
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 94

**The National Health Service Pension
Scheme (Scotland) Regulations 2015**

PART 8

General

Definitions

149. The expressions listed in column 1 of the Table in Schedule 13 have the meaning given by the corresponding entry in column 2.

OOH provider

150.—(1) A reference to an “OOH provider” is a reference to a body within paragraph (2) or (3).

(2) A body is within this paragraph if it is a company limited by guarantee (which is not otherwise an employing authority)—

- (a) in which all the members of the company are medical practitioners, HBPMS contractors, GMS practices or Section 17C Agreement providers and the majority of those members are—
 - (i) HBPMS contractors, GMS practices or Section 17C Agreement providers whose HBPMS contracts, GMS contracts or Section 17C Agreements require them to provide OOH services; or
 - (ii) medical practitioners who are partners or shareholders in an HBPMS contractor, a GMS practice or a Section 17C Agreement provider which is a partnership or a company limited by shares and which is required to provide OOH services under its HBPMS contract, GMS contract or Section 17C Agreement;
- (b) which has a contract with a Health Board, an HBPMS contractor, a GMS practice or a Section 17C Agreement provider for the provision of OOH services;
- (c) in respect of which a Health Board appointed by the Scottish Ministers to act on their behalf—
 - (i) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity;
 - (ii) is satisfied that the company has met all the conditions for being an OOH provider in this regulation; and
 - (iii) has, pursuant to a written application made by the company to it for that purpose, approved the company as an employing authority.

(3) A body is within this paragraph if it is a body corporate other than a company limited by guarantee (which is not otherwise an employing authority) which—

- (a) operates in the interests of those who are the recipients of the primary medical services it provides or the general public;
 - (b) operates on a not-for-profit basis;
 - (c) is not an associated company in relation to another person;
 - (d) has a memorandum or articles or rules that—
 - (i) prohibit the payment of dividends to its members;
 - (ii) require its profits (if any) or other income to be applied to promoting its objects; and
 - (iii) require all assets which would otherwise be available to its members generally to be transferred on its winding up either to another body which operates on a not for profit basis and whose purpose is to provide health or social care for the benefit of the community or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto;
 - (e) has at least one member who is—
 - (i) an HBPMS contractor, a GMS practice or a Section 17C Agreement provider;
 - (ii) a partner in a partnership which is an HBPMS contractor, a GMS practice or a Section 17C Agreement provider; or
 - (iii) a shareholder in a company limited by shares that is an HBPMS contractor, a GMS practice or a Section 17C Agreement provider;
 - (f) has a contract with a Health Board, an HBPMS contractor, a GMS practice or a Section 17C Agreement provider, for the provision of OOH services; and
 - (g) is approved as an employing authority by a Health Board appointed by the Scottish Ministers to act on their behalf—
 - (i) pursuant to a written application made by the body to it for that purpose; and
 - (ii) that Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.
- (4) For the purposes of paragraph (3)(c)—
- (a) a body corporate is another person’s “associated company” if that person—
 - (i) has control of it; and
 - (ii) it is not an employing authority,
 - (b) a person is to be taken to have control of a body corporate if the person-
 - (i) exercises, or is able to exercise direct or indirect control over its affairs;
 - (ii) is entitled to acquire such control.
- (5) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority must make a written application to a Health Board appointed by the Scottish Ministers to act on their behalf (“the appointed Board”).
- (6) An application referred to in paragraph (5) may specify the date from which approval by the appointed Board (if given) shall have effect (the “nominated date”).
- (7) If a company limited by guarantee or other body corporate makes an application and—
- (a) the appointed Board is satisfied that the company or other body corporate is within paragraph (2) or (3) as the case may be or will be at a nominated date which is later than the approval date; and
 - (b) it approves that application,
- the approval takes effect on the later of the nominated date and the approval date.

(8) If paragraph (7) applies, NHS employment is treated as commencing on the later of the nominated date (if any) and the approval date.

(9) The appointed Board may give an OOH provider a notice in writing terminating its participation in this scheme if the provider—

- (a) does not have in force a guarantee, indemnity or bond as required by the Scottish Ministers in accordance with regulation 151;
- (b) has ceased to be within paragraph (2) and (3);
- (c) has notified the Board that any one of the following events has occurred in respect of it—
 - (i) a proposal for a voluntary arrangement has been made or approved under Part 1 (company voluntary arrangements) of the Insolvency Act 1986⁽¹⁾ (“the 1986 Act”);
 - (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Schedule B1 (administration) to the 1986 Act;
 - (iii) a receiver, manager or administrative receiver has been appointed under Part 3 of the 1986 Act;
 - (iv) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed under Part 4 or Part 5 of the 1986 Act or pursuant to section 123 of the Co-operative and Community Benefit Societies Act 2014⁽²⁾ or an instrument of dissolution has been drawn up in accordance with section 119 of that Act;
 - (v) notice has been received by it that it may be struck off the register of companies, or an application to strike it off has been made, under Part 31 of the Companies Act 2006⁽³⁾.

(10) An OOH provider—

- (a) must give the appointed Board notice in writing upon the occurrence of any of the events referred to in paragraph (9)(c) and must give such notice on the same day as that event;
- (b) that wishes to cease to participate in this Section of the scheme must give the appointed Board and its employees not less than three months’ notice in writing (to commence with the date of the notice) of that fact.

(11) An OOH provider ceases to participate in this scheme on—

- (a) such date as the appointed Board may specify in a notice under paragraph (9); or
- (b) the day upon which the period referred to in paragraph (10)(b) expires if a notice under that provision has been given.

Guarantees, bonds and indemnities

151.—(1) This regulation applies if—

- (a) an employing authority fails or has at any time in the past failed to pay or to remit contributions in accordance with regulation 30 to 34, 47, 56 or 61; and
- (b) the authority is—
 - (i) a GMS practice;
 - (ii) a Section 17C Agreement provider;
 - (iii) an HBPMS contractor; or

(1) 1986 c.46.

(2) 2014 c.14.

(3) 2006 c.46.

(iv) an OOH provider.

(2) The scheme manager may require the authority to have in force a guarantee, indemnity or bond which provides for payment to the scheme manager, if the authority fails to meet them, of all future liabilities under—

- (a) this scheme; or
- (b) the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998⁽⁴⁾.

(3) The guarantee, indemnity or bond must be in such form, in respect of such amount and provided by such person as the scheme manager approves for the purpose.

Medical practitioner

152.—(1) References to a medical practitioner must be construed in accordance with this regulation.

(2) A medical practitioner is a fully registered person—

- (a) whose name is included in a medical performers list; and
- (b) to whom any of paragraphs (3) to (5) apply.

(3) This paragraph applies to—

- (a) a GMS practice;
- (b) a Section 17C Agreement provider;
- (c) an HBPMS contractor; or
- (d) an OOH provider.

(4) This paragraph applies to a partner in a partnership that is—

- (a) a GMS practice;
- (b) a Section 17C Agreement provider;
- (c) an HBPMS contractor; or
- (d) an OOH provider.

(5) This paragraph applies to a shareholder in a company limited by shares that is—

- (a) a GMS practice;
- (b) a Section 17C Agreement provider; or
- (c) an HBPMS contractor.

(6) This paragraph applies to an ophthalmic provider.

(7) A person who is a GP registrar is not a medical practitioner.

(8) A reference to a fully registered person must be construed in accordance with section 55 of the Medical Act 1983⁽⁵⁾.

(9) An ophthalmic provider is a medical practitioner providing general ophthalmic services under the 1978 Act.

(4) S.I. 1998/1451.

(5) 1983 c.54.