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STATUTORY INSTRUMENTS

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**2004 No. 627**

**The National Health Service (Personal Medical Services Agreements) Regulations 2004**

**PART 2**

**AGREEMENTS**

**Conditions: introductory**

**3.** A relevant body may make an agreement only if the conditions set out in regulations 4 and 5 are met.

**Conditions relating solely to medical practitioners**

**4.—(1)** A relevant body may make an agreement with a medical practitioner (whether he falls within section 28D(1)(b) or another paragraph of section 28D(1)), only if he—

- (a) is a general medical practitioner; or
- (b) is employed by a Primary Care Trust, a Local Health Board, (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.

(2) A relevant body may make an agreement with a qualifying body only if any share or shares in the qualifying body are legally and beneficially owned by a medical practitioner who is—

- (a) a general medical practitioner; or
- (b) a medical practitioner who is employed by a Primary Care Trust, a Local Health Board, (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.

(3) In paragraph (1)(a) and (2)(a) “general medical practitioner” does not include—

- (a) from the coming into force of article 10 of the 2003 Order, a medical practitioner whose name is included in the General Practitioner Register by virtue of paragraph 1(d) of Schedule 6 to that Order; and
- (b) until the coming into force of paragraph 22 of Schedule 8 to the 2003 Order, a medical practitioner who either—
  - (i) has an acquired right to practise as a general medical practitioner pursuant to regulation 5(1)(d) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994(1), or
  - (ii) upon the coming into force of paragraph 22 of Schedule 8 to the 2003 Order, is an eligible general practitioner pursuant to that paragraph by virtue of an acquired right under paragraph 1(d) of Schedule 6 to the 2003 Order.

### General condition relating to all agreements

5.—(1) A relevant body may make an agreement with an individual falling within section 28D(1)(b) to (d) only if that individual does not fall within paragraph (3).

(2) A relevant body may make an agreement with a qualifying body only if—

- (a) the qualifying body;
- (b) any person legally and beneficially owning a share in the qualifying body; and
- (c) any director or secretary of the qualifying body,

does not fall within paragraph (3).

(3) A person falls within this paragraph if—

- (a) he or it (in the case of a qualifying body), is the subject of a national disqualification;
- (b) subject to paragraph (4), he or it is disqualified or suspended (other 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 five years prior to the signing of the agreement or commencement of the agreement, whichever is the earlier, he has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless he has subsequently been employed by that health service body or another health service body and paragraph (5) applies to him or that dismissal was the subject of a finding of unfair dismissal by any competent tribunal or court;
- (d) within the period of five years prior to signing the agreement or commencement of the agreement, whichever is the earlier, he or it has been removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 49F(2), (3) and (4) of the Act respectively<sup>(2)</sup>) unless his name has subsequently been included in such a list;
- (e) he has been convicted in the United Kingdom of murder;
- (f) he has been convicted in the United Kingdom of a criminal offence, committed on or after 1st April 2002, and has been sentenced to a term of imprisonment of over six months;
- (g) subject to paragraph (6) he has been convicted elsewhere of an offence—
  - (i) which would, if committed in England and Wales, constitute murder,
  - (ii) committed on or after 3rd November 2003 which would, if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (h) he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons with respect to which special provisions of the Act apply)<sup>(3)</sup> or Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children under the age of 17 years to which special provisions apply)<sup>(4)</sup> committed on or after 1st April 2004;
- (i) he or it has—
  - (i) been adjudged bankrupt or had sequestration of his estate awarded unless (in either case) he has been discharged or the bankruptcy order has been annulled,

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(2) Section 49F was inserted into the Act by section 25 of the 2001 Act and amended by the 2002 Act, section 2(5) and paragraph 21 and the 2003 Act, Schedule 14.

(3) 1933 c. 12 as amended by the Criminal Justice Act 1988 (c. 33), section 170, Schedule 15, paragraph 8 and Schedule 16, paragraph 16; 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.

(4) 1995 c. 46.

- (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986<sup>(5)</sup>,
  - (iii) made a composition or arrangement with, or granted a trust deed for, his or its creditors unless he or it has been discharged in respect of it, or
  - (iv) an administrator, administrative receiver or receiver appointed in respect of it;
- (j) he has been—
- (i) 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 he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated, or
  - (ii) 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)<sup>(6)</sup>, from being concerned in the management or control of any body; or
- (k) he is subject to a disqualification order under the Company Directors Disqualification Act 1986<sup>(7)</sup>, the Companies (Northern Ireland) Order 1986<sup>(8)</sup> or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order)<sup>(9)</sup>.
- (4) A person shall not fall within paragraph (3)(b) where the relevant body 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 party to an agreement; or
  - (b) in the case of an agreement with a qualifying body—
    - (i) a person legally and beneficially owning a share in the qualifying body, or
    - (ii) a director or secretary of the qualifying body,as the case may be.
- (5) 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.
- (6) A person shall not fall within paragraph (3)(g) where the relevant body is satisfied that the conviction does not make the person unsuitable to be—
- (a) a party to an agreement;
  - (b) in the case of an agreement with a qualifying body—
    - (i) a person legally and beneficially owning a share in the qualifying body, or
    - (ii) a director or secretary of the qualifying body,as the case may be.

## Reasons

6.—(1) Where a relevant body is of the view that the conditions in regulation 4 or 5 for making an agreement are not met it shall notify in writing the person or persons intending to make the agreement of its view and the reasons for that view and of his, its or their right of appeal under regulation 7.

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<sup>(5)</sup> 1986 c. 45. Schedule 4A was inserted by section 257 of, and Schedule 20 to, the Enterprise Act 2002 (c. 40).

<sup>(6)</sup> 1990 c. 40.

<sup>(7)</sup> 1986 c. 46 as amended by the Insolvency Act 2000 (c. 39).

<sup>(8)</sup> S.I.1986/1032 (N.I. 6).

<sup>(9)</sup> 1986 c. 45.

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(2) The relevant body shall also notify in writing of its view and the reasons for that view any person legally and beneficially owning a share in, or a director or secretary of, a qualifying body that is notified under paragraph (1) where its reason for the decision relates to that person or those persons.

### **Appeal**

7. A person who has been served with a notice under regulation 6(1) may appeal to the FHSAA against the decision of the relevant body that the conditions in regulation 4 or 5 are not met by giving notice in writing to the FHSAA within the period of 28 days beginning on the day that the relevant body served its notice.