

2010 No. 394

NATIONAL HEALTH SERVICE

**The National Health Service (General Medical Services
Contracts) (Scotland) Amendment Regulations 2010**

Made - - - - *9th November 2010*
Laid before the Scottish Parliament *11th November 2010*
Coming into force - - *22nd December 2010*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9(6), 17L(1)(a), (c), (d) and (e), (5), (6) and (7), 17N, 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978(a) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the National Health Service (General Medical Services Contracts) (Scotland) Amendment Regulations 2010 and come into force on 22nd December 2010.

(2) In these Regulations “the 2004 Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(b).

Amendment of the 2004 Regulations

2. The 2004 Regulations are amended as follows.

3. In regulation 2 (interpretation)—

(a) after the definition of “closed” insert—

““conditional disqualification” has the same meaning as in section 29C(1) of the Act(c) and includes a decision under provisions in force in England, Wales or Northern Ireland corresponding (whether or not exactly) to a conditional disqualification;”;

(b) for the definition of “disqualified” substitute—

““disqualified” means, unless the context otherwise requires, disqualified by the Tribunal (or a corresponding decision under provisions in force in England, Wales or Northern Ireland corresponding, whether or not exactly, to disqualified), but does not

(a) 1978 c.29, section 17N was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1) section 4; section 17L was substituted by the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3), section 39; section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 29 and Schedule 9, paragraph 24 and by the Health Act 1999 (c.8), Schedule 4, paragraph 60. Section 108(1) defines “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.S.I. 2004/115.

(c) Section 29C(1) was inserted by the Health Act 1999 (c.8), section 58.

include conditional disqualification, and “disqualification” shall be construed accordingly;”;

- (c) in the definition of “list”, for the word “contact”, substitute “context”;
- (d) omit the definitions of “local or national disqualification” and “national disqualification”;
- (e) in the definition of “health care professional”, for the words “section 17L(5)”, substitute “section 17L(8)”.

4. For regulation 3 (conditions: general), substitute—

“Conditions: general

3. A Health Board may only enter into a contract if the conditions set out in regulations 4, 5 and 5A are met.”.

5. For regulation 4 (conditions relating solely to medical practitioners), substitute—

“Conditions relating solely to medical practitioners

4.—(1) In the case of a contract to be entered into with a medical practitioner, that practitioner must be a general medical practitioner who satisfies the conditions in regulations 5 and 5A.

(2) In the case of a contract to be entered into with a partnership—

- (a) at least one partner (who must not be a limited partner) must be a general medical practitioner;
- (b) all the other partners must be individuals; and
- (c) all the partners must satisfy the conditions in regulations 5 and 5A.

(3) In the case of a contract to be entered into with a limited liability partnership—

- (a) at least one member must be a general medical practitioner;
- (b) all the other members must be individuals; and
- (c) all the members must satisfy the conditions in regulations 5 and 5A.

(4) In the case of a contract to be entered into with a company—

- (a) at least one member of the company must be a general medical practitioner;
- (b) all other members must be individuals;
- (c) all the members must satisfy the conditions in regulations 5 and 5A, and
- (d) any director or secretary of the company must satisfy the conditions in regulation 5.

(5) In paragraphs (1), (2)(a), (3)(a) and (4)(a), “general medical practitioner” does not include a medical practitioner whose name is included in the General Practitioner Register by virtue of—

- (a) article 4(3) of the 2010 Order (general practitioners eligible for entry in the General Practitioner Register) because of an exemption under regulation 5(1)(d) of one of the sets of Regulations specified in paragraph (6);
- (b) article 6(2) of the 2010 Order (persons with acquired rights) by virtue of being a restricted service principal (within the meaning of one or more of the sets of Regulations specified in paragraph (7)) included in a list specified in that article; or
- (c) article 6(6) of the 2010 Order.

(6) The regulations referred to in paragraph (5)(a) are the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998, the National Health Service (Vocational Training for General Medical Practice) Regulations 1997 and the Medical Practitioners (Vocational Training) Regulations (Northern Ireland) 1998.

(7) The regulations referred to in paragraph (5)(b) are the National Health Service (General Medical Services) Regulations 1992, the National Health Service (General Medical Services) (Scotland) Regulations 1995 and the General Medical Services Regulations (Northern Ireland) 1997.”.

6. For regulation 5 (general conditions relating to all contracts), substitute—

“General conditions relating to all contracts

5.—(1) It is a condition in the case of a contract to be entered into—

- (a) with a medical practitioner, that the medical practitioner;
- (b) with a partnership, that any member of the partnership or the partnership;
- (c) with a limited liability partnership, that any member of the limited liability partnership or the limited liability partnership; and
- (d) with a company, that—
 - (i) the company,
 - (ii) any member of the company,
 - (iii) any director or secretary of the company,

must not fall within paragraph (2).

