
STATUTORY INSTRUMENTS

2004 No. 585

**The National Health Service
(Performers Lists) Regulations 2004**

PART 1

GENERAL PROVISIONS AS TO PERFORMERS LISTS

Interpretation and modification

2.—(1) In these Regulations—

“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);

“armed forces” means the United Kingdom Armed Forces of Her Majesty;

“contingent removal” shall be construed in accordance with regulation 12;

“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(3);

“fraud case” means a case where a person satisfies the second condition for removal from the performers list, set out in section 49F(3)(4) or, by virtue of section 49H(5), is treated as doing so;

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

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

(3) Section 49S was inserted by the 2001 Act, section 27(1) and amended by the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (“the 2002 Act”), Schedule 1, paragraph 18.

(4) Section 49F was inserted by the 2001 Act, s. 25 and amended by the 2002 Act, Schedule 2, paragraph 21; provision corresponding to it may be made by virtue of the 2003 Act, s. 28X(4).

(5) Section 49H was inserted by the 2001 Act, s. 25; provision corresponding to it may be made by virtue of the 2003 Act, s. 28X(4).

“licensing or regulatory body” means a body that licenses or regulates any profession of which the performer 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 licenses 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)(6), a medical list, a services list or a supplementary list;

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

“medical performers list” means a list of medical practitioners prepared and published pursuant to regulation 3(1);

“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 performer under section 49N;
- (b) to nationally disqualify a performer 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 and Security Management Service (Establishment and Constitution) Order 2002(9);

“notice” means a notice in writing (including electronically) and “notify” shall be construed accordingly;

“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;

“performer” means a health care professional;

“performers list” means a list prepared and published pursuant to regulation 3(1);

“previous list” means a list in which the performer’s name was included prior to his inclusion in the performers list;

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

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

(6) Section 49N(1) was inserted by the 2001 Act, section 25 and amended by the 2002 Act, Schedule 2, paragraph 25 and the 2003 Act, Schedule 11, paragraph 24.

(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.

(10) [1997 c. 46](#).

“relevant body” means the body for the time being mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(11), which regulates the profession of the performer;

“relevant performers list” means the medical performers list;

“relevant Part” means Part 2;

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

“Services List Regulations” means the National Health Service (Personal Medical Services) (Services List) and the (General Medical Services) and (General Medical Services Supplementary List) Amendment Regulations 2003(12);

“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(13);

“suspended”, unless the context otherwise requires, means—

- (a) suspended by a Primary Care Trust or equivalent body under section 49I(14) or 49J(15), regulations made under section 43D(16) or under section 8ZA(17) 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(18), 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(19) 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(20); and

all references to sections are to sections of the National Health Service Act 1977, except where specified otherwise.

(2) The provisions of this Part shall have effect subject to any modification or further provision in the relevant Part.

(11) 2002 c. 17.

(12) S.I. 2003/2644.

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

(14) Section 49I was inserted by the 2001 Act, s. 25 and amended by the 2002 Act, Schedule 2, paragraph 21; provision corresponding to it may be made by virtue of the 2003 Act, s. 28X(4).

(15) Section 49J was inserted by the 2001 Act, s. 25 and amended by the 2002 Act, Schedule 2, paragraph 22; provision corresponding to it may be made by virtue of the 2003 Act, s. 28X(4).

(16) Section 43D was inserted by the 2001 Act, s. 24 and amended by the 2002 Act, Schedule 2, paragraph 20 and the 2003 Act, Schedule 11, paragraph 20.

(17) Section 8ZA was inserted by section 26(2) of the 2001 Act and amended by the 2002 Act, Schedule 3, paragraph 3.

(18) Section 28DA was inserted by the 2001 Act, s. 26(1).

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

(20) 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.

Performers lists

3.—(1) A Primary Care Trust shall prepare and publish a medical performers list in accordance with this Part, as modified or supplemented by the relevant Part.

(2) Performers lists shall be available for public inspection.

Application for inclusion in a performers list

4.—(1) An application by a performer for the inclusion of his name in a performers 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, certificate and consents required by paragraphs (3) and (6), any declaration required under paragraph (4) or (5) and any further information, undertakings, consents or declarations required under paragraph (7) or the relevant Part.

