
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 116

**The National Health Service (Primary Medical Services
Section 17C Agreements) (Scotland) Regulations 2004**

PART 2

PROVIDERS

General conditions relating to providers

3.—(1) Subject to the provisions of any order made by the Scottish Ministers under section 7 (ancillary provision) of the 2004 Act a Health Board may only make an agreement with one or more of the persons falling within section 17D(1)(b), (d) or (e) of the Act⁽¹⁾, where—

- (a) if a person is an individual, the individual;
- (b) if a person is a partnership, any member of the partnership and the partnership; and
- (c) if a person is a company limited by shares—
 - (i) the company;
 - (ii) any person legally and beneficially owning a share in the company; and
 - (iii) any director or secretary of the company,satisfies the condition set out in paragraph (2).

(2) It is a condition that the person must not—

- (a) be the subject of a national disqualification;
- (b) subject to paragraph (3), be disqualified or suspended (otherwise than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;
- (c) within the period of 5 years prior to the signing of the agreement or commencement of the agreement, whichever is the earlier, have been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless the person has subsequently been employed by that health service body or another health service body and paragraph (4) applies to that person, or that dismissal was the subject of a finding of unfair dismissal by any competently established tribunal or court;
- (d) within the period of 5 years prior to signing the agreement or commencement of the agreement, whichever is the earlier, have been disqualified from a list unless the person's name has subsequently been included in such a list;
- (e) have been convicted in the United Kingdom of murder;
- (f) have been convicted in the United Kingdom of a criminal offence, other than murder, and been sentenced to a term of imprisonment of over 6 months;

(1) 1978, c. 29. Section 17D(1) was inserted by the National Health Service (Primary Care) Act 1997 (c. 46), section 21(2) and amended by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 2(3).

- (g) subject to paragraph (5), have been convicted elsewhere of an offence which would if committed in Scotland, constitute—
- (i) murder; or
 - (ii) a criminal offence other than murder, and been sentenced to a term of imprisonment of over 6 months;
- (h) have been convicted of an offence referred to in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children under the age of 17 years to which special provisions apply)⁽²⁾ or Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons with respect to which special provisions apply)⁽³⁾;
- (i) have—
- (i) had sequestration of the person’s estate awarded or been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order has been annulled;
 - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986⁽⁴⁾ unless that order has ceased to have effect or has been annulled; or
 - (iii) made a composition or arrangement with, or granted a trust deed for, the person’s creditors unless the person has been discharged in respect of it;
- (j) have an administrator, administrative receiver or receiver appointed in respect of the person;
- (k) have been—
- (i) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽⁵⁾ (powers of the Court of Session to deal with the management of charities), from being concerned in the management or control of any body; or
 - (ii) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which the person by that person’s conduct contributed to or facilitated;
- (l) be subject to a disqualification order under the Company Directors Disqualification Act 1986⁽⁶⁾, the Companies (Northern Ireland) Order 1986⁽⁷⁾ or to an order made under section 429(2)(b) of the Insolvency Act 1986⁽⁸⁾ (failure to pay under county court administration order); or
- (m) fall within regulation 5(2)(m) of the GMS Contracts Regulations.
- (3) A person shall not fall within paragraph (2)(b) where the Health Board is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and it does not make the person unsuitable to be—
- (a) a party to the agreement;

(2) 1995 c. 46.

(3) 1933 c. 12 as amended by the Sexual Offences Act 1956 (c. 69), sections 48 and 51 and Schedules 3 and 4 and the Criminal Justice Act 1988 (c. 33) (“the 1988 Act”), section 170, Schedule 15, paragraph 8 and Schedule 16, paragraph 16; and as modified by the 1988 Act, section 170(1) Schedule 15, paragraph 9.

(4) 1986 c. 45. Schedule 4A was inserted by section 257 of and Schedule 20 to the Enterprise Act 2002 (c. 40).

(5) 1990 c. 40.

(6) 1986 c. 46.

(7) S.I.1986/1032 (N.I. 6).

(8) 1986 c. 45 as amended by the Insolvency Act 2000 (c. 39).

- (b) in the case where the person is a partner in a partnership that is a proposed party to the agreement, a partner in that partnership;
 - (c) in the case where the person is—
 - (i) a person legally and beneficially holding a share in a company limited by shares that is a proposed party to the agreement; or
 - (ii) a director or secretary of a company limited by shares that is a proposed party to the agreement,
a person legally and beneficially holding a share in that company, or a director or secretary of that company (as the case may be).
- (4) Where a person has been employed as a member of a health care profession any subsequent employment must also be as a member of that profession.
- (5) A person shall not fall within paragraph (2)(g) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—
- (a) a party to the agreement;
 - (b) in the case where the person is a partner in a partnership that is a proposed party to the agreement, a partner in that partnership;
 - (c) in the case where the person is—
 - (i) a person legally and beneficially holding a share in a company limited by shares that is a proposed party to the agreement; or
 - (ii) a director or secretary of a company limited by shares that is a proposed party to the agreement,
a person legally and beneficially holding a share in that company, or a director or secretary of that company (as the case may be).
- (6) In this regulation, “health service body” does not include any provider who is to be treated as a health service body in accordance with regulation 8.

Reasons

- 4.—(1) Where a Health Board is of a view that a person does not satisfy the condition in regulation 3(2), it shall notify in writing the person intending to make an agreement of the Health Board’s view and its reasons for that view, and of that person’s right of appeal under regulation 5.
- (2) The Health Board shall also notify in writing of its view and its reasons for that view—
- (a) any other persons intending to make the agreement;
 - (b) any partner in a partnership that is notified under paragraph (1); and
 - (c) any person legally and beneficially owning a share in, or a director or secretary of, a company that is notified under paragraph (1) where its reasons for that view relate to that person or persons.

Appeal

5. A person who has been served with a notice under regulation 4(1) may appeal to the Scottish Ministers against the decision of the Health Board by giving notice in writing to the Scottish Ministers within the period of 28 days beginning on the day that the Health Board served its notice.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Prescribed period under section 17D(3) of the Act

6. The period prescribed for the purposes of section 17D(3) of the Act (persons with whom agreements may be made)⁽⁹⁾ is 6 months.

⁽⁹⁾ Section 17D(3) was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 2(3)(e).