WELSH STATUTORY INSTRUMENTS

2002 No. 916 (W. 104)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (General Medical Services) (Amendment) (Wales) Regulations 2002

Made - - - -	*28 March 2002*
Coming into force - -	*1 April 2002*

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 29, 29A, 29B and 126(4) of the National Health Service Act 1977(**1**) and section 65 of the Health and Social Care Act 2001(**2**) hereby makes the following Regulations:

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the National Health Service (General Medical Services) (Amendment) (Wales) Regulations 2002 and shall come into force on 1st April 2002.

(2) These Regulations apply to Wales only.

(3) In these Regulations "the principal Regulations" ("*y prif Reoliadau*") means the National Health Service (General Medical Services) Regulations 1992 (**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) ("the 1990 Act"), 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. Section 29A was 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 29B was inserted by the 1997 Act , section 32, and amended by the 2001 Act, sections 15 and 20. Section 126(4) was amended by the 1990 Act, section 65(2); by the Health Act 999 (c.8), Schedule 4, paragraph 37(6) and by the 2001 Act, Schedule 5, paragraph 5(13)(b).
As regards Wales, the functions of the Secretary of State under section 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; section 68 of the 2001 Act provides that Sch 1 shall be construed so as to include the amendments made by that Act to the 1977 Act; these Regulations therefore apply only to Wales.

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

(**3**) S.I. 1992/635; relevant amending instruments are S.I. 1998/682, 1998/2838 and 2000/220 (the amendments made by these Regulations have effect in Wales by virtue of SI. 2000/1707, W114).

Amendment of regulation 2

2. In regulation 2(1) (interpretation), omit the definition of "Medical Practices Committee".

Amendment of Part II of the principal Regulations

3. In regulation 4 (medical list), in paragraphs (3) and (5)(f), for "by the Medical Practices Committee" in each place where those words occur substitute "by the Health Authority".

4.—(1) Regulation 5A (preferential right to be included in medical list) shall be amended in accordance with the following paragraphs—

(2) in paragraph (2)(a) for "the Medical Practices Committee" substitute "the Health Authority";

(3) in paragraph (2)(b), for "under section 33(4)(b) of the Act" substitute "under regulation 13(1)(c)";

(4) omit paragraph (4).

5. In regulation 6 (amendment of or withdrawal from the medical list), in paragraph (5) from "Where a Health Authority" to " and the Medical Practices Committee grants such variation," substitute "Where the Health Authority grants an application for the variation of a condition imposed pursuant to regulation 13(1)(b), ".

Amendment of Part III of the principal Regulations

6. Omit regulations 10 (Medical Practices Committee - appointment of members and tenure of office) and 11 (references and reports to the Medical Practices Committee by a Health Authority).

7. For regulation 12 (decisions of the Medical Practices Committee) substitute—

"Consideration of vacancies by Health Authorities

12.—(1) A Health Authority may consider at any time whether there is, or will be a vacancy for a doctor to provide general medical services in their area.

(2) A Health Authority must consider whether there is, or will be a vacancy for a doctor in their area if—

(a) it has been asked to do so by a doctor who provides general medical services in their area , or

(b) a doctor has died, or has withdrawn from, or been removed from the Health Authority's medical list.

(3) Where paragraph (2) applies and where a doctor's prospective patients are situated in the area of more than one Health Authority, any of those Health Authorities may—

(a) elect to consider separately whether there is a vacancy in respect of the prospective patients residing in their area, or

(b) agree to deal jointly with one or more other Health Authorities with prospective patients residing in their areas.

(4) In a case falling within paragraph (3)(b), the Health Authority in whose area reside the largest number of the prospective patients shall decide whether to declare a vacancy, and, if it does so, it shall proceed in accordance with regulation 13 .

(5) If a Health Authority is considering whether or not there is, or will be a vacancy, the Health Authority shall before reaching a decision—

(a) consider the matters set out in Part I of Schedule 3;

(b) obtain from any other Health Authority in whose area prospective patients reside, such information as it thinks necessary.

(6) In reaching their decision a Health Authority shall, in particular, take account of—

(a) the needs of persons in their area for personal medical services;

(b) any relevant financial considerations;

(c) the effect of creating a vacancy on any other Health Authority in whose area prospective patients reside;

(d) any services outside general medical services and personal medical services already provided by doctors in the area.

8.—(1) Regulation 13 (declaration of vacancies) shall be amended in accordance with the following paragraphs.

(2) In paragraph (1) for "If the Medical Practices Committee" to "in a locality" substitute "If a Health Authority decides that the number of doctors undertaking to provide general medical services in an area".

(3) For paragraph (1)(c) substitute—

"(c) may impose the condition that any doctor who is to fill a particular vacancy may provide general medical services only in such part of the area as the Health Authority may specify.".

(4) In paragraph (2)(e)(ii) from " as shall have been specified in" to the end, substitute "as the Health Authority may specify.".

(5) Omit paragraphs (3) and (4).

(6) After paragraph (4) add—

"(5) In a case to which regulation 12(3)(b) applies, before deciding which of the conditions set out in paragraph (2) it is appropriate to specify, the Health Authority declaring the vacancy shall consult any Health Authority in whose area prospective patients reside.

(6) When a Health Authority declares a vacancy to which regulation 18A or 18B applies, the vacancy will automatically lapse by effluxion of time after a period of 12 months beginning with the date of the declaration of the vacancy.

(7) When a Health Authority declares a vacancy for a sole practitioner, it shall advertise the vacancy within three months of the declaration of the vacancy or such further period as may be agreed by the National Assembly for Wales.

