
WELSH STATUTORY INSTRUMENTS

2006 No. 181 (W.32)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services) (Amendment and Consequential Amendment) (Wales) Regulations 2006

Made - - - - *31 January 2006*

Coming into force, except

for regulation 39(11) *1 February 2006*

Regulation 39(11) *1 August 2006*

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

Title, commencement and application

1.—(1) The title of these Regulations is the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services) (Amendment and Consequential

(1) 1977 c. 49 (“the 1977 Act”); see section 128(1) as amended by the National Health Service and Community Care Act 1990, section 26(2)(g) and (i), for the definitions of “prescribed” and “regulations”.

Section 38 was amended by the Health and Social Security Act 1984 (c. 48) (“the 1984 Act”), section 1(3); the Health and Medicines Act 1988 (c. 49), section 13; by S.I.1985/39, article 7(11); the Health Authorities Act 1995 (c. 17) (“the 1995 Act”) section 2(1) and paragraphs 1 and 27 of the Schedule; and by the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (“the 2002 Act”), section 2(5) and paragraphs 1 and 11 of Schedule 2.

Section 39 was amended by the 1984 Act, section 1 and paragraph 1 of Schedule 1 and Schedule 8; the 1995 Act, section 2 and paragraph 28 of Schedule 1; the Health Act 1999 (c. 8) (“the 1999 Act”), section 9(4); by the Health and Social Care Act 2001 (c. 15) (“the 2001 Act”), sections 20 and 23; and by the 2002 Act, section 2(5) and paragraphs 1 and 12 of Schedule 2.

Sections 43ZA and 43D were inserted by the 2001 Act, sections 21 and 24.

Sections 49F, 49I, 49L, 49M, 49N, 49P and 49Q were inserted by the 2001 Act, section 25.

Section 126(4) was amended by the 1990 Act, section 65(2) and by paragraph 37(6) to Schedule 4 to the 1999 Act and by the 2001 Act, section 67 and paragraph 5(13)(b) to Schedule 5.

The functions of the Secretary of State under sections 38, 39 and 126(4) were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672, article 2 and Schedule 1 as amended by the 1999 Act, section 66(5); by the 2001 Act, section 68(1), by the 2002 Act, section 40(1) and by the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), section 1971(1).

(2) 2001 c. 15.

Amendment) Regulations 2006 and, except for regulation 39(11), they come into force on 1 February 2006.

- (2) Regulation 39(11) comes into force on 1 August 2006.
- (3) These Regulations apply in relation to Wales.

PART 1

Supplementary List

Interpretation

2.—(1) In this Part—

“Abolition of the Tribunal Regulations” (*“Diddymu Rheoliadau'r Tribiwnlys”*) means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001(3);

“Abolition of the Tribunal (Wales) Regulations” (*“Diddymu Rheoliadau'r Tribiwnlys”* (Cymru)) means the Abolition of National Health Service Tribunal (Consequential Provisions) Regulations 2002(4);

“director” (*“cyfarwyddwr”*) 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” (*“cyflogaeth”*) means any employment, whether paid or unpaid and whether under a contract for services or a contract of service, and “employed” and “employer” should be construed accordingly;

“equivalent body” (*“corff gyfatebol”*) means—

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

“equivalent list” (*“rhestr gyfatebol”*) means a list kept by an equivalent body;

“FHSAA” means the Family Health Services Appeal Authority constituted under section 49S;

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

“general ophthalmic services” (*“gwasanaethau offthalmig cyfredinol”*) means the services which a person whose name is included in an ophthalmic list had undertaken to provide, pursuant to paragraph 10 of Schedule 1 to the Ophthalmic Regulations;

“licensing or regulatory body” (*“corff trwyddedu neu reoleiddio”*) means a body that licenses or regulates any profession to which the ophthalmic medical practitioner or optician belongs, or has formerly belonged, including a body regulating or licensing the education, training or

(3) S.I.2001/3744

(4) S.I.2002/1920

qualifications of that profession, and includes any body which licenses or regulates any such profession, its education, training or qualifications, outside the United Kingdom;

“list” (“*rhestr*”), 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 31 March 2004;
- (c) a list of persons approved by a Local Health Board 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 31 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 31 March 2004;

“a national disqualification” (“*anghymwysiad cenedlaethol*”) means a decision—

- (a) made by the FHSAA to nationally disqualify a 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) of the Abolition of the Tribunal (Wales) Regulations;

“the NCAA” means the National Clinical Assessment Authority;

“the NHS Counter Fraud and Security Management Service” (“*Gwasanaeth Gwrth Dwyll a Rheoli Diogelwch y Gwasanaeth Iechyd Gwladol*”) means the body with responsibility for the 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” (“*hysbysiad*”) means an notice in writing (including electronic) and “notify” shall be construed accordingly;

“the NPSA” means the National Patient Safety Agency established as a Special Health Authority under section 11;

“ophthalmic list” (“*rhestr offthalmig*”) means the list prepared by a Local Health Board under regulation 6(6) of the Ophthalmic Regulations;

“ophthalmic medical practitioner” (“*ymarferydd meddygol offthalmig*”) 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” (“*Rheoliadau Offthalmig*”) means the National Health Service (General Ophthalmic Services) Regulations 1986(7);

“optician” (“*optegydd*”) means an natural person, who is an ophthalmic optician;

“Opticians Act” (“*y Ddeddf Optegwyr*”) means the Opticians Act 1989(8);

(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.2001/1423 \(W.98\)](#) and [S.I.2002/1883 \(W.192\)](#)

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

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

“originating events” (“*digwyddiadau sy'n cychwynnol*”) means the events that gave rise to the conviction, investigation, proceedings, suspension, refusal to admit, conditional inclusion, removal or contingent removal that took place;

“practitioner” (“*ymarferydd*”), except where the context otherwise requires, means an ophthalmic medical practitioner or an optician;

“professional conduct” (“*ymddygiad proffesiynol*”) includes matters relating both to professional conduct and professional performance;

“Primary Care Act” (“*Ddeddf Gofal Sylfaenol*”) means the National Health Service (Primary Care) Act 1997⁽⁹⁾;

“professional registration number” (“*Rhif cofrestru proffesiynol*”) means the number against the ophthalmic medical practitioner or optician’s name in the register;

“the register” (“*gofrestr*”), 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” (“*atal dros dro*”) means—

- (a) suspended by a Local Health Board or equivalent body under section 49I or 49J, or regulations made under section 28DA or 43D or under section 8ZA of the Primary Care Act⁽¹⁰⁾;
- (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 Local Health Board, or prior to 1 April 2003, by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal (Wales) Regulations, or in England, by a Primary Care Trust, or prior to 1 October 2002, by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations, and “suspends” and “suspension” should be construed accordingly; and

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

(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 Local Health Board must prepare and publish a supplementary list of all practitioners approved by the Local Health Board for the purposes of assisting in the provision of general ophthalmic services.

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

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

(4) In respect of any practitioner, whose name is included in the supplementary list, the list will include that practitioner's—

(9) 1997 c. 46

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

(11) Section 46 was revoked by the 2001 Act, section 67 and Schedule 5, paragraph 5, and Schedule 6, Part 1.

(12) 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.

- (a) full name;
 - (b) professional registration number, and
 - (i) suffixed to that number, the organisational code given by the National Assembly for Wales to the Local Health Board, and
 - (ii) prefixed to that number, the initials SOL;
 - (c) date of birth, where the practitioner has given consent, or if consent is not given, the date of the practitioner's first registration in the register; and
 - (d) date when his or her name was first included in the supplementary list.
- (5) The supplementary list must be available for public inspection.

Application for inclusion in the supplementary list

4.—(1) Subject to paragraphs (7) to (11), an application by a practitioner for the inclusion of his or her name in the supplementary list must be made by sending to the Local Health Board an application in writing, which must include the information mentioned in paragraph (2), the undertakings and consents required by paragraphs (3) and (6) and any declaration required under paragraphs (4) and (5).

- (2) The practitioner must provide the following information—
- (a) full name;
 - (b) sex;
 - (c) date of birth;
 - (d) private address and telephone number;
 - (e) details of qualifications and where they were obtained;
 - (f) a declaration that he or she is a fully registered ophthalmic medical practitioner or optician, included in the register;
 - (g) professional registration number and the date of first registration in the register;
 - (h) chronological details of 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 or she 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 the practitioner 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 Local Health Board or equivalent list from which the practitioner has been removed or contingently removed, or to which the practitioner has been refused admission or in which he or she has been conditionally included, with an explanation as to why;
 - (l) if the practitioner 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 Local Health Board or equivalent body concerned; and
 - (m) where the practitioner 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 Local Health Board or equivalent body concerned.

- (3) The practitioner must provide the following undertakings and consent—
- (a) an undertaking to provide the declarations and document, if applicable, required by regulation 9;
 - (b) an undertaking not to assist in the provision of general ophthalmic services in the area of another Local Health Board or equivalent body from whose ophthalmic or supplementary list he or she has been removed, except where that removal was at his or her request or in accordance with regulation 10(7) or 21(12) of these Regulations, or regulation 9(2) of the Ophthalmic Regulations, without the consent, in writing, of that Local Health Board or equivalent body;
 - (c) an undertaking to notify the Local Health Board within 7 days of any material changes to the information provided in the application until the application is finally determined;
 - (d) an undertaking to notify the Local Health Board if he or she is included, or applies to be included, in any other list or equivalent list held by a Local Health Board or equivalent body; and
 - (e) consent to the disclosure of information in accordance with regulation 16 and 20 of these Regulations.
- (4) The practitioner must send with the application a declaration as to whether he or she—
- (a) has any criminal conviction 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⁽¹³⁾ (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992⁽¹⁴⁾ (penalty as alternative to prosecution);
 - (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 or her 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 Local Health Board;
 - (h) has been subject to any investigation into his or her professional conduct by any licensing, regulatory or other body, where the outcome was adverse;
 - (i) is currently subject to any investigation into his or her professional conduct by any licensing, regulatory or other body;
 - (j) is to his or her 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 Local Health Board or equivalent body, which might lead to his or her removal from any list or equivalent list;

⁽¹³⁾ 1995 c. 46

⁽¹⁴⁾ 1992 c. 5

- (l) is, or has been where the outcome was adverse, the subject of any investigation into his or her 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 Local Health Board or equivalent body, or is currently suspended from such a list and if so, why and the name of that Local Health Board or equivalent body; or
- (n) is, or has ever been, subject to a national disqualification,

and, if so, the practitioner must 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 practitioner is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate, he or she must in addition make a declaration to the Local Health Board 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 Local Health Board
- (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 the practitioner’s 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 Local Health Board 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, the practitioner must give the name and the address of the registered office of the body corporate and details, including approximate dates, or when any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(6) The practitioner must consent to a request being made by the Local Health Board 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 the practitioner 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 Local Health Board finds that the information, references or documentation supplied by the practitioner are not sufficient for it to decide the practitioner’s application, it must seek from the practitioner such further information, references or documentation as it may reasonably require in order to make a decision and the practitioner must supply the material so sought to the Local Health Board.

