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STATUTORY INSTRUMENTS

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**2003 No. 2644**

The National Health Service (Personal Medical Services) (Services List) and the (General Medical Services Supplementary List) and (General Medical Services) Amendment Regulations 2003

PART I  
SERVICES LIST

**Interpretation**

**2.—(1)** In this Part—

“Abolition of the Tribunal Regulations” means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001(1);

“Abolition of the Tribunal (Wales) Regulations” means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002(2);

“contingent removal” shall be construed in accordance with section 49G(3);

“doctor” means a registered medical practitioner;

“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 Local Health Board in Wales, a Health Board or an NHS trust in Scotland, a Health and Social Services Board in Northern Ireland, in relation to any time prior to 1st October 2002, a Health Authority in England or, in relation to any time prior to 1st April 2003, a Health Authority in Wales;

“equivalent list” means a list kept by an equivalent body;

“FHSAA” means the Family Health Services Appeal Authority constituted under section 49S(4);

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(1) [S.I. 2001/3744](#).

(2) [S.I. 2002/1920](#).

(3) Sections 49G to 49R were inserted by section 25 of the 2001 Act and amended by the 2002 Act, Schedule 2, paragraphs 21 to 28.

(4) Section 49S was inserted by the 2001 Act, section 27(1) and amended by the 2002 Act, Schedule 1, paragraph 18.

“fraud case” means a case where a person satisfies the second condition for removal from the medical list, set out in section 49F(3)(5) or, by virtue of section 49H, is treated as doing so;

“General Practice Registrar” means—

- (a) a doctor, or
- (b) a medical practitioner whose name appears in the register of medical practitioners with limited registration,

who is being trained in general practice by a GP trainer;

“GP trainer” means a doctor who falls within regulation 7(1) of the Vocational Training Regulations;

“Health Committee” means the Health Committee of the General Medical Council referred to in section 1(3) of the Medical Act;

“licensing or regulatory body” means a body that licenses or regulates any profession of which the doctor is, or has been a member, including a body regulating or licensing the education, training or qualifications of that profession, and includes any body which licences or regulates any such profession, its education, training or qualifications, outside the United Kingdom;

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

“list-holding performer” means a doctor who both performs personal medical services and is required to hold a patient list;

“Medical Act” means the Medical Act 1983(6);

“medical list” means the list prepared by a Primary Care Trust under regulation 4 of the Medical Regulations;

“Medical Regulations” means the National Health Service (General Medical Services) Regulations 1992(7);

“a national disqualification” means a decision—

- (a) made by the FHSAA to nationally disqualify a doctor under section 49N;
- (b) to nationally disqualify a doctor under provisions in force in Scotland or Northern Ireland corresponding to section 49N; or
- (c) by the Tribunal, which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4) of the Abolition of the Tribunal Regulations or regulation 6(4)(b) of the Abolition of the Tribunal (Wales) Regulations;

“the NCAA” means the National Clinical Assessment Authority established as a Special Health Authority under section 11(8);

“the NHS Counter Fraud and Security Management Service” means the service with responsibility for policy and operational matters relating to the prevention, detection and investigation of fraud or corruption and the management of security in the National Health Service, established by the Counter Fraud Management Service Establishment and Constitution Order 2002(9);

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(5) Sections 49F and 49H were inserted by the 2001 Act, section 25; section 49F was amended by the 2002 Act, Schedule 2, paragraph 21.

(6) 1983 c. 54.

(7) S.I. 1992/635.

(8) The NCAA was established by S.I. 2000/2961; section 11 was amended by the 1995 Act, Schedule 1, paragraphs 1 and 2 and by the 1999 Act, section 65 and Schedule 4, paragraphs 4 and 6.

(9) S.I. 2002/3039. The NHS Counter Fraud and Security Management Service replaces the National Health Service Counter Fraud Service.

“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;

“pilot scheme provider” means a doctor who both provides and performs personal medical services under the terms of the same pilot scheme;

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

“Professional Conduct Committee” means the Professional Conduct Committee of the General Medical Council, referred to in section 1(3) of the Medical Act;

“Primary Care Act” means the National Health Service (Primary Care) Act 1997(10);

“professional registration number” means the number against the doctor’s name in the register of medical practitioners;

“register of medical practitioners” means the register of doctors kept by virtue of section 2 of the Medical Act;

“supplementary list” means a list prepared by a Primary Care Trust under regulation 3 of the Supplementary List Regulations;

“Supplementary List Regulations” means the National Health Service (General Medical Services Supplementary List) Regulations 2001(11);

“suspended” means—

- (a) suspended by a Primary Care Trust or equivalent body under section 49I or 49J, regulations made under sections 28DA or 43D or under section 8ZA of the Primary Care Act, including these Regulations,
- (b) in relation to Scotland or Northern Ireland, suspended under provisions in force corresponding to those in or made under sections 28DA, 43D, 49I, 49J or under section 8ZA of the Primary Care Act,

and shall be treated as including a case where a person is treated as suspended by a Primary Care Trust or, prior to 1st October 2002, a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations, or in Wales, by a Local Health Board or, prior to 1st April 2003, by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal (Wales) Regulations, and “suspends” and “suspension” shall be construed accordingly;

“the Tribunal” means the Tribunal constituted under section 46(12) for England and Wales, and which, except for prescribed cases, had effect in relation to England until 14th December 2001 and in relation to Wales until 26th August 2002(13);

“the Vocational Training Regulations” means the National Health Service (Vocational Training for General Medical Practice) Regulations 1997(14); and

“vocational training scheme” means a pre-arranged programme of training which is designed for the purpose of enabling a doctor to gain the medical experience prescribed by regulation 6(1) of the Vocational Training Regulations.

(2) All references in this Part to sections are to sections of the National Health Service Act 1977, except where specified otherwise.

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(10) 1997 c. 46.

(11) S.I. 2001/3740; amended by S.I. 2002/848, 1920 and 2469.

(12) Section 46 was revoked by the 2001 Act, s. 67, Schedule 5, paragraph 5 and Schedule 6, part I.

(13) See S.I. 2001/3738, article 2(5) and (6)(b), which sets out the prescribed cases for England and S.I. 2002/1919, article 2(2) and (3)(b), which sets out the prescribed cases for Wales.

(14) S.I. 1997/2817, as amended by S.I. 1998/669.