(2) The performer 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) chronological details of his professional experience (including the starting and finishing dates of each appointment together with an explanation of any gaps between appointments) with any additional supporting particulars, and an explanation of why he was dismissed from any post;
- (f) 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 performer 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;
- (g) 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;
- (h) details of any list or 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;
- (i) if he is the director of any body corporate that is included in any list or 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; and
- (j) 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.

(3) The performer shall provide the following undertakings, certificate and consent—

- (a) undertaking to provide the declarations and document, if applicable, required by regulation 9;
- (b) 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 or, if his name is included in the performers list, at any time when his name is included in that list;
- (c) 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;

- (d) undertaking to co-operate with an assessment by the NCAA, when requested to do so by the Primary Care Trust;
 - (e) undertaking, except where the relevant Part provides to the contrary, to participate in the appraisal system provided by a Primary Care Trust;
 - (f) an enhanced criminal record certificate, under section 115 of the Police Act 1997⁽²¹⁾, in relation to himself; and
 - (g) consent to the disclosure of information in accordance with regulation 9.
- (4) The performer 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⁽²²⁾ or a penalty under section 115A of the Social Security Administration Act 1992⁽²³⁾;
 - (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;
 - (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 Trust's or body's lists or 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 a Primary Care Trust or equivalent body, or is currently suspended from such a list and if so, why and the name of that 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.

(5) If the performer 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—

⁽²¹⁾ 1997 c. 50.

⁽²²⁾ 1995 c. 46.

⁽²³⁾ 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

- (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;
- (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 those proceedings, and any outcome.

(6) The performer 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 him or a body corporate referred to in paragraphs (2) and (5) and, for the purposes of this paragraph, “employer” includes any partnership of which the performer is or was a member.

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

Readmission

5.—(1) Where a performer has been removed from its performers 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, it may agree to include him in its performers 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 him 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 performer from its performers list shall once again have effect.

Decisions and grounds for refusal

6.—(1) The grounds on which a Primary Care Trust may refuse to include a performer in its performers list are, in addition to any prescribed in the relevant Part, that—

- (a) having considered the declaration required by regulation 4(4) and (if applicable) regulation 4(5), and any other information or documents in its possession relating to him, it considers that he is unsuitable to be included in its performers list;

- (b) having contacted the referees provided by him under regulation 4(2)(f), it is not satisfied with the references;
 - (c) 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 him, which that Service shall supply, and, having considered these and any other facts in its possession relating to fraud involving or relating to him, the Trust considers these justify such refusal;
 - (d) 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 performer, which he shall supply, and, having considered these and any other facts in its possession involving or relating to the performer, the Trust considers these justify such refusal; or
 - (e) there are any grounds for considering that admitting him to its performers list would be prejudicial to the efficiency of the services, which those included in that list perform.
- (2) The grounds on which a Primary Care Trust must refuse to include a performer in its performers list are, in addition to any prescribed in the relevant Part, that—
- (a) he has not provided satisfactory evidence that he intends to perform the services, which those included in the relevant performers list perform, in its area;
 - (b) it is not satisfied he has the knowledge of English which, in his own interests or those of his patients, is necessary in performing the services, which those included in the relevant performers list perform, in its area;
 - (c) he has been convicted in the United Kingdom of murder;
 - (d) he has been convicted in the United Kingdom of a criminal offence, committed on or after the day prescribed in the relevant Part, and has been sentenced to a term of imprisonment of over six months;
 - (e) he is subject to a national disqualification;
 - (f) he has not updated his application in accordance with regulation 7(4); or
 - (g) in a case to which regulation 15(4) applies, he does not notify it under regulation 15(5) that he wishes to be included in its performers list subject to the specified conditions.
- (3) Before making a decision on the performer's application, the Primary Care Trust shall—
- (a) check, as far as reasonably practicable, the information he provided, in particular that provided under regulation 4(4) and (if applicable) (5) or as required by the relevant Part, and shall ensure that it has sight of relevant documents;
 - (b) check with the NHS Counter Fraud and Security Management Service whether he has any record of fraud, which information that Service shall supply;
 - (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 performer, which information he shall supply; and
 - (d) take up the references that he provided under regulation 4(2)(f).
- (4) Where the Primary Care Trust is considering a refusal of the performer's application 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), (c) or (d)—
- (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 the services, which those included in the relevant performers list perform, 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⁽²⁴⁾ applies, or if it had been committed in England or Wales, would have applied;
 - (g) whether he 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 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.
- (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 the Primary Care Trust has decided whether or not to include a performer in its performers list, it shall notify him within 7 days of that decision of—
- (a) that decision; and
 - (b) if it has decided not to include him, the reasons for that (including any facts relied upon) and of any right of appeal under regulation 15 against that decision.

