

## 2004 No. 585

## NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Performers Lists)  
Regulations 2004**

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<i>Made</i>	<i>4th March 2004</i>
<i>Laid before Parliament</i>	<i>11th March 2004</i>
<i>Coming into force</i>	<i>1st April 2004</i>

The Secretary of State for Health, in exercise of the powers conferred upon him by sections 28X, and 126(4) of the National Health Service Act 1977<sup>1</sup> and all other powers enabling him in that behalf, hereby makes the following Regulations:

**1.— Citation, commencement and application**

- (1) These Regulations may be cited as the National Health Service (Performers Lists) Regulations 2004 and shall come into force on 1st April 2004.
- (2) These Regulations apply to England only.

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**Commencement**reg. 1(1)-(2): April 1, 2004

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<sup>1</sup> (“the 1977 Act”); see section 128(1) as amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 26(2)(g) and (i), for the definitions of “prescribed” and “regulations”. Section 28X was inserted by the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) (“the 2003 Act”), section 179(1). Section 126(4) was amended by the 1990 Act, s. 65(2); by the Health Act 1999 (c. 8) (“the 1999 Act”), Schedule 4, paragraph 37(6) and by the Health and Social Care Act 2001 (c. 15) (“the 2001 Act”), Schedule 5, paragraph 5(13)(b). As regards Wales, the functions of the Secretary of State under sections 29 and 126(4) of the 1977 Act are transferred to the National Assembly for Wales under article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; section 68 of the 2001 Act provides that Schedule 1 shall be construed so as to include the amendments made by that Act to the 1977 Act; these Regulations therefore extend only to England.

## PART 1

### GENERAL PROVISIONS AS TO PERFORMERS LISTS

#### 2.— Interpretation and modification

(1) In these Regulations—

[“the 2008 Regulations” means the National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008;]<sup>2</sup>

“Abolition of the Tribunal Regulations” means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001;

“Abolition of the Tribunal (Wales) Regulations” means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002;

[“the Amendment Regulations” means the National Health Service (Performers Lists) Amendment Regulations 2005;]<sup>3</sup>

“armed forces” means the United Kingdom Armed Forces of Her Majesty;

“contingent removal” shall be construed in accordance with regulation 12;

[“dental list” means the list prepared by a Primary Care Trust under regulation 4(1) of the Dental Regulations;

“dental performers list” means the list prepared by a Primary Care Trust and published pursuant to regulation 3(1)(b);

“the Dental Regulations” means the National Health Service (General Dental Services) Regulations 1992;]<sup>4</sup>

“director” means—

(a) a director of a body corporate; or

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

“employment” means any employment, whether paid or unpaid and whether under a contract for services or a contract of service and “employed” and “employer” shall be construed accordingly;

“equivalent body” means a Local Health Board in Wales, a Health Board or an NHS trust in Scotland, a Health and Social Services Board in Northern Ireland, in relation to any time prior to 1st October 2002 a Health Authority in England or, in relation to any time prior to 1st April 2003, a Health Authority in Wales;

“equivalent list” means a list kept by an equivalent body;

“FHSAA” means the Family Health Services Appeal Authority constituted under section 49S<sup>5</sup>;

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<sup>2</sup> Definition inserted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.2(d) (August 1, 2008: insertion has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

<sup>3</sup> Definition inserted by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.2(f) (April 1, 2006)

<sup>4</sup> Definitions inserted by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.2(f) (April 1, 2006)

<sup>5</sup> Section 49S was inserted by the 2001 Act, section 27(1) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (“the 2002 Act”), Schedule 1, paragraph 18.

“fraud case” means a case where a person satisfies the second condition for removal from the performers list, set out in section 49F(3)<sup>6</sup> or, by virtue of section 49H<sup>7</sup>, is treated as doing so;

“licensing or regulatory body” means a body that licenses or regulates any profession of which the performer is, or has been a member, including a body regulating or licensing the education, training or qualifications of that profession, and includes any body which licenses or regulates any such profession, its education, training or qualifications, outside the United Kingdom;

“list” means a list referred to in section 49N(1)(a) to (c)<sup>8</sup>, [ a performers list, a dental list, ]<sup>9</sup> [ an ophthalmic list, ]<sup>10</sup> a medical list, a services list or a supplementary list ;

“medical list” means the list prepared by a Primary Care Trust under regulation 4 of the Medical Regulations;

“medical performers list” means a list of medical practitioners prepared and published pursuant to [regulation 3(1)(a)]<sup>11</sup> ;

“Medical Regulations” means the National Health Service (General Medical Services) Regulations 1992;

“a national disqualification” means a decision—

(a) made by the [First-tier Tribunal]<sup>12</sup> to nationally disqualify a performer under section 49N [ or under regulations corresponding to that section made under section 28X(4) (persons performing primary medical and dental services) ]<sup>13</sup> ;

(b) to nationally disqualify a performer under provisions in force in Scotland or Northern Ireland corresponding to section 49N; or

(c) by the Tribunal, which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4) of the Abolition of the Tribunal Regulations or regulation 6(4)(b) of the Abolition of the Tribunal (Wales) Regulations;

“the NCAA” means the National Clinical Assessment Authority established as a Special Health Authority under section 11<sup>14</sup> ;

[ “the NHS Business Services Authority” means the NHS Business Services Authority(Awdurdod Gwasanaethau Busnes y GIG) established by the NHS Business

<sup>6</sup> Section 49F was inserted by the 2001 Act, s. 25 and amended by the 2002 Act, Schedule 2, paragraph 21; provision corresponding to it may be made by virtue of the 2003 Act, s. 28X(4).

<sup>7</sup> Section 49H was inserted by the 2001 Act, s. 25; provision corresponding to it may be made by virtue of the 2003 Act, s. 28X(4).

<sup>8</sup> Section 49N(1) was inserted by the 2001 Act, section 25 and amended by the 2002 Act, Schedule 2, paragraph 25 and the 2003 Act, Schedule 11, paragraph 24.

<sup>9</sup> Words inserted by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.2(a) (April 1, 2006)

<sup>10</sup> Words inserted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.2(a) (August 1, 2008: insertion has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

<sup>11</sup> Words substituted by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.2(b) (April 1, 2006)

<sup>12</sup> Word substituted by Transfer of Tribunal Functions Order 2010/22 Sch.3 para.49 (January 18, 2010)

<sup>13</sup> Words inserted by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.2(c) (April 1, 2006)

<sup>14</sup> The NCAA was established by S.I. 2000/2961; section 11 was amended by the 1995 Act, Schedule 1, paragraphs 1 and 2 and by the 1999 Act, section 65 and Schedule 4, paragraphs 4 and 6.

Services Authority(Awdurdod Gwasanaethau Busnes y GIG) (Establishment and Constitution)Order 2005;]<sup>15</sup>

“the NHS Counter Fraud and Security Management Service” means the service with responsibility for policy and operational matters relating to the prevention, detection and investigation of fraud or corruption and the management of security in the National Health Service, established by the Counter Fraud and Security Management Service (Establishment and Constitution) Order 2002 [,which was replaced on 1st April 2006 by the NHS Business Services Authority]<sup>16 17</sup> ;

“notice” means a notice in writing (including electronically) and “notify” shall be construed accordingly;

[ “the NPSA” means the National Patient Safety Agency established as a Special Health Authority under section 11;]<sup>18</sup>

[ “ophthalmic performers list” means the list prepared by a Primary Care Trust and published pursuant to regulation 3(1)(c);]<sup>2</sup>

“originating events” means the events that gave rise to the conviction, investigation, proceedings, suspension, refusal to admit, conditional inclusion, removal or contingent removal that took place;

“performer” means a health care professional;

“performers list” means a list prepared and published pursuant to regulation 3(1);

“previous list” means a list in which the performer's name was included prior to his inclusion in the performers list;

“Primary Care Act” means the National Health Service (Primary Care) Act 1997;

“professional conduct” includes matters relating both to professional conduct and professional performance;

“relevant body” means the body for the time being mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002, which regulates the profession of the performer;

[ “relevant performers list” means—

- (a) in the case of a medical practitioner, the medical performers list;
- (b) in the case of a dentist, the dental performers list; and
- (c) in the case of an ophthalmic practitioner, the ophthalmic performers list;

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[ “relevant Part” means—

- (a) in the case of a medical practitioner, Part 2;
- (b) in the case of a dentist, Part 3; and
- (c) in the case of an ophthalmic practitioner, Part 4;

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<sup>15</sup> Definition inserted by Special Health Authorities Abolition Order 2006/635 Sch.2 para.15(2)(b) (April 1, 2006)

<sup>16</sup> Words inserted by Special Health Authorities Abolition Order 2006/635 Sch.2 para.15(2)(a) (April 1, 2006)

<sup>17</sup> The NHS Counter Fraud and Security Management Service replaces the National Health Service Counter Fraud Service.

<sup>18</sup> Definition inserted by Special Health Authorities Abolition Order 2005/502 Sch.2 para.8(2) (April 1, 2005)

<sup>19</sup> Definition substituted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.2(b) (August 1, 2008: substitution has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

“services list” means a list prepared by a Primary Care Trust under regulation 3 of the Services List Regulations;

“Services List Regulations” means the National Health Service (Personal Medical Services) (Services List) and the (General Medical Services) and (General Medical Services Supplementary List) Amendment Regulations 2003;

“supplementary list” means a list prepared by a Primary Care Trust under regulation 3 of the Supplementary List Regulations;

“Supplementary List Regulations” means the National Health Service (General Medical Services Supplementary List) Regulations 2001<sup>21</sup> ;

“suspended” , unless the context otherwise requires, means–

(a) suspended by a Primary Care Trust or equivalent body under section 49I<sup>22</sup> or 49J<sup>23</sup> , regulations made under section 43D<sup>24</sup> or under section 8ZA<sup>25</sup> of the Primary Care Act, including these Regulations;

(b) in relation to Scotland or Northern Ireland, suspended under provisions in force corresponding to those in or made under sections 28DA<sup>26</sup> , 43D, 49I, 49J or under section 8ZA of the Primary Care Act,

and shall be treated as including a case where a person is treated as suspended by a Primary Care Trust or, prior to 1st October 2002, a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations, or, in Wales, by a Local Health Board or, prior to 1st April 2003, by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal (Wales) Regulations, and “suspends” and “suspension” shall be construed accordingly;

“the Tribunal” means the Tribunal constituted under section 46<sup>27</sup> for England and Wales, and which, except for prescribed cases, had effect in relation to England until 14th December 2001 and in relation to Wales until 26th August 2002<sup>28</sup> ; and

all references to sections are to sections of the National Health Service Act 1977, except where specified otherwise.

(2) The provisions of this Part shall have effect subject to any modification or further provision in the relevant Part.

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<sup>20</sup> Definition substituted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.2(c) (August 1, 2008: substitution has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

<sup>21</sup> Amended by S.I. 2002/848, 1920 and 2469.

<sup>22</sup> Section 49I was inserted by the 2001 Act, s. 25 and amended by the 2002 Act, Schedule 2, paragraph 21; provision corresponding to it may be made by virtue of the 2003 Act, s. 28X(4).

<sup>23</sup> Section 49J was inserted by the 2001 Act, s. 25 and amended by the 2002 Act, Schedule 2, paragraph 22; provision corresponding to it may be made by virtue of the 2003 Act, s. 28X(4).

<sup>24</sup> Section 43D was inserted by the 2001 Act, s. 24 and amended by the 2002 Act, Schedule 2, paragraph 20 and the 2003 Act, Schedule 11, paragraph 20.

<sup>25</sup> Section 8ZA was inserted by section 26(2) of the 2001 Act and amended by the 2002 Act, Schedule 3, paragraph 3.

<sup>26</sup> Section 28DA was inserted by the 2001 Act, s. 26(1).

<sup>27</sup> Section 46 was revoked by the 2001 Act, s. 67, Schedule 5, paragraph 5 and Schedule 6, part I.

<sup>28</sup> See S.I. 2001/3738, article 2(5) and (6)(b), which sets out the prescribed cases for England and S.I. 2002/1919, article 2(2) and (3)(b), which sets out the prescribed cases for Wales.

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**Commencement**

Pt 1 reg. 2(1)-(2): April 1, 2004

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**3.— Performers lists**

[ (1) A Primary Care Trust shall prepare and publish, in accordance with this Part, as modified or supplemented by the relevant Part—

- (a) a medical performers list;
- (b) a dental performers list; and
- (c) an ophthalmic performers list.

] <sup>29</sup>

(2) Performers lists shall be available for public inspection.

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**Commencement**

Pt 1 reg. 3(1)-(2): April 1, 2004

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**4.— Application for inclusion in a performers list**

(1) An application by a performer for the inclusion of his name in a performers list shall be made by sending the Primary Care Trust an application in writing, which shall include the information mentioned in paragraph (2), the undertakings, certificate and consents required by paragraphs (3) and (6), any declaration required under paragraph (4) or (5) and any further information, undertakings, consents or declarations required under paragraph (7) or the relevant Part.

(2) The performer shall provide the following information—

- (a) his full name;
- (b) his sex;
- (c) his date of birth;
- (d) his private address and telephone number;
- (e) chronological details of his professional experience (including the starting and finishing dates of each appointment together with an explanation of any gaps between appointments) with any additional supporting particulars, and an explanation of why he was dismissed from any post;
- (f) names and addresses of two referees, who are willing to provide clinical references relating to two recent posts (which may include any current post) as a performer which lasted at least three months without a significant break, and, where this is not possible, a full explanation and the names and addresses of alternative referees;
- (g) whether he has any outstanding application, including a deferred application, to be included in a list or an equivalent list, and if so, particulars of that application;

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<sup>29</sup> Substituted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.3 (August 1, 2008: substitution has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

- (h) [subject to paragraph (8), ]<sup>30</sup> details of any list or equivalent list from which he has been removed or contingently removed, or to which he has been refused admission or in which he has been conditionally included, with an explanation as to why;
- (i) if he is the director of any body corporate that is included in any list or equivalent list, or which has an outstanding application (including a deferred application) for inclusion in any list or equivalent list, the name and registered office of that body and details of the Primary Care Trust or equivalent body concerned; and
- (j) where he is, or was in the preceding six 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 or contingently removed or from which it is currently suspended, with an explanation as to why and details of the Primary Care Trust or equivalent body concerned.
- (3) The performer shall provide the following undertakings, certificate and consent–
- (a) undertaking to provide the declarations and document, if applicable, required by regulation 9;
- (b) undertaking to notify the Primary Care Trust within 7 days of any material changes to the information provided in the application until the application is finally determined or, if his name is included in the performers list, at any time when his name is included in that list;
- (c) undertaking to notify the Primary Care Trust if he is included, or applies to be included, in any other list held by a Primary Care Trust or equivalent body;
- (d) undertaking to co-operate with an assessment by the [NPSA]<sup>31</sup>, when requested to do so by the Primary Care Trust;
- (e) undertaking, except where the relevant Part provides to the contrary, to participate in the appraisal system provided by a Primary Care Trust;
- (f) an enhanced criminal record certificate, under section 115 of the Police Act 1997, in relation to himself; and
- (g) consent to the disclosure of information in accordance with regulation 9.
- (4) [Subject to paragraph (8), the]<sup>32</sup> performer shall send with the application a declaration as to whether he–
- (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<sup>33</sup> (penalty as alternative to prosecution);

<sup>30</sup> Words inserted by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.3(a) (April 1, 2010)

<sup>31</sup> Word substituted by Special Health Authorities Abolition Order 2005/502 Sch.2 para.8(3) (April 1, 2005)

<sup>32</sup> Words inserted by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.3(b) (April 1, 2010)

<sup>33</sup> 1992 c.5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c.47).

