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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**

**Interpretation and modification**

2.—(1) In these Regulations unless the context otherwise requires —

“Abolition of the Tribunal Regulations” means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001(1);

“Abolition of the Tribunal (Wales) Regulations” means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002(2);

“armed forces” means the United Kingdom Armed Forces of Her Majesty;

“contingent removal” shall be construed in accordance with regulation 12;

“director” means —

(a) a director of a body corporate; or

(b) a member of the body of persons controlling a body corporate (whether or not a limited liability partnership);

“employment” means any employment, whether paid or unpaid and whether under a contract for services or a contract of service, and “employed” and “employer” shall be construed accordingly;

“equivalent body” means a Primary Care Trust in England, a Health Board or an NHS trust in Scotland, a Health and Social Services Board in Northern Ireland, in relation to any time prior to 1st April 2003 a Health Authority in Wales, or in relation to any time prior to 1st October 2002, a Health Authority in England;

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

“FHSAA” means the Family Health Services Appeal Authority constituted under section 49S(3);

“fraud case” means a case where a person satisfies the second condition for removal from the medical performers list, set out in section 49F(3)(4) or, by virtue of section 49H, is treated as doing so;

“licensing or regulatory body” means a body that licenses or regulates any profession of which the performer is, or has been a member, including a body regulating or licensing the education,

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(1) [S.I. 2001/3744](#).

(2) [S.I. 2002/1920](#).

(3) Section 49S was inserted by the 2001 Act, section 27(1) and amended by the 2002 Act, Schedule 2; provision corresponding to it may be made by virtue of the 2003 Act, section 28X(4).

(4) Section 49H was inserted by the 2001 Act, section 25; section 49F was amended by the 2002 Act, Schedule 2, paragraph 21.

training or qualifications of that profession, and includes any body which licences or regulates any such profession, its education, training or qualifications, outside the United Kingdom;

“list” means list referred to in section 49N(1)(a) to (c)(5), a medical list, a services list or a supplementary list;

“medical list” means the list prepared by the Local Health board under regulation 4 of the Medical Regulations;

“medical performers list” means a list of medical performers prepared and published pursuant to regulation 3(1);

“Medical Regulations” means the National Health Service (General Medical Services) Regulations 1992(6);

“a national disqualification” means a decision —

- (a) made by the FHSAA to nationally disqualify a performer under section 49N;
- (b) to nationally disqualify a performer under provisions in force in Scotland or Northern Ireland corresponding to section 49N; or
- (c) by the Tribunal, which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4) of the Abolition of the Tribunal Regulations or regulation 6(4)(b) of the Abolition of the Tribunal (Wales) Regulations;

“the NCAA” means the National Clinical Assessment Authority established as a Special Health Authority under section 11(7);

“the NHS Counter Fraud and Security Management Service” means the service with responsibility for policy and operational matters relating to the prevention, detection and investigation of fraud or corruption and the management of security in the National Health Service, established by the Counter Fraud Management Service (Establishment and Constitution) Order 2002(8);

“notice” means a notice in writing (including electronically) and “notify” shall be construed accordingly;

“originating events” means the events that gave rise to the conviction, investigation, proceedings, suspension, refusal to admit, conditional inclusion, removal or contingent removal that took place;

“performer” means a health care professional;

“performers list” means a list prepared and published pursuant to regulation 3(1);

“previous list” means a list in which the performer’s name was included prior to inclusion in the performer’s list;

“Primary Care Act” means the the National Health Service (Primary Care) Act 1997(9)

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

“relevant body” means the body for the time being mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (10), which regulates the profession of the performer;

(5) Section 49N was inserted by the 2001 Act, section 25 and amended by the 2002 Act, Schedule 2 paragraph 25. Corresponding provision may be made by virtue of the 1002 Act, section 28X(4).

(6) [S.I. 1992/635](#)

(7) The NCAA was established by [S.I. 2000/2961](#); section 11 was amended by the 1995 Act, Schedule 1, paragraphs 1 and 2 and by the 1999 Act, section 65 and Schedule 4, paragraphs 4 and 6.

(8) [S.I. 2002/3039](#).

(9) 1997 c. 46.

(10) 2002 c. 17.

“relevant performers list” means the performers list applicable to that description of performer;

“relevant Part” means the Part, other than Part I, of these Regulations applicable to the description of performer therein prescribed;

“services list” means a list prepared by a Primary Care Trust under regulation 3 of the Services List Regulations;

“Services List Regulations” means the Regulations, if any, prepared by a Primary Care Trust under sections 8ZA, 9 and 39 of the Primary Care Act(11);

“supplementary list” means a list prepared by a Local Health Board under regulation 3 of the Supplementary List Regulations;

“Supplementary List Regulations” means the National Health Service (General Medical Services Supplementary List) (Wales) Regulations 2002(12);

“suspended” means —

- (a) suspended by a Local Health Board or equivalent body under section 49I(13), or 49J(14), regulations made under section 43D(15) or under section 8ZA(16) of the Primary Care Act, including these Regulations,
- (b) in relation to Scotland or Northern Ireland, suspended under provisions in force corresponding to those in or made under sections 28DA(17), 43D, 49I, 49J or under section 8ZA of the Primary Care Act,

and shall be treated as including a case where a person is treated as suspended by a Local Health Board or, prior to 1st April 2003, a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal (Wales) Regulations, or in England by a Primary Care Trust or, prior to 1st October 2002, by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations, and “suspends” and “suspension” shall be construed accordingly;

“the Tribunal” means the Tribunal constituted under section 46(18) for England and Wales, and which, except for prescribed cases, had effect in relation to England until 14th December 2001 and in relation to Wales until 26th August 2002(19); and

all references to sections are to sections of the National Health Service Act 1977, except where specified otherwise.

(2) The provisions of this Part shall have effect in relation to each description of performer as prescribed in the relevant Part, subject to any modification or further provision in that relevant Part.

## Performers Lists

3.—(1) A Local Health Board shall prepare and publish a medical performers list in accordance with this Part, as modified or supplemented by Part 2.

