

SCHEDULE 1

Regulation 6

TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule—

“the 2001 Rules” means the Family Health Services Appeal Authority (Procedure) Rules 2001(1);

“continuing matter” means any case where the Initial Primary Care Trust had not yet come to a decision on any matter under the Ophthalmic Regulations or the Ophthalmic Supplementary Regulations;

“Initial Primary Care Trust” means a Primary Care Trust in whose ophthalmic list the ophthalmic practitioner’s name was or had been included prior to the relevant date;

“the relevant date” means 1st August 2008,

and other terms used in this Schedule and in the principal Regulations shall bear the same meaning in this Schedule that they have in Part 4 of the principal Regulations.

Allocation of ophthalmic practitioners on previous lists

2. Subject to paragraph 5, in the case of an ophthalmic practitioner, whose name, immediately before the relevant date, was included in a Primary Care Trust’s—

(a) ophthalmic list, but was not included in the ophthalmic list of any other Primary Care Trust (and the Trust is satisfied that his name was not so included); or

(b) ophthalmic supplementary list,

his name shall, on the relevant date, be included in its ophthalmic performers list.

3. Subject to paragraph 10, in the case of an ophthalmic practitioner whose name was, immediately before the relevant date, included in the ophthalmic list of more than one Primary Care Trust, his name shall, on that date, be included in the ophthalmic performers list of one of those Trusts in accordance with paragraphs 4 and 5.

4. The ophthalmic practitioner shall be included in the ophthalmic performers list of the Primary Care Trust in which he has indicated to that Trust he wishes to be included.

5. If an ophthalmic practitioner would, by reason of paragraphs 2(a) or 4, be included in the ophthalmic performers list of a Primary Care Trust in whose area he will not be party to a scheme to provide primary ophthalmic services on or after the relevant date, but he is, or will be on the relevant date, party to such a scheme in the area of another Trust in whose ophthalmic list his name was—

(a) included immediately before the relevant date, he shall be included on the ophthalmic performers list of that Trust and, if he was immediately before the relevant date included in the ophthalmic list of more than one such Trust, the question of on which ophthalmic performers list his name is to be included in shall be determined in accordance with paragraph 4; or

(b) not included immediately before the relevant date, nor included in the ophthalmic list of any other Trust in whose area he will be party to a scheme to provide primary ophthalmic services on or after the relevant date, he, if wishes to be included in an ophthalmic performers list, shall apply to be included in the ophthalmic performers list of a Primary Care Trust

(1) S.I. 2001/3750, relevant amendments are S.I. 2002/1921 and 2469, 2002/469, 2004/865 and 2006/562.

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in whose area he will be party to a scheme to provide primary ophthalmic services on or after the relevant date.

Applications not decided by the relevant date

6. Subject to paragraph 7, in any case where there was any application to a Primary Care Trust, including an application which it has deferred, by an ophthalmic practitioner for his name to be included in its ophthalmic list or ophthalmic supplementary list and that application has not been decided before the relevant date, that application shall be deemed to be an application to have his name included in the Primary Care Trust's ophthalmic performers list.

7. In a case where—

- (a) an ophthalmic practitioner has made an application to which paragraph 6 applies;
- (b) his name was already included in an ophthalmic list or ophthalmic supplementary list of any other Primary Care Trust; and
- (c) he had not given notice of an intention to withdraw from that list with that application,

that application shall be void and the Primary Care Trust shall so notify him, informing him of the reason for that.

Matters relating to the ophthalmic practitioner

8. Any matter, question or proceeding relating to any ophthalmic practitioner under the Ophthalmic Regulations or the Ophthalmic Supplementary List Regulations, that had not been finally decided before the relevant date, shall be treated as though it had arisen in relation to the ophthalmic performers list in which that ophthalmic practitioner has been included and shall continue to be dealt with by the Primary Care Trust.

9. In a case where an ophthalmic list or ophthalmic supplementary list, on which the ophthalmic practitioner's name was included immediately before the relevant date, contained, in relation to him, any condition or contingent removal, or if he was suspended from that list, that condition, contingent removal or suspension, as the case may be, shall equally apply to the ophthalmic performers list in which his name is included on and after the relevant date as it did, in relation to any other list, before that date.

10. In any case where there is any continuing matter and that matter had not been finally decided before the relevant date, that ophthalmic practitioner shall be included in the ophthalmic performers list of the Initial Primary Care Trust and paragraphs 3 to 5 do not apply to that ophthalmic practitioner.

