
STATUTORY INSTRUMENTS

2005 No. 3491

NATIONAL HEALTH SERVICE, ENGLAND

The National Health Service (Performers Lists) Amendment Regulations 2005

Made - - - - - *20th December 2005*
Laid before Parliament *30th December 2005*
Coming into force - - - *1st April 2006*

The Secretary of State for Health makes these Regulations, in exercise of the powers conferred by sections 28X and 126(4) of the National Health Service Act 1977(1):

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Performers Lists) Amendment Regulations 2005 and shall come into force on 1st April 2006.

(2) These Regulations apply in relation to England only.

(3) In these Regulations “the principal Regulations” means the National Health Service (Performers Lists) Regulations 2004(2).

Amendment of regulation 2 of the principal Regulations

2. In regulation 2(1) of the principal Regulations (interpretation and modification)—

(a) in the definition of “list”, after “49N(1)(a) to (c)”, insert “a performers list, a dental list”;

(b) in the definition of “medical performers list”, for “regulation 3(1)”, substitute “regulation 3(1)(a)”;

(1) 1977 c. 49 (“the 1977 Act”); see section 128(1) as amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 26(2)(g) and (i), for the definitions of “prescribed” and “regulations”. Section 28X was inserted by the Health and Community Care (Community Health and Standards) Act 2003 (c. 43) (“the 2003 Act”), section 179(1). Section 126(4) was amended by the 1990 Act, s. 65(2); by the Health Act 1999 (c. 8) (“the 1999 Act”), Schedule 4, paragraph 37(6) and by the Health and Social Care Act 2001 (c. 15) (“the 2001 Act”), Schedule 5, paragraph 5(13) (b). As regards Wales, the functions of the Secretary of State under sections 29 and 126(4) of the 1977 Act are transferred to the National Assembly for Wales under article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; section 68 of the 2001 Act provides that Schedule 1 shall be construed so as to include the amendments made by that Act to the 1977 Act; these Regulations therefore extend only to England.

(2) S.I. 2004/585; amended by S.I. 2004/2694 and 2005/502 and 893.

- (c) in the definition of “a national disqualification” add, at the end of paragraph (a), “or under regulations corresponding to that section made under section 28X(4) (persons performing primary medical and dental services)”;
- (d) for the definition of “relevant performers list”, substitute—
 - ““relevant performers list” means—
 - (a) in the case of a medical practitioner, the medical performers list; and
 - (b) in the case of a dentist, the dental performers list”;
- (e) for the definition of “relevant part”, substitute—
 - ““relevant Part” means—
 - (a) in the case of a medical practitioner, Part 2; and
 - (b) in the case of a dentist, Part 3;”;
- (f) insert the following definitions at the appropriate alphabetical places—
 - “the Amendment Regulations” means the National Health Service (Performers Lists) Amendment Regulations 2005(3);
 - “dental list” means the list prepared by a Primary Care Trust under regulation 4(1) of the Dental Regulations;
 - “dental performers list” means the list prepared by a Primary Care Trust and published pursuant to regulation 3(1)(b); and
 - “the Dental Regulations” means the National Health Service (General Dental Services) Regulations 1992(4).

Amendment of regulation 3 of the principal Regulations

- 3. For regulation 3(1) of the principal Regulations (performers lists), substitute—
 - “(1) A Primary Care Trust shall prepare and publish, in accordance with this Part, as modified or supplemented by the relevant Part—
 - (a) a medical performers list; and
 - (b) a dental performers list.”.

Amendment of regulation 6 of the principal Regulations

- 4. At the end of regulation 6 of the principal Regulations (decisions and grounds for refusal), add paragraph (7)—
 - “(7) When the Primary Care Trust notifies the performer under paragraph (6)(b), it shall—
 - (a) notify 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
 - (b) tell him how to exercise any such right.”.

(3) S.I. 2005/3491
(4) S.I. 1992/661.

Amendment of regulation 9 of the principal Regulations

5. At the end of regulation 9(5) of the principal Regulations (requirements with which a performer in a performers list must comply), add “to these Regulations or the Schedule to the Amendment Regulations”.

Amendment of regulation 14 of the principal Regulations

6. In regulation 14 of the principal Regulations (reviews), after paragraph (7), insert paragraph (7A)—

“(7A) When the Primary Care Trust notifies the performer under paragraph (7)(c), it shall—

- (a) notify 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
- (b) tell him how to exercise any such right.”.

Amendment of regulation 16 of the principal Regulations

7. At the end of regulation 16(1)(a) of the principal Regulations (notifications), add “, 24(1) or 31(1);”.

Insertion of regulation 18A of the principal Regulations

8. After regulation 18 of the principal Regulations, insert regulation 18A—

“National disqualification

18A.—(1) In this regulation and in regulation 19 “national disqualification” means the disqualification of the performer from inclusion in—

- (a) a performer’s list;
- (b) a list referred to in section 49N(1) prepared by a Primary Care Trust;
- (c) a supplementary list prepared by a Primary Care Trust;
- (d) a list of pharmacists performing local pharmaceutical services prepared by a Primary Care Trust,

or only from inclusion in one or more descriptions of such list prepared by a Primary Care Trust or an equivalent list, the description being that specified by the FHSAA in its decision.

