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WELSH STATUTORY INSTRUMENTS

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**2023 No. 1053**

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

**PART 1**

**General**

**Title, coming into force and application**

1.—(1) The title of these Regulations is the National Health Service (Ophthalmic Services) (Wales) Regulations 2023.

(2) These Regulations come into force on 20 October 2023.

(3) These Regulations apply in relation to Wales.

**Interpretation**

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the National Health Service (Wales) Act 2006;

“combined list” (“*rhestr gyfunoI*”) has the meaning given in regulation 10;

“commencement date” (“*dyddiad cychwyn*”) means the day on which these Regulations come into force under regulation 1(2);

“contractor” (“*contractwr*”) means a qualified practitioner, other than a student optometrist, who has entered into an arrangement with a Local Health Board to provide primary ophthalmic services;

“corporate optician” (“*optegydd corfforedig*”) means a body corporate registered in the register maintained under section 9 of the Opticians Act 1989(1) (list of bodies corporate carrying on business as opticians), which is carrying on business as an optometrist, and for the purpose of this definition, “optometrist” has the meaning given in section 36 of that Act(2) (interpretation);

“deputy” (“*dirprwy*”) means an ophthalmic medical practitioner or an optometrist who is included in a combined list and assists in the provision of primary ophthalmic services;

“director” (“*cyfarwyddwr*”) means—

(a) a director of a body corporate;

(b) a member of a body of persons controlling a body corporate (whether or not a limited liability partnership);

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(1) 1989 c. 44; section 9 was amended by S.I. 2005/848., article 10, the Co-operative and Community Benefit Societies Act 2014 (c. 14), Schedule 4, paragraph 44 and the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 (c. 16), Schedule 1, paragraph 37.

(2) Section 36 was amended by S.I. 2005/848, Schedule 1, paragraph 8. There are other amendments to section 36 which are not relevant to these Regulations.

“dispensing optician” (“*optegydd cyflenwi*”) means a person registered as a dispensing optician in the register maintained under section 7 of the Opticians Act 1989(3) (register of opticians);

“eligible person” (“*person cymwys*”) has the meaning given in regulation 5;

“employer” (“*cyflogwr*”) includes any partnership of which a qualified practitioner is or was a member;

“employment” (“*cyflogaeth*”) means any employment whether paid or unpaid and whether under a contract of service or not, and “employee”, “employed” and “employer” must be interpreted accordingly;

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

- (a) in relation to England, NHS England, as established by section 1H of the National Health Service Act 2006(4);
- (b) in relation to Scotland, a Health Board established under section 2 of the National Health Service (Scotland) Act 1978(5);
- (c) in relation to Northern Ireland, the Department of Health in Northern Ireland;

“equivalent list” (“*rhestr gyfatebol*”) means a list kept by an equivalent body which is equivalent to a primary care list;

“eye examination” (“*archwiliad llygaid*”) has the meaning given in regulation 3;

“eye examination services” (“*gwasanaethau archwilio llygaid*”) has the meaning given in regulation 3;

“First-tier Tribunal” (“*Tribiwnlys Haen Gyntaf*”) means the First-tier Tribunal established under section 3(1) of the Tribunals, Courts and Enforcement Act 2007(6) (the First-tier Tribunal);

“general ophthalmic services” (“*gwasanaethau offthalmig cyffredinol*”) has the meaning given in regulation 4;

“Health Education and Improvement Wales” (“*Addysg a Gwella Iechyd Cymru*”) means the body established by the Health Education and Improvement Wales (Establishment and Constitution) Order 2017(7);

“hospital” (“*ysbyty*”) has the meaning given in section 206 of the Act (interpretation);

“licensing or regulatory body” (“*corff trwyddedu neu reoleiddio*”) means a body that licenses or regulates any profession of which the qualified practitioner is or has been a member, including a body licensing or regulating the education, training or qualifications of those professions, and any body which licenses or regulates any such profession, its education, training or qualifications, outside the United Kingdom;

“local authority” (“*awdurdod lleol*”) has the meaning given in section 206 of the Act (interpretation);

“medical” (“*meddygol*”) has the meaning given in section 206 of the Act (interpretation);

“medical practitioner” (“*ymarferydd meddygol*”) means a fully registered person within the meaning of section 55 of the Medical Act 1983(8) who holds a licence to practise under that Act;

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(3) Section 7 was amended by S.I. 2005/848, article 7.

(4) 2006 c. 41.

(5) 1978 c. 29.

(6) 2007 c. 15.

(7) S.I. 2017/913 (W. 224).

(8) 1983 c. 54; the definition of “fully registered person” in section 55 was substituted by S.I. 2007/3101, regulation 29 and amended by S.I. 2008/1774, Schedule 1, paragraph 20 and S.I. 2019/593, Schedule 1, paragraph 30. There are other amendments to section 55 which are not relevant to these Regulations.

- “mobile practice” (“*practis symudol*”) has the meaning given in Schedule 3;
- “mobile services” (“*gwasanaethau symudol*”) means primary ophthalmic services provided at a place other than a registered premises;
- “a national disqualification” (“*anghymhwysiad cenedlaethol*”) means—
- (a) a decision made by the First-tier Tribunal under section 115 of the Act<sup>(9)</sup> (national disqualification);
  - (b) a decision made under provisions in force in England, Scotland or Northern Ireland corresponding to section 115 of the Act;
- “the NHS Counter Fraud Authority” (“*Awdurdod Gwrth-dwyll y GIG*”) means the body established by the NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017<sup>(10)</sup>;
- “NHS Resolution” (“*NHS Resolution*”) means the NHS Litigation Authority, a body established by the National Health Service Litigation Authority (Establishment and Constitution) Order 1995<sup>(11)</sup>;
- “notice” (“*hysbysiad*”) means a notice in writing;
- “officer” (“*swyddog*”) has the meaning given in section 206 of the Act (interpretation);
- “ophthalmic hospital” (“*ysbyty offthalmig*”) includes an ophthalmic department of a hospital;
- “ophthalmic list” (“*rhestr offthalmig*”) has the meaning given in regulation 10;
- “ophthalmic medical practitioner” (“*ymarferydd meddygol offthalmig*”) means a person recognised under regulation 9 and Schedule 2;
- “Ophthalmic Qualifications Committee” (“*Pwyllgor Cymwysterau Offthalmig*”) means such committee appointed by organisations representative of the medical profession as may be recognised by the Welsh Ministers for the purposes of approving—
- (a) ophthalmic hospitals, academic degrees, academic or postgraduate courses in ophthalmology and appointments affording special opportunities for acquiring the necessary skill and experience of the kind required for the provision of general ophthalmic services, and
  - (b) the qualifications of medical practitioners for the purpose of general ophthalmic services;
- “optometrist” (“*optometrydd*”) means a person registered as an optometrist in the register maintained under section 7 of the Opticians Act 1989 (register of opticians);
- “originating events” (“*digwyddiadau cychwynnol*”) has the meaning given in Schedule 3;
- “patient” (“*claf*”) means a person for whom a contractor has agreed to provide primary ophthalmic services;
- “primary care list” (“*rhestr gofal sylfaenol*”) means a list referred to in section 115(1)(a) to (d) of the Act;
- “primary ophthalmic services” (“*gwasanaethau offthalmig sylfaenol*”) has the meaning given in regulation 4;
- “primary ophthalmic services form” (“*ffurflen gwasanaethau offthalmig sylfaenol*”) means a form provided by a Local Health Board which must be completed by a contractor to receive payment for providing primary ophthalmic services under these Regulations;
- “professional conduct” (“*ymddygiad professiynol*”) includes matters relating both to professional conduct and professional performance;

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<sup>(9)</sup> Section 115 was amended by S.I. 2010/22, Schedule 2, paragraph 139, the Health and Social Care Act 2012 (c. 7), Schedule 21, paragraph 31 and the Health and Care Act 2022 (c. 31), Schedule 1, paragraph 1.

<sup>(10)</sup> S.I. 2017/958, to which there are amendments not relevant to these Regulations.

<sup>(11)</sup> S.I. 1995/2800, to which there are amendments not relevant to these Regulations.

