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## STATUTORY INSTRUMENTS

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**2004 No. 1020 (W.117)**

### **NATIONAL HEALTH SERVICE, WALES**

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

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations provide for lists for performing primary medical care to be kept by Local Health Boards in accordance with the provisions of section 28X of the National Health Service Act 1977.

Part I lays down general provisions relating to lists and regulation 2 provides some definitions for the Regulations.

Regulation 3 provides that each Local Health Board must prepare and publish lists.

Regulation 4 sets out how to apply to be included in the list and requires certain information to be given.

Regulation 5 provides for a performer to be readmitted to the list on a successful appeal against conviction.

Regulation 6 sets out the grounds on which the Local Health Board may or must refuse to admit a performer to the list, and the matters to which it must have regard.

Regulation 7 sets out the circumstances in which a Local Health Board may defer consideration of an application to include a performer in its list and the procedure to be followed.

Regulation 8 allows Local Health Boards to enter a performer's name in its list subject to condition. It also allows a performer's name to be included in that list, until any appeal has been decided, provided the performer agrees to be bound by the condition until the appeal is determined.

Regulation 9 provides for a requirement that a performer notify the Local Health Board in writing, within 7 days, if the performer, or a company of which the performer is a director, incurs any criminal convictions or other specified matters occur.

Regulation 10 provides for the mandatory removal from its list by a Local Health Board of any performer on certain specified grounds, and for the discretionary removal on other specified grounds.

Regulation 11 sets out the criteria for decisions on discretionary removals from the list.

Regulation 12 provides for a Local Health Board to impose conditions on a performer who is in the list and for the medical practitioner to be removed if the medical practitioner fails to comply with those conditions.

Regulation 13 provides for a Local Health Board to suspend a performer from its list, if certain conditions are met, for the procedure to be then followed and provides for payment to suspended performers.

Regulation 14 provides for review and the procedure to be followed by Local Health Boards where the Local Health Board decides to conditionally include, contingently remove, or suspend a performer from its list.

Regulation 15 provides for appeals from specified decisions to be heard by the FHSAA.

Regulation 16 provides for a Local Health Board to notify specified persons of specified information relating to decisions to refuse to admit, impose conditions, remove (or contingently remove) or suspend a performer from the list.

Regulation 17 provides for amendment of the list and withdrawal from the list and regulation 18 provides for the circumstances in which a performer may not withdraw from the list.

Regulation 19 amends the statutory period for review set out in section 49N of the National Health Service Act 1977 in specified circumstances.

Regulation 20 provides for the disclosure of information to specified persons.

Part II (regulations 21 to 27) modifies the general provisions in Part I to make provisions specific to general medical practitioners and regulation 21 provides some definitions for Part II.

Regulation 22 provides, subject to specified exceptions, that no general medical practitioner may perform any primary medical service unless included in such a list, what information is to be included in the list and that the list shall be published.

Regulation 23 supplements regulation 4 by providing for certain specific information to be provided by general medical practitioners.

Regulation 24 provides further grounds on which the Local Health Board may or must refuse to admit a general medical practitioner to its list, and matters to which it must have regard.

Regulation 25 provides an exception, subject to a further requirement, to the requirement to participate in an appraisal scheme provided by or on behalf of a Local Health Board.

Regulation 26 provides additional grounds for the mandatory removal from its list by a Local Health Board of a general medical practitioner, and modifies certain provisions for removal from a list in regulation 10.

Regulation 27 provides an additional ground of appeal for a general medical practitioner from those in regulation 15.

Schedule 1 makes transitional and consequential provisions.

Schedule 2 makes various revocations.

**2004 No. 1020 (W.117)**

**NATIONAL HEALTH SERVICE, WALES**

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

*Made*

*30th March 2004*

*Coming into force*

*1st April 2004*

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 28X, and 126(4) of the National Health Service Act 1977(a), hereby makes the following Regulations:

**PART I GENERAL**

**Citation, commencement and application**

1.-(1) These Regulations may be cited as the National Health Service (Performers Lists) (Wales) Regulations 2004 and shall come into force on 1st April 2004.

