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STATUTORY INSTRUMENTS

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**2005 No. 3373**

**The National Health Service (Personal Dental Services Agreements) Regulations 2005**

**PART 2**

**CONTRACTORS**

**Conditions: introductory**

3. A Relevant Body may only enter into an agreement if the conditions set out in—
- (a) regulation 4; and
  - (b) in the case of an agreement to be entered into with a qualifying body<sup>(1)</sup>, on or after the coming into force for all purposes of article 39 of the Dentists Act Order (substitution of sections 43 and 44), regulation 5,

are met.

**General conditions relating to all agreements**

4.—(1) A Relevant Body may make an agreement with an individual falling within section 28D(1)(b) to (d) 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; or
- (b) any director, chief executive 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 date the agreement is to be commenced or, if earlier, the date on which the agreement is to be signed—
  - (i) 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; or
  - (ii) 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

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(1) A “qualifying body” is defined in section 28D(2) of the Act.

- (4) of the Act<sup>(2)</sup> respectively) unless his or its name has subsequently been included in such a list;
- (d) he has been convicted in the United Kingdom of—
- (i) murder; or
  - (ii) a criminal offence other than murder, committed on or after 14th December 2001, and has been sentenced to a term of imprisonment of over six months;
- (e) subject to paragraph (6), he has been convicted outside the United Kingdom of an offence—
- (i) which would, if committed in England and Wales, constitute murder; or
  - (ii) committed on or after 14th December 2001, 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;
- (f) he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933<sup>(3)</sup> (offences against children and young persons with respect to which special provisions of this Act apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995<sup>(4)</sup> (offences against children under the age of 17 years to which special provisions apply) committed on or after 1st April 2006;
- (g) 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;
  - (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> 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, his or its creditors unless he or it has been discharged in respect of it;
- (h) an administrator, administrative receiver or receiver is appointed in respect of it;
- (i) he has within the period of five years prior to the date the agreement is to be commenced or, if earlier, the date on which the agreement is to be signed—
- (i) been 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;
  - (ii) been removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(6)</sup> (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body; or
  - (iii) been 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

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

(3) 1933 c. 12; as amended by the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 58(1), Schedule 10, paragraph 2; the Sexual Offences Act 2003 (c. 42), section 139 and Schedule 6, paragraph 7; the Criminal Justice Act 1988 (c. 33), section 170 and 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 modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9.

(4) 1995 c. 46.

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

(6) 1990 c. 40.

(7) 1986 c. 46 as amended by the Insolvency Act 2000 (c. 39).

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

to an order made under section 429(2)(b) of the Insolvency Act 1986<sup>(9)</sup> (failure to pay under county court administration order).

(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, a director, chief executive 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)(e) where the Relevant Body is satisfied that the conviction 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, a member, director, chief executive or secretary of the qualifying body.

#### **Additional conditions relating to agreements with qualifying bodies**

5.—(1) Subject to paragraph (2), it is a condition in the case of an agreement to be entered into with a qualifying body on or after the date of the coming into force of article 39 of the Dentists Act Order, that no—

- (a) offence has been or is being committed under section 43 of the Dentists Act; or
- (b) financial penalty has been imposed under section 43B or 44 of the Dentists Act.

(2) Paragraph (1) shall not apply if the Relevant Body is satisfied that any offence under section 43 or penalty imposed under section 43B or 44 of the Dentists Act does not make the qualifying body unsuitable to be a contractor, whether by virtue of the time that has elapsed since any conviction or penalty was imposed, or otherwise.

#### **Reasons**

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

(2) The Relevant Body shall also notify in writing of its view and its reasons for that view, any director, chief executive or secretary of a qualifying body that is notified under paragraph (1) where its reasons for the decision relate 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.

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(9) 1986 c. 45.

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**Status:** *This is the original version (as it was originally made).*

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