EXPLANATORY MEMORANDUM TO

THE NATIONAL HEALTH SERVICE (PERFORMERS LISTS) (ENGLAND) (AMENDMENT) REGULATIONS 2023

2023 No. 525

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (DHSC) and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the National Health Service (Performers Lists) (England) Regulations 2013 (S.I. 2013/335, as amended) (the "2013 Regulations") to introduce two main changes to the 2013 Regulations:

- make the necessary legislative amendments to simplify intra-UK cross border working of medical, dental and ophthalmic practitioners. This change will apply to the medical, dental and ophthalmic performers lists.
- simplify the application process for overseas dentists who have not completed dental foundation training. This change will apply to dental practitioners only. The Regulations revoke the exemptions from the requirement to undertake dental foundation training in regulation 34(4) of the 2013 Regulations and provide two exemptions in their place. The first is where a dental practitioner is judged, through an assessment by the Board (NHSE is referred to as 'the Board' throughout these Regulations), to have knowledge and experience equivalent to that of a dental practitioner who has satisfactorily completed foundation training. The second is where a dental practitioner is participating in an induction programme determined by the Board.

2.2 In addition, these Regulations make minor amendments to the 2013 Regulations to make it clear that dental practitioners are required to satisfactorily complete foundation training to be included on the dental performers list, rather than just completing foundation training.

2.3 These Regulations are a central part of the Government's Dental Plan, which takes urgent action to improve access to NHS dental services and meet the unprecedented levels of demand currently being seen. The changes will facilitate the easing of workforce pressures currently impacting the provision of NHS primary care services, by enabling practitioners already approved to practise in the NHS in Scotland, Wales and Northern Ireland to move to England more easily, and by simplifying the application process for overseas dentists seeking to work in the NHS.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The 2013 Regulations provide the regulatory framework for managing medical, dental and ophthalmic practitioners who perform primary care services in the NHS in England. They establish performers lists of practitioners approved to practise in the NHS, and place responsibility for managing the performers lists on NHS England as the commissioner of primary care services.

6.2 The 2013 Regulations set out in Regulation 5 the process for consideration of applications by NHS England from medical, dental and ophthalmic practitioners. Regulation 34(4) sets out the circumstances under which a dental practitioner will be exempt from the requirement to undertake foundation training. A new regulation 5A will be added and regulation 34(4) will be amended by this instrument. The purpose of the amendments are to:

- enable the movement of medical, dental and ophthalmic practitioners from Scotland, Wales or Northern Ireland without delay, in order to provide primary medical, dental or ophthalmic services in England; and
- to abolish the Performers List Validation by Experience (PLVE) scheme as an alternative to foundation training and replace it with an assessment by NHS England and tailored induction programmes specified by NHS England. The PVLE scheme was led by Health Education England (HEE) and provided the framework by which the postgraduate dental dean or director of postgraduate dental education assessed overseas-qualified dentists seeking to work in NHS primary dental care settings. Through the PLVE scheme HEE provided assurance to NHS England that applicants to the dental performers list had knowledge and experience equivalent to that of a dental practitioner who had satisfactorily completed foundation training. This amendment applies to the dental performers list only.

6.3 Regulation 3 of the Regulations inserts a new regulation 5A into the 2013 Regulations to provide that where a practitioner makes an application for inclusion in a performers list in England and is already included in an equivalent list in Scotland, Wales or Northern Ireland, the practitioner must be included on the relevant performers list in England on a provisional basis, until the Board notifies the practitioner of its decision or a period of three months elapses, whichever is sooner. However, this immediate inclusion does not apply where the practitioner:

(a) is suspended from inclusion in the equivalent list (or the authority responsible for the equivalent list is considering removing or suspending the practitioner from that list),

(b) is included in the equivalent list subject to any conditions (or the authority responsible for the equivalent list is considering imposing conditions on the practitioner), or

(c) has previously made any other application to the Board for inclusion in a performers list which the Board has refused (and that has not been challenged successfully on appeal).

6.4 Regulation 6 will amend regulation 34(4) of the 2013 Regulations to revoke the exemptions from the requirement to undertake foundation training which apply to dental practitioners with qualifications from an EU member state, with experience in community dental service or the armed forces, or who are assessed by a post-graduate dental dean or director of postgraduate dental education to have the necessary knowledge or experience (the PVLE scheme). Regulation 34(4) is amended to provide two exemptions in their place. The first is where a dental practitioner is judged, through an assessment by the Board to have knowledge and experience equivalent to that of a dental practitioner who has satisfactorily completed foundation training. The second is where a dental practitioner is participating in an induction programme determined by the Board.

6.5 Regulation 4 will amend regulation 30(2)(c) to match the new wording in Regulation 35(1)(b) on satisfactory completion on foundation training and to ensure that references in the 2013 Regulations to completion of foundation training consistently refer to "satisfactory" completion of that training. Regulation 5 will amend regulation 33 for the same reasons.

6.6 Regulation 7 will amend regulation 35(1)(b) to update the wording on grounds for removal from the dental performers list.

7. Policy background

What is being done and why?

7.1 The 2013 Regulations are being amended to provide greater flexibility for performers to move between the four nations and to improve the process for overseas dentists to join the Dental Performers List. The policy intention behind these changes is to support the NHS workforce and facilitate the provision of primary care services in England.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 The 2013 Regulations provide the regulatory framework to ensure that medical, dental and ophthalmic practitioners who contract with NHS England are qualified and competent to provide safe and effective primary medical, dental and ophthalmic services.

Why is it being changed?

7.3 The 2013 Regulations, as they are currently drafted, do not allow practitioners who are included on a Performers List in Scotland, Wales or Northern Ireland to the join the England Performers List with immediate effect, meaning they must wait for their application to be approved before they can provide NHS primary services. This is a barrier to flexible working across the four nations which impacts on the provision of services in England. The Regulations also include provisions under which Health

Education England operated the PLVE process, this form of assessment constituted a barrier for overseas dentists wanting to work in the UK and provide NHS services.

What will it now do?

7.4 These changes will simplify the process for consideration of applications by NHS England from practitioners who are included on an equivalent list in Scotland, Wales or Northern Ireland, as well as simplifying the application process for overseas dentists seeking to work in the NHS, by moving to a structured induction process which mirrors that already in place for EEA-qualified dentists.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Performers Lists legislation will not be consolidated.

10. Consultation outcome

10.1 No formal consultation was carried out, because the Department considers there is a strong public interest in introducing this legislation swiftly, in order to take immediate steps to improve access to NHS dental services and meet the unprecedented demand for them. The Department has engaged with NHS England over the last year to understand the changes needed to improve the operation of the Performers List. Informal consultation has also been undertaken with the Devolved Governments and regulatory bodies on wider reforms to the Performers List, and in light of these, the Department considers the changes to be uncontroversial.

11. Guidance

11.1 No guidance is required. NHS England have briefed the sector on the upcoming changes and will provide a further update when the legislation comes into force.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the SI relates to maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that DHSC will continue to work with NHS England to ensure the Regulations provide an effective regulatory framework for managing medical, dental and ophthalmic performers.

14.2 The instrument does not include a statutory review clause. The legislation will be subject to review by officials as part of ongoing policy development work on the delivery of primary care services.

15. Contact

15.1 Rosie Ettridge at the Department of Health and Social Care - Telephone: 0113 254 5159 or email: Rosamond.ettridge@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Philip Harper, Deputy Director for Professional Regulation, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Neil O'Brien, Parliamentary Under Secretary of State for Primary Care and Public Health, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.