(2) These Regulations apply to Wales only.

**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(b);

"Abolition of the Tribunal (Wales) Regulations" means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002(c);

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

"contingent removal" shall be construed in accordance with regulation 12;

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(a) 1977 c.49; *see* section 128(1) as amended by the National Health Service and Community Care Act 1990 (c.19) ("the 1990 Act"), section 26(2)(g) and (i), for the definitions of "prescribed" and "regulations". Section 28X was inserted by the Health and Community Care (Community Health and Standards) Act 2003 (c.43) ("the 2003 Act"), s.179. Section 126(4) was amended by the 1990 Act, Schedule 4, paragraph 37(6) and by the 2001 Act, Schedule 5, paragraph 5(13)(b). As regards Wales, the functions of the Secretary of State under section 29 and 126(4) of the 1977 Act are transferred to the National Assembly for Wales under article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; section 68 of the 2001 Act and section 197 of the 2003 Act provide that Schedule 1 shall be construed so as to include the amendments made by these Acts to the 1977 Act.

(b) S.I. 2001/ 3744.

(c) S.I. 2002/1920.

"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(a);

"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)(b) 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, 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)(c), 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(d);

"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(e);

"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(f);

"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);

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(a) 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).

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

(c) 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).

(d) S.I. 1992/635

(e) 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.

(f) S.I. 2002/3039.

"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(a)

"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 (b), which regulates the profession of the performer;

"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(c);

"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(d);

"suspended" means -

- (a) suspended by a Local Health Board or equivalent body under section 49I(e), or 49J(f), regulations made under section 43D(g) or under section 8ZA(h) 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(i), 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(j) 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(k); 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.

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(a) 1997 c.46.

(b) 2002 c.17.

(c) 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.

(d) S.I. 2002/1882 (W.191) amended by S.I. 2002/2802(W.270).

(e) 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).

(f) 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).

(g) 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.

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

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

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

(k) 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.

## 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.

### 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(a), in relation to the performer; and
- (g) consent to the disclosure of information in accordance with regulation 9.

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(a) 1997 c.50.

- (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>(a)</sup> or a penalty under section 115A of the Social Security Administration Act 1992<sup>(b)</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;
- (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

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(a) 1995 c. 46.

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

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(a) 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

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(a) 1997 c.51.

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**(b)** or a penalty under section 115A of the Social Security Administration Act 1992**(a)**;

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(a) 1995 c. 46.

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

- (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;
- (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(a) 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(b);
- (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(c); 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

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(a) 1997 c.50.

(b) 1984 c.22.

(c) 1952 c.52.

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

(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(a) 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

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(a) 1997 c. 51.

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 Assmably 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)(a), 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;
- (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.

## **PART 3 MEDICAL PERFORMERS LIST**

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(a) 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.

## Interpretation

21.-(1) For the purposes of this Part the prescribed description of performer is medical practitioner and the relevant body is the General Medical Council. (2) In this Part -

"the 2002 Order" means the Medical Act 1983 (Amendment) Order 2002(a);

the 2003 Order" means the General and Specialist Medical Practice (Education, Training and Qualifications) order 2003(b);

"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, and

- (a) before the coming into force 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 force of paragraph 22 of Schedule 8 to the 2003 order, is an eligible 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; and

after the coming into force of article 10 of the 2003 Order, is entered on the GP Register.

"contractor" means a general medical practitioner, who both provides and performs primary medical services in accordance with section 28C(c) arrangements or under a general medical services.

"the Board" means the Postgraduate Medical Education and Training Board;

"both registers" means the register of medical practitioners and, after the coming in to force 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 board specified in article 20(3)(a) of that Order;

"Fitness to Practise Panel" means a panel constituted pursuant to paragraph 19E of Schedule 1 to the Medical Act(d);

"GP Register" after the coming into force of article 10 of the 2003 Order, means the register kept by virtue of that article;

"GP Registrar" means a medical practitioner, who is being trained in general practice-

- (a) prior to the coming into force of article 5 of the 2003 Order, 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; or
- (b) after the coming into force of that article, approved by the 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);

"general medical practitioner" means a GP Registrar or-

- (a) on the coming into force of article 10 of the 2003 Order, a medical practitioner whose name is included in the GP Register; and
- (b) until the coming into force of that article, a medical practitioner who is either-

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(a) S.I. 2002/3135

(b) S.I. 2003/1250

(c) Section 28C was inserted by the National Health Service (Primary Care) Act 1997, section 21(1) and amended by the 1999 Act, section 65(1) and Schedule 4, the 2001 Act, section 40 and Schedule 5 and the 2003 Act, section 180 and Schedule 11, paragraph 414.