(2) Performers lists shall be available for public inspection.

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(11) No Regulations have been made by the Assembly; the relevant Regulations for England are the National Health Service (Personal Medical Services)(Services Lists) and (General Medical Services) and (General Medical Services Supplementary List) Amendment Regulations 2003 [SI2003/2644](#).

(12) [S.I. 2002/1882 \(W.191\)](#) amended by [S.I. 2002/2802 \(W.270\)](#).

(13) Section 49I was inserted by the 2001 Act, section 25 and amended by the 2002 Act, Schedule 2; provision corresponding to it may be made by virtue of the 2003 Act, section 18X(4).

(14) Section 49J was inserted by the 2001 Act, section 25 and amended by the 2002 Act, Schedule 2; provision corresponding to it may be made by virtue of the 2003 Act, section 28X(4).

(15) Section 43D was inserted by the 2001 Act, section 14 and amended by the 2002 Act, Schedule 2, and by the 2003 Act Schedule 11, paragraph 20.

(16) Section 8ZA was inserted by the 2001 Act, section 26(2), and amended by the 2002 Act, Schedule 2.

(17) Section 28DA was inserted by the 2001 Act, section 26(1) and amended by the 2002 Act, Schedule 2.

(18) Section 46 was revoked by the 2001 Act, s. 67, Schedule 5, paragraph 5 and Schedule 6, part I.

(19) See [S.I. 2001/3738](#), article 2(5) and (6)(b), which sets out the prescribed cases for England and [S.I. 2002/1919](#), article 2(2) and (3)(b), which sets out the prescribed cases for Wales.

**Application for inclusion in a performers list**

4.—(1) An application by a performer for the inclusion of the performer's name in a performers list shall be made by sending the Local Health Board an application in writing, which shall include the information mentioned in paragraph (2), the undertakings, certificate, authority and consents required by paragraphs (3), and (6) any declaration required under paragraph (4) or (5) and any further information, undertakings, consents or documentation required under paragraph (7) or the relevant Part.

- (2) The performer shall provide the following information—
- (a) full name;
  - (b) sex;
  - (c) date of birth;
  - (d) private address and telephone number;
  - (e) chronological details of professional experience (including the starting and finishing dates of each appointment together with an explanation of any gaps between appointments) with any additional supporting particulars, and an explanation of why the performer was dismissed from any post;
  - (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) as a performer which lasted at least three months without a significant break, and where this is not possible, a full explanation and the names and addresses of alternative referees;
  - (g) whether the performer has any outstanding application, including a deferred application, to be included in a list or an equivalent list, and if so, particulars of that application;
  - (h) details of any list or any equivalent list from which the performer has been removed or contingently removed, or to which the performer has been refused admission or in which the performer has been conditionally included, with an explanation as to why;
  - (i) if the performer is the director of any body corporate that is included in any list or any equivalent list, or which has an outstanding application (including a deferred application) for inclusion in any list or equivalent list, the name and registered office of that body and details of the Local Health Board or equivalent body concerned; and
  - (j) where the performer is, or was in the preceding six months, or was at the time of the originating events, a director of a body corporate, details of any list or equivalent list to which that body has been refused admission, in which it has been conditionally included, from which it has been removed or contingently removed or from which it is currently suspended, with an explanation as to why and details of the Local Health Board or equivalent body concerned.
- (3) The performer shall provide the following undertakings, certificate and consent —
- (a) undertaking to provide the declarations and document, if applicable, required by regulation 9;
  - (b) undertaking to notify the Local Health Board within 7 days of any material changes to the information provided in the application until the application is finally determined or, if the performer's name is included in the performers list, at any time when the performer's name is included in that list;
  - (c) undertaking to notify the Local Health Board if the performer is included, or applies to be included, in any other list held by a Local Health Board or equivalent body;
  - (d) undertaking to co-operate with an assessment by the NCAA when requested to do so by the Local Health Board;

- (e) undertaking, except where in the relevant Part provides to the contrary, to participate in an appraisal system provided on behalf of the Local Health Board;
  - (f) an enhanced criminal record certificate, under section 115 of the Police Act 1997<sup>(20)</sup>, in relation to the performer; and
  - (g) consent to the disclosure of information in accordance with regulation 9.
- (4) The performer shall send with the application a declaration as to whether the performer—
- (a) has any criminal convictions in the United Kingdom;
  - (b) has been bound over to keep the peace in the United Kingdom;
  - (c) has accepted a police caution in the United Kingdom;
  - (d) has accepted and agreed to pay either a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995<sup>(21)</sup> or a penalty under section 115A of the Social Security Administration Act 1992<sup>(22)</sup>;
  - (e) 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);
  - (f) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
  - (g) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Local Health Board;
  - (h) has been subject to any investigation into his professional conduct by any licensing, regulatory or other body, where the outcome was adverse;
  - (i) is currently subject to any investigation into the performer’s professional conduct by any licensing, regulatory or other body;
  - (j) is to the performer’s knowledge, or has been where the outcome was adverse, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud;
  - (k) is the subject of any investigation by another Local Health Board or equivalent body, which might lead to the performer’s removal from any of that Local Health Board’s lists or any equivalent lists;
  - (l) is, or has been where the outcome was adverse, the subject of any investigation into the performer’s professional conduct in respect of any current or previous employment;
  - (m) has been removed from, contingently removed from, refused admission to, or conditionally included in any list or equivalent list kept by a Local Health Board or equivalent body, or is currently suspended from such a list and if so, why and the name of that Local Health Board or equivalent body; or
  - (n) is, or has ever been, subject to a national disqualification,

and, if so, the performer shall give details of any investigation or proceedings which were or are to be brought, including the nature of the investigation or proceedings, where and approximately when that investigation or those proceedings took place or are to take place, and any outcome.

(5) If the performer is, has in the preceding six months been, or was at the time of the originating events a director of a body corporate, the performer shall in addition make a declaration to the Local Health Board as to whether the body corporate—

- (a) has any criminal convictions in the United Kingdom;

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<sup>(20)</sup> 1997 c. 50.

