
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 115

The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004

PART 2

Contractors

Conditions: general

3. Subject to the provisions of any order made by the Scottish Ministers under section 7 of the 2004 Act (ancillary provisions), a Health Board may only enter into a contract if the conditions set out in regulations 4 and 5 are met.

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.

(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; and
- (b)** any other partner who is a medical practitioner must—
 - (i)** be a general medical practitioner, or
 - (ii)** 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 Services Trust.

(3) In the case of a contract to be entered into with a company limited by shares—

- (a)** at least one share in the company must be legally and beneficially owned by a general medical practitioner; and
- (b)** any other share or shares in the company that are legally and beneficially owned by a medical practitioner must be so owned by—
 - (i)** a general medical practitioner, or
 - (ii)** 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 Services trust.

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; and

- (c) with a company limited by shares, that—
 - (i) the company,
 - (ii) any person legally and beneficially owning a share in the company, and
 - (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 is the subject of a national disqualification;
 - (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 the person has subsequently been employed by that health service body or another health service body and paragraph (4) applies to that person or 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 (5), 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⁾ 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;

(1) 1995 c. 46.

(2) 1933 c. 12, as amended by the Criminal Justice Act 1988 (c. 33), section 170, Schedule 15, paragraph 8 and Schedule 16, paragraph 16 and the Sexual Offences Act 1956 (c. 69), sections 48 and 51 and Schedules 3 and 4; 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).

- (j) an administrator, administrative receiver or receiver is appointed in respect of it;
 - (k) the person has been-
 - (i) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (powers of the Court of Session to deal with management of charities)(4), 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 Commissioners 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(5), the Companies (Northern Ireland) Order 1986(6) or to an order made under section 429(2)(b) of the Insolvency Act 1986(7) (failure to pay under county court administration order); or
 - (m) the person would fall within regulation 5(2)(d) of the National Health Service (General Medical Services Contracts) Regulations 2004(8).
- (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) in the case of a contract with a company limited by shares—
 - (i) a person legally and beneficially holding a share in the company, or
 - (ii) a director or secretary of the company,as the case may be.
- (4) Where a person has been employed as a member of a health care profession, any subsequent employment must also be as a member of that profession.
- (5) 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) in the case of a contract with a company limited by shares—
 - (i) a person legally and beneficially holding a share in the company; or
 - (ii) a director or secretary of the company,as the case may be.
- (6) 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.

(4) 1990 c. 40.

(5) 1986 c. 46 as amended by the Insolvency Act 2000 (2000 c. 39).

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

(7) 1986 c. 45.

(8) S.I. 2004/291.

Reasons

6.—(1) Where a Health Board is of the view that the conditions in regulation 4 or 5 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); or
- (b) any person legally and beneficially owning a share in, 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.

Appeal

7. A person who has been served with a notice under regulation 6(1) may appeal to the Scottish Ministers against the decision of the Health Board by giving notice in writing to the Scottish Ministers within the period of 28 days beginning on the day that the Health Board served its notice.

Prescribed period under section 17L(6) of the Act

8. The period prescribed for the purposes of section 17L(6) of the Act (eligibility to be contractor under general medical services contract)⁽⁹⁾ is six months.

(9) Section 17L was inserted by the 2004 Act, section 4.