

**EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (PERFORMERS LISTS)
AMENDMENT REGULATIONS 2010**

2010 No. 412

1. This Explanatory Memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the National Health Service (Performers Lists) Regulations 2004 (SI 2004/585) (“the 2004 Regulations”) in order to create a special procedure relating to the inclusion of a person’s name in a medical performers list. Such persons would be doctors registered on a temporary basis during an emergency by virtue of section 18A of the Medical Act 1983. These Regulations also correct an error relating to ophthalmic performers lists, where a date that should have been inserted into Part 4 of the 2004 Regulations by the National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008 (SI 2008/1187) (“the 2008 Regulations”) was not inserted.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The amendments in relation to medical performers lists were drawn up in the light of the recent pandemic influenza outbreak. The Government consulted with the General Medical Council, bodies representing medical practitioners, employers, and Primary Care Trusts, all of whom support the changes.

3.2 The amendments in relation to ophthalmic performers lists correct an error in the 2004 Regulations, as amended by the 2008 Regulations. After discussions with the SI Registrar, it was decided that the Instrument would not be issued free of charge. The principal reason for making the Instrument at this time is not to correct the earlier defective instrument, but to make the amendments in relation to medical performers lists.

4. Legislative Context

4.1 The 2004 Regulations (as amended) require Primary Care Trusts to keep lists of persons performing primary medical, dental and

ophthalmic services.

Medical performers lists

- 4.2 The Medical Act 1983 provides the legislative basis for the regulation of doctors in the UK by the General Medical Council (GMC). A new section 18A of that Act was inserted by the Health Care and Associated Professions (Miscellaneous Amendments) Order 2008 (SI 2008/1774) to allow the GMC to register doctors temporarily on the register of medical practitioners should the Secretary of State advise the GMC Registrar that an emergency is about to occur, is occurring or has occurred. This would allow the GMC to increase the number of registered doctors by, for example, re-registering recently retired practitioners or others they consider suitable but who would not necessarily meet the full requirements for registration. These provisions are intended to allow for the continued supply of drugs, medicines and appliances in an emergency.
- 4.3 Since the insertion of section 18A, the Government has been looking at other legislative changes that may be required to support the NHS during a pandemic. These Regulations therefore amend the 2004 Regulations to introduce a special procedure to allow PCTs to include temporarily registered doctors speedily on their medical performers list. This will enable PCTs to include such practitioners in their performers list without undertaking the full range of checks and references that would normally be required.

Ophthalmic performers lists

- 4.4 Other amendments made by these Regulations relate to ophthalmic performers lists and an error in the 2008 Regulations. The 2008 Regulations amended the 2004 Regulations to require PCTs to keep and maintain ophthalmic performers lists, in addition to medical and dental performers lists. Previously, ophthalmic practitioners who performed primary ophthalmic services were included on ophthalmic lists or ophthalmic supplementary lists.
- 4.5 Paragraph 2 of Schedule 1 to the 2008 Regulations required practitioners who were included on the old ophthalmic lists and ophthalmic supplementary lists to be automatically moved on to the new ophthalmic performers lists. There was an error in the 2008 Regulations, described in paragraph 7, relating to prescribed dates for criminal offences committed by ophthalmic performers, and mandatory refusal of an application or mandatory removal of a performer from an ophthalmic performers list by a PCT. The result of this error is that where an ophthalmic practitioner committed an offence between 14 December 2001 and 1 April 2005 and was sentenced to more than 6 months imprisonment, but was properly included on an ophthalmic supplementary list, the PCT must remove that performer from its ophthalmic performers list in accordance with the 2004 Regulations as

amended by the 2008 Regulations. The policy intention was for such a practitioner to automatically transfer from the old lists to the new lists.

5. Territorial Extent and Application

5.1 These Regulations apply to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

▪ *What is being done and why*

Medical Performers Lists

7.1 A pandemic (or other civil emergency) may place pressure on the delivery of primary medical services, necessitating the need to increase temporarily the supply of general practitioners. An absence of local GPs could mean patients are diverted to Accident and Emergency settings, exacerbating likely pressures in times of emergency. In the light of the recent pandemic influenza outbreak the Government has been considering how to increase the numbers of GPs should the need arise.

7.2 The GMC has been given powers to register doctors temporarily on the register of medical practitioners should the Secretary of State advise the GMC Registrar that an emergency is about to occur, is occurring or has occurred. The GMC may use these powers to register anyone they consider suitable, fit and proper to be registered. It has however, decided to adopt a phased approach in the event of an emergency, registering automatically those voluntarily or administratively erased from their register within the last 2 years about whom there are no concerns. If the emergency continues it will consider registering automatically those erased more than 2 years before the emergency if required.

7.3 The exercise of these powers will mean that upon notification from the Secretary of State to the GMC doctors who were previously registered with the GMC would be temporarily registered automatically on the GMC register without the need for an application. These provisions are already in place and can be invoked by the Secretary of State when he considers it necessary to do so.

7.4 In order to practise as a GP, a doctor needs to meet the following requirements:

- to perform primary medical services, the doctor's name must be included in a PCT's medical performers list;
- to be admitted to the medical performers list, the doctor must be a registered general medical practitioner (i.e. a registered GP);
- in order to be a registered GP, a doctor must, until April 2010 apply to the Postgraduate Medical Education and Training Board and thereafter to the GMC to be included on the GP register.

