
STATUTORY RULES OF NORTHERN IRELAND

2004 No. 149

HEALTH AND PERSONAL SOCIAL SERVICES

The Health and Personal Social Services (Primary Medical Services Performers Lists) Regulations (Northern Ireland) 2004

Made - - - - *30th March 2004*

Coming into operation *1st April 2004*

The Department of Health, Social Services and Public Safety⁽¹⁾, in exercise of the powers conferred on it by Articles 57G, 106(b) and 107(6) of, and paragraph 1(8)(a) of Schedule 11 to, the Health and Personal Social Services (Northern Ireland) Order 1972⁽²⁾ and of all other powers enabling it in that behalf, in conjunction with the Department of Finance and Personnel, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Health and Personal Social Services (Primary Medical Services Performers Lists) Regulations (Northern Ireland) 2004 and shall come into operation on 1st April 2004.

Interpretation

2. In these Regulations –

“the Order” means the Health and Personal Social Services (Northern Ireland) Order 1972;

“the 2002 Order” means the Medical Act 1983 (Amendment) Order 2002⁽³⁾;

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003⁽⁴⁾;

“the 2004 Order” means the Primary Medical Services (Northern Ireland) Order 2004⁽⁵⁾;

“appliance” means an appliance which is included in a list for the time being approved by the Department for the purposes of Article 63 of the Order;

(1) See S.I. 1999/283 (N.I. 1) Article 3(6)

(2) S.I. 1972/1265 (N.I. 14) Article 57G was inserted by the Primary Medical Services (Northern Ireland) Order 2004 (S.I. 2004/311 (N.I. 2)). Schedule 11 was substituted by Schedule 2 to the Health and Personal Social Services Act (Northern Ireland) 2001 c. 3 (N.I.) and amended by Article 8(3) of S.I. 2004/311 (N.I. 12)

(3) S.I. 2002/3135

(4) S.I. 2003/1250

(5) S.I. 2004/311 (N.I. 2)

“approved medical practice” has the meaning indicated in section 11(4) of the Medical Act 1983(6);

“armed forces GP” means a medical practitioner who is employed on a contract of service by the Ministry of Defence, whether or not as a member of the armed forces of the Crown, and

- (a) before the coming into operation of Article 10 of the 2003 Order holds either a certificate of prescribed experience under regulation 10 of, or a certificate of equivalent experience under regulation 12 of, the Vocational Training Regulations; or
- (b) upon the coming into operation of paragraph 22 of Schedule 8 to the 2003 Order, is an eligible general medical practitioner pursuant to that paragraph, other than by virtue of having an acquired right under paragraph 1(d) of Schedule 6 to that Order;

“Board” means a Health and Social Services Board;

“both registers” means the register of medical practitioners and, after the coming into operation of Article 10 of the 2003 Order, that register and the GP Register;

“CCT” means Certificate of Completion of Training awarded under Article 8 of the 2003 Order, including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in Article 20(3)(a) of that Order;

“Committee on Professional Performance” means the Committee on Professional Performance of the General Medical Council referred to in section 1(3) of the Medical Act 1983(7);

“conditional disqualification” has the meaning indicated in paragraph 4 of Schedule 11 to the Order(8) and includes a decision under provisions in operation in England, Wales or Scotland corresponding to a conditional disqualification;

“disqualification” means local or general disqualification by the Tribunal under paragraph 3(2) of Schedule 11 to the Order (or a decision under provisions in operation in England, Wales or Scotland corresponding to local or general disqualification), but does not include conditional disqualification, and “disqualified” shall be construed accordingly;

“equivalent body” means a Primary Care Trust established under section 16A of the National Health Services Act 1977(9), a Local Health Board established under section 16BA of the National Health Services Act 1977(10) and a Health Board established under section 2 of the National Health Service (Scotland) Act 1978(11);

“equivalent list” means a list kept by an equivalent body;

“first condition for disqualification” has the meaning indicated in paragraph 1(6) of Schedule 11 to the Order;

“Fitness to Practise Panel” means a panel constituted pursuant to paragraph 19E of Schedule 1 to the Medical Act 1983(12);

“general medical practitioner” means a GP Registrar or –

- (a) on the coming into operation of Article 10 of the 2003 Order, a medical practitioner whose name is included in the GP Register, otherwise than by virtue of paragraph 1(d) of Schedule 6 of that Order; and

(6) 1983 c. 54. Section 11(4) was amended by the National Health Service (Primary Care) Act 1997 (c. 46), section 35(4) and Schedule 2, Part 1, paragraph 61 and paragraph 48 of Schedule 11 to the Health and Social Care (Community Health and Standards) Act 2003 (c. 43)

(7) 1983 c. 54. Section 1(3) was amended by the Medical (Professional Performance) Act 1995 (c. 41), Schedule, paragraph 2 and S.I. 2000/1803

(8) Schedule 11 was substituted by Schedule 2 to the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3) and amended by S.I. 2004/311 (N.I. 12)

(9) 1977 c. 49. Section 16A is inserted by section 2(1) of the Health Act 1999 c. 8

(10) Section 16BA is inserted by section 6 of the National Health Service Reform and Health Care Professions Act 2002 c. 17

(11) 1978 c. 29

(12) 1983 c. 54. Paragraph 19E is inserted by Article 5(3) of the 2002 Order, with effect from such date as the Secretary of State specify

- (b) until the coming into operation of that Article, a medical practitioner who is either –
- (i) until the coming into operation of paragraph 22 of Schedule 8 to the 2003 Order, suitably experienced within the meaning of Article 8(2) of the Health and Personal Social Services (Northern Ireland) Order 1978⁽¹³⁾, section 21(2) of the National Health Service (Scotland) Act 1978⁽¹⁴⁾ or section 31(2) of the National Health Service Act 1977⁽¹⁵⁾ or would have been so considered notwithstanding the repeal of the appropriate provision; or
 - (ii) upon the coming into operation of paragraph 22 of Schedule 8 to the 2003 Order, an eligible general medical practitioner pursuant to that paragraph other than by virtue of having an acquired right under paragraph 1(d) of Schedule 6 to the 2003 Order;