### Services list

3.—(1) A Primary Care Trust shall prepare and publish a services list of all doctors who may perform personal medical services in connection with the provision of such services under a pilot scheme.

(2) Subject to paragraph (3) and regulation 21, a doctor may not perform personal medical services, unless—

(a) in the case of a list-holding performer or a pilot scheme provider, his name is included in a services list; or

(b) in any other case, his name is included in a services list, medical list or a supplementary list.

(3) A doctor who is provisionally registered under section 15 or 21 of the Medical Act(15), may perform personal medical services when his name is not included in a services list, medical list or a supplementary list, but only whilst acting in the course of his employment in a resident medical capacity in an approved medical practice (within the meaning of section 11(4) of that Act(16)).

(4) In respect of any doctor whose name is included in a services list, the list shall include—

(a) the doctor's full name;

(b) his professional registration number with, suffixed to it, the organisational code given by the Secretary of State to the Primary Care Trust;

(c) his date of birth, where he consents, or if not, his date of first registration in the register of medical practitioners;

(d) whether he is a pilot scheme provider;

(e) whether he is a list-holding performer;

(f) whether he is a General Practice Registrar; and

(g) the date that his name was included in the services list.

(5) The services list shall be available for public inspection.

### Application for inclusion in the services list

4.—(1) Subject to paragraphs (8) and (9), an application by a doctor for the inclusion of his name in the services list shall be made by sending the Primary Care Trust an application in writing, which shall include the information mentioned in paragraph (2), the undertakings and consents required by paragraphs (3) and (7) and any declaration required under paragraph (2), (5) or (6).

(2) The doctor shall provide the following information—

(a) his full name;

(b) his sex;

(c) his date of birth;

(d) his private address and telephone number;

(e) his medical qualifications and where they were obtained, with evidence concerning his qualifications and experience produced in accordance with the Vocational Training Regulations;

(f) subject to sub-paragraph (j), a declaration that he is a fully registered doctor included in the register of medical practitioners;

(g) his professional registration number and date of first registration in the register of medical practitioners;

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(15) Relevant amendments to sections 15 and 21 are S.I. 1996/1591 and s. 41(10) of and paragraph 61(1) and (4) to the 1997 Act.

(16) Relevant amendments are s. 35(1) and (4) of the 1997 Act.

- (h) chronological details of his professional experience (including the starting and finishing dates of each appointment together with an explanation of any gaps between appointments) separated into—
    - (i) general practice experience (whether as principal, assistant or deputy) including whether that experience was in the performance of personal medical services,
    - (ii) hospital appointments, and
    - (iii) other experience (including obstetric experience),with any additional supporting particulars, and an explanation of why he was dismissed from any post;
  - (i) names and addresses of two referees who are willing to provide clinical references relating to 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 the names and addresses of alternative referees;
  - (j) if he is a General Practice Registrar, the name and practice address of his GP trainer and, if he is not a fully registered doctor included in the register of medical practitioners, a declaration that he is registered in that register with limited registration with details of the limits of that registration, as defined in the direction by virtue of which he is registered;
  - (k) whether he has any outstanding application, including a deferred application, to be included in a list or an equivalent list, and if so, particulars of that application;
  - (l) details of any Primary Care Trust list or any equivalent list from which he has been removed or contingently removed, or to which he has been refused admission or in which he has been conditionally included, with an explanation as to why;
  - (m) if he is the director of any body corporate that is included in any list or any equivalent list, or which has an outstanding application (including a deferred application) for inclusion in any list or equivalent list, the name and registered office of that body and details of the Primary Care Trust or equivalent body concerned;
  - (n) where he is, or was in the preceding six months, or was at the time of the originating events, a director of a body corporate, details of any list or equivalent list to which that body has been refused admission, in which it has been conditionally included, from which it has been removed or contingently removed or from which it is currently suspended, with an explanation as to why and details of the Primary Care Trust or equivalent body concerned;
  - (o) whether he is a list-holding performer;
  - (p) whether he is a pilot scheme provider; and
  - (q) in a case to which either sub-paragraph (o) or (p) applies, if that doctor is a pilot scheme provider to more than one pilot scheme or is required to hold a list of patients in more than one pilot scheme, which pilot scheme is to be the scheme in respect of which he is applying to be included in a services list.
- (3) The doctor shall provide the following undertakings and consent—
- (a) undertaking to provide the declarations and document, if applicable, required by regulation 9;
  - (b) undertaking not to perform personal medical services, nor to provide or assist in providing general medical services in the area of another Primary Care Trust or equivalent body from whose medical, services or supplementary list he has been removed, except where that removal was at his request or in accordance with regulation 10(6) of these Regulations, regulation 10(7) of the Supplementary List Regulations 2001 or regulation 7(2) or (11) of the Medical Regulations, without the consent, in writing, of that Primary Care Trust or equivalent body;

- (c) undertaking to notify the Primary Care Trust within 7 days of any material changes to the information provided in the application until the application is finally determined;
  - (d) undertaking to notify the Primary Care Trust if he is included, or applies to be included, in any other list held by a Primary Care Trust or equivalent body;
  - (e) undertaking to co-operate with an assessment by the NCAA when requested to do so by the Primary Care Trust;
  - (f) consent to the disclosure of information in accordance with regulation 9; and
  - (g) if he is a General Practice Registrar, unless he is suitably experienced within the meaning of section 31(17), or has an acquired right under regulation 5(1)(d) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994(18), an undertaking—
    - (i) not to perform personal medical services except when acting for, and under the supervision of, his GP trainer;
    - (ii) to withdraw from the services list if any of the events listed in paragraph (4) takes place, and
    - (iii) to apply for a certificate of prescribed experience under regulation 10 of, or a certificate of equivalent experience under regulation 11 of, the Vocational Training Regulations, as soon as he is eligible to do so, and to provide the Primary Care Trust with a copy of any such certificate.
- (4) The events to which this paragraph applies are—
- (a) the conclusion of any period of training prescribed by regulation 6(3) of the Vocational Training Regulations, unless it forms part of a vocational training scheme which has not yet been concluded, or the doctor provides the Primary Care Trust with a certificate of prescribed experience under regulation 10 of, or a certificate of equivalent experience under regulation 11 of, the Vocational Training Regulations;
  - (b) the failure satisfactorily to complete any period of training within the meaning of regulation 9 of the Vocational Training Regulations; and
  - (c) the completion of a vocational training scheme, unless the doctor provides the Primary Care Trust with a certificate of prescribed experience under regulation 10 of, or a certificate of equivalent experience under regulation 11 of, the Vocational Training Regulations.
- (5) The doctor shall send with the application a declaration 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 accepted and agreed to pay either a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995(19) or a penalty under section 115A of the Social Security Administration Act 1992(20);
  - (e) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction);
  - (f) 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;

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(17) Section 31 was amended by the 1997 Act, section 32(3).

