

EXECUTIVE NOTE

THE NATIONAL HEALTH SERVICE (PRIMARY MEDICAL SERVICES PERFORMERS LISTS)(SCOTLAND) AMENDMENT REGULATIONS 2011

SSI 2011/392

1. The above instrument was made in exercise of the powers conferred by sections 17P, 32E, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978 (“the Act”). The instrument is subject to negative resolution procedure.

Background

2. The National Health Service (Primary Medical Services Performers Lists)(Scotland) Regulations 2004 (“the 2004 Regulations”) were introduced as part of the response to the Shipman Inquiry Reports. The 2004 Regulations require NHS Boards to prepare and maintain a list of all medical practitioners who may perform primary medical services for that Board (“a PMS list”). This follows from the legal duty under the National Health Service (Scotland) Act 1978 (“the 1978 Act”) which requires NHS Boards to provide or secure the provision of primary medical services within their area.

3. The 2004 Regulations set out in detail the information, declarations and undertakings to be provided with an application to be on a PMS list, and the Board must in so far as practicable check this material before determining any application. Performers must also meet certain requirements by virtue of the 2004 Regulations, such as taking part in annual appraisals and notifying the Board of any subsequent changes to their circumstances, which requires a change to the information recorded on a PMS list. This could include, for example, any findings against the performer following an investigation into the performer’s professional conduct by a regulatory body, or any criminal convictions. Collectively these help to ensure the protection of patients (and, additionally, the protection of NHS resources from fraud) and that Boards have knowledge of and substantial control over who is providing primary medical services within their area and are thus able to discharge their legal duty under the 1978 Act. This also supports performers by applying the same criteria across Scotland for inclusion on a Board list.

Policy Objectives

4. The purpose of the instrument is to amend the 2004 Regulations in consequence of the new vetting and barring scheme, introduced by the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”). The amending regulations place requirements on Health Boards and medical practitioners seeking inclusion on a PMS list to make appropriate use of the PVG scheme and disclosure records. These amendments will only apply to medical practitioners who are seeking to join a PMS list and will not apply to those already on a PMS list. The amending regulations also provide for the suspension of a performer by a Health Board in certain circumstances, e.g. whilst investigations of a complaint or concerns about the performer are being undertaken. Where a Health Board is considering suspending a performer it must give that performer the opportunity to present their case before the Health Board, giving at least 24 hours notice. Thereafter, the Health Board may suspend a performer with immediate effect. The new suspension amendments will strengthen patient safety and

help prevent any interference with investigations which are being undertaken, whilst also providing protection to the individual.

5. This instrument also makes amendments to allow for a 'Lead Board' to carry out all the pre-listing suitability checks. This will mean that other Boards will not have to duplicate this work if the performer wished to be on another Health Board's list, but could rely on the 'Lead Board' having carried out the necessary checks and sharing that information with them.

Consultation

6. The Scottish General Practitioners Committee of the British Medical Association and the Health Boards have been consulted and no substantive comments were received.

Protection of Vulnerable Groups (Scotland) Act 2007 Financial Effects and Regulatory Impact Assessment

7. The *Protection of Vulnerable Groups (Scotland) Act 2007 - Secondary Legislation - Partial Regulatory Impact Assessment (RIA No. 2007/40)* was published on 15 November 2007. This accompanied the consultation on the Protection of Vulnerable groups (Scotland) Act 2007-Scottish Vetting and barring Scheme-Consultation on Policy Proposals for Secondary Legislation. Although comments were invited, no specific comments were made in respect of the RIA. A revised draft RIA (RIA No. 2009/03) was published to accompany the significant draft SSIs published for consultation on 10 November 2009. Responses to the consultation exercise have been taken into account in finalising the RIA. The final RIA (also RIA No. 2009/03) can be found at:

<http://www.scotland.gov.uk/Publications/2010/04/RIA2010/RIA2010>

8. Health Boards and GP practices will bear the costs with regard to Scheme membership and Disclosure Certificates.



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