

## SCHEDULE 5

### OTHER CONTRACTUAL TERMS

#### PART 4

#### PERSONS WHO PERFORM SERVICES

##### Qualifications of performers

**53.**—(1) Subject to sub-paragraph (2), no medical practitioner shall perform medical services under the agreement unless he is—

- (a) included in a medical performers list of a Primary Care Trust in England;
- (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) shall not apply in the case of—

- (a) a medical practitioner employed by (in England and Wales and Scotland) an NHS trust, an NHS foundation trust, (in Scotland) a Health Board, or (in Northern Ireland) a Health and Social Services 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 the Medical Act 1983(**2**) acting in the course of his employment in a resident medical capacity in an approved medical practice; or
- (c) a GP Registrar during the first two months of his training period.

**54.** No health care professional other than one to whom paragraph 53 applies shall perform clinical services under the agreement unless he is appropriately registered with his relevant professional body and his registration is not currently suspended.

**55.** Where the registration of a health care professional or, in the case of a medical practitioner, his inclusion in a primary care list, is subject to conditions, the contractor shall ensure compliance with those conditions insofar as they are relevant to the agreement.

**56.** No health care professional shall perform any clinical services unless he has such clinical experience and training as are necessary to enable him properly to perform such services.

##### Conditions for employment and engagement

**57.**—(1) Subject to sub-paragraphs (2) and (3), a contractor shall not employ or engage a medical practitioner (other than one falling within paragraph 53(2)) unless—

- (a) that practitioner has provided it with the name and address of the Primary Care Trust on whose primary medical performers list he appears; and
- (b) the contractor has checked that the practitioner meets the requirements in paragraph 53.

(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 53 in accordance

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(1) 1983 c. 54. Section 41A was inserted by S.I.2000/1803.

(2) Section 15A was inserted by regulations 2 and 3 of S.I. 2000/3041 and section 21 was amended by S.I. 2002/3135.

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with sub-paragraph (1)(b) before employing or engaging him he may be employed or engaged on a temporary basis for a single period of up to seven days whilst such checks are undertaken.

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

- (a) the name and address provided under sub-paragraph (1) may be the name and address of the Primary Care Trust on whose list he has applied for inclusion; and
- (b) confirmation that his name appears on that list shall not be required until the end of the first two months of the Registrar's training period.

**58.**—(1) The contractor shall not employ or engage—

- (a) a health care professional other than one to whom paragraph 53 applies unless the contractor has checked that he meets the requirements in paragraph 54; or
- (b) a health care professional to perform clinical services unless he has taken reasonable steps to satisfy himself that he meets the requirements in paragraph 56.

(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 54 in accordance with sub-paragraph (1) before employing or engaging him, he may be employed or engaged on a temporary basis for a single period of up to seven 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 shall 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 him and any relevant clinical experience gained by him.

**59.**—(1) The contractor shall not employ or engage a health care professional to perform medical services under the agreement 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 health care professional 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 him, he may be employed or engaged on a temporary basis for a single period of up to fourteen days whilst his references are checked and considered, and for an additional single period of a further seven 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.

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

(2) The duty imposed by sub-paragraph (1) is in addition to the duties imposed by paragraphs 57 to 59.

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

- (a) that person's academic and vocational qualifications;
- (b) his education and training; and
- (c) his previous employment or work experience.

### **Training**

**61.** The contractor shall ensure that for any health care professional who is—

- (a) performing clinical services under the agreement; 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 his skills and knowledge in relation to the services which he is performing or assisting in performing.

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

### **Arrangements for GP Registrars**

**63.—(1)** The contractor shall only employ a GP Registrar for the purpose of being trained by a GP Trainer subject to the conditions in sub-paragraph (2).

(2) The conditions referred to in sub-paragraph (1) are that the contractor shall 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 agreement or for which other staff assist them in the performance of those services.

(3) A contractor which employs a GP Registrar shall—

- (a) offer him terms of employment in accordance with the rates and subject to the conditions contained in any directions given by the Secretary of State to Strategic Health Authorities under section 17 of the Act (Secretary of State's directions: exercise of functions)<sup>(3)</sup> concerning the grants, fees, travelling and other allowances payable to GP Registrars<sup>(4)</sup>; and
- (b) take into account any guidance issued by the Secretary of State in relation to the GP Registrar Scheme<sup>(5)</sup>.

### **Doctors with provisional registration**

**64.** A contractor shall not by reason only of having employed or engaged a person who is provisionally registered under section 15, 15A or 21 of the Medical Act and is acting in the course of his employment in a resident medical capacity in an approved medical practice, reduce the total number of hours in which other staff assist in the performance of medical services under the agreement.

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(3) Section 17 was amended by the 2001 Act, section 67(1) and Schedule 5, paragraph 5(1) and (3) and the 2002 Act, section 1(3) and Schedule 1, paragraph 7.