(2) A person falls within this paragraph if—

- (a) the person has been disqualified or suspended by direction of the Tribunal made pursuant to section 32A(2) (applications for interim suspension) or 32B(1) (suspension pending appeal) of the Act, or under any provisions in force in England, Wales or Northern Ireland corresponding thereto;
- (b) subject to paragraph (3), the person is 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 contract or commencement of the contract, whichever is the earlier, the person has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body, unless—
 - (i) the person has subsequently been employed by that health service body or another health service body and, where the person has been employed as a member of a health care profession, any subsequent employment has also been as a member of that profession; or
 - (ii) 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 contract or commencement of the contract, whichever is the earlier, the person has been disqualified from a list anywhere in the United Kingdom unless the person’s name has subsequently been included in such a list;
- (e) the person has been convicted in the United Kingdom of murder;
- (f) the person has been convicted in the United Kingdom of a criminal offence, other than murder, and has been sentenced to a term of imprisonment of over six months;
- (g) subject to paragraph (4), the person has 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 six months;

- (h) the person has been convicted of an offence referred to in Schedule 1 to the Criminal Procedure (Scotland) Act 1995(a) (offences against children under the age of 17 years to which special provisions apply) or Schedule 1 to the Children and Young Persons Act 1933(b) (Offences against children and young persons with respect to which special provisions apply);
 - (i) the person has—
 - (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(c) or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985(d) 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) an administrator, administrative receiver or receiver is appointed in respect of the person;
 - (k) the person has been—
 - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session)(e), 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 Commission for England and Wales 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) the person is subject to a disqualification order under the Company Directors Disqualification Act 1986(f), the Companies (Northern Ireland) Order 1986(g) or to an order made under section 429(2)(b) of the Insolvency Act 1986(h) (failure to pay under county court administration order); or
 - (m) the person falls within regulation 5(2)(d) of the National Health Service (General Medical Services Contracts) Regulations 2004(i).
- (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 contractor;
 - (b) a partner, in the case of a contract with a partnership;
 - (c) a member, in the case of a contract with a limited liability partnership;

(a) 1995 c.46.

(b) 1933 c.12, as amended by the Domestic Violence, Crime and Victims Act 2004 (c.28), section 58, Schedule 10; the Sexual Offences Act 2003 (c.42), section 139, Schedule 6, paragraph 7; the Criminal Justice Act 1988 (c.33), section 170, Schedule 15, paragraph 8 and Schedule 16, and the Sexual Offences Act 1956 (c.69), section 48 and Schedule 3; and as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9.

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

(d) 1985 c.66. Sections 56A to 56K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(e) 2005, asp 10.

(f) 1986 c.46 as amended by the Insolvency Act 2000 (c.39).

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

(h) 1986 c.45 as amended by the Enterprise Act 2002 (c.40), section 269, Schedule 23, paragraph 15.

(i) S.I. 2004/291.

- (d) in the case of a contract with a company—
 - (i) a member of the company, or
 - (ii) a director or secretary of the company,

as the case may be.

(4) 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 contractor;
- (b) a partner, in the case of a contract with a partnership;
- (c) a member in the case of a contract with a limited liability partnership;
- (d) in the case of a contract with a company—
 - (i) a member of the company; or
 - (ii) a director or secretary of the company,

as the case may be.

(5) In this regulation, “health service body” does not include any person who is to be regarded as a health service body in accordance with regulation 10.”.

7. After regulation 5, insert—

“Further conditions relating to all contracts

5A.—(1) For the purposes of section 17L(4) of the Act (eligibility to be contractor under general medical services contract), a person regularly performs or is engaged in the day to day provision of primary medical services where, subject to paragraphs (2) and (3), that person so performs or is so engaged, or will so perform or so engage, for no less than a total of 10 hours in each week for the duration of the contract.

(2) For the purposes of section 17L(5)(b) of the Act, references in section 17L(4) to a person who is performing or is engaged in the provision of services, include a person who has performed or been engaged in providing the services within 6 months prior to the contract being entered into.