“General Medical Services Contracts Regulations” means the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004⁽¹⁶⁾;

“GP Register”, after the coming into operation of Article 10 of the 2003 Order, means the register kept by virtue of that Article;

“GP Registrar” –

- (a) until the coming into operation of Article 5 of the 2003 Order, means a medical practitioner who is being trained in general practice by a medical practitioner who –
 - (i) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the Vocational Training Regulations; and
 - (ii) performs primary medical services; and
- (b) after the coming into operation of that Article, means a medical practitioner who is being trained in general practice by a GP Trainer, whether as part of training leading to a CCT, or otherwise;

“GP Trainer” means a medical practitioner who is –

- (a) until the coming into operation of Article 4(5)(d) of the 2003 Order, approved as a GP Trainer by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the Vocational Training Regulations; or
- (b) from the coming into operation of that Article, approved by the Postgraduate Medical Education and Training Board under Article 4(5)(d) of the 2003 Order for the purposes of providing training to a GP Registrar under Article 5(1)(c)(i) of that Order;

“health case” has the meaning ascribed to it by section 35E(4) of the Medical Act 1983⁽¹⁷⁾;

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

“list” has the same meaning as in paragraph 1(8) of Schedule 11 to the Order;

“Local Medical Committee” means the committee of that name recognised by a Board in relation to its area under Article 55B of the Order⁽¹⁸⁾ (Local Medical Committees);

⁽¹³⁾ S.I. 1978/1907 (N.I. 26)

⁽¹⁴⁾ 1978 c. 29

⁽¹⁵⁾ 1977 c. 49

⁽¹⁶⁾ S.R. 2004 No. 140

⁽¹⁷⁾ Section 35E is inserted by Article 13 of the 2002 Order, with effect from such date as the Secretary of State may specify

⁽¹⁸⁾ Article 55B was inserted by paragraph 9 of Schedule 1 to the 2004 Order

“Local Pharmaceutical Committee” means the committee of that name recognised by a Board in relation to its area under Article 55(3) of the Order⁽¹⁹⁾ (Recognition of local representative committees);

“medical practitioner” means a registered medical practitioner, and includes for the purposes of these Regulations a person provisionally registered under section 15 (provisional registration), 15A (provisional registration for EEA nationals) or section 21 (provisional registration) of the Medical Act 1983⁽²⁰⁾ or a person for the time being registered under section 22 (limited registration of persons by virtue of overseas qualifications) of that Act⁽²¹⁾ with limited registration;

“local or general disqualification” has the meaning indicated in paragraph 3(2) of Schedule 11 to the Order⁽²²⁾;

“performer” means a person included in a primary medical services performers list;

“pharmacist” means a pharmacist, other than a supplier of appliances only, whose name is included in the pharmaceutical list under Article 63 of the Order or who is employed by a person whose name is so included;

“primary medical services performers list” means a list of medical practitioners prepared pursuant to regulation 4(1);

“professional conduct” includes matters relating both to professional conduct and professional performance;

“Professional Conduct Committee” means the Professional Conduct Committee of the General Medical Council referred to in section 1(3) of the Medical Act;

“professional registration number” means the number against the medical practitioner’s name in the register of medical practitioners kept by the General Medical Council;

“provider of primary medical services” means a general medical practitioner, who, in addition to performing primary medical services, provides (including by virtue of being a partner in a partnership which so provides) primary medical services in accordance with arrangements under Article 56(2) (primary medical services), an agreement under Article 15B (Primary medical or personal dental services) or a general medical services contract under Article 57 (general medical services contracts: introductory) of the Order⁽²³⁾;

“register of medical practitioners” has the meaning given to it by section 2(2) of the Medical Act 1983⁽²⁴⁾;

“relevant service in the armed forces” means whole time service in the armed forces of the Crown in a national emergency, as a volunteer or otherwise, or a compulsory whole-time service in those forces, including any service resulting from any reserve liability, or any equivalent service by a person liable for compulsory whole-time service in those forces;

“second condition for disqualification” has the meaning indicated in paragraph 1(7) of Schedule 11 to the Order;

“suspended” means suspended as respects the performance of primary medical services by a direction of the Tribunal made pursuant to paragraphs 9 (applications for interim suspension)

(19) Article 55 was substituted by section 42 of the Health and Personal Social Service Act (Northern Ireland) 2001 and amended by paragraph 7 of Schedule 1 to the 2004 Order

(20) 1983 c. 54. Section 15 was amended by the National Health Service (Primary Care) Act 1997 (c. 46) (“the 1997 Act”), Schedule 2, Part 1, paragraph 61(4); section 15A was inserted by S.I. 2000/3041. Section 21 was amended by the 1997 Act, Schedule 2, Part 1, paragraph 61(5) and by S.I. 1996/1591 and 2002/3135

(21) Section 22 was amended by S.I. 1996/1951 and 2002/3135

(22) Schedule 11 was substituted by Schedule 2 to the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3)

(23) Article 56(2) was substituted by Article 3 of the 2004 Order, Article 15B was inserted by the Health Service (Primary Care) (N.I.) Order 1997 (1997/1177 (N.I. 7)) and was amended by Article 6(2) of the 2004 Order, and Article 57 was inserted by Article 4 of the 2004 Order

(24) 1983 c. 54. Section 2 was amended by S.I. 1996/11591

or 10 (suspension pending appeal) of Schedule 11 to the Order or under any provisions in operation in England, Wales or Scotland corresponding thereto;

“the Vocational Training Regulations” mean the Medical Practitioners (Vocational Training) Regulations (Northern Ireland) 1998⁽²⁵⁾;

“vocational training scheme” means –

- (a) a pre-arranged programme of training which is designed for the purpose of enabling a medical practitioner to gain the medical experience prescribed by regulation 6(1) of the Vocational Training Regulations; or
- (b) after the coming into operation of Article 4 of the 2003 Order, post graduate medical education and training necessary for the award of a CCT under that Article; and

“writing” includes, except in regulation 6(1), electronic mail.

