WELSH STATUTORY INSTRUMENTS

2002 No. 1896 (W.197)

NATIONAL HEALTH SERVICE,WALES

The National Health Service (General Medical Services) (Amendment) (Wales) (No. 2) Regulations 2002

Made - - - -	*18th July 2002*
Coming into force - -	*26th August 2002*

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 29, 29A, 29B, 43ZA, 49F, 49I, 49L, 49M, 49N, 49O, 49P, 49Q, 49R, 65 and 126(4) of the National Health Service Act 1977(**1**)hereby makes the following Regulations:

Citation, commencement, interpretation and application

1.—(1) These Regulations may be cited as the National Health Service (General Medical Services) (Amendment) (Wales) (No. 2) Regulations 2002 and shall come into force on 26th August2002.

(2) In these Regulations "the principal Regulations" means the National Health Service (General Medical Services) Regulations 1992(**2**).

(3) The principal Regulations shall be amended in accordance with the following provisions of these Regulations.

(4) All references in these Regulations to sections are to sections of the National Health Service Act 1977 except where specified otherwise.

(5) These Regulations extend to Wales only.

(**1**) 1977 c. 49; *see* section 128(1) as amended by the National Health Service and Community Care Act 1990 (c. 19), section 26(2)(g) and (i), for the definitions of "prescribed" and "regulations". Section 29 was extended by the Health and Medicines Act 1988 (c. 49), section 17; and amended by the Health Services Act 1980 (c. 53), sections 1 and 7 and Schedule 1, paragraph 42(b); by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 6, paragraph 2; by the Medical Act 1983 (c. 54), section 56(1) and Schedule 5, paragraph 16(a); by S.I. 1985/39, article 7(3); by the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 18; and by the National Health Service (Primary Care) Act 1997 (c. 46) ("the 1997 Act"), Schedule 2, paragraph 8. Sections 29A and 29B were inserted by the 1997 Act, section 32, and amended by the Health and Social Care Act 2001(c. 15) ("the 2001 Act"), section 20. Section 43ZA was inserted by the 2001 Act, section 21. Sections 49F to 49R were inserted by the 2001 Act, section 25. Section 126(4) was amended by the 1990 Act, section 65(2); and by the 1999 Act, Schedule 4, paragraph 37(6). The functions of the Secretary of State under sections 29, 29A, 29B and 126(4) of the 1977 Act are transferred to the National Assembly for Wales under article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672, as amended by the 1999 Act, section 66(5); section 68 of the 2001 Act provides that Schedule 1 shall be construed so as to include the amendments by that Act to the 1977 Act which are sections 43ZA and 43F to 43R.

(**2**) S.I. 1992/635.

Amendment of regulation 2

2.—(1) In regulation 2 (interpretation)—

(a) insert the following definitions in the appropriate alphabetical positions—

""Abolition of the Tribunal Regulations" means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002;";(**3**)

""director" 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" means any employment whether paid or unpaid and whether under a contract for services or a contract of service, and "employed" and "employer" shall be construed accordingly;";

""equivalent body" means a Health Authority in England, a Health Board or an NHS trust in Scotland or a Health and Social Services Board in Northern Ireland;";

""equivalent lists" means lists kept by an equivalent body;";

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

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

""licensing or regulatory body" means the body that licenses or regulates any profession of which the doctor is or has been a member;";

""lists" means lists referred to in section 49N(1)(a) to (c);";

""Medical Supplementary List" means a list prepared by a Health Authority in accordance with section 43D of the Act of doctors approved by the Health Authority for the purpose of assisting in the provision of general medical services;";

""a national disqualification" means—

(a) a decision made by the FHSAA in relation to a doctor under section 49N of the Act,

(b) a decision under provisions in force in Scotland or Northern Ireland corresponding to section 49N of the Act,

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

(d) a decision made by the Tribunal;"

""the NCAA" means the National Clinical Assessment Authority established as a Special Health Authority under section 11 of the Act;";

""the National Health Service Counter Fraud Service" means the service provided by the Secretary of State to deal with inquiries and investigations in relation to any allegations of fraud or corruption in the health service;";

(**3**) S.I. 2002/1920.

""originating events" means the events that gave rise to the conviction, investigation, proceedings, suspension, refusal to admit, conditional inclusion, removal or contingent removal that took place;";

""professional conduct" includes matters relating to both professional conduct and professional performance;";

""professional registration number" means the number against the doctor's name in the register maintained by the General Medical council;";

""suspended" means—

(i) suspended by a Health Authority under sections 49I or 49J of the Act or under regulations made under sections 28DA or 43D of the Act, or section 8ZA of the 1997 Act,

(ii) in relation to England, suspended by the Tribunal before 14th December 2001,

(iii) in relation to Scotland or Northern Ireland, suspended under provisions in force corresponding to those in section 49I or 49J of the Act,

and shall be treated as including a case where a person is treated as suspended by a Health Authority in Wales by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations;

and "suspends" and "suspension" shall be construed accordingly;",

(b) for the definition of "the Tribunal" substitute ""the Tribunal" means the Tribunal constituted under section 46 of the Act;"; and

(c) omit the definitions of "FHSA", "Family Health Services Authority" and "suspended by direction of the Tribunal";".

