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STATUTORY INSTRUMENTS

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**2006 No. 552**

**The National Health Service (Local  
Pharmaceutical Services etc.) Regulations 2006**

**PART 3**

**CONTRACTORS**

**General condition relating to all LPS schemes**

- 7.—(1) A Primary Care Trust may only enter into an LPS scheme with—
- (a) an individual, if that individual does not fall within paragraph (2);
  - (b) two or more individuals (whether or not practising in partnership), if each of those individuals does not fall within paragraph (2); and
  - (c) in the case of a body corporate, if—
    - (i) the body corporate, or
    - (ii) any director, chief executive, superintendent or company secretary of the body corporate,does not fall within paragraph (2).
- (2) A person falls within this paragraph if—
- (a) he is the subject of national disqualification;
  - (b) subject to paragraph (3), he is disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing or regulatory body anywhere in the world;
  - (c) he has within a period of five years prior to the date the scheme is to be commenced or, if earlier, the date on which the scheme is to be signed, 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<sup>(1)</sup> (disqualification of practitioners) respectively), unless his 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 1st April 2006, and has been sentenced to a term of imprisonment of over six months;
  - (e) subject to paragraph (4), he has been convicted elsewhere of an offence—
    - (i) which would, if committed in England and Wales, constitute murder, or

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(1) Section 49F was inserted by section 25 of the 2001 Act and amended by the 2002 Act, Schedule 2, paragraph 21, and the 2003 Act, Schedule 14, Part 4.

- (ii) committed on or after the 1st April 2006 which would, if committed in England and Wales, constitute a criminal offence other than murder, and has 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>(2)</sup> (offences against children and young persons with respect to which special provisions of the Act apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995<sup>(3)</sup> (offences against children under the age of 17 years to which special provisions apply) committed on or after 1st April 2006;
- (g) he has been convicted of an offence under Part 2 of the Sexual Offences Act 2003<sup>(4)</sup> committed on or after 1st April 2006;
- (h) he has—
  - (i) been adjudged bankrupt, or sequestration of his estate has been 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>,
  - (iii) made a composition or arrangement with, or granted a trust deed for, his creditors unless he has been discharged in respect of it, or
  - (iv) in the case of a body corporate, been wound up under Part IV of the Insolvency Act 1986;
- (i) there is—
  - (i) an administrator, administrative receiver or receiver appointed in respect of him, or
  - (ii) an administration order made in respect of him under Schedule B1 to the Insolvency Act 1986<sup>(6)</sup>;
- (j) he has within the period of five years prior to the date the scheme is to be commenced or, if earlier, the date on which the scheme is to be signed—
  - (i) been removed from the office of charity trustee or trustee for the 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 or facilitated, or
  - (ii) been removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(7)</sup> (powers of the Court of Session to deal with management of charities) from being concerned in the management or control of any body;
- (k) he has within the period of five years prior to the date the scheme is to be commenced or, if earlier, the date on which the scheme is to be signed, been subject to a disqualification order under the Company Directors Disqualification Act 1986<sup>(8)</sup> or the Companies (Northern Ireland) Order 1986<sup>(9)</sup>, or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order); or

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(2) 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 as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9.

(3) 1995 c. 46.

(4) 2003 c. 42.

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

(6) Schedule B1 was inserted by the Enterprise Act 2002 (c. 40), section 248 and Schedule 16.

(7) 1990 c. 40.

(8) 1986 c. 46, as amended by the Insolvency Act 2000 (c. 39).

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

- (l) he (in the case of an individual) has refused to comply with a request by the Primary Care Trust for him to be medically examined on the grounds that it is concerned that he is incapable of adequately providing services under the scheme.
- (3) A person shall not fall within paragraph (2)(b) where the Primary Care Trust is satisfied that the disqualification or suspension from practising imposed by a licensing or regulatory body outside the United Kingdom does not make the person unsuitable to be—
  - (a) a party to an LPS scheme; or
  - (b) in the case of an LPS scheme with a body corporate, a director, chief executive, superintendent or company secretary of a party to an LPS scheme.
- (4) A person shall not fall within (2)(e) where the Primary Care Trust is satisfied that the conviction does not make the person unsuitable to be—
  - (a) a party to an LPS scheme; or
  - (b) in the case of an LPS scheme with a body corporate, a director, chief executive, superintendent or company secretary of a party to an LPS scheme.

### **Reasons**

8. Where a Primary Care Trust is of the view that a person proposing to enter into an LPS scheme does not meet the conditions in regulation 7, it must notify that person in writing of its view, the reasons for that view and of his right of appeal under regulation 9.

### **Appeal**

9. A person who has been served with a notice under regulation 8 may appeal to the FHSAA against the decision of the Primary Care Trust that the conditions in regulation 7 are not met by giving notice in writing to the FHSAA within the period of 28 days beginning on the day that the Primary Care Trust served its notice.

### **Health service body status**

10.—(1) A contractor shall be treated as a health service body for the purposes of section 4 of the 1990 Act from the date it makes an LPS scheme unless, prior to making the scheme, it objected in a written notice served on the Primary Care Trust with which it subsequently made the scheme.

(2) Where a contractor is to be treated as a health service body for the purposes of section 4 of the 1990 Act pursuant to paragraph (1), any change in the parties comprising the contractor shall not affect the health service body status of the contractor.

(3) If, pursuant to paragraph (1) or (4), a contractor is to be treated as a health service body, that fact shall not affect the nature of, or any rights or liabilities arising under, any other scheme or contract with a health service body entered into by that contractor before the date on which the contractor is to be so regarded.

(4) A contractor may at any time request a variation of the LPS scheme to include or remove provision from the scheme that the scheme is an NHS contract, and if it does so—

- (a) the Primary Care Trust must agree to the variation; and
- (b) the procedure in paragraph 26 of Schedule 2 shall apply.

(5) Where, pursuant to paragraph (4), the Primary Care Trust agrees to a variation of the scheme, the contractor shall—

- (a) be treated; or
- (b) subject to paragraph (7), cease to be treated,

as a health service body for the purposes of section 4 of the 1990 Act from the date that variation takes effect.

(6) Subject to paragraph (7), a contractor that is to be treated as a health service body pursuant to paragraphs (1) or (4), as the case may be, shall cease to be treated as a health service body for the purposes of section 4 of the 1990 Act if the scheme is terminated.

(7) Where a contractor ceases to be treated as a health service body pursuant to—

- (a) paragraph (5) or (6), it shall continue to be treated as a health service body for the purposes of being a party to any other NHS contract entered into after it was treated as a health service body but before the date on which the contractor ceased to be treated as a health service body (for which purposes it ceases to be such a body on the termination of that NHS contract);
- (b) paragraph (5), it shall, if it or the Primary Care Trust has referred any matter to the NHS dispute resolution procedure before it ceases to be treated as a health service body, be bound by the determination of the adjudicator as if the dispute had been referred pursuant to paragraph 22 of Schedule 2; or
- (c) paragraph (6), it must continue to be treated as a health service body for the purposes of the NHS dispute resolution procedure where that procedure has been commenced—
  - (i) before the termination of the scheme, or
  - (ii) after the termination of the scheme, whether in connection with, or arising out of, the termination of the scheme or otherwise,for which purposes it ceases to be such a body on the conclusion of that procedure.

### **Lists of LPS contractors**

**11.** The Primary Care Trust shall publish lists of contractors who provide local pharmaceutical services in their area, together with information about—

- (a) services that each contractor provides; and
- (b) the days on which and times at which those services are provided.