SCHEDULE 6

OTHER CONTRACTUAL TERMS

PART 4

PERSONS WHO PERFORM SERVICES

Qualifications of performers

46.—(1) Subject to sub-paragraph (2), no medical practitioner may perform medical services under the contract unless the practitioner is—

(a) included in the primary medical services performers' list for the Health Board which is under a duty to provide or secure the provision of the service to be performed;

(b) not suspended from that list or from the Medical Register; and

(c) not subject to interim suspension under section 41A of the Medical Act 1983 (interim orders)(**1**).

(2) Sub-paragraph (1)(a) does not apply in the case of—

(a) a medical practitioner employed in Scotland, by a Health Board, in England and Wales, by an NHS trust, an NHS foundation trust, or, in Northern Ireland, by a Health and Social Care trust who is providing services other than primary medical services at the practice premises;

(b) a person who is provisionally registered under section 15 (provisional registration), 15A (provisional registration for EEA nationals) or 21 (provisional registration of EEA nationals with certain overseas qualifications) of the Medical Act 1983(**2**) acting in the course of the person's employment in a resident medical capacity in an approved practice setting within the meaning of section 44D of the Medical Act 1983 (approved practice settings)(**3**); or

(c) a GP Registrar who has applied to the Health Board to have the GP Registrar's name included in the primary medical services performers list of the Health Board, until the first of the following events arises—

(i) the Health Board notifies the GP Registrar of the Board's decision on that application;

(ii) the end of a period of 2 months, starting with the date on which the GP Registrar's vocational training scheme begins.

(3) In this paragraph, "vocational training scheme" has the meaning given in regulation 2 (interpretation) of the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004(**4**).

Qualifications of performers

47. No health care professional other than one to whom paragraph 46 applies may perform clinical services under the contract unless the health care professional is appropriately registered

(**1**) 1983 c.54. Section 41A was inserted by S.I. 2000/1803 and amended by S.I. 2002/3135, S.I. 2006/1914 and S.I. 2015/794.
(**2**) Section 15 was substituted by S.I. 2006/1914. Section 15A was inserted by S.I. 2000/3041 and amended by S.I. 2006/1914, S.I. 2007/3101 and S.I. 2011/1043. Section 21 was amended by S.I. 2002/3135, S.I. 2006/1914 and S.I. 2007/3101.
(**3**) Section 44D was inserted by S.I. 2006/1914.
(**4**) S.S.I. 2004/114 was relevantly amended by S.I. 2010/234.

with the health care professional's relevant professional body and the health care professional's registration is not currently suspended.

Qualifications of performers

48. Where the registration of a health care professional or, in the case of a medical practitioner, the practitioner's inclusion in a list, is subject to conditions, the contractor must ensure compliance with those conditions insofar as they are relevant to the contract.

Qualifications of performers

49. No health care professional may perform any clinical services unless the health care professional has such clinical experience and training as are necessary to enable the health care professional properly to perform such services.

Conditions for employment and engagement

50.—(1) Subject to sub-paragraphs (2) and (3), a contractor must not employ or engage a medical practitioner (other than one falling within paragraph 46(2)) unless—

(a) that practitioner has provided it with the name and address of the Health Board on whose primary medical services performers list the practitioner appears; and

(b) the contractor has checked that the practitioner meets the requirements in paragraph 46.

(2) Where the employment or engagement of a medical practitioner is urgently needed and it is not possible for the contractor to check the matters referred to in paragraph 46 in accordance with sub-paragraph (1)(b) before employing or engaging the practitioner, the practitioner may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

(3) Where the prospective employee is a GP Registrar, the requirements set out in sub-paragraph (1) apply with the modifications that—

(a) the name and address provided under sub-paragraph (1) may be the name and address of the Health Board on whose primary medical services performers list the GP Registrar has applied for inclusion; and

(b) confirmation that the GP Registrar's name appears on that list will not be required until the end of the first two months of the GP Registrar's training period.

Conditions for employment and engagement

51.—(1) A contractor must not employ or engage—

(a) a health care professional (other than one to whom paragraph 46 applies) unless the contractor has checked that the health care professional meets the requirements in paragraph 47; or

(b) a health care professional to perform clinical services unless the contractor has taken reasonable steps to satisfy itself that the health care professional meets the requirements in paragraph 49.

