
WELSH STATUTORY INSTRUMENTS

2023 No. 1053 (W. 179)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (Ophthalmic Services) (Wales) Regulations 2023

<i>Made</i>	- - - -	<i>27 September 2023</i>
<i>Laid before Senedd Cymru</i>		<i>29 September 2023</i>
<i>Coming into force</i>	- -	<i>20 October 2023</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by sections 2, 3, 10, 12(3), 15, 71, 72, 73, 74, 76(6) and (9), 78(6), 104, 105, 106, 107(5) and (7), 110(6)(a), (9) and (10), 115(9), 116, 117, 118, 119(3), (4) and (5), 203(9) and (10), 204(3)(c)(i) and 205 of the National Health Service (Wales) Act 2006⁽¹⁾.

PART 1

General

Title, coming into force and application

1.—(1) The title of these Regulations is the National Health Service (Ophthalmic Services) (Wales) Regulations 2023.

(2) These Regulations come into force on 20 October 2023.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

(1) 2006 c. 42. See section 206(1) of the National Health Service (Wales) Act 2006 (“the Act”) for the definitions of “prescribed” and “regulations”, which are relevant to the powers being exercised; see sections 15, 71, 72, 73, 74, 76(6) and (9), 104, 105, 106, 107(5) and (7), 110(6)(a), (9) and (10), 115(9), 116, 117, 118, 119(3) and (5), 203(9) and (10), 204(3)(c)(i) and 205. Section 72 was amended by the Protection of Freedoms Act 2012 (c. 9) (“the 2012 Act”), Schedule 9, paragraph 125 and the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), Schedule 2, paragraph 130. Section 105 was amended by paragraph 128 of Schedule 9 to the 2012 Act and S.I. 2010/22, Schedule 2, paragraph 134. Sections 104 and 110 were amended by paragraphs 133, 135 and 138 of Schedule 2 to S.I. 2010/22, respectively. Section 106 was amended by the Health and Social Care Act 2012 (c. 7) and the Health and Care Act 2022 (c. 31). There are amendments to sections 10 and 203 which are not relevant to these Regulations.

“the Act” (“*y Ddeddf*”) means the National Health Service (Wales) Act 2006;

“combined list” (“*rhestr gyfunol*”) has the meaning given in regulation 10;

“commencement date” (“*dyddiad cychwyn*”) means the day on which these Regulations come into force under regulation 1(2);

“contractor” (“*contractwr*”) means a qualified practitioner, other than a student optometrist, who has entered into an arrangement with a Local Health Board to provide primary ophthalmic services;

“corporate optician” (“*optegydd corfforedig*”) means a body corporate registered in the register maintained under section 9 of the Opticians Act 1989(2) (list of bodies corporate carrying on business as opticians), which is carrying on business as an optometrist, and for the purpose of this definition, “optometrist” has the meaning given in section 36 of that Act(3) (interpretation);

“deputy” (“*dirprwy*”) means an ophthalmic medical practitioner or an optometrist who is included in a combined list and assists in the provision of primary ophthalmic services;

“director” (“*cyfarwyddwr*”) means—

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

“dispensing optician” (“*optegydd cyflenwi*”) means a person registered as a dispensing optician in the register maintained under section 7 of the Opticians Act 1989(4) (register of opticians);

“eligible person” (“*person cymwys*”) has the meaning given in regulation 5;

“employer” (“*cyflogwr*”) includes any partnership of which a qualified practitioner is or was a member;

“employment” (“*cyflogaeth*”) means any employment whether paid or unpaid and whether under a contract of service or not, and “employee”, “employed” and “employer” must be interpreted accordingly;

“equivalent body” (“*corff cyfatebol*”) means—

- (a) in relation to England, NHS England, as established by section 1H of the National Health Service Act 2006(5);
- (b) in relation to Scotland, a Health Board established under section 2 of the National Health Service (Scotland) Act 1978(6);
- (c) in relation to Northern Ireland, the Department of Health in Northern Ireland;

“equivalent list” (“*rhestr gyfatebol*”) means a list kept by an equivalent body which is equivalent to a primary care list;

“eye examination” (“*archwiliad llygaid*”) has the meaning given in regulation 3;

“eye examination services” (“*gwasanaethau archwilio llygaid*”) has the meaning given in regulation 3;

(2) 1989 c. 44; section 9 was amended by S.I. 2005/848., article 10, the Co-operative and Community Benefit Societies Act 2014 (c. 14), Schedule 4, paragraph 44 and the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 (c. 16), Schedule 1, paragraph 37.

(3) Section 36 was amended by S.I. 2005/848, Schedule 1, paragraph 8. There are other amendments to section 36 which are not relevant to these Regulations.

(4) Section 7 was amended by S.I. 2005/848, article 7.

(5) 2006 c. 41.

(6) 1978 c. 29.

“First-tier Tribunal” (“*Tribiwnlys Haen Gyntaf*”) means the First-tier Tribunal established under section 3(1) of the Tribunals, Courts and Enforcement Act 2007(7) (the First-tier Tribunal);

“general ophthalmic services” (“*gwasanaethau offthalmig cyffredinol*”) has the meaning given in regulation 4;

“Health Education and Improvement Wales” (“*Addysg a Gwella Iechyd Cymru*”) means the body established by the Health Education and Improvement Wales (Establishment and Constitution) Order 2017(8);

“hospital” (“*ysbyty*”) has the meaning given in section 206 of the Act (interpretation);

“licensing or regulatory body” (“*corff trwyddedu neu reoleiddio*”) means a body that licenses or regulates any profession of which the qualified practitioner is or has been a member, including a body licensing or regulating the education, training or qualifications of those professions, and any body which licenses or regulates any such profession, its education, training or qualifications, outside the United Kingdom;

“local authority” (“*awdurdod lleol*”) has the meaning given in section 206 of the Act (interpretation);

“medical” (“*meddygol*”) has the meaning given in section 206 of the Act (interpretation);

“medical practitioner” (“*ymarferydd meddygol*”) means a fully registered person within the meaning of section 55 of the Medical Act 1983(9) who holds a licence to practise under that Act;

“mobile practice” (“*practis symudol*”) has the meaning given in Schedule 3;

“mobile services” (“*gwasanaethau symudol*”) means primary ophthalmic services provided at a place other than a registered premises;

“a national disqualification” (“*anghymhwysiad cenedlaethol*”) means—

- (a) a decision made by the First-tier Tribunal under section 115 of the Act(10) (national disqualification);
- (b) a decision made under provisions in force in England, Scotland or Northern Ireland corresponding to section 115 of the Act;

“the NHS Counter Fraud Authority” (“*Awdurdod Gwrth-dwyll y GIG*”) means the body established by the NHS Counter Fraud Authority (Establishment, Constitution, and Staff and Other Transfer Provisions) Order 2017(11);

“NHS Resolution” (“*NHS Resolution*”) means the NHS Litigation Authority, a body established by the National Health Service Litigation Authority (Establishment and Constitution) Order 1995(12);

“notice” (“*hysbysiad*”) means a notice in writing;

“officer” (“*swyddog*”) has the meaning given in section 206 of the Act (interpretation);

“ophthalmic hospital” (“*ysbyty offthalmig*”) includes an ophthalmic department of a hospital;

“ophthalmic list” (“*rhestr offthalmig*”) has the meaning given in regulation 10;

(7) 2007 c. 15.

(8) S.I. 2017/913 (W. 224).

(9) 1983 c. 54; the definition of “fully registered person” in section 55 was substituted by S.I. 2007/3101, regulation 29 and amended by S.I. 2008/1774, Schedule 1, paragraph 20 and S.I. 2019/593, Schedule 1, paragraph 30. There are other amendments to section 55 which are not relevant to these Regulations.

(10) Section 115 was amended by S.I. 2010/22, Schedule 2, paragraph 139, the Health and Social Care Act 2012 (c. 7), Schedule 21, paragraph 31 and the Health and Care Act 2022 (c. 31), Schedule 1, paragraph 1.

(11) S.I. 2017/958, to which there are amendments not relevant to these Regulations.

(12) S.I. 1995/2800, to which there are amendments not relevant to these Regulations.

“ophthalmic medical practitioner” (“*ymarferydd meddygol offthalmig*”) means a person recognised under regulation 9 and Schedule 2;

“Ophthalmic Qualifications Committee” (“*Pwyllgor Cymwysterau Offthalmig*”) means such committee appointed by organisations representative of the medical profession as may be recognised by the Welsh Ministers for the purposes of approving—

(a) ophthalmic hospitals, academic degrees, academic or postgraduate courses in ophthalmology and appointments affording special opportunities for acquiring the necessary skill and experience of the kind required for the provision of general ophthalmic services, and

(b) the qualifications of medical practitioners for the purpose of general ophthalmic services;

“optometrist” (“*optometrydd*”) means a person registered as an optometrist in the register maintained under section 7 of the Opticians Act 1989 (register of opticians);

“originating events” (“*digwyddiadau cychwynnol*”) has the meaning given in Schedule 3;

“patient” (“*claf*”) means a person for whom a contractor has agreed to provide primary ophthalmic services;

“primary care list” (“*rhestr gofal sylfaenol*”) means a list referred to in section 115(1)(a) to (d) of the Act;

“primary ophthalmic services” (“*gwasanaethau offthalmig sylfaenol*”) has the meaning given in regulation 4;

“primary ophthalmic services form” (“*ffurflen gwasanaethau offthalmig sylfaenol*”) means a form provided by a Local Health Board which must be completed by a contractor to receive payment for providing primary ophthalmic services under these Regulations;

“professional conduct” (“*ymddygiad professiynol*”) includes matters relating both to professional conduct and professional performance;

“professional registration number” (“*rhif cofrestru proffesiynol*”) means the number against the qualified practitioner’s name in the relevant register maintained by the General Medical Council or the General Optical Council;

“qualified practitioner” (“*ymarferydd cymwysedig*”) means—

- (a) a corporate optician;
- (b) an optometrist;
- (c) an ophthalmic medical practitioner;
- (d) a student optometrist;

“the register” (“*y gofrestr*”) has the meaning given in Schedule 3;

“registered premises” (“*mangre gofrestredig*”) means an address which is included in an ophthalmic list in relation to a contractor, in accordance with paragraph 1(g) of Schedule 3;

“the Statement” (“*y Datganiad*”) has the meaning given in regulation 31;

“student optometrist” (“*myfyriwr optometreg*”) means a person registered as a person undertaking training as an optometrist in the register maintained under section 8A of the Opticians Act 1989(13) (register of students);

“supplementary list” (“*rhestr atodol*”) has the meaning given in regulation 10;

“suspended” (“*wedi ei atal dros dro*”) means suspended—

- (a) under the Act;
- (b) under the National Health Service Act 2006;

(13) Section 8A was added by S.I. 2005/848, article 9.

- (c) under the National Health Service (Scotland) Act 1978;
 - (d) under the Health and Personal Social Services (Northern Ireland) Order 1972(14);
- “terms of service” (“*telerau gwasanaeth*”) means the terms set out in Schedule 4.

PART 2

Arrangements for ophthalmic services

Duty to arrange eye examinations

3.—(1) Each Local Health Board must arrange, as respects its area, for the provision of eye examinations in accordance with these Regulations.

(2) Each Local Health Board must administer the arrangements for these services in accordance with these Regulations.

(3) In these Regulations—

- (a) an “eye examination” means an examination of the eye for the purpose of diagnosing or determining treatment for an eye condition, or reviewing an existing condition, which includes such tests, procedures and advice as appropriate to the presenting signs, symptoms and needs of the patient, and
- (b) the services required by paragraph (1) are referred to as “eye examination services”.

General ophthalmic services and primary ophthalmic services

4. In these Regulations—

- (a) “general ophthalmic services” means the services that a contractor must provide under paragraph 23 (testing of sight) of the terms of service, and
- (b) “primary ophthalmic services” means, collectively—
 - (i) general ophthalmic services, and
 - (ii) eye examination services.

PART 3

Eligibility and applications for a sight test

Eligibility for a sight test

5. A person who meets any of the criteria in paragraph 1 of Schedule 1 is eligible for a sight test under general ophthalmic services (and is referred to in these Regulations as an “eligible person”).

Application for a sight test

6.—(1) An eligible person may apply to a contractor for a sight test.

(2) The application must—

- (a) be made on a form provided for that purpose to contractors by the relevant Local Health Board, and

- (b) contain a written declaration, signed by the applicant in writing or electronically, to the effect that they are an eligible person.
- (3) Before providing such a sight test, a contractor to whom an application has been made must—
 - (a) except where paragraph (4) applies, ask the person to produce satisfactory evidence that they meet one of the criteria in paragraph 1 of Schedule 1,
 - (b) where the person has been asked for, but has not provided, satisfactory evidence that they are an eligible person, record that fact on the person’s primary ophthalmic services form,
 - (c) ensure that the person’s details and the approximate date of their last sight test, if any, are recorded on a primary ophthalmic services form, and
 - (d) satisfy themselves that the sight test is necessary.
- (4) This paragraph applies where—
 - (a) the person is eligible by reason of paragraph 1(1)(d) of Schedule 1, and
 - (b) satisfactory evidence of the person’s eligibility is already available to the contractor.
- (5) Paragraph 2 of Schedule 1 makes provision about the specific evidence that a contractor must request before providing a sight test to certain persons.
- (6) The contractor—
 - (a) may appoint a member of their staff to carry out the requirements of paragraph (3)(a) and (b) on their behalf, and
 - (b) must ensure that the member of staff appointed for that purpose is given instruction to enable them to fulfil the requirements on behalf of the contractor.
- (7) Subject to paragraph (8), an application for general ophthalmic services under these Regulations may be made and a signature required by these Regulations may be given—
 - (a) on behalf of any person under 16 years of age, by either parent, the guardian or other adult who has care of the child;
 - (b) on behalf of any person under 18 years of age—
 - (i) in the care of a local authority to whose care they have been committed under the Children Act 1989⁽¹⁵⁾ or which has received them into care under the Social Services and Well-being (Wales) Act 2014⁽¹⁶⁾, by a person duly authorised by that authority;
 - (ii) in the care of a voluntary organisation, by that organisation or a person duly authorised by them;
 - (c) on behalf of any other person who is incapable of making the application or giving the signature, by a relative or any other adult who has care of that person.
- (8) A signature on an application may not be given by the contractor to whom the application is made.

Other services treated as general ophthalmic services

- 7.—(1) Paragraph (5) applies where—
 - (a) a person receives a sight test, other than general ophthalmic services, from a contractor,
 - (b) immediately before receiving the sight test, that person was not an eligible person, and
 - (c) Condition A, Condition B or Condition C is met in relation to the person.
- (2) Condition A is met in relation to the person if,

(15) 1989 c. 41.
(16) 2014 anaw 4

during the provision of the sight test, the person is shown to meet the eligibility criterion at paragraph 1(1)(e) of Schedule 1.

(3) Condition B is met in relation to the person if—

- (a) before the end of a period of 14 days beginning with the day on which the sight test was provided, the person becomes an eligible person by reason of meeting the eligibility criterion in paragraph 1(1)(d) of Schedule 1 by reference to paragraph 1(2)(c), (d) or (g) of that Schedule, and
- (b) before the end of the period of 3 months beginning with the day on which the sight test was provided, the person provides to the Local Health Board a notice of entitlement to that effect.

(4) Condition C is met in relation to the person if, before the end of the period of 3 months beginning with the day on which the sight test was provided, the person becomes an eligible person by reason of meeting the eligibility criterion in paragraph 1(1)(d) of Schedule 1 by reference to paragraph (2)(n) of that Schedule.

(5) Where this paragraph applies the sight test must be treated as having been general ophthalmic services under the Act—

- (a) for the purposes of regulation 8(1)(a) of the National Health Service (Optical Charges and Payments) Regulations 1997(17), and
- (b) for the purposes specified in section 71(8) and (9) of the Act.

(6) Where the sight test received by a person is treated by virtue of paragraph (3) or (4) as being general ophthalmic services—

- (a) that person may provide to the Local Health Board a receipt for, or other evidence of, any fee paid for that sight test, and
- (b) if the Local Health Board is satisfied as to the amount paid for that sight test, it must pay that person an amount equal to the fee paid.

PART 4

Combined lists

CHAPTER 1

Provision of primary ophthalmic services

8.—(1) A qualified practitioner (other than a student optometrist) may provide primary ophthalmic services in a Local Health Board's area if they are included in that Local Health Board's ophthalmic list (see regulation 10(2)(a)).

(2) A qualified practitioner (other than a student optometrist) may assist in the provision of primary ophthalmic services in Wales if they are included in a Local Health Board's ophthalmic or supplementary list (see regulation 10(2)(a) and (b)).

(3) A student optometrist may assist in the provision of primary ophthalmic services in Wales to the extent they are qualified to do so and under the supervision of an ophthalmic medical practitioner or optometrist whose name is included in a combined list, if the student optometrist is included in a Local Health Board's supplementary list (see regulation 10(2)(b)).

(17) S.I. 1997/818, to which there are amendments not relevant to these Regulations.

Qualifications of ophthalmic medical practitioners

9.—(1) The prescribed qualifications which a medical practitioner must possess for the purposes of section 71 of the Act (arrangements for general ophthalmic services) are those set out in paragraph 1 of Schedule 2.

(2) Paragraph 2 of Schedule 2 makes provision in relation to the approval of qualifications of ophthalmic medical practitioners by the Ophthalmic Qualifications Committee.

(3) Paragraph 3 of Schedule 2 makes provision in relation to appeals against determinations by the Ophthalmic Qualifications Committee.

CHAPTER 2

Preparation and publication of a combined list

Duty to prepare a combined list

10.—(1) Each Local Health Board must prepare, for its area, a combined list.

(2) The combined list must consist of—

- (a) a list of the qualified practitioners who undertake to provide primary ophthalmic services and have been approved by the Local Health Board under regulation 13 (“the ophthalmic list”), and
- (b) in a separate part, a list of the qualified practitioners approved by the Local Health Board for the purpose of assisting in the provision of primary ophthalmic services under regulation 13 (“the supplementary list”).

(3) The combined list must contain the information set out in Part 1 of Schedule 3.

Publication of the combined list

11.—(1) Each Local Health Board must publish its combined list and make a copy of it available for inspection at—

- (a) its offices, and
- (b) any other place in its area it considers appropriate.

(2) Each Local Health Board must—

- (a) send a copy of its combined list to the relevant Local Medical Committee and the relevant Local Optical Committee, and
- (b) at intervals of not more than 3 months, notify each of them of any alteration made in that list.

(3) In this regulation—

“relevant Local Medical Committee” (*“Pwyllgor Meddygol Lleol perthnasol”*) means the committee recognised by the Local Health Board under section 54 of the Act;

“relevant Local Optical Committee” (*“Pwyllgor Optegol Lleol perthnasol”*) means the committee recognised by the Local Health Board under section 78 of the Act.

CHAPTER 3

Inclusion in a list

Application for inclusion in a list

12.—(1) A qualified practitioner, other than a student optometrist, may apply to a Local Health Board for inclusion in its ophthalmic list.

(2) A qualified practitioner may apply to a Local Health Board for inclusion in its supplementary list.