(18) S.I. 1994/3130, as amended by S.I. 1998/669.

(19) 1995 c. 46.

(20) 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

- (g) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Primary Care Trust;
- (h) has been subject to any investigation into his professional conduct by any licensing, regulatory or other body, where the outcome was adverse;
- (i) is currently subject to any investigation into his professional conduct by any licensing, regulatory or other body;
- (j) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud;
- (k) is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any of that Primary Care Trust's lists or any equivalent lists;
- (l) 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;
- (m) has been removed from, contingently removed from, refused admission to, or conditionally included in any list or equivalent list kept by another Primary Care Trust or equivalent body, or is currently suspended from such a list and if so, why and the name of that Primary Care Trust or equivalent body; or
- (n) is, or has ever been, subject to a national disqualification,

and, if so, he shall 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.

(6) If the doctor is, has in the preceding six months been, or was at the time of the originating events a director of a body corporate, he shall in addition make a declaration to the Primary Care Trust 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 Primary Care Trust;
- (d) has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body, 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;
- (f) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud;
- (g) is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to its removal from any list or equivalent list; or
- (h) has been removed from, contingently removed from, refused admission to, or conditionally included in any list or equivalent list or is currently suspended from such a list,

and, if so, he shall 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.

(7) The doctor shall consent to a request being made by the Primary Care Trust 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, into the doctor or a body corporate referred to in paragraphs (3), (5) and (6).

(8) If, in the case of any application, the Primary Care Trust finds that the information, references or documentation supplied by the doctor are not sufficient for it to decide his application, it shall seek from that doctor such further information, references or documentation as it may reasonably require in order to make a decision and that doctor shall supply the material so sought to the Trust.

(9) In the case of an application to a Primary Care Trust by a doctor, who is included in the medical list or the supplementary list of that Trust, seeking to withdraw from that list and to include his name in its services list, that doctor shall only be required to provide the information required by paragraph (2) insofar as—

- (a) he has not already supplied it to that Trust; or
- (b) it has changed since it was provided.

### **Readmission**

5.—(1) Where a doctor has been removed from any list by a Primary Care Trust on the grounds that he had been convicted of a criminal offence, and that conviction is overturned on appeal, that Primary Care Trust may agree to include the doctor in its services list without a full application if it—

- (a) is satisfied that there are no other matters that need to be considered; and
- (b) has received an undertaking from the doctor to comply with the requirements of these Regulations.

(2) In a case to which paragraph (1) applies, if the conviction is reinstated on a further appeal, the previous determination of the Primary Care Trust to remove that doctor from its services list shall once again have effect.

### **Grounds for refusal**

6.—(1) The grounds on which a Primary Care Trust may refuse to include a doctor in its services list are that—

- (a) the Primary Care Trust, having considered the declaration required by regulation 4(5) and (if applicable) regulation 4(6), and any other information or documents in its possession relating to the doctor, considers that he is unsuitable to be included in its services list;
- (b) having checked the information provided by the doctor under regulation 4(2)(e), (f) and (g), the Primary Care Trust considers the doctor is unsuitable to be included in its services list;
- (c) having contacted the referees provided by the doctor under regulation 4(2)(i), the Primary Care Trust is not satisfied with the references;
- (d) having checked with the NHS Counter Fraud and Security Management Service for any facts that it considers relevant relating to past or current fraud investigations involving or related to the doctor and, having considered these and any other facts in its possession relating to fraud involving or relating to the doctor, the Primary Care Trust considers these justify such refusal;
- (e) having checked with the Secretary of State for any facts that he considers relevant relating to past or current investigations or proceedings involving or related to the doctor and, having considered these and any other facts in its possession involving or relating to the doctor, the Primary Care Trust considers these justify such refusal;
- (f) there are any grounds for considering that admitting the doctor to its services list would be prejudicial to the efficiency of the service which he would undertake; or



- (g) where his registration in the register of medical practitioners is subject to conditions imposed pursuant—
- (i) to a direction, under section 36(1)(iii) of the Medical Act(21), of the Professional Conduct Committee,
  - (ii) to a direction, under section 37 of that Act(22), of the Health Committee,
  - (iii) to a direction, under section 36A of or paragraph 5A(3) of Schedule 4 to that Act(23), of the Committee on Professional Performance of the General Medical Council referred to in section 1(3) of that Act, or
  - (iv) to an order, under section 41A of that Act(24), of any of those committees or of the Interim Orders Committee of the General Medical Council referred to in section 1(3) of that Act.
- (2) The grounds on which a Primary Care Trust must refuse to include a doctor in its services list are that—
- (a) he has not provided satisfactory evidence that he intends to perform personal medical services in its area;
  - (b) he is a list-holding performer and either all or the majority of the patients of the pilot scheme reside in the area of another Primary Care Trust;
  - (c) he is a pilot scheme provider and either all or the majority of the patients of the pilot scheme reside in the area of another Primary Care Trust;
  - (d) regulation 4(2)(p) applies to that doctor and the pilot scheme that he specified in his application to be included in the services list is not one that lies within the area of that Primary Care Trust;
  - (e) he is included in the medical or supplementary list of any Primary Care Trust, unless he has given notice in writing to that Trust that he wishes to withdraw from that list;
  - (f) he is included in the services list of another Primary Care Trust, unless he has given notice in writing to that Trust that he wishes to withdraw from that list;
  - (g) it is not satisfied he has the knowledge of English which, in his own interests or those of his patients, is necessary in performing personal medical services in its area;
  - (h) it is not satisfied he is suitably experienced within the meaning of section 31, unless he has an acquired right under regulation 5(1)(d) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994(25) or is a General Practice Registrar;
  - (i) he has been convicted in the United Kingdom of murder;
  - (j) he has been convicted in the United Kingdom of a criminal offence, committed on or after 3rd November 2003, and has been sentenced to a term of imprisonment of over six months;
  - (k) he has been nationally disqualified;
  - (l) he has not updated his application in accordance with regulation 7(4); or
  - (m) in a case to which regulation 15(4) applies, he does not notify the Primary Care Trust under regulation 15(5) that he wishes to be included in its services list subject to the specified conditions.
- (3) Before making a decision on the application, the Primary Care Trust shall—

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(21) Section 36 was amended by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 5 and by [S.I. 2000/1803](#), articles 2 and 5.

