

Frequently asked questions:

Registration requirements for independent medical practitioners under the Health and Social Care Act 2008

Introduction

This guidance provides information about the scope of registration under the Health and Social Care Act 2008 for independent medical practitioners that provide solely independent (private) practice or a mixture of both independent and NHS practice.

Background to the new system

1. The regulation of health and adult social care is changing. The Health and Social Care Act 2008 (the Act) introduced a new, single registration system that applies to all health and adult social care providers that carry on regulated activities. The new registration system marks a change from regulation that was based primarily on policies, systems and processes to regulation based primarily on outcomes – these are the experiences people have as a result of the care they receive.
2. If providers carry on a ‘regulated activity’ they are required to register with the Care Quality Commission under the new law. You can find the list of regulated activities we will register in the Health and Social Care Act 2008 (Regulated Activities) 2010 Regulations (the regulated activity regulations) on our website.
3. Where any ‘regulated activity’ is being delivered, the new law requires the person who is providing it to be registered with us. The list of activities includes many of the activities typically performed by independent doctors.
4. To register with us, providers must show that they are meeting new essential standards of quality and safety that apply across the health and adult social care sector. These standards apply to all providers of regulated activities, regardless of which sector they are in or what services they provide.
5. This guidance will help independent doctors and their colleagues to determine when registration is appropriate, and who must be registered with us as the provider of the relevant activity.

Practising privileges and registration

Q1: What distinguishes an independent doctor from an employee of a hospital or clinic?	“Practising privileges’ means the grant, by a person managing a hospital, to a medical practitioner of permission to practise as a medical practitioner in that hospital;... A ‘hospital’ means any institution for the reception and treatment of persons suffering from illness, and includes any clinics or outpatient departments associated with that hospital” (NHS 2006 Act, s. 275). In addition, regulation 4 of the Care Quality Commission
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	<p>(Registration) Regulations 2009 states that where a person grants practising privileges to another, the grantor is employing that other person.</p> <p>If a doctor has been granted practising privileges by a registered service provider, then for the purpose of the Health and social Care Act 2008, and regulation of their services by CQC, the doctor is construed as being ‘employed’ by that provider.</p> <p>We will therefore regard the legal entity running any hospital (referred to as the ‘registered service provider’) that has granted practising privileges to an independent doctor as the provider of the regulated activities that the doctor performs, and it must be registered in respect of them.</p> <p>This is because the Health & Social Care Act 2008 (Regulated Activities) Regulations 2010 defines employment as:</p> <ul style="list-style-type: none"> a) employment under a contract of service, an apprenticeship, a contract for services or otherwise than under a contract (including under a carer agreement); and b) the grant of practising privileges <p>The terms ‘employed’ and ‘employer’ should be construed accordingly.</p>
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<p>Q2: What are the implications for the provider if they grant practising privileges to doctors?</p>	<p>A registered service provider that is carrying on one or more regulated activities is required to comply with necessary regulations in respect of the people it employs, including those granted practising privileges.</p> <p>A provider should fulfill its requirements to carry out pre-employment checks, induction, training and appraisal for independent doctors to whom it has granted practising privileges, as well as for those it employs directly. The provider must ensure that services being provided by independent doctors are subject to the management and quality assurance systems required by the regulations.</p> <p>Please refer to outcome 12a in the publication <i>Guidance about compliance: Essential standards of quality and safety</i> as an example.</p>
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<p>Q3: What are the implications for a doctor if they have been granted practising</p>	<p>It is the responsibility of the service provider to ensure that they meet the requirements of the regulations, and that all employed staff, including doctors working under practising privileges, follow arrangements that have been put in place.</p>
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privileges?	<p>Doctors, and others granted practising privileges by the provider, are expected to follow the appropriate arrangements.</p> <p>If any doctor does not adhere to the provider’s policies, procedures and professional conduct requirements, they can expect the same action to be taken whether they are working under practising privileges or are permanent employees of the provider.</p> <p>Any doctor working under practising privileges is not required to register as the provider of a regulated activity in respect of the service they perform under those practising privileges.</p> <p>If the doctor also provides services elsewhere (i.e. other than for the registered service provider who has granted them practising privileges), they must register as the provider of the services (regulated activity(ies)) being carried on elsewhere, unless these services are also being provided under practising privileges of another registered provider.</p> <p>Note: there are general exemptions that may apply (see section on exemption for further information).</p>
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Q4: If a doctor rents a room or suite of rooms should they register with CQC?	<p>If a doctor rents a room or a suite of rooms and carries out one or more regulated activity(ies) in those rooms, then the doctor must register with CQC unless an exemption applies OR they are working under arrangements of practising privileges.</p> <p>Providing services under arrangements of practising privileges is only lawful if the person or organisation granting the practising privileges are themselves registered with CQC for the regulated activities being carried on by the doctor. In addition, the service provider granting practising privileges should consider the important points referred to in question 2 of this document.</p> <p>In summary:</p> <p>In a situation where a doctor rents rooms from a registered service provider AND has been granted practising privileges by that provider to perform the regulated activities in the rooms, then, providing the doctor has been granted practising privileges, it is the legal entity running the hospital or clinic that is required to register with CQC as the provider of the service being provided both by the doctor and by the hospital more widely.</p> <p>Registered service providers who provide outpatient rooms for rent in which regulated activities are carried out must be aware of the possibility of that activity forming part of their own overall provision of regulated activities. If this is the case, they should be aware that the requirement to comply with the regulations extends to the way that regulated activities are provided in the outpatient rooms – even</p>
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	<p>though the rooms are being 'rented'.</p> <p>If the registered service provider is not the provider of the regulated activities being carried on in any part of their premises, because they act only as a landlord and not the employer or grantor of practising privileges, then they should make it clear to people using the services that they are not carrying on the regulated activities in the outpatient facilities that are being rented.</p>
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<p>Q5: Groups of doctors working together – do they have to register separately and individually? What triggers them to be able to register as a 'group'?</p>	<p>If a group of doctors joins together to form a limited liability partnership (LLP) then it is the LLP that is the service provider if regulated activities are being provided by that partnership. An LLP will be a legal entity in its own right and should be registered with us as the provider of the regulated activities performed by its members.</p> <p>If a group of doctors joins together in an unincorporated partnership, then the partnership itself will be the legal entity required to register as the provider of the regulated activities involved. Practitioners will need to obtain their own legal advice about the implications of operating as a partnership. Applications can be made using the designated partnership form.</p> <p>In the case of a group of doctors who have set up services within their own premises (such as a leased, rented or owned property) AND each doctor carries on their own service separately within those premises, AND the group of doctors are not providing a joint service, then each doctor will be required to register individually as the provider of the regulated activity(ies) that they are providing.</p> <p>If a doctor has set up services within another provider's premises (such as a room sub-rented in a leased, rented or owned property) and the doctor carries on their own service separately within those premises, then each doctor will be required to register individually for the service (regulated activity(ies)) that they are providing.</p>
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<p>Q6: Under the new Health & Social Care Act 2008, what happens if I have a number of practices at different places?</p>	<p>Under the Health and Social Care Act 2008, it is the service provider that is required to register for each regulated activity that they are carrying on. However, the location at which that activity is carried on will be a condition of their registration.</p> <p>So, if a doctor (as an individual provider) carries on the same regulated activity in one or more private rooms, then only one registration is required. The locations at which that activity is carried on will be reflected in the conditions placed upon that registration. If the doctor provides more than one regulated activity, and in a mixture of locations and settings, then their activity will be covered by different</p>
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	<p>registration.</p> <p>For example, some activities may be carried on in private rooms that are not connected with any other registered provider, whereas some may be carried on under practising privileges at a private hospital. The doctor will need to register as a provider of the services being provided solely by him/herself in the rooms, whereas the services being delivered while working under practising privileges will not have to be included as part of the doctor's own registration application.</p> <p>When applying for registration, an individual doctor must notify us of any location at which they intend to perform a regulated activity as a sole provider. If they intend to provide services that will be regulated activities in other locations, and under different arrangements, they may be satisfied that those arrangements are covered by another provider's registration, if they are to omit them from their own applications.</p>
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Exemptions from registration

