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STATUTORY INSTRUMENTS

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**2013 No. 335**

**The National Health Service (Performers Lists) (England) Regulations 2013**

**PART 1**

General Provisions as to Performers Lists

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the National Health Service (Performers Lists) (England) Regulations 2013 and come into force on 1st April 2013.

(2) These Regulations apply to England only.

**Interpretation**

2. In these Regulations—

“the 2006 Act” means the National Health Service Act 2006;

“armed forces” means the regular forces within the meaning of the Armed Forces Act 2006<sup>M1</sup> or the reserve forces within the meaning of that Act;

“the Board” means the National Health Service Commissioning Board established by section 1H of the 2006 Act (the National Health Service Commissioning Board and its general functions)<sup>M2</sup>;

“dental list” means a list prepared by a Primary Care Trust under regulation 4(1) of the National Health Service (General Dental Services) Regulations 1992 (dental list)<sup>M3</sup>;

“dental performers list” means, unless the context otherwise requires, the list prepared, maintained and published by the Board pursuant to regulation 3(1)(b);

“dental supplementary list” means a list prepared by a Primary Care Trust under regulation 3 of the National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003 (supplementary list)<sup>M4</sup>;

[<sup>F1</sup>“dentists register” means the register referred to in section 14(1) of the Dentists Act 1984;]

“director of a body corporate” includes a member of the body of persons controlling a body corporate (whether or not a limited liability partnership);

“emergency registered practitioner” means a medical practitioner—

- (a) who is registered as a registered medical practitioner pursuant to section 18A of the Medical Act 1983 (temporary registration with regard to emergencies involving loss of human life or human illness etc.)<sup>M5</sup>;
- (b) who within the period of five years prior to being so registered, had been included in a medical performers list; and
- (c) who was subsequently removed from that or another medical performers list—

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- (i) in accordance with regulation 14(5) or regulation 10(6) of the National Health Service (Performers Lists) Regulations 2004 (removal from performers list)<sup>M6</sup>, or
- (ii) on some other ground unconnected with impairment of fitness to practise (for these purposes, impairment is construed in accordance with section 35C(2) of the Medical Act 1983 (functions of the Investigation Committee))<sup>M7</sup>;

“employment” means any employment, whether paid or unpaid, and, except in relation to the definition of a Type 1 armed forces GP, includes—

- (a) the provision of services under a contract for services; or
  - (b) membership of a partnership,
- and “employed” and “employer” are to be construed accordingly;

“equivalent body” means—

- (a) in relation to England, prior to 1st October 2002, a Health Authority;
- (b) in relation to Wales—
  - (i) a Local Health Board, or
  - (ii) prior to 1st April 2003, a Health Authority in Wales;
- (c) in relation to Northern Ireland—
  - (i) a Health and Social Care Board, or
  - (ii) prior to 1st April 2009, a Health and Social Services Board;
- (d) in relation to Scotland, a Health Board;

“equivalent list” means any list kept by an equivalent body which serves an equivalent function to a health service list;

“the First-tier Tribunal” means the First-tier Tribunal constituted under section 3(1) of the Tribunal, Courts and Enforcement Act 2007 (the First-tier tribunal)<sup>M8</sup>;

“GP Register” means the register kept by virtue of section 34C of the Medical Act 1983 (the general practitioner register)<sup>M9</sup>;

“health service list” means—

- (a) a list referred to in section 159(1) of the 2006 Act (national disqualification)<sup>M10</sup>, including that section as enacted immediately before the transfer date;
- (b) a dental list, an ophthalmic list, or a medical list;
- (c) a medical supplementary list, a dental supplementary list or an ophthalmic supplementary list; or
- (d) a services list;

“holder of a list” means the body which keeps a list;

“indemnity arrangement” means an arrangement which may comprise—

- (a) a policy of insurance;
- (b) an arrangement made for the purposes of indemnifying a person; or
- (c) a combination of a policy of insurance and an arrangement made for the purposes of indemnifying a person;

“investigation” means, in relation to a Practitioner or a body corporate of which the Practitioner is or has been a director, unless the context otherwise requires, an investigation into the conduct of the Practitioner or body corporate which could result in a finding relevant to the suitability of the Practitioner to be included in a list;

- “list” means, unless the context otherwise requires, a health service list or an equivalent list;
- “medical list” means a list prepared by a Primary Care Trust under regulation 4 of the National Health Service (General Medical Services) Regulations 1992 (medical list) <sup>M11</sup>;
- “medical performers list” means, unless the context otherwise requires, the list prepared, maintained and published by the Board pursuant to regulation 3(1)(a);
- “medical supplementary list” means a list prepared by a Primary Care Trust under regulation 3 of the National Health Service (General Medical Services Supplementary List) Regulations 2001 (supplementary list) <sup>M12</sup>;
- “national disqualification” means the effect of a decision of the First-tier Tribunal under section 159(1) of the 2006 Act (national disqualification);
- “the NCAA” means the National Clinical Assessment Authority established as a Special Health Authority under section 28 of the 2006 Act (special health authorities) <sup>M13</sup>;
- “the NHS Business Services Authority” means the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG) established as a Special Health Authority under section 28 of the 2006 Act (special health authorities);
- [<sup>F2</sup>“NHS Counter Fraud Authority” means the NHS Counter Fraud Authority established as a special health authority under section 28 of the 2006 Act;]
- “the NHSLA” means the National Health Service Litigation Authority established as a Special Health Authority under section 28 of the 2006 Act (special health authorities);
- “the NICE” means the National Institute for Health and Clinical Excellence established as a Special Health Authority under section 28 of the 2006 Act (special health authorities) <sup>M14</sup>;
- “the NPSA” means the National Patient Safety Agency established as a Special Health Authority under section 28 of the 2006 Act (special health authorities) <sup>M15</sup>;
- “notice” means a notice in writing (including in electronic form) and “notify” is to be construed accordingly;
- “ophthalmic list” means a list prepared by a Primary Care Trust under regulation 6 of the National Health Service (General Ophthalmic Services) Regulations 1986 (ophthalmic list) <sup>M16</sup>;
- “ophthalmic performers list” means, unless the context otherwise requires, the list prepared, maintained and published by the Board pursuant to regulation 3(1)(c);
- “ophthalmic supplementary list” means a list prepared by a Primary Care Trust under regulation 3 of the National Health Service (General Ophthalmic Services Supplementary List) and (General Ophthalmic Services Amendment and Consequential Amendment) Regulations 2005 (supplementary list) <sup>M17</sup>;
- “originating event” means, in relation to a conviction, investigation or proceedings, or a suspension, disqualification or removal from, refusal to include in or conditional inclusion in a list, the event which gives rise to it;
- “period of emergency” means the period—
- (a) beginning when the Secretary of State advises the Registrar of the General Medical Council (“the Registrar”) that an emergency of the type described in section 1 of the Civil Contingencies Act 2004 (meaning of “emergency”) <sup>M18</sup>, has occurred, is occurring or is about to occur; and
  - (b) ending when the Secretary of State advises the Registrar that the circumstances that led the Secretary of State to advise the Registrar as mentioned in sub-paragraph (a) no longer exist;

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“Practitioner” means a medical practitioner, dental practitioner or ophthalmic practitioner;  
 “performers list” means, unless the context otherwise requires, a list referred to in regulation 3(1);

[<sup>F1</sup>“protected caution” means a caution of the kind described in article 2A(1) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975;]

[<sup>F1</sup>“protected conviction” means a conviction of the kind described in article 2A(2) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975;]

“register of medical practitioners” has the meaning given to it by section 2(2) of the Medical Act 1983 (registration of medical practitioners) <sup>M19</sup>;

“regulatory body” means a body anywhere in the world which regulates or licenses any profession of which the Practitioner is or has been a member and includes a body which regulates or licenses the education, training or qualifications of that profession;

“relevant body” means, in relation to a Practitioner, the body for the time being mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (regulatory bodies) <sup>M20</sup>, which regulates the profession of the Practitioner;

“relevant performers list” means—

- (a) in the case of a medical practitioner, the medical performers list;
- (b) in the case of a dental practitioner, the dental performers list; and
- (c) in the case of an ophthalmic practitioner, the ophthalmic performers list;

“relevant Part” means—

- (a) in the case of a medical practitioner, Part 2;
- (b) in the case of a dental practitioner, Part 3; and
- (c) in the case of an ophthalmic practitioner, Part 4;

“Type 1 armed forces GP” means a medical practitioner—

- (a) who is a member of the armed forces or employed by the Ministry of Defence; and
- (b) whose name is included in the GP Register;

“Type 2 armed forces GP” means a medical practitioner—

- (a) who is not a Type 1 armed forces GP;
- (b) whose name is included in the GP Register; and
- (c) who is engaged under a contract for services specifically for the provision of medical services to members of the armed forces;

“services list” means a list prepared by a Primary Care Trust under regulation 3 of the National Health Service (Personal Medical Services)(Services List) and the (General Medical Services) and (General Medical Services Supplementary List) Amendment Regulations 2003 (services list) <sup>M21</sup>;

“transfer date” means 1st April 2013; and

“working day” means any day which is not a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971 <sup>M22</sup>.