(3) For the purposes of section 17L(6) of the Act, the prescribed circumstances in which a period of time in which a person is not performing or is not engaged in the provision of primary medical services is to be disregarded for the purposes of determining whether the person regularly performs or is engaged in the day to day provision of those services are where the period of time is—

- (a) a period of annual leave, as determined by the period of annual leave entitlement of the said person;
- (b) a local or public holiday in Scotland;
- (c) a period of—
 - (i) maternity leave,
 - (ii) paternity leave,
 - (iii) adoption leave as the parent who is the main care provider, or
 - (iv) adoption leave as the parent who is not the main care provider,as determined by the period of entitlement of the said person;
- (d) a period of time when a person has been incapable of work due to sickness, injury or pregnancy;
- (e) a period of time of up to a maximum of 12 months, when a person is undertaking approved study or training;
- (f) a period of service as a medical practitioner employed under a contract of service by the Ministry of Defence, whether or not as a member of the armed forces of the

Crown, provided that the medical practitioner is entered on the GP Register kept by virtue of section 34C of the Medical Act 1983(a);

- (g) a period of whole time service in the armed forces of the Crown in a national emergency, as a volunteer or otherwise, or a compulsory whole time service in those forces, including any service resulting from any reserve liability, or any equivalent service by a person liable for compulsory whole-time service in those forces;
- (h) any period during which the person has been suspended by a professional regulatory body, a Health Board or the NHS Tribunal where that person was suspended after the contract with the Health Board was entered into.

(4) For the purposes of this regulation, “approved study or training” means study or training which is relevant for the purposes of the contractor carrying out the obligations under the contract effectively, and which has been approved by the appropriate partner, member or person responsible for training and development.”.

8. For regulation 6 (reasons), substitute—

“Reasons

6.—(1) Where a Health Board is of the view that the conditions in regulations 4, 5 or 5A for entering into a contract are not met, it shall notify in writing the person intending to enter into the contract of its view and its reasons for that view and of that person’s right of appeal under regulation 7.

(2) The Health Board shall also notify in writing of its view and its reasons for that view—

- (a) any partner in the partnership that is notified under paragraph (1);
- (b) any member of a limited liability partnership that is notified under paragraph (1);
- (c) any member, or a director or secretary, of a company that is notified under paragraph (1) where its reasons for that view relates to that person or persons.”.

9. For regulation 8 (prescribed period under section 17L(6) of the Act), substitute—

“Conditions relating to contracts entered into prior to 22nd December 2010

8.—(1) In respect of contracts entered into prior to 22nd December 2010 the following conditions shall apply for the duration of the contract—

- (a) contractors must comply with the conditions specified in section 17L of the Act, as in force at 21st December 2010;
- (b) in the case of a contract entered into with a medical practitioner, that practitioner must be a general medical practitioner;
- (c) in the case of a contract entered into with a partnership—
 - (i) at least one partner (who must not be a limited partner) must be a general medical practitioner; and
 - (ii) any other partner who is a medical practitioner must—
 - (aa) be a general medical practitioner, or
 - (bb) be employed, in Scotland, by a Health Board, in England and Wales, by a Primary Care trust, Local Health Board, NHS trust, a NHS Foundation trust, or, in Northern Ireland, by a Health and Social Care Trust;

(a) 1983 c.54; section 34C was inserted by the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2010/234, Schedule 1, paragraph 10.

- (d) in the case of a contract entered into with a company limited by shares—
 - (i) at least one share in the company must be legally and beneficially owned by a general medical practitioner; and
 - (ii) any other share or shares in the company that are legally and beneficially owned by a medical practitioner must be so owned by—
 - (aa) a general medical practitioner, or
 - (bb) a medical practitioner who is employed, in Scotland, by a Health Board, in England and Wales, by a Primary Care Trust, Local Health Board, NHS trust, or a NHS foundation trust, or in Northern Ireland, by a Health and Social Care Trust.

(2) In paragraph 1(b), (c) and (d), “general medical practitioner” does not include a medical practitioner whose name is included in the General Practitioner Register by virtue of—

- (a) article 4(3) of the 2010 Order (general practitioners eligible for entry in the General Practitioner Register) because of an exemption under regulation 5(1)(d) of one of the sets of Regulations specified in sub-paragraph (f);
- (b) article 6(2) of the 2010 Order (persons with acquired rights) by virtue of being a restricted services principal (within the meaning of one or more of the sets of Regulations specified in sub-paragraph (g)) included in a list specified in that article; or
- (c) article 6(6) of the 2010 Order.

(3) The regulations referred to in paragraph 2(a) are the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998, the National Health Service (Vocational Training for General Medical Practice) Regulations 1997 and the Medical Practitioners (Vocational Training) Regulations (Northern Ireland) 1998.

(4) The regulations referred to in paragraph 2(b) are the National Health Service (General Medical Services) Regulations 1992, the National Health Service (General Medical Services) (Scotland) Regulations 1995 and the General Medical Services Regulations (Northern Ireland) 1997.

