
WELSH STATUTORY INSTRUMENTS

2006 No. 181

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

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(1).

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(2), including these Regulations;
- (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 NCA” 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;”;
- (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;”;
- and
- (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;”; and

(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;”; and

- (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(3) (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 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—

(3) 1983 c. 54; section 36 was amended by S.I. 2000/1803.

“(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)”;

(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(4) (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the

- Social Security Administration Act 1992(5) (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”,
- (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(6) (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—

“(iia) 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);

(iib) 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.