

2001 No. 3742

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (General Medical Services)
Amendment (No. 4) Regulations 2001**

Made - - - - 22nd November 2001

Laid before Parliament 22nd November 2001

Coming into force 14th December 2001

The Secretary of State, in exercise of the powers conferred upon him by sections 29, 29A, 29B, 43ZA, 49F, 49I, 49L, 49M, 49N, 49O, 49P, 49Q, 49R and 126(4) of the National Health Service Act 1977^(a) and section 65 of the Health and Social Care Act 2001^(b) and all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the National Health Service (General Medical Services) Amendment (No.4) Regulations 2001 and shall come into force on 14th December 2001.

(2) These Regulations extend to England only.

(3) In these Regulations “the principal Regulations” means the National Health Service (General Medical Services) Regulations 1992^(c).

(4) The principal Regulations shall be amended in accordance with the following provisions of these Regulations.

^(a) 1977 c.49; see section 128(1) as amended by the National Health Service and Community Care Act 1990 (c.19), section 26(2)(g) and (i), for the definitions of “prescribed” and “regulations”. Section 29 was extended by the Health and Medicines Act 1988 (c.49), section 17; and amended by the Health Services Act 1980 (c.53), sections 1 and 7 and Schedule 1, paragraph 42(b); by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 6, paragraph 2; by the Medical Act 1983 (c.54), section 56(1) and Schedule 5, paragraph 16(a); by S.I. 1985/39, article 7(3); by the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 18; and by the National Health Service (Primary Care) Act 1997 (c.46) (“the 1997 Act”), Schedule 2, paragraph 8. Sections 29A and 29B were inserted by the 1997 Act, section 32, and amended by the Health and Social Care Act 2001 (c.15) (“the 2001 Act”), section 20. Section 43ZA was inserted by the 2001 Act, section 21. Sections 49F to 49R were inserted by the 2001 Act, section 25. Section 126(4) was amended by the 1990 Act, section 65(2); by the 1999 Act, Schedule 4, paragraph 37(6) and by the 2001 Act, Schedule 5, paragraph 5(13)(b). As regards Wales, the functions of the Secretary of State under sections 29, 29A, 29B 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, which are sections 43ZA and 49F to 49R; these Regulations therefore extend only to England.

^(b) 2001 c.15.

^(c) S.I. 1992/635; relevant amending Regulations are 1992/660, 1993/540, 1994/633, 1994/3130, 1995/80, 1995/3093, 1996/702, 1997/730, 1997/2468, 1998/682, 1998/2838, 1999/326, 2000/220, 2000/601, 2000/2383, and 2001/706.

Amendment of regulation 2

2.—(1) In regulation 2 (interpretation)—

(a) insert the following definitions in the appropriate alphabetical positions—

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

““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 Health Authority in Wales, a Health Board or an NHS trust in Scotland or a Health and Social Services Board in Northern Ireland;”,

““equivalent lists” means lists kept by an equivalent body;”,

““FHSAA” means the Family Health Services Appeal Authority constituted under section 49S of the Act(b);”,

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

““licensing or regulatory body” means the body that licenses or regulates any profession of which the doctor is or has been a member;”,

““lists” means lists referred to in section 49N(1)(a) to (c);”,

““Medical Supplementary List” means a list prepared by a Health Authority in accordance with section 43D(c) of the Act of doctors approved by the Health Authority for the purposes of assisting in the provision of general medical services;”,

““a national disqualification” means—

(a) a decision made by the FHSAA in relation to a doctor under section 49N of the Act,

(b) a decision under provisions in force in Scotland or Northern Ireland corresponding to section 49N of the Act,

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

(d) a decision by the Tribunal, which applies to the whole of Wales and which is made after 13th December 2001;”,

““the NCAA” means the National Clinical Assessment Authority established as a Special Health Authority under section 11 of the Act(d);”,

““the National Health Service Counter Fraud Service” means the service provided by the Secretary of State to deal with inquiries and investigations in relation to any allegations of fraud or corruption in the health service(e);”,

““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;”,

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

(a) S.I. 2001/3744.

(b) Section 49S was inserted by the Health and Social Care Act 2001 (c.15), section 27(1).

(c) Section 43D was inserted by the Health and Social Care Act 2001 (c.15), section 24.

(d) The NCAA was established by S.I. 2000/2961.

(e) The National Health Service Counter Fraud Service may be contacted by writing to them at Hannibal House, Elephant and Castle, London SE1 6TE, or e-mailing them on DCFS@doh.gov.UK.

““professional registration number” means the number against the doctor’s name in the register maintained by the General Medical Council;”,

““suspended” means—

- (a) suspended by a Health Authority under sections 49I or 49J of the Act or under regulations made under sections 28DA or 43D of the Act, or section 8ZA of the 1997 Act,
- (b) in relation to Wales, suspended by the Tribunal,
- (c) in relation to Scotland or Northern Ireland, suspended under provisions in force corresponding to those in section 49I or 49J of the Act,

and shall be treated as including a case where a person is treated as suspended by a Health Authority in England by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations,

and “suspends” and “suspension” shall be construed accordingly;”;

- (b) for the definition of “the Tribunal” substitute ““the Tribunal” means the Tribunal constituted under section 46 of the Act^(a) for England and Wales, and which had effect in relation to England only until 14th December 2001;”; and
 - (c) omit the definitions of “FHSA”, “Family Health Services Authority” and “suspended by direction of the Tribunal;”.
- (2) In the provisions of the principal Regulations listed in the Schedule to these Regulations—
- (a) for “FHSA” wherever it appears substitute “Health Authority”,
 - (b) for “An” wherever it appears immediately preceding “FHSAA” substitute “A”, and
 - (c) for “an” wherever it appears immediately preceding “FHSAA” substitute “a”.

Amendment of regulation 6

3. In regulation 6 (amendment of or withdrawal from the medical list), for paragraph (6) substitute—

“(6) Where a Health Authority is investigating a doctor—

- (a) for the purpose of deciding whether or not to exercise its powers under section 49F, 49G or 49I of the Act;
- (b) in order to see whether the doctor has failed to comply with a condition imposed on his inclusion under regulation 18M so as to justify his removal from the list; or
- (c) who has been suspended under section 49I(1)(a) of the Act,

the doctor may not withdraw from any list kept by any Health Authority in which he is included, except where the Secretary of State has given his consent, until the matter has been finally determined by the Health Authority.

(7) Where a Health Authority has decided to remove a doctor from a list under section 49F or 49G of the Act, or contingently remove him under section 49G of the Act, or remove him for breach of a condition imposed on inclusion under regulation 18M, but has not yet given effect to its decision, the doctor may not withdraw from any list kept by any Health Authority in which he is included, except where the Secretary of State has given his consent.

(8) Where a Health Authority has suspended a doctor under section 49I(1)(b) of the Act, the doctor may not withdraw from any list kept by any Health Authority in which he is

^(a) Section 46 was substituted by the Health Act 1999 c.8.

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 Health Authority.”.

Amendment of regulation 7

4. In regulation 7 (removal from the medical list)—
 - (a) in paragraph (1) omit sub-paragraphs (d) and (e);
 - (b) in paragraph (3)(a) after “as mentioned in section 29(8) of the Act (suspension by direction or order of the Health Committee or by interim order of the Preliminary Proceedings Committee)” add “or in section 41A of the Medical Act 1983 (interim orders committee)(a).”;
 - (c) for paragraph (3)(c), substitute—

“(c) any period during which the doctor provided no medical services by reason only that he was suspended from the medical list.”.