(5) The period prescribed for the purposes of section 17L(6) of the Act (eligibility to be contractor with general medical services contract) is six months.”.

10. In regulation 21(1)(a) (certificates)—

- (a) omit “or” in the second place it occurs;
- (b) for sub-paragraph (iii), substitute—
 - “(iii) in the case of a contract with a limited liability partnership, one of the members; or”;
- (c) after sub-paragraph (iii), insert—
 - “(iv) in the case of a contract with a company, one of the members; or”.

11. In regulation 27(2) (functions of area medical committee), for “or (c) where” to “in that company.”, substitute—

- “(c) where the contractor is a limited liability partnership, any member of the limited liability partnership; or
- (d) where the contractor is a company, any member of that company.”.

12.—(1) Schedule 5 (other contractual terms) is amended as follows.

(2) In paragraph 20(5) (removal from the list at the request of the contractor)—

- (a) for paragraph (c), substitute—

- “(c) in the case of a contract with a limited liability partnership, a member of that limited liability partnership;” and
 - (b) after paragraph (c), insert—
 - “(ca) in the case of a contract with a company, a member of that company;”.
- (3) In paragraph 21(2) (removal from the list of patients who are violent)—
 - (a) for paragraph (c) substitute—
 - “(c) in the case of a contract with a limited liability partnership, a member of that limited liability partnership;” and
 - (b) after paragraph (c), insert—
 - “(ca) in the case of a contract with a company, a member of that company;”.
- (4) In paragraph 58 (independent nurse prescribers and supplementary prescribers)—
 - (a) in sub-paragraph (1)(b)—
 - (i) for “a contractor is a partnership and one of the partners”, substitute, “a contractor is a partnership or limited liability partnership and one of the partners or members as the case may be”; and
 - (ii) omit ‘or’ in the second place it occurs;
 - (b) after sub-paragraph (1)(b), insert—
 - “(ba) a contractor is a company and one of the members is an independent nurse prescriber, a supplementary prescriber or a pharmacist independent prescriber whose functions will include prescribing; or”;
 - (c) in the tailpiece, from the words “the party became” to “as the case may be”, substitute—
 - “the person became a partner or member as 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 paragraph (1)(a)) or the person’s functions were extended as the case may be.”;
 - (d) in sub-paragraph (2)—
 - (i) for paragraph (b), substitute—
 - “the partner or member, as the case may be, in a partnership or limited liability partnership who is an independent nurse prescriber, a supplementary prescriber or a pharmacist independent prescriber whose functions include prescribing, ceases to be a partner or member of the partnership or limited liability partnership;”;
 - (ii) after paragraph (b), insert—
 - “(ba) the member of a company who is an independent nurse prescriber, a supplementary prescriber or a pharmacist independent prescriber whose functions include prescribing, ceases to be a member of the company;”;
 - (e) in sub-paragraph (3)(e)(ii)—
 - (i) for “a partner in the partnership” substitute “a partner or member, as the case may be in the partnership or limited liability partnership”; and
 - (ii) omit “or”;
 - (f) after sub-paragraph (3)(e)(ii), insert—
 - “(iia) the person became a member of the company, if applicable; or”;
 - (g) in sub-paragraph (4)(d)(ii) for the words “partner in the partnership” substitute “a partner or member, as the case may be in the partnership or limited liability partnership”;
 - (h) after sub-paragraph (4)(d)(ii), insert—
 - “(iia) the person ceased to be a member of the company.”.

- (5) In paragraph 62 (sub-contracting of clinical matters)—
- (a) in sub-paragraph (3),
 - (i) in paragraph (c) omit “and”;
 - (ii) after paragraph (d) insert—
 - “; and
 - (e) in the case of a contract entered into on or after 22nd December 2010, 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.”;
 - (b) in sub-paragraph (5),
 - (i) in paragraph (a)(ii) omit “or”;
 - (ii) after paragraph (b) insert—
 - “; or
 - (c) in the case of a contract entered into on or after 22nd December 2010, if the sub-contractor were a contractor, that sub-contractor would not have sufficient involvement in patient care in terms of section 17L(3) and (4) of the Act.”;
 - (c) in sub-paragraph (10)—
 - (i) for “company or firm” in both cases where that term occurs, substitute “company, partnership or limited liability partnership”;
 - (ii) in paragraphs (a) and (c), for “shareholder in”, substitute “member of”.
- (6) In paragraph 73 (annual return and review), after sub-paragraph (1B), insert—
- “(1C) Without prejudice to the generality of sub-paragraph (1), in the case of contracts entered into on or after 22nd December 2010, the contractor shall include in the annual return a statement confirming that the contractor meets the conditions of section 17L(3) and (4) of the Act, and, in connection with that statement, shall include such details as the Health Board considers appropriate.”.
- (7) In paragraph 74(1)(b) (notifications to the Health Board), for “99, 100 or 101(1)”, substitute “99, 99A, 100, 101(1) or 101A”.
- (8) In paragraph 77 (notice provisions specific to a contract with a company limited by shares), before sub-paragraph (1), insert—
- “(A1) This paragraph applies to contracts entered into prior to 22nd December 2010”.
- (9) After paragraph 77, insert—