<sup>(21)</sup> 1995 c. 46.

<sup>(22)</sup> 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

- (b) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (c) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Local Health Board;
- (d) has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body, where the outcome was adverse;
- (e) is currently subject to any investigation into its provision of professional services by any licensing, regulatory or other body;
- (f) is to the performer's knowledge, or has been where the outcome was adverse, the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud;
- (g) is the subject of any investigation by another Local Health Board or equivalent body, which might lead to its removal from any performers list or equivalent performers list; or
- (h) has been removed from, contingently removed from, refused admission to, or conditionally included in any performers list or equivalent performers list or is currently suspended from such a performers list,

and, if so, give the name and registered office of the body corporate and details of any investigation or proceedings which were or are to be brought, including the nature of the investigation or proceedings, where and approximately when that investigation or those proceedings took place or are to take place, and any outcome.

(6) The performer shall provide all necessary authority to enable a request to be made by the Local Health 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 performer or a body corporate referred to in paragraphs (2) and (5) and for the purpose of this paragraph, "employer" includes any partnership of which the performer is or was a member.

(7) If in the case of any application, the Local Health Board finds that the information, references or documentation supplied by the performer are not sufficient for it to decide the performer's application, it shall seek from that performer such further information, references or documentation as it may reasonably require in order to make a decision and that performer shall supply the material so sought to the Local Health Board.

## **Readmission**

5.—(1) Where a performer has been removed from its performers list by a Local Health Board on the grounds that the performer had been convicted of a criminal offence, and that conviction is overturned on appeal, that Local Health Board may agree to include the performer in its performers list without a full application if it—

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

(2) In a case to which paragraph (1) applies, if the conviction is reinstated on a further appeal, the previous determination of the Local Health Board to remove that performer from its performers list shall once again have effect.

## Decisions and grounds for refusal

6.—(1) The grounds on which a Local Health Board may refuse to include a performer in its performers list are, in addition to any prescribed in the relevant Part, that—

- (a) the Local Health Board, having considered the declaration required by regulation 4(4) and (if applicable) regulation 4(5), and any other information or documents in its possession relating to the performer, considers that the performer is unsuitable to be included in its performers list;
- (b) having contacted the referees provided by the performer under regulation 4(2)(f), the Local Health Board is not satisfied with the references;
- (c) having checked with the NHS Counter Fraud and Security Management Service for any facts that it considers relevant relating to past or current fraud investigations involving or related to the performer which that service shall supply and, having considered these and any other facts in its possession relating to fraud involving or relating to the performer, the Local Health Board considers these justify such refusal;
- (d) having checked with the Assembly for any facts that the Assembly considers relevant relating to past or current investigations or proceedings involving or related to the performer which the Assembly shall supply and, having considered these and any other facts in its possession involving or relating to the performer, the Local Health Board considers these justify such refusal; or
- (e) there are any grounds for considering that admitting the performer to its list would be prejudicial to the efficiency of the services, which those included in the performers list perform.

(2) The grounds on which a Local Health Board must refuse to include a performer in its performers list are, in addition to any prescribed in the relevant Part, that —

- (a) the performer has not provided satisfactory evidence that the performer intends to perform the services, which those included in the relevant performers list perform, in its area;
- (b) it is not satisfied the performer has the knowledge of English which, in the performer's own interests or those of the performer's patients, is necessary in performing the services, which those included in the relevant performers list perform, in its area;
- (c) the performer has been convicted in the United Kingdom of murder;
- (d) the performer has been convicted in the United Kingdom of a criminal offence, committed on or after the day prescribed in the relevant Part, and has been sentenced to a term of imprisonment of over six months;
- (e) the performer has been nationally disqualified;
- (f) the performer's application has not been updated in accordance with regulation 7(4); or
- (g) in a case to which regulation 15(4) applies, the performer does not notify the Local Health Board under regulation 15(5) that the performer wishes to be included in its performers list subject to the specified conditions.

(3) Before making a decision on the performer's application, the Local Health Board shall—

- (a) check, as far as reasonably practicable, the information provided by the performer, in particular that provided under regulation 4(4) and (if applicable) (5) or as required by the relevant Part, and shall ensure that it has sight of relevant documents;
- (b) check with the NHS Counter Fraud and Security Management Service whether the performer has any record of fraud which information the service shall supply;
- (c) check with the Assembly as to any information held by it as to any record about past or current investigations or proceedings involving or related to that performer which information the Assembly shall supply; and

(d) take up the references that performer provided under regulation 4(2)(f).

(4) Where the Local Health Board is considering a refusal of the performer's application under paragraph (1) or (2) it shall consider all facts which appear to it to be relevant, and shall in particular take into consideration, in relation to paragraph (1)(a), (c) or (d) —

- (a) the nature of any offence, investigation or incident;
- (b) the length of time since such offence, incident, conviction or investigation;
- (c) whether there are other offences, incidents or investigations to be considered;
- (d) any action or penalty imposed by any licensing, regulatory or other body, the police or the courts as a result of any such offence, incident or investigation;
- (e) the relevance of any offence, investigation or incident to the performer performing the services, which those included in the relevant performers list perform, and any likely risk to the performer's patients or to public finances;
- (f) whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997(23) applies, or if it had been committed in England or Wales, would have applied;
- (g) whether the performer has been refused admission to, or conditionally included in, or removed, contingently removed or is currently suspended from, any list or any equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action; and
- (h) whether the performer was at the time, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate, which was refused admission to, conditionally included in, removed or contingently removed from, any list or equivalent list or is currently suspended from any such list, and if so, what the facts relating to the matter which led to such and the reasons given by Local Health Board or equivalent body in each case.

(5) When the Local Health Board takes into consideration any of the matters set out in paragraph (4), it shall consider the overall effect of all the matters being considered.

(6) When the Local Health Board has decided whether or not to include a performer in its performers list, the Local Health Board shall notify the performer within 7 days of that decision of—

- (a) that decision; and
- (b) if it has decided not to include the performer, the reasons for that decision (including any facts relied upon) and of any right of appeal under regulation 15 against that decision.