(22) Section 37 was amended by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 6 and by [S.I. 2000/1803](#), articles 2 and 7.

(23) Section 36A was inserted by the 1995 Act, section 1 and amended by [S.I. 2000/1803](#), articles 2 and 6 and paragraph 5A of Schedule 4 was added by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 20.

(24) Section 41A was inserted by [S.I. 2000/1803](#), articles 2 and 10.

(25) [S.I. 1994/3130](#); regulation 5 was amended by [S.I. 1998/669](#).

- (a) check, as far as reasonably practicable, the information provided by the doctor, in particular that provided under regulations 4(2)(e), (f) and (g), (5), and (if applicable) (6), and shall ensure that it has sight of relevant documents;
- (b) check with the NHS Counter Fraud and Security Management Service whether the doctor has any record of fraud;
- (c) check with the Secretary of State as to any information held by him as to any record about past or current investigations or proceedings involving or related to that doctor; and
- (d) in a case where he is—
  - (i) a list-holding performer, or
  - (ii) a pilot scheme provider,
 take up the references that doctor provided under regulation 4(2)(i).

(4) Where the Primary Care Trust is considering a refusal under paragraph (1) or (2) 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), (d) or (e) above—

- (a) the nature of any offence, investigation or incident;
- (b) the length of time since any offence, incident, 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 his performing personal 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(26) applies, or if it had been committed in England or Wales, would have applied;
- (g) whether the doctor has been refused admission to, or conditionally included in, or removed, contingently removed or is currently suspended from, any list or any equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action; and
- (h) whether the doctor 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 admission to, conditionally included in, removed or contingently removed from, any list or equivalent list or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by Primary Care Trust or equivalent body in each case.

(5) When the Primary Care Trust takes into consideration any of the matters set out in paragraph (4), it shall consider the overall effect of all the matters being considered.

(6) When refusing to include a doctor in its services list, the Primary Care Trust 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 15 against the Primary Care Trust's decision.

### **Deferment of decision on application**

7.—(1) A Primary Care Trust may defer a decision on an application to be included in the services list, where—

- (a) there are, in respect of the doctor—
  - (i) criminal proceedings in the United Kingdom, or

- (ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence, which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to the removal of the doctor from the Primary Care Trust's services list, if he had been included in it;
  - (b) in respect of a body corporate of which the doctor is, has in the preceding 6 months been, or was at the time of the originating events, a director there are—
    - (i) criminal proceedings in the United Kingdom, or
    - (ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence, which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to the removal of the doctor from the Primary Care Trust's services list, if he had been included in it;
  - (c) there is an investigation anywhere in the world by the doctor's licensing or regulatory body or any other investigation (including one by another Primary Care Trust or equivalent body) relating to him in his professional capacity that, if adverse, would be likely to lead to the removal of the doctor from the Primary Care Trust's services list, if he had been included in it;
  - (d) the doctor is suspended from any list or any equivalent list;
  - (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 list or any equivalent list;
  - (f) the FHSAA is considering an appeal by the doctor against a decision of a Primary Care Trust to refuse to include him in its services list, or to conditionally include him in or to contingently remove him from, or to remove him from any list kept by a Primary Care Trust and if that appeal is unsuccessful the Primary Care Trust would be likely to remove him from the Primary Care Trust's services list if he had been included in it;
  - (g) the doctor is being investigated by the NHS Counter Fraud and Security Management Service in relation to any fraud, where the result, if adverse, would be likely to lead to the removal of the doctor from the Primary Care Trust's services list if he had been included in it;
  - (h) 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 in relation to any fraud, where the result, if adverse, would be likely to lead to the removal of the doctor from the Primary Care Trust's services list if he were to be included in it; and
  - (i) the FHSAA is considering an application from a Primary Care Trust 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 Primary Care Trust may only defer a decision under paragraph (1) above until the outcome of the relevant event mentioned in any of sub-paragraphs (a) to (i) is known.
- (3) The Primary Care Trust must notify the doctor that it has deferred a decision on the application and the reasons for it.
- (4) Once the outcome of the relevant event mentioned in paragraph (1) is known, the Primary Care Trust shall notify the doctor in writing that he must within 28 days of the date of the notification (or such longer period as the Primary Care Trust may agree)—
- (a) update his application; and
  - (b) confirm in writing that he wishes to proceed with his application.

(5) Provided any additional information has been received within the 28 days or the time agreed, the Primary Care Trust shall notify the doctor as soon as possible—

- (a) that his application to be included has been successful; or
- (b) that the Primary Care Trust has decided to refuse the application or impose conditions on his inclusion, and the reasons for that (including any facts relied upon), and any right of appeal under regulation 15.

### **Conditional inclusion**

8.—(1) A Primary Care Trust may determine that, if a person is to be included in the services list, he is to be subject, while he remains included in that list, to the imposition of conditions, having regard to the requirements of section 8ZA(5) of the Primary Care Act (purpose of conditions).

(2) If a doctor fails to comply with a condition, which has been imposed by the Primary Care Trust, it may remove him from its services list.

(3) Where the Primary Care Trust is considering the removal of a doctor from its services list for breach of a condition, it shall give him—

- (a) notice of any allegation against him;
- (b) notice of the grounds for the action it is considering;
- (c) the opportunity to make written representations to the Primary Care Trust within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put his case at an oral hearing before the Primary Care Trust, if he requests one within the 28 day period mentioned in sub-paragraph (c).

(4) If there are no representations within the period specified in paragraph (3)(c), the Primary Care Trust shall inform the doctor of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(5) If there are representations, the Primary Care Trust must take them into account before reaching its decision, and shall then notify the doctor of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(6) If the doctor requests an oral hearing, this must take place before the Primary Care Trust reaches its decision and the Primary Care Trust must then notify the doctor of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) of any right of appeal under regulation 15,

within 7 days of making that decision.