“Notice provisions specific to a contract with a company

77A.—(1) This paragraph applies to contracts entered into on or after 22nd December 2010.

(2) A contractor which is a company shall give notice in writing to the Health Board forthwith when—

- (a) a member, director or secretary of the company ceases to be a member, director or secretary of the company or informs the other members of the company that that person intends to cease to be a member, director or secretary of the company, and the date upon which he or she ceased, or will cease, to be a member, director or secretary of the company;
- (b) a new member, director or secretary becomes a member, director or secretary of the company;
- (c) the company passes a resolution or a court of competent jurisdiction makes an order that the contractor be wound up;
- (d) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the contractor;

- (e) circumstances arise which would enable the court to make a winding up order in respect of the contractor; or
- (f) the contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

(3) A notice under sub-paragraph (2)(b) shall—

- (a) state the date the new member, director or secretary became a member, director or secretary of the company;
- (b) confirm that the new member is an individual who satisfies the conditions imposed on members by virtue of section 17L(3) and (4) of the Act and the conditions imposed by regulations 4, 5 and 5A; and
- (c) confirm that the new director or, as the case may be, secretary meets the conditions imposed on directors and secretaries by virtue of regulation 5.”.

(10) In paragraph 78 (notice provisions specific to a contract with persons practising in partnership), for sub-paragraph (2) substitute—

“(2) A notice under sub-paragraph (1)(b) shall—

- (a) state the date that the new partner joined the partnership;
- (b) in the case of a contract entered into prior to 22nd December 2010—
 - (i) confirm that the new partner is a medical practitioner, or that the partner satisfies the conditions specified in section 17L(2)(c)(i) to (viii) of the Act as in force at 21st December 2010; and
 - (ii) confirm that the new partner meets the conditions imposed by regulation as in force at 21st December 2010 and regulation 5;
- (c) in the case of a contract entered on or after 22nd December 2010—
 - (i) confirm that the new partner is an individual who satisfies the conditions imposed on members by virtue of section 17L(3) and (4) of the Act, and
 - (ii) meets the further conditions imposed by regulations 4, 5 and 5A; and
- (d) state whether the new partner is a general or a limited partner.”.

(11) After paragraph 78, insert—

“Notice provisions specific to a contract with persons practising in a limited liability partnership.

78A.—(1) A contractor which is a limited liability partnership shall give notice in writing to the Health Board forthwith when—

- (a) a member ceases to be a member, or informs the other members of the partnership that the member intends to cease to be a member of the partnership, and the date upon which the member ceased, or will cease, to be a member of the partnership;
- (b) a new member joins the partnership.

(2) A notice under sub-paragraph (1)(b) shall—

- (a) state the date that the new member joined the limited liability partnership;
- (b) confirm that the new member is an individual who satisfies the conditions imposed on members by virtue of section 17L(3) and (4) of the Act and meets the conditions imposed by regulations 4, 5 and 5A.”.

(12) In paragraph 99 (termination by the Health Board for breach of conditions in regulation 4), before sub-paragraph (1), insert—

“(A1) This paragraph applies to contracts entered into prior to 22nd December 2010 and all references to regulation 4 are to regulation 4 as in force at 21st December 2010.”.

(13) After paragraph 99 of Schedule 5, insert—

“Termination by the Health Board for breach of conditions for contracts entered into on or after 22nd December 2010.

99A.—(1) This paragraph applies to contracts entered into on or after 22nd December 2010.

(2) The Health Board shall serve notice in writing on the contractor terminating the contract forthwith if the contractor is an individual medical practitioner and the medical practitioner no longer satisfies the conditions specified in regulation 4(1).

(3) Where the contractor is—

- (a) a partnership and the conditions specified in regulation 4(2) are no longer satisfied;
- (b) a limited liability partnership and the conditions specified in regulation 4(3) are no longer satisfied; or
- (c) a company and the conditions specified in regulation 4(4) are no longer satisfied,

sub-paragraph (4) shall apply.