(3) An application for inclusion in a Local Health Board's ophthalmic list must be made in writing and include—

- (a) an undertaking—
 - (i) to provide primary ophthalmic services in that Local Health Board's area;
 - (ii) to comply with the terms of service set out in Schedule 4;
- (b) where the applicant wishes to provide mobile services, a statement to that effect with an undertaking to provide mobile services;
- (c) the information, undertakings and declarations required by paragraphs 3, 4 and 7 of Schedule 3.

(4) An application for inclusion in a Local Health Board's supplementary list must be made in writing and include the information, undertakings and declarations required by paragraphs 5, 6 and 7 of Schedule 3.

(5) In the case of an application to a Local Health Board by a qualified practitioner who is included in the supplementary list of that Local Health Board, and is seeking to withdraw from that list and be included in its ophthalmic list, that qualified practitioner is required to provide any information and undertakings required by paragraph (3) and Schedules 3 and 4 only insofar as—

- (a) that qualified practitioner has not already supplied them to that Local Health Board, or
- (b) the information has changed since it was provided.

Decisions and grounds for refusal

13.—(1) A Local Health Board that receives an application under regulation 12 must—

- (a) decide whether to approve the qualified practitioner for inclusion in its ophthalmic or supplementary list (as the case may be), and
- (b) unless regulation 15 applies, notify the qualified practitioner of its decision within 7 days of that decision.

(2) Before deciding an application under paragraph (1)(a), the Local Health Board must—

- (a) check, as far as reasonably practicable, the information provided by the qualified practitioner, in particular that provided under Schedule 3,
- (b) check with the NHS Counter Fraud Authority whether the qualified practitioner has any record of fraud,
- (c) check with the Welsh Ministers for, and consider, any facts that the Welsh Ministers consider relevant relating to past or current investigations or proceedings involving or relating to the qualified practitioner, and
- (d) obtain references from the referees named by the qualified practitioner under paragraph 3(l) or 5(h) of Schedule 3 (as appropriate) and consider the references provided.

(3) The Local Health Board must refuse to include a qualified practitioner in its combined list where any of the grounds in paragraph 8 of Schedule 3 applies.

(4) The Local Health Board may refuse to include a qualified practitioner in its combined list where any of the grounds in paragraph 9 of Schedule 3 applies.

(5) When considering a refusal under paragraph (4), the Local Health Board must consider the factors set out in paragraph 10 of Schedule 3.

(6) Where the Local Health Board refuses an application, the notice under paragraph (1)(b) must contain—

- (a) a statement of the reasons for the Local Health Board's decision (including any facts relied upon), and
- (b) details of how to appeal the refusal under regulation 28.

(7) Where an application is made to a Local Health Board in accordance with regulation 12, the Local Health Board may refuse the application only in accordance with paragraphs (3) and (4).

Conditional inclusion

14.—(1) A Local Health Board may—

- (a) decide to include a qualified practitioner in its combined list subject to conditions;
- (b) in relation to a qualified practitioner who has applied to be included in the Local Health Board's ophthalmic list, vary the terms of service set out in Schedule 4 to these Regulations for the purpose of, or in connection with, the imposition of those conditions.

(2) The imposition of conditions on a qualified practitioner under paragraph (1)(a) must be with a view to—

- (a) preventing any prejudice to the efficiency of the provision of primary ophthalmic services, or
- (b) preventing any acts or omissions of the type described in section 107(3)(a) of the Act (disqualification of practitioners).

(3) A Local Health Board may, and if requested in writing by the qualified practitioner to do so must, review its decision to impose or vary a condition under paragraph (1).

(4) A qualified practitioner may not request a review under paragraph (3) until after a three month period beginning with the date the Local Health Board includes the qualified practitioner in its combined list.

(5) After a review has taken place, the qualified practitioner may not request a further review before the end of a six month period beginning with the date of the decision on the previous review.

(6) Where a Local Health Board reviews its decision under this regulation, it may—

- (a) vary the conditions imposed on the qualified practitioner,
- (b) impose different conditions on the qualified practitioner,
- (c) remove the condition or conditions imposed on the qualified practitioner, or
- (d) remove the qualified practitioner from its combined list.

(7) A qualified practitioner may appeal the following decisions of the Local Health Board to the First-tier Tribunal—

- (a) a decision to impose conditions, or any particular condition, on the qualified practitioner;
- (b) a decision to vary a condition;
- (c) a decision to vary the terms of service of the qualified practitioner.

(8) Except in a case within sub-paragraph (10), any decision of the Local Health Board that may be the subject of an appeal under sub-paragraph (4) must not have effect until the First-tier Tribunal has determined any appeal against it or the time for any appeal has expired.

(9) Sub-paragraph (10) applies where—

- (a) a qualified practitioner has applied to be included in a Local Health Board's supplementary list, and
- (b) the Local Health Board decides that a qualified practitioner may be included in its supplementary list subject to conditions.

(10) If the qualified practitioner agrees in writing to be bound by the conditions imposed until the time for appeal has expired or any appeal is decided, the qualified practitioner may be included (or continue to be included) in that list—

- (a) during the period for any appeal to the First-tier Tribunal under regulation 28, or
- (b) if an appeal is brought, until the appeal has been decided.

Deferral of decisions

15.—(1) A Local Health Board may defer consideration of a decision under regulation 13 where any of the circumstances in Part 4 of Schedule 3 applies.

(2) The Local Health Board must—

- (a) notify the qualified practitioner that it has deferred its decision, and
- (b) give the reasons for that deferral.

(3) A Local Health Board may defer consideration of a decision under paragraph (1) only until the outcome of the relevant event mentioned in paragraph 11(1)(c) and (2) of Part 4 of Schedule 3 is known or whilst the qualified practitioner is suspended under paragraph 11(1)(a) or (b) of that Schedule.

(4) Once the Local Health Board has become aware of the outcome of the relevant event mentioned in paragraph 11(1)(c) and (2) of Part 4 of Schedule 3, or the suspension referred to in paragraph 11(1)(a) or (b) of that Schedule has come to end, the Local Health Board must notify the qualified practitioner that they are required to—

- (a) update their application within 28 days of the date of the notification (or such longer period as the Local Health Board may agree), and
- (b) confirm in writing within the period referred to in sub-paragraph (a) that they wish to proceed with their application.

(5) Provided any additional information has been received within 28 days, or the time agreed, the Local Health Board must notify the qualified practitioner as soon as possible—

- (a) that their application has been successful, or
- (b) where the Local Health Board has decided to refuse their application or impose conditions on their inclusion—
 - (i) of that decision and the reasons for it (including any facts relied on), and
 - (ii) of how to appeal that decision under regulation 28.

Requirements with which a qualified practitioner included in a supplementary list must comply

16.—(1) On becoming aware of a change to the information provided by the qualified practitioner in accordance with paragraphs 5 to 7 of Schedule 3 when applying to be included in the Local Health Board's supplementary list, the qualified practitioner must notify the Local Health Board in writing within 7 days.

(2) Where sub-paragraph (1) applies, the qualified practitioner must provide all necessary authority to enable a request to be made by the Local Health Board to any employer (or former employer), licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to the notification given by the qualified practitioner under sub-paragraph (1).

(3) A qualified practitioner who is included in the supplementary list of a Local Health Board must supply that Local Health Board with an enhanced criminal record certificate under section 113B

of the Police Act 1997(18) in relation to the qualified practitioner, if the Local Health Board at any time, for reasonable cause, gives the qualified practitioner notice to provide such a certificate.

CHAPTER 4

Removal etc. from, and readmission to, a list

Removal from a list

17.—(1) A Local Health Board must remove a qualified practitioner from its ophthalmic or supplementary list (as appropriate) when—

- (a) it becomes aware that the qualified practitioner has been convicted in the United Kingdom of murder;
- (b) it becomes aware that the qualified practitioner is subject to a national disqualification;
- (c) it becomes aware that the qualified practitioner has died;
- (d) it becomes aware that the qualified practitioner has otherwise ceased to be a qualified practitioner;
- (e) in the case of a qualified practitioner in the Local Health Board’s ophthalmic list, it becomes aware that the qualified practitioner has been included in the supplementary list of any Local Health Board;
- (f) in the case of a qualified practitioner in the Local Health Board’s supplementary list, it becomes aware that the qualified practitioner has been included in any Local Health Board’s ophthalmic list or the supplementary list of another Local Health Board;
- (g) where the qualified practitioner is an ophthalmic medical practitioner, it becomes aware that the ophthalmic medical practitioner is the subject of—
 - (i) a direction given by a Medical Practitioners Tribunal under section 35D(2)(a) or (b) of the Medical Act 1983(19) (functions of a Medical Practitioners Tribunal);
 - (ii) an order or direction made by the Medical Practitioners Tribunal under section 38(1) of the Medical Act 1983 (power to order immediate suspension etc.);
 - (iii) from the coming into force of article 13 of the Medical Act 1983 (Amendment) Order 2002(20), a direction by a Medical Practitioners Tribunal for erasure or immediate suspension under section 35D(2)(a) or (b), (5)(a) or (b), (10)(a) or (b), or (12)(a) or (b) (functions of a Medical Practitioners Tribunal), or section 38(1) (power to order immediate suspension etc.) of the Medical Act 1983;
- (h) in the case of an optometrist, it becomes aware that the qualified practitioner is the subject of a direction made by the Fitness to Practise Committee of the General Optical Council other than in a health case to erase the practitioner’s name from the appropriate register or suspend the practitioner’s registration under section 13F(3)(a) or (b), (7)(a) or (b) or (13)(a) or (b) of the Opticians Act 1989(21) (powers of the Fitness to Practise Committee);
- (i) it is notified by the First-tier Tribunal that it has considered an appeal by that qualified practitioner against their conditional inclusion in the Local Health Board’s supplementary list and that qualified practitioner had been conditionally included pending the outcome of the appeal, and the First-tier Tribunal has decided not to include the qualified practitioner in the supplementary list;

(18) 1997 c. 50; section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15).

(19) Section 35D was inserted by article 13 of S.I. 2002/3135, and the title of the section was further amended by article 5 of S.I. 2015/794. Section 35D(2) was amended by S.I. 2014/1101, article 7 and S.I. 2015/794, article 5. There are other amendments to this section which are not relevant to these Regulations.

(20) S.I. 2002/3135, to which there are amendments not relevant to these Regulations.

(21) Section 13F was added by S.I. 2005/848, article 16.

- (j) it is notified by the First-tier Tribunal that it has considered an appeal by that qualified practitioner against their contingent removal from the Local Health Board's supplementary list, and the First-tier Tribunal has decided to remove the qualified practitioner from that supplementary list instead.
- (2) Except in a case to which paragraph (1)(c) applies, where a qualified practitioner is removed from a Local Health Board's list under paragraph (1), the Local Health Board must immediately inform the qualified practitioner that they have been removed from that list.
- (3) A Local Health Board may remove a qualified practitioner from its ophthalmic or supplementary list (as appropriate) where—
- (a) the qualified practitioner is included in the Local Health Board's ophthalmic list and has failed to comply with the terms of service;
 - (b) the qualified practitioner has failed to comply with a condition imposed under regulation 14;
 - (c) the qualified practitioner has been convicted in the United Kingdom of a criminal offence (other than murder), committed on or after 30 July 2002 in the case of the ophthalmic list, or on or after 1 February 2006 in the case of the supplementary list, and the qualified practitioner has been sentenced to a term of imprisonment (whether suspended or not) of over 6 months;
 - (d) the qualified practitioner is included in the Local Health Board's supplementary list and the Local Health Board considers any of the conditions set out below is met in relation to the qualified practitioner—
 - (i) the continued inclusion of that qualified practitioner in its supplementary list would be prejudicial to the efficiency of the services which those included in that list assist in providing (“an efficiency case”);
 - (ii) the qualified practitioner has (whether together with someone else or on their own) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for themselves or someone else any financial or other benefit and knew that they, or the other person, were not entitled to that benefit (“a fraud case”);
 - (iii) the qualified practitioner is unsuitable to be included in that part of that list (“an unsuitability case”);
 - (e) in accordance with paragraphs (4) and (5), it determines that a qualified practitioner that has been included in the Local Health Board's combined list for the preceding twelve months has not provided (or assisted in providing, as applicable) primary ophthalmic services for persons in its locality within that period.
- (4) In calculating the period of twelve months referred to in paragraph (3)(e), the Local Health Board must disregard—
- (a) any period during which the qualified practitioner was suspended from the Local Health Board's list;
 - (b) any period during which the qualified practitioner was performing whole-time service in the armed forces in a national emergency (as a volunteer or otherwise), compulsory whole-time service in the armed forces (including service resulting from reserve liability), or any equivalent service, if liable for compulsory whole-time service in the armed forces;
 - (c) any period which the Local Health Board reasonably determines.
- (5) A Local Health Board which is considering removing a qualified practitioner from its ophthalmic or supplementary list (as appropriate) under paragraph (3) must, before making that decision, follow the procedure in paragraph 12 of Schedule 3.

(6) Where a Local Health Board is considering a removal under section 107 of the Act (disqualification of practitioners) or under paragraph (3)(d) of this regulation, it must consider the factors set out in paragraphs 14 to 17 of Schedule 3 that are applicable to the grounds for removal being considered.

(7) A Local Health Board must notify the qualified practitioner of its decision under this regulation or under section 107 of the Act within 7 days beginning with the day it makes that decision.

(8) The notification in paragraph (7) must contain—

- (a) the Local Health Board’s decision;
- (b) the reasons for that decision (including any facts relied upon);
- (c) details of how to exercise a right of appeal under regulation 28;
- (d) where paragraph (10) applies, notification of the information in that paragraph;
- (e) when making a decision under paragraph (3)(d) of this regulation or under section 107 of the Act, the condition (or conditions) in regulation 17(3)(d) or section 107 on which it relies.

(9) A Local Health Board which decides to remove a qualified practitioner from its ophthalmic or supplementary list (as the case may be) under paragraph (3) must not remove that qualified practitioner until the later of—

- (a) the end of a period of 28 days beginning with the day on which the Local Health Board makes that decision, or
- (b) the date any appeal is determined by the First-tier Tribunal.

(10) Paragraph 13 of Schedule 3 makes provision in relation to the procedure for removals from an ophthalmic list under section 107 of the Act (disqualification of practitioners).

(11) Nothing in this regulation will prejudice the right of a qualified practitioner to have their name included again in an ophthalmic or supplementary list.

(12) In this regulation—

“health case” (“*achos iechyd*”) has the meaning given to it in section 13G(6) of the Opticians Act 1989⁽²²⁾ (provisions supplementary to section 13F);

“health scheme” (“*cynllun iechyd*”) means the services covered by the definition in section 107 of the Act (disqualification of practitioners) and those prescribed by regulation 18.

Prescribed health schemes

18. The following are prescribed as health schemes for the purposes of section 107(7) of the Act (disqualification of practitioners)—

- (a) health services, including medical treatment, provided by His Majesty’s Forces;
- (b) services provided by Port Health Authorities constituted under the Public Health (Control of Disease) Act 1984⁽²³⁾;
- (c) health services provided to a prisoner in the care of the medical officer or any other such officer of a prison appointed for the purposes of the Prison Act 1952⁽²⁴⁾;
- (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

⁽²²⁾ Section 13G was added by [S.I. 2005/848](#), article 16.

⁽²³⁾ 1984 c. 22.

⁽²⁴⁾ 1952 c. 52.

Contingent removal from a supplementary list

19.—(1) In an efficiency or a fraud case relating to a qualified practitioner in a Local Health Board’s supplementary list, the Local Health Board may, instead of deciding to remove a qualified practitioner from that list, decide to remove the qualified practitioner contingently and regulation 17(7) and (8) will apply to that decision.

(2) Where a Local Health Board is considering contingently removing a qualified practitioner under paragraph (1), it must, before making that decision, follow the procedure in paragraph 12(1) to (3) of Schedule 3.

(3) If it so decides, the Local Health Board must impose such conditions as it may decide on the qualified practitioner’s inclusion in its supplementary list with a view to—

- (a) removing any prejudice to the efficiency of the services in question (in an efficiency case), or
- (b) preventing further acts or omissions (in a fraud case).

(4) Where the Local Health Board decides to contingently remove a practitioner under paragraph (1), that decision must not take effect until the later of—

- (a) the end of a period of 28 days starting with the date the Local Health Board made its decision, or
- (b) the date any appeal is determined by the First-tier Tribunal.

(5) If the Local Health Board decides that the qualified practitioner has failed to comply with a condition, it may decide to—

- (a) vary the conditions imposed,
- (b) impose new conditions, or
- (c) remove the qualified practitioner from its supplementary list.

(6) In this regulation, “efficiency case” and “fraud case” have the meaning given in regulation 17.

(7) A Local Health Board may, and if requested in writing by the qualified practitioner to do so must, review its decision to contingently remove the qualified practitioner under this regulation.

(8) A qualified practitioner may not request a review under paragraph (7) until after a three month period beginning with the date of the Local Health Board includes the qualified practitioner in its combined list.

(9) After a review has taken place, the qualified practitioner may not request a further review before the end of a six month period beginning with the date of the decision on the previous review.

(10) Where a Local Health Board reviews its decision under this regulation, it may—

- (a) vary the conditions imposed on the qualified practitioner,
- (b) impose different conditions on the qualified practitioner, or
- (c) remove the qualified practitioner from its supplementary list.

Withdrawal from an ophthalmic list

20.—(1) Subject to regulation 21, a qualified practitioner must give notice to a Local Health Board that they wish to withdraw from that Local Health Board’s ophthalmic list.

(2) A qualified practitioner must give notice to the Local Health Board that they intend to withdraw from the Local Health Board’s ophthalmic list if that qualified practitioner is included in the supplementary list of any Local Health Board.

(3) Where a Local Health Board receives a notice from a qualified practitioner—

- (a) pursuant to paragraph (1), it must remove the qualified practitioner from its ophthalmic list on the earlier of the following—
 - (i) the date that is three months after the date of the notice, or
 - (ii) the date from which the Local Health Board has agreed that the withdrawal will take effect;
 - (b) pursuant to paragraph (2), it must remove the qualified practitioner from its ophthalmic list as soon as the Local Health Board confirms that the qualified practitioner is included in a supplementary list.
- (4) A qualified practitioner may withdraw a notice given pursuant to paragraph (1) at any time before the Local Health Board removes their name from its ophthalmic list.
- (5) A qualified practitioner may not withdraw a notice given pursuant to paragraph (2) once the qualified practitioner has been included in a supplementary list.

Restrictions on withdrawal from an ophthalmic list

21.—(1) Unless the Welsh Ministers have given their consent to a qualified practitioner’s withdrawal from an ophthalmic list, a qualified practitioner may not withdraw from an ophthalmic list where a Local Health Board is investigating the qualified practitioner—

- (a) for the purpose of deciding whether or not to exercise its powers under section 107 (disqualification of practitioners), 108 (contingent removal) or 110 (suspension) of the Act,
- (b) for failure to comply with a condition imposed on the qualified practitioner under regulation 14 so as to justify removal of the qualified practitioner from its ophthalmic list, or
- (c) who has been suspended under section 110(1)(a) of the Act,

until the matter has been finally determined by the Local Health Board.

