

*Status: Point in time view as at 22/11/2001. This version of this cross heading contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2001, Cross Heading: General and personal medical services, general dental services, general ophthalmic services and pharmaceutical services. (See end of Document for details)*



# Health and Social Care Act 2001

## 2001 CHAPTER 15

### PART 1

#### NATIONAL HEALTH SERVICE

*General and personal medical services, general dental services,  
general ophthalmic services and pharmaceutical services*

VALID FROM 14/12/2001

#### **17 Remuneration of general medical practitioners**

In section 29 of the 1977 Act (which makes provision for the arrangements for general medical services), subsection (4) (which prevents general medical practitioners' remuneration from consisting wholly or mainly of a fixed salary except in special circumstances) shall cease to have effect.

#### **Commencement Information**

- II** [S. 17](#) partly in force; [s. 17](#) not in force at Royal Assent see [s. 70\(2\)](#); [s. 17](#) in force for E. for certain purposes at 14.12.2001 by [S.I. 2001/3738](#), [arts. 1\(3\), 2\(3\)](#), [Sch. 1 Pt. III](#)

#### **18 Out of hours medical services**

- (1) This section applies to arrangements made by—
- a medical practitioner, in connection with any obligation of his to provide general medical services under arrangements under section 29 of the 1977 Act, or
  - any person (the “participant”), in connection with any obligation of his to provide personal medical services under section 28C arrangements,

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under which a person undertakes, or persons undertake, to provide out of hours services.

(2) Regulations may make provision—

- (a) for such arrangements to be made, in the case of a service provider of a specified description, only if the service provider is approved in accordance with the regulations;
- (b) for approval to be given, as respects out of hours services provided for persons in the area of any Health Authority, by that Authority or by another Health Authority;
- (c) as to steps to be taken by any Health Authority for making available information about approvals which have been given;
- (d) as to the procedure for applying for approval;
- (e) as to requirements (including requirements imposed by a Health Authority) with which an approved service provider must comply;
- (f) as to the suspension or withdrawal of any approval;
- (g) as to circumstances in which, while the arrangements are in force, there may be transferred to the service provider—
  - (i) liabilities or obligations of the medical practitioner by virtue of Part 2 of the 1977 Act, or
  - (ii) (as the case may be) liabilities or obligations of the participant by virtue of the section 28C arrangements;
- (h) as to criteria to be applied in making decisions under the regulations;
- (i) as to appeals against decisions of Health Authorities under the regulations.

(3) In this section—

“medical practitioner” has the same meaning as in the 1977 Act;

“out of hours period” means any period specified by the regulations as such a period;

“out of hours services” means general medical services or personal medical services (as the case may be) provided during part or all of an out of hours period;

“section 28C arrangements” means arrangements made under section 28C of the 1977 Act;

“service provider”, in relation to arrangements to which this section applies, means the person or persons undertaking to provide out of hours services under the arrangements.

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**Commencement Information**

**I2** S. 18 partly in force; s. 18 in force for certain purposes at 11.5.2001, see s. 70(2); s. 18 in force for E. at 12.9.2002 by S.I. 2002/2363, art. 3

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VALID FROM 01/04/2002

## 19 Enhanced criminal record certificates

- (1) Section 115 of the Police Act 1997 (c. 50) (enhanced criminal record certificates) shall be amended as follows.
- (2) In subsection (2)—
  - (a) the word “or” after paragraph (a) shall be omitted; and
  - (b) at the end of paragraph (b) there shall be inserted “or
  - (c) in relation to an individual to whom subsection (6C), (6D) or (6E) applies.”
- (3) After subsection (6B) there shall be inserted—

“(6C) This subsection applies to an individual included or seeking inclusion in any list prepared for the purposes of Part 2 of the National Health Service Act 1977 (c. 49) of—

  - (a) medical practitioners undertaking to provide general medical services,
  - (b) persons undertaking to provide general dental services,
  - (c) persons undertaking to provide general ophthalmic services, or
  - (d) persons undertaking to provide pharmaceutical services.

(6D) This subsection applies to an individual who is—

  - (a) a director of a body corporate included or seeking inclusion in a list referred to in subsection (6C)(b) or (c),
  - (b) a member of a limited liability partnership included or seeking inclusion in a list referred to in subsection (6C)(c),
  - (c) a member of the body of persons controlling a body corporate (whether or not a limited liability partnership) included or seeking inclusion in a list referred to in subsection (6C)(d).

(6E) This subsection applies to an individual included or seeking inclusion in any list prepared by a Health Authority under—

  - (a) section 28DA of the National Health Service Act 1977 or section 8ZA of the National Health Service (Primary Care) Act 1997 (lists of persons who may perform personal medical services or personal dental services), or
  - (b) section 43D of the 1977 Act (supplementary lists),

and to an individual included or seeking inclusion in any list corresponding to a list referred to in paragraph (a) prepared by a Health Authority by virtue of regulations made under section 41 of the Health and Social Care Act 2001 (which provides for the application of enactments in relation to local pharmaceutical services).”