(7) When the Primary Care Trust notifies the doctor of any decision, it shall inform him that, if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which the Primary Care Trust gave him the notice informing him of its decision and shall tell him how to proceed with any appeal.

(8) The Primary Care Trust shall also notify the doctor of his right to have the decision reviewed in accordance with regulation 14.

(9) Where the Primary Care Trust determines that a doctor—

(a) may be included in its services list, but subject to conditions imposed under this regulation;  
or

(b) is to be subject to conditions while he remains included in its services list,

the name of the doctor may be included (or continue to be included) in its services list during the period for bringing the appeal to the FHSAA pursuant to regulation 15, 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.

### **Requirements with which a doctor in the services list must comply**

9.—(1) A doctor, who is included in the services list of a Primary Care Trust, shall make a declaration to that Trust in writing 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) has accepted and agreed to pay either a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995(27) or a penalty under section 115A of the Social Security Administration Act 1992(28);
- (e) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction);
- (f) 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;
- (g) 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;
- (h) is notified by any licensing, regulatory or other body of the outcome of any investigation into his professional conduct, and there is a finding against him;
- (i) becomes the subject of any investigation into his professional conduct by any licensing, regulatory or other body;
- (j) 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 if adverse;
- (k) becomes to his knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;
- (l) becomes the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any list or any equivalent list; or
- (m) is removed, contingently removed or suspended from, refused admission to, or conditionally included in, any list or any equivalent list,

and, if so, he shall give details, including approximate dates, and where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(2) A doctor, who is included in the services list of a Primary Care Trust, and is, was in the preceding six months, or was at the time of the originating events, a director of a body corporate, shall make a declaration to that Trust in writing within 7 days of its occurrence if that body corporate—

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(27) 1995 c. 46.

(28) 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

- (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 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;
- (f) becomes to his knowledge the subject of any investigation in relation to fraud, or is notified of the outcome of such an investigation if adverse;
- (g) becomes the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to its removal from any list or any equivalent list; or
- (h) is removed, contingently removed or suspended from, refused admission to, or conditionally included in any list or any equivalent list,

and, if so, he shall give the name and registered address 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) A doctor, who is included in the services list of a Primary Care Trust, shall consent to a request being made by that Trust 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 that employer or body into the doctor or a body corporate referred to in paragraph (1) and (2).

(4) A doctor, who is included in the services list of a Primary Care Trust, shall supply that Trust with an enhanced criminal record certificate under section 115 of the Police Act 1997<sup>(29)</sup> in relation to himself, if the Primary Care Trust at any time, for reasonable cause, requests him to provide such a certificate.

### **Removal from services list**

**10.—(1)** The Primary Care Trust must remove the doctor from its services list where it becomes aware that he—

- (a) has been convicted in the United Kingdom of murder;
- (b) has been convicted in the United Kingdom of a criminal offence, committed on or after 3rd November 2003, and has been sentenced to a term of imprisonment of over six months;
- (c) has been nationally disqualified;
- (d) has died;
- (e) is no longer a doctor;
- (f) is the subject of—
  - (i) a direction given by the Professional Conduct Committee under section 36(1)(i) or (ii) of the Medical Act (professional misconduct and criminal offences)<sup>(30)</sup>, or
  - (ii) an order or direction made by that Committee under section 38(1) of that Act (order for immediate suspension)<sup>(31)</sup>;

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<sup>(29)</sup> 1997 c. 50.

<sup>(30)</sup> Section 36 was amended by S.I. 2000/1803.

<sup>(31)</sup> Section 38(1) was amended by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 7.

- (g) is included in the medical list or supplementary list of any Primary Care Trust, or the services list of another Primary Care Trust; or
- (h) in the case of a General Practice Registrar, the doctor is in breach of the undertaking provided in accordance with regulation 4(3)(g)(ii) and has failed to withdraw from the list after the Primary Care Trust has given him 28 days notice in writing requesting him to do so.

(2) Where a Primary Care Trust is notified by the FHSAA that it has considered an appeal by a doctor against—

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

the Primary Care Trust shall remove the doctor from its services list and shall notify the doctor immediately that it has done so.

(3) The Primary Care Trust may remove a doctor from its services list where any of the conditions set out in paragraph (4) is satisfied.

(4) The conditions mentioned in paragraph (3) are that the—

- (a) continued inclusion of that doctor in the services list would be prejudicial to the efficiency of the services which those included in the list perform (“an efficiency case”);
- (b) doctor (whether on his own or together with another) is involved in a fraud case in relation to any health scheme; or
- (c) doctor is unsuitable to be included in that list (“an unsuitability case”).

(5) For the purposes of this regulation, in addition to the services covered by the definition of “health scheme” in section 49F(8), 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<sup>(32)</sup>;
- (c) medical 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<sup>(33)</sup>; and
- (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

(6) Where the doctor cannot demonstrate that he has performed personal medical services within the area of the Primary Care Trust during the preceding twelve months, the Primary Care Trust may remove him from its services list.

(7) In calculating the period of twelve months referred to in paragraph (6), the Primary Care Trust shall disregard any period during which—

- (a) his registration as a medical practitioner was suspended as mentioned in section 37 of the Medical Act (suspension by direction or order of the Health Committee)<sup>(34)</sup>;
- (b) he was suspended by virtue of section 41A of the Medical Act (interim orders)<sup>(35)</sup>;
- (c) he was suspended under these Regulations; or
- (d) he was performing relevant service as defined in regulation 2 of the Medical Regulations.

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<sup>(32)</sup> 1984 c. 22.

<sup>(33)</sup> 1952 c. 52.

<sup>(34)</sup> Section 37 was amended by paragraphs 1 and 6 of the Schedule to the 1995 Act and by S.I. 2000/1803, articles 2 and 7.

<sup>(35)</sup> Section 41A was inserted by S.I. 2000/1803, articles 2 and 10.

(8) Where a Primary Care Trust is considering removing a doctor from its services list under paragraphs (3) to (6) or regulations 8(2), 12(3)(c) or 15(6)(b) or contingently removing a doctor under regulation 12(1), it shall give him—

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

(9) If there are no representations within the period specified in paragraph (8)(c), the Primary Care Trust shall inform the doctor of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(10) If there are representations, the Primary Care Trust must take them into account before reaching its decision, and shall then notify the doctor of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(11) If the doctor requests an oral hearing, this must take place before the Primary Care Trust reaches its decision, and the Primary Care Trust shall then notify the doctor of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(12) When the Primary Care Trust notifies the doctor of any decision, it shall inform him that, if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which the Primary Care Trust informed him of its decision and shall tell him how to proceed with any appeal.