(8) In the case of an application to a Local Health Board by a practitioner, who is included in its ophthalmic list, seeking to withdraw from that list and to include his or her name in its supplementary list, the practitioner will only be required to provide the information required by paragraphs (2), (4) and (5) insofar as—

- (a) it has not already been supplied to that Local Health Board; 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 or her training, may make an application to a Local Health Board not less than 3 months before he or she anticipates being entered on the register.

(10) An application under paragraph (9) must 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 is to be taken as being a reference to an applicant under paragraph (9).

(11) An applicant under paragraph (9) must provide the information required by paragraph (2) (f) and (g) as soon as he or she has been notified by the General Optical Council whether he or she has been admitted to the register and the Local Health Board will 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); and
- (c) it has not deferred the application under regulation 7,

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

Readmission

5.—(1) Where a practitioner has been removed from its supplementary list by a Local Health Board on the grounds that he or she had been convicted of a criminal offence, and that conviction is overturned on appeal, it may agree to include that practitioner 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 the practitioner 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 Local Health Board to remove that practitioner from its supplementary list will once again have effect.

Decisions and grounds for appeal

6.—(1) The grounds on which a Local Health Board may refuse to include a practitioner 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 the practitioner, it considers that he or she is unsuitable to be included in its supplementary list;
- (b) having checked the information provided by the practitioner under regulation 4(2)(e), (f) and (g), it considers that he or she is unsuitable to be included in its supplementary list;
- (c) having contacted the referees provided by the practitioner 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 to past or current fraud investigations involving or related to the practitioner and, having considered these and any other facts in its possession relating to fraud involving or relating to the practitioner, it considers these justify such a refusal;
 - (e) having checked with the National Assembly for Wales for any facts that it considers relevant relating to past or current investigations or proceedings involving or related to the practitioner and, having considered these and any other facts in its possession involving or relating to the practitioner, it considers these justify such a refusal; or
 - (f) there are grounds for considering that admitting the practitioner to its supplementary list would be prejudicial to the efficiency of the service which he or she would undertake.
- (2) The grounds on which a Local Health Board must refuse to include a practitioner in its supplementary list are that—
- (a) the practitioner has not provided satisfactory evidence that he or she intends to assist in the provision of general ophthalmic services in its area;
 - (b) the practitioner is included in the ophthalmic list of any Local Health Board, unless he or she has given notice in writing to that Local Health Board that he or she wishes to withdraw from that list;
 - (c) the practitioner is included in the supplementary list of another Local Health Board, unless the practitioner has given notice in writing to that Local Health Board that he or she wishes to withdraw from that list;
 - (d) it is not satisfied that the practitioner has the knowledge of English, which, in the practitioner's own interests or those of the practitioner's patients, is necessary in assisting in the provision of general ophthalmic services in its area;
 - (e) the practitioner has been convicted in the United Kingdom of murder;
 - (f) the practitioner has been convicted in the United Kingdom of a criminal offence, other than murder, committed on or after 1 February 2006 and has been sentenced to a term of imprisonment of over six months;
 - (g) the practitioner is subject to a national disqualification;
 - (h) the practitioner has not updated his or her application in accordance with regulation 7(4); or
 - (i) in a case to which regulation 15(4) applies, the practitioner does not notify the Local Health Board under regulation 15(5) that he or she wishes to be included in its supplementary list subject to the specified conditions.
- (3) Before making a decision on the application submitted by the practitioner, the Local Health Board must—
- (a) check, as far as reasonably practicable, the information that has been 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 in relation to the practitioner;
 - (c) check with the National Assembly for Wales as to any information held by it as to any record about past or current investigations or proceedings involving or related to that practitioner; and
 - (d) take up the references were provided under regulation 4(2)(i).
- (4) Where the Local Health Board is considering a refusal under paragraph (1) or (2), it must consider all the facts which appear to it to be relevant, and must 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 the practitioner of general ophthalmic services and any likely risk to his or her 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⁽¹⁵⁾, or if it had been committed in England and Wales, would have constituted such an offence;
 - (g) whether the practitioner 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 Local Health Board or equivalent body for such action; and
 - (h) whether the practitioner was at the time, has in the preceding six months been, or as 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 Local Health Board or equivalent body in each case.
- (5) When the Local Health Board takes into consideration any of the matters set out in paragraph (4), it must consider the overall effect of all the matters being considered.
- (6) The Local Health Board will give notice in writing of its decision whether or not to include the practitioner in its supplementary list with 7 days of that decision.
- (7) Any notice in which the Local Health Board advises of its refusal of an application for inclusion in its supplementary list, must contain—
- (a) a statement of the reasons for its decision (including any facts relied upon);
 - (b) details of any right of appeal arising under regulation 15; and
 - (c) notice that any right of appeal must be exercised within the period of 28 days beginning with the date on which it gave notice of its decision.

Deferment of decision on application

7.—(1) A Local Health Board may defer a decision on the application of a practitioner to be included in its supplementary list, where—

- (a) there are, in respect of that practitioner—
 - (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 that practitioner's removal from its supplementary list, if he or she were to be included in it;
- (b) in respect of a body corporate of which the practitioner 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 the practitioner's removal from its supplementary list, if he or she were to be included in it;
- (c) there is an investigation anywhere in the world by the practitioner's licensing or regulatory body or any other investigation (including one by another Local Health Board or equivalent body) relating to the practitioner in his or her professional capacity that, if adverse, would be likely to lead to the practitioner's removal from the Local Health Board's supplementary list, if he or she were to be included in it;
- (d) the practitioner is suspended from any list or equivalent list;
- (e) a body corporate of which the practitioner 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 the practitioner against a decision of a Local Health Board to refuse to include the practitioner in its supplementary list, or to conditionally include the practitioner in or to contingently remove him or her from any list kept by a Local Health Board and if that appeal is unsuccessful the Local Health Board would be likely to remove the practitioner from its supplementary list, if he or she were to be included in it;
- (g) the FHSAA is considering an appeal by a body corporate of which the practitioner is, has in the preceding six months been, or was at the time of the originating events a director, against a decision of a Local Health Board or equivalent body to refuse to admit the body corporate to its list, or to conditionally include it in or to contingently remove it from any list kept by the Local Health Board or equivalent body, and if that appeal is unsuccessful the Local Health Board would be likely to remove the practitioner from its supplementary list, if the practitioner were to be included in it;
- (h) the practitioner 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 the practitioner's removal from the Local Health Board's list if the practitioner were to be included in it;
- (i) a body corporate, of which the practitioner 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 the practitioner's removal from the Local Health Board's supplementary list, if he or she were to be included in it; and
- (j) the FHSAA is considering an application by a Local Health Board for a national disqualification of the practitioner or of a body corporate of which the practitioner is, has in the preceding six months been, or was at the time of the originating events, a director.
- (2) A Local Health Board may only defer a decision under paragraph (1) until the outcome of the relevant event in any of the sub-paragraphs (a) to (j) of that paragraph is known.
- (3) The Local Health Board must notify the practitioner 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 Local Health Board must notify the practitioner that he or she must within 28 days of the notification of the requirement (or such longer period as the Local Health Board may agree)—
- (a) update his or her application; and
- (b) confirm in writing that he or she wishes to proceed with the application.

(5) Provided any additional information has been received within 28 days or the time agreed, the Local Health Board will notify the practitioner as soon as possible—

- (a) that the practitioner’s application to be included has been successful; or
- (b) that it has decided to refuse the practitioner’s application or to impose conditions on the practitioner’s inclusion, and the reasons for it (including any facts relied upon), and of any right of appeal under regulation 15.

Conditional inclusion

8.—(1) A Local Health Board may determine that if a practitioner is to be included in the supplementary list, the practitioner is to be subject, whilst he or she remains included in that list, to the imposition of conditions, having regard to the requirements of section 43D(5) (purpose of conditions).

(2) If a practitioner fails to comply with a condition, which has been imposed by the Local Health Board, it may remove that practitioner from its supplementary list.

(3) Where the Local Health Board is considering the removal of a practitioner from its supplementary list for breach of a condition, it must give the practitioner—

- (a) notice of any allegation against him or her;
- (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 or her case at an oral hearing before it, if the practitioner requests one within the 28 day period mentioned in sub-paragraph (c).

(4) If the practitioner does not make any representations within the period specified in paragraph (3)(c), the Local Health Board will decide the matter and inform the practitioner 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.

(5) If the practitioner does make representations, the Local Health Board must take them into account before reaching its decision, it will then notify the practitioner of—

- (a) its decision and the reasons for making 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 practitioner requests an oral hearing, this must take place before the Local Health Board reaches its decision and it must then notify the practitioner of—

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

within 7 days of making that decision.

(7) When the Local Health Board notifies the practitioner of any decision made in accordance with this regulation, it must inform the practitioner that if he or she wishes to exercise a right of appeal, the practitioner must do so within 28 days, beginning with the date on which notice of the decision was given, and it must tell the practitioner how to exercise any such right.

(8) The Local Health Board must also notify the practitioner of the practitioner’s right to have the decision reviewed in accordance with regulation 14.

(9) Where the Local Health Board determines that a practitioner—

- (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 the practitioner remains included in its supplementary list,

the practitioner's 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, of if an appeal is brought, until such time as the appeal has been decided, provided the practitioner 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 a practitioner in the supplementary list must comply

9.—(1) A practitioner, who is included in the supplementary list of a Local Health Board, must make a declaration in writing to that Local Health Board within 7 days of its occurrence if he or she—

- (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 (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);
- (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 or her 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 the practitioner's professional conduct, and there is a finding against the practitioner;
- (i) becomes the subject of any investigation into his or her professional conduct by any licensing, regulatory or other body;
- (j) becomes subject to an investigation into the practitioner's 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 the practitioner's knowledge, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or the practitioner is informed of the outcome of such an investigation, where it is adverse;
- (l) becomes the subject of any investigation by another Local Health Board, which might lead to the practitioner's 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, the practitioner must 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) A practitioner who is included in the supplementary list of a Local Health Board and is, or was in the preceding six months, or was at the time of the originating events, a director of a

body corporate, must make a declaration in writing to that Local Health Board 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;
- (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 an 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 the practitioner’s 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 Local Health Board 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, 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) A practitioner who is included in the supplementary list of a Local Health Board must consent to a request being made by that Local Health Board 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 the practitioner or a body corporate referred to in paragraph (1) or (2) and, for the purposes of this paragraph, “employer” includes any partnership of which the practitioner is or was a member.

(4) A practitioner who is included in the supplementary list of a Local Health Board must supply that Local Health Board with an enhanced criminal record certificate under section 115 of the Police Act 1997⁽¹⁶⁾ in relation to the practitioner, if the Local Health Board at any time, for reasonable cause, gives him or her notice to provide such a certificate.

Removal from supplementary list

10.—(1) The Local Health Board must remove a practitioner from its supplementary list where it becomes aware that the practitioner—

- (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 1 February 2006, 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 a practitioner;
- (f) in the case of a practitioner who is an ophthalmic medical practitioner, is the subject of—

⁽¹⁶⁾ 1997 c. 50; relevant amendments are the 2001 Act, section 19(1), (2) and (3); and the 2002 Act, section 2(5) and paragraph 54 of Schedule 2.

