

## **Government Response: *The National Health Service (Ophthalmic Services) (Wales) Regulations 2023***

The Welsh Government notes both the Technical points and the Merits Scrutiny point raised and has provided responses in relation to the Technical Scrutiny points below. The Welsh Government is grateful to the Senedd Committee for confirming that no response is required in relation to the Merits Scrutiny point.

### **Technical Scrutiny point 1:**

The Welsh Government agrees that, in places, references could be more specific. However, it is not considered that these require correction as, in the circumstances, the correct legal meaning is clear.

### **Technical Scrutiny point 2:**

The Welsh Government notes the point made but considers that the definitions of “employ”, “employee” and “employment” in regulation 2 and Paragraph 18 of Schedule 4 achieve the intended legal effect and that no correction is required.

### **Technical Scrutiny point 3:**

Regulation 4(a) refers to paragraph 23 “of the terms of service”. “Terms of service” is defined in regulation 2 as “the terms set out in Schedule 4”. Therefore, the location of paragraph 23 is identified and no correction is required.

### **Technical Scrutiny point 4:**

The Welsh Government notes the point made but considers that in the context of regulation 7(4) and Schedule 1 the reference to “paragraph (2)(n)” would be read as a reference to “paragraph 1(2)(n)” and, therefore, a correction is not strictly required. However, the Government is liaising with the SI Registrar to seek a correction slip.

### **Technical Scrutiny point 5:**

The Welsh Government agrees that the provisions could be more precise. However, as these provisions cannot be interpreted in any other way other than to mean a reference to a “qualified practitioner”, it is not considered that correction is required.

### **Technical Scrutiny point 6:**

The Welsh Government agrees that referring to “facts” rather than “factors” in regulation 13(5) would be more consistent. However, the provision produces the correct legal effect. It is clear that the facts in paragraph 10 of Schedule 3 are the factors referred to in regulation 13(5) and it is clear that the Local Health Board must consider those matters in Schedule 3, paragraph 10 and therefore no correction is required.

**Technical Scrutiny point 7:**

1 February 2006 is the date that the supplementary list system was established under the *National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services) (Amendment and Consequential Amendment) (Wales) Regulations 2006*. 30 July 2002 has been the relevant date in relation to the ophthalmic list since 2016.

There is no intended policy change to these grounds for removal. Therefore, the provisions maintain the current position.

**Technical Scrutiny point 8:**

The Government notes the point made but considers that the proper construction of the provision would result in the reference being read as a reference to regulation 13 because regulation 15 does not deal with refusals. Therefore, a correction is not strictly required. However, the Government is liaising with the SI Registrar to see if this matter can be addressed by way of correction slip.

**Technical Scrutiny point 9:**

Local Health Boards will be directed to notify the NHS Counter Fraud Authority in relation to fraud cases within the meaning of regulation 17(3)(d) pending an amendment to the regulations to that effect.

**Technical Scrutiny point 10:**

The Welsh Government accepts that referring to a “qualified practitioner” would be consistent, however, the correct legal meaning is clear as the only people to whom it is relevant are those who are “qualified practitioners”.

**Technical Scrutiny point 11:**

The Welsh Government accepts that referring to a “qualified practitioner” would be consistent, however, the correct legal meaning is clear as the only people to whom it is relevant are those who are “qualified practitioners”.

**Technical Scrutiny point 12:**

The Government notes point but considers that there is no doubt as to the Regulations that are being referred to. Whilst the Welsh Government, therefore, considers that a correction is not required it is liaising with the S.I. Registrar about the possibility of clarifying this by way of correction slip.

**Technical Scrutiny point 13:**

The Government notes the error in the cross-referencing and is liaising with the S.I. Registrar about the possibility of a correction slip to refer to paragraph “(i)” rather than “(g)”.

**Technical Scrutiny point 14:**

The Government notes the omission of two words “and experience” in the Welsh language text in paragraph 3(7) of Schedule 2. However, paragraph 1 of Schedule 2 to the Regulations, regulation 9 and Section 71 of the National Health Service (Wales) Act 2006 all refer to “prescribed qualifications” and there can therefore be no adverse effect from the omission of those words. However, the Welsh Government is liaising with the S.I. Registrar about the possibility of inserting the words this by way of correction slip so that the Welsh and English are equivalent.

**Technical Scrutiny point 15:**

The Welsh Government notes that the term “health service” is only used once in the Schedule. However, it is considered that the correct legal meaning is clear and that no correction is therefore required.

**Technical Scrutiny point 16:**

The Welsh Government accepts that referring to a “qualified practitioner” would be consistent, however, the correct legal meaning is clear in the circumstances as the only people to whom it is relevant are those who are “qualified practitioners”.

**Technical Scrutiny point 17:**

The Welsh Government considers that the provision has the correct legal effect as a “certificate” is a “document”.

**Technical Scrutiny point 18:**

Under Schedule 3, paragraphs 10(1)(b) and 15(2)(b), the Local Health Board (“LHB”) must consider “all facts which appear to be relevant” including (but not limited to) those specifically listed. The length of time since a conviction is particularly relevant given the potential for a person to have been convicted of an offence long after the conduct of the offence. The length of time since the offence, and since the conviction for the offence, are therefore listed as specific facts to be taken into account and the Welsh Government considers that this provision is suitable.

**Technical Scrutiny point 19:**

The Welsh Government notes the very slight difference in the Welsh and English language text. However, it is not considered that this needs to be corrected as the provision has the correct legal effect.

**Technical Scrutiny point 20:**

The Welsh Government considers that this provision is effective. Paragraph 15(1) of Schedule 4 refers to “information” provided under paragraph 7 of Schedule 3. This would capture any information forming part of a declaration provided by a qualified practitioner which is the intended effect.

**Technical Scrutiny point 21:**

The Welsh Government accepts that referring to a “qualified practitioner” would be consistent, however, the provision has the correct legal effect as the only people to whom it is relevant are those who are “qualified practitioners”.

**Technical Scrutiny point 22:**

The Welsh Government agrees that the suggested wording could have been more precise. However, in context, the intention and legal effect is clear and it is not considered that this needs to be corrected.