Deferment of decision on application

7.—(1) A Primary Care Trust may defer a decision on a performer's application to be included in a performers list, where—

- (a) there are, in respect of him—
 - (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 his removal from its performers list, if he were to be included in it;
- (b) in respect of a body corporate of which he 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 his removal from its performers list, if he were to be included in it;
- (c) there is an investigation anywhere in the world by his 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 his removal from its performers list, if he were to be included in it;
- (d) he is suspended from any list or equivalent list;

(24) 1997 c. 51.

- (e) a body corporate of which he 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 equivalent list;
 - (f) the FHSAA is considering an appeal by him against a decision of a Primary Care Trust to refuse to include him in its performers 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 Trust would be likely to remove him from its performers list, if he were to be included in it;
 - (g) the FHSAA is considering an appeal by a body corporate of which he is, has in the preceding six months been, or was at the time of the originating events a director, against a decision of a Primary Care Trust or equivalent body to refuse to admit the body corporate to its list, or to conditionally include it in or to remove or contingently remove it from any list kept by a Primary Care Trust or equivalent body, and if that appeal is unsuccessful the Trust would be likely to remove him from its performers list, if he were to be included in it;
 - (h) he 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 his removal from the Trust's performers list, if he were to be included in it;
 - (i) a body corporate, of which he 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 his removal from the Trust's performers list, if he were to be included in it; and
 - (j) the FHSAA is considering an application from a Primary Care Trust for the national disqualification of him or a body corporate of which he is, has in the preceding six months been, or was at the time of the originating events a director.
- (2) The 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 (j) is known.
- (3) The Primary Care Trust must notify the performer 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 performer that he must within 28 days of the date of the notification (or such longer period as it 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 performer as soon as possible that—
- (a) his application to be included in its performers list has been successful; or
 - (b) it has decided to refuse the application or impose conditions on his inclusion, and of the reasons for that (including any facts relied upon), and of any right of appeal under regulation 15.

Conditional inclusion

8.—(1) A Primary Care Trust may determine that, if a performer is to be included in its performers list, he is to be subject, while he remains included in that performers list, to the imposition of conditions, having regard to the requirements of section 28X(6) (preventing fraud or prejudice to the efficiency of the service).

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

(3) Where the Primary Care Trust is considering the removal of a performer from its performers 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 it 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 it, 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 decide the matter and, within 7 days of making that decision, notify the performer of—

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

(5) If there are representations, the Primary Care Trust must take them into account before reaching its decision and shall then, within 7 days of making it, notify the performer of—

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

(6) If the performer requests an oral hearing, this must take place before the Primary Care Trust reaches its decision, and it must then, within 7 days of making that decision, notify him of—

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

(7) When the Primary Care Trust notifies the performer 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 it gave him the notice informing him of its decision and shall tell him how to exercise any such right.

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

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

- (a) may be included in its performers list, but subject to conditions imposed under this regulation; or
- (b) is to be subject to conditions while he remains included in its performers list,

his name may be included (or continue to be included) in its performers 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 he agrees in writing to be bound by the conditions imposed until the time for appeal has expired or the appeal is decided.

Requirements with which a performer in a performers list must comply

9.—(1) A performer, who is included in a performers 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⁽²⁵⁾ or a penalty under section 115A of the Social Security Administration Act 1992⁽²⁶⁾;
- (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;
- (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 informed 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 informed of the outcome of any such investigation, where it is 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 informed 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 equivalent list; or
- (m) is removed, contingently removed or suspended from, refused admission to, or conditionally included in, any list or 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 those proceedings, and any outcome.