“professional registration number” (“*rhif cofrestru proffesiynol*”) means the number against the qualified practitioner’s name in the relevant register maintained by the General Medical Council or the General Optical Council;

“qualified practitioner” (“*ymarferydd cymwysedig*”) means—

- (a) a corporate optician;
- (b) an optometrist;
- (c) an ophthalmic medical practitioner;
- (d) a student optometrist;

“the register” (“*y gofrestr*”) has the meaning given in Schedule 3;

“registered premises” (“*mangre gofrestredig*”) means an address which is included in an ophthalmic list in relation to a contractor, in accordance with paragraph 1(g) of Schedule 3;

“the Statement” (“*y Datganiad*”) has the meaning given in regulation 31;

“student optometrist” (“*myfyriwr optometreg*”) means a person registered as a person undertaking training as an optometrist in the register maintained under section 8A of the Opticians Act 1989(12) (register of students);

“supplementary list” (“*rhestr atodol*”) has the meaning given in regulation 10;

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

- (a) under the Act;
- (b) under the National Health Service Act 2006;
- (c) under the National Health Service (Scotland) Act 1978;
- (d) under the Health and Personal Social Services (Northern Ireland) Order 1972(13);

“terms of service” (“*telerau gwasanaeth*”) means the terms set out in Schedule 4.

## PART 2

### Arrangements for ophthalmic services

#### Duty to arrange eye examinations

3.—(1) Each Local Health Board must arrange, as respects its area, for the provision of eye examinations in accordance with these Regulations.

(2) Each Local Health Board must administer the arrangements for these services in accordance with these Regulations.

(3) In these Regulations—

- (a) an “eye examination” means an examination of the eye for the purpose of diagnosing or determining treatment for an eye condition, or reviewing an existing condition, which includes such tests, procedures and advice as appropriate to the presenting signs, symptoms and needs of the patient, and
- (b) the services required by paragraph (1) are referred to as “eye examination services”.

#### General ophthalmic services and primary ophthalmic services

4. In these Regulations—

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(12) Section 8A was added by S.I. 2005/848, article 9.

(13) S.I. 1972/1265 (N.I. 14), to which there are amendments not relevant to these Regulations.

- (a) “general ophthalmic services” means the services that a contractor must provide under paragraph 23 (testing of sight) of the terms of service, and
- (b) “primary ophthalmic services” means, collectively—
  - (i) general ophthalmic services, and
  - (ii) eye examination services.

## PART 3

### Eligibility and applications for a sight test

#### **Eligibility for a sight test**

5. A person who meets any of the criteria in paragraph 1 of Schedule 1 is eligible for a sight test under general ophthalmic services (and is referred to in these Regulations as an “eligible person”).

#### **Application for a sight test**

- 6.—(1) An eligible person may apply to a contractor for a sight test.
- (2) The application must—
- (a) be made on a form provided for that purpose to contractors by the relevant Local Health Board, and
  - (b) contain a written declaration, signed by the applicant in writing or electronically, to the effect that they are an eligible person.
- (3) Before providing such a sight test, a contractor to whom an application has been made must—
- (a) except where paragraph (4) applies, ask the person to produce satisfactory evidence that they meet one of the criteria in paragraph 1 of Schedule 1,
  - (b) where the person has been asked for, but has not provided, satisfactory evidence that they are an eligible person, record that fact on the person’s primary ophthalmic services form,
  - (c) ensure that the person’s details and the approximate date of their last sight test, if any, are recorded on a primary ophthalmic services form, and
  - (d) satisfy themselves that the sight test is necessary.
- (4) This paragraph applies where—
- (a) the person is eligible by reason of paragraph 1(1)(d) of Schedule 1, and
  - (b) satisfactory evidence of the person’s eligibility is already available to the contractor.
- (5) Paragraph 2 of Schedule 1 makes provision about the specific evidence that a contractor must request before providing a sight test to certain persons.
- (6) The contractor—
- (a) may appoint a member of their staff to carry out the requirements of paragraph (3)(a) and (b) on their behalf, and
  - (b) must ensure that the member of staff appointed for that purpose is given instruction to enable them to fulfil the requirements on behalf of the contractor.
- (7) Subject to paragraph (8), an application for general ophthalmic services under these Regulations may be made and a signature required by these Regulations may be given—
- (a) on behalf of any person under 16 years of age, by either parent, the guardian or other adult who has care of the child;

- (b) on behalf of any person under 18 years of age—
    - (i) in the care of a local authority to whose care they have been committed under the Children Act 1989<sup>(14)</sup> or which has received them into care under the Social Services and Well-being (Wales) Act 2014<sup>(15)</sup>, by a person duly authorised by that authority;
    - (ii) in the care of a voluntary organisation, by that organisation or a person duly authorised by them;
  - (c) on behalf of any other person who is incapable of making the application or giving the signature, by a relative or any other adult who has care of that person.
- (8) A signature on an application may not be given by the contractor to whom the application is made.

### **Other services treated as general ophthalmic services**

- 7.—(1) Paragraph (5) applies where—
- (a) a person receives a sight test, other than general ophthalmic services, from a contractor,
  - (b) immediately before receiving the sight test, that person was not an eligible person, and
  - (c) Condition A, Condition B or Condition C is met in relation to the person.
- (2) Condition A is met in relation to the person if, during the provision of the sight test, the person is shown to meet the eligibility criterion at paragraph 1(1)(e) of Schedule 1.
- (3) Condition B is met in relation to the person if—
- (a) before the end of a period of 14 days beginning with the day on which the sight test was provided, the person becomes an eligible person by reason of meeting the eligibility criterion in paragraph 1(1)(d) of Schedule 1 by reference to paragraph 1(2)(c), (d) or (g) of that Schedule, and
  - (b) before the end of the period of 3 months beginning with the day on which the sight test was provided, the person provides to the Local Health Board a notice of entitlement to that effect.
- (4) Condition C is met in relation to the person if, before the end of the period of 3 months beginning with the day on which the sight test was provided, the person becomes an eligible person by reason of meeting the eligibility criterion in paragraph 1(1)(d) of Schedule 1 by reference to paragraph (2)(n) of that Schedule.
- (5) Where this paragraph applies the sight test must be treated as having been general ophthalmic services under the Act—
- (a) for the purposes of regulation 8(1)(a) of the National Health Service (Optical Charges and Payments) Regulations 1997<sup>(16)</sup>, and
  - (b) for the purposes specified in section 71(8) and (9) of the Act.
- (6) Where the sight test received by a person is treated by virtue of paragraph (3) or (4) as being general ophthalmic services—
- (a) that person may provide to the Local Health Board a receipt for, or other evidence of, any fee paid for that sight test, and

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<sup>(14)</sup> 1989 c. 41.

<sup>(15)</sup> 2014 anaw 4

<sup>(16)</sup> S.I. 1997/818, to which there are amendments not relevant to these Regulations.

- (b) if the Local Health Board is satisfied as to the amount paid for that sight test, it must pay that person an amount equal to the fee paid.

## PART 4

### Combined lists

#### CHAPTER 1

##### **Provision of primary ophthalmic services**

**8.—(1)** A qualified practitioner (other than a student optometrist) may provide primary ophthalmic services in a Local Health Board’s area if they are included in that Local Health Board’s ophthalmic list (see regulation 10(2)(a)).

(2) A qualified practitioner (other than a student optometrist) may assist in the provision of primary ophthalmic services in Wales if they are included in a Local Health Board’s ophthalmic or supplementary list (see regulation 10(2)(a) and (b)).

(3) A student optometrist may assist in the provision of primary ophthalmic services in Wales to the extent they are qualified to do so and under the supervision of an ophthalmic medical practitioner or optometrist whose name is included in a combined list, if the student optometrist is included in a Local Health Board’s supplementary list (see regulation 10(2)(b)).

##### **Qualifications of ophthalmic medical practitioners**

**9.—(1)** The prescribed qualifications which a medical practitioner must possess for the purposes of section 71 of the Act (arrangements for general ophthalmic services) are those set out in paragraph 1 of Schedule 2.

