementary list.

(10) If a Primary Care Trust decides to review its decision to suspend an ophthalmic medical practitioner or optician under regulation 13(1)(a) or (b), it may decide to impose conditions or remove him from its supplementary list.

(11) A Primary Care Trust may not review its decision to suspend an ophthalmic medical practitioner or optician under regulation 13(1)(c) or (d).

## Appeals

**15.—**(1) An ophthalmic medical practitioner or optician may appeal (and the hearing of it shall be by way of redetermination) to the FHSAA against a decision of a Primary Care Trust mentioned in paragraph (2) by giving notice to the FHSAA.

(2) The Primary Care Trust decisions in question are—

- (a) a decision to refuse admission to the supplementary list under regulation 6(1);
- (b) a decision to impose a particular condition under regulation 8, or to vary any condition or to impose a different condition under that regulation;
- (c) any decision on a review under regulation 14 of a conditional inclusion under regulation 8;
- (d) any decision to remove him under regulations 8(2), 10(3) or (6), 12(3)(c) or 15(6)(b);
- (e) any decision to impose a particular condition under regulation 12(1), or to vary any condition or to impose a different condition under that regulation;
- (f) any decision on a review under regulation 14 of a contingent removal under regulation 12(1); and
- (g) any decision to transfer or move him under regulation 21(12).

(3) On appeal the FHSAA may make any decision which the Primary Care Trust could have made.

(4) Where the decision of the FHSAA on appeal is that the appellant's inclusion in the supplementary list is to be subject to conditions, whether or not those conditions are identical with the conditions imposed by the Primary Care Trust, the Trust shall ask the appellant to notify it within 28 days of the decision (or such longer period as the Trust may agree) whether he wishes to be included in the supplementary list subject to those conditions.

(5) If the ophthalmic medical practitioner or optician notifies the Primary Care Trust that he does wish to be included in the supplementary list subject to the conditions, it shall so include him.

(6) Where the FHSAA on appeal decides to impose a contingent removal—

- (a) the Primary Care Trust and the ophthalmic medical practitioner or optician may each apply to the FHSAA for the conditions imposed on him to be varied, for different conditions to be imposed, or for the contingent removal to be revoked; and
- (b) the Primary Care Trust may remove him from its supplementary list if it determines that he has failed to comply with a condition.

## Notification

**16.—**(1) Where a Primary Care Trust decides to—

- (a) refuse to admit an ophthalmic medical practitioner or optician to its supplementary list on the grounds specified in regulation 6;
- (b) impose conditions on his inclusion in that list under regulation 8;
- (c) remove him from that list under regulation 10;
- (d) remove him from that list contingently under regulation 12; or
- (e) suspend him from that list under regulation 13,

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

(2) Where paragraph (1) applies, a Primary Care Trust shall notify, within 7 days of that decision—

- (a) the Secretary of State;

- (b) any Primary Care Trust or equivalent body that, to the knowledge of the notifying Trust—
    - (i) has the ophthalmic medical practitioner or optician on any list or equivalent list,
    - (ii) is considering an application for inclusion in any list or equivalent list by the ophthalmic medical practitioner or optician, or
    - (iii) has in its area any place where the ophthalmic medical practitioner or optician assists in the provision of general ophthalmic services;
  - (c) the Scottish Executive;
  - (d) the National Assembly for Wales;
  - (e) the Northern Ireland Executive;
  - (f) the General Medical Council, General Optical Council or any other appropriate regulatory body;
  - (g) the NCAA; and
  - (h) where it is a fraud case, the NHS Counter Fraud and Security Management Service.
- (3) The persons or bodies to be additionally notified in accordance with paragraph (1) are—
- (a) persons or bodies that can establish that they—
    - (i) are or were employing the ophthalmic medical practitioner or optician, are using or have used his services, or
    - (ii) are considering employing or using his services in a professional capacity; and
  - (b) a partnership any of whose members provide or assist in the provision of general ophthalmic services and can establish that the ophthalmic medical practitioner or optician is or was a member of the partnership or that it is considering inviting him to become such a member.
- (4) The matters referred to in paragraph (1) are—
- (a) name, address and date of birth of the ophthalmic medical practitioner or optician;
  - (b) his professional registration number;
  - (c) date and copy of the decision of the Primary Care Trust; and
  - (d) a contact name of a person in the Trust for further enquiries.
- (5) The Primary Care Trust shall send to the ophthalmic medical practitioner or optician concerned a copy of any information about him provided to the persons or bodies listed in paragraph (2) or (3), and any correspondence with that person or body relating to that information.
- (6) Where the Primary Care Trust has notified any of the persons or bodies specified in paragraph (2) or (3) of the matters set out in paragraph (4), it may, in addition, if requested by that person or body, notify that person or body of any evidence that was considered, including any representations from the ophthalmic medical practitioner or optician.
- (7) Where a Primary Care Trust is notified by the FHSAA that it has imposed a national disqualification on an ophthalmic medical practitioner or optician who was, or had applied to be, included in its supplementary 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 Primary Care Trust shall notify the persons or bodies that were notified of the original decision of the later decision or the fact that that suspension has lapsed.