### Commencement Information

- I3** S. 19 wholly in force at 1.7.2002; s. 19 not in force at Royal Assent, see s. 70(2); s. 19 in force for E. at 1.4.2002 by S.I. 2002/1095, art. 2(3), Sch. (with transitional provisions in arts. 3, 4) (as amended

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(26.3.2002) by S.I. 2002/1170, art. 3); s. 19 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

## 20 Medical, dental, ophthalmic and pharmaceutical etc. lists

(1) The 1977 Act shall be amended as follows.

(2) In section 29A (medical lists), after subsection (4) there shall be inserted—

“(4A) Regulations may make provision in relation to the supply to a Health Authority, by a medical practitioner who is included in their medical list (or, as respects paragraph (a), by arrangement with him), of—

- (a) information of a prescribed description; and
- (b) a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act.”

(3) In section 29B (vacancies for medical practitioners)—

(a) after subsection (2) there shall be inserted—

“(2A) The regulations may also make provision in relation to—

- (a) grounds on which a Health Authority may, or must, refuse to nominate or approve a medical practitioner for appointment to fill a vacancy (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H(2) below);
- (b) information which must be supplied to a Health Authority by a medical practitioner seeking such nomination or approval (or by arrangement with him);
- (c) the supply to a Health Authority by such a medical practitioner of a certificate of a kind referred to in section 29A(4A)(b) above; and
- (d) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about such medical practitioners, and refusals by the Health Authority to nominate or approve them.”;

(b) in subsection (3), after paragraph (a) there shall be inserted—

“(aa) grounds on which a Health Authority may defer a decision whether or not to nominate or approve a medical practitioner for appointment to fill a vacancy;”;

(c) after subsection (3) there shall be inserted—

“(3A) If regulations made by virtue of subsection (2A)(a) provide that a Health Authority may refuse to nominate or approve a medical practitioner for appointment to fill a vacancy, they must provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.”

(4) In section 36 (regulations about general dental services)—

(a) in subsection (1)(b), for “(2) and (3)” there shall be substituted “ (2) to (7) ”,

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(b) after subsection (1) there shall be inserted—

“(1A) The regulations may include provision as to—

- (a) information which must be supplied to a Health Authority by, or by arrangement with, a dental practitioner or dental corporation included or seeking inclusion in a list referred to in subsection (1)(a); and
- (b) the supply to a Health Authority—
  - (i) by a dental practitioner who is included, or seeking inclusion, in such a list, or
  - (ii) by a director of a dental corporation included, or seeking inclusion, in such a list,of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act.”;

and

(c) after subsection (3) there shall be inserted—

“(4) The provision which may be made by regulations under subsection (3) includes, in particular, provision in relation to grounds on which a Health Authority may, or must, refuse to include a dental practitioner or a dental corporation in a list referred to in subsection (1)(a) (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H below).

(5) Those regulations may make provision in relation to criteria to be applied in making decisions under the regulations.

(6) If those regulations provide that a Health Authority may refuse to include a dental practitioner or dental corporation in such a list, they must also provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.

(7) Regulations may provide for grounds on which a Health Authority may defer a decision whether or not to grant an application for inclusion in a list referred to in subsection (1)(a).

(8) Regulations may make provision as to the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about dental practitioners and dental corporations seeking inclusion in such a list, and refusals by the Health Authority to include them.”

(5) Section 39 (regulations about general ophthalmic services) shall be renumbered as subsection (1) of that section, and—

- (a) in that subsection as so renumbered, in paragraph (b), after “subject to” there shall be inserted “ subsections (2) and (3) below, to ”, and
- (b) after that subsection there shall be inserted—

“(2) The regulations may, in particular, make provision in relation to—

- (a) grounds on which a Health Authority may, or must, refuse to include a medical practitioner or an ophthalmic optician

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- in a list referred to in subsection (1)(a) (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H below);
  - (b) information which must be supplied to a Health Authority by a person included or seeking inclusion in such a list (or by arrangement with him);
  - (c) the supply to a Health Authority by an individual—
    - (i) who is included, or seeking inclusion, in such a list, or
    - (ii) who is a director of a body corporate or who is a member of a limited liability partnership included, or seeking inclusion, in such a list,
 of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act;
  - (d) grounds on which a Health Authority may defer a decision whether or not to include a person in such a list;
  - (e) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in such a list, and refusals by the Health Authority to include them; and
  - (f) criteria to be applied in making decisions under the regulations.
- (3) If regulations made by virtue of subsection (2)(a) provide that a Health Authority may refuse to include a person in such a list, they must also provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.”
- (6) In section 42 (regulations about pharmaceutical services)—
  - (a) in subsection (3), the word “and” after paragraph (d) shall be omitted,
  - (b) after paragraph (e) there shall be inserted—
    - “(f) as to other grounds on which a Health Authority may, or must, refuse to grant an application (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H below);
    - (g) as to information which must be supplied to a Health Authority by a person included, or seeking inclusion, in such a list (or by arrangement with him);
    - (h) for the supply to a Health Authority by an individual—
      - (i) who is included, or seeking inclusion, in such a list, or
      - (ii) who is a member of the body of persons controlling a body corporate included, or seeking inclusion, in such a list,
 of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act;