<p>Q7: Are the same exemptions that applied under the Care Standards Act 2000 carried over to The Health & Social Care Act 2008?</p>	<p>Exemptions from the need to be registered are complicated and now appear in The Health & Social Care Act 2008 (Regulated Activities) Regulations 2010. These will be continuously updated on our website.</p> <p>Generally speaking, the same exemptions that applied to doctors under the Care Standards Act 2000 have been reflected in the exemptions that apply to doctors under The Health & Social Care Act 2008. However, some of these exemptions are now time limited and doctors should obtain their own legal advice about the extent to which they will apply.</p> <p>The majority of exemptions are described as “general exemptions” and are outlined in schedule 2 of the Health & Social Care Act 2008 (Regulated Activities) Regulations 2010. These exemptions are detailed and may be found by the following link:</p> <p>http://www.opsi.gov.uk/si/si2009/uksi_20090660_en_1</p> <p>One exemption that has been removed by the new legislation is religious circumcision. Schedule 1, paragraph 7(c) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 defines surgical procedures carried out for the purpose of religious observance as a regulated activity. It is therefore clear that circumcision being carried out for religious observance (as well as for medical reasons) by a health care professional is subject to registration.</p>
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Q8: Can you explain the main 'NHS exemption' that applies to some independent doctors?

We advise you to refer to the full regulations when deciding whether your services may or may not be exempt. This is because the exemptions are complex and cannot be summarised here. There are a number of other exemptions, with some being time-limited and others with no time limit. You are welcome to contact us on an individual basis for help in determining whether your service may or may not be exempt or subject to registration.

The main 'NHS exemption' that is currently in place under the Care Standards Act 2000 has been transferred under the Health and Social Care Act 2008.