Insertion of new regulations

5. After regulation 7 (removal from the medical list) insert the following regulations—

“Supplementary matters relating to removal

7A. In addition to the services covered by the definition of “health scheme” in section 49F(8) of the Act, the following shall also be health schemes—

- (a) health services, including medical and surgical treatment, provided by Her Majesty’s Forces;
- (b) services provided by Port Health Authorities constituted under the Public Health (Control of Disease) Act 1984(b);
- (c) health 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(c);
- (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

Criteria for decisions on removal

7B.—(1) Where a Health Authority is considering removal of a doctor under section 49F(4) of the Act (an unsuitability case), it shall consider the information from the doctor supplied under paragraph 36A(1), (2), (4) and (5) of Schedule 2 and must apply the criteria set out in paragraph (2).

- (2) The criteria referred to in paragraph (1) are—
 - (a) the nature of any criminal offence, investigation or incident;
 - (b) the length of time since any such offence or incident was committed, and since any criminal conviction or investigation;
 - (c) whether there are other criminal offences to be considered;
 - (d) the penalty imposed on any criminal conviction or the outcome of any investigation;
 - (e) the relevance of any criminal offence, or investigation into professional conduct, on the provision by the doctor of general medical services and the likely risk to patients;
 - (f) whether any criminal offence was a sexual offence to which Part I of the Sexual Offences Act 1997(d) applies;

(a) 1983 c.54; section 41A was inserted by the Medical Act 1983 (Amendment) Order 2000/1803, made in accordance with s.60 of the Health Act 1999 c.8.

(b) 1984 c.22.

(c) 1952 c.52.

(d) 1997 c.51.

- (g) whether the doctor has been refused admittance to, conditionally included, removed, contingently removed or is currently suspended from other Health Authority lists or equivalent lists, and if so, what the facts were in those cases and what were the reasons given by the Health Authority or equivalent body in the case; 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 admittance to, conditionally included, removed or contingently removed from other Health Authority lists or equivalent lists, or is currently suspended from such lists, and if so, what the facts were in those cases and what were the reasons given by the Health Authority or equivalent body in the case.

(3) Where a Health Authority is considering removal of a doctor under section 49F(3) of the Act (a fraud case), it shall consider the information from the doctor supplied under paragraph 36A(1), (2), (4) and (5) of Schedule 2, and must apply the criteria set out in paragraph (4).

(4) The criteria referred to in paragraph (3) are—

- (a) the nature of any incidents of fraud;
- (b) the length of time since any incident occurred, and since the investigation was concluded;
- (c) whether there are other incidents of fraud or other criminal offences to be considered;
- (d) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident;
- (e) the relevance of the investigation to the provision by him of general medical services and the likely risk to patients or to public finances;
- (f) whether the doctor has been refused admittance to, conditionally included, removed, contingently removed or is currently suspended from other Health Authority lists or equivalent lists, and if so, what the facts were in those cases and what were the reasons given by the Health Authority or equivalent body in the case;
- (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 admittance to, conditionally included, removed or contingently removed from other Health Authority lists or equivalent lists, or is currently suspended from such lists, and if so, what the facts were in those cases and what were the reasons given by the Health Authority or equivalent body in the case.

(5) Where a Health Authority is considering removal of a doctor under section 49F(2) of the Act (an efficiency case), it shall consider the information from the doctor supplied under paragraph 36A(1), (2), (4) and (5) of Schedule 2, and must apply the criteria set out in paragraph (6).

(6) The criteria referred to in paragraph (5) are—

- (a) whether it was prejudicial to the efficiency of the general medical services provided by the doctor;
- (b) the length of time since any incident occurred, and since the investigation 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 doctor has ever failed to comply with a request by the Health Authority to undertake an assessment by the NCAA;

- (f) whether the doctor has previously failed to make a declaration or comply with an undertaking required by these Regulations;
 - (g) whether the doctor has been refused admittance to, conditionally included, removed, contingently removed or is currently suspended from other Health Authority lists or equivalent lists, and if so, what the facts were in those cases and what were the reasons given by the Health Authority or equivalent body in the case;
 - (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 admittance to, conditionally included, removed or contingently removed from other Health Authority lists or equivalent lists, or is currently suspended from such lists, and if so, what the facts were in those cases and what were the reasons given by the Health Authority or equivalent body in the case.
- (7) In making any decision under section 49F of the Act, the Health Authority shall take into account the effect of all relevant incidents and offences relating to the doctor of which it is aware, whichever condition it relies on.
- (8) When making a decision on any condition in section 49F of the Act, the Health Authority shall state in its decision on which condition (or conditions) in section 49F of the Act it relies.

Cases where the Health Authority must remove a doctor

7C.—(1) The Health Authority must remove the doctor from the medical list where it becomes aware that the doctor—

- (a) has been convicted in the United Kingdom of murder;
- (b) has been convicted in the United Kingdom since 13th December 2001 of a criminal offence and has been sentenced to a term of imprisonment of over six months.

(2) The Health Authority shall notify the doctor immediately that he has been removed from the list.

Notifications by Health Authorities

7D.—(1) Where a Health Authority—

- (a) refuses to approve or nominate a doctor under regulation 18EE;
- (b) removes a doctor under section 49F of the Act;
- (c) contingently removes a doctor under section 49G of the Act; or
- (d) suspends a doctor,

it shall notify the persons and bodies specified in paragraph (2), and shall notify those specified in paragraph (3) if so requested by those persons or bodies, of the matters set out in paragraph (4).

(2) Where paragraph (1) applies, a Health Authority shall notify—

- (a) the Secretary of State;
- (b) any Health Authority in England that has the doctor, or a body corporate of which the doctor is director, on any of its lists, or is considering an application for inclusion in any of its lists by such a doctor or body corporate;
- (c) the Scottish Executive;
- (d) the National Assembly for Wales;
- (e) the Northern Ireland Executive;
- (f) the General Medical Council or any other appropriate regulatory body;
- (g) the local medical committee for its area;
- (h) any other organisation that, to the knowledge of the Health Authority, employs or uses the services of the doctor in a professional capacity;

(i) where it is a fraud case, the National Health Service Counter Fraud Service.

(3) Where paragraph (1) applies, the Health Authority shall notify any person or body that can establish that it is considering employing the doctor in a professional capacity if the Health Authority receives a written request (including an electronic request) to do so.

(4) The matters referred to in paragraph (1) are—

- (a) identifying details of the doctor;
- (b) professional registration number;
- (c) date and copy of the decision of the Health Authority;
- (d) a contact name of a person in the Health Authority for further enquiries.

(5) The Health Authority shall send to the doctor concerned a copy of any information about him provided to the persons or bodies specified in paragraphs (2) and (3) and any correspondence with those persons or bodies.

(6) Where the Health Authority 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 so requested by that person or body, notify that person or body of any evidence that was considered, including representations made by the doctor.

(7) Where a Health Authority is notified by the FHSAA that it has imposed a national disqualification on a doctor whom the Health Authority had removed from its list, it shall notify the persons or bodies listed in paragraph (2)(b), (g), (h) and (i) and paragraph (3).

(8) Where a decision is changed on review or appeal, or a suspension lapses, the Health Authority shall notify any person or body that was notified of the original decision of the later decision.