(2) A performer, who is included in a performers 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—

- (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;
- (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 informed 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 it;
- (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 informed 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 equivalent list; or
- (h) is removed, contingently removed or suspended from, refused admission to, or conditionally included in any list or equivalent list,

⁽²⁵⁾ 1995 c. 46.

⁽²⁶⁾ 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

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 those proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(3) A performer, who is included in a performers 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 performer or a body corporate referred to in paragraphs (1) and (2) and, for the purposes of this paragraph, “employer” includes any partnership of which the performer is or was a member.

(4) A performer, who is included in a performers list of a Primary Care Trust, shall supply it with an enhanced criminal record certificate under section 115 of the Police Act 1997(27) in relation to himself, if it at any time, for reasonable cause, it requests him to provide such a certificate.

(5) Subject to paragraph (6), a performer, who is included in a performers list of a Primary Care Trust, shall comply with any undertaking he gave on admission to that list or to any previous list from which he has been transferred pursuant to Schedule 1.

(6) A performer, who is included in a relevant performers list of a Primary Care Trust, shall act in accordance with the undertakings that a performer is required by these Regulations to provide when applying for inclusion in that relevant performers list.

(7) A performer, who is included in a performers list of a Primary Care Trust, shall, except where the relevant Part provides to the contrary—

- (a) participate in the appraisal system provided by a Primary Care Trust; and
- (b) if the appraisal is not conducted by the Trust in whose list he is included, send that Trust a copy of the statement summarising that appraisal.

Removal from performers list

10.—(1) The Primary Care Trust must remove the performer from its performers 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 the day prescribed in the relevant Part, and has been sentenced to a term of imprisonment of over six months;
- (c) is subject to a national disqualification;
- (d) has died; or
- (e) is no longer a member of the relevant health care profession.

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

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

the Trust shall remove him from its performers list and shall notify him immediately that it has done so.

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

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

- (a) his continued inclusion in its performers list would be prejudicial to the efficiency of the services which those included in the relevant performers list perform (“an efficiency case”);
 - (b) he is involved in a fraud case in relation to any health scheme; or
 - (c) he is unsuitable to be included in that performers 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 the armed forces;
 - (b) services provided by Port Health Authorities constituted under the Public Health (Control of Disease) Act 1984⁽²⁸⁾;
 - (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⁽²⁹⁾; and
 - (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.
- (6) Where the performer cannot demonstrate that he has performed the services, which those included in the relevant performers list perform, within the area of the Primary Care Trust during the preceding twelve months, it may remove him from its performers list.
- (7) Subject to any provision in the relevant Part, in calculating the period of twelve months referred to in paragraph (6), the Primary Care Trust shall disregard any period during which—
- (a) the performer was suspended under these Regulations; or
 - (b) he was performing whole time service in the armed forces in a national emergency (as a volunteer or otherwise), compulsory whole-time service in the armed forces (including service resulting from reserve liability), or any equivalent service, if liable for compulsory whole-time service in the armed forces.
- (8) Where a Primary Care Trust is considering removing a performer from its performers list under paragraphs (3) to (6) or regulations 8(2), 12(3)(c) or 15(6)(b) or contingently removing a performer under regulation 12(1), it shall give him—
- (a) notice of any allegation against him;
 - (b) notice of what action it is considering and on what grounds;
 - (c) the opportunity to make written representations to it 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 it, 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 decide whether or not to remove the performer and then, within 7 days of making that decision, notify him of—
- (a) that decision and the reasons for it (including any facts relied upon); and
 - (b) any right of appeal under regulation 15.
- (10) If there are representations, the Primary Care Trust must take them into account before reaching its decision, and shall then, within 7 days of making that decision, notify him of—
- (a) that decision and the reasons for it (including any facts relied upon); and
 - (b) any right of appeal under regulation 15.

⁽²⁸⁾ 1984 c. 22.

