
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 66

The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018

PART 2

CONTRACTORS

Conditions: general

4. A Health Board may only enter into a contract if the conditions set out in regulations 5, 6 and 7 are met.

Conditions relating solely to medical practitioners

5.—(1) In the case of a contract to be entered into with a medical practitioner, that practitioner must be a general medical practitioner who satisfies the conditions in regulations 6 and 7.

(2) In the case of a contract to be entered into with a partnership—

- (a) at least one partner (who must not be a limited partner) must be a general medical practitioner;
- (b) all the other partners must be individuals; and
- (c) all the partners must satisfy the conditions in regulations 6 and 7.

(3) In the case of a contract to be entered into with a limited liability partnership—

- (a) at least one member must be a general medical practitioner;
- (b) all the other members must be individuals; and
- (c) all the members must satisfy the conditions in regulations 6 and 7.

(4) In the case of a contract to be entered into with a company—

- (a) at least one member of the company must be a general medical practitioner;
- (b) all other members must be individuals;
- (c) all the members must satisfy the conditions in regulations 6 and 7; and
- (d) any director or secretary of the company must satisfy the conditions in regulation 6.

(5) In paragraphs (1), (2)(a), (3)(a) and (4)(a), “general medical practitioner” does not include a medical practitioner whose name is included in the General Practitioner Register by virtue of—

- (a) article 4(3) of the 2010 Order (general practitioners eligible for entry in the General Practitioner Register) because of an exemption under regulation 5(1)(d) of one of the sets of Regulations specified in paragraph (6);
- (b) article 6(2) of the 2010 Order (persons with acquired rights) by virtue of being a restricted service principal (within the meaning of one or more of the sets of Regulations specified in paragraph (7)) included in a list specified in that article; or

(c) article 6(6) of the 2010 Order.

(6) The regulations referred to in paragraph (5)(a) are the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998⁽¹⁾, the National Health Service (Vocational Training for General Medical Practice) Regulations 1997⁽²⁾ and the Medical Practitioners (Vocational Training) Regulations (Northern Ireland) 1998⁽³⁾.

(7) The regulations referred to in paragraph (5)(b) are the National Health Service (General Medical Services) Regulations 1992⁽⁴⁾, the National Health Service (General Medical Services) (Scotland) Regulations 1995⁽⁵⁾ and the General Medical Services Regulations (Northern Ireland) 1997⁽⁶⁾.

General conditions relating to all contracts

6.—(1) It is a condition in the case of a contract to be entered into—

- (a) with a medical practitioner, that the medical practitioner;
- (b) with a partnership, that any member of the partnership or the partnership;
- (c) with a limited liability partnership, that any member of the limited liability partnership or the limited liability partnership; and
- (d) with a company, that—
 - (i) the company;
 - (ii) any member of the company;
 - (iii) any director or secretary of the company,

must not fall within paragraph (2).

(2) A person falls within this paragraph if—

- (a) the person has been disqualified or suspended by direction of the Tribunal made pursuant to section 32A(2) (applications for interim suspension) or 32B(1) (suspension pending appeal) of the Act⁽⁷⁾, or under any provisions in force in England, Wales or Northern Ireland corresponding thereto;
- (b) subject to paragraph (3), the person is disqualified or suspended (otherwise 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 5 years prior to the signing of the contract or commencement of the contract, whichever is the earlier, the person has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body, unless—
 - (i) the person has subsequently been employed by that health service body or another health service body and, where the person has been employed as a member of a health care profession, any subsequent employment has also been as a member of that profession; or

(1) [S.I. 1998/5](#). Those Regulations were revoked by [S.I. 2003/1250](#).

(2) [S.I. 1997/2817](#). Those Regulations were revoked by [S.I. 2003/1250](#).

(3) [S.R. \(N.I.\) 1998/No. 13](#). Those Regulations were revoked by [S.I. 2003/1250](#).

(4) [S.I. 1992/635](#). Those Regulations were revoked in respect of Wales by [S.I. 2004/1016 \(W. 113\)](#) and in respect of England by [S.I. 2004/865](#).

(5) [S.I. 1995/416](#). Those Regulations were revoked by [S.S.I. 2004/114](#).

(6) [S.R. \(N.I.\) 1997/No. 380](#). Those Regulations were revoked by [S.R. \(N.I.\) 2004/No. 156](#).

(7) Sections 32A and 32B were inserted by section 8 of the National Health Service (Amendment) Act 1995 (c.31). Section 32A(2) was amended by paragraph 51 of schedule 4 of the Health Act 1999 (“the 1999 Act”), and section 26(7) of the Smoking, Health and Social Care (Scotland) Act 2005 (“the 2005 Act”). Section 32B(1) was amended by the paragraph 52 of schedule 4 of 1999 Act and paragraph 1 of schedule 3 of the 2005 Act.