(4) Where this sub-paragraph applies, the Health Board shall—

- (a) serve notice in writing on the contractor terminating the contract forthwith; or
- (b) serve notice in writing on the contractor confirming that the Health Board will allow the contract to continue, for a period specified by the Health Board of up to six months (the “interim period”), during which time the Health Board shall, with the consent of the contractor, employ or supply one or more general medical practitioners to the contractor for the interim period to assist the contractor in the provision of clinical services under the contract.

(5) Before deciding which of the options in sub-paragraph (4) to pursue, the Health Board shall, whenever it is reasonably practicable to do so, consult the area medical committee (if any) for its area.

(6) If the contractor does not, pursuant to sub-paragraph (4)(b), consent to the Health Board employing or supplying a general medical practitioner during the interim period, the Health Board shall serve notice in writing on the contractor terminating the contract forthwith.

(7) If, at the end of the interim period, the contractor still falls within sub-paragraph (3)(a), (b) or (c), the Health Board shall serve notice in writing on the contractor terminating the contract forthwith.”.

(14) For paragraph 100 (termination by the Health Board for the provision of untrue etc. information), substitute—

“100. The Health Board may serve notice in writing on the contractor terminating the contract forthwith, or from such date as may be specified in the notice if—

- (a) in the case of a contract entered into prior to 22nd December 2010, after the contract has been entered into, it comes to the attention of the Health Board that written information provided to the Health Board by the contractor—
 - (i) before the contract was entered into; or
 - (ii) pursuant to paragraphs 77(2) or (3) or 78(2),
in relation to the conditions set out in regulations 4 and 5 as in force at 21st December 2010 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect; or
- (b) in the case of a contract entered into on or after 22nd December 2010, after the contract has been entered into, it comes to the attention of the Health Board that written information provided to the Health Board by the contractor
 - (i) before the contract was entered into; or

(ii) pursuant to paragraphs 77A(2), 78(2) or 78A(2),
in relation to the conditions set out in regulations 4, 5 and 5A (and compliance with those conditions), was, when given, untrue or inaccurate in a material respect.”.

(15) In paragraph 101 (other grounds for termination by the Health Board)—

- (a) in sub-paragraph (1) for “The Health Board”, substitute “In the case of contracts entered into prior to 22nd December 2010, the Health Board”;
- (b) in sub-paragraph (2)(a) after “or (3)(b)” insert “as in force at 21st December 2010”;
- (c) for sub-paragraph (2)(b), substitute—
 - “(b) the person has been disqualified or suspended by direction of the Tribunal made pursuant to section 32A(2) (applications for interim suspension) or 32B(1) (suspension pending appeal) of the Act, or under any provisions in force in England, Wales or Northern Ireland corresponding thereto;”;
- (d) in sub-paragraph (2)(c), omit “or a suspension on the grounds of ill-health”;
- (e) in sub-paragraph (2)(j)(ii), following “Insolvency Act 1986”, insert “or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985”;
- (f) in sub-paragraph (m)(ii), for “Charity Commissioners”, substitute “Charity Commission for England and Wales”;
- (g) in sub-paragraph (o)—
 - (i) for “that” in the first place that term occurs, substitute “the”;
 - (ii) for “it” in the first place that term occurs, substitute “the Health Board”.

(16) After paragraph 101 insert—

“Other grounds for termination by the Health Board for contracts entered into on or after 22nd December 2010.

101A.—(1) In the case of contracts entered into on or after 22nd December 2010, the Health Board may serve notice in writing on the contractor terminating the contract forthwith, or from such date as may be specified in the notice if—

- (a) in the case of a contract with a medical practitioner, that medical practitioner;
- (b) in the case of a contract with a partnership, any partner or the partnership;
- (c) in the case of a contract with a limited liability partnership, any member or the limited liability partnership; and
- (d) in the case of a contract with a company—
 - (i) the company,
 - (ii) any member of the company, or
 - (iii) any director or secretary of the company,falls within sub-paragraph (2) during the existence of the contract.