#### Textual Amendments

**F1** Words in reg. 2 inserted (1.4.2015) by [The National Health Service \(Performers Lists\) \(England\) \(Amendment\) Regulations 2015 \(S.I. 2015/362\)](#), regs. 1(1), 3

- F2** Words in reg. 2 inserted (1.11.2017) by The NHS Counter Fraud Authority (Investigatory Powers and Other Miscellaneous Amendments) Order 2017 (S.I. 2017/960), arts. 1(1), **4(2)**

### Marginal Citations

- M1** 2006 c. 52.
- M2** Section 1H was inserted by section 9 of the [Health and Social Care Act 2012 \(c. 7\)](#).
- M3** [S.I. 1992/661](#). These regulations were revoked in relation to England by [S.I. 2006/562](#) and in relation to Wales by [S.I. 2006/946](#).
- M4** [S.I. 2003/250](#). These regulations were revoked by [S.I. 2006/562](#).
- M5** 1983 c. 54. Section 18A was inserted by [S.I. 2008/1774](#).
- M6** [S.I. 2004/585](#). These regulations were amended by [S.I. 2004/2694](#), [S.I. 2005/502](#), [S.I. 2005/893](#), [S.I. 2005/3491](#), [S.I. 2006/635](#), [S.I. 2006/1385](#), [S.I. 2006/1914](#), [S.I. 2008/1187](#), [S.I. 2008/1700](#), [S.I. 2010/22](#), [S.I. 2010/234](#), [S.I. 2010/412](#), [S.I. 2010/578](#), [S.I. 2011/1043](#) and [S.I. 2012/476](#).
- M7** Section 35C was substituted by [S.I. 2002/3135](#). Sub-section (2) was amended by the [Policing and Crime Act 2009 \(c. 26\)](#), [section 81](#) and by [S.I. 2008/1774](#).
- M8** 2007 c. 15.
- M9** Section 34C was inserted by [S.I. 2010/234](#).
- M10** Section 159(1) was amended by [S.I. 2010/22](#) and by the [Health and Social Care Act 2012 \(c. 7\)](#), [section 55](#) and Schedule 4, Part 7, paragraph 85.
- M11** [S.I. 1992/635](#). These regulations were revoked in relation to England by [S.I. 2004/865](#) and in relation to Wales by [S.I. 2004/1016](#).
- M12** [S.I. 2001/3740](#). These regulations were revoked by [S.I. 2004/585](#).
- M13** Section 28 was amended by the [Health and Social Care Act 2012 \(c. 7\)](#), [section 55](#) and Schedule 4, Part 2, paragraph 13. The Authority was abolished by [S.I. 2005/502](#).
- M14** The Institute was abolished by the [Health and Social Care Act 2012 \(c. 7\)](#), [section 248](#).
- M15** The Agency was abolished by the [Health and Social Care Act 2012 \(c. 7\)](#), [section 281](#).
- M16** [S.I. 1986/975](#). Regulation 6 was amended by [S.I. 1996/705](#), [S.I. 2001/3739](#), [S.I. 2002/1883](#), [S.I. 2002/2469](#), [S.I. 2005/480](#) and [S.I. 2006/181](#). The regulations were revoked in relation to England by [S.I. 2008/1700](#).
- M17** [S.I. 2005/480](#). These regulations were revoked by [S.I. 2008/1700](#).
- M18** 2004 c. 36. Section 1 was amended by [S.I. 2010/976](#).
- M19** Section 2(2) was amended by [S.I. 2002/3135](#), [S.I. 2006/1914](#), [S.I. 2007/3101](#) and [S.I. 2008/1774](#).
- M20** 2002 c. 17. The section heading was substituted by, and sub-section 1 was amended by section 222 of the [Health and Social Care Act 2012](#) (“the 2012 Act”). Sub-section (2) was amended by the 2012 Act, section 230 and Schedule 15, Part 3, paragraph 62 and by section 223. Sub-section (2A) was inserted by section 113 of the [Health and Social Care Act 2008 \(c. 14\)](#) (“the 2008 Act”) and amended by the 2012 Act, sections 223 and 230 and Schedule 15, Part 3, paragraph 62. Sub-section (3) was amended by the 2008 Act, section 127 and Schedule 10, paragraph 17, by [S.I. 2010/231](#) and by the 2012 Act, section 230 and Schedule 15, Part 2, paragraph 56. Sub-sections (3A) and (3B) were inserted by section 220 of the 2012 Act. Sub-section (4) was amended by the 2012 Act, section 230 and Schedule 15, Part 3, paragraph 62 and sub-section (5) was amended by section 224 of that Act. Sub-section (6) was amended by the 2008 Act, sections 127 and 166, Schedule 10, paragraph 17 and Schedule 15, Part 2.
- M21** [S.I. 2003/2644](#). These regulations were revoked by [S.I. 2004/585](#).
- M22** 1971 c. 80.

### Performers lists

3.—(1) The Board is to prepare, maintain and publish, in accordance with this Part as modified or supplemented by the relevant Part—

- (a) a medical performers list;
- (b) a dental performers list; and

- (c) an ophthalmic performers list.
- (2) The performers lists must be made available by the Board for public inspection.

#### **Application for inclusion in a performers list**

4.—(1) An application by a Practitioner for inclusion in a performers list must be made by sending the Board an application in writing, which must include the information and documentation required by this regulation, and—

- (a) in relation to an application for inclusion in the medical performers list, satisfy the requirements of regulation 26;
  - (b) in relation to an application for inclusion in the dental performers list, satisfy the requirements of regulation 33; and
  - (c) in relation to an application for inclusion in the ophthalmic performers list, satisfy the requirements of regulation 39.
- (2) The Practitioner must provide the following—
- (a) the Practitioner's full name;
  - (b) the Practitioner's sex;
  - (c) the Practitioner's date of birth;
  - (d) the Practitioner's residential address and telephone number;
  - (e) chronological details of the Practitioner's professional experience (including the starting and finishing dates of each appointment together with an explanation of any gaps between appointments) and evidence of each post, and, if the Practitioner has been dismissed from any post, the reasons for that dismissal;
  - (f) names and addresses of two referees, who are willing to provide clinical references relating to two recent posts (which may include any current post) each of which lasted at least three months without a significant break, or, where this is not possible, a full explanation as to why that is the case and the names and addresses of two alternative referees;
  - (g) where the Practitioner has one, a copy of the Practitioner's most recent appraisal;
  - (h) evidence that the Practitioner has in force an appropriate indemnity arrangement which provides the Practitioner with cover in respect of liabilities that may be incurred in carrying out the Practitioner's work;
  - (i) confirmation of whether the Practitioner has any outstanding application, including a deferred application, to be included in any list and if so, particulars of that application;
  - (j) details of any list—
    - (i) from which the Practitioner has been removed,
    - (ii) in which the Practitioner has been refused inclusion,
    - (iii) in which the Practitioner has been included subject to conditions, or
    - (iv) from which the Practitioner is currently suspended,
 together with an explanation as to why;
  - (k) if the Practitioner is the director of a body corporate that is included in any list or which has an outstanding application (including a deferred application) for inclusion in any such list, the name and registered office of that body corporate and details of that list (including the holder of the list);
  - (l) where the Practitioner is, has in the preceding six months been, or was at the time of the originating event, a director of a body corporate, details of any list—

- (i) in which that body has been refused inclusion,
  - (ii) in which it has been included subject to conditions,
  - (iii) from which it has been removed, or
  - (iv) from which it is currently suspended,
- together with an explanation as to why; and
- (m) an enhanced criminal record certificate under section 113B of the Police Act 1997 (enhanced criminal record certificates) <sup>M23</sup> which includes suitability information relating to children and suitability information relating to vulnerable adults under sections 113BA (suitability information relating to children) and 113BB (suitability information relating to vulnerable adults) of that Act respectively <sup>M24</sup>.
- (3) The Practitioner must provide the following undertakings—
- (a) to provide any declaration or document required by regulation 9;
  - (b) to notify the Board within 7 days of any material change to the information provided in the application, whether such change occurs before the Board's determination of the Practitioner's application or subsequently;
  - (c) to maintain an appropriate indemnity arrangement which provides cover in respect of liabilities that may be incurred in carrying out work as a Practitioner at all times and to provide evidence of such an indemnity arrangement to the Board on request;
  - (d) to notify the Board if the Practitioner is included, or applies to be included, in any other list;
  - (e) to co-operate with an assessment by the NHSLA where appropriate and when requested to do so by the Board; and
  - (f) to participate in any appraisal system established by the Board.
- (4) A Type 1 armed forces GP is not required to provide the undertaking referred to in paragraph (3)(f) but is to give an undertaking to provide the Board with a copy of any annual appraisal of the Practitioner relating to the Practitioner's provision of medical services as a Type 1 GP.
- (5) The Practitioner must send with the application a declaration as to whether the Practitioner—
- (a) has a criminal conviction in the United Kingdom [<sup>F3</sup>(but the Practitioner need not declare a protected conviction)], including one in respect of which the Practitioner has been bound over;
  - (b) has accepted a police caution in the United Kingdom [<sup>F4</sup>(but the Practitioner need not declare a protected caution)];
  - (c) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 <sup>M25</sup> (fixed penalty: conditional offer by procurator fiscal) or a compensation offer under section 302A of that Act <sup>M26</sup> (compensation offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 <sup>M27</sup> (penalty as alternative to prosecution);
  - (d) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 (admonition and absolute discharge) <sup>M28</sup> discharging the Practitioner absolutely;
  - (e) has been convicted elsewhere of an offence which would constitute a criminal offence if committed in England and Wales [<sup>F5</sup>(but the Practitioner need not declare such an offence if the offence would constitute a protected conviction if committed in England and Wales)];
  - (f) is currently the subject of any proceedings (which includes arrest, charge or bail) which might lead to a conviction;

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- (g) has been the subject of any investigation by any regulatory or other body which included a finding adverse to the Practitioner;
  - (h) is currently the subject of any investigation by any regulatory or other body;
  - (i) is involved in an inquest [<sup>F6</sup>conducted as part of an investigation under the Coroners and Justice Act 2009, as a person who is found to have caused, or contributed to, the death of the deceased or otherwise had their conduct brought into question];
  - (j) has been the subject of any investigation by the NHS Business Services Authority [<sup>F7</sup>or the NHS Counter Fraud Authority] in relation to fraud which included a finding adverse to the Practitioner;
  - (k) is currently the subject of any investigation by the [<sup>F8</sup>NHS Counter Fraud Authority] in relation to fraud;
  - (l) is the subject of any investigation by the holder of any list which might lead to the Practitioner's removal from the list;
  - (m) is the subject of any investigation in respect of any current or previous employment;
  - (n) has been the subject of any investigation in respect of any current or previous employment which included a finding adverse to the Practitioner;
  - (o) has been removed or is currently suspended from, or has been refused inclusion in or included subject to conditions in, any list; or
  - (p) is, or has ever been, subject to a national disqualification.
- (6) Where a Practitioner makes a declaration regarding any matter under paragraph (5), the Practitioner must provide an explanation of the facts giving rise to that matter, including those concerned, relevant dates and any outcome.
- (7) If a Practitioner is, has in the preceding six months been, or was at the time of the originating event, a director of a body corporate, the Practitioner must make a declaration as to whether the body corporate—
- (a) has a criminal conviction in the United Kingdom;
  - (b) has been convicted elsewhere of an offence, which would constitute a criminal offence if committed in England and Wales;
  - (c) is currently the subject of any proceedings (which includes a charge) which might lead to a conviction;
  - (d) has been the subject of any investigation by any regulatory or other body which included a finding adverse to the body corporate;
  - (e) is currently the subject of any investigation by any regulatory or other body;
  - (f) has been the subject of any investigation by the NHS Business Services Authority [<sup>F9</sup>or the NHS Counter Fraud Authority] in relation to fraud which included a finding adverse to the body corporate;
  - (g) is currently the subject of any investigation by the [<sup>F10</sup>NHS Counter Fraud Authority] in relation to fraud;
  - (h) is the subject of any investigation by the holder of any list which might lead to its removal from that list;
  - (i) has been removed or is currently suspended from, or has been refused inclusion in or included subject to conditions in, any list; or
  - (j) is, or has ever been, subject to a national disqualification.
- (8) Where the Practitioner makes a declaration regarding any matter under paragraph (7), the Practitioner must provide the name and registered office of the body corporate in question and an



explanation of the facts giving rise to that matter, including those concerned, relevant dates and any outcome.