### **Amendment of or withdrawal from supplementary lists**

17.—(1) An ophthalmic medical practitioner or optician shall, unless it is impracticable for him to do so, give notice to the Primary Care Trust within 28 days of any occurrence requiring a change in the information recorded about him in the supplementary list and of any change of his private address.

(2) Where an ophthalmic medical practitioner or optician intends to withdraw from the supplementary list, unless it is impracticable for him to do so, he shall so notify the Primary Care Trust at least three months in advance of that date.

(3) An ophthalmic medical practitioner or optician shall notify the Primary Care Trust that he intends to withdraw from its supplementary list if he is accepted on to its ophthalmic list, or on to any such list of another Primary Care Trust.

(4) The Primary Care Trust shall, on receiving notice from any ophthalmic medical practitioner or optician—

- (a) pursuant to paragraph (1), amend its supplementary list as soon as possible;
- (b) pursuant to paragraph (2), so amend its supplementary list, either—
  - (i) on the date notified by him, provided it falls at least three months after the date of the notice, or
  - (ii) on the date from which it has agreed that the withdrawal shall take effect, whichever is the earlier; or
- (c) pursuant to paragraph (3), remove his name from its supplementary list as soon as it confirms that he has been accepted on that other list.

(5) An ophthalmic medical practitioner or optician may withdraw a notice given pursuant to paragraph (1) or (2) at any time before the Primary Care Trust removes his name from its supplementary list.

(6) A notice given pursuant to paragraph (3) may not be withdrawn once the ophthalmic medical practitioner or optician has been accepted on that other list.

### **Restrictions on withdrawal from lists**

18.—(1) Where a Primary Care Trust is investigating an ophthalmic medical practitioner or optician—

- (a) for the purpose of deciding whether or not to exercise its powers to remove him under regulation 10 or contingently remove him under regulation 12; or
- (b) who has been suspended under regulation 13,

he may not withdraw from any list kept by a Primary Care Trust in which he is included, except where the Secretary of State has given his consent, until the matter has been finally determined by the Primary Care Trust.

(2) Where a Primary Care Trust has decided to remove an ophthalmic medical practitioner or optician from its supplementary list under regulation 10(3) to (6) or to contingently remove him from it under regulation 12, but has not yet given effect to its decision, he may not withdraw from any list kept by a Primary Care Trust in which he is included, except where the Secretary of State has given his consent.

(3) Where a Primary Care Trust has suspended an ophthalmic medical practitioner or optician under regulation 13(1)(b), he may not withdraw from any list kept by a Primary Care Trust in which he is included, except where the Secretary of State has given his consent, until the decision of the relevant court or body is known and the matter has been considered and finally determined by the Primary Care Trust.

### **Review periods on national disqualification**

**19.** The period for review shall be the different period specified below, instead of that in section 49N(8)(26), where the circumstances are that—

- (a) 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), in which case the reference to “two years” in that provision shall be a reference to five years;
- (b) 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, in which case the reference to “one year” in section 49N(8)(b) shall be a reference to three years;
- (c) the FHSAA states that it is of the opinion that, because a criminal conviction considered by the FHSAA in reaching the decision that has effect has been quashed or the penalty reduced on appeal, there is a need for an immediate review, in which case the reference to “two years” or “one year” in section 49N(8) shall be a reference to the period that has already elapsed; or
- (d) 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, in which case the reference to “two years” or “one year” in section 49N(8) shall be a reference to the period that has already elapsed.

### **Disclosure of information**

**20.—(1)** The Primary Care Trust may disclose information supplied to it or acquired by it pursuant to these Regulations to any of the following—

- (a) the Secretary of State;
- (b) any other Primary Care Trust or equivalent body, which to its knowledge—
  - (i) has an ophthalmic medical practitioner or optician to whom that information relates on any of its lists,
  - (ii) is considering an application from such an ophthalmic medical practitioner or optician for inclusion in any of its lists, or
  - (iii) has in its area any place where the ophthalmic medical practitioner or optician assists in the provision of general ophthalmic services;
- (c) the Scottish Executive;
- (d) the National Assembly for Wales;
- (e) the Northern Ireland Executive;
- (f) the General Medical Council, General Optical Council or any other licensing or regulatory body;
- (g) any organisation or employer that, to the knowledge of the Primary Care Trust, employs or uses the services of the ophthalmic medical practitioner or optician, to whom that information relates, in a professional capacity;
- (h) any partnership, any of whose members provide or assist in the provision of general ophthalmic services and of which, to the knowledge of the Primary Care Trust, the

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(26) Section 49N was inserted by section 25 of the 2001 Act and amended by the 2002 Act, Schedule 2, paragraph 25 and the 2003 Act, section 184 and Schedule 11, paragraph 24.

ophthalmic medical practitioner or optician is a member or that is considering inviting him to become a member; and

- (i) where an allegation of fraud is being considered, the NHS Counter Fraud and Security Management Service.

