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STATUTORY INSTRUMENTS

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**2003 No. 2644**

The National Health Service (Personal Medical Services) (Services List) and the (General Medical Services Supplementary List) and (General Medical Services) Amendment Regulations 2003

PART III

AMENDMENTS TO THE MEDICAL REGULATIONS

**Interpretation**

**38.** In this Part “the Medical Regulations” means the National Health Service (General Medical Services) Regulations 1992<sup>(1)</sup>.

**Amendment of regulation 2**

**39.**—(1) Regulation 2 of the Medical Regulations (interpretation)<sup>(2)</sup> shall be amended in accordance with the following provisions of this regulation.

(2) For the definition of “equivalent body”, “GP Registrar”, “licensing or regulatory body” and “Medical Supplementary List” there shall be substituted respectively—

““equivalent body” means a Local Health Board in Wales, a Health Board or an NHS trust in Scotland, a Health and Social Services Board in Northern Ireland, in relation to any time prior to 1st October 2002, a Health Authority in England or, in relation to any time prior to 1st April 2003, a Health Authority in Wales;”;

““GP Registrar” means—

- (a) a doctor, or
- (b) a medical practitioner whose name appears in the register of medical practitioners with limited registration maintained by the GMC pursuant to the Medical Act 1983, who is being trained in general practice by a doctor who falls within regulation 7(1) of the National Health Service (Vocational Training for General Medical Practice) Regulations 1997<sup>(3)</sup>;”;

““licensing or regulatory body” means a body that licenses or regulates any profession of which the doctor is, or has been a member, including a body regulating or licensing the education, training or qualifications of that profession, and includes any body which licences or regulates any such profession, its education, training or qualifications, outside the United Kingdom;”;

and

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(1) 1992/635.

(2) Regulation 2 was amended, in relation to England, by S.I. 1997/2468, 1998/682, 2838, 1999/326, 2001/3742, 2002/554, 682, 1920, 2469, 2861 and 3135.

(3) S.I. 1997/2817, as amended by S.I. 1998/669.

““medical supplementary list” means the list prepared by a Primary Care Trust under regulation 3 of the Supplementary List Regulations;”.

(3) The following definitions shall be inserted at the appropriate alphabetical place—

““the NHS Counter Fraud and Security Management Service” means the service with responsibility for policy and operational matters relating to the prevention, detection and investigation of fraud or corruption and the management of security in the National Health Service, established by the Counter Fraud and Security Management Service Establishment and Constitution Order 2002(4);”;

““services list” means the list prepared by a Primary Care Trust under regulation 3 of the Services List Regulations;”;

““Services List Regulations” means the National Health Service (Personal Medical Services) (Services List) and the (General Medical Services) and (General Medical Services Supplementary List) Amendment Regulations 2003(5);”;

““Supplementary List Regulations” means the National Health Service (General Medical Services Supplementary List) Regulations 2001(6);”.

(4) The definition of “the National Health Service Counter Fraud Service” shall be omitted.

#### **Amendment of regulation 6**

**40.**—(1) Regulation 6 of the Medical Regulations (amendment of or withdrawal from the medical list)(7) shall be amended in accordance with the following provisions of this regulation.

(2) After paragraph (2) there shall be inserted the following paragraph—

“(2A) A doctor shall give notice in writing to the Primary Care Trust that he intends to withdraw from its medical list if he is accepted onto the services list or medical supplementary list of the Primary Care Trust.”.

(3) At the end of paragraph (3) there shall be added—

“or

(e) in the case of a notice pursuant to paragraph (2A), remove the doctor’s name from its medical list as soon as it confirms that that doctor has been accepted on that other list.”.

(4) After paragraph (4) there shall be inserted the following paragraph—

“(4A) A notice given pursuant to paragraph (2A) may not be withdrawn.”.

#### **Amendment of regulation 7**

**41.** In regulation 7(1) of the Medical Regulations (removal from the medical list)(8) there shall be inserted, after sub-paragraph (c), the following sub-paragraphs—

“(d) has been nationally disqualified; or

(e) has had his name included in the medical supplementary list or the services list of any Primary Care Trust.”.

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(4) S.I. 2002/3039. The NHS Counter Fraud and Security Management Service replaces the National Health Service Counter Fraud Service.