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- (i) for grounds on which a Health Authority may defer a decision whether or not to grant an application;
- (j) for the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in such a list, and refusals by the Health Authority to grant such applications;
- (k) as to criteria to be applied in making decisions under the regulations (other than decisions required by virtue of paragraph (d))”

and

- (c) after subsection (4) there shall be inserted—

“(4A) If regulations made by virtue of subsection (3)(f) provide that a Health Authority may refuse to grant an application, they must also provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.”

- (7) In section 43 (persons authorised to provide pharmaceutical services), after subsection (2B) there shall be inserted—

“(2BA) The regulations may, in particular, include provision—

- (a) as to grounds on which a Health Authority may, or must, refuse to grant an application for inclusion in a list of medical practitioners referred to in subsection (2A) (including grounds corresponding to the conditions referred to in section 49F(2), (3) and (4) as read with section 49H(2) below);
- (b) as to information which must be supplied to a Health Authority by a medical practitioner included, or seeking inclusion, in such a list (or by arrangement with him);
- (c) for the supply to a Health Authority by a medical practitioner who is included, or seeking inclusion, in such a list of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act;
- (d) for grounds on which a Health Authority may defer a decision whether or not to grant an application for inclusion in such a list;
- (e) for the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in such a list, and refusals by the Health Authority to grant such applications;
- (f) as to criteria to be applied in making decisions under the regulations

(2BB) If regulations made by virtue of subsection (2BA)(a) provide that a Health Authority may refuse to grant an application for inclusion in such a list, they must also provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.”

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#### Commencement Information

- I4** S. 20 partly in force; s. 20 not in force at Royal Assent see s. 70(2); s. 20(1)-(5) in force for E. for certain purposes at 22.11.2001 and 14.12.2001 by [S.I. 2001/3738](#), [arts. 1\(3\), 2\(2\)](#), [Sch. 1 Pt. II](#); s. 20 in force for W. at 1.7.2002 by [S.I. 2002/1475](#), [art. 2\(1\)](#), [Sch. 1 Pt. 1](#)

## 21 Conditional inclusion in medical, dental, ophthalmic and pharmaceutical lists

After section 43 of the 1977 Act there shall be inserted—

### “43ZA Conditional inclusion in medical, dental, ophthalmic and pharmaceutical lists

- (1) The Secretary of State may by regulations provide—
  - (a) that if a person is to be included in a list referred to in subsection (3), he is to be subject, while he remains included in the list, to conditions determined by the Health Authority,
  - (b) for the Health Authority to vary that person’s terms of service for the purpose of or in connection with the imposition of any such conditions,
  - (c) for the Health Authority to vary the conditions or impose different ones,
  - (d) for the consequences of failing to comply with a condition (including removal from the list), and
  - (e) for the review by the Health Authority of any decision made by virtue of the regulations.
- (2) The imposition of conditions must be with a view to—
  - (a) preventing any prejudice to the efficiency of the services in question, or
  - (b) preventing any acts or omissions within section 49F(3)(a) below.
- (3) The lists in question are—
  - (a) a list of persons undertaking to provide general medical services,
  - (b) a list of persons undertaking to provide general dental services,
  - (c) a list of persons undertaking to provide general ophthalmic services,
  - (d) a list of persons undertaking to provide pharmaceutical services.
- (4) If regulations provide for a practitioner’s removal from the list for breach of condition—
  - (a) the regulations may provide that he may not withdraw from the list while the Health Authority are investigating whether there are grounds for exercising their power to remove him, or after the Health Authority have decided to remove him but before they have given effect to that decision; and
  - (b) the regulations must include provision—
    - (i) requiring the practitioner to be given notice of any allegation against him,
    - (ii) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his removal from the list, and



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- (iii) requiring him to be given notice of the Health Authority's decision and the reasons for it and of his right of appeal under subsection (5).
- (5) If regulations provide as mentioned in subsection (1), they must also provide for an appeal by the person in question to the FHSAA against the Health Authority's decision—
- (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to vary his terms of service,
  - (d) on any review of an earlier such decision of theirs,
  - (e) to remove him from the list for breach of condition,
- and the appeal shall be by way of redetermination of the Health Authority's decision.
- (6) The regulations may provide for any such decision not to have effect until the determination by the FHSAA of any appeal against it, and must so provide in relation to a decision referred to in subsection (5)(e).
- (7) Regulations under this section may provide for the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about persons whose inclusion in the lists referred to in subsection (3) is subject to conditions imposed under this section, and about the removal of such persons from such lists for breach of condition.”