- (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(17) (professional misconduct and criminal offences),
 - (ii) an order or a direction made by that Committee under section 38(1) of the Medical Act 1983 (order for immediate suspension), or
 - (iii) from the coming into force of article 13 of the Medical Act 1983 (Amendment) Order 2002, 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), 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 the Medical Act 1983;
- (g) in the case of a practitioner who is an optician, is the subject of a suspension order under section 17 of the Opticians Act;
- (h) in the case of a practitioner who is an optician, is the subject of a direction made by the Fitness to Practise Committee of the General Optical Council other than in a health case to erase the practitioner’s name from the appropriate register or suspend the practitioner’s registration under section 13F(3)(a) or (b), 7(a) or (b) or 13(a) or (b) (powers of the Fitness to Practise Committee) of the Opticians Act;
- (i) is included in the ophthalmic list of any Local Health Board, or the supplementary list of another Local Health Board,

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

(2) In paragraph (1), “health case” has the meaning given to it in section 13G(6) of the Opticians Act.

(3) Where the Local Health Board is notified by the FHSAA that it has considered an appeal by a practitioner against—

- (a) a contingent removal by the Local Health Board and it has decided to remove the practitioner instead; or
- (b) a conditional inclusion, where the practitioner has been conditionally included in the supplementary list until the appeal has been decided, and has decided not to include the practitioner,

the Local Health Board must remove the practitioner from its supplementary list and must notify the practitioner immediately that it has done so.

(4) The Local Health Board may remove a practitioner from its supplementary list where any of the conditions set out in paragraph (5) is satisfied.

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

- (a) the continued inclusion of that practitioner 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) the practitioner is involved in a fraud case in relation to any health scheme; or
- (c) the practitioner is unsuitable to be included in that list (“an unsuitability case”).

(6) For the purposes of this regulation, in addition to the services covered by the definition of “health scheme” in section 48F(8), the following are also health schemes—

- (a) health services, including medical and surgical treatment, provide by Her Majesty’s Forces;

(17) 1983 c. 54; section 36 was amended by S.I.2000/1803

- (b) services provided by Port Health Authorities constituted under the Public Health (Control of Diseases) Act 1984⁽¹⁸⁾;
- (c) health services provided to a prisoner in the care of a medical officer or such officer of a prison appointed for the purposes of section 7 of the Prison Act 1952⁽¹⁹⁾; and
- (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

(7) Where the practitioner cannot demonstrate that he or she assisted in the provision of general ophthalmic services within the Local Health Board's area during the preceding six months, it may remove the practitioner from its supplementary list.

(8) In calculating the period of six months referred to in paragraph (7), the Local Health Board will disregard any period during which the practitioner 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 equivalent service by a person liable for whole-time service in those forces.

(9) Where a Local Health Board is considering removing a practitioner from its supplementary list under paragraphs (4) to (7), regulation 8, 12(4)(c) or 15(6) or contingently removing the practitioner under regulation 12, it must give the practitioner—

- (a) notice of any allegation against him or her;
- (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 notification under sub-paragraph (b); and
- (d) the opportunity to put his or her case at an oral hearing before it, if the practitioner so requests within the 28 day period referred to in sub-paragraph (c).

(10) If there are no representations within the period specified in paragraph (9)(c), the Local Health Board must notify the practitioner 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 practitioner makes representations the Local Health Board must take them into account before reaching its decision, and must notify the practitioner 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) If the practitioner requests an oral hearing, this must take place before the Local Health Board reaches its decision and it must then notify the practitioner 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.

⁽¹⁸⁾ 1984 c. 22

⁽¹⁹⁾ 1952 c. 52

(13) When the Local Health Board notifies the practitioner of any decision it must inform the practitioner that if he or she wishes to exercise a right of appeal then he or she must do so within the period of 28 days beginning with the date on which it informed the practitioner of its decision and it must also tell the practitioner how to exercise any such right.

(14) The Local Health Board must also notify the practitioner of the practitioner's right to have the decision reviewed in accordance with regulation 14.

(15) Where the Local Health Board decides to remove a practitioner under paragraph (4) or (7), the practitioner will not be removed from its supplementary list until—

- (a) the end of a period of 28 days starting with the day on which the Local Health Board 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 Local Health Board is considering whether to remove a practitioner from its supplementary list under regulation 10(4) and (5)(c) (“an unsuitability case”) it must—

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

(2) The matters referred to in 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 in respect of the practitioner's 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, or if it had been committed in England and Wales, would have been such an offence;
- (g) whether the practitioner 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 reasons relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action; and
- (h) whether the practitioner 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 Local Health Board or equivalent body in each case for such action.

(3) Where a Local Health Board is considering whether to remove a practitioner from its supplementary list under regulation 10(4) and (5)(b) (“a fraud case”), it must consider—

- (a) any information relating to the practitioner which it has received in accordance with any provision of regulation 9;
 - (b) any information held by the National Assembly for Wales as to any record about past or current investigations or proceedings involving or relating to the practitioner; 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 incidence of fraud occurred and since any investigation into it was concluded;
 - (c) whether there are other incidents of fraud or other criminal offences to be considered'
 - (d) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such offence, investigation or incident;
 - (e) the relevance of any investigation into an incident of fraud to the practitioner assisting in the provision of general ophthalmic services and the likely risk to patients or to public finances;
 - (f) whether the practitioner 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 Local Health Board or equivalent body for such action;
 - (g) whether the practitioner 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 Local Health Board or equivalent body in each case.
- (5) Where a Local Health Board is considering removal of a practitioner from its supplementary list under regulation 10(4) and (5)(a) (“an efficiency case”), it must—
- (a) consider any information relating to the practitioner which it has received in accordance with any provision of regulation 9;
 - (b) consider any information held by the National Assembly for Wales as to any record about past or current investigations or proceedings involving or relating to the practitioner; and
 - (c) 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 practitioner 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 the practitioner has previously failed to supply information, make a declaration or comply with an undertaking required by these Regulations or the Ophthalmic Regulations;
 - (f) whether the practitioner has ever failed to comply with a request by the Local Health Board to take an assessment by the NCAA on or before 31 March 2005 or thereafter by the NPSA;

(g) whether the practitioner 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 Local Health Board or the equivalent body for such action; and

(h) whether the practitioner 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 Local Health Board or equivalent body in each case for such action.

(7) In making any decision under regulation 10, the Local Health Board must take into account the overall effect of any relevant incidents and offences relating to the practitioner of which it is aware, whichever condition it relies on.

(8) When making a decision on any condition in regulation 10(5), the Local Health Board must state in its decision on which condition it relies.

Contingent removal

12.—(1) In an efficiency case or a fraud case the Local Health Board may, instead of deciding to remove a practitioner from its supplementary list, decide to remove the practitioner contingently and regulation 10(13) and (14) will apply to that decision.

(2) If it so decides, it must impose such conditions as it may decide on the practitioner's 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 Local Health Board decides to contingently remove a practitioner under paragraph (1) that decision will not take effect until—

(a) the end of a period of 28 days starting with the day on which the Local Health Board reaches its decision; or

(b) any appeal is disposed of by the FHSAA,

whichever is the later.

(4) If the Local Health Board determines that the practitioner has failed to comply with a condition it may decide to—

(a) vary the conditions imposed;

(b) impose new conditions;

(c) remove the practitioner from its supplementary list.

Suspension

13.—(1) If a Local Health Board is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend a practitioner from its supplementary list in accordance with the provisions of this regulation—

(a) while it decides whether or not to exercise its powers to remove the practitioner under regulation 10 or contingently remove the practitioner under regulation 12;

(b) while it waits for a decision of a licensing or regulatory body or court anywhere in the world which affects the practitioner;

- (c) where it has decided to remove the practitioner, but before that decision takes effect; or
 - (d) pending an appeal under these Regulations.
- (2) In a case falling within paragraph (1)(a), the Local Health Board must specify a period, not exceeding six months, as the period of suspension.
- (3) In a case falling within paragraph (1)(b), the Local Health Board may specify that the practitioner 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 (2) or (3) may extend beyond six months if—
- (a) on the application of the Local Health Board, the FHSAA so orders;
 - (b) the Local Health Board 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 must 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 will end on the earlier of that date or that event, as the case may be.
- (6) The FHSAA may, on the application of the Local Health Board, make a further order, which must also comply with paragraph (5), at any time while the period of suspension pursuant to the earlier order is still continuing.
- (7) If the Local Health Board suspends a practitioner in a case falling within paragraph (1)(c) or (d), the suspension has effect from the date the Local Health Board informed the practitioner of the suspension and will continue until—
- (a) the expiry of any appeal period; or
 - (b) if the practitioner appeals under regulation 15, the FHSAA has disposed of the appeal.
- (8) The Local Health Board 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 a practitioner is suspended under these Regulations that practitioner is to be treated as not being included in the Local Health Board's supplementary list, even though his or her name appears in it.
- (10) The Local Health Board may at any time revoke the suspension and inform the practitioner of its decision.
- (11) Where a Local Health Board is considering suspending a practitioner or varying the period of suspension under this regulation, it must give the practitioner—
- (a) notice of any allegation against the practitioner;
 - (b) notice of what action it is considering and on what grounds;
 - (c) the opportunity to put his or her case at an oral hearing before it, on a specified day, provided that at least 24 hours notice of the hearing is given to the practitioner.
- (12) If the practitioner does not wish to have an oral hearing or does not attend the oral hearing the Local Health Board may suspend the practitioner with immediate effect.
- (13) If an oral hearing does take place, the Local Health Board must take into account any representations made before it reaches its decision.
- (14) The Local Health Board may suspend the practitioner with immediate effect following the hearing.

(15) The Local Health Board must notify the practitioner of its decision and the reasons for it (including any facts relied upon) within 7 days of making that decision.

(16) The Local Health Board must notify the practitioner of any right of review under regulation 14.

(17) During a period of suspension payments may be made to or in respect of the practitioner in accordance with a determination by the National Assembly for Wales.

Reviews

14.—(1) A Local Health Board may, and if requested in writing to do so by the practitioner must, 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 the practitioner under regulation 13(1)(a) or (b), except where a suspension is continuing by order of the FHSAA.

(2) The practitioner may not request a review of the Local Health Board'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 the practitioner's name in the supplementary list.

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

(4) If a Local Health Board decides to review its decision under this regulation to conditionally include, contingently remove or suspend a practitioner, it must give the practitioner—

- (a) notice of any allegation against the practitioner;
- (b) notice of what action it is considering and on what grounds;
- (c) with 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 or her case at an oral hearing before it, if the practitioner so requests within the 28 day period mentioned in sub-paragraph (c).

(5) If there are no representations with the period specified in paragraph (4)(c), the Local Health Board must notify the practitioner of its decision, the reasons for it (including any facts relied upon) and of any right of appeal under regulation 15.

(6) If the practitioner makes representations, the Local Health Board must take them into account before reaching its decision.

(7) The Local Health Board must notify the practitioner 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) When the Local Health Board notifies the practitioner under paragraph (7)(c), it must also inform the practitioner that if he or she wishes to exercise a right of appeal then he or she must do so within the period of 28 days beginning with the date on which it gave notice of its decision and it must also inform the practitioner how to exercise any such right.

