

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (PERFORMERS LISTS) (ENGLAND)
(AMENDMENT) REGULATIONS 2020

2020 No. 411

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments

2. Purpose of the instrument

- 2.1 These regulations amend regulation 24(1) of the National Health Service (Performers Lists) (England) (Amendments) Regulations 2013 (“the 2013 Regulations”). They amend the 2013 Regulations (as amended) to allow medical practitioners who are not general practitioners to provide such services without being on the performers list if they are employed or are registered with bodies designated under the Medical Profession (Responsible Officers) Regulations 2010.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument will come into force within 21 days of being laid before Parliament. This instrument is also being laid during a recess period that, it is acknowledged, may extend beyond its currently scheduled 4-week period. Laying during a potentially lengthy recess period, and the short time between the laying date and this instrument being brought into force, is so that the provisions are available with immediate effect in the context of the coronavirus pandemic.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England only.
- 4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 This instrument is being made by the Secretary of State, in exercise of the powers conferred by sections 91(1) and 272(7) of the National Health Service Act 2006(a).

7. Policy background

What is being done and why?

- 7.1 The National Health Service (Performers Lists) Regulations 2004 Regulations came into force on 1 April 2004 and provide Clinical Commissioning Groups (CCGs) with a framework for managing medical, dental and ophthalmic practitioners undertaking primary care services in their area.
- 7.2 Performers are required to be named on a performers list maintained by the NHS Commissioning Board in order to perform NHS primary care services. This is to ensure that only those performers who are suitable to undertake such clinical services are able to do so.
- 7.3 Currently medical practitioners cannot provide primary medical services for the NHS unless they are on a performers list. This constrains the ability of non-GP doctors to work in primary care. In the current context of the coronavirus pandemic, this is a barrier to deploying doctors other than general practitioners in a primary care setting. This may limit the ability to continue to provide primary care services during the epidemic period.
- 7.4 These Regulations allow medical practitioners who are not general practitioners to provide such services without being on a performers list so long as they are employed or are registered with bodies designated under the Medical Profession (Responsible Officers) Regulations 2010. These are bodies such as NHS provider organisations, the Department of Health and Social Care and the armed forces.
- 7.5 This instrument is being made in order to allow the NHS to adapt its current operating procedures for medical practitioners to respond to the Covid-19 emergency. It sits alongside powers in the Medical Act to carry out the emergency registration of medical practitioners. They allow medical practitioners to be deployed in primary care in a more flexible way. This amendment to the performers list regulations is temporary. The current arrangements will be restored at the end of the emergency period.
- 7.6 Officials have consulted with the General Medical Council (GMC) and NHS England and Improvement (NHSEI) to identify a group of doctors who would be available to be deployed quickly into primary care during the emergency period.
- 7.7 Under these regulations, non-GPs can be deployed into primary care if they meet any of the following criteria:
- are directly employed by a designated body (the organisation that a doctor connects to for appraisal and revalidation purposes);
 - are registered with a framework locum agency that is a designated body;
 - hold practising privileges with an independent provider that is a designated body

- 7.8 This covers more than 95% of doctors who hold GMC registration and a licence to practise and therefore builds in the necessary capacity to be able to operate with flexibility during the peak of the epidemic.
- 7.9 Non-GPs returning to join the GMC's temporary register are not covered in the regulations as they will not have a link to a designated body and will therefore not be available to work in primary care. They are considered to be a higher risk group and are not suitable to provide primary care services for the following reasons:
- a lack of recent experience of clinical practice (the GMC's temporary register is open to medical practitioners who left the register up to six years ago);
 - a lack of familiarity of working in a primary care setting; and
 - this group of medical practitioners do not have a relationship with a designated body (which provides assurance in relation to pre-employment checks).
- 7.10 Officials have engaged with the Royal College of GPs (RCGP), the British Medical Association (BMA), the GMC and colleagues in NHSEI on the level of support, induction and supervision that will be needed for doctors who do not normally work in primary care. Any doctor working in the community and/or general practice should have the necessary competency and should only work within their own professional expertise.
- 7.11 These organisations are developing guidance for providers on what the changes mean and for how local decisions should be made on the suitability of non-GP medical practitioners to provide primary care services.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 None

10. Consultation outcome

- 10.1 The Department has consulted with key stakeholders and representative bodies on the proposed changes and considers that shortened engagement is necessary and proportionate in the context of the coronavirus pandemic.

11. Guidance

- 11.1 NHS England and NHS Improvement will produce guidance for providers and medical practitioners on the regulation. The guidance will set out how local organisations should make a decision on the suitability of non-GP medical practitioners to work in primary care and on the induction and supervision arrangements that should be in place. The guidance will also be of interest to regulatory bodies and other organisations providing assistance or advice to medical practitioners.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the SI relates to emergency measures that will be required the duration of the worldwide health pandemic. The changes will not be in force for any period beyond that.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 As the amendments will only be in place for as long as the Secretary of State considers that an emergency situation exists no monitoring or review provisions have been made in this instrument.

15. Contact

- 15.1 Jon Stones at the Department of Health and Social Care Telephone: 0113 254 5458 or email: jonathan.stones@dhsc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Mark Bennett at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Matt Hancock, Secretary of State for Health and Social Care, can confirm that this Explanatory Memorandum meets the required standard.