(d) Paragraph 19E is inserted by article 5(3) of the 2002 Order, with effect from such date as the Secretary of State may specify.

- (i) until the coming into force of paragraph 22 of Schedule 8 to the 2003 Order, suitable experience within the meaning of section 31(2), section 21 of the National Health Service (Scotland) Act 1978(a) or Article 8(2) of the Health and Personal Social Services (Northern Ireland) Order 1978(b); or
- (ii) upon the coming into force of paragraph 22 of Schedule 8 to the 2003 Order, and eligible general practitioner pursuant to that paragraph or has an acquired right to practice as a general medical practitioner pursuant to regulation 5(1)(d) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994(c);

"GP Trainer" means a general medical practitioner, other than a GP Registrar, who is-

- (a) prior to the coming into force 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) after the coming into force of that article, approved by the Board under article 4(5)(d) the 2003 Order for the purposes of providing training to a GP Registrar under article 5(1)(c)(i);

"health case" has the meaning ascribed to it by section 35E of the Medical Act(d);

"Health Committee" means the Health Committee of the General Medical Council referred to in section 1(3) of the Medical Act;

"Medical Act" means the Medical Act 1983(e);

"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 doctor's name in the register of medical practitioners;

"relevant scheme" means the scheme in respect of which the general medical practitioner is applying to be included in a medical performers list;

"register of medical practitioners" has the meaning given to it by section 2(2) of the Medical Act;

"scheme" means an arrangement to provide primary medical services-

- (a) in accordance with section 28C; or
- (b) under a general medical services contract;

"the Vocational Training Regulations" means the National Health Service (Vocational Training for General Medical Practice) Regulations 1997(f); and

"vocational training scheme" means

- (a) a pre-arranged programme of training which is designed for the purpose of enabling a doctor to gain the medical experience prescribed by regulation 6(1) of the Vocational Training Regulations; or
- (b) after the coming into force of article 4 of the 2003 order, post graduate medical education and training necessary for the award of a CCT in general practice under that article.

### **Medical performers performers list**

22.-(1) Subject to paragraphs (2) and (3) a medical practitioner may not perform any primary medical service, unless that medical practitioner is a general medical practitioner and his or her name is included in a medical performers list.

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(a) 1978 c.29

(b) S.I. 1978/1907 (N.I. 26) or would have been so considered notwithstanding the repeal of the relevant provision

(c) S.I. 1994/3130.

(d) Section 35 is inserted by article 8 of the 2002 Order, with effect from such date as the Secretary of State may specify.

(e) 1983 c.54.

(f) S.I. 1997/2817, as amended by S.I. 1998/669 and 2003/3148.



(2) A medical practitioner who is provisionally registered under section 15, 15A or 21 of the Medical Act(a), may perform primary medical service when the medical practitioner's name is not included in a medical performers list, but only whilst acting in the course of employment in a resident medical capacity in an approved medical practice (within the meaning of section 11(4) of that Act(b)).

(3) A GP Registrar, who has applied in accordance with these Regulations to a Local Health Board for inclusion in its medical performers list may perform primary medical services, despite not being included in that performers list, until the first of the following events arises-

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

(4) In respect of any medical practitioner whose name is included in a medical performers list, the performers list shall include -

- (a) the medical practitioner's full name;
- (b) the medical practitioner's professional registration number with, suffixed to it, the organisational code given by the National Assembly for Wales to the Local Health Board;
- (c) the medical practitioner's date of birth, where the medical practitioner consents, or if not, the date of the medical practitioner's first registration in both registers;
- (d) if the medical practitioner is a contractor, that the medical practitioner is a contractor;
- (e) if the medical practitioner is a GP Registrar, that the medical practitioner is a GP Registrar;
- (f) if the medical practitioner is an armed forces GP, that the medical practitioner is an armed forces GP; and
- (g) the date that the medical practitioner's name was included in the medical performers list or, if the medical practitioner was included in any medical, supplementary or services list of a Local Health Board, first included in such a list.