(13) The Primary Care Trust shall also notify the doctor of his right to have the decision reviewed in accordance with regulation 14.

(14) Where the Primary Care Trust decides to remove a doctor under paragraph (6), the doctor shall not be removed from its services list for a period of three months, starting on the date—

- (a) on which the Primary Care Trust reaches its decision; or
- (b) any appeal is disposed of by the FHSAA,

whichever is the later.

### **Criteria for a decision on removal**

**11.**—(1) Where a Primary Care Trust is considering whether to remove a doctor from its services list under regulation 10(2) and (4)(c) (an unsuitability case), it shall—

- (a) consider any information relating to the doctor which it has received in accordance with any provision of regulation 9;
- (b) consider any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to that doctor; and
- (c) in reaching its decision, take into consideration the matters set out in paragraph (2).



- (2) The matters referred to in paragraph (1) are—
- (a) the nature of any offence, investigation or incident;
  - (b) the length of time since any such offence, incident, conviction or investigation;
  - (c) whether there are other offences, incidents or investigations to be considered;
  - (d) any action taken or penalty imposed by any licensing or regulatory body, the police or the courts as a result of any such offence, incident or investigation;
  - (e) the relevance of any offence, incident or investigation to his performing personal medical services and any likely risk to any patients or to public finances;
  - (f) whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997(36) applies, or if it had been committed in England and Wales, would have applied;
  - (g) whether the doctor has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from any list or any equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action; 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 admission to, conditionally included in, removed or contingently removed from any list or equivalent list or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Primary Care Trust or equivalent body in each case for such action.
- (3) Where a Primary Care Trust is considering removal of a doctor from its services list under regulation 10(3) and (4)(b) it shall consider—
- (a) any information relating to the doctor which it has received in accordance with any provision of regulation 9;
  - (b) any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to that doctor; and
  - (c) the matters set out in paragraph (4).
- (4) The matters referred to in paragraph (3)(c) are—
- (a) the nature of any incidents of fraud;
  - (b) the length of time since the last incident of fraud occurred, and since any investigation into it was concluded;
  - (c) whether there are any 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 offence, investigation or incident;
  - (e) the relevance of any investigation into an incident of fraud to his performing personal medical services and the likely risk to patients or to public finances;
  - (f) whether the doctor has been refused admittance to, conditionally included in, removed, or contingently removed or is currently suspended from, any list or any equivalent list, and, if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action; and
  - (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 admission to, conditionally included in, or removed or contingently removed from, any list or equivalent

list, or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Primary Care Trust or equivalent body in each case.

(5) Where a Primary Care Trust is considering removal of a doctor from its services list under regulation 10(3) and (4)(a) (“an efficiency case”), it shall—

- (a) consider any information relating to the doctor which it has received in accordance with any provision of regulation 9;
- (b) consider any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to that doctor; and
- (c) in reaching its decision, take into account the matters referred to in paragraph (6).

(6) The matters referred to in paragraph (5)(c) are—

- (a) the nature of any incident which was prejudicial to the efficiency of the personal medical services that the doctor performed;
- (b) the length of time since the last incident occurred and since any investigation into it 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 Primary Care Trust to undertake an assessment by the NCAA;
- (f) whether the doctor has previously failed to supply information, make a declaration or comply with an undertaking required by these Regulations, the Medical Regulations or the Supplementary List Regulations;
- (g) whether the doctor has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from any list or any equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or the equivalent body for such action; 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 admission to, conditionally included in, removed or contingently removed from, any list or equivalent list, or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Primary Care Trust or equivalent body in each case for such action.

(7) In making any decision under regulation 10, the Primary Care Trust shall take into account the overall effect of any 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 regulation 10(6), the Primary Care Trust shall state in its decision on which condition it relies.

### **Contingent removal**

**12.—**(1) In an efficiency case or a fraud case the Primary Care Trust may, instead of deciding to remove a doctor from its services list, decide to remove him contingently.

(2) If it so decides, it must impose such conditions as it may decide on his inclusion in its services list with a view to—

- (a) removing any prejudice to the efficiency of the services in question (in an efficiency case);  
or
- (b) preventing further acts or omissions (in a fraud case).

(3) If the Primary Care Trust determine that the doctor has failed to comply with a condition, it may decide to—

- (a) vary the conditions imposed;
- (b) impose new conditions; or
- (c) remove him from its services list.

### **Suspension**

**13.**—(1) If a Primary Care Trust is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend a doctor from its services list—

- (a) while it decides whether or not to exercise its powers to remove him under regulation 10 or contingently remove him under regulation 12;
- (b) while it waits for a decision affecting the doctor of a court anywhere in the world or of a licensing or regulatory body;
- (c) where it has decided to remove the doctor, but before that decision takes effect; or
- (d) pending appeal.

(2) In a case falling within paragraph (1)(a), the Primary Care Trust must specify a period, not exceeding six months, as the period of suspension.

(3) In a case falling within paragraph (1)(b), the Primary Care Trust may specify that the doctor remains suspended after the decision referred to in that paragraph has been made for an additional period, not exceeding six months.

(4) The period of suspension may extend beyond six months if—

- (a) on the application of the Primary Care Trust, the FHSAA so orders; or
- (b) the Primary Care Trust applied under sub-paragraph (a) before the expiry of the period of suspension, but the FHSAA has not made an order by the time it expires, in which case it continues until the FHSAA makes an order.

(5) If the FHSAA does so order, it shall specify—

- (a) the date on which the period of suspension is to end;
- (b) an event beyond which it is not to continue; or
- (c) both a date on which it is to end and an event beyond which it is not to continue, in which case it shall end on the earlier of that date or that event, as the case may be.

(6) The FHSAA may, on the application of the Primary Care Trust, make a further order (complying with paragraph (5)) at any time while the period of suspension pursuant to the earlier order is still continuing.

(7) If the Primary Care Trust suspends a doctor in a case falling within paragraph (1)(c) or (d), the suspension has effect from—

- (a) the date the Primary Care Trust gave him notice of the suspension until the expiry of any appeal period; or
- (b) if he appeals under regulation 15, until the FHSAA has disposed of the appeal.