#### Commencement Information

**I5** S. 21 wholly in force at 1.7.2002; s. 21 not in force at Royal Assent, see s. 70(2); s. 21 in force for E. at 22.11.2001 by S.I. 2001/3738, arts. 1(3), 2(1), Sch. 1 Pt. I; s. 21 in force for W. at 1.7.2002, {art. 2(1)}, Sch. Pt. 1

## 22 Dental corporations

- (1) The 1977 Act shall be amended as follows.
- (2) In section 35 (arrangements for general dental services)—
- (a) in subsection (1)—
    - (i) after “dental practitioners” there shall be inserted “ or dental corporations ”, and
    - (ii) after “dental practitioner” there shall be inserted “ or dental corporation ”,
  - (b) in subsection (2)—
    - (i) after “dental practitioner who” there shall be inserted “ , or dental corporation which, ”,
    - (ii) after “salary” there shall be inserted “ (or, in the case of a dental corporation, a fixed rate of remuneration) ”, and
    - (iii) in paragraph (b), after “practitioner” there shall be inserted “ or corporation ”, and
  - (c) after subsection (4) there shall be inserted—

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“(5) In this Act, “dental corporation” means a body corporate which carries on the business of dentistry (within the meaning of section 40 of the Dentists Act 1984 (c. 24)).”

- (3) In section 36 (regulations about general dental services)—
- (a) in subsection (1)(a), after “dental practitioners” there shall be inserted “ and dental corporations ”,
  - (b) in subsection (1)(b), after “dental practitioner” there shall be inserted “ or dental corporation ”,
  - (c) in subsection (1)(d), after “dental practitioners” there shall be inserted “ and dental corporations ”, and
  - (d) in subsection (3), after “dental practitioner” there shall be inserted “ or dental corporation ”.
- (4) In section 37 (Dental Practice Board), after subsection (1C) there shall be inserted—
- “(2) In subsections (1A) and (1B), references to a dental practitioner include references to a dental corporation.”
- (5) In section 128(1) (interpretation), in the appropriate place there shall be inserted—
- ““dental corporation” has the meaning given by section 35(5);”.

#### Commencement Information

- I6** S. 22 wholly in force at. 1.7.2002; s. 22 not in force at Royal Assent see s. 70(2); s. 22 in force for E. at 22.11.2001 by [S.I. 2001/3738](#), [arts. 1\(3\), 2\(1\)](#), [Sch. 1 Pt. I](#); s. 22 in force for W. at 1.7.2002 by [S.I. 2002/1475](#), [art. 2\(1\)](#), [Sch. Pt. 1](#)

VALID FROM 01/07/2002

#### **23 Declaration of financial interests, gifts, etc.**

- (1) The 1977 Act shall be amended as follows.
- (2) In section 29 (arrangements and regulations for general medical services), after subsection (5) there shall be inserted—
- “(5A) Regulations may include provision as to the making of declarations about—
- (a) financial interests;
  - (b) gifts above a prescribed value; and
  - (c) other benefits received.
- (5B) Before making regulations by virtue of subsection (5A), the Secretary of State must consult such organisations as he thinks fit appearing to him to represent medical practitioners providing general medical services.”
- (3) In section 36 (regulations about general dental services), after the subsection (1A) inserted by section 20 of this Act there shall be inserted—
- “(1B) The regulations may include provision as to the making of declarations about—

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- (a) financial interests;
- (b) gifts above a prescribed value; and
- (c) other benefits received.

(1C) Before making regulations by virtue of subsection (1B), the Secretary of State must consult such organisations as he thinks fit appearing to him to represent dental practitioners and dental corporations providing general dental services.”

(4) In section 39 (regulations about general ophthalmic services), after the subsection (3) inserted by section 20 of this Act there shall be inserted—

“(4) The regulations may include provision as to the making of declarations about—

- (a) financial interests;
- (b) gifts above a prescribed value; and
- (c) other benefits received.

(5) Before making regulations by virtue of subsection (4), the Secretary of State must consult such organisations as he thinks fit appearing to him to represent persons providing general ophthalmic services.”

(5) In section 42 (regulations about pharmaceutical services)—

(a) in subsection (3), after the paragraph (k) inserted by section 20 of this Act there shall be inserted—

“(l) as to the making of declarations about—

- (i) financial interests;
- (ii) gifts above a prescribed value; and
- (iii) other benefits received.”,

and

(b) after the subsection (3B) inserted by section 43 of this Act there shall be inserted—

“(3C) Before making regulations by virtue of subsection (3)(l), the Secretary of State must consult such organisations as he thinks fit appearing to him to represent persons providing pharmaceutical services.”

