WELSH STATUTORY INSTRUMENTS

2002 No. 1883 (W.192)

NATIONAL HEALTH SERVICE, WALES

National Health Service (General Ophthalmic Services) (Amendment) (Wales) 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 38, 39, 43ZA, 49F, 49I, 49L, 49M, 49N, 49O, 49P, 49Q, 49R and 126(4) of the National Health Service Act 1977(**1**) and section 65 of the Health and Social Care Act 2001(**2**), and all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the National Health Service (General Ophthalmic Services) (Amendment) (Wales) Regulations 2002 and shall come into force on 26th August 2002.

(2) These Regulations extend to Wales only.

(3) In these Regulations "the principal Regulations" means the National Health Service (General Ophthalmic Services) Regulations 1986(**3**).

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

(**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 38 was amended by the Health Services Act 1980 (c. 53) ("the Health Services Act"), section 1 and Schedule 1, paragraph 51; by the Health and Social Security Act 1984 (c. 48) ("the Health and Social Security Act"), section 1(3); by S.I. 1985/39, article 7(11); by the Health and Medicines Act 1988 (c. 49) ("the Health and Medicines Act"), section 13(1); and by the Health Authorities Act 1995 (c. 17) ("the Health Authorities Act"), Schedule 1, paragraph 27. Section 39 was extended by the Health and Medicines Act, section 17; and amended by the Health Services Act, section 1 and Schedule 1, paragraph 52; by the Health and Social Security Act, section 1(4), Schedule 1, Part I, paragraph 1 and Schedule 8, Part I; by S.I. 1985/39, article 7(12); by the Health Authorities Act, Schedule 1, paragraph 28; by the Health Act 1999 (c. 8), section 9(4) and the Health and Social Care Act 2001 (c. 15), ("the 2001 Act") section 20(5) and 23(4). As regards Wales, the functions of the Secretary of State under sections 38, 39 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; section 68 of the 2001 Act provides that Schedule 1 shall be construed so as to include the amendments made by that Act to the 1977 Act, which are sections 43ZA and 49F to 49R; those Regulations therefore extend only to Wales.

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

(**3**) S.I. 1986/975; relevant amending Regulations are 1988/486, 1989/395, 1990/1051, 1991/583, 1992/404, 1995/558, 1996/705, 1996/2320, 1999/2562, 1999/2841 and 2001/414.

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(**4**);";

""corresponding decision" means a decision of the Tribunal in England, Scotland and Northern Ireland to impose a local or national disqualification on an ophthalmic medical practitioner or optician;";

""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 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(**5**);";

""fraud case" means a case where a person satisfies the second condition for removal from the ophthalmic 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 a body such as the General Medical Council or the General Optical Council that licenses or regulates any profession of which the ophthalmic medical practitioner or optician is or has been a member and includes an approved training institution for ophthalmic medical practitioners or opticians;";

""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 purposes of assisting in the provision of General Medical Services;";

""a national disqualification" means—

(a) a decision made by the FHSAA in relation to an ophthalmic medical practitioner or optician 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) of the Abolition of the Tribunal Regulations,

(d) a decision by the Tribunal";

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

(**5**) Section 49S was inserted by the Health and Social Care Act 2001 (c. 15), section 27(1).

""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(**6**);";

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

""professional registration number" means the number against the ophthalmic medical practitioner's or optician's name in the register maintained by the General Medical Council or the General Optical Council;";

""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;";

""suspended" means—

(a) 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 National Health Service (Primary Care) Act 1997(**7**),

(b) suspended by the Tribunal,

(c) 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(**8**) for England and Wales;"; and

(c) omit the definitions of "Committee" and "suspended by direction of the Tribunal".

(2) In the provisions of the principal Regulations listed in the Schedule to these Regulations, for "the Committee" wherever it appears substitute "Health Authority".

Amendment of regulation 7

3. In regulation 7(1) (application for inclusion in ophthalmic list) for sub-paragraph (c) substitute —

"(c) the information and undertakings set out in Schedule 1A.".

Insertion of new regulations

4. —After regulation 7 (application for inclusion in ophthalmic list) insert—

"**Grounds for refusal**

7A.—(1) The grounds on which a Health Authority may refuse to include an ophthalmic medical practitioner or optician under regulation 7 are—

(a) that the Health Authority has considered the information provided under paragraph 7 of Schedule 1A and any other information in its possession in relation

(**6**) The National Health Service Counter Fraud Service may be contacted by writing to them at Hannibal House, Elephant and Castle, London SE1 6TE, or e-mailing them on DCFS@doh.gov.UK.
(**7**) 1997 c. 46.
(**8**) Section 46 was substituted by the Health Act 1999 c. 8.

to this application and considers the ophthalmic medical practitioner or optician is unsuitable to be included in the list;