Procedure on removal

7E.—(1) Where a Health Authority is considering—

- (a) removing a doctor under section 49F of the Act (other than in cases specified in regulation 7C);
- (b) contingently removing a doctor under section 49G of the Act;
- (c) removing a doctor for a breach of a condition imposed under regulation 49G of the Act; or
- (d) removing a doctor for breach of a condition imposed under regulation 18M,

it shall follow the procedure set out in paragraphs (3) to (8) below.

(2) Where a Health Authority is notified by the FHSAA that it has considered—

- (a) an appeal by a doctor against a contingent removal by the Health Authority and has decided to remove him instead; or
- (b) an appeal by a doctor against a conditional inclusion, where the doctor has been conditionally included in the list until the appeal has been decided, and has decided not to include him,

the Health Authority shall remove the doctor and shall notify the doctor immediately that it has done so.

(3) Before reaching a decision of the kind mentioned in paragraph (1), the Health Authority shall—

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

(4) If there are no representations within the period specified in paragraph (3)(c), the Health Authority shall inform the doctor of its decision, the reasons for it (including any facts relied upon), and of any right of appeal.

(5) If there are representations, the Health Authority must take them into account before reaching its decision, and notifying the doctor of its decision, the reasons for it (including any facts relied upon), and of any right of appeal.

(6) If the doctor requests an oral hearing, this must take place before the Health Authority reaches its decision, and the Health Authority must then notify the doctor of its decision, the reasons for it (including any facts relied upon), and of any right of appeal.

(7) When the Health Authority notifies the doctor of any decision, it shall inform him that if he wishes to exercise a right of appeal, he has 28 days from the date of the decision to do so, and shall tell him how to do so.

(8) The Health Authority shall also notify the doctor of his right to have the decision reviewed in accordance with section 49L of the Act.

Procedure on suspension

7F.—(1) Before reaching a decision to suspend a doctor under section 49I or 49J of the Act, the Health Authority shall—

- (a) give the doctor notice in writing of any allegation against him;
- (b) give the doctor notice of what action the Health Authority is considering and on what grounds;
- (c) give him the opportunity to put his case at an oral hearing before the Health Authority on a specified day, provided that at least 24 hours' notice of the hearing is given;
- (d) give the doctor notice of his right of review under section 49L of the Act.

(2) If the doctor does not wish to have an oral hearing or does not attend the oral hearing, the Health Authority shall inform him of its decision and the reasons for it (including any facts relied upon).

(3) If an oral hearing takes place, the Health Authority shall take into account any representations made before it reaches its decision.

(4) The Health Authority may suspend the doctor with immediate effect following the hearing.

(5) The Health Authority shall notify the doctor of its decision and the reasons for it (including any facts relied upon).

Procedure on review of Health Authority decision

7G.—(1) If a Health Authority decides to review its decision to conditionally include, contingently remove or suspend a doctor under section 49I of the Act, it shall—

- (a) notify the doctor in writing that it intends to review its decision;
- (b) notify him of what action it has in mind and the reasons for it;
- (c) give him the opportunity to make written representations to the Health Authority within 28 calendar days of the date of the notification under subparagraph (b);
- (d) give him the opportunity to put his case at an oral hearing before the Health Authority if he requests one within the 28 day period mentioned above;
- (e) after any hearing or on completion of the review, notify him of its decision and the reasons for it (including any facts relied upon).

(2) If there are representations, the Health Authority must take them into account before reaching its decision.

(3) The Health Authority shall notify the doctor of its decision and the reasons for it (including any facts relied upon).

(4) If the doctor requests an oral hearing, this must take place before the Health Authority reaches its decision.

(5) The Health Authority shall notify the doctor of its decision and the reasons for it (including any facts relied upon).

(6) When the Health Authority notifies the doctor of any decision, it shall inform him of any right of appeal, that he has 28 days from the date of the decision to exercise that right if he wishes to do so, and tell him how to do so.

(7) The Health Authority shall also notify the doctor of his right to have the decision further reviewed in accordance with section 49L of the Act.

National Disqualification

7H. The period for review shall be the different period specified below instead of that in section 49N(8) of the Act where the circumstances are that—

- (a) on making a decision to impose a national disqualification, the FHSAA states that it is of the opinion that the criminal or professional conduct of the doctor is such that there is no realistic prospect of a further review being successful if held within the period specified in section 49N(8)(a) of the Act, 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 FHSAA of a national disqualification the doctor was unsuccessful and the FHSAA 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 section 49N(8)(b) of the Act shall be a reference to three years;
- (c) the FHSAA states that it is of the opinion that because a criminal conviction considered by the FHSAA in reaching its decision 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 section 49N(8) of the Act shall be a reference to the period that has already elapsed;
- (d) the FHSAA 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 section 49N(8) of the Act shall be a reference to the period that has already elapsed.”.

Amendment of regulation 18E

6.—(1) In regulation 18E(1) (criteria for approval and nomination)(a)—

- (a) omit sub-paragraph (bb);
- (b) after sub-paragraph (d) add—
 - “(e) unless the Health Authority has checked as far as practicable the references and information provided by the doctor in accordance with paragraphs 5, 6, 6A and 18 of Part III of Schedule 3;
 - (f) unless the Health Authority has checked with the National Health Service Counter Fraud Service whether the doctor has any record of a fraud case.”.

Insertion of new regulations 18EE and 18EF

7. After regulation 18E insert—

“Grounds for refusal

18EE.—(1) The grounds on which a Health Authority may refuse to approve or nominate a doctor are—

(a) Regulation 18E was added to the principal Regulations by regulation 5(1) of and Schedule 1 to S.I. 1998/2838.

- (a) that the Health Authority having considered the declaration required by paragraph 6A of Part III of Schedule 3 and any other information in its possession in relation to the application, considers he is unsuitable to be included in the list;
 - (b) that having checked the information provided by the doctor in paragraphs 5 and 6 of Part III of Schedule 3, the Health Authority considers the doctor is unsuitable to be included in the list;
 - (c) that having contacted referees, the Health Authority is not satisfied with the references given in accordance with paragraph 18 of that Part;
 - (d) that having checked with the National Health Service Counter Fraud Service for any facts that it considers relevant relating to past or current investigations into a fraud case, involving the doctor, and any fraud case relating to the doctor, the Health Authority considers these justify such refusal;
 - (e) that there are any grounds for the Health Authority to consider that admitting the doctor to the list would be prejudicial to the efficiency of the service which he would undertake.
- (2) The grounds on which a Health Authority must refuse to approve or nominate a doctor are—
- (a) where the doctor has been convicted in the United Kingdom of murder;
 - (b) where, after the 13th December 2001, he has been convicted in the United Kingdom of a criminal offence and sentenced to a term of imprisonment of over six months;
 - (c) where he is the subject of a national disqualification;
 - (d) where he has not updated his application in accordance with regulation 18EF(4);
 - (e) where he does not notify the Health Authority under regulation 18M(11) that he wishes to be included in the list subject to the specified conditions.
- (3) Where the Health Authority is considering refusal of a doctor under paragraph (1), 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), (b) or (d) above—
- (a) the nature of any offence, investigation or incident;
 - (b) the length of time since such offence or incident was committed and since any 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 the provision by him of general medical services and any likely risk to his patients or to public finances;
 - (f) whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997^(a) applies;
 - (g) whether he has been refused admission to or conditionally included in, removed, contingently removed, or is currently suspended from any of a Health Authority's lists or from equivalent lists, and if so, what the facts were in those cases and the reasons given by the Health Authority or equivalent body involved; 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 admittance to, conditionally included, removed or contingently removed from other Health Authority lists or equivalent lists, or is currently suspended from such lists, and if so, what the facts were in those cases and what were the reasons given by the Health Authority or equivalent body in the case.