(2) A person falls within this sub-paragraph if—

- (a) subject to sub-paragraph (3), the person does not satisfy the requirements of section 17L(1), (2) or (3) of the Act;
- (b) the person has been disqualified or suspended by direction of the Tribunal made pursuant to section 32A(2) (applications for interim suspension) or 32B(1) (suspension pending appeal) of the Act, or under any provisions in force in England, Wales or Northern Ireland corresponding thereto;
- (c) subject to sub-paragraph (5), the person is 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;

- (d) subject to sub-paragraph (6), the person has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless before the Health Board has served a notice terminating the contract pursuant to this paragraph, the person is employed by the health service body that dismissed the person or by another health service body;
- (e) the person is disqualified from a list unless the person's name has subsequently been included in such a list;
- (f) the person has been convicted in the United Kingdom of murder;
- (g) the person has been convicted in the United Kingdom of a criminal offence, other than of murder, and has been sentenced to a term of imprisonment of over six months;
- (h) subject to sub-paragraph (7), the person has been convicted elsewhere of an offence—
 - (i) which would, if committed in Scotland, constitute murder; or
 - (ii) constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (i) the person has 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 to which special provisions apply) or Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons with respect to which special provisions apply);
- (j) the person has—
 - (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 or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985, unless that order has ceased to have effect or has been annulled,
 - (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, or
 - (iv) been wound up under Part IV of the Insolvency Act 1986;
- (k) there is—
 - (i) an administrator, administrative receiver or receiver appointed in respect of it, or
 - (ii) an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986;
- (l) that person is a partnership or limited liability partnership and—
 - (i) a dissolution of the partnership or limited liability partnership is ordered by any competent court, tribunal or arbitrator, or
 - (ii) an event happens that makes it unlawful for the business of the partnership or limited liability partnership to continue, or for members of the partnership or limited liability partnership to carry on in partnership or limited liability partnership;
- (m) the person has been—
 - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session), 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 Commission for England and Wales 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 the person's conduct contributed to or facilitated;

- (n) the person is subject to a disqualification order under the company Directors Disqualification Act 1986, the Companies (Northern Ireland) Order 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order);
- (o) the person has refused to comply with a request by the Health Board for that person to be medically examined on the grounds that the Health Board is concerned that the person is incapable of adequately providing services under the contract and, in a case where the contract is with a partnership, limited liability partnership, or a company, the Health Board is not satisfied that the contractor is taking adequate steps to deal with the matter; or
- (p) the person would otherwise fall within paragraph 113(2)(e) of Schedule 6 to the National Health Service (General Medical Services Contracts) Regulations 2004.

(3) Subject to sub-paragraph (4), a Health Board shall not terminate the contract pursuant to sub-paragraph (2)(a) where—

- (a) a contractor who is an individual;
- (b) in the case of a party to a contract which is a partnership, a partner in that partnership;
- (c) in the case of a party to a contract which is a limited liability partnership, a member of that limited liability partnership; or
- (d) in the case of a party to a contract which is a company, a member of that company, after having entered into a contract (“the relevant contract”), retires and is therefore not performing or is not engaged in the provision of primary medical services, in accordance with regulation 5A.

(4) Sub-paragraph (3) only applies for the period of time following the date of retirement, which is the equivalent to the length of time that the relevant person referred to in sub-paragraph (3)(a), (b), (c) or (d) has performed or been engaged in the provision of primary medical services for the purposes of the relevant contract, up to a maximum period of 2 years following the date of retirement.

(5) A Health Board shall not terminate the contract pursuant to sub-paragraph (2)(c) where the Health Board is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be—

- (a) a contractor;
- (b) in the case of a contract with a partnership, a partner;
- (c) in the case of a contract with a limited liability partnership, a member; or
- (d) in the case of a contract with a company—
 - (i) a member of the company, or
 - (ii) a director or secretary of the company,as the case may be.

(6) A Health Board shall not terminate the contract pursuant to sub-paragraph (2)(d)—

- (a) until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or
- (b) if, during the period of time specified in paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of the person's dismissal, until proceedings before that tribunal or court are concluded,

and the Health Board may only terminate the contract at the end of the period specified in paragraph (b) if there is no finding of unfair dismissal at the end of those proceedings.

(7) A Health Board shall not terminate the contract pursuant to sub-paragraph (2)(h) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a contractor;
- (b) in the case of a contract with a partnership, a partner in that partnership;
- (c) in the case of a contract with a limited liability partnership, a member of that limited liability partnership; or
- (d) in the case of a contract with a company—
 - (i) a member of the company; or
 - (ii) a director or secretary of the company,

as the case may be.

(8) In this paragraph, “health service body” does not include any person who is to be regarded as a health service body in accordance with regulation 10.”.

(17) In paragraph 104(1) (termination by the Health Board: additional provision specific to contracts with a partnership and companies limited by shares), for “limited by shares”, substitute “, partnership or limited liability partnership”.

(18) In paragraph 105 (contract sanctions) in sub-paragraph (2), after “101,” insert “101A,”.

(19) In paragraph 107 (termination and the NHS dispute resolution procedure), in sub-paragraphs (1) and (5), after “101” insert “101A,”.

(20) In paragraph 108 (consultation with the area medical committee), in sub-paragraph (1)(a), after “101” insert “101A,”.

