

Explanatory Memorandum to the National Health Service (Performers Lists) (Wales) Regulations 2026

This Explanatory Memorandum has been prepared by Health, Social Care and Early Years and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary'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) Regulations 2026. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Cabinet Secretary for Health and Social Care
6 March 2026

PART 1

1. Description

1.1 The National Health Service (Performers Lists) (Wales) Regulations 2026 (“the 2026 Regulations”) revoke and replace the National Health Service (Performers Lists) (Wales) Regulations 2004 (“the 2004 Regulations”).

1.2 The 2026 Regulations modernise arrangements for the performers lists to support their efficient operation and administration whilst maintaining public safety.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 None.

3. Legislative background

3.1 The Welsh Ministers have powers under sections 49, 63, 115(9) and 203(9) and (10) of the National Health Service (Wales) Act 2006 to make the 2026 Regulations.

3.2 The 2026 Regulations are made under the Senedd annulment procedure.

4. Purpose and intended effect of the legislation

4.1 The 2026 Regulations require Local Health Boards (LHBs) to establish, maintain and publish lists of medical and dental practitioners who may undertake primary care services in their area. These lists will replace the existing performers lists held by LHBs under the 2004 Regulations.

4.2 Medical and dental practitioners are required to be named on a performers list in order to perform NHS primary care services. The performers list framework provides LHBs with powers over admission, suspension and removal from its lists.

4.3 The powers are used to ensure that practitioners are suitable to undertake clinical services and protect patients from any practitioners who are not suitable; and to prevent inefficiency and fraud. The framework enables LHBs to intervene at an early stage to ensure patient safety.

4.4 The changes included in the 2026 Regulations are intended to support the modernisation and efficient operation of the performers lists, and permit increased flexibility in the primary care workforce, whilst continuing to ensure patient safety and high-quality primary care services.

Key changes

4.5 The following lists key changes the Welsh Statutory Instrument makes:

Immediate Suspension

4.6 This provision enables a LHB to suspend a practitioner immediately without having to give notice where it considers that it is necessary for the protection of patients or members of the public or that it is otherwise in the public interest.

Conditional Inclusion

4.7 The provisions of “conditional inclusion” and “contingent removal” in the 2004 Regulations have been merged and simplified in the 2026 Regulations to provide for the imposition of conditions on inclusion in a list in certain circumstances.

Appraisals

4.8 An applicant to a medical performers list must provide a copy of their most recent appraisal, where they have one, ensuring the LHB has all relevant information on applicants when they apply to join a list.

Inquests

4.9 Practitioners will be required to inform the LHB when they are called before an inquest as a person who may by any act or omission have caused or contributed to the death of the deceased, or whose employee or agent may have done so.

Criminal Convictions - Refusal

4.10 The introduction of a discretion for LHBs as to whether to refuse entry to the performers list in cases where practitioners have been sentenced to imprisonment of over 6 months.

Criminal Convictions - Removal

4.11 The introduction of a discretion for LHBs as to whether to remove a practitioner from the list if they have been sentenced to a term of imprisonment (whether suspended or not) of between 6 and 12 months. Removal remains mandatory for convictions with sentences over 12 months.

Protected cautions and protected convictions

4.12 The changes bring the 2026 Regulations in line with requirements in respect of protected cautions and protected convictions under the Rehabilitation of Offenders Act 1974.

Grounds for refusal for dentists and additional grounds for removal

4.13 The 2026 Regulations simplify the application process for overseas dentists who have not completed dental foundation training.

Exempting GP Registrars from being on the Medical Performers List

4.14 There is robust oversight and supervision of doctors on a General Medical Council (GMC) approved postgraduate training programme. The 2026 Regulations therefore allow GP Registrars (GPRs) on a GMC approved postgraduate training programme to deliver primary care services without requiring them to be included on the medical performers list, where the delivery of primary care services is part of their training. There is also an exemption for all other registered medical practitioners from inclusion on the medical performers list where they are undertaking a GMC approved postgraduate training programme.

The point at which GP Registrars apply to join the Medical Performers List

4.15 The 2026 Regulations provide GPRs with a streamlined application process to join a medical performers list if they apply within 6 months of completing their training.

Additional grounds for removal from a medical performers list - suspension of registration

4.16 The 2026 Regulations contain provision to remove a medical practitioner from a performers list where the medical practitioner's registration in the register of medical practitioners has been suspended by the Medical Practitioners Tribunal.