(2) Paragraph 2 of Schedule 2 makes provision in relation to the approval of qualifications of ophthalmic medical practitioners by the Ophthalmic Qualifications Committee.

(3) Paragraph 3 of Schedule 2 makes provision in relation to appeals against determinations by the Ophthalmic Qualifications Committee.

#### CHAPTER 2

### Preparation and publication of a combined list

##### **Duty to prepare a combined list**

**10.—(1)** Each Local Health Board must prepare, for its area, a combined list.

(2) The combined list must consist of—

- (a) a list of the qualified practitioners who undertake to provide primary ophthalmic services and have been approved by the Local Health Board under regulation 13 (“the ophthalmic list”), and
- (b) in a separate part, a list of the qualified practitioners approved by the Local Health Board for the purpose of assisting in the provision of primary ophthalmic services under regulation 13 (“the supplementary list”).

(3) The combined list must contain the information set out in Part 1 of Schedule 3.

### **Publication of the combined list**

**11.**—(1) Each Local Health Board must publish its combined list and make a copy of it available for inspection at—

- (a) its offices, and
- (b) any other place in its area it considers appropriate.

(2) Each Local Health Board must—

- (a) send a copy of its combined list to the relevant Local Medical Committee and the relevant Local Optical Committee, and
- (b) at intervals of not more than 3 months, notify each of them of any alteration made in that list.

(3) In this regulation—

“relevant Local Medical Committee” (*“Pwyllgor Meddygol Lleol perthnasol”*) means the committee recognised by the Local Health Board under section 54 of the Act;

“relevant Local Optical Committee” (*“Pwyllgor Optegol Lleol perthnasol”*) means the committee recognised by the Local Health Board under section 78 of the Act.

## **CHAPTER 3**

### **Inclusion in a list**

#### **Application for inclusion in a list**

**12.**—(1) A qualified practitioner, other than a student optometrist, may apply to a Local Health Board for inclusion in its ophthalmic list.

(2) A qualified practitioner may apply to a Local Health Board for inclusion in its supplementary list.

(3) An application for inclusion in a Local Health Board’s ophthalmic list must be made in writing and include—

- (a) an undertaking—
  - (i) to provide primary ophthalmic services in that Local Health Board’s area;
  - (ii) to comply with the terms of service set out in Schedule 4;
- (b) where the applicant wishes to provide mobile services, a statement to that effect with an undertaking to provide mobile services;
- (c) the information, undertakings and declarations required by paragraphs 3, 4 and 7 of Schedule 3.

(4) An application for inclusion in a Local Health Board’s supplementary list must be made in writing and include the information, undertakings and declarations required by paragraphs 5, 6 and 7 of Schedule 3.

(5) In the case of an application to a Local Health Board by a qualified practitioner who is included in the supplementary list of that Local Health Board, and is seeking to withdraw from that list and be included in its ophthalmic list, that qualified practitioner is required to provide any information and undertakings required by paragraph (3) and Schedules 3 and 4 only insofar as—

- (a) that qualified practitioner has not already supplied them to that Local Health Board, or
- (b) the information has changed since it was provided.



## **Decisions and grounds for refusal**

- 13.**—(1) A Local Health Board that receives an application under regulation 12 must—
- (a) decide whether to approve the qualified practitioner for inclusion in its ophthalmic or supplementary list (as the case may be), and
  - (b) unless regulation 15 applies, notify the qualified practitioner of its decision within 7 days of that decision.
- (2) Before deciding an application under paragraph (1)(a), the Local Health Board must—
- (a) check, as far as reasonably practicable, the information provided by the qualified practitioner, in particular that provided under Schedule 3,
  - (b) check with the NHS Counter Fraud Authority whether the qualified practitioner has any record of fraud,
  - (c) check with the Welsh Ministers for, and consider, any facts that the Welsh Ministers consider relevant relating to past or current investigations or proceedings involving or relating to the qualified practitioner, and
  - (d) obtain references from the referees named by the qualified practitioner under paragraph 3(l) or 5(h) of Schedule 3 (as appropriate) and consider the references provided.
- (3) The Local Health Board must refuse to include a qualified practitioner in its combined list where any of the grounds in paragraph 8 of Schedule 3 applies.
- (4) The Local Health Board may refuse to include a qualified practitioner in its combined list where any of the grounds in paragraph 9 of Schedule 3 applies.
- (5) When considering a refusal under paragraph (4), the Local Health Board must consider the factors set out in paragraph 10 of Schedule 3.
- (6) Where the Local Health Board refuses an application, the notice under paragraph (1)(b) must contain—
- (a) a statement of the reasons for the Local Health Board’s decision (including any facts relied upon), and
  - (b) details of how to appeal the refusal under regulation 28.
- (7) Where an application is made to a Local Health Board in accordance with regulation 12, the Local Health Board may refuse the application only in accordance with paragraphs (3) and (4).

## **Conditional inclusion**

- 14.**—(1) A Local Health Board may—
- (a) decide to include a qualified practitioner in its combined list subject to conditions;
  - (b) in relation to a qualified practitioner who has applied to be included in the Local Health Board’s ophthalmic list, vary the terms of service set out in Schedule 4 to these Regulations for the purpose of, or in connection with, the imposition of those conditions.
- (2) The imposition of conditions on a qualified practitioner under paragraph (1)(a) must be with a view to—
- (a) preventing any prejudice to the efficiency of the provision of primary ophthalmic services, or
  - (b) preventing any acts or omissions of the type described in section 107(3)(a) of the Act (disqualification of practitioners).
- (3) A Local Health Board may, and if requested in writing by the qualified practitioner to do so must, review its decision to impose or vary a condition under paragraph (1).

(4) A qualified practitioner may not request a review under paragraph (3) until after a three month period beginning with the date the Local Health Board includes the qualified practitioner in its combined list.

(5) After a review has taken place, the qualified practitioner may not request a further review before the end of a six month period beginning with the date of the decision on the previous review.

(6) Where a Local Health Board reviews its decision under this regulation, it may—

- (a) vary the conditions imposed on the qualified practitioner,
- (b) impose different conditions on the qualified practitioner,
- (c) remove the condition or conditions imposed on the qualified practitioner, or
- (d) remove the qualified practitioner from its combined list.

(7) A qualified practitioner may appeal the following decisions of the Local Health Board to the First-tier Tribunal—

- (a) a decision to impose conditions, or any particular condition, on the qualified practitioner;
- (b) a decision to vary a condition;
- (c) a decision to vary the terms of service of the qualified practitioner.

(8) Except in a case within sub-paragraph (10), any decision of the Local Health Board that may be the subject of an appeal under sub-paragraph (4) must not have effect until the First-tier Tribunal has determined any appeal against it or the time for any appeal has expired.

(9) Sub-paragraph (10) applies where—

- (a) a qualified practitioner has applied to be included in a Local Health Board's supplementary list, and
- (b) the Local Health Board decides that a qualified practitioner may be included in its supplementary list subject to conditions.

(10) If the qualified practitioner agrees in writing to be bound by the conditions imposed until the time for appeal has expired or any appeal is decided, the qualified practitioner may be included (or continue to be included) in that list—

- (a) during the period for any appeal to the First-tier Tribunal under regulation 28, or
- (b) if an appeal is brought, until the appeal has been decided.

### **Deferral of decisions**

**15.**—(1) A Local Health Board may defer consideration of a decision under regulation 13 where any of the circumstances in Part 4 of Schedule 3 applies.

(2) The Local Health Board must—

- (a) notify the qualified practitioner that it has deferred its decision, and
- (b) give the reasons for that deferral.

(3) A Local Health Board may defer consideration of a decision under paragraph (1) only until the outcome of the relevant event mentioned in paragraph 11(1)(c) and (2) of Part 4 of Schedule 3 is known or whilst the qualified practitioner is suspended under paragraph 11(1)(a) or (b) of that Schedule.

