OFFERYNNAU STATUDOL CYMRU

2002 Rhif 1881 (Cy.190)

Y GWASANAETH IECHYD GWLADOL, CYMRU

Rheoliadau'r Gwasanaeth Iechyd Gwladol (Gwasanaethau Deintyddol Cyffredinol) (Diwygio) (Cymru) (Rhif 2) 2002

Wedi'u gwneud - -	*18 Gorffennaf 2002*
Yn dod i rym - -	*26 Awst 2002*

Mae Cynulliad Cenedlaethol Cymru, drwy arfer y pwerau a roddwyd iddo gan adrannau 15(1), 35(1), 36(1), (1A) a (4) i (8), 37(1), 43ZA, 49F, 49I, 49L, 49M, 49N, 49O, 49P, 49R a 126(4) o Ddeddf y Gwasanaeth Iechyd Gwladol 1977(**1**) ac adran 65 o Ddeddf Iechyd a Gofal Cymdeithasol 2001(**2**) drwy hyn yn gwneud y Rheoliadau canlynol:

Enwi, cychwyn, dehongli a hyd a lled

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau'r Gwasanaeth Iechyd Gwladol (Gwasanaethau Deintyddol Cyffredinol) (Diwygio) (Cymru) (Rhif 2) 2002 a deuant i rym ar 26 Awst 2002.

(2) Yn y Rheoliadau hyn—

(a) ystyr "y prif Reoliadau" ("*the principal Regulations*") yw Rheoliadau'r Gwasanaeth Iechyd Gwladol (Gwasanaethau Deintyddol Cyffredinol) 1992(**3**);

(**1**) 1977 p.49; *gweler* adran 128(1), fel y'i diwygiwyd gan Ddeddf y Gwasanaeth Iechyd Gwladol a Gofal Cymunedol 1990 (p.19) ("Deddf 1990"), adran 26(2)(g) ac (i); a chan Ddeddf Iechyd 1999 (p.8) ("Deddf 1999"), Atodlen 4, paragraff 38(2), ar gyfer y diffiniadau o "rhagnodedig" a "rheoliadau". Diwygiwyd adran 15(1) gan Ddeddf Iechyd a Nawdd Cymdeithasol 1984 (p.48) ("Deddf 1984"), adran 5(2); gan Ddeddf 1990, adran 12(1) a chan Ddeddf yr Awdurdodau Iechyd 1995 (p.17) ("Deddf 1995"), Atodlen 1, paragraff 6. Amnewidiwyd adran 35(I) gan O.S. 1985/39, erthygl 7(9), a'i diwygio gan Ddeddf 1995, Atodlen 1, paragraff 24. Rhifwyd adran 36(I) felly gan Ddeddf 1984, Atodlen 3, paragraff 5(1) a'i diwygio gan O.S. 1981/432, erthygl 3(3)(a); gan O.S. 1985/39, erthygl 7(10); gan Ddeddf Iechyd a Meddyginiaethau 1988 (p. 49), Atodlen 2, paragraff 4; gan Ddeddf 1990, adran 24 a chan Ddeddf 1995, Atodlen 1, paragraff 25(a). Mewnosodwyd adran 36(3) gan Ddeddf 1990, adran 24(3). Mewnosodwyd is-adrannau (1A) a (4) i (8) gan Ddeddf Iechyd a Gofal Cymdeithasol 2001 (p. 15) ("Deddf 2001"), adran 20(4). Diwygiwyd adran 37(I) (a rifwyd felly gan Ddeddf 1988), adran 12(2)) gan Ddeddf y Gwasanaeth Iechyd Gwaldol 1980 (p. 53), adran 1 ac Atodlen 1, paragraff 50; a addaswyd gan adran 12(1) o Ddeddf 1988 a'i diwygio gan y Ddeddf honno, Atodlen 3; a'i diwygio gan Ddeddf 1995, Atodlen 1, paragraff 26. Diwygiwyd adran 126(4) gan Ddeddf 1990, adran 65(2); a chan Ddeddf 1999, Atodlen 4, paragraff 37(6). Mewnosodwyd adran 43A gan Ddeddf 2001, adran 21. Mewnosodwyd adrannau 49F i 49R gan Ddeddf 2001, adran 25. Mewn perthynas â Chymru trosglwyddwyd swyddogaethau'r Ysgrifennydd Gwladol o dan adrannau 15, 35, 36 a 126(4) o Ddeddf 1977 i Gynulliad Cenedlaethol Cymru o dan Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672), erthygl 2 ac Atodlen 1; felly i Gymru yn unig y mae'r Rheoliadau hyn yn ymestyn.