(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 discharging him absolutely;  
 ]<sup>34</sup>

(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 Primary Care Trust;

(h) has been subject to any investigation into his professional conduct by any licensing, regulatory or other body, where the outcome was adverse;

(i) is currently subject to any investigation into his professional conduct by any licensing, regulatory or other body;

(j) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the NHS Counter Fraud and Security Management Service [ or the NHS Business Services Authority]<sup>35</sup> in relation to fraud;

(k) is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any of that Trust's or body's lists or equivalent lists;

(l) is, or has been where the outcome was adverse, the subject of any investigation into his professional conduct in respect of any current or previous employment;

(m) has been removed from, contingently removed from, refused admission to, or conditionally included in any list or equivalent list kept by a Primary Care Trust or equivalent body, or is currently suspended from such a list and if so, why and the name of that Trust or equivalent body; or

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

and, if so, he shall give details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(5) If the performer is, has in the preceding six months been, or was at the time of the originating events a director of a body corporate, he shall, in addition, make a declaration to the Primary Care Trust as to 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 Primary Care Trust;

(d) has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body, where the outcome was adverse;

(e) is currently subject to any investigation into its provision of professional services by any licensing, regulatory or other body;

(f) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the NHS Counter Fraud and Security Management Service [ or the NHS Business Services Authority]<sup>35</sup> in relation to fraud;

(g) is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to its removal from any list or equivalent list; or

<sup>34</sup> Substituted by National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2005/893 Pt 4 reg.10 (April 14, 2005)

<sup>35</sup> Words substituted by Special Health Authorities Abolition Order 2006/635 Sch.2 para.15(3)(a) (April 1, 2006)

(h) has been removed from, contingently removed from, refused admission to, or conditionally included in any list or equivalent list or is currently suspended from such a list,

and, if so, he shall give the name and registered office of the body corporate and 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.

(6) The performer shall consent to a request being made by the Primary Care Trust 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, into him or a body corporate referred to in paragraphs (2) and (5) and, for the purposes of this paragraph, “employer” includes any partnership of which the performer is or was a member.

(7) If, in the case of any application, the Primary Care Trust finds that the information, references or documentation supplied by the performer are not sufficient for it to decide his application, it shall seek from him such further information, references or documentation as it may reasonably require in order to make a decision and he shall supply it with the material so sought.

[ (8) The performer is not required—

(a) to provide for the purposes of paragraph (2)(h), details of any list from which he has been removed or to which he has been refused admission; or

(b) to send with any application a declaration for the purposes of paragraph (4)(m), as to whether he has been removed from or refused admission to any list kept by a Primary Care Trust,

where such removal or refusal relates to a person to whom regulation 43 applies and that refusal or removal respectively falls within regulation 43(2)(c) or (3)(c).

] <sup>36</sup>

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#### **Commencement**

Pt 1 reg. 4(1)-(7): April 1, 2004

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#### **5.— Readmission**

(1) Where a performer has been removed from its performers list by a Primary Care Trust on the grounds that he had been convicted of a criminal offence, and that conviction is overturned on appeal, it may agree to include him in its performers list without a full application if it—

(a) is satisfied that there are no other matters that need to be considered; and

(b) has received an undertaking from him to comply with the requirements of these Regulations.

(2) In a case to which paragraph (1) applies, if the conviction is reinstated on a further appeal, the previous determination of the Primary Care Trust to remove that performer from its performers list shall once again have effect.

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#### **Commencement**

Pt 1 reg. 5(1)-(2): April 1, 2004

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<sup>36</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.3(c) (April 1, 2010)

## 6.— Decisions and grounds for refusal

- (1) The grounds on which a Primary Care Trust may refuse to include a performer in its performers list are, in addition to any prescribed in the relevant Part, that—
- (a) having considered the declaration required by regulation 4(4) and (if applicable) regulation 4(5), and any other information or documents in its possession relating to him, it considers that he is unsuitable to be included in its performers list;
  - (b) having contacted the referees provided by him under regulation 4(2)(f), it is not satisfied with the references;
  - (c) having checked with the NHS Counter Fraud and Security Management Service [ or the NHS Business Services Authority ]<sup>37</sup> for any facts that it considers relevant relating to past or current fraud investigations involving or related to him, which that Service shall supply, and, having considered these and any other facts in its possession relating to fraud involving or relating to him, the Trust considers these justify such refusal;
  - (d) having checked with the Secretary of State for any facts that he considers relevant relating to past or current investigations or proceedings involving or related to the performer, which he shall supply, and, having considered these and any other facts in its possession involving or relating to the performer, the Trust considers these justify such refusal; or
  - (e) there are any grounds for considering that admitting him to its performers list would be prejudicial to the efficiency of the services, which those included in that list perform.
- (2) The grounds on which a Primary Care Trust must refuse to include a performer in its performers list are, in addition to any prescribed in the relevant Part, that—
- (a) he has not provided satisfactory evidence that he intends to perform the services, which those included in the relevant performers list perform, in its area;
  - (b) it is not satisfied he has the knowledge of English which, in his own interests or those of his patients, is necessary in performing the services, which those included in the relevant performers list perform, in its area;
  - (c) he has been convicted in the United Kingdom of murder;
  - (d) he has been convicted in the United Kingdom of a criminal offence, committed on or after the day prescribed in the relevant Part, and has been sentenced to a term of imprisonment of over six months;
  - (e) he is subject to a national disqualification;
  - (f) he has not updated his application in accordance with regulation 7(4); or
  - (g) in a case to which regulation 15(4) applies, he does not notify it under regulation 15(5) that he wishes to be included in its performers list subject to the specified conditions.
- (3) Before making a decision on the performer's application, the Primary Care Trust shall—
- (a) check, as far as reasonably practicable, the information he provided, in particular that provided under regulation 4(4) and (if applicable) (5) or as required by the relevant Part, and shall ensure that it has sight of relevant documents;
  - (b) check with [the NHS Business Services Authority ]<sup>38</sup> whether he has any record of fraud, which information that Service shall supply;
  - (c) check with the Secretary of State as to any information held by him as to any record about past or current investigations or proceedings involving or related to that performer, which information he shall supply; and

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<sup>37</sup> Words substituted by Special Health Authorities Abolition Order 2006/635 Sch.2 para.15(3)(b) (April 1, 2006)

<sup>38</sup> Words substituted by Special Health Authorities Abolition Order 2006/635 Sch.2 para.15(4)(a) (April 1, 2006)

(d) take up the references that he provided under regulation 4(2)(f).

(4) Where the Primary Care Trust is considering a refusal of the performer's application under paragraph (1) or (2), it shall consider all facts which appear to it to be relevant and shall in particular take into consideration, in relation to paragraph (1)(a), (c) or (d)—

- (a) the nature of any offence, investigation or incident;
- (b) the length of time since any offence, incident, conviction or investigation;
- (c) whether there are other offences, incidents or investigations to be considered;
- (d) any action 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 to his performing the services, which those included in the relevant performers list perform, and any likely risk to his patients or to public finances;
- (f) whether any offence was a sexual offence [for the purposes of Part 2 of the Sexual Offences Act 2003, or if it had been committed in England and Wales, would have been such an offence]<sup>39</sup> ;
- (g) [subject to paragraph (4A), ]<sup>40</sup> whether he has been refused admission to, or conditionally included in, or removed, contingently removed or is currently suspended from, any list or any equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action; and
- (h) whether he was at the time, has in the preceding six 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, any 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 Primary Care Trust or equivalent body in each case.

[ (4A) The Primary Care Trust must not take into consideration, for the purposes of paragraph (4)(g), any refusal of admission to or removal from any list where—

- (a) such refusal or removal relates to a person to whom regulation 43 applies; and
- (b) that refusal or removal respectively falls within regulation 43(2)(c) or (3)(c).

] <sup>41</sup>

(5) When the Primary Care Trust takes into consideration any of the matters set out in paragraph (4), it shall consider the overall effect of all the matters being considered.

(6) When the Primary Care Trust has decided whether or not to include a performer in its performers list, it shall notify him within 7 days of that decision of—

- (a) that decision; and
- (b) if it has decided not to include him, the reasons for that (including any facts relied upon) and of any right of appeal under regulation 15 against that decision.

[ (7) When the Primary Care Trust notifies the performer under paragraph (6)(b), it shall—

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<sup>39</sup> Words substituted by National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2005/893 Pt 4 reg.11 (April 14, 2005)

<sup>40</sup> Words inserted by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.4(a) (April 1, 2010)

<sup>41</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.4(b) (April 1, 2010)

- (a) notify him that if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which it gave him the notice informing him of its decision; and
- (b) tell him how to exercise any such right.

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### Commencement

Pt 1 reg. 6(1)-(6)(b): April 1, 2004

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## 7.— Deferment of decision on application

(1) A Primary Care Trust may defer a decision on a performer's application to be included in a performers list, where—

- (a) there are, in respect of him—
  - (i) criminal proceedings in the United Kingdom, or
  - (ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence,
 which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to his removal from its performers list, if he were to be included in it;
- (b) in respect of a body corporate of which he is, has in the preceding 6 months been, or was at the time of the originating events a director there are—
  - (i) criminal proceedings in the United Kingdom, or
  - (ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence,
 which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to his removal from its performers list, if he were to be included in it;
- (c) there is an investigation anywhere in the world by his licensing or regulatory body or any other investigation (including one by another Primary Care Trust or equivalent body) relating to him in his professional capacity that, if adverse, would be likely to lead to his removal from its performers list, if he were to be included in it;
- (d) he is suspended from any list or equivalent list;
- (e) a body corporate of which he is, has in the preceding six months been, or was at the time of the originating events a director, is suspended from any list or equivalent list;
- (f) the [First-tier Tribunal] <sup>43</sup> is considering an appeal by him against a decision of a Primary Care Trust to refuse to include him in its performers list, or to conditionally include him in or to contingently remove him from, or to remove him from any list kept by a Primary Care Trust and if that appeal is unsuccessful the Trust would be likely to remove him from its performers list, if he were to be included in it;
- (g) the [First-tier Tribunal] <sup>43</sup> is considering an appeal by a body corporate of which he is, has in the preceding six months been, or was at the time of the originating events a director, against a decision of a Primary Care Trust or equivalent body to refuse to admit the body corporate to its list, or to conditionally include it in or to remove or contingently remove it from any list kept by a Primary Care Trust or equivalent body, and if that appeal

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<sup>42</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.4 (April 1, 2006)

<sup>43</sup> Word substituted by Transfer of Tribunal Functions Order 2010/22 Sch.3 para.50 (January 18, 2010)

is unsuccessful the Trust would be likely to remove him from its performers list, if he were to be included in it;

(h) he is being investigated by [the NHS Business Services Authority]<sup>44</sup> in relation to any fraud, where the result, if adverse, would be likely to lead to his removal from the Trust's performers list, if he were to be included in it;

(i) a body corporate, of which he is, has in the preceding six months been, or was at the time of the originating events a director, is being investigated in relation to any fraud, where the result, if adverse, would be likely to lead to his removal from the Trust's performers list, if he were to be included in it; and

(j) the [First-tier Tribunal]<sup>43</sup> is considering an application from a Primary Care Trust for the national disqualification of him or a body corporate of which he is, has in the preceding six months been, or was at the time of the originating events a director.

(2) The Primary Care Trust may only defer a decision under paragraph (1) above until the outcome of the relevant event mentioned in any of sub-paragraphs (a) to (j) is known.

(3) The Primary Care Trust must notify the performer that it has deferred a decision on the application and the reasons for it.

(4) Once the outcome of the relevant event mentioned in paragraph (1) is known, the Primary Care Trust shall notify the performer that he must within 28 days of the date of the notification (or such longer period as it may agree)–

(a) update his application; and

(b) confirm in writing that he wishes to proceed with his application.

(5) Provided any additional information has been received within the 28 days or the time agreed, the Primary Care Trust shall notify the performer as soon as possible that–

(a) his application to be included in its performers list has been successful; or

(b) it has decided to refuse the application or impose conditions on his inclusion, and of the reasons for that (including any facts relied upon), and of any right of appeal under regulation 15.

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#### Commencement

Pt 1 reg. 7(1)-(5)(b): April 1, 2004

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### 8.— Conditional inclusion

(1) A Primary Care Trust may determine that, if a performer is to be included in its performers list, he is to be subject, while he remains included in that performers list, to the imposition of conditions, having regard to the requirements of section 28X(6) (preventing fraud or prejudice to the efficiency of the service).

(2) If a performer fails to comply with a condition, which has been imposed by the Primary Care Trust, it may remove him from its performers list.

(3) Where the Primary Care Trust is considering the removal of a performer from its performers list for breach of a condition, it shall give him–

(a) notice of any allegation against him;

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<sup>44</sup> Words substituted by Special Health Authorities Abolition Order 2006/635 Sch.2 para.15(4)(b) (April 1, 2006)

- (b) notice of the grounds for the action it is considering;
  - (c) the opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
  - (d) the opportunity to put his case at an oral hearing before it, if he requests one within the 28 day period mentioned in sub-paragraph (c).
- (4) If there are no representations within the period specified in paragraph (3)(c), the Primary Care Trust shall decide the matter and, within 7 days of making that decision, notify the performer of—
- (a) that decision and the reasons for it (including any facts relied upon); and
  - (b) any right of appeal under regulation 15.
- (5) If there are representations, the Primary Care Trust must take them into account before reaching its decision and shall then, within 7 days of making it, notify the performer of—
- (a) that decision and the reasons for it (including any facts relied upon); and
  - (b) any right of appeal under regulation 15.
- (6) If the performer requests an oral hearing, this must take place before the Primary Care Trust reaches its decision, and it must then, within 7 days of making that decision, notify him of—
- (a) that decision and the reasons for it (including any facts relied upon); and
  - (b) any right of appeal under regulation 15.
- (7) When the Primary Care Trust notifies the performer of any decision, it shall inform him that, if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which it gave him the notice informing him of its decision and shall tell him how to exercise any such right.
- (8) The Primary Care Trust shall also notify the performer of his right to have the decision reviewed in accordance with regulation 14.
- (9) Where the Primary Care Trust determines that a performer—
- (a) may be included in its performers list, but subject to conditions imposed under this regulation; or
  - (b) is to be subject to conditions while he remains included in its performers list,
- his name may be included (or continue to be included) in its performers list during the period for bringing the appeal to the [First-tier Tribunal]<sup>45</sup> pursuant to regulation 15, or if an appeal is brought, until such time as that appeal has been decided, provided he agrees in writing to be bound by the conditions imposed until the time for appeal has expired or the appeal is decided.

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#### Commencement

Pt 1 reg. 8(1)-(9)(b): April 1, 2004

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### 9.— Requirements with which a performer in a performers list must comply

- (1) A performer, who is included in a performers list of a Primary Care Trust, shall make a declaration to that Trust in writing, within 7 days of its occurrence, if he—
- (a) is convicted of any criminal offence in the United Kingdom;
  - (b) is bound over following a criminal conviction in the United Kingdom;
  - (c) accepts a police caution in the United Kingdom;

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<sup>45</sup> Word substituted by Transfer of Tribunal Functions Order 2010/22 Sch.3 para.51 (January 18, 2010)

[ (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 discharging him absolutely;

(f) is 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 informed by any licensing, regulatory or other body of the outcome of any investigation into his professional conduct, and there is a finding against him;

(i) becomes the subject of any investigation into his professional conduct by any licensing, regulatory or other body;

(j) becomes subject to an investigation into his professional conduct in respect of any current or previous employment, or is informed of the outcome of any such investigation, where it is adverse;

(k) becomes to his knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service [ or the NHS Business Services Authority]<sup>47</sup> in relation to fraud, or is informed of the outcome of such an investigation, where it is adverse;

(l) becomes the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any list or equivalent list; or

(m) is removed, contingently removed or suspended from, refused admission to, or conditionally included in, any list or equivalent list,

and, if so, he shall give details, including approximate dates, and where any investigation or proceedings were or are to be brought, the nature of that investigation or those proceedings, and any outcome.