Enhanced criminal record certificates

11.—(1) Where an ophthalmic practitioner's name has been included in a ophthalmic performers list of a Primary Care Trust pursuant to this Schedule, and—

- (a) it has not received an enhanced criminal record certificate under section 113B of the Police Act 1997⁽²⁾ relating to him; and
- (b) the Secretary of State directs that the Primary Care Trust shall require such a certificate from any ophthalmic practitioner whose name is included in its ophthalmic performers list,

the ophthalmic practitioner shall, within 3 months of the Primary Care Trust notifying him of that requirement, provide that certificate to it.

(2) 1997 c.50; section 113B was inserted by the Serious Organised Crime and Police Act 2005, s.163(2) and amended by the Safeguarding Vulnerable Groups Act 2006, s 63(1) and Schedule 9 and the Armed Forces Act 2006 s. 378(1) and Schedule 16.

(2) When sub-paragraph (1)(b) applies, the Primary Care Trust shall write to each such ophthalmic practitioner informing him that he is now under a duty to—

- (a) provide it with such a certificate; and
- (b) do so within the period of 3 months beginning with the date of that letter,

and, subject to sub-paragraph (3), if the ophthalmic practitioner has not provided it with such a certificate within that time, it shall remove him from its ophthalmic performers list.

(3) The Primary Care Trust—

- (a) shall extend the period prescribed in sub-paragraph (1), if the Secretary of State directs that an extension should be required in relation to all such cases or in such categories of case as he may set out in the directions; and
- (b) may, if it thinks it is not reasonably practicable for that ophthalmic practitioner to provide it with such a certificate within the period of 3 months, beginning with the date of the letter under sub-paragraph (2), as extended by reason of any direction to which paragraph (a) above applies, extend that period for such time as it considers appropriate in the circumstances of the case,

and shall notify that ophthalmic practitioner of that extension of time.

Appeals to the FHSAA under Part 2 of the 2001 Rules

12.—(1) Where—

- (a) the FHSAA receives a notice of appeal within the time limit specified in rule 5 of the 2001 Rules on or after the relevant date; and
- (b) that notice of appeal concerns a disputed decision taken by a respondent Initial Primary Care Trust before the relevant date,

that Trust shall continue to be the respondent, even if the ophthalmic practitioner's name is, from the relevant date, included in the ophthalmic performer's list of a different Primary Care Trust.

13. Where—

- (a) the FHSAA has received a notice of appeal in accordance with rule 6 of the 2001 Rules before the relevant date;
- (b) that appeal concerns a disputed decision taken by a respondent Initial Primary Care Trust before the relevant date; and
- (c) it has not been finally determined before the relevant date,

that Trust shall continue to be the respondent, even if the ophthalmic practitioner's name is, from the relevant date, included in the ophthalmic performer's list of a different Primary Care Trust.

Applications to the FHSAA under Part 3 of the 2001 Rules

14. Where the FHSAA—

- (a) has received an application pursuant to Part 3 of the 2001 Rules before the relevant date; and
- (b) that application has not been finally determined immediately before the relevant date,

the parties to that application shall, from the relevant date, continue to be the ophthalmic practitioner who was a party immediately before the relevant date and the Initial Primary Care Trust.

General matters relating to cases under Part 4 of the 2001 Rules

15. Where a panel has—

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- (a) pursuant to rule 32(1), 33, 44(2) or 45(2) of the 2001 Rules given any directions; or
- (b) pursuant to rule 37 of those Rules, varied any directions,

in relation to any appeal falling within paragraph 12, those directions or varied directions shall continue to apply to the Initial Primary Care Trust, even if the ophthalmic practitioner's name is, on and after the relevant date, included in the ophthalmic performers list of a different Primary Care Trust.

16. Where a panel has, pursuant to rule 42 or 43 of the 2001 Rules, given a decision—

- (a) that decision shall continue to apply to the Initial Primary Care Trust; and
- (b) that Trust, shall be entitled to apply to the FHSAA pursuant to and in accordance with rule 43 of the 2001 Rules for a review of a panel's decision.

17. Where the FHSAA has taken a decision before the relevant date which, by virtue of rule 46 of the 2001 Rules, it would, at the time it took that decision have been obliged to publish, that obligation shall continue on or after the relevant date if it has not already published the decision.