(2) Unless the Welsh Ministers have given their consent to the qualified practitioner’s withdrawal from an ophthalmic list, a qualified practitioner may not withdraw from an ophthalmic list where a Local Health Board has decided to—

- (a) remove the qualified practitioner from its ophthalmic list under section 107 or 108 of the Act,
- (b) contingently remove the qualified practitioner under section 108 of the Act, or
- (c) remove the qualified practitioner for breach of a condition imposed on inclusion under these Regulations,

but has not yet given effect to that decision.

(3) Where a Local Health Board has suspended a qualified practitioner under section 110(1)(b), the qualified practitioner may not withdraw from an ophthalmic list until the decision of the relevant court or body is known and the matter has been considered and finally determined by the Local Health Board.

(4) The Local Health Board must not agree to a qualified practitioner withdrawing from its ophthalmic list unless it is satisfied that satisfactory arrangements have been made for the completion of any primary ophthalmic services which the qualified practitioner has undertaken to provide.

Withdrawal from a supplementary list

22.—(1) A qualified practitioner must, so far as is practicable, give the Local Health Board at least three months’ notice in advance of the day that the qualified practitioner intends to withdraw from its supplementary list.

(2) A qualified practitioner must give notice to the Local Health Board that they intend to withdraw from the Local Health Board's supplementary list if that qualified practitioner is included in—

- (a) that Local Health Board's ophthalmic list,
- (b) any other Local Health Board's ophthalmic list, or
- (c) any other Local Health Board's supplementary list.

(3) When a Local Health Board receives a notice from a qualified practitioner—

- (a) pursuant to paragraph (1), it must remove the qualified practitioner from its supplementary list on the earlier of the following—
 - (i) the date that is three months after the date of the notice, or
 - (ii) the date from which the Local Health Board has agreed that the withdrawal will take effect;
- (b) pursuant to paragraph (2), it must remove the qualified practitioner from its supplementary list as soon as the Local Health Board confirms that the qualified practitioner has been included in another list referred to in paragraph (2).

(4) A qualified practitioner may withdraw a notice given pursuant to paragraph (1) at any time before the Local Health Board removes their name from its supplementary list.

(5) A qualified practitioner may not withdraw a notice given pursuant to paragraph (2) once the qualified practitioner has been included in that other list.

Suspension from a supplementary list

23.—(1) If the Local Health Board is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend a qualified practitioner from its supplementary list—

- (a) while it decides whether or not to remove the qualified practitioner from its supplementary list under regulation 17 or contingently remove the qualified practitioner from its supplementary list under regulation 19;
- (b) while it waits for a decision of a licensing or regulatory body or court anywhere in the world which affects the qualified practitioner;
- (c) where it has decided to remove the practitioner, but before that decision takes effect;
- (d) pending an appeal under these Regulations.

(2) In a case falling within paragraph (1)(a), the Local Health Board must specify a period, not exceeding six months, as the period of suspension.

(3) In a case falling within paragraph (1)(b), the Local Health Board may specify that the qualified practitioner remains suspended, after the decision referred to in that sub-paragraph has been made, for an additional period not exceeding six months.

(4) Subject to paragraph (5), the Local Health Board may extend the period of suspension under paragraph (2) or impose a further period of suspension under paragraph (3), so long as the aggregate does not exceed six months.

(5) The period of suspension under paragraph (2) or (3) may be extended beyond six months if—

- (a) on the application of the Local Health Board, the First-tier Tribunal so orders, or
- (b) the Local Health Board applied under sub-paragraph (a) before the expiry of the period of suspension, but the First-tier Tribunal has not made an order by the time it expires, in which case it continues until the First-tier Tribunal makes an order.

(6) If the First-tier Tribunal does so order, it must specify—

- (a) the date on which the period of suspension is to end,
- (b) an event beyond which it is not to continue, or
- (c) both of the above, in which case the suspension will end on the earlier of the date or event specified, as the case may be.

(7) The First-tier Tribunal may, on the application of the Local Health Board, make a further order, which must also comply with paragraph (6), at any time while the period of suspension pursuant to the earlier order is still continuing.

(8) If the Local Health Board suspends a qualified practitioner in a case falling within paragraph (1)(c) or (d), the suspension has effect from the date the Local Health Board informed the qualified practitioner of the suspension and will continue until—

- (a) in a case falling within paragraph (1)(c), the decision takes effect, or
- (b) in a case falling within paragraph (1)(d), the First-tier Tribunal has determined the appeal.

(9) While a qualified practitioner is suspended under these Regulations, that qualified practitioner must be treated as not being included in that Local Health Board's supplementary list, even though their name appears in it.

(10) A Local Health Board may, and if requested in writing by the qualified practitioner to do so must, review its decision to suspend the qualified practitioner under paragraph (1)(a) or (b) of this regulation.

(11) A qualified practitioner may not request a review under paragraph (10) until after a three month period beginning with the date of the Local Health Board includes the qualified practitioner in its combined list.

(12) After a review has taken place, the qualified practitioner may not request a further review before the end of a six month period beginning with the date of the decision on the previous review.

(13) Where a Local Health Board decides to review its decision to suspend a practitioner under paragraph (1)(c) or (d) of this regulation, it may decide to impose conditions or remove the practitioner from its supplementary list.

Procedure on suspension from a combined list

24.—(1) Where a Local Health Board is considering suspending a qualified practitioner under regulation 23 of these Regulations, or section 110 (suspension) or 111(25) (suspension pending appeal) of the Act, or varying the period of suspension under regulation 23 of these Regulations, or section 110 of the Act, the Local Health Board must give the qualified practitioner —

- (a) notice of any allegation against the qualified practitioner;
- (b) notice of what action the Local Health Board is considering and on what grounds;
- (c) the opportunity to make written representations to the Local Health Board within 28 days of the date of the notification under sub-paragraph (b) (“the specified period”);
- (d) the opportunity to make representations at an oral hearing before the Local Health Board within the specified period if the qualified practitioner requests one.

(2) The Local Health Board may suspend the qualified practitioner with immediate effect if—

- (a) they make no written representations within the specified period and do not request an oral hearing, or
- (b) they do not attend any oral hearing that is arranged.

(3) If the qualified practitioner requests an oral hearing, the hearing must take place within the specified period and before the Local Health Board reaches its decision.

(4) If the qualified practitioner makes written representations or an oral hearing takes place, the Local Health Board must take into account any representations made before it reaches its decision.

(5) The Local Health Board may suspend the qualified practitioner with immediate effect following any hearing.

(6) The Local Health Board must notify the qualified practitioner of its decision and the reasons for it (including any facts relied upon) within 7 days beginning with the day that its decision is made.

(7) When the Local Health Board notifies the qualified practitioner under paragraph (6) it must also inform the qualified practitioner of any right to a review of that decision under the Act (in the case of suspension from the ophthalmic list) or under regulation 23 of these Regulations (in the case of suspension from the supplementary list).

Readmission

25.—(1) Paragraph (2) applies where—

- (a) a qualified practitioner has been removed from a combined list by a Local Health Board on the grounds that the qualified practitioner had been convicted of a criminal offence, and
- (b) that conviction is overturned on appeal.

(2) The Local Health Board may agree to include the qualified practitioner in its combined list without that qualified practitioner making an application under regulation 12 if it—

- (a) is satisfied that there are no other matters that need to be considered, and
- (b) has received an undertaking to comply with the requirements of these Regulations from the qualified practitioner.

(3) Where the conviction mentioned in paragraph (1) is reinstated on a further appeal—

- (a) the previous decision of the Local Health Board to remove the qualified practitioner from its combined list will once again have effect, and
- (b) the Local Health Board must remove the qualified practitioner from its combined list.

Notifications to Local Health Boards

26.—(1) A qualified practitioner that is included in the combined list of a Local Health Board must notify that Local Health Board within 14 days of any occurrence requiring a change in the information which that list is required to contain in relation to them.

(2) A qualified practitioner that is included in a supplementary list of a Local Health Board must notify that Local Health Board within 14 days of any change in their private address.

(3) Where a Local Health Board receives a notice from a qualified practitioner pursuant paragraph (1) or (2), it must amend its combined list as soon as possible.

Notifications by Local Health Boards

27.—(1) A Local Health Board must notify the persons or bodies specified in paragraph (2) and must additionally notify those included in paragraph (3), if requested to do so by those person or bodies in writing, of the matters set out in paragraph (4), where that Local Health Board decides to—

- (a) refuse to include a qualified practitioner in its combined list under regulation 13;
- (b) impose conditions on the qualified practitioner's inclusion in a combined list under regulation 14;
- (c) remove the qualified practitioner from its ophthalmic list under section 107 of the Act (disqualification of practitioners) or from its ophthalmic or supplementary list under regulation 17;

- (d) contingently remove the qualified practitioner from its ophthalmic list under section 108 of the Act or from its supplementary list under regulation 19;
 - (e) suspend the qualified practitioner from its ophthalmic list under section 110 or 111 of the Act or from its supplementary list under regulation 23.
- (2) Where paragraph (1) applies, a Local Health Board must, within 7 days beginning with the date of that decision, notify—
- (a) the Welsh Ministers;
 - (b) any Local Health Board or equivalent body that, to the knowledge of the Local Health Board—
 - (i) has included the qualified practitioner in a primary care list or equivalent list;
 - (ii) is considering an application from the qualified practitioner for inclusion in a primary care list or equivalent list;
 - (iii) has in its area any place where the qualified practitioner provides or assists in the provision of primary ophthalmic services;
 - (c) the Secretary of State;
 - (d) the Scottish Ministers;
 - (e) the Northern Ireland Executive;
 - (f) the General Medical Council, General Optical Council or any other appropriate regulatory body;
 - (g) NHS Resolution;
 - (h) any other organisation that, to the knowledge of the Local Health Board, employs or uses any of the services of the qualified practitioner in a professional capacity;
 - (i) where it is a fraud case within the meaning of section 107(3) of the Act, the NHS Counter Fraud Authority.
- (3) The persons or bodies to be additionally notified in accordance with paragraph (1) are—
- (a) persons or bodies that can establish that they—
 - (i) are or were employing the qualified practitioner, are using or have used any of the qualified practitioner’s services in a professional capacity, or
 - (ii) are considering employing or using any of the qualified practitioner’s services in a professional capacity;
 - (b) a partnership, any of whose members provide or assist in the provision of primary ophthalmic services, and can establish that the qualified practitioner is or was a member of the partnership or that it is considering inviting the qualified practitioner to become such a member.
- (4) The matters referred to in paragraph (1) are—
- (a) the name, address and, where applicable, the date of birth of the qualified practitioner and, in the case of a corporate optician, the names, addresses and dates of birth of its directors, with the case of a director who is a member of a profession regulated by a body for the time being mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002⁽²⁶⁾ (the Professional Standards Authority for Health and Social Care), that fact and the individual’s registration number with that body,
 - (b) the qualified practitioner’s professional registration number,

⁽²⁶⁾ 2002 c. 17; section 25(3) was amended by paragraph 17(2) and (3) of Schedule 10 to the Health and Social Care Act 2008 (c. 14), paragraph 10(2) of Schedule 4 to S.I. 2010/231, paragraph 56(b) of Schedule 15 to the Health and Social Care Act 2012 (c. 7) and paragraph 2(2) of Schedule 4 to the Children and Social Work Act 2017 (c. 16).

- (c) the date and a copy of the decision of the Local Health Board, and
- (d) a contact name of a person in the Local Health Board for further enquiries.

(5) The Local Health Board must send to the qualified practitioner concerned a copy of any information about that practitioner that it has provided to the persons or bodies listed in paragraph (2) or (3), and any correspondence with that person or body relating to that information.

(6) Where the Local Health Board has notified any of the persons or bodies specified in paragraph (2) or (3) of the matters set out in paragraph (4), it may, in addition, if requested by that person or body, notify that person or body of any evidence that was considered, including any representations from the practitioner.

(7) Where a Local Health Board is notified by the First-tier Tribunal that it has imposed a national disqualification on a qualified practitioner whom the Local Health Board had removed from its combined list, or who was applying, or had applied to be, included in its combined list, the Local Health Board must notify the persons or bodies listed in paragraph (2)(b), (g), (h) and (i) and paragraph (3).

(8) Where a decision is changed on review or appeal, or a suspension lapses, the Local Health Board must notify the persons or bodies that were notified of the original decision of the later decision or of the fact that the suspension has lapsed.

CHAPTER 5

Reviews and appeals

Appeal to the First-tier Tribunal

28.—(1) A qualified practitioner may appeal to the First-tier Tribunal against a decision of the Local Health Board—

- (a) to refuse to include the qualified practitioner in its combined list under regulation 13, except in a case to which any of the grounds in paragraph 8 of Schedule 3 applies;
- (b) set out in regulation 14(7) (conditional inclusion);
- (c) to remove the qualified practitioner from its combined list under regulation 17;
- (d) to contingently remove the qualified practitioner from its supplementary list under regulation 19;
- (e) on any review of an earlier such decision of the Local Health Board under these Regulations.

(2) The reference in paragraph (1)(c) to a decision to remove a qualified practitioner under regulation 17 does not include removal in accordance with regulation 17(1)(c).

(3) Any appeal under this regulation is by way of redetermination.

(4) On appeal, the First-tier Tribunal may make any decision which the Local Health Board could have made.

(5) Where the First-tier Tribunal decides on appeal that the qualified practitioner's inclusion in the combined list must be subject to conditions, whether or not those conditions are identical to the conditions imposed by the Local Health Board, the Local Health Board must ask the qualified practitioner to notify it within 28 days of the decision (or such longer period as the Local Health Board agrees) whether the qualified practitioner wishes to be included in the combined list subject to those conditions.

(6) If the qualified practitioner notifies the Local Health Board that the qualified practitioner does wish to be included in the combined list subject to the conditions, the Local Health Board must so include the practitioner.

(7) Where the First-tier Tribunal on appeal decides to impose a contingent removal under these Regulations—

- (a) the Local Health Board and the qualified practitioner may each apply to the First-tier Tribunal for the conditions imposed on the qualified practitioner to be varied, for different conditions to be imposed, or for the contingent removal to be revoked;
- (b) the Local Health Board may remove the qualified practitioner from its combined list if it determines that the practitioner has failed to comply with a condition.

(8) Any right of appeal under this regulation must be exercised within 28 days beginning with the date on which notice of the relevant decision was given to the qualified practitioner.

Procedure on review of Local Health Board decision

29.—(1) Where a Local Health Board reviews its decision under regulation 14, 19 or 23, the Local Health Board must give the qualified practitioner—

- (a) notice that it intends to review its decision;
- (b) notice of any allegation against the qualified practitioner;
- (c) notice of what action the Local Health Board is considering and on what grounds;
- (d) the opportunity to make written representations to the Local Health Board within 28 days of the date of the notification under sub-paragraph (b) (“the specified period”);
- (e) the opportunity to make representations at an oral hearing before the Local Health Board within the specified period if the qualified practitioner requests one.

(2) If the qualified practitioner requests an oral hearing, the hearing must take place within the specified period and before the Local Health Board reaches its decision.

(3) If the qualified practitioner makes written representations or an oral hearing takes place, the Local Health Board must take into account any representations made before it reaches its decision.

(4) The Local Health Board must notify the qualified practitioner of its decision and the reasons for it (including any facts relied upon) within 7 days beginning with the day its decision is made.

(5) When the Local Health Board notifies the qualified practitioner under paragraph (4) it must, where applicable, also inform the qualified practitioner—

- (a) of any right of appeal under regulation 28;
- (b) that the qualified practitioner has 28 days beginning with the date the Local Health Board gave notice of the decision to exercise that right;
- (c) how to exercise that right of appeal.

Review periods for national disqualification

30.—(1) If on making a decision to impose a national disqualification, the First-tier Tribunal states that it is of the opinion that the criminal or professional conduct of the optometrist or ophthalmic medical practitioner is such that there is no realistic prospect of a further review being successful if held within the period specified in section 115(8)(a) of the Act, the reference to “two years” in that provision must be read as a reference to 5 years.

(2) If on the last review by the First-tier Tribunal of a national disqualification, the optometrist or ophthalmic medical practitioner was unsuccessful, and the First-tier Tribunal states that it is of the opinion that there is no realistic prospect of a further review being successful if held within a period of 3 years beginning with the date of its decision on that review, the reference to “one year” in section 115(8)(b) of the Act must be read as a reference to 3 years.

(3) If the First-tier Tribunal states that it is of the opinion that because a criminal conviction considered by the First-tier Tribunal in reaching its decision has been quashed or the penalty reduced on appeal, there is a need for an immediate review, the references to “two years” and “one year” in section 115(8) of the Act must be read as references to the period that has already elapsed.

(4) If the First-tier Tribunal is of the opinion that because the decision of a licensing, regulatory, or other body has been quashed or the penalty reduced on appeal, there is a need for an immediate review, the references to “two years” and “one year” in section 115(8) of the Act must be read as references to the period that has already elapsed.

PART 5

Arrangements with qualified practitioners and payment

The Statement

31.—(1) In these Regulations, references to “the Statement” are references to a determination by the Welsh Ministers, under section 76 of the Act, as to the remuneration to be paid to those who provide general ophthalmic services.

(2) The Welsh Ministers must publish the Statement.

(3) Subject to sub-paragraph (4), the Statement may provide that it has effect in relation to remuneration in respect of a period beginning on or after a date specified in the Statement, which may be the date of the Statement or an earlier or later date.

(4) The Statement may provide for payments to be paid in respect of a period beginning with a date earlier than the date of the Statement only if doing so is not detrimental to the persons to whose remuneration it relates.

(5) Where the Statement does not specify a date, it has effect in relation to remuneration in respect of a period beginning on the date the Statement is published.

Arrangements for the provision of primary ophthalmic services

32. A Local Health Board’s arrangements for the provision of primary ophthalmic services must incorporate—

- (a) the terms of service,
- (b) the Statement (in accordance with which the Local Health Board is required to make payments to contractors for the provision of general ophthalmic services), and
- (c) any directions given by the Welsh Ministers under section 12(3) of the Act (functions of Local Health Boards) relating to remuneration for the provision of eye examination services or compliance with other provisions of the terms of service (in accordance with which the Local Health Board is required to make payments to contractors) (collectively, the “fee directions”).

Payments for partial services

33.—(1) A contractor who is unable to complete for a patient the general ophthalmic services or eye examination services which the contractor has undertaken to provide must inform the Local Health Board accordingly in writing.

(2) If the Local Health Board is satisfied that the inability to complete the general ophthalmic services or eye examinations services is due to a reasonable cause, it must make payment in

accordance with the Statement or relevant fee directions (as appropriate) to the contractor for such part of those services as the contractor has provided.

Payments to suspended qualified practitioners

34.—(1) A Local Health Board must make payments to, or in respect of, qualified practitioners who have been suspended from its combined list under the Act or under regulation 23 in accordance with a determination of the Welsh Ministers in relation to such payments.

(2) The Welsh Ministers must—

- (a) make the determination in accordance with paragraph (3) after consultation with a body appearing to them to be representative of persons to whose remuneration the determination would relate and such other persons as they consider appropriate, and
- (b) publish that determination with the Statement.

(3) Subject to paragraphs (4) and (5), the Welsh Ministers' determination must be such as to secure that, as far as reasonably practicable, the suspended qualified practitioner receives payments at a rate corresponding to the remuneration of that qualified practitioner for primary ophthalmic services during the 12 months ending with the qualified practitioner's suspension.