(5) S.I. 2003/2644.

(6) S.I. 2001/3740; amended by S.I. 2002/848, 1920 and 2469.

(7) Regulation 6 was amended, in relation to England, by S.I. 1998/2838, 2001/3742, 2002/554, and 2469.

(8) Regulation 7 was amended, in relation to England, by S.I. 1995/3093, 2000/220, 2001/3742, 2002/2469, and 3135.

## Amendment of regulation 7B

42.—(1) Regulation 7B of the Medical Regulations (criteria for decisions on removal)(9) shall be amended in accordance with the following provisions of this regulation.

(2) For paragraph (1) there shall be substituted the following paragraph—

“(1) Where a Primary Care Trust is considering whether to remove a doctor from its medical list under section 49F(4) of the Act (“an unsuitability case”), it shall—

- (a) consider any information relating to the doctor which it has received in accordance with any provision of Schedule 2;
- (b) consider any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or relating to that doctor; and
- (c) in reaching its decision, take into consideration the matters set out in paragraph (2).”.

(3) In paragraph (2), for “criteria” there shall be substituted “matters” and, for sub-paragraphs (b) to (f), there shall be substituted—

- “(b) the length of time since any such offence, incident, conviction or investigation;
- (c) whether there are other offences, incidents or investigations to be considered;
- (d) any action taken or penalty imposed by any licensing or regulatory body, the police or the courts as a result of any such offence, incident or investigation;
- (e) the relevance of any offence, incident or investigation to his provision of general medical services and the likely risk to patients or to public finances;
- (f) whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997(10) applies, or if it had been committed in England and Wales, would have applied;”.

(4) For paragraph (3) there shall be substituted—

“(3) Where a Primary Care Trust is considering whether to remove a doctor from its medical list under section 49F(3) of the Act (a fraud case), it shall—

- (a) consider any information relating to the doctor which it has received in accordance with any provision of Schedule 2;
- (b) consider any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to that doctor; and
- (c) in reaching its decision, take into consideration the matters set out in paragraph (4).”.

(5) In paragraph (4) there shall be substituted—

- (a) for “criteria”, “matters”;
- (b) for sub-paragraph (b)—
  - “(b) the length of time since the last incident of fraud occurred, and since any investigation into it was concluded;” and
- (c) in sub-paragraph (d), for “the incident”, “any such offence, investigation or incident”.

(6) For paragraph (5) there shall be substituted—

“(5) Where a Primary Care Trust is considering whether to remove a doctor from its medical list under section 49F(2) of the Act (“an efficiency case”), it shall—

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(9) Regulation 7B was inserted, in relation to England, by S.I. 2001/3742 and amended by S.I. 2002/554 and 2469.

(10) 1997 c. 51.

- (a) consider any information relating to the doctor which it has received in accordance with any provision of Schedule 2;
  - (b) consider any information held by the Secretary of State as to any record about past or current investigations or proceedings involving or related to that doctor; and
  - (c) in reaching its decision, take into consideration the matters set out in paragraph (6).”.
- (7) In paragraph (6)—
- (a) for “criteria” there shall be substituted “matters”;
  - (b) for sub-paragraphs (a) and (b) there shall be substituted—
    - “(a) the nature of any incident which was prejudicial to the efficiency of the general medical services provided by the doctor;
    - (b) the length of time since the last incident occurred and since any investigation into it was concluded;”;
  - (c) at the end of sub-paragraph (f) there shall be added “, the Supplementary List Regulations or the Services List Regulations”.

#### **Amendment of regulation 7D**

**43.**—(1) Regulation 7D of the Medical Regulations (notifications)(**11**) shall be amended in accordance with the following provisions of this regulation.

- (2) In paragraph (2)—
- (a) after sub-paragraph (f) there shall be inserted the following sub-paragraph—
    - “(ff) the NCAA”; and
  - (b) in sub-paragraph (i) for “the National Health Service Counter Fraud Service” there shall be substituted “the NHS Counter Fraud and Security Management Service”.
- (3) For sub-paragraph (4)(a) there shall be substituted—
- “(a) the name, address and date of birth of the doctor;”.
- (4) For paragraph (7) there shall be substituted—
- “(7) Where a Primary Care Trust is notified by the FHSAA that it has imposed a national disqualification on a doctor who was, or had applied to be, included in its medical list, it shall notify the persons or bodies listed in paragraph (2)(b), (ff), (g) and (h) and paragraph (3).”.