(a) 1997 c.51.

(4) When the Health Authority takes into consideration the matters set out in paragraph (3), it shall consider the overall effect of all the matters being considered.

(5) When refusing to nominate or approve an additional doctor, the Health Authority shall notify the doctor of its decision and the reasons for it (including any facts relied upon), and of any right of appeal under regulation 18GG against the Health Authority's decision.

Deferment of decision

18EF—(1) A Health Authority may defer a decision whether to approve an additional doctor under regulation 18A or 18B, or to nominate him under regulation 18C, or to approve a replacement doctor under regulation 18I—

- (a) where there are legal proceedings anywhere in the world that would be criminal proceedings if brought in the United Kingdom, and that if successful would be likely to lead to the removal of the doctor from the Health Authority list if he had been included;
- (b) where there are legal proceedings anywhere in the world against a body corporate of which the doctor is, has in the preceding six months been, or was at the time of the originating events a director, that would be criminal proceedings if brought in the United Kingdom, and that if successful would be likely to lead to the removal of the doctor from the Health Authority list if he had been included;
- (c) where there is an investigation anywhere in the world by the doctor's licensing or regulatory body or any other investigation (including one by another Health Authority or equivalent body) relating to him in his professional capacity that if successful would be likely to lead to the removal of the doctor from the Health Authority list if he were to be included;
- (d) where the doctor is suspended from any of the lists or equivalent lists;
- (e) where a body corporate of which the doctor is, has in the preceding six months been, or was at the time of the originating events a director, is suspended from any of the lists or equivalent lists;
- (f) where the FHSAA is considering an appeal by the doctor against a decision of a Health Authority to refuse to approve, nominate or admit a doctor to its list, or to conditionally include in or to contingently remove from, or to remove from any list kept by a Health Authority and if that appeal is unsuccessful the Health Authority would be likely to remove the doctor from the Health Authority list if he had been included;
- (g) where the FHSAA is considering an appeal by a body corporate of which the doctor is, has in the preceding six months been, or was at the time of the originating events a director, against a decision of a Health Authority to refuse to approve, nominate or admit a doctor to its list, or to conditionally include in or to contingently remove from, or to remove from any list kept by a Health Authority and if that appeal is unsuccessful the Health Authority would be likely to remove the doctor from the Health Authority list if he had been included;
- (h) where the doctor is being investigated by the National Health Service Counter Fraud Service in relation to any fraud case, where the result if adverse would be likely to lead to the removal of the doctor from the Health Authority list if he had been included;
- (i) where a body corporate, of which the doctor is, has in the preceding six months been, or was at the time of the originating events a director, is being investigated by the National Health Service Counter Fraud Service in relation to any fraud case, where the result if adverse would be likely to lead to the removal of the doctor from the Health Authority list if he were to be included;

- (j) where the FHSAA is considering an application from a Health Authority for a national disqualification of the doctor;
 - (k) where the FHSAA is considering an application from a Health Authority for a national disqualification of the doctor or a body corporate of which the doctor is, has in the preceding six months been, or was at the time of the originating events a director.
- (2) A Health Authority may only defer consideration under paragraph (1) above until the outcome of the relevant event mentioned in sub-paragraph (a) to (k) is known.
- (3) A Health Authority must notify the doctor of a decision to defer a decision of an application and the reasons for this.
- (4) Once the outcome of the relevant event mentioned in paragraph (1) is known the Health Authority shall notify the doctor that he must update his application within 28 days (or such longer period as the Health Authority may agree) with any relevant information before it can be considered.
- (5) Provided any additional information has been received within the 28 days or the time agreed, the Health Authority shall notify the doctor as soon as possible—
- (a) that his application to be approved or nominated has been successful; or
 - (b) that the Health Authority has decided to refuse the application or impose conditions on his inclusion, and the reasons for it (including any facts relied upon), and of any right of appeal under regulation 18GG or 18M(8).”.

Amendment of regulation 18F

8. In regulation 18F (entry on to medical list)—
- (a) in paragraph (1) omit “(and, where applicable any other Authority referred to in paragraph (2))”;
 - (b) omit paragraph (2); and
 - (c) after paragraph (3) add—
- “(4) Where the Health Authority nominates or approves a doctor or replacement doctor pursuant to regulations 18A, 18B, 18C or 18I, but subject to conditions imposed under regulations made under section 43ZA of the Act, the name of the doctor may be included on the medical list during the period for bringing an appeal to the FHSAA pursuant to regulation 18GG, or if an appeal is brought, until such time as that appeal has been decided, provided the doctor agrees to be bound by the conditions imposed until the time for appeal has expired or the appeal is decided.”.

Amendment of regulation 18G

9. In regulation 18G, in paragraph (1)(a) for “has refused to approve pursuant to regulation 18E(2)(a)” substitute “has refused to approve pursuant to regulation 18E(1)(b) or (2)(a)”.

Insertion of new regulation 18GG

- 10.—(1) After regulation 18G (appeal to the Secretary of State) insert—

“Appeal to the FHSAA

18GG.—(1) A doctor may appeal to the FHSAA against a decision of a Health Authority to refuse to approve or nominate him pursuant to regulation 18EE(1) or 18I(6)(b)(iii).

- (2) Such appeal shall be by way of redetermination.”.

Amendment of regulation 18I

- 11.** In regulation 18I (procedure in cases to which regulation 18H applies)—
- (a) in paragraph (6)—
 - (i) at the end of sub-paragraph (a)(iv) omit “and” and add—
“(v) where there are grounds for refusal under regulation 18EE(2), and”;
 - (ii) at the end of sub-paragraph (b)(i) omit “or”;
 - (iii) after sub-paragraph (b)(ii) add—
“, or
 - (iii) where there are grounds for refusal under regulation 18EE(1) having taken into consideration the matters set out in regulation 18EE(3) and (4).”;
 - (b) in paragraph (7) omit “(and, where applicable, any other Authority referred to in regulation 18H(3))”;
 - (c) after paragraph (7) insert—
“(7A) The Health Authority may determine in accordance with regulation 18M that the doctor be subject to conditions on his inclusion.”;
 - (d) in paragraph (8)(a) for “pursuant to paragraph (6)(a)(i), (iii), or (iv) or (b)(ii)” substitute “pursuant to paragraph (6)(a)(i), (iii), (iv) or (v) or (b)(ii)”;
 - (e) after paragraph (8) insert—
“(8A) Where a Health Authority refuses to approve a replacement doctor pursuant to paragraph (6)(b)(iii)—
 - (a) the Health Authority shall so notify the doctor in accordance with regulation 18EE(5), and
 - (b) the doctor may appeal to the FHSAA in accordance with regulation 18GG.”.

Amendment of regulation 18J

- 12.** In regulation 18J (cross-border vacancies)—
- (a) in paragraph (8), omit “and” at the end of sub-paragraph (a);
 - (b) after sub-paragraph (b) of paragraph (8) add—
 - “(c) there being no grounds for refusal under regulation 18EE(1) and (2);
 - (d) the right to defer consideration of its decision in regulation 18EF(1); and
 - (e) the Health Authority being able to impose conditions in accordance with regulation 18M.”.