Changes to enhanced criminal record checks for applicants who have never resided in the UK

4.17 The 2026 Regulations require applicants who have never resided in the UK to provide evidence of a check equivalent to an enhanced criminal record certificate or if the practitioner is unable to obtain such evidence, a statement in writing demonstrating that the practitioner has taken all reasonable steps to obtain it.

Returning Practitioners

4.18 LHBs already hold a substantial amount of information about practitioners who apply to re-join a performers list. The 2026 Regulations, therefore, introduce a streamlined application process for returning practitioners.

4.19 Returning practitioners need to make a declaration to the LHB that they have no adverse regulatory finding/employment action taken in the period for which they have not been included on the performers list. LHBs then have 3 months to undertake the relevant checks on the returner. LHBs can provisionally include returning practitioners pending these checks but must remove the practitioner if the checks have not been carried out within 3 months or if any new information arises which would have resulted in the initial inclusion being refused.

At suspension hearings to permit the practitioner to resume practice

subject to interim conditions, pending the completion of the investigation and any subsequent full hearing.

4.20 The 2026 Regulations provide for temporary conditions to be put in place to enable the practitioner to work pending a finding of fact about a practitioner being investigated. The act of imposing these temporary conditions is a neutral act that ensures patient safety as LHBs investigate a case about the practitioner. The temporary conditions will be reviewable but not susceptible to appeal. If the parties do not agree, then LHBs have the right to suspend the practitioner.

4.21 The 2026 Regulations also provide that a practitioner may request that the LHB reviews any conditions it has agreed with that practitioner under the Regulations and any decision the LHB has made to allow the practitioner to resume practice.

**Introduction of a time limit for claims for payment to be made (90 days from the date of first suspension), and;
Introduction of a time limit for redetermination of suspension payment (28 days)**

4.22 The 2026 Regulations will introduce a 90-day time period for practitioners to make a claim for suspension payments, and a 28-day time period to request a reconsideration of a decision relating to suspension payments.

Removal from a performers list – right of appeal

4.23 The 2026 Regulations provide that if a LHB decides to remove a practitioner from a list the practitioner has 28 days to appeal beginning with the date of the notification.

A process to enable conditions imposed to be removed.

4.24 The 2026 Regulations provides for LHBs to maintain, vary, or remove conditions imposed on practitioners.

Decisions of LHB in relation to suspension of the practitioner

4.25 Under the 2004 Regulations LHBs are unable to lift a suspension on a review. A provision has been included in the 2026 Regulations to allow this to happen.

Modification of the review periods where the First-tier Tribunal (FTT) has imposed a national disqualification.

4.26 National disqualification of practitioners from a performers list may, in certain cases, be necessary to protect patient safety and NHS resources. The

power to nationally disqualify practitioners from the performers list in Wales is provided in section 115 of the NHS (Wales) Act 2006.

4.27 A practitioner who is subject to a national disqualification may request a review of the FTT's decision. It is considered appropriate to extend the periods before which a review can be requested provided for at sections 115(8)(a) and (b) of the National Health Service (Wales) Act 2006 from two years since the disqualification and one year since the last review, to five and three years respectively, where the FTT is of the opinion that the criminal or professional conduct of the practitioner is such that there is no realistic prospect of a review being successful if held within that period. These changes are intended to prevent practitioners from requesting a review a short time after the FTT decision or the last FTT review, if the FTT considers there is no realistic prospect of the review resulting in a different outcome. The 2026 Regulations also allow for a national disqualification to be reviewed after one day where a criminal conviction or other decision relevant to the national disqualification has been quashed or the penalty reduced on appeal.

A requirement for the practitioner to provide an annual declaration that confirms that they remain on the performers list and that their information is up to date.

4.28 The 2026 Regulation require practitioners to provide an annual declaration that confirms that they remain clinically active, and that their information is up to date to ensure that the performers list remains up to date.

Removing the requirement for LHBs to collect data on the practitioner's sex

4.29 The requirement for practitioners to declare their sex is removed, as LHBs do not require applicants to provide this data to process their applications. All protected characteristics will be collected as part of wider NHS workforce data collection, but it will not be mandatory for practitioners to declare their protected characteristics to be included on a performers list.

Removing the requirement to provide 'an explanation of any gaps between appointments' for all types of applicants

4.30 The 2026 Regulations do not require applicants to provide 'an explanation of any gaps between appointments' for all types of application. If there is any significant patient safety concerns due to a gap in a practitioner's CV, this would be captured via other checks at the point of application.