(2) If a performer appeals to the FHSAA under regulation 15 and the FHSAA decides—

- (a) to remove the appellant from a performers list; or
- (b) to refuse to admit him to a performers list,

the FHSAA may also impose a national disqualification on that performer.

(3) A Primary Care Trust which has—

- (a) removed a performer from its performers list; or
- (b) refused to include him in its performers list,

may apply to the FHSAA for a national disqualification to be imposed on him.

(4) Any application under paragraph (3) must be made before the end of the period of three months beginning with—

- (a) the date of the removal or the refusal; or

- (b) 1st April 2006,
whichever is the later.
- (5) If the FHSAA imposes a national disqualification on a person—
 - (a) no Primary Care Trust may include him in any list from which he has been so disqualified; and
 - (b) if he is included in any such list, a Primary Care Trust shall remove him from that list forthwith.
- (6) The FHSAA may, at the request of a person upon whom it has imposed a national disqualification, review that disqualification.
- (7) On a review under paragraph (6), the FHSAA may confirm or revoke that disqualification.
- (8) Subject to regulation 19, a request referred to in paragraph (6) may not be made before the end of the period of—
 - (a) two years beginning with the date on which the national disqualification was imposed; or
 - (b) one year beginning with the date of the FHSAA’s decision on the last such review.”.

Amendment of regulation 19 of the principal Regulations

- 9. In regulation 19 of the principal Regulations (review periods on national disqualification)—
 - (a) for “section 49N(8)”, in each of the three places where it occurs, substitute “regulation 18A(8)”;
 - (b) in paragraph (a) for “section 49N(8)(a)” substitute “regulation 18A(8)(a)”; and
 - (c) in paragraph (b) for “section 49N(8)(b)” substitute “regulation 18A(8)(b)”.

Amendment of regulation 22 of the principal Regulations

- 10. In regulation 22(4)(c) of the principal Regulations (medical performers list) delete “his date of birth, where he consents, or if not,”.

Insertion of Part 3 to the principal Regulations

- 11. After Part 2 of the principal Regulations insert Part 3—

“PART 3

DENTAL PERFORMERS LISTS

Interpretation

- 28.—(1) For the purposes of this Part, the prescribed description of performer is dentist and the relevant body is the General Dental Council.
- (2) In this Part—
 - “the 2005 Order” means articles 18 to 24 of the Dentists Act 1984 (Amendment) Order 2005(5);

“approved trainer” means a dentist—

- (a) whose name is included in a dental performers list; and
- (b) who has been approved for a specified period, which has not elapsed, by a postgraduate dental dean or a director of postgraduate dental education as having the requisite skills and suitable practice facilities to enable him to act as a trainer;

“community dental service” means dental services provided under—

- (a) sections 3(1)(c) and 5(1A);
- (b) in Scotland, under sections 1 and 39(2) of the NHS (Scotland) Act 1978(6); and
- (c) in Northern Ireland, under article 5(1)(c) and 9(1A) of the Health and Personal Social Services (Northern Ireland) Order 1972(7);

“contractor” means a dentist, who both provides and performs primary dental services in accordance with section 28C(8) arrangements or under a general dental services contract under section 28K(9);

“dental supplementary list” means the list prepared by a Primary Care Trust under regulation 3(1) of the Dental Supplementary List Regulations;

“the Dental Supplementary List Regulations” means the National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003(10);

“dentist” means a dental practitioner who is registered in the dentists register;

“Dentists Act” means the Dentists Act 1984(11);

“dentists register” means the register referred to in section 14(1) of the Dentists Act(12);

“health case” means a case falling within either section 28(1) (powers of the Health Committee) or, after the coming into force of the 2005 Order, section 27(2)(c) of the Dentists Act (allegations) (13);

“Health Committee” means the Health Committee of the General Dental Council, referred to in section 2 of the Dentists Act (committees of the Council)(14);

“personal dental services” means personal dental services provided pursuant to Part I of the Primary Care Act (pilot schemes for primary care);

“postgraduate dental dean or director of postgraduate dental education” means a dentist appointed to that position by a Strategic Health Authority to assist in the provision of a suitable learning environment for dentists performing primary dental services to meet the requirements and standards of the Dental Faculties of the Royal College of Surgeons of England and the Department of Health;

“Practice Committee”, after the coming into force of the 2005 Order, means the Professional Conduct Committee, the Health Committee or the Professional Performance Committee of the General Dental Council referred to in section 2 of the Dentists Act;

(6) 1978 c. 29.