Insertion of new regulation 18M

- 13.—(1)** After regulation 18L (transitional provisions) insert—

“Conditional Inclusion

18M.—(1) A Health Authority may determine that if a doctor is to be included in the list, he is to be subject, while he remains included in the list, to the imposition of conditions, having regard to the requirements in section 43ZA(2) of the Act.

(2) A Health Authority may vary the terms of service as provided for in Schedule 2 to these Regulations in relation to the applicant for the purpose of, or in connection with, the imposition of those conditions.

(3) The Health Authority may of its own volition or at the request of the doctor concerned review any decision made under this regulation.

(4) A doctor may not request a review of a Health Authority decision until the expiry of a three month period beginning with the date the Health Authority includes the doctor’s name on the list.

(5) After a review has taken place, the doctor cannot request another review before the expiry of six months from the date of the decision on the previous review.

(6) On such a review, the Health Authority may vary the conditions, impose different conditions or remove the doctor from the list.

(7) Failure to comply with a condition may lead to removal of the doctor from the list.

(8) There shall be an appeal to the FHSAA from any decision of the Health Authority—

- (a) to impose conditions, or any particular condition on a doctor;
- (b) to vary a condition;
- (c) to vary his terms of service;
- (d) on any review of an earlier such decision of the Health Authority;
- (e) to remove him from the medical list for breach of condition,

and the appeal shall be by way of redetermination of the Health Authority decision.

(9) On appeal the FHSAA may make any decision which the Health Authority could have made.

(10) Where the decision of the FHSAA on appeal is that conditions be imposed on the doctor, whether or not those conditions are identical with the conditions imposed by the Health Authority, the Health Authority shall ask the doctor to notify it within 28 days of the decision (or such longer period as the Health Authority may agree), whether he wishes to be included on the medical list subject to these conditions.

(11) If the doctor notifies the Health Authority that he does wish to be included in the medical list subject to the conditions, the Health Authority shall so include him.

(12) Subject to regulation 18F(4), any decision of the Health Authority that may be the subject of an appeal under paragraph (8) shall not have effect until the FHSAA has determined any appeal against it or any time for appeal has expired.

(13) A Health Authority shall disclose to the persons or bodies specified in paragraph (15) below, information of the kind mentioned in paragraph (14) about doctors whose inclusion in the list is subject to conditions imposed under this regulation and about the removal of such persons from the list for breach of such a condition.

(14) The information referred to in paragraph (13) is—

- (a) identifying details of the doctor;
- (b) professional registration number;
- (c) date and copy of the decision of the Health Authority;
- (d) the contact name of a person in the Health Authority for further enquiries.

(15) Persons or bodies to whom information shall be disclosed under paragraph (13) are—

- (a) the Secretary of State;
- (b) any Health Authority in England that has the doctor on any of its lists, or a body corporate of which the doctor is a director, or any Health Authority in England that is considering an application for inclusion in any of its lists from such a doctor or body corporate;
- (c) the Scottish Executive;
- (d) the National Assembly for Wales;
- (e) the Northern Ireland Executive;
- (f) the General Medical Council or any other appropriate regulatory body;
- (g) the local medical committee for its area;
- (h) any other organisation that, to the knowledge of the Health Authority, employs or uses the services of the doctor in a professional capacity;
- (i) where it is a fraud case, the National Health Service Counter Fraud Service.

(16) The Health Authority shall notify any persons or bodies of the information specified in paragraph (14) if it can establish that it is considering employing the doctor in a

professional capacity and it receives a written request (including an electronic request) to do so.

(17) The Health Authority shall send to the doctor concerned a copy of any information about him provided to the persons or bodies listed in paragraphs (15) and (16), and any correspondence with those persons or bodies.

(18) Where the Health Authority has notified any of the persons or bodies mentioned in paragraph (15) or (16) of the matters set out in paragraph (14), it may in addition notify those persons or bodies of any evidence that was considered, including representations of the doctor if so requested.

(19) Where a Health Authority is notified by the FHSAA that it has imposed a national disqualification on a doctor whom the Health Authority had removed from its medical list, it shall notify the persons or bodies listed in paragraph (15)(b), (g), (h) and (i) and paragraph (16).

(20) Where a decision is changed on review or appeal, or a suspension lapses, the Health Authority shall notify any person or body that was notified of the original decision of the later decision.”.

Amendment of regulation 25

14. In regulation 25 (temporary provision of services)—

(a) in paragraph (2)—

(i) after “suspended as mentioned in section 29(8) of the Act” insert “, or section 41A of the Medical Act 1983”;

(ii) for “suspended by direction of the Tribunal” substitute “suspended”;

(b) for paragraph (6A) substitute—

“(6A) No doctor may be appointed under paragraph (2) or (6) unless he is—

(a) suitably experienced (other than by virtue of being a restricted services principal) within the meaning of section 31 of the Act; and

(b) included by a Health Authority in a medical list or a medical supplementary list prepared in accordance with section 43D of the Act, or is named as a performer of personal medical services in a pilot scheme.”;

(c) in paragraph (13), after “to undertake” add “, but not by any variation imposed on that doctor by the Health Authority under sections 43ZA or 49G of the Act”;

(d) in paragraph (14A), for “suspended by direction of the Tribunal” substitute “suspended”;

(e) in paragraph (14B), for “suspension by direction of the Tribunal” substitute “suspension”;

(f) in paragraph (15), for sub-paragraph (a)(ii) substitute—

“(ii) consequent upon the suspension of whose registration as mentioned in section 29(8) of the Act arrangements are made under paragraph (2)(a),”.

Substitution of regulation 34A

15. For regulation 34A (payments to suspended doctors) substitute—

“**34A.**—(1) A Health Authority shall make payments to any doctor who is suspended in accordance with the Secretary of State’s determination in relation to such payments.

(2) The Secretary of State shall make the determination in accordance with paragraph (3) after consultation with the organisations referred to in regulation 34(1) and it shall be published with the Statement referred to in regulation 34(1).

(3) The determination may be amended from time to time by the Secretary of State, after consultation with the organisations referred to in regulation 34(1), and any amendments shall be published with the Statement referred to in regulation 34(1).

(4) Subject to paragraphs (5) and (6), the Secretary of State’s determination shall be such as to secure that, as far as reasonably practicable, the suspended doctor receives all the

payments which would have been due to him pursuant to regulation 34 had he provided such general medical services to his patients during the period of his suspension as are actually provided by the doctor who becomes responsible for them during that period by virtue of regulation 25(2)(a).

(5) To the extent that such payments consist of the reimbursement of expenses for which the doctor must submit a claim, the suspended doctor shall receive reimbursement only in respect of those expenses which he continues to incur during the period of his suspension.

(6) The determination shall provide for a deduction to take account of any payments which the suspended doctor receives—

- (a) for providing general medical services as an assistant or deputy;
- (b) for performing personal medical services in connection with a pilot scheme;
- (c) for providing services under Part I of the Act.”.

Amendment of Schedule 2

16.—(1) Schedule 2 (terms of service) shall be amended in accordance with the following provisions.

(2) In paragraph 18A (out-of-hours arrangements) for sub-paragraph (7)(h)(i) substitute—

“(i) he has been notified that he is the subject of proceedings by any Health Authority that may lead to his removal from any of the lists held by that Health Authority, or his contingent removal, or that he is subject to conditions imposed on him by a Health Authority under section 43ZA.”.

(3) After paragraph 22(2)(a)(iv) (organisations providing deputy doctors) insert—

“(v) after 1st June 2002, is on a medical supplementary list, medical list or is named as a performer of personal medical services in a pilot scheme; and”.