(9) If a Local Health Board 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 practitioner from its supplementary list.

(10) If a Local Health Board decides to review its decision to impose a contingent removal under regulation 12, it may vary the conditions, impose different conditions, or remove the practitioner from its supplementary list.

(11) If a Local Health Board decides to review its decision to suspend a practitioner under regulation 13(1)(a) or (b), it may decide to impose conditions or remove the practitioner from its supplementary list.

(12) A Local Health Board may not review its decision to suspend a practitioner under regulation 13(1)(c) or (d).

Appeals

15.—(1) A practitioner may appeal (which will be by way of redetermination) to the FHSAA against a decision of a Local Health Board mentioned in paragraph (2) by giving notice to the FHSAA.

(2) The Local Health Board 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 an review under regulation 14 of a conditional inclusion under regulation 8;
- (d) any decision to remove the practitioner under regulations 8(2), 10(4) or (7), 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 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 the practitioner under regulation 21(12).

(3) On appeal the FHSAA may make any decision which the Local Health Board could have made.

(4) Where the decision of the FHSAA on appeal is that the appellant practitioner's inclusion in the supplementary list is to be subject to conditions, whether or not those conditions are identical to the conditions imposed by the Local Health Board, the Local Health Board must ask the appellant to notify it within 28 days of the decision (or such longer period as the Local Health Board agrees) whether the practitioner wishes to be included in the supplementary list subject to those conditions.

(5) If the practitioner notifies the Local Health Board that he or she does wish to be included in the supplementary list subject to the conditions, it will so include the practitioner.

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

- (a) the Local Health Board and the practitioner may each apply to the FHSAA for the conditions imposed on the practitioner to be varied, for different conditions to be imposed, or for the contingent removal to be revoked; and
- (b) the Local Health Board may remove the practitioner from its supplementary list if it determines that he or she has failed to comply with a condition.

Notification

16.—(1) Where a Local Health Board decides to—

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

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

(2) Where paragraph (1) applies, a Local Health Board must, within 7 days of that decision, notify—

- (a) the National Assembly for Wales;
- (b) any Local Health Board or equivalent body that, to the knowledge of the notifying Local Health Board—
 - (i) has the practitioner in any list or equivalent list,
 - (ii) is considering an application for inclusion in any list or equivalent list by the practitioner, or
 - (iii) has in its area any place where the practitioner assists in the provision of general ophthalmic services;
- (c) the Secretary of State;
- (d) the Scottish Executive;
- (e) the Northern Ireland Executive;
- (f) the General Medical Council, General Optical Council or any other appropriate regulatory body;
- (g) the NPSA; 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 practitioner, are using or have used the practitioner’s services, or
 - (ii) are considering employing or using the practitioner’s 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 practitioner is or was a member of the partnership or that it is considering inviting the practitioner to become such a member.

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

- (a) the name, address and date of birth of the practitioner;
- (b) the practitioner’s registration number;
- (c) the date and a copy of the decision of the Local Health Board; and
- (d) a contact name of a person in the Local Health Board for further enquiries.

(5) The Local Health Board must send to the practitioner concerned a copy of any information about him or her that it has 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 Local Health Board 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 practitioner.

(7) Where a Local Health Board is notified by the FHSAA that it has imposed a national disqualification on a practitioner who was, or had applied to be, included in its supplementary list, the Local Health Board must 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 Local Health Board must notify the persons or bodies that were notified of the original decision of the later decision or of the fact that the suspension has lapsed.

Amendment of or withdrawal from supplementary lists

17.—(1) A practitioner must, unless it is impracticable for him or her to do so, give notice in writing to the Local Health Board within 28 days of any occurrence requiring a change in the information recorded about the practitioner in the supplementary list and of any change in his or her private address.

(2) Where a practitioner intends to withdraw from the supplementary list, unless it is impracticable for him or her to do so, the practitioner must give notice in writing to the Local Health Board at least three months in advance of that date.

(3) A practitioner must give notice in writing to the Local Health Board that he or she intends to withdraw from its supplementary list if the practitioner is accepted on to its ophthalmic list, or on to the ophthalmic list or supplementary list of another Local Health Board.

(4) The Local Health Board will, on receiving notice from any practitioner—

(a) pursuant to paragraph (1), amend its supplementary list as soon as possible;

(b) pursuant to paragraph (2), amend its supplementary list either—

(i) on the date which falls 3 months after the date of the notice, or

(ii) on the date from which the Local Health Board has agreed that the withdrawal will take effect,

whichever is the earlier; or

(c) pursuant to paragraph (3), immediately remove the practitioner's name from the list.

(5) A practitioner may withdraw a notice given pursuant to paragraph (1) or (2) at any time before the Local Health Board removes his or her name from its supplementary list.

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

Restriction on withdrawal from lists

18.—(1) Where a Local Health Board is investigating a practitioner—

(a) for the purposes of deciding whether or not to exercise its powers to remove the practitioner under regulation 12; or

(b) who has been suspended under regulation 13,

the practitioner may not withdraw from any list kept by a Local Health Board in which he or she is included, except where the National Assembly for Wales has given its consent, until the matter has been finally determined by the Local Health Board.

(2) Where a Local Health Board has decided to remove a practitioner from its supplementary list under regulation 10(4) to (7) or to contingently remove the practitioner from it under regulation 12, but has not yet given effect to its decision, the practitioner may not withdraw from any list kept by the Local Health Board in which he or she is included, except where the National Assembly for Wales has given its consent.

(3) Where a Local Health Board has suspended a practitioner under regulation 13(1)(b), the practitioner may not withdraw from any list kept by a Local Health Board in which he or she is included, except where the National Assembly for Wales has given its consent, until the decision of the relevant court or body is known and the matter has been considered and finally determined by the Local Health Board

Review periods for national disqualification

19. The period for review will be the period specified below, instead of that set out in section 49N(8), 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 practitioner 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 section is a reference to five years;
- (b) on the last review by the FHSAA of a national disqualification the practitioner 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) is 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 need for an immediate review, in which case the reference to “two years” or “one year” in section 49N(8) is 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) is a reference to the period that has already elapsed.

Disclosure of information

20.—(1) The Local Health Board may disclose information supplied to it or acquired by it pursuant to these Regulations to any of the following—

- (a) the National Assembly for Wales;
- (b) any other Local Health Board or equivalent body, which to its knowledge—
 - (i) has a practitioner to whom that information relates in any of its lists,
 - (ii) is considering an application from such a practitioner for inclusion in any of its lists,
or
 - (iii) has in its area any place where the practitioner assists in the provision of general ophthalmic services;

- (c) the Secretary of State;
- (d) the Scottish Executive;
- (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 Local Health Board, employs or uses the services of the practitioner, 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 Local Health Board, the practitioner is a member or that is considering inviting the practitioner to become a member; and
- (i) where an allegation of fraud is being considered, the NHS Counter Fraud and Security Management Service.

(2) The Local Health Board must disclose to the National Assembly for Wales information supplied to it or acquired by it pursuant to these Regulations, as it may from time to time request.

Transitional provisions

21.—(1) Any practitioner, who is not included in an ophthalmic list, but was assisting in the provision of general ophthalmic services on 31 January 2006 may continue to do so, notwithstanding regulation 3(3), until—

- (a) 1 August 2006; or
- (b) the date on which the Local Health Board notifies the practitioner of its decision under regulation 6(6),

whichever is the earlier, provided that the practitioner applies, in accordance with these Regulations, to a Local Health Board to be included in its supplementary list not later than 1 May 2006.

(2) Any practitioner not falling within paragraph (1) who has applied to be included in a supplementary list on or before 1 May 2006, may assist in the provision of general ophthalmic services after the date of that application, notwithstanding regulation 3(3), until—

- (a) 1 August 2006; or
- (b) the date on which the Local Health Board notifies the practitioner of its decision

whichever is the earlier.

(3) Any practitioner to whom paragraph (1) or (2) applies must comply with regulation 9, if any of the events specified occur, as though he or she were included in the supplementary list of the Local Health Board in whose locality the practitioner is assisting in the provision of general ophthalmic services.

(4) An practitioner may not assist in the provision of general ophthalmic services by virtue of paragraph (1) or (2) during any period in which he or she is the subject of a suspension notice given by a Local Health Board under paragraph (5).

(5) A Local Health Board may give a suspension notice to a practitioner 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 Local Health Board 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 practitioner by the Local Health Board in accordance with a determination by the National Assembly for Wales.

- (8) Where a Local Health Board—
- (a) has received an application from a practitioner to whom paragraph (1) or (2) applies; and
 - (b) becomes aware in respect of the practitioner of any of the matters listed in regulation 10(1),
- it must immediately decide that practitioner’s application to be included in its supplementary list.
- (9) A Local Health Board may publish a list of the practitioners whose applications it has approved for inclusion in its supplementary list prior to 1 August 2006.
- (10) If, on or after 1 February 2006, it appears to the Local Health Board that any practitioner whose name was included in its ophthalmic list on 31 January 2006—
- (a) is not entitled to have his or her name in its ophthalmic list; but
 - (b) would be, if the practitioner so applied, entitled to have his or her name included in its supplementary list,
- it must take the action specified in paragraph (11).
- (11) The Local Health Board must—
- (a) give the practitioner 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 Local Health Board in whose ophthalmic list the practitioner is, to its knowledge, included.
- (12) After considering any representations under paragraph (11)(b), if the Local Health Board is satisfied that the practitioner does not meet the requirements for inclusion in its ophthalmic list, it must—
- (a) remove the practitioner’s name from its ophthalmic list; and
 - (b) unless the practitioner’s name is included in the ophthalmic list or the supplementary list of another Local Health Board, include his or her name in its supplementary list.
- (13) In a case to which paragraph (12) applies, the Local Health Board must notify the practitioner of its decision and the reasons for it (including any facts relied up) with 7 days of making that decision.
- (14) When the Local Health Board notifies the practitioner of its decision under paragraph (13), it must also advise the practitioner that if he or she wishes to exercise a right of appeal then he or she must do so with the period of 28 days beginning with the date on which it gave the practitioner the notice of its decision and it must also tell the practitioner how to exercise any such right.
- (15) When the Local Health Board notifies the practitioner of its decision in accordance with paragraph (13) it must also notify any Local Health Board which it consulted pursuant to paragraph (11)(b).
- (16) The Local Health Board must act under paragraphs (10) to (12), so as to enable it to take a decision under paragraph (12), as soon as is reasonably practical.
- (17) In any case where a Local Health Board—
- (a) received, on or before 31 January 2006, an application for inclusion in its ophthalmic list;
 - (b) has not determined that application before that date; and
 - (c) considers that it is not appropriate to include the applicant practitioner in its ophthalmic list, but that it may be appropriate to include the practitioner in its supplementary list,
- it must treat that application as an application for inclusion in its supplementary list.

PART 2

Amendments to the Ophthalmic Regulations

Interpretation

22. In this Part “the Ophthalmic Regulations” (*“Rheoliadau Offthalmig”*) means the National Health Service (General Ophthalmic Services) Regulations 1986⁽²⁰⁾.

