

## SCHEDULES

### SCHEDULE 3

#### Combined lists

### PART 5

#### Removal from a combined list

##### **Procedure for removal under these Regulations**

**12.**—(1) In the circumstances in sub-paragraph (4), a Local Health Board must give the qualified practitioner—

- (a) notice of any allegation against the qualified practitioner;
- (b) notice of the action the Local Health Board is considering and on what grounds;
- (c) the opportunity to make written representations to the Local Health Board within 28 days of the date of notification under paragraph (b) (“the specified period”);
- (d) the opportunity to make representations at an oral hearing before the Local Health Board within the specified period if the qualified practitioner requests one.

(2) If the qualified practitioner requests an oral hearing, the hearing must take place within the specified period and before the Local Health Board reaches its decision.

(3) If the qualified practitioner makes written representations or an oral hearing takes place, the Local Health Board must take any representations made by the qualified practitioner into account before reaching its decision.

(4) This paragraph applies where a Local Health Board is considering—

- (a) removal on the grounds in regulation 17(3),
- (b) removal for breach of a condition imposed under regulation 14, or
- (c) contingent removal under regulation 19.

##### **Procedure for removal under the Act**

**13.** A Local Health Board must follow the procedure set out in paragraph 12(1) to (3) where it is considering—

- (a) removing a qualified practitioner from its ophthalmic list under section 107 of the Act (disqualification of practitioners), or
- (b) contingently removing a qualified practitioner from its ophthalmic list under section 108 of the Act.

##### **Factors to be considered before removal**

**14.** In making any decision under section 107 of the Act (disqualification of practitioners) or regulation 17(3)(d) of these Regulations, the Local Health Board must take into account the overall

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effect of any relevant incidents and offences relating to the qualified practitioner of which it is aware, whichever condition it relies on.

#### **Factors relating to unsuitability cases**

**15.**—(1) Where a Local Health Board is considering whether to remove a qualified practitioner from its combined list under section 107(4) of the Act (disqualification of practitioners) or under regulation 17(3)(d) of these Regulations, in relation to an unsuitability case, it must—

- (a) consider any information relating to the qualified practitioner which it has received in accordance with any provision of Part 2 of Schedule 3 or Schedule 4,
- (b) check with the Welsh Ministers for, and consider, any facts that the Welsh Ministers consider relevant relating to past or current investigations or proceedings involving or relating to the qualified practitioner, and
- (c) in reaching its decision, take into consideration the matters set out in sub-paragraph (2).

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

- (a) the nature of any offence, investigation or incident;
- (b) the length of time since any offence, incident, conviction or investigation occurred or was concluded;
- (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 the qualified practitioner's provision of (or assistance in providing, as applicable) primary ophthalmic services and any likely risk to any patients or to public finances;
- (f) whether any offence was a sexual offence for the purposes of Part 1 of the Sexual Offences Act 2003, or which if it had been committed in England and Wales, would have been such an offence;
- (g) whether the qualified practitioner has been refused admission to, conditionally included in, removed, contingently removed, or is currently suspended from, a primary care list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action;
- (h) whether the qualified practitioner is, has in the preceding 6 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 a primary care 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 Local Health Board or equivalent body in each case for such action;
- (i) in the case of a corporate optician, whether a person who, at the time of the originating events, was one of its directors, has been refused admittance to, conditionally included in, removed, contingently removed or suspended from a primary care list, or equivalent list and, if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action.

#### **Factors relating to fraud cases**

**16.**—(1) Where a Local Health Board is considering whether to remove a qualified practitioner from its combined list under section 107(3) of the Act (disqualification of practitioners) or under regulation 17(3)(d) of these Regulations, in relation to a fraud case, it must—

- (a) consider any information relating to the qualified practitioner which it has received in accordance with any provision of Part 2 of Schedule 3 or Schedule 4,
  - (b) check with the Welsh Ministers for, and consider, any facts that the Welsh Ministers consider relevant relating to past or current investigations or proceedings involving or relating to the qualified practitioner, and
  - (c) in reaching its decision, take into consideration the matters set out in sub-paragraph (2).
- (2) The matters referred to in sub-paragraph (1)(c) are—
- (a) the nature of any cases of fraud;
  - (b) the length of time since the last case of fraud occurred and since any investigation into it was concluded;
  - (c) whether there are other cases of fraud or other 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 offence, investigation or case;
  - (e) the relevance of any investigation into a case of fraud to the qualified practitioner's provision of (or assistance in providing, as applicable) primary ophthalmic services and the likely risk to patients or to public finances;
  - (f) whether the qualified practitioner has been refused admission to, conditionally included in, removed, or contingently removed or is currently suspended from, a primary care list or equivalent list, and, if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action;
  - (g) whether the qualified practitioner is, has in the preceding 6 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, a primary care 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 Local Health Board or equivalent body in each case;
  - (h) in the case of a corporate optician, whether a person who, at the time of the originating events, was one of its directors, has been refused admittance to, conditionally included in, removed, contingently removed or suspended from a primary care list or equivalent list and, if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action.

### **Factors relating to efficiency cases**

17.—(1) Where a Local Health Board is considering the removal of a qualified practitioner from its combined list under section 107(2) of the Act (disqualification of practitioners) or under regulation 17(3)(d) of these Regulations, in relation to an efficiency case, it must—

- (a) consider any information relating to the qualified practitioner which it has received in accordance with any provision of Part 2 of Schedule 3 or Schedule 4,
  - (b) check with the Welsh Ministers for, and consider, any facts that the Welsh Ministers consider relevant relating to past or current investigations or proceedings involving or relating to the qualified practitioner, and
  - (c) in reaching its decision, take into consideration the matters referred to in sub-paragraph (2).
- (2) The matters referred to in sub-paragraph (1)(c) are—
- (a) whether the continued inclusion of the qualified practitioner in the combined list would be prejudicial to the efficiency of the primary ophthalmic services—
    - (i) provided by the qualified practitioner, or

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- (ii) which the qualified practitioner assists 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 the qualified practitioner has previously failed to supply information, make a declaration or comply with an undertaking required by these Regulations;
- (f) whether the qualified practitioner has ever failed to comply with a request by the Local Health Board to take an assessment by NHS Resolution or any of its predecessor bodies;
- (g) whether the qualified practitioner has been refused admission to, conditionally included in, removed or contingently removed or is currently suspended from, a primary care list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or the equivalent body for such action;
- (h) whether the qualified practitioner is, has in the preceding 6 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 a primary care 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 Local Health Board or equivalent body in each case for such action;
- (i) in the case of a corporate optician, whether a person, who, at the time of the originating events, was one of its directors, has been refused admittance to, conditionally included in, removed, contingently removed or suspended from a primary care list or equivalent list and, if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action.