### **Deferment of decision on application**

7.—(1) A Local Health Board may defer a decision on a performer's application to be included in a performers list, where—

- (a) there are in respect of the performer, legal proceedings that are criminal proceedings in the United Kingdom or, where there are legal proceedings in respect of conduct which, had it occurred in the United Kingdom would constitute a criminal offence, and that if successful would be likely to lead to the removal of the performer from the Local Health Board's performers list if the performer had been included;
- (b) there are legal proceedings against a body corporate of which the performer is, has in the preceding six months been, or was at the time of the originating events a director, that are criminal proceedings in the United Kingdom or, where there are legal proceedings in respect of conduct which, had it occurred in the United Kingdom would constitute a criminal offence, and that if successful would be likely to lead to the removal of

the performer from the Local Health Board's performers list if the performer had been included;

- (c) there is an investigation anywhere in the world by the performer's licensing or regulatory body or any other investigation (including one by another Local Health Board or equivalent body) relating to the performer in the performer's professional capacity that, if adverse, would be likely to lead to the removal of the performer from the Local Health Board's performers list, if the performer were to be included in it;
- (d) the performer is suspended from any performers list or any equivalent performers list;
- (e) a body corporate of which the performer is, has in the preceding six months been, or was at the time of the originating events, a director, is suspended from any list or any equivalent list;
- (f) the FHSAA is considering an appeal by the performer against a decision of a Local Health Board to refuse to include the performer in its performers list, or to conditionally include the performer in or to contingently remove the performer from, or to remove the performer from any performers list kept by a Local Health Board and if that appeal is unsuccessful the Local Health Board would be likely to remove the performer from the Local Health Board's performers list if the performer had been included in it;
- (g) the FHSAA is considering an appeal by a body corporate of which the performer is, has in the preceding six months been, or was at the time of the originating events a director, against a decision of a Local Health Board or equivalent body to refuse to admit the body corporate to its list, or to conditionally include it in or to remove or contingently remove it from any list kept by a Local Health Board or equivalent body, and if that appeal is unsuccessful the Local Health Board would be likely to remove the performer from the performers list if the performer had been included;
- (h) the performer is being investigated by the NHS Counter Fraud and Security Management Service in relation to any fraud, where the result, if adverse, would be likely to lead to the removal of the performer from the Local Health Board's performers list if the performer were to be included in it;
- (i) a body corporate, of which the performer is, has in the preceding six months been, or was at the time of the originating events a director, is being investigated in relation to any fraud, where the result, if adverse, would be likely to lead to the removal of the performer from the Local Health Board's performers list if the performer were to be included in it; and
- (j) the FHSAA is considering an application from a Local Health Board for a national disqualification of the performer or a body corporate of which the performer is, has in the preceding six months been, or was at the time of the originating events, a director.

(2) A Local Health Board may only defer a decision under paragraph (1) above until the outcome of the relevant event mentioned in any of sub-paragraphs (a), (b), (c), (f), (g), (h), (i), (j) is known or whilst the performer or the body corporate is suspended under sub-paragraph (d) or (e) above.

(3) The Local Health Board must notify the performer that it has deferred a decision on the application and the reasons for it.

(4) Once the outcome of the relevant event mentioned in paragraph (1)(a), (b), (c), (f), (g), (h), (i), (j) is known or the suspension referred to in paragraph (1)(d) or (e) has come to an end, the Local Health Board shall notify the performer that the performer must within 28 days of the date of the notification (or such longer period as the Local Health Board may agree)—

- (a) update the performer's application; and
- (b) confirm in writing that the performer wishes the application to proceed.

(5) Provided any additional information has been received within the 28 days or the time agreed, the Local Health Board shall notify the performer as soon as possible that —

- (a) the performer's application to be included in its performers list has been successful; or
- (b) the Local Health Board has decided to refuse the application or impose conditions on the performer's inclusion, and the reasons for that (including any facts relied upon), and any right of appeal under regulation 15.

### **Conditional inclusion**

8.—(1) A Local Health Board may determine that, if a performer is to be included in a performers list, the performer is to be subject, while the performer remains included in that performers list, to the imposition of conditions, having regard to the requirements of section 28X(6) (preventing fraud or prejudice to the efficiency of the service).

(2) If a performer fails to comply with a condition, which has been imposed by the Local Health Board, it may remove the performer from its performers list.

(3) Where the Local Health Board is considering the removal of a performer from its performers list for breach of a condition, it shall —

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

(4) If there are no representations within the period specified in paragraph (3)(c), the Local Health Board shall decide the matter and, within 7 days of making that decision, notify the performer of —

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15.

(5) If there are representations, the Local Health Board must take them into account before reaching its decision, and shall then, within 7 days of making that decision, notify the performer of —

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15.

(6) If the performer requests an oral hearing, this must take place before the Local Health Board reaches its decision and the Local Health Board must then, within 7 days of making that decision, notify the performer of —

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) of any right of appeal under regulation 15.

(7) When the Local Health Board notifies the performer of any decision, it shall inform the performer that, if the performer wishes to exercise a right of appeal, the performer must do so within the period of 28 days beginning with the date on which the Local Health Board gave the performer the notice informing the performer of its decision and shall tell the performer how to exercise any such right.

(8) The Local Health Board shall also notify the performer of the performer's right to have the decision reviewed in accordance with regulation 14.

(9) Where the Local Health Board determines that a performer —

- (a) may be included in its performers list, but subject to conditions imposed under this regulation; or
- (b) is to be subject to conditions while the performer remains included in its performers list,

the name of the performer may be included (or continue to be included) in its performers list during the period for bringing the appeal to the FHSAA pursuant to regulation 15, or if an appeal is brought, until such time as that appeal has been decided, provided the performer agrees in writing to be bound by the conditions imposed until the time for appeal has expired or the appeal is decided.