(4) Once the Local Health Board has become aware of the outcome of the relevant event mentioned in paragraph 11(1)(c) and (2) of Part 4 of Schedule 3, or the suspension referred to in paragraph 11(1)(a) or (b) of that Schedule has come to end, the Local Health Board must notify the qualified practitioner that they are required to—

- (a) update their application within 28 days of the date of the notification (or such longer period as the Local Health Board may agree), and
  - (b) confirm in writing within the period referred to in sub-paragraph (a) that they wish to proceed with their application.
- (5) Provided any additional information has been received within 28 days, or the time agreed, the Local Health Board must notify the qualified practitioner as soon as possible—
- (a) that their application has been successful, or
  - (b) where the Local Health Board has decided to refuse their application or impose conditions on their inclusion—
    - (i) of that decision and the reasons for it (including any facts relied on), and
    - (ii) of how to appeal that decision under regulation 28.

**Requirements with which a qualified practitioner included in a supplementary list must comply**

**16.**—(1) On becoming aware of a change to the information provided by the qualified practitioner in accordance with paragraphs 5 to 7 of Schedule 3 when applying to be included in the Local Health Board's supplementary list, the qualified practitioner must notify the Local Health Board in writing within 7 days.

(2) Where sub-paragraph (1) applies, the qualified practitioner must provide all necessary authority to enable a request to be 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 the notification given by the qualified practitioner under sub-paragraph (1).

(3) A qualified 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 113B of the Police Act 1997(17) in relation to the qualified practitioner, if the Local Health Board at any time, for reasonable cause, gives the qualified practitioner notice to provide such a certificate.

CHAPTER 4

Removal etc. from, and readmission to, a list

**Removal from a list**

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

- (a) it becomes aware that the qualified practitioner has been convicted in the United Kingdom of murder;
- (b) it becomes aware that the qualified practitioner is subject to a national disqualification;
- (c) it becomes aware that the qualified practitioner has died;
- (d) it becomes aware that the qualified practitioner has otherwise ceased to be a qualified practitioner;
- (e) in the case of a qualified practitioner in the Local Health Board's ophthalmic list, it becomes aware that the qualified practitioner has been included in the supplementary list of any Local Health Board;

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(17) 1997 c. 50; section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15).

- (f) in the case of a qualified practitioner in the Local Health Board’s supplementary list, it becomes aware that the qualified practitioner has been included in any Local Health Board’s ophthalmic list or the supplementary list of another Local Health Board;
  - (g) where the qualified practitioner is an ophthalmic medical practitioner, it becomes aware that the ophthalmic medical practitioner is the subject of—
    - (i) a direction given by a Medical Practitioners Tribunal under section 35D(2)(a) or (b) of the Medical Act 1983(18) (functions of a Medical Practitioners Tribunal);
    - (ii) an order or direction made by the Medical Practitioners Tribunal under section 38(1) of the Medical Act 1983 (power to order immediate suspension etc.);
    - (iii) from the coming into force of article 13 of the Medical Act 1983 (Amendment) Order 2002(19), a direction by a Medical Practitioners Tribunal for erasure or immediate suspension under section 35D(2)(a) or (b), (5)(a) or (b), (10)(a) or (b), or (12)(a) or (b) (functions of a Medical Practitioners Tribunal), or section 38(1) (power to order immediate suspension etc.) of the Medical Act 1983;
  - (h) in the case of an optometrist, it becomes aware that the qualified practitioner is the subject of a direction made by the Fitness to Practise Committee of the General Optical Council other than in a health case to erase the practitioner’s name from the appropriate register or suspend the practitioner’s registration under section 13F(3)(a) or (b), (7)(a) or (b) or (13) (a) or (b) of the Opticians Act 1989(20) (powers of the Fitness to Practise Committee);
  - (i) it is notified by the First-tier Tribunal that it has considered an appeal by that qualified practitioner against their conditional inclusion in the Local Health Board’s supplementary list and that qualified practitioner had been conditionally included pending the outcome of the appeal, and the First-tier Tribunal has decided not to include the qualified practitioner in the supplementary list;
  - (j) it is notified by the First-tier Tribunal that it has considered an appeal by that qualified practitioner against their contingent removal from the Local Health Board’s supplementary list, and the First-tier Tribunal has decided to remove the qualified practitioner from that supplementary list instead.
- (2) Except in a case to which paragraph (1)(c) applies, where a qualified practitioner is removed from a Local Health Board’s list under paragraph (1), the Local Health Board must immediately inform the qualified practitioner that they have been removed from that list.
- (3) A Local Health Board may remove a qualified practitioner from its ophthalmic or supplementary list (as appropriate) where—
- (a) the qualified practitioner is included in the Local Health Board’s ophthalmic list and has failed to comply with the terms of service;
  - (b) the qualified practitioner has failed to comply with a condition imposed under regulation 14;
  - (c) the qualified practitioner has been convicted in the United Kingdom of a criminal offence (other than murder), committed on or after 30 July 2002 in the case of the ophthalmic list, or on or after 1 February 2006 in the case of the supplementary list, and the qualified practitioner has been sentenced to a term of imprisonment (whether suspended or not) of over 6 months;

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

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

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

- (d) the qualified practitioner is included in the Local Health Board's supplementary list and the Local Health Board considers any of the conditions set out below is met in relation to the qualified practitioner—
- (i) the continued inclusion of that qualified practitioner in its supplementary list would be prejudicial to the efficiency of the services which those included in that list assist in providing (“an efficiency case”);
  - (ii) the qualified practitioner has (whether together with someone else or on their own) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for themselves or someone else any financial or other benefit and knew that they, or the other person, were not entitled to that benefit (“a fraud case”);
  - (iii) the qualified practitioner is unsuitable to be included in that part of that list (“an unsuitability case”);
- (e) in accordance with paragraphs (4) and (5), it determines that a qualified practitioner that has been included in the Local Health Board's combined list for the preceding twelve months has not provided (or assisted in providing, as applicable) primary ophthalmic services for persons in its locality within that period.
- (4) In calculating the period of twelve months referred to in paragraph (3)(e), the Local Health Board must disregard—
- (a) any period during which the qualified practitioner was suspended from the Local Health Board's list;
  - (b) any period during which the qualified practitioner was performing whole-time service in the armed forces in a national emergency (as a volunteer or otherwise), compulsory whole-time service in the armed forces (including service resulting from reserve liability), or any equivalent service, if liable for compulsory whole-time service in the armed forces;
  - (c) any period which the Local Health Board reasonably determines.
- (5) A Local Health Board which is considering removing a qualified practitioner from its ophthalmic or supplementary list (as appropriate) under paragraph (3) must, before making that decision, follow the procedure in paragraph 12 of Schedule 3.
- (6) Where a Local Health Board is considering a removal under section 107 of the Act (disqualification of practitioners) or under paragraph (3)(d) of this regulation, it must consider the factors set out in paragraphs 14 to 17 of Schedule 3 that are applicable to the grounds for removal being considered.
- (7) A Local Health Board must notify the qualified practitioner of its decision under this regulation or under section 107 of the Act within 7 days beginning with the day it makes that decision.
- (8) The notification in paragraph (7) must contain—
- (a) the Local Health Board's decision;
  - (b) the reasons for that decision (including any facts relied upon);
  - (c) details of how to exercise a right of appeal under regulation 28;
  - (d) where paragraph (10) applies, notification of the information in that paragraph;
  - (e) when making a decision under paragraph (3)(d) of this regulation or under section 107 of the Act, the condition (or conditions) in regulation 17(3)(d) or section 107 on which it relies.
- (9) A Local Health Board which decides to remove a qualified practitioner from its ophthalmic or supplementary list (as the case may be) under paragraph (3) must not remove that qualified practitioner until the later of—

- (a) the end of a period of 28 days beginning with the day on which the Local Health Board makes that decision, or
  - (b) the date any appeal is determined by the First-tier Tribunal.
- (10) Paragraph 13 of Schedule 3 makes provision in relation to the procedure for removals from an ophthalmic list under section 107 of the Act (disqualification of practitioners).
- (11) Nothing in this regulation will prejudice the right of a qualified practitioner to have their name included again in an ophthalmic or supplementary list.
- (12) In this regulation—
- “health case” (“*achos iechyd*”) has the meaning given to it in section 13G(6) of the Opticians Act 1989<sup>(21)</sup> (provisions supplementary to section 13F);
  - “health scheme” (“*cynllun iechyd*”) means the services covered by the definition in section 107 of the Act (disqualification of practitioners) and those prescribed by regulation 18.

