
STATUTORY INSTRUMENTS

2008 No. 1187

**The National Health Service (Performers Lists)
Amendment and Transitional Provisions Regulations 2008**

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008 and shall come into force on 1st August 2008.

(2) These Regulations apply to England.

(3) In these Regulations “the principal Regulations” means the National Health Service (Performers Lists) Regulations 2004⁽¹⁾.

Amendment of regulation 2 of the principal Regulations

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

(a) in the definition of “list”, after “a dental list,”, insert “an ophthalmic list,”;

(b) for the definition of “relevant performers list” substitute—

““relevant performers list” means—

(a) in the case of a medical practitioner, the medical performers list;

(b) in the case of a dentist, the dental performers list; and

(c) in the case of an ophthalmic practitioner, the ophthalmic performers list;”;

(c) for the definition of “relevant Part” substitute—

““relevant Part” means—

(a) in the case of a medical practitioner, Part 2;

(b) in the case of a dentist, Part 3; and

(c) in the case of an ophthalmic practitioner, Part 4;”;

(d) insert the following definitions at the appropriate alphabetical places—

““the 2008 Regulations” means the National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008⁽²⁾; and

“ophthalmic performers list,” means the list prepared by a Primary Care Trust and published pursuant to regulation 3(1)(c);”.

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—

(1) S.I. 2004/585; amended by S.I. 2004/2694, 2005/502, 893 and 3491 and 2006/385, 1914 and 3185.

(2) S.I. 2008/1187.

- (a) a medical performers list;
- (b) a dental performers list; and
- (c) an ophthalmic performers list.”.

Amendment of regulation 9 of the principal Regulations

4. In regulation 9(5) of the principal Regulations (requirements with which a performer in a performers list must comply), for “the Schedule to the Amendment Regulations” substitute “the Schedules to the Amendment Regulations or the 2008 Regulations”.

Insertion of Part 4 to the principal Regulations

5. After Part 3 of the principal Regulations insert—

“PART 4

OPHTHALMIC PERFORMERS LISTS

Interpretation

34.—(1) For the purposes of this Part the prescribed description of performer is an optometrist or an OMP and the relevant body is—

- (a) in relation to an optometrist, the General Optical Council; and
- (b) in relation to an OMP, the General Medical Council.

(2) In this Part—

“the Committee” means the Ophthalmic Qualifications Committee appointed by organisations representative of the medical profession as may be recognised by the Secretary of State for the purposes of approving—

- (a) ophthalmic hospitals, academic degrees, academic or post graduate courses in ophthalmology and appointments affording special opportunities for acquiring the necessary skill and experience of the kind required for the provision of primary ophthalmic services; and
- (b) the qualifications of doctors for the purpose of primary ophthalmic services;

“contractor” means an ophthalmic practitioner, who both provides primary ophthalmic services under a general ophthalmic services contract under section 117 of the National Health Service Act 2006 (general ophthalmic services contracts)(3) and performs such services;

“OMP” means a registered medical practitioner, who has been recognised as an ophthalmic medical practitioner under regulations 36 and 37;

“ophthalmic hospital” includes an ophthalmic department of a hospital;

“ophthalmic list” means the list prepared by a Primary Care Trust under regulation 6 of the Ophthalmic Regulations;

“ophthalmic practitioner” means either—

- (a) a registered optometrist, who is not a corporate body; or
- (b) an OMP;

(3) 2006 c.41.

“the Ophthalmic Regulations” means the National Health Service (General Ophthalmic Services) Regulations 1996(4);

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

“the Ophthalmic Supplementary List Regulations” means the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005(5);

“Opticians Act” means the Opticians Act 1989(6);

“professional registration number” means the number against the ophthalmic practitioner’s name in the register;

“register” means—

- (a) in the case of an optometrist, the register maintained by the General Optical Council under section 7(a) of the Opticians Act(7);
- (b) in the case of an OMP, the register of medical practitioners;

“relevant scheme” means the scheme in respect of which the ophthalmic practitioner is applying to be included in an ophthalmic performers list; and

“scheme” means an arrangement to provide primary ophthalmic services under a general ophthalmic services contract.

Ophthalmic performers list

35.—(1) An ophthalmic practitioner may not perform any primary ophthalmic services, unless his name is included in a ophthalmic performers list.

(2) In respect of any ophthalmic practitioner, whose name is included in an ophthalmic performers list, the list shall include—

- (a) his full name;
- (b) his professional registration number with—
 - (i) suffixed to it, the organisational code given by the Secretary of State to the Primary Care Trust,
 - (ii) prefixed to it, the initials OPL;
- (c) his date of birth, where he consents, or where he does not consent, the date of his first registration in the register;
- (d) whether he is a contractor;
- (e) if he is an OMP, that fact and the date of his approval as an OMP under regulation 37(3) or 38(7); and
- (f) the date that his name was included in the ophthalmic performers list or, if his name was previously included in any ophthalmic list or ophthalmic supplementary list of a Primary Care Trust, the date that it was first included in such a list.

