

## SCHEDULE 5

### OTHER CONTRACTUAL TERMS

#### PART 4

##### PERSONS WHO PERFORM SERVICES

###### **Qualifications of performers**

48.—(1) Subject to sub-paragraph (2), no medical practitioner shall perform medical services under the contract unless he is –

- (a) included in the primary medical services performers list maintained by that Board;
- (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<sup>(1)</sup>.

(2) Sub-paragraph (1)(a) shall not apply in the case of –

- (a) a medical practitioner employed by a Health and Social Services Trust, (in Scotland) a Health Board, an NHS Trust or an NHS foundation trust who is providing services other than primary medical services at the practice premises;
- (b) a person who is provisionally registered under section 15, 15A or 21 of the Medical Act 1983<sup>(2)</sup> 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.

49. No health care professional other than one to whom paragraph 48 applies shall perform clinical services under the contract unless he is appropriately registered with his relevant professional body and his registration is not currently suspended.

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

51. 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**

52.—(1) Subject to sub-paragraphs (2) and (3), a contractor shall not employ or engage a medical practitioner (other than one falling within paragraph 48(2)), unless –

- (a) that practitioner has provided him with the name and address of the Board on whose primary medical services performers list he appears; and
- (b) the contractor has checked that the practitioner meets the requirements in paragraph 48.

(2) Where the employment or engagement of a medical practitioner is urgently needed and is not possible for the contractor to check the matters referred to in paragraph 48 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 7 days whilst such checks are undertaken.

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

(2) 1983 c. 54; section 15A was inserted by regulations 2 and 3 of S.I. 2000/3041

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(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 Board on whose primary medical services performers list he has applied for inclusion; and
- (b) confirmation that his name appears on those lists shall not be required until the end of the first two months of the Registrar’s training period.

53.—(1) A contractor shall not employ or engage –

- (a) a health care professional other than one to whom paragraph 48 applies unless the contractor has checked that he meets the requirements in paragraph 49; 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 51.

(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 49 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 7 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.

54.—(1) The contractor shall not employ or engage a health care professional to perform medical services under the contract 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 14 days whilst his references are checked and considered, and for an additional single period of a further 7 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, he may rely on the references provided on the first occasion, provided that those references are not more than twelve months old.

55.—(1) Before employing or engaging any person to assist him in the provision of services under the contract, the contractor shall take reasonable care to satisfy himself 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 52 to 54.

(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**

56. The contractor shall ensure that for any health care professional who is –

- (a) performing clinical services under the contract; 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.

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

### **Terms and conditions**

58. The contractor shall only offer employment to a general medical practitioner on terms and conditions which are no less favourable than those contained in the “Model terms and conditions of service for a salaried general practitioner employed by a GMS practice” published by the British Medical Association and the NHS Confederation as item 1.2 of the supplementary documents to the new GMS contract 2003(3).

### **Arrangements for GP Registrars**

59.—(1) The contractor shall only employ a GP Registrar for the purpose of being trained by a GP Trainer with the agreement of the Department and 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 contract 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 guidance given by the Department concerning the grants, fees, travelling and other allowances payable to GP Registrars; and
- (b) take into account any guidance issued by the Department in relation to the GP Registrar Scheme.

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

60.—(1) Where –

- (a) a contractor employs or engages a person who is an independent nurse prescriber or a supplementary prescriber whose functions will include prescribing;

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(3) This document is published jointly by the General Practitioners Committee of the British Medical Association and the NHS Confederation. It is available on the Confederation’s website at [www.nhsconfed.org](http://www.nhsconfed.org) or a copy may be obtained by writing to the NHS Confederation, 1 Warwick Row, London, SW1E 5ER

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- (b) a party to the contract is an independent nurse prescriber or a supplementary prescriber whose functions will include prescribing; or
- (c) the functions of a person who is an independent nurse prescriber or a supplementary prescriber whom the contractor already employs or has already engaged are extended to include prescribing,

it shall notify the Board in writing within the period of 7 days beginning with and including the date on which the contractor employed or engaged the person, the party became a party to the contract (unless, immediately before becoming such a party, he fell under paragraph (1)(a)) or the person's functions were extended, as the case may be.

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

he shall notify the Board in writing by the end of the second working day after the day when the event occurred.

(3) The contractor shall provide the following information when he notifies the Board in accordance with sub-paragraph (1) –

- (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 in his practice.

(4) The contractor shall provide the following information when he notifies the Board 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 –
  - (i) he ceased to be employed or engaged in his 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**

61.—(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 21, unless regulations relating to particular certificates provide otherwise;
  - (b) prescription forms;
  - (c) any other clinical documents.

### **Level of skill**

62. The contractor shall carry out his obligations under the contract with reasonable care and skill.

### **Appraisal and assessment**

63.—(1) The contractor shall ensure that any medical practitioner performing services under the contract –

- (a) participates in the appraisal system provided by the Board, unless he participates in an appropriate appraisal system provided by another health services body or is an armed forces GP; and
- (b) co-operates with any assessment by or on behalf of the Board of services performed by that practitioner under the contract.

(2) In sub-paragraph (1), “armed forces GP” means a medical practitioner who is employed on a contract of service by the Ministry of Defence, whether or not as a member of the United Kingdom Armed Forces of Her Majesty.

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

64.—(1) Subject to sub-paragraph (2), the contractor shall not sub-contract any of his rights or duties under the contract in relation to clinical matters unless –

- (a) in all cases, including those which fall within paragraph 65, he has taken reasonable steps to satisfy himself that –
  - (i) it is reasonable in all the circumstances; and
  - (ii) that person is qualified and competent to provide the service; and
- (b) except in cases which fall within paragraph 65, he has notified the Board in writing of his intention to sub-contract as soon as reasonably practicable before the date on which the proposed sub-contract is intended to come into operation.