**Requirements with which a performer in a performers list must comply**

9.—(1) A performer, who is included in a performers list of a Local Health Board, shall make a declaration to that Local Health Board in writing within 7 days of its occurrence if the performer —

- (a) is convicted of any criminal offence in the United Kingdom;
- (b) is bound over in the United Kingdom;
- (c) accepts a police caution in the United Kingdom;
- (d) has accepted and agreed to pay either a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995<sup>(24)</sup> or a penalty under section 115A of the Social Security Administration Act 1992<sup>(25)</sup>;
- (e) 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);
- (f) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in the United Kingdom, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (g) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in the United Kingdom, would constitute a criminal offence;
- (h) 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;
- (i) becomes the subject of any investigation into the performer’s professional conduct by any licensing, regulatory or other body;
- (j) becomes subject to an investigation into the performer’s professional conduct in respect of any current or previous employment, or is informed of the outcome of any such investigation if adverse;
- (k) becomes to the performer’s knowledge the subject of any investigation by the NHS Counter Fraud and Security Management Service in relation to fraud, or is informed of the outcome of such an investigation, where it is adverse;
- (l) becomes the subject of any investigation by another Local Health Board or equivalent body, which might lead to the performer’s removal from any list or any equivalent list; or
- (m) is removed, contingently removed or suspended from, refused admission to, or conditionally included in, any list or any equivalent list,

and, if so, the performer shall give details of any investigation or proceedings which were or are to be brought, including the nature of the investigation or proceedings, where and approximately that investigation or those proceedings were or are to take place, and any outcome.

(2) A performer, who is included in a performers list of a Local Health Board, and is, was in the preceding six months, or was at the time of the originating events, a director of a body corporate, shall make a declaration to that Local Health Board in writing within 7 days of its occurrence if that body corporate —

- (a) is convicted of any criminal offence in the United Kingdom;

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<sup>(24)</sup> 1995 c. 46.

<sup>(25)</sup> 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

- (b) is convicted elsewhere of an offence, or what 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 the United Kingdom, would constitute a criminal offence;
- (d) is notified 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 the body corporate;
- (e) becomes the subject of any investigation into its provision of professional services by any licensing, regulatory or other body;
- (f) becomes to the performer's knowledge the subject of any investigation in relation to fraud, or is informed of the outcome of such an investigation if adverse;
- (g) becomes the subject of any investigation by another Local Health Board or equivalent body, which might lead to its removal from any list or any equivalent list; or
- (h) is removed, contingently removed or suspended from, refused admission to, or conditionally included in any list or any equivalent list,

and, if so, the performer shall give the name and registered address of the body corporate and details of any investigation or proceedings which were or are to be brought, including the nature of that investigation or those proceedings, where and approximately when the investigation or those proceedings took place or are to take place, and any outcome.

(3) A performer, who is included in a performers list of a Local Health Board, shall provide all necessary authority to enable a request to be made by that Local Health 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, by that employer or body into the performer or a body corporate referred to in paragraph (1) and (2) for the purposes of this paragraph, "employed" includes any partnership of which the performer is or was a member.

(4) A performer, who is included in a performers list of a Local Health Board, shall supply that Local Health Board with an enhanced criminal record certificate under section 115 of the Police Act 1997(26) in relation to the performer, if the Local Health Board at any time, for reasonable cause, requests the performer to provide such a certificate.

(5) Subject to paragraph (6) a performer, who is included in a performers list of a Local Health Board, shall comply with any undertaking the performer gave on admission to that list or to any previous list from which the performer has transferred pursuant to Schedule 1.

(6) A performer, who is included in a relevant performers list of a Local Health board shall act in accordance with the undertakings that a performer is required to provide when applying for inclusion in that relevant performers list.

(7) A performer, who is included in a performers list of a Local Health Board, shall, except where the relevant Part provides to the contrary, participate in the appraisal system provided on behalf of that Local Health Board, and send the Local Health Board a copy of the statement summarising that appraisal.

### **Removal from performers list**

**10.—**(1) The Local Health Board must remove the performer from its performers list where it becomes aware that the performer —

- (a) has been convicted in the United Kingdom of murder;

- (b) has been convicted in the United Kingdom of a criminal offence, committed on or after the day prescribed in the relevant Part, and has been sentenced to a term of imprisonment of over six months;
- (c) has been nationally disqualified;
- (d) has died; or
- (e) is no longer a member of the relevant health care profession.

(2) Where a Local Health Board is notified by the FHSAA that it has considered an appeal by a performer against —

- (a) a contingent removal by the Local Health Board and has decided to remove the performer instead; or
- (b) a conditional inclusion, where the performer has been conditionally included in a performers list until the appeal has been decided, and has decided not to include the performer,

the Local Health Board shall remove the performer from its performers list and shall notify the performer immediately that it has done so.

(3) The Local Health Board may remove a performer from its performers list where any of the conditions set out in paragraph (4) is satisfied.

(4) The conditions mentioned in paragraph (3) are that the —

- (a) continued inclusion of that performer in the Local Health Board’s performers list would be prejudicial to the efficiency of the services which those included in the relevant performers list perform (“an efficiency case”);
- (b) performer is involved in a fraud case in relation to any health scheme; or
- (c) performer is unsuitable to be included in the performers list (“an unsuitability case”).

(5) For the purposes of this regulation, in addition to the services covered by the definition of “health scheme” in section 49F(8), the following shall also be health schemes—

- (a) health services, including medical and surgical treatment, provided by the armed forces;
- (b) services provided by Port Health Authorities constituted under the Public Health (Control of Disease) Act 1984(27);
- (c) medical services provided to a prisoner in the care of the medical officer or other such officer of a prison appointed for the purposes of section 7 of the Prison Act 1952(28); and
- (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.

(6) Where the performer cannot demonstrate that the performer has performed the services, which those included in the relevant performers list perform, within the area of the Local Health Board during the preceding twelve months, the Local Health Board may remove the performer from its performers list.

(7) Subject to any provision in the relevant Part, in calculating the period of twelve months referred to in paragraph (6), the Local Health Board shall disregard any period during which —

- (a) the performer was suspended under these Regulations; or
- (b) the performer 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

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(27) 1984 c. 22.

