

SCHEDULE 5

OTHER CONTRACTUAL TERMS

PART 4

Persons who perform services

Qualifications of performers

46.—(1) Subject to sub-paragraph (2), no medical practitioner shall perform medical services under the contract unless the practitioner is—

- (a) included in the primary medical services performers' list for the Health Board which is under a duty to provide or secure the provision of the service to be performed;
- (b) not suspended from that list or from the Medical Register; and
- (c) not subject to interim suspension under section 41A of the Medical Act 1983 (interim orders)(1).

(2) Sub-paragraph (1) (a) shall not apply in the case of—

- (a) a medical practitioner employed in Scotland, by a Health Board, in England and Wales, by a NHS trust, a NHS foundation trust, or, in Northern Ireland, by a Health and Social Services trust who is providing services other than primary medical services at the practice premises;
- (b) a person who is provisionally registered under section 15 (provisional registration), 15A (provisional registration for EEA nationals) or 21 (provisional registration) of the Medical Act 1983(2) acting in the course of the person's employment in a resident medical capacity in an approved medical practice; or
- (c) a GP Registrar during the first two months of the GP Registrar's training period.

Qualifications of performers

47. No health care professional other than one to whom paragraph 46 applies shall perform clinical services under the contract unless the health care professional is appropriately registered with the health care professional's relevant professional body and the health care professional's registration is not currently suspended.

Qualifications of performers

48. Where the registration of a health care professional or, in the case of a medical practitioner, the practitioner's inclusion in a list, is subject to conditions, the contractor shall ensure compliance with those conditions insofar as they are relevant to the contract.

Qualifications of performers

49. No health care professional shall perform any clinical services unless the health care professional has such clinical experience and training as are necessary to enable the health care professional properly to perform such services.

(1) 1983 c. 54. Section 41A was inserted by S.I.2000/1803.

(2) Section 15 was amended by the National Health Service (Primary Care) Act 1997 (c. 46) ("the 1997 Act"), Schedule 1, Part 1, paragraph 61(9); section 15A was inserted by S.I. 2000/3041; section 21 was amended by the 1997 Act, Schedule 1, Part 1, paragraph 61(5) and by S.I. 1996/1591 and 2002/3135.

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Conditions for employment and engagement

50.—(1) Subject to sub-paragraphs (2) and (3), a contractor shall not employ or engage a medical practitioner (other than one falling within paragraph 46(2)) unless—

- (a) that practitioner has provided it with the name and address of the Health Board on whose primary medical services performers list the practitioner appears;
- (b) the contractor has checked that the practitioner meets the requirements in paragraph 46.

(2) Where the employment or engagement of a medical practitioner is urgently needed and it is not possible for the contractor to check the matters referred to in paragraph 46 in accordance with sub-paragraph (1)(b) before employing or engaging the practitioner, the practitioner may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

(3) Where the prospective employee is a GP Registrar, the requirements set out in sub-paragraph (1) shall apply with the modifications that—

- (a) the name and address provided under sub-paragraph (1) may be the name and address of the Health Board on whose primary medical services performers list the GP Registrar has applied for inclusion; and
- (b) confirmation that the GP Registrar’s name appears on that list shall not be required until the end of the first two months of the GP Registrar’s training period.

Conditions for employment and engagement

51.—(1) A contractor shall not employ or engage—

- (a) a health care professional (other than one to whom paragraph 46 applies) unless the contractor has checked that the health care professional meets the requirements in paragraph 47; or
- (b) a health care professional to perform clinical services unless the contractor has taken reasonable steps to satisfy itself that the health care professional meets the requirements in paragraph 49.

(2) Where the employment or engagement of a health care professional is urgently needed and it is not possible to check the matters referred to in paragraph 47 in accordance with sub-paragraph (1) before employing or engaging the practitioner, the health care professional may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

(3) When considering a health care professional’s experience and training for the purposes of sub-paragraph (1)(b), the contractor shall have regard in particular to—

- (a) any post-graduate or post-registration qualification held by the health care professional; and
- (b) any relevant training undertaken by the health care professional and any relevant clinical experience gained by the health care professional.

Conditions for employment and engagement

52.—(1) The contractor shall not employ or engage a health care professional to perform medical services under the contract unless—

- (a) that person has provided two clinical references, relating to two recent posts (which may include any current post) as a health care professional which lasted for three months without a significant break, or where this is not possible, a full explanation and alternative referees; and
- (b) the contractor has checked and is satisfied with the references.