⁽²⁹⁾ 1952 c. 52.

(11) If the performer requests an oral hearing, this must take place before the Primary Care Trust reaches its decision, and it shall then, within 7 days of making that decision, notify him of—

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

(12) When the Primary Care Trust notifies the performer 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 it informed him of its decision and it shall tell him how to exercise any such right.

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

(14) Where the Primary Care Trust decides to remove a performer under paragraph (6), he shall not be removed from its performers list, until—

- (a) a period of 28 days starting with the day on which it 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 performer from its performers list under regulation 10(3) and (4)(c) (“an unsuitability case”), it shall—

- (a) consider any information relating to him 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 performer, which information he shall supply if the Trust so requests; 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 relevant primary 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⁽³⁰⁾ applies, or if it had been committed in England and Wales, would have applied;
- (g) whether the performer has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from any list or 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

(30) 1997 c. 51.

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 performer from its performers list under regulation 10(3) and (4)(b) it shall consider—

- (a) any information relating to him 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 performer, which information he shall supply, if the Trust so requests; 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 relevant primary services and the likely risk to patients or to public finances;
- (f) whether the performer has been refused admittance to, conditionally included in, removed, or contingently removed or is currently suspended from, any list or 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 performer from its performers list under regulation 10(3) and (4)(a) (“an efficiency case”), it shall—

- (a) consider any information relating to him 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 performer, which information he shall supply, if the Trust so requests; 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 services, which the performer 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 performer has ever failed to comply with a request to undertake an assessment by the NCAA;
- (f) whether he has previously failed to supply information, make a declaration or comply with an undertaking required on inclusion in a list;
- (g) whether he has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from any list or 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 performer of which it is aware, whichever condition it relies on.

(8) When making a decision on any condition in regulation 10(4), 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 performer from its performers 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 performers 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 determines that the performer 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 performers 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 performer from its performers list, in accordance with the provisions of this regulation—

- (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 him of a court anywhere in the world or of a licensing or regulatory body;
- (c) where it has decided to remove him, but before that decision takes effect; or
- (d) pending appeal under these Regulations.

(2) Subject to paragraph (8), 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) Subject to paragraph (8), in a case falling within paragraph (1)(b), the Primary Care Trust may specify that the performer 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 under paragraph (1)(a) or (b) 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 performer in a case falling within paragraph (1)(c) or (d), the suspension has effect from the date the Primary Care Trust informed him of the suspension until—

- (a) the expiry of any appeal period; or
- (b) if he appeals under regulation 15, 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 performer is suspended under these Regulations, he is to be treated as not being included in the Primary Care Trust's performers list, even though his name appears in it.

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

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

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

(12) If the performer does not wish to have an oral hearing or does not attend the oral hearing, the Primary Care Trust may suspend the performer with immediate effect.

(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 performer with immediate effect following the hearing.

(15) The Primary Care Trust shall notify the performer 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 notify the performer of any right of review under regulation 14.

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

(18) If a payment is made pursuant to a determination under paragraph (17), but the payee was not entitled to receive all or any part thereof, if the amount to which he was not entitled has not been recovered by other means, it may be recovered as a civil debt.

(19) If a performer is dissatisfied with a decision of a Primary Care Trust (“the original decision”) —

- (a) to refuse to make a payment to or in respect of him pursuant to a determination under paragraph (17);
- (b) to make a payment to or in respect of him pursuant to a determination under paragraph (17), but at a lower level than the level to which he considers to be correct; or
- (c) in respect of recovery of what the Primary Care Trust considers to be an overpayment,

he may ask the Primary Care Trust to review the original decision and, if he does so, it shall reconsider that decision, and once it has done so, it must notify the performer in writing of the decision that is the outcome of its reconsideration of its original decision (“the reconsidered decision”) and give him notice of the reasons for its reconsidered decision.

(20) If the performer remains dissatisfied (whether on the same or different grounds), he may appeal to the Secretary of State by giving him a notice of appeal within a period of 28 days beginning on the day that the Primary Care Trust notified him of the reconsidered decision.

