

Performers List Regulations 2013

Thank you for consulting the Optical Confederation and the College of Optometrists on these draft regulations.

As the coalition of the representative bodies for the 12,000 optometrists, 6,000 dispensing opticians and 7,000 optical practices in the UK, the Optical Confederation is a major stakeholder in the changes proposed. The Confederation is a coalition of the five optical representative bodies: the Association of British Dispensing Opticians (ABDO); the Association of Contact Lens Manufacturers (ACLM); the Association of Optometrists (AOP); the Federation of Manufacturing Opticians (FMO) and the Federation of Opticians (FODO). As a Confederation, we work with others to improve eye health for the public good.

The College of Optometrists is the professional, scientific and examining body for optometry in the UK, working for the public benefit.

We regret therefore not having been involved amongst the “wide range of stakeholders” with whom “the proposals have already been discussed” (Executive Summary – Paragraph 7). However we were pleased to be fully involved in the previous Donaldson¹ and Foster² reviews and the “Tackling Concerns Locally”³ working group set up under the White Paper *Trust, Assurance & Safety* in 2007. In consequence, we are broadly supportive of the changes proposed.

As a sector, we support the proposal for Option 3 (the Department’s preferred option) which reflects

- the changes resulting from the Health and Social Care Act 2012, i.e. the changes from PCTs to the NHS Commissioning Board (NHS CB)
- the recommendations from previous reviews (paragraph 1.13)
- including the power “for immediate suspension if a performer’s conduct could create serious risks for the public” (paragraph 1.20) provided there is a route of appeal

¹ *Good doctors, safer patients: Proposals to strengthen the system to assure and improve the performance of doctors and to protect the safety of patients*, Department of Health, Crown 276071, 2006

² *The regulation of the non-medical healthcare professions A review by the Department of Health*, Department of Health, 6856, 2006

³ *Tackling Concerns Locally: the Performers List system A review of current arrangements and recommendations for the future*, Dobson C, Department of Health, Crown 10883, 2009

- and inclusion of the changes brought in by the new Disclosure and Barring scheme under the Protection of Freedoms Act 2012 (PoFA).

National List and Local Area Teams

We also fully support the proposals that

- there should be a single National Performers List (Question 2.4)
- “Local Area Teams will undertake the day-to-day management of the National Performers’ list” (paragraph 1.24)
- rights to hearings (paragraph 2.1)
- rights to have a decision review and/or appeal to the First-tier Tribunal (paragraph 2.1).

We welcome the information that “The NHS CB is developing the administrative systems required to manage the local lists as one organisation with 27 local area teams” (paragraph 1.25). As key stakeholders and representatives of the practitioners and businesses affected, we formally request

- to be involved in the development of those administrative systems under the principle of “co-production”
- also to be consulted formally on them before they are implemented.

Information Checks and Obligations

We are slightly concerned about the proposal not to proceed with the introduction of an additional duty for the NHS CB take reasonable steps to identify other health care organisations that require notifying of certain decisions such as suspension. (Paragraph 2.38)

We would hope that the NHS CB would have a duty to notify the appropriate authorities in Wales, Scotland, Northern Ireland and the Republic of Ireland where English registrants may well move if refused admission to the English list on grounds of public protection (and given that practitioners would have a further right of appeal against refusal to be admitted to an ophthalmic provider list in those jurisdictions).

Standardised and Coordinated Information

We are disappointed that further progress has not been made on coordinating the information requirements of the General Optical Council (GOC) and performers listing requirements where there is duplication to deliver Performers Listing Regulation 2 (see Annex C) and minimise burdens on the NHS and practitioners.

We look forward to working with the NHS CB (in the spirit of 'co-production') and the GOC to take forward these recommendations including the development of standardised forms and procedures, under the NHS CB's single operating model.

We would also request that such coordination is considered in respect of the new disclosure and barring requirements in order that administrative burdens on the NHS and the optical sector are kept to a minimum, and would request to be fully involved in discussions about this.

Pre-registration Applications

We also understand that, following our earlier representations, the Department plans to amend Regulation 39(4) to enable pre-registration optometrists to apply to be admitted to the performers list "not more", rather than "not less", than three months before their anticipated date of registration. We would seek reassurances however that the NHS CB systems will be efficient enough to enable this to happen without delay for the practitioner.

This makes it all the more important that we should be involved in helping the NHS CB develop its administrative systems for managing the list through the 27 local areas teams, as requested above.

It is against this background that our detailed responses to the detailed Consultation Questions are attached.

We are very happy for this response to be made public.