(2) Where the employment or engagement of a health care professional is urgently needed and it is not possible to check the matters referred to in paragraph 47 in accordance with sub-paragraph (1) before employing or engaging that person, the health care professional may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

(3) When considering a health care professional's experience and training for the purposes of sub-paragraph (1)(b), the contractor must have regard in particular to—

(a) any post-graduate or post-registration qualification held by the health care professional; and

(b) any relevant training undertaken by the health care professional and any relevant clinical experience gained by the health care professional.

Conditions for employment and engagement

52.—(1) The contractor must not employ or engage a health care professional to perform medical services under the contract unless—

(a) that person has provided two clinical references, relating to two recent posts (which may include any current post) as a health care professional which lasted for three months without a significant break, or where this is not possible, a full explanation and alternative referees; and

(b) the contractor has checked and is satisfied with the references.

(2) Where the employment or engagement of a medical practitioner is urgently needed and it is not possible to obtain and check the references in accordance with sub-paragraph (1)(b) before employing or engaging the practitioner, the practitioner may be employed or engaged on a temporary basis for a single period of up to 14 days whilst the practitioner's references are checked and considered, and for an additional single period of a further 7 days if the contractor believes the person supplying those references is ill, on holiday or otherwise temporarily unavailable.

(3) Where the contractor employs or engages the same person on more than one occasion within a period of three months, it may rely on the references provided on the first occasion, provided that those references are not more than twelve months old.

Conditions for employment and engagement

53.—(1) Before employing or engaging any person to assist it in the provision of services under the contract, the contractor must take reasonable care to satisfy itself that the person in question is both suitably qualified and competent to discharge the duties for which the person is to be employed or engaged.

(2) The duty imposed by sub-paragraph (1) is in addition to the duties imposed by paragraphs 50 to 52.

(3) When considering the competence and suitability of any person for the purpose of sub-paragraph (1), the contractor must have regard, in particular, to—

(a) that person's academic and vocational qualifications;

(b) that person's education and training; and

(c) that person's previous employment or work experience.

Training

54. The contractor must ensure that for any health care professional who is—

(a) performing clinical services under the contract; or

(b) employed or engaged to assist in the performance of such services,

there are in place arrangements for the purpose of maintaining and updating the health care professional's skills and knowledge in relation to the services which the health care professional is performing or assisting in performing.

Training

55. The contractor must afford to each employee reasonable opportunities to undertake appropriate training with a view to maintaining that employee's competence.

Terms and conditions

56. The contractor may only offer employment to a general medical practitioner on terms and conditions which are no less favourable than those contained in the "Model terms and conditions of service for a salaried general practitioner employed by a GMS practice" published by the British Medical Association and the NHS Confederation as item 1.2 of the supplementary documents to the GMS contract 2003(**5**).

Arrangements for GP Registrars

57.—(1) The contractor may only employ or engage a GP Registrar subject to the conditions in sub-paragraph (2).

(2) The conditions referred to in sub-paragraph (1) are that the contractor must not, by reason only of having employed or engaged a GP Registrar, reduce the total number of hours for which other medical practitioners perform primary medical services under the contract or for which other staff assist them in the performance of those services.

(3) A contractor which employs or engages a GP Registrar is to—

(a) offer the GP Registrar terms of employment in accordance with the rates and subject to the conditions contained in any directions given by the Scottish Ministers to NHS Education for Scotland(**6**) concerning the grants, fees, travelling and other allowances payable to GP Registrars; and

(b) take into account any guidance issued by the Scottish Ministers in relation to the GP Registrar Scheme(**7**).

Independent prescribers and supplementary prescribers

58.—(1) Where—

(a) a contractor employs or engages a person who is an independent prescriber or a supplementary prescriber whose functions will include prescribing;

(b) a contractor is a partnership or limited liability partnership and one of the partners or members as the case may be is an independent prescriber or a supplementary prescriber whose functions will include prescribing;

(c) a contractor is a company and one of the members is an independent prescriber or a supplementary prescriber whose functions will include prescribing; or

(d) the functions of a person who is an independent prescriber or a supplementary prescriber whom the contractor already employs or has already engaged are extended to include prescribing,

it must notify the Health Board in writing within the period of 7 days beginning with the date on which the contractor employed or engaged the person, the person became a partner or member as

(**5**) This document is published jointly by the General Practitioners Committee of the British Medical Association and the NHS Confederation.