Declaration of information

4.31 The 2026 Regulations state that practitioners have 7 days to declare to the LHB if they become aware of any material change to the information provided in or with their application.

Removal of the need to issue a notification on the death of a practitioner

4.32 Under the 2026 Regulations LHBs no longer need to issue a notice to other bodies in circumstances where a practitioner has died.

Notification - Withdrawn applications to be included in the Performers Lists

4.33 The 2026 Regulations contain a new provision for the LHB to notify prescribed bodies of a withdrawn application by a practitioner. Where a practitioner withdraws an application for inclusion in the performers list and the LHB has reason to believe that the withdrawal was made to avoid a decision to refuse inclusion in a list under the regulations, then the LHB must notify the prescribed bodies. Otherwise, the LHB has discretion whether to notify the bodies.

Emergency Registered Practitioners

4.34 Provisions are included in the 2026 Regulations for a streamlined application procedure for medical practitioners who have been registered by the General Medical Council under their provisions for emergency registration of medical practitioners in section 18A of the Medical Act 1983 (c.54). The purpose of which is to bolster the workforce in the event of a pandemic.

4.35 These procedures enable such medical practitioners to apply to be included in the medical performers list of a LHB where they had been on an equivalent list in the UK in the preceding five years and had only been removed from that list because they had not performed services in the previous 12 months or for some other reason unconnected with the impairment of their fitness to practise. Such applicants need not supply all the information normally supplied by performers list applicants, but there is also additional information obligations placed upon them. Provision is also made about the grounds on which LHBs can refuse such applicants and the grounds on which emergency registered practitioners can be removed from a medical performers list. No appeal rights lie in respect of decisions of LHBs to refuse to include, or to remove, such practitioners from a medical performers list.

5. Stakeholder engagement

5.1 As part of the 2022/23 General Medical Service (GMS) contract tripartite negotiations with representatives from LHBs the General Practitioners Committee (Wales) (GPC(W)) and the Welsh Government, it was agreed to

seek a review of the 2004 Regulations via a Task and Finish Group. The Group which included relevant stakeholders reported in 2024 with a number of recommendations for changes to the 2004 Regulations. In addition, a comparison was undertaken between the 2004 Regulations and the National Health Service (Performers Lists) (**England**) Regulations 2013 (“the 2013 Regulations”).

5.2 Officials collated the recommendations for amendments to the 2004 Regulations from the Task and Finish Group and provisions from the 2013 Regulations which officials recommended should be made to the 2004 Regulations.

5.3 The total proposed amendments were circulated to members of the Task and Finish group by way of stakeholder engagement for any comments. There were 3 responses to this engagement.

5.4 Following that, given the proposals for amendment are generally technical in nature and have been developed alongside relevant stakeholders as part of the Task and Finish Group, a 3-week stakeholder engagement exercise was undertaken on the then draft 2025 Regulations. This resulted in 10 responses where there was broad agreement to the majority of the proposals. On the whole the responses were positive. However, some responses highlighted certain technical/operational details that are reflected in revisions to the 2026 Regulations. Further limited stakeholder engagement was then undertaken. Responses were considered and revisions were made where considered appropriate and necessary.

6. Outcome of consultation with the Information Commissioner’s Office

6.1 Under Article 36(4) of the UK GDPR, the government is required to consult the Information Commissioner’s Office (ICO) on any proposals for legislative or statutory measures they are developing which involve the processing of personal data. The government duly consulted the ICO on the development of this instrument.

PART 2 – REGULATORY IMPACT ASSESSMENT

7. Regulatory Impact Assessment (RIA)

Introduction

7.1 In order to deliver NHS primary care services, medical and dental practitioners must be registered with a licence to practise with their respective professional regulators, General Medical Council (GMC) and General Dental Council (GDC), and must be on a performers list (PL) list if they wish to practice. In Wales performers lists are held by LHBs and administered by NHS Wales Shared Services Partnership on their behalf. There is legislative provision for performers lists in each of the constituent countries of the UK.

7.2 The 2026 Regulations give assurance that practitioners are suitable ('fit for purpose') to work independently to deliver NHS primary care services in Wales. The 2026 Regulations provide governance in primary care settings where many practitioners are independent contractors and practising without the oversight of an employer. A practitioner wishing to work in NHS primary care must satisfy checks, equivalent to employment checks, to be accepted on a performers list.