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

**23.**-(1) In addition to the information required by regulation 4(2), the general medical practitioner when making an application for inclusion of the general medical practitioner's name in a medical performers list shall give the following information -

- (a) the general medical practitioner's medical qualifications and where they were obtained, with evidence concerning the general medical practitioner's qualifications and experience;
- (b) subject to sub-paragraph (e), a declaration that the general medical practitioner is a fully registered general medical practitioner included in both registers;
- (c) the general medical practitioner's professional registration number and date of first registration in both registers;
- (d) in relation to the general medical practitioner's professional experience given under regulation 4(2)(e), the general medical practitioner shall separate that information into -
  - (i) general practice experience,
  - (ii) hospital appointments, and
  - (iii) other experience (including obstetric experience),

with full supporting particulars of that experience;

- (e) if the general medical practitioner is a GP Registrar, the name and practice address of his or her GP Trainer and, if the general medical practitioner is not a fully registered general medical practitioner included in the register of medical practitioners, a declaration that the medical practitioner is registered in that register with limited registration, with details of the limits of that registration, as defined in the direction by virtue of which the general medical practitioner is registered;
- (f) whether the general medical practitioner is a contractor;
- (g) if the general medical practitioner is a contractor for more than one scheme and, if so, which schemes and which scheme of those schemes is the relevant scheme; and

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(a) Relevant amendments to sections 15 and 21 are S.I. 1996/1591 and s. 41(10) of and paragraph 61(1) and (4) of Schedule 2 to the 1997 Act.

(b) Relevant amendments are s. 35(1) and (4) of the 1997 Act.

(h) whether the general medical practitioner is an armed forces GP.

(2) In addition to the undertakings required by regulation 4(3) the general medical practitioner shall give the following further undertakings -

- (a) not to perform any primary medical service in the area of another Local Health Board or equivalent body from whose medical performers list, medical list, services list or supplementary list or equivalent list the general medical practitioner has been removed, except where that removal was at the general medical practitioner's request or in accordance with regulation 10(6) of these Regulations, regulation 10(6) of the Services List Regulations, regulation 10(7) of the Supplementary List Regulations or regulation 7(2) or (11) of the Medical Regulations or any equivalent provision in Scotland or England, without the consent, in writing, of that Local Health Board or equivalent body;
- (b) if the general medical practitioner is a GP Registrar, unless the general medical practitioner has an acquired right under regulation 5(1)(d) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994(a), an undertaking --
  - (i) not to perform any primary medical service except when acting for and under the supervision of, the general medical practitioner's GP Trainer;
  - (ii) to withdraw from the medical performers list if any of the events listed in paragraph (3) takes place, and
  - (iii) -
    - (aa) until the coming into force of article 10 of the 2003 Order, to apply for a certificate of prescribed experience under regulation 10 of, or a certificate of equivalent experience under regulation 12 of, the Vocational Training Regulations, as soon as the general medical practitioner is eligible to do so, and to provide the Local Health Board with a copy of any such certificate; or
    - (bb) after the coming into force of article 10 of the 2003 Order, to provide the Local Health Board with a evidence of his or her inclusion in the GP Register; and
- (c) if the general medical practitioner is a contractor, to comply with the requirements of paragraph 122 of Schedule 6 to the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004 (gifts)(b); and
- (d) if the general medical practitioner is not a contractor, to comply with the requirements of that paragraph as though the general medical practitioner were a contractor.