Responses to Consultation Questions

Question 2.1a: Do you think that the power to remove a performer where they have not provided a minimum service should replace the existing power to remove a performer where they have not provided services within 12 months?

Answer: Yes.

Q 2.1b: If you agree that this power should be provided do you think that:

a) it should apply to the same to all groups of performers (medical, dental and ophthalmic);

A: Yes, but see response to question 2.2 below.

b) different measures should be in place for each group of performers?

A: Yes.

Q 2.2: Please explain what you think are appropriate minimum “level(s) of Primary Care Services.

A: Twelve months has worked well within the optometric professions as the time within which, if a performer has not practised, the NHS should consider removing them from a list.

Optometry and optics are low risk professions but skills can deteriorate within a year if they are not practised. We would therefore support changing the regulations to enable different minima to be set for different professions according to clinical risk, etc but would argue that the period should remain twelve months for optometrists and ophthalmic medical practitioners (OMPs).

If this situation should change in future, the new flexibility would allow the NHS Commissioning Board, in consultation with the Optical Confederation and BMA, to amend that period without needing to change the underlying regulations.

It follows that, in our view, on grounds of safety the minimum period should apply equally to performers on maternity/paternity leave.

Q 2.3: What groups do you consider should be subject to an exemption and what other methods do you think should be taken to ensure that this proposal does not impact unequally on specific groups?

A: None.

Q 2.4: We consider that it is appropriate to set up national performers' list for England. Do you agree?

A: Yes – one single list for optometrists and ophthalmic medical practitioners (OMPs).

Q 2.5: Do you agree that the requirement to undertake a criminal records check in every application should be removed from the Performers' List Regulations? This would mean that the NHS CB could undertake these checks but would not be under a blanket duty to do so in every case.

A: Yes – this would be a sensible and proportionate approach for the reasons given in the consultation document.

Q. 2.6: Do you agree with our proposal to implement the recommendation to enable immediate suspension where it appears that a performer's conduct creates a serious risk to the public?

A: Yes – provided there is a right of review by the NHS Commissioning Board and appeal to the First Tier tribunal (paragraph 2.1).

Q. 2.7: Do you agree that guidance is the best way of setting out the range of support that the NHS CB should consider providing to suspended performers?

A: Yes – provided that the guidance makes clear that suspension is a neutral act and that, if a practitioner that loses his/her sole income or part of their income in this way, he/she is appropriately recompensed by the NHS.

Q. 2.8: Do you agree with our proposal to implement the recommendation to have additional options at suspension hearings?

A: Yes.

Q 2.9: Do you agree that the current arrangements for reviewing suspensions (modified to provide for reviews to be held for the NHS CB) are an adequate cost-effective measure?

A: Yes – provided that suspension remains a neutral act and that the practitioner, if in part or solely dependent upon their NHS income, has financial recompense (paragraph 2.35).

Q. 2.10: Do you agree with the proposal not to take forward the recommendation of the Performers List Review to widen the powers to suspend performers?

A: Yes.

Q. 2.11: Do you agree that the requirement to demonstrate adequate indemnity or insurance arrangements should be incorporated into the draft regulations?

A: Yes, but subject to the following proviso.

It is already a requirement of registration with the General Optical Council that optometrists should have adequate professional indemnity insurance arrangements in place and the options and arrangements for this work well and cost-effectively for the profession. To avoid confusion and additional costs we would argue that the performers listing requirement should be identical.

Q2.12: The draft regulations incorporate changes recommended by the Performers' List Review. Do you consider that these recommendations have been adequately incorporated into the draft regulations?

A: Yes, but please see our comments in respect of Information Checks and Obligations and Standardised and Coordinated Information above.

Q. 3.1: Do you agree the performers should be required to submit their last appraisal, if they have one, when they apply to join the performers' list?

A: Yes, but subject to the following proviso.

New registrants, following completion of their post-graduate vocational pre-registration training, may not have had an appraisal to date. Optometrists in such a position should be able to present their professional qualifying exam result as evidence of performance.

Q. 3.2: Do you think regulation 9(ii)(h), which requires a performer to report when they are a 'properly interested person' at an inquest (subject to the exception shown there), achieves the recommendation?

A: Yes.

Q. 3.3: Do you have any other comments on the draft regulations or the policy changes described in this Consultation Document?

A: Yes. Please see introductory comments above.

Q. 4.1: Do you consider that the proposed regulations will impact differently for different groups in relation to any of the protected characteristics under the Equality Act 2010?

A: No.

Submitted by Ben Cook on behalf of the Optical Confederation and the College of Optometrists. 14th December 2012