(4) The Welsh Ministers' determination may include provision that payments in accordance with the determination must not exceed a specified amount in any specified period.

(5) The determination must provide for a deduction to take account of any payments which the suspended qualified practitioner receives for providing primary ophthalmic services otherwise than as a principal.

(6) Determinations may be varied or revoked by subsequent determinations.

(7) Regulation 35(2) to (5) applies to payments made under this regulation as it applies to payments made under that regulation.

Overpayments

35.—(1) Where—

- (a) a Local Health Board has made a payment to a patient under regulation 7(6) in respect of a sight test, and
- (b) the amount paid exceeds the fee payable to the contractor for general ophthalmic services set out in the Statement,

the Local Health Board must deduct the excess from remuneration otherwise payable to the contractor.

(2) Paragraphs (3) to (5) apply where a Local Health Board considers that it has made an overpayment for primary ophthalmic services to a contractor (whether in error or otherwise).

(3) The Local Health Board must, except to the extent that the Welsh Ministers on the application of the Local Health Board direct otherwise, inform the contractor of that fact.

(4) If the contractor admits the overpayment, the Local Health Board may recover the amount overpaid by a deduction from the contractor's remuneration or in some other manner.

(5) If the contractor does not admit the overpayment—

- (a) the Local Health Board may refer the matter under regulation 5(1) of the National Health Service (Service Committees and Tribunal) Regulations 1992⁽²⁷⁾ for investigation, and

(27) S.I. 1992/664, amended by S.I. 2002/2469; there are other amending instruments but none is relevant to these Regulations.

- (b) if the Local Health Board, or the Welsh Ministers on appeal, decide that there has been an overpayment, the amount overpaid will be recoverable by a deduction from the contractor's remuneration or in some other manner.

(6) Recovery of an overpayment under this regulation is without prejudice to the investigation of an alleged breach of the terms of service.

PART 6

Miscellaneous

Disclosure of information

36.—(1) A Local Health Board may disclose information supplied to it or acquired by it pursuant to these Regulations to any of the following—

- (a) the Welsh Ministers;
- (b) any other Local Health Board or equivalent body, which to its knowledge—
 - (i) has a qualified practitioner, or a body corporate of which the qualified practitioner is a director, to whom that information relates included in any of its primary care lists or equivalent lists,
 - (ii) is considering an application from such a qualified practitioner, or a body corporate of which the qualified practitioner is known to be a director, for inclusion in any of its primary care lists or equivalent lists, or
 - (iii) has in its area any place where the qualified practitioner provides or assists in the provision of primary ophthalmic services;
- (c) the Secretary of State;
- (d) the Scottish Ministers;
- (e) the Northern Ireland Executive;
- (f) the General Medical Council, General Optical Council or any other licensing or regulatory body;
- (g) NHS Resolution;
- (h) any organisation or employer that, to the knowledge of the Local Health Board, employs or uses any of the services of the qualified practitioner, to whom that information relates, in a professional capacity;
- (i) any partnership, any of whose members provide or assist in the provision of primary ophthalmic services and of which, to the knowledge of the Local Health Board, the qualified practitioner is a member or that is considering inviting the qualified practitioner to become a member;
- (j) where an allegation of fraud is being considered, the NHS Counter Fraud Authority.

(2) The Local Health Board must disclose to the Welsh Ministers information supplied to it or acquired by it pursuant to these Regulations, as the Welsh Ministers may request.

Publication of information

37.—(1) The Local Health Board must make available for inspection at its offices, and at such other places in its area as appear to the Local Health Board to be convenient for informing any person interested, copies of—

- (a) these Regulations, and

(b) the Statement.

(2) The Local Health Board is not required to make available copies of both documents referred to in paragraph (1) at every place at which it makes available copies of either of them.

Service of documents on contractors

38.—(1) Any document which is required or authorised under these Regulations to be given to a contractor may be given by—

(a) delivering it to them, or

(b) sending it addressed to them at—

(i) any address notified by the contractor to the Local Health Board for inclusion in the ophthalmic list as a place at which the person has undertaken to provide ophthalmic services, or

(ii) in the case of a mobile practice, the address notified to the Local Health Board as the address to which correspondence may be sent.

(2) In paragraph (1), “mobile practice” has the meaning given in Schedule 3.

PART 7

Consequential, revocation, transitional and saving provisions

Consequential amendments to primary legislation

39. The provisions listed in Schedule 5 are amended in relation to Wales as set out in that Schedule.

Minor and consequential amendments to secondary legislation

40. The provisions listed in Schedule 6 are amended in relation to Wales as set out in that Schedule.

Revocation provisions

41. Subject to the savings in regulation 42, the regulations listed in Schedule 7 are revoked in relation to Wales as set out in that Schedule.

Savings and transitional provisions

42.—(1) Where—

(a) general ophthalmic services have been provided under arrangements made in accordance with the 1986 Regulations, but

(b) payments for those services have not been made at the coming into force of these Regulations,

the Local Health Board must make payments for those services in accordance with the 1986 Regulations, which are saved for that purpose.

(2) A Local Health Board’s ophthalmic list is deemed to include, for the relevant transitional period, any person whose name was included in the ophthalmic list of that Local Health Board kept under regulation 6 of the 1986 Regulations (ophthalmic list) immediately before the commencement

date (“the previous ophthalmic list”), together with all the information relating to that person which is contained in the previous ophthalmic list.

(3) A Local Health Board’s supplementary list is deemed to include, for the relevant transitional period, any person whose name was included in the supplementary list of that Local Health Board kept under regulation 3 of the 2006 Regulations (supplementary list) immediately before the commencement date (“the previous supplementary list”), together with all the information relating to that person which is contained in the previous supplementary list.

(4) A person who is deemed to be included in a Local Health Board’s ophthalmic or supplementary list under paragraph (2) or (3), respectively, may at any time in the relevant transitional period—

- (a) provide general ophthalmic services or assist in the provision of those services (as the case may be);
- (b) provide eye examination services or assist in the provision of those services (as the case may be) if they are accredited to do so.

(5) Paragraph (7) applies if, before the end of the compliance period, a person who is deemed to be included in a Local Health Board’s ophthalmic list provides the following to that Local Health Board—

- (a) evidence that they are qualified to provide the eye examination services, except in the case of a corporate optician;
- (b) an undertaking to provide primary ophthalmic services in the Local Health Board’s area;
- (c) an undertaking to comply with the terms of service set out in Schedule 4.

(6) Paragraph (7) applies if, before the end of the compliance period, a person who is deemed to be included in a Local Health Board’s supplementary list provides the following to that Local Health Board—

- (a) evidence that they are qualified to provide the eye examination services;
- (b) an undertaking not to assist in the provision of primary ophthalmic services in the area of another Local Health Board or equivalent body from whose combined list the qualified practitioner has been removed, except where that removal was at the qualified practitioner’s request or in accordance with regulation 17(3)(e), without the consent of that Local Health Board or equivalent body.

(7) Where this paragraph applies—

- (a) the person is treated for the purposes of these Regulations as having applied to the Local Health Board for inclusion in the Local Health Board’s ophthalmic or supplementary list (as appropriate) and been approved by that Local Health Board under regulation 13;
- (b) the Local Health Board must notify the person that they have been included in the relevant list.

(8) In this regulation, “compliance period”, in relation to a person, means—

- (a) the period of 28 days beginning with the commencement date, or
- (b) if the Local Health Board in whose list the person is deemed to be included considers that it is not reasonably practicable for the person to comply with paragraph (5) or (6) (as appropriate) before the end of that period, such longer period as may be specified by the Local Health Board.

(9) In this regulation, “relevant transitional period”, in relation to a person, means the period—

- (a) beginning with the commencement date, and
- (b) ending with the earlier of—
 - (i) the expiry of the compliance period in relation that person, and

(ii) the date on which the Local Health Board notifies the person that they have been included in the relevant list.

(10) For the period beginning with the commencement date and ending with 31 March 2024, a person registered as a person undertaking training as an optometrist in the register maintained under section 8A of the Opticians Act 1989 (register of students) is treated, for the purposes of regulation 8(3) and paragraph 18 of Schedule 4, as if the person were a student optometrist included in a Local Health Board's supplementary list.

(11) Paragraph (12) applies where a Local Health Board has—

- (a) received an application for inclusion in its previous ophthalmic list or previous supplementary list, but
- (b) not determined that application before the commencement date.

(12) The Local Health Board must—

- (a) request the relevant evidence and undertakings set out in paragraph (5) or (6) (as appropriate), and
- (b) following receipt of the relevant evidence and undertakings, determine the application in accordance with these Regulations.

(13) Any appeal or review started under the 1986 or 2006 Regulations which has not concluded at the commencement date must be conducted in accordance with the 1986 or 2006 Regulations (as appropriate), which are saved for those purposes.

(14) Subject to paragraphs (1) to (13), any action taken by or on behalf of a Local Health Board before the commencement date in relation to its previous ophthalmic list or previous supplementary list (or in relation to the persons or entries on those lists), has effect on and after the commencement date as if such action had been taken by that Local Health Board in relation to the relevant part of the combined list maintained by that Local Health Board on the commencement date or in relation to the persons or entries therein.

(15) Subject to paragraphs (1) to (13), any action taken by or on behalf of any other person before the commencement date in relation to the previous ophthalmic list or the previous supplementary list of a Local Health Board (or in relation to the persons or entries on those lists), has effect on and after the commencement date as if such action had been taken in relation to the relevant part of the combined list maintained by that Local Health Board on the commencement date or in relation to the persons or entries therein.

(16) For the purposes of this regulation—

“the 1986 Regulations” (“*Rheoliadau 1986*”) means the National Health Service (General Ophthalmic Services) Regulations 1986⁽²⁸⁾ (revoked by regulation 41 and Schedule 7);

“the 2006 Regulations” (“*Rheoliadau 2006*”) means the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services) (Amendment and Consequential Amendment) (Wales) Regulations 2006⁽²⁹⁾ (revoked by regulation 41 and Schedule 7).

⁽²⁸⁾ S.I. 1986/975, amended by S.I. 1996/705, S.I. 2002/1883 and S.I. 2006/181. There are other amending instruments but none is relevant to these Regulations. These Regulations were revoked in relation to England by S.I. 2008/1700.

⁽²⁹⁾ S.I. 2006/181 (W. 32).

27 September 2023

Eluned Morgan
Minister for Health and Social Services, one of
the Welsh Ministers

SCHEDULES

SCHEDULE 1

Regulations 5, 6 and 7

Eligibility

Eligibility criteria

- 1.—(1) The eligibility criteria are—
- (a) a person is under the age of 16 years;
 - (b) a person is under the age of 19 years and receiving qualifying full-time education within the meaning of section 71(3) of the Act (arrangements for general ophthalmic services);
 - (c) a person is aged 60 years or more;
 - (d) a person’s resources are treated under sub-paragraph (2) as being less than, or equal to, that person’s requirements;
 - (e) a person requires to wear a complex appliance;
 - (f) a person is registered as sight-impaired or severely sight-impaired in a register kept by a local authority—
 - (i) in Wales, under section 18(1) of the Social Services and Well-being (Wales) Act 2014 (registers of sight-impaired, hearing-impaired and other disabled people), or
 - (ii) in England, under section 77(1) of the Care Act 2014⁽³⁰⁾ (registers of sight-impaired adults, disabled adults, etc.);
 - (g) a person has received a diagnosis of diabetes or glaucoma, or has been advised by an ophthalmologist to be predisposed to the development of glaucoma;
 - (h) a person is aged 40 or more and is the parent, brother, sister or child of a person who has been diagnosed with glaucoma;
 - (i) a person is a prisoner;
 - (j) a person is unioocular;
 - (k) a person has a hearing impairment;
 - (l) a person has been diagnosed with retinitis pigmentosa;
 - (m) a person has been clinically assessed as being at particular risk of developing eye disease.
- (2) A person’s resources must be treated as being less than or equal to that person’s requirements if—
- (a) the person is in receipt of income support;
 - (b) the person is a member of the same family as a person who is in receipt of income support;
 - (c) the person’s income resources as calculated in accordance with Part 4 of, and Schedule 1 to, the National Health Service (Travel Expenses and Remission of Charges) (Wales)

⁽³⁰⁾ 2014 c. 23.

Regulations 2007(31) for the purposes of remission of charges under the Act are less than the person's requirements as so calculated or exceed the person's requirements as so calculated by 50 per cent or less of the amount of the charge specified in regulation 3(2)(b) of the National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Wales) Regulations 2007(32) (supply of drugs and appliances by chemists) and the person's capital resources as so calculated do not exceed the capital limit;

- (d) the person is a member of the same family as a person falling within paragraph (c);
- (e) the person is in receipt of an income-based jobseeker's allowance;
- (f) the person is a member of the same family as a person falling within paragraph (e);
- (g) the person is a relevant child for the purposes of section 23A of the Children Act 1989(33) to whose maintenance a responsible local authority is contributing under section 23B(8) of that Act;
- (h) the person is a category 2 young person within the meaning of section 104(2) of the Social Services and Well-being (Wales) Act 2014 to whose maintenance a responsible local authority is contributing under section 109(1) of that Act;
- (i) the person is a member of a family—
 - (i) one member of which is receiving—
 - (aa) working tax credit and child tax credit,
 - (bb) working tax credit which includes a disability element or a severe disability element, or
 - (cc) child tax credit, but is not eligible to receive working tax credit, and
 - (ii) where the gross annual income of the person or persons to whom an award of a tax credit is made under section 14 of the Tax Credits Act 2002(34) is determined at the time of the award not to exceed £15,276;
- (j) the person is a person in respect of whom there is a current notice of entitlement;
- (k) the person is a member of a family one member of which is receiving pension credit guarantee credit;
- (l) the person is in receipt of income-related employment and support allowance;
- (m) the person is a member of the same family as a person in receipt of income-related employment and support allowance;
- (n) that person is a relevant universal credit recipient.

(3) In sub-paragraph (1)(g), “ophthalmologist” means a medical practitioner whose name is included in the register of specialists kept by the General Medical Council under section 34D of the Medical Act 1983(35) (the specialist register) and that register indicates his speciality to be ophthalmology.

(4) In sub-paragraph (2)(n), “relevant universal credit recipient” means a person who, in the relevant assessment period—

- (a) had an award of universal credit, either as a single claimant or as one of joint claimants, where—

(31) S.I. 2007/1104 (W. 116); relevant amending instruments are S.I. 2008/1480 (W. 153), S.I. 2009/54 (W. 18), S.I. 2009/2365 (W. 193), S.I. 2010/1237 (W. 107), S.I. 2011/1940 (W. 208), S.I. 2013/684 (W. 82), S.I. 2014/1099 (W. 109), S.I. 2016/211 (W. 84), S.I. 2017/340 (W. 84) and S.I. 2018/48 (W. 15).

(32) S.I. 2007/121 (W. 11), to which there are amendments not relevant to these Regulations.

(33) 1989 c. 41; section 23A was inserted by section 2(4) of the Children (Leaving Care) Act 2000 (c. 35) and was amended by paragraph 8(3) of Schedule 3 to the Children and Young Persons Act 2008 (c. 23) and regulation 74 of S.I. 2016/413 (W. 131).

(34) 2002 c. 21; Part 1 is repealed except in relation to a case referred to in article 3 of S.I. 2019/167.

(35) Section 34D was added by paragraph 10 of Schedule 1 to the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010 (S.I. 2010/234) and was amended by paragraph 19 of Schedule 1(1) to S.I. 2019/593.

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- (i) the award did not include the child element,
 - (ii) the single claimant or, as the case may be, both joint claimants, did not have limited capability for work, and
 - (iii) the single claimant had earned income or, as the case may be, the joint claimants had combined earned income, of £435.00 or less;
- (b) had an award of universal credit, either as a single claimant or as one of joint claimants, where—
- (i) the award included the child element, and
 - (ii) the single claimant had earned income or, as the case may be, the joint claimants had combined earned income, of £935.00 or less;
- (c) had an award of universal credit, either as a single claimant or as one of joint claimants, where—
- (i) the single claimant or, as the case may be, one or both joint claimants, had limited capability for work, and
 - (ii) the single claimant had earned income or, as the case may be, the joint claimants had combined earned income, of £935.00 or less;
- (d) was a qualifying young person for whom a recipient referred to in paragraph (b) or (c) is responsible (within the meaning of Part 1 of the 2012 Act⁽³⁶⁾ (universal credit) and regulations made thereunder).
- (5) Where sub-paragraph (6) applies, a person must be treated as falling within the description of a relevant universal credit recipient in sub-paragraph (2)(n).
- (6) This sub-paragraph applies where the conditions in paragraph (a), (b), (c) or (d) of sub-paragraph (4) are satisfied in the assessment period in which the sight test takes place and—
- (a) there is no relevant assessment period, or
 - (b) none of those conditions were satisfied in the relevant assessment period.
- (7) In sub-paragraph (2), “family” has the meaning assigned to it by section 137(1) of the Social Security Contributions and Benefits Act 1992⁽³⁷⁾ (interpretation of Part VII and supplementary provisions) as it applies to income support except that—
- (a) in paragraphs (b), (d) and (k), it has the meaning assigned to it by section 35 of the Jobseekers Act 1995⁽³⁸⁾ (interpretation);
 - (b) in paragraph (g), it has the meaning assigned to it by regulation 2(2) of the Tax Credits (Definition and Calculation of Income) Regulations 2002⁽³⁹⁾ (interpretation);
 - (c) in paragraph (m), it has the meaning assigned to it by regulation 2 of the Employment and Support Allowance Regulations 2008⁽⁴⁰⁾ (interpretation).
- (8) In this paragraph—
- “the 2012 Act” (“*Deddf 2012*”) means the Welfare Reform Act 2012;
- “assessment period” (“*cyfnod asesu*”) means the assessment period for the purposes of universal credit as specified in regulation 21 of the Universal Credit Regulations 2013⁽⁴¹⁾ (assessment periods);

⁽³⁶⁾ 2012 c. 5; there are amendments to Part 1 which are not relevant to these Regulations.

⁽³⁷⁾ 1992 c. 4; section 137(1) was amended by paragraph 22 of Schedule 1 to S.I. 2014/560. There are other amendments to that section that are not relevant to these Regulations.

⁽³⁸⁾ 1995 c. 18; section 35 was amended by paragraph 124(3) of Schedule 24(7) to the Civil Partnership Act 2004 (c. 33). There are other amendments to that section that are not relevant to these Regulations.

⁽³⁹⁾ S.I. 2002/2006, amended by S.I. 2005/1919; there are other amending instruments but none is relevant.

⁽⁴⁰⁾ S.I. 2008/794, to which there are amendments not relevant to these Regulations.

⁽⁴¹⁾ S.I. 2013/376; relevant amending instruments are S.I. 2014/2887 and S.I. 2018/65.