#### Textual Amendments

- F3** Words in reg. 4(5)(a) inserted (1.4.2015) by [The National Health Service \(Performers Lists\) \(England\) \(Amendment\) Regulations 2015 \(S.I. 2015/362\)](#), regs. 1(1), **4(a)**
- F4** Words in reg. 4(5)(b) inserted (1.4.2015) by [The National Health Service \(Performers Lists\) \(England\) \(Amendment\) Regulations 2015 \(S.I. 2015/362\)](#), regs. 1(1), **4(b)**
- F5** Words in reg. 4(5)(e) inserted (1.4.2015) by [The National Health Service \(Performers Lists\) \(England\) \(Amendment\) Regulations 2015 \(S.I. 2015/362\)](#), regs. 1(1), **4(c)**
- F6** Words in reg. 4(5)(i) substituted (25.7.2013) by [The Coroners and Justice Act 2009 \(Commencement No. 15, Consequential and Transitory Provisions\) Order 2013 \(S.I. 2013/1869\)](#), art. 4, **Sch. para. 5(2)**
- F7** Words in reg. 4(5)(j) inserted (1.11.2017) by [The NHS Counter Fraud Authority \(Investigatory Powers and Other Miscellaneous Amendments\) Order 2017 \(S.I. 2017/960\)](#), arts. 1(1), **4(3)**
- F8** Words in reg. 4(5)(k) substituted (1.11.2017) by [The NHS Counter Fraud Authority \(Investigatory Powers and Other Miscellaneous Amendments\) Order 2017 \(S.I. 2017/960\)](#), arts. 1(1), **4(4)(a)**
- F9** Words in reg. 4(7)(f) inserted (1.11.2017) by [The NHS Counter Fraud Authority \(Investigatory Powers and Other Miscellaneous Amendments\) Order 2017 \(S.I. 2017/960\)](#), arts. 1(1), **4(3)**
- F10** Words in reg. 4(7)(g) substituted (1.11.2017) by [The NHS Counter Fraud Authority \(Investigatory Powers and Other Miscellaneous Amendments\) Order 2017 \(S.I. 2017/960\)](#), arts. 1(1), **4(4)(a)**

#### Marginal Citations

- M23** 1997 c. 50. Section 113B was inserted by the [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **section 163**. It was amended by: the [Safeguarding Vulnerable Groups Act 2006 \(c. 47\)](#), **section 63** and Schedule 9, Part 2, paragraph 14; the [Armed Forces Act 2006 \(c. 52\)](#), **section 378** and Schedule 16, paragraph 149; the [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(2007 asp 14\)](#), sections 79 and 80; the [Policing and Crime Act 2009 \(c. 26\)](#), **sections 97** and 112 and Schedule 8, Part 8; S.I. 2009/203; S.I. 2010/146; the [Protection of Freedoms Act 2012 \(c. 9\)](#), **sections 79**, 80, 82 and 115 and Schedule 10, Parts 5 and 6; and S.I. 2012/3006.
- M24** Sections 113BA and 113BB were inserted in relation to England, Wales and Northern Ireland by the [Safeguarding Vulnerable Groups Act 2006 \(c. 47\)](#), **section 63** and Schedule 9, Part 2, paragraph 14. An alternative section 113BA was inserted in relation to Scotland by the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(2010 asp 13\)](#), section 108. Section 113BA was amended in relation to England, Wales and Northern Ireland by the [Education and Inspections Act 2006 \(c. 40\)](#), **sections 170** and 173 and by the [Protection of Freedoms Act 2012 \(c. 9\)](#), **section 115** and Schedule 9, Part 6, paragraphs 35 and 38 and Schedule 10, Part 5. Section 113BB was amended by the [Protection of Freedoms Act 2012 \(c. 9\)](#), **section 115** and Schedule 9, Part 6, paragraphs 35 and 39 and Schedule 10, Part 5.
- M25** 1995 c. 46. Section 302 has been amended by: the [Communications Act 2003 \(2003 c. 21\)](#), **section 406** and Schedule 17, paragraph 133; the [Wireless Telegraphy Act 2006 \(2006 c. 36\)](#), **section 123** and Schedule 7, paragraph 16; the [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(2007 asp 6\)](#), section 50; and the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(2010 asp 13\)](#), section 70.
- M26** Section 302A was inserted by the [Criminal Proceedings etc. \(Reform\) \(Scotland\) Act 2007 \(2007 asp 6\)](#), section 50 and amended by the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(2010 asp 13\)](#), section 70.
- M27** 1992 c. 5. Section 115A was inserted by the [Social Security Administration \(Fraud\) Act 1997 \(1997 c. 47\)](#), **section 15**. It was amended by the [Social Security Fraud Act 2001 \(2001 c. 11\)](#), **sections 1** and 14 and the [Welfare Reform Act 2012 \(2012 c. 5\)](#), **sections 113** and 115.
- M28** 1995 c. 46. Section 246 was amended by the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(2010 asp 13\)](#), section 14 and Schedule 2, paragraph 26.

**Consideration of applications**

5.—(1) In considering a Practitioner's application for inclusion in a performers list the Board is to—

- (a) satisfy itself that it has checked all the information and documents the Practitioner has provided pursuant to these Regulations;
- (b) check with the [F11NHS Counter Fraud Authority] whether it has any record of fraud relating to the Practitioner, which information that Authority must supply;
- (c) check with the NHSLA whether it has any record of past or current investigations or proceedings involving or relating to the Practitioner, which information the NHSLA must supply; and
- (d) obtain and consider references from the referees named by the Practitioner under regulation 4(2)(f).

(2) If the Board cannot reach a decision on a Practitioner's application on the information or documentation provided by the Practitioner, it may seek from the Practitioner such further information, references or other documentation as it may reasonably require in order to make a decision and the Practitioner must provide that material.

(3) Where it appears to the Board that it may assist its consideration of any information or documentation provided under paragraph (2) of regulation 4 or any declaration made under paragraph (5) or (7) of that regulation, the Board may request further information from—

- (a) any employer or former employer of the Practitioner;
- (b) any body corporate;
- (c) the holder of any list;
- (d) any regulatory or other body,

involved in the matter which is the subject of the information, declaration or other documentation provided by the Practitioner.

(4) Where the Board has made a request under paragraph (3), the Practitioner must consent to the provision of information in response to that request.

**Textual Amendments**

**F11** Words in [reg. 5\(1\)\(b\)](#) substituted (1.11.2017) by [The NHS Counter Fraud Authority \(Investigatory Powers and Other Miscellaneous Amendments\) Order 2017 \(S.I. 2017/960\)](#), arts. 1(1), **4(4)(b)**

**Readmission**

6.—(1) Where a Practitioner has been removed from a performers list by the Board on the ground that the Practitioner has been convicted of a criminal offence, and that conviction is overturned on appeal, the Board may agree to include the Practitioner in the performers list without the need for the Practitioner to provide an application that complies with all, or any particular provision, of regulation 4 and, as the case may be, regulation 26, 33 or 39, if the Board—

- (a) is satisfied that there are no other matters that need to be considered by it in respect of that inclusion; and
- (b) it has received an undertaking from the Practitioner to comply with the requirements of these Regulations.

(2) If the conviction is reinstated on a further appeal, the previous determination of the Board to remove that Practitioner from the performers list is once again to have effect.

## Decisions and grounds for refusal

### 7.—(1) The Board—

- (a) may refuse to include a Practitioner in a performers list on the grounds set out in paragraph (2);
- (b) must refuse to do so on the grounds set out in paragraph (4).

(2) The grounds on which the Board may refuse to include a Practitioner in a performers list are, in addition to those prescribed in the relevant Part, that—

- (a) it considers the Practitioner is unsuitable to be included in the performers list having considered the information and documentation provided under regulation 4(2) and—
  - (i) in the case of a medical practitioner, regulation 26,
  - (ii) in the case of a dental practitioner, regulation 33, and
  - (iii) in the case of an ophthalmic practitioner, regulation 39;
- (b) having considered any declaration required by regulation 4(5) and (if applicable) regulation 4(7), and any information provided under regulation 4(6) or (8) in connection with any such declaration, and any other information or documents in its possession relating to the Practitioner, it considers that the Practitioner is unsuitable to be included in a performers list;
- (c) having obtained references from the referees named by the Practitioner under regulation 4(2)(f), it is not satisfied with those references;
- (d) having checked with the [<sup>F12</sup>NHS Counter Fraud Authority] for any facts that the Board considers relevant relating to any past or current fraud investigation involving or relating to the Practitioner, and, having considered these and any other facts in its possession relating to such matters, it considers that the Practitioner is unsuitable to be included in a performers list;
- (e) the Practitioner has been convicted in the United Kingdom of any criminal offence (other than murder), committed on or after the day prescribed in the relevant Part, and has been sentenced to a term of imprisonment (whether suspended or not) of over six months;
- (f) having checked with the NHSLA for any facts that the Board considers relevant relating to any past or current investigation or proceedings involving or relating to the Practitioner, and, having considered these and any other facts in its possession involving or relating to the Practitioner, it considers that the Practitioner is unsuitable to be included in a performers list; or
- (g) it considers that there are reasonable grounds for concluding that including the Practitioner in a performers list would be prejudicial to the efficiency of the services which those included in that list perform.

