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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 394**

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

**Amendment of the 2004 Regulations**

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(1) (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(2) (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(3) or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985(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) 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)(5), 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(6), the Companies (Northern Ireland) Order 1986(7) or

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(1) 1995 c.46.

(2) 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.

(3) 1986 c.45. Schedule 4A was inserted by section 257 of and Schedule 20 to the Enterprise Act 2002 (c.40).

(4) 1985 c.66. Sections 56A to 56K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(5) 2005, asp 10.

(6) 1986 c.46 as amended by the Insolvency Act 2000 (c.39).

to an order made under section 429(2)(b) of the Insolvency Act 1986<sup>(8)</sup> (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<sup>(9)</sup>.

(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;
- (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.”.

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

(8) 1986 c.45 as amended by the Enterprise Act 2002 (c.40), section 269, Schedule 23, paragraph 15.

(9) S.I. 2004/291.