### Prescribed health schemes

**18.** The following are prescribed as health schemes for the purposes of section 107(7) of the Act (disqualification of practitioners)—

- (a) health services, including medical treatment, provided by His Majesty’s Forces;
- (b) services provided by Port Health Authorities constituted under the Public Health (Control of Disease) Act 1984<sup>(22)</sup>;
- (c) health services provided to a prisoner in the care of the medical officer or any other such officer of a prison appointed for the purposes of the Prison Act 1952<sup>(23)</sup>;
- (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

### Contingent removal from a supplementary list

**19.**—(1) In an efficiency or a fraud case relating to a qualified practitioner in a Local Health Board’s supplementary list, the Local Health Board may, instead of deciding to remove a qualified practitioner from that list, decide to remove the qualified practitioner contingently and regulation 17(7) and (8) will apply to that decision.

(2) Where a Local Health Board is considering contingently removing a qualified practitioner under paragraph (1), it must, before making that decision, follow the procedure in paragraph 12(1) to (3) of Schedule 3.

(3) If it so decides, the Local Health Board must impose such conditions as it may decide on the qualified 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).

(4) Where the Local Health Board decides to contingently remove a practitioner under paragraph (1), that decision must not take effect until the later of—

- (a) the end of a period of 28 days starting with the date the Local Health Board made its decision, or
- (b) the date any appeal is determined by the First-tier Tribunal.

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<sup>(21)</sup> Section 13G was added by [S.I. 2005/848](#), article 16.

<sup>(22)</sup> 1984 c. 22.

<sup>(23)</sup> 1952 c. 52.

(5) If the Local Health Board decides that the qualified practitioner has failed to comply with a condition, it may decide to—

- (a) vary the conditions imposed,
- (b) impose new conditions, or
- (c) remove the qualified practitioner from its supplementary list.

(6) In this regulation, “efficiency case” and “fraud case” have the meaning given in regulation 17.

(7) A Local Health Board may, and if requested in writing by the qualified practitioner to do so must, review its decision to contingently remove the qualified practitioner under this regulation.

(8) A qualified practitioner may not request a review under paragraph (7) until after a three month period beginning with the date of the Local Health Board includes the qualified practitioner in its combined list.

(9) After a review has taken place, the qualified practitioner may not request a further review before the end of a six month period beginning with the date of the decision on the previous review.

(10) Where a Local Health Board reviews its decision under this regulation, it may—

- (a) vary the conditions imposed on the qualified practitioner,
- (b) impose different conditions on the qualified practitioner, or
- (c) remove the qualified practitioner from its supplementary list.

### **Withdrawal from an ophthalmic list**

**20.**—(1) Subject to regulation 21, a qualified practitioner must give notice to a Local Health Board that they wish to withdraw from that Local Health Board’s ophthalmic list.

(2) A qualified practitioner must give notice to the Local Health Board that they intend to withdraw from the Local Health Board’s ophthalmic list if that qualified practitioner is included in the supplementary list of any Local Health Board.

(3) Where a Local Health Board receives a notice from a qualified practitioner—

- (a) pursuant to paragraph (1), it must remove the qualified practitioner from its ophthalmic list on the earlier of the following—
  - (i) the date that is three months after the date of the notice, or
  - (ii) the date from which the Local Health Board has agreed that the withdrawal will take effect;
- (b) pursuant to paragraph (2), it must remove the qualified practitioner from its ophthalmic list as soon as the Local Health Board confirms that the qualified practitioner is included in a supplementary list.

(4) A qualified practitioner may withdraw a notice given pursuant to paragraph (1) at any time before the Local Health Board removes their name from its ophthalmic list.

(5) A qualified practitioner may not withdraw a notice given pursuant to paragraph (2) once the qualified practitioner has been included in a supplementary list.

### **Restrictions on withdrawal from an ophthalmic list**

**21.**—(1) Unless the Welsh Ministers have given their consent to a qualified practitioner’s withdrawal from an ophthalmic list, a qualified practitioner may not withdraw from an ophthalmic list where a Local Health Board is investigating the qualified practitioner—

- (a) for the purpose of deciding whether or not to exercise its powers under section 107 (disqualification of practitioners), 108 (contingent removal) or 110 (suspension) of the Act,

(b) for failure to comply with a condition imposed on the qualified practitioner under regulation 14 so as to justify removal of the qualified practitioner from its ophthalmic list, or

(c) who has been suspended under section 110(1)(a) of the Act,

until the matter has been finally determined by the Local Health Board.

(2) Unless the Welsh Ministers have given their consent to the qualified practitioner's withdrawal from an ophthalmic list, a qualified practitioner may not withdraw from an ophthalmic list where a Local Health Board has decided to—

(a) remove the qualified practitioner from its ophthalmic list under section 107 or 108 of the Act,

(b) contingently remove the qualified practitioner under section 108 of the Act, or

(c) remove the qualified practitioner for breach of a condition imposed on inclusion under these Regulations,

but has not yet given effect to that decision.

(3) Where a Local Health Board has suspended a qualified practitioner under section 110(1)(b), the qualified practitioner may not withdraw from an ophthalmic list 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.

(4) The Local Health Board must not agree to a qualified practitioner withdrawing from its ophthalmic list unless it is satisfied that satisfactory arrangements have been made for the completion of any primary ophthalmic services which the qualified practitioner has undertaken to provide.

### **Withdrawal from a supplementary list**

**22.**—(1) A qualified practitioner must, so far as is practicable, give the Local Health Board at least three months' notice in advance of the day that the qualified practitioner intends to withdraw from its supplementary list.

(2) A qualified practitioner must give notice to the Local Health Board that they intend to withdraw from the Local Health Board's supplementary list if that qualified practitioner is included in—

(a) that Local Health Board's ophthalmic list,

(b) any other Local Health Board's ophthalmic list, or

(c) any other Local Health Board's supplementary list.

(3) When a Local Health Board receives a notice from a qualified practitioner—

(a) pursuant to paragraph (1), it must remove the qualified practitioner from its supplementary list on the earlier of the following—

(i) the date that is three months after the date of the notice, or

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

(b) pursuant to paragraph (2), it must remove the qualified practitioner from its supplementary list as soon as the Local Health Board confirms that the qualified practitioner has been included in another list referred to in paragraph (2).

(4) A qualified practitioner may withdraw a notice given pursuant to paragraph (1) at any time before the Local Health Board removes their name from its supplementary list.

(5) A qualified practitioner may not withdraw a notice given pursuant to paragraph (2) once the qualified practitioner has been included in that other list.



### **Suspension from a supplementary list**

**23.**—(1) If the 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 qualified practitioner from its supplementary list—

- (a) while it decides whether or not to remove the qualified practitioner from its supplementary list under regulation 17 or contingently remove the qualified practitioner from its supplementary list under regulation 19;
- (b) while it waits for a decision of a licensing or regulatory body or court anywhere in the world which affects the qualified practitioner;
- (c) where it has decided to remove the practitioner, but before that decision takes effect;
- (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 qualified practitioner remains suspended, after the decision referred to in that sub-paragraph has been made, for an additional period not exceeding six months.

(4) Subject to paragraph (5), 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.

(5) The period of suspension under paragraph (2) or (3) may be extended beyond six months if—

- (a) on the application of the Local Health Board, the First-tier Tribunal so orders, or
- (b) the Local Health Board applied under sub-paragraph (a) before the expiry of the period of suspension, but the First-tier Tribunal has not made an order by the time it expires, in which case it continues until the First-tier Tribunal makes an order.

(6) If the First-tier Tribunal 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 of the above, in which case the suspension will end on the earlier of the date or event specified, as the case may be.

(7) The First-tier Tribunal may, on the application of the Local Health Board, make a further order, which must also comply with paragraph (6), at any time while the period of suspension pursuant to the earlier order is still continuing.