Amendment of regulation 2

23.—(1) Regulation 2 of the Ophthalmic Regulations (interpretation) is amended in accordance with the following provisions of this regulation.

(2) In paragraph (1)—

(a) for the definitions of “deputy”, “equivalent body”, “licensing or regulatory body”, “mobile practice” and “suspended” substitute respectively—

““deputy” (*“dirpwy”*) means an ophthalmic medical practitioner or an optician, who is included in an ophthalmic list or a supplementary list and assists in the provision of general ophthalmic services;”;

““equivalent body” (*“corff cyfatebol”*) means—

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

““licensing or regulatory body” (*“corff trwyddedu neu reoleiddio”*) means—

- (a) 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
- (b) includes any body which licenses or regulates any such profession, its education or qualifications, outside the United Kingdom;”;

““mobile practice” (*“practis symudol”*) means a contractor who—

- (a) has made arrangements with the Local Health Board to provide mobile services; and
- (b) does not have premises in the locality;” and

““suspended” (*“atal dros dro”*) means suspended—

- (a) in relation to England and Wales, by a Local Health Board or equivalent body under section 49I or 49J of the Act or under Regulations made under—
 - (i) sections 28DA or 43D of the Act, or
 - (ii) section 8ZA of the National Health Service (Primary Care) Act 1997⁽²¹⁾, including these Regulations;

⁽²⁰⁾ S.I.1986/975

⁽²¹⁾ 1997 c. 46

- (b) in relation to Scotland or Northern Ireland, under provision in force corresponding to those in or made under sections 28DA, 43D, 49I or 49J of the Act or under section 8ZA of the National Health Service (Primary Care) Act 1997,

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

- (b) insert the following definitions in the appropriate place in the alphabetical order—

““corporate optician” (“*optegydd corfforaethol*”) means an optician which is a body corporate carrying on business as an optician;”;

““mobile services” (“*gwasanaethau symudol*”) means general ophthalmic services provided at—

- (a) a day centre;
(b) a residential centre; or
(c) the patient’s home, where the patient is unable to leave it unaccompanied because of physical or mental illness or disability,

which a contractor has made arrangements with a Local Health Board to provide in its locality;”;

““the NCAA” means the National Clinical Assessment Authority;”;

““the NHS Counter Fraud Security and Management Service” (“*Gwasanaeth Gwrth Dwyll a Rheoli Diogelwch y Gwasanaeth Iechyd Gwladol*”) means the service 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;”;

““notice” (“*hysbysiad*”) means a notice in writing (including electronic) and “notify” is to be construed accordingly;”;

““ophthalmic list” (“*rhestr offthalmig*”) means the list prepared by a Local Health Board under regulation 6;”;

““the register” (“*y gofrestr*”), 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 or list maintained by the General Optical Council;”;

““supplementary list” (“*rhestr atodol*”) means the list prepared by the Local Health Board under regulation 3 of the Supplementary List Regulations;” and

““Supplementary List Regulations” (“*Rheoliadau Rhestr Atodol*”) means the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services)(Amendment and Consequential Amendment) (Wales) Regulations 2006;”;

- (c) omit the definition of “the National Health Service Counter Fraud Service”.

- (3) After paragraph (3) insert the following paragraph—

(4) In these Regulations any reference to “he” or “she”, “him” or “her” or “his” or “her”, when referring to an optician includes a reference to a corporate optician.

Amendment of regulation 6

24.—(1) Regulation 6 of the Ophthalmic Regulations (ophthalmic list) is amended in accordance with the following provisions of this regulation.

(2) In paragraph (1), after the words “shall keep” insert “and publish”.

(3) In paragraph (3)—

(a) at the end of sub-paragraph (a) add—

“and in relation to each person—

(i) the person’s professional registration number with—

(aa) suffixed to that number, the organisational code given by the National Assembly for Wales to the Local Health Board, and

(bb) prefixed to that number, the initials OL,

(ii) in the case of an individual, where consent is given, that person’s date of birth or where consent is not given or in the case of a corporate optician, the date of that it’s first registration in the register, and

(iii) the date that the person’s name was included in the ophthalmic list;”;

(b) substitute the following sub-paragraph for sub-paragraph (b)—

“(b) except in the case of a mobile practice, the addresses of any places in the Local Health Board’s locality at which they have undertaken to provide general ophthalmic services, other than mobile services;”;

(c) in sub-paragraph (c) delete the words from “or in the case of” to the end of the sub-paragraph;

(d) in sub-paragraph (d)—

(i) after “or employee” , insert “in assisting”, and

(ii) at the end of the sub-paragraph, add “or in the provision of mobile services”; and

(e) at the end of the paragraph, add the following sub-paragraph—

“(e) if the contractor has made arrangements with the Local Health Board to provide mobile services—

(i) that fact,

(ii) the addresses of any day or residential centres visited regularly, with particulars of the months in which visits are planned to take place and the planned interval between such visits, and

(iii) if that contractor is a mobile practice, that fact and the addresses to which correspondence in connection with such provision may be sent.”.

Amendment of regulation 7

25.—(1) Regulation 7 of the Ophthalmic Regulations (application for inclusion in ophthalmic list and notification) is amended in accordance with the following provision of this regulation.

(2) In paragraph (1)—

(a) for “body corporate carrying on business as ophthalmic opticians” substitute “corporate optician”; and

(b) after sub-paragraph (a) insert the following sub-paragraph—

“(aa) if the applicant wishes to provide mobile services, a statement to that effect, with an undertaking to provide mobile services and to comply with the terms of service relevant to the provision of mobile services;”.

(3) After paragraph (1) insert the following paragraphs—

“(1A) In the case of an application to a Local Health Board by an ophthalmic medical practitioner or optician who is included in the supplementary list of that Local Health Board, seeking to withdraw from that list and to include his or her name in its ophthalmic list, he or she will only be required to provide any information and undertakings required by paragraph (1) and Schedule 1A insofar as—

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

(1B) Before making a decision on the application of the ophthalmic medical practitioner or optician, the Local Health Board must—

- (a) check, as far as reasonably practicable, the information provided by the ophthalmic medical practitioner or optician, in particular that provided under Schedule 1A, and must ensure that it has sight of relevant documents;
- (b) check with the NHS Counter Fraud and Security Management Service whether the applicant has any record of fraud;
- (c) check with the National Assembly for Wales as to any information held by it as to any record about past or current investigations or proceedings involving or relating to the ophthalmic medical practitioner or optician; and
- (d) take up the references provided by the ophthalmic medical practitioner or optician under paragraph 9 of Schedule 1A.

(1C) When the Local Health Board has decided whether or not to include the applicant ophthalmic medical practitioner or optician in its list, it must notify him or her within 7 days of that decision of—

- (a) that decision; and
- (b) if the Local Health Board has decided not to include the ophthalmic medical practitioner or optician, the reasons for it (including any facts relied upon) and of any right of appeal under regulation 7C against that decision.”.

Amendment of regulation 7A

26.—(1) Regulation 7A of the Ophthalmic Regulations (grounds for refusal) is amended in accordance with the following provisions of this regulation.

(2) In paragraph (1)—

- (a) after “may refuse to include an ophthalmic medical practitioner or optician” insert the words “in its list or to list him or her as providing mobile services”;
- (b) in sub-paragraph (a) delete the words “paragraph 7 of”;
- (c) in sub-paragraph (b) delete the words “paragraphs 5 and 6 of”;
- (d) substitute the following sub-paragraph for sub-paragraph (d)—

“(d) that 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 relating to the ophthalmic medical practitioner or optician and, having considered these and any other facts in its possession relating to fraud involving or relating to him or her, the Local Health Board considers these justify such refusal;” and

(e) after sub-paragraph (e) add—

“or

(f) that, having checked with the National Assembly for Wales for any facts that it considers relevant relating to past or current investigations or proceedings involving or relating to the ophthalmic medical practitioner or optician and, having considered these and any other facts in its possession involving or relating to him or her, the Local Health Board considers these justify such refusal.”.

(3) In paragraph (2) after sub-paragraph (e) add the following sub-paragraphs—

“(f) where he or she has not provided satisfactory evidence of his or her intention to provide general ophthalmic services in its locality;

(g) except in the case of a corporate optician, where it is not satisfied that he or she has the knowledge of English which, in his or her own interests or those of his or her patients, is necessary for the provision of general ophthalmic services in its locality; or

(h) where the ophthalmic medical practitioner or optician has had his or her name in the supplementary list of any Local Health Board.”.

(4) In paragraph (3)—

(a) at the end of sub-paragraph (f), add “or, if it had been committed in England and Wales, would have applied”; and

(b) after sub-paragraph (h) add the following sub-paragraphs—

“(i) whether he or she is 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 is currently suspended from such a list, and if so, the reasons relating to the matter which led to the suspension and the reasons given by the Local Health Board or equivalent body for the suspension;

(j) where it is a corporate optician, whether any of its directors, or anyone who has in the preceding six months been one of its directors, was refused admittance to, conditionally included in, removed or contingently removed from or 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 Local Health Board or equivalent body for such action.”;

(5) Omit paragraph (5).

Amendment of regulation 7B

27. Regulation 7B(1) of the Ophthalmic Regulations (deferment of decisions) is amended as follows—

(a) for sub-paragraphs (a) and (b) substitute the following sub-paragraphs—

“(a) where there are in respect of him or her—

(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 the removal of the ophthalmic medical practitioner or optician from its ophthalmic list, if he or she were to be included in it;

- (b) where there are, in respect of a body corporate of which he or she is, has in the preceding six months been, or was at the time of the originating events, a director—
 - (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 the removal of the ophthalmic medical practitioner or optician from its ophthalmic list, if he or she were to be included in it;
- (bb) in the case of a corporate optician, where there are in respect of any of its directors—
 - (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 that body’s removal from its ophthalmic list, if it were to be included in it;”;
- (b) for sub-paragraph (h) substitute the following sub-paragraph—
 - “(h) where the ophthalmic medical practitioner or optician is being investigated by the NHS Counter Fraud and Security Management Service in relation to any fraud, and the result, if adverse, would be likely to lead to his or her removal from the Local Health Board’s ophthalmic list, if he or she were to be included in it;”;
- (c) in sub-paragraph (i), omit the words “by the National Health Service Counter Fraud Service” and “case”.

Amendment of regulation 7C

- 28. At the beginning of regulation 7C(1) (appeal to the FHSAA) insert—
 - “Except in a case to which regulation 7A(2) (mandatory grounds of refusal) applies,”.

Amendment of regulation 7D

- 29.—(1) Regulation 7D of the Ophthalmic Regulations is amended in accordance with the following provisions of this regulation.
- (2) In paragraph (14), after sub-paragraph (b), insert the following sub-paragraph—
 - “(bb) if the optician is a corporate optician, the names addresses and dates of birth of its directors, with the case of a director, who is a member of a profession regulated by a body for the time being mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, that fact and his or her registration number with that body;”.
- (3) In paragraph (15)—
 - (a) after sub-paragraph (f) insert the following sub-paragraph—
 - “(ff) the NCAA;”;
 - (b) for sub-paragraph (h) substitute the following sub-paragraph—
 - “(h) where it is a fraud case, the NHS Counter Fraud and Security Management Service, and, in respect of a person or body falling within sub-paragraph (a), (b),

(f) or (h) that notification must be given not more than 7 days after the Local Health Board makes the decision referred to in paragraph (1).”.

