WELSH STATUTORY INSTRUMENTS

2006 No. 181 (W.32)

NATIONAL HEALTH SERVICE, WALES

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

Made - - - -	*31 January 2006*
Coming into force, except	
for regulation 39(11)	*1 February 2006*
Regulation 39(11)	*1 August 2006*

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

Title, commencement and application

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

(**1**) 1977 c. 49 ("the 1977 Act); see section 128(1) as amended by the National Health Service and Community Care Act 1990, section 26(2)(g) and (i), for the definitions of "prescribed" and "regulations".
Section 38 was amended by the Health and Social Security Act 1984 (c. 48)("the 1984 Act"), section 1(3); the Health and Medicines Act 1988 (c. 49), section 13; by S.I.1985/39, article 7(11); the Health Authorities Act 1995 (c. 17) ("the 1995 Act") section 2(1) and paragraphs 1 and 27 of the Schedule; and by the National Health Service Reform and Health Care Professions Act 2002 (c. 17) ("the 2002 Act"), section 2(5) and paragraphs 1 and 11 of Schedule 2.
Section 39 was amended by the 1984 Act, section 1 and paragraph 1 of Schedule 1 and Schedule 8; the 1995 Act, section 2 and paragraph 28 of Schedule 1; the Health Act 1999 (c. 8) ("the 1999 Act"), section 9(4); by the Health and Social Care Act 2001 (c. 15) ("the 2001 Act), sections 20 and 23; and by the 2002 Act, section 2(5) and paragraphs 1 and 12 of Schedule 2.
Sections 43ZA and 43D were inserted by the 2001 Act, sections 21 and 24.
Sections 49F, 49I, 49L, 49M, 49N, 49P and 49Q were inserted by the 2001 Act, section 25.
Section 126(4) was amended by the 1990 Act, section 65(2) and by paragraph 37(6) to Schedule 4 to the 1999 Act and by the 2001 Act, section 67 and paragraph 5(13)(b) to Schedule 5.
The functions of the Secretary of State under sections 38, 39 and 126(4) were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, S.I.1999/672, article 2 and Schedule 1 as amended by the 1999 Act, section 66(5); by the 2001 Act, section 68(1), by the 2002 Act, section 40(1) and by the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), section 1971(1).

(**2**) 2001 c. 15.

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

(2) Regulation 39(11) comes into force on 1 August 2006.

(3) These Regulations apply in relation to Wales.

PART 1

Supplementary List

Interpretation

2.—(1) In this Part—

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

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

"director" ("*cyfarwyddwr*") means—

(a) a director of a body corporate; or

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

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

"equivalent body"("*corff 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;

(d) in relation to any time prior to 1 October 2002, a Health Authority in England; or

(e) in relation to any time prior to 1 April 2003, a Health Authority in Wales;

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

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

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

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

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

(**3**) S.I.2001/3744
(**4**) S.I.2002/1920

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

"list" ("*rhestr*"), unless the context otherwise requires, means—

(a) a list referred to in section 49N(1)(a) to (c) ;

(b) a list of persons undertaking to provide general medical services prepared in accordance with regulations under section 29, as the list existed on or before 31 March 2004;

(c) a list of persons approved by a Local Health Board for the purpose of assisting in the provision of general medical services prepared in accordance with regulations under section 43D(1) as the list existed on or before 31 March 2004; or

(d) a services list referred to in section 8ZA(1)(a) of the Primary Care Act as the list existed on or before 31 March 2004;

"a national disqualification" ("*anghymwysiad cenedlaethol*") means a decision—

(a) made by the FHSAA to nationally disqualify a ophthalmic medical practitioner or optician under section 49N;

(b) to nationally disqualify an ophthalmic medical practitioner or optician under provisions in force in Scotland or Northern Ireland corresponding to section 49N; or

(c) by the Tribunal, which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4) of the Abolition of the Tribunal Regulations, or regulation 6(4) of the Abolition of the Tribunal (Wales) Regulations;

"the NCAA" means the National Clinical Assessment Authority;