(28) 1952 c. 52.

(8) Where a Local Health Board is considering removing a performer from its performers list under paragraphs (3) to (6) or regulations 8(2), 12(3)(c) or 15(6)(b) or contingently removing a performer under regulation 12(1), 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;
- (c) the opportunity to make written representations to the Local Health Board within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put the performer's case at an oral hearing before the Local Health Board, if the performer so requests, within the 28 day period mentioned in sub-paragraph (c).

(9) If there are no representations within the period specified in paragraph (8)(c), the Local Health Board shall decide whether or not to remove the performer and then, within 7 days of making that decision, notify the performer of —

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15.

(10) If there are representations, the Local Health Board must take them into account before reaching its decision, and shall then, within 7 days of making that decision, notify the performer of—

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15.

(11) If the performer requests an oral hearing, this must take place before the Local Health Board reaches its decision, and the Local Health Board shall decide whether or not to remove the performer and then, within 7 days of making that decision, notify the performer of —

- (a) that decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15.

(12) When the Local Health Board notifies the performer of any decision, it shall inform the performer that, if the performer wishes to exercise a right of appeal, the performer must do so within the period of 28 days beginning with the date on which the Local Health Board informed the performer of its decision and shall tell the performer how to exercise any such right.

(13) The Local Health Board shall also notify the performer of the performer's right to have the decision reviewed in accordance with regulation 14.

(14) Where the Local Health Board decides to remove a performer under paragraph (6), the performer shall not be removed from its performers list until —

- (a) a period of 28 days starting with the day on which the Local Health Board reaches its decision; or
- (b) any appeal is disposed of by the FHSAA,

whichever is the later.

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

**11.—**(1) Where a Local Health Board is considering whether to remove a performer from its performers list under regulation 10(3) and (4)(c) (an unsuitability case), it shall —

- (a) consider any information relating to the performer which it has received in accordance with any provision of regulation 9;
- (b) consider any information held by the Assembly as to any record about past or current investigations or proceedings involving or related to that performer which information it shall supply if the Local Health Board so requests; and

- (c) in reaching its decision, take into consideration the matters set out in paragraph (2).
- (2) The matters referred to in paragraph (1) are —
- (a) the nature of any offence, investigation or incident;
  - (b) the length of time since any such incident occurred, any such offence was committed, and since any criminal conviction or investigation;
  - (c) whether there are other offences, incidents or investigations to be considered;
  - (d) any action taken or penalty imposed by any licensing or regulatory body, the police or the courts as a result of any such offence, incident or investigation;
  - (e) the relevance of any offence, incident or investigation to the performance by the performer of any relevant primary service and any likely risk to any patients or to public finances;
  - (f) whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997(29) applies, or if it had been committed in England and Wales, would have applied;
  - (g) whether the performer has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from any list or any equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action; and
  - (h) whether the performer is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate, which was refused admission to, conditionally included in, removed or contingently removed from any list or equivalent list or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Local Health Board or equivalent body in each case for such action.
- (3) Where a Local Health Board is considering removal of a performer from its performers list under regulation 10(3) and (4)(b) it shall consider —
- (a) any information relating to the performer which it has received in accordance with any provision of regulation 9;
  - (b) any information held by the Assembly as to any record about past or current investigations or proceedings involving or related to that performer which information it shall supply if the Local Health Board so requests; and
  - (c) the matters set out in paragraph (4).
- (4) The matters referred to in paragraph (3)(c) are —
- (a) the nature of any incidents of fraud;
  - (b) the length of time since the last incident of fraud occurred, and since any investigation into that incident was concluded;
  - (c) whether there are any other incidents of fraud, or other criminal offences to be considered;
  - (d) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such offence, investigation or incident;
  - (e) the relevance of any investigation into an incident of fraud to the performance by the performer of any relevant primary service and the likely risk to patients or to public finances;
  - (f) whether the performer has been refused admittance to, conditionally included in, removed, or contingently removed or is currently suspended from, any list or any equivalent list, and, if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or equivalent body for such action; and

- (g) whether the performer is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate, which was refused admission to, conditionally included in, or removed or contingently any list or equivalent list, or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Local Health Board or equivalent body in each case.
- (5) Where a Local Health Board is considering removal of a performer from its performers list under regulation 10(3) and (4)(a) (“an efficiency case”), it shall —
- (a) consider any information relating to the performer which it has received in accordance with any provision of regulation 9;
  - (b) consider any information held by the Assembly as to any record about past or current investigations or proceedings involving or related to that performer which information it shall supply if the Local Health Board so requests; and
  - (c) in reaching its decision, take into account the matters referred to in paragraph (6).
- (6) The matters referred to in paragraph (5)(c) are —
- (a) the nature of any incident which was prejudicial to the efficiency of the services, which the performer 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 licensing, regulatory or other body, the police or the courts as a result of any such incident;
  - (d) the nature of the incident and whether there is a likely risk to patients;
  - (e) whether the performer has ever failed to comply with a request to undertake an assessment by the NCAA;
  - (f) whether the performer has previously failed to supply information, make a declaration or comply with an undertaking required on inclusion in a list ;
  - (g) whether the performer has been refused admittance to, conditionally included in, removed or contingently removed or is currently suspended from any list or any equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Local Health Board or the equivalent body for such action; and
  - (h) whether the performer is, has in the preceding six months been, or was at the time of the originating events, a director of a body corporate, which was refused admission to, conditionally included in, removed or contingently removed from, any list or equivalent list, or is currently suspended from any such list, and if so, what the facts were in each such case and the reasons given by the Local Health Board or equivalent body in each case for such action.
- (7) In making any decision under regulation 10, the Local Health Board shall take into account the overall effect of any relevant incidents and offences relating to the performer of which it is aware, whichever condition it relies on.
- (8) When making a decision on any condition in regulation 10(4), the Local Health Board shall state in its decision on which condition it relies.