Amendment of regulation 8

30.—(1) Regulation 8 of the Ophthalmic Regulations (withdrawal from the ophthalmic list) is amended in accordance with the following provisions of this regulation.

(2) After paragraph (1) insert the following paragraph—

“(1A) An ophthalmic medical practitioner or optician, who applies for inclusion in a supplementary list, must give notice to the Local Health Board, as soon as practicable thereafter, that he or she intends to withdraw from its ophthalmic list if his or her name is included in the supplementary list of any Local Health Board.”.

(3) After paragraph (3) add the following paragraphs—

“(4) In the case of a notice pursuant to paragraph (1A), the Local Health Board must remove the name of the ophthalmic medical practitioner or optician from its ophthalmic list as soon as it confirms that his or her name is included in a supplementary list.

(5) A notice given pursuant to paragraph (1A) may not be withdrawn once the name of the ophthalmic medical practitioner or optician is included in a supplementary list.”.

Amendment of regulation 9

31.—(1) Regulation 9 of the Ophthalmic Regulations (removal from the ophthalmic list) is amended in accordance with the following provisions of this regulation.

(2) In paragraph (1)—

(a) in sub-paragraph (a) omit “or”;

(b) after sub-paragraph (a) insert the following sub-paragraph—

“(aa) in the case of a corporate optician, has been dissolved or ceased trading;”;

(c) after sub-paragraph (b), insert the following—

“or

(c) has had his or her name included in the supplementary list of any Local Health Board;”;

(d) at the end, add “and, except in the case to which sub-paragraph (a) applies, notify the contractor immediately that he or she has been removed from the list;”;

(3) In paragraph (2A), for “by direction of the Tribunal” substitute “from the ophthalmic list”.

(4) In paragraph (5), for “this regulation” substitute “paragraph (2)”.

Amendment of regulation 9B

32.—(1) Regulation 9B of the Ophthalmic Regulations (criteria for decisions on removal) is amended in accordance with the following provisions of this regulation.

(2) For paragraph (1) substitute the following paragraph—

“(1) Where a Local Health Board is considering whether to remove an ophthalmic medical practitioner or optician from its ophthalmic list under section 49F(4) of the Act (an unsuitability case), it must—

(a) consider any information relating to the ophthalmic medical practitioner or optician which it has received in accordance with any provision of Schedule 1 or 1A;

- (b) check with the National Assembly for Wales as to any record held by it about past or current investigations or proceedings involving or relating to the ophthalmic medical practitioner or optician; and
 - (c) in reaching its decision, take into consideration the matters set out in paragraph (2).”.
- (3) In paragraph (2)—
 - (a) for “criteria” substitute “matters”;
 - (b) for sub-paragraphs (b) to (f) substitute the following sub-paragraphs—
 - “(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 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 ophthalmic medical practitioner or optician’s provision of general ophthalmic services and the likely risk to his or her patients or to public finances;
 - (f) whether any offence was a sexual offence to which Part 1 of the Sexual Offences Act 2003 applies, or if had been committed in England and Wales, would have applied;”;
 - (c) after sub-paragraph (h) add the following—
 - “and
 - (j) 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 or 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 Local Health Board or equivalent body for such action.”.
- (4) For paragraph (3) substitute the following paragraph—
 - “(3) Where a Local Health Board is considering whether to remove an ophthalmic medical practitioner or optician from its ophthalmic list under section 49F(3) of the Act (“a fraud case”), it must—
 - (a) consider any information relating to the ophthalmic medical practitioner or optician which it has received in accordance with any provision of Schedule 1 or 1A;
 - (b) check with the National Assembly for Wales as to any record held by it about past or current investigations or proceedings involving or relating to the ophthalmic medical practitioner or optician; and
 - (c) in reaching its decision, take into consideration the matters set out in paragraph (4).”.
- (5) In paragraph (4)—
 - (a) for “criteria” substitute “matters”;
 - (b) in sub-paragraph (d) for “any such incident” substitute “any such offence, investigation or incident”; and
 - (c) at the end of sub-paragraph (g) add the following—
 - “and

- (j) 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 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 Local Health Board or equivalent body for such action.”.
- (6) For paragraph (5) substitute the following paragraph—
- “(5) Where a Local Health Board is considering whether to remove an ophthalmic medical practitioner or optician from its ophthalmic list under section 49(F)(2) of the Act (“an efficiency case”), it must—
- (a) consider any information relating to the ophthalmic medical practitioner or optician which it has received in accordance with any provision of Schedule 1 or 1A.
 - (b) check with the National Assembly for Wales as to any record held by it about past or current investigations or proceedings involving or relating to the ophthalmic medical practitioner or optician; and
 - (c) in reaching its decision, take into consideration the matters set out in paragraph (6).”.
- (7) In paragraph (6)—
- (a) for “criteria” substitute “matters”;
 - (b) at the end of sub-paragraph (f) add “or the Supplementary List Regulations”; and
 - (c) at the end of sub-paragraph (h) add the following—
- “and
- (j) 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 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 Local Health Board or equivalent body for such action.”.

Amendment of regulation 9C

33. In regulation 9C(1) (cases where a practitioner must be removed), after sub-paragraph (b) insert the following sub-paragraphs—

- “(c) is subject to a national disqualification;
- (d) 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⁽²²⁾ (professional misconduct and criminal offences,
 - (ii) an order or direction made by that Committee under section 38(1) of the Medical Act 1983 (order for immediate suspension), or
 - (iii) from the coming into force of article 13 of the Medical Act 1983 (Amendment) Order 2002, 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

(22) 1983 c. 54; section 36 was amended by S.I. 2000/1803.

- Panel), or section 38(1) of the Medical Act 1983 (power to order immediate suspension); or
- (e) in the case of an optician, is the subject of a suspension order under section 17 of the Optician’s Act.”.

Amendment of regulation 9D

34.—(1) Regulation 9D of the Ophthalmic Regulations is amended in accordance with the following provisions of this regulation.

(2) In paragraph (1)—

- (a) after sub-paragraph (d) omit “or”; and
- (b) after sub-paragraph (e) insert—

“or

(f) removes an ophthalmic medical practitioner or optician under regulation 9 or 9C;”.

(3) In paragraph (2)—

(a) after sub-paragraph (b) insert the following sub-paragraph—

“(bb) any Local Health Board in Wales in whose area the ophthalmic medical practitioner or optician, to the knowledge of the notifying Local Health Board, provides or assists in the provision of general ophthalmic services;”;

(b) after sub-paragraph (f) insert the following sub-paragraph—

“(ff) the NCAA;”;

(c) for sub-paragraph (h) substitute the following sub-paragraph—

“(h) where it is a fraud case, the NHS Counter Fraud and Security Management Service, and that notification will be given not later than 7 days after the Local Health Board makes the decision referred to in paragraph (1).”.

(4) In paragraph (4), for sub-paragraph (a) substitute the following sub-paragraph—

“(a) the name, address and, where applicable, the date of birth of the ophthalmic medical practitioner or optician, and, in the case of a corporate optician, that information in respect of its directors;”.

(5) In paragraph (7), for “paragraph (2)(b), (g) and (h) and paragraph (3)” substitute “paragraph (2)(b), (ff), (g), and (h) and those in paragraph (3).”.

(6) After paragraph (8) insert the following paragraph—

“(9) Where a Local Health Board 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 ophthalmic list, the Local Health Board must notify the persons or bodies referred to in paragraphs (2)(b), (ff), (g), and (h) and those in paragraph (3).”.

Amendment of regulation 9E

35. Regulation 9E of the Ophthalmic Regulations (procedure on removal) is amended as follows—

- (a) in paragraphs (4) and (7) for “inform” substitute “notify”; and
- (b) at the end of each of paragraphs (4), (5) and (6) add the words “within 7 days of making that decision”.

Amendment of regulation 9F

36.—(1) Regulation 9F of the Ophthalmic Regulations (procedure on suspension) is amended in accordance with the following provisions of this regulation.

(2) In paragraph (2) for the words “and the reasons” to the end of the paragraph, substitute “within 7 days of a making that decision.”.

(3) After paragraph (2) insert the following paragraph—

“(2A) If the ophthalmic medical practitioner or optician does not wish to have an oral hearing or does not attend the oral hearing, the Local Health Board may suspend him or her with immediate effect.”.

(4) At the end of paragraph (5) add “within 7 days of making that decision.”.

Amendment of regulation 9G

37. At the end of regulation 9G(5) (procedure on review) of the Ophthalmic Regulations add “within 7 days of making that decision.”.

Insertion of regulation 9I

38. After regulation 9H of the Ophthalmic Regulations (national disqualification) insert the following regulation—

“Readmission

9I.—(1) Where an ophthalmic medical practitioner or optician has been removed from its ophthalmic list by a Local Health Board on the grounds that the he or she had been convicted of a criminal offence, and that conviction is overturned on appeal, it may agree to include the ophthalmic medical practitioner or optician in its ophthalmic 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 the ophthalmic medical practitioner or optician 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 Local Health Board to remove that ophthalmic medical practitioner or optician from its ophthalmic list will once again have effect.”.

Amendment of Schedule 1

39.—(1) Schedule 1 to the Ophthalmic Regulations (terms of service) is amended in accordance with the following provisions of this regulation.

(2) For paragraphs 3 (premises at which general ophthalmic services are to be provided) and 3A (visits) substitute the following paragraphs—

“Premises at which general ophthalmic services are to be provided

3 Subject to paragraph 3A, a contractor must provide general ophthalmic services only at an address which is included in relation to the contractor in the ophthalmic list.

Provision of mobile services

3A.—(1) A contractor, who has made arrangements with the Local Health Board to provide mobile services, may provide them only in accordance with sub-paragraph (2) after giving notice in accordance with sub-paragraph (3).

(2) The contractor may only provide mobile services if—

- (a) the patient has requested the contractor to provide those services to him or her, or, where the patient is incapable of making such a request, a relative or primary carer of that patient or a duly authorised person has made such a request; and
- (b) subject to sub-paragraphs (5), (6) and (7), the contractor has notified the Local Health Board in accordance with sub-paragraph (3), and if applicable, (4) and the Local Health Board has not informed the contractor that it is not content with those changes.

(3) The contractor must notify the Local Health Board of his or her intention to provide mobile services—

- (a) where they are to be provide to three or more persons at a day centre or residential centre, at least three weeks in advance; or
- (b) in any other case, as far in advance as is reasonably possible, but not less than 48 hours (except that no part of a Saturday, Sunday or bank holiday will count toward that period) before that provision,

identifying the persons to whom the services are to be provided and specifying the date and approximate time when the contractor will provide them.

(4) If the contractor wishes to change any of the matters of which he or she has notified the Local Health Board under sub-paragraph (3), the contractor must notify the Local Health Board at least 48 hours (except that no part of a Saturday, Sunday or bank holiday will count towards that period) before—

- (a) if the contractor wishes to provide mobile services to further or different persons, that provision;
- (b) if the contractor wish to change the date or time of the provision of those services, both—
 - (i) the previously notified date of that provision, and
 - (ii) if the notification is to change the date, the date so notified.