Primary Medical Services Performers

3.—(1) Subject to paragraphs (2), (3) and (4), a health care professional who is a medical practitioner may not perform any primary medical service which a Board is, under Article 56 of the Order⁽²⁶⁾, under a duty to provide or secure the provision of unless that medical practitioner is included in a primary medical services performers list maintained by that Board.

(2) A medical practitioner who is provisionally registered under section 15 (provisional registration), 15A (provisional registration for EEA nationals) or section 21 (provisional registration) of the Medical Act 1983 may perform primary medical services despite not being included in the primary medical services performers list of any Board, where those services are performed in the course of the practitioner’s employment in a resident medical capacity in an approved medical practice.

(3) A GP Registrar, who has applied in accordance with these Regulations to a Board to have the GP Registrar’s name included in a primary medical services performers list maintained by that Board, may, despite not being included in that list, perform any primary medical service which that Board is, under Article 56 of the Order, under a duty to provide or secure the provision of, until the first of the following events arises –

- (a) the Board notifies the GP Registrar of the Board’s decision on that application;
- (b) the end of a period of 2 months, starting with the date on which the GP Registrar’s vocational training scheme begins.

(4) Paragraph (1) shall not apply to the provision of any primary medical service by a medical practitioner not included in a list specified in paragraph (1) at any time prior to 1st October 2004.

Primary Medical Services Performers Lists

4.—(1) Each Board shall prepare in accordance with these Regulations a primary medical services performers list of medical practitioners who may perform primary medical services for which that Board is, under Article 56 of the Order, under a duty to provide or secure the provision of.

(2) A primary medical services performers list shall contain in respect of each performer included in the list the following information –

- (a) the full name and professional registration number of the performer;
- (b) provided that the performer consents to its inclusion, the date of birth, or, if there is no consent, the date of first full registration as a medical practitioner (whether pursuant to the Medical Act 1983 or otherwise), of the performer;

⁽²⁵⁾ S.R. 1998 No. 13

⁽²⁶⁾ S.I. 1972/1265 (N.I. 14). Article 56 was inserted by Article 3 of the 2004 Order

- (c) if the performer is also a provider of primary medical services, that the performer is one;
- (d) if the performer is a GP Registrar, that the performer is one; and
- (e) if the performer is an armed forces GP, that the performer is one.

Publication of primary medical services performers lists

5.—(1) A Board shall publish and make available for inspection, at such places as appear to it convenient for informing all persons interested within the Board's area, copies of the primary medical services performers list and shall keep them up-to-date.

(2) A Board shall send a copy of the primary medical services performers list to –

- (a) the Department;
- (b) the Local Medical Committee (if any);
- (c) the Local Pharmaceutical Committee (if any); and
- (d) all pharmacists providing pharmaceutical services in the Board's area,

at intervals of not more than 3 months.

Application for inclusion in the primary medical services performers list

6.—(1) An application by a person for inclusion in a primary medical services performers list of a Board shall be made in writing to the Board and shall include the documents, information, undertakings and declarations specified in Schedule 1.

(2) Before determining an application, a Board shall –

- (a) check so far as practicable, the information provided by the applicant and any relevant documents; and
- (b) take up the references that the applicant provided in accordance with paragraph 1(g) of Schedule 1.

(3) If a Board considers that further information or documents, in addition to the documents, information and undertakings provided by the applicant in accordance with paragraph (1), are necessary to determine the applicant's application, the Board shall require the applicant to provide such further information or documents as are necessary before the Board shall determine an application in accordance with this regulation.

Decisions and grounds for refusal and deferral

7.—(1) A Board shall refuse to include the name of an applicant in its primary medical services performers list if –

- (a) the applicant is not a general medical practitioner;
- (b) the applicant is –
 - (i) the subject of a direction given by the Professional Conduct Committee under section 36 (professional misconduct and criminal offences) of the Medical Act 1983(27);
 - (ii) the subject of an order made by the Professional Conduct Committee under section 38(1) (power to order immediate suspension after a finding of professional misconduct or unfitness to practise) of that Act(28);

(27) Section 36 was amended by the Medical (Professional Performance) Act 1995 (c. 51) ("the 1995 Act"), Schedule, paragraph 5 and by S.I. 2000/1803

(28) Section 38 (1) was amended by the 1995 Act, Schedule, paragraph 7(2)(a)–(c)