(2) Sub-paragraph (1)(b) shall not apply to a contract for services with a health care professional for the provision by that professional personally of clinical services.

- (3) The notification referred to in sub-paragraph (1)(b) shall include –
- (a) the name and address of the proposed sub-contractor;
  - (b) the duration of the proposed sub-contract;
  - (c) the services to be covered; and

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(d) the address of any premises to be used for the provision of services.

(4) Following receipt of a notice in accordance with sub-paragraph (1)(b), the Board may request such further information relating to the proposed sub-contract as appears to it to be reasonable and the contractor shall supply such information promptly.

(5) The contractor shall not proceed with the sub-contract or, if it has already taken effect, shall take appropriate steps to terminate it, where, within 28 days of receipt of the notice referred to in sub-paragraph (1)(b), the Board has served notice of objection to the sub-contract on the grounds that –

(a) the sub-contract would –

(i) put at serious risk the safety of the contractor’s patients, or

(ii) put the Board at risk of material financial loss; or

(b) the sub-contractor would be unable to meet the contractor’s obligations under the contract.

(6) Where the Board objects to a proposed sub-contract in accordance with sub-paragraph (5), it shall include with the notice of objection a statement in writing of the reasons for its objection.

(7) Sub-paragraphs (1) and (3) to (6) shall also apply in relation to any renewal or material variation of a sub-contract in relation to clinical matters.

(8) Where a Board does not object to a proposed sub-contract under paragraph (5), the parties to the contract shall be deemed to have agreed a variation of the contract which has the effect of adding to the list of practice premises any premises whose address was notified to it under sub-paragraph (3) (d) and paragraph 96(1) shall not apply.

(9) A contract with a sub-contractor must prohibit the sub-contractor from sub-contracting the clinical services he has agreed with the contractor to provide.

### **Sub-contracting of out of hours services**

65.—(1) A contractor shall not, otherwise than in accordance with the written approval of the Board, sub-contract all or part of his duty to provide out of hours services to any person other than those listed in sub-paragraph (2) other than on a short-term occasional basis.

(2) The persons referred to in sub-paragraph (1) are –

(a) a person who holds a contract with a Board which includes out of hours services;

(b) an Article 15B provider who is required to provide the equivalent of essential services to his patients during all or part of the out of hours period;

(c) a health care professional, not falling within paragraph (a) or (b), who is to provide the out of hours services personally under a contract for services; or

(d) a group of medical practitioners, whether in partnership or not, who provide out of hours services for each other under informal rota arrangements.

(3) An application for approval under sub-paragraph (1) shall be made by the contractor in writing to the Board and shall state –

(a) the name and address of the proposed sub-contractor;

(b) the address of any premises to be used for the provision of services;

(c) the duration of the proposed sub-contract;

(d) the services to be covered by the arrangement; and

(e) how it is proposed that the sub-contractor will meet the contractor’s obligations under the contract in respect of the services covered by the arrangement.

(4) Within 7 days of receipt of an application under sub-paragraph (3), a Board may request such further information relating to the proposed arrangements as seem to it to be reasonable.

(5) Within 28 days of receipt of an application which meets the requirements specified in sub-paragraph (3) or the further information requested under sub-paragraph (4) (whichever is the later), the Board shall –

- (a) approve the application;
- (b) approve the application with conditions; or
- (c) refuse the application.

(6) The Board shall not refuse the application if it is satisfied that the proposed arrangement will, in respect of the services to be covered, enable the contractor to meet satisfactorily his obligations under the contract and will not –

- (a) put at serious risk the safety of the contractor's patients; or
- (b) put the Board at risk of material financial loss.

(7) The Board shall inform the contractor by notice in writing of its decision on the application and, where it refuses an application, it shall include in the notice a statement of the reasons for its refusal.

(8) Where a Board approves an application under this paragraph the parties to the contract shall be deemed to have agreed a variation of the contract which has the effect of adding to the list of practice premises, for the purposes of the provision of services in accordance with that application, any premises whose address was notified to it under sub-paragraph (3)(b) and paragraph 96(1) shall not apply.

(9) Sub-paragraphs (1) to (8) shall also apply in relation to any renewal or material variation of a sub-contract in relation to out of hours services.

(10) A contract with a sub-contractor must prohibit the sub-contractor from sub-contracting the out of hours services it has agreed with the contractor to provide.

### **Withdrawal and variation of approval under paragraph 65**

66.—(1) Without prejudice to any other remedies which it may have under the contract, where a Board has approved an application made under paragraph 65(3) it shall, subject to paragraph 67, be entitled to serve notice on the contractor withdrawing or varying that approval, from a date specified in the notice, if it is no longer satisfied that the proposed arrangement will enable the contractor to meet satisfactorily his obligations under the contract.

(2) The date specified in the notice shall be such as appears reasonable in all the circumstances to the Board.

- (3) The notice referred to in sub-paragraph (1) shall take effect on whichever is the later of –
- (a) the date specified in the notice; or
  - (b) (if applicable) the date of the final determination of the dispute resolution procedure (or any court proceedings) relating to the notice in favour of the Board.

67.—(1) Without prejudice to any other remedies which it may have under the contract, where a Board has approved an application made under paragraph 65(3) it shall be entitled to serve notice on the contractor withdrawing or varying that approval with immediate effect if –

- (a) it is no longer satisfied that the proposed arrangement will enable the contractor to meet satisfactorily his obligations under the contract; and
- (b) it is satisfied that immediate withdrawal or variation is necessary to protect the safety of the contractor's patients.

(2) An immediate withdrawal of approval under sub-paragraph (1) shall take effect on the date on which the notice referred to in that sub-paragraph is received by the contractor.

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