(3) Where the Board is considering a refusal of a Practitioner's application under a ground contained in paragraph (2) it must, in particular, take into consideration—

- (a) the nature of any matter in question;
- (b) the length of time since that matter and the events giving rise to it occurred;
- (c) any action or penalty imposed by any regulatory or other body as a result of that matter;
- (d) the relevance of that matter to the Practitioner's performance of the services which those included in the relevant performers list perform, and any likely risk to the Practitioner's patients or to public finances;
- (e) whether any offence was a sexual offence for the purposes of Part 2 of the Sexual Offences Act 2003 (notification and orders) <sup>M29</sup>, or which if it had been committed in England and Wales, would have been such an offence;

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(f) whether, in respect of any list, the Practitioner—

- (i) was refused inclusion in it,
- (ii) was included in it subject to conditions,
- (iii) was removed from it, or
- (iv) is currently suspended from it,

and, if so, the facts relating to the matter which led to such action together with the reasons given by the holder of the list; and

(g) whether, in respect of any list, the Practitioner was at the time of the originating event or in the six months preceding that event, a director of a body corporate, which—

- (i) was refused inclusion in it,
- (ii) was included in it subject to conditions,
- (iii) was removed from it, or
- (iv) is currently suspended from it,

and, if so, the facts relating to that event and the reasons given for such action by the holder of the list.

(4) The grounds on which the Board must refuse to include a Practitioner in a performers list are, in addition to any prescribed in the relevant Part, that—

- (a) the Practitioner has not provided satisfactory evidence that the Practitioner intends to perform the services which those included in that performers list perform;
- (b) it is not satisfied that the Practitioner has sufficient knowledge of the English language necessary for the work which those included in that performers list perform;
- (c) the Practitioner has been convicted in the United Kingdom of murder;
- (d) the Practitioner is subject to a national disqualification which disqualifies the Practitioner from inclusion in that performers list;
- (e) in a case to which regulation 8(4) applies, the Practitioner has not updated the Practitioner's application in accordance with the requirements of that regulation;
- (f) in a case to which regulation 10(5) applies, the Practitioner has not given the notification and undertaking required by that regulation; or
- (g) in a case to which regulation 17(5) applies, the Practitioner has not notified the Board under that regulation that the Practitioner wishes to be included in the performers list subject to its conditions.

(5) Paragraph (4)(a) does not apply in the case of a Type 1 armed forces GP.

(6) Where the Board has made a decision on a Practitioner's application for inclusion in a performers list, it must notify the Practitioner within 7 days of—

- (a) its decision; and
- (b) if it has decided not to include the Practitioner, the reasons for that decision (including any facts relied upon) and the Practitioner's right of appeal under regulation 17.

(7) Where the Board notifies a Practitioner under paragraph (6)(b), it must—

- (a) notify the Practitioner that the right of appeal must be exercised within the period of 28 days beginning with the date on which it notified the Practitioner of its decision; and
- (b) tell the Practitioner how to exercise that right.

**Textual Amendments**

**F12** Words in [reg. 7\(2\)\(d\)](#) substituted (1.11.2017) by [The NHS Counter Fraud Authority \(Investigatory Powers and Other Miscellaneous Amendments\) Order 2017 \(S.I. 2017/960\)](#), arts. 1(1), **4(4)(c)**

**Marginal Citations**

**M29** 2003 c. 42.

**Deferment of decision on application**

**8.—(1)** The Board may defer a decision on a Practitioner's application to be included in a performers list, where—

- (a) there are, in respect of the Practitioner—
  - (i) criminal proceedings in the United Kingdom, or
  - (ii) proceedings elsewhere in the world relating to conduct, which, if they had occurred in the United Kingdom, would constitute a criminal offence,and which, if they resulted in a conviction or the equivalent of a conviction would, if the Practitioner were at that time included in a performers list, be likely to lead to the Practitioner's removal from it;
- (b) in respect of a body corporate of which the Practitioner is, has in the preceding 6 months been, or was at the time of the originating event, a director there are—
  - (i) criminal proceedings in the United Kingdom, or
  - (ii) proceedings elsewhere in the world relating to conduct, which, if they had occurred in the United Kingdom, would constitute a criminal offence,and which, if they resulted in a conviction or the equivalent of a conviction would, if the Practitioner were at that time included in a performers list, be likely to lead to the Practitioner's removal from it;
- (c) there is any investigation anywhere in the world by any regulatory or other body relating to the Practitioner which if adverse to the Practitioner would, if the Practitioner were at that time included in a performers list, be likely to lead to the Practitioner's removal from it;
- (d) the Practitioner is suspended from any list;
- (e) a body corporate of which the Practitioner is, has in the preceding six months been, or was at the time of the originating event, a director, is suspended from any list;
- (f) the Practitioner has appealed to the First-tier Tribunal against a decision to refuse to include the Practitioner or to include the Practitioner subject to conditions in any list, or to remove the Practitioner from any list, and if that appeal is unsuccessful it would, if the Practitioner were at that time included in a performers list, be likely to lead to the Practitioner's removal from it;
- (g) a body corporate of which the Practitioner is, has in the preceding six months been, or was at the time of the originating event, a director, has appealed to the First-tier Tribunal against a decision to refuse to include the body corporate or to include it subject to conditions in any list, or to remove it from any list, and if that appeal is unsuccessful it would, if the Practitioner were at that time included in a performers list, be likely to lead to the Practitioner's removal from it;
- (h) the Practitioner is being investigated by the [<sup>F13</sup>NHS Counter Fraud Authority] in relation to fraud, where, if the result included a finding adverse to the Practitioner it would, if

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the Practitioner were at that time included in a performers list, be likely to lead to the Practitioner's removal from it; or

- (i) a body corporate, of which the Practitioner is, has in the preceding six months been, or was at the time of the originating event a director, is being investigated in relation to any fraud, where if the result included a finding adverse to the body corporate it would, if the Practitioner were at that time included in a performers list, be likely to lead to the Practitioner's removal from it.
- (2) Within 7 days of the date of a decision under paragraph (1), the Board must notify the Practitioner in writing of that decision and the reasons for it.
- (3) The Board may only defer a decision under paragraph (1) until the outcome of the matter in question is known or any suspension under sub-paragraph (d) or (e) of that paragraph has ended.
- (4) Once the outcome of the matter in question is known or any suspension has ended (as the case may be), the Board must notify the Practitioner that the Practitioner must within 28 days of the date of the notification—
- (a) confirm in writing that the Practitioner wishes to proceed with the Practitioner's application; and
  - (b) if the Practitioner wishes to proceed, provide any additional information required.
- (5) Provided any confirmation and additional information has been received within the 28 days referred to in paragraph (4), the Board must—
- (i) make a decision in accordance with regulation 7 and regulation 27(1), 34(1) or (2) or 40(1) (as the case may be) as to whether or not to grant the Practitioner's application to be included in the performers list; or
  - (ii) consider whether to impose conditions on the Practitioner's inclusion in the performers list in accordance with regulation 10.
- (6) Where, under paragraph (5), the Board decides to grant or refuse the Practitioner's application, paragraphs (6) and (7) of regulation 7 apply as if there had been no deferment.

#### **Textual Amendments**

**F13** Words in [reg. 8\(1\)\(h\)](#) substituted (1.11.2017) by [The NHS Counter Fraud Authority \(Investigatory Powers and Other Miscellaneous Amendments\) Order 2017 \(S.I. 2017/960\)](#), arts. 1(1), **4(4)(d)**

#### **Requirements with which a Practitioner included in a performers list must comply**

- 9.—**(1) Where a Practitioner is included in a performers list, the Practitioner must comply with the requirements applicable to the Practitioner under this regulation.
- (2) The Practitioner must make a declaration to the Board if the Practitioner—
- (a) is convicted of a criminal offence in the United Kingdom;
  - (b) is bound over following a criminal conviction in the United Kingdom;
  - (c) accepts a police caution in the United Kingdom;
  - (d) has accepted a conditional offer under section 302 of the Criminal Procedure (Scotland) Act 1995 (fixed penalty: conditional offer by procurator fiscal) or a compensation offer under section 302A of that Act (compensation offer by procurator fiscal) or agreed to pay a penalty under section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution);

- (e) has, in proceedings in Scotland for an offence, been the subject of an order under section 246(2) or (3) of the Criminal Procedure (Scotland) Act 1995 (admonition and absolute discharge) discharging the Practitioner absolutely;
  - (f) is convicted elsewhere of an offence which would constitute a criminal offence if committed in England and Wales;
  - (g) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales, would constitute a criminal offence;
  - (h) is involved in any inquest as a person who <sup>F14</sup>has been found by a coroner to have caused, or contributed to, the death of the deceased or otherwise had their conduct brought into question at an inquest conducted as part of an investigation under the Coroners and Justice Act 2009];
  - (i) is informed by any regulatory or other body of the outcome of any investigation which includes a finding adverse to the Practitioner;
  - (j) becomes the subject of any investigation by any regulatory or other body;
  - (k) becomes the subject of any investigation in respect of any current or previous employment, or is informed of the outcome of any such investigation which includes a finding adverse to the Practitioner;
  - (l) becomes the subject of any investigation by the <sup>F15</sup>NHS Counter Fraud Authority] in relation to fraud, or is informed of the outcome of such an investigation which includes a finding adverse to the Practitioner;
  - (m) becomes the subject of any investigation by the holder of any list which could lead to the Practitioner's removal from the list;
  - (n) is removed or suspended from, refused inclusion in, or included subject to conditions in, any list; or
  - (o) becomes subject to a national disqualification.
- (3) A declaration regarding any matter under paragraph (2) is to be in writing, given within 7 days of its occurrence and is to include—
- (a) an explanation of the facts giving rise to that matter, including those concerned, relevant dates and any outcome; and
  - (b) copies of any relevant documents.
- (4) A Practitioner must make a declaration to the Board if the Practitioner is, has in the preceding six months been, or was at the time of the originating event, a director of a body corporate that—
- (a) is convicted of a criminal offence in the United Kingdom;
  - (b) is convicted elsewhere of an offence, which would constitute a criminal offence if committed in England and Wales;
  - (c) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales, would constitute a criminal offence;
  - (d) is informed by any regulatory or other body of the outcome of any investigation which includes a finding adverse to the body corporate;
  - (e) becomes the subject of any investigation by any regulatory or other body;
  - (f) becomes the subject of any investigation in relation to fraud, or is informed of the outcome of any such investigation, which includes a finding adverse to the body corporate;
  - (g) becomes the subject of any investigation by the holder of any list which might lead to its removal from that list;