(3) 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 force 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, or
  - (ii) the general medical practitioner provides the Local Health Board with-
    - (aa) a certificate of prescribed experience under regulation 10 of the Vocational Training Regulations,
    - (bb) a certificate of equivalent experience under regulation 11 of those Regulations, or
    - (cc) after the coming into force of article 10 of the 2003 Order, evidence of inclusion in the GP Register;
- (b) 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 force of articles 4 and 5 of the 2003 Order, of general practice training within the meaning of those article; and
- (c) the completion of a vocational training scheme, unless the medical practitioner provides the Local Health Board-
  - (i) with a certificate of prescribed experience under regulation 10 of, or a certificate of equivalent experience under regulation 12 of, the Vocational Training Regulations; or
  - (ii) after the coming into force of article 10 of the 2003 Order, evidence of inclusion in the GP Register.

(4) If the medical practitioner is an armed forces GP, the medical practitioner shall not be required to give an undertaking pursuant to regulation 4(3)(e) (undertaking to participate in appraisal system).

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(a) S.I. 1994/3130, as amended by S.I. 1998/669 and 2003/3148.

(b) S.I. 2004/1478 (W.78).

## **Additional grounds for refusal**

24.-(1) In addition to the grounds in regulation 6(1), a Local Health Board may also refuse to admit a medical practitioner to its medical performers list if -

- (a) having checked the information provided by the doctor under regulation 23(1)(a), (b) and (c), the Local Health Board considers the medical practitioner is unsuitable to be included in its performers list; or
- (b) the medical practitioner's registration in the register of medical practitioners is subject to conditions imposed, before the coming into force of article 13 of the 2002 Order, pursuant to a direction -
  - (i) under section 36(1)(iii) of the Medical Act(a), of the Professional Conduct Committee,
  - (ii) under section 37 of that Act (b), of the Health Committee,
  - (iii) under section 36A of or paragraph 5A(3) of Schedule 4 to that Act(c), of the Committee on Professional Performance of the General Medical Council referred to in section 1(3) of that Act, or
- (c) the medical practitioner's registration in the register of medical practitioners is subject to an order, under section 41A of that Act(d) -
  - (i) before the coming into force of article 13 of the 2002 Order, of any of those committees or of the Interim Orders Committee of that Council referred to in section 1(3) of that Act,
  - (ii) after the coming into force of that article, of a Fitness to Practise Panel or an Interim Orders Panel of that General Medical Council;
- (d) after the coming into force of article 13 of the 2002 Order, the medical practitioner's registration in that register is subject to conditions imposed by a Fitness to Practise Panel pursuant to section 35D(2)(c) (5)(c), (8)(c) or (12)(c) of the Medical Act(e); or
- (e) after the coming into force of article 14 of the 2002 order, the medical practitioner's registration in that register is subject to conditions imposed by a Fitness to Practise Panel pursuant to rules made under paragraph 5A of Schedule 4 to the Medical Act(f).

(2) In addition to the grounds in regulation 6(2), a Local Health Board shall also refuse to admit a medical practitioner to its medical performers list if -

- (a) the medical practitioner is a contractor and, at the time of his or her application, more of the patients of the relevant scheme reside in the area of another Local Health Board than reside in the area of the Local Health Board in whose performers list the medical practitioner has applied for inclusion;
- (b) the medical practitioner is a contractor and the relevant scheme is not one that lies within its area; or
- (c) the medical practitioner is included in the medical performers list of another Local Health Board, unless the medical practitioner has given notice in writing to that Local Health Board that the medical practitioner wishes to withdraw from that list.

(3) For the purposes of regulation 6(2)(d), the day prescribed in this Part is 3rd November 2003 or, if that medical practitioner had been included in a medical list or a supplementary performers list, 26th August 2002.

(4) Regulation 6(2)(a) (intention to work in the Local Health Board's area) shall not apply in the case of an armed forces GP.

(5) In addition to checking the information provided by the doctor, as required by regulation 6(3)(a), the Local Health Board shall also check the information the doctor provided under regulation 23.

## **Requirements with which a doctor in a medical performers list must comply**

25. Regulation 9(6) (requirement to participate in appraisal system) shall not apply in the case of an armed forces GP, but in such a case the medical practitioner shall provide the Local Health Board with a copy of the annual appraisal undertaken by the Ministry of Defence or the armed forces, as the case may be.

