Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The National Health Service (Performers Lists) (Wales) Regulations 2004. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

WELSH STATUTORY INSTRUMENTS

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 [F1], hereby makes the following Regulations:

F1 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.

PART 1

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 [F2];

"Abolition of the Tribunal (Wales) Regulations" means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002 [F3];

[[F4]"the Amendment Regulations" means the National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2006;**]**

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

"contingent removal" shall be construed in accordance with regualtion12;

[[F4]"dental list" means the list prepared by a Local Health Board under regulation 4(1) of the Dental Regulations;**]**

[[F4]"dental performers list" means the list prepared by a Local Health Board and published pursuant to regulation 3(1)(b);**]**

[[F4]"the Dental Regulations" means the National Health Service (General Dental Services) Regulations 1992;**]**

"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 **[**[F5]the National Health Service Commissioning Board**]** 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, **[**[F6]in relation to any time prior to 1st April 2013 and after 30th September 2002, a Primary Care Trust in England,**]** 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 [F7];

"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) [F8] or, by virtue of section 49H, is treated as doing so;

[[F9]"indemnity arrangement" means an arrangement which may comprise—

(a) a policy of insurance;

(b) an arrangement made for the purposes of indemnifying a person; or

(c) a combination of a policy insurance and an arrangement made for the purposes of indemnifying a person;**]**

"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) F10, **[**F11a performers list, a dental list,**]** 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 **[**F12regulation 3(1)(a)**]**;

"Medical Regulations" means the National Health Service (General Medical Services) Regulations 1992 F13;

"a national disqualification" means a decision —

(a) made by the **[**F14First-tier Tribunal**]** to nationally disqualify a performer under section 49N **[**F15or under regulations corresponding to that section made under section 28X(4) (persons performing primary medical and dental services)**]**;

(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 F16;

[F17"NICE" means the National Institute for Health and Clinical Excellence established as a Special Health Authority by the National Institute for Clinical Excellence (Establishment and Constitution) Order 1999;

"the NHSLA" means the National Health Service Litigation Authority established as a Special Health Authority by the National Health Service Litigation Authority (Establishment and Constitution) Order 1995;**]**

"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 F18;

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

[F19"the NPSA" means the National Patient Safety Agency established as a special health authority under section 11;**]**

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

"performer" means a health care professional;

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

"previous list" means a list in which the performer's name was included prior to inclusion in the performer's list;

"Primary Care Act" means the National Health Service (Primary Care) Act 1997 [F20]

[[F21]"primary care organisation" means in respect of Wales a Local Health Board, in respect of England **[**[F22]the National Health Service Commissioning Board,**]** in respect of Scotland a Health Board and in respect of Northern Ireland a Health and Social Services Board or such successor bodies to those primary care organisations as may exist from time to time.**]**

"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 [F23], 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 [F24];

"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 [F25];

"suspended" means —

(a) suspended by a Local Health Board or equivalent body under section 49I [F26], or 49J [F27], regulations made under section 43D [F28] or under section 8ZA [F29] 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 [F30], 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 **[**[F31]by the National Health Service Commissioning Board or, after 30th September 2002 and prior to 1st April 2013, 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 [F32] 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 [F33]; 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.

F2 S.I. 2001/ 3744.
F3 S.I. 2002/1920.

F4 Words in reg. 2(1) inserted (1.4.2006) by The National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2006 (S.I. 2006/945), regs. 1(1), **2(d)** (with Sch.)

F5 Words in reg. 2(1) substituted (1.4.2013) by The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013 (S.I. 2013/235), art. 1(2), **Sch. 2 para. 65(2)(a)(i)**

F6 Words in reg. 2(1) inserted (1.4.2013) by The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013 (S.I. 2013/235), art. 1(2), **Sch. 2 para. 65(2)(a)(ii)**

F7 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).

F8 Section 49H was inserted by the 2001 Act, section 25; section 49F was amended by the 2002 Act, Schedule 2, paragraph 21.

F9 Words in reg. 2(1) inserted (1.3.2016) by The National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2016 (S.I. 2016/101), regs. 1(2), **2**

F10 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).

F11 Words in reg. 2(1) inserted (1.4.2006) by The National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2006 (S.I. 2006/945), regs. 1(1), **2(a)** (with Sch.)

F12 Words in reg. 2(1) substituted (1.4.2006) by The National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2006 (S.I. 2006/945), regs. 1(1), **2(b)** (with Sch.)

F13 S.I. 1992/635

F14 Words in reg. 2(1) substituted (18.1.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(1), **Sch. 3 para. 64**

F15 Words in reg. 2(1) added (1.4.2006) by The National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2006 (S.I. 2006/945), regs. 1(1), **2(c)** (with Sch.)

F16 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.

F17 Words in reg. 2(1) inserted (1.4.2013) by The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013 (S.I. 2013/235), art. 1(2), **Sch. 2 para. 65(2)(b)**

F18 S.I. 2002/3039.

F19 Words in reg. 2 inserted (1.3.2006) by The National Health Service (Primary Medical Services) (Miscellaneous Amendments) (Wales) Regulations 2006 (S.I. 2006/358), regs. 1(1), **15**

F20 1997 c. 46.

F21 Words in reg. 2 inserted (28.2.2005) by The National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2005 (S.I. 2005/258), regs. 1(1), **2**

F22 Words in reg. 2(1) substituted (1.4.2013) by The National Treatment Agency (Abolition) and the Health and Social Care Act 2012 (Consequential, Transitional and Saving Provisions) Order 2013 (S.I. 2013/235), art. 1(2), **Sch. 2 para. 65(2)(c)**

F23 2002 c. 17.

F24 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.

F25 S.I. 2002/1882 (W.191) amended by S.I. 2002/2802(W.270).

F26 Secton 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).

F27 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).

F28 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.

F29 Section 8ZA was inserted by the 2001 Act, section 26(2), and amended by the 2002 Act, Schedule 2.

F30 Section 28DA was inserted by the 2001 Act, section 26(1) and amended by the 2002 Act, Schedule 2.