

2023 No. 525

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Performers Lists) (England)
(Amendment) Regulations 2023**

Made - - - - at 12.30 p.m. on 10th May 2023

Laid before Parliament at 4.15 p.m. on 10th May 2023

Coming into force - - 31st May 2023

The Secretary of State, in exercise of the powers conferred by sections 91, 106, 123, 272(7) and (8) and 275(1) of the National Health Service Act 2006(a) makes the following Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the National Health Service (Performers Lists) (England) (Amendment) Regulations 2023 and come into force on 31st May 2023.

(2) These Regulations extend to England and Wales only.

Amendments to the National Health Service (Performers Lists) (England) Regulations 2013

2. The National Health Service (Performers Lists) (England) Regulations 2013(b) are amended in accordance with regulations 3 to 7.

Consideration of applications

3. After regulation 5 (consideration of applications) insert—

“Applications from Practitioners included in an equivalent list

5A.—(1) The Board must, as soon as reasonably practicable after receiving an application for inclusion in a performers list, include the Practitioner on that list for the period specified in paragraph (2) if—

- (a) the Practitioner is already included in an equivalent list (and is not suspended from inclusion in that list);
- (b) the Practitioner’s inclusion in the equivalent list is not subject to any conditions;

(a) 2006 c. 41. Section 91 was amended by section 55 of, and paragraph 35 of Schedule 4 to, the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”), and by section 1 of, and paragraph 1 of Schedule 1 to, the Health and Care Act 2022 (c. 31) (“the 2022 Act”). Section 106 was amended by section 55 of, and paragraph 47 of Schedule 4 to, the 2012 Act, and by section 1 of, and paragraph 1 of Schedule 1 to, the 2022 Act. Section 123 was amended by section 55 of, and paragraph 60 of Schedule 4 to, the 2012 Act, and by section 1 of, and paragraph 1 of Schedule 1 to, the 2022 Act. Section 275 is cited for the meaning of “prescribed” and “regulations”.

(b) S.I. 2013/335, as amended by S.I. 2015/362, 2016/686, 2020/411 and 2021/30; there are other amending instruments but none are relevant.

- (c) the authority responsible for the equivalent list—
 - (i) has not notified the Practitioner that it is considering removing the Practitioner from that list, imposing conditions, or suspending inclusion in that list, or
 - (ii) if it has so notified the Practitioner, has subsequently notified the Practitioner that it has decided not to remove the Practitioner, impose any conditions, or suspect inclusion, as the case may be; and
 - (d) the Practitioner has not previously made any other application to the Board for inclusion in a performers list which the Board has refused (and that refusal has not been challenged successfully on appeal).
- (2) The period referred to in paragraph (1) is—
- (a) the period beginning with the date on which the Board receives the application and ending with the date on which the Board, after considering the application in accordance with regulation 5 (consideration of applications), notifies the Practitioner that the Practitioner will—
 - (i) continue to be included in the performers list,
 - (ii) be removed from the performers list, or
 - (iii) continue to be included in the performers list subject to conditions; or
 - (b) if the Board does not so notify the Practitioner before the end of the period of three months beginning with the date on which the Board receives the application, that period.
- (3) Paragraph (1) and the ending of the Practitioner’s inclusion in a performers list by virtue of paragraph (2)(b) are without prejudice to—
- (a) regulation 5;
 - (b) any decision the Board may make, after considering the application in accordance with regulation 5, to include the Practitioner in the performers list;
 - (c) any decision the Board may make, after considering the application in accordance with regulation 5, refusing to include the Practitioner in the performers list under regulation 7 (decisions and grounds for refusal);
 - (d) any decision the Board may make, after considering the application in accordance with regulation 5, imposing conditions on the Practitioner’s inclusion in the performers list under regulation 10 (conditions).”.

Interpretation: foundation training

4. In regulation 30(2)(c) (interpretation: foundation training) for “and has not completed foundation training” substitute “and has not satisfactorily completed foundation training”.

Application for inclusion in the dental performers list

5. In regulation 33 (application for inclusion in the dental performers list)—
- (a) for paragraph (2)(b) substitute—
 - “(b) unless the dental practitioner is undertaking foundation training, or is exempt under regulation 34(4) from the requirement to undertake foundation training, evidence that the dental practitioner has satisfactorily completed such training;”;
 - (b) in paragraph (3)(a)(ii) after “to complete that training” insert “satisfactorily”; and
 - (c) in paragraph (3)(a)(iii) before “completion” insert “satisfactory”.

Additional grounds for refusal

6. In regulation 34 (additional grounds for refusal)—
- (a) in paragraph (2) before “completed” insert “satisfactorily”;

(b) for paragraph (4) substitute—

“(4) A dental practitioner is exempt from the requirement to undertake foundation training—

- (a) if the dental practitioner is judged, through an assessment by the Board, to have knowledge and experience equivalent to that of a dental practitioner who has satisfactorily completed foundation training; or
- (b) for a period during which the dental practitioner participates in an induction programme in accordance with paragraphs (5) to (7).”;

(c) After paragraph (4) insert—

“(5) For the purposes of paragraph (4)(b), where the dental practitioner is judged, through an assessment by the Board, to have the knowledge and experience necessary to perform primary dental services to a standard that does not prejudice the efficiency of those services, the Board may specify the requirements for an induction programme which the dental practitioner must participate in.

(6) The specified requirements of an induction programme must have the aim that, after completing the programme, the dental practitioner is able to satisfy the Board that they have knowledge and experience equivalent to that of a dental practitioner who has satisfactorily completed foundation training.

(7) Where the Board specifies the requirements for an induction programme, it must specify a period of no more than two years during which the dental practitioner must participate in the induction programme.

(8) Regulations 32 (contents of the dental performers list), 33 (application for inclusion in the dental performers list) and 35(1)(b) (grounds for removal from the dental performers list) apply to a dental practitioner participating in an induction programme as if they were a dental practitioner undertaking foundation training.”.

Grounds for removal from the dental performers list

7. In regulation 35 (grounds for removal from the dental performers list) for paragraph (1)(b) substitute—

“(b) the dental practitioner—

- (i) is not exempt under regulation 34(4) from the requirement to undertake foundation training,
- (ii) has failed to complete foundation training satisfactorily, and
- (iii) has not withdrawn from the dental performers list pursuant to regulation 33(3)(a)(ii).”.

Signed by authority of the Secretary of State for Health and Social Care

At 12.30 p.m. on 10th May 2023

Neil O'Brien
Parliamentary Under Secretary of State,
Department of Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

Regulation 3 inserts a new regulation 5A into the 2013 Regulations to provide that where a practitioner makes an application for inclusion in a performers list in England and is already included in an equivalent list in Scotland, Wales or Northern Ireland, the practitioner must be included on the relevant performers list in England on a provisional basis, until the Board notifies the practitioner of its decision or a period of three months elapses, whichever is sooner.

Regulation 6 amends regulation 34 of the 2013 Regulations to revoke the exemptions from the requirement to undertake foundation training which apply to dental practitioners with qualifications from an EU member state, with experience in community dental service or the armed forces, or who are assessed by a post-graduate dental dean or director of postgraduate dental education to have the necessary knowledge or experience. Regulation 34(4) is amended to provide two exemptions in their place. The first is where a dental practitioner is judged, through an assessment by the Board, to have knowledge and experience equivalent to that of a dental practitioner who has satisfactorily completed foundation training. The second is where a dental practitioner is participating in an induction programme specified by the Board.

Regulations 4, 5, and 7 make minor amendments related to the amendments made by regulations 3 and 6.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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