#### Commencement Information

**I7** S. 23 partly in force; s. 23 not in force at Royal Assent see s. 70(2); s. 23 in force for W. at 1.7.2002 by S.I. 2002/1475, **art. 2(1)**, Sch. Pt. 1

## 24 Supplementary lists

After section 43C of the 1977 Act there shall be inserted—

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### **“43D Supplementary lists**

- (1) The Secretary of State may make regulations providing for the preparation and publication by each Health Authority of one or more lists of persons approved by the Health Authority for the purpose of assisting in the provision of general medical services, general dental services, general ophthalmic services and pharmaceutical services.
- (2) Such a list is referred to in this section as a “supplementary list”.
- (3) The regulations may, in particular, include provision as to—
  - (a) the Health Authority to which an application for inclusion in a supplementary list is to be made,
  - (b) the procedure for applying for inclusion, including any information to be supplied to the Health Authority (whether by the applicant or by arrangement with him),
  - (c) grounds on which the Health Authority may, or must, refuse a person’s application for inclusion in a supplementary list (including his unsuitability for inclusion in such a list), or on which they may defer their decision on the application,
  - (d) requirements with which a person included in a supplementary list must comply (including the declaration of financial interests and of gifts and other benefits),
  - (e) grounds on which a Health Authority may, or must, suspend or remove a person from a supplementary list, the procedure for doing so, and the consequences of doing so,
  - (f) payments to or in respect of persons who are suspended from a supplementary list (including provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State),
  - (g) the supply to the Health Authority by an applicant for inclusion in a supplementary list, or by a person included in one, of a criminal conviction certificate under section 112 of the Police Act 1997 (c. 50), a criminal record certificate under section 113 of that Act or an enhanced criminal record certificate under section 115 of that Act,
  - (h) circumstances in which a person included in a supplementary list may not withdraw from it,
  - (i) criteria to be applied in making decisions under the regulations,
  - (j) appeals against decisions of Health Authorities under the regulations,
  - (k) the disclosure by a Health Authority, to prescribed persons or persons of prescribed descriptions, of information of a prescribed description about applicants for inclusion in a supplementary list, refusals of such applications, and suspensions and removals from that list.
- (4) The regulations may, in particular, also provide for—
  - (a) a person’s inclusion in a supplementary list to be subject to conditions determined by the Health Authority,
  - (b) the Health Authority to vary the conditions or impose different ones,

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- (c) the consequences of failing to comply with a condition (including removal from the list), and
  - (d) the review by the Health Authority of their decisions made by virtue of regulations under this subsection.
- (5) The imposition of such conditions must be with a view to—
  - (a) preventing any prejudice to the efficiency of the services to which the supplementary list relates; or
  - (b) preventing any acts or omissions of the type described in section 49F(3)(a) below.
- (6) Regulations made by virtue of subsection (3)(e) may (but need not) make provision corresponding to anything in sections 49F to 49N below.
- (7) If the regulations provide under subsection (3)(e) or (4) that a Health Authority may suspend or remove a person from a supplementary list, they must include provision—
  - (a) requiring him to be given notice of any allegation against him;
  - (b) giving him the opportunity of putting his case at a hearing before the Health Authority make any decision as to his suspension or removal; and
  - (c) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of any right of appeal under subsection (8) or (9).
- (8) If the regulations provide under subsection (3)(c) or (e) that a Health Authority may refuse a person’s application for inclusion in a supplementary list, or remove a person from one, the regulations must provide for an appeal (by way of redetermination) to the FHSAA against the Health Authority’s decision.
- (9) If the regulations make provision under subsection (4), they must provide for an appeal (by way of redetermination) by the person in question to the FHSAA against the Health Authority’s decision—
  - (a) to impose conditions, or any particular condition,
  - (b) to vary a condition,
  - (c) to remove him from the supplementary list for breach of condition,
  - (d) on any review of an earlier such decision of theirs.
- (10) Regulations may require a person (“A”) included in—
  - (a) a medical list,
  - (b) a list referred to in section 36(1)(a),
  - (c) a list referred to in section 39(1)(a),
  - (d) a list referred to in section 42(2)(a), or
  - (e) a list referred to in section 43(2A),not to employ or engage a person (“B”) to assist him in the provision of the relevant service unless B is included in a list referred to in paragraphs (a) to (e), a supplementary list, a services list referred to in section 28DA above or section 8ZA of the National Health Service (Primary Care) Act 1997 (c. 46) or a list corresponding to a services list prepared by a Health Authority by virtue of regulations made under section 41 of the Health and Social Care Act 2001 (or, in any of those cases, such a list of a prescribed description).
- (11) If regulations do so require, they—

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- (a) need not require both A and B to be included in lists prepared by the same Health Authority, but
- (b) may, in particular, require that both A and B be included in lists prepared by Health Authorities in England, or in lists prepared by Health Authorities in Wales.”