(2) Where the employment or engagement of a medical practitioner is urgently needed and it is not possible to obtain and check the references in accordance with sub-paragraph (1)(b) before employing or engaging the practitioner, the practitioner may be employed or engaged on a temporary basis for a single period of up to 14 days whilst the practitioner's references are checked and considered, and for an additional single period of a further 7 days if the contractor believes the person supplying those references is ill, on holiday or otherwise temporarily unavailable.

(3) Where the contractor employs or engages the same person on more than one occasion within a period of three months, it may rely on the references provided on the first occasion, provided that those references are not more than twelve months old.

Conditions for employment and engagement

53.—(1) Before employing or engaging any person to assist it in the provision of services under the contract, the contractor shall take reasonable care to satisfy itself that the person in question is both suitably qualified and competent to discharge the duties for which the person is to be employed or engaged.

(2) The duty imposed by sub-paragraph (1) is in addition to the duties imposed by paragraphs 50 to 52.

(3) When considering the competence and suitability of any person for the purpose of sub-paragraph (1), the contractor shall have regard, in particular, to—

- (a) that person's academic and vocational qualifications;
- (b) that person's education and training; and
- (c) that person's previous employment or work experience.

Training

54. The contractor shall ensure that for any health care professional who is—

- (a) performing clinical services under the contract; or
- (b) employed or engaged to assist in the performance of such services,

there are in place arrangements for the purpose of maintaining and updating the health care professional's skills and knowledge in relation to the services which the health care professional is performing or assisting in performing.

Training

55. The contractor shall afford to each employee reasonable opportunities to undertake appropriate training with a view to maintaining that employee's competence.

Terms and conditions

56. The contractor shall only offer employment to a general medical practitioner on terms and conditions which are no less favourable than those contained in the "Model terms and conditions of service for a salaried general practitioner employed by a GMS practice" published by the British Medical Association and the NHS Confederation as item 1.2 of the supplementary documents to the new GMS contract 2003⁽³⁾.

(3) This document is published jointly by the General Practitioners Committee of the British Medical Association and the NHS Confederation. It is available on the Department of Health's website at www.doh.gov.uk/gmscontract/supportingdoc.htm or a copy may be obtained by writing to the NHS Confederation, 1 Warwick Road, London SW1E 5ER.

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Arrangements for GP Registrars

57.—(1) The contractor shall only employ a GP Registrar for the purpose of being trained by a GP Trainer with the agreement of the Scottish Ministers and subject to the conditions in sub-paragraph (2).

(2) The conditions referred to in sub-paragraph (1) are that the contractor shall not, by reason only of having employed or engaged a GP Registrar, reduce the total number of hours for which other medical practitioners perform primary medical services under the contract or for which other staff assist them in the performance of those services.

(3) A contractor which employs a GP Registrar shall—

- (a) offer the GP Registrar terms of employment in accordance with the rates and subject to the conditions contained in any directions given by the Scottish Ministers to Health Boards under section 17M of the Act⁽⁴⁾ concerning the grants, fees, travelling and other allowances payable to GP Registrars; and
- (b) take into account any guidance issued by the Scottish Ministers in relation to the GP Registrar Scheme⁽⁵⁾.

Independent nurse prescribers and supplementary prescribers

58.—(1) Where—

- (a) a contractor employs or engages a person who is an independent nurse prescriber or a supplementary prescriber whose functions will include prescribing;
- (b) a contractor is a partnership and one of the partners is an independent nurse prescriber or a supplementary prescriber whose functions will include prescribing; or
- (c) the functions of a person who is an independent nurse prescriber or a supplementary prescriber whom the contractor already employs or has already engaged are extended to include prescribing,

it shall notify the Health Board in writing within the period of 7 days beginning with the date on which the contractor employed or engaged the person, the party became a party to the contract (unless, immediately before becoming such a party, the person fell under paragraph (1)(a)) or the person's functions were extended, as the case may be.

(2) Where—

- (a) the contractor ceases to employ or engage a person who is an independent nurse prescriber or a supplementary prescriber whose functions included prescribing in its practice;
- (b) the partner in a partnership who is an independent nurse prescriber or a supplementary prescriber whose functions include prescribing, ceases to be partner in a partnership;
- (c) the functions of a person who is an independent nurse prescriber or a supplementary prescriber whom the contractor employs or engages in its practice are changed so that they no longer include prescribing in its practice; or
- (d) the contractor becomes aware that a person who is an independent nurse prescriber or a supplementary prescriber whom the contractor employs or engages has been removed or suspended from the relevant register,

it shall notify the Health Board in writing by the end of the second working day after the day when the event occurred.

⁽⁴⁾ Section 17M was inserted by the 2004 Act, section 4.

⁽⁵⁾ The current guidance is the GP Registrar Scheme Vocational Guide for General Medical practice—the UK Guide 2000 published by the Department of Health and available on their website at www.doh.gov.uk/medicaltrainingintheuk or by writing to the Department of Health, P.O. Box 777, London SE1 6XH.