- (iii) from the coming into operation of Article 13 of the 2002 Order, the subject of a direction by a Fitness to Practise Panel for erasure or immediate suspension under section 35D(2)(a) or (b), (5)(a) or (b), 10(a) or (b), or (12)(a) or (b) (functions of a Fitness to Practise Panel), or section 38(1) (power to order immediate suspension etc) of that Act(29); or
 - (iv) from the coming into operation of Article 14 of the 2002 Order, the subject of a direction by a Fitness to Practise Panel suspending him pursuant to rules made under paragraph 5A(3) of Schedule 4 of that Act(30);
 - (c) the applicant has been convicted in the United Kingdom of murder;
 - (d) the applicant has been convicted in the United Kingdom of a criminal offence and sentenced to a term of imprisonment of over 6 months;
 - (e) having contacted referees provided by the applicant, the Board is not satisfied with the references (if any) provided by the referees; or
 - (f) the Board is not satisfied that the applicant has the knowledge of English which, in the interests of the applicant and of patients who may receive primary medical services from the applicant, is necessary for performing primary medical services.
- (2) Paragraph (1) is without prejudice to any duty on a Board not to –
- (a) enter an applicant in a primary medical services performers list by virtue of that applicant being disqualified under paragraph 3(2) or 3 of Schedule 11 to the Order(31);
 - (b) enter an applicant in a primary medical services performers list by virtue of that applicant being suspended under paragraph 9 or 10 of Schedule 11 to the Order ; or
 - (c) enter an applicant in a primary medical services performers list by virtue of that applicant being subject to inquiry in a fraud case under paragraph 1(2) of Schedule 11 to the Order.
- (3) When a Board has decided whether or not to include an applicant in its primary medical services performers list, the Board shall notify the applicant within 7 days of –
- (a) that decision; and
 - (b) if the Board has decided not to include the applicant, the reasons for that (including any facts upon which the Board has relied) and of the right of appeal under regulation 13 against that decision.
- (4) Without prejudice to the Board’s power under paragraph 1 of Schedule 11 to the Order (the Tribunal) to make representations to the Tribunal that an applicant meets the second condition for disqualification, a Board shall defer determination of an application for inclusion in a primary medical services performers list where –
- (a) the applicant is the subject of criminal proceedings in the United Kingdom or elsewhere in the world, conviction in respect of which would be likely to lead to refusal to include in, or removal from, a primary medical services performers list or would be likely to lead the Tribunal (if representations were made to it) to be of the opinion that the applicant meets the first condition for disqualification (if the applicant were included in the list), or the second condition for disqualification;
 - (b) the applicant is the subject of an investigation or proceedings relating to the applicant’s professional conduct by any licensing or regulatory body (including one by another Board or equivalent body) in the United Kingdom or elsewhere in the world, the outcome of which would be likely to lead to refusal to include in, or removal from, a primary

(29) Sections 35D and 38 are inserted by Article 13 of the 2002 Order, with effect from such date as the Secretary of State may specify

(30) Schedule 4 is substituted by Article 14 of the 2002 Order, with effect from such date as the Secretary of State may specify

(31) Schedule 11 was substituted by Schedule 2 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3) and amended by paragraph 12 of Schedule 1 to the 2004 Order

medical services performers list or would be likely to lead the Tribunal (if representations were made to it) to be of the opinion that the applicant meets the first condition for disqualification (if the applicant were included in the list) or second condition for disqualification; or

- (c) the applicant is the subject of other proceedings in the United Kingdom which would be likely to result in the applicant being disqualified, removed or suspended from an equivalent list or would be likely to lead the Tribunal (if representations were made to it) to be of the opinion that the applicant meets the first condition for disqualification (if the applicant were included in the list), or second condition for disqualification,

and the Board shall notify the applicant of the deferral and the reasons for the deferral in writing.

(5) A Board shall defer a determination under paragraph (4) only until the outcome of the relevant event is known.

(6) Once the outcome of the relevant event is known, the Board shall require the applicant to confirm that the applicant wishes to proceed with the application and provide details of any changes to the application, and any information included in the application, within 28 days (or such longer period as the Board specifies).

(7) On the expiry of the period of 28 days (or such longer period as the Board has specified) referred to in paragraph (6), the Board shall again consider the application and notify the applicant of its determination and the reasons for it (including any facts relied on) and, where the Board refuses the application for inclusion, of the applicant's right of appeal under regulation 13.

(8) In this regulation "the outcome of the relevant event" means the final determination of any proceedings (including proceedings pending the determination of which the applicant is suspended) or investigation referred to in paragraph 4(a) to (c).

Requirements with which a medical practitioner included in a primary medical services performers list must comply

8.—(1) A performer included in a primary medical services performers list shall comply with the undertakings specified in paragraph 3 of Schedule 1 and any other requirement of these Regulations.

(2) A performer included in a primary medical services performers list shall comply with the undertakings specified in paragraph 3 of Schedule 1 whether or not those undertakings were included in an application by the performer under regulation 6.

Removal from primary medical services performers lists

9.—(1) In addition to any duty on a Board under the Order not to continue to include a performer by virtue of that performer's disqualification or to remove the performer by virtue of the performer being suspended, where a Board determines that a performer who has been included in a primary medical services performers list –

- (a) has died;
- (b) is no longer a general medical practitioner;
- (c) is –
 - (i) the subject of a direction given by the Professional Conduct Committee under section 36 (professional misconduct and criminal offences) of the Medical Act 1983;
 - (ii) the subject of an order made by the Professional Conduct Committee under section 38(1) (power to order immediate suspension after a finding of professional misconduct or unfitness to practise) of that Act;
 - (iii) from the coming into operation of Article 13 of the 2002 Order, the subject of a direction by a Fitness to Practise Panel for erasure or immediate suspension under

section 35D(2)(a) or (b), (5)(a) or (b), 10(a) or (b), or (12)(a) or (b) (functions of a Fitness to Practise Panel), or section 38(1) (power to order immediate suspension etc) of that Act; or

(iv) from the coming into operation of Article 14 of the 2002 Order, the subject of a direction by a Fitness to Practise Panel suspending him pursuant to rules made under paragraph 5A(3) of Schedule 4 of that Act;

(d) has been convicted in the United Kingdom of murder; or

(e) has been convicted in the United Kingdom of a criminal offence and sentenced to a term of imprisonment of over 6 months,

the Board shall remove the performer from the primary medical services performers list with effect from the date of its determination or, in the circumstances mentioned in sub-paragraph (c), the date on which the direction or order takes effect, if that date is later than the date of the Board's determination, and shall notify the performer as soon as practicable of the removal and the reasons for the removal in writing.

(2) Paragraph (1) is without prejudice to any duty on a Board to –

(a) remove a performer from a primary medical services performers list by virtue of that performer being disqualified under paragraph 3(2) or 3 of Schedule 11 to the Order; or

(b) remove a performer from a primary medical services performers list by virtue of that applicant being suspended under paragraph 9 or 10 of Schedule 11 to the Order.