(**2**) 2001 p.15.

(**3**) O.S. 1992/661; yr offerynnau diwygio perthnasol yw O.S. 1993/2209, 1993/3172, 1995/3092, 1996/704, 1996/2051, 1998/1648, 1998/2224, 2000/2459, 2001/289 a 2001/1746.

(b) oni bai fod y cyd-destun yn mynnu fel arall mae unrhyw gyfeiriad at reoliad neu Atodlen â rhif yn gyfeiriad at y rheoliad neu'r Atodlen sy'n dwyn y rhif hwnnw yn y prif Reoliadau.

(3) Mae'r Rheoliadau hyn yn gymwys i Gymru yn unig.

(4) Caiff y prif Reoliadau eu diwygio yn unol â darpariaethau canlynol y Rheoliadau hyn.

Diwygio rheoliad 2

2.—(1) Ym mharagraff (1) o reoliad 2 (dehongli)—

(a) mewnosodwch y diffiniadau canlynol yn eu lle priodol yn nhrefn yr wyddor—

""the Abolition of the Tribunal Regulations 2002" means the Abolition of the NHS Tribunal (Consequential Provisions) Regulations 2002(**4**);";

""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 Wales, 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 dental 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 dentist is or has been a member;";

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

""a national disqualification" means—

(a) a decision made by the FHSAA in relation to a dentist 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 2002,

(d) a decision of the Tribunal;";

""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**);";

""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 registration number" means the number against a dentist's name in the register maintained by the General Dental Council;";

(**4**) O.S. 2002/1920.
(**5**) Mewnosodwyd adran 49S gan Ddeddf Iechyd a Gwasanaethau Cymdeithasol 2001, adran 27(1).
(**6**) Gellir cysylltu â Gwasanaeth Gwrth-dwyll y Gwasanaeth Iechyd Gwladol drwy ysgrifennu atynt yn Hannibal House, Elephant and Castle, London SE1 6JE neu anfon e-bost at DCFS@doh.gov.uk.

""suspended" means—

(a) suspended by a Health Authority under section 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,

(b) in relation to Wales, 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 2002,

and "suspend" and "suspension" shall be construed accordingly;";

(b) yn lle'r diffiniad o "the Tribunal" rhowch ""the Tribunal" means the Tribunal constituted under section 46 of the Act(**7**) for Wales and England,";

(c) yn y diffiniad o "estimate", yn lle "an FHSA" rhowch "a Health Authority"; ac

(ch) hepgorwch y diffiniad "suspended by direction of the Tribunal".

(2) Ym mharagraff (2)(d) o reoliad 2—

(a) yn lle "FHSA" rhowch bob tro "Health Authority", a

(b) yn lle "an" bob tro y bydd yn ymddangos yn union cyn "FHSA" rhowch "a".

Diwygio rheoliad 4

3. Yn rheoliad 4(1) (rhestr ddeintyddol), ar ôl "in its locality" mewnosodwch "who are not subject to a national disqualification".

Diwygio rheoliad 5

4. Caiff rheoliad 5 (cais i gynnwys enw ar y rhestr ddeintyddol) ei ddiwygio fel a ganlyn—

(a) ym mharagraff (1) ar ôl "subject to paragraph (3)" mewnosodwch "and regulations 5ZA to 5ZD";

(b) yn lle paragraff (2) rhowch yn ei le—

"(2) Subject to paragraphs (3ZA), (3A) and (4) and to regulation 5ZB, a Health Authority shall determine an application made by a dentist under paragraph (1) within 21 days of their receiving all the information referred to in Part I of Schedule 2, including references from any referees, and where the Health Authority considers that the proposed practice premises should be inspected, they shall carry out that inspection within that 21 day period.";

(c) ar ôl paragraff (3A), mewnosodwch—

"(3ZA) The Health Authority must, before determining an application, check so far as practicable—

(a) the information provided by the dentist in accordance with paragraphs 5B, 11A and 14 of Schedule 2, and

(b) with the National Health Service Counter Fraud Service whether the dentist has any record of a fraud case.";

(c) in paragraph (4), for "the date of receipt of the application" substitute "the date of the Health Authority receiving all the information mentioned in paragraph (2)";

(**7**) Amnewidiwyd adran 46 gan Ddeddf Iechyd 1999 p.8.