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- (h) is removed or suspended from, refused inclusion in, or included subject to conditions in, any list;
  - (i) is involved in an inquest <sup>F16</sup> conducted as part of an investigation under the Coroners and Justice Act 2009, as a person who is found to have caused, or contributed to, the death of the deceased or otherwise had their conduct brought into question]; or
  - (j) becomes subject to a national disqualification.
- (5) A declaration regarding any matter under paragraph (4) is to be in writing, given within 7 days of its occurrence and is to include—
- (a) the name and registered address of the body corporate;
  - (b) an explanation of the facts giving rise to that matter, including those concerned, relevant dates and any outcome; and
  - (c) copies of any relevant documents.
- (6) Where it appears to the Board that it may assist its consideration of any declaration made under paragraph (2) or (4) to do so, the Board may request further information from—
- (a) any current or former employer of the Practitioner;
  - (b) any body corporate;
  - (c) the holder of any list;
  - (d) any regulatory or other body,
- involved in the matter which is the subject of the declaration.
- (7) Where the Board has made a request under paragraph (6), the Practitioner must consent to the provision of information in response to that request.
- (8) Where the Board reasonably requests it, a Practitioner must supply the Board with an enhanced criminal record certificate under section 113B of the Police Act 1997 (enhanced criminal record certificates) <sup>M30</sup> which includes suitability information relating to children and suitability information relating to vulnerable adults under sections 113BA (suitability information relating to children) and 113BB (suitability information relating to vulnerable adults) of that Act respectively <sup>M31</sup>.
- (9) A Practitioner must comply with any undertaking given pursuant to the Practitioner's application for inclusion in any performers list, any performers list held by a Primary Care Trust prior to the transfer date or any list from which the Practitioner has been transferred pursuant to the Schedules to the National Health Service (Performers Lists) Amendment Regulations 2005 <sup>M32</sup> or the National Health Service (Performers Lists) Amendment and Transitional Provisions Regulations 2008 <sup>M33</sup>.
- (10) A Practitioner must —
- (a) participate in any appraisal system established by the Board; and
  - (b) if any appraisal under that system is not conducted by the Board, send the Board a copy of a statement summarising that appraisal.
- This is subject to paragraph (11).
- (11) Paragraph (10) does not apply in the case of a Type 1 armed forces GP, but a Type 1 armed forces GP is to give an undertaking to provide the Board with a copy of any annual appraisal of the Practitioner relating to the Practitioner's provision of medical services as a Type 1 GP.
- (12) A Practitioner must comply with any conditions imposed by the Board or the First-tier Tribunal on the Practitioner's inclusion in the performers list under regulation 10, 11, 12, 16 or 17.



### Textual Amendments

- F14** Words in reg. 9(2)(h) substituted (25.7.2013) by [The Coroners and Justice Act 2009 \(Commencement No. 15, Consequential and Transitory Provisions\) Order 2013 \(S.I. 2013/1869\)](#), art. 4, **Sch. para. 5(3)**
- F15** Words in reg. 9(2)(l) substituted (1.11.2017) by [The NHS Counter Fraud Authority \(Investigatory Powers and Other Miscellaneous Amendments\) Order 2017 \(S.I. 2017/960\)](#), arts. 1(1), **4(4)(e)**
- F16** Words in reg. 9(4)(i) substituted (25.7.2013) by [The Coroners and Justice Act 2009 \(Commencement No. 15, Consequential and Transitory Provisions\) Order 2013 \(S.I. 2013/1869\)](#), art. 4, **Sch. para. 5(4)**

### Marginal Citations

- M30** 1997 c. 50. Section 113B was inserted by the [Serious Organised Crime and Police Act 2005 \(c. 15\)](#), **section 163**. It was amended by: the [Safeguarding Vulnerable Groups Act 2006 \(c. 47\)](#), **section 63** and Schedule 9, Part 2, paragraph 14; the [Armed Forces Act 2006 \(c. 52\)](#), **section 378** and Schedule 16, paragraph 149; the [Protection of Vulnerable Groups \(Scotland\) Act 2007 \(2007 asp 14\)](#), sections 79 and 80; the [Policing and Crime Act 2009 \(c. 26\)](#), **sections 97** and 112 and Schedule 8, Part 8; [S.I. 2009/203](#); [S.I. 2010/146](#); the [Protection of Freedoms Act 2012 \(c. 9\)](#), **sections 79, 80, 82** and 115 and Schedule 10, Parts 5 and 6; and [S.I. 2012/3006](#).
- M31** 1997 c.50. Sections 113BA and 113BB were inserted in relation to England, Wales and Northern Ireland by the [Safeguarding Vulnerable Groups Act 2006 \(c. 47\)](#), **section 63** and Schedule 9, Part 2, paragraph 14. An alternative section 113BA was inserted in relation to Scotland by the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(2010 asp 13\)](#), section 108. Section 113BA was amended in relation to England, Wales and Northern Ireland by the [Education and Inspections Act 2006 \(c. 40\)](#), **sections 170** and 173 and by the [Protection of Freedoms Act 2012 \(c. 9\)](#), **section 115** and Schedule 9, Part 6, paragraphs 35 and 38 and Schedule 10, Part 5. Section 113BB was amended by the [Protection of Freedoms Act 2012 \(c. 9\)](#), **section 115** and Schedule 9, Part 6, paragraphs 35 and 39 and Schedule 10, Part 5.
- M32** [S.I. 2005/3491](#).
- M33** [S.I. 2008/1187](#).

### Conditions

**10.—(1)** Where the Board considers it appropriate for the purpose of preventing any prejudice to the efficiency of the services which those included in a performers list perform or for the purpose of preventing fraud, it may impose conditions on a Practitioner's—

- (a) initial inclusion in a performers list; or
- (b) continued inclusion in such a list.

**(2)** Where the Board is considering imposing conditions under paragraph (1) it must give the Practitioner—

- (a) notice of any allegation against the Practitioner;
- (b) notice of what action it is considering and on what grounds;
- (c) the opportunity to make representations to it within a period of 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put the Practitioner's case at an oral hearing before it, if the Practitioner so requests, within the 28 day period mentioned in sub-paragraph (c).

**(3)** After consideration of any representations made under paragraph (2)(c) and any oral hearing held under paragraph (2)(d), the Board must decide whether or not to impose conditions on the Practitioner's inclusion in the performers list and within 7 days of making that decision, notify the Practitioner of—

- (a) that decision and the reasons for it (including any facts relied upon);

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- (b) any right of review under regulation 16; and
  - (c) any right of appeal under regulation 17.
- (4) Where the Board notifies a Practitioner under paragraph (3)(c) it must also inform the Practitioner—
- (a) that the right of appeal must be exercised within the period of 28 days beginning with the date of the notification of that decision; and
  - (b) how to exercise any such right.
- (5) Where the Board decides to impose conditions under paragraph (1)(a), the Practitioner must, within 28 days of the date of notification of the decision—
- (a) notify the Board whether the Practitioner wishes to be included in the performers list subject to those conditions; and
  - (b) if the Practitioner does so wish, provide an undertaking that the Practitioner will comply with the conditions specified.

#### **Failure to comply with conditions**

**11.**—(1) If the Board determines that a Practitioner has failed to comply with any conditions imposed under regulation 10, it may—

- (a) vary all or any of the conditions imposed;
- (b) impose new conditions; or
- (c) after satisfying the requirements of regulation 14(8) to (11), remove the Practitioner from the performers list.

(2) Where the Board makes a decision under paragraph (1)(a) or (b) it must notify the Practitioner of—

- (a) that decision and the reasons for it (including any facts relied upon);
- (b) the right of appeal under regulation 17; and
- (c) the right of review under regulation 16.

#### **Suspension**

**12.**—(1) If the Board is satisfied that it is necessary to do so for the protection of patients or members of the public or that it is otherwise in the public interest, it may suspend a Practitioner from a performers list—

- (a) while the Board decides whether or not to exercise its powers to remove the Practitioner under regulation 11(1)(c), 14(3) or (5), 16 or 17(6)(b) or to impose conditions on the Practitioner's inclusion in a performers list under regulation 10;
- (b) while it awaits—
  - (i) the outcome of any criminal or regulatory investigation affecting the Practitioner, or
  - (ii) a decision of a court anywhere in the world, or of any regulatory body, affecting the Practitioner;
- (c) where it has decided to remove the Practitioner from a performers list but that decision has yet to take effect; or
- (d) pending an appeal under these Regulations.

[<sup>F17</sup>(1A) The Board must suspend a Practitioner from a performers list if the Practitioner's registration—

- (a) in the register of medical practitioners is subject to an interim suspension order made under section 41A of the Medical Act 1983;
- (b) in the dentists register is subject to an interim suspension order made under section 32 of the Dentists Act 1984;
- (c) in the register maintained by the General Optical Council under section 7(a) or 8B(1)(a) of the Opticians Act 1989 is subject to an interim suspension order made under section 13L of that Act.

(1B) A suspension under paragraph (1A) will cease to have effect on the date that the interim suspension order referred to in that paragraph ends.

(1C) Where the Board suspends a Practitioner under paragraph (1A) it must notify the Practitioner of the suspension and the reason for it.]

(2) Where the Board is considering suspending a Practitioner [<sup>F18</sup>under paragraph (1)] it must give the Practitioner—

- (a) notice of any allegation against the Practitioner;
- (b) notice of what action it is considering and on what grounds; and
- (c) the opportunity to put the Practitioner's case at an oral hearing before it, on a specified day, provided that at least two working days' notice of the hearing is given (beginning with the day on which the notice is given).

This paragraph does not apply where paragraph (6) applies.

(3) Where a Practitioner does not wish to have an oral hearing under paragraph (2)(c) or does not attend one, the Board may suspend the Practitioner with immediate effect.

(4) If an oral hearing does take place, the Board must take into account any representations made before it reaches its decision, and the Board may—

- (a) suspend the Practitioner with immediate effect; or
- (b) allow the Practitioner to resume practice subject to conditions imposed by the Board.

(5) Where the Board suspends a Practitioner in a case falling within paragraph (1)(a) or (b), it must notify the Practitioner of the right of review under regulation 16.