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“capital limit” (“*terfyn cyfalaf*”) means the amount prescribed for the purposes of section 134(1) of the Social Security Contributions and Benefits Act 1992 (exclusions from benefit) as it applies to income support;

“child element” (“*elfen plenty*”) means the child element of universal credit as specified in regulation 24(1) of the Universal Credit Regulations 2013⁽⁴²⁾ (the child element);

“child tax credit” (“*credyd treth plant*”) means child tax credit under section 8 of the Tax Credits Act 2002 (entitlement);

“disability element” (“*elfen anabled*”) means the disability element of working tax credit as specified in section 11(3) of the Tax Credits Act 2002 (maximum rate);

“earned income” (“*incwm a enillir*”) means a person’s earned income as defined by Chapter 2 of Part 6 of the Universal Credit Regulations 2013 (calculation of capital and income – earned income);

“gross annual income” (“*incwm blynyddol gros*”) means income that is calculated for a tax year for the purposes of Part 1 of the Tax Credits Act 2002 in accordance with regulations made under section 7 of that Act (income test);

“an income-based jobseeker’s allowance” (“*lwfans ceisio gwaith yn seiliedig ar incwm*”) has the meaning given to it by section 1(4) of the Jobseekers Act 1995⁽⁴³⁾ (the jobseeker’s allowance);

“income support” (“*cymhorthdal incwm*”) means income support under Part VII of the Social Security Contributions and Benefits Act 1992 and includes personal expenses addition, special transitional addition and transitional addition as defined in regulation 2(1) of the Income Support (Transitional) Regulations 1987⁽⁴⁴⁾ (interpretation);

“income-related employment and support allowance” (“*lwfans cyflogaeth a chymorth yn seiliedig ar incwm*”) means an employment and support allowance, entitlement to which is based on section 1(2)(b) of the Welfare Reform Act 2007⁽⁴⁵⁾ (income-related employment and support allowance);

“joint claimants” (“*hawlwyr ar y cyd*”) has the meaning given in section 40 of the 2012 Act (interpretation of Part 1);

“limited capability for work” (“*gallu cyfyngedig i weithio*”) means limited capability for work or limited capability for work and work-related activity as interpreted in accordance with regulations 39 and 40 respectively of the Universal Credit Regulations 2013⁽⁴⁶⁾ (limited capability for work; limited capability for work and work-related activity);

“pension credit guarantee credit” (“*credyd gwarant y credyd pensiwn*”) must be interpreted in accordance with sections 1 and 2 of the State Pension Credit Act 2002⁽⁴⁷⁾ (entitlement; guarantee credit);

“prisoner” (“*carcharor*”) means a person who is detained in a prison, including a young offender institution, a secure training centre, and a naval, military or air force prison, but is, at the time of receiving any general ophthalmic service, on leave from that prison, and for the purposes of this definition—

⁽⁴²⁾ S.I. 2013/376, amended by the Welfare Reform and Work Act 2016 (c. 7), section 14(5); there are other amending instruments but none is relevant.

⁽⁴³⁾ 1995 c. 18; section 1(4) was repealed by the Welfare Reform Act 2012 (c. 5), Schedule 14, paragraph 1. That repeal has effect on different days for different areas and purposes in relation to any provision of Part 1 of the 2012 Act (c. 5) or Part 1 of Schedule 14 to that Act.

⁽⁴⁴⁾ S.I. 1987/1969, to which there are amendments not relevant to these Regulations.

⁽⁴⁵⁾ 2007 c. 5; section 1(2)(b) was repealed by the Welfare Reform Act 2012 (c. 5), Schedule 14, paragraph 1. That repeal has effect on different days for different areas and purposes in relation to any provision of Part 1 of the 2012 Act (c. 5) or Part 1 of Schedule 14 to that Act.

⁽⁴⁶⁾ S.I. 2013/376, amended by S.I. 2014/597.

⁽⁴⁷⁾ 2002 c. 16; section 2 was amended by Schedule 24 to the Civil Partnership Act 2004 (c. 33).

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(a) “secure training centre” means a place in which offenders subject to detention and training orders within the meaning given by section 233 of the Sentencing Code⁽⁴⁸⁾ (detention and training order) may be detained and given training and education and prepared for their release, and

(b) “young offender institution” means a place for the detention of offenders sentenced to detention in a young offender institution or to custody for life;

“qualifying young person” (“*person ifanc cymhwysol*”) has the meaning given in section 10(5) of the 2012 Act (responsibility for children and young persons);

“relevant assessment period” (“*cyfnod asesu perthnasol*”) means the assessment period immediately preceding that in which the sight test take place;

“severe disability element” (“*elfen anabledd difrifol*”) means the severe disability element of working tax credit as specified in section 11(6)(d) of the Tax Credits Act 2002 (maximum rate);

“single claimant” (“*hawlydd unigol*”) has the meaning given in section 40 of the 2012 Act (interpretation of Part 1);

“universal credit” (“*credyd cynhwysol*”) means universal credit under Part 1 of the 2012 Act;

“working tax credit” (“*credyd treth gwaith*”) means working tax credit under section 10 of the Tax Credits Act 2002 (entitlement).

(9) In this paragraph and paragraph 2—

“complex appliance” (“*teclyn cymhleth*”) means an optical appliance at least one lens of which—

(a) has a power in any one meridian of plus or minus 10 or more dioptries, or

(b) is a prism-controlled multifocal lens;

“notice of entitlement” (“*hysbysiad o hawlogaeth*”) means a notice issued under regulation 8 of the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 (notices of entitlement).

Specific evidence of eligibility for certain persons

2.—(1) Subject to sub-paragraph (2), the specific evidence mentioned in regulation 6(5) is—

(a) for a person who is eligible only by virtue of paragraph 1(1)(d) and (2)(c) or (d), a current notice of entitlement;

(b) for a person who is eligible only by virtue of paragraph 1(1)(e), the prescription for a complex appliance issued to that person on the occasion when the person’s sight was last tested;

(c) for a person who is eligible only by virtue of paragraph 1(1)(g), the name and address of that person’s medical practitioner and consent to the Local Health Board seeking confirmation of the person’s diabetes or glaucoma from that person’s medical practitioner, set out on a form provided for that purpose to contractors by the Local Health Board.

(2) Where an eligible person to whom sub-paragraph (1)(b) applies is unable to meet its requirements, the contractor may instead of satisfying themselves that those requirements are met, satisfy themselves that the person is an eligible person by referring to the contractor’s own records or by measuring the power of the lenses of the person’s existing optical appliance by means of a focimeter or other suitable means.

⁽⁴⁸⁾ See section 1(1) of the Sentencing Act 2020 (c. 17) which states that Parts 2 to 13 of that Act together make up a code called the “Sentencing Code”.

SCHEDULE 2

Regulation 9

Recognition of ophthalmic medical practitioners

Qualifications of ophthalmic medical practitioners

1.—(1) The prescribed qualifications which a medical practitioner must possess for the purposes of section 71 of the Act (arrangements for general ophthalmic services) are that the medical practitioner has (at the date of consideration of this application under paragraph 2) recent and adequate experience and either—

- (a) has held—
 - (i) an appointment in the health service, otherwise than under Part 4 of the National Health Service Act 1946⁽⁴⁹⁾, Part 2 of the National Health Service Act 1977⁽⁵⁰⁾, or Part 6 of the Act, with the status of consultant ophthalmologist, or
 - (ii) an appointment for a period of 2 years or more of equivalent status as ophthalmic surgeon or assistant ophthalmic surgeon on the staff of an approved ophthalmic hospital, or
- (b) has—
 - (i) obtained the Membership of the Royal College of Ophthalmologists, or any approved higher degree or qualification, and
 - (ii) held one or more ophthalmic appointments in an approved ophthalmic hospital for a period totalling 2 years or more, which must include tenure for at least 6 months of a residential appointment or an appointment with duties comparable with those of a residential appointment.

(2) The tenure for 6 months of a residential or comparable appointment referred to in sub-paragraph (1)(b)(ii) is not required in the case of a medical practitioner who has been fully registered for at least 7 years and whose experience is such as to make that requirement unnecessary.

(3) In this paragraph, “approved” means approved by the Ophthalmic Qualifications Committee or by an appeal committee under paragraph 3.

Approval of qualifications of ophthalmic medical practitioners

2.—(1) A medical practitioner who wishes to be recognised as an ophthalmic medical practitioner must apply to the Ophthalmic Qualifications Committee for its approval of that person’s qualifications and must give to the Ophthalmic Qualifications Committee such particulars of those qualifications as the Committee may require.

(2) The Ophthalmic Qualifications Committee must consider and determine that applicant’s application and within 2 months beginning with the date of the application must inform that applicant of its determination.

(3) If the Ophthalmic Qualifications Committee is satisfied that the applicant possesses the qualifications prescribed by paragraph 1, the applicant must be considered an ophthalmic medical practitioner.

(4) Despite paragraph 1 and sub-paragraph (1), a medical practitioner who has the prescribed qualifications for the purposes of providing general ophthalmic services in Northern Ireland under the Health and Personal Social Services (Northern Ireland) Order 1972, in Scotland under the National Health Service (Scotland) Act 1978, or in England under the National Health Service Act 2006, must be considered an ophthalmic medical practitioner.

⁽⁴⁹⁾ 1946 c. 81.

⁽⁵⁰⁾ 1977 c. 49.

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- (5) For the purposes of sub-paragraph (2), the date of the application is the later of—
- (a) the date on which a completed application with all necessary supporting information is received by the Ophthalmic Qualifications Committee, or
 - (b) if the Ophthalmic Qualifications Committee requires any further supporting particulars from the applicant, the date on which the Committee receives all the particulars that it requires.

Appeals from Ophthalmic Qualifications Committee

3.—(1) Any person (“an appellant”) dissatisfied with a determination of the Ophthalmic Qualifications Committee that the appellant is not qualified to be an ophthalmic medical practitioner may, within 1 month beginning with the date on which the appellant received notice of that determination, or such longer period as the Welsh Ministers may at any time allow, appeal against the determination by sending to the Welsh Ministers a notice of appeal stating the facts and contentions on which the appellant relies.

- (2) The Welsh Ministers must—
- (a) appoint to determine the appeal an appeal committee of 5 persons of whom at least 3 must be appointed after consultation with such bodies or organisations representing medical practitioners as appear to the Welsh Ministers to be concerned with the issues relating to qualification as an ophthalmic medical practitioner,
 - (b) refer the appeal to that appeal committee,
 - (c) send a copy of the notice of appeal to the Ophthalmic Qualifications Committee and to such other persons as appear to the Welsh Ministers to be interested in the appeal, and
 - (d) inform the appellant, the Ophthalmic Qualifications Committee and any such other persons that the appeal has been referred to an appeal committee and of the address to which communications to the appeal committee must be sent.

(3) The appeal committee may, and if requested to do so by the appellant or the Ophthalmic Qualifications Committee must, hold a hearing in connection with an appeal at such time and place as it may direct.

(4) Notice of the hearing must, at least 14 clear days before the date of the hearing, be sent by recorded delivery service to the appellant, the Ophthalmic Qualifications Committee and any other person to whom the Welsh Ministers have under sub-paragraph (2) sent notice of the appeal.

(5) Either the appellant or the Ophthalmic Qualifications Committee may within 1 month of being informed that the appeal has been referred to an appeal committee, or of being informed that a hearing of the appeal will be held, give notice that they wish to appear before the appeal committee.

- (6) Any party to an appeal is entitled to appear and be heard by counsel or a solicitor and—
- (a) the Ophthalmic Qualifications Committee is entitled to appear by a member or by their clerk or other officer duly appointed for the purpose;
 - (b) the appellant is entitled to appear in person, by any member of the appellant’s family, by any friend, or by any officer or member of any organisation of which the appellant is a member.

(7) An appeal committee is to have all the powers of the Ophthalmic Qualifications Committee, including in particular the power of approval, and if satisfied that an appellant possesses the qualifications and experience prescribed by paragraph 1, it must give that approval.

(8) The appeal committee must as soon as practicable notify its determination to the appellant, the Ophthalmic Qualifications Committee, the Welsh Ministers and any other person to whom the Welsh Ministers have sent notice of the appeal under paragraph (2).

(9) Subject to the other provisions in this paragraph, the appeal committee may set the procedure of the appeal as it considers proper.

Interpretation

4. In this Schedule—

“the health service” (“*y gwasanaeth iechyd*”) has the meaning given in section 206 of the Act; “qualifications” (“*cymwysterau*”) includes qualifications as to experience.

SCHEDULE 3

Regulations 10, 12, 13, 15, 16, 17, 19, 28
and 38

Combined lists

PART 1

Information in the combined list

Information in the ophthalmic list

1. A Local Health Board’s ophthalmic list must contain the following information—
 - (a) the full names of the persons the Local Health Board has included in it;
 - (b) each such person’s professional registration number, with—
 - (i) suffixed to that number, the organisational code given by the Welsh Ministers to the Local Health Board, and
 - (ii) prefixed to that number, the initials OL;
 - (c) in the case of an individual, where consent is given, that person’s date of birth or where consent is not given or in the case of a corporate optician, the date of their first registration in the register;
 - (d) the date that the person’s name was first included in the ophthalmic list;
 - (e) if the qualified practitioner has made arrangements with the Local Health Board to provide mobile services, that fact;
 - (f) if the qualified practitioner is a mobile practice, that fact;
 - (g) the addresses of any places in the locality of the Local Health Board at which the qualified practitioner has undertaken to provide primary ophthalmic services other than mobile services, or in the case of a mobile practice, the address to which correspondence in connection with such provision may be sent and the addresses of any day or residential centres visited regularly;
 - (h) particulars of the days on which and hours between which the qualified practitioner has agreed to provide primary ophthalmic services at those addresses, or in the case of visits to day or residential centres by a mobile practice, the months in which visits are intended to take place and the planned interval between such visits, as agreed with the Local Health Board;
 - (i) the names of every other qualified practitioner who is regularly engaged as a deputy, director or employee in assisting in the provision of primary ophthalmic services at any of those addresses or in the provision of mobile services.

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Information in the supplementary list

2. A Local Health Board's supplementary list must contain the following information—
 - (a) the full names of the persons the Local Health Board has included in it;
 - (b) each such person's professional registration number, with—
 - (i) suffixed to that number, the organisational code given by the Welsh Ministers to the Local Health Board, and
 - (ii) prefixed to that number, the initials SOL;
 - (c) date of birth, where the qualified practitioner has given consent, or if consent is not given, the date of the qualified practitioner's first registration in the register;
 - (d) the date on which that person's name was included in the supplementary list.

PART 2

Information and undertakings to be provided in applications

Ophthalmic lists: information to be included in an application

3. A qualified practitioner applying to be included in a Local Health Board's ophthalmic list must provide the following information—
 - (a) the qualified practitioner's full name;
 - (b) the qualified practitioner's professional registration number, with—
 - (i) suffixed to that number, the organisational code given by the Welsh Ministers to the Local Health Board, and
 - (ii) prefixed to that number, the initials OL;
 - (c) in the case of an individual, where consent is given, that person's date of birth or where consent is not given or in the case of a corporate optician, the date of their first registration in the register;
 - (d) details of the addresses of any places in the Local Health Board's locality at which the qualified practitioner undertakes to provide primary ophthalmic services;
 - (e) the names of every other ophthalmic medical practitioner or optometrist who is regularly engaged as a deputy, director or employee in assisting in the provision of primary ophthalmic services at any of those addresses or in the provision of mobile services;
 - (f) if the qualified practitioner wishes to provide mobile services, the addresses to which correspondence in connection with such provision may be sent;
 - (g) particulars of the days on which and hours between which the qualified practitioner agrees to provide primary ophthalmic services;
 - (h) company number, if appropriate;
 - (i) the qualified practitioner's private address, or in the case of a corporate optician, the address of its registered office, and, in either case, a telephone number;
 - (j) qualifications and where they were obtained;
 - (k) chronological details of the qualified practitioner's professional experience (including starting and finishing dates of each appointment together with an explanation of any gaps between appointments), with any supporting particulars, and an explanation of why the qualified practitioner was dismissed from any post;

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- (l) 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 a qualified practitioner, which lasted for at least 3 months without a significant break, and where this is not possible, a full explanation and the names and addresses of alternative referees;
- (m) any information that the qualified practitioner has undertaken to provide under this Schedule;
- (n) particulars of any outstanding or deferred application for inclusion in the ophthalmic list, or any other list of a Local Health Board or equivalent body, with the name of the Local Health Board or equivalent body in question;
- (o) particulars of any Local Health Board or equivalent body in whose lists the qualified practitioner is included, or from which the qualified practitioner has been removed or contingently removed, or is suspended, or to which they have been refused admission or in which they have been conditionally included, with an explanation as to why;
- (p) if the applicant is a director of a 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 address of the registered office of that body and details of the Local Health Board or equivalent body concerned;
- (q) if the applicant is, or was in the preceding 6 months, or was at the time of the originating events, a director of a body corporate, details of any list or equivalent list to which that body has been refused admission, in which it has been conditionally included, from which it has been removed, contingently removed or from which it is currently suspended, with an explanation as to why and details of the Local Health Board or equivalent body concerned;
- (r) all necessary authority to enable a request to be made by the Local Health Board to any employer (or former employer), licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by them into the qualified practitioner;
- (s) any other information the Local Health Board may reasonably require.

Ophthalmic lists: undertakings and consent

4. A qualified practitioner applying to be included in a Local Health Board's ophthalmic list must provide the following undertakings and consent—

- (a) an undertaking to provide the information required by this Schedule and any further information requested by the Local Health Board;
- (b) an undertaking to notify the Local Health Board within 7 days of any material changes to the information provided in the application until the application is finally determined;
- (c) an undertaking to neither provide nor assist in the provision of primary ophthalmic services in the area of another Local Health Board or equivalent body from whose combined list or equivalent list the qualified practitioner has been removed, except where that removal was at the qualified practitioner's request or in accordance with regulation 17(3)(e), without the consent, in writing of that Local Health Board or equivalent body;
- (d) consent to the disclosure of information in accordance with these Regulations.

Supplementary lists: information to be provided in an application

5. A qualified practitioner applying to be included in a Local Health Board's supplementary list must provide the following information—

- (a) the qualified practitioner's full name;
- (b) the qualified practitioner's date of birth;

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- (c) the qualified practitioner's private address and telephone number;
- (d) details of the qualified practitioner's qualifications and where they were obtained;
- (e) a declaration that the qualified practitioner is a fully registered ophthalmic medical practitioner or optometrist, or student optometrist, included in the register;
- (f) the qualified practitioner's professional registration number and their date of first registration in the register;
- (g) chronological details of the qualified practitioner's professional experience (including starting and finishing dates of each appointment together with an explanation of any gaps between appointments), with any supporting particulars, and an explanation of why the qualified practitioner was dismissed from any post;
- (h) except where the applicant is a student optometrist, 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 a qualified practitioner, which lasted for at least 3 months without a significant break, and where this is not possible, a full explanation and the names and addresses of alternative referees;
- (i) whether the qualified practitioner has any outstanding application, including a deferred application, to be included in a combined list or an equivalent list and, if so, particulars of that application;
- (j) details of any Local Health Board or equivalent list from which the qualified practitioner has been removed or contingently removed, or to which they have been refused admission or in which they have been conditionally included, with an explanation as to why;
- (k) if the qualified practitioner is the director of a body corporate that is included in any combined list or equivalent list, or which has an outstanding application (including a deferred application) for inclusion in such a list, the name and address of the registered office of that body and details of the Local Health Board or equivalent body concerned;
- (l) where the practitioner is or was, in the preceding six months or at the time of the originating events, a director of a body corporate, details of any combined list or equivalent list to which that body has been refused admission, in which it has been conditionally included, from which it has been removed, contingently removed or from which it is currently suspended, with an explanation as to why and details of the Local Health Board or equivalent body concerned;
- (m) any other information the Local Health Board may reasonably require.