(2) A performer, who is included in a performers list of a Primary Care Trust, and is, was in the preceding six months, or was at the time of the originating events a director of a body corporate, shall make a declaration to that Trust in writing within 7 days of its occurrence if that body corporate—

(a) is convicted of any criminal offence in the United Kingdom;

(b) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales;

(c) 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;

(d) is informed by any licensing, regulatory or other body of the outcome of any investigation into its provision of professional services, and there is a finding against it;

(e) becomes the subject of any investigation into its provision of professional services by any licensing, regulatory or other body;

<sup>46</sup> Substituted by National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2005/893 Pt 4 reg.12 (April 14, 2005)

<sup>47</sup> Words substituted by Special Health Authorities Abolition Order 2006/635 Sch.2 para.15(3)(c) (April 1, 2006)

- (f) becomes to his knowledge the subject of any investigation in relation to fraud, or is informed of the outcome of such an investigation, if adverse;
- (g) becomes the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to its removal from any list or equivalent list; or
- (h) is removed, contingently removed or suspended from, refused admission to, or conditionally included in any list or equivalent list,

and, if so, he shall give the name and registered address of the body corporate and details, including approximate dates, of where any investigation or those proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(3) A performer, who is included in a performers list of a Primary Care Trust, shall consent to a request being made by that Trust 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 that employer or body into the performer or a body corporate referred to in paragraphs (1) and (2) and, for the purposes of this paragraph, “employer” includes any partnership of which the performer is or was a member.

(4) A performer, who is included in a performers list of a Primary Care Trust, shall supply it with an enhanced criminal record certificate under section 115 of the Police Act 1997 in relation to himself, if it at any time, for reasonable cause, it requests him to provide such a certificate.

(5) Subject to paragraph (6), a performer, who is included in a performers list of a Primary Care Trust, shall comply with any undertaking he gave on admission to that list or to any previous list from which he has been transferred pursuant to Schedule 1 [ to these Regulations or [the Schedules to the Amendment Regulations or the 2008 Regulations]<sup>48</sup> ]<sup>49</sup> .

(6) A performer, who is included in a relevant performers list of a Primary Care Trust, shall act in accordance with the undertakings that a performer is required by these Regulations to provide when applying for inclusion in that relevant performers list.

(7) A performer, who is included in a performers list of a Primary Care Trust, shall, except where the relevant Part provides to the contrary—

- (a) participate in the appraisal system provided by a Primary Care Trust; and
- (b) if the appraisal is not conducted by the Trust in whose list he is included, send that Trust a copy of the statement summarising that appraisal.

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#### Commencement

Pt 1 reg. 9(1)-(7)(b): April 1, 2004

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### 10.— Removal from performers list

(1) The Primary Care Trust must remove the performer from its performers list where it becomes aware that he—

- (a) has been convicted in the United Kingdom of murder;

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<sup>48</sup> Words substituted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.4 (August 1, 2008: substitution has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

<sup>49</sup> Words added by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.5 (April 1, 2006)

- (b) has been convicted in the United Kingdom of a criminal offence, committed on or after the day prescribed in the relevant Part, and has been sentenced to a term of imprisonment of over six months;
  - (c) is subject to a national disqualification;
  - (d) has died; or
  - (e) is no longer a member of the relevant health care profession.
- (2) Where a Primary Care Trust is notified by the [First-tier Tribunal]<sup>50</sup> that it has considered an appeal by a performer against–
- (a) a contingent removal by the Trust and has decided to remove him instead; or
  - (b) a conditional inclusion, where he has been conditionally included in a performers list until the appeal has been decided, and has decided not to include him,
- the Trust shall remove him from its performers list and shall notify him immediately that it has done so.
- (3) The Primary Care Trust may remove a performer from its performers list where any of the conditions set out in paragraph (4) is satisfied.
- (4) The conditions mentioned in paragraph (3) are that–
- (a) his continued inclusion in its performers list would be prejudicial to the efficiency of the services which those included in the relevant performers list perform (“an efficiency case”);
  - (b) he is involved in a fraud case in relation to any health scheme; or
  - (c) he is unsuitable to be included in that performers list (“an unsuitability case”).
- (5) For the purposes of this regulation, in addition to the services covered by the definition of “health scheme” in section 49F(8), the following shall also be health schemes–
- (a) health services, including medical and surgical treatment, provided by the armed forces;
  - (b) services provided by Port Health Authorities constituted under the Public Health (Control of Disease) Act 1984;
  - (c) medical services provided to a prisoner in the care of the medical officer or other such officer of a prison appointed for the purposes of section 7 of the Prison Act 1952; and
  - (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.
- (6) Where the performer cannot demonstrate that he has performed the services, which those included in the relevant performers list perform, within the area of the Primary Care Trust during the preceding twelve months, it may remove him from its performers list.
- (7) Subject to any provision in the relevant Part, in calculating the period of twelve months referred to in paragraph (6), the Primary Care Trust shall disregard any period during which–
- (a) the performer was suspended under these Regulations; or
  - (b) he 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.

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<sup>50</sup> Word substituted by Transfer of Tribunal Functions Order 2010/22 Sch.3 para.52 (January 18, 2010)

(8) Where a Primary Care Trust is considering removing a performer from its performers list under paragraphs (3) to (6) or regulations 8(2), 12(3)(c) or 15(6)(b) or contingently removing a performer under regulation 12(1), it shall give him—

- (a) notice of any allegation against him;
- (b) notice of what action it is considering and on what grounds;
- (c) the opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put his case at an oral hearing before it, if he so requests, within the 28 day period mentioned in sub-paragraph (c).

(9) If there are no representations within the period specified in paragraph (8)(c), the Primary Care Trust shall decide whether or not to remove the performer and then, within 7 days of making that decision, notify him of—

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15.

(10) If there are representations, the Primary Care Trust must take them into account before reaching its decision, and shall then, within 7 days of making that decision, notify him of—

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15.

(11) If the performer requests an oral hearing, this must take place before the Primary Care Trust reaches its decision, and it shall then, within 7 days of making that decision, notify him of—

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15.

(12) When the Primary Care Trust notifies the performer of any decision, it shall inform him that, if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which it informed him of its decision and it shall tell him how to exercise any such right.

(13) The Primary Care Trust shall also notify the performer of his right to have the decision reviewed in accordance with regulation 14.

(14) Where the Primary Care Trust decides to remove a performer under [paragraph (3) or (6)]<sup>51</sup>, he shall not be removed from its performers list, until—

- (a) a period of 28 days starting with the day on which it reaches its decision; or
- (b) any appeal is disposed of by the [First-tier Tribunal]<sup>50</sup>,

whichever is the later.

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#### **Commencement**

Pt 1 reg. 10(1)-(14)(b): April 1, 2004

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### **11.— Criteria for a decision on removal**

(1) Where a Primary Care Trust is considering whether to remove a performer from its performers list under regulation 10(3) and (4)(c) (“an unsuitability case”), it shall—

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<sup>51</sup> Words substituted by National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2004/2694 Pt 4 reg.16 (November 15, 2004)

- (a) consider any information relating to him which it has received in accordance with any provision of regulation 9;
  - (b) consider any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to that performer, which information he shall supply if the Trust so requests; and
  - (c) in reaching its decision, take into consideration the matters set out in paragraph (2).
- (2) The matters referred to in paragraph (1) are–
- (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 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 his performing relevant primary 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 2 of the Sexual Offences Act 2003]<sup>52</sup> ;
  - (g) [subject to paragraph (9), ]<sup>53</sup> whether the performer has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from any list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action; and
  - (h) whether he was at the time, has in the preceding six 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 any 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 Primary Care Trust or equivalent body in each case for such action.
- (3) Where a Primary Care Trust is considering removal of a performer from its performers list under regulation 10(3) and (4)(b) it shall consider–
- (a) any information relating to him which it has received in accordance with any provision of regulation 9;
  - (b) any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to that performer, which information he shall supply, if the Trust so requests; and
  - (c) the matters set out in paragraph (4).
- (4) The matters referred to in paragraph (3)(c) are–
- (a) the nature of any incidents of fraud;
  - (b) the length of time since the last incident of fraud occurred, and since any investigation into it was concluded;
  - (c) whether there are any other incidents of fraud, or other criminal offences to be considered;

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<sup>52</sup> Words substituted by National Health Service (Primary Medical Services) (Miscellaneous Amendments) Regulations 2005/893 Pt 4 reg.13 (April 14, 2005)

<sup>53</sup> Words inserted by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.5(a) (April 1, 2010)

- (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 incident;
  - (e) the relevance of any investigation into an incident of fraud to his performing relevant primary services and the likely risk to patients or to public finances;
  - (f) [subject to paragraph (9), ]<sup>53</sup> whether the performer has been refused admittance to, conditionally included in, removed, or contingently removed or is currently suspended from, any list or equivalent list, and, if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action; and
  - (g) whether he was at the time, has in the preceding six 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, or removed or contingently removed from, any 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 Primary Care Trust or equivalent body in each case.
- (5) Where a Primary Care Trust is considering removal of a performer from its performers list under regulation 10(3) and (4)(a) (“an efficiency case”), it shall–
- (a) consider any information relating to him which it has received in accordance with any provision of regulation 9;
  - (b) consider any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to that performer, which information he shall supply, if the Trust so requests; and
  - (c) in reaching its decision, take into account the matters referred to in paragraph (6).
- (6) The matters referred to in paragraph (5)(c) are–
- (a) the nature of any incident which was prejudicial to the efficiency of the services, which the performer performed;
  - (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 performer has ever failed to comply with a request to undertake an assessment by the NCAA [ on or before 31st March 2005 or thereafter by the NPSA]<sup>54</sup> ;
  - (f) whether he has previously failed to supply information, make a declaration or comply with an undertaking required on inclusion in a list;
  - (g) [subject to paragraph (9), ]<sup>55</sup> whether he has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from any list or equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or the equivalent body for such action; and
  - (h) whether he was at the time, has in the preceding six 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, any list or equivalent list, or is currently suspended from any such list, and if so, what the facts were in each such

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<sup>54</sup> Words added by Special Health Authorities Abolition Order 2005/502 Sch.2 para.8(4) (April 1, 2005)

<sup>55</sup> Words inserted by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.5(b) (April 1, 2010)

case and the reasons given by the Primary Care Trust or equivalent body in each case for such action.

(7) In making any decision under regulation 10, the Primary Care Trust shall take into account the overall effect of any relevant incidents and offences relating to the performer of which it is aware, whichever condition it relies on.

(8) When making a decision on any condition in regulation 10(4), the Primary Care Trust shall state in its decision on which condition it relies.

[ (9) The Primary Care Trust must not take into account for the purposes of paragraphs (2)(g), (4)(f) or (6)(g), any refusal of admittance to a list or any removal from a list where—

- (a) such refusal or removal relates to a person to whom regulation 43 applies; and
- (b) that refusal or removal respectively falls within regulation 43(2)(c) or (3)(c).

] <sup>56</sup>

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#### Commencement

Pt 1 reg. 11(1)-(8): April 1, 2004

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### 12.— Contingent removal

(1) In an efficiency case or a fraud case the Primary Care Trust may, instead of deciding to remove a performer from its performers list, decide to remove him contingently.

(2) If it so decides, it must impose such conditions as it may decide on his inclusion in its performers 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).

(3) If the Primary Care Trust determines that the performer has failed to comply with a condition, it may decide to—

- (a) vary the conditions imposed;
- (b) impose new conditions; or
- (c) remove him from its performers list.

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#### Commencement

Pt 1 reg. 12(1)-(3)(c): April 1, 2004

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### 13.— Suspension

(1) If a Primary Care Trust 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 performer from its performers list, in accordance with the provisions of this regulation—

- (a) while it decides whether or not to exercise its powers to remove him under regulation 10 or contingently remove him under regulation 12;

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<sup>56</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.5(c) (April 1, 2010)

- (b) while it waits for a decision affecting him of a court anywhere in the world or of a licensing or regulatory body;
  - (c) where it has decided to remove him, but before that decision takes effect; or
  - (d) pending appeal under these Regulations.
- (2) Subject to paragraph (8), in a case falling within paragraph (1)(a), the Primary Care Trust must specify a period, not exceeding six months, as the period of suspension.
- (3) Subject to paragraph (8), in a case falling within paragraph (1)(b), the Primary Care Trust may specify that the performer remains suspended after the decision referred to in that paragraph has been made for an additional period, not exceeding six months.
- (4) The period of suspension under paragraph (1)(a) or (b) may extend beyond six months if–
- (a) on the application of the Primary Care Trust, the [First-tier Tribunal]<sup>57</sup> so orders; or
  - (b) the Primary Care Trust applied under sub-paragraph (a) before the expiry of the period of suspension, but the [First-tier Tribunal]<sup>57</sup> has not made an order by the time it expires, in which case it continues until the [First-tier Tribunal]<sup>57</sup> makes an order.
- (5) If the [First-tier Tribunal]<sup>57</sup> does so order, it shall 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 a date on which it is to end and an event beyond which it is not to continue, in which case it shall end on the earlier of that date or that event, as the case may be.
- (6) The [First-tier Tribunal]<sup>57</sup> may, on the application of the Primary Care Trust, make a further order (complying with paragraph (5)) at any time while the period of suspension pursuant to the earlier order is still continuing.
- (7) If the Primary Care Trust suspends a performer in a case falling within paragraph (1)(c) or (d), the suspension has effect from the date the Primary Care Trust informed him of the suspension until–
- (a) the expiry of any appeal period; or
  - (b) if he appeals under regulation 15, the [First-tier Tribunal]<sup>57</sup> has disposed of the appeal.
- (8) The Primary Care Trust 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.
- (9) [Except as provided in paragraph (9A) the]<sup>58</sup> effect of a suspension is that, while a performer is suspended under these Regulations, he is to be treated as not being included in the Primary Care Trust's performers list, even though his name appears in it.
- [ (9A) For the purpose of an application by a performer who is suspended under these Regulations to be included in another performers list, he shall be treated as still included in the list from which he is suspended, notwithstanding that suspension. ]<sup>59</sup>
- (10) The Primary Care Trust may at any time revoke the suspension and notify the performer of its decision.

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<sup>57</sup> Word substituted by Transfer of Tribunal Functions Order 2010/22 Sch.3 para.53 (January 18, 2010)

<sup>58</sup> Words inserted by National Health Service (Performers Lists) Amendment Regulations 2006/1385 reg.2(a) (July 3, 2006)

<sup>59</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2006/1385 reg.2(b) (July 3, 2006)

- (11) Where a Primary Care Trust is considering suspending a performer or varying the period of suspension under this regulation, it shall give him—
- (a) notice of any allegation against him;
  - (b) notice of what action it is considering and on what grounds; and
  - (c) the opportunity to put his case at an oral hearing before it, on a specified day, provided that at least 24 hours notice of the hearing is given.
- (12) If the performer does not wish to have an oral hearing or does not attend the oral hearing, the Primary Care Trust may suspend the performer with immediate effect.
- (13) If an oral hearing does take place, the Primary Care Trust shall take into account any representations made before it reaches its decision.
- (14) The Primary Care Trust may suspend the performer with immediate effect following the hearing.
- (15) The Primary Care Trust shall notify the performer of its decision and the reasons for it (including any facts relied upon) within 7 days of making that decision.
- (16) The Primary Care Trust shall notify the performer of any right of review under regulation 14.
- (17) During a period of suspension payments may be made to or in respect of the performer in accordance with a determination by the Secretary of State.
- (18) If a payment is made pursuant to a determination under paragraph (17), but the payee was not entitled to receive all or any part thereof, if the amount to which he was not entitled has not been recovered by other means, it may be recovered as a civil debt.
- (19) If a performer is dissatisfied with a decision of a Primary Care Trust (“the original decision”)—
- (a) to refuse to make a payment to or in respect of him pursuant to a determination under paragraph (17);
  - (b) to make a payment to or in respect of him pursuant to a determination under paragraph (17), but at a lower level than the level to which he considers to be correct; or
  - (c) in respect of recovery of what the Primary Care Trust considers to be an overpayment,
- he may ask the Primary Care Trust to review the original decision and, if he does so, it shall reconsider that decision, and once it has done so, it must notify the performer in writing of the decision that is the outcome of its reconsideration of its original decision (“the reconsidered decision”) and give him notice of the reasons for its reconsidered decision.
- (20) If the performer remains dissatisfied (whether on the same or different grounds), he may appeal to the Secretary of State by giving him a notice of appeal within a period of 28 days beginning on the day that the Primary Care Trust notified him of the reconsidered decision.
- (21) A notice of appeal under paragraph (20) shall include—
- (a) the names and addresses of the parties to the disputed decision;
  - (b) a copy of the reconsidered decision; and
  - (c) a brief statement of the grounds for appeal.
- (22) The Secretary of State shall thereafter send a written request to the parties to make, in writing and within a specified period, any representations they may wish to make about the matter (and the request to the Primary Care Trust shall include a copy of the performer's brief statement of the grounds for appeal).
- (23) Once the period specified pursuant to paragraph (22) has elapsed, the Secretary of State shall—

- (a) give a copy of any representations received from a party to the other party; and
- (b) request in writing a party to whom a copy of representations is given to make within a specified period any written observations which he or it wishes to make on those representations.