(7) S.I.1972/1265(N.I.14).

(8) Section 28C was inserted by the National Health Service (Primary Care) Act 1997, s. 21(1) and amended by the 1999 Act, s.65(1) and Schedule 4, the 2001 Act, s.40 and Schedule 5 and the 2003 Act, s. 180 and Schedule 11, paragraph 14.

(9) Section 28K was inserted by the 2003 Act, s. 172(1).

(10) S.I. 2003/250.

(11) 1984 c. 24.

(12) Section 14 is substituted by S.I. 2005/2001 from a date to be determined.

(13) Sections 27 and 28 are substituted by S.I. 2005/2001 from a date to be determined.

(14) Section 2 was amended by S.I. 2001/3926, art. 2 and 6(b) and by S.I. 2005/2011, article 4, from a date to be determined.

“Preliminary Proceedings Committee” means the Preliminary Proceedings Committee of the General Dental Council, referred to in section 2 of the Dentists Act;

“Professional Conduct Committee” means the Professional Conduct Committee of the General Dental Council, referred to in section 2 of the Dentists Act;

“professional registration number” means the number against the dentist’s name in the dentists register;

“relevant scheme” means the scheme in respect of which the dentist is applying to be included in a dental performers list;

“scheme” means an arrangement to provide primary dental services—

- (a) in accordance with section 28C; or
- (b) under a general dental services contract; and

“vocational training” means a relevant period of employment during which a dentist is employed under a contract of service by an approved trainer to provide a wide range of dental care and treatment and to attend such study days as that contract provides, with the aims and objectives of enhancing clinical and administrative competence and promoting high standards through relevant postgraduate training and in particular to—

- (a) enable the dentist to practise and improve his skills;
- (b) introduce the dentist to all aspects of dental practice in primary care;
- (c) identify the dentist’s personal strengths and weaknesses and balance them through a planned programme of training;
- (d) promote oral health of, and quality dental care for, patients;
- (e) develop further and implement peer and self review, and promote awareness of the need for professional education, training and audit as a continuing process; and
- (f) enable the dentist to—
 - (i) make competent and confident professional decisions including decisions for referrals to other services,
 - (ii) demonstrate that he is working within the guidelines regarding the ethics and confidentiality of dental practice,
 - (iii) implement regulations and guidelines for the delivery of safe practice,
 - (iv) know how to obtain appropriate advice on, and practical experience of, legal and financial aspects of practice, and
 - (v) demonstrate that he has acquired skill and knowledge in the psychology of care of patients and can work successfully as a member of a practice team.

(3) In the definition of “vocational training” in paragraph (2), “relevant period of employment” means—

- (a) one year’s full-time employment;
- (b) an equivalent period of part-time employment; or
- (c) in the case of a dentist, who is neither exempt under regulation 31(5) from the requirement to undertake vocational training, nor has completed vocational training as in sub-paragraph (a) or (b), but—
 - (i) has performed community dental service,
 - (ii) has performed personal dental services prior to 1st April 2006,
 - (iii) has otherwise gained experience of dentistry in primary care as a dentist,

- (iv) has been employed in a hospital as a dentist, or
- (v) holds or is enrolled on a course to achieve a postgraduate qualification in dentistry registerable with the General Dental Council as an additional diploma by virtue of regulations made under section 19(1)(c) of the Dentists Act (regulations with respect to the register),

such period of employment, which may be less than, but shall not exceed that in sub-paragraph (a) or an equivalent period of part-time employment, as a postgraduate dental dean or director of postgraduate dental education may determine that he must complete in order to have satisfactorily completed vocational training.

Dental performers list

29.—(1) Subject to paragraph 14 of the Schedule to the Amendment Regulations, a dentist may not perform any primary dental services, unless he is a dentist whose name is included in a dental performers list.

(2) Paragraph (1) does not apply to a dentist, who is undertaking vocational training, during the first two months of that training.

(3) In respect of any dentist, whose name is included in a dental performers list, the list shall include—

- (a) his full name;
- (b) his professional registration number with, suffixed to it, the organisational code given by the Secretary of State to the Primary Care Trust;
- (c) his date of first registration in the dentists register;
- (d) whether he is a dentist undertaking vocational training;
- (e) whether he is a contractor; and
- (f) the date that his name was included in the dental performers list or, if his name was included in any dental list or dental supplementary list of a Primary Care Trust, first included in such a list.

Application for inclusion in a dental performers list

30.—(1) In addition to the information required by regulation 4(2), the dentist, when making an application for the inclusion of his name in a dental performers list, shall give the following information—

- (a) his dental qualifications and where they were obtained, with evidence concerning his qualifications and experience;
- (b) unless he is a dentist undertaking vocational training, evidence that he has completed vocational training;
- (c) a declaration that he is included in the dentists register;
- (d) his professional registration number and date of first registration;
- (e) if he is a dentist undertaking vocational training, the name and practice address of his approved trainer;
- (f) whether he is a contractor; and
- (g) whether he is a contractor for more than one scheme and, if so, which schemes and which of those schemes is the relevant scheme.