(4) The current directions are the Directions to Strategic Health Authorities concerning GP Registrars dated 3rd November 2003. A copy of these directions can be obtained by writing to the Department of Health, P.O. Box 777, London SE1 6XH.

(5) The current guidance is the GP Registrar Scheme Vocational Guide for General Medical Practice—the UK Guide 2000 published by the Department of Health and available on its website at [www.doh.gov.uk/medicaltrainingintheuk](http://www.doh.gov.uk/medicaltrainingintheuk) or by writing to the Department of Health, P.O. Box 777, London SE1 6XH.

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### **Independent nurse prescribers and supplementary prescribers**

65.—(1) This paragraph applies to contractors other than Primary Care Trusts.

(2) Where—

- (a) a contractor employs or engages a person who is an independent nurse prescriber or a supplementary prescriber whose functions will include prescribing;
- (b) a party to the agreement is an independent nurse prescriber or a supplementary prescriber whose functions will include prescribing unless immediately before becoming such a party, he fell within paragraph (a); or
- (c) the functions of a person who is an independent nurse prescriber or a supplementary prescriber are extended to include prescribing,

it shall notify the relevant body in writing within the period of seven days beginning with the date on which it employed or engaged the person, the party became a party to the agreement or the person's functions were extended, as the case may be.

(3) Where—

- (a) the contractor ceases to employ or engage a person who is an independent nurse prescriber or a supplementary prescriber whose functions included prescribing;
- (b) the party to the agreement who is an independent nurse prescriber or a supplementary prescriber whose functions included prescribing, ceases to be a party to the agreement;
- (c) the functions of a person who is an independent nurse prescriber or a supplementary prescriber are changed so that they no longer include prescribing in its practice; or
- (d) the contractor becomes aware that an independent nurse prescriber or a supplementary prescriber has been removed or suspended from the relevant register,

it shall notify the relevant body in writing by the end of the second working day after the day when the event occurred.

(4) The contractor shall provide the following information when it notifies the relevant body in accordance with sub-paragraph (2)—

- (a) the person's full name;
- (b) his professional qualifications;
- (c) his identifying number which appears in the relevant register;
- (d) the date on which his entry in the relevant register was annotated to the effect that he was qualified to order drugs, medicines and appliances for patients;
- (e) the date on which—
  - (i) he was employed or engaged, if applicable,
  - (ii) he became a party to the agreement, if applicable, or
  - (iii) one of his functions became to prescribe.

(5) The contractor shall provide the following information when it notifies the relevant body in accordance with sub-paragraph (3)—

- (a) the person's full name;
- (b) his professional qualifications;
- (c) his identifying number which appears in the relevant register; and
- (d) the date—
  - (i) he ceased to be employed or engaged in its practice,
  - (ii) he ceased to be a party to the agreement,

- (iii) his functions changed so as no longer to include prescribing, or
- (iv) on which he was removed or suspended from the relevant register.

### **Signing of documents**

**66.**—(1) In addition to any other requirements relating to such documents whether in these regulations or otherwise, the contractor shall ensure that the documents specified in 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 12, unless regulations relating to particular certificates provide otherwise;
  - (b) prescription forms and repeatable prescriptions; and
  - (c) any other clinical documents.

### **Level of skill**

**67.** The contractor shall carry out its obligations under the agreement with reasonable care and skill.

### **Appraisal and assessment**

**68.**—(1) The contractor shall ensure that any medical practitioner performing services under the agreement—

- (a) participates in the appraisal system provided by the relevant body or where the contractor is a Primary Care Trust, by it, unless he participates in an appropriate appraisal system provided by another health service body or is an armed forces GP; and
- (b) co-operates with an assessment by the NCAA when requested to do so by the relevant body or where the contractor is a Primary Care Trust, by it.

(2) The relevant body which is a Primary Care Trust shall provide an appraisal system for the purposes of sub-paragraph (1) (a).

### **Sub-contracting of clinical matters**

**69.**—(1) The contractor shall not sub-contract any of its rights or duties under the agreement in relation to clinical matters unless it has taken reasonable steps to satisfy itself that—

- (a) it is reasonable in all the circumstances;
- (b) that the person is qualified and competent to provide the service; and
- (c) it is satisfied in accordance with paragraph 113 that the sub-contractor holds adequate insurance.

(2) Where the contractor sub-contracts any of its rights or duties under the agreement in relation to clinical matters, it shall—

- (a) inform the relevant body of the sub-contract as soon as is reasonably practicable; and
- (b) provide the relevant body with such information in relation to the sub-contract as it reasonably requests.

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(3) Where the contractor sub-contracts clinical services under sub-paragraph (1), the parties to the agreement shall be deemed to have agreed a variation to the agreement which has the effect of adding to the list of the contractor's premises any premises which are to be used by the sub-contractor for the purpose of the sub-contract and paragraph 98(1) shall not apply.

(4) A contractor must ensure that any person with whom it sub-contracts is prohibited from sub-contracting the clinical services it has agreed with the contractor to provide.