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(a) Section 36 was amended by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 5 and by S.I. 2000/1803, articles 2 and 5.

(b) Section 37 was amended by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 6 and by S.I. 2000/1803, articles 2 and 7.

(c) Section 36A was inserted by the 1995 Act, section 1 and amended by S.I. 2000/1803, articles 2 and 6 and paragraph 5A of Schedule 4 was added by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 20.

(d) Section 41A was inserted by S.I. 2000/1803, articles 2 and 10.

(e) Section 35D is inserted by article 13 of the 2002 Order, with effect from such date as the Secretary of State may specify

(f) Schedule 4 is substituted by article 14 of the 2002 Order with effect from such date as the Secretary of State may specify.

## Grounds for removal from a medical performers list

26.-(1) Subject to paragraph (2) and in addition to the grounds in regulation 10(1), the Local Health Board must remove a medical practitioner from its performers list where it becomes aware that the medical practitioner is -

- (a) the subject of a direction given by the Professional Conduct Committee under section 36(1)(i) or (ii) of the Medical Act (professional misconduct and criminal offences)(a),
- (b) the subject of an order or direction made by that Committee under section 38(1) of that Act (order for immediate suspension)(b);
- (c) from the coming into force 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) (functions of a Fitness to Practise Panel) or section 38(1) (powers to order immediate suspension etc) of that Act(c);
- (d) from the coming into force of the article 14 of the 2002 Order, the subject of a direction by a Fitness to Practise Panel suspending the medical practitioner pursuant to rules made under paragraph 5A(3) of Schedule 4 of that Act(d) (suspension for failure to comply with reasonable requirements as to assessment);
- (e) included in the medical performers performers list of another Local Health Board; or
- (f) if a GP Registrar, in breach of the undertaking provided in accordance with regulation 23(2) and has failed to withdraw from the performers list after the Local Health Board has given the GP Registrar 28 days notice requesting the doctor to do so.

(2) Paragraph (1)(c) shall not apply where a direction that a medical practitioner's registration is suspended is made in a health case.

(3) For the purposes of regulation 10(1)(b), the day prescribed in this Part is 3rd November 2003 or, if that medical practitioner had been included in a medical performers list or a supplementary performers list, 26th August 2002.

(4) Regulation 10(6) (power to remove for non-practice in the area) shall not apply in the case of an armed forces GP.

(5) In calculating the period of 12 months under regulation 10(7) (periods to be disregarded), the Local Health Board shall disregard any period during which the doctor's registration or the doctor's entitlement to practise as such was suspended -

- (a) before the coming into force 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;
- (b) after the coming into force of that article, by a Fitness to Practise Panel pursuant to section 41A(1)(a) of that Act; or
- (c) after the coming into force of that article, in a health case.

## Additional decision that may be appealed

27. A general medical practitioner may also appeal, under regulation 15, against a decision of the Local Health Board to refuse to include the general practitioner's name in its medical performers list under regulation 24(1).

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(a) Section 36 was amended by S.I. 2000/1803.

(b) Section 38(1) was amended by the 1995 Act, section 4 and Schedule 1, paragraphs 1 and 7.

(c) Sections 35D and 38 inserted by article 13 of the 2002 Order, with effect from such dates as the Secretary of State may specify.

(d) Schedule 4 is inserted by article 14 of the 2002 order, with effect from such date as the Secretary of State may specify.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(a)

30th March 2004

*D. Elis-Thomas*

The Presiding Officer of the National Assembly

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(a) 1998 c.38.

## SCHEDULE 1

### TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

#### Interpretation

1. In this Schedule -

"the 2001 Rules" means the Family Health Services Appeal Authority (Procedure) Rules 2001(a);

"continuing matter" means any case, other than a case falling within paragraph 2, where the Initial Local Health Board had not get come to a decision on any matter, other than a matter falling within paragraph 8, under the Medical Regulations;

"Initial Local Health Board " means a Local Health Board in whose medical list the general medical practitioner's name was or had been included prior to 1st April 2004,

and terms used in this Schedule shall bear the same meaning that they have in Part 2.

