

**2010 No. 412**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (Performers Lists) Amendment  
Regulations 2010**

<i>Made</i>	- - - -	<i>19th February 2010</i>
<i>Laid before Parliament</i>		<i>26th February 2010</i>
<i>Coming into force</i>	- -	<i>1st April 2010</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 91, 123, 272(7) and (8) and 275(1) of the National Health Service Act 2006(a).

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the National Health Service (Performers Lists) Amendment Regulations 2010 and come into force on 1st April 2010.

(2) These Regulations apply in relation to England.

**Amendment of the National Health Service (Performers Lists) Regulations 2004**

2. The National Health Service (Performers Lists) Regulations 2004(b) are amended as follows.

**Amendment of regulation 4**

3. In regulation 4 (application for inclusion in a performers list)—

- (a) in paragraph (2)(h), before “details of any list” insert “subject to paragraph (8),”;
- (b) in paragraph (4), before “The performer shall send” insert “Subject to paragraph (8),”;  
and
- (c) after paragraph (7), insert—
  - “(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).”.

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(a) 2006 c.41. Section 275(1) is an interpretation provision and is cited for the meaning ascribed to “regulations”.  
(b) S.I.2004/585. Relevant amendments were made by S.I.2004/2694, 2005/502, 893 and 3491, 2006/635 and 1914, 2007/3101 and 2008/1187 and 1700.

### **Amendment of regulation 6**

4. In regulation 6 (decisions and grounds for refusal)—
- (a) in paragraph (4)(g), before “whether he has been refused”, insert “subject to paragraph (4A),”; and
  - (b) after paragraph (4), insert—
    - “(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).”.

### **Amendment of regulation 11**

5. In regulation 11 (criteria for a decision on removal)—
- (a) in paragraphs (2)(g) and (4)(f), before each reference to “whether the performer has been refused”, insert “subject to paragraph (9),”;
  - (b) in paragraph (6)(g), before the reference to “whether he has been refused”, insert “subject to paragraph (9),”; and
  - (c) after paragraph (8), insert—
    - “(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).”.

### **Amendment of regulation 21**

6. In regulation 21(2) (medical performers lists: interpretation), insert in the appropriate places the following definitions—

““emergency registered practitioner” means a medical practitioner—

- (a) who is registered as a registered medical practitioner pursuant to section 18A of the Medical Act(a) (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(b) (functions of the Investigation Committee));”;

““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(c) (meaning of “emergency”), read with subsection (2)(a) and (b) of that section, has occurred, is occurring or is about to occur;

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(a) The “Medical Act”, as defined in the regulations, is the Medical Act 1983 (c.54). Section 18A is inserted by S.I.2008/1774.  
(b) 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.  
(c) 2004 c.36.

- (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 subparagraph (a) no longer exist;”.

#### **Insertion of new regulations 26A to 26C**

7. After regulation 26 insert—

##### **“Disapplication of provisions with regard to emergency registered practitioners**

**26A.**—(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.

##### **Modification of regulation 4: applications relating to emergency registered practitioners**

**26B.**—(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
- (c) an enhanced criminal record certificate under section 113B of the Police Act 1997(a) (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.

##### **Modification of regulation 10: removal of emergency registered practitioners**

**26C.**—(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),

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(a) 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.

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.

(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).”.

### **Substitution of regulation 27**

8. For regulation 27 (additional decision that may be appealed), substitute—

#### **“Decisions that may or may not be appealed**

27.—(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.”.

### **Amendment of regulation 34**

9. In regulation 34 (interpretation) in the definition of “the Ophthalmic Regulations” in regulation 34(2), for “1996” substitute “1986”.

### **Insertion of new regulation 35A**

10. After regulation 35, insert—

**“Inclusion in ophthalmic performers list without a full application in certain circumstances**

**35A.** 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).”.

**Amendment of regulation 40**

**11.** In regulation 40 (additional grounds for refusal), for paragraph (3), substitute—

“(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.”.

**Amendment of regulation 41**

**12.** In regulation 41 (grounds for removal from a ophthalmic performers list), for paragraph (2), substitute—

“(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.”.

**Insertion of new regulation 43**

**13.** After regulation 42, insert—

**“Additional provisions relating to applications for inclusion in, refusals of admission to and removals from an ophthalmic performers list**

**43.—**(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
- (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.”.

Signed by authority of the Secretary of State for Health.

*Ann Keen*  
Parliamentary Under-Secretary of State,  
Department of Health

19th February 2010

#### **EXPLANATORY NOTE**

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

These Regulations amend the National Health Service (Performers Lists) Regulations 2004 (S.I.2004/585) (“the principal Regulations”) for two main purposes.

The first is to create, in relation to the medical performers list kept by each Primary Care Trust (PCT) under the principal Regulations, special listing procedures for medical practitioners who have been registered by the General Medical Council under their provisions for emergency registration of medical practitioners in section 18A of the Medical Act 1983 (c.54). These procedures enable such medical practitioners to apply to be included in the medical performers list of a PCT where they had been on such a list in the preceding five years and had only been removed from that list because they had not performed services for the PCT in the previous 12 months or for some other reason unconnected with the impairment of their fitness to practise. Such applicants need not supply all the information normally supplied by performers list applicants, but there are also additional information obligations placed upon them. Provision is also made about the grounds on which PCTs can refuse such applicants and the grounds on which emergency registered practitioners can be removed from a medical performers list. No appeal rights lie in respect of decisions of PCTs to refuse to include, or to remove, such practitioners from a medical performers list (regulations 6 to 8).

The second is to amend the dates prescribed in relation to mandatory refusal and removal from the ophthalmic performers list kept by each PCT (regulations 11 and 12), and a number of related changes are made as a consequence in respect of any performers (“affected ophthalmic performers”) who, prior to those amendments, were refused admission to, or removed from, an ophthalmic performers list where, had the dates prescribed by these Regulations been previously prescribed, the PCT would not have been obliged to refuse or remove them.

Regulation 3 provides that an affected ophthalmic performer is not required to disclose a particular type of refusal or removal in future applications for admission to a performers list. Regulation 4 provides that a PCT considering an affected ophthalmic performer’s application for admission to the PCT’s performers list must not take a particular type of refusal or removal into account. Regulation 5 makes similar provision where a PCT is considering whether to remove an affected ophthalmic performer from its performers list. Regulation 10 provides that, in some cases, a PCT may include an affected ophthalmic performer in its list without a full application, provided the PCT is satisfied there are no other matters that need to be taken into consideration. Regulation 13 inserts a new regulation 43 into the principal Regulations which describes the relevant refusals and

removals of affected ophthalmic performers for the purposes of other provisions of the principal Regulations amended or inserted by these Regulations.

Regulation 9 corrects an erroneous reference in the interpretation provision at regulation 34 of the principal Regulations.

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STATUTORY INSTRUMENTS

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