Removal from the primary medical services performers list of medical practitioners not performing primary medical services

10.—(1) Where a Board has determined, in accordance with the provisions of this regulation, that a performer who is included in the primary medical services performers list has not, for the preceding 12 months, performed primary medical services which that Board is, under Article 56 of the Order(**32**), under a duty to provide or secure the provision of, the Board may remove the performer from the primary medical services performers list, unless the Department directs to the contrary in accordance with regulation 13(11).

(2) In calculating the period of 12 months referred to in paragraph (1) the Board shall disregard any period during which the performer –

(a) was not included in the primary medical services performers list;

(b) was suspended;

(c) was suspended –

(i) before the coming into operation of Article 13 of the 2002 Order by a committee of the General Medical Council pursuant to sections 37 or 41A of the Medical Act 1983(**33**);

(ii) after the coming into operation of that Article, by a Fitness to Practise Panel pursuant to section 41A(1)(a) of that Act(**34**); or

(iii) after the coming into operation of that Article, in a health case;

(d) was an armed forces GP or performing a period of relevant service in the armed forces.

(3) Before making any determination under paragraph (1) the Board shall –

(32) S.I. 1972/1265 (N.I. 14). Article 56 was inserted by Article 3 of the 2004 Order

(33) 1983 c. 54. Section 37 was amended by the Medical (Professional Performance) Act 1995 (c. 51) (“the 1995 Act”), Schedule, paragraph 6 and by S.I. 2000/1803; section 41A was inserted by S.I. 2000/1803

(34) Section 41A is substituted by Article 13 of the 2002 Order, with effect from such date as the Secretary of State may specify

- (a) send the performer notice in writing of its intention to remove the performer from the primary medical services performers list and the reasons for that intention;
- (b) give the performer the opportunity to make written representations to the Board within 28 days of and including the date of the notification under sub-paragraph (a); and
- (c) give the performer the opportunity to make oral representations, if the performer so requests, within 28 days of and including the date of notification under sub-paragraph (a).

(4) If the performer requests the opportunity to make oral representations pursuant to paragraph (3)(c), the Board shall appoint a committee, of which at least one third of the members shall be general medical practitioners, to consider those representations and make a recommendation to the Board.

(5) If there are no representations within 28 days of and including the date of notification under paragraph (3)(a) the Board shall inform the performer in writing of –

- (a) its determination and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 13,

within 7 days of making that determination, and where the Board has determined that the performer is to be removed from the primary medical services performers list it shall give the performer 28 days notice in writing of the date on which the performer will be removed.

(6) Where there are representations by the performer pursuant to paragraph (3)(b) or (c) the Board shall take those representations or any recommendation made by the committee appointed in accordance with paragraph (4) into account before reaching its decision, and shall then notify the performer in writing of –

- (a) its determination and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 13 (appeal to the Department),

within 7 days of making that determination, and where the Board has determined that the performer is to be removed from the primary medical services performers list it shall give the performer 28 days notice in writing of the date on which the performer will be removed.

(7) Where a performer has appealed to the Department, in accordance with regulation 13, within 21 days of and including the date on which notice of the determination of the Board was given to the performer and the decision on any such appeal is pending, a Board shall not remove, by reason of the determination against which appeal has been lodged, that performer from the primary medical services performers list.

(8) No determination under this regulation shall be made in respect of any performer who has completed a period of relevant service in the armed forces until 12 months after the date when the performer completed that period of relevant service in the armed forces.

Re-inclusion in a primary medical services performers list

11. Where a person's name has been removed from a primary medical services performers list on grounds of conviction of a criminal offence and either –

- (a) that conviction is overturned on appeal; or
- (b) the sentence is reduced on appeal to 6 months or less imprisonment,

the Board may include that person in the primary medical services performers list without an application being made in accordance with regulation 6 if the Board is satisfied that there is no further information which it should consider, and provided that the Board receives undertakings from the person to comply with these Regulations.

Amendment or withdrawal from primary medical services performers lists

12.—(1) A performer shall, unless it is impracticable to do so, give notice in writing to the Board within 28 days from and including the date of any occurrence requiring a change in the information recorded on a primary medical services performers list.

(2) A performer shall, unless it is impracticable to do so, give notice in writing to the Board at least three months in advance of any date on which the performer intends to withdraw from the primary medical services performers list.

(3) The Board shall, on receiving notice from any performer –

(a) pursuant to paragraph (1) as soon as practicable so amend the primary medical services performers list;

(b) pursuant to paragraph (2) so amend the primary medical services performers list, either –

(i) on the date which falls three months after the date the notice was received, or, if later, the date on which the performer has indicated in the notice the performer intends to withdraw; or

(ii) on the date from which the Board has agreed with the performer that the withdrawal shall take effect,

whichever is the earlier.

(4) Any notice given pursuant to paragraph (2) may not be withdrawn by the performer except with the consent of the Board.

(5) Where, in relation to a performer, representations are made to the Tribunal under paragraph 1 of Schedule 11 to the Order (the Tribunal), or a request for a review has been made to the Tribunal or a review is to be made by the Tribunal under paragraph 5 of Schedule 11 to the Order (review etc. of disqualification), that performer shall not, except with the consent of the Department and subject to such conditions as it may impose, be entitled to withdraw from the list until the proceedings on such representations, request for review or review have been determined.

Appeal to the Department

13.—(1) A person may appeal –

(a) for a re-determination by the Department where the person's application for inclusion in a primary medical services performers list is refused under regulation 7;

(b) for a re-determination by the Department of a determination of a Board to remove the person from the primary medical services performers list pursuant to regulation 10(1).