#### Commencement Information

**I8** S. 24 wholly in force at 1.7.2002; s. 24 not in force at Royal Assent, see s. 70(2); s. 24 in force for E. at 22.11.2001 by S.I. 2001/3738, arts. 1(3), 2(1), Sch. 1 Pt. I; s. 24 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

## 25 Suspension and disqualification of practitioners

After section 49E of the 1977 Act (which is repealed by this Act) there shall be inserted—

### “49F Disqualification of practitioners

- (1) If it appears to a Health Authority that any of the conditions set out in subsections (2) to (4) is established in relation to a person included in any of the following prepared by them—
  - (a) a list of medical practitioners undertaking to provide general medical services,
  - (b) a list of medical practitioners undertaking to provide general ophthalmic services,
  - (c) a list of dental practitioners and dental corporations undertaking to provide general dental services,
  - (d) a list of ophthalmic opticians undertaking to provide general ophthalmic services, or
  - (e) a list of persons undertaking to provide pharmaceutical services,
 (such a person being referred to in this group of sections as a “practitioner”), they may (or, in cases falling within subsection (6), must) decide to remove him from that list.
- (2) The first condition is that the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide (and such a case is referred to in this group of sections as an “efficiency case”).
- (3) The second condition is that the person concerned—
  - (a) has (whether on his own or together with another) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for himself or another any financial or other benefit, and
  - (b) knew that he or (as the case may be) the other was not entitled to the benefit,
 (and such a case is referred to in this group of sections as a “fraud case”).

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- (4) The third condition is that the person concerned is unsuitable to be included in the list (and such a case is referred to in this group of sections as an “unsuitability case”).
- (5) “This group of sections” means this section and sections 49G to 49R below.
- (6) In unsuitability cases, the Health Authority must remove the practitioner from the list in prescribed circumstances.
- (7) The Health Authority must state which condition (or conditions) they are relying on when removing a practitioner from a list.
- (8) In subsection (3), “health scheme” means—
  - (a) any of the health services under section 1(1) above or any corresponding enactment extending to Scotland or Northern Ireland, and
  - (b) any prescribed scheme,and regulations may prescribe any scheme for the purposes of this subsection which appears to the Secretary of State to be a health or medical scheme paid for out of public funds.
- (9) Detriment to a health scheme includes detriment to any patient of, or person working in, that scheme or any person liable to pay charges for services provided under that scheme.

#### **49G Contingent removal**

- (1) In an efficiency case or a fraud case, the Health Authority may, instead of deciding to remove a practitioner from their list, decide to remove him contingently.
- (2) If they so decide, they must impose such conditions as they may decide on his inclusion in the 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 within section 49F(3)(a) above (in a fraud case).
- (3) If the Health Authority determine that the practitioner has failed to comply with a condition, they may decide to—
  - (a) vary the conditions, or impose different conditions, or
  - (b) remove him from their list.
- (4) The Health Authority may decide to vary the terms of service of the person concerned for the purpose of or in connection with the imposition of any conditions by virtue of this section.

#### **49H Fraud and unsuitability cases: supplementary**

- (1) Where the practitioner is a body corporate, the body corporate is to be treated for the purposes of this group of sections as meeting the second or third condition referred to in section 49F(3) and (4) above—

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- (a) in the case of an ophthalmic optician not referred to in paragraph (b) or a dental corporation, if any director meets that condition (whether or not he first did so when he was a director), and
  - (b) in the case of a body corporate carrying on a retail pharmacy business or an ophthalmic optician which is a limited liability partnership, if any one of the body of persons controlling the body meets that condition (whether or not he first did so when he was such a person).
- (2) A practitioner is to be treated for the purposes of this group of sections as meeting the condition referred to in section 49F(3) above if—
- (a) another person, because of an act or omission of his occurring in the course of providing any services mentioned in section 49F(1) above on the practitioner's behalf, meets that condition; and
  - (b) the practitioner failed to take all such steps as were reasonable to prevent acts or omissions within section 49F(3)(a) above occurring in the course of the provision of those services on his behalf.

#### **49I Suspension**

- (1) If the Health Authority are satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, they may suspend a practitioner from their list—
- (a) while they decide whether or not to exercise their powers under section 49F or 49G (other than in circumstances falling within paragraph (b)), or
  - (b) while they wait for a decision affecting the practitioner of a court or of a body which regulates—
    - (i) the practitioner's profession,
    - (ii) the profession of a person providing any of the services mentioned in section 49F(1) on the practitioner's behalf, or
    - (iii) if the practitioner is a body corporate, the profession of one of its directors or, as the case may be, one of the body of persons controlling it or (if it is a limited liability partnership) one of its members,
 or one of that regulatory body's committees.
- (2) The references in subsection (1)(b) to a court or regulatory body are to a court or such a body anywhere in the world.
- (3) In a case falling within subsection (1)(a), the Health Authority must specify how long the period of suspension is to be.
- (4) In a case falling within subsection (1)(b), the Health Authority may specify that the practitioner shall remain suspended after the decision referred to there for an additional period which the Health Authority must specify.
- (5) In either case—
- (a) before that period expires they may extend, or further extend, the suspension for a further specified period, or
  - (b) if that period has expired, they may impose a further suspension, for a period which they must specify.