### **Contingent removal**

**12.—(1)** In an efficiency case or a fraud case the Local Health Board may, instead of deciding to remove a performer from its performers list, decide to remove the performer contingently.

(2) If it so decides, it must impose such conditions as it may decide on the inclusion of the performer in its performers list with a view to —

- (a) removing any prejudice to the efficiency of the services in question (in an efficiency case);  
or
  - (b) preventing further acts or omissions (in a fraud case).
- (3) If the Local Health Board determine that the performer has failed to comply with a condition, it may decide to —
- (a) vary the conditions imposed;
  - (b) impose new conditions; or
  - (c) remove the performer from its performers list.

### **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 FHSAA so orders; or
  - (b) the Local Health Board applied under sub-paragraph (a) before the expiry of the period of suspension, but the FHSAA has not made an order by the time it expires, in which case it continues until the FHSAA makes an order.
- (5) If the FHSAA 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 FHSAA 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 FHSAA 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) 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.

(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") —

- (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 Assmsembly 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.

## **Reviews**

**14.**—(1) A Local Health Board may, and if requested in writing to do so by the performer must, review its decision to —

- (a) impose or vary conditions imposed under regulation 8;
- (b) impose or vary conditions imposed under regulation 12; or
- (c) suspend a performer under regulation 13(1)(a) or (b), except where a suspension is continuing by order of the FHSAA.

(2) A performer may not request a review of a Local Health Board's decision until the expiry of a three month period beginning with the date of the Local Health Board's decision or, in the case of a conditional inclusion under regulation 8, beginning with the date the Local Health Board includes the performer's name in a performers list.

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

(4) If a Local Health Board decides to review its decision under this regulation to conditionally include, contingently remove or suspend a performer, 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;
- (c) the opportunity to make written representations to the Local Health Board within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put the performer's case at an oral hearing before the Local Health Board, if the performer so requests within the 28 day period mentioned in sub-paragraph (c).

(5) If there are no representations within the period specified in paragraph (4)(c), the Local Health Board shall notify the performer of its decision, the reasons for it (including any facts relied upon) and of any right of appeal under regulation 15.

(6) If there are representations, the Local Health Board must take them into account before reaching its decision.

(7) The Local Health Board shall, within 7 days of making its decision, notify the performer of—

- (a) that decision;
- (b) the reasons for it (including any facts relied upon);
- (c) any right of appeal under regulation 15; and
- (d) the right to a further review under this regulation

(8) If a Local Health Board decides to review its decision to impose conditions under regulation 8, the Local Health Board may vary the conditions, impose different conditions, remove the conditions or remove the performer from its performers list.

(9) If a Local Health Board decides to review its decision to impose a contingent removal under regulation 12, the Local Health Board may vary the conditions, impose different conditions, or remove the performer from its performers list.

(10) If a Local Health Board decides to review its decision to suspend a performer under regulation 13(1)(a) or (b), the Local Health Board may decide to impose conditions or remove the performer from its performers list.

(11) A Local Health Board may not review its decision to suspend a performer under regulation 13(1)(c) or (d).

## Appeals

**15.**—(1) A performer may appeal (by way of redetermination) to the FHSAA against a decision of a Local Health Board mentioned in paragraph (2) by giving notice to the FHSAA.

(2) The Local Health Board decisions in question are decisions —

- (a) to refuse admission to a performers list under regulation 6(1);
- (b) to impose a particular condition under regulation 8, or to vary any condition or to impose a different condition under that regulation;
- (c) on a review, under regulation 14, of a conditional inclusion under regulation 8;
- (d) to remove the performer under regulations 8(2), 10(3) or (6), 12(3)(c) or 15(6)(b);
- (e) to impose a particular condition under regulation 12, or to vary any condition or to impose a different condition under that regulation;
- (f) on a review, under regulation 14, of a contingent removal under regulation 12; and
- (g) that the relevant Part prescribes that the performer may appeal to the FHSAA.

(3) On appeal the FHSAA may make any decision which the Local Health Board could have made.

(4) Where the decision of the FHSAA on appeal is that the appellant's inclusion in a performers list is to be subject to conditions, whether or not those conditions are identical with the conditions imposed by the Local Health Board, the Local Health Board shall ask the performer to notify it within 28 days of the decision (or such longer period as the Local Health Board may agree) whether the performer wishes to be included on its performers list subject to those conditions.

(5) If the performer notifies the Local Health Board that the performer does wish to be included in a performers list subject to the conditions, the Local Health Board shall so include the performer.

(6) Where the FHSAA on appeal decides to impose a contingent removal —

- (a) the Local Health Board and the performer may each apply to the FHSAA for the conditions imposed on the performer to be varied, for different conditions to be imposed, or for the contingent removal to be revoked; and

- (b) the Local Health Board may remove the performer from its performers list if it determines that the performer has failed to comply with any such condition.

## **Notification**

**16.—**(1) Where a Local Health Board decides to —

- (a) refuse to admit a performer to its performers list on the grounds specified in regulation 6;
- (b) impose conditions on the inclusion of the performer in that list under regulation 8;
- (c) remove the performer from that list under regulation 10;
- (d) remove the performer from that list contingently under regulation 12; or
- (e) suspends the performer from that list under regulation 13,

it shall notify the persons or bodies specified in paragraph (2), and shall additionally notify those specified in paragraph (3), if requested to do so by those persons or bodies in writing (including electronically), of the matters set out in paragraph (4).

(2) Where paragraph (1) applies, a Local Health Board shall notify within 7 days of that decision —

- (a) the Assembly;
- (b) any other Local Health Board or equivalent body that to the knowledge of the notifying Local Health Board —
  - (i) has the performer on any list or equivalent list, or
  - (ii) is considering an application for inclusion in any list or equivalent list by the performer,
  - (iii) in whose area the performer performs services;
- (c) the Scottish Executive;
- (d) the Secretary of State;
- (e) the Northern Ireland Executive;
- (f) the relevant body or any other appropriate regulatory body;
- (g) the NCAA; and
- (h) where it is a fraud case, the NHS Counter Fraud and Security Management Service.