(6) Where the Board considers it necessary to do so for the protection of patients or members of the public or that it is otherwise in the public interest, it may determine that a suspension [<sup>F19</sup>under paragraph (1)] is to have immediate effect without undertaking the steps specified in paragraph (2).

(7) When a Practitioner is suspended in accordance with paragraph (6)—

- (a) the Board must immediately notify the Practitioner of its decision, the reasons for it and the allegations against the Practitioner;
- (b) the Board must review its decision within two working days of the Practitioner being suspended (beginning with the day on which the Practitioner was suspended); and
- (c) the Board is as soon as practicable to give the Practitioner—
  - (i) notice of what further action it is considering and on what grounds, and
  - (ii) the opportunity to put the Practitioner's case at an oral hearing before it, on a specified day, provided that at least two working days' notice of the hearing is given (beginning with the day on which the notice is given).

(8) If a decision to suspend a Practitioner in accordance with paragraph (6) is not reviewed in accordance with sub-paragraph (b) of paragraph (7), the suspension will cease to have effect on the expiry of the period mentioned in that sub-paragraph.

(9) Where a Practitioner does not wish to have an oral hearing under paragraph (7)(c)(ii) or does not attend one, the Board may confirm or revoke the suspension.

(10) If an oral hearing under paragraph 7(c)(ii) does take place, the Board must take into account any representations made before it reaches its decision, and the Board may—

- (a) confirm or revoke the suspension; or
- (b) allow the Practitioner to resume practice subject to conditions imposed by the Board.

(11) Where the Board decides to confirm a suspension under paragraph (9) or (10) the Board must notify the Practitioner of—

- (i) its decision and the right of review under regulation 16, immediately, and
- (ii) the reasons for it (including any facts relied upon) within 7 days of the decision.

(12) In a case falling within paragraph (1)(a) or (b), the Board must specify a period, not exceeding six months, as the period of suspension (“the initial period of suspension”). This is subject to paragraph (19).

(13) In a case falling within—

- (a) paragraph (1)(b)(i), after the outcome of the investigation referred to in that paragraph is known, the Board may specify that the Practitioner remains suspended for an additional period of time so long as the aggregate of the initial and additional period of suspension does not exceed 6 months;
- (b) paragraph (1)(b)(ii), after the decision referred to in that paragraph has been made, the Board may specify that the Practitioner remains suspended for an additional period so long as the aggregate of the initial and additional period of suspension does not exceed 6 months.

(14) Where the Board specifies under paragraph (13) that the Practitioner should remain suspended for an additional period, it must immediately notify the Practitioner of this.

(15) The Board may extend the period of suspension under paragraph (12) or impose a further period of suspension under paragraph (13), so long as the aggregate does not exceed six months.

This is subject to paragraph (19).

(16) Any period of suspension referred to in paragraph (13)(a) or (b) may be extended beyond six months if—

- (a) on the application of the Board, the First-tier Tribunal so orders; or
- (b) the Board has applied to the First-tier Tribunal under sub-paragraph (a) before the expiry of the initial period of suspension but the First-tier Tribunal has not made an order by the time that initial period expires, in which case the period of suspension continues until the First-tier Tribunal makes an order.

(17) If the First-tier Tribunal makes an order in accordance with paragraph (16)(a), it must specify—

- (a) a date on which the period of suspension is to end;
- (b) an event beyond which it is not to continue; or
- (c) that the period of suspension is to end on the earlier of a specified date or event.

(18) The First-tier Tribunal may, on the application of the Board, make a further order (complying with paragraph (17)) at any time while the period of suspension pursuant to its earlier order is continuing.

(19) A suspension under paragraph (1)(a) remains effective after the Board has made a decision to exercise its powers to remove the Practitioner from the performers list under regulation 11(1)(c), 14(3) or (5), 16 or 17(6)(b) until the decision for the removal of the Practitioner takes effect.

(20) If the Board suspends a Practitioner in a case falling within paragraph (1)(c) or (d), the suspension has effect until—

- (a) in a case falling within paragraph (1)(c), the decision takes effect; or
- (b) in a case falling within paragraph (1)(d), the First-tier Tribunal has disposed of the appeal.

(21) If it is in possession of evidence that revoking a suspension [<sup>F20</sup>imposed under paragraph (1)] will not compromise the protection of patients or members of the public or the public interest, the Board may at any time [<sup>F21</sup>revoke that suspension] with immediate effect and notify the Practitioner of its decision.

(22) Whilst suspended under these Regulations, a Practitioner is to be treated as not being included in a performers list, even though the Practitioner appears in it.

[<sup>F22</sup>(23) Nothing in paragraph (22) prevents a Practitioner from being removed from a performers list pursuant to regulation 11(1)(c), 14 or 17(6)(b).]

#### Textual Amendments

- F17** Reg. 12(1A)-(1C) inserted (1.4.2015) by The National Health Service (Performers Lists) (England) (Amendment) Regulations 2015 (S.I. 2015/362), regs. 1(1), **5(a)**
- F18** Words in reg. 12(2) inserted (1.4.2015) by The National Health Service (Performers Lists) (England) (Amendment) Regulations 2015 (S.I. 2015/362), regs. 1(1), **5(b)**
- F19** Words in reg. 12(6) inserted (1.4.2015) by The National Health Service (Performers Lists) (England) (Amendment) Regulations 2015 (S.I. 2015/362), regs. 1(1), **5(c)**
- F20** Words in reg. 12(21) inserted (1.4.2015) by The National Health Service (Performers Lists) (England) (Amendment) Regulations 2015 (S.I. 2015/362), regs. 1(1), **5(d)(i)**
- F21** Words in reg. 12(21) substituted (1.4.2015) by The National Health Service (Performers Lists) (England) (Amendment) Regulations 2015 (S.I. 2015/362), regs. 1(1), **5(d)(ii)**
- F22** Reg. 12(23) inserted (1.4.2015) by The National Health Service (Performers Lists) (England) (Amendment) Regulations 2015 (S.I. 2015/362), regs. 1(1), **5(e)**

#### Payments during suspension

**13.**—(1) During a period of suspension under regulation 12, payments may be made by the Board to, or in respect of, a Practitioner in accordance with a determination by the Secretary of State.

(2) If such a payment is made but the Practitioner was not entitled to receive all or any part of it, the amount to which the Practitioner was not entitled (“the overpayment”) may be recovered by the Board as a civil debt.

- (3) Where requested by a Practitioner to do so, the Board is to reconsider any decision—
  - (a) to refuse to make a payment to, or in respect of, the Practitioner under paragraph (1);
  - (b) as to the amount of a payment to, or in respect of, the Practitioner under paragraph (1); or
  - (c) in respect of recovery of what the Board considers to be an overpayment under paragraph (2).

(4) Following the reconsideration of such a decision the Board is to notify the Practitioner in writing of the outcome of its reconsideration (“the reconsidered decision”) together with the reasons for it.

(5) Following notification of the reconsidered decision, the Practitioner may, within a period of 28 days beginning on the day on which the Practitioner is notified of that reconsidered decision, give the Secretary of State a notice of appeal.

- (6) A notice of appeal under paragraph (5) must include—
  - (a) the name and address of the Practitioner;
  - (b) a contact name and address to be used by the Board for the purposes of the appeal;

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- (c) a copy of the reconsidered decision; and
- (d) a brief statement of the grounds for appeal.

(7) The Secretary of State must thereafter send a written request to the Practitioner and the Board (“the parties”) to make, in writing and within a specified period, any representations they may wish to make about the matter: the request to the Board is to include a copy of the Practitioner’s brief statement of the grounds for appeal.

(8) Once the period specified pursuant to paragraph (7) has elapsed, the Secretary of State is to—

- (a) give a copy of any representations received from each party to the other party; and
- (b) request that each party make any written observations which that party wishes to make on the representations of the other party.

(9) The Secretary of State is to, as soon as is reasonably practicable, having taken into account any such representations or observations as referred to in paragraphs (7) and (8) and such other evidence as the Secretary of State sees fit—

- (a) decide the appeal, and notify the parties of its decision and the reasons for it; and
- (b) give the Board such directions in writing, if any, on the matter as the Secretary of State thinks fit.

### **Removal from a performers list**

**14.—**(1) The Board must remove a Practitioner from a performers list where the grounds in regulations 28(1), 35(1) or 41(1) apply or where it becomes aware that the Practitioner—

- (a) has been convicted in the United Kingdom of murder;
- (b) is subject to a national disqualification which disqualifies the Practitioner from inclusion in the performers list in question;
- (c) has died; or
- (d) is no longer registered with the Practitioner’s relevant body.

(2) Where the Board is notified by the First-tier Tribunal that it has considered an appeal by a Practitioner against conditions imposed under regulation 10 and has decided to remove the Practitioner instead, the Board is to remove the Practitioner from the performers list and must immediately notify the Practitioner that it has done so.

(3) The Board may remove a Practitioner from a performers list where any one of the following is satisfied—

- (a) the Practitioner has been convicted in the United Kingdom of a criminal offence (other than murder), committed on or after the day prescribed in the relevant Part, and has been sentenced to a term of imprisonment (whether suspended or not) of over six months;
- (b) the Practitioner’s continued inclusion in that performers list would be prejudicial to the efficiency of the services which those included in that performers list perform (“an efficiency case”);
- (c) the Practitioner—
  - (i) has (whether on the Practitioner’s own or together with another person) by an act or omission caused, or risked causing, detriment to any health scheme by securing or trying to secure for the Practitioner or another person any financial or other benefit, and
  - (ii) knew that the Practitioner or the other person was not entitled to the benefit (“a fraud case”); or
- (d) the Practitioner is unsuitable to be included in that performers list (“an unsuitability case”).

- (4) For the purposes of paragraph (3)(c)—
- (a) the following are “health schemes”—
- (i) the services included in the definition of “health scheme” in section 151(7) of the 2006 Act (disqualification of practitioners),
  - (ii) health services, including medical and surgical treatment, provided by the armed forces,
  - (iii) services provided by Port Health Authorities constituted under the Public Health (Control of Disease) Act 1984 <sup>M34</sup>,
  - (iv) medical services provided to a prisoner in the care of a medical officer or other officer of a prison appointed for the purposes of section 7 of the Prison Act 1952 (prison officers) <sup>M35</sup>, and
  - (v) publicly-funded health services provided by or on behalf of any organisation anywhere in the world; and
- (b) a Practitioner must be treated as meeting the conditions referred to if—
- (i) another person, because of an act or omission of that person in the course of providing on the Practitioner's behalf any services which those included on the relevant performers list perform, meets that condition, and
  - (ii) the Practitioner failed to take all such steps as were reasonable to prevent acts or omissions falling within paragraph (3)(c)(i) occurring in the course of the provision of those services on the Practitioner's behalf.

