
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 66

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

PART 2

CONTRACTORS

General conditions relating to all contracts

- 6.—(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⁽¹⁾, 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

(1) Sections 32A and 32B were inserted by section 8 of the National Health Service (Amendment) Act 1995 (c.31). Section 32A(2) was amended by paragraph 51 of schedule 4 of the Health Act 1999 (“the 1999 Act”), and section 26(7) of the Smoking, Health and Social Care (Scotland) Act 2005 (“the 2005 Act”). Section 32B(1) was amended by the paragraph 52 of schedule 4 of 1999 Act and paragraph 1 of schedule 3 of the 2005 Act.

- (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—
 - (i) murder; or
 - (ii) a criminal offence, other than murder, and has been sentenced to a term of imprisonment of over six months;
- (f) the person has been convicted elsewhere of an offence which would, if committed in Scotland, constitute—
 - (i) murder; or
 - (ii) subject to paragraph (4), a criminal offence, other than murder, and been sentenced to a term of imprisonment of over six months;
- (g) the person has been convicted of an offence referred to in schedule 1 of the Criminal Procedure (Scotland) Act 1995(2) or schedule 1 of the Children and Young Persons Act 1933(3);
- (h) 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—
 - (aa) schedule 4A of the Insolvency Act 1986(4);
 - (bb) schedule 2A of the Insolvency (Northern Ireland) Order 1989(5);
 - (cc) sections 56A to 56K of the Bankruptcy (Scotland) Act 1985(6); or
 - (dd) sections 155 to 160 of the Bankruptcy (Scotland) Act 2016(7),
 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;
- (i) there is—
 - (i) an administrator, administrative receiver or receiver is appointed in respect of it; or

(2) [1995 c.46](#). Schedule 1 was amended by section 7(1) of the Prohibition of Female Genital Mutilation (Scotland) Act [2005 \(asp 8\)](#), paragraph 2 of schedule 1 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act [2005 \(asp 9\)](#), paragraph 2 of schedule 5 of the Sexual Offences (Scotland) Act [2009 \(asp 9\)](#) and section 41 of the Criminal Justice and Licensing (Scotland) Act [2010 \(asp 13\)](#).

(3) [1933 c.12](#). Schedule 1 was amended by paragraph 52 of schedule 4 of the Sexual Offences Act [1956 \(c.69\)](#), paragraph 170(2) of schedule 16 of the Criminal Justice Act [1988 \(c.33\)](#), paragraph 7 of schedule 6 of the Sexual Offences Act [2003 \(c.42\)](#) and paragraph 1 of schedule 5 of the Modern Slavery Act [2015 \(c.3\)](#).

(4) [1986 c.45](#). Schedule 4A was inserted by section 257 and paragraph 1 of schedule 20 of the Enterprise Act [2002 \(c.40\)](#) ("the 2002 Act") and was amended by paragraph 63 of the Enterprise and Regulatory Reform Act [2013 \(c.24\)](#).

(5) [S.I. 1989/2405 \(N.I. 19\)](#). schedule 2A was inserted by [S.I. 2005/1455 \(N.I. 10\)](#).

(6) [1985 c.66](#). Sections 56A to 56K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act [2007 \(asp 3\)](#), amended by the Bankruptcy and Debt Advice (Scotland) Act [2014 \(asp 11\)](#) and repealed by Part 1 of schedule 9 of the Bankruptcy (Scotland) Act [2016 \(asp 21\)](#).

(7) [2016 asp 21](#).

- (ii) an administration order made in respect of it under schedule B1 of the Insolvency Act 1986⁽⁸⁾;
 - (j) that person is a partnership or limited liability partnership and—
 - (i) a dissolution of the partnership or limited liability partnership has been ordered by any competent court, tribunal or arbitrator; or
 - (ii) an event has happened 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;
 - (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)⁽⁹⁾, 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—
 - (i) a disqualification order under section 1 of the Company Directors Disqualification Act 1986⁽¹⁰⁾;
 - (ii) a disqualification undertaking under section 1A of that Act⁽¹¹⁾;
 - (iii) a disqualification order under article 3 of the Company Directors Disqualification (Northern Ireland) Order 2002⁽¹²⁾;
 - (iv) a disqualification undertaking under article 4 of that Order⁽¹³⁾; or
 - (v) an order under section 429(2)(b) of the Insolvency Act 1986⁽¹⁴⁾ (failure to pay under county court administration order); or
 - (m) the person falls within regulation 6(2)(d) (general conditions relating to all contracts) of the National Health Service (General Medical Services Contracts) Regulations 2015⁽¹⁵⁾.
- (3) A person will 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

⁽⁸⁾ Schedule B1 was inserted by paragraph 1 of schedule 16 of the 2002 Act.

⁽⁹⁾ 2005 asp 10. Section 34 was amended by section 122 of the Public Services Reform (Scotland) Act 2010 (asp 8).

⁽¹⁰⁾ 1986 c.46. Section 1 was amended by section 5 and paragraph 2 of schedule 4 of the Insolvency Act 2000 (c.39) ("the 2000 Act"), section 204 of the 2002 Act and paragraph 2 of schedule 7 of the Small Business, Enterprise and Employment Act 2015 (c.26) ("the 2015 Act").

⁽¹¹⁾ Section 1A was inserted by S.I. 2005/1454 (N.I. 9) and section 6(2) of the 2000 Act and amended by paragraph 3 of schedule 7 of the 2015 Act.

⁽¹²⁾ S.I. 2002/3150 (N.I. 4). Article 3 was amended by paragraph 9 of schedule 8 of the 2015 Act.

⁽¹³⁾ Article 4 was amended by paragraph 9 of schedule 8 of the 2015 Act.

⁽¹⁴⁾ Section 429 was amended by paragraph 15 of schedule 23 of the Enterprise Act 2002.

⁽¹⁵⁾ S.I. 2015/1862.

(ii) a director or secretary of the company,
as the case may be.

(4) A person will not fall within paragraph (2)(f)(ii) 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 13.