(**6**) NHS Education Scotland is a Special Health Board established under section 2(1)(b) of the Act by S.S.I. 2002/103 (as relevantly amended by S.S.I. 2006/79) which applies section 2(5) of the Act to NHS Education Scotland as it applies to Health Boards.

(**7**) The current guidance is PCS(GPR) 2009/1, which is available at http://www.sehd.scot.nhs.uk/pcs/PCS2009(GPR)01.pdf, as amended by PCS(GPR) 2011/1, which is available at http://www.sehd.scot.nhs.uk/pcs/PCS2011(GPR)01.pdf and as amended by PCS(GPR) 2015/1, which is available at http://www.sehd.scot.nhs.uk/pcs/PCS2015(GPR)01.pdf.

the case may be of the partnership, limited liability partnership or company that is a party to the contract (unless, immediately before becoming such a partner or member of that partnership, limited liability partnership or company that is such a party, the person fell under sub-paragraph (1)(a)) or the person's functions were extended as the case may be.

(2) Where—

(a) the contractor ceases to employ or engage a person who is an independent prescriber or a supplementary prescriber whose functions included prescribing;

(b) the partner or member, as the case may be, in a partnership or limited liability partnership who is an independent prescriber or a supplementary prescriber whose functions include prescribing, ceases to be a partner or member of the partnership or limited liability partnership;

(c) the member of a company who is an independent prescriber or a supplementary prescriber whose functions include prescribing, ceases to be a member of the company;

(d) the functions of a person who is an independent prescriber or a supplementary prescriber whom the contractor employs or engages in its practice are changed so that they no longer include prescribing; or

(e) the contractor becomes aware that a person who is an independent prescriber or a supplementary prescriber whom the contractor employs or engages has been removed or suspended from the relevant register,

it must notify the Health Board in writing by the end of the second working day after the day when the event occurred.

(3) The contractor must provide the following information when it notifies the Health Board in accordance with sub-paragraph (1)—

(a) the person's full name;

(b) the person's professional qualifications;

(c) the person's identifying number which appears in the relevant register;

(d) the date on which the person's entry in the relevant register was annotated to the effect that the person was qualified to order drugs, medicines and appliances for patients;

(e) the date on which—

(i) the person was employed or engaged, if applicable;

(ii) the person became a partner or member, as the case may be in the partnership or limited liability partnership, if applicable;

(iii) the person became a member of the company, if applicable; or

(iv) one of the person's functions became prescribing in its practice.

(4) The contractor must provide the following information when it notifies the Health Board in accordance with sub-paragraph (2)—

(a) the person's full name;

(b) the person's professional qualifications;

(c) the person's identifying number which appears in the relevant register;

(d) the date on which—

(i) the person ceased to be employed or engaged in its practice;

(ii) the person ceased to be a partner or member, as the case may be in the partnership or limited liability partnership;

(iii) the person ceased to be a member of the company;

(iv) the person's functions changed so as no longer to include prescribing; or

(v) the person was removed or suspended from the relevant register.

Signing of documents

59.—(1) In addition to any other requirements relating to such documents whether in these Regulations or otherwise, the contractor must ensure that the documents specified in sub-paragraph (2) include—

(a) the clinical profession of the health care professional who signed the document; and

(b) the name of the contractor on whose behalf it is signed.

(2) The documents referred to in sub-paragraph (1) are—

(a) certificates issued in accordance with regulation 25, unless regulations relating to particular certificates provide otherwise;

(b) prescription forms; and

(c) any other clinical documents.

Level of skill

60. The contractor must carry out its obligations under the contract with reasonable skill and care.

Appraisal and assessment

61.—(1) The contractor must ensure that any medical practitioner performing services under the contract—

(a) participates in the appraisal system provided by the Health Board unless the practitioner participates in an appropriate appraisal system provided by another health service body or is an armed forces GP; and

(b) co-operates with any assessment process which the Health Board operates in relation to poorly performing doctors, as set out in NHS circular PCA(M)(2001)17(**8**).