- 7.5 Legislation has recently been approved by Parliament, which will enable recently retired doctors who are re-registered on the GMC register to be automatically re-included in the GP register. However, before the doctor can perform primary medical services under any of the various contracting arrangements, the 2004 Regulations place an onus on a doctor to apply to be included in a PCT's medical performers list. That application process requires the provision of a range of information, including qualifications, experience, identity and references. The PCT also needs to undertake a criminal record check. During an emergency therefore, these requirements would create an additional lead-in time before the doctor would be available to perform primary medical services.
- 7.6 In order to reduce this lead-in time, these Regulations will amend the 2004 Regulations to allow PCTs to re-admit to the medical performers list as quickly as possible, those GPs who have been returned to the GMC and GP registers by the GMC using their emergency powers. The amendments do this by providing for a shortened application process for these doctors subject to the conditions set out in the Regulations.
- 7.7 In the case of a criminal record check, the Regulations allow for inclusion on the list if the check is provided at the time of the application or an undertaking is given that it will be applied for and provided to the PCT within a short period. The Regulations provide that the person can be removed from the list if the result of the check is not provided within that period.
- 7.8 The checks which would normally be made before inclusion on the performers list are, in such cases, made following inclusion on the list. So, if, following this process, a doctor is included on the performers list but the result of checks indicate that the doctor should not have been included on the list, then the Regulations allow the PCT to remove the doctor from the list.
- 7.9 The Regulations also provide that no appeals shall arise in respect of decisions not to include such doctors on a performers list or to remove them from such a list, given that such inclusion is only intended to be on a temporary basis in any event.

Ophthalmic performers lists

- 7.10 The Regulations correct an error that occurred when the 2008 Regulations amended the 2004 Regulations in respect of ophthalmic performers. Prior to the 2008 Regulations, a PCT was required to refuse a person's application to be included in an ophthalmic supplementary list, or remove a person from an ophthalmic supplementary list, if the person had been convicted in the UK of an offence committed on or after 1 April 2005, and sentenced to more than 6 months imprisonment. The date of 1 April 2005 was chosen because the regulations relating to ophthalmic supplementary lists came into force on 1 April 2005. One of the objectives of the 2008 Regulations was to move people who were on ophthalmic supplementary lists automatically on to ophthalmic performers lists. The same date of 1 April 2005 should have been included in the 2004 Regulations in relation to criminal offences committed by people who had been included in an ophthalmic supplementary list.
- 7.11 The date of 1 April 2005 should also have been included in relation to criminal offences committed by people who had not been included in either an old ophthalmic list or an ophthalmic supplementary list, in order to be consistent with the dates relating to criminal offences in respect of medical performers and dental performers.
- 7.12 The 2008 Regulations erroneously inserted only the date of 14 December 2001 as the prescribed date for refusal of an application for inclusion in, or removal from, an ophthalmic performers list. This was the date relevant to the old ophthalmic lists – under the regulations relating to old ophthalmic lists, PCTs had to refuse an application to an old ophthalmic list, or remove a person from an old ophthalmic list, if the person had been convicted in the UK of a criminal offence on or after 14 December 2001, and sentenced to more than 6 months imprisonment.
- 7.13 The effect of this error is—
- (a) where a person who was moved from an ophthalmic supplementary list to an ophthalmic performers list as a consequence of paragraph 2 of Schedule 1 to the 2008 Regulations had committed an offence between 14 December 2001 and 1 April 2005, and was sentenced to more than 6 months imprisonment, the PCT had to remove the person from its ophthalmic performers list as a consequence of regulations 10(1)(b) and 41(2) of the 2004 Regulations; and
- (b) as a consequence of regulations 6(2)(d) and 40(3), PCTs had to refuse an application from a person who committed an offence between 14 December 2001 and 1 April 2005, was sentenced to more than 6 months imprisonment, and who either had been included on an ophthalmic supplementary list, or had not been included on either of the old lists. This was not the policy intention. The intention was that PCTs should exercise discretion to consider whether or not such a person should be included on an ophthalmic performers list.

- 7.14 Regulations 11 and 12 of the Regulations correct the prescribed dates in regulations 40 and 41 of the 2004 Regulations, by including the date of 1 April 2005 in relation to people who had been included on an ophthalmic supplementary list, or had not been included on either of the old lists. The date of 14 December 2001 will continue to apply to those who had been included on an ophthalmic list.
- 7.15 The Regulations provide that people who were removed from an ophthalmic performers list, or whose application to an ophthalmic performers list was refused, solely because of the error in the 2008 Regulations, do not have that removal or refusal counted against them in future applications for inclusion on a performers list.
- 7.16 Provision is also made by the Regulations to allow PCTs to include certain of the ophthalmic practitioners affected by the error in the PCT's ophthalmic performers list without the full application usually required by the 2004 Regulations.

▪ ***Consolidation***

- 7.17 It is the intention of the Department to amend the 2004 Regulations in the first half of next year as a consequence of the Report "Tackling Concerns Locally: the Performers List system". As part of the implementation project, consideration will be given to consolidation.

8. Consultation outcome

- 8.1 The Government has consulted on the amendments relating to medical performers lists with the General Medical Council, doctors' representative bodies (British Medical Association, Retired Doctors Association), NHS employers, Primary Care Trusts and the devolved administrations, all of whom have expressed support for the changes.
- 8.2 The Government has consulted on the amendments relating to ophthalmic performers lists with the Association of Optometrists, the Federation of Ophthalmic and Dispensing Opticians and the British Medical Association Ophthalmic Group and these representative bodies were content with the proposed changes

9. Guidance

- 9.1 Guidance in relation to Pandemic Flu and the new arrangements for inclusion in a medical performers list in an emergency will be published on the Department of Health website when the Regulations come into force.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument, as it has no significant impact on business, charities or voluntary bodies. There are no equality implications.

11. Regulating Small Business

11.1 The Regulations do not affect small businesses.

12. Monitoring and review

12.1 The 2004 Regulations are currently under review following publication of the Report “Tackling Concerns Locally: the Performers List system”. It is anticipated that further amendments and revised guidance will be issued in the first half of 2011.

13. Contact

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