(24) Once the period specified pursuant to paragraph 23(b) has elapsed, the Secretary of State shall, as soon as is reasonably practicable, having taken into account any such representations or observations as referred to in paragraphs (22) and (23) (if submitted within the specified periods) and such other evidence as he sees fit to consider—

- (a) determine the appeal, and shall give notice of the determination (including a record of the reasons for it) to both parties; and
- (b) give the Primary Care Trust such directions in writing, if any, on the matter as he thinks fit.

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#### Commencement

Pt 1 reg. 13(1)-(24)(b): April 1, 2004

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#### 14.— Reviews

(1) A Primary Care Trust may and, if requested in writing to do so by the performer, shall review its decision to—

- (a) impose or vary conditions imposed under regulation 8;
- (b) impose or vary conditions imposed under regulation 12; or
- (c) suspend him under regulation 13(1)(a) or (b), except where a suspension is continuing by order of the [First-tier Tribunal]<sup>60</sup>.

(2) A performer may not request a review of a Primary Care Trust's decision until the expiry of a three month period beginning with the date of that decision or, in the case of a conditional inclusion under regulation 8, beginning with the date it includes his name in its performers list.

(3) After a review has taken place, the performer cannot request a further review before the expiry of six months from the date of the decision on the last review.

(4) If a Primary Care Trust decides to review its decision under this regulation to conditionally include, contingently remove or suspend a performer, it shall give him—

- (a) notice of any allegation against him;
- (b) notice of what action it is considering and on what grounds;
- (c) the opportunity to make written representations to it within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put his case at an oral hearing before it, if he so requests within the 28 day period mentioned in sub-paragraph (c).

(5) If there are no representations within the period specified in paragraph (4)(c), the Primary Care Trust shall notify the performer of its decision, the reasons for it (including any facts relied upon) and of any right of appeal under regulation 15.

(6) If there are representations, the Primary Care Trust must take them into account before reaching its decision.

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<sup>60</sup> Word substituted by Transfer of Tribunal Functions Order 2010/22 Sch.3 para.54 (January 18, 2010)

- (7) The Primary Care Trust shall, within 7 days of making its decision, notify the performer of—
- (a) that decision;
  - (b) the reasons for it (including any facts relied upon);
  - (c) any right of appeal under regulation 15; and
  - (d) the right to a further review under this regulation.

- [ (7A) When the Primary Care Trust notifies the performer under paragraph (7)(c), it shall—
- (a) notify him that if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which it gave him the notice informing him of its decision; and
  - (b) tell him how to exercise any such right.

] <sup>61</sup>

(8) If a Primary Care Trust decides to review its decision to impose conditions under regulation 8, it may vary the conditions, impose different conditions, remove the conditions or remove the performer from its performers list.

(9) If a Primary Care Trust decides to review its decision to impose a contingent removal under regulation 12, it may vary the conditions, impose different conditions, or remove the performer from its performers list.

(10) If a Primary Care Trust decides to review its decision to suspend a performer under regulation 13(1)(a) or (b), it may decide to impose conditions or remove him from its performers list.

(11) A Primary Care Trust may not review its decision to suspend a performer under regulation 13(1)(c) or (d).

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#### Commencement

Pt 1 reg. 14(1)-(11): April 1, 2004

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### 15.— Appeals

(1) A performer may appeal (by way of redetermination) to the [First-tier Tribunal] <sup>62</sup> against a decision of a Primary Care Trust mentioned in paragraph (2) [...] <sup>63</sup> .

- (2) The Primary Care Trust decisions in question are decisions—
- (a) to refuse admission to a performers list under regulation 6(1);
  - (b) to impose a particular condition under regulation 8, or to vary any condition or to impose a different condition under that regulation;
  - (c) on a review, under regulation 14, of a conditional inclusion under regulation 8;
  - (d) to remove the performer under regulations 8(2), 10(3) or (6), 12(3)(c) or 15(6)(b);
  - (e) to impose a particular condition under regulation 12, or to vary any condition or to impose a different condition under that regulation;
  - (f) on a review, under regulation 14, of a contingent removal under regulation 12; and

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<sup>61</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.6 (April 1, 2006)

<sup>62</sup> Word substituted by Transfer of Tribunal Functions Order 2010/22 Sch.3 para.55(a)(i) (January 18, 2010)

<sup>63</sup> Words repealed by Transfer of Tribunal Functions Order 2010/22 Sch.3 para.55(a)(ii) (January 18, 2010)

- (g) which the relevant Part prescribes that the performer may appeal to the [First-tier Tribunal]<sup>64</sup> .
- (3) On appeal the [First-tier Tribunal]<sup>64</sup> may make any decision which the Primary Care Trust could have made.
- (4) Where the decision of the [First-tier Tribunal]<sup>64</sup> on appeal is that the appellant's inclusion in a performers list is to be subject to conditions, whether or not those conditions are identical with the conditions imposed by the Primary Care Trust, the Trust shall ask him to notify it within 28 days of the decision (or such longer period as the Trust may agree) whether he wishes to be included in its performers list subject to those conditions.
- (5) If the performer notifies the Primary Care Trust that he does wish to be included in its performers list subject to the conditions, it shall so include him.
- (6) Where the [First-tier Tribunal]<sup>64</sup> on appeal decides to impose a contingent removal—
- (a) the Primary Care Trust and the performer may each apply to the [First-tier Tribunal]<sup>64</sup> for the conditions imposed on the performer to be varied, for different conditions to be imposed, or for the contingent removal to be revoked; and
  - (b) the Primary Care Trust may remove the performer from its performers list if it determines that he has failed to comply with any such condition.

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#### Commencement

Pt 1 reg. 15(1)-(6)(b): April 1, 2004

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### 16.— Notification

- (1) Where a Primary Care Trust decides to—
- (a) refuse to admit a performer to its performers list on the grounds specified in [regulation 6, 24(1) or 31(1)]<sup>65</sup> ;
  - (b) impose conditions on his inclusion in that list under regulation 8;
  - (c) remove him from that list under regulation 10;
  - (d) remove him from that list contingently under regulation 12; or
  - (e) suspend him from that list under regulation 13,
- it shall notify the persons or bodies specified in paragraph (2) and shall additionally notify those specified in paragraph (3), if requested to do so by those persons or bodies in writing (including electronically), of the matters set out in paragraph (4).
- (2) Where paragraph (1) applies, a Primary Care Trust shall notify within 7 days of that decision—
- (a) the Secretary of State;
  - (b) any other Primary Care Trust or equivalent body that, to the knowledge of the notifying Trust—
    - (i) has the performer on any list or equivalent list,
    - (ii) is considering an application for inclusion in any list or equivalent list by him,
 or

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<sup>64</sup> Word substituted by Transfer of Tribunal Functions Order 2010/22 Sch.3 para.55(b) (January 18, 2010)

<sup>65</sup> Words added by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.7 (April 1, 2006)

- (iii) in whose area he performs services;
- (c) the Scottish Executive;
  - (d) the National Assembly for Wales;
  - (e) the Northern Ireland Executive;
  - (f) the relevant body or any other appropriate regulatory body;
  - (g) the [NPSA]<sup>66</sup> ; and
  - (h) where it is a fraud case, [the NHS Business Services Authority]<sup>67</sup> .
- (3) The persons or bodies to be additionally notified in accordance with paragraph (1) are–
- (a) persons or bodies that can establish that they are or were employing him, are using or have used his services or are or were considering employing him or using his services in a professional capacity; and
  - (b) a partnership which provides primary services and can establish that the performer is or was a member of the partnership or that it is considering inviting the performer to become such a member.
- (4) The matters referred to in paragraph (1) are–
- (a) his name, address and date of birth;
  - (b) his professional registration number;
  - (c) the date and a copy of the Primary Care Trust's decision; and
  - (d) a contact name of a person in the Trust for further enquiries.
- (5) The Primary Care Trust shall send to the performer concerned a copy of any information about him 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 Primary Care Trust 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 performer.
- (7) Where a Primary Care Trust is notified by the [First-tier Tribunal]<sup>68</sup> that it has imposed a national disqualification on a performer who was, or had applied to be included, in its performers list, it shall notify the persons or bodies listed in paragraph (2)(b), (g) and (h) and paragraph (3).
- (8) Where a decision is changed on review or appeal, or a suspension lapses, the Primary Care Trust shall notify the persons or bodies that were notified of the original decision of the later decision or the fact that that suspension has lapsed.

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#### Commencement

Pt 1 reg. 16(1)-(8): April 1, 2004

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<sup>66</sup> Word substituted by Special Health Authorities Abolition Order 2005/502 Sch.2 para.8(5) (April 1, 2005)

<sup>67</sup> Words substituted by Special Health Authorities Abolition Order 2006/635 Sch.2 para.15(4)(c) (April 1, 2006)

<sup>68</sup> Word substituted by Transfer of Tribunal Functions Order 2010/22 Sch.3 para.56 (January 18, 2010)

**17.— Amendment of or withdrawal from performers lists**

- (1) A performer shall, unless it is impracticable for him to do so, give notice to the Primary Care Trust within 28 days of any occurrence requiring a change in the information recorded about him in its performers list and of any change of his private address.
- (2) Where a performer intends to withdraw from a performers list, unless it is impracticable for him to do so, he shall so notify the Primary Care Trust at least three months in advance of that date.
- (3) A performer shall notify the Primary Care Trust that he intends to withdraw from its relevant performers list if he is accepted on to any relevant performers list of another Primary Care Trust.
- (4) The Primary Care Trust shall on receiving notice from any performer—
  - (a) pursuant to paragraph (1), amend its performers list as soon as possible;
  - (b) pursuant to paragraph (2), so amend its performers list, either—
    - (i) on the date notified by him, provided it falls at least three months after the date of the notice, or
    - (ii) on the date from which it has agreed that the withdrawal shall take effect, whichever is the earlier; or
  - (c) pursuant to paragraph (3), remove his name from its performers list as soon as it confirms that he has been accepted on that other list.
- (5) A performer may withdraw a notice given pursuant to paragraph (1) or (2) at any time before the Primary Care Trust removes his name from its performers list.
- (6) A notice given pursuant to paragraph (3) may not be withdrawn once the performer has been accepted on that other list.

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**Commencement**

Pt 1 reg. 17(1)-(6): April 1, 2004

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**18.— Restrictions on withdrawal from performers lists**

- (1) Where a Primary Care Trust is investigating a performer—
  - (a) for the purpose of deciding whether or not to exercise its powers to remove him under regulation 10 or contingently remove him under regulation 12; or
  - (b) who has been suspended under regulation 13(1)(a),he may not withdraw from any list kept by any Primary Care Trust in which he is included, except where the Secretary of State has given his consent, until the matter has been finally determined by the Trust.
- (2) Where a Primary Care Trust has decided to remove a performer from its performers list under regulation 10(3) to (6) or to contingently remove him from it under regulation 12, but has not yet given effect to its decision, he may not withdraw from any list kept by any Primary Care Trust in which he is included, except where the Secretary of State has given his consent.
- (3) Where a Primary Care Trust has suspended a performer under regulation 13(1)(b), he may not withdraw from any list kept by any Primary Care Trust in which he is included, except where the Secretary of State has given his consent, until the decision of the relevant court or body is known and the matter has been considered and finally determined by the Trust.

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**Commencement**

Pt 1 reg. 18(1)-(3): April 1, 2004

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**[18A.— National disqualification**

(1) In this regulation and in regulation 19 “national disqualification” means the disqualification of the performer from inclusion in—

- (a) a performer's list;
- (b) a list referred to in section 49N(1) prepared by a Primary Care Trust;
- (c) a supplementary list prepared by a Primary Care Trust;
- (d) a list of pharmacists performing local pharmaceutical services prepared by a Primary Care Trust,

or only from inclusion in one or more descriptions of such list prepared by a Primary Care Trust or an equivalent list, the description being that specified by the [First-tier Tribunal]<sup>69</sup> in its decision

(2) If a performer appeals to the [First-tier Tribunal]<sup>69</sup> under regulation 15 and the [First-tier Tribunal]<sup>69</sup> decides—

- (a) to remove the appellant from a performers list; or
- (b) to refuse to admit him to a performers list,

the [First-tier Tribunal]<sup>69</sup> may also impose a national disqualification on that performer.

(3) A Primary Care Trust which has—

- (a) removed a performer from its performers list; or
- (b) refused to include him in its performers list,

may apply to the [First-tier Tribunal]<sup>69</sup> for a national disqualification to be imposed on him.

(4) Any application under paragraph (3) must be made before the end of the period of three months beginning with—

- (a) the date of the removal or the refusal; or
- (b) 1st April 2006,

whichever is the later.

(5) If the [First-tier Tribunal]<sup>69</sup> imposes a national disqualification on a person—

- (a) no Primary Care Trust may include him in any list from which he has been so disqualified; and
- (b) if he is included in any such list, a Primary Care Trust shall remove him from that list forthwith.

(6) The [First-tier Tribunal]<sup>69</sup> may, at the request of a person upon whom it has imposed a national disqualification, review that disqualification.

(7) On a review under paragraph (6), the [First-tier Tribunal]<sup>69</sup> may confirm or revoke that disqualification.

(8) Subject to regulation 19, a request referred to in paragraph (6) may not be made before the end of the period of—

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<sup>69</sup> Word substituted by Transfer of Tribunal Functions Order 2010/22 Sch.3 para.57(a) (January 18, 2010)

- (a) two years beginning with the date on which the national disqualification was imposed; or
- (b) one year beginning with the date of the [First-tier Tribunal's]<sup>70</sup> decision on the last such review.

] <sup>71</sup>

## 19. Review periods on national disqualification

The period for review shall be the different period specified below, instead of that in [regulation 18A(8)]<sup>72</sup>, where the circumstances are that—

- (a) on making a decision to impose a national disqualification, the [First-tier Tribunal]<sup>73</sup> states that it is of the opinion that the criminal or professional conduct of the performer is such that there is no realistic prospect of a further review being successful, if held within the period specified in [regulation 18A(8)(a)]<sup>74</sup>, in which case the reference to “two years” in that provision shall be a reference to five years;
- (b) on the last review by the [First-tier Tribunal]<sup>73</sup> of a national disqualification the performer was unsuccessful and the [First-tier Tribunal]<sup>73</sup> 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 three years beginning with the date of its decision on that review, in which case the reference to “one year” in [regulation 18A(8)(b)]<sup>75</sup> shall be a reference to three years;
- (c) the [First-tier Tribunal]<sup>73</sup> states that it is of the opinion that, because a criminal conviction considered by the [First-tier Tribunal]<sup>73</sup> in reaching the decision that has effect has been quashed or the penalty reduced on appeal, there is a need for an immediate review, in which case the reference to “two years” or “one year” in [regulation 18A(8)]<sup>72</sup> shall be a reference to the period that has already elapsed; or
- (d) the [First-tier Tribunal]<sup>73</sup> 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, in which case the reference to “two years” or “one year” in [regulation 18A(8)]<sup>72</sup> shall be a reference to the period that has already elapsed.