#### Allocation of medical practitioners on previous lists

2. Subject to paragraph 7, in the case of a general medical practitioner, whose name, immediately before 1st April 2004, was included in a Local Health Board's -

- (a) medical list, but was not included in the medical list of any other Local Health Board;
- (b) services list; or
- (c) supplementary list,

the general medical practitioner's name shall, on that day, be included in its medical performers list.

3. Subject to paragraphs 6 and 8, in the case of a general medical practitioner, whose name, immediately before 1st April 2004 was included in the medical list of more than one Local Health Board, his or her name shall, on that day, be included in the medical performers list of the Local Health Board in whose area the greatest number of the patients on the list of that medical practitioner resided immediately before that day.

4. In a case to which paragraph 3 applies, if there is a doubt as to in which area the largest number of the patients on the list of that medical practitioner reside, the Local Health Boards involved shall agree between themselves, after considering any representations from the medical practitioner, as to in which medical performers list the medical practitioner shall be included.

5. In any case where the Local Health Boards are unable to agree between themselves, in accordance with paragraphs 4 or 6, as to in which Local Health Board's medical performers list that medical practitioner shall be included the Assembly shall determine the matter, after considering any representations the medical practitioner made to any of those Local Health Boards.

6. Subject to paragraph 8, in the case of a general medical practitioner, whose name, immediately before 1st April 2004 was included in the medical list of more than one Local Health Board, and on that day will be a party to a scheme to provide primary medical service to more than one of those Local Health Boards, the medical practitioner shall choose in which list the name of the medical practitioner shall be included.

#### Applications not decided on 1st April 2004

7. Subject to paragraph 8, in any case where there was any application, including an application which the Local Health Board has deferred, by a medical practitioner to a Local Health Board for the medical practitioner's name to be included in its medical list, service list or supplementary list and that application has not been decided before 1st April 2004, it shall be deemed to be an application to have the medical practitioner's name included in the medical performers list of that Local Health Board.

8. In a case where -

- (a) a medical practitioner has made an application to which paragraph 7 applies;
- (b) the medical practitioner's name was already included in a medical list, service list or supplementary list of any Local Health Board; and

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(a) S.I. 2001/3750 as amended by S.I. 2002/1921 and 2469.

- (c) the medical practitioner had not given notice of an intention to withdraw from that list with that application,

that application shall be void and the Local Health Board shall so notify the medical practitioner, informing the medical practitioner of the reason for that.

### **Matters relating to the medical practitioner**

9. Subject to paragraphs 7 and 8, in a case falling within paragraph 2, any matter, question or proceeding relating to any medical practitioner under the Medical Regulations, the Services List Regulations or the Supplementary List Regulations, that had not been finally decided before 1st April 2004, shall be treated as though it had arisen in relation to the medical performers list in which that medical practitioner has been included or, but for that matter, would have been included and shall continue to be dealt with by the Local Health Board.

10. In a case where the services list, supplementary list or any medical list, on which the medical practitioner's name was included immediately before 1st April 2004, contained, in relation to the medical practitioner, any condition or contingent removal, or if the medical practitioner was then suspended from that list, that condition, contingent removal or suspension, as the case may be, shall equally apply to the medical performers list in which the medical practitioner's name is included and any national disqualification shall apply to the medical performers list on and after 1st April 2004 as it did, in relation to any other list, before that date.

11. Subject to paragraph 12, in any case where there is any continuing matter and that matter had not been finally decided before 1st April 2004, it shall be treated as though it had arisen in relation to the medical performers list in which that medical practitioner has been included or, but for that matter, would have been included.

12. In any case where there is a continuing matter and the medical performers list in which that medical practitioner's name is included is not that of the Initial Local Health Board, that matter shall proceed as though that name were included in the Initial Local Health Board's medical performers list.