- (ii) that dismissal was the subject of a finding of unfair dismissal by any competently established tribunal or court;
- (d) within the period of 5 years prior to signing the contract or commencement of the contract, whichever is the earlier, the person has been disqualified from a list anywhere in the United Kingdom unless the person's name has subsequently been included in such a list;
- (e) the person has been convicted in the United Kingdom of—
 - (i) murder; or
 - (ii) a criminal offence, other than murder, and has been sentenced to a term of imprisonment of over six months;
- (f) the person has been convicted elsewhere of an offence which would, if committed in Scotland, constitute—
 - (i) murder; or
 - (ii) subject to paragraph (4), a criminal offence, other than murder, and been sentenced to a term of imprisonment of over six months;
- (g) the person has been convicted of an offence referred to in schedule 1 of the Criminal Procedure (Scotland) Act 1995⁽⁸⁾ or schedule 1 of the Children and Young Persons Act 1933⁽⁹⁾;
- (h) the person has—
 - (i) had sequestration of the person's estate awarded or been adjudged bankrupt unless (in either case) the person 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—
 - (aa) schedule 4A of the Insolvency Act 1986⁽¹⁰⁾;
 - (bb) schedule 2A of the Insolvency (Northern Ireland) Order 1989⁽¹¹⁾;
 - (cc) sections 56A to 56K of the Bankruptcy (Scotland) Act 1985⁽¹²⁾; or
 - (dd) sections 155 to 160 of the Bankruptcy (Scotland) Act 2016⁽¹³⁾,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, the person's creditors unless the person has been discharged in respect of it;
- (i) there is—
 - (i) an administrator, administrative receiver or receiver is appointed in respect of it; or

(8) 1995 c.46. Schedule 1 was amended by section 7(1) of the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (asp 8), paragraph 2 of schedule 1 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), paragraph 2 of schedule 5 of the Sexual Offences (Scotland) Act 2009 (asp 9) and section 41 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

(9) 1933 c.12. Schedule 1 was amended by paragraph 52 of schedule 4 of the Sexual Offences Act 1956 (c.69), paragraph 170(2) of schedule 16 of the Criminal Justice Act 1988 (c.33), paragraph 7 of schedule 6 of the Sexual Offences Act 2003 (c.42) and paragraph 1 of schedule 5 of the Modern Slavery Act 2015 (c.3).

(10) 1986 c.45. Schedule 4A was inserted by section 257 and paragraph 1 of schedule 20 of the Enterprise Act 2002 (c.40) ("the 2002 Act") and was amended by paragraph 63 of the Enterprise and Regulatory Reform Act 2013 (c.24).

(11) S.I. 1989/2405 (N.I. 19). schedule 2A was inserted by S.I. 2005/1455 (N.I. 10).

(12) 1985 c.66. Sections 56A to 56K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), amended by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11) and repealed by Part 1 of schedule 9 of the Bankruptcy (Scotland) Act 2016 (asp 21).

(13) 2016 asp 21.

- (ii) an administration order made in respect of it under schedule B1 of the Insolvency Act 1986⁽¹⁴⁾;
 - (j) that person is a partnership or limited liability partnership and—
 - (i) a dissolution of the partnership or limited liability partnership has been ordered by any competent court, tribunal or arbitrator; or
 - (ii) an event has happened that makes it unlawful for the business of the partnership or limited liability partnership to continue, or for members of the partnership or limited liability partnership to carry on in partnership or limited liability partnership;
 - (k) the person has been—
 - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session)⁽¹⁵⁾, from being concerned in the management or control of any body; or
 - (ii) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission for England and Wales or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which the person by that person’s conduct contributed to or facilitated;
 - (l) the person is subject to—
 - (i) a disqualification order under section 1 of the Company Directors Disqualification Act 1986⁽¹⁶⁾;
 - (ii) a disqualification undertaking under section 1A of that Act⁽¹⁷⁾;
 - (iii) a disqualification order under article 3 of the Company Directors Disqualification (Northern Ireland) Order 2002⁽¹⁸⁾;
 - (iv) a disqualification undertaking under article 4 of that Order⁽¹⁹⁾; or
 - (v) an order under section 429(2)(b) of the Insolvency Act 1986⁽²⁰⁾ (failure to pay under county court administration order); or
 - (m) the person falls within regulation 6(2)(d) (general conditions relating to all contracts) of the National Health Service (General Medical Services Contracts) Regulations 2015⁽²¹⁾.
- (3) A person will not fall within paragraph (2)(b) where the Health Board 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 contractor;
 - (b) a partner, in the case of a contract with a partnership;
 - (c) a member, in the case of a contract with a limited liability partnership;
 - (d) in the case of a contract with a company—
 - (i) a member of the company; or

⁽¹⁴⁾ Schedule B1 was inserted by paragraph 1 of schedule 16 of the 2002 Act.