Supplementary lists: undertakings and consents

6. A qualified practitioner applying to be included in a Local Health Board's supplementary list must provide the following undertakings and consents—

- (a) an undertaking to provide the information and document, if applicable, required by regulation 16;
- (b) an undertaking not to assist in the provision of primary ophthalmic services in the area of another Local Health Board or equivalent body from whose combined list or equivalent list the qualified practitioner has been removed, except where that removal was at the qualified practitioner's request or in accordance with regulation 17(3)(e), without the consent in writing of that Local Health Board or equivalent body;
- (c) an undertaking to notify the Local Health Board within 7 days of any material changes to the information provided in the application until the application is finally determined;

- (d) an undertaking to notify the Local Health Board if the qualified practitioner is included, or applies to be included, in any other combined list or equivalent list held by a Local Health Board or equivalent body;
- (e) consent to the disclosure of information in accordance with these Regulations;
- (f) consent a request being made by the Local Health Board to any employer (or former employer), licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by them into the qualified practitioner.

Declarations

7.—(1) A qualified practitioner applying to be included in the Local Health Board’s combined list must declare whether the qualified practitioner—

- (a) has any criminal convictions in the United Kingdom;
- (b) has been bound over following a criminal conviction in the United Kingdom;
- (c) has accepted a police caution in the United Kingdom;
- (d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995⁽⁵¹⁾ (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992⁽⁵²⁾ (penalty as alternative to prosecution);
- (e) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 (admonition and absolute discharge) discharging the practitioner absolutely;
- (f) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (g) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales, would constitute a criminal offence;
- (h) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Local Health Board;
- (i) has been subject to any investigation into the professional conduct of the qualified practitioner by any licensing, regulatory or other body anywhere in the world, where the outcome was adverse;
- (j) is currently subject to any investigation into the professional conduct of the qualified practitioner by any licensing, regulatory or other body anywhere in the world;
- (k) is, or has been where the outcome was adverse, the subject of any investigation into the professional conduct of the qualified practitioner in respect of any current or previous employment;
- (l) becomes to the qualified practitioner’s knowledge the subject of any investigation by the NHS Counter Fraud Authority in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;
- (m) is the subject of an investigation by another Local Health Board or equivalent body, which might lead to the qualified practitioner’s removal from a primary care list or equivalent list;
- (n) has been removed, contingently removed or suspended from, refused admission to or conditionally included in a primary care list or equivalent list, and if so, why and the name of that Local Health Board or equivalent body;

⁽⁵¹⁾ 1995 c. 46.

⁽⁵²⁾ 1992 c. 5.

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(o) is, or has ever been, subject to a national disqualification.

(2) A declaration under sub-paragraph (1) must give details, including approximate dates, of where the investigation or proceedings were or are to be brought, the nature of that investigation or those proceedings, and any outcome.

(3) If the qualified practitioner applying to be included in the Local Health Board's combined list is, has in the preceding 6 months been, or was at the time of the originating events, a director of a body corporate, the qualified practitioner must declare whether the body corporate—

- (a) has any criminal convictions in the United Kingdom;
- (b) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (c) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Local Health Board;
- (d) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales would constitute a criminal offence;
- (e) has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body anywhere in the world, where the outcome was adverse;
- (f) is currently subject to any investigation into its provision of professional services by any licensing, regulatory or other body anywhere in the world;
- (g) becomes to the qualified practitioner's knowledge the subject of any investigation by the NHS Counter Fraud Authority in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;
- (h) is the subject of any investigation by another Local Health Board which might lead to its removal from a primary care list or equivalent list;
- (i) has been removed, contingently removed or suspended from, refused admission to or conditionally included in a primary care list or equivalent list, and if so, why and the name of that Local Health Board or equivalent body.

(4) A declaration under sub-paragraph (3) must give the name and address of the registered office of the body corporate and details of any investigation or proceedings which were or are to be brought, including the nature of the investigation or proceedings, where and approximately when that investigation or those proceedings took place or are to take place, and any outcome.

(5) Where the qualified practitioner applying to be included in a Local Health Board's ophthalmic list is a corporate optician, the qualified practitioner must declare whether any of its directors—

- (a) has any criminal convictions in the United Kingdom;
- (b) has been bound over following a criminal conviction in the United Kingdom;
- (c) has accepted a police caution in the United Kingdom;
- (d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);
- (e) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 (admonition and absolute discharge) discharging that director absolutely;
- (f) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;
- (g) is currently the subject of any proceedings which might lead to such a conviction which have not yet been notified to the Local Health Board;

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- (h) is currently subject to any investigation into that director's professional conduct by any licensing, regulatory or other body;
 - (i) is to that director's knowledge the subject of any investigation by the NHS Counter Fraud Authority in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;
 - (j) is the subject of any investigation by another Local Health Board or equivalent body which might lead to that director's removal from a primary care list or equivalent list;
 - (k) has been removed, contingently removed or suspended from, refused admission to, or conditionally included in a primary care list or equivalent list, and if so, why and the name of that Local Health Board or equivalent body.
- (6) A declaration under sub-paragraph (5) must give details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or those proceedings, and any outcome.

PART 3

Determination of applications

- 8.** The grounds on which a Local Health Board must refuse to include a qualified practitioner in its combined list are that—
- (a) the qualified practitioner has been convicted in the United Kingdom of murder;
 - (b) the qualified practitioner is the subject of a national disqualification;
 - (c) the qualified practitioner has not provided further information under regulation 15(5);
 - (d) the qualified practitioner has not notified the Local Health Board under regulation 28(6);
 - (e) the Local Health Board is not satisfied of the qualified practitioner's intention to provide or assist in the provision of primary ophthalmic services (as the case may be) in the Local Health Board's area;
 - (f) the qualified practitioner—
 - (i) applies to be included in the ophthalmic list, but is included in the supplementary list of any Local Health Board, or
 - (ii) applies to be included in the supplementary list, but is included in either the ophthalmic list of any Local Health Board or the supplementary list of another Local Health Board unless, in either case, the qualified practitioner has given notice in writing to that Local Health Board that they wish to withdraw from that list;
 - (g) except in relation to a student optometrist, the Local Health Board considers that the qualified practitioner is not qualified to provide, or assist in the provision of, primary ophthalmic services (as appropriate);
 - (h) in relation to a student optometrist, the Local Health Board considers that the person is not qualified to assist in the provision of services under supervision.
- 9.** The grounds on which a Local Health Board may refuse to include a qualified practitioner in its combined list are that—
- (a) the Local Health Board, having reviewed the qualified practitioner's application and any other relevant information or documents, considers the qualified practitioner is unsuitable to be included in its combined list;

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- (b) the Local Health Board, having checked the information provided by the qualified practitioner, is not satisfied with the information provided in the qualified practitioner's application;
- (c) having obtained references from the referees named by the qualified practitioner under Part 2 of Schedule 3, the Local Health Board is not satisfied with those references;
- (d) having checked with the NHS Counter Fraud Authority for any facts that the Local Health Board considers relevant relating to any past or current fraud investigation involving or relating to the qualified practitioner and, having considered these and any other facts in its possession relating to fraud or relating to the qualified practitioner, the Local Health Board considers that these justify such refusal;
- (e) the Local Health Board considers that there are reasonable grounds for concluding that including the qualified practitioner in the combined list would be prejudicial to the efficiency of the services which the qualified practitioner would provide or assist with;
- (f) having checked with the Welsh Ministers for any facts that they consider relevant relating to past or current investigations or proceedings involving or relating to the qualified practitioner and, having considered these and any other facts in its possession involving or relating to the qualified practitioner, the Local Health Board considers that these justify such refusal;
- (g) on or after 30 July 2002 in the case of the ophthalmic list, or on or after 1 February 2006 in the case of the supplementary list, the qualified practitioner has been convicted in the United Kingdom of any criminal offence (other than murder) and has been sentenced to a term of imprisonment (whether suspended or not) of over 6 months.

10.—(1) Where the Local Health Board is considering a refusal of a qualified practitioner's application on a ground contained in paragraph 9, it must consider all facts which appear to it to be relevant including—

- (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 taken 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 in respect of the qualified practitioner's provision of (or assistance in providing, as applicable) primary ophthalmic services and any likely risk to any patients or to public finances;
- (f) whether any criminal offence was a sexual offence for the purposes of Part 1 of the Sexual Offences Act 2003(53), or which if it had been committed in England and Wales, would have been such an offence;
- (g) whether the qualified practitioner has been refused admission to, conditionally included in, removed, contingently removed, or is currently suspended from, a primary care list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action;
- (h) whether the qualified practitioner is, has in the preceding 6 months been, or was at the time of the originating events, a director of a body corporate which was refused admission to, conditionally included in, removed or contingently removed from a primary care list or equivalent list or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Local Health Board or equivalent body in each case for such action;

(53) 2003 c. 42.

- (i) in the case of a corporate optician, whether any of its directors, or anyone who has in the preceding 6 months been one of its directors, has been refused admittance to, conditionally included in, removed, contingently removed or suspended from a primary care list, or equivalent list and, if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action.
- (2) When the Local Health Board takes into consideration the matters set out in sub-paragraph (1), it must consider the overall effect of all the matters being considered.

PART 4

Deferral of decisions

- 11.—(1) The circumstances referred to in regulation 15 are—
- (a) the qualified practitioner is suspended from a primary care list or equivalent list;
 - (b) a body corporate of which the qualified practitioner is, has in the preceding 6 months been, or was at the time of the originating events, a director, is suspended from a primary care list or equivalent list;
 - (c) any of the circumstances mentioned in sub-paragraph (2), where the Local Health Board considers it likely that a conviction, or equivalent to a conviction, or a finding against the qualified practitioner would lead to the qualified practitioner’s removal from its combined list if they were included on it.
- (2) The circumstances are—
- (a) active criminal proceedings in relation to the qualified practitioner in the United Kingdom;
 - (b) active proceedings in relation to the qualified practitioner elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence;
 - (c) in respect of a body corporate of which the qualified practitioner is, has in the preceding 6 months been, or was at the time of the originating events a director—
 - (i) active criminal proceedings in relation to that body corporate in the United Kingdom;
 - (ii) active proceedings in relation to that body corporate elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence;
 - (d) in the case of a corporate optician, where in respect of any of its directors—
 - (i) there are active criminal proceedings in the United Kingdom;
 - (ii) there are active proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence;
 - (e) there is an active investigation anywhere in the world by the qualified practitioner’s licensing or regulatory body or any other investigation (including one by another Local Health Board or equivalent body) relating to the qualified practitioner in their professional capacity;
 - (f) the First-tier Tribunal is considering an appeal by the qualified practitioner against a decision of a Local Health Board to refuse to admit the qualified practitioner to its combined list, or to conditionally include them in, or to remove or contingently remove them from any list kept by the Local Health Board;
 - (g) the First-tier Tribunal is considering an appeal by a body corporate of which the qualified practitioner is, has in the preceding 6 months been, or was at the time of the originating

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- events a director against a decision of a Local Health Board to refuse to admit the body corporate to its combined list, or to conditionally include them in, or to remove or contingently remove them from any lists kept by a Local Health Board or equivalent body;
- (h) the qualified practitioner is being investigated by the NHS Counter Fraud Authority in relation to any fraud;
 - (i) a body corporate, of which the qualified practitioner is, has in the preceding 6 months been, or was at the time of the originating events, a director, is being investigated in relation to any fraud;
 - (j) the First-tier Tribunal is considering an application from a Local Health Board for a national disqualification of the qualified practitioner;
 - (k) the First-tier Tribunal is considering an application from a Local Health Board for a national disqualification of a body corporate of which the qualified practitioner is, or has in the preceding 6 months been, or was at the time of the originating events a director.

PART 5

Removal from a combined list

Procedure for removal under these Regulations

12.—(1) In the circumstances in sub-paragraph (4), a Local Health Board must give the qualified practitioner—

- (a) notice of any allegation against the qualified practitioner;
- (b) notice of the action the Local Health Board is considering and on what grounds;
- (c) the opportunity to make written representations to the Local Health Board within 28 days of the date of notification under paragraph (b) (“the specified period”);
- (d) the opportunity to make representations at an oral hearing before the Local Health Board within the specified period if the qualified practitioner requests one.

(2) If the qualified practitioner requests an oral hearing, the hearing must take place within the specified period and before the Local Health Board reaches its decision.

(3) If the qualified practitioner makes written representations or an oral hearing takes place, the Local Health Board must take any representations made by the qualified practitioner into account before reaching its decision.

(4) This paragraph applies where a Local Health Board is considering—

- (a) removal on the grounds in regulation 17(3),
- (b) removal for breach of a condition imposed under regulation 14, or
- (c) contingent removal under regulation 19.

Procedure for removal under the Act

13. A Local Health Board must follow the procedure set out in paragraph 12(1) to (3) where it is considering—

- (a) removing a qualified practitioner from its ophthalmic list under section 107 of the Act (disqualification of practitioners), or
- (b) contingently removing a qualified practitioner from its ophthalmic list under section 108 of the Act.

Factors to be considered before removal

14. In making any decision under section 107 of the Act (disqualification of practitioners) or regulation 17(3)(d) of these Regulations, the Local Health Board must take into account the overall effect of any relevant incidents and offences relating to the qualified practitioner of which it is aware, whichever condition it relies on.

Factors relating to unsuitability cases

15.—(1) Where a Local Health Board is considering whether to remove a qualified practitioner from its combined list under section 107(4) of the Act (disqualification of practitioners) or under regulation 17(3)(d) of these Regulations, in relation to an unsuitability case, it must—

- (a) consider any information relating to the qualified practitioner which it has received in accordance with any provision of Part 2 of Schedule 3 or Schedule 4,
 - (b) check with the Welsh Ministers for, and consider, any facts that the Welsh Ministers consider relevant relating to past or current investigations or proceedings involving or relating to the qualified practitioner, and
 - (c) in reaching its decision, take into consideration the matters set out in sub-paragraph (2).
- (2) The matters referred to in sub-paragraph (1)(c) are—
- (a) the nature of any offence, investigation or incident;
 - (b) the length of time since any offence, incident, conviction or investigation occurred or was concluded;
 - (c) whether there are other offences, incidents or investigations to be considered;
 - (d) any action taken or penalty imposed by any licensing or regulatory body, the police or the courts as a result of any such offence, incident or investigation;
 - (e) the relevance of any offence, incident or investigation to the qualified practitioner's provision of (or assistance in providing, as applicable) primary ophthalmic services and any likely risk to any patients or to public finances;
 - (f) whether any offence was a sexual offence for the purposes of Part 1 of the Sexual Offences Act 2003, or which if it had been committed in England and Wales, would have been such an offence;
 - (g) whether the qualified practitioner has been refused admission to, conditionally included in, removed, contingently removed, or is currently suspended from, a primary care list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action;
 - (h) whether the qualified practitioner is, has in the preceding 6 months been, or was at the time of the originating events, a director of a body corporate which was refused admission to, conditionally included in, removed or contingently removed from a primary care list or equivalent list or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Local Health Board or equivalent body in each case for such action;
 - (i) in the case of a corporate optician, whether a person who, at the time of the originating events, was one of its directors, has been refused admittance to, conditionally included in, removed, contingently removed or suspended from a primary care list, or equivalent list and, if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action.

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Factors relating to fraud cases

16.—(1) Where a Local Health Board is considering whether to remove a qualified practitioner from its combined list under section 107(3) of the Act (disqualification of practitioners) or under regulation 17(3)(d) of these Regulations, in relation to a fraud case, it must—

- (a) consider any information relating to the qualified practitioner which it has received in accordance with any provision of Part 2 of Schedule 3 or Schedule 4,
 - (b) check with the Welsh Ministers for, and consider, any facts that the Welsh Ministers consider relevant relating to past or current investigations or proceedings involving or relating to the qualified practitioner, and
 - (c) in reaching its decision, take into consideration the matters set out in sub-paragraph (2).
- (2) The matters referred to in sub-paragraph (1)(c) are—

- (a) the nature of any cases of fraud;
- (b) the length of time since the last case of fraud occurred and since any investigation into it was concluded;
- (c) whether there are other cases of fraud or other offences to be considered;
- (d) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such offence, investigation or case;
- (e) the relevance of any investigation into a case of fraud to the qualified practitioner's provision of (or assistance in providing, as applicable) primary ophthalmic services and the likely risk to patients or to public finances;
- (f) whether the qualified practitioner has been refused admission to, conditionally included in, removed, or contingently removed or is currently suspended from, a primary care list or equivalent list, and, if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action;
- (g) whether the qualified practitioner is, has in the preceding 6 months been, or was at the time of the originating events, a director of a body corporate, which was refused admission to, conditionally included in, removed or contingently removed from, a primary care list or equivalent list, or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Local Health Board or equivalent body in each case;
- (h) in the case of a corporate optician, whether a person who, at the time of the originating events, was one of its directors, has been refused admittance to, conditionally included in, removed, contingently removed or suspended from a primary care list or equivalent list and, if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action.

Factors relating to efficiency cases

17.—(1) Where a Local Health Board is considering the removal of a qualified practitioner from its combined list under section 107(2) of the Act (disqualification of practitioners) or under regulation 17(3)(d) of these Regulations, in relation to an efficiency case, it must—

- (a) consider any information relating to the qualified practitioner which it has received in accordance with any provision of Part 2 of Schedule 3 or Schedule 4,
- (b) check with the Welsh Ministers for, and consider, any facts that the Welsh Ministers consider relevant relating to past or current investigations or proceedings involving or relating to the qualified practitioner, and
- (c) in reaching its decision, take into consideration the matters referred to in sub-paragraph (2).

- (2) The matters referred to in sub-paragraph (1)(c) are—
- (a) whether the continued inclusion of the qualified practitioner in the combined list would be prejudicial to the efficiency of the primary ophthalmic services—
 - (i) provided by the qualified practitioner, or
 - (ii) which the qualified practitioner assists in providing;
 - (b) the length of time since the last incident occurred and since any investigation into it was concluded;
 - (c) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident;
 - (d) the nature of the incident and whether there is a likely risk to patients;
 - (e) whether the qualified practitioner has previously failed to supply information, make a declaration or comply with an undertaking required by these Regulations;
 - (f) whether the qualified practitioner has ever failed to comply with a request by the Local Health Board to take an assessment by NHS Resolution or any of its predecessor bodies;
 - (g) whether the qualified practitioner has been refused admission to, conditionally included in, removed or contingently removed or is currently suspended from, a primary care list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or the equivalent body for such action;
 - (h) whether the qualified practitioner is, has in the preceding 6 months been, or was at the time of the originating events, a director of a body corporate which was refused admission to, conditionally included in, removed or contingently removed from a primary care list or equivalent list, or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Local Health Board or equivalent body in each case for such action;
 - (i) in the case of a corporate optician, whether a person, who, at the time of the originating events, was one of its directors, has been refused admittance to, conditionally included in, removed, contingently removed or suspended from a primary care list or equivalent list and, if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action.

