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WELSH STATUTORY INSTRUMENTS

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**2023 No. 1053**

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

**PART 4**

Combined lists

**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.