(2) The Health Board must provide an appraisal system for the purposes of sub-paragraph (1)(a) after consultation with the area medical committee and such other persons as appear to the Health Board to be appropriate.

(3) In sub-paragraph (1)—

"armed forces GP" means a medical practitioner who is employed on a contract of service by the Ministry of Defence, whether or not as a member of the United Kingdom Armed Forces of Her Majesty; and

"health service body" does not include any person who is to be regarded as a health service body in accordance with regulation 13.

Sub-contracting of clinical matters

62.—(1) Subject to sub-paragraph (2), the contractor may not sub-contract any of its rights or duties under the contract in relation to clinical matters unless—

(a) in all cases, it has taken reasonable steps to satisfy itself that—

(i) it is reasonable in all the circumstances; and

(**8**) Published by the then Scottish Executive as NHS Circular PCA(M)(2001)(17), copies available at http://www.sehd.scot.nhs.uk/pca/pca2001(m)17.htm.

(ii) the proposed sub-contractor person is qualified and competent to provide the service; and

(b) it has notified the Health Board of its intention to sub-contract as soon as reasonably practicable before the date on which the proposed sub-contract is intended to come into force.

(2) Sub-paragraph (1)(b) does not apply to a contract for services with a health care professional for the provision by that person of clinical services.

(3) The notification referred to in sub-paragraph (1)(b) must include—

(a) the name and address of the proposed sub-contractor;

(b) the duration of the proposed sub-contract;

(c) the services to be covered;

(d) the address of any premises to be used for the provision of services ; and

(e) whether the sub-contractor, if that sub-contractor were a contractor, would have sufficient involvement in patient care in terms of section 17L(3) and (4) of the Act(**9**).

(4) Following receipt of a notice in accordance with sub-paragraph (1)(b), the Health Board may request such further information relating to the proposed sub-contract as appears to it to be reasonable and the contractor must supply such information promptly.

(5) The contractor will not proceed with the sub-contract or, if it has already taken effect, must take appropriate steps to terminate it, where, within 28 days of receipt of the notice referred to in sub-paragraph (1)(b), the Health Board has served notice of objection to the sub-contract on the grounds that—

(a) the sub-contract would—

(i) put at serious risk the safety of the contractor's patients; or

(ii) put the Board at risk of material financial loss;

(b) the sub-contractor would be unable to meet the contractor's obligations under the contract; or

(c) the sub-contractor would not have sufficient involvement in patient care in terms of section 17L(3) and (4) of the Act, if that sub-contractor were a contractor.

(6) Where the Health Board objects to a proposed sub-contract in accordance with sub-paragraph (5), it must include with the notice of objection a statement in writing of the reasons for its objections.

(7) Sub-paragraphs (1) and (3) to (6) also apply in relation to any renewal or material variation of a sub-contract in relation to clinical matters.

(8) Where a Health Board does not object to a proposed sub-contract under sub-paragraph (5), the parties to the contract will be deemed to have agreed a variation of the contract which has the effect of adding to the list of practice premises any premises whose address was notified to it under sub-paragraph (3)(d) and paragraph 94 (1) does not apply.

(9) A contract with a sub-contractor must prohibit the sub-contractor from sub-contracting the clinical services it has agreed with the contractor to provide.

(10) The contractor may not sub contract any of its rights or duties under the contract in relation to the provision of essential services to a company, partnership or limited liability partnership—

(a) owned wholly or partly by the contractor, or by any former or current employee of, or partner or member of the contractor;

(**9**) Section 17L was substituted by section 39(1) of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3).

(b) formed by or on behalf of the contractor, or from which it derives or may derive a pecuniary benefit; or

(c) formed by or on behalf of a former or current employee of, or partner or partner or member of the contractor, or from which such a person derives or may derive a pecuniary benefit,

where that company, partnership or limited liability partnership is or was formed wholly or partly for the purpose of avoiding the restrictions on the sale of goodwill of a medical practice in section 35 of the Act(**10**) or any regulations made wholly or partly under that section.

(**10**) Section 35 was substituted by section 34(2) of the National Health Service (Primary Care) Act 1997 (c.46) and amended by paragraph 1 of schedule 1 of the Primary Medical Services (Scotland) Act 2004 (asp 1).