

2008 No. 1425 (W. 147)

**NATIONAL HEALTH
SERVICE, WALES**

The National Health Service
(Primary Medical Services) and
(Performers Lists) (Miscellaneous
Amendments) (Wales) Regulations
2008

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to certain Regulations relating to primary medical services and to Regulations that require performers of primary medical or dental services are included in a performers list maintained by a Local Health Board

Part 2 of these Regulations amends the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004 (“the GMS Contracts Regulations”). In particular, it:

- (a) makes amendments to references to “incapable adults”, and to those who may act on their behalf, to reflect the terms used in and the provisions of the Mental Capacity Act 2005;
- (b) makes amendments to the provisions relating to the contractor’s clinical governance system to provide that such systems must include standard operating procedures in relation to the management and use of controlled drugs; and
- (c) makes minor changes to the restrictions on those who are eligible to contract to provide primary medical services and to the provisions relating to the service of remedial and breach notices.

Part 3 of these Regulations amends the National Health Service (Performers Lists) (Wales) Regulations 2004 (“the Performers Lists Regulations”). In particular:

regulations 4A, 22, 23A and 29 of the Performers Lists Regulations are amended to extend the period that a performer may provide primary medical or dental services without being on a performers list from two to three months.

regulation 13 of the Performers Lists Regulations is amended to make it clear that a performer who is suspended from a list is still treated as being included in that list in relation to any application that the performer may make for inclusion in another list; and

regulation 22 of the Performers Lists Regulations is amended so as to permit a doctor who is undertaking the post-registration part of the foundation programme for newly qualified doctors, to perform primary medical services without being a general practitioner or on a list, but only in so far as the performance of primary medical services constitutes part of that programme.

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The National Health Service
(Primary Medical Services) and
(Performers Lists) (Miscellaneous
Amendments) (Wales) Regulations
2008

Made 3 June 2008

Laid before the National

Assembly for Wales 4 June 2008

Coming into force 1 July 2008

The Welsh Ministers, in exercise of the powers conferred by sections 47, 49, 63 and 203(9) and (10) of the National Health Service (Wales) Act 2006⁽¹⁾ hereby make the following Regulations:

PART 1

General

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the National Health Service (Primary Medical Services) and (Performers Lists) (Miscellaneous Amendments) (Wales) Regulations 2008.

(2) These Regulations come into force on 1 July 2008.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations—

(1) 2006 c.42.

“the GMS Contracts Regulations” (“*y Rheoliadau Contractau GMC*”) means the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004(1); and

“the Performers Lists Regulations” (“*y Rheoliadau Rhestri Cyflawnwyr*”) means the National Health Service (Performers Lists) (Wales) Regulations 2004(2).

PART 2

Amendment of the GMS Contracts Regulations

Amendment of regulation 2 of the GMS Contracts Regulations

2. In the definition of “CCT”, omit the words “, including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in article 20(3)(a) of that Order”.

Amendment of regulation 5 of the GMS Contracts Regulations

3. In regulation 5 (general condition relating to all contracts) of the GMS Contracts Regulations, in paragraph (2)(i)(ii), after “Insolvency Act 1986” insert “or Schedule 2A to the Insolvency (Northern Ireland) Order 1989”(3).

Amendment of Schedule 6 to the GMS Contracts Regulations

4. In Schedule 6 (other contractual terms) to the GMS Contracts Regulations—

(a) in paragraph 15 (application for inclusion in a list of patients)—

(i) for sub-paragraph (4)(b), substitute—

“(b) on behalf of any adult who lacks the capacity to make such an application, or to authorise such an application to be made on their behalf, by a relative of that person, the primary carer of that person, a donee of a lasting power of attorney granted by that person or a deputy appointed for that person by the court under the provisions of the Mental Capacity Act 2005(4).”, and

(1) S.I. 2004/478 (W.48)

(2) S.I. 2004/1020 (W.117).

(3) S.I. 1989/2405 (N.I. 19)

(4) 2005 c.9

- (ii) in sub-paragraph (6)(b), for “incapable adult”, substitute “an adult who lacks capacity”;
- (b) in paragraph 17(3) (which relates to the refusal of applications for inclusion in the list of patients or for acceptance as a temporary resident), for “incapable adult”, substitute “an adult who lacks capacity”;
- (c) in paragraph 18(1)(a) (which relates to patient preference of practitioner), for “incapable adult”, substitute “an adult who lacks capacity”;
- (d) for paragraph 19(5)(b) (which relates to removal from the list at the request of the patient), substitute—
 - “(b) in the case of an adult patient who lacks the capacity to make the relevant request or receive the relevant advice, information or notification, a relative of that person, the primary carer of that person, a donee of a lasting power of attorney granted by that person or a deputy appointed for that person by the court under the provisions of the Mental Capacity Act 2005.”;
- (e) in paragraph 52 (qualifications of performers)—
 - (i) in sub-paragraph (2)(b), omit the final “or”,
 - (ii) in sub-paragraph (2)(c)(ii) for “two” substitute “three”,—
 - (iii) after sub-paragraph (2)(c), add the following—
 - “(d) a medical practitioner who is already included in the medical performers list of another primary care organisation and who has submitted an application to a Local Health Board in accordance with regulation 4A of the National Health Service (Performers Lists) (Wales) Regulations 2004 until the first of the following events arises—
 - (i) the Local Health Board notifies him or her of its decision on that application; or
 - (ii) the end of a period of three months, starting with the date on which the application was submitted; or
- (e) a medical practitioner, who—
 - (i) is not a GP Registrar;
 - (ii) is undertaking a programme of post-registration supervised clinical practice supervised by the Postgraduate Medical Education and Training Board (“a post-registration programme”);