(2) In addition to the undertakings required by regulation 4(3), the dentist shall give the following further undertakings—

- (a) not to perform any primary dental services in the area of another Primary Care Trust or equivalent body from whose dental performers list, dental list, dental supplementary list or equivalent list he has been removed, except where that removal was at his request or in accordance with regulation 10(6) of these Regulations, regulation 10(7) of the Dental Supplementary List Regulations or regulation 8(3) of the Dental Regulations or any equivalent provision in Scotland or Wales, without the consent, in writing, of that Trust or equivalent body;
- (b) if he is a dentist undertaking vocational training, an undertaking—
 - (i) not to perform any primary dental services except when acting for and under the direction of his approved trainer,
 - (ii) to withdraw from the dental performers list if he fails to complete his vocational training, and
 - (iii) upon completion of his vocational training, to provide the Primary Care Trust with satisfactory evidence that he has completed that training;
- (c) if he is a contractor, to comply with the requirements of paragraph 83 of Schedule 3 to the National Health Service (General Dental Services Contracts) Regulations 2005 (gifts)(**15**) or paragraph 81 of Schedule 3 to the National Health Service (Personal Dental Services Agreements) Regulations 2005 (gifts)(**16**), as the case may be; and
- (d) if he is not a contractor, to comply with those requirements as though he were a contractor.

Additional grounds for refusal

31.—(1) In addition to the grounds in regulation 6(1), a Primary Care Trust may also refuse to admit a dentist to its dental performers list if—

- (a) having checked the information he provided under regulation 30(1), it considers he is unsuitable to be included in its list;
- (b) his registration in the dentists register is subject to conditions—
 - (i) imposed by the Health Committee under section 28 of the Dentists Act (powers of the Health Committee), or
 - (ii) after the coming into force of the 2005 Order, imposed by a Practice Committee under sections 27B(6)(c) (Practice Committees), 27C(1)(c), (2)(b) or (c) (resumed hearings) or 28(6)(b) of that Act (restoration to register)(**17**);
- (c) after the coming into force of the 2005 Order, he is subject to an order for immediate conditional registration imposed by a Practice Committee under section 30(2) of that Act (orders for immediate suspension and immediate conditional registration)(**18**); or
- (d) after the coming into force of the 2005 Order, he is subject to an order for interim conditional registration imposed by a Practice Committee or the Interim Orders

(15) S.I. 2005/3361.

(16) S.I. 2005/3373.

(17) Sections 27B, 27C and 28 were inserted by the 2005 Order from a date to be determined.

(18) Section 30 is substituted by S.I. 2005/2011 from a date to be determined.

Committee under section 32(4)(b) or (6)(c) or by the Court under section 32(9) of that Act (interim orders)(19).

(2) In addition to the grounds in regulation 6(2), a Primary Care Trust shall also refuse to admit a dentist to its dental performers list if—

- (a) he is a contractor and the relevant scheme is not one that lies within its area;
- (b) he is included in the dental performers list of another Primary Care Trust, unless he has given notice to that Trust that he wishes to withdraw from that list; or
- (c) he is not undertaking vocational training and has neither completed vocational training nor is exempt under paragraph (5) from the requirement to undertake vocational training.

(3) For the purposes of regulation 6(2)(d), the day prescribed in this Part is 3rd March 2003 or, if that dentist had been included in a dental list, 14th December 2001.

(4) In addition to checking the information provided by the dentist as required by regulation 6(3)(a), the Primary Care Trust shall also check the information he provided under regulation 30(1).

(5) A dentist is exempt from the requirement to undertake vocational training if—

- (a) he is registered as a dentist by virtue of section 15(1)(b) of the Dentists Act (registration of nationals of member States who hold appropriate European diplomas)(20) or is in any other way a person in respect of whom a member State is prohibited by Community law from imposing such a requirement; or
- (b) he has experience in primary care as a dentist for a total period of at least two years full-time or an equivalent period part-time—
 - (i) in community dental service,
 - (ii) in the armed forces of the Crown, or
 - (iii) prior to 1st April 2006, in the performance of personal dental services,and part or all of that period fell within the period of four years beginning with the date of his application under regulation 4.

Grounds for removal from a dental performers list

32.—(1) Subject to paragraph (2) and in addition to the grounds in regulation 10(1), the Primary Care Trust must remove a dentist from its dental performers list where it becomes aware that he—

- (a) is the subject of—
 - (i) a determination by the Professional Conduct Committee to suspend him under section 27 of the Dentists Act (erasure or suspension), or
 - (ii) after the coming into force of the 2005 Order, a direction of a Practice Committee under section 27B(6)(b) or 27C(2)(d) or (3) of that Act;
- (b) is included in the dental performers list of another Primary Care Trust; or
- (c) has failed to complete vocational training and has not withdrawn from the list pursuant to regulation 30(2)(b)(ii).