(b) that having checked the information provided by the ophthalmic medical practitioner or optician in paragraphs 5 and 6 of Schedule 1A, the Health Authority is not satisfied with the information;

(c) that having contacted referees, in accordance with paragraph 9 of that Schedule the Health Authority is not satisfied with the information provided by the referees;

(d) that having checked with the National Health Service Counter Fraud Service for any facts that they consider relevant relating to past or current investigations into a fraud case involving the ophthalmic medical practitioner or optician, and having considered these and any fraud case relating to the ophthalmic medical practitioner or optician, the Health Authority considers these justify such refusal;

(e) that there are any grounds for the Health Authority to consider that admitting the ophthalmic medical practitioner or optician to the list would be prejudicial to the efficiency of the service which the ophthalmic medical practitioner or optician would undertake.

(2) The grounds on which a Health Authority must refuse to include an ophthalmic medical practitioner or optician are—

(a) where the ophthalmic medical practitioner or optician has been convicted in the United Kingdom of murder;

(b) where, after 30th July 2002, the ophthalmic medical practitioner or optician has been convicted in the United Kingdom of a criminal offence and sentenced to a term of imprisonment of over six months;

(c) where the ophthalmic medical practitioner or optician is the subject of a national disqualification;

(d) where the ophthalmic medical practitioner or optician has not updated his or her application in accordance with regulation 7B(4);

(e) where the ophthalmic medical practitioner or optician does not notify the Health Authority under regulation 7D(11) that the ophthalmic medical practitioner or optician wishes to be included in the list subject to the specified conditions.

(3) Where the Health Authority is considering refusal of an ophthalmic medical practitioner or optician under paragraph (1), it shall consider all facts which appear to it to be relevant and shall in particular take into consideration in relation to paragraph (1)(a), (b) and (d) above—

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

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

(c) whether there are other offences, incidents or investigations to be considered;

(d) any action or penalty imposed by any licensing, regulatory or other body, the police or the courts as a result of any such offence, incident or investigation;

(e) the relevance of any offence, investigation or incident to the provision by the ophthalmic medical practitioner or optician of general ophthalmic services and any likely risk to his or her patients or public finances;

(f) whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997(**9**) applies;

(**9**) 1997 c. 51.

(g) whether the ophthalmic medical practitioner or optician has been refused admittance to or conditionally included in, removed, contingently removed or is currently suspended from any of a Health Authority's lists or from 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 ophthalmic medical practitioner or optician was is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate which refused admittance to, conditionally included in, removed or contingently removed from other Health Authority lists or equivalent lists, or is currently suspended from such lists, and if so, the facts relating to the matter which led to such actions and the reasons given by the Health authority or equivalent body for such action.

(4) When the Health Authority takes into consideration the matters set out in paragraph (3), it shall consider the overall effect of all the matters being considered.

(5) When refusing an application from an ophthalmic medical practitioner or optician, the Health Authority shall notify the ophthalmic medical practitioner or optician of its decision and the reasons for it (including any facts relied upon) and of any right of appeal under regulation 7C.

Deferment of decision

7B.—(1) A Health Authority may defer consideration of a decision on an application by an ophthalmic medical practitioner or optician to be included in the ophthalmic list—

(a) where there are legal proceedings that are criminal proceedings in the United Kingdom, or where there are legal proceedings in respect of conduct which, had it occurred in the United Kingdom would constitute a criminal offence, and that if successful would be likely to lead to the removal of the ophthalmic medical practitioner or optician from the Health Authority list if the ophthalmic medical practitioner or optician had been included;

(b) where there are legal proceedings that are criminal proceedings in the United Kingdom against a body corporate of which the ophthalmic medical practitioner or optician is, has in the preceding six months been, or was at the time of the originating events a director, or where there are criminal proceedings in respect of conduct which, if it had occurred in the United Kingdom would constitute a criminal offence, and that if successful would be likely to lead to the removal of the ophthalmic medical practitioner or optician from the Health Authority list if the ophthalmic medical practitioner or optician had been included;

(c) where there is an investigation anywhere in the world by the ophthalmic medical practitioner's or optician's licensing or regulatory body or any other investigation (including one by another Health Authority or equivalent body) relating to the ophthalmic medical practitioner or optician in his or her professional capacity that if adverse would be likely to lead to the removal of the ophthalmic medical practitioner or optician from the Health Authority list if the ophthalmic medical practitioner or optician were to be included;

(d) where the ophthalmic medical practitioner or optician is suspended from any of the lists or equivalent lists;

(e) where a body corporate of which the ophthalmic medical practitioner or optician is, has in the preceding six months been, or was at the time of the originating events a director, is suspended from any of the lists or equivalent lists;