(5) Where a Practitioner cannot demonstrate that the Practitioner has performed the services, which those included in the relevant performers list perform, during the preceding twelve months, the Board may remove that Practitioner from the relevant performers list.

This is subject to paragraph (6).

(6) Paragraph (5) does not apply in the case of a Type 1 or a Type 2 armed forces GP.

(7) In calculating the period of twelve months referred to in paragraph (5), the following periods are to be disregarded—

- (a) any period during which the Practitioner was suspended under these Regulations;
- (b) any period during which the Practitioner was performing whole time service in the armed forces in a national emergency (as a volunteer or otherwise), compulsory whole-time service in the armed forces (including service resulting from reserve liability), or any equivalent service, if liable for compulsory whole-time service in the armed forces; or
- (c) any period which the Board with good cause so determines.

This is subject to regulations 28(4), 35(4) and 41(3).

(8) Where the Board is considering removing a Practitioner from a performers list under paragraph (3) or (5) or regulation 11(1)(c) or 17(6)(b) it is to give the Practitioner—

- (a) notice of any allegation against the Practitioner;
- (b) notice of what action it is considering and on what grounds;
- (c) the opportunity to make written representations to it within a period of 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put the Practitioner's case at an oral hearing before it, if the Practitioner so requests, within the 28 day period mentioned in sub-paragraph (c).

(9) After consideration of any representations made under paragraph (8)(c) and any oral hearing held under paragraph (8)(d), the Board is to decide whether or not to remove the Practitioner and, within 7 days of making that decision, notify the Practitioner of—

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- (a) that decision and the reasons for it (including any facts relied upon); and
  - (b) any right of appeal under regulation 17.
- (10) When the Board notifies a Practitioner under paragraph (9)(b), it is to—
- (a) notify the Practitioner that the right of appeal must be exercised within the period of 28 days beginning with the date of that notification; and
  - (b) tell the Practitioner how to exercise any such right.
- (11) Where the Board decides to remove a Practitioner from a performers list under paragraph (3) or (5) or regulation 11(1)(c), 16 or 17(6)(b), the Practitioner is not to be removed from the performers list until the later of—
- (a) the expiry of a period of 28 days starting with the day on which it reaches its decision; and
  - (b) the date on which any appeal is disposed of by the First-tier Tribunal.

#### **Marginal Citations**

**M34** 1984 c. 22.

**M35** 1952 c. 52. Section 7 was amended by S.I. 1963/597, the [Sex Discrimination Act 1975 \(c. 65\)](#), [section 18](#) and by the [Offender Management Act 2007 \(c. 21\)](#), [sections 25](#) and 39 and Schedule 5, Part 2.

#### **Criteria for a decision on removal**

**15.**—(1) Where the Board is considering whether to remove a Practitioner from a performers list under regulation 14(3)(d) (an unsuitability case), it is to consider—

- (a) any information relating to that Practitioner which it has received pursuant to regulation 9;
  - (b) any information held by the NHSLA about past or current investigations or proceedings involving or relating to that Practitioner, which information the NHSLA must supply if the Board so requests; and
  - (c) the matters set out in paragraph (2).
- (2) Those matters are—
- (a) the nature of any event which gives rise to a question as to the suitability of the Practitioner to be included in the performers list;
  - (b) the length of time since the event and the facts which gave rise to it occurred;
  - (c) any action taken or penalty imposed by any regulatory or other body (including the police or the courts) as a result of the event;
  - (d) the relevance of the event to the Practitioner's performance of the services which those included in the relevant performers list perform, and any likely risk to any patients or to public finances;
  - (e) whether any offence was a sexual offence for the purposes of Part 2 of the Sexual Offences Act 2003 (notification and orders) <sup>M36</sup>, or if it had been committed in England and Wales, would have been such an offence;
  - (f) whether, in respect of any list, the Practitioner—
    - (i) was refused inclusion in it,
    - (ii) was included in it subject to conditions,
    - (iii) was removed from it, or
    - (iv) is currently suspended from it,



and, if so, the facts relating to the event which led to such action and the reasons given for such action by the holder of the list; and

- (g) whether, in respect of any list, the Practitioner was, at the time of the originating event or in the six months preceding that event, a director of a body corporate which—

- (i) was refused inclusion in it,
- (ii) was included in it subject to conditions,
- (iii) was removed from it, or
- (iv) is currently suspended from it,

and, if so, the facts relating to that event and the reasons given for such action by the holder of the list.

- (3) Where the Board is considering whether to remove a Practitioner from a performers list under regulation 14(3)(c) (a fraud case) it is to consider—

- (a) any information relating to that Practitioner which it has received under regulation 9;
- (b) any information held by the NHSLA about past or current investigations or proceedings involving or relating to that Practitioner, which information the NHSLA must supply if the Board so requests;
- (c) any information held by the [<sup>F23</sup>NHS Counter Fraud Authority] about past or current investigations or proceedings involving or relating to that Practitioner, which information that Authority must supply if the Board so requests; and
- (d) the matters set out in paragraph (4).

- (4) Those matters are—

- (a) the nature of any incident of fraud;
- (b) the length of time since the last incident of fraud occurred, and since any investigation into it was concluded;
- (c) any action taken by any regulatory or other body (including the police or the courts) as a result of the incident;
- (d) the relevance of any investigation into any incident of fraud to the Practitioner's performance of the services which those included in the relevant performers list perform, and the likely risk to patients or to public finances;
- (e) whether, in respect of any list, the Practitioner—
  - (i) was refused inclusion in it,
  - (ii) was included in it subject to conditions,
  - (iii) was removed from it, or
  - (iv) is currently suspended from it,

and, if so, the facts relating to the incident which led to such action and the reasons given for such action by the holder of the list; and

- (f) whether, in respect of any list, the Practitioner was at the time of the originating event or in the six months preceding that event, a director of a body corporate, which—

- (i) was refused inclusion in it,
- (ii) was included in it subject to conditions,
- (iii) was removed from it, or
- (iv) is currently suspended from it,

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and, if so, the facts relating to that event and the reasons given for such action by the holder of the list.

(5) Where the Board is considering whether to remove a Practitioner from a performers list under regulation 14(3)(b) (an efficiency case), it must consider—

- (a) any information relating to that Practitioner which it has received under regulation 9;
- (b) any information held by the NHSLA about past or current investigations or proceedings involving or relating to that Practitioner, which information the NHSLA must supply if the Board so requests; and
- (c) the matters referred to in paragraph (6).

(6) Those matters are—

- (a) the nature of any incident which was prejudicial to the efficiency of the services which the Practitioner performed;
- (b) the length of time since the last incident occurred and since any investigation into it was concluded;
- (c) any action taken by any regulatory or other body (including the police or courts) as a result of any such incident;
- (d) the relevance of the incident to the Practitioner's performance of the services which those included in the relevant performers list perform, and the likely risk to patients or to public finances;
- (e) whether the Practitioner has ever failed to comply with a request to undertake an assessment by the NCAA on or before 31st March 2005, by the NPSA between 1st April 2005 and 31st March 2012 inclusive, by the NICE between 1st April 2012 and 31st March 2013 inclusive, or thereafter by the NHSLA;
- (f) whether the Practitioner has previously failed to supply information, make a declaration or comply with an undertaking required on inclusion in a performers list;
- (g) whether, in respect of any list, the Practitioner—
  - (i) was refused inclusion in it,
  - (ii) was included in it subject to conditions,
  - (iii) was removed from it, or
  - (iv) is currently suspended from it,

and, if so, the facts relating to the incident which led to such action and the reasons given for such action by the holder of the list; and

(h) whether, in respect of any list, the Practitioner was at the time of the originating event or in the six months preceding that event, a director of a body corporate, which —

- (i) was refused inclusion in it,
- (ii) was included in it subject to conditions,
- (iii) was removed from it, or
- (iv) is currently suspended from it,

and, if so, the facts relating to that event and the reasons given for such action by the holder of the list.

#### Textual Amendments

**F23** Words in [reg. 15\(3\)\(c\)](#) substituted (1.11.2017) by [The NHS Counter Fraud Authority \(Investigatory Powers and Other Miscellaneous Amendments\) Order 2017 \(S.I. 2017/960\)](#), arts. 1(1), **4(4)(f)**

## Marginal Citations

M36 2003 c. 42.

## Reviews

**16.—**(1) The Board may, and if requested in writing to do so by a Practitioner must, review its decision to—

- (a) impose or vary conditions imposed under regulation 10, 11, 12 or this regulation;
- (b) suspend the Practitioner under regulation 12(1)(a) or (b), except where the suspension is continuing by order of the First-tier Tribunal.

This is subject to paragraph (9).

(2) On a review under paragraph (1)(a), the Board may—

- (a) maintain or vary the conditions;
- (b) impose different conditions; or
- (c) remove the Practitioner from the relevant performers list.

(3) On a review under paragraph (1)(b), the Board may—

- (a) maintain or vary the suspension;
- (b) impose conditions; or
- (c) remove the Practitioner from the relevant performers list.

(4) A Practitioner may not request a review of a decision by the Board before the expiry of a three month period beginning with the date of that decision.

(5) After a review has taken place, a Practitioner cannot request a further review before the expiry of six months from the date of the decision on the last review.

(6) Before conducting a review under paragraph (1), the Board must give the Practitioner—

- (a) notice of any allegation against the Practitioner;
- (b) notice of what action it is considering and on what grounds;
- (c) the opportunity to make written representations to it within a period of 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put the Practitioner's case at an oral hearing before it within the 28 day period mentioned in sub-paragraph (c).

(7) After consideration of any representations made under paragraph (6)(c) and any oral hearing held under paragraph (6)(d), the Board is to make its decision and, within 7 days of making that decision, notify the Practitioner of—

- (a) the decision;
- (b) the reasons for it (including any facts relied upon);
- (c) any right of appeal under regulation 17; and
- (d) the right to request a further review under this regulation.