(2) Paragraph (1)(a)(ii) shall not apply where a direction that a dentist's registration be suspended is made in a health case.

(19) Section 32 is substituted by S.I. 2005/2011 from a date to be determined.

(20) Section 15(1)(b) was amended by S.I. 1996/1496, regulation 2(1).

(3) For the purposes of regulation 10(1)(b), the day prescribed in this Part is 3rd March 2003 or, if that dentist had been included in a dental list, 14th December 2001.

(4) In calculating the period of 12 months under regulation 10(7) (periods to be disregarded), the Primary Care Trust shall disregard any period during which the dentist's registration or his entitlement to practise as such was suspended by—

- (a) the Health Committee under section 28(1)(a) or (3)(a) of the Dentists Act (powers of the Health Committee);
- (b) the Preliminary Proceedings Committee under section 32(1) of that Act (orders for interim suspension);
- (c) after the coming into force of the 2005 Order, by a Practice Committee under sections 27B (6)(b) (Practice Committee) or 27C(1)(b) or (d) (resumed hearings) of that Act in a health case; or
- (d) after the coming into force of the 2005 Order, by a Practice Committee or the Interim Orders Committee of the General Dental Council under section 32(4)(a) or (6)(d) of that Act or by the court under section 32(9) of that Act.

Additional decision that may be appealed

33. A dentist may also appeal, under regulation 15, against a decision of the Primary Care Trust to refuse to include his name in its dental performers list under regulation 31(1).”.

Consequential amendments

12.—(1) The Regulations set out below shall be amended in accordance with the following paragraphs of this regulation.

- (2) In paragraph (a) of the definition of “national NHS disqualification” in—
 - (a) regulation 1(2) of the National Institute for Clinical Excellence (Membership) Regulations 1999 (citation, commencement and interpretation)(**21**);
 - (b) regulation 1(3) of the Commission for Social Care Inspection (Membership) Regulations 2003 (citation, commencement, application and interpretation)(**22**);
 - (c) regulation 1(3) of the Commission for Healthcare Audit and Inspection (Membership) Regulations 2003 (citation, commencement and interpretation)(**23**);
 - (d) regulation 1(3) of the NHS Direct Regulations 2004 (citation, commencement, application and interpretation)(**24**);
 - (e) regulation 1(2) of the NHS Pensions Agency (Asiantaeth Pensiynau'r GIG) Regulations 2004 (citation, commencement and interpretation)(**25**);
 - (f) regulation 1(3) of the Health and Social Care Information Centre Regulations 2005 (citation, commencement, application and interpretation)(**26**);
 - (g) regulation 1(3) of the NHS Institute for Innovation and Improvement Regulations 2005 (citation, commencement, application and interpretation)(**27**);

(21) S.I. 1999/260.
 (22) S.I. 2003/3190.
 (23) S.I. 2003/3279.
 (24) S.I. 2004/570.
 (25) S.I. 2004/668.
 (26) S.I. 2005/500.
 (27) S.I. 2005/1447.

(h) regulation 1(2) of the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) Regulations 2005 (citation, commencement and interpretation)(**28**); and

(i) regulation 1(2) of the NHS Blood and Transplant (Gwad a Thrawsblaniadau'r GIG) Regulations 2005 (citation, commencement and interpretation)(**29**),

after “of the Act”, insert “or under regulations corresponding to that section made under section 28X(4) of the Act (persons performing primary medical and dental services)”.

(3) In paragraph (a) of the definition of “a national disqualification” in regulation 2(1) (interpretation) of the National Health Service (General Ophthalmic Services) Regulations 1986(**30**), after “of the Act”, insert “or under regulations corresponding to that section made under section 28X(4) of the Act (persons performing primary medical and dental services)”.

(4) In rule 2(2)(a)(ii) of the Family Health Services Appeal Authority (Procedure) Rules 2001(**31**), after “section 49N(4) of the 1977 Act”, insert “or under regulations making provision corresponding to that section pursuant to section 28X(4) of that Act”.

(5) In regulation 5(1)(e)(i) of the Commission for Patient and Public Involvement in Health (Membership and Procedure) Regulations 2002 (disqualification for appointment)(**32**) delete “under section 49N of the 1977 Act”.

(6) In regulation 3(1)(e)(i) of the Counter Fraud and Security Management Service Regulations 2002 (disqualification for appointment)(**33**) delete “under section 49N of the Act”.

(7) In regulation 3(1)(e)(i) of the NHS Professionals Special Health Authority Regulations 2003 (disqualification for appointment)(**34**) delete “under section 49N of the Act (national disqualification)”.