(8) The Health Authority shall notify its decision in writing, giving reasons, to—

(a) the Local Medical Committee;

(b) any doctor who made a request under regulation 12(2)(a);

(c) any Health Authority or Health Board in whose area prospective patients reside.

(9) In this Part of these Regulations, where the prospective patients of a doctor reside in the area of more than one Health Authority, any reference to "area" shall be construed as a reference to those areas in which prospective patients reside.".

9. Omit regulation 14 (report by Health Authority to Medical Practices Committee).

10.—(1) For regulation 15 (variation and revocation of decisions of the Medical Practices Committee) substitute—

"**Variation and revocation of decisions of Health Authorities**

15.—(1) Subject to paragraph (2), the Health Authority which declared a vacancy may—

(a) except in cases where an additional doctor has already been nominated or approved pursuant to regulation 18A, 18B or 18C, revoke a decision made pursuant to regulation 13(1) to declare a vacancy for an additional doctor in an area;

(b) in the case of a condition imposed pursuant to regulation 13(1)(b) (or such a condition as varied pursuant to this regulation), vary the condition by imposing in relation to any doctor who fills or would fill that particular vacancy another condition set out in regulation 13(2);

(c) in the case of a condition imposed pursuant to regulation 13(1)(c) (or such condition as varied pursuant to this regulation), revoke the condition or vary it by specifying such other part of the area in which the doctor is to be excluded from providing general medical services as the Health Authority considers appropriate; or

(d) refuse to vary or revoke the decision in question.

(2) The Health Authority may not vary or revoke any decision referred to in paragraph (1) (b) or (c) without the written consent of any doctor to whom the existing condition applies.

(3) Before making a decision to vary or revoke a decision under this regulation, the Health Authority shall consult—

(a) the Local Medical Committee for its area;

(b) any Health Authority in whose area prospective patients reside.

(4) In cases where the Health Authority has, at the request or with the consent of a particular doctor considered whether to vary a condition imposed pursuant to regulation 13(1)(b) or vary or revoke a condition imposed pursuant to regulation 13(1)(c) then the Health Authority shall give to that doctor a written statement of the reasons for its decision.".

11. For regulation 16 (effect of variation or revocation) substitute—

"**16.** A decision of a Health Authority under regulations 13 or 15 has effect until it is varied or revoked, or expires by effluxion of time pursuant to regulation 13 (6)."

12.—(1) Regulation 17 (decision by Health Authority as to type of vacancy) shall be amended in accordance with the following paragraphs.

(2) For paragraph (1) substitute—

"(1) This regulation applies where a Health Authority decides that there is a vacancy for an additional doctor in an area.";

(3) In paragraphs (2) and (3) for "If the Health Authority made a reference pursuant to regulation 11(1)" in each place where those words occur substitute "Where the Health Authority considered in accordance with regulation 12(2)(a) whether to declare a vacancy".

(4) For paragraph (5) substitute—

"(5) In making their decision the Health Authority must—

(a) in a case to which regulation 12(3)(b) applies, consult any Health Authority in whose area the prospective patients reside; and

(b) take account, in particular, of the needs of the patients in the area.".

13. In regulation 18 (consultation with Local Medical Committee)—

(a) for sub- paragraphs (a) to (c) substitute—

"(a) declares a vacancy under regulation 13(1)(a),

(b) imposes conditions on a doctor under regulation 13(1)(b),

(c) decides under regulation 15 to vary or revoke a decision,";

(b) after sub-paragraph (f), for "where regulation 11(2)(a)" substitute "where regulation 12 (1)".

14. In regulation 18A(4) (particular partnership vacancies), after "agreed" add "(after consultation with any other Health Authority in whose area prospective patients reside).".

15.—(1) Regulation 18B (general partnership vacancies) shall be amended in accordance with the following paragraphs.

(2) In paragraph (2) for "in the locality" in each place where those words occur substitute "in the area";

(3) After paragraph (2) insert—

"(2A) Before setting the criteria referred to in paragraph (2)(a), the Health Authority must consult any other Health Authority in whose area prospective patients reside.";

(4) In paragraph (7), after "agreed between the Health Authority" insert "(after consultation with any other Health Authority in whose area prospective patients reside)".

16.—(1) Regulation 18C(vacancies for sole practitioners) shall be amended in accordance with the following paragraphs.

(2) In paragraph (6) omit "to the Secretary of State ".

(3) In paragraph (7)—

(a) for "regulation 12(4)(d)" substitute "regulation 13(7)";

(b) for "must make a further reference" to the end, substitute "must consider again in accordance with regulation 12 whether there is, or will be, a vacancy in the area.".

(4) For paragraph (8) substitute—

"(8) No vacancy may be re-advertised until the expiry of the period for appeal, or, if an appeal is lodged under regulation 18G, until that appeal is dismissed .".

17.—(1) Regulation 18D (advertisement of vacancies for sole practitioners) shall be amended in accordance with the following paragraphs.

(2) For paragraph (1)(a) substitute—

"(a) the Health Authority has declared a vacancy, pursuant to regulation 13(1)(a), for an additional doctor in an area; and".

(3) In paragraph (2) for "within such period as the Medical Practices Committee has specified pursuant to regulation 12 (4)(d)," substitute "within the period specified in regulation 13(7),".

(4) In paragraph (3)—

(a) in sub-paragraph (b) for "by the Medical Practices Committee " substitute "by the Health Authority ";

(b) for "the locality" substitute "the area".

(5) In paragraph (6) for "the locality" substitute "the area, and shall be set after consultation with any other Health Authority in whose area prospective patients reside."

18. In regulation 18E(criteria for approval and nomination), in paragraph (3) omit "to the Secretary of State ".