(8) When the Board notifies a Practitioner under paragraph (7)(c), it must—

- (a) notify the Practitioner that the right of appeal is to be exercised within the period of 28 days beginning with the date on which it gave the Practitioner notice of its decision; and
- (b) inform the Practitioner as to how to exercise any such right.

(9) The Board may not review—

- (a) a decision to suspend a Practitioner under regulation 12(1)(c) or (d)<sup>F24</sup>, or (1A)]; or
- (b) a decision to impose conditions on the inclusion of the Practitioner in a performers list whose inclusion in the performers list has been refused under regulation 7(4)(f) or (g).

#### Textual Amendments

**F24** Words in [reg. 16\(9\)\(a\)](#) inserted (1.4.2015) by [The National Health Service \(Performers Lists\) \(England\) \(Amendment\) Regulations 2015 \(S.I. 2015/362\)](#), regs. 1(1), 6

#### Appeals

**17.**—(1) A Practitioner may appeal (by way of redetermination) to the First-tier Tribunal against a decision of the Board mentioned in paragraph (2). This is subject to paragraph (3).

- (2) A decision of the Board referred to in paragraph (1) is a decision to—
  - (a) refuse to include a Practitioner in a performers list on the grounds referred to in regulation 7(1);
  - (b) impose, maintain or vary any conditions under regulation 10, 11, 12 or 16;
  - (c) remove a Practitioner from a performers list under regulation 11(1)(c), 14(3) or (5), 16 or paragraph (6)(b) of this regulation; and
  - (d) refuse to include—
    - (i) a medical practitioner in the medical performers list under regulation 27(1),
    - (ii) a dental practitioner in the dental performers list under regulation 34(1) or (2), or
    - (iii) an ophthalmic practitioner in the ophthalmic performers list under regulation 40(1).
- (3) There is no right of appeal under paragraph (1) against a decision of the Board—
  - (a) to refuse to include a Practitioner in the medical performers list where the Practitioner has applied to be included in that list in accordance with regulation 22 and Schedule 1; or
  - (b) to remove an emergency registered practitioner from the medical performers list.
- (4) On appeal, the First-tier Tribunal may make any decision which the Board could have made.
- (5) Where the decision of the First-tier Tribunal on appeal is that the Practitioner's initial inclusion in a performers list is to be subject to conditions, whether or not those conditions are identical with any conditions imposed by the Board, the Practitioner must notify the Board within 28 days of the First-tier Tribunal's decision whether the Practitioner wishes to be included in its performers list subject to those conditions.
- (6) Where the First-tier Tribunal decides to impose conditions on the inclusion of a Practitioner in a performers list—
  - (a) either the Board or the Practitioner may apply to the First-tier Tribunal for the conditions to be varied or for different conditions to be imposed;
  - (b) the Board may, after satisfying the requirements of regulation 14(8) to (11), remove the Practitioner from the performers list if it determines that the Practitioner has failed to comply with any such conditions.
- (7) Following an appeal under paragraph (1), the First-tier Tribunal may, following a request from the Practitioner or on its own initiative, review the First-tier Tribunal's earlier decision.
- (8) A request referred to in paragraph (7) may not be made within the period of one year beginning with the date of the First-tier Tribunal's last decision on the appeal. This is subject to paragraph (9).

(9) When, on making a decision on appeal, the First-tier Tribunal states that it is of the opinion that there is no realistic prospect of a further review being successful if held at the expiry of the one year period referred to in paragraph (8), the reference to “one year” in paragraph (8) is to be treated as a reference to three years.

## Notification

**18.**—(1) Within 7 days of making a decision mentioned in paragraph (2), the persons and bodies referred to in paragraph (3) are to be notified by the Board of the matters set out in paragraph (4).

(2) A decision of the Board referred to in paragraph (1) is a decision to—

- (a) refuse to include a Practitioner in a performers list on the grounds referred to in regulation 7(1), 27(1), 34(1) or (2) or 40(1);
- (b) impose conditions under regulation 10 or 12;
- (c) vary conditions or impose new conditions under regulation 11;
- (d) suspend a Practitioner from a performers list under regulation 12; or
- (e) remove a Practitioner from a performers list under regulation 11(1)(c), [F25]14, 16(2)(c) or (3)(c), 17(6)(b), 28(1), 35(1) or 41(1)].

(3) The persons and bodies referred to in paragraph (1) are—

- (a) the Secretary of State;
- (b) the Scottish Executive;
- (c) the Welsh Ministers;
- (d) the Northern Ireland Executive;
- (e) the relevant body and any other appropriate regulatory body;
- (f) the NHSLA;
- (g) where it is a fraud case, the [F26]NHS Counter Fraud Authority];
- (h) persons or bodies that can establish to the Board's satisfaction that they are employing or considering employing the Practitioner in a professional capacity; and
- (i) a partnership which provides primary services and can establish that the Practitioner is or was a member of the partnership or that it is considering inviting the Practitioner to become such a member.

(4) The matters referred to in paragraph (1) are—

- (a) the Practitioner's name, address and date of birth;
- (b) the Practitioner's professional registration number;
- (c) the date of, and a copy of, the Board's decision; and
- (d) a contact name of a person in the Board for further enquiries.

(5) The Board must send to the Practitioner a copy of any information about the Practitioner which it provides to the persons and bodies listed in paragraph (3) together with any correspondence with those persons and bodies relating to that information.

(6) Where the Board has notified the persons and bodies specified in paragraph (3) of the matters set out in paragraph (4), it is, in addition, if requested by any such person or body, to notify that person or body of any evidence that was considered in making its decision, including any representations from the Practitioner.

(7) Where a decision of the Board is changed on review or appeal, or a suspension ends, the Board is to notify the persons and bodies that were notified of the original decision of the later decision or the fact that that suspension has ended.

**Textual Amendments**

- F25** Words in reg. 18(2)(e) substituted (1.4.2015) by [The National Health Service \(Performers Lists\) \(England\) \(Amendment\) Regulations 2015 \(S.I. 2015/362\)](#), regs. 1(1), 7
- F26** Words in reg. 18(3)(g) substituted (1.11.2017) by [The NHS Counter Fraud Authority \(Investigatory Powers and Other Miscellaneous Amendments\) Order 2017 \(S.I. 2017/960\)](#), arts. 1(1), **4(4)(g)**

**Amendment of or withdrawal from performers lists**

**19.**—(1) A Practitioner is to give notice to the Board of any change requiring amendment to the information recorded about the Practitioner in a performers list and of any change of the Practitioner's residential address, and the notice must be given within 28 days of the change unless it is impracticable for the Practitioner to do so.

(2) Where a Practitioner intends to withdraw from a performers list the Practitioner is to so notify the Board, and the notice must be given at least three months in advance of the date from which the Practitioner intends to withdraw unless it is impracticable for the Practitioner to do so.

(3) On receiving notice from any Practitioner pursuant to paragraph (1), the Board is to amend the performers list as soon as possible.

(4) On receiving notice from any Practitioner pursuant to paragraph (2), the Board is to amend the performers list on—

- (i) the date notified by the Practitioner, provided it falls at least three months after the date of the notice, or
- (ii) an earlier date, if it so agrees.

This is subject to regulation 20.

(5) A Practitioner may, in writing, withdraw a notice given pursuant to paragraph (2) at any time before the Board removes the Practitioner from the performers list.

**Restrictions on withdrawal from performers lists**

**20.**—(1) A Practitioner may not withdraw from a performers list where—

- (a) the Practitioner is suspended from a performers list under regulation 12(1)(a) or (b) [<sup>F27</sup>or regulation 12(1A)]; or
- (b) the Board has decided to remove the Practitioner from a performers list under regulation 11(1)(c), 14(3) or (5), 16 or 17(6)(b) but its decision has not yet taken effect.

(2) Where the Board has notified a Practitioner of a matter referred to in paragraph (3), the Practitioner may not withdraw from a performers list in which the Practitioner is included until the Board has finished its consideration of those matters.

(3) Those matters are that the Board is considering—

- (a) imposing conditions under regulation 10(1)(b);
- (b) imposing conditions or removing the Practitioner from a performers list under regulation 11;
- (c) suspending the Practitioner from a performers list under regulation 12; or
- (d) removing the Practitioner from the performers list under regulation 14(3) or (5), 16 or 17(6)(b).

(4) Nothing in this regulation prevents a Practitioner from withdrawing from the performers list in question if the Secretary of State consents.

### Textual Amendments

**F27** Words in [reg. 20\(1\)\(a\)](#) inserted (1.4.2015) by [The National Health Service \(Performers Lists\) \(England\) \(Amendment\) Regulations 2015 \(S.I. 2015/362\)](#), regs. 1(1), **8**

### Disclosure of information

**21.**—(1) The Board may disclose information about a Practitioner supplied to it or acquired by it pursuant to these Regulations to any of the following—

- (a) the Secretary of State;
- (b) any equivalent body—
  - (i) which has the Practitioner in any of its lists,
  - (ii) which is considering an application from the Practitioner for inclusion in any of its lists;
- (c) the Scottish Executive;
- (d) the Welsh Ministers;
- (e) the Northern Ireland Executive;
- (f) the NHSLA;
- (g) the relevant body or any other appropriate regulatory body;
- (h) any organisation or employer which, to the knowledge of the Board, is employing the Practitioner or using the Practitioner's services in a professional capacity or considering doing so;
- (i) any partnership which provides primary services, of which, to the knowledge of the Board, the Practitioner is a member, or which is considering inviting the Practitioner to become a member; and
- (j) where an allegation of fraud is being considered, the [<sup>F28</sup>NHS Counter Fraud Authority].

(2) The Board is to disclose to the Secretary of State any information supplied to it or acquired by it pursuant to these Regulations that the Secretary of State may from time to time request.

### Textual Amendments

**F28** Words in [reg. 21\(1\)\(j\)](#) substituted (1.11.2017) by [The NHS Counter Fraud Authority \(Investigatory Powers and Other Miscellaneous Amendments\) Order 2017 \(S.I. 2017/960\)](#), arts. 1(1), **4(4)(h)**

### Emergency registered practitioners

**22.** This Part applies subject to Schedule 1.

**Status:**

Point in time view as at 01/11/2017.

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service (Performers Lists) (England) Regulations 2013, PART 1.