(3) The persons or bodies to be additionally notified in accordance with paragraph (1) are —

- (a) persons or bodies that can establish that they are or were employing the performer, using or have used the performer's services or are or were considering employing the performer or using the performer's services in a professional capacity; or
- (b) a partnership which provides primary services and can establish that the performer is or was a member of the partnership or that it is considering inviting the performer to become such a member.

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

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

(5) The Local Health Board shall send to the performer concerned a copy of any information about the performer provided to the persons or bodies listed in paragraph (2) or (3), and any correspondence with that person or body relating to that information.

(6) Where the Local Health Board has notified any of the persons or bodies specified in paragraph (2) or (3) of the matters set out in paragraph (4), it may, in addition, if requested by that person or body, notify that person or body of any evidence that was considered, including any representations from the performer.

(7) Where a Local Health Board is notified by the FHSAA that it has imposed a national disqualification on a performer who was, or had applied to be included, in its performers list, it shall notify the persons or bodies listed in paragraph (2)(b), (g) and (h) and paragraph (3).

(8) Where a decision is changed on review or appeal, or a suspension lapses, the Local Health Board shall notify the persons or bodies that were notified of the original decision of the later decision or the fact that that suspension has lapsed.

### **Amendment of or withdrawal from performers list**

17.—(1) A performer shall, unless it is impracticable for the performer to do so, give notice to the Local Health Board within 28 days of any occurrence requiring a change in the information recorded about the performer in its performers list and of any change of the performer's private address.

(2) Where a performer intends to withdraw from a performers list, unless it is impracticable for the performer to do so, the performer shall so notify to the Local Health Board at least three months in advance of that date.

(3) A performer shall so notify the Local Health Board that the performer intends to withdraw from its relevant performers list if the performer is accepted on to any relevant performers list of another Local Health Board.

(4) The Local Health Board shall on receiving notice from any performer—

- (a) pursuant to paragraph (1), amend its performers list as soon as possible;
- (b) pursuant to paragraph (2), so amend its performers list, either—
  - (i) on the date notified by the performer provided it falls at least three months after the date of the notice, or
  - (ii) on the date from which the Local Health Board has agreed that the withdrawal shall take effect,

whichever is the earlier; or

- (c) pursuant to paragraph (3), remove the performer's name from its performers list as soon as it confirms that that performer has been accepted on that other performers list.

(5) A performer may withdraw a notice given pursuant to paragraph (1) or (2) at any time before the Local Health Board removes the performer's name from its performers list.

(6) A notice given pursuant to paragraph (3) may not be withdrawn once the performer has been accepted on that other list.

### **Restrictions on withdrawal from performers list**

18.—(1) Where a Local Health Board is investigating a performer—

- (a) for the purpose of deciding whether or not to exercise its powers to remove the performer under regulation 10 or contingently remove the performer under regulation 12; or
- (b) who has been suspended under regulation 13(1)(a),

the performer may not withdraw from any list kept by any Local Health Board in which the performer is included, except where the Assembly has given its consent, until the matter has been finally determined by the Local Health Board.

(2) Where a Local Health Board has decided to remove a performer from its performers list under regulation 10(3) to (6) or to contingently remove the performer from it under regulation 12, but has not yet given effect to its decision, the performer may not withdraw from any list kept by any Local Health Board in which the performer is included, except where the Assembly has given its consent.

(3) Where a Local Health Board has suspended a performer under regulation 13(1)(b), the performer may not withdraw from any list kept by any Local Health Board in which the performer is included, except where the Assembly has given its consent, until the decision of the relevant court or body is known and the matter has been considered and finally determined by the Local Health Board.

### **Review periods on national disqualification**

**19.**—(1) If on making a decision to impose a national disqualification, the FHSAA states that it is of the opinion that the criminal or professional conduct of the performer is such that there is no realistic prospect of a further review being successful if held within the period specified in section 49N(8)(a)(**30**), the reference to “two years” in that provision shall be a reference to five years;

(2) If on the last review by the FHSAA of a national disqualification the performer was unsuccessful and the FHSAA states that it is of the opinion that there is no realistic prospect of a further review being successful if held within a period of three years beginning with the date of its decision on that review the reference to “one year” in section 49N(8)(b) shall be a reference to three years;

(3) If the FHSAA states that it is of the opinion that, because a criminal conviction considered by the FHSAA in reaching the decision that has effect has been quashed or the penalty reduced on appeal, there is a need for an immediate review the reference to “two years” or “one year” in section 49N(8) shall be a reference to the period that has already elapsed;

(4) If the FHSAA is of the opinion that because the decision of a licensing, regulatory or other body has been quashed or the penalty reduced on appeal, there is a need for an immediate review the reference to “two years” or “one year” in section 49N(8) shall be a reference to the period that has already elapsed.

### **Disclosure of Information**

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

- (a) the Assembly;
- (b) any other Local Health Board or equivalent body, which —
  - (i) has the performer to whom that information relates on any of its performers lists, or
  - (ii) is considering an application from the performer for inclusion on any of its lists, or
  - (iii) in whose area the performer performs the services in question;
- (c) the Scottish Executive;
- (d) the Secretary of State;
- (e) the Northern Ireland Executive;
- (f) the NCAA;
- (g) the relevant body or any other licensing or regulatory body;

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(30) Section 49N was inserted by the 2001 Act, section 25, and amended by the 2002 Act, Schedule 2, paragraph 25 and the 2003, section 184 and Schedule 11, paragraph 24.

- (h) any organisation or employer that, to the knowledge of the Local Health Board, employ the performer use the services of the performer or considering employing the performer or using the services of the performer in a professional capacity;
  - (i) any partnership, which provides primary services, of which, to the knowledge of the Local Health Board, the performer is a member or that is considering inviting the performer to become a member; and
  - (j) where an allegation of fraud is being considered, the NHS Counter Fraud and Security Management Service.
- (2) The LHB shall disclose to the Assembly information supplied to or acquired by the LHB pursuant to these Regulations as the Assembly may from time to time request.