(4) In paragraph 23 (assistants and deputies)(a) omit “or” at the end of sub-paragraph (b), and at the end of sub-paragraph (c) insert—

- “(d) who has been convicted in the United Kingdom of murder;
- (e) who has been convicted in the United Kingdom of a criminal offence after 13th December 2001 and sentenced to a term of imprisonment of over six months;
- (f) who is suspended under section 41A of the Medical Act; or
- (g) who is suspended from any Health Authority medical, services or medical supplementary list.”.

(5) After paragraph 23 (assistants and deputies), add—

“**23A.—**(1) After 1st April 2002, a doctor shall not engage as a deputy, or employ as an assistant, any doctor unless he is on a medical supplementary list or medical list or is named in an agreement under section 2 of the 1997 Act as a performer of personal medical services, or has an outstanding application with a Health Authority under these Regulations, submitted to that Health Authority before 28th February 2002.

(2) After 1st June 2002, a doctor shall not engage as a deputy, or employ as an assistant, any doctor unless he is on a medical supplementary list or medical list or is named in an agreement under section 2 of the 1997 Act as a performer of personal medical services.

(3) After 1st April 2002, subject to sub-paragraphs (4) and (5), a doctor shall not engage as a deputy, or employ as an assistant, any doctor unless—

- (a) the deputy or assistant has provided two clinical references, relating to two recent posts (which may include any current post) as a doctor which lasted for at least three months without a significant break, or where this is not possible, a full explanation and alternative referees; and
- (b) the doctor has checked and is satisfied with the doctor’s references.

(4) Where a doctor is urgently needed as a deputy, and it is not possible to obtain and check the references in accordance with paragraph (3)(b) before engaging him, he may be

(a) Paragraph 23 was substituted by S.I. 1995/3093, regulation 6(b), and amended by S.I. 1998/682, regulation 9(5)(d).

engaged on a temporary basis for a single period of up to 14 days whilst his references are checked and considered, and for an additional single period of a further 7 days if the doctor believes the person supplying those references is ill, on holiday or otherwise temporarily unavailable.

(5) Where a doctor uses the same doctor as a deputy on more than one occasion within a period of three months, he may rely on the references provided on the first occasion, provided that those references are not more than twelve months old.”.

(6) After paragraph 36 (records) insert—

“Information to be supplied

36A.—(1) A doctor shall by 31st March 2002 supply in writing information to the Health Authority 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 been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (e) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Health Authority;
- (f) has been subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world, where the outcome was adverse;
- (g) is currently subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world;
- (h) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud Service in relation to any fraud case;
- (i) is the subject of any investigation by another Health Authority or equivalent body, which might lead to his removal from any of that Health Authority’s lists or equivalent lists;
- (j) is, or has been where the outcome was adverse, subject to an investigation into his professional conduct in respect of any current or previous employment;
- (k) has been removed, contingently removed, refused admission to, or conditionally included in any list or equivalent list kept by another Health Authority or equivalent body, or is currently suspended from such a list,

and if so, 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.

(2) If the doctor is, has in the preceding six months been, or was to his knowledge at the time of the originating events a director of a body corporate, he shall in addition by 31st March 2002 supply in writing information to the Health Authority 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, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (c) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Health Authority;
- (d) has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body anywhere in the world, 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 anywhere in the world;
- (f) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud Service in relation to any fraud case;
- (g) is the subject of any investigation by another Health Authority or equivalent body, which might lead to its removal from any of that Health Authority's lists or equivalent lists;
- (h) has been removed, contingently removed, refused admission to, or conditionally included in any list or equivalent list kept by another Health Authority or equivalent body, or is currently suspended from such a list,

and if so, 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 proceedings, and any outcome.

(3) The doctor shall consent to a request being made by the Health Authority 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 them into the doctor or a body corporate referred to in subparagraph (1) or (2).

(4) A doctor shall inform the Health Authority 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;
- (d) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (e) 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;
- (f) is notified by any licensing, regulatory or other body anywhere in the world, of the outcome of any investigation into his professional conduct, and there is a finding against him;
- (g) becomes the subject of any investigation into his professional conduct by any licensing, regulatory or other body;
- (h) becomes subject to an investigation into his professional conduct in respect of any current or previous employment, or is notified of the outcome of any such investigation where it is adverse;
- (i) becomes to his knowledge the subject of any investigation by the National Health Service Counter Fraud Service in relation to any fraud case;
- (j) becomes the subject of any investigation by another Health Authority or equivalent body, which might lead to his removal from any of that Health Authority's lists or equivalent lists;
- (k) is removed, contingently removed, suspended, refused admission to, or conditionally included in any list or equivalent list kept by another Health Authority or equivalent body,

and if so, 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) A doctor who is, has in the preceding six months been, or was to his knowledge at the time of any originating events a director of a body corporate, shall in addition inform the Health Authority within 7 days if the 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, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (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 notified by any licensing, regulatory or other body anywhere in the world, of the outcome of any investigation into its provision of professional services, and there is a finding against the body corporate;
- (e) becomes the subject of any investigation into its provision of professional services by any licensing, regulatory or other body anywhere in the world;
- (f) becomes to his knowledge the subject of any investigation by the National Health Service Counter Fraud Service in relation to any fraud case or is notified of the outcome of such an investigation where it is adverse;
- (g) becomes the subject of any investigation by another Health Authority or equivalent body, which might lead to its removal from any of that Health Authority's lists or equivalent lists;
- (h) is removed, contingently removed, suspended, refused admission to, or conditionally included in any list or equivalent list kept by another Health Authority or equivalent body,

and if so, 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 proceedings, and any outcome.

(6) Where paragraphs (5) or (6) apply, the doctor shall consent to a request being made by the Health Authority 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 them into the doctor or a body corporate referred to in sub-paragraph (4) or (5).

Applications to other lists

36B. A doctor shall inform the Health Authority—

- (a) if he, or a body corporate of which he is a director, applies to be included in any list held by another Health Authority or equivalent body, and of the outcome of any such application; and
- (b) if he becomes a director of a body corporate that is included in any list held by a Health Authority, or has applied to be included in such a list, and the outcome of any such application.”.

(7) After paragraph 50 (annual reports) insert—

“NCAA Assessment

50A. A doctor shall co-operate with an assessment by the NCAA when requested to do so by the Health Authority.”.

Amendment of Schedule 3

17. In Part I of Schedule 3 (information to be included in a report by a Health Authority when making a reference to the Medical Practices Committee), in paragraph 8 omit the words “including details of the declaration made under paragraph 6A of Part III of this Schedule.”.

