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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 136**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Primary Medical Services Performers Lists) (Scotland) Amendment Regulations 2006**

<i>Made</i>	- - - -	<i>9th March 2006</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>10th March 2006</i>
<i>Coming into force</i>	- -	<i>1st April 2006</i>

The Scottish Ministers, in exercise of the powers conferred by sections 17P, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

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

**Amendment of the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004**

2.—(1) The National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004(2) are amended in accordance with paragraphs (2) to (10).

(2) In regulation 2 (interpretation)—

(a) insert after the definition of “conditional disqualification”—

“corresponding decision” has the same meaning as in section 32D of the Act(3);

(b) in the definition of “disqualification” omit “local or national”;

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- (1) 1978 c. 29; Section 17P was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 5(2) and extended by the Health and Medicines Act 1988 (c. 49), section 17 as amended by [S.S.I. 2004/167](#); section 105(7), which contains provisions relevant to the making of regulations, was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24 and by the Health Act 1999 (c. 8), Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).
- (2) [S.S.I. 2004/114](#), as amended by [S.S.I. 2004/216](#) and [2005/333](#).
- (3) Section 32D is substituted by the [Smoking, Health and Social Care \(Scotland\) 2005 \(asp 13\)](#) (“the 2005 Act”), section 27, with effect from 1st April 2006 in terms of [S.S.I. 2006/121](#).

- (c) omit the definition of “local or national disqualification”;
- (d) insert the following definition after the definition of “suspended”:-
  - ““third condition for disqualification” has the meaning indicated in section 29(7A) of the Act(4)
- (3) In regulation 7(2)(a) omit “or 31(1)”.
- (4) In regulation 7(2)(b)-
  - (a) insert “or” before “32B”; and
  - (b) omit “or 32D”.
- (5) In regulation 7(2)(c) for “regulation 26(1) (practitioners subject to inquiry in a fraud case)(5)”, substitute “regulation 26 (practitioners subject to inquiry)”.
- (6) In regulation 7(4), for “the second” substitute “a”.
- (7) In regulation 7(4)(a), (b) and (c), for “the first condition for disqualification (if the applicant were included in the list), or the second”, substitute “a”.
- (8) After regulation 7 insert-

**“Effect to be given to corresponding decisions in England, Wales and Northern Ireland**

**7A.—**(1) A Health Board shall not include the name of any person in its primary medical services performers list, and shall remove the name of any person from its primary medical services performers list, if any decision has been made in England, Wales or Northern Ireland to deal with that person in any way which corresponds (whether or not exactly) with a way in which a person may be dealt with under section 29B(2)(6), 30(2)(7) or (5)(8) or 32B(1)(9) of the Act, for so long as that decision is in force.

(2) Where any corresponding decision is made in England, Wales or Northern Ireland by an equivalent body that-

- (a) a person is to be included in an equivalent list subject to conditions; or
- (b) a person is to be removed from an equivalent list contingent on conditions; or
- (c) a person is to be disqualified from an equivalent list subject to conditions; or
- (d) any conditions so imposed are varied,

a Health Board shall impose those conditions in relation to the performance, by that person of primary medical services in the area of the Health Board.

(3) The Health Board may make such modifications of the conditions referred to in paragraph (2) as it considers necessary for them to have the like effect in relation to Scotland as they do in relation to England, Wales or (as the case may be) Northern Ireland, but only if the Health Board has previously given the person concerned written notice of the proposed modifications and an opportunity to make representations about them.”.

- (9) In regulation 9(2)(a) omit “or 31(1)”.

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(4) Section 29(7A) is inserted by the 2005 Act, section 26(2)(d), with effect from 1st April 2006 in terms of [S.S.I. 2006/121](#).

(5) Regulation 26 of [S.S.I. 2001/38](#) is amended by [S.S.I. 2006/121](#) with effect from 1st April 2006.

(6) Section 29B(2) was added by the Health Act 1999 (c. 8) (“the 1999 Act”) section 58, and amended by the [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), Schedule 2, paragraph 2, the Act 2004, Schedule 1, paragraph 1, and the [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#) (“the 2005 Act”), section 26(4) and Schedule 3.

(7) Section 30(2) was substituted by the 1999 Act, section 58, and is amended by the 2005 Act, Schedule 3, with effect from 1st April 2006 in terms of [S.S.I. 2006/121](#).

(8) Section 30(5) was substituted by the 1999 Act, section 58, and is amended by the 2005 Act, Schedule 3, with effect from 1st April 2006, in terms of [S.S.I. 2006/121](#).

(9) Section 32B(1) was substituted by the National Health Services (Amendment) Act 1995 (c. 31), section 8, and amended by the 1999 Act, section 65 and Schedule 4, paragraph 52, and by the 2005 Act, Schedule 3.

- (10) In regulation 9(2)(b)–
- (a) insert “or” before “32B”; and
  - (b) omit “or 32D”.

St Andrew’s House,  
Edinburgh  
9th March 2006

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

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

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 (“the principal Regulations”), which provide for lists of medical practitioners who may perform primary medical services for which Health Boards are, under section 2C(1) of the National Health Service (Scotland) Act 1978, under a duty to provide or secure the provision of, to be kept by those Health Boards.

Regulations 2(2) to (7), (9) and (10) make amendments which are consequential on the amendments made by the Smoking, Health and Social Care (Scotland) Act 2005, section 26 (“the 2005 Act”) to sections 29-32D of the National Health Service (Scotland) Act 1978 (“the 1978 Act”) which relate to disqualification from inclusion in a list by the NHS Tribunal. The 2005 Act removes the distinction between local and national disqualification, and adds a third condition for disqualification.

Regulation 2(8) inserts a new regulation 7A into the principal Regulations, which is consequential on the amendments to the 1978 Act made by section 27 of the 2005 Act regarding the effect to be given in Scotland to decisions in England, Wales and Northern Ireland corresponding to the decisions to be made by the NHS Tribunal in Scotland.