

2015 No. 362

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Performers Lists) (England)
(Amendment) Regulations 2015**

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| <i>Made</i> | - - - - | <i>24th February 2015</i> |
| <i>Laid before Parliament</i> | | <i>26th February 2015</i> |
| <i>Coming into force</i> | - - | <i>1st April 2015</i> |

The Secretary of State for Health, in exercise of the powers conferred by sections 91, 106, 123 and 272(7) and (8) of the National Health Services Act 2006(a), makes the following Regulations.

Citation, commencement and application

1.—(1) These Regulations may be cited as the National Health Service (Performers Lists) (England) (Amendment) Regulations 2015 and come into force on 1st April 2015.

(2) These Regulations apply to England only.

Amendment of the National Health Service (Performers Lists) Regulations 2013

2. The National Health Service (Performers Lists) (England) Regulations 2013(b) are amended in accordance with regulations 3 to 13.

3. In regulation 2 (interpretation) at the appropriate place in the alphabetical order insert—

““dentists register” means the register referred to in section 14(1) of the Dentists Act 1984(c);

“protected caution” means a caution of the kind described in article 2A(1) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(d);

“protected conviction” means a conviction of the kind described in article 2A(2) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975;”.

4. In paragraph (5) of regulation 4 (application for inclusion in a performers list)—

(a) in sub-paragraph (a) after “United Kingdom” insert “(but the Practitioner need not declare a protected conviction)”;

(b) in sub-paragraph (b) after “United Kingdom” insert “(but the Practitioner need not declare a protected caution)”;

(a) 2006 c.41. Section 91 was amended by the Health and Social Care Act 2012 (c.7) (“the 2012 Act”), section 55 and Schedule 4, Part 4, paragraph 35. Section 106 was amended by the 2012 Act, section 55 and Schedule 4, Part 5, paragraph 47. Section 123 was amended by the 2012 Act, section 55 and Schedule 4, Part 6, paragraph 60.

(b) S.I. 2013/335.

(c) 1984. c. 24. Section 14 was substituted by S.I. 2005/2011, articles 2 and 6 and amended by S.I. 2007/3101, regulations 109 and 111.

(d) S.I. 1975/1023. Regulation 2A was inserted, in relation to England and Wales, by S.I. 2013/1198, articles 2 and 4.

- (c) in sub-paragraph (e) after “Wales” insert “(but the Practitioner need not declare such an offence if the offence would constitute a protected conviction if committed in England and Wales)”.

5. In regulation 12 (suspension)—

- (a) after paragraph (1) insert—

“(1A) The Board must suspend a Practitioner from a performers list if the Practitioner’s registration—

- (a) in the register of medical practitioners is subject to an interim suspension order made under section 41A of the Medical Act 1983(a);
- (b) in the dentists register is subject to an interim suspension order made under section 32 of the Dentists Act 1984(b);
- (c) in the register maintained by the General Optical Council under section 7(a) or 8B(1)(a) of the Opticians Act 1989(c) is subject to an interim suspension order made under section 13L(d) of that Act.

(1B) A suspension under paragraph (1A) will cease to have effect on the date that the interim suspension order referred to in that paragraph ends.

(1C) Where the Board suspends a Practitioner under paragraph (1A) it must notify the Practitioner of the suspension and the reason for it.”;

- (b) in paragraph (2), after “considering suspending a Practitioner” insert “under paragraph (1)”;
- (c) in paragraph (6), after “suspension” insert “under paragraph (1)”;
- (d) in paragraph (21)—
 - (i) after “suspension” where it first appears insert “imposed under paragraph (1)”;
 - (ii) for “revoke a suspension” substitute “revoke that suspension”;
- (e) after paragraph (22), insert—

“(23) Nothing in paragraph (22) prevents a Practitioner from being removed from a performers list pursuant to regulation 11(1)(c), 14 or 17(6)(b).”.

6. In regulation 16(9)(a) (reviews), after “or (d)” insert “, or (1A)”.

7. In regulation 18 (notification), in paragraph (2)(e) for “14 or 17(6)(b)” substitute “14, 16(2)(c) or (3)(c), 17(6)(b), 28(1), 35(1) or 41(1)”.