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(3) The contractor shall provide the following information when it notifies the Health Board in accordance with sub-paragraph (1)—

- (a) the person's full name;
- (b) the person's professional qualifications;
- (c) the person's identifying number which appears in the relevant register;
- (d) the date on which the person's entry in the relevant register was annotated to the effect that the person was qualified to order drugs, medicines and appliances for patients;
- (e) the date—
 - (i) on which the person was employed or engaged, if applicable,
 - (ii) the person became a partner in the partnership, if applicable, or
 - (iii) on which one of the person's functions became prescribing in its practice.

(4) The contractor shall provide the following information when it notifies the Health Board in accordance with sub-paragraph (2)—

- (a) the person's full name;
- (b) the person's professional qualifications;
- (c) the person's identifying number which appears in the relevant register;
- (d) the date—
 - (i) the person ceased to be employed or engaged in its practice,
 - (ii) the person ceased to be partner in the partnership,
 - (iii) the person's functions changed so as no longer to include prescribing, or
 - (iv) on which the person was removed or suspended from the relevant register.

Signing of documents

59.—(1) In addition to any other requirements relating to such documents whether in these Regulations or otherwise, the contractor shall ensure that the documents specified in sub-paragraph (2) include—

- (a) the clinical profession of the health care professional who signed the document; and
 - (b) the name of the contractor on whose behalf it is signed.
- (2) The documents referred to in sub-paragraph (1) are—
- (a) certificates issued in accordance with regulation 21, unless regulations relating to particular certificates provide otherwise;
 - (b) prescription forms; and
 - (c) any other clinical documents.

Level of skill

60. The contractor shall carry out its obligations under the contract with reasonable skill and care.

Appraisal and assessment

61.—(1) The contractor shall ensure that any medical practitioner performing services under the contract—

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- (a) participates in the appraisal system provided by the Health Board unless the practitioner participates in an appropriate appraisal system provided by another health service body or is an armed forces GP; and
 - (b) co-operates with any assessment process which the Health Board operates in relation to poorly performing doctors, as set out in NHS circular PCA(M)(2001)17(6).
- (2) The Health Board shall provide an appraisal system for the purposes of sub-paragraph (1) (a) after consultation with the area medical committee and such other persons as appear to it to be appropriate.
- (3) In sub-paragraph (1)—
- “armed forces GP” means a medical practitioner who is employed on a contract of service by the Ministry of Defence, whether or not as a member of the United Kingdom Armed Forces of Her Majesty; and
 - “health service body” does not include any person who is to be regarded as a health service body in accordance with regulation 10.

Sub-contracting of clinical matters

62.—(1) Subject to sub-paragraph (2), the contractor shall not sub-contract any of its rights or duties under the contract in relation to clinical matters unless—

- (a) in all cases, including those which fall within paragraph 63, it has taken reasonable steps to satisfy itself that—
 - (i) it is reasonable in all the circumstances; and
 - (ii) that person is qualified and competent to provide the service; and
 - (b) except in cases which fall within paragraph 63, it has notified the Health Board of its intention to sub-contract as soon as reasonably practicable before the date on which the proposed sub-contract is intended to come into force.
- (2) Sub-paragraph (1)(b) shall not apply to a contract for services with a health care professional for the provision by that person of clinical services.
- (3) The notification referred to in sub-paragraph (1)(b) shall include—
- (a) the name and address of the proposed sub-contractor;
 - (b) the duration of the proposed sub-contract;
 - (c) the services to be covered; and
 - (d) the address of any premises to be used for the provision of services.
- (4) Following receipt of a notice in accordance with sub-paragraph (1)(b), the Health Board may request such further information relating to the proposed sub-contract as appears to it to be reasonable and the contractor shall supply such information promptly.
- (5) The contractor shall not proceed with the sub-contract or, if it has already taken effect, shall take appropriate steps to terminate it, where, within 28 days of receipt of the notice referred to in sub-paragraph (1)(b), the Health Board has served notice of objection to the sub-contract on the grounds that—
- (a) the sub-contract would—
 - (i) put at serious risk the safety of the contractor’s patients, or
 - (ii) put the Board at risk of material financial loss; or

(6) Copies of NHS Circular PCA(M) (2001)17 may be obtained in writing from the Scottish Executive Health Department, Primary Care Division, St Andrew’s House, Regent Road, Edinburgh, EH1 3DG.

(b) the sub-contractor would be unable to meet the contractor's obligations under the contract.

(6) Where the Health Board objects to a proposed sub-contract in accordance with sub-paragraph (5), it shall include with the notice of objection a statement in writing of the reasons for its objections.