(8) In paragraph (a) of the definition of “a national disqualification” in regulation 2(1) of the National Health Service (General Medical Services Contracts) Regulations 2004 (interpretation)(**35**), after “of the Act”, insert “or under regulations corresponding to that section made under section 28X(4) of the Act (persons performing primary medical and dental services)”.

(9) In paragraph (a) of the definition of “a national disqualification” in regulation 2(1) of the National Health Service (Personal Medical Services Agreements) Regulations 2004 (interpretation)(**36**), after “(national disqualification)”, insert “or under regulations corresponding to that section made under section 28X(4) of the Act (persons performing primary medical and dental services)”.

(10) In paragraph (a) of the definition of “a national disqualification” in regulation 2(1) (interpretation) of the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005(**37**), after “section 49N”, insert “or under regulations corresponding to that section made under section 28X(4) (persons performing primary medical and dental services)”.

(11) At the end of paragraph (a) of the definition of “national disqualification” in regulation 2(1) (interpretation) of the National Health Service (Pharmaceutical Services) Regulations 2005(**38**), add “or under regulations corresponding to that section made under section 28X(4) of the Act (persons performing primary medical and dental services)”.

(28) [S.I. 2005/2415](#).

(29) [S.I. 2005/2531](#).

(30) [S.I. 1986/975](#); the definition was inserted by [S.I. 2001/3739](#) and amended by [S.I. 2002/1920](#).

(31) [S.I. 2001/3750](#); relevant amendments in relation to England are [S.I. 2002/2469](#) and [2004/865](#).

(32) [S.I. 2002/3038](#).

(33) [S.I. 2002/3040](#).

(34) [S.I. 2003/3060](#).

(35) [S.I. 2004/291](#).

(36) [S.I. 2004/627](#).

(37) [S.I. 2005/480](#).

(38) [S.I. 2005/641](#).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(12) In regulation 3(1)(e)(i) of the Health Protection Agency Regulations 2005 (disqualification for appointment)⁽³⁹⁾ for “pursuant to section 49N of the NHS Act” substitute “imposed by the Family Health Services Appeal Authority constituted under section 49S of the NHS Act (the Family Services Appeal Authority);”.

Revocations

13. Schedule 1 to the principal Regulations and the National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003⁽⁴⁰⁾ are hereby revoked.

Transitional provisions

14. The transitional provisions in the Schedule shall have effect.

Signed by authority of the Secretary of State for Health

20th December 2005

Rosie Winterton
Minister of State,
Department of Health

⁽³⁹⁾ S.I. 2005/408.
⁽⁴⁰⁾ S.I. 2003/ 250.

SCHEDULE 1

Regulation 14

TRANSITIONAL PROVISIONS

Interpretation

1. In this Schedule—

“the 2001 Rules” means the Family Health Services Appeal Authority (Procedure) Rules 2001(41);

“continuing matter” means any case where the Initial Primary Care Trust had not yet come to a decision on any matter, other than a matter falling within paragraph 8, under the Dental Regulations;

“Initial Primary Care Trust” means a Primary Care Trust in whose dental list the dentist’s name was or had been included prior to the relevant date;

“the relevant date” means 1st April 2006,

and other terms used shall bear the same meaning in this Schedule that they have in Part 3 of the principal Regulations.

Allocation of dentists on previous lists

2. In the case of a dentist, whose name, immediately before the relevant date, was included in a Primary Care Trust’s—

- (a) dental list, but was not included in the dental list of any other Primary Care Trust; or
- (b) dental supplementary list,

his name shall, on that day, be included in that Primary Care Trust’s dental performers list.

3. In the case of a dentist whose name was, immediately before the relevant date, included in the dental list of more than one Primary Care Trust, his name shall, on that date, be included in the dental performers list of one of those Trusts in accordance with paragraphs 4 to 9.

4. In which Primary Care Trust’s list that dentist’s name is to be included shall be determined by reference to the payments that the Dental Practice Board made to the dentist under regulation 20 (approval of payments) of the Dental Regulations(42) in the quarter ending 31st December 2005 in relation to the general dental services that the dentist had provided in the area of each such Primary Care Trust, in accordance with paragraph 5.

5. The dentist shall be included in the dental performers list of the Trust in respect of whose area the largest total of payments was made, unless the payments in respect of two or more such areas in that quarter were the same, in which case the matter shall be determined by reference to the previous quarter.

6. This paragraph applies to a dentist, who—

- (a) falls within paragraph 3; but
- (b) would, by reason of paragraphs 4 and 5, be included in the dental performers list of a Primary Care Trust in whose area he will not be party to a scheme to provide primary dental services on or after the relevant date.

7. A dentist to whom paragraph 6 applies—

(41) S.I. 2001/3750, as amended by S.I. 2002/1921 and 2469.

(42) Regulation 20 was amended by S.I. 1998/224, 2000/2459, 2001/1677 and 2002/2469.