(5) If the contractor is unable to attend the place at which the contractor has notified the Local Health Board that he or she would be attending, the contractor may instead, on that day and at that approximate time, provide mobile services at another location (“the substitution”), provided that the Local Health Board notifies the contractor that it agrees to the substitution.

(6) In a case to which paragraph (5) applies the contractor may attend and provide mobile services at the originally notified place at such time as the Local Health Board agrees.

(7) In a case where circumstances have arisen whereby it was not possible to notify in accordance with sub-paragraph (4)(a), the contractor may provide mobile services to up to 3 other persons at the previously notified time and place.”.

(3) In paragraph 4 (premises and equipment)—

- (a) in sub-paragraph (1), for “sub-paragraph (1A)” substitute “sub-paragraphs (1A) to (1D)”; and
- (b) for sub-paragraph (1A) substitute the following—

“(1A) A contractor, who has made arrangements with the Local Health Board to provide mobile services, must provide suitable equipment for the provision of such services.

(1B) A contractor, who was included on the ophthalmic list of a Local Health Board on 31 January 2006, and who—

- (a) does not provide or no longer provides accommodation and equipment, as required under sub-paragraph (1), or equipment as required under sub-paragraph (1A); and
- (b) is not employed, in relation to the general ophthalmic services which he or she has undertaken to provide in the area of that Local Health Board, by another contractor,

may, instead of providing the accommodation and equipment, as required under sub-paragraph (1), or equipment as required by sub-paragraph (1A), enter into arrangements of the kind described in sub-paragraph (1C), provided the conditions set out in sub-paragraph (1D) are met.

(1C) The arrangements referred to in sub-paragraph (1B) are legally enforceable arrangements under which—

- (a) requisite, proper and sufficient consulting and waiting room accommodation and suitable equipment; or
- (b) in the case of the provision of mobile services, suitable equipment,

are available to the contractor for the provision of the general ophthalmic services that he or she has undertaken to provide, which permit inspection as required under paragraph 4(2) or (2A).

(1D) The conditions referred to in sub-paragraph (1B) are that the contractor has satisfied the Local Health Board that—

- (a) the arrangements are legally enforceable and permit inspection as required under paragraph 4(2) or (2A);
- (b) the accommodation and equipment or, in the case of the provision of mobile services, equipment, provided under the arrangements are adequate and suitable.”;
- (c) in sub-paragraph (2) for “sub-paragraph (2A)” substitute “sub-paragraphs (2A) and (3)”;
- (d) in sub-paragraph (2A), for “In the case of a mobile practice, the contractor” substitute “A contractor, who has made arrangements with the Local Health Board to provide mobile services,” ; and
- (e) after sub-paragraph (2A) insert the following sub-paragraph—

“(3) In addition to the right to inspect under sub-paragraph (2A), a contractor who has made arrangements with the Local Health Board to provide mobile services, must allow an authorised officer of the National Assembly for Wales or that Local Health Board to inspect the facilities and equipment that he or she uses when providing those services at a location of which the contractor has notified the Local Health Board in accordance with paragraph 3A(3).”.

(4) Paragraph 5 (notices) is re-numbered as sub-paragraph (1) of paragraph 5 and—

- (a) at the beginning insert “Subject to sub-paragraph (2),”; and
- (b) after sub-paragraph (1), insert the following sub-paragraph—

“(2) Where mobile services are being provided, a notice is required to be displayed only in so far as it is reasonably practicable to do so.”.

(5) In paragraph 6 (records)—

- (a) at the beginning of sub-paragraph (1) insert “Subject to paragraph 6ZA”; and

- (b) in sub-paragraph (2), for “paragraph 8(5)” substitute “paragraphs 6ZA and 8(5)”.
- (6) After paragraph 6 insert the following paragraph—
- “**6ZA.**—(1) A contractor, who was included on the list of a Local Health Board on 31 January 2006 and who—
- (a) does not keep or no longer keeps records as required under paragraph 6; and
 - (b) is not employed, in relation to the general ophthalmic services he or she provides in the area of that Local Health Board, by another contractor,
- may, instead of keeping those records, comply with the conditions set out in sub-paragraph (2).
- (2) The conditions referred to in sub-paragraph (1) are that the contractor has—
- (a) made legally enforceable arrangements that a proper record in respect of each patient to whom the contractor provides general ophthalmic services, giving appropriate details of sight testing, is kept and that all such records are kept for a period of seven years and during that period must be produced when and as required under paragraph 6(2);
 - (b) satisfied the Local Health Board as to the keeping of records and that the arrangements are legally enforceable and require such production; and
 - (c) access to those records at all reasonable times.”
- (7) In paragraph 6A (declarations of convictions)—
- (a) at the end of sub-paragraph (3) add “and for the purposes of this sub-paragraph, “employer” includes any partnership of which the ophthalmic medical practitioner or optician is or was a member”;
 - (b) in sub-paragraph (4)—
 - (i) for “Having supplied the information referred to in paragraph (1), the contractor shall inform”, substitute “The contractor must notify”,
 - (ii) after paragraph (c) add the following paragraphs—
 - “(cc) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995⁽²³⁾ (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992⁽²⁴⁾ (penalty as alternative to prosecution);
 - (cd) 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 or her absolutely;”,
 - (iii) in paragraph (d) omit the words “or is subject” to the end of the paragraph;
 - (iv) for paragraph (i) substitute—
 - “(i) becomes to his or her knowledge the subject of any investigation by the NHS Counter Fraud and Management Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse”;
 - (c) in sub-paragraph (5)—
 - (i) for “Having supplied the information referred to in paragraph (1), the contractor shall inform” substitute “The contractor must notify”,

⁽²³⁾ 1995 c. 46

⁽²⁴⁾ 1992 c. 5

- (ii) substitute the following paragraph for paragraph (f)—
 - “(f) becomes to his or her knowledge the subject of any investigation in relation to fraud, or is notified of the outcome of such an investigation, if adverse;” and
- (iii) in paragraph (b) omit the words “or is subject ” to the end of the paragraph;
- (d) after sub-paragraph (5) insert the following sub-paragraph—
 - “(5A) If the contractor is a corporate optician, it must notify the Local Health Board within 7 days if one of its directors or a person who was in the preceding six months or was at the time of the originating events one of its directors—
 - (a) is convicted of any criminal offence in the United Kingdom;
 - (b) is bound over following any 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 (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);
 - (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 or her 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 notified by any licensing, regulatory or other body anywhere in the world, of the outcome of any investigation into his or her professional conduct, and there is finding against the contractor;
 - (i) becomes subject to any investigation into his or her professional conduct in respect of any current or previous employment, or is notified of the outcome of any such investigation and of any finding against him or her;
 - (j) becomes to his or her knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;
 - (k) becomes the subject of any investigation by another Local Health Board or equivalent body, which might lead to his or her removal from any list or equivalent list;
 - (l) is removed, contingently removed or suspended from, refused admission to or conditionally included in any list or equivalent list,
 and, if so, give the name and address of that director or ex-director 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;”
- (e) after sub-paragraph (6) add the following sub-paragraph—
 - “(7) An ophthalmic medical practitioner or optician, who is included in the ophthalmic list of a Local Health Board must supply that Local Health Board with an enhanced criminal record certificate under section 115 of the Police Act 1997 in relation to himself or

herself, if the Local Health Board at any time, for reasonable cause, gives the ophthalmic medical practitioner or optician notice to provide such a certificate.”.

(8) In paragraph 6B (applications to other lists)—

- (a) at the end of sub-paragraph (a) omit the word “and”; and
- (b) at the end of sub-paragraph (b) add the following—

“and

- (c) in the case of a corporate optician, if any of its directors applies to be included in any list held by another Local Health Board or equivalent body and the outcome of any such application.”.

(9) In paragraph 7 (deputies)—

- (a) for sub-paragraph (1) substitute the following sub-paragraph—

“(1) Subject to regulation 21 of the Supplementary List Regulations (transitional provisions), a contractor may arrange for sight to be tested on his or her behalf by an ophthalmic medical practitioner or optician, but no such arrangements can be made unless the name of the that ophthalmic medical practitioner or optician is included in an ophthalmic list or a supplementary list.”; and

- (b) after sub-paragraph (a) omit the word “and” and sub-paragraph (2)(b).

(10) In paragraph 8 (employees)—

- (a) for sub-paragraphs (1), (2) and (3) substitute—

“(1) Subject to regulation 21 of the Supplementary List Regulations (transitional provisions), a contractor may employ to test sight—

- (a) an ophthalmic medical practitioner or optician whose name is included in an ophthalmic list or a supplementary list; or
- (b) a person who is authorised to test sight by rules made under section 24(3) of the Opticians Act 1989(25) (testing of sight), acting under the continuous personal supervision of an ophthalmic medical practitioner or optician whose name is included in an ophthalmic list or a supplementary list.”; and

- (b) after sub-paragraph (4)(a) omit the word “and” and sub-paragraph (4)(b).

(11) In paragraph 9 (payments)—

- (a) for sub-paragraph (2) substitute the following sub-paragraph—

“(2) Any such claim will be—

- (a) signed by the ophthalmic medical practitioner or optician whose name is included in an ophthalmic list or a supplementary list and who performed the general ophthalmic services in respect of which the claim is made (“the practitioner”); and
- (b) in a case where the practitioner is not on the ophthalmic list of that Local Health Board, counter-signed on behalf of the contractor by a person (who may be the contractor) duly authorised by the contractor to counter-sign, whom the contractor has previously notified the Local Health Board as being so authorised.

(2A) In the case of a claim signed under sub-paragraph (2)(a), the practitioner must supply, the practitioner’s signature, his or her professional registration number with the prefix and suffix given to that number in the ophthalmic list or supplementary list in which the practitioner’s name is included; and

(2B) In the case of a claim counter-signed under sub-paragraph (2)(b), the person authorised to counter-sign must supply, with his or her counter-signature, the professional registration number of the contractor.”

(b) in sub-paragraph (3) after “signatory” insert “or counter-signatory”.

(12) In paragraph 10(2) (testing of sight)—

(a) after “a contractor” insert “or an ophthalmic medical practitioner or optician assisting the contractor in the provision of general ophthalmic services”; and

(b) for “inform the patient’s doctor of his opinion” substitute—

(i) refer the patient to an ophthalmic hospital,

(ii) inform the patient’s doctor or GP practice that he or she has done so, and

(iii) give the patient a written statement that he or she has done so with details of the referral.”.

Amendment of Schedule 1A

40.—(1) Schedule 1A to the Ophthalmic Regulations (information and undertakings to be given when applying to be included in the ophthalmic list) is amended in accordance with the following provisions of this regulation.

(2) At the end of paragraph 4 add “or in the case of a corporate optician, the address of its registered office, and, in either case, telephone number”.

(3) At the end of paragraph 6 add “and the date of first registration in the register”.