(7) Sub-paragraphs (1) and (3) to (6) shall also apply in relation to any renewal or material variation of a sub-contract in relation to clinical matters.

(8) Where a Health Board does not object to a proposed sub-contract under paragraph (5), the parties to the contract shall be deemed to have agreed a variation of the contract which has the effect of adding to the list of practice premises any premises whose address was notified to it under sub-paragraph (3)(d) and paragraph 94 (1) shall not apply.

(9) A contract with a sub-contractor must prohibit the sub-contractor from sub-contracting the clinical services it has agreed with the contractor to provide.

Sub-contracting of out of hours service

63.—(1) A contractor shall not, otherwise than in accordance with the written approval of the Health Board, sub-contract all or part of its duty to provide out of hours services to any person other than those listed in sub-paragraph (2) other than on a short-term occasional basis.

(2) The persons referred to in sub-paragraph (1) are—

- (a) a person who holds a general medical services contract with a Health Board which includes out of hours services;
- (b) a section 17C provider who is required to provide the equivalent of essential services to the provider's patients during all or part of the out of hours period;
- (c) a health care professional, not falling within paragraph (a) or (b), who is to provide the out of hours services personally under a contract for services; or
- (d) a group of medical practitioners, whether in partnership or not, who provide out of hours services for each other under informal rota arrangements.

(3) An application for approval under sub-paragraph (1) shall be made by the contractor in writing to the Health Board and shall state—

- (a) the name and address of the proposed sub-contractor;
- (b) the address of any premises used for the provision of services;
- (c) the duration of the proposed sub-contract;
- (d) the services to be covered by the arrangement; and
- (e) how it is proposed that the sub-contractor will meet the contractor's obligations under the contract in respect of the services covered by the arrangement.

(4) Within 7 days of receipt of an application under sub-paragraph (3), a Health Board may request such further information relating to the proposed arrangements as seem to it to be reasonable.

(5) Within 28 days of receipt of an application which meets the requirements specified in sub-paragraph (3) or the further information requested under sub-paragraph (4) (whichever is the later), the Health Board shall—

- (a) approve the application;
- (b) approve the application with conditions; or
- (c) refuse the application.

(6) The Health Board shall not refuse the application if it is satisfied that the proposed arrangement will, in respect of the services to be covered, enable the contractor to meet satisfactorily its obligations under the contract and will not—

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- (a) put at serious risk the safety of the contractor's patients; or
- (b) put the Health Board at risk of material financial loss.

(7) The Health Board shall inform the contractor by notice in writing of its decision on the application and, where it refuses an application, it shall include in the notice a statement of the reasons for its refusal.

(8) Where a Health Board approves a sub-contract under this paragraph the parties to the contract shall be deemed to have agreed a variation of the contract which has the effect of adding to the list of practice premises for the purposes of the provision of services in accordance with that application, any premises whose address was notified to it under sub-paragraph (3)(b) and paragraph 94 (1) shall not apply.

(9) Sub-paragraphs (1) to (8) shall also apply in relation to any renewal or material variation of a sub-contract in relation to out of hours services.

(10) A contract with a sub-contractor must prohibit the sub-contractor from sub-contracting the out of hours services it has agreed with the contractor to provide.

Withdrawal and variation of approval under paragraph 63

64.—(1) Without prejudice to any other remedies which it may have under the contract, where a Health Board has approved an application made under paragraph 63(3) it shall, subject to paragraph 65, be entitled to serve notice on the contractor withdrawing or varying that approval from a date specified in the notice if it is no longer satisfied that the proposed arrangement will enable the contractor to meet satisfactorily its obligations under the contract.

(2) The date specified in the notice shall be such as appears reasonable in all the circumstances to the Health Board.

(3) The notice referred to in sub-paragraph (1) shall take effect on whichever is the later of—

- (a) the date specified in the notice; or
- (b) (if applicable) the date of the final determination of the NHS dispute resolution procedure (or any court proceedings) relating to the notice in favour of the Health Board.

Withdrawal and variation of approval under paragraph 63

65.—(1) Without prejudice to any other remedies which it may have under the contract, where a Health Board has approved an application made under paragraph 63(3) it shall be entitled to serve notice on the contractor withdrawing or varying that approval with immediate effect if—

- (a) it is no longer satisfied that the proposed arrangement will enable the contractor to meet satisfactorily its obligations under the contract; and
- (b) it is satisfied that immediate withdrawal or variation is necessary to protect the safety of the contractor's patients.

(2) An immediate withdrawal of approval under sub-paragraph (1) shall take effect on the date on which the notice referred to in that sub-paragraph is received by the contractor.