(8) If the Local Health Board suspends a qualified practitioner in a case falling within paragraph (1)(c) or (d), the suspension has effect from the date the Local Health Board informed the qualified practitioner of the suspension and will continue until—

- (a) in a case falling within paragraph (1)(c), the decision takes effect, or
- (b) in a case falling within paragraph (1)(d), the First-tier Tribunal has determined the appeal.

(9) While a qualified practitioner is suspended under these Regulations, that qualified practitioner must be treated as not being included in that Local Health Board's supplementary list, even though their name appears in it.

(10) A Local Health Board may, and if requested in writing by the qualified practitioner to do so must, review its decision to suspend the qualified practitioner under paragraph (1)(a) or (b) of this regulation.

(11) A qualified practitioner may not request a review under paragraph (10) until after a three month period beginning with the date of the Local Health Board includes the qualified practitioner in its combined list.

(12) After a review has taken place, the qualified practitioner may not request a further review before the end of a six month period beginning with the date of the decision on the previous review.

(13) Where a Local Health Board decides to review its decision to suspend a practitioner under paragraph (1)(c) or (d) of this regulation, it may decide to impose conditions or remove the practitioner from its supplementary list.

### **Procedure on suspension from a combined list**

**24.**—(1) Where a Local Health Board is considering suspending a qualified practitioner under regulation 23 of these Regulations, or section 110 (suspension) or 111(24) (suspension pending appeal) of the Act, or varying the period of suspension under regulation 23 of these Regulations, or section 110 of the Act, the Local Health Board must give the qualified practitioner —

- (a) notice of any allegation against the qualified practitioner;
  - (b) notice of what action the Local Health Board is considering and on what grounds;
  - (c) the opportunity to make written representations to the Local Health Board within 28 days of the date of the notification under sub-paragraph (b) (“the specified period”);
  - (d) the opportunity to make representations at an oral hearing before the Local Health Board within the specified period if the qualified practitioner requests one.
- (2) The Local Health Board may suspend the qualified practitioner with immediate effect if—
- (a) they make no written representations within the specified period and do not request an oral hearing, or
  - (b) they do not attend any oral hearing that is arranged.

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

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

(5) The Local Health Board may suspend the qualified practitioner with immediate effect following any hearing.

(6) The Local Health Board must notify the qualified practitioner of its decision and the reasons for it (including any facts relied upon) within 7 days beginning with the day that its decision is made.

(7) When the Local Health Board notifies the qualified practitioner under paragraph (6) it must also inform the qualified practitioner of any right to a review of that decision under the Act (in the case of suspension from the ophthalmic list) or under regulation 23 of these Regulations (in the case of suspension from the supplementary list).

### **Readmission**

**25.**—(1) Paragraph (2) applies where—

- (a) a qualified practitioner has been removed from a combined list by a Local Health Board on the grounds that the qualified practitioner had been convicted of a criminal offence, and
- (b) that conviction is overturned on appeal.

(2) The Local Health Board may agree to include the qualified practitioner in its combined list without that qualified practitioner making an application under regulation 12 if it—

- (a) is satisfied that there are no other matters that need to be considered, and
  - (b) has received an undertaking to comply with the requirements of these Regulations from the qualified practitioner.
- (3) Where the conviction mentioned in paragraph (1) is reinstated on a further appeal—
- (a) the previous decision of the Local Health Board to remove the qualified practitioner from its combined list will once again have effect, and
  - (b) the Local Health Board must remove the qualified practitioner from its combined list.

### **Notifications to Local Health Boards**

**26.**—(1) A qualified practitioner that is included in the combined list of a Local Health Board must notify that Local Health Board within 14 days of any occurrence requiring a change in the information which that list is required to contain in relation to them.

(2) A qualified practitioner that is included in a supplementary list of a Local Health Board must notify that Local Health Board within 14 days of any change in their private address.

(3) Where a Local Health Board receives a notice from a qualified practitioner pursuant paragraph (1) or (2), it must amend its combined list as soon as possible.

### **Notifications by Local Health Boards**

**27.**—(1) A Local Health Board 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, of the matters set out in paragraph (4), where that Local Health Board decides to—

- (a) refuse to include a qualified practitioner in its combined list under regulation 13;
- (b) impose conditions on the qualified practitioner's inclusion in a combined list under regulation 14;
- (c) remove the qualified practitioner from its ophthalmic list under section 107 of the Act (disqualification of practitioners) or from its ophthalmic or supplementary list under regulation 17;
- (d) contingently remove the qualified practitioner from its ophthalmic list under section 108 of the Act or from its supplementary list under regulation 19;
- (e) suspend the qualified practitioner from its ophthalmic list under section 110 or 111 of the Act or from its supplementary list under regulation 23.

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

- (a) the Welsh Ministers;
- (b) any Local Health Board or equivalent body that, to the knowledge of the Local Health Board—
  - (i) has included the qualified practitioner in a primary care list or equivalent list;
  - (ii) is considering an application from the qualified practitioner for inclusion in a primary care list or equivalent list;
  - (iii) has in its area any place where the qualified practitioner provides or assists in the provision of primary ophthalmic services;
- (c) the Secretary of State;
- (d) the Scottish Ministers;
- (e) the Northern Ireland Executive;

- (f) the General Medical Council, General Optical Council or any other appropriate regulatory body;
  - (g) NHS Resolution;
  - (h) any other organisation that, to the knowledge of the Local Health Board, employs or uses any of the services of the qualified practitioner in a professional capacity;
  - (i) where it is a fraud case within the meaning of section 107(3) of the Act, the NHS Counter Fraud Authority.
- (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 qualified practitioner, are using or have used any of the qualified practitioner’s services in a professional capacity, or
    - (ii) are considering employing or using any of the qualified practitioner’s services in a professional capacity;
  - (b) a partnership, any of whose members provide or assist in the provision of primary ophthalmic services, and can establish that the qualified practitioner is or was a member of the partnership or that it is considering inviting the qualified practitioner to become such a member.
- (4) The matters referred to in paragraph (1) are—
- (a) the name, address and, where applicable, the date of birth of the qualified practitioner and, in the case of 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<sup>(25)</sup> (the Professional Standards Authority for Health and Social Care), that fact and the individual’s registration number with that body,
  - (b) the qualified practitioner’s professional 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 qualified practitioner concerned a copy of any information about that practitioner 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 First-tier Tribunal that it has imposed a national disqualification on a qualified practitioner whom the Local Health Board had removed from its combined list, or who was applying, or had applied to be, included in its combined list, the Local Health Board must notify the persons or bodies listed in paragraph (2)(b), (g), (h) and (i) 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.

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<sup>(25)</sup> 2002 c. 17; section 25(3) was amended by paragraph 17(2) and (3) of Schedule 10 to the Health and Social Care Act 2008 (c. 14), paragraph 10(2) of Schedule 4 to S.I. 2010/231, paragraph 56(b) of Schedule 15 to the Health and Social Care Act 2012 (c. 7) and paragraph 2(2) of Schedule 4 to the Children and Social Work Act 2017 (c. 16).

## CHAPTER 5

### Reviews and appeals

#### **Appeal to the First-tier Tribunal**

**28.**—(1) A qualified practitioner may appeal to the First-tier Tribunal against a decision of the Local Health Board—

- (a) to refuse to include the qualified practitioner in its combined list under regulation 13, except in a case to which any of the grounds in paragraph 8 of Schedule 3 applies;
- (b) set out in regulation 14(7) (conditional inclusion);
- (c) to remove the qualified practitioner from its combined list under regulation 17;
- (d) to contingently remove the qualified practitioner from its supplementary list under regulation 19;
- (e) on any review of an earlier such decision of the Local Health Board under these Regulations.

(2) The reference in paragraph (1)(c) to a decision to remove a qualified practitioner under regulation 17 does not include removal in accordance with regulation 17(1)(c).

(3) Any appeal under this regulation is by way of redetermination.

(4) On appeal, the First-tier Tribunal may make any decision which the Local Health Board could have made.