(iii) has notified the Local Health Board that he or she will be undertaking part or all of a post-registration programme in its area at least 24 hours before commencing any part of that programme taking place in the Local Health Board's area; and

(iv) has, with that notification, provided the Local Health Board with evidence sufficient for it to satisfy itself that he or she is undergoing a post-registration programme,

but only in so far as any medical services that the medical practitioner performs constitute part of a post-registration programme.”, and

(iv) in sub-paragraph (3) after “regulation 21(2)” insert “and “primary care organisation” has the meaning given in regulation 2” ;

(f) in paragraph 56 (conditions for training and employment)—

(i) in sub-paragraph (1) for “(2) and (3)” substitute “(2) to (4)”,

(ii) in sub-paragraph (3)(b) for “two” substitute “three”,

(iii) after sub-paragraph (3) insert the following—

“(4) Where the prospective employee is a medical practitioner who is already included in the medical performers list of another primary care organisation and who has submitted an application to the Local Health Board in accordance with regulation 4A of the National Health Service (Performers Lists) (Wales) Regulations 2004, the requirements set out in sub-paragraph (1) shall apply with the modifications that—

(a) the name and address provided under sub-paragraph (1) may be the name and address of the Local Health Board on whose list the medical practitioner has applied for inclusion, provided that the name and address of the primary care organisation on whose list the medical practitioner is already included is provided in addition; and

(b) confirmation that the medical practitioner's name appears on that list shall not be required until the first of the following events arises—

(i) the Local Health Board notifies the medical practitioner of its decision on that application, or

(ii) the end of a period of three months, starting with the date on

which the Local Health Board receives the application.

- (5) In this paragraph “primary care organisation” has the meaning given in regulation 2 of the National Health Service (Performers Lists) (Wales) Regulations 2004.”;
- (g) in paragraph 58(1) (which relates to conditions for employment and engagement), after the word “contract”, insert “, other than a medical practitioner falling within paragraph 52(2)(e),”;
 - (h) in paragraph 91(b) (which relates to the making of complaints), for “is incapable of making a complaint”, substitute “lacks the capacity to make a complaint”;
 - (i) in paragraph 111(2)(j)(ii) (which relates to other grounds for termination by the Local Health Board), after “Insolvency Act 1986” insert “or Schedule 2A to the Insolvency (Northern Ireland) Order 1989”;
 - (j) in paragraphs 113(1) and (5) (which relate to termination by the Local Health Board: remedial notices and breach notices), for “specified in paragraphs 109 to 112”, substitute “specified in paragraphs 109 to 112A”;
 - (k) for paragraph 118 (1) (which relates to consultation with the Local Medical Committee), substitute—

“(1) Whenever the Local Health Board is considering—

 - (a) terminating the contract pursuant to paragraph 110, 111, 112, 113(4) or (6) or 114;
 - (b) which of the alternative notices in writing available under the provisions of paragraph 112A it will serve; or
 - (c) imposing a contract sanction,

it shall, whenever it is reasonably practicable to do so, consult the Local Medical Committee for its area before it terminates the contract, serves a notice in writing or imposes a contract sanction.”;
 - (l) in paragraph 119(1) (which relates to clinical governance), after “effective system of clinical governance” insert “which shall include appropriate standard operating procedures in relation to the management and use of controlled drugs”.

PART 3

Amendment of the Performers Lists Regulations

Amendment of regulation 4A of the Performers Lists Regulations

5. In regulation 4A(8)(b) (which relates to application for inclusion in a performers list by a performer already listed on a performers list of a primary care organisation), for “2 months” substitute “3 months”.

Amendment of regulation 13 of the Performers Lists Regulations

6. In regulation 13 of the Performers Lists Regulations (suspension)—

- (a) at the beginning of paragraph (9), insert “Except as provided in paragraph (9A),”, and
- (b) after paragraph (9) insert—

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

Amendment of regulation 22 of the Performers Lists Regulations

7. In regulation 22 of the Performers Lists Regulations—

- (a) in paragraph (1), for “(2) and (3), substitute “(2) to (3)”;
- (b) after paragraph (2) insert the following—

“(2A) A medical practitioner who falls within paragraph (2B) may perform primary medical services in the area of a Local Health Board, but only in so far as the performance of those services constitutes part of a programme of post-registration supervised clinical practice approved by the Board (“a post-registration programme”).

(2B) A medical practitioner falls within this paragraph if he or she—

- (a) is not a GP Registrar;
- (b) is undertaking a post-registration programme;
- (c) has notified the Local Health Board that he or she will be undertaking part or all of a post-registration programme in its area at least 24 hours before commencing any part of that programme taking place in the Local Health Board’s area; and

(d) has, with that notification, provided the Local Health Board with evidence sufficient for it to satisfy itself that he or she is undergoing a post-registration programme.”; and

(c) in paragraph (3)(b) “2 months”, substitute “3 months”.

Amendment of regulation 23A of the Performers Lists Regulations

8. In regulation 23A(4)(b) (which relates to application for inclusion in a medical performers list by a general practitioner already listed on a medical performers list of a primary care organisation), for “2 months” substitute “3 months”.

Amendment of regulation 29 of the Performers Lists Regulations

9. In regulation 29(2) (which relates to the dental performers list), for “two months” substitute “three months”.

Edwina Hart

Minister for Health and Social Services, one of
Welsh Ministers

3 June 2008