(8) The Primary Care Trust may extend the period of suspension under paragraph (2) or impose a further period of suspension under paragraph (3), so long as the aggregate does not exceed six months.

(9) The effect of a suspension is that while a doctor is suspended under these Regulations he is to be treated as not being included in the Primary Care Trust's services list, even though his name appears in it.

(10) The Primary Care Trust may at any time revoke the suspension and inform the doctor of its decision.

(11) Where a Primary Care Trust is considering suspending a doctor or varying the period of suspension under this regulation, it shall give the doctor—

- (a) notice in writing of any allegation against him;
- (b) notice of what action the Primary Care Trust is considering and on what grounds; and
- (c) the opportunity to put his case at an oral hearing before the Primary Care Trust, on a specified day, provided that at least 24 hours notice of the hearing is given.

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

(13) If an oral hearing does take place, the Primary Care Trust shall take into account any representations made before it reaches its decision.

(14) The Primary Care Trust may suspend the doctor with immediate effect following the hearing.

(15) The Primary Care Trust shall notify the doctor of its decision and the reasons for it (including any facts relied upon) within 7 days of making that decision.

(16) The Primary Care Trust shall inform the doctor of any right of review under regulation 14.

(17) During a period of suspension payments may be made to or in respect of the doctor in accordance with a determination by the Secretary of State.

## **Reviews**

**14.—**(1) A Primary Care Trust may, and if requested in writing to do so by the doctor shall, review its decision to—

- (a) impose or vary conditions imposed under regulation 8;
- (b) impose or vary conditions imposed under regulation 12; or
- (c) suspend a doctor under regulation 13(1)(a) or (b), except where a suspension is continuing by order of the FHSAA.

(2) A doctor may not request a review of a Primary Care Trust's decision until the expiry of a three month period beginning with the date of the Primary Care Trust's decision or, in the case of a conditional inclusion under regulation 8, beginning with the date the Primary Care Trust includes the doctor's name in the services list.

(3) After a review has taken place, the doctor cannot request a further review before the expiry of six months from the date of the decision on the last review.

(4) If a Primary Care Trust decides to review its decision under this regulation to conditionally include, contingently remove or suspend a doctor, it shall give the doctor—

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

(5) If there are no representations within the period specified in paragraph (4)(c), the Primary Care Trust shall inform the doctor of its decision, the reasons for it (including any facts relied upon) and of any right of appeal under regulation 15.

(6) If there are representations, the Primary Care Trust must take them into account before reaching its decision.

(7) The Primary Care Trust shall notify the doctor of—

- (a) its decision;
- (b) the reasons for it (including any facts relied upon);
- (c) any right of appeal under regulation 15; and
- (d) the right to a further review under this regulation,

within 7 days of making that decision.

(8) If a Primary Care Trust decides to review its decision to impose conditions under regulation 9, the Primary Care Trust may vary the conditions, impose different conditions, remove the conditions or remove the doctor from its services list.

(9) If a Primary Care Trust decides to review its decision to impose a contingent removal under regulation 12, the Primary Care Trust may vary the conditions, impose different conditions, or remove the doctor from its services list.

(10) If a Primary Care Trust decides to review its decision to suspend a doctor under regulation 13(1)(a) or (b), the Primary Care Trust may decide to impose conditions or remove the doctor from its services list.

(11) A Primary Care Trust may not review its decision to suspend a doctor under regulation 13(1)(c) or (d).

## Appeals

**15.—**(1) A doctor may appeal (by way of redetermination) to the FHSAA against a decision of a Primary Care Trust mentioned in paragraph (2) by giving notice in writing to the FHSAA.

(2) The Primary Care Trust decisions in question are—

- (a) a decision to refuse admission to the services list under regulation 6(1);
- (b) a decision to impose a particular condition under regulation 8, or to vary any condition or to impose a different condition under that regulation;
- (c) any decision on a review, under regulation 14, of a conditional inclusion under regulation 8;
- (d) any decision to remove the doctor under regulations 8(2), 10(3) or (6), 12(3)(c) or 15(6)(b);
- (e) any decision to impose a particular condition under regulation 12, or to vary any condition or to impose a different condition under that regulation; and
- (f) any decision on a review, under regulation 14, of a contingent removal under regulation 12.

(3) On appeal the FHSAA may make any decision which the Primary Care Trust could have made.

(4) Where the decision of the FHSAA on appeal is that the appellant's inclusion in the services list is to be subject to conditions, whether or not those conditions are identical with the conditions imposed by the Primary Care Trust, the Primary Care Trust shall ask him to notify it within 28 days of the decision (or such longer period as the Primary Care Trust may agree) whether he wishes to be included on the services list subject to those conditions.

(5) If the doctor notifies the Primary Care Trust that he does wish to be included in the services list subject to the condition or conditions, the Primary Care Trust shall so include him.

(6) Where the FHSAA on appeal decides to impose a contingent removal—

- (a) the Primary Care Trust and the doctor may each apply to the FHSAA for the conditions imposed on the doctor to be varied, for different conditions to be imposed, or for the contingent removal to be revoked; and

- (b) the Primary Care Trust may remove the doctor from its services list if it determines that he has failed to comply with a condition.

## Notification

### 16.—(1) Where a Primary Care Trust—

- (a) refuses to admit a doctor to its services list on the grounds specified in regulation 6;
- (b) imposes conditions on his inclusion in that list under regulation 8;
- (c) removes him from that list under regulation 10;
- (d) removes him from that list contingently under regulation 12; or
- (e) suspends him from that list under regulation 13,

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

### (2) Where paragraph (1) applies, a Primary Care Trust shall notify—

- (a) the Secretary of State;
- (b) any Primary Care Trust or equivalent body that—
  - (i) has the doctor on any list or equivalent list, or
  - (ii) is considering an application for inclusion in any list or equivalent list by the doctor;
- (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 NCA; and
- (h) where it is a fraud case, the NHS Counter Fraud and Security Management Service.

(3) The persons or bodies to be additionally notified in accordance with paragraph (1) are persons or bodies that can establish that they are or were employing or that they are considering employing the doctor in a professional capacity.

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

- (a) name, address and date of birth of the doctor;
- (b) his professional registration number;
- (c) date and copy of the decision of the Primary Care Trust; and
- (d) a contact name of a person in the Primary Care Trust for further enquiries.