"the NHS Counter Fraud and Security Management Service" ("*Gwasanaeth Gwrth Dwyll a Rheoli Diogelwch y Gwasanaeth Iechyd Gwladol*") means the body with responsibility for the policy and operational matters relating to the prevention, detection and investigation of fraud or corruption and the management of security in the National Health Service, established by the Counter Fraud and Security Management Service Establishment and Constitution Order 2002(**5**);

"notice" ("*hysbysiad*") means an notice in writing (including electronic) and "notify" shall be construed accordingly;

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

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

"ophthalmic medical practitioner" ("*ymarferydd meddygol offthalmig*") means a registered medical practitioner, whose qualifications have, in accordance with regulations 3, 4 or 5 of the Ophthalmic Regulations, been approved as prescribed qualifications;

"Ophthalmic Regulations" ("*Rheoliadau Offthalmig*") means the National Health Service (General Ophthalmic Services) Regulations 1986(**7**);

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

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

(**5**) S.I.2002/3039. The NHS Counter Fraud and Security Management Service replaces the National Health Service Counter Fraud Service.
(**6**) Regulation 6 was amended by S.I.2001/1423 (W.98) and S.I.2002/1883 (W.192)
(**7**) S.I.1986/975
(**8**) 1989 c. 44

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

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

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

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

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

"the register" ("*gofrestr*"), except where the context otherwise requires, means in relation to an ophthalmic medical practitioner, a register maintained by the General Medical Council or, in relation to an optician, a register maintained by the General Optical Council;

"suspended" ("*atal dros dro*") means—

(a) suspended by a Local Health Board or equivalent body under section 49I or 49J, or regulations made under section 28DA or 43D or under section 8ZA of the Primary Care Act(**10**);

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

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

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

(2) All references in this Part to sections are to sections of the National Health Service Act 1977, except where specified otherwise.

Supplementary List

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

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

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

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

(**9**) 1997 c. 46
(**10**) Section 8ZA was inserted by the 2001 Act, section 26(2) and amended by the 2002 Act, Schedule 3, paragraph 3.
(**11**) Section 46 was revoked by the 2001 Act, section 67 and Schedule 5, paragraph 5, and Schedule 6, Part 1.
(**12**) See S.I.2001/3738, article 2(5) and (6)(b), which sets out the prescribed cases for England and S.I.2002/1919, article 2(2) and (3)(b), which sets out the prescribed cases for Wales.

(a) full name;

(b) professional registration number, and

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

(ii) prefixed to that number, the initials SOL;

(c) date of birth, where the practitioner has given consent, or if consent is not given, the date of the practitioner's first registration in the register; and

(d) date when his or her name was first included in the supplementary list.

(5) The supplementary list must be available for public inspection.

Application for inclusion in the supplementary list

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

(2) The practitioner must provide the following information—

(a) full name;

(b) sex;

(c) date of birth;

(d) private address and telephone number;

(e) details of qualifications and where they were obtained;

(f) a declaration that he or she is a fully registered ophthalmic medical practitioner or optician, included in the register;

(g) professional registration number and the date of first registration in the register;

(h) chronological details of professional experience (including the starting and finishing dates of each appointment together with an explanation of any gaps between appointments), with any additional supporting particulars, and an explanation of why he or she was dismissed from any post;

(i) names and addresses of two referees, who are willing to provide references in respect of two recent posts (which may include any current post) as an ophthalmic medical practitioner or optician, which lasted for at least three months without a significant break, and where this is not possible, a full explanation and the names and addresses of alternative referees;

(j) whether the practitioner has any outstanding application, including a deferred application, to be included in a list or an equivalent list, and if so, particulars of that application;

(k) details of any Local Health Board or equivalent list from which the practitioner has been removed or contingently removed, or to which the practitioner has been refused admission or in which he or she has been conditionally included, with an explanation as to why;

(l) if the practitioner is the director of any body corporate that is included in any list or equivalent list, or which has an outstanding application (including a deferred application) for inclusion in such a list, the name and the address of the registered office of that body and details of the Local Health Board or equivalent body concerned; and

(m) where the practitioner is, or was in the preceding six months, or was at the time of the originating events, a director of a body corporate, details of any list or equivalent