

## **Explanatory Memorandum to the National Health Service (Performers Lists) (Wales)(Amendment) Regulations 2016**

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Health Service (Performers Lists) (Wales) (Amendment) Regulations 2016.

Mark Drakeford  
Minister for Health and Social Services  
2 February 2016

## **1. Description**

These Regulations amend the National Health Service (Performers Lists) (Wales) Regulations 2004. The Regulations provide in the main for revisions to streamline the application process for GPs and Dentists already on a performers list in England, Scotland or Northern Ireland to be included in a Local Health Board's Performers List to provide primary medical or primary dental services in Wales.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

None.

## **3. Legislative background**

The Regulations will be made pursuant to powers under sections 49 and 203 of the National Health Service (Wales) Act 2006.

These Regulations will follow the negative resolution procedure. They will come into force on 1 March 2016.

## **4. Purpose & intended effect of the legislation**

The National Health Service (Performers Lists) (Wales) Regulations 2004 ("the 2004 Regulations"), as amended, contain the listing requirements for a GP or Dentist to be included in a Local Health Board's Performers List and therefore be able to work in Wales.

The 2004 Regulations provides Local Health Boards with powers not just over admission but also in relation to suspension and removal from its lists. The powers are used to ensure performers are suitable to undertake clinical services and protect patients from any performers who are not suitable, or whose efficiency to perform those services may be impaired. The 2004 Regulations allow Local Health Boards to intervene at an early stage and provide support and remediation for practitioners whose performance is beginning to fall away from the required standards.

GPs and Dentists have suggested that the administrative process to be included in a Local Health Board's performers list may be acting as a barrier to recruitment.

Consideration was therefore given to amending the 2004 Regulations to streamline the application process for inclusion in a Local Health Board's performers list for GPs and Dentists already included in a performers list in one of the home nations.

The amending Regulations include amendments to -

- allow a GP/Dentist to be provisionally included immediately on a Local Health Board's performers list on receipt of their application, whilst NHS Wales Shared Services Partnership (NWSSP), on behalf of the Local Health Boards, undertakes further checks;
- extend the timescale for the requirement to produce a copy of their enhanced criminal record certificate dated within six months of making the application for

inclusion on the performers list, to be dated within three years. This is consistent for services that fall under the Children & Families (Wales) Measure 2010 (i.e. a child minding or children's day care service). This Measure requires employers to renew their employees' enhanced criminal Disclosure and Barring Service certificates every three years; and

- remove the need for a GP/Dentist to provide details of their medical qualifications but instead consent to NWSSP requesting this information from the holder of their performers list in the other home nations.

As an additional safeguard, in exceptional circumstances, if the Local Health Board should have any initial concerns about listing the performer, an amendment has also been made to enable Local Health Boards to defer a decision on provisionally including that performer in the performers list until they have undertaken the full checks. Furthermore, if the initial checks prove unsatisfactory, then the Local Health Board can refuse their application.

The proposed amendments strengthen the ground for removal from the performers list and the medical indemnity arrangements along with clarifying the position relating to regulatory declaration in relation to a UK conviction.

The regulations also make amendments to accommodate the latest Dental Foundation Training model. In England and Wales, a Dentist must have completed Dental Foundation Training (DFT), demonstrated equivalent experience, or be exempt from the requirement to do so. DFT is currently defined in the 2004 Regulations as a period of employment not exceeding one year or part time equivalent and there is no formal or agreed process across England, Wales and Northern Ireland to assess the end point of this training, or to formally extend training if necessary. In Scotland there is a statutory requirement for assessment of satisfactory completion of the training, which has been in place for a number of years, however this does not exist elsewhere in the UK.

The amendments to the 2004 Regulations make provision for the definition of the term 'satisfactory completion' and for a formal appeals mechanism, along with the ability to occasionally extend DFT beyond one year if a need is identified through the formal assessment process managed by Postgraduate Dental Deans and Directors. References to "vocational training" have also been replaced with "foundation training".

The amendments, in particular, the changes extending the requirement to produce an enhanced criminal record certificate dated within six months to dated within three years, together with immediate provisional listing on receipt of the performers' application, will reduce bureaucracy to an absolute minimum.

## **5. Consultation**

Discussions and meetings were held with Local Health Boards, NWSSP, the General Practitioners Committee Wales, and the Welsh Dental Committee in developing this proposal. A further 4 week informal consultation exercise was undertaken with relevant stakeholders which included -

Directors of Primary, Community Care and Mental Health of Health Boards  
Associate Medical Directors of Health Boards  
General Practitioners Committee Wales  
Local Medical Committees  
Royal College of General Practitioners  
British Dental Association  
General Dental Practitioners Committee Wales  
Local Dental Committees  
NHS Shared Services Partnership Primary Care  
Chief Executive of the Community Health Councils  
NHS England Regional Teams  
ShropDoc

Seven responses were received following the informal consultation. The great majority of responses expressed support for the proposals.

#### **6. Regulatory Impact Assessment (RIA)**

A Regulatory Impact Assessment has not been prepared for this instrument as it imposes no costs or no savings, or negligible costs or savings on the public, private or charities and voluntary sectors.

This legislation has no impact on the statutory duties (sections 77-79 of the Government of Wales Act 2006) or statutory partners (sections 72-75 of that Act).