(2) A person may appeal by sending a notice of appeal to the Department, a copy of which shall be sent at the same time to the Board, within 21 days, or within such longer period as the Department for reasonable cause allows, of the date on which notice of the determination of the Board was given to the person.

(3) A notice of appeal shall contain the facts and contentions on which the person seeks to rely.

(4) If it appears to the Department that an appeal is of such a nature that it can properly be determined without a hearing, it may determine the appeal summarily without a hearing and shall give its decision in writing, with reasons for that decision, and send it to the appellant and the Board.

(5) If the Department is of the opinion that a hearing is required, it shall appoint –

(a) counsel or a solicitor; and

(b) where it sees fit, one or more other persons,

to hear the appeal.

(6) A hearing may take place at such time and place as the Department may direct and notice of the hearing shall be sent by post to the appellant and the Board not less than 14 days before the date fixed for the hearing.

(7) The appellant may attend and be heard in person or by counsel or solicitor or other representative and the Board may be represented at the hearing by any duly authorised official or by counsel or solicitor.

(8) Subject to the provisions of this regulation, the procedure at the hearing shall be such as the person or persons hearing the appeal may determine.

(9) The person or persons hearing the appeal shall report thereon to the Department, stating the relevant facts and conclusions, and the Department after taking such report into consideration shall give its decision in writing, with reasons for that decision and send it to the appellant and the Board.

(10) Where, on allowing an appeal referred to in paragraph (1)(a), the Department remits an application to the Board for reconsideration, the Board shall re-determine the application and in so doing shall comply with any any directions given by the Department.

(11) Where the Department allows an appeal referred to in paragraph (1)(b), it shall direct the Board not to remove the performer from the primary medical services performers list by reason of the determination appealed against, or, where the person has been removed, direct the Board to re-include the person in the primary medical services performers list, and not to remove the person by reason of the determination appealed against.

Disclosure of information

14.—(1) Where a Board decides to –

- (a) refuse to admit a person to the Board’s primary medical services performers list on the grounds specified in regulation 7(1);
- (b) remove a performer from that list under regulation 9 or 10;

the Board shall notify the persons specified in paragraph (2) within 7 days of that decision, and shall additionally notify those persons specified in paragraph (3), if requested to do so by those persons or bodies in writing, of the matters set out in paragraph (4).

(2) The persons to be notified within 7 days in accordance with paragraph (1) are –

- (a) the Department;
- (b) any other Board or equivalent body that, to the knowledge of the notifying Board –
 - (i) has the person on any list or equivalent list,
 - (ii) is considering an application for inclusion in any list or equivalent list by that person;
 or
 - (iii) is investigating an allegation against that person;

- (c) the Secretary of State;
- (d) the National Assembly for Wales;
- (e) the Scottish Ministers;
- (f) the General Medical Council or any other appropriate regulatory body.

(3) The persons to be additionally notified in accordance with paragraph (1) are –

- (a) persons that can establish that they are or were employing that person, using or used that person’s services or considering employing that person or using that person’s services in a professional capacity;

- (b) a partnership which provides primary medical services which can establish that the person is or was a member of the partnership or that it is considering inviting the person to become such a member;
- (c) a corporate body which provides primary medical services which can establish that that the person is or was –
 - (i) a member;
 - (ii) a legal and beneficial shareholder;
 - (iii) a director or secretary; or
 - (iv) one of the body of persons with control, of that corporate body, or that the corporate body was considering inviting the person to become such a person.
- (4) The matters referred to in paragraph (1) are –
 - (a) the person’s name, address and date of birth;
 - (b) the person’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 shall send to the person concerned a copy of any information about that person provided to the persons listed in paragraph (2) or (3), and any correspondence with that person relating to that information.
- (6) Where the Board has notified any of the persons specified in paragraph (2) or (3) of the matters set out in paragraph (4), it may, in addition, if requested by that person, notify that person of any evidence that was considered, including any representations from the performer.
- (7) Where a decision is changed on appeal the Board shall notify the persons that were notified of the original decision of the later decision.
- (8) A Board may disclose information about a performer supplied to it or acquired by it pursuant to these Regulations, or about references by the Board to the Tribunal to any of the following –
 - (a) the Department;
 - (b) any other Board or equivalent body, which –
 - (i) has the person to whom the information relates on any list or equivalent list;
 - (ii) is considering an application from such a person for inclusion in any list or equivalent list;
 - (iii) is investigating an allegation against that person;
 - (c) the Secretary of State;
 - (d) the National Assembly for Wales;
 - (e) the Scottish Ministers;
 - (f) the General Medical Council or any other licensing or regulatory body;
 - (g) persons that can establish that they are or were employing that person, using or used that person’s services or considering employing that person or using that person’s services in a professional capacity;
 - (h) a partnership which provides primary medical services which can establish that the person is or was a member of the partnership or that it is considering inviting the person to become such a member; and
 - (i) a corporate body which provides primary medical services which can establish that that person is or was –

- (i) a member;
 - (ii) a legal and beneficial shareholder;
 - (iii) a director or secretary; or
 - (iv) one of the body of persons with control,
- of that corporate body, or that the corporate body was considering inviting the person to become such a person.

Payments to suspended medical practitioners

15.—(1) A Board shall make payments, in accordance with any determination by the Department, to any performer whose name appears on a primary medical services performers list and who is suspended.

(2) Any determination under paragraph (1) shall be made in accordance with paragraph (3) after consultation with such persons as the Department considers appropriate.

(3) Any determination under paragraph (1) –

- (a) shall determine any sum payable by reference to remuneration which the performer might have received during the period the performer was suspended; and
- (b) may also determine any sum payable by reference to any other payment received or which might have been received by the performer.

(4) Any determination under paragraph (1) may be amended from time to time by the Department after consultation with such persons as it considers appropriate.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 30th March 2004.

L.S.