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- (6) The period of suspension (in a subsection (1)(a) case) or the additional period (in a subsection (1)(b) case), including in both cases the period of any further suspension imposed under subsection (5)(b), may not exceed six months in aggregate, except—
  - (a) in prescribed circumstances, when it may not extend beyond any prescribed event (which may be the expiry of a prescribed period),
  - (b) if, on the application of the Health Authority, the FHSAA orders accordingly before the expiry of the period of suspension, or
  - (c) if the Health Authority have applied under paragraph (b) before the expiry of the period of suspension, but the FHSAA has not made an order by the time it expires, in which case it continues until the FHSAA has made an order.
- (7) If the FHSAA does so order, it shall specify—
  - (a) the date on which the period of suspension is to end, or
  - (b) an event beyond which it is not to continue.
- (8) The FHSAA may, on the application of the Health Authority, make a further order (complying with subsection (7)) at any time while the period of suspension pursuant to the earlier order is still continuing.
- (9) The Secretary of State may make regulations providing for payments to practitioners who are suspended.
- (10) Those regulations may include provision for the amount of the payments, or the method of calculating the amount, to be determined by the Secretary of State or by another person appointed for the purpose by the Secretary of State.

#### **49J Suspension pending appeal**

- (1) This section applies if the Health Authority decide to remove a practitioner from a list under section 49F.
- (2) In such a case they may also decide to suspend the practitioner from the list pending any appeal by him, if they are satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest.
- (3) If they do suspend the practitioner under this section, the suspension has effect from the date when the Health Authority gave him notice of the suspension.
- (4) The suspension has effect until its revocation under subsection (5) or (6) or, if later, until the expiry of the period of 28 days referred to in section 49M(1) below, or, if the practitioner appeals under section 49M, until the FHSAA has disposed of the appeal.
- (5) The Health Authority may revoke a suspension imposed under this section.
- (6) If the practitioner appeals under section 49M against the Health Authority's decision to remove him from the list, the FHSAA may also revoke a suspension imposed on him under this section.
- (7) Subsections (9) and (10) of section 49I above apply for the purposes of this section as they apply for the purposes of that.

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#### **49K Effect of suspension**

While a practitioner is suspended (whether under section 49I or under section 49J above) he is to be treated as not being included in the list from which he has been suspended even though his name appears in it.

#### **49L Review of decisions**

- (1) The Health Authority may, and (except in prescribed cases) if requested in writing to do so by the practitioner must, review a contingent removal or a suspension (other than a contingent removal or a suspension imposed by, or a suspension continuing pursuant to, an order of the FHSAA, or a suspension imposed under section 49J above).
- (2) The practitioner may not request a review before the expiry of the period of—
  - (a) three months beginning with the date of the Health Authority's decision to suspend or contingently remove him, or (as appropriate),
  - (b) six months beginning with the date of their decision on the previous review.
- (3) On such a review, the Health Authority may—
  - (a) confirm the contingent removal or the suspension,
  - (b) in the case of a suspension, terminate it,
  - (c) in the case of a contingent removal, vary the conditions, impose different conditions, revoke the contingent removal, or remove the practitioner from the list.

#### **49M Appeals**

- (1) A practitioner may appeal to the FHSAA against a decision of a Health Authority mentioned in subsection (2) by giving notice in writing to the FHSAA within the period of 28 days beginning with the date on which the Health Authority gave him notice of the decision.
- (2) The Health Authority decisions in question are—
  - (a) to remove the practitioner from a list (under section 49F or 49G(3) or under subsection (5)(b) of this section),
  - (b) to remove him contingently (under section 49G),
  - (c) to impose any particular condition under section 49G, or to vary any condition or to impose any different condition under that section,
  - (d) to vary his terms of service (under section 49G(4)),
  - (e) any decision on a review of a contingent removal under section 49L.
- (3) The appeal shall be by way of redetermination of the Health Authority's decision.
- (4) On an appeal, the FHSAA may make any decision which the Health Authority could have made.
- (5) If the FHSAA decides to remove the practitioner contingently—

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- (a) the Health Authority and the practitioner may each apply to the FHSAA for the conditions imposed on the practitioner to be varied, for different conditions to be imposed, or for the contingent removal to be revoked, and
  - (b) the Health Authority may remove him from their list if they determine that he has failed to comply with a condition.
- (6) The Health Authority shall not remove a person from a list, or impose a contingent removal—
- (a) until the expiry of the period of 28 days referred to in subsection (1), or
  - (b) if the practitioner appeals within that period, until the FHSAA has disposed of the appeal.
- (7) Regulations may provide for payments by Health Authorities to practitioners who are removed from lists pursuant to decisions of the FHSAA under this section, but whose appeals against those decisions are successful.