### **Enhanced criminal record certificates**

13.-(1) Where a medical practitioner's name has been included in a medical performers list of a Local Health Board pursuant to this Schedule, and -

- (a) it has not received an enhanced criminal record certificate under section 115 of the Police Act 1997(a) relating to the medical practitioner; and
- (b) the Assembly directs that the Local Health Board shall require such a certificate from any medical practitioner, whose name is included in its medical performers list,

the medical practitioner shall, within 3 months of the Local Health Board notifying the medical practitioner of that requirement, provide that certificate to it.

(2) When sub-paragraph (1)(b) applies, the Local Health Board shall write to each such medical practitioner informing the medical practitioner that the medical practitioner is now under a duty to -

- (a) provide it with such a certificate; and
- (b) do so within the period of 3 months beginning with the date of that letter,

and, subject to sub-paragraph (3), if the medical practitioner has not provided it with such a certificate within that time, it shall remove the medical practitioner from its medical performers list.

(3) Local Health Board -

- (a) shall extend the period prescribed in sub-paragraph (1), if the Assembly directs that an extension should be required in relation to all such cases or in such categories of case as it may set out in the directions; and
- (b) may, if it thinks it is not reasonably practicable for that medical practitioner to provide it with such a certificate within the period of 3 months, beginning with the date of the letter under paragraph (2), as extended by reason of any direction to which head (a) applies, extend that period for such time as it considers appropriate in the circumstances of the case and shall notify that medical practitioner of that extension of time.

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(a) 1997 c.50.

## **Appeals to the FHSAA under Part II of the 2001 Rules**

### **14. Where -**

- (a) the FHSAA receives a notice of appeal within the time limit specified in rule 5 of the 2001 Rules on or after the 1st April 2004; and
- (b) that notice of appeal concerns a disputed decision taken by a respondent Initial Local Health board before the 1st April 2004,

that Local Health Board shall continue to be the respondent, even if the medical practitioner's name is from 1st April 2004, included in the medical performer's list of a different Local Health Board.

### **15. Where -**

- (a) the FHSAA has received a notice of appeal in accordance with rule 6 of the 2001 Rules before the 1st April 2004;
- (b) that appeal concerns a disputed decision taken by a respondent Initial Local Health Board before the 1st April 2004; and
- (c) it has not been finally determined before the 1st April 2004,

that Local Health Board shall continue to be the respondent, even if the medical practitioner's name is, from 1st April 2004, included in the medical performer's list of a different local Health Board.

## **Applications to the FHSAA under Part III of the 2001 Rules**

### **16. Where the FHSAA -**

- (a) has received an application pursuant to Part III of the 2001 Rules before the 1st April 2004; and
- (b) that application has not been finally determined before the 1st April 2004,

the parties to that application shall, from the 1st April 2004, continue to be the medical practitioner who was a party immediately before the 1st April 2004 and the Initial Local Health Board.

## **General matters relating to cases under Part IV of the 2001 Rules**

### **17. Where a panel has -**

- (a) pursuant to rule 32(1), 33, 44(2) or 45(2) of the 2001 Rules given any directions; or
- (b) pursuant to rule 37 of those Rules, varied any directions,

in relation to any appeal falling within paragraph 17, those directions or varied directions shall continue to apply to the Initial Local Health Board, even if the medical practitioner's name is, on and after 1st April 2004, included in the medical performer's list of a different Local Health Board.

### **18. Where a panel has, pursuant to rule 42 or 43 of the 2001 Rules, given a decision -**

- (a) that decision shall continue to apply to the Initial Local Health Board; and
- (b) that Local Health Board, shall be entitled to apply to the FHSAA pursuant to and in accordance with rule 43 of the 2001 Rules for a review of a panel's decision.

**19. Where the FHSAA has taken a decision before the 1st April 2004 which, by virtue of rule 46 of the 2001 Rules, it would, at the time it took that decision have been obliged to publish, that obligation shall continue on or after the 1st April 2004 if it has not published the decision immediately**



SCHEDULE 2  
REVOCATIONS

The following Regulations are hereby revoked -

The National Health Service (General Medical Services Supplementary List) (Wales) Regulations 2002<sup>(a)</sup>.

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(a) S.I. 2002/1882 (W.191) as amended by S.I. 2002/2802 (W.270).