SCOTTISH STATUTORY INSTRUMENTS

2018 No. 66

The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018

PART 4

HEALTH SERVICE BODY STATUS

Health service body status

13.—(1) Where a proposed contractor elects, in a written notice served on the Health Board at any time prior to the contract being entered into, to be regarded as a health service body for any purposes of section 17A of the Act(**1**) (NHS Contracts), it will be so regarded from the date on which the contract is entered into but only for the purposes of that contract.

(2) Where a contract is made with a partnership, and that partnership is to be regarded as a health service body in accordance with paragraph (1) or (4), the contractor will, subject to paragraph (3), continue to be regarded as a health service body for any purposes of section 17A of the Act for as long as that contract continues irrespective of any change in the membership of the partnership.

(3) A contractor may at any time request in writing a variation of the contract to include or remove provision from the contract that the contract is an NHS contract and, if the contractor does so—

(a) the Health Board must agree to the variation; and

(b) the procedure in paragraph 94(1) of schedule 6 applies.

(4) If, pursuant to paragraph (3), the Health Board agrees to the variation to the contract, the contractor will—

(a) be regarded; or

(b) subject to paragraph (6), cease to be regarded,

as a health service body for any purposes of section 17A of the Act from the date that variation is to take effect pursuant to paragraph 94(1) of schedule 6.

(5) Subject to paragraph (6), a contractor ceases to be a health service body for the purposes of section 17A of the Act if the contract terminates.

(6) Where a contractor ceases to be a health service body pursuant to—

(a) paragraph (4), the contractor will, if the contractor or the Health Board has referred any matter to the Scottish Ministers for determination under section 17A(4) of the Act before the contractor ceases to be a health service body, be bound by the determination of the adjudicator;

(**1**) Section 17A was inserted by section 30 of the National Health Service and Community Care Act 1990 (c.19) ("the 1990 Act"). Section 17A was moved under a new heading entitled "NHS Contracts" by section 31 of the National Health Service (Primary Care) Act 1997 (c.46) ("the 1997 Act"). Section 17 was amended by paragraph 102 of schedule 1 of the Health Authorities Act 1995 (c.17), paragraph 36 of schedule 2 of the 1997 Act, paragraph 46 of schedule 4 and paragraph 1 of schedule 5 of the Health Act 1999 (c.8), paragraph 1 of schedule 14 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43), paragraph 8 of schedule 17 of the Public Services Reform (Scotland) Act 2010 (asp 8) and paragraph 2 of schedule 21 of the Health and Social Care Act 2012 (c.7).

(b) paragraph (5), it will continue to be regarded as a health service body for the purposes of the NHS dispute resolution procedure where that procedure has been commenced—

(i) before the termination of the contract; or

(ii) after the termination of the contract, whether in connection with or arising out of the termination of the contract or otherwise,

for which purposes it ceases to be such a body on the conclusion of that procedure.

(7) If, pursuant to paragraph (1) or (4), a contractor is to be regarded as a health service body, section 17A has effect in relation to such a person subject to the following modifications:—

(a) for subsection (4), substitute—

"(4) Whether or not an arrangement which constitutes an NHS contract would, apart from this subsection, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities but, if any dispute arises out of or in connection with the NHS contract, either party may refer the matter to the Scottish Ministers for determination in accordance with the NHS dispute resolution procedure specified in paragraphs 91 and 92 of schedule 6 of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018.";

(b) after subsection (4), insert—

"(4A) In subsection (4), the reference to "any dispute arises out of or in connection with the NHS contract" includes any dispute arising out of or in connection with the termination of the contract.";

(c) subsections (5), (6) and (7) do not apply; and

(d) in subsections (8) and (9), for any reference to "the person appointed under subsection (6)", substitute a reference to "the panel appointed by the Scottish Ministers under paragraph 91 of schedule 6 of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018".