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WELSH STATUTORY INSTRUMENTS

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**2004 No. 1020**

**The National Health Service (Performers Lists) (Wales) Regulations 2004**

**PART 2**

**PROVISIONS AS TO PERFORMERS LISTS**

**Suspension**

**13.**—(1) If a Local Health Board is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend a performer from its performers list in accordance with the provisions of this regulation —

- (a) while it decides whether or not to exercise its powers to remove the performer under regulation 10 or contingently remove the performer under regulation 12;
- (b) while it waits for a decision affecting the performer of a court anywhere in the world or of a licensing or regulatory body;
- (c) where it has decided to remove the performer, but before that decision takes effect; or
- (d) pending appeal under these Regulations.

(2) Subject to paragraph (8), in a case falling within paragraph (1)(a), the Local Health Board must specify a period, not exceeding six months, as the period of suspension.

(3) Subject to paragraph (8), in a case falling within paragraph (1)(b), the Local Health Board may specify that the performer remains suspended after the decision referred to in that paragraph has been made for an additional period, not exceeding six months.

(4) The period of suspension under paragraph (1)(a) or (b) may extend beyond six months if—

- (a) on the application of the Local Health Board, the [F1First-tier Tribunal] so orders; or
- (b) the Local Health Board applied under sub-paragraph (a) before the expiry of the period of suspension, but the [F1First-tier Tribunal] has not made an order by the time it expires, in which case it continues until the [F1First-tier Tribunal] makes an order.

(5) If the [F2First-tier Tribunal] does so order, it shall specify —

- (a) the date on which the period of suspension is to end;
- (b) an event beyond which it is not to continue; or
- (c) both a date on which it is to end and an event beyond which it is not to continue, in which case it shall end on the earlier of that date or that event, as the case may be.

(6) The [F2First-tier Tribunal] may, on the application of the Local Health Board, make a further order (complying with paragraph (5)) at any time while the period of suspension pursuant to the earlier order is still continuing.

(7) If the Local Health Board suspends a performer in a case falling within paragraph (1)(c) or (d), the suspension has effect from the date the Local Health Board informed the performer of the suspension until —

- (a) the expiry of any appeal period; or
- (b) if the performer appeals under regulation 15, the [<sup>F3</sup>First-tier Tribunal] has disposed of the appeal.

(8) The Local Health Board may extend the period of suspension under paragraph (2) or impose a further period of suspension under paragraph (3), so long as the aggregate does not exceed six months.

(9) [<sup>F4</sup>Except as provided in paragraph (9A),] the effect of a suspension is that while a performer is suspended under these Regulations the performer is to be treated as not being included in the Local Health Board's performers list, even though the performer's name appears in it.

[<sup>F5</sup>(9A) For the purpose of an application by a performer who is suspended under these Regulations to be included in another performers list, he or she is to be treated as still included in the list from which he or she is suspended, notwithstanding that suspension.]

(10) The Local Health Board may at any time revoke the suspension and inform the performer of its decision.

(11) Where a Local Health Board is considering suspending a performer or varying the period of suspension under this regulation, it shall give the performer —

- (a) notice of any allegation against the performer;
- (b) notice of what action the Local Health Board is considering and on what grounds; and
- (c) the opportunity to put the performer's case at an oral hearing before the Local Health Board, on a specified day, provided that at least 24 hours notice of the hearing is given.

(12) If the performer does not wish to have an oral hearing or does not attend the oral hearing, the Local Health Board may suspend the performer with immediate effect.

(13) If an oral hearing does take place, the Local Health Board shall take into account any representations made before it reaches its decision.

(14) The Local Health Board may suspend the performer with immediate effect following the hearing.

(15) The Local Health Board shall notify the performer of its decision and the reasons for it (including any facts relied upon) within 7 days of making that decision.

(16) The Local Health Board shall notify the performer of any right of review under regulation 14.

(17) During a period of suspension payments may be made to or in respect of the performer in accordance with a determination by the Assembly.

(18) If a payment is made pursuant to a determination under paragraph (17), but the payee was not entitled to receive all or any part thereof, if the amount to which he or she was not entitled has not been recovered by other means, it may be recovered as a civil debt.

(19) If a performer is dissatisfied with a decision of a Local Health Board ("the original decision")

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- (a) to refuse to make a payment to or in respect of him or her pursuant to a determination under paragraph (17);
  - (b) to make a payment to or in respect of him or her pursuant to a determination under paragraph (17), but at a lower level than the level to which he or she considers to be correct; or
  - (c) in respect of recovery of what the Local Health Board considers to be an overpayment,

the performer may ask the Local Health Board to review the original decision and, if the performer does so, it shall reconsider that decision, and once it has done so, it must notify the performer in writing of the decision that is the outcome of its reconsideration of its original decision (“the reconsidered decision”), and give the performer notice of the reasons for its reconsidered decision.

(20) If the performer remains dissatisfied (whether on the same or different grounds), he or she may appeal to the Assembly by giving the performer a notice of appeal within a period of 28 days beginning on the day that the Local Health Board notified the performer of the reconsidered decision.

(21) A notice of appeal under paragraph (20) shall include—

- (a) the names and addresses of the parties to the disputed decision;
- (b) a copy of the reconsidered decision; and
- (c) a brief statement of the grounds for appeal.

(22) The Assembly shall thereafter send a written request to the parties to make, in writing and within a specified period, any representations they may wish to make about the matter (and the request to the Local Health Board shall include a copy of the performer’s brief statement of the grounds for appeal).

(23) Once the period specified pursuant to paragraph (22) has elapsed, the Assembly shall—

- (a) give a copy of any representations received from a party to the other party; and
- (b) request in writing a party to whom a copy of representations is given to make within a specified period any written observations which he, she or it wishes to make on those representations.

(24) Once the period specified pursuant to paragraph (23)(b) has elapsed, the Assembly shall, as soon as is reasonably practicable, having taken into account any such representations or observations as referred to in paragraphs (22) and (23) (if submitted within the specified periods) and such other evidence as it sees fit to consider—

- (a) determine the appeal, and shall give notice of the determination (including a record of the reasons for it) to both parties; and
- (b) give the Local Health Board such directions in writing, if any, on the matter as it thinks fit.

#### **Textual Amendments**

- F1** Words in reg. 13(4)(a)(b) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), [art. 1\(1\)](#), [Sch. 3 para. 68](#)
- F2** Words in reg. 13(5)(6) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), [art. 1\(1\)](#), [Sch. 3 para. 68](#)
- F3** Words in reg. 13(7)(b) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), [art. 1\(1\)](#), [Sch. 3 para. 68](#)
- F4** Words in reg. 13(9) inserted (1.7.2008) by [The National Health Service \(Primary Medical Services\) and \(Performers Lists\) \(Miscellaneous Amendments\) \(Wales\) Regulations 2008 \(S.I. 2008/1425\)](#), regs. 1(2), [6\(a\)](#)
- F5** Reg. 13(9A) inserted (1.7.2008) by [The National Health Service \(Primary Medical Services\) and \(Performers Lists\) \(Miscellaneous Amendments\) \(Wales\) Regulations 2008 \(S.I. 2008/1425\)](#), regs. 1(2), [6\(b\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service (Performers Lists) (Wales) Regulations 2004, Section 13.