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### Commencement

Pt 1 reg. 19(a)-(d): April 1, 2004

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## 20.— Disclosure of Information

(1) The Primary Care Trust may disclose information about a performer supplied to it or acquired by it pursuant to these Regulations to any of the following—

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<sup>70</sup> Word substituted by Transfer of Tribunal Functions Order 2010/22 Sch.3 para.57(b) (January 18, 2010)

<sup>71</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.8 (April 1, 2006)

<sup>72</sup> Words substituted by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.9(a) (April 1, 2006)

<sup>73</sup> Word substituted by Transfer of Tribunal Functions Order 2010/22 Sch.3 para.58 (January 18, 2010)

<sup>74</sup> Words substituted by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.9(b) (April 1, 2006)

<sup>75</sup> Words substituted by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.9(c) (April 1, 2006)

- (a) the Secretary of State;
  - (b) any other Primary Care Trust or equivalent body—
    - (i) which has him on any of its lists,
    - (ii) which is considering an application from him for inclusion on any of its lists,
    - or
    - (iii) in whose area he performs the services in question;
  - (c) the Scottish Executive;
  - (d) the National Assembly for Wales;
  - (e) the Northern Ireland Executive;
  - (f) the [NPSA]<sup>76</sup> ;
  - (g) the relevant body or any other licensing or regulatory body;
  - (h) any organisation or employer that, to the knowledge of the Primary Care Trust, is employing him, using his services or considering employing him or using his services in a professional capacity;
  - (i) any partnership, which provides primary services, of which, to the knowledge of the Primary Care Trust, the performer is a member or that is considering inviting the performer to become a member; and
  - (j) where an allegation of fraud is being considered, [the NHS Business Services Authority]<sup>77</sup> .
- (2) The Primary Care Trust shall disclose to the Secretary of State information supplied to it or acquired by it pursuant to these Regulations as he may from time to time request.

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#### Commencement

Pt 1 reg. 20(1)-(2): April 1, 2004

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## PART 2

### MEDICAL PERFORMERS LISTS

#### 21.— Interpretation

- (1) For the purposes of this Part the prescribed description of performer is medical practitioner and the relevant body is the General Medical Council.
- (2) In this Part—
- “2002 Order” means the Medical Act 1983 (Amendment) Order 2002;
  - [...] <sup>78</sup>
  - [ “armed forces GP” means a medical practitioner who—
    - (a) is employed under a contract of service by the Ministry of Defence whether or not as a member of the armed forces; and
    - (b) is entered on the GP Register;

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<sup>76</sup> Word substituted by Special Health Authorities Abolition Order 2005/502 Sch.2 para.8(6) (April 1, 2005)

<sup>77</sup> Words substituted by Special Health Authorities Abolition Order 2006/635 Sch.2 para.15(4)(d) (April 1, 2006)

<sup>78</sup> Definition repealed by General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010/234 Sch.3(2) para.6(2)(a) (April 1, 2010)

] <sup>79</sup>

[...] <sup>78</sup>

[ “both registers” means the register of medical practitioners and the GP Register;] <sup>80</sup>

“CCT” means Certificate of Completion of Training awarded under [section 34L(1) of the Medical Act] <sup>81</sup> [...] <sup>82</sup> ;

“contractor” means a general medical practitioner, who both provides and performs primary medical services in accordance with section 28C <sup>83</sup> arrangements or under a general medical services contract;

[ “emergency registered practitioner” means a medical practitioner—

(a) who is registered as a registered medical practitioner pursuant to section 18A of the Medical Act <sup>84</sup> (temporary registration with regard to emergencies involving loss of human life or human illness etc.);

(b) whose name, within the period of five years prior to being so registered, had been included on a medical performers list; and

(c) whose name was subsequently removed from that or another medical performers list—

(i) on the ground referred to in regulation 10(6); or

(ii) on some other ground unconnected with impairment of fitness to practise (for these purposes, impairment is construed in accordance with section 35C(2) of the Medical Act <sup>85</sup> (functions of the Investigation Committee));

] <sup>86</sup>

“Fitness to Practise Panel” means a panel constituted pursuant to paragraph 19E of Schedule 1 to the Medical Act <sup>87</sup> ;

[ “GP Register” means the register kept by virtue of section 34C of the Medical Act;

“GP Registrar” means a medical practitioner who is being trained in general practice by a GP Trainer, whether as part of training leading to a CCT or otherwise;

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<sup>79</sup> Definition substituted by General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010/234 Sch.3(2) para.6(2)(b) (April 1, 2010)

<sup>80</sup> Definition substituted by General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010/234 Sch.3(2) para.6(2)(c) (April 1, 2010)

<sup>81</sup> Words substituted by General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010/234 Sch.3(2) para.6(2)(d) (April 1, 2010)

<sup>82</sup> Words repealed by European Qualifications (Health and Social Care Professions) Regulations 2007/3101 Pt 4 reg.68 (December 3, 2007)

<sup>83</sup> Section 28C was inserted by the National Health Service (Primary Care) Act 1997, s. 21(1) and amended by the 1999 Act, s.65(1) and Schedule 4, the 2001 Act, s.40 and Schedule 5 and the 2003 Act, s. 180 and Schedule 11, paragraph 14.

<sup>84</sup> The “Medical Act”, as defined in the regulations, is the Medical Act 1983 (c.54). Section 18A is inserted by S.I.2008/1774.

<sup>85</sup> Section 35C is substituted by S.I.2002/3135 and amended by S.I.2006/1914, 2008/1774 and 3131 and the Health and Social Care Act 2008 (c.14), section 99 and Schedule 7, Part 1, paragraph 6. The last three mentioned amendments are not yet in force.

<sup>86</sup> Definition inserted by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.6 (April 1, 2010)

<sup>87</sup> Paragraph 19E is inserted by article 5(3) of the 2002 Order, with effect from such date as the Secretary of State may specify.

“GP Trainer” means a general medical practitioner, other than a GP Registrar, who is approved by the General Medical Council for the purposes of providing training to a GP Registrar;

“general medical practitioner” means a GP Registrar or a medical practitioner whose name is included in the GP Register; ]<sup>88</sup>

“health case” has the meaning ascribed to it by section 35E(4) of the Medical Act<sup>89</sup>);

“Health Committee” means the Health Committee of the General Medical Council referred to in section 1(3) of the Medical Act;

“Medical Act” means the Medical Act 1983;

[ “period of emergency” means the period—

(a) beginning when the Secretary of State advises the Registrar of the General Medical Council (“the Registrar”) that an emergency of the type described in section 19(1)(a) of the Civil Contingencies Act 2004 (meaning of “emergency”), read with subsection (2)(a) and (b) of that section, has occurred, is occurring or is about to occur;

(b) ending when the Secretary of State advises the Registrar that the circumstances that led to the Secretary of State to advise the Registrar as mentioned in sub-paragraph (a) no longer exist;

] <sup>86</sup>

“Professional Conduct Committee” means the Professional Conduct Committee of the General Medical Council, referred to in section 1(3) of the Medical Act;

“professional registration number” means the number against the general medical practitioner's name in the registers of medical practitioners;

“relevant scheme” means the scheme in respect of which the general medical practitioner is applying to be included in a medical performers list;

“register of medical practitioners” has the meaning given to it by section 2(2) of the Medical Act;

“scheme” means an arrangement to provide primary medical services—

(a) in accordance with section 28C; or

(b) under a general medical services contract;

[...] <sup>78</sup>

[ “vocational training scheme” means postgraduate medical education and training necessary for the award of a CCT in general practice. ]<sup>90</sup>

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### Commencement

Pt 2 reg. 21(1)-(2) definition of "vocational training scheme" (b): April 1, 2004

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<sup>88</sup> Definitions substituted by General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010/234 Sch.3(2) para.6(2)(e) (April 1, 2010)

<sup>89</sup> Section 35E is inserted by article 13 of the 2002 Order, with effect from such date as the Secretary of State may specify.

<sup>90</sup> Definition substituted by General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010/234 Sch.3(2) para.6(2)(f) (April 1, 2010)

## 22.— Medical performers list

(1) Subject to paragraphs [(2) to (3)]<sup>91</sup>, a medical practitioner may not perform any primary medical services, unless he is a general medical practitioner and his name is included in a medical performers list.

(2) A medical practitioner, who is provisionally registered under section 15, 15A or 21 of the Medical Act<sup>92</sup>, may perform primary medical services, when his name is not included in a medical performers list, but only whilst acting in the course of his employment in a resident medical capacity in an approved medical practice (within the meaning of section 11(4) of that Act<sup>93</sup>).

[ (2A) A medical practitioner who falls within paragraph (2B) may perform primary medical services in the area of a Primary Care Trust, but only in so far as the performance of those services constitutes part of a programme of post-registration supervised clinical practice approved by [the General Medical Council]<sup>94</sup> (“a post-registration programme”).

(2B) A medical practitioner falls within this paragraph if he—

- (a) is not a GP Registrar;
- (b) is undertaking a post-registration programme;
- (c) has notified the Primary Care Trust that he will be undertaking part or all of a post-registration programme in its area at least 24 hours before commencing any part of that programme taking place in the Primary Care Trust's area; and
- (d) has, with that notification, provided the Primary Care Trust with evidence sufficient for it to satisfy itself that he is undergoing a post-registration programme.

]<sup>95</sup>

(3) A GP Registrar, who has applied in accordance with these Regulations to a Primary Care Trust to have his name included in its medical performers list, may perform primary medical services, despite not being included in that list, until the first of the following events arises—

- (a) the Trust notifies him of its decision on that application; or
- (b) the end of a period of 2 months, starting with the date on which his vocational training scheme begins.

(4) In respect of any medical practitioner, whose name is included in a medical performers list, the list shall include—

- (a) his full name;
- (b) his professional registration number with, suffixed to it, the organisational code given by the Secretary of State to the Primary Care Trust;
- (c) [...] <sup>96</sup> his dates of first registration in both registers;
- (d) whether he is a contractor;

<sup>91</sup> Words substituted by National Health Service (Performers Lists) Amendment Regulations 2006/1385 reg.3(a) (July 3, 2006)

<sup>92</sup> Relevant amendments to sections 15 and 21 are S.I. 1996/1591 and s. 41(10) of and paragraph 61(1) and (4) to Schedule 2 to the 1997 Act.

<sup>93</sup> Relevant amendments are s. 35(1) and (4) of the 1997 Act.

<sup>94</sup> Words substituted by General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010/234 Sch.3(2) para.6(3) (April 1, 2010)

<sup>95</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2006/1385 reg.3(b) (July 3, 2006)

<sup>96</sup> Words repealed by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.10 (April 1, 2006)

- (e) whether he is a GP Registrar;
- (f) whether he is an armed forces GP; and
- (g) the date that his name was included in the medical performers list or, if his name was included in any medical, supplementary or services list of a Primary Care Trust, first included in such a list.

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#### Commencement

Pt 2 reg. 22(1)-(4)(g): April 1, 2004

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### 23.— Application for inclusion in a medical performers list

(1) In addition to the information required by regulation 4(2), the general medical practitioner, when making an application for the inclusion of his name in a medical performers list, shall give the following information—

- (a) his medical qualifications and where they were obtained, with evidence concerning his qualifications and experience;
- (b) [...] <sup>97</sup> a declaration that he is a fully registered medical practitioner, included in both registers;
- (c) his professional registration number and date of first registration in both registers;
- (d) in relation to his professional experience given under regulation 4(2)(e), he shall separate that information into—
  - (i) general practice experience,
  - (ii) hospital appointments, and
  - (iii) other experience,

with full supporting particulars of that experience;

- (e) if he is a GP Registrar, the name and practice address of his GP Trainer [...] <sup>98</sup> ;
- (f) whether he is a contractor;
- (g) whether he is a contractor for more than one scheme and, if so, which schemes and which of those schemes is the relevant scheme; and
- (h) whether he is an armed forces GP.

(2) In addition to the undertakings required by regulation 4(3), the general medical practitioner shall give the following further undertakings—

- (a) not to perform any primary medical services in the area of another Primary Care Trust or equivalent body from whose medical performers list, medical list, services list, supplementary list or equivalent list he has been removed, except where that removal was at his request or in accordance with regulation 10(6) of these Regulations, regulation 10(6) of the Services List Regulations, regulation 10(7) of the Supplementary List Regulations

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<sup>97</sup> Words repealed by Medical Act 1983 (Amendment) and Miscellaneous Amendments Order 2006/1914 Pt 14 art.77(a) (October 19, 2007: July 19, 2006 for the purpose of conferring powers enabling orders to be made by the Privy Council, or amendments specified in SI 2006/1914 art.1(2)(b)(ii); October 19, 2007 as specified on page 10493 of the London Gazette dated July 20, 2007 otherwise)

<sup>98</sup> Words repealed by Medical Act 1983 (Amendment) and Miscellaneous Amendments Order 2006/1914 Pt 14 art.77(b) (October 19, 2007: July 19, 2006 for the purpose of conferring powers enabling orders to be made by the Privy Council, or amendments specified in SI 2006/1914 art.1(2)(b)(ii); October 19, 2007 as specified on page 10493 of the London Gazette dated July 20, 2007 otherwise)

2001 or regulation 7(2) or (11) of the Medical Regulations or any equivalent provision in Scotland or Wales, without the consent, in writing, of that Trust or equivalent body;

(b) if he is a GP Registrar, unless he has an acquired right under regulation 5(1)(d) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994<sup>99</sup>, an undertaking—

(i) not to perform any primary medical services, except when acting for and under the supervision of, his GP Trainer,

(ii) to withdraw from the medical performers list if any of the events listed in paragraph (3) takes place, and

[ (iii) to provide the Primary Care Trust with evidence of their inclusion in the GP Register; and ]<sup>100</sup>

(c) if he is a contractor, to comply with the requirements of paragraph 124 of Schedule 6 to the National Health Service (General Medical Services Contracts) Regulations 2004 (gifts); and

(d) if he is not a contractor, to comply with the requirements of that paragraph as though he were a contractor.

[ (3) The events to which this paragraph applies are—

(a) the conclusion of any period of general practice training required by section 34J of the Medical Act unless—

(i) it forms part of a vocational training scheme which has not yet been concluded; or

(ii) the medical practitioner provides the Primary Care Trust with evidence of their inclusion in the GP Register;

(b) the failure satisfactorily to complete any period of general practice training within the meaning of that section of that Act; and

(c) the completion of a vocational training scheme unless the medical practitioner provides the Primary Care Trust with evidence of their inclusion in the GP Register.

] <sup>101</sup>

(4) If he is an armed forces GP, he shall not be required to give an undertaking pursuant to regulation 4(3)(e) (undertaking to participate in NHS appraisal).

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#### Commencement

Pt 2 reg. 23(1)-(4): April 1, 2004

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#### 24.— Additional grounds for refusal

(1) In addition to the grounds in regulation 6(1), a Primary Care Trust may also refuse to admit a medical practitioner to its medical performers list if—

(a) having checked the information he provided under regulation 23(1), it considers he is unsuitable to be included in its list;

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<sup>99</sup> As amended by S.I. 1998/669 and 2003/3148.

