

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE (PERFORMERS LISTS) (ENGLAND)
(AMENDMENT) REGULATIONS 2022

2022 No. 1131

1. Introduction

1.1 This explanatory memorandum has been prepared by Department of Health and Social Care (DHSC) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument makes amendments to update the definition of “foundation training” in The National Health Service (Performers Lists) (England) Regulations 2013 (“the 2013 Regulations”). The amendment changes the definition to reflect changes in employment arrangements for dentists undertaking dental foundation training (“Dental Foundation Trainees”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. European Convention on Human Rights

5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The 2013 Regulations set out the requirements a dentist must meet, including training requirements, to be included on the Dental Performers List, which is a prerequisite to delivering NHS dental treatment. Foundation training is the training that dentists are required to complete to be included on the Dental Performers List.

6.2 Dental Foundation Trainees have in previous years been directly employed by NHS dental contractors during their 12-month foundation training (or pro rata equivalent). To date, their contract of employment is typically with either a dental practice (a business entity) or an individual dentist who is named on the Dental Performers List (“a Dental Performer”).

6.3 The 2013 Regulations enabled a dentist to be eligible for inclusion onto the Dental Performers List, if they are undertaking foundation training or have completed that training. The definition of “foundation training” refers to employment by an “approved trainer”, which is an individual Dental Performer with the requisite training

approvals. The definition of “approved trainer” therefore does not extend to employment by business entities or NHS bodies. The limited definition of “approved trainer” is inconsistent with some established and planned future practice, in which Dental Foundation Trainees are in many cases employed by an organisation and supervised by a Dental Performer.

- 6.4 This amendment makes provision for Dental Foundation Trainees to be employed by either NHS dental contractors (including business entities) or NHS bodies, whilst their training will remain under the supervision of a Dental Performer with the requisite training approvals.
- 6.5 The instrument also ensures that the position of dentists, who were not employed by “approved trainers” (as defined in the 2013 Regulations), but were supervised by approved trainers during their training period, are eligible for inclusion on the Dental Performers List.

7. Policy background

What is being done and why?

- 7.1 Health Education England have implemented a Lead Employer model for Dental Foundation Training, with almost all Dental Foundation Trainees to be employed by one of three Lead Employers across England, all of which are NHS Trusts. Lead employers are organisations, such as NHS trusts, that support the training programmes. As the Lead Employer model is embedded, it will become the primary employment model for Dental Foundation Trainees.
- 7.2 The Lead Employer model seeks to streamline the administration of and human resources management of Dental Foundation Trainees and provide employment contract continuity when they move between practices. This simplifies the existing arrangement, which sees Dental Foundation Trainees be issued new contracts when they move between practices during their training year.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.3 Prior to these changes, in the 2013 Regulations, the definition of “foundation training” referred to employment by an “approved trainer”. The definition of “approved trainer” was limited to an individual Dental Performer with the requisite training approvals.

Why is it being changed?

- 7.4 This change will reflect all current and future training arrangements, which has seen a move away from Dental Foundation Trainees being employed by a named individual and instead by an organisation. This will enable the implementation of the Lead Employer model by Health Education England, which will see almost all new Dental Foundation Trainees employed by an organisation.

What will it now do?

- 7.5 With the wider introduction of a Lead Employer model, the employment of Foundation Dentists is decoupled from an individual Dental Performer. The 2013 Regulations will now reflect that Dental Foundations Trainees can be employed by either NHS Bodies or NHS dental contractors, rather than just an individual Dental Performer, to be eligible for inclusion onto the Dental Performers List. The work of

Dental Foundation Trainees will continue to be supervised by “approved trainers”, which are Dental Performers with the requisite training approvals.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 These are minor amendments, and the Department does not have any immediate plans for consolidation.

10. Consultation outcome

- 10.1 A short consultation was carried out with the British Dental Association (The BDA), the main professional body for dentists in Britain. The BDA supported the change, which was accepted as technical in nature.

11. Guidance

- 11.1 Not applicable.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector is that dentists who have undertaken or are undertaking foundation training will be able to be included on the Dental Performers List and treat NHS dental patients.
- 12.3 A full Impact Assessment has not been prepared for this instrument, as it reflects operational policy and no potential negative impacts on individuals or organisations has been identified.

13. Regulating small business

- 13.1 The legislation does not apply to small businesses, as it concerns only the inclusion of Foundation Dentists on the Dental Performers List.

14. Monitoring & review

- 14.1 NHS England (on behalf of the Secretary of State for Health and Social Care) are responsible for monitoring the implementation of, and compliance with this legislation; however the Secretary of State is ultimately responsible for these regulations and the policies they implement.
- 14.2 This instrument does not include a statutory review clause.

15. Contact

- 15.1 Laurence Bickerton at the Department of Health and Social Care Telephone: 020 7972 2998 or email: Laurence.bickerton@dhsc.gov.uk can be contacted with any queries regarding the instrument.

- 15.2 Alette Addison, Deputy Director for Pharmacy, Dentistry and Eyecare, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Neil O'Brien, Parliamentary Under Secretary of State for Primary Care and Public Health, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.