(4) S.I. 1986/975.

(5) S.I. 2005/480.

(6) 1989 c.44.

(7) Section 7 was amended by S.I. 2005/848.

Qualifications of ophthalmic medical practitioners

36.—(1) The prescribed qualifications and experience which a registered medical practitioner is to possess to be recognised as an ophthalmic medical practitioner are that he has (at the date of consideration of his application under regulation 37) recent experience and that he —

- (a) has had adequate experience and has held—
 - (i) an appointment in the health service, otherwise than under Part 2 of the 1977 Act⁽⁸⁾, Part IV of the National Health Service Act 2006⁽⁹⁾ or Part 4 of the National Health Service Act 1946⁽¹⁰⁾, with the status of consultant ophthalmologist, or
 - (ii) an appointment for a period of not less than 2 years of equivalent status as ophthalmic surgeon or assistant ophthalmic surgeon on the staff of an approved ophthalmic hospital; or
- (b) has—
 - (i) subject to paragraph (3), held one or more ophthalmic appointments in an approved ophthalmic hospital for a period totalling not less than 2 years, which shall include tenure for a period totalling not less than 6 months of a residential appointment or an appointment with duties comparable with those of a residential appointment,
 - (ii) obtained the Membership of the Royal College of Ophthalmologists, or any approved higher degree or qualification, and
 - (iii) had adequate experience.

(2) In this regulation “approved” means approved by the Committee or by the appeal committee on appeal from the Committee under regulation 38.

(3) The tenure for 6 months of a residential or comparable appointment referred to in paragraph (1)(b)(i) shall not be required in the case of a registered medical practitioner who has been fully registered for at least 7 years and whose experience is such as to make that requirement unnecessary.

Approval of qualifications of ophthalmic medical practitioners

37.—(1) A registered medical practitioner who wishes to establish his status as an OMP shall apply to the Committee for approval of his qualifications and experience and shall give to it such particulars of his qualifications and experience as it may require.

(2) The Committee shall consider and determine his application and within 2 months after the date of the application shall inform him of the Committee’s determination.

(3) If the Committee is satisfied that he possesses the qualifications and experience prescribed by regulation 36, it shall approve him as an OMP.

(4) Notwithstanding the provisions of regulation 36 and of paragraph (1), a registered medical practitioner who has the prescribed qualifications for the purposes of providing general ophthalmic services in Scotland under the National Health Service (Scotland) Act 1978, or in Northern Ireland under the Health and Personal Social Services (Northern Ireland) Order 1972, shall be approved as an OMP.

(5) For the purposes of paragraph (2) the date of the application shall be—

⁽⁸⁾ 1977 c.49.

⁽⁹⁾ 2006 c.41.

⁽¹⁰⁾ 1946 c.81.

- (a) the date upon which a completed application with all necessary supporting details is received by the Committee; or
- (b) if the Committee require any further particulars from the applicant, the date on which the Committee receive all the particulars which it requires.

Appeals from Ophthalmic Qualifications Committee

38.—(1) Any person dissatisfied with a determination of the Committee that he is not qualified to be an OMP may, within one month from the date on which he received notice of that determination, or such longer period as the Secretary of State may at any time allow, appeal against the determination by sending to the Secretary of State a notice of appeal stating the facts and contentions on which he relies.

(2) The Secretary of State shall—

- (a) appoint to determine the appeal an appeal committee of 3 persons, who shall be appointed after consultation with such bodies or organisations representing doctors as appear to him to be concerned with the issues relating to qualification as an OMP;
- (b) refer the appeal to that appeal committee;
- (c) send a copy of the notice of appeal to the Committee and to such other persons as may appear to him to be interested in the appeal; and
- (d) inform the appellant, the Committee and any such other persons that the appeal has been referred to an appeal committee and of the address to which communications to the appeal committee shall be sent.

(3) The appeal committee may, and if requested to do so by the appellant or the Committee shall, hold a hearing in connection with an appeal at such time and place as they may direct.

(4) Notice of the hearing shall, not less than 14 days before the date of the hearing, be sent by the recorded delivery service to the appellant, the Committee, and any other person to whom the Secretary of State has under paragraph (2) sent notice of the appeal.

(5) Either the appellant or the Committee may within one month of being informed that the appeal has been referred to an appeal committee, or of being informed that a hearing of the appeal will be held, give notice of a wish to appear before the appeal committee.

(6) Any party to an appeal shall be entitled to appear and be heard by counsel or solicitor,

- (a) the Committee shall be entitled to appear by a member or by their clerk or other officer duly appointed for the purpose; and
- (b) The appellant shall be entitled to appear in person, by any member of his family, by any friend, or by any officer or member of any organisation of which he is a member; and

(7) Subject to the preceding provisions of this regulation, the procedure of the appeal committee in determining the appeal shall be such as it thinks proper.

(8) An appeal committee shall have all the powers of the Committee, including in particular the power of approval, and, if satisfied that an appellant possesses the qualifications prescribed by regulation 36, it shall so determine and accordingly the appellant shall be an OMP.

