
WELSH STATUTORY INSTRUMENTS

2023 No. 1053

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

PART 4

Combined lists

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⁽¹⁾ 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.

(1) 1997 c. 50; section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15).