

2023 No. 828

NATIONAL HEALTH SERVICE, ENGLAND

**The National Health Service (Performers Lists) (England)
(Amendment) (No. 2) Regulations 2023**

Made - - - - *18th July 2023*
Laid before Parliament *19th July 2023*
Coming into force - - *18th September 2023*

The Secretary of State, in exercise of the powers conferred by sections 91, 106, 123, 159(9), 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) (No. 2) Regulations 2023 and come into force on 18th September 2023.

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

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

2.—(1) The National Health Service (Performers Lists) (England) Regulations 2013(b) are amended in accordance with regulations 3 to 19.

(2) In these Regulations, references to “the 2013 Regulations” are references to the National Health Service (Performers Lists) (England) Regulations 2013.

Interpretation

3. In regulation 2 (interpretation) of the 2013 Regulations after the definition of “relevant Part” insert the following definition—

““returning practitioner” means a Practitioner who was included in a performers list at any time before making an application for inclusion in a performers list;”.

Application for inclusion in a performers list

4. In regulation 4 (application for inclusion in a performers list) of the 2013 Regulations—

(a) 2006 c. 41. Section 91 was amended by paragraph 35 of Schedule 4 to the Health and Social Care Act 2012 (c. 7) (“the 2012 Act”), and by paragraph 1 of Schedule 1 to the Health and Care Act 2022 (c. 31) (“the 2022 Act”). Section 106 was amended by paragraph 47 of Schedule 4 to the 2012 Act, and by paragraph 1 of Schedule 1 to the 2022 Act. Section 123 was amended by paragraph 60 of Schedule 4 to the 2012 Act, and by 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. 2013/1869, 2015/362, 2015/1862, 2016/686, 2017/960, 2019/248, 2020/411, 2021/30 and 2023/525.

- (a) in paragraph (2)—
 - (i) after “The Practitioner must provide the following” insert “, subject to paragraph (9)”;
 - (ii) omit sub-paragraph (b);
 - (iii) in sub-paragraph (e) omit “together with an explanation of any gaps between appointments”;
 - (iv) after sub-paragraph (h) insert—
 - “(ha) confirmation of whether the Practitioner is or at any time has been included in an equivalent list;”;
 - (v) at the end of sub-paragraph (l) omit “and”;
 - (vi) after sub-paragraph (m) insert—
 - “; and
 - (n) if the Practitioner has resided in a country other than the United Kingdom for 12 months or more (whether in a continuous period or otherwise) while over the age of 18 years during the period of 5 years immediately before making the application—
 - (i) a certificate issued by an authority of that country which is equivalent to an enhanced criminal record certificate referred to in paragraph (m), or
 - (ii) if the Practitioner is unable to obtain such a certificate, a statement in writing demonstrating that the Practitioner has taken all reasonable steps to obtain such a certificate.”;
- (b) in paragraph (3)(b) after “the information provided in” insert “or with”;
- (c) after paragraph (8) insert—
 - “(9) This regulation applies to—
 - (a) a returning practitioner as if paragraph (2)(c), (e), (f) and (h) were omitted;
 - (b) a GP Registrar to whom paragraph (10) applies as if paragraph (2)(c), (e), (f), (g) and (h) were omitted; and
 - (c) a dental practitioner undertaking foundation training as if—
 - (i) paragraph (2)(c), (e) and (g) were omitted; and
 - (ii) paragraph (2)(f) required the name and address of one referee who is willing to provide a clinical reference relating to one recent post (which may include any current post), which lasted at least three months without a significant break, or, where this is not possible, a full explanation as to why that is the case and the name and address of one alternative referee.
 - (10) This paragraph applies to a GP Registrar who makes an application for inclusion in the medical performers list during the period of 6 months ending with the date on which they are expected to be awarded a CCT.
 - (11) For the purposes of—
 - (a) paragraphs 9(b) and (10), “GP Registrar” and “CCT” have the meanings given in regulation 23 (medical performers list: interpretation);
 - (b) paragraph 9(c), “foundation training” has the meaning given in regulation 30 (interpretation: foundation training).”.