Dr. J. F. Livingstone
A Senior Officer of the
Department of Health, Social Services and
Public Safety

Sealed with the Official Seal of the Department of Finance and Personnel on 30th March 2004.

L.S.

C. Doran
A Senior Officer of the
Department of Finance and Personnel

SCHEDULE 1

Regulation 6(1)

INFORMATION, DECLARATIONS AND UNDERTAKINGS TO BE INCLUDED IN AN APPLICATION FOR INCLUSION IN A PRIMARY MEDICAL SERVICES PERFORMERS LIST

1. An application shall contain the following information –
 - (a) the applicant's full name, sex, date of birth and private address and telephone number;
 - (b) a full description of the applicant's medical qualifications including the institution which awarded them;
 - (c) the applicant's professional registration number and date of first registration in both registers;
 - (d) chronological details of the applicant's professional experience (including the starting and finishing dates of each appointment together with explanation of any gaps between appointments) with any additional supporting particulars, and an explanation of why the applicant was dismissed from any post;
 - (e) in relation to the applicant's professional experience provided under (d), the applicant shall separate that information into –
 - (i) general practice experience;
 - (ii) hospital appointments; and
 - (iii) other experience,with full supporting particulars of that experience;
 - (f) details of any list or equivalent list from which the applicant has ever been disqualified, conditionally disqualified, removed or suspended or to which admission was refused together with reasons for disqualification, conditional disqualification, removal, suspension or refusal;
 - (g) name and addresses of two referees who are willing to provide clinical references relating to two recent posts as a medical practitioner which lasted at least 3 months without a significant break and which may include a current post, or, where this is not possible, a full explanation and name and address of an alternative referee or referees;
 - (h) evidence that the applicant has a knowledge of English which, in the interests of the applicant and of patients who may receive primary medical services from the applicant, is necessary for performing primary medical services;
 - (i) whether the applicant is a provider of primary medical services;
 - (j) if the applicant is a provider of primary medical services, whether the applicant is a provider under more than one arrangement, agreement or contract to provide primary medical services and, if so, details of the other arrangement, agreement or contract;
 - (k) if the applicant is the director or one of the persons with control of a corporate body, the name and registered office of that body;
 - (l) if the applicant is an armed forces GP, that he is one;
 - (m) if the applicant is a GP Registrar, the name and address of the GP Trainer.
2. An application shall contain the following declarations as to whether or not the applicant –
 - (a) is a medical practitioner included in both registers;
 - (b) if the applicant is a GP Registrar, and is not a fully registered medical practitioner included in the register of medical practitioners, that the applicant is registered in that register with

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- limited registration, with details of the limits of that registration, as defined in the direction by virtue of which the applicant is registered;
- (c) has been convicted of a criminal offence in the United Kingdom;
 - (d) has been convicted elsewhere of an offence which would constitute a criminal offence if committed in Northern Ireland;
 - (e) is currently the subject of any proceedings which might lead to a conviction specified in sub-paragraph (c) or (d);
 - (f) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging the applicant absolutely (without proceeding to conviction);
 - (g) has accepted and agreed to pay a penalty under section 109A of the Social Security Administration (Northern Ireland) Act 1992⁽³⁵⁾, a penalty under section 115A of the Social Security Administration Act 1992⁽³⁶⁾ or a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995⁽³⁷⁾;
 - (h) has accepted a police caution in the United Kingdom;
 - (i) has been bound over following a criminal conviction in the United Kingdom;
 - (j) has been subject to any investigation into the applicant's professional conduct by any licensing, regulatory or other body where the outcome was adverse;
 - (k) is currently subject to any investigation into the applicant's professional conduct by any licensing, regulatory or other body;
 - (l) is the subject of any investigation or proceedings by another Board or equivalent body which might result in the applicant being disqualified, conditionally disqualified, removed or suspended from a list, or equivalent list;
 - (m) is, or has been, where the outcome was adverse, the subject of any investigation into the applicant's professional conduct in respect of any previous or current employment;
 - (n) is, or has in the preceding 6 months been, or was at the time of the events that gave rise to conviction, proceedings or investigation, a director or one of the body of persons with control of a body corporate which –
 - (i) has been convicted of a criminal offence in the United Kingdom;
 - (ii) has been convicted elsewhere of an offence which would constitute a criminal offence if committed in Northern Ireland;
 - (iii) is currently the subject of any proceedings which might lead to such a conviction; or
 - (iv) has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body;
 - (o) that the applicant consents to a request being made by the Board to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, into the applicant or a body corporate referred to in this paragraph and, for the purposes of this sub-paragraph, "employer" includes any partnership of which the applicant is or was a member.
3. An application shall include the following undertakings –
- (a) that the performer will participate in appropriate and relevant appraisal procedures;
 - (b) that the performer will notify the Board in writing within 7 days of its occurrence if the performer –

⁽³⁵⁾ 1992 c. 8. Section 109A was inserted by Article 14 of S.I. 1997/1182 (N.I. 11)

⁽³⁶⁾ 1992 c. 5. Section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47)