(5) Where the First-tier Tribunal decides on appeal that the qualified practitioner's inclusion in the combined list must 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 qualified practitioner to notify it within 28 days of the decision (or such longer period as the Local Health Board agrees) whether the qualified practitioner wishes to be included in the combined list subject to those conditions.

(6) If the qualified practitioner notifies the Local Health Board that the qualified practitioner does wish to be included in the combined list subject to the conditions, the Local Health Board must so include the practitioner.

(7) Where the First-tier Tribunal on appeal decides to impose a contingent removal under these Regulations—

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

(8) Any right of appeal under this regulation must be exercised within 28 days beginning with the date on which notice of the relevant decision was given to the qualified practitioner.

#### **Procedure on review of Local Health Board decision**

**29.**—(1) Where a Local Health Board reviews its decision under regulation 14, 19 or 23, the Local Health Board must give the qualified practitioner—

- (a) notice that it intends to review its decision;
- (b) notice of any allegation against the qualified practitioner;
- (c) notice of what action the Local Health Board is considering and on what grounds;

- (d) the opportunity to make written representations to the Local Health Board within 28 days of the date of the notification under sub-paragraph (b) (“the specified period”);
  - (e) the opportunity to make representations at an oral hearing before the Local Health Board within the specified period if the qualified practitioner requests one.
- (2) If the qualified practitioner requests an oral hearing, the hearing must take place within the specified period and before the Local Health Board reaches its decision.
- (3) If the qualified practitioner makes written representations or an oral hearing takes place, the Local Health Board must take into account any representations made before it reaches its decision.
- (4) The Local Health Board must notify the qualified practitioner of its decision and the reasons for it (including any facts relied upon) within 7 days beginning with the day its decision is made.
- (5) When the Local Health Board notifies the qualified practitioner under paragraph (4) it must, where applicable, also inform the qualified practitioner—
- (a) of any right of appeal under regulation 28;
  - (b) that the qualified practitioner has 28 days beginning with the date the Local Health Board gave notice of the decision to exercise that right;
  - (c) how to exercise that right of appeal.

### **Review periods for national disqualification**

- 30.**—(1) If on making a decision to impose a national disqualification, the First-tier Tribunal states that it is of the opinion that the criminal or professional conduct of the optometrist or ophthalmic medical practitioner is such that there is no realistic prospect of a further review being successful if held within the period specified in section 115(8)(a) of the Act, the reference to “two years” in that provision must be read as a reference to 5 years.
- (2) If on the last review by the First-tier Tribunal of a national disqualification, the optometrist or ophthalmic medical practitioner was unsuccessful, and the First-tier Tribunal 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 3 years beginning with the date of its decision on that review, the reference to “one year” in section 115(8)(b) of the Act must be read as a reference to 3 years.
- (3) If the First-tier Tribunal states that it is of the opinion that because a criminal conviction considered by the First-tier Tribunal in reaching its decision has been quashed or the penalty reduced on appeal, there is a need for an immediate review, the references to “two years” and “one year” in section 115(8) of the Act must be read as references to the period that has already elapsed.
- (4) If the First-tier Tribunal 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, the references to “two years” and “one year” in section 115(8) of the Act must be read as references to the period that has already elapsed.

## **PART 5**

### **Arrangements with qualified practitioners and payment**

#### **The Statement**

- 31.**—(1) In these Regulations, references to “the Statement” are references to a determination by the Welsh Ministers, under section 76 of the Act, as to the remuneration to be paid to those who provide general ophthalmic services.
- (2) The Welsh Ministers must publish the Statement.

(3) Subject to sub-paragraph (4), the Statement may provide that it has effect in relation to remuneration in respect of a period beginning on or after a date specified in the Statement, which may be the date of the Statement or an earlier or later date.

(4) The Statement may provide for payments to be paid in respect of a period beginning with a date earlier than the date of the Statement only if doing so is not detrimental to the persons to whose remuneration it relates.

(5) Where the Statement does not specify a date, it has effect in relation to remuneration in respect of a period beginning on the date the Statement is published.

### **Arrangements for the provision of primary ophthalmic services**

**32.** A Local Health Board's arrangements for the provision of primary ophthalmic services must incorporate—

- (a) the terms of service,
- (b) the Statement (in accordance with which the Local Health Board is required to make payments to contractors for the provision of general ophthalmic services), and
- (c) any directions given by the Welsh Ministers under section 12(3) of the Act (functions of Local Health Boards) relating to remuneration for the provision of eye examination services or compliance with other provisions of the terms of service (in accordance with which the Local Health Board is required to make payments to contractors) (collectively, the "fee directions").

### **Payments for partial services**

**33.—**(1) A contractor who is unable to complete for a patient the general ophthalmic services or eye examination services which the contractor has undertaken to provide must inform the Local Health Board accordingly in writing.

(2) If the Local Health Board is satisfied that the inability to complete the general ophthalmic services or eye examinations services is due to a reasonable cause, it must make payment in accordance with the Statement or relevant fee directions (as appropriate) to the contractor for such part of those services as the contractor has provided.

### **Payments to suspended qualified practitioners**

**34.—**(1) A Local Health Board must make payments to, or in respect of, qualified practitioners who have been suspended from its combined list under the Act or under regulation 23 in accordance with a determination of the Welsh Ministers in relation to such payments.

(2) The Welsh Ministers must—

- (a) make the determination in accordance with paragraph (3) after consultation with a body appearing to them to be representative of persons to whose remuneration the determination would relate and such other persons as they consider appropriate, and
- (b) publish that determination with the Statement.

(3) Subject to paragraphs (4) and (5), the Welsh Ministers' determination must be such as to secure that, as far as reasonably practicable, the suspended qualified practitioner receives payments at a rate corresponding to the remuneration of that qualified practitioner for primary ophthalmic services during the 12 months ending with the qualified practitioner's suspension.

(4) The Welsh Ministers' determination may include provision that payments in accordance with the determination must not exceed a specified amount in any specified period.

(5) The determination must provide for a deduction to take account of any payments which the suspended qualified practitioner receives for providing primary ophthalmic services otherwise than as a principal.

(6) Determinations may be varied or revoked by subsequent determinations.

(7) Regulation 35(2) to (5) applies to payments made under this regulation as it applies to payments made under that regulation.

### **Overpayments**

**35.**—(1) Where—

- (a) a Local Health Board has made a payment to a patient under regulation 7(6) in respect of a sight test, and
- (b) the amount paid exceeds the fee payable to the contractor for general ophthalmic services set out in the Statement,

the Local Health Board must deduct the excess from remuneration otherwise payable to the contractor.

(2) Paragraphs (3) to (5) apply where a Local Health Board considers that it has made an overpayment for primary ophthalmic services to a contractor (whether in error or otherwise).

(3) The Local Health Board must, except to the extent that the Welsh Ministers on the application of the Local Health Board direct otherwise, inform the contractor of that fact.

(4) If the contractor admits the overpayment, the Local Health Board may recover the amount overpaid by a deduction from the contractor's remuneration or in some other manner.

(5) If the contractor does not admit the overpayment—

- (a) the Local Health Board may refer the matter under regulation 5(1) of the National Health Service (Service Committees and Tribunal) Regulations 1992<sup>(26)</sup> for investigation, and
- (b) if the Local Health Board, or the Welsh Ministers on appeal, decide that there has been an overpayment, the amount overpaid will be recoverable by a deduction from the contractor's remuneration or in some other manner.

(6) Recovery of an overpayment under this regulation is without prejudice to the investigation of an alleged breach of the terms of service.

## **PART 6**

### **Miscellaneous**

#### **Disclosure of information**

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

- (a) the Welsh Ministers;
- (b) any other Local Health Board or equivalent body, which to its knowledge—
  - (i) has a qualified practitioner, or a body corporate of which the qualified practitioner is a director, to whom that information relates included in any of its primary care lists or equivalent lists,

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(26) S.I. 1992/664, amended by S.I. 2002/2469; there are other amending instruments but none is relevant to these Regulations.