Consideration of applications

5. In regulation 5 (consideration of applications) of the 2013 Regulations—

- (a) in paragraph (1)(b) before “check” insert “if the Practitioner is not a returning practitioner,”;
- (b) for paragraph (1)(c) substitute—

- “(c) if the Practitioner is not a returning practitioner, check with the NHSLA whether it holds any information set out in paragraph (1A) relating to the Practitioner, which information the NHSLA must supply;”;
- (c) in paragraph (1)(d) after “the Practitioner” insert “, where the Practitioner is required to name referees”;
- (d) after paragraph (1) insert—
 - “(1A) The information referred to in paragraph (1)(c) is—
 - (a) any information received by the NHSLA following a notification by the Board under regulation 18(1) (notification);
 - (b) any finding made by the NHSLA about the standard of practice or professional conduct of the relevant Practitioner, other than a finding that relates only to a compensation claim; and
 - (c) any information held by NHSLA relating to a Health Professional Alert Notice that has been issued in respect of the relevant Practitioner and has not been revoked.”;
- (e) after paragraph (4) insert—
 - “(5) In paragraph (1A)(c) a “Health Professional Alert Notice” means a notice issued in accordance with the National Health Service Litigation Authority Directions 2013(a) stating that a named individual poses a significant risk of harm to patients, staff or the public and is likely to seek work in the NHS.”.

Applications from Practitioners included in an equivalent list

6. In regulation 5A(1)(c)(ii) (applications from Practitioners included in an equivalent list) of the 2013 Regulations for “suspect” substitute “suspend”.

Decisions and grounds for refusal

- 7. In regulation 7 (decisions and grounds for refusal) of the 2013 Regulations—
 - (a) in paragraph (2)(c) after “the Practitioner” insert “, where the Practitioner is required to name referees”;
 - (b) in paragraph (5) after “Type 1 armed forces GP” insert “or a Type 2 armed forces GP”.

Removal of returning practitioner after delayed checks

8. After regulation 7 (decisions and grounds for refusal) of the 2013 Regulations insert—

“Removal of returning practitioner after delayed checks

7A.—(1) This regulation applies where the Board has decided to include a returning practitioner in a performers list.

(2) The Board must remove the returning practitioner from the performers list at the end of the period of 3 months beginning with the date of the decision to include them in the list, unless the Board has before the end of that period—

- (a) carried out the checks referred to in regulation 5(1)(b) and (c) that would apply to any other Practitioner, and

(a) These Directions were signed on 28th March 2013 and were amended by the National Health Service Litigation Authority (Amendment) Directions 2013, signed on 5th November 2013, the National Health Service Litigation Authority (Amendment) Directions 2015, signed on 9th March 2015, and the National Health Service Litigation Authority (Amendment) Directions 2019, signed on 16th December 2019. These Directions are available from <https://www.gov.uk/government/collections/nhs-litigation-authority-directions>, or by writing to The Department of Health and Social Care, Resolution and Maternity Branch, 39 Victoria Street, SW1H 0EU.

- (b) obtained from the returning practitioner any further information it has sought under regulation 5(2).
- (3) The Board must remove the returning practitioner from the performers list if the checks and information referred to in paragraph (2)—
 - (a) lead to the disclosure of new information to the Board, and
 - (b) if the Board had received that information before deciding to include the returning practitioner in a performers list, it would have refused to include the returning practitioner in the performers list in accordance with regulation 7 (decisions and grounds for refusal).”.

Requirements with which a practitioner included in a performers list must comply

9. In regulation 9 (requirements with which a practitioner included in a performers list must comply) of the 2013 Regulations—

- (a) after paragraph (1) insert—

“(1A) A Practitioner must make a declaration to the Board during each reporting period confirming that they continue to perform services that are regulated under regulation 24, regulation 31 or regulation 37, as the case may be.

(1B) The reporting periods in paragraph (1A) are—

- (a) the period beginning with 1st January 2024 and ending with 31st December 2024, and
 - (b) each subsequent period of 12 months.”;
- (b) after paragraph (8) insert—

“(8A) Where the Board reasonably requests it, if the Practitioner has resided in a country other than the United Kingdom for 12 months or more (whether in a continuous period or otherwise) during the period in which they have been included in a performers list, a Practitioner must supply—

- (a) a certificate issued by an authority of that country which is equivalent to an enhanced criminal record certificate, or
- (b) if the Practitioner is unable to obtain such a certificate, a statement in writing demonstrating that the Practitioner has taken all reasonable steps to obtain such a certificate.”.