(21) A notice of appeal under paragraph (20) shall include—

- (a) the names and addresses of the parties to the disputed decision;
- (b) a copy of the reconsidered decision; and
- (c) a brief statement of the grounds for appeal.

(22) The Secretary of State shall thereafter send a written request to the parties to make, in writing and within a specified period, any representations they may wish to make about the matter (and the request to the Primary Care Trust shall include a copy of the performer’s brief statement of the grounds for appeal).

(23) Once the period specified pursuant to paragraph (22) has elapsed, the Secretary of State shall—

- (a) give a copy of any representations received from a party to the other party; and
- (b) request in writing a party to whom a copy of representations is given to make within a specified period any written observations which he or it wishes to make on those representations.

(24) Once the period specified pursuant to paragraph 23(b) has elapsed, the Secretary of State shall, as soon as is reasonably practicable, having taken into account any such representations or observations as referred to in paragraphs (22) and (23) (if submitted within the specified periods) and such other evidence as he sees fit to consider—

- (a) determine the appeal, and shall give notice of the determination (including a record of the reasons for it) to both parties; and
- (b) give the Primary Care Trust such directions in writing, if any, on the matter as he thinks fit.

Reviews

14.—(1) A Primary Care Trust may and, if requested in writing to do so by the performer, 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 him under regulation 13(1)(a) or (b), except where a suspension is continuing by order of the FHSAA.
- (2) A performer 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 that decision or, in the case of a conditional inclusion under regulation 8, beginning with the date it includes his name in its performers list.
- (3) After a review has taken place, the performer 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 performer, it shall give him—
- (a) notice of any allegation against him;
 - (b) notice of what action it is considering and on what grounds;
 - (c) the opportunity to make written representations to it 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 it, 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 notify the performer 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, within 7 days of making its decision, notify the performer of—
- (a) that 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.
- (8) If a Primary Care Trust decides to review its decision to impose conditions under regulation 8, it may vary the conditions, impose different conditions, remove the conditions or remove the performer from its performers list.
- (9) If a Primary Care Trust decides to review its decision to impose a contingent removal under regulation 12, it may vary the conditions, impose different conditions, or remove the performer from its performers list.
- (10) If a Primary Care Trust decides to review its decision to suspend a performer under regulation 13(1)(a) or (b), it may decide to impose conditions or remove him from its performers list.
- (11) A Primary Care Trust may not review its decision to suspend a performer under regulation 13(1)(c) or (d).

Appeals

- 15.**—(1) A performer may appeal (by way of redetermination) to the FHSAA against a decision of a Primary Care Trust mentioned in paragraph (2) by giving notice to the FHSAA.
- (2) The Primary Care Trust decisions in question are decisions—
- (a) to refuse admission to a performers list under regulation 6(1);

- (b) to impose a particular condition under regulation 8, or to vary any condition or to impose a different condition under that regulation;
 - (c) on a review, under regulation 14, of a conditional inclusion under regulation 8;
 - (d) to remove the performer under regulations 8(2), 10(3) or (6), 12(3)(c) or 15(6)(b);
 - (e) to impose a particular condition under regulation 12, or to vary any condition or to impose a different condition under that regulation;
 - (f) on a review, under regulation 14, of a contingent removal under regulation 12; and
 - (g) which the relevant Part prescribes that the performer may appeal to the FHSAA.
- (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 a performers list is to be subject to conditions, whether or not those conditions are identical with the conditions imposed by the Primary Care Trust, the Trust shall ask him to notify it within 28 days of the decision (or such longer period as the Trust may agree) whether he wishes to be included in its performers list subject to those conditions.
- (5) If the performer notifies the Primary Care Trust that he does wish to be included in its performers list subject to the conditions, it shall so include him.
- (6) Where the FHSAA on appeal decides to impose a contingent removal—
- (a) the Primary Care Trust and the performer may each apply to the FHSAA for the conditions imposed on the performer 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 performer from its performers list if it determines that he has failed to comply with any such condition.