(5) The Primary Care Trust shall send to the doctor concerned a copy of any information about him provided to the persons or bodies listed in paragraph (2) or (3), and any correspondence with that person or body relating to that information.

(6) Where the Primary Care Trust 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 requested by that person or body, notify that person or body of any evidence that was considered, including any representations from the doctor.

(7) Where a Primary Care Trust is notified by the FHSAA that it has imposed a national disqualification on a doctor who was, or had applied to be included, in its services list, it shall notify the persons or bodies listed in paragraph (2)(b), (g) and (h) and paragraph (3).

(8) Where a decision is changed on review or appeal, or a suspension lapses, the Primary Care Trust shall notify the persons or bodies that were notified of the original decision of the later decision or the fact that that suspension has lapsed.

#### **Amendment of or withdrawal from services list**

17.—(1) A doctor shall, unless it is impracticable for him to do so, give notice to the Primary Care Trust within 28 days of any occurrence requiring a change in the information recorded about him in the services list and of any change of his private address.

(2) Where a doctor intends to withdraw from the services list, unless it is impracticable for him to do so, he shall give notice in writing to the Primary Care Trust at least three months in advance of that date.

(3) A doctor shall give notice in writing to the Primary Care Trust that he intends to withdraw from its services list if he is accepted on to the medical list or supplementary list of the Primary Care Trust, or on to any list of another Primary Care Trust.

(4) The Primary Care Trust shall on receiving notice—

- (a) from any doctor pursuant to paragraph (1), amend its services list as soon as possible;
- (b) pursuant to paragraph (2), so amend its services list, either—
  - (i) on the date which falls three months after the date of the notice, or
  - (ii) on the date from which the Primary Care Trust has agreed that the withdrawal shall take effect,whichever is the earlier; or
- (c) pursuant to paragraph (3), remove the doctor's name from its services list as soon as it confirms that that doctor has been accepted on that other list.

(5) A doctor may withdraw a notice given pursuant to paragraph (1) or (2) at any time before the Primary Care Trust removes his name from its services list.

(6) A notice given pursuant to paragraph (3) may not be withdrawn.

#### **Restrictions on withdrawal from list**

18.—(1) Where a Primary Care Trust is investigating a doctor—

- (a) for the purpose of deciding whether or not to exercise its powers to remove him under regulation 10 or contingently remove him under regulation 12; or
- (b) who has been suspended under regulation 13(1)(a),

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

(2) Where a Primary Care Trust has decided to remove a doctor from its services list under regulation 10(3) to (6) or to contingently remove him from it under regulation 12, but has not yet given effect to its decision, the doctor may not withdraw from any list kept by a Primary Care Trust in which he is included, except where the Secretary of State has given his consent.

(3) Where a Primary Care Trust has suspended a doctor under regulation 13(1)(b), the doctor may not withdraw from any list kept by a Primary Care Trust in which he is 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 Primary Care Trust.

### **Review periods on national disqualification**

**19.** The period for review shall be the different period specified below, instead of that in section 49N(8)(37), 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), 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) 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 the decision that has effect 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) shall be a reference to the period that has already elapsed; or
- (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) shall be a reference to the period that has already elapsed.

### **Disclosure of information**

**20.** The Primary Care Trust may disclose information supplied to it or acquired by it pursuant to these Regulations to any of the following—

- (a) the Secretary of State;
- (b) any other Primary Care Trust or equivalent body, which—
  - (i) has a doctor to whom that information relates on any of its lists; or
  - (ii) is considering an application from such a doctor for inclusion on any of its lists;
- (c) the Scottish Executive;
- (d) the National Assembly for Wales;
- (e) the Northern Ireland Executive;
- (f) the NCAA;
- (g) the General Medical Council or any other licensing or regulatory body;
- (h) any organisation or employer that, to the knowledge of the Primary Care Trust, employs or uses the services of the doctor to whom that information relates in a professional capacity; and
- (i) where an allegation of fraud is being considered, the NHS Counter Fraud and Security Management Service.

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(37) Section 49N was inserted by section 25 of the 2001 Act.



## Transitional provisions

**21.**—(1) Subject to paragraphs (3), (4), (5), (6) and (9), any doctor, who was performing personal medical services on 2nd November 2003, may continue to do so, notwithstanding regulation 3(2), until—

- (a) 3rd February 2004; or
- (b) the date on which the Primary Care Trust notifies that doctor of its decision under regulation 4,

whichever is the earlier, provided that that doctor applies, in accordance with these Regulations, to a Primary Care Trust to be included in its services list not later than 3rd December 2003.

(2) Subject to paragraphs (3), (4), (5), (6) and (9), any doctor, not falling within paragraph (1), who has applied to be included in a services list on or before 3rd December 2003, may perform personal medical services after the date of that application, notwithstanding regulation 3(2), until—

- (a) 3rd February 2004; or
- (b) the date on which the Primary Care Trust notifies that doctor of its decision under regulation 4,

whichever is the earlier.

(3) Any doctor to whom paragraph (1) or (2) applies shall comply with regulation 9, if any of the events therein specified occur, as though he were included in the services list of a Primary Care Trust in whose area he is performing personal medical services.

(4) A doctor may not perform personal medical services by virtue of paragraph (1) or (2) during any period in which he is the subject of a suspension notice given by a Primary Care Trust under paragraph (5).

(5) A Primary Care Trust may give a suspension notice to a doctor to whom paragraph (1) or (2) applies where it is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest.

(6) A Primary Care Trust may withdraw a suspension notice it has given under paragraph (5) at any time.

(7) During a period of suspension payments may be made to or in respect of the doctor by the Primary Care Trust in accordance with a determination by the Secretary of State.

(8) Where a Primary Care Trust—

- (a) has received an application from a doctor to whom paragraph (1) or (2) applies; and
- (b) becomes aware in respect of that doctor of any of the matters listed in regulation 10(1),

it shall immediately decide the doctor's application to be included in its services list.

(9) A Primary Care Trust may publish a list of doctors whose applications it has approved for inclusion in its services list prior to 3rd February 2004.

(10) In this regulation any reference to a doctor performing personal medical services shall be taken as including a doctor, whose name was not included in either a medical list or a supplementary list on 2nd November 2003, but who was assisting in the provision of general medical services on that date, when named as a performer of personal medical services in an agreement under section 2 of the Primary Care Act (provision of personal medical services under a pilot scheme)(**38**).