#### **Amendment of regulation 7E**

**44.** At the end of each of paragraphs (4), (5) and (6) of regulation 7E of the Medical Regulations (procedure on removal)(**12**) there shall be added “within 7 days of making that decision”.

#### **Amendment of regulation 7F**

**45.** At the end of each of paragraphs (2) and (5) of regulation 7F of the Medical Regulations (procedure on suspension)(**13**) there shall be added “within 7 days of making that decision”.

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(11) Regulation 7D was inserted, in relation to England, by [S.I. 2001/3742](#) and amended by [S.I. 2002/554](#) and [2469](#).

(12) Regulation 7E was inserted, in relation to England, by [S.I. 2001/3742](#) and amended by [S.I. 2002/554](#) and [2469](#).

(13) Regulation 7F was inserted, in relation to England, by [S.I. 2001/3742](#) and amended by [S.I. 2002/554](#) and [2469](#).

### **Amendment of regulation 7G**

46. At the end of regulation 7G(5) of the Medical Regulations (procedure on review)(14) there shall be added “within 7 days of making that decision”.

### **Amendment of regulation 18E**

47. For regulation 18E(1)(f) of the Medical Regulations (criteria for approval and nomination)(15) there shall be substituted the following sub-paragraphs—

- “(f) unless the Primary Care Trust has checked with the NHS Counter Fraud and Security Management Service whether the doctor has any record of fraud; and
- (g) unless the Primary Care Trust has checked with the Secretary of State as to any information held by him about past or current investigations or proceedings involving or relating to that doctor.”.

### **Amendment of regulation 18EE**

48.—(1) Regulation 18EE of the Medical Regulations (grounds for refusal)(16) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph (1)—

(a) for sub-paragraph (d) there shall be substituted—

“(d) having checked with the NHS Counter Fraud and Security Management Service for any facts that it considers relevant relating to past or current fraud investigations involving or related to the doctor and, having considered these and any other facts in its possession relating to fraud involving or relating to the doctor, the Primary Care Trust consider these justify such refusal;” and

(b) at the end there shall be added—

“or

(f) having checked with the Secretary of State for any facts that he considers relevant relating to past or current investigations or proceedings involving or relating to the doctor and, having considered these and any other facts in its possession involving or relating to the doctor, the Primary Care Trust consider these justify such refusal.”.

(3) At the end of paragraph (3)(f) there shall be added “or, if it had been committed in England or Wales, would have applied”.

### **Amendment of regulation 18EF**

49. Paragraph (1) of regulation 18EF of the Medical Regulations (deferment of decision)(17) shall be amended by—

(a) substituting for sub-paragraphs (a) and (b)—

“(a) there are, in respect of the doctor—

(i) criminal proceedings in the United Kingdom, or

(ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence,

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(14) Regulation 7G was inserted, in relation to England, by [S.I. 2001/3742](#) and amended by [S.I. 2002/2469](#).

(15) Regulation 18E was inserted by [S.I. 1998/2828](#) and amended by [S.I. 2000/220](#), [2001/3742](#), [2002/554](#), [2469](#) and [3135](#).

(16) Regulation 18EE was inserted, in relation to England, by [S.I. 2001/3742](#) and amended by [S.I. 2002/554](#) and [2469](#).

(17) Regulation 18EF was inserted, in relation to England, by [S.I. 2001/3742](#) and amended by [S.I. 2002/554](#) and [2469](#).

which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to the removal of the doctor from the Primary Care Trust's list, if he had been included in it;

(b) in respect of a body corporate of which the doctor is, has in the preceding 6 months been, or was at the time of the originating events, a director there are—

(i) criminal proceedings in the United Kingdom, or

(ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence,

which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to the removal of the doctor from the Primary Care Trust's list, if he had been included in it;"; and

(b) substituting for sub-paragraph (h)—

“(h) the doctor is being investigated by the NHS Counter Fraud and Security Management Service in relation to any fraud, where the result, if adverse, would be likely to lead to the removal of the doctor from the Primary Care Trust's list if he had been included in it;”.