18. In Part III of Schedule 3 (information and undertakings to be given by a doctor in connection with an application for nomination or approval for a practice vacancy)—

(a) for paragraph 6A substitute—

“6A. (a) Information on whether he—

- (i) has any criminal convictions in the United Kingdom;
- (ii) has been bound over following a criminal conviction in the United Kingdom;
- (iii) has accepted a police caution in the United Kingdom;
- (iv) has been convicted elsewhere of an offence, or what if committed in England and Wales, would constitute a criminal offence or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (v) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Health Authority;
- (vi) has been subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world, where the outcome was adverse;
- (vii) is currently subject to any investigation into his professional conduct by any licensing, regulatory or other body anywhere in the world;
- (viii) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud Service in relation to any fraud case;
- (ix) is the subject of any investigation by another Health Authority or equivalent body, which might lead to his removal from any of that Health Authority's lists or equivalent lists;
- (x) 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,

and if so, 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.”;

- (b) Where the doctor is, has in the preceding six months been, or was to his knowledge at the time of the originating events a director of a body corporate, he shall in addition supply in writing information to the Health Authority as to whether the body corporate—

- (i) has any criminal convictions in the United Kingdom;
- (ii) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (iii) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Health Authority;
- (iv) has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body anywhere in the world, where the outcome was adverse;
- (v) is currently subject to any investigation into its provision of professional services by any licensing, regulatory or other body anywhere in the world;
- (vi) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud Service in relation to any fraud case;
- (vii) is the subject of any investigation by another Health Authority or equivalent body, which might lead to its removal from any of that Health Authority's lists or equivalent lists;

- (viii) has been removed, contingently removed, refused admission to, or conditionally included in any list or equivalent list kept by another Health Authority or equivalent body, or is currently suspended from such a list, and if so, 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 proceedings, and any outcome.”;
- (c) in paragraph 15—
- (i) after “starting and finishing dates of each appointment” insert “, with an explanation of any gaps between appointments,”;
- (ii) after sub-paragraph (d) insert a new sub-paragraph—
- “(e) an explanation of why he was dismissed from any post.”;
- (d) at the end of paragraph 18, add “, who are willing to provide clinical references in respect of two recent posts, (which may include any current post) as a doctor which lasted at least three months without a significant break, and where this is not possible, a full explanation and alternative referees.”;
- (e) for paragraph 19 substitute—
- “19.** If the applicant is not in the Health Authority’s medical list, the name of any Health Authority in whose dental, optical, pharmaceutical, supplementary or services list he is included, or from any of whose lists or equivalent lists he has been removed or contingently removed or is currently suspended, or from any of whose lists or equivalent lists he has been refused admission or conditionally included, with an explanation as to why, and particulars of any outstanding application (including deferred applications), for inclusion in the medical list, or any other list of a Health Authority, with the name of the Health Authority in question.”;
- (f) after paragraph 19 insert—
- “19A.** If the applicant is the director of any body corporate that is included in any list of any Health Authority, or equivalent lists, or which has an outstanding application (including a deferred application) for inclusion in any list of any Health Authority or equivalent list, the name of the Health Authority in question, and the name and registered office of any such body corporate.”;
- (g) for paragraph 25 substitute—
- “25.** An undertaking to—
- (a) be bound by the terms of service;
- (b) notify the Health Authority within 7 days of any material changes to the information provided in the application until the application is finally determined;
- (c) supply the information required by paragraph 36A of Schedule 2.”;
- (h) after paragraph 25 add—
- “26.** Consent to a request being made by the Health Authority 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 them into the doctor or a body corporate referred to in sub-paragraph (6A).”.

Savings

19.—(1) Notwithstanding the amendments made to the principal Regulations by the provisions of the regulations listed in paragraph (2) (“the listed amendments”), where by virtue of regulation 6(3) of the Abolition of the Tribunal Regulations a case continues before the Tribunal after 31st October 2001, the listed amendments shall not apply to a doctor in relation to his case until such time as the case has been concluded and the time for making an appeal has ended, or any appeal has been withdrawn, or he has exhausted his rights of appeal, as the case may be.

- (2) For the purposes of paragraph (1) the listed amendments are those made by—
- (a) regulation 2(1)(c);
 - (b) regulation 4(c);
 - (c) regulation 3;
 - (d) regulation 15(a)(ii), (d) and (e);
 - (e) regulation 16.

Signed by the authority of the Secretary of State for Health

22nd November 2001

John Hutton
Minister of State,
Department of Health

SUBSTITUTION OF HEALTH AUTHORITY REFERENCES

In Regulation 2(1) (interpretation), the definitions “group practice”, “local directory”, “locality”, and “medical card”**(a)**.

Regulation 3 (scope and terms of service).

Regulation 4 (medical list)**(b)**.

Regulation 6 (amendment of or withdrawal from the medical list)**(c)**.

Regulation 7 (removal from the medical list)**(d)**.

Regulation 8 (local directory)**(e)**.

Regulation 9 (amendment of local directory).

Regulation 19 (doctors’ lists)**(f)**.

Regulation 22 (change of doctor)**(g)**.

Regulation 23 (removal from doctor’s list)**(h)**.

Regulation 24 (limitation on number of persons on doctors’ lists)**(i)**.

Regulation 25 (temporary provision of services)**(j)**.

Regulation 27 (child health surveillance list)**(k)**.

Regulation 28 (obtaining child health surveillance services).

Regulation 30 (obstetric list)**(l)**.

Regulation 31 (obtaining maternity medical services)**(m)**.

Regulation 32 (minor surgery list)**(n)**.

Regulation 33 (obtaining minor surgery services)**(o)**.

Regulation 34 (payments)**(p)**.

Regulation 35 (claims and overpayments)**(q)**.

Regulation 36 (determination of questions).

Regulation 37 (publication of particulars).

Regulation 38 (appointment of medical adviser).

Regulation 39 (guidance to doctors).

Regulation 40 (certificate that transaction does not involve goodwill)**(r)**.

(a) Regulation 2 was amended by S.I. 1995/3093, 1997/2468, 1998/682, 1998/2838 and 1999/326.

(b) Regulation 4 was amended by S.I. 1996/702, 1998/682 and 1998/2838.

(c) Regulation 6 was amended by S.I. 1998/2838.

(d) Regulation 7 was amended by S.I. 1995/3093 and 2000/220.

(e) Regulation 8 was amended by S.I. 1997/730 and 1997/2468.

(f) Regulation 19 was amended by S.I. 1994/633 and 1998/682.

(g) Regulation 22 was amended by S.I. 1998/682.

(h) Regulation 23 was amended by S.I. 1997/730.

(i) Regulation 24 was amended by S.I. 1996/702.

(j) Regulation 25 was amended by S.I. 1994/3130, 1995/682, 1998/682 and 1998/2838.

(k) Regulation 27 was amended by S.I. 1998/682.

(l) Regulation 30 was amended by S.I. 1998/682.

(m) Regulation 31 was amended by S.I. 1998/682.

(n) Regulation 32 was amended by S.I. 1998/682.

(o) Regulation 33 was amended by S.I. 1998/682.

(p) Regulation 34 was amended by S.I. 1993/540, 1997/2468 and 2000/601.

(q) Regulation 35 was amended by S.I. 1996/702 and 1997/2468.

(r) Regulation 40 was inserted by S.I. 1998/2838.

In Schedule 2 (terms of service)—

paragraphs 1(a), 4(b), 5(c), 6(d), 9(e), 9A(f), 10, 11(g), 12, 13(h), 14(i), 17, 18(j), 19(k), 20(l), 21, 23(m), 24, 27(n), 28(o), 29, 29A(p), 30, 31, 32(q), 33(r), 34, 35, 36(s), 38(t), 39, 41, 43(u), 47, 49, 50(v), 51.

In Schedule 3, Part VII (information to be supplied by FHSA with regard to doctor's lists), the heading.

In Schedule 4 (child health surveillance services), paragraph 1.

In Schedule 5, Part I (criteria to be considered before inclusion in the obstetric list), paragraphs 3 and 5.

In Schedule 12 (information to be included in practice leaflets), paragraph 5(w).

In Schedule 13 (information to be included in annual reports), paragraph 1(x).

(a) Paragraph 1 was amended by S.I. 1996/702, 1997/730, 1997/2468 and 2001/2890.