<sup>100</sup> Substituted by General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010/234 Sch.3(2) para.6(4)(a) (April 1, 2010)

<sup>101</sup> Substituted by General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010/234 Sch.3(2) para.6(4)(b) (April 1, 2010)

- (b) his registration in the register of medical practitioners is subject to conditions imposed, before the coming into force of article 13 of the 2002 Order, pursuant to a direction under—
- (i) section 36(1)(iii) of the Medical Act<sup>102</sup>, of the Professional Conduct Committee,
  - (ii) section 37 of that Act<sup>103</sup>, of the Health Committee, or
  - (iii) section 36A of or paragraph 5A(3) of Schedule 4 to that Act<sup>104</sup>, of the Committee on Professional Performance of the General Medical Council referred to in section 1(3) of that Act;
- (c) his registration in the register of medical practitioners is subject to an order, under section 41A of that Act<sup>105</sup>—
- (i) before the coming into force of article 13 of the 2002 Order, of any of those committees or of the Interim Orders Committee of that Council referred to in section 1(3) of that Act,
  - (ii) after the coming into force of that article, of a Fitness to Practise Panel or an Interim Orders Panel of that Council;
- (d) after the coming into force of article 13 of the 2002 Order, his registration in that register is subject to conditions imposed by a Fitness to Practise Panel pursuant to section 35D(2)(c), (5)(c), (8)(c) or (12)(c) of the Medical Act<sup>106</sup>; or
- (e) after the coming into force of article 14 of the 2002 Order, his registration in that register is subject to conditions imposed by a Fitness to Practise Panel pursuant to rules made under paragraph 5A of Schedule 4 to the Medical Act<sup>107</sup>.
- (2) In addition to the grounds in regulation 6(2), a Primary Care Trust shall also refuse to admit a medical practitioner to its medical performers list if—
- (a) he is a contractor and, at the date of his application, more of the patients of the relevant scheme reside in the area of another Primary Care Trust than reside in the area of the Trust in whose list he has applied for inclusion;
  - (b) he is a contractor and the relevant scheme is not one that lies within its area; or
  - (c) he is included in the medical performers list of another Primary Care Trust, unless he has given notice to that Trust that he wishes to withdraw from that list.
- (3) Regulation 6(2)(a) (intention to work in the Primary Care Trust's area) shall not apply in the case of an armed forces GP.
- (4) For the purposes of regulation 6(2)(d), the day prescribed in this Part is 3rd November 2003 or, if that medical practitioner had been included in a medical list or a supplementary list, 14th December 2001.

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<sup>102</sup> Section 36 was amended by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 5 and by S.I. 2000/1803, articles 2 and 5.

<sup>103</sup> Section 37 was amended by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 6 and by S.I. 2000/1803, articles 2 and 7.

<sup>104</sup> Section 36A was inserted by the 1995 Act, section 1 and amended by S.I. 2000/1803, articles 2 and 6 and paragraph 5A of Schedule 4 was added by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 20.

<sup>105</sup> Section 41A was inserted by S.I. 2000/1803, articles 2 and 10 and is substituted by article 13 of the 2002 Order, with effect from such date as the Secretary of State may specify.

<sup>106</sup> Section 35D is inserted by article 13 of the 2002 Order, with effect from such date as the Secretary of State may specify.

<sup>107</sup> Schedule 4 is substituted by article 14 of the 2002 Order, with effect from such date as the Secretary of State may specify.

(5) In addition to checking the information provided by the medical practitioner as required by regulation 6(3)(a), the Primary Care Trust shall also check the information he provided under regulation 23.

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**Commencement**

Pt 2 reg. 24(1)-(5): April 1, 2004

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**25. Requirements with which a medical practitioner in a medical performers list must comply**  
Regulation 9(6) (requirement to participate in a Primary Care Trust's appraisal) shall not apply in the case of an armed forces GP, but in such a case he shall provide the Primary Care Trust with a copy of his annual appraisal by the Ministry of Defence or the armed forces, as the case may be.

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**Commencement**

Pt 2 reg. 25: April 1, 2004

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**26.— Grounds for removal from a medical performers list**

(1) Subject to paragraph (2) and in addition to the grounds in regulation 10(1), the Primary Care Trust must remove a medical practitioner from its medical performers list where it becomes aware that he is—

- (a) the subject of a direction given by the Professional Conduct Committee under section 36(1)(i) or (ii) of the Medical Act (professional misconduct and criminal offences)<sup>108</sup> ;
- (b) the subject of an order or direction made by that Committee under section 38(1) of that Act (order for immediate suspension)<sup>109</sup> ;
- (c) following the coming into force of article 13 of the 2002 Order, the subject of a direction by a Fitness to Practise Panel 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 Fitness to Practise Panel), or section 38(1) (power to order immediate suspension etc) of that Act<sup>110</sup> ;
- (d) following the coming into force of article 14 of the 2002 Order, the subject of a direction by a Fitness to Practise Panel suspending him pursuant to rules made under paragraph 5A(3) of Schedule 4 to that Act<sup>111</sup> (professional performance assessments);
- (e) included in the medical performers list of another Primary Care Trust; or
- (f) if a GP Registrar, in breach of the undertaking provided in accordance with regulation 23(2) and has failed to withdraw from the list after the Primary Care Trust has given him 28 days notice requesting him to do so.

(2) Paragraph (1)(c) shall not apply where a direction that a medical practitioner's registration be suspended is made in a health case.

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<sup>108</sup> Section 36 was amended by S.I. 2000/1803.

<sup>109</sup> Section 38(1) was amended by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 7.

<sup>110</sup> Sections 35D and 38 are inserted by article 13 of the 2002 Order, with effect from such date as the Secretary of State may specify.

<sup>111</sup> Schedule 4 is substituted by article 14 of the 2002 Order, with effect from such date as the Secretary of State may specify.

(3) For the purposes of regulation 10(1)(b), the day prescribed in this Part is 3rd November 2003 or, if that medical practitioner had been included in a medical list or a supplementary list, 14th December 2001.

(4) Regulation 10(6) (power to remove for non-practice in the area) shall not apply in the case of an armed forces GP.

(5) In calculating the period of 12 months under regulation 10(7) (periods to be disregarded), the Primary Care Trust shall disregard any period during which the medical practitioner's registration or his entitlement to practise as such was suspended—

(a) before the coming into force of article 13 of the 2002 Order, by a committee of the General Medical Council pursuant to sections 37 or 41A of the Medical Act;

(b) after the coming into force of that article, by a Fitness to Practise Panel pursuant to section 41A(1)(a) of that Act; or

(c) after the coming into force of that article, in a health case.

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#### Commencement

Pt 2 reg. 26(1)-(5)(c): April 1, 2004

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#### **[26A.— Disapplication of provisions with regard to emergency registered practitioners**

(1) Regulations 6, 23 and 24 do not apply to applications made during a period of emergency for inclusion of the name of an emergency registered practitioner in a medical performers list.

(2) Regulation 26 does not apply in respect of the removal of an emergency registered practitioner's name from a medical performers list.

]<sup>112</sup>

#### **[26B.— Modification of regulation 4: applications relating to emergency registered practitioners**

(1) Regulation 4 applies in respect of an application made during a period of emergency for inclusion of the name of an emergency registered practitioner in a medical performers list as if—

(a) paragraph (2)(f) and (g);

(b) paragraph (3)(c), (d), (e) and (f); and

(c) paragraphs (6) and (7),

were omitted.

(2) In addition to the information required by regulation 4, as modified by paragraph (1), the following must be supplied with an application referred to in that paragraph—

(a) details of any Primary Care Trust in whose medical performers list the medical practitioner was previously included;

(b) the medical practitioner's professional registration number; and

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<sup>112</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.7 (April 1, 2010)

(c) an enhanced criminal record certificate under section 113B of the Police Act 1997<sup>113</sup> (enhanced criminal record certificates) or, if none is supplied with the application, an undertaking—

- (i) if not already applied for, to apply for such a certificate within 7 days; and
- (ii) to provide that certificate to the Primary Care Trust within 7 days of receiving it.

(3) A Primary Care Trust must refuse to include a medical practitioner's name in its medical performers list pursuant to an application referred to in paragraph (1) if the medical practitioner is not an emergency registered practitioner.

]

#### **[26C.— Modification of regulation 10: removal of emergency registered practitioners**

(1) The grounds in regulation 10 for the removal by a Primary Care Trust of a performer's name from its performers list apply in respect of the removal of an emergency registered practitioner's name from its medical performers list as if—

- (a) paragraph (2); and
- (b) paragraphs (6) to (14),

were omitted.

(2) In addition to the grounds specified in regulation 10(1), a Primary Care Trust must remove the name of an emergency registered practitioner (“E”) from its medical performers list where E—

- (a) has not, on request, provided evidence to the Primary Care Trust that the certificate referred to in regulation 26B(2)(c) has been applied for (despite the undertaking to apply for the certificate); or
- (b) has not provided that certificate to the Primary Care Trust (despite the undertaking to provide it),

within the relevant period specified in regulation 26B(2)(c).

(6) A Primary Care Trust may also remove E's name from its medical performers list where it considers such removal to be justified, after having checked—

- (a) as far as reasonably practicable, the information provided with the application, in particular that provided under regulation 4(4) and (5), having had sight of the relevant documents;
- (b) with the NHS Counter Fraud and Security Management Service or the NHS Business Services Authority for relevant information relating to past or current fraud investigations involving or related to E and having considered these and any other facts in its possession relating to fraud involving or relating to E; or
- (c) with the Secretary of State for any relevant information relating to past or current investigations or proceedings involving or related to E and having considered these and any other facts in its possession involving or related to E.

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<sup>113</sup> 1997 c.50. Section 113B is inserted by the Serious Organised Crime and Police Act 2005 (c.15), section 163(2) and amended by: the Armed Forces Act 2006 (c.52), section 378(1), and Schedule 16, paragraph 149; the Safeguarding Vulnerable Groups Act 2006 (c.47), section 63(1), and Schedule 9, Part 2, paragraph 14(1) and (3); the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14), section 79(1); and S.I.2009/203.

<sup>114</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.7 (April 1, 2010)

(7) The Service or Authority referred to in paragraph (6)(b) or, as the case may be, the Secretary of State, must, in response to a request from a Primary Care Trust, supply to that Trust any information they consider relevant for the consideration by the Trust of the question in paragraph (6)(b) or, as the case may be (c).  
 ]<sup>115</sup>

**[27.— Decisions that may or may not be appealed**

(1) A medical practitioner may also appeal, under regulation 15, against a decision of the Primary Care Trust to refuse to include the practitioner's name in its medical performers list under regulation 24(1).

(2) No appeal lies under regulation 15 against a decision of a Primary Care Trust—  
 (a) to refuse to include a medical practitioner's name in its medical performers list where that practitioner has applied to be included on that list in accordance with regulation 26B(1);  
 or  
 (b) to remove an emergency registered practitioner's name from its medical performers list.

] <sup>116</sup>

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**Commencement**

Pt 2 reg. 27: April 1, 2004

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**[ PART 3**

**DENTAL PERFORMERS LISTS**

] <sup>117</sup>

**[28.— Interpretation**

(1) For the purposes of this Part, the prescribed description of performer is dentist and the relevant body is the General Dental Council.

(2) In this Part—  
 “the 2005 Order” means articles 18 to 24 of the Dentists Act 1984 (Amendment) Order 2005;  
 “approved trainer” means a dentist—  
 (a) whose name is included in a dental performers list; and  
 (b) who has been approved for a specified period, which has not elapsed, by a postgraduate dental dean or a director of postgraduate dental education as having the requisite skills and suitable practice facilities to enable him to act as a trainer;  
 “community dental service” means dental services provided under—

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<sup>115</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.7 (April 1, 2010)

<sup>116</sup> Substituted by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.8 (April 1, 2010)

<sup>117</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.11 (April 1, 2006)

- (a) sections 3(1)(c) and 5(1A);
- (b) in Scotland, under sections 1 and 39(2) of the NHS (Scotland) Act 1978; and
- (c) in Northern Ireland, under article 5(1)(c) and 9(1A) of the Health and Personal Social Services (Northern Ireland) Order 1972;

“contractor” means a dentist, who both provides and performs primary dental services in accordance with section 28C<sup>118</sup> arrangements or under a general dental services contract under section 28K<sup>119</sup> ;

“dental supplementary list” means the list prepared by a Primary Care Trust under regulation 3(1) of the Dental Supplementary List Regulations;

“the Dental Supplementary List Regulations” means the National Health Service (General Dental Services Supplementary List ) and (General Dental Services) Amendment Regulations 2003;

“dentist” means a dental practitioner who is registered in the dentists register;

“Dentists Act” means the Dentists Act 1984;

“dentists register” means the register referred to in section 14(1) of the Dentists Act<sup>120</sup> ;

“health case” means a case falling within either section 28(1) (powers of the Health Committee) or, after the coming into force of the 2005 Order, section 27(2)(c) of the Dentists Act (allegations)<sup>121</sup> ;

“Health Committee” means the Health Committee of the General Dental Council, referred to in section 2 of the Dentists Act (committees of the Council)<sup>122</sup> ;

“personal dental services” means personal dental services provided pursuant to Part I of the Primary Care Act (pilot schemes for primary care);

“postgraduate dental dean or director of postgraduate dental education” means a dentist appointed to that position by a Strategic Health Authority to assist in the provision of a suitable learning environment for dentists performing primary dental services to meet the requirements and standards of the Dental Faculties of the Royal College of Surgeons of England and the Department of Health;

“Practice Committee”, after the coming into force of the 2005 Order, means the Professional Conduct Committee, the Health Committee or the Professional Performance Committee of the General Dental Council referred to in section 2 of the Dentists Act;

“Preliminary Proceedings Committee” means the Preliminary Proceedings Committee of the General Dental Council, referred to in section 2 of the Dentists Act;

“Professional Conduct Committee” means the Professional Conduct Committee of the General Dental Council, referred to in section 2 of the Dentists Act;

“professional registration number” means the number against the dentist's name in the dentists register;

“relevant scheme” means the scheme in respect of which the dentist is applying to be included in a dental performers list;

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<sup>118</sup> Section 28C was inserted by the National Health Service (Primary Care) Act 1997, s. 21(1) and amended by the 1999 Act, s.65(1) and Schedule 4, the 2001 Act, s.40 and Schedule 5 and the 2003 Act, s. 180 and Schedule 11, paragraph 14.

<sup>119</sup> Section 28K was inserted by the 2003 Act, s. 172(1).

<sup>120</sup> Section 14 is substituted by S.I. 2005/2001 from a date to be determined.

<sup>121</sup> Sections 27 and 28 are substituted by S.I. 2005/2001 from a date to be determined.

<sup>122</sup> Section 2 was amended by S.I. 2001/3926, art. 2 and 6(b) and by S.I. 2005/2011, article 4, from a date to be determined.

“scheme” means an arrangement to provide primary dental services—

- (a) in accordance with section 28C; or
- (b) under a general dental services contract; and

“vocational training” means a relevant period of employment during which a dentist is employed under a contract of service by an approved trainer to provide a wide range of dental care and treatment and to attend such study days as that contract provides, with the aims and objectives of enhancing clinical and administrative competence and promoting high standards through relevant postgraduate training and in particular to—

- (a) enable the dentist to practise and improve his skills;
- (b) introduce the dentist to all aspects of dental practice in primary care;
- (c) identify the dentist's personal strengths and weaknesses and balance them through a planned programme of training;
- (d) promote oral health of, and quality dental care for, patients;
- (e) develop further and implement peer and self review, and promote awareness of the need for professional education, training and audit as a continuing process; and
- (f) enable the dentist to—
  - (i) make competent and confident professional decisions including decisions for referrals to other services,
  - (ii) demonstrate that he is working within the guidelines regarding the ethics and confidentiality of dental practice,
  - (iii) implement regulations and guidelines for the delivery of safe practice,
  - (iv) know how to obtain appropriate advice on, and practical experience of, legal and financial aspects of practice, and
  - (v) demonstrate that he has acquired skill and knowledge in the psychology of care of patients and can work successfully as a member of a practice team.