(9) The appeal committee shall as soon as practicable notify its determination to the appellant, the Committee, the Secretary of State and any other person to whom the Secretary of State has under paragraph (2) sent notice of the appeal.

Application for inclusion in an ophthalmic performers list

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

- (a) his professional qualifications and where they were obtained, with evidence concerning his qualifications and experience, including, if he seeks inclusion as an OMP, evidence of his approval as an OMP under regulation 37 or 38;
- (b) a declaration that he is included in the register;
- (c) his professional registration number and date of first registration;
- (d) whether he is a contractor; and
- (e) 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 ophthalmic practitioner shall give the following further undertakings—

- (a) not to perform any primary ophthalmic services in the area of another Primary Care Trust or equivalent body from whose ophthalmic performers list, ophthalmic list, ophthalmic 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(6) of the Ophthalmic Supplementary List Regulations, regulation 9(2) of the Ophthalmic Regulations or any equivalent provision in Scotland or Wales, without the consent, in writing, of that Primary Care Trust or equivalent body;
- (b) if he is a contractor, to comply with the requirements of paragraph 52 (gifts) of Schedule 1 to the General Ophthalmic Services Contracts Regulations 2008⁽¹¹⁾; and
- (c) if he is not a contractor, to comply with the requirements in sub-paragraph (b) as though he were a contractor.

(3) Any person who is not an optometrist, but expects to become so on successful completion of his training, may make an application to a Primary Care Trust not less than 3 months before he anticipates his being entered on the register.

(4) An application under paragraph (3) shall contain—

- (a) all information mentioned in regulation 4(2) and paragraph (1) of this regulation, except that required by sub-paragraphs (b) and (c) of that paragraph;
- (b) the undertakings, certificate and consent required by regulation 4(3) and paragraph (2) of this regulation;
- (c) any declaration required under regulation 4(4) or (5), and

in the application of these Regulations to any such application, a reference to an optometrist, an ophthalmic practitioner or a performer shall be taken as being a reference to an applicant under paragraph (3).

(5) An applicant under paragraph (2) shall provide the information required by paragraph (1)(b) and (c) as soon as he has been notified by the General Optical Council whether he has been admitted to the register and the Primary Care Trust shall then, provided—

- (a) the requirements of regulation 4 and paragraphs (3) and (4) of this regulation have been complied with;

- (b) it has not sought further information, references or documentation from him under regulation 4(7); and
 - (c) it has not deferred the application under regulation 7,
- decide his application within 7 days of receiving the information required under paragraph (1)(b) and (c).

Additional grounds for refusal

40.—(1) In addition to the grounds in regulation 6(1), a Primary Care Trust may also refuse to admit an ophthalmic practitioner to its ophthalmic performers list if—

- (a) having checked the information provided under regulation 39(1), it considers he is unsuitable to be included in its list;
- (b) in the case of an OMP, regulation 24(1)(b), (c), (d) or (e) applies to him; or
- (c) in the case of an optometrist, his registration in the register is subject to conditions imposed under section 13F (powers of the fitness to practise committee) of the Opticians Act or he is the subject of an order pursuant to section 13H (financial penalty order) of that Act⁽¹²⁾.

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

- (a) he is a contractor and the relevant scheme is not one that lies within its area; or
- (b) he is included in the ophthalmic performers list of another Primary Care Trust, unless he has given notice to that Trust that he wishes to withdraw from that list.

(3) For the purposes of regulation 6(2)(d), the day prescribed in this Part is 14th December 2001.

(4) In addition to checking the information provided by the ophthalmic practitioner as required by regulation 6(3)(a), the Primary Care Trust shall also check the information he provided under regulation 39.

Grounds for removal from a ophthalmic performers list

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

- (a) is an OMP and regulation 26(1)(a) to (d) applies to him and, in a case where paragraph (1)(c) of that regulation applies to him, paragraph (2) of that regulation does not apply to him;
- (b) is an optometrist and is the subject of a direction under section 13F(3)(a) or (b), (7) or (13)(a) or (b) of the Opticians Act;
- (c) is included in the ophthalmic performers list of another Primary Care Trust.

(2) For the purposes of regulation 10(1)(b), the day prescribed in this Part is 14th December 2001.

(3) 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 ophthalmic practitioner's registration or his entitlement to practise as such was suspended—

- (a) if he is an OMP, in a case to which regulation 26(5) applies; or

⁽¹²⁾ Sections 13F and 13H were inserted by [S.I. 2005/848](#).

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

- (b) if he is an optometrist, under section 13L (interim orders) of the Opticians Act(13).

Additional decision that may be appealed

42. An ophthalmic practitioner may also appeal, under regulation 15, against a decision of the Primary Care Trust to refuse to include his name in its ophthalmic performers list under regulation 40(1).”.

Transitional provisions

6. The provisions in the Schedule shall have effect.

Signed by authority of the Secretary of State for Health.

28th April 2008

Ann Keen
Parliamentary Under-Secretary of State,
Department of Health