PART 6

Interpretation

Interpretation

18. In this Schedule—

“mobile practice” (*“practis symudol”*) means a contractor who—

- (a) has made arrangements with the Local Health Board to provide mobile services, and
- (b) does not have premises in that Local Health Board’s area;

“originating events” (*“digwyddiadau 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;

“the register” (*“y gofrestr”*) means—

- (a) in relation to an ophthalmic medical practitioner, a register maintained by the General Medical Council under the Medical Act 1983, or

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- (b) in relation to a qualified practitioner other than an ophthalmic medical practitioner, a register maintained by the General Optical Council under the Opticians Act 1989.

SCHEDULE 4

Regulations 12, 14 and 42

Terms of Service

Incorporation of provisions

1.—(1) Any provisions of the following affecting the rights and obligations of contractors form part of the terms of service—

- (a) these Regulations;
- (b) the Statement;
- (c) the fee directions;
- (d) so much of Part 2 of the National Health Service (Service Committees and Tribunal) Regulations 1992⁽⁵⁴⁾ as relates to—
 - (i) the investigation of questions arising between contractors and their patients, other investigations to be made by the ophthalmic discipline committee (“the Committee”), and the action which may be taken by the Committee as a result of such investigations, including the withholding of remuneration from a contractor where there has been a breach of the terms of service;
 - (ii) appeals to the Welsh Ministers against decisions of the Committee;
 - (iii) the investigation of excessive issuing of optical vouchers following the testing of sight;
- (e) regulation 9 of the National Health Service (Optical Charges and Payments) Regulations 1997⁽⁵⁵⁾ (issue of vouchers by ophthalmic medical practitioners or opticians).

(2) The contractor must secure that any person the contractor employs to assist in the provision of primary ophthalmic service complies with the provisions listed at paragraph (1)(a) to (e) in so far as they apply to such persons.

(3) In this paragraph, “fee directions” has the meaning given in regulation 32.

Duty to make available basic glasses

2.—(1) Sub-paragraphs (2) and (3) apply where—

- (a) in the course of its business, a contractor supplies glasses for the purpose of correcting visual defects, and
- (b) a person presents that contractor with a voucher for supply of optical appliances issued under the National Health Service (Optical Charges and Payments) Regulations 1997.

(2) A contractor may accept the voucher in substitution for payment in relation to a pair of glasses only if the contractor has made available to the person at least one pair of basic glasses (whether or not the payment is in relation to those basic glasses or another pair of glasses).

(3) For the purposes of this paragraph, “basic glasses” means a pair of glasses that are an appropriate fit for the person which—

⁽⁵⁴⁾ S.I. 1992/664; relevant amending instruments are S.I. 1996/703, S.I. 2002/2469 and S.I. 2013/2042.

⁽⁵⁵⁾ S.I. 1997/818, amended by S.I. 2003/301.

- (a) meet the person's prescription, and
 - (b) are of a value equal to or less than the face value of the voucher.
- (4) In sub-paragraph (3), "face value" has the meaning given in the National Health Service (Optical Charges and Payments) Regulations 1997.

Premises at which primary ophthalmic services are to be provided

3. Subject to paragraph 4, a contractor may provide primary ophthalmic services only at the contractor's registered premises.

Provision of mobile services

4.—(1) A contractor who has made arrangements with a Local Health Board to provide mobile services in that Local Health Board's area may only provide them in accordance with sub-paragraph (2).

- (2) The contractor may only provide mobile services if—
 - (a) the patient has requested the contractor provides those services to them, or where the patient is not capable of making such a request, a relative or primary carer of that patient, or a duly authorised person, has made such a request,
 - (b) the patient's circumstances related to their physical or mental illness or disability make it impossible or unreasonable for them to receive primary ophthalmic services at a registered premises, and
 - (c) the contractor is satisfied that the patient is eligible for mobile services in accordance with these Regulations.

Premises and equipment

5.—(1) Subject to sub-paragraphs (2) to (6) and paragraph 18(4), a contractor must provide, as necessary, proper and sufficient consulting and waiting room accommodation and suitable equipment for the provision of primary ophthalmic services which the contractor has undertaken to provide.

(2) A contractor, who has made arrangements with the Local Health Board to provide mobile services, must provide suitable equipment for the provision of such services.

(3) Where the circumstances in sub-paragraph (4) apply, a contractor may, instead of providing the accommodation and equipment, as required under sub-paragraph (1), or equipment as required under sub-paragraph (2), enter into arrangements of the kind described in sub-paragraph (5), provided the conditions set out in sub-paragraph (6) are met.

(4) The circumstances referred to in sub-paragraph (3) are that a contractor who was included on the ophthalmic list of a Local Health Board on 31 January 2006—

- (a) does not provide or no longer provides accommodation and equipment, as required under sub-paragraph (1), or equipment as required under sub-paragraph (2), and
- (b) is not employed, in relation to the primary ophthalmic services which the contractor has undertaken to provide in the area of that Local Health Board, by another contractor.

(5) The arrangements referred to in sub-paragraph (3) are legally enforceable arrangements under which the following are available to the contractor for the provision of primary ophthalmic services that the contractor has undertaken to provide, which permit inspection as required under sub-paragraph (7) or (8)—

- (a) requisite, proper and sufficient consulting and waiting room accommodation and suitable equipment, or

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(b) in the case of the provision of mobile services, suitable equipment.

(6) The conditions referred to in sub-paragraph (3) are that the contractor has satisfied the Local Health Board that—

(a) the arrangements are legally enforceable and permit inspection as required under sub-paragraph (7) or (8);

(b) the accommodation and equipment or, in the case of the provision of mobile services, equipment, provided under the arrangements are adequate and suitable.

(7) Subject to sub-paragraph (8) and paragraph 18(4), a contractor, on receipt of a written request from the Local Health Board to do so, must admit at all reasonable times for the purposes of inspecting the contractor's accommodation or equipment an authorised officer of the Welsh Ministers, or an authorised officer or member of the Local Health Board.

(8) On receipt of a written request from the Local Health Board or the Welsh Ministers, a contractor who has made arrangements with the Local Health Board to provide mobile services must—

(a) arrange for an authorised officer of the Local Health Board or of the Welsh Ministers to be allowed to inspect at a reasonable time the facilities and equipment that the contractor uses;

(b) allow an authorised officer of the Welsh Ministers or that Local Health Board to inspect the facilities and equipment that the contractor uses when providing those services.

(9) A contractor must have regard to the code of practice on access to premises prepared and published by the Welsh Ministers under section 19(1) of the Health and Social Care (Quality and Engagement) (Wales) Act 2020⁽⁵⁶⁾ (code of practice on access to premises) (so far as the code is relevant) in exercising any function that relates to the provision of health services or social services (within the meaning of those terms in section 21 of that Act).

Displaying of notices

6.—(1) Subject to sub-paragraph (2), a contractor must prominently display at each place at which the contractor provides primary ophthalmic services—

(a) a notice and leaflets supplied or approved by the Local Health Board, indicating that primary ophthalmic services are available and indicating to which descriptions of the contractor's patients a payment may be made under the National Health Service (Optical Charges and Payments) Regulations 1997, and

(b) details of the days on which and hours between which the contractor has agreed to provide primary ophthalmic services at that place.

(2) Where mobile services are being provided, a notice is required to be displayed only in so far as it is reasonably practicable to do so.

Welsh Language

7.—(1) Where the contractor provides primary ophthalmic services through the medium of Welsh, the contractor must notify the Local Health Board of that fact.

(2) The contractor must make available a Welsh language version of any document or form provided by the Local Health Board for use by patients and other members of the public.

(3) Where the contractor displays a new sign or notice in connection with primary ophthalmic services, the text on the sign or notice must be in English and Welsh.

(4) The contractor may utilise the translation service offered by the Local Health Board for the purposes of sub-paragraph (3).

(56) 2020 asc 1

(5) The contractor must encourage persons delivering primary ophthalmic services who speak Welsh to wear a badge provided by the Local Health Board conveying that they are able to speak Welsh.

(6) The contractor must encourage persons delivering primary ophthalmic services to utilise information and/or attend training courses and events provided by the Local Health Board, so that they can develop—

- (a) an awareness of the Welsh language (including awareness of its history and its role in Welsh culture), and
- (b) an understanding of how the Welsh language can be used when delivering primary ophthalmic services.

(7) The contractor must encourage those delivering primary ophthalmic services to establish and record the Welsh or English language preference expressed by or on behalf of a patient.

Times at which primary ophthalmic services must be provided

8. The contractor must provide primary ophthalmic services during times agreed with the Local Health Board.

Records

9.—(1) Subject to paragraph 10, a contractor must keep a proper record in respect of each patient to whom the contractor provides primary ophthalmic services.

(2) Subject to paragraphs 10 and 18(4), a contractor must retain all such records for a period of 10 years after the date the patient was last seen or until the patient turns 25 years old, whichever is the later.

(3) During the period referred to in sub-paragraph (2), a contractor must produce those records when required to do so by a Local Health Board or the Welsh Ministers—

- (a) to an officer authorised by a Local Health Board or by the Welsh Ministers, and
- (b) within such period, not being less than 14 days, as the Local Health Board or the Welsh Ministers may specify.

Alternative records arrangements

10.—(1) Where the circumstances in sub-paragraph (2) apply, a contractor may, instead of keeping the records required under paragraph 9, comply with the conditions set out in sub-paragraph (3).

(2) The circumstances referred to in sub-paragraph (1) are that a contractor—

- (a) was included on the ophthalmic list of a Local Health Board on 31 January 2006,
- (b) does not keep or no longer keeps records as required under paragraph 9, and
- (c) is not employed, in relation to the primary ophthalmic services the contractor provides in the area of that Local Health Board, by another contractor.

(3) The conditions referred to in sub-paragraph (1) are that the contractor has—

- (a) made legally enforceable arrangements that—
 - (i) a proper record in respect of each patient to whom the contractor provides primary ophthalmic services is kept,
 - (ii) all such records are kept for a period of 10 years after the date the patient was last seen or until the patient turns 25 years old, whichever is the later, and

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- (iii) during that period such records must be produced when and as required under paragraph 9(3),
- (b) satisfied the Local Health Board's requirements as to the keeping of records and that the arrangements are legally enforceable and require such production, and
- (c) access to those records at all reasonable times.

Audits

- 11.**—(1) A contractor must—
- (a) complete such audits as the Local Health Board on whose ophthalmic list the contractor is included may require in each financial year, and
 - (b) submit those audits to that Local Health Board in the form and manner required by the Local Health Board.
- (2) Nothing in this paragraph requires a contractor to complete more than three such audits in any financial year.
- (3) The audits required by sub-paragraph (1) are audits—
- (a) relating to services provided by the contractor, and
 - (b) which the Local Health Board requires for the purpose of exercising its functions under the Act.
- (4) For the purposes of this Schedule, “financial year” has the meaning given in section 206 of the Act (interpretation).

Workforce reporting

- 12.**—(1) A contractor must provide such workforce data to the Local Health Board on whose ophthalmic list the contractor is included as the Local Health Board may, from time to time, require.
- (2) Nothing in these terms of service requires a contractor to do anything contrary to data protection legislation.
- (3) For the purposes of this paragraph—
- “data protection legislation” (“*deddfwriaeth diogelu data*”) has the meaning given in section 3 of the Data Protection Act 2018(**57**) (terms relating to the processing of personal data);
 - “workforce data” (“*data am y gweithlu*”) means data relating to those employed by the contractor.

Optometry collaborative

- 13.**—(1) A contractor must—
- (a) attend at least four meetings of the relevant optometry collaborative in each financial year, and
 - (b) vote in the election of the optometric lead of the relevant optometry collaborative (and any vote regarding that person's continued appointment).
- (2) For the purposes of complying with the requirements in sub-paragraph (1), a contractor may appoint an individual who is an optometrist, an ophthalmic medical practitioner or a dispensing optician to act on the contractor's behalf.
- (3) For the purposes of this paragraph—

(57) 2018 c. 12; the definition in section 3 was amended by S.I. 2019/419.

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“optometric lead” (“*arweinydd optometreg*”) means the person elected by an optometry collaborative to represent it within a primary care cluster;

“optometry collaborative” (“*cydweithredfa optometreg*”) means a group of contractors providing primary ophthalmic services within the geographic area of the same primary care cluster;

“primary care cluster” (“*clwstwr gofal sylfaenol*”) means a group of health and social care providers that have agreed to work collaboratively to deliver primary care services across a specified geographical area;

“relevant optometry collaborative” (“*cydweithredfa optometreg berthnasol*”) means the optometry collaborative in whose area the contractor provides primary ophthalmic services.

Quality improvement and governance

14.—(1) A contractor must—

- (a) complete a quality improvement and governance self-assessment, in the form required by the Local Health Board on whose list the contractor is included, in each financial year,
- (b) submit the completed self-assessment to that Local Health Board, and
- (c) undertake, and ensure that relevant employees of the contractor undertake, appropriate training in relation to quality improvement and governance provided by Health Education and Improvement Wales, as required by the Local Health Board on whose list the contractor is included.

(2) The requirement in sub-paragraph (1)(c) that the contractor must undertake training does not apply to a contractor that is a corporate optician.

(3) For the purposes of this paragraph, “relevant employees” means, in relation to a contractor, employees of such a description as required by the Local Health Board.

Declarations of Convictions etc.

15.—(1) On becoming aware of a change to the information the contractor provided in accordance with paragraph 7 of Schedule 3 when applying to be included in a Local Health Board’s ophthalmic list, the contractor must notify the Local Health Board in writing within 7 days.

(2) Where sub-paragraph (1) applies, the contractor must provide all necessary authority to enable a request to be made by the Local Health Board to any employer (or former employer), licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to the notification given by the contractor under sub-paragraph (1).

(3) A contractor who is included in an ophthalmic list of a Local Health Board must supply that Local Health Board with an enhanced criminal record certificate under section 113B of the Police Act 1997 in relation to them, if the Local Health Board at any time, for reasonable cause, gives the contractor notice to provide such a certificate.

Applications to other lists

16. A contractor who is an ophthalmic medical practitioner or optometrist must inform the Local Health Board in whose list they are included—

- (a) if they or a body corporate of which they are a director apply to be included in a primary care list or equivalent list, and of the outcome of any such application;
- (b) if they become a director of a body corporate that is included in any primary care list, or apply to be included in such a list, and the outcome of any such application;

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- (c) in the case of a corporate optician, if any of its directors applies to be included in a primary care list or equivalent list and the outcome of any such application.

Deputies

17.—(1) A contractor may arrange for a deputy to provide primary ophthalmic services on the contractor's behalf.

(2) Any contractor who makes an arrangement for the regular provision of services by a deputy must notify the Local Health Board of that arrangement.

(3) A contractor is responsible for all acts and omissions of any person acting as their deputy and of any employee of that person.

(4) A deputy who is also a contractor is jointly responsible to the same extent as the contractor for whom the deputy is deputising.

Employees

18.—(1) A contractor may employ—

- (a) to assist in the provision of primary ophthalmic services, an ophthalmic medical practitioner or optometrist included in a combined list;
- (b) to assist in the provision of primary ophthalmic services to the extent they are qualified to do so, and under the supervision of an ophthalmic medical practitioner or optometrist whose name is included in a combined list, a student optometrist whose name is included in a supplementary list;
- (c) to test sight, a person who—
 - (i) is authorised to test sight by rules made under section 24(3) of the Opticians Act 1989(58) (testing of sight), under the supervision of an ophthalmic medical practitioner or optometrist whose name is included in a combined list, but
 - (ii) is not a student optometrist;
- (d) to assist in the provision of eye examination services to the extent they are accredited to do so, an accredited dispensing optician.

(2) A contractor who regularly employs an ophthalmic medical practitioner, optometrist, student optometrist or accredited dispensing optician must notify the Local Health Board accordingly.

(3) A contractor is responsible for all acts and omissions of its employees.

(4) An employee of the contractor who is also a contractor is jointly responsible but only, in the case of paragraphs 5(1) and (7) and 9(2), to the extent that the employee has not taken all reasonable steps to secure that the requirements of those provisions are met.

(5) In this paragraph—

“accredited dispensing optician” (“*optegydd cyflenwi achrededig*”) means a person who—

- (a) is registered as a dispensing optician in the register maintained under section 7 of the Opticians Act 1989 (register of opticians) with a contact lens specialty entry,
- (b) has been accredited by Health Education and Improvement Wales to undertake elements of the eye examination service, and
- (c) has provided evidence of (b) to the contractor;

“employee” (“*cyflogai*”) includes, in the case of a body corporate, a director and “employ” (“*cyflogi*”) must be interpreted accordingly.

(58) Section 24 was amended by [S.I. 2005/848](#).

Concerns procedure

19.—(1) A contractor must have in place arrangements which comply with the requirements of the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011⁽⁵⁹⁾ (“the 2011 Regulations”), for the handling and consideration of any concerns.

(2) References in this paragraph and in paragraph 20 to a “concern” are to a concern notified in accordance with the 2011 Regulations.

Co-operation with investigations

20.—(1) A contractor must co-operate with any investigation of a complaint or concern in relation to any matter reasonably connected to the contractor’s provision of primary ophthalmic services undertaken by a “relevant body”, which includes—

- (a) the Local Health Board;
- (b) the Welsh Ministers;
- (c) the Public Services Ombudsman for Wales.

(2) The co-operation required by sub-paragraph (1) includes—

- (a) answering questions reasonably put to the contractor by a relevant body;
- (b) providing any information relating to the complaint or concern reasonably required by a relevant body;
- (c) attending any meeting to consider the complaint or the concern (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given), if the contractor’s presence is reasonably required by a relevant body.

Complaints made against and concerns notified about ophthalmic medical practitioners

21.—(1) Where a contractor who, being an ophthalmic medical practitioner, also performs primary medical services under a GMS contract for any person for whom the contractor provides primary ophthalmic services, the complaints procedure or procedure for notifying concerns established and operated in accordance with the terms of that GMS contract applies in relation to any matter reasonably connected with the contractor’s provision of primary ophthalmic services as it applies as respects the provision of services under the GMS contract.

(2) Any requirement as to co-operation with investigations of complaints or concerns by other bodies imposed on a GMS contractor under the terms of the contractor’s contract which gives effect to paragraph 102 of Schedule 3 to the National Health Service (General Medical Services Contracts) (Wales) Regulations 2023⁽⁶⁰⁾ also applies in relation to complaints or concerns about the matters referred to in sub-paragraph (1).

(3) For the purposes of this paragraph, “GMS contract” means a general medical services contract under section 42 of the Act (general medical services contracts: introductory) and “GMS contractor” must be interpreted accordingly.

Payment claims

22.—(1) Any claim by a contractor for fees for the provision of primary ophthalmic services under these Regulations must be made by completing a primary ophthalmic services form and sending it to the Local Health Board in whose area the primary ophthalmic services were provided within 3 months beginning with the date of completion of the provision of those services.

⁽⁵⁹⁾ S.I. 2011/704; relevant amending instruments are S.I. 2023/274 (W. 41) and S.I. 2023/281 (W. 42).

⁽⁶⁰⁾ S.I. 2023/953 (W. 155).