7.3 The 2026 Regulations require LHBs to establish, maintain and publish lists of medical and dental practitioners who may undertake primary care services in their area. The purpose of the 2026 Regulations is to ensure that practitioners are suitable to undertake clinical services and protect patients from any practitioners who are not suitable. They are also intended to prevent inefficiency and fraud. The legal framework enables LHBs to intervene at an early stage to ensure patient safety.

Background

7.4 As part of the 2022/23 General Medical Service (GMS) contract tripartite negotiations, with representative from the LHBs, the General Practitioners Committee (Wales) (GPC(W)) and the Welsh Government, it was agreed to seek a review of the National Health Service (Performers Lists) (Wales) Regulations 2004 ("the 2004 Regulations") via a Task and Finish Group. The Task and Finish Group was made up of representatives from Welsh Government, LHBs, the NHS Wales Shared Services Partnership, Health Education and Improvement Wales, the British Medical Association and the British Dental Association. The Group reported in 2024 with a number of recommendations for changes to the 2004 Regulations. In addition, a comparison was undertaken between the 2004 Regulations and the National Health Service (Performers Lists) (**England**) Regulations 2013 ("the 2013 Regulations").

Proposal

7.5 A raft of amendments were proposed to take account of policy developments, to reduce bureaucracy and create flexibility without compromising patient safety. The review highlighted where risks to patient

safety could be reduced, for example by ensuring that information on the performers list is valid and kept up to date and that there is a robust governance system in place.

7.6 Given the number of proposed amendments and due to the 2004 Regulations being over 20 years old, the 2004 Regulations will be revoked and replaced by the 2026 Regulations.

8. Options

Option 1

8.1 Revoke the 2004 Regulations and not make the 2026 Regulations.

8.2 This option would have the effect of abolishing a system that protects patients from unsuitable performers and could have huge costs in terms of patient safety.

Option 2

8.3 Keep the status quo. That is keep the 2004 Regulations in operation and not revoke them to make the 2026 Regulations.

Option 3

8.4 Make the 2026 Regulations. This is the preferred option.

9. Costs and benefits

Option 1

9.1 Revoke the 2004 Regulations and not make the 2026 Regulations.

9.2 If the 2004 Regulations were revoked, GPs and dentists would not need to be included in a performers list. This would mean that as long as the GP or dentist were on the relevant register of their Regulatory Body then they could practise in the NHS in Wales. This would mean that LHBs would have no control over these GPs or dentists and put patient safety at risk. To apply to be included in a performers list, the GP or dentist has to provide information, declarations and undertakings to the LHB. For example, names and addresses of clinical referees, enhanced criminal records certificate, professional experience, a copy of their appraisal but to name a few. In addition, being included in a performers list is not an end in themselves. Accordingly, admission to a list is not a once-for-all process. Once on a list, the GPs' and dentists' performance is regularly reviewed by the LHBs. The system is designed to ensure practitioners are fit to provide primary medical and dental services. The assignment of a responsible officer/medical director to a practitioner under the Medical Profession (Responsible Officers) Regulations 2010 is a key factor, for example, for appraisal and revalidation (medical only), performance concerns and accountability for that practitioner.

Benefit

9.3 There is no benefit with this option.

Costs

9.4 NHS Wales Shared Services Partnership (NWSSP) administer the performers lists on behalf of the LHBs. There would be a cost saving to NWSSP if the performers list were abolished.

Option 2

9.5 Keep the status quo. That is keep the 2004 Regulations in operation and not revoke them to make the 2026 Regulations.

Benefit

9.6 A performers list system would remain in place ensuring a level of patient safety by the checks and balances undertaken by NWSSP/LHBs. However, this would not take account of policy developments or the amendments put forward by stakeholders via the Task and Finish Group

Cost

9.7 This would be cost neutral.

Option 3

9.8 Make the 2026 Regulations. This is the preferred option.

Benefit

9.9 The 2026 Regulations would contain provisions to take account of policy developments over a number of years. The provisions reduce bureaucracy and create flexibility in the regulations without compromising patient safety. Where risk to patient safety has been identified through the review of the 2004 Regulations, provisions have been included in the 2026 Regulations for example by ensuring that information on the PL is accurate and kept up to date.

Cost

9.10 This would be cost neutral.

10. Competition Assessment

10.1 The making of the 2026 Regulations has no impact on the competitiveness of businesses, charities, or the voluntary sector.

11. Post implementation review

11.1 The same performers list system has been in place for over 20 years and operationally has run and worked smoothly. The making of the 2026 Regulations will not hinder that process. However, the 2026 Regulations will be kept under review to identify any further amendments that could be made to the Regulations to enhance the performers list system further.