(2) The Primary Care Trust shall disclose to the Secretary of State information supplied to it or acquired by it pursuant to these Regulations, as he may from time to time request.

### **Transitional provisions**

**21.**—(1) Any ophthalmic medical practitioner or optician, who is not included in an ophthalmic list, but was assisting in the provision of general ophthalmic services on 31st March 2005 may continue to do so, notwithstanding regulation 3(3), until—

- (a) 31st July 2005; or

(b) the date on which the Primary Care Trust notifies him of its decision under regulation 6(6), whichever is the earlier, provided that he applies, in accordance with these Regulations, to a Primary Care Trust to be included in its supplementary list not later than 16th May 2005.

(2) Any ophthalmic medical practitioner or optician, not falling within paragraph (1), who has applied to be included in a supplementary list on or before 16th May 2005, may assist in the provision of general ophthalmic services after the date of that application, notwithstanding regulation 3(3), until—

- (a) 31st July 2005; or

(b) the date on which the Primary Care Trust notifies him of its decision under regulation 6(6), whichever is the earlier.

(3) Any ophthalmic medical practitioner or optician to whom paragraph (1) or (2) applies shall comply with regulation 9, if any of the events therein specified occur, as though he were included in the supplementary list of the Primary Care Trust in whose locality he is assisting in the provision of general ophthalmic services.

(4) An ophthalmic medical practitioner or optician may not assist in the provision of general ophthalmic services by virtue of paragraph (1) or (2) during any period in which he is the subject of a suspension notice given by a Primary Care Trust under paragraph (5).

(5) A Primary Care Trust may give a suspension notice to an ophthalmic medical practitioner or optician to whom paragraph (1) or (2) applies where 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.

(6) A Primary Care Trust may withdraw a suspension notice it has given under paragraph (5) at any time.

(7) During a period of suspension payments may be made to or in respect of the ophthalmic medical practitioner or optician by the Primary Care Trust in accordance with a determination by the Secretary of State.

(8) Where a Primary Care Trust—

- (a) has received an application from an ophthalmic medical practitioner or optician to whom paragraph (1) or (2) applies; and

(b) becomes aware in respect of him of any of the matters listed in regulation 10(1),  
it shall immediately decide his application to be included in its supplementary list.

(9) A Primary Care Trust may publish a list of ophthalmic medical practitioners or opticians whose applications it has approved for inclusion in its supplementary list prior to 31st July 2005.

(10) If, on or after 1st April 2005, it appears to the Primary Care Trust that any ophthalmic medical practitioner or optician, whose name was included in its ophthalmic list on 31st March 2005—

(a) is not entitled to have his name included in its ophthalmic list; but

(b) would be, if he so applied, entitled to have his name included in its supplementary list, it shall take the action specified in paragraph (11).

(11) The Primary Care Trust shall—

(a) give him notice to that effect, together with the opportunity to make written representations to it within 28 days of the date of that notification; and

(b) consult any other Primary Care Trust in whose ophthalmic list his name is, to its knowledge, included.

(12) After considering any representations under paragraph (11)(a) and the results of any consultation under paragraph (11)(b), if the Primary Care Trust is satisfied that that ophthalmic medical practitioner or optician does not meet the requirements for inclusion in its ophthalmic list, it shall—

(a) remove his name from its ophthalmic list; and

(b) unless his name is included in the ophthalmic list or supplementary list of another Primary Care Trust, include his name in its supplementary list.

(13) In a case to which paragraph (12) applies, the Primary Care Trust shall notify the ophthalmic medical practitioner or optician of its decision and the reasons for it (including any facts relied upon), within 7 days of making that decision.

(14) When the Primary Care Trust notifies the ophthalmic medical practitioner or optician of its decision in accordance with paragraph (13) it shall also notify any Primary Care Trust which it consulted pursuant to paragraph (11)(b).

(15) The Primary Care Trust shall act under paragraphs (10) to (12), so as to enable it to take a decision under paragraph (12), as soon as is reasonably practical.

(16) In any case where a Primary Care Trust—

(a) received, on or before 31st March 2005, an application for inclusion in its ophthalmic list;

(b) has not been determined that application before that date; and

(c) considers that it is not appropriate to include the applicant in its ophthalmic list, but that it may be appropriate to include him in its supplementary list,

it shall treat that application as an application for inclusion in its supplementary list.