(3) In the definition of “vocational training” in paragraph (2), “relevant period of employment” means—

- (a) one year's full-time employment;
- (b) an equivalent period of part-time employment; or
- (c) in the case of a dentist, who is neither exempt under regulation 31(5) from the requirement to undertake vocational training, nor has completed vocational training as in sub-paragraph (a) or (b), but—
  - (i) has performed community dental service,
  - (ii) has performed personal dental services prior to 1st April 2006,
  - (iii) has otherwise gained experience of dentistry in primary care as a dentist,
  - (iv) has been employed in a hospital as a dentist, or
  - (v) holds or is enrolled on a course to achieve a postgraduate qualification in dentistry registerable with the General Dental Council as an additional diploma by virtue of regulations made under section 19(1)(c) of the Dentists Act (regulations with respect to the register),

such period of employment, which may be less than, but shall not exceed that in sub-paragraph (a) or an equivalent period of part-time employment, as a postgraduate dental dean or director of postgraduate dental education may determine that he must complete in order to have satisfactorily completed vocational training.

] <sup>123</sup>**[29.— Dental performers list**

(1) Subject to paragraph 14 of the Schedule to the Amendment Regulations, a dentist may not perform any primary dental services, unless he is a dentist whose name is included in a dental performers list.

(2) Paragraph (1) does not apply to a dentist, who is undertaking vocational training, during the first two months of that training.

(3) In respect of any dentist, whose name is included in a dental performers list, the list shall include—

- (a) his full name;
- (b) his professional registration number with, suffixed to it, the organisational code given by the Secretary of State to the Primary Care Trust;
- (c) his date of first registration in the dentists register;
- (d) whether he is a dentist undertaking vocational training;
- (e) whether he is a contractor; and
- (f) the date that his name was included in the dental performers list or, if his name was included in any dental list or dental supplementary list of a Primary Care Trust, first included in such a list.

] <sup>124</sup>**[30.— Application for inclusion in a dental performers list**

(1) In addition to the information required by regulation 4(2), the dentist, when making an application for the inclusion of his name in a dental performers list, shall give the following information—

- (a) his dental qualifications and where they were obtained, with evidence concerning his qualifications and experience;
- (b) unless he is a dentist undertaking vocational training, evidence that he has completed vocational training;
- (c) a declaration that he is included in the dentists register;
- (d) his professional registration number and date of first registration;
- (e) if he is a dentist undertaking vocational training, the name and practice address of his approved trainer;
- (f) whether he is a contractor; and
- (g) whether he is a contractor for more than one scheme and, if so, which schemes and which of those schemes is the relevant scheme.

(2) In addition to the undertakings required by regulation 4(3), the dentist shall give the following further undertakings—

- (a) not to perform any primary dental services in the area of another Primary Care Trust or equivalent body from whose dental performers list, dental list, dental supplementary list or equivalent list he has been removed, except where that removal was at his request or in

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<sup>123</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.11 (April 1, 2006)

<sup>124</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.11 (April 1, 2006)

accordance with regulation 10(6) of these Regulations, regulation 10(7) of the Dental Supplementary List Regulations or regulation 8(3) of the Dental Regulations or any equivalent provision in Scotland or Wales, without the consent, in writing, of that Trust or equivalent body;

- (b) if he is a dentist undertaking vocational training, an undertaking—
  - (i) not to perform any primary dental services except when acting for and under the direction of his approved trainer,
  - (ii) to withdraw from the dental performers list if he fails to complete his vocational training, and
  - (iii) upon completion of his vocational training, to provide the Primary Care Trust with satisfactory evidence that he has completed that training;
- (c) if he is a contractor, to comply with the requirements of paragraph 83 of Schedule 3 to the National Health Service (General Dental Services Contracts) Regulations 2005 (gifts) or paragraph 81 of Schedule 3 to the National Health Service (Personal Dental Services Agreements) Regulations 2005 (gifts), as the case may be; and
- (d) if he is not a contractor, to comply with those requirements as though he were a contractor.

]<sup>125</sup>

### **[31.— Additional grounds for refusal**

(1) In addition to the grounds in regulation 6(1), a Primary Care Trust may also refuse to admit a dentist to its dental performers list if—

- (a) having checked the information he provided under regulation 30(1), it considers he is unsuitable to be included in its list;
- (b) his registration in the dentists register is subject to conditions—
  - (i) imposed by the Health Committee under section 28 of the Dentists Act (powers of the Health Committee), or
  - (ii) after the coming into force of the 2005 Order, imposed by a Practice Committee under sections 27B(6)(c) (Practice Committees), 27C(1)(c), (2)(b) or (c) (resumed hearings) or 28(6)(b) of that Act (restoration to register)<sup>126</sup> ;
- (c) after the coming into force of the 2005 Order, he is subject to an order for immediate conditional registration imposed by a Practice Committee under section 30(2) of that Act (orders for immediate suspension and immediate conditional registration)<sup>127</sup> ; or
- (d) after the coming into force of the 2005 Order, he is subject to an order for interim conditional registration imposed by a Practice Committee or the Interim Orders Committee under section 32(4)(b) or (6)(c) or by the Court under section 32(9) of that Act (interim orders)<sup>128</sup> .

(2) In addition to the grounds in regulation 6(2), a Primary Care Trust shall also refuse to admit a dentist to its dental performers list if—

- (a) he is a contractor and the relevant scheme is not one that lies within its area;

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<sup>125</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.11 (April 1, 2006)

<sup>126</sup> Sections 27B, 27C and 28 were inserted by the 2005 Order from a date to be determined.

<sup>127</sup> Section 30 is substituted by S.I. 2005/2011 from a date to be determined.

<sup>128</sup> Section 32 is substituted by S.I. 2005/2011 from a date to be determined.

- (b) he is included in the dental performers list of another Primary Care Trust, unless he has given notice to that Trust that he wishes to withdraw from that list; or
  - (c) he is not undertaking vocational training and has neither completed vocational training nor is exempt under paragraph (5) from the requirement to undertake vocational training.
- (3) For the purposes of regulation 6(2)(d), the day prescribed in this Part is 3rd March 2003 or, if that dentist had been included in a dental list, 14th December 2001.
- (4) In addition to checking the information provided by the dentist as required by regulation 6(3)(a), the Primary Care Trust shall also check the information he provided under regulation 30(1).
- (5) A dentist is exempt from the requirement to undertake vocational training if—
- (a) he is registered as a dentist by virtue of section 15(1)(b) of the Dentists Act (registration of nationals of member States who hold appropriate European diplomas)<sup>129</sup> or is in any other way a person in respect of whom a member State is prohibited by Community law from imposing such a requirement; or
  - (b) he has experience in primary care as a dentist for a total period of at least two years full-time or an equivalent period part-time—
    - (i) in community dental service,
    - (ii) in the armed forces of the Crown, or
    - (iii) prior to 1st April 2006, in the performance of personal dental services,
 and part or all of that period fell within the period of four years beginning with the date of his application under regulation 4.

]<sup>130</sup>

### **[32.— Grounds for removal from a dental performers list**

- (1) Subject to paragraph (2) and in addition to the grounds in regulation 10(1), the Primary Care Trust must remove a dentist from its dental performers list where it becomes aware that he—
- (a) is the subject of—
    - (i) a determination by the Professional Conduct Committee to suspend him under section 27 of the Dentists Act (erasure or suspension), or
    - (ii) after the coming into force of the 2005 Order, a direction of a Practice Committee under section 27B(6)(b) or 27C(2)(d) or (3) of that Act;
  - (b) is included in the dental performers list of another Primary Care Trust; or
  - (c) has failed to complete vocational training and has not withdrawn from the list pursuant to regulation 30(2)(b)(ii).
- (2) Paragraph (1)(a)(ii) shall not apply where a direction that a dentist's registration be suspended is made in a health case.
- (3) For the purposes of regulation 10(1)(b), the day prescribed in this Part is 3rd March 2003 or, if that dentist had been included in a dental list, 14th December 2001.
- (4) In calculating the period of 12 months under regulation 10(7) (periods to be disregarded), the Primary Care Trust shall disregard any period during which the dentist's registration or his entitlement to practise as such was suspended by—

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<sup>129</sup> Section 15(1)(b) was amended by S.I. 1996/1496, regulation 2(1).

<sup>130</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.11 (April 1, 2006)

- (a) the Health Committee under section 28(1)(a) or (3)(a) of the Dentists Act (powers of the Health Committee);
- (b) the Preliminary Proceedings Committee under section 32(1) of that Act (orders for interim suspension);
- (c) after the coming into force of the 2005 Order, by a Practice Committee under sections 27B (6)(b) (Practice Committee) or 27C(1)(b) or (d) (resumed hearings) of that Act in a health case; or
- (d) after the coming into force of the 2005 Order, by a Practice Committee or the Interim Orders Committee of the General Dental Council under section 32(4)(a) or (6)(d) of that Act or by the court under section 32(9) of that Act.

] <sup>131</sup>

### [33. Additional decision that may be appealed

A dentist may also appeal, under regulation 15, against a decision of the Primary Care Trust to refuse to include his name in its dental performers list under regulation 31(1). ] <sup>132</sup>

## [ PART 4

### OPHTHALMIC PERFORMERS LISTS

] <sup>133</sup>

### [34.— Interpretation

(1) For the purposes of this Part the prescribed description of performer is an optometrist or an OMP and the relevant body is—

- (a) in relation to an optometrist, the General Optical Council; and
- (b) in relation to an OMP, the General Medical Council.

(2) In this Part—

“the Committee” means the Ophthalmic Qualifications Committee appointed by organisations representative of the medical profession as may be recognised by the Secretary of State for the purposes of approving—

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

- (b) the qualifications of doctors for the purpose of primary ophthalmic services;

“contractor” means an ophthalmic practitioner, who both provides primary ophthalmic services under a general ophthalmic services contract under section 117 of the National Health Service Act 2006 (general ophthalmic services contracts) and performs such services;

<sup>131</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.11 (April 1, 2006)

<sup>132</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.11 (April 1, 2006)

<sup>133</sup> Inserted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.5 (August 1, 2008: insertion has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

“OMP” means a registered medical practitioner, who has been recognised as an ophthalmic medical practitioner under regulations 36 and 37;

“ophthalmic hospital” includes an ophthalmic department of a hospital;

“ophthalmic list” means the list prepared by a Primary Care Trust under regulation 6 of the Ophthalmic Regulations;

“ophthalmic practitioner” means either—

- (a) a registered optometrist, who is not a corporate body; or
- (b) an OMP;

“the Ophthalmic Regulations” means the [National Health Service (General Ophthalmic Services) Regulations 1986]<sup>134</sup> <sup>135</sup> ;

“ophthalmic supplementary list” means the list prepared by a Primary Care Trust under regulation 3(1) of the Ophthalmic Supplementary List Regulations;

“the Ophthalmic Supplementary List Regulations” means the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005;

“Opticians Act” means the Opticians Act 1989;

“professional registration number” means the number against the ophthalmic practitioner's name in the register;

“register” means—

- (a) in the case of an optometrist, the register maintained by the General Optical Council under [section 7(a) or 8B(1)(a)<sup>136</sup> ]<sup>137</sup> of the Opticians Act<sup>138</sup> ;
- (b) in the case of an OMP, the register of medical practitioners;

“relevant scheme” means the scheme in respect of which the ophthalmic practitioner is applying to be included in an ophthalmic performers list; and

“scheme” means an arrangement to provide primary ophthalmic services under a general ophthalmic services contract.

]<sup>139</sup>

### [35.— Ophthalmic performers list

(1) An ophthalmic practitioner may not perform any primary ophthalmic services, unless his name is included in a ophthalmic performers list.

(2) In respect of any ophthalmic practitioner, whose name is included in an ophthalmic performers list, the list shall include—

- (a) his full name;
- (b) his professional registration number with—

<sup>134</sup> Word substituted by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.9 (April 1, 2010)

<sup>135</sup> S.I. 1986/975.

<sup>136</sup> Section 8B of the Opticians Act 1989 (c. 44) was inserted by S.I. 2007/3101.

<sup>137</sup> Words inserted by Primary Ophthalmic Services Amendment, Transitional and Consequential Provisions Regulations 2008/1700 Sch.1 para.14 (August 1, 2008)

<sup>138</sup> Section 7 was amended by S.I. 2005/848.

<sup>139</sup> Inserted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.5 (August 1, 2008: insertion has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

- (i) suffixed to it, the organisational code given by the Secretary of State to the Primary Care Trust,
- (ii) prefixed to it, the initials OPL;
- (c) his date of birth, where he consents, or where he does not consent, the date of his first registration in the register;
- (d) whether he is a contractor;
- (e) if he is an OMP, that fact and the date of his approval as an OMP under regulation 37(3) or 38(7); and
- (f) the date that his name was included in the ophthalmic performers list or, if his name was previously included in any ophthalmic list or ophthalmic supplementary list of a Primary Care Trust, the date that it was first included in such a list.

] <sup>140</sup>

### **[35A. Inclusion in ophthalmic performers list without a full application in certain circumstances**

Where a performer has been refused admission to its ophthalmic performers list by a Primary Care Trust or has been removed from its ophthalmic performers list by a Primary Care Trust and that refusal or removal relates to a person to whom regulation 43 applies, the Primary Care Trust may agree to include them in its ophthalmic performers list without a full application if it—

- (a) is satisfied that there are no other matters that need to be considered; and
- (b) the performer provides undertakings of the kinds referred to in regulation 4(3) and 39(2).

] <sup>141</sup>

### **[36.— Qualifications of ophthalmic medical practitioners**

(1) The prescribed qualifications and experience which a registered medical practitioner is to possess to be recognised as an ophthalmic medical practitioner are that he has (at the date of consideration of his application under regulation 37) recent experience and that he—

- (a) has had adequate experience and has held—
  - (i) an appointment in the health service, otherwise than under Part 2 of the 1977 Act<sup>142</sup>, Part IV of the National Health Service Act 2006 or Part 4 of the National Health Service Act 1946, with the status of consultant ophthalmologist, or
  - (ii) an appointment for a period of not less than 2 years of equivalent status as ophthalmic surgeon or assistant ophthalmic surgeon on the staff of an approved ophthalmic hospital; or
- (b) has—
  - (i) subject to paragraph (3), held one or more ophthalmic appointments in an approved ophthalmic hospital for a period totalling not less than 2 years, which shall include tenure for a period totalling not less than 6 months of a residential

<sup>140</sup> Inserted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.5 (August 1, 2008: insertion has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

<sup>141</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.10 (April 1, 2010)

<sup>142</sup> 1977 c.49.

appointment or an appointment with duties comparable with those of a residential appointment,

- (ii) obtained the Membership of the Royal College of Ophthalmologists, or any approved higher degree or qualification, and
- (iii) had adequate experience.

(2) In this regulation “approved” means approved by the Committee or by the appeal committee on appeal from the Committee under regulation 38.

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

]<sup>143</sup>

### **[37.— Approval of qualifications of ophthalmic medical practitioners**

(1) A registered medical practitioner who wishes to establish his status as an OMP shall apply to the Committee for approval of his qualifications and experience and shall give to it such particulars of his qualifications and experience as it may require.

(2) The Committee shall consider and determine his application and within 2 months after the date of the application shall inform him of the Committee's determination.

(3) If the Committee is satisfied that he possesses the qualifications and experience prescribed by regulation 36, it shall approve him as an OMP.

(4) Notwithstanding the provisions of regulation 36 and of paragraph (1), a registered medical practitioner who has the prescribed qualifications for the purposes of providing general ophthalmic services in Scotland under the National Health Service (Scotland) Act 1978, or in Northern Ireland under the Health and Personal Social Services (Northern Ireland) Order 1972, shall be approved as an OMP.

(5) For the purposes of paragraph (2) the date of the application shall be—

- (a) the date upon which a completed application with all necessary supporting details is received by the Committee; or
- (b) if the Committee require any further particulars from the applicant, the date on which the Committee receive all the particulars which it requires.

