
STATUTORY INSTRUMENTS

2015 No. 1879

The National Health Service (Personal Medical Services Agreements) Regulations 2015

PART 2

Agreements

Conditions: general

4.—(1) The Board may only enter into an agreement if the conditions specified in regulation 5 are met.

(2) Paragraph (1) is subject to the provisions of any scheme made by the Secretary of State under section 300 (transfer schemes) and section 303 (power to make consequential provision) of the Health and Social Care Act 2012(1).

General condition relating to all agreements

5.—(1) The Board must not enter into an agreement with—

- (a) a person falling within section 93(1)(b) to (d) of the Act (persons with whom agreements may be made under section 92), to whom paragraph (2) applies;
- (b) a qualifying body if paragraph (2) applies to—
 - (i) the qualifying body,
 - (ii) any person both legally and beneficially owning a share in the qualifying body, and
 - (iii) any director or secretary of the qualifying body.

(2) This paragraph applies if—

- (a) the contractor is the subject of a national disqualification;
- (b) subject to paragraph (3), the contractor is disqualified or suspended (other than by interim suspension order or direction pending an investigation) from practising by a licensing body anywhere in the world;
- (c) the contractor has, within the period of five years before the signing of the agreement or commencement of the agreement (whichever is the earlier) been dismissed (otherwise than by reason of redundancy) from any employment with a health service body, unless—
 - (i) if the contractor was employed as a member of a health care profession at the time of the dismissal, the contractor has not subsequently been employed by that health service body or by another health service body, and
 - (ii) the dismissal was the subject of a finding of unfair dismissal by any competent tribunal or a court;

- (d) the contractor has, within the period of five years before the signing of the agreement or commencement of the agreement (whichever is the earlier), been removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 151(2), (3) and (4) of the Act⁽²⁾ (disqualification of practitioners)), or a performers list held by the Board by virtue of regulations made under section 91(3) (persons performing primary medical services) of the Act, unless the contractor's name has subsequently been included in such a list;
- (e) the contractor has been convicted in the United Kingdom of murder;
- (f) the contractor has been convicted in the United Kingdom of a criminal offence other than murder committed on or after 1st April 2002 and has been sentenced to a term of imprisonment of longer than six months;
- (g) subject to paragraph (3), the contractor has been convicted outside of the United Kingdom of an offence which would, if committed in England and Wales, constitute murder and—
 - (i) the offence was committed on or after 3rd November 2003; and
 - (ii) the contractor was sentenced to a term of imprisonment of longer than six months;
- (h) the contractor has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933⁽³⁾ (offences against children and young persons, with respect to which special provisions of this Act apply), or in Schedule 1 to the Criminal Procedure (Scotland) Act 1995⁽⁴⁾ (offences against children under the age of 17 years to which special provisions apply) committed on or after 1st April 2004;
- (i) the contractor has at any time been included in—
 - (i) any barred list within the meaning of section 2 of the Safeguarding Vulnerable Groups Act 2006⁽⁵⁾ (barred lists), or
 - (ii) any barred list within the meaning of article 6 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007⁽⁶⁾ (barred lists),
 unless the contractor was removed from the list either on the grounds that it was not appropriate for the contractor to have been included in it or as the result of a successful appeal;
- (j) the contractor has, within the period of five years before the signing of the agreement or commencement of the agreement (whichever is the earlier), been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission, the Charity Commission for Northern Ireland or the High Court, and that order was made on the grounds of misconduct or mismanagement in the administration of a charity for which the contractor was responsible or to which the contractor was privy, or which was contributed to, or facilitated by, the contractor's conduct;
- (k) the contractor has, within the period of five years before the signing of the agreement or commencement of the agreement (whichever is the earlier), been removed from being concerned with the management or control of any body in any case where removal was by

(2) Section 151 was amended by paragraph 79 of Schedule 4 to the Health and Social Care Act 2012 (c.7).

(3) 1933 c.12. Schedule 1 was amended by section 51 of, and Schedule 4 to, the Sexual Offences Act 1956 (c.99); paragraph 8 of Schedule 15, and section 170(2) of, and Schedule 16 to, the Criminal Justice Act 1988 (c.33); section 139 of, and paragraph 7 of Schedule 6 to, the Sexual Offences Act 2003 (c.42); section 58(1) of, and Schedule 10 to, the Domestic Violence, Crime and Victims Act 2004 (c.28); paragraph 53 of Schedule 21 to Coroners and Justice Act 2009 (c.25); section 115(1) of, and paragraph 136(a) and (b) of Schedule 9 to, the Protection of Freedoms Act 2012 (c. 9); and section 7(1) of, and paragraph 1 of Schedule 5 to, the Modern Slavery Act 2015 (c.30).

(4) 1995 c.46. Schedule 1 was amended by paragraph 2(8)(a) of Schedule 5 to the Sexual Offences (Scotland) Act 2009 (asp 9) which inserted paragraphs 1A to 1D into that Schedule.

(5) 2006 c.47. Section 2 was amended by articles 3(a) and 4 of S.I. 2012/3006

(6) S.I. 2007/1351 (N.I. 11); as amended by section 81(2) and (3)(o)(i) and 116(5)(a) of the Policing and Crime Act 2009 (c.26).