Notification

16.—(1) Where a Primary Care Trust decides to—

- (a) refuse to admit a performer to its performers list on the grounds specified in regulation 6;
- (b) impose conditions on his inclusion in that list under regulation 8;
- (c) remove him from that list under regulation 10;
- (d) remove him from that list contingently under regulation 12; or
- (e) suspend 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 within 7 days of that decision—

- (a) the Secretary of State;
- (b) any other Primary Care Trust or equivalent body that, to the knowledge of the notifying Trust—
 - (i) has the performer on any list or equivalent list,
 - (ii) is considering an application for inclusion in any list or equivalent list by him, or
 - (iii) in whose area he performs services;
- (c) the Scottish Executive;
- (d) the National Assembly for Wales;
- (e) the Northern Ireland Executive;

- (f) the relevant body or any other appropriate regulatory body;
 - (g) the NCAA; 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—
- (a) persons or bodies that can establish that they are or were employing him, are using or have used his services or are or were considering employing him or using his services in a professional capacity; and
 - (b) a partnership which provides primary services and can establish that the performer is or was a member of the partnership or that it is considering inviting the performer to become such a member.
- (4) The matters referred to in paragraph (1) are—
- (a) his name, address and date of birth;
 - (b) his professional registration number;
 - (c) the date and a copy of the Primary Care Trust’s decision; and
 - (d) a contact name of a person in the Trust for further enquiries.
- (5) The Primary Care Trust shall send to the performer 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 performer.
- (7) Where a Primary Care Trust is notified by the FHSAA that it has imposed a national disqualification on a performer who was, or had applied to be included, in its performers 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 performers lists

- 17.—(1) A performer 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 its performers list and of any change of his private address.
- (2) Where a performer intends to withdraw from a performers list, unless it is impracticable for him to do so, he shall so notify the Primary Care Trust at least three months in advance of that date.
- (3) A performer shall notify the Primary Care Trust that he intends to withdraw from its relevant performers list if he is accepted on to any relevant performers list of another Primary Care Trust.
- (4) The Primary Care Trust shall on receiving notice from any performer—
- (a) pursuant to paragraph (1), amend its performers list as soon as possible;
 - (b) pursuant to paragraph (2), so amend its performers list, either—
 - (i) on the date notified by him, provided it falls at least three months after the date of the notice, or
 - (ii) on the date from which it has agreed that the withdrawal shall take effect, whichever is the earlier; or

- (c) pursuant to paragraph (3), remove his name from its performers list as soon as it confirms that he has been accepted on that other list.
- (5) A performer may withdraw a notice given pursuant to paragraph (1) or (2) at any time before the Primary Care Trust removes his name from its performers list.
- (6) A notice given pursuant to paragraph (3) may not be withdrawn once the performer has been accepted on that other list.

Restrictions on withdrawal from performers lists

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

- (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),

he may not withdraw from any list kept by any 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 Trust.

(2) Where a Primary Care Trust has decided to remove a performer from its performers 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, he may not withdraw from any list kept by any 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 performer under regulation 13(1)(b), he may not withdraw from any list kept by any 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 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)(**31**), 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 performer 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 performer 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

(31) Section 49N was inserted by the 2001 Act, section 25, and amended by the 2002 Act, Schedule 2, paragraph 25 and the 2003 Act, section 184 and Schedule 11, paragraph 24.

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.—(1) The Primary Care Trust may disclose information about a performer 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—
 - (i) which has him on any of its lists,
 - (ii) which is considering an application from him for inclusion on any of its lists, or
 - (iii) in whose area he performs the services in question;
- (c) the Scottish Executive;
- (d) the National Assembly for Wales;
- (e) the Northern Ireland Executive;
- (f) the NCAA;
- (g) the relevant body or any other licensing or regulatory body;
- (h) any organisation or employer that, to the knowledge of the Primary Care Trust, is employing him, using his services or considering employing him or using his services in a professional capacity;
- (i) any partnership, which provides primary services, of which, to the knowledge of the Primary Care Trust, the performer is a member or that is considering inviting the performer to become a member; and
- (j) where an allegation of fraud is being considered, the NHS Counter Fraud and Security Management Service.

(2) The Primary Care Trust shall disclose to the Secretary of State information supplied to it or acquired by it pursuant to these Regulations as he may from time to time request.