(2) In the provisions of the principal Regulations listed in the Schedule to these Regulations—

(a) for "FHSA" wherever it appears substitute "Health Authority",

(b) for "An" wherever it appears immediately preceding "FHSAA" substitute "A", and

(c) for "an" wherever it appears immediately preceding "FHSAA" substitute "a".

Amendment of regulation 6

3. In regulation 6 (amendment or withdrawal from the medical list), for paragraph (6) substitute —

"(6) Where a Health Authority is investigating a doctor—

(a) for the purpose of deciding whether or not to exercise its powers under section 49F, 49G or 49I of the Act;

(b) in order to see whether the doctor has failed to comply with a condition imposed on the doctor's inclusion under regulation 18M so as to justify the removal of the doctor from the list; or

(c) who has been suspended under section 49I(1)(a) of the Act,

the doctor may not withdraw from any list kept by any Health Authority in which the doctor is included, except where the National Assembly for Wales has given its consent, until the matter has been finally determined by the Health Authority;

(b) where a Health Authority has decided to remove a doctor from a list under section 49F or 49G, or contingently remove under section 49G, or remove the doctor for a breach of a condition imposed on inclusion under regulation 18M, but has not yet given effect to its decision, the doctor may not withdraw from any

list kept by any Health Authority in which the doctor is included, except where the National Assembly for Wales has given its consent; and

(c) where a Health Authority has suspended a doctor under section 49I(1)(b), the doctor may not withdraw from any list kept by any Health Authority in which the doctor is included, except where the National Assembly for Wales has given its consent, until the decision of the relevant court or body is known and the matter has been considered and finally determined by the Health Authority.".

Amendment of regulation 7

4. In regulation 7 (removal from the medical list)—

(a) at the end of paragraph (1) omit sub-paragraphs (d) and (e),

(b) in paragraph (3)(a) after "as mentioned in section 29(8) of the Act (suspension by direction or order of the Health committee or by interim order of the Preliminary Proceedings Committee)" add "or in section 41A of the Medical Act 1983(**4**) (interim orders committee).";

(c) for paragraph (3)(c), substitute—

"(c) any period during which the doctor provided no medical services by reason only that the doctor was suspended from the medical list.".

Insertion of new regulations

5. After regulation 7 (removal from the medical list) insert the following new regulations—

"**Supplementary matters relating to removal**

7A. In addition to the services covered by the definition of "health scheme" in section 49F(8) , the following shall also be health schemes for the purposes of sub-section (3) of that section—

(a) health services, including medical and surgical treatment, provided by Her Majesty's Forces;

(b) Port Health Authorities constituted under the Public Health (Control of Disease) Act 1984(**5**);

(c) health services provided to a prisoner in the care of the medical officer or such other officer of a prison appointed for the purposes of section 7 of the Prison Act 1952(**6**);

(d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

Criteria for decisions on removal

7B.—(1) Where a Health Authority is considering whether to remove a doctor under section 49F(4) of the Act (unsuitablility case), it shall consider the information supplied under paragraph 36A(1), (2), (4) and (5) of Schedule 2, and must apply the criteria set out in paragraph (2).

(2) The criteria referred to in paragraph (1) are—

(**4**) 1983 c. 54
(**5**) 1984 c. 22.
(**6**) 1952 c. 52.

(a) the nature of any criminal offence or investigation or incident;

(b) the length of time since any such offence or incident, conviction or investigation;

(c) whether there are other criminal offences to be considered;

(d) the penalty imposed on any criminal conviction or the outcome of any investigation;

(e) the relevance of any criminal offence or investigation into professional conduct to the provision by the doctor of general medical services and the likely risk to patients;

(f) whether any criminal offence was a sexual offence to which Part I of the Sexual Offences Act 1997(**7**) applies;

(g) whether the doctor has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from other Health Authority or equivalent lists, and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such action; and

(h) whether the doctor is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which was refused admittance to, conditionally included in, removed or contingently removed from other Health Authority lists, and if so, the facts relating to the mater which led to such action and the reasons given by the Health Authority or equivalent body for such action,

(i) whether the doctor is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which is currently suspended from such a list, and if so, the facts relating to the matter which led to the suspension and the reasons given by the Health Authority or equivalent body for the suspension.

(3) Where a Health Authority is considering removal of a doctor under section 49F(3) of the Act (fraud case), it shall consider the information from the doctor supplied under paragraph 36A(1), (2), (4) and (5) of Schedule 2, and must apply the criteria set out in paragraph (4).

(4) The criteria referred to in paragraph (3) are—

(a) the nature of any fraud case;

(b) the length of time since the last incident of fraud (if any) occurred, and since any investigation into that incident of fraud was concluded;

(c) whether there are other fraud cases or other criminal offences to be considered;

(d) any action taken by licensing, regulatory body or other body as a result of any such incident;

(e) the relevance of any investigation into the incident of fraud to the provision by the doctor of general medical services and the likely risk to patients or to public finances;

(f) whether the doctor has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from other Health Authority lists or equivalent lists, and if so, the facts relating to the matter which led to such action and the reasons given by the Health Authority or equivalent body for such actions; and

(**7**) 1997 c. 51.