]<sup>144</sup>

### **[38.— Appeals from Ophthalmic Qualifications Committee**

(1) Any person dissatisfied with a determination of the Committee that he is not qualified to be an OMP may, within one month from the date on which he received notice of that determination, or such longer period as the Secretary of State may at any time allow, appeal against the determination

<sup>143</sup> Inserted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.5 (August 1, 2008: insertion has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

<sup>144</sup> Inserted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.5 (August 1, 2008: insertion has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

by sending to the Secretary of State a notice of appeal stating the facts and contentions on which he relies.

(2) The Secretary of State shall—

- (a) appoint to determine the appeal an appeal committee of 3 persons, who shall be appointed after consultation with such bodies or organisations representing doctors as appear to him to be concerned with the issues relating to qualification as an OMP;
- (b) refer the appeal to that appeal committee;
- (c) send a copy of the notice of appeal to the Committee and to such other persons as may appear to him to be interested in the appeal; and
- (d) inform the appellant, the 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 shall be sent.

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

(4) Notice of the hearing shall, not less than 14 days before the date of the hearing, be sent by the recorded delivery service to the appellant, the Committee, and any other person to whom the Secretary of State has under paragraph (2) sent notice of the appeal.

(5) Either the appellant or the Committee may within one 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 of a wish to appear before the appeal committee.

(6) Any party to an appeal shall be entitled to appear and be heard by counsel or solicitor,—

- (a) the Committee shall be entitled to appear by a member or by their clerk or other officer duly appointed for the purpose; and
- (b) The appellant shall be entitled to appear in person, by any member of his family, by any friend, or by any officer or member of any organisation of which he is a member; and

(7) Subject to the preceding provisions of this regulation, the procedure of the appeal committee in determining the appeal shall be such as it thinks proper.

(8) An appeal committee shall have all the powers of the Committee, including in particular the power of approval, and, if satisfied that an appellant possesses the qualifications prescribed by regulation 36, it shall so determine and accordingly the appellant shall be an OMP.

(9) The appeal committee shall as soon as practicable notify its determination to the appellant, the Committee, the Secretary of State and any other person to whom the Secretary of State has under paragraph (2) sent notice of the appeal.

]<sup>145</sup>

### **[39.— Application for inclusion in an ophthalmic performers list**

(1) In addition to the information required by regulation 4(2), the ophthalmic practitioner, when making an application for the inclusion of his name in a ophthalmic performers list, shall give the following information—

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<sup>145</sup> Inserted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.5 (August 1, 2008: insertion has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

- (a) his professional qualifications and where they were obtained, with evidence concerning his qualifications and experience, including, if he seeks inclusion as an OMP, evidence of his approval as an OMP under regulation 37 or 38;
  - (b) a declaration that he is included in the register;
  - (c) his professional registration number and date of first registration;
  - (d) whether he is a contractor; and
  - (e) whether he is a contractor for more than one scheme and, if so, which schemes and which of those schemes is the relevant scheme.
- (2) In addition to the undertakings required by regulation 4(3), the ophthalmic practitioner shall give the following further undertakings—
- (a) not to perform any primary ophthalmic services in the area of another Primary Care Trust or equivalent body from whose ophthalmic performers list, ophthalmic list, ophthalmic supplementary list or equivalent list he has been removed, except where that removal was at his request or in accordance with regulation 10(6) of these Regulations, regulation 10(6) of the Ophthalmic Supplementary List Regulations, regulation 9(2) of the Ophthalmic Regulations or any equivalent provision in Scotland or Wales, without the consent, in writing, of that Primary Care Trust or equivalent body;
  - (b) if he is a contractor, to comply with the requirements of paragraph 52 (gifts) of Schedule 1 to the General Ophthalmic Services Contracts Regulations 2008; and
  - (c) if he is not a contractor, to comply with the requirements in sub-paragraph (b) as though he were a contractor.
- (3) Any person who is not an optometrist, but expects to become so on successful completion of his training, may make an application to a Primary Care Trust not less than 3 months before he anticipates his being entered on the register.
- (4) An application under paragraph (3) shall contain—
- (a) all information mentioned in regulation 4(2) and paragraph (1) of this regulation, except that required by sub-paragraphs (b) and (c) of that paragraph;
  - (b) the undertakings, certificate and consent required by regulation 4(3) and paragraph (2) of this regulation;
  - (c) any declaration required under regulation 4(4) or (5), and
- in the application of these Regulations to any such application, a reference to an optometrist, an ophthalmic practitioner or a performer shall be taken as being a reference to an applicant under paragraph (3).
- (5) An applicant under paragraph (2) shall provide the information required by paragraph (1)(b) and (c) as soon as he has been notified by the General Optical Council whether he has been admitted to the register and the Primary Care Trust shall then, provided—
- (a) the requirements of regulation 4 and paragraphs (3) and (4) of this regulation have been complied with;
  - (b) it has not sought further information, references or documentation from him under regulation 4(7); and
  - (c) it has not deferred the application under regulation 7,
- decide his application within 7 days of receiving the information required under paragraph (1)(b) and (c).

] <sup>146</sup>

**[40.— Additional grounds for refusal**

(1) In addition to the grounds in regulation 6(1), a Primary Care Trust may also refuse to admit an ophthalmic practitioner to its ophthalmic performers list if—

- (a) having checked the information provided under regulation 39(1), it considers he is unsuitable to be included in its list;
- (b) in the case of an OMP, regulation 24(1)(b), (c), (d) or (e) applies to him; or
- (c) in the case of an optometrist, his registration in the register is subject to conditions imposed under section 13F (powers of the fitness to practise committee) of the Opticians Act or he is the subject of an order pursuant to section 13H (financial penalty order) of that Act<sup>147</sup>.

(2) In addition to the grounds in regulation 6(2), a Primary Care Trust shall also refuse to admit a ophthalmic practitioner to its ophthalmic performers list if—

- (a) he is a contractor and the relevant scheme is not one that lies within its area; or
- (b) he is included in the ophthalmic performers list of another Primary Care Trust, unless he has given notice to that Trust that he wishes to withdraw from that list.

[ (3) For the purposes of regulation 6(2)(d), the date prescribed in this Part is 1st April 2005 or, if the ophthalmic practitioner had been included in an ophthalmic list, 14th December 2001. ]<sup>148</sup>

(4) In addition to checking the information provided by the ophthalmic practitioner as required by regulation 6(3)(a), the Primary Care Trust shall also check the information he provided under regulation 39.

] <sup>149</sup>

**[41.— Grounds for removal from a ophthalmic performers list**

(1) Subject to paragraph (2) and in addition to the grounds in regulation 10(1), the Primary Care Trust must remove an ophthalmic practitioner from its ophthalmic performers list where it becomes aware that he—

- (a) is an OMP and regulation 26(1)(a) to (d) applies to him and, in a case where paragraph (1)(c) of that regulation applies to him, paragraph (2) of that regulation does not apply to him;
- (b) is an optometrist and is the subject of a direction under section 13F(3)(a) or (b), (7) or (13)(a) or (b) of the Opticians Act;
- (c) is included in the ophthalmic performers list of another Primary Care Trust.

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<sup>146</sup> Inserted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.5 (August 1, 2008: insertion has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

<sup>147</sup> Sections 13F and 13H were inserted by S.I. 2005/848.

<sup>148</sup> Substituted by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.11 (April 1, 2010)

<sup>149</sup> Inserted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.5 (August 1, 2008: insertion has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

[ (2) For the purposes of regulation 10(1)(b), the date prescribed in this Part is 1st April 2005 or, if the ophthalmic practitioner had been included in an ophthalmic list, 14th December 2001. ]<sup>150</sup>

(3) In calculating the period of 12 months under regulation 10(7) (periods to be disregarded), the Primary Care Trust shall disregard any period during which the ophthalmic practitioner's registration or his entitlement to practise as such was suspended—

- (a) if he is an OMP, in a case to which regulation 26(5) applies; or
- (b) if he is an optometrist, under section 13L (interim orders) of the Opticians Act<sup>151</sup>.

] <sup>152</sup>

#### **[42. Additional decision that may be appealed**

An ophthalmic practitioner may also appeal, under regulation 15, against a decision of the Primary Care Trust to refuse to include his name in its ophthalmic performers list under regulation 40(1).

] <sup>153</sup>

#### **[43.— Additional provisions relating to applications for inclusion in, refusals of admission to and removals from an ophthalmic performers list**

(1) For the purposes of regulations 4(8), 6(4A), 11(9) and 35A, a performer is a person to whom this regulation applies if—

- (a) in the case of a refusal to admit to a list, paragraph (2) applies; and
- (b) in the case of a removal from a list, paragraph (3) applies.

(2) This paragraph applies where the performer has not been included in an ophthalmic list and—

- (a) has been convicted in the United Kingdom of a criminal offence committed before 1st April 2005 and has been sentenced to a term of imprisonment of over six months;
- (b) has applied for admission to an ophthalmic performers list kept by a Primary Care Trust; and
- (c) has been refused admission to the list solely on the grounds that—
  - (i) a criminal offence was committed before 1st April 2005 and the performer had been sentenced to a term of imprisonment of over six months, and
  - (ii) at the time of the refusal, the date prescribed by regulation 40(3) for the purposes of regulation 6(2)(d) required the Primary Care Trust concerned to refuse to include the performer in its ophthalmic performers list.

(3) This paragraph applies where the performer has not been included in an ophthalmic list and—

- (a) has been convicted in the United Kingdom of a criminal offence committed before 1st April 2005 and has been sentenced to a term of imprisonment of over six months;
- (b) was on an ophthalmic performers list kept by a Primary Care Trust; and

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<sup>150</sup> Substituted by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.12 (April 1, 2010)

<sup>151</sup> Section 13L was inserted by S.I. 2005/848.

<sup>152</sup> Inserted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.5 (August 1, 2008: insertion has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

<sup>153</sup> Inserted subject to transitional provisions specified in SI 2008/1187 Sch.1 by National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008/1187 reg.5 (August 1, 2008: insertion has effect subject to transitional provisions specified in SI 2008/1187 Sch.1)

- (c) was removed from that ophthalmic performers list solely on the grounds that—
- (i) the criminal offence was committed before 1st April 2005 and the performer had been sentenced to a term of imprisonment of over six months, and
  - (ii) at the time of the removal, the date prescribed by regulation 41(2) for the purposes of regulation 10(1)(b) required the Primary Care Trust concerned to remove that performer from its ophthalmic performers list.

] <sup>154</sup>

*John Hutton*  
Minister of State,  
Department of Health

4th March 2004

## SCHEDULE 1

### TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

#### *Interpretation*

1. [...] <sup>155</sup>

#### *Allocation of medical practitioners on previous lists*

2. [...] <sup>156</sup>

3. [...] <sup>157</sup>

4. [...] <sup>158</sup>

5. [...] <sup>159</sup>

6. [...] <sup>160</sup>

#### *Applications not decided on 1st April 2004*

7. [...] <sup>161</sup>

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<sup>154</sup> Added by National Health Service (Performers Lists) Amendment Regulations 2010/412 reg.13 (April 1, 2010)

<sup>155</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>156</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>157</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>158</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>159</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>160</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>161</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

8. [...] <sup>162</sup>

*Matters relating to the medical practitioner*

9. [...] <sup>163</sup>

10. [...] <sup>164</sup>

11. [...] <sup>165</sup>

12. [...] <sup>166</sup>

*Enhanced criminal record certificates*

13.— [...] <sup>167</sup>

*Appeals to the FHSAA under Part II of the 2001 Rules*

14. [...] <sup>168</sup>

15. [...] <sup>169</sup>

*Applications to the FHSAA under Part III of the 2001 Rules*

16. [...] <sup>170</sup>

*General matters relating to cases under Part IV of the 2001 Rules*

17. [...] <sup>171</sup>

18. [...] <sup>172</sup>

19. [...] <sup>173</sup>

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<sup>162</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>163</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>164</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>165</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>166</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>167</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>168</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>169</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>170</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>171</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>172</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

## SCHEDULE 2

### REVOCATIONS

The following Regulations are hereby revoked—  
 the National Health Service (General Medical Services Supplementary List) Regulations 2001<sup>174</sup> ; and  
 the National Health Service (Personal Medical Services) (Services List) and the (General Medical Services) and (General Medical Services Supplementary List) Amendment Regulations 2003.

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#### Commencement

Sch. 2 para. 1: April 1, 2004

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### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for lists of persons performing primary medical care to be kept by Primary Care Trusts in accordance with the provisions of section 28X of the National Health Service Act 1977.

Part 1 lays down general provisions relating to lists and regulation 2 provides some definitions for the Regulations.

Regulation 3 provides that each Primary Care Trust must prepare and publish lists.

Regulation 4 sets out how to apply to be included in the list and requires certain information to be given.

Regulation 5 provides for a performer to be readmitted to the list on a successful appeal against conviction.

Regulation 6 sets out the grounds on which the Primary Care Trust may or must refuse to admit a performer to the list, and the matters to which it must have regard.

Regulation 7 sets out the circumstances in which a Primary Care Trust may defer consideration of an application to include a performer in its list and the procedure to be followed.

Regulation 8 allows Primary Care Trusts to enter a performer's name in its list subject to condition. It also allows a performer's name to be included in that list, until any appeal has been decided, provided he agrees to be bound by the condition until the appeal is determined.

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<sup>173</sup> Revoked by National Health Service (Performers Lists) Amendment Regulations 2005/3491 reg.13 (April 1, 2006)

<sup>174</sup> Amended by S.I. 2002/848, 1920 and 2469.

Regulation 9 provides for a requirement that a performer notify the Primary Care Trust in writing, within 7 days, if he, or a company of which he is a director, incurs any criminal convictions or other specified matters occur.

Regulation 10 provides for the mandatory removal from its list by a Primary Care Trust of any performer on certain specified grounds, and for the discretionary removal on other specified grounds.

Regulation 11 sets out the criteria for decisions on discretionary removals from the list.

Regulation 12 provides for a Primary Care Trust to impose conditions on a performer who is in the list and for him to be removed if he fails to comply with those conditions.

Regulation 13 provides for a Primary Care Trust to suspend a performer from its list, if certain conditions are met, for the procedure to be then followed and provides for payment to suspended performers.

Regulation 14 provides for review and the procedure to be followed by a Primary Care Trust where it decides to conditionally include, contingently remove, or suspend a performer from its list.

Regulation 15 provides for appeals from specified decisions to be heard by the FHSAA.

Regulation 16 provides for a Primary Care Trust to notify specified persons of specified information relating to decisions to refuse to admit, impose conditions, remove (or contingently remove) or suspend a performer from the list.

Regulation 17 provides for the circumstances in which a performer may or may not withdraw from the list and regulation 18 provides for the circumstances in which a performer may not withdraw from the list.

Regulation 19 amends the statutory period for review set out in section 49N of the National Health Service Act 1977 in specified circumstances.

Regulation 20 provides for the disclosure of information to specified persons.

Part 2 (regulations 21 to 27) modifies the general provisions in Part 1 to make provisions specific to general medical practitioners and regulation 21 provides some definitions for Part 2.

Regulation 22 provides, subject to specified exceptions, that no general medical practitioner may perform any primary medical services unless included in such a list, what information is to be included in the list and that the list shall be published.

Regulation 23 supplements regulation 4 by providing for certain specific information to be provided by general medical practitioners.

Regulation 24 provides further grounds on which the Primary Care Trust may or must refuse to admit a general medical practitioner to its list, and matters to which it must have regard.

Regulation 25 provides an exception, subject to a further requirement, to the requirement to participate in a Primary Care Trust's appraisal scheme.

Regulation 26 provides additional grounds for the mandatory removal from its list by a Primary Care Trust of a general medical practitioner, and modifies certain provisions for removal from a list in regulation 10.

Regulation 27 provides an additional ground of appeal for a general medical practitioner to those in regulation 15.

Schedule 1 makes transitional and consequential provisions.

Schedule 2 makes various revocations.