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- (2) Any such claim—
- (a) may be submitted electronically or on paper, and
 - (b) must be—
 - (i) signed by the optometrist or ophthalmic medical practitioner whose name is included in a combined list and who provided or assisted in the provision of the primary ophthalmic services in respect of which the claim is made (“the practitioner”), and
 - (ii) in a case where the practitioner is not on the ophthalmic list of that Local Health Board, counter-signed on behalf of the contractor by a person (who may be the contractor) duly authorised by the contractor to counter-sign, whom the contractor has previously notified the Local Health Board as being so authorised.
- (3) In the case of a claim signed under sub-paragraph (2)(b)(i), the practitioner must supply with their signature, their professional registration number with the prefix and suffix given to that number in the combined list in which the qualified practitioner’s name is included.
- (4) In the case of a claim counter-signed under sub-paragraph (2)(b)(ii), the person authorised to counter-sign must supply, with that person’s counter-signature, the professional registration number of the contractor.
- (5) A signatory or counter-signatory is to sign any electronic claim or paper claim in digital ink or in ink, in the signatory or counter-signatory’s own handwriting and not by means of a stamp or reproduced image, with the signatory or counter-signatory’s—
- (a) initials or forename, and
 - (b) surname.
- (6) Except as provided in these Regulations, in the Statement or in sub-paragraph (7), a contractor must not demand or accept from any patient or from other persons the payment of any fee or other remuneration in respect of the provision of primary ophthalmic services.
- (7) A contractor is entitled to demand and recover from a patient, or person having charge of a patient, a sum in respect of loss of remunerative time resulting from that patient’s failure to keep an appointment.
- (8) A contractor must not demand or accept from the Local Health Board the payment of any fee or other remuneration in respect of any item of service—
- (a) which has not been provided under primary ophthalmic services, or
 - (b) for which another claim has already been submitted to the Local Health Board.

Testing of sight

- 23.**—(1) Where a contractor has accepted an application for the testing of sight under these Regulations, the contractor must—
- (a) test the sight of the patient to determine whether the patient needs to wear or use an optical appliance,
 - (b) in doing so, must fulfil any duty imposed on the contractor by, or in regulations made under, section 26 of the Opticians Act 1989(61) (duties to be performed on sight testing), and
 - (c) provide relevant eye health advice to the patient.
- (2) A prescription for glasses issued following a testing of sight under general ophthalmic services must—

(61) Section 26 was amended by [S.I. 2005/848](#), article 19.

- (a) be completed by the method recommended in guidance published by the British Standards Institution, and
 - (b) comply with any requirements as to its form specified in the Statement for the purposes of payment in respect of the sight test.
- (3) Where a contractor provides a sight test as part of mobile services, the contractor must record the reason given by the patient, or on their behalf, for requiring mobile services on the primary ophthalmic services form.
- (4) A contractor must keep a record of the eye health advice provided to a patient under this paragraph.
- (5) For the purposes of this paragraph, “relevant eye health advice”, in relation to a patient, means—
- (a) advice about any risks to eye health or vision that appear to the contractor to be relevant to that patient,
 - (b) advice about how to mitigate any identified risks to their eye health or vision,
 - (c) recommendations for managing the patient’s eye condition or eye health or vision, and
 - (d) such other advice, for the purpose of increasing the patient’s knowledge and understanding of any health issues connected to the patient’s eye condition, eye health or vision, which appears to the contractor to be relevant to the patient’s personal circumstances.

Eye examinations

24.—(1) A contractor must provide an eye examination to a person in the circumstances in sub-paragraph (2).

(2) The circumstances are that a qualified practitioner considers that it is clinically appropriate to provide an eye examination to a person—

- (a) due to clinical findings that have become apparent during the provision of general ophthalmic services or during a sight test provided otherwise than under the Act, to that person,
- (b) following a recommendation by a health care professional that the person should be examined by a qualified practitioner,
- (c) because the person has, or may have, an acute eye problem, or
- (d) for the purpose of reviewing the person’s eye health following—
 - (i) treatment at an ophthalmic hospital, or
 - (ii) a previous eye examination under sub-paragraph (c).

(3) Where a contractor provides an eye examination as part of mobile services, the contractor must record the reason given by the patient, or on their behalf, for requiring mobile services on the primary ophthalmic services form.

(4) For the purposes of this paragraph, “health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002⁽⁶²⁾ (the Professional Standards Authority for Health and Social Care).

Refusal to provide services

25.—(1) Paragraphs (2) and (3) apply—

(62) 2002 c. 17.

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- (a) where—
 - (i) a person applies for a sight test, and
 - (ii) the contractor is satisfied that the person is eligible for a sight test in accordance with these Regulations, or
 - (b) where one of the circumstances in paragraph 24(2) applies in relation to a person.
- (2) The contractor may refuse to provide the relevant service to that person only if they have reasonable grounds for doing so.
- (3) For the purposes of paragraph (2), reasonable grounds may not relate to the person’s age, ophthalmic condition or related medical condition.

Referrals

26.—(1) Where a contractor, or qualified practitioner assisting the contractor in the provision of primary ophthalmic services, is of the opinion that a patient who has received a sight test pursuant to paragraph 23 or an eye examination pursuant to paragraph 24 of this Schedule—

- (a) shows on examination signs of injury, disease or abnormality in the eye or elsewhere which may require medical treatment, or
- (b) is not likely to attain a satisfactory standard of vision notwithstanding the application of corrective lenses,

the contractor must, if appropriate, and with the consent of the patient, take the steps set out in sub-paragraph (2).

(2) The steps referred to in sub-paragraph (1) are—

- (a) in the first instance, a referral to an optometrist with qualifications appropriate to the needs of the patient;
- (b) if the contractor considers that a referral of the kind specified in paragraph (a) would not meet the patient’s needs, a referral to an ophthalmic hospital.

(3) Where a contractor makes a referral in accordance with this paragraph, the contractor must immediately—

- (a) inform the patient’s general practitioner of the referral and provide details of the reason for the referral, and
- (b) give the patient a written statement confirming the referral has been made with details of the referral.

(4) In this paragraph, “general practitioner” means a medical practitioner registered as a general practitioner.

(5) A referral made by a contractor in accordance with this paragraph must be made electronically where the means of making electronic referrals are available to the contractor.

Use of disqualified name

27.—(1) Subject to sub-paragraph (2), a contractor must not use in any manner the name or part of the name, either alone or in combination with any other words or letters of, or used by, any person so long as that person is disqualified by the First-tier Tribunal from inclusion in any combined list by virtue of the Act or these Regulations.

(2) Nothing in sub-paragraph (1) prevents—

- (a) a contractor other than a body corporate from using the contractor’s own name, or
- (b) a contractor that is a body corporate from using the name by which it is enrolled in the register maintained under the Opticians Act 1989.

Training

28.—(1) A contractor must ensure that the persons specified in sub-paragraph (2) undertake training, as required by the Local Health Board on whose list the contractor is included, which—

- (a) must include annual training for the purpose of maintaining and updating the individual’s professional skills and knowledge in relation to the services that person performs, assists with or supports;
- (b) may include other ad-hoc or one-off training for that purpose.

(2) The persons are—

- (a) the contractor, except where the contractor is a corporate optician;
- (b) those employed by the contractor under paragraph 18(1) to assist in the provision of primary ophthalmic services;
- (c) others employed by the contractor who support the persons listed at (b) in the performance of such services.

(3) A contractor may not employ or otherwise engage a qualified practitioner in relation to the provision of primary ophthalmic services unless the contractor is satisfied that the qualified practitioner has the clinical experience and training necessary to enable them to properly perform the services that they are to be required to perform.

Compliance with legislation and guidance

29. A contractor must—

- (a) comply with all relevant legislation, and
- (b) have regard to all relevant guidance issued by the Local Health Board or the Welsh Ministers.

SCHEDULE 5

Regulation 39

Consequential amendments to primary legislation

Freedom of Information Act 2000

1.—(1) The Freedom of Information Act 2000(**63**) is amended as follows.

(2) In Schedule 1 (public authorities), in paragraph 44, after “National Health Service (Wales) Act 2006,” insert “or providing both general ophthalmic services and other ophthalmic services in accordance with arrangements made with a Local Health Board in Wales under the National Health Service (Wales) Act 2006,”.

Commissioner for Older People (Wales) Act 2006

2.—(1) The Commissioner for Older People (Wales) Act 2006(**64**) is amended as follows.

(2) In section 27(1) (other interpretative provisions), in sub-paragraph (b) of the definition of “family health service provider in Wales”—

- (a) after “general ophthalmic services” insert “, or both general ophthalmic services and other ophthalmic services in accordance with arrangements made with a Local Health Board,”;

(63) 2000 c. 36.

(64) 2006 c. 30.

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(b) omit “Part 6 of”.

Public Services Ombudsman (Wales) Act 2019

3.—(1) The Public Services Ombudsman (Wales) Act 2019⁽⁶⁵⁾ is amended as follows.

(2) In section 78(1) (interpretation), in sub-paragraph (b) of the definition of “family health service provider in Wales”, after “general ophthalmic services” insert “, or both general ophthalmic services and other ophthalmic services in accordance with arrangements made with a Local Health Board”.

SCHEDULE 6

Regulation 40

Minor and consequential amendments to secondary legislation

The National Health Service (Service Committees and Tribunal) Regulations 1992

1.—(1) The National Health Service (Service Committees and Tribunal) Regulations 1992⁽⁶⁶⁾ are amended as follows.

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

(a) in the definition of “complaint”, for “Part II services” substitute “a relevant service”;

(b) for the definition of “Ophthalmic Regulations” substitute—

““Ophthalmic Regulations” means the National Health Service (Ophthalmic Services) (Wales) Regulations 2023;”;

(c) omit the definition of “Part II service”;

(d) in the definition of “patient”, for “Part II service” substitute “relevant service”;

(e) at the appropriate place insert—

““primary ophthalmic services” has the meaning given in regulation 4 of the Ophthalmic Regulations;”;

““relevant service” means pharmaceutical services provided under the National Health Service (Wales) Act 2006 or primary ophthalmic services;”.

(3) In regulation 2(4) (interpretation), for sub-paragraph (d) substitute—

“(d) paragraphs 19 and 20 of Schedule 4 to the National Health Service (Ophthalmic Services) (Wales) Regulations 2023.”.

(4) In regulation 4(5) (provisions relating to the start of disciplinary proceedings), for “Part II services” substitute “relevant services”.

(5) In regulation 20(3) (power of Local Representative Committees to consider complaints), for “general ophthalmic services” substitute “primary ophthalmic services or other ophthalmic services pursuant to arrangements with Local Health Boards under the National Health Service (Wales) Act 2006”.

⁽⁶⁵⁾ 2019 anaw 3.

⁽⁶⁶⁾ S.I. 1992/664.

The National Health Service Pension Scheme Regulations 1995

2.—(1) The National Health Service Pension Scheme Regulations 1995⁽⁶⁷⁾ are amended as follows.

(2) In regulation A2 (interpretation), for paragraph (b) of the definition of “ophthalmic provider” substitute—

- “(b) as regards Wales, is included in an ophthalmic list (as defined in regulation 10(2)(a) of the National Health Service (Ophthalmic Services) (Wales) Regulations 2023) prepared and published by a Local Health Board in accordance with Chapter 2 of Part 4 of those Regulations;”.

The National Health Service (Optical Charges and Payments) Regulations 1997

3.—(1) The National Health Service (Optical Charges and Payments) Regulations 1997⁽⁶⁸⁾ are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation)—

(a) for the definition of “ophthalmic list” substitute—

““ophthalmic list” means the list defined in regulation 10(2)(a) of the Ophthalmic Services Regulations, prepared and published by a Local Health Board in accordance with Chapter 2 of Part 4 of those Regulations;”;

(b) for the definition of “Ophthalmic Services Regulations” substitute—

““Ophthalmic Services Regulations” means the National Health Service (Ophthalmic Services) (Wales) Regulations 2023;”;

(c) for the definition of “supplementary list” substitute—

““supplementary list” means the list defined in regulation 10(2)(b) of the Ophthalmic Services Regulations, prepared and published by a Local Health Board in accordance with Chapter 2 of Part 4 of those Regulations;”.

(3) In regulation 9(1) (issue of vouchers by ophthalmic medical practitioners or opticians), in the words after paragraph (b) omit “paragraph 10(1) of Schedule 1 of”.

The National Health Service Pension Scheme Regulations 2008

4.—(1) The National Health Service Pension Scheme Regulations 2008⁽⁶⁹⁾ are amended as follows.

(2) In regulation 2.A.1 (interpretation: general), for paragraph (b) of the definition of “ophthalmic provider” substitute—

- “(b) as regards Wales, is included in an ophthalmic list (as defined in regulation 10(2)(a) of the National Health Service (Ophthalmic Services) (Wales) Regulations 2023) prepared and published by a Local Health Board in accordance with Chapter 2 of Part 4 of those Regulations;”.

(3) In regulation 3.A.1 (interpretation of Part 3: general), for paragraph (b) of the definition of “ophthalmic provider” substitute—

- “(b) as regards Wales, is included in an ophthalmic list (as defined in regulation 10(2)(a) of the National Health Service (Ophthalmic Services) (Wales) Regulations 2023) prepared and published by a Local Health Board in accordance with Chapter 2 of Part 4 of those Regulations;”.

⁽⁶⁷⁾ S.I. 1995/300.

⁽⁶⁸⁾ S.I. 1997/818.

⁽⁶⁹⁾ S.I. 2008/653.

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The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011

5.—(1) Regulation 2(1) of the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011(70) is amended as follows.

(2) In the definition of “primary care provider”, for paragraph (e) substitute—

“(e) provides ophthalmic services, including primary ophthalmic services, in accordance with arrangements under the 2006 Act;”.

(3) In the definition of “relevant complaints procedure”, for sub-paragraph (iv) of paragraph (c) substitute—

“(iv) paragraph 19 of Schedule 4 to the National Health Service (Ophthalmic Services) (Wales) Regulations 2023;”.

(4) At the appropriate place insert—

““primary ophthalmic services” (“*gwasanaethau offthalmig sylfaenol*”) has the meaning given in regulation 4 of the National Health Service (Ophthalmic Services) (Wales) Regulations 2023;”.

The Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Order 2012

6.—(1) Article 5 of the Safeguarding Vulnerable Groups Act 2006 (Miscellaneous Provisions) Order 2012(71) is amended as follows.

(2) In paragraph (a), in the definition of “practice premises”, for the words from “the address which is included” to “services are provided” substitute—

“registered premises in relation to a contractor as defined in the National Health Service (Ophthalmic Services) (Wales) Regulations 2023”.

(3) In paragraph (b), in the definition of “mobile services”, for “National Health Service (General Ophthalmic Services) Regulations 1986” substitute “National Health Service (Ophthalmic Services) (Wales) Regulations 2023”.

The National Health Service Pension Scheme Regulations 2015

7.—(1) Regulation 166(10) (medical practitioner) of the National Health Service Pension Scheme Regulations 2015(72) is amended as follows.

(2) For paragraph (b) substitute—

“(b) in Wales, is included in an ophthalmic list (as defined in regulation 10(2) of the National Health Service (Ophthalmic Services) (Wales) Regulations 2023) prepared and published by a Local Health Board in accordance with Chapter 2 of Part 4 of those Regulations.”.

SCHEDULE 7

Regulation 41

Revocations

The following provisions are revoked to the extent specified.

(70) S.I. 2011/704 (W. 108).

(71) S.I. 2012/2113.

(72) S.I. 2015/94.

<i>Title</i>	<i>Citation</i>	<i>Extent of revocation</i>
The National Health Service (General Ophthalmic Services) Regulations 1986	S.I. 1986/975	The whole Regulations
The National Health Service (General Ophthalmic Services) Amendment Regulations 1988	S.I. 1988/486	The whole Regulations
The National Health Service (General Ophthalmic Services) Amendment Regulations 1989	S.I. 1989/395	The whole Regulations
The National Health Service (General Ophthalmic Services) Amendment (No 2) Regulations 1989	S.I. 1989/1175	The whole Regulations
The National Health Service (General Ophthalmic Services) Amendment Regulations 1990	S.I. 1990/1051	The whole Regulations
The National Health Service (Optical Charges and Payments) (Miscellaneous Amendments) Regulations 1992	S.I. 1992/404	All remaining provisions
The National Health Service (General Ophthalmic Services) Amendment Regulations 1995	S.I. 1995/558	The whole Regulations
The National Health Service (General Ophthalmic Services) Amendment Regulations 1996	S.I. 1996/705	The whole Regulations
The National Health Service (General Ophthalmic Services) (Amendment) Regulations 1999	S.I. 1999/693	The whole Regulations
The National Health Service (General Ophthalmic Services) (Amendment) (Wales) Regulations 2002	S.I. 2002/1883 (W. 192)	The whole Regulations
The National Health Service (General Ophthalmic Services) (Amendment) (Wales) Regulations 2003	S.I. 2003/837 (W. 106)	The whole Regulations
The National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services) (Amendment and Consequential Amendment) (Wales) Regulations 2006	S.I. 2006/181 (W. 32)	The whole Regulations

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<i>Title</i>	<i>Citation</i>	<i>Extent of revocation</i>
The National Health Service (General Ophthalmic Services) (Amendment) Regulations 2007	S.I. 2007/122 (W. 12) (Wales)	The whole Regulations
The National Health Service (General Ophthalmic Services) (Amendment) (Wales) (No. 2) Regulations 2007	S.I. 2007/1026 (W. 93)	The whole Regulations

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for arrangements in relation to primary ophthalmic services under the National Health Service in Wales. They supersede, consolidate and revoke previous Regulations.

The Regulations in large part replicate the provisions of the revoked Regulations in relation to the arrangements to be made by Local Health Boards for general ophthalmic services (sight tests).

In addition to the provisions about general ophthalmic services, the Regulations require Local Health Boards to also make arrangements for the provision of eye examination services under the National Health Service in Wales. General ophthalmic services and the eye examination services are collectively referred to in the Regulations as “primary ophthalmic services”.

Part 2 of the Regulations defines primary ophthalmic services and places a duty on Local Health Boards to arrange for the provision of eye examination services in their area.

Part 3 of the Regulations (and Schedule 1) makes provision in relation to general ophthalmic services, including setting out who is eligible to receive general ophthalmic services.

Part 4 of the Regulations (and Schedules 2 and 3) makes provision requiring each Local Health Board to maintain a combined list (comprised of the ophthalmic and supplementary lists), and provision about the qualification of ophthalmic medical practitioners. The “ophthalmic list” is a list of contractors that provide primary ophthalmic services in the Local Health Board’s area and the “supplementary list” is a list of the persons approved by the Local Health Board for the purpose of assisting in the provision of primary ophthalmic services. The Regulations require those registered with the General Optical Council as student optometrists to be included in a combined list before they may be employed to assist in the provision of primary ophthalmic services.

Part 5 of the Regulations (and Schedule 4) makes provision about arrangements with qualified practitioners for the provision of primary ophthalmic services.

Part 6 of the Regulations makes miscellaneous provision including in relation to the disclosure and publication of information, and the service of documents.

Part 7 of the Regulations (and Schedules 5, 6 and 7) makes consequential, revocation, transitional and saving provisions.