8. In regulation 20 (restrictions on withdrawal from performers list), in paragraph (1)(a) after “or (b)” insert “or regulation 12(1A)”.

9. In regulation 28(1)(grounds for removal from the medical performers list)—

- (a) in sub-paragraph (b), after “suspended” insert “under section 35D(2)(b), (10)(b) or (12), or section 38(1) of the Medical Act 1983 or by virtue of rules made under paragraph 5A(3) of Schedule 4 to that Act”;
- (b) in sub-paragraph (c), after “withdrawn” insert “except where this has been withdrawn as a result of an interim suspension order made under section 41A(1)(a) of the Medical Act 1983”.

10. In regulation 29(1)(interpretation: general definitions) omit the definition of “dentists register”.

(a) 1983 c.54. Section 41A was inserted by S.I. 2000/1803, article 10, substituted by S.I. 2002/3135, articles 2 and 13 and amended by S.I. 2006/1914, articles 2, 14 and 59.

(b) 1984 c.24. Section 32 was substituted by S.I. 2005/2011, articles 2 and 23.

(c) 1989 c.44. Section 7(a) was substituted by S.I. 2005/848, articles 2 and 7(1); section 8B was inserted by S.I. 2007/3101, regulations 178 and 180.

(d) Section 13L was inserted by S.I. 2005/848, articles 2 and 16.

11. In regulation 35(1) (grounds for removal from the dental performers list), in sub-paragraph (a) after “suspended” insert “under section 27B(6)(b), 27C(2)(d) or (3) of the Dentists Act 1984”.

12. In regulation 36 (interpretation), after “contractor” insert—

““health case” means a fitness to practise case in which an allegation is made that a Practitioner’s fitness to practise is impaired by reason of adverse physical or mental health;”.

13. In regulation 41 (grounds for removal from the ophthalmic performers list)—

(a) in paragraph (1)—

(i) in sub-paragraph (b), after “suspended” insert “under section 13F(3)(b), (7) or (13)(b) of the Opticians Act 1989”;

(ii) for the full-out words “This is subject to paragraph (2)” substitute “This is subject to paragraph (1A)”;

(b) after paragraph (1), insert—

“(1A) Paragraph (1)(b) does not apply where a direction that an ophthalmic practitioner’s registration in the register be suspended is made in a health case.”.

Signed by authority of the Secretary of State for Health.

Daniel Poulter
Parliamentary Under-Secretary of State
Department of Health

24th February 2015

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Performers Lists) (England) Regulations 2013 (S.I. 2013/335) (“the 2013 Regulations”).

Regulation 4 amends regulation 4 of the 2013 Regulations to provide that a person applying for inclusion in a performers list need not disclose a protected caution or protected conviction. Regulation 3 inserts a definition of “protected caution” and “protected conviction”.

Regulation 5 amends regulation 12 of the 2013 Regulations to provide that where a medical, dental or ophthalmic practitioner’s registration in the register of medical practitioners, the dentists register or the register held under section 7(a) or section 8B(1)(a) of the Opticians Act 1989, is the subject of an interim suspension order, then the Board must suspend the practitioner from the performers list and notify the practitioner of that suspension. Regulation 6 makes a consequential amendment to regulation 16 of the 2013 Regulations.

Regulation 7 amends regulation 18 of the 2013 Regulations to provide that the Board must notify the persons mentioned in regulation 18(3) when, under regulations 28(1), 35(1) or 41(1), it removes a practitioner from a performers list.

Regulation 8 amends regulation 20 to provide that a Practitioner may not withdraw from a performers list where the practitioner is suspended under regulation 12(1A).

Regulation 9 amends regulation 28 of the 2013 Regulations to provide that the Board must remove a practitioner from the performers list where the practitioner’s registration in the medical register is subject to a suspension order following a finding of impairment of fitness to practise (except where the direction for suspension was made in a health case) and not where an interim suspension order is in place. Regulations 10 and 13 make similar amendment to the 2013 Regulations in respect of dental practitioners and ophthalmic practitioners respectively. Regulation 13 also amends regulation 41 to provide that an ophthalmic practitioner cannot be removed from a performers list where the suspension by the regulator is made in a health case (which reflects the

position with medical and dental practitioners) and regulation 12 inserts a definition of “health case”.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.

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