- (ii) is considering an application from such a qualified practitioner, or a body corporate of which the qualified practitioner is known to be a director, for inclusion in any of its primary care lists or equivalent lists, or
- (iii) has in its area any place where the qualified practitioner provides or assists in the provision of primary ophthalmic services;
- (c) the Secretary of State;
- (d) the Scottish Ministers;
- (e) the Northern Ireland Executive;
- (f) the General Medical Council, General Optical Council or any other licensing or regulatory body;
- (g) NHS Resolution;
- (h) any organisation or employer that, to the knowledge of the Local Health Board, employs or uses any of the services of the qualified practitioner, to whom that information relates, in a professional capacity;
- (i) any partnership, any of whose members provide or assist in the provision of primary ophthalmic services and of which, to the knowledge of the Local Health Board, the qualified practitioner is a member or that is considering inviting the qualified practitioner to become a member;
- (j) where an allegation of fraud is being considered, the NHS Counter Fraud Authority.

(2) The Local Health Board must disclose to the Welsh Ministers information supplied to it or acquired by it pursuant to these Regulations, as the Welsh Ministers may request.

### **Publication of information**

**37.**—(1) The Local Health Board must make available for inspection at its offices, and at such other places in its area as appear to the Local Health Board to be convenient for informing any person interested, copies of—

- (a) these Regulations, and
- (b) the Statement.

(2) The Local Health Board is not required to make available copies of both documents referred to in paragraph (1) at every place at which it makes available copies of either of them.

### **Service of documents on contractors**

**38.**—(1) Any document which is required or authorised under these Regulations to be given to a contractor may be given by—

- (a) delivering it to them, or
- (b) sending it addressed to them at—
  - (i) any address notified by the contractor to the Local Health Board for inclusion in the ophthalmic list as a place at which the person has undertaken to provide ophthalmic services, or
  - (ii) in the case of a mobile practice, the address notified to the Local Health Board as the address to which correspondence may be sent.

(2) In paragraph (1), “mobile practice” has the meaning given in Schedule 3.

## PART 7

### Consequential, revocation, transitional and saving provisions

#### Consequential amendments to primary legislation

**39.** The provisions listed in Schedule 5 are amended in relation to Wales as set out in that Schedule.

#### Minor and consequential amendments to secondary legislation

**40.** The provisions listed in Schedule 6 are amended in relation to Wales as set out in that Schedule.

#### Revocation provisions

**41.** Subject to the savings in regulation 42, the regulations listed in Schedule 7 are revoked in relation to Wales as set out in that Schedule.

#### Savings and transitional provisions

**42.—(1)** Where—

- (a) general ophthalmic services have been provided under arrangements made in accordance with the 1986 Regulations, but
- (b) payments for those services have not been made at the coming into force of these Regulations,

the Local Health Board must make payments for those services in accordance with the 1986 Regulations, which are saved for that purpose.

(2) A Local Health Board's ophthalmic list is deemed to include, for the relevant transitional period, any person whose name was included in the ophthalmic list of that Local Health Board kept under regulation 6 of the 1986 Regulations (ophthalmic list) immediately before the commencement date ("the previous ophthalmic list"), together with all the information relating to that person which is contained in the previous ophthalmic list.

(3) A Local Health Board's supplementary list is deemed to include, for the relevant transitional period, any person whose name was included in the supplementary list of that Local Health Board kept under regulation 3 of the 2006 Regulations (supplementary list) immediately before the commencement date ("the previous supplementary list"), together with all the information relating to that person which is contained in the previous supplementary list.

(4) A person who is deemed to be included in a Local Health Board's ophthalmic or supplementary list under paragraph (2) or (3), respectively, may at any time in the relevant transitional period—

- (a) provide general ophthalmic services or assist in the provision of those services (as the case may be);
- (b) provide eye examination services or assist in the provision of those services (as the case may be) if they are accredited to do so.

(5) Paragraph (7) applies if, before the end of the compliance period, a person who is deemed to be included in a Local Health Board's ophthalmic list provides the following to that Local Health Board—

- (a) evidence that they are qualified to provide the eye examination services, except in the case of a corporate optician;

- (b) an undertaking to provide primary ophthalmic services in the Local Health Board’s area;
  - (c) an undertaking to comply with the terms of service set out in Schedule 4.
- (6) Paragraph (7) applies if, before the end of the compliance period, a person who is deemed to be included in a Local Health Board’s supplementary list provides the following to that Local Health Board—
- (a) evidence that they are qualified to provide the eye examination services;
  - (b) an undertaking not to assist in the provision of primary ophthalmic services in the area of another Local Health Board or equivalent body from whose combined list the qualified practitioner has been removed, except where that removal was at the qualified practitioner’s request or in accordance with regulation 17(3)(e), without the consent of that Local Health Board or equivalent body.
- (7) Where this paragraph applies—
- (a) the person is treated for the purposes of these Regulations as having applied to the Local Health Board for inclusion in the Local Health Board’s ophthalmic or supplementary list (as appropriate) and been approved by that Local Health Board under regulation 13;
  - (b) the Local Health Board must notify the person that they have been included in the relevant list.
- (8) In this regulation, “compliance period”, in relation to a person, means—
- (a) the period of 28 days beginning with the commencement date, or
  - (b) if the Local Health Board in whose list the person is deemed to be included considers that it is not reasonably practicable for the person to comply with paragraph (5) or (6) (as appropriate) before the end of that period, such longer period as may be specified by the Local Health Board.
- (9) In this regulation, “relevant transitional period”, in relation to a person, means the period—
- (a) beginning with the commencement date, and
  - (b) ending with the earlier of—
    - (i) the expiry of the compliance period in relation that person, and
    - (ii) the date on which the Local Health Board notifies the person that they have been included in the relevant list.
- (10) For the period beginning with the commencement date and ending with 31 March 2024, a person registered as a person undertaking training as an optometrist in the register maintained under section 8A of the Opticians Act 1989 (register of students) is treated, for the purposes of regulation 8(3) and paragraph 18 of Schedule 4, as if the person were a student optometrist included in a Local Health Board’s supplementary list.
- (11) Paragraph (12) applies where a Local Health Board has—
- (a) received an application for inclusion in its previous ophthalmic list or previous supplementary list, but
  - (b) not determined that application before the commencement date.
- (12) The Local Health Board must—
- (a) request the relevant evidence and undertakings set out in paragraph (5) or (6) (as appropriate), and
  - (b) following receipt of the relevant evidence and undertakings, determine the application in accordance with these Regulations.

(13) Any appeal or review started under the 1986 or 2006 Regulations which has not concluded at the commencement date must be conducted in accordance with the 1986 or 2006 Regulations (as appropriate), which are saved for those purposes.

(14) Subject to paragraphs (1) to (13), any action taken by or on behalf of a Local Health Board before the commencement date in relation to its previous ophthalmic list or previous supplementary list (or in relation to the persons or entries on those lists), has effect on and after the commencement date as if such action had been taken by that Local Health Board in relation to the relevant part of the combined list maintained by that Local Health Board on the commencement date or in relation to the persons or entries therein.

(15) Subject to paragraphs (1) to (13), any action taken by or on behalf of any other person before the commencement date in relation to the previous ophthalmic list or the previous supplementary list of a Local Health Board (or in relation to the persons or entries on those lists), has effect on and after the commencement date as if such action had been taken in relation to the relevant part of the combined list maintained by that Local Health Board on the commencement date or in relation to the persons or entries therein.

(16) For the purposes of this regulation—

“the 1986 Regulations” (“*Rheoliadau 1986*”) means the National Health Service (General Ophthalmic Services) Regulations 1986(27) (revoked by regulation 41 and Schedule 7);

“the 2006 Regulations” (“*Rheoliadau 2006*”) means the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services) (Amendment and Consequential Amendment) (Wales) Regulations 2006(28) (revoked by regulation 41 and Schedule 7).

27 September 2023

*Eluned Morgan*  
Minister for Health and Social Services, one of  
the Welsh Ministers

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(27) S.I. 1986/975, amended by S.I. 1996/705, S.I. 2002/1883 and S.I. 2006/181. There are other amending instruments but none is relevant to these Regulations. These Regulations were revoked in relation to England by S.I. 2008/1700.

(28) S.I. 2006/181 (W. 32).