- virtue of section 34(5)(e) of the Charities and Trustees Investment (Scotland) Act 2005(7) (powers of Court of Session);
- (l) the contractor—
 - (i) has been adjudged bankrupt and has not been discharged from the bankruptcy or the bankruptcy order has not been annulled, or
 - (ii) has had sequestration of the contractor’s estate awarded and has not been discharged from the sequestration;
 - (m) the contractor is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(8) (bankruptcy restrictions order and undertaking), or Schedule 2A to the Insolvency (Northern Ireland) Order 1989(9) (bankruptcy restrictions order and undertaking), or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985(10) (bankruptcy restrictions order, interim bankruptcy restrictions order and bankruptcy restrictions undertaking), unless the contractor has been discharged from that order or that order has been annulled;
 - (n) the contractor—
 - (i) is subject to a moratorium period under a debt relief order under Part VIIA of the Insolvency Act 1986(11) (debt relief orders), or
 - (ii) is the subject of a debt relief restrictions order or an interim debt relief restrictions order under Schedule 4ZB to that Act(12) (debt relief restrictions orders and undertakings);
 - (o) the contractor has made a composition agreement or arrangement with, or granted a trust deed for, the contractor’s creditors and the contractor has not been discharged in respect of it;
 - (p) the contractor is subject to—
 - (i) a disqualification order under section 1 of the Company Directors Disqualification Act 1986(13) (disqualification orders: general) or a disqualification undertaking under section 1A of that Act(14) (disqualification undertakings: general),
 - (ii) a disqualification order or disqualification undertaking under article 3 (disqualification orders: general) or article 4 (disqualification undertakings: general) of the Company Directors Disqualification (Northern Ireland) Order 2002(15), or
 - (iii) a disqualification order under section 429(2) of the Insolvency Act 1986(16) (disabilities on revocation of an administration order against an individual);
 - (q) the contractor has had an administrator, administrative receiver or receiver appointed in respect of the contractor; or

(7) 2005 asp 10. Section 34 was amended by section 122 of the Public Services Reform (Scotland) Act 2010 (asp 8).

(8) 1986 c.45. Schedule 4A was inserted by Schedule 20 to the Enterprise Act 2002 (c.40) and was amended by section 71(3) of, and paragraph 63(1), (3), (2)(a) and (b) to, the Enterprise and Regulatory Reform Act 2013 (c.24).

(9) S.I. 1989/2405 (N.I. 19). Schedule 2A was inserted by article 13(2) of, and Schedule 5 to, S.I. 2005/1455 (N.I. 10).

(10) 1985 c.66. Sections 56A to 56K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(11) 1986 c.45. Part VIIA was inserted by section 108(1) of, and Schedule 17 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

(12) 1986 c.45. Schedule 4ZB was inserted by section 108(2) of and Schedule 19 to the Tribunals, Courts and Enforcement Act 2007.

(13) 1986 c.46. Section 1 was amended by sections 5(1) and (2) and 8 of the Insolvency Act 2000 (c.40), section 204(1) and (3) of the Enterprise Act 2002 (c.40), and sections 111 and 164(1) of, and paragraphs 1 and 2 of Schedule 7 to, the Small Business Enterprise and Employment Act 2015 (c.26).

(14) 1986 c.46. Section 1A was inserted by section 6(1) and (2) of the Insolvency Act 2000 (c.39), and was amended by section 111 of, and paragraphs 1 and 3(1) and (2) of Schedule 7 to, the Small Business Enterprise and Employment Act 2015.

(15) S.I. 2002/3150 (N.I. 4).

(16) 1986 c.45. Section 429 was amended by section 269 of, and Schedule 23 to, the Enterprise Act 2002, and by section 106 of, and Schedule 16 to, the Tribunals, Courts and Enforcement Act 2007.

- (r) the contractor has had an administration order made in respect of the contractor under Schedule B1 to the Insolvency Act 1986⁽¹⁷⁾ (administration).
- (3) Paragraph (2)(b) or, as the case may be, paragraph (2)(g), does not apply to a person where—
- (a) that person—
- (i) has been disqualified or suspended from practising by a licensing body outside of the United Kingdom, or
- (ii) has been convicted outside of the United Kingdom of a criminal offence; and
- (b) the Board is satisfied that the disqualification, suspension or, as the case may be, the conviction does not make the person unsuitable to be—
- (i) a party to the agreement; or
- (ii) in the case of an agreement with a qualifying body—
- (aa) a person who both legally and beneficially owns a share in the qualifying body, or
- (bb) a director or secretary of the qualifying body.
- (4) For the purposes of paragraph (2)(c)—
- (a) 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; and
- (b) a health service body includes a Strategic Health Authority or a Primary Care Trust which was established before the coming into force of section 33 (abolition of Strategic Health Authorities) or section 34 (abolition of Primary Care Trusts) of the Health and Social Care Act 2012⁽¹⁸⁾.
- (5) In this regulation, “contractor” includes a person with whom the Board is proposing to enter into an agreement.

Notice of conditions not being met and reasons

6.—(1) Where the Board considers that the conditions in regulation 5 for entering into an agreement are not met, it must give notice in writing to the person or persons intending to enter into the agreement of—

- (a) its view and the reasons for that view; and
- (b) the right of appeal under regulation 7.

(2) The Board must give notice in writing of its view and the reasons for that view to any person who both legally and beneficially owns a share in, or who is a director or secretary of, a qualifying body that is given notice under paragraph (1) in any case where its reason for the decision relates to such a person.

Right of appeal

7. A person who has been given a notice by the Board under regulation 6(1) may appeal to the First-tier Tribunal⁽¹⁹⁾ against the decision of the Board that the conditions in regulation 5 are not met.

⁽¹⁷⁾ 1986 c.45. Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002.

⁽¹⁸⁾ 2012 c.7.

⁽¹⁹⁾ An appeal may be made to the First-tier Tribunal (Primary Health Lists) against a decision by the National Health Service Commissioning Board to refuse to enter a person in a list, to remove a person from a list or regarding the conditions relating to that person's entry in a list. The First-tier Tribunal was established in 2008 by Part 1 of the Tribunals, Courts and Enforcement Act 2007 (c.15). The Health, Education and Social Chamber is responsible for hearing appeals concerning matters relating to the Health Service in England and Wales.