The high level exemptions that involve primary medical services and the NHS exemption are set out in schedule 2 paragraphs 3, 4 and 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2010, as follows:

1) The provision of all medical services (including medical services provided otherwise than under the 2006 Act) by a provider whose sole or main purpose is the provision of primary medical services

a) under arrangements made pursuant to the following sections of the 2006 Act

(i) section 3 (Secretary of State's duty as to provision of certain services),

(ii) section 83(2)(b) (primary medical services),

(iii) section 92 (arrangements by Strategic Health Authorities for the provision of primary medical services); or

b) under a contract entered into pursuant to section 84 of that Act (general medical services contracts: introductory).

NB: this exemption (above) will cease to have effect from 1 April 2012.

2) Subject to the exemption above in 1), and except where the exemption 2 (below) applies, the provision of treatment in a surgery or consulting room otherwise than under arrangements made pursuant to the 2006 Act by:

- an individual medical practitioner who also provides services (whether there or elsewhere) under arrangements made pursuant to the 2006 Act; or

- a group of medical practitioners all of whom also provide services (whether there or elsewhere) under arrangements made

	<p>pursuant to the 2006 Act.</p> <p>3) Exemption 2 does not apply in relation to:</p> <ul style="list-style-type: none"> • treatment carried out under anaesthesia or intravenously administered sedation; • dental treatment carried out under general anaesthesia; • obstetric services and, in connection with childbirth, medical services; • the termination of pregnancies; • cosmetic surgery, with the exception of the procedures referred to in paragraph 7(4) of Schedule 1; • haemodialysis or peritoneal dialysis; • endoscopy; or • the provision of hyperbaric therapy, being the administration of oxygen (whether or not combined with one or more other gases) to a person who is in a sealed chamber which is gradually pressurised with compressed air, where such therapy is carried out by or under the supervision or direction of a medical practitioner. <p>Please refer to pages 9 and 10 of our guidance on the scope of registration for further information.</p> <p>http://www.cqc.org.uk/guidanceforprofessionals/introductiontoregistration.cfm</p> <p>Please note: this guidance may be updated in the near future.</p>
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<p>Q9: Is anything going to change regarding the 'NHS exemption'?</p>	<p>The Department of Health will continue to review these exemptions, which may be subject to further consultation.</p>
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<p>Q10: There are other exemptions that apply to doctors – can you broadly outline some of these?</p>	<p>The legislation includes a number of exemptions. We advise you to refer to our website and read the guidance in order to identify whether your services are subject to registration.</p> <p>However, you may use the following information as general guidance.</p> <p>The following services may be exempt from registration:</p> <p><i>The provision of services (other than in a surgery, consulting room or</i></p>
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	<p><i>hospital) involving treatment by medical practitioners working for the purposes of an undertaking which also provides such services in pursuance of the 2006 Act.</i></p> <p>This exemption will cease to have effect on 1 April 2012.</p> <p><i>(Paragraph 8, Schedule 1, Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 Medical services provided (otherwise than in a hospital) only under arrangements made on behalf of service users by</i></p> <p><i>their employer;</i></p> <p><i>a government department; or</i></p> <p><i>an insurance provider with whom the service users hold an insurance policy, other than an insurance policy which is solely or primarily intended to provide benefits in connection with the diagnosis or treatment of physical or mental illness, disability or infirmity.</i></p> <p>There is currently no time limit on this exemption.</p> <p><i>Forensic medical services provided under arrangements made with a police authority as defined in section 101 (interpretation) of the Police Act 1996</i></p> <p>There is currently no time limit on this exemption.</p>
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<p>Q11: Are occupational health doctors exempt from registration?</p>	<p>Occupational Health is not specifically referred to within the legislation (either the old legislation or the new). However, as indicated above in the answer to Q10, the general exemptions make it clear that:</p> <p><i>Medical services provided (otherwise than in a hospital) only under arrangements made on behalf of service users by</i></p> <p><i>their employer;</i></p> <p><i>a government department; or</i></p> <p><i>an insurance provider with whom the service users hold an insurance policy, other than an insurance policy which is solely or primarily intended to provide benefits in connection with the diagnosis or treatment of physical or mental illness, disability or infirmity.</i></p> <p>As this is a general exemption, it applies to all of the regulated activities, providing that they are not undertaken in a hospital. Therefore, whether it is diagnostics and screening procedures, treatment of disease disorder or injury or a surgical procedure, it will be exempt. However, if surgery or any other regulated activity is undertaken in a hospital the exemption does not apply.</p>
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Q12: Will providers applying for registration for Treatment of Disease, Disorder and Injury have to apply for Diagnostics and screening procedures too?

It is feasible that a service that provides treatment of disease, disorder or injury will NOT carry on the regulated activity of diagnostic and screening procedures. However, it is equally feasible (probably more likely) that a service providing the regulated activity of treatment of disease disorder of injury will also carry on the regulated activity of diagnostic and screening procedures – in which case the provider will be required to register for both regulated activities.

Please refer to our guidance on the scope of registration for further information.

<http://www.cqc.org.uk/guidanceforprofessionals/introductiontoregistration.cfm>

Note: this guidance may be updated in the near future. If you are unable to access it for any reason, please contact us.