(4) In paragraph 7(a)—

(a) after paragraph (iii) insert the following paragraphs—

“(iiia) has accepted a conditional offer under section 302 of the Criminal Proceedings (Scotland) Act 1995 (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);

(iiib) 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 or her absolutely;”;

(b) in paragraph (iv)—

(i) for the words “United Kingdom” substitute “England and Wales”, and

(ii) omit the words “or is subject” to the end of the paragraph;

(c) for paragraph (x) substitute—

“(x) the ophthalmic medical practitioner or optician becomes to his or her knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;”;

(d) for paragraph (xi) substitute the following—

“(xi) is the subject of an investigation by another Local Health Board or equivalent body, which might lead to his or her removal from any list or equivalent list;

(xii) has been removed, contingently removed or suspended from, refused admission to or conditionally included in any list or equivalent list,

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

- (5) In paragraph 7(b)—
- (a) in paragraph (ii)—
 - (i) for “United Kingdom” substitute “England and Wales”, and
 - (ii) omit the words “or is subject ” to the end of the paragraph;
 - (b) for paragraph (vi) substitute the following paragraph—

“(vi) it becomes to his or her knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;”;
 - (c) after paragraph (vi) add the following paragraphs—
 - “(vii) is the subject of any investigation by another Local Health Board which might lead to his or her removal from any list or equivalent list;
 - (viii) has been refused, contingently removed or suspended from, refused admission to or conditionally included in any list or equivalent list.”.
- (6) At the end of paragraph 7 add sub-paragraph (c)—
- “(c) if the contractor is a corporate optician, information on whether any of its directors—
 - (i) has any criminal convictions in the United Kingdom;
 - (ii) has been bound over following a criminal conviction in the United Kingdom;
 - (iii) has accepted a police caution in the United Kingdom;
 - (iv) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a fixed penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);
 - (v) 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 or her absolutely;
 - (vi) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
 - (vii) is currently the subject of any proceedings which might lead to such a conviction which have not yet been notified to the Local Health Board;
 - (viii) is currently subject to any investigation into his or her professional conduct by any licensing, regulatory or other body;
 - (ix) is to his or her knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;
 - (x) is the subject of any investigation by another Local Health Board or equivalent body which might lead to his or her removal from any list or equivalent list;
 - (xi) has been removed, contingently removed or suspended from, refused admission to, or conditionally included in any list or equivalent list,
- and if so, give details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or those proceedings, and any outcome.”.

(7) For paragraph 10 substitute the following paragraph—

10. If the ophthalmic medical practitioner or optician is not in the Local Health Board’s ophthalmic list, the name of any Local Health Board or equivalent body in any of whose lists or equivalent lists he or she is included, or from any of whose lists or equivalent lists he or she has been removed or contingently removed or is currently suspended, or to any of whose lists or equivalent lists he or she has been refused admission or conditionally included, with an explanation as to why, and particulars of any outstanding or deferred application for inclusion in the ophthalmic list, or any other list of a Local Health Board or equivalent body, with the name of the Local Health Board or equivalent body in question.

(8) After paragraph 11 add the following paragraph—

“**11A.** Where he or she 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 Local Health Board or equivalent body concerned.”.

(9) In paragraph 13 substitute for sub-paragraph (c) the following sub-paragraph—

“(c) supply the information in this Schedule; and

(d) neither to provide nor assist in the provision of general ophthalmic services in the area of another Local Health Board or equivalent body from whose ophthalmic list, supplementary list or equivalent list he or she has been removed, except where that removal was at his or her request or in accordance with regulation 10(7) or 21(12) of the Supplementary List Regulations, or regulation 9(2) of these Regulations, without the consent, in writing, of that Local Health Board or equivalent body.”.

(10) After paragraph 14 add the following paragraph—

“**15.** In the case of a corporate optician, paragraphs 2, 3 and 5 will not apply, but it must also give details of its registration as a company.”.

Transitional provisions

41.—(1) A corporate optician whose name is included in the ophthalmic list of a Local Health Board on 31 January 2006, which has not already notified that Local Health Board of any matter arising on or before that day of which these Regulations require notification by a corporate optician, must notify that Local Health Board of any such matter by 1 August 2006.

(2) Any contractor—

- (a) who was named in the ophthalmic list of the Local Health Board as a mobile practice on 31 January 2006; or
- (b) whose name was included in the ophthalmic list of the Local Health Board and provided mobile services in its area immediately before 1 February 2006,

may continue to do so until 1 May 2006 and, if the contractor wishes to continue to provide mobile services in the area of that Local Health Board after that date, the contractor must apply by 1 May 2006 to that Local Health Board to make arrangements with the contractor to provide mobile services.

(3) If that contractor makes an application in accordance with paragraph (2), the contractor may continue to provide mobile services in the area of that Local Health Board, pursuant to this regulation, until such time as that Local Health Board determines whether or not to make arrangements with the contractor.

(4) Before 1 August 2006, in addition to the procedure laid out in paragraph 9(2) of Schedule 1 to the Ophthalmic Regulations, a claim by a contractor under paragraph 9(1) of that Schedule may be signed by an ophthalmic medical practitioner or optician—

- (a) whose name is included in a supplementary list or an ophthalmic list; and
- (b) who is employed by that contractor, provided that he or she identifies on that claim—
 - (i) the Local Health Board in whose supplementary list his or her name is included; and
 - (ii) the contractor on whose behalf he or she is signing.

PART 3

Consequential Amendments to the Charges and Payments Regulations

Interpretation

42. In this Part the “Charges and Payments Regulations” (*“Rheoliadau Ffioedd a Thaliadau”*) means the National Health Service (Optical Charges and Payments) Regulations 1997⁽²⁶⁾.

Amendment regulation 1 of the Charges and Payments Regulations

43.—(1) Regulation 1(2) of the Charges and Payments Regulations (citation, commencement and interpretation) is amended in accordance with the following provision of this regulation.

(2) Insert the following definition in the appropriate place in the alphabetical order—

““supplementary list” (*“rhestr atodol”*) means the list prepared by a Local Health Board under regulation 3 of the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services) (Amendment and Consequential Amendment) (Wales) Regulations 2006;”.

Amendment of regulations 4 and 6 of the Charges and Payments Regulations.

44.—(1) Regulations 4 and 6 of the Charges and Payments Regulations are amended in accordance with the following provisions of this regulation.

(2) In regulations 4(1)(b) (completion and use of voucher— sight test) and 6(1) (payment to patients in respect of sight test) after “ophthalmic list” in each place it occurs in each of those regulations insert “or supplementary list” .

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽²⁷⁾

31 January 2006

D. Elis-Thomas
The Presiding Officer of the National Assembly

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 1 of these Regulations provides for a supplementary list for those assisting in the provision of general ophthalmic services to be kept by Local Health Boards in accordance with the provisions of section 43D of the National Health Service Act 1977 (“the 1977 Act”).

Regulation 2 contains definitions for the Regulations.

Regulation 3 provides that each Local Health Board must prepare and publish a supplementary list. It also provides that no ophthalmic medical practitioner or optician (“a practitioner”) may assist in performing general ophthalmic services unless his or her name is included in such a list or an ophthalmic list.

Regulation 4 sets out how to apply to be included in the list and requires certain information to be given. It relaxes those requirements for a practitioner who is included in the ophthalmic list of that Local Health Board.

Regulation 5 provides for a practitioner to be readmitted to the supplementary list on a successful appeal against conviction.

Regulation 6 sets out the grounds on which the Local Health Board may or must refuse to admit a practitioner to the supplementary list, and the matters to which it must have regard.

Regulation 7 sets out the circumstances in which a Local Health Board may defer consideration of an application to include a practitioner in the supplementary list and the procedure to be followed in that respect.

Regulation 8 allows a Local Health Board to enter a practitioner’s name in the supplementary list subject to conditions. It also allows a practitioner’s name to be included in that list, until any appeal against the conditions has been decided, provided that the practitioner agrees to be bound by the conditions until the appeal has been determined.

Regulation 9 provides for a requirement that a practitioner notify the Local Health Board in writing, within 7 days, if the practitioner, or a company of which he or she is a director, incurs any criminal convictions or other specified matters occur.

Regulation 10 provides for the mandatory removal from its supplementary list by a Local Health Board of any practitioner convicted of murder or of a criminal offence and sentenced to over 6 months imprisonment and for discretion to remove a practitioner on specified grounds.

Regulation 11 sets out the criteria for decisions on discretionary removals from the supplementary list.

Regulation 12 provides for a Local Health Board to impose conditions on a practitioner whose name is included in the supplementary list and for the practitioner to be removed if he or she fails to comply with those conditions.

Regulation 13 provides for a Local Health Board to suspend a practitioner from the supplementary list, if certain conditions are met, for the procedure to be followed and for payments to suspended practitioners.

Regulation 14 provides for review and the procedure to be followed by Local Health Boards where the Local Health Board decides to conditionally include, contingently remove, or suspend a practitioner from the supplementary list.

Regulation 15 provides for appeals from specified decisions to be heard by the FHSAA.

Regulation 16 provides for a Local Health Board to notify specified persons of specified information relating to decisions to refuse to admit, impose conditions, remove (or contingently remove) or suspend a practitioner from the supplementary list.

Regulation 17 provides for the circumstances in which a practitioner may or may not withdraw from the supplementary list and regulation 18 provides for the circumstances in which an practitioner may not withdraw from the supplementary list.

Regulation 19 amends the statutory periods for review set out in section 49N of the 1977 Act in specified circumstances.

Regulation 20 provides for the disclosure of information to specified persons.

Regulation 21 makes transitional provisions for practitioners already assisting in the provision of general ophthalmic services before the coming into force of these Regulations to continue to do so until not later than 1 August 2006, while their applications for inclusion in a supplementary list are determined. It also makes like provision for those applying for inclusion in a list in the first six weeks after the coming into force of these Regulations and makes provision for those wrongly included in an ophthalmic list to be transferred to a supplementary list.

Part 2 of these Regulations (regulations 22 to 41) amends the National Health Service (General Ophthalmic Services) Regulations 1986 (“the 1986 Regulations”), which regulate the terms on which ophthalmic medical practitioners and opticians provide general ophthalmic services under the 1977 Act, to ensure like provision in relation to ophthalmic lists to that provided in these Regulations for supplementary lists.

Part 2 also makes further provision for opticians which are corporate bodies practising as ophthalmic opticians (“corporate opticians”), extends the categories of persons who may be included in an ophthalmic list (in regulation 39(2) to (5)) and makes provision in relation to mobile services (in regulations 23(2) and (3), 24(3), 25(2) and 39(2), (3) and (5)). It further amends the 1986 Regulations (in regulation 39(9)) so as to clarify who may sign a claim for payment and provides when a counter-signature is also required.

Part 2 also amends the 1986 Regulations (in regulation 39(10)) so as to provide for opticians to refer patients to a doctor within the hospital eye service, to so inform the patient’s doctor and to give the patient a statement to that effect. Regulation 41 requires corporate opticians already included in an ophthalmic list to provide further information required under these Regulations by 1 August 2006 and makes other transitional provisions.

Part 3 contains an amendment (regulation 43) to the National Health Service (Optical Charges and Payments) Regulations 1997 to make provision for the introduction of supplementary lists.