Suspension

10. In regulation 12 (suspension) of the 2013 Regulations—

- (a) for paragraph (4)(b) substitute—

“(b) if the Practitioner agrees to conditions proposed by the Board which are to apply during a period described in paragraph (1), allow the Practitioner to resume practice subject to those conditions until that period ends.”;

- (b) for paragraph (7)(b) substitute—

“(b) the Board must review its decision before the end of the next working day following the day on which its decision was made;”;

- (c) for paragraph (10)(b) substitute—

“(b) if the Practitioner agrees to conditions proposed by the Board which are to apply during a period described in paragraph (1), allow the Practitioner to resume practice subject to those conditions until that period ends.”.

Payments during suspension

11. In regulation 13 (payments during suspension) of the 2013 Regulations—

- (a) before paragraph (1) insert—
 - “(A1) A Practitioner may apply to the Board before the end of the period of 90 days beginning with the date on which a decision to suspend them was made under regulation 12 (suspension) for payments during the period of suspension.”;
- (b) in paragraph (1)—
 - (i) omit “, or in respect of,”;
 - (ii) after “Secretary of State” insert “where the Practitioner has made an application in accordance with paragraph (A1)”;
- (c) after paragraph (3) insert—
 - “(3A) A request by the Practitioner under paragraph (3) must be made before the end of the period of 28 days beginning with the day on which the decision was notified to the Practitioner.”.

Reviews

12. In regulation 16 (reviews) of the 2013 Regulations—

- (a) in paragraph (1)(a) omit “, 12”;
- (b) after paragraph (1) insert—
 - “(1A) The Board may, and if requested in writing to do so by a Practitioner must, review—
 - (a) the conditions it has agreed with the Practitioner under paragraph (4)(b) or (10)(b) of regulation 12 (suspension); and
 - (b) its decision under those paragraphs to allow the Practitioner to resume practice subject to those conditions.”;
- (c) in paragraph (2)(a) for “maintain or vary the conditions” substitute “maintain, vary or remove the conditions”;
- (d) in paragraph (3)(b) for “impose conditions” substitute “allow the Practitioner to resume practice during a period described in regulation 12(1) subject to conditions it has agreed with the Practitioner”;
- (e) after paragraph (3) insert—
 - “(3A) On a review under paragraph (1A), the Board may—
 - (a) agree the same or varied conditions with the Practitioner;
 - (b) remove the conditions; or
 - (c) remove the Practitioner from the relevant performers list.”.

Appeals

13. In regulation 17(2)(b) (appeals) of the 2013 Regulations omit “, 12”.

National disqualification

14. After regulation 17 (restrictions on withdrawal from performers list) of the 2013 Regulations insert—

“National disqualification

17A. Where the First-tier Tribunal imposes a national disqualification from a performers list on a Practitioner under section 159 of the National Health Service Act 2006(a)—

(a) Section 159 was amended by the Health and Care Act 2022 (c. 3), the Health and Social Care Act 2012 (c. 7) and the Transfer of Tribunal Functions Order 2010 (S.I. 2010/22).

- (a) the reference in section 159(8)(a) of that Act to a period of two years is to be treated as a reference to a period of five years if the Tribunal is of the opinion that the criminal or professional conduct of the Practitioner is such that there is no realistic prospect of a review being successful if held within that period of two years;
- (b) the reference in section 159(8)(b) of the Act to a period of one year is to be treated as a reference to a period of three years if the Tribunal is of the opinion that the criminal or professional conduct of the Practitioner is such that there is no realistic prospect of a further review being successful if held within that period of one year;
- (c) the references in section 159(8)(a) and (b) of the Act to periods of two years and one year are each to be treated as references to a period of one day, if—
 - (i) a criminal conviction considered by the Tribunal in reaching a decision to impose the national disqualification has been quashed or the penalty reduced on appeal; or
 - (ii) the decision of a licensing, regulatory or other body considered by the Tribunal in reaching a decision to impose the national disqualification has been quashed or the penalty reduced on appeal.”.