(21) In paragraph 114 (gifts),

- (a) after sub-paragraph (2)(b), insert—
 - “(ba) where the contract is with a limited liability partnership, any member of the limited liability partnership;”;
- (b) in sub-paragraph (2)(c)(i) for “person legally and beneficially holding a share in”, substitute “member of”.

13. Schedule 8 (information to be included in practice leaflets) is amended as follows—

- (a) in paragraph 3, for “shareholders” substitute “members”;
- (b) after paragraph 3 insert—
 - “(3A) In the case of a contract with a limited liability partnership—
 - (a) the names of all the members; and
 - (b) the address of the registered office of the limited liability partnership.”.

NICOLA STURGEON
A member of the Scottish Executive

St Andrew’s House,
Edinburgh
9th November 2010

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 (“the principal Regulations”), which set out the framework for general medical services contracts under the National Health Service (Scotland) Act 1978 (“the Act”). The amendments are necessary following the commencement of Part 2 of the Tobacco and Primary Medical Services (Scotland) Act 2010 which makes provision for the new eligibility criteria for persons contracting with Health Boards to provide primary medical services.

Regulation 3 amends regulation 2 of the principal Regulations by amending the definition of “disqualified”, inserting a definition of “conditional disqualification”, omitting the definitions of “local or national disqualification” and “national disqualification” and amending the definitions “list” and “health care professional”.

Regulations 4, 5 and 6 amend regulation 3, 4 and 5 of the principal Regulations to take into account the new eligibility criteria.

Regulation 7 inserts regulation 5A to the principal Regulations, to make provision as to what constitutes the regular performance of, or being engaged in the day to day provision of primary medical services (“the involvement criteria”). Regulation 5A provides that the involvement criteria require that a person performs or is engaged, or will perform or be engaged in the provision of primary medical services for no less than a total of 10 hours in each week for the duration of the contract. Regulation 5A also sets out the periods of time which are to be disregarded for the purposes of determining whether a person fulfils the involvement criteria.

Regulation 8 amends regulation 6 of the principal Regulations to take account of the new eligibility criteria.

Regulation 9 inserts a new regulation 8 in order to clarify the conditions which apply in the case of contracts entered into prior to 22nd December 2010 and to clarify that those conditions apply for the duration of the contract.

Regulations 10, 11, 12(2), (3) and (4) make technical amendments to regulations 21 and 27 and paragraphs 20, 21 and 58 of Schedule 5 of the principal Regulations in order to take account of the new eligibility criteria.

Regulation 12(5) amends paragraph 62 of Schedule 5 regarding the sub-contracting of clinical matters in order to provide that where a contractor sub-contracts any of its rights or duties under the contract, the required notification to the Health Board must include a statement as to whether the sub-contractor, if it were a contractor, would have sufficient involvement in patient care in terms of section 17L(3) and (4) of the Act. The amendment also provides that a Health Board may serve a notice of objection to a sub-contract on the grounds that the sub-contractor, if it were a contractor, would not have sufficient involvement in patient care in terms of section 17L(3) and (4) of the Act.

Regulation 12(6) amends paragraph 73 of Schedule 5 to provide that the contractor shall include in the annual return a statement that the contractor meets the conditions of section 17L(3) and (4) of the Act.

Regulation 12(7) amends the cross-references in paragraph 74 of Schedule 5.

Regulation 12(8) amends paragraph 77 so that it only applies to contracts entered into prior to 22nd December 2010.

Regulation 12(9) inserts a new paragraph 77A to provide for new notice provisions specific to a contract with a company which was entered into after 22nd December 2010 and which take into account the new eligibility criteria.

Regulation 12(10) amends paragraph 78 of Schedule 5 to make a distinction between the notice provision requirements which apply to contracts with partnerships entered into prior to 22nd December 2010 and those entered into on or after 22nd December 2010.

Regulation 12(11) inserts a new paragraph 78A of Schedule 5 to make provision for notice provisions requirements specific to contracts with persons practising in a limited liability partnership.

Regulation 12(12), (13), (14), (15) and (16) amend the termination provisions of Schedule 5 of the principal Regulations in order to make a distinction between the application of those provisions to those contracts entered into prior to and those entered into on or after the commencement of the new eligibility criteria.

Regulation 12(17), (18), (19), (20) and (21) and regulation 13 make further amendments to Schedule 5 and Schedule 8 respectively to take into account the new eligibility criteria and to amend cross-references.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government Health Directorate, St Andrew's House, Regent Road, Edinburgh, EH1 3DG, and online at www.legislation.gov.uk.

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