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- (a) if he is party to such a scheme in the area of another Trust in whose dental list his name was included immediately before the relevant date, it shall be included in the dental performers list of that Trust; and
- (b) if he was on that day included in the dental list of more than one such Trust, the question of which dental performers list his name is to be included in shall be determined in accordance with paragraphs 4 and 5.

Applications not decided by the relevant date

8. Subject to paragraph 9, in any case where there was any application, including an application which the Primary Care Trust has deferred, by a dentist to a Primary Care Trust for his name to be included in its dental list or dental supplementary list and that application has not been decided before the relevant date, it shall be deemed to be an application to have his name included in the dental performers list of that Primary Care Trust.

9. In a case where—

- (a) a dentist has made an application to which paragraph 8 applies;
- (b) his name was already included in a dental list or dental supplementary list of any Primary Care Trust; and
- (c) he had not given notice of an intention to withdraw from that list with that application,

that application shall be void and the Primary Care Trust shall so notify him, informing him of the reason for that.

Matters relating to the dentist

10. In a case falling within paragraph 2, any matter, question or proceeding relating to any dentist under the Dental Regulations or the Dental Supplementary List Regulations, that had not been finally decided before the relevant date, shall be treated as though it had arisen in relation to the dental performers list in which that dentist has been included or, but for that matter, would have been included and shall continue to be dealt with by the Primary Care Trust.

11. In a case where a dental list or dental supplementary list, on which the dentist's name was included immediately before the relevant date, contained, in relation to him, any condition or contingent removal, or if he was then suspended from that list, that condition, contingent removal or suspension, as the case may be, shall equally apply to the dental performers list in which his name is included on and after the relevant date as it did, in relation to any other list, before that date.

12. In any case where a dentist was included in a dental supplementary list immediately before the relevant date and was then undertaking vocational training, he shall be included in the dental performers list subject to giving the undertakings required by regulation 30(2)(b) of the principal Regulations (application for inclusion in a dental performers list).

13. Subject to paragraph 14, in any case where there is any continuing matter and that matter had not been finally decided before the relevant date, it shall be treated as though it had arisen in relation to the dental performers list in which that dentist has been included or, but for that matter, would have been included.

14. In any case where there is a continuing matter and the dental performers list in which that dentist's name is included is not that of the Initial Primary Care Trust that matter shall proceed as though his name were included in the Initial Primary Care Trust's dental performers list.

Dentists performing personal dental services or community dental service

15.—(1) Any dentist, whose name was not included in a dental list or a dental supplementary list immediately before the relevant date and was performing personal dental services or community dental service before the relevant date, may perform primary dental services, notwithstanding regulation 29(1) of the principal Regulations (dental performers list), until—

- (a) 1st July 2006; or
- (b) the date on which the Primary Care Trust notifies him of its decision on his application to be included in its dental performers list,

whichever is the earlier, provided that that dentist applies, in accordance with the principal Regulations, to a Primary Care Trust to be included in its dental performers list not later than 1st May 2006.

(2) A dentist making an application to a Primary Care Trust under sub-paragraph (1), who was employed by a Primary Care Trust to perform personal dental services or community dental service immediately before the relevant date, shall only be required to provide the information required under regulations 4(2), (4) and (5) (application for inclusion in a performers list) and 30(1) (application for inclusion in a dental performers list) of the principal Regulations in so far as—

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

(3) Any dentist to whom sub-paragraph (1) applies shall comply with regulation 9 of the principal Regulations (requirements with which a performer in a performers list must comply), if any of the events specified in that regulation occur, as if he were included in the dental performers list of the Primary Care Trust in whose area he is performing primary dental services.

(4) A dentist may not perform primary dental services by virtue of sub-paragraph (1) during any period in which he is the subject of a suspension notice given by a Primary Care Trust under sub-paragraph (5).

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

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

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

- (8) Where a Primary Care Trust—
- (a) has received an application from a dentist to whom sub-paragraph (1) applies; and
 - (b) becomes aware in respect of that dentist of any of the matters listed in regulations 10(1) (removal from performers list) or 32(1) (ground for removal from a dental performers list) of the principal Regulations,

it shall immediately decide the dentist's application to be included in its dental performers list.

Enhanced criminal record certificates

16.—(1) Where a dentist's name has been included in a dental performers list of a Primary Care Trust pursuant to this Schedule, and—

- (a) it has not received an enhanced criminal record certificate under section 115 of the Police Act 1997(43) relating to him; and

(43) 1997 c. 50.

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(b) the Secretary of State directs that the Primary Care Trust shall require such a certificate from any dentist whose name is included in its dental performers list, the dentist shall, within 3 months of the Trust notifying him of that requirement, provide that certificate to it.

(2) When sub-paragraph (1)(b) applies, the Primary Care Trust shall write to each such dentist informing him that he is now under a duty to—

- (a) provide it with such a certificate; and
- (b) do so within the period of 3 months beginning with the date of that letter,

and, subject to sub-paragraph (3), if the dentist has not provided it with such a certificate within that time, it shall remove him from its dental performers list.

