

SCHEDULE 1

Amendments to the National Health Service (General Medical Services Contracts) Regulations 2015

Pay transparency

10. After regulation 27A insert—

“Disclosure of information about NHS earnings: jobholders

27AA.—(1) In this regulation—

- (a) “disclosure obligation”, “relevant financial year”, “relevant threshold”, “the disclosure date” and “sub-contractor” have the meanings given in regulation 27A;
- (b) “NHS earnings” has the meaning given in regulation 27B.

(2) In this regulation and, where applicable, in regulation 27B—

“contract of engagement” means a contract of employment or other agreement under which a jobholder is engaged;

“jobholder” means—

- (a) an individual employed by a relevant person;
- (b) an individual engaged by a relevant person under a contract for services to provide services which enable the relevant person to fulfil its obligations under the contract or sub-contract, as the case may be;
- (c) an individual engaged by a third party to provide clinical services;
- (d) where the relevant person is a company, a director or company secretary of that company;

“relevant person” means—

- (a) the contractor;
- (b) a sub-contractor;
- (c) a person to whom the sub-contractor has sub-contracted obligations as permitted by paragraph 44(9A) of Schedule 3 (“P”);

“third party contract” means a contract or other agreement under which a relevant person is provided with a jobholder to provide clinical services under the contract or sub-contract, as the case may be, and which is between—

- (a) a contractor and a person other than a jobholder or sub-contractor,
- (b) a sub-contractor and a person other than a jobholder, the contractor, or a person (“P”) to whom the sub-contractor has sub-contracted obligations as permitted by paragraph 44(9A) of Schedule 3, or
- (c) P and a person other than a jobholder or sub-contractor;

“third party” is to be construed in accordance with the definition of “third party contract”.

- (3) A contract must contain a term which prevents the contractor from entering into a contract of engagement unless it requires the jobholder to comply with the disclosure obligation for each relevant financial year in which the jobholder’s NHS earnings exceed the relevant threshold.

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- (4) A contract must also contain a term which prevents the contractor from sub-contracting any of its obligations to provide clinical services under the contract unless—
- (a) the sub-contract entered into by the contractor requires the sub-contractor (“S”) to—
 - (i) include the term specified in paragraph (6) in any contract of engagement S enters into with a jobholder on or after entering into the sub-contract, and
 - (ii) use reasonable endeavours to include that term in any contract of engagement which S has entered into prior to entering into the sub-contract, and
 - (b) the sub-contract prevents S from sub-contracting to P any of the clinical services S has agreed with the contractor to provide under the sub-contract unless the sub-contract S enters into with P includes the term specified in paragraph (5).
- (5) The term requires P to—
- (a) include the term specified in paragraph (6) in any contract of engagement which P enters into with a jobholder on or after entering into the sub-contract with S, and
 - (b) use reasonable endeavours to include that term in any contract of engagement which P has entered into prior to entering into that sub-contract.
- (6) The term requires the jobholder to comply with the disclosure obligation for each relevant financial year in which the jobholder’s NHS earnings exceed the relevant threshold.
- (7) A contract must also contain a term requiring the contractor to use reasonable endeavours to ensure that any contract of engagement, which the contractor entered into before the term in paragraph (3) is incorporated into the contract is amended to include the term specified in paragraph (6).
- (8) A contract must also contain a term requiring the contractor to use reasonable endeavours to ensure that any sub-contract which the contractor entered into before the term in paragraph (4) is incorporated into the contract is amended to include the terms specified in paragraph (9).
- (9) The terms are—
- (a) a term which requires S to—
 - (i) include the term specified in paragraph (6) in any contract of engagement S enters into with a jobholder on or after the amendment of the sub-contract,
 - (ii) use reasonable endeavours to include the term specified in paragraph (6) in any contract of engagement which S entered into before the amendment of the sub-contract, and
 - (iii) use reasonable endeavours to include the term specified in paragraph (5) in any sub-contract which S has entered into with P before the amendment of the sub-contract pursuant to paragraph (8);
 - (b) a term which prevents S from sub-contracting to P obligations to provide clinical services under the contract unless the sub-contract entered into by S includes the term specified in paragraph (5).
- (10) A contract must also contain a term requiring the contractor to use reasonable endeavours to include in a third party contract (whenever entered into) a term requiring the third party (“T”) to include the term specified in paragraph (6) in any contract of engagement to which T is a party.
- (11) A contract must also contain a term which prevents the contractor from sub-contracting any of its obligations to provide clinical services under the contract, unless the sub-contract requires S to use reasonable endeavours to—

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- (a) include in a third party contract (whenever entered into) a term requiring T to include the term specified in paragraph (6) in any contract of engagement to which T is a party, and
 - (b) include in any sub-contract between S and P a term requiring P to include in any third party contract (whenever entered into) the term specified in paragraph (12).
- (12) The term is one which requires T to include the term specified in paragraph (6) in any contract of engagement to which T is a party.
- (13) Nothing in this regulation requires a jobholder to comply with the disclosure obligation for any relevant financial year which—
- (a) ends before the jobholder enters into a contract of engagement;
 - (b) begins after the jobholder’s contract of engagement has terminated.”.