#### **49N National disqualification**

- (1) If the FHSAA removes the practitioner from a list, it may also decide to disqualify him from inclusion in—
- (a) all lists referred to in section 49F(1)(a) to (e) prepared by all Health Authorities,
  - (b) all supplementary lists prepared by all Health Authorities, and
  - (c) all services lists prepared by all Health Authorities under section 28DA above or under section 8ZA of the National Health Service (Primary Care) Act 1997 (c. 46), or any list corresponding to a services list prepared by any Health Authority by virtue of regulations made under section 41 of the Health and Social Care Act 2001,
- or only from inclusion in one or more descriptions of such lists prepared by all Health Authorities, the description being specified by the FHSAA in its decision.
- (2) A decision by the FHSAA to do what is mentioned in subsection (1) is referred to in this section as the imposition of a national disqualification.
- (3) The FHSAA may also impose a national disqualification on a practitioner if it dismisses an appeal by him against a Health Authority's refusal to include him in such a list (or, in the case of a medical list, to nominate or approve him for inclusion in it).
- (4) The Health Authority may apply to the FHSAA for a national disqualification to be imposed on a person after they have—
- (a) removed him from a list of theirs of any of the kinds referred to in subsection (1)(a) to (c), or
  - (b) refused to include him in such a list (or, in the case of a medical list, to nominate or approve him for inclusion in it).
- (5) Any such application must be made before the end of the period of three months beginning with the date of the removal or of their refusal.
- (6) If the FHSAA imposes a national disqualification on a person—

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- (a) no Health Authority may include him in a list of any of the kinds from which he has been disqualified from inclusion prepared by them, and
  - (b) if he is included in such a list, each Health Authority in whose list he is included must remove him from it.
- (7) The FHSAA may at the request of the person upon whom it has been imposed review a national disqualification, and on a review may confirm it or revoke it.
- (8) Subject to subsection (9), the person may not request such a review before the end of the period of—
- (a) two years beginning with the date on which the national disqualification was imposed, or
  - (b) one year beginning with the date of the FHSAA’s decision on the last such review.
- (9) The Secretary of State may provide in regulations for subsection (8) to have effect in prescribed circumstances as if the reference there to “two years” or “one year” were a reference to a different period specified in the regulations.

#### **49O Notification of decisions**

Regulations may require a Health Authority to notify prescribed persons, or persons of prescribed descriptions, of any decision they make under this group of sections, and of any information relevant to the decision which they consider it appropriate to include in the notification.

#### **49P Withdrawal from lists**

Regulations may provide for circumstances in which a practitioner—

- (a) whom a Health Authority are investigating in order to see whether there are grounds for exercising their powers under section 49F, 49G or 49I,
  - (b) whom a Health Authority have decided to remove from a list under section 49F or 49G, or contingently remove under section 49G, but who has not yet been removed or contingently removed, or
  - (c) who has been suspended under section 49I,
- may not withdraw from a list in which he is included.

#### **49Q Regulations**

- (1) Any decision by a Health Authority referred to in this group of sections shall be reached in accordance with regulations made by the Secretary of State about such decisions.
- (2) The regulations shall include provision—
- (a) requiring the practitioner to be given notice of any allegation against him,
  - (b) giving him the opportunity of putting his case at a hearing before a Health Authority make any decision affecting him under this group of sections,
  - (c) requiring him to be given notice of the Health Authority’s decision and the reasons for it and of any right of appeal which he may have.

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- (3) The regulations may, in particular, make provision as to criteria which the Health Authority must apply when making decisions in unsuitability cases.

#### **49R Corresponding provision in Scotland and Northern Ireland**

- (1) This section applies where it appears to the Secretary of State that there is provision in Scotland or Northern Ireland under which a person may be dealt with in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under this group of sections.
- (2) A decision in Scotland or Northern Ireland to deal with such a person in such a way is referred to in this section as a “corresponding decision”.
- (3) If this section applies, the Secretary of State may make regulations providing for the effect to be given in England and Wales to a corresponding decision.
- (4) That effect need not be the same as the effect of the decision in the place where it was made.
- (5) The regulations may not provide for a corresponding decision to be reviewed or revoked in England and Wales.”

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#### **Commencement Information**

- 19** S. 25 partly in force; s. 25 not in force at Royal Assent see s. 70(2); s. 25 in force for E. for certain purposes at 22.11.2001 by S.I. 2001/3738, arts. 1(3), 2(1), Sch. 1 Pt. I; s. 25 in force for E. for certain purposes at 22.11.2001 and 14.12.2001 by S.I. 2001/3738, arts. 1(3), 2(2)(3), Sch. 1 Pts. II, III; s. 25 in force for W. at 1.7.2002 by S.I. 2002/1475, art. 2(1), Sch. Pt. 1

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