(ch) ar ôl paragraff (4) ychwanegwch—

"(5) Where a Health Authority proposes to include a dentist on a list subject to conditions imposed under regulation 5ZD, the name of the dentist may be included on the list during the period for bringing an appeal to the FHSAA pursuant to that regulation, or if an appeal is brought, until such time as that appeal is decided, provided the dentist agrees to be bound by the condition imposed until the time for appeal has expired or his appeal is decided.".

Mewnosod rheoliad 5ZA i 5ZD newydd yn y prif Reoliadau

5. Ar ôl rheoliad 5 mewnosodwch y rheoliadau canlynol—

"**Grounds for refusal**

5ZA.—(1) The grounds on which a Health Authority may refuse to include a dentist in the dental list under regulation 5 are—

(a) that they have considered the declaration required by paragraph 5B of Schedule 2 and any other information in their possession in relation to the dentist's application and consider the dentist unsuitable to be included in the list;

(b) that having checked the information provided by the dentist under paragraph 5B of Schedule 2 they consider the dentist is unsuitable to be included in the list;

(c) that having contacted referees, they are not satisfied with the references given in accordance with paragraph 11A of Schedule 2;

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

(e) they consider that there are grounds to consider that admitting the dentist to the list would be prejudicial to the efficiency of the service which he would undertake.

(2) The grounds on which a Health Authority must refuse to include a dentist under regulation 5 are—

(a) where the dentist has been convicted in the United Kingdom of murder;

(b) where, after 30th July 2002, the dentist 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 dentist is subject to a national disqualification;

(d) where the dentist has not updated his application in accordance with regulation 5Z(b)(4);

(e) where the dentist does not notify the Health Authority under regulation 5ZD(11) that the dentist wishes to be included in the list subject to the specified conditions.

(3) Where the Health Authority are considering refusing to include a dentist in a list under paragraph (1), they shall consider all facts which appear to them to be relevant and shall in particular take into consideration in relation to paragraph (1)(a), (b) or (d) above—

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

(b) the length of time since the offence was committed or the incident occurred and since any conviction or investigation;

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

(d) any action or penalty imposed by any professional, 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 dentist of general dental services and any likely risk to patients or to public finances;

(f) whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997(**8**) applies;

(g) whether the dentist has been refused admission 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, what the facts were in those cases and the reasons given by the Health Authority or equivalent body involved.

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

(5) When the Health Authority refuse to include a dentist in the dental list they shall notify the dentist of their decision and the reasons for it (and any facts relied on) and of any right of appeal under regulation 5ZC against their decision.

Deferment of decision

5ZB.—(1) A Health Authority may defer a decision whether to include a dentist in a dental 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, if 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 dentist from the Health Authority list if the dentist had been included;

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

(c) where the dentist is suspended from any of the lists or equivalent lists;

(d) where the FHSAA is considering an appeal by the dentist against a decision of a Health Authority to refuse to include the dentist in their list, or to conditionally include in or to contingently remove from, or to remove from any list kept by a Health Authority and if that appeal is unsuccessful the Health Authority would be likely to remove the dentist from the Health Authority list if the dentist were to be included;

(e) where the dentist is being investigated by the National Health Service Counter Fraud Service in relation to any fraud case, where the result if adverse would be likely to lead to the removal of the dentist from the Health Authority list if he were to be included;

(f) where the FHSAA is considering an application from a Health Authority for a national disqualification of the dentist.

(2) A Health Authority may only defer consideration under paragraph (1) above until the outcome of the relevant events mentioned in that paragraph is known.

(**8**) 1997 p.51.