(b) Paragraph 4 was amended by S.I. 1994/633, 1996/702 and 1998/682.

(c) Paragraph 5 was amended by S.I. 1998/682.

(d) Paragraph 6 was amended by S.I. 1998/682.

(e) Paragraph 9 was amended by S.I. 1998/682.

(f) Paragraph 9A was inserted by S.I. 1994/633.

(g) Paragraph 11 was amended by S.I. 1998/682.

(h) Paragraph 13 was substituted by S.I. 1995/80 and amended by S.I. 1998/682.

(i) Paragraph 14 was amended by S.I. 1998/682.

(j) Paragraph 18 was amended by S.I. 1996/702.

(k) Paragraph 19 was amended by S.I. 1998/682.

(l) Paragraph 20 was amended by S.I. 1994/633, 1997/730 and 1998/682.

(m) Paragraph 23 was substituted by S.I. 1995/3093 and amended by S.I. 1998/682.

(n) Paragraph 27 was substituted by S.I. 1995/80.

(o) Paragraph 28 was inserted by S.I. 1994/3130.

(p) Paragraph 29A was inserted by S.I. 1995/80.

(q) Paragraph 32 was substituted by S.I. 1998/2838.

(r) Paragraph 33 was amended by S.I. 1998/682.

(s) Paragraph 36 was substituted by S.I. 2000/2383.

(t) Paragraph 38 was inserted by S.I. 1993/540 and 1995/80.

(u) Paragraph 43 was amended by S.I. 2001/706 and 2001/2890.

(v) Paragraph 50 was substituted by S.I. 1993/540 and amended by S.I. 1997/730.

(w) Schedule 12 was amended by S.I. 1995/80 and 1996/702.

(x) Schedule 13 was amended by S.I. 1996/702 and 1997/730.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service (General Medical Services) Regulations 1992 (“the principal Regulations”), which regulate the terms on which doctors provide general medical services under the National Health Service Act 1977 (“the 1977 Act”) in order to implement certain provisions of the Health and Social Care Act 2001.

Regulation 2 adds some additional definitions to regulation 2 of the principal Regulations.

Regulation 3 amends regulation 6 to prevent a doctor withdrawing from the medical list, without the consent of the Secretary of State, when the Health Authority is investigating to see whether there are grounds for removal or suspension from the medical list, or whether he has failed to comply with a condition imposed on his inclusion so as to justify his removal.

Regulation 4 amends regulation 7 of the principal Regulations so as to remove the mandatory removal of the name of any doctor convicted of murder or of a criminal offence and sentenced to 6 months. These grounds are moved to new regulation 7C of the principal Regulations, with the change that the conviction must now be for over six months, and other grounds are listed. Other minor changes are made to regulation 7.

Regulation 5 inserts new regulations 7A to 7H, which give effect to powers given in sections 49F to 49R of the 1977 Act (inserted by s.25 of the Health and Social Care Act 2001)—

Regulation 7A extends the definition of a “health scheme” in s.49(8) of the 1977 Act.

Regulation 7B sets out the criteria the Health Authority must take into account when exercising its discretionary powers of removal under s.49F of the 1977 Act.

Regulation 7C sets out the grounds for mandatory removal by the Health Authority of a doctor from the medical list.

Regulation 7D provides for a Health Authority to notify specified persons of specified information relating to decisions to remove or suspend a doctor from the medical list.

Regulation 7E provides the procedure to be followed by Health Authorities on removal of a doctor from the medical list.

Regulation 7F provides the procedure to be followed by Health Authorities on suspension of a doctor from the medical list.

Regulation 7G provides the procedure to be followed by Health Authorities where the Health Authority decides to review a decision to conditionally include, conditionally remove, or suspend a doctor from the medical list.

Regulation 7H amends the statutory period for review set in s.49N of the 1977 Act in specified circumstances.

Regulation 6 amends regulation 18E of the principal Regulations so as to add additional criteria for approval and nomination of doctors to the medical list.

Regulation 7 adds new regulations 18EE and 18EF to the principal Regulations. Regulation 18EE sets out the grounds on which a Health Authority may or must refuse to approve or nominate a doctor to the medical list, and the criteria to which they must have regard. Regulation 18EF sets out the circumstances in which a Health Authority may defer consideration of an application to approve or nominate a doctor in the medical list, and the procedure to be followed.

Regulation 8 makes minor amendments to regulation 18F of the principal Regulations, and allows Health Authorities to enter a doctor’s name on the list subject to conditions, with his consent, until any appeal has been decided.

Regulation 9 amends regulation 18G of the principal Regulations to allow for appeals to the Secretary of State on a point of law from decisions on his proficiency in English.

Regulation 10 adds a new regulation 18GG to the principal Regulations to allow an appeal to the FHSAA against a decision by a Health Authority to refuse to approve or nominate a doctor.

Regulations 11 and 12 make minor amendments to regulations 18I and 18J of the principal Regulations.

Regulation 13 inserts a new regulation 18M into the principal Regulations. This provides for a Health Authority to impose conditions when it includes a doctor in the medical list. The Health

Authority may review such conditions and there is an appeal to the FHSAA. The Health Authority may remove the doctor for breach of a condition.

Regulation 14 amends regulation 25 of the principal Regulations to allow for a Health Authority to appoint a temporary doctor to look after the patients of a doctor suspended by the Health Authority.

Regulation 15 substitutes a new regulation 34A of the principal Regulations because the power on which it relied, section 49E of the 1977 Act, was repealed in the Health and Social Care Act, Sch 5, paragraph 5. New provision for paying practitioners suspended under the new powers inserted by the Health and Social Care Act 2001 is made.

Regulation 16 amends Schedule 2 to the principal Regulations (the GPs' terms of service).

There is a minor consequential amendment to paragraph 18A (out-of-hours arrangements).

Paragraph 22 is amended to require organisations providing deputy doctors to use only doctors who are included in the supplementary or medical list, or are named as performers of personal medical services in a pilot scheme.

Paragraph 23 is amended to prevent doctors employing as assistants or deputies doctors who are suspended or have been convicted of murder or a criminal offence and sentenced to over six months in prison.

Paragraph 23A imposes certain further requirements on doctors employing assistants or deputies.

A new requirement is added at paragraph 36A to require a GP to notify the Health Authority in writing as to whether or not he, or a company of which he is a director, has any criminal convictions or other specified matters by 31 March 2002, and to report any subsequent events of this nature within 7 days.

Paragraph 36B requires a doctor on the medical list of a Health Authority to inform it if he, or a company of which he is a director, applies to join another list, or if he becomes a director of a company that is so included, or is applying to be included.

New paragraph 50A requires a doctor to co-operate with an assessment by the new National Clinical Assessment Authority.

Regulations 17 and 18 make minor amendments to Parts I (information to be included in a report by a Health Authority when making a reference to the Medical Practices Committee) and III (information and undertakings to be given by a practitioner in connection with an application for nomination or approval for a practice vacancy) of Schedule 3 to the principal Regulations, and provide for more information to be provided by the doctor. The undertaking given under paragraph 25 is extended to require the doctor to undertake to inform the Health Authority of any changes to the information provided with the application, and to continue to supply information to the Health Authority once included. New paragraph 26 requires the doctor to consent to the Health Authority asking the doctor's regulatory body to give specified information to the Health Authority.

In addition, regulations 7 and 25 of the principal Regulations are amended to include a reference to the interim suspension orders available under section 41A of the Medical Act 1983.

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