(3) The Primary Care Trust—

- (a) shall extend the period prescribed in sub-paragraph (1), if the Secretary of State directs that an extension should be required in relation to all such cases or in such categories of case as he may set out in the directions; and
- (b) may, if it thinks it is not reasonably practicable for that dentist to provide it with such a certificate within the period of 3 months, beginning with the date of the letter under sub-paragraph (2), as extended by reason of any direction to which paragraph (a) applies, extend that period for such time as it considers appropriate in the circumstances of the case,

and shall notify that dentist of that extension of time.

Appeals to the FHSAA under Part II of the 2001 Rules

17.—(1) Where—

- (a) the FHSAA receives a notice of appeal within the time limit specified in rule 5 of the 2001 Rules (time period in which an FHS regulations appeal must be heard) on or after the relevant date; and
- (b) that notice of appeal concerns a disputed decision taken by a respondent Initial Primary Care Trust before the relevant date,

that Trust shall continue to be the respondent, even if the dentist's name is from the relevant date, included in the dental performer's list of a different Primary Care Trust.

18. Where—

- (a) the FHSAA has received a notice of appeal in accordance with rule 6 of the 2001 Rules (notice of appeal) before the relevant date;
- (b) that appeal concerns a disputed decision taken by a respondent Initial Primary Care Trust before the relevant date; and
- (c) it has not been finally determined before the relevant date,

that Trust shall continue to be the respondent, even if the dentist's name is, from the relevant date, included in the dental performer's list of a different Primary Care Trust.

Applications to the FHSAA under Part III of the 2001 Rules

19. Where the FHSAA—

- (a) has received an application pursuant to Part III of the 2001 Rules (applications to the FHSAA) before the relevant date; and
- (b) that application has not been finally determined immediately before the relevant date,

the parties to that application shall, from the relevant date, continue to be the dentist who was a party immediately before the relevant date and the Initial Primary Care Trust.

General matters relating to cases under Part IV of the 2001 Rules

20. Where a panel has—

- (a) pursuant to rule 32(1) (directions in respect of hearings), 33 (further directions), 44(2) (miscellaneous powers of panel) or 45(2) (irregularities) of the 2001 Rules given any directions; or
- (b) pursuant to rule 37 (varying or setting aside directions) of those Rules, varied any directions,

in relation to any appeal falling within paragraph 17, those directions or varied directions shall continue to apply to the Initial Primary Care Trust, even if the dentist's name is, on and after the relevant date, included in the dental performers list of a different Primary Care Trust.

21. Where a panel has, pursuant to rule 42 (decision of panel) or 43 (review of panel's decision) of the 2001 Rules, given a decision—

- (a) that decision shall continue to apply to the Initial Primary Care Trust; and
- (b) that Trust shall be entitled to apply to the FHSAA pursuant to and in accordance with rule 43 of the 2001 Rules for a review of a panel's decision.

22. Where the FHSAA has taken a decision before the relevant date which, by virtue of rule 46 of the 2001 Rules (publication of certain decisions by the FHSAA), it would, at the time it took that decision have been obliged to publish, that obligation shall continue on or after the relevant date if it has not published the decision immediately.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Performers Lists) Regulations 2004 (“the Principal Regulations”) so as to provide for lists of persons performing primary dental care to be kept by Primary Care Trusts in accordance with the provisions of section 28X of the National Health Service Act 1977. It also makes amendments to the general provisions relating to performers lists.

Regulation 2 provides some further definitions for the Principal Regulations and regulations 3 to 7, 9 and 10 make minor amendments to those Regulations.

Regulation 8 adds provision for national disqualification.

Regulation 11 adds a new Part 3 to the Principal Regulations (regulations 28 to 33 of the Principal Regulations) which modifies the general provisions in Part 1 of those Regulations to make provisions specific to dentists.

Regulation 28 of Part 3 provides some definitions for Part 3.

Regulation 29 of Part 3 provides, subject to specified exceptions, that no dentist may perform any primary dental services unless included in such a list, what information is to be included in the list and that the list shall be published.

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Regulation 30 of Part 3 supplements regulation 4 by providing for certain specific information to be provided by dentists.

Regulation 31 of Part 3 provides further grounds on which the Primary Care Trust may or must refuse to admit a dentist to its list, and matters to which it must have regard.

Regulation 32 of Part 3 provides additional grounds for the mandatory removal from its list by a Primary Care Trust of a dentist, and modifies certain provisions for removal from a list in regulation 10.

Regulation 33 of Part 3 provides an additional ground of appeal for a dentist to those in regulation 15.

Regulation 12 makes consequential amendments.

Regulation 13 revokes National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003 and Schedule 1 to the Principal Regulations.

Regulation 14 gives effect to the Schedule.

The Schedule makes transitional provisions.