Notification

15. In regulation 18(2)(e) (notification) of the 2013 Regulations after “14” insert “(other than 14(1)(c))”.

Medical performers list

16. In regulation 24 (medical performers list) of the 2013 Regulations—

- (a) in paragraph (3)—
 - (i) for “registered medical practitioner who falls within paragraph (4)” substitute “GP Registrar or other registered medical practitioner”;
 - (ii) after “General Medical Council” insert “under section 34I(1)(a) of the Medical Act 1983”;
- (b) omit paragraphs (4) and (5).

Application for inclusion on the medical performers list

17. In regulation 26 (application for inclusion in the medical performers list) of the 2013 Regulations—

- (a) in paragraph (2) after “The medical practitioner must” insert “, subject to paragraph (7)”;
- (b) after paragraph (6) insert—

“(7) This regulation applies to an application made by a returning practitioner as if paragraph (2)(a), (b) and (d) were omitted.”.

Application for inclusion in the dental performers list

18. In regulation 33 (application for inclusion in the dental performers list) of the 2013 Regulations—

- (a) in paragraph (2) after “The dental practitioner must” insert “, subject to paragraph (4),”;
- (b) after paragraph (3) insert—

“(4) This regulation applies to an application made by a returning practitioner as if paragraph (2)(a) and (c) were omitted.”.

Application for inclusion in the ophthalmic performers list

19. In regulation 39 (application for inclusion in the ophthalmic performers list) of the 2013 Regulations—

- (a) in paragraph (2) after “The ophthalmic practitioner must” insert “, subject to paragraph (8).”;
- (b) after paragraph (7) insert—

“(8) This regulation applies to an application made by a returning practitioner as if paragraph (2)(a), (b) and (c) were omitted.”.

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

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

18th July 2023

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 4 amends regulation 4 of the 2013 Regulations to change the information that must be provided in an application for inclusion in a performers list, including reduced requirements specific to GP Registrars completing their training and returning practitioners. Regulations 17 to 19 make similar reductions to the information required from returning practitioners under regulations 26, 33 and 39 of the 2013 Regulations in relation to the medical, dental and ophthalmic performers lists respectively. Regulation 5(a) reduces the initial checks carried out on a returning practitioner’s application, and regulation 8 inserts a new regulation 7A into the 2013 Regulations, requiring further checks to be carried out within 3 months of a returning practitioner’s inclusion and permitting the removal of a returning practitioner where justified by checks carried out after an application has been accepted. Regulation 5 also amends regulation 5 of the 2013 Regulations as regards the checks on applications that must be made with the National Health Service Litigation Authority.

Regulation 9 amends regulation 9 of the 2013 Regulations, introducing a requirement for an annual statement from practitioners that they continue to perform regulated services, and a requirement to provide information about any overseas criminal record.

Regulation 10 amends regulation 12 of the 2013 Regulations to provide that temporary conditions may be agreed with a Practitioner, if the Practitioner’s practice is to be subject to such temporary conditions pending a decision in a case. Regulation 12 amends regulation 16 of the 2013 Regulations as regards temporary conditions decided upon in the context of reviews, to reflect this change. As a consequence of this change, regulation 13 amends regulation 17 of the 2013 Regulations to remove the option of an appeal to the First-tier Tribunal in relation to conditions agreed with the Practitioner under regulation 12 of the 2013 Regulations.

Regulation 11 amends regulation 13 of the 2013 Regulations to require that any application for payments during a period of suspension must be made within 90 days of the decision to suspend. It also requires a Practitioner to make any request for reconsideration of a decision on payments within 28 days of that decision.

Regulation 14 inserts a new regulation 17A into the 2013 Regulations, modifying in certain circumstances the review period applying to a decision of the First-tier Tribunal imposing a national disqualification from a performers list under section 159 of the National Health Service Act 2006.

Regulation 15 amends regulation 18 of the 2013 Regulations to make clear that there is no obligation to notify a deceased Practitioner where they are removed from a performers list following their death.

Regulation 16 amends regulation 24 of the 2013 Regulations, so that GP Registrars are not required to be included in the medical performers list in order to perform primary medical services, insofar as those services are part of a post-registration programme of supervised clinical practice.

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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