⁽³⁷⁾ 1995 c. 46

- (i) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in Northern Ireland, would constitute a criminal offence;
- (ii) is convicted of a criminal offence in the United Kingdom;
- (iii) is convicted elsewhere of an offence which would constitute a criminal offence if committed in Northern Ireland;
- (iv) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging the performer absolutely (without proceeding to conviction);
- (v) has accepted and agreed to pay a penalty under section 109A of the Social Security Administration (Northern Ireland) Act 1992, a penalty under section 115A of the Social Security Administration Act 1992 or a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995;
- (vi) has accepted a police caution in the United Kingdom;
- (vii) is bound over following a criminal conviction in the United Kingdom;
- (viii) becomes the subject of any investigation into the performer's professional conduct by any licensing, regulatory or other body;
- (ix) is informed by any licensing, regulatory or other body of the outcome of any investigation into the performer's professional conduct, and there is a finding against the performer;
- (x) becomes the subject of any investigation or proceedings by another Board or equivalent body, which might result in the performer being disqualified, conditionally disqualified, removed or suspended from a list, or equivalent list;
- (xi) is disqualified, conditionally disqualified, removed or suspended from or refused admission to any list or equivalent list;
- (xii) is, was in the preceding 6 months, or was at the time of the events that gave rise to the charge, conviction or investigation, a director or one of the persons with control of a body corporate and that body corporate –
 - (aa) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in Northern Ireland, would constitute a criminal offence;
 - (bb) is convicted of a criminal offence in the United Kingdom;
 - (cc) is convicted elsewhere of an offence which, if committed in Northern Ireland, would constitute a criminal offence;
 - (dd) becomes the subject of any investigation into its provision of professional services by any licensing, regulatory or other body; or
 - (ee) is informed by any licensing, regulatory or other body of the outcome of any investigation into its provision of professional services, and there is a finding against it,together with details of the occurrence, including approximate dates, and where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome;
- (c) if the performer is a provider of primary medical services under a general medical services contract, to comply with the requirements of paragraph 116 (gifts) of Schedule 5 (other contractual terms) to the General Medical Services Contracts Regulations;
- (d) if the performer is not a provider of primary medical services but performs primary medical services in accordance with a general medical services contract, to comply with

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- the requirements of paragraph 116 (Gifts) of Schedule 5 (Other contractual terms) to the General Medical Services Contracts Regulations as though the performer were a provider of primary medical services;
- (e) if the performer is a GP Registrar, unless the performer has an acquired right under regulation 5(1)(d) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994⁽³⁸⁾, that the performer will –
- (i) not perform primary medical services except when acting for, and under the supervision of, the performer’s GP Trainer;
 - (ii) withdraw from the primary medical services performers list if any of the events in paragraph 4 takes place;
 - (iii) until the coming into operation of Article 10 of the 2003 Order apply for a certificate of prescribed experience under regulation 10 of the Vocational Training Regulations or a certificate of equivalent experience under regulation 12 of those regulations as soon as the performer is eligible to do so, and provide the Board with a copy of any such certificate; and
 - (iv) after the coming into operation of Article 10 of the 2003 Order, provide the Board with evidence of the performer’s inclusion in the GP Register;
- (f) that the performer shall consent to a request being made by the Board to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, into the applicant or a body corporate referred to in this paragraph and, for the purposes of this sub-paragraph, “employer” includes any partnership of which the applicant is or was a member.
4. The events to which this paragraph applies are –
- (a) the conclusion of any period of training prescribed by regulation 6(3) of the Vocational Training Regulations or after the coming into operation of Articles 4 and 5 of the 2003 Order, any period of general practice training required pursuant to those Articles, unless –
- (i) it forms part of a vocational training scheme which has not yet been concluded;
 - (ii) the GP Registrar provides the Board with –
 - (aa) a certificate of prescribed experience under regulation 10 of the Vocational Training Regulations;
 - (bb) a certificate of equivalent experience under regulation 12 of those Regulations; or
 - (cc) after the coming into operation of Article 10 of the 2003 Order, evidence of the applicants inclusion in the GP Register;
 - (iii) the failure satisfactorily to complete any period of training within the meaning of regulation 9 of the Vocational Training Regulations or after the coming into operation of Articles 4 and 5 of the 2003 Order, of general practice training within the meaning of those Articles; and
 - (iv) the completion of a vocational training scheme, unless the GP Registrar provides the Board with –
 - (aa) a certificate of prescribed experience under regulation 10 of the Vocational Training Regulations;
 - (bb) a certificate of equivalent experience under regulation 12 of those regulations; or

⁽³⁸⁾ S.I.1994/3130; relevant amending instrument is S.I. 1998/669

(cc) after the coming into operation of Article 10 of the 2003 Order, evidence of the GP Registrar's inclusion in the GP Register.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations provide for lists ("primary medical services performers lists") of general medical practitioners performing primary medical services for which Boards are, under Article 56 of the Health and Personal Social Services (Northern Ireland) Order 1972 ("the 1972 Order"), under a duty to provide or secure the provision of, to be kept by those Boards.

Regulation 3 provides that medical practitioners, subject to certain exceptions, may not perform primary medical services for which a Board is under a duty to provide or secure the provision of unless they are included in a list maintained by the Board.

Regulations 4 and 5 provide for the preparation, maintenance and publication of lists by Boards.

Regulation 6 makes provision in relation to applications for inclusion in primary medical services performers lists and Schedule 1 sets out the information, declarations and undertakings to be supplied on application.

Regulation 7 makes provision for the grounds on which an application must be refused or deferred.

Regulation 8 and paragraph 3 of Schedule 1 set out the requirements with which a performer included in a list must comply.

Regulations 9 and 10 make provision for removals of performers from the primary medical services performers list, including the grounds for removal, and regulation 11 makes provision to permit Boards to re-include in a list persons removed on the grounds of a criminal conviction where the person has successfully appealed against conviction, or in certain circumstances, sentence.

Regulation 12 sets out the circumstances in which a performer included in a primary medical services performers list may not withdraw from it.

Regulation 13 makes provision for appeals to the Department against decisions of Boards to refuse to include a person in a primary medical services performers list, or to remove them from the list on the ground that the person has not performed primary medical services in the last 12 months.

Regulation 14 makes provision for the disclosure of information by Boards about applicants for inclusion on primary medical services performers lists, refusals of applications, removals and references to the Tribunal.

Regulation 15 provides for the making of payments by Boards to general medical practitioners who have been suspended by the Tribunal under paragraph 9 (applications for interim suspension) or paragraph 10 (suspension pending appeal) of Schedule 11 to the 1972 Order or under corresponding provisions in operation in England, Wales or Scotland in consequence of that suspension.