#### **Amendment of regulation 18M**

**50.** After regulation 18M(15)(f) of the Medical Regulations (conditional inclusion)(**18**) there shall be inserted the following sub-paragraph—

“(ff) the NCAA;”.

#### **Amendment of regulation 35**

**51.** At the end of regulation 35(2) of the Medical Regulations (recovery of overpayments)(**19**) there shall be added “, except to the extent that the Secretary of State has determined otherwise pursuant to regulation 11(1) of the National Health Service (Service Committees and Tribunal) Regulations 1992(**20**)”.

#### **Amendment of Schedule 2**

**52.—**(1) Schedule 2 to the Medical Regulations (terms of service for doctors)(**21**) shall be amended in accordance with the following provisions of this regulation.

(2) In paragraph 23A—

(a) for sub-paragraph (1) there shall be substituted—

“(1) Subject to regulation 21 of the Services List Regulations, a doctor shall not engage as a deputy, nor employ as an assistant, any doctor unless his name is included in a medical list, a medical supplementary list or a services list.”; and

(b) sub-paragraph (2) shall be omitted.

(3) In paragraph 36A—

(a) in sub-paragraph (4)—

(i) there shall be inserted, after head (c), the following heads—

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(18) Regulation 18F was inserted by S.I. 1998/2838 and amended by S.I. 2001/3742, 2002/554 and 2469.

(19) Regulation 35(2) was amended by S.I. 2001/3742 and 2002/2469.

(20) S.I. 1992/664.

(21) Schedule 2 was amended by S.I. 1993/540, 1994/633, 3130, 1995/80, 3093, 1996/702, 1997/730, 2468, 1998/682, 1664, 2383, 1999/326, 2000/2383, 2001/706, 2890, 3742, 2002/551, 2469, 2548, 2861, 2890, 3135 and 2003/26.

- “(cc) has accepted and agreed to pay either a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995(22) or a penalty under section 115A of the Social Security Administration Act 1992(23);
- (cd) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction);” and
- (ii) for head (i) there shall be substituted—
- (i) becomes to his knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;”;
- (b) in sub-paragraph (5) “to his knowledge”, in the first place where it occurs, shall be deleted and for head (f) there shall be substituted—
- “(f) becomes to his knowledge the subject of any investigation in relation to fraud, or is notified of the outcome of such an investigation if adverse”; and
- (c) at the end there shall be added a new sub-paragraph (7)—
- “(7) A doctor, who is included in the medical list of a Primary Care Trust, shall supply that Trust with an enhanced criminal record certificate under section 115 of the Police Act 1997(24) in relation to himself, if the Primary Care Trust at any time, for reasonable cause, requests him to provide such a certificate.”.
- (4) After paragraph 36B there shall be inserted the following paragraph—
- “**36C.**—(1) A doctor shall report in writing to a patient’s Primary Care Trust the death on his practice premises of any patient no later than the end of the first working day after the date on which the death occurred.
- (2) The report shall include—
- (a) the patient’s full name;
- (b) the patient’s National Health Service number where known;
- (c) the date and place of death;
- (d) a brief description of the circumstances, as known, surrounding the death;
- (e) the name of any doctor or other person treating the patient whilst on the practice premises; and
- (f) the name, where known, of any other person who was present at the time of death.
- (3) The doctor shall send a copy of the report to any other Primary Care Trust on whose list the doctor is.”.

### **Amendment of Part III of Schedule 3**

**53.** In paragraph 6A of Part III of Schedule 3 to the Medical Regulations (information and undertakings to be given by a practitioner in connection with an application)(25)—

- (a) in (a)—
- (i) there shall be inserted, after head (iii), the following heads—

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(22) 1995 c. 46.

(23) 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

(24) 1997 c. 50.

(25) Paragraph 6A was inserted by S.I. 2000/220 and amended, in relation to England, by S.I. 2001/3742.

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(iiiA) has accepted and agreed to pay either a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995 or a penalty under section 115A of the Social Security Administration Act 1992;

(iiiB) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction);”; and

(ii) for head (viii) there shall be substituted—

“(viii) becomes to his knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;”; and

(b) in (b) “to his knowledge”, in the first place where it occurs, shall be deleted.