⁽¹⁵⁾ 2005 asp 10. Section 34 was amended by section 122 of the Public Services Reform (Scotland) Act 2010 (asp 8).

⁽¹⁶⁾ 1986 c.46. Section 1 was amended by section 5 and paragraph 2 of schedule 4 of the Insolvency Act 2000 (c.39) (“the 2000 Act”), section 204 of the 2002 Act and paragraph 2 of schedule 7 of the Small Business, Enterprise and Employment Act 2015 (c.26) (“the 2015 Act”).

⁽¹⁷⁾ Section 1A was inserted by S.I. 2005/1454 (N.I. 9) and section 6(2) of the 2000 Act and amended by paragraph 3 of schedule 7 of the 2015 Act.

⁽¹⁸⁾ S.I. 2002/3150 (N.I. 4). Article 3 was amended by paragraph 9 of schedule 8 of the 2015 Act.

⁽¹⁹⁾ Article 4 was amended by paragraph 9 of schedule 8 of the 2015 Act.

⁽²⁰⁾ Section 429 was amended by paragraph 15 of schedule 23 of the Enterprise Act 2002.

⁽²¹⁾ S.I. 2015/1862.

(ii) a director or secretary of the company,
as the case may be.

(4) A person will not fall within paragraph (2)(f)(ii) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a contractor;
- (b) a partner, in the case of a contract with a partnership;
- (c) a member in the case of a contract with a limited liability partnership;
- (d) in the case of a contract with a company—
 - (i) a member of the company; or
 - (ii) a director or secretary of the company,

as the case may be.

(5) In this regulation, “health service body” does not include any person who is to be regarded as a health service body in accordance with regulation 13.

Further conditions relating to all contracts

7.—(1) For the purposes of section 17L(4) of the Act(22) (eligibility to be contractor under general medical services contract), a person regularly performs or is engaged in the day to day provision of primary medical services where, subject to paragraphs (2) and (3), that person so performs or is so engaged, or will so perform or so engage, for no less than a total of 10 hours in each week for the duration of the contract.

(2) For the purposes of section 17L(5)(b) of the Act, references in section 17L(4) to a person who is performing or is engaged in the provision of services, include a person who has performed or been engaged in providing the services within 6 months prior to the contract being entered into.

(3) For the purposes of section 17L(6) of the Act, the prescribed circumstances in which a period of time in which a person is not performing or is not engaged in the provision of primary medical services is to be disregarded for the purposes of determining whether the person regularly performs or is engaged in the day to day provision of those services are where the period of time is—

- (a) a period of annual leave, as determined by the period of annual leave entitlement of the said person;
- (b) a local or public holiday in Scotland;
- (c) a period of—
 - (i) maternity leave;
 - (ii) paternity leave;
 - (iii) adoption leave;
 - (iv) parental leave; or
 - (v) shared parental leave,as determined by the period of entitlement of the said person;
- (d) a period of time when a person has been incapable of work due to sickness, injury or pregnancy;
- (e) a period of time of up to a maximum of 12 months, when a person is undertaking approved study or training;

(22) Section 17L was substituted by section 39 of the Tobacco and Primary Medical Services (Scotland) Act 2010 asp 3.

- (f) a period of service as a medical practitioner employed under a contract of service by the Ministry of Defence, whether or not as a member of the armed forces of the Crown, provided that the medical practitioner is entered on the General Practitioner Register kept by virtue of section 34C of the Medical Act 1983⁽²³⁾;
- (g) a period of whole time service in the armed forces of the Crown in a national emergency, as a volunteer or otherwise, or a compulsory whole time service in those forces, including any service resulting from any reserve liability, or any equivalent service by a person liable for compulsory whole-time service in those forces; or
- (h) any period during which the person has been suspended by a professional regulatory body, a Health Board or the Tribunal where that person was suspended after the contract with the Health Board was entered into.

(4) For the purposes of this regulation, “approved study or training” means study or training which is relevant for the purposes of the contractor carrying out the obligations under the contract effectively, and which has been approved by the appropriate partner, member or person responsible for training and development.

Reasons

8.—(1) Where a Health Board is of the view that the conditions in regulations 5, 6 or 7 for entering into a contract are not met, it must notify in writing the person intending to enter into the contract of the Health Board’s view and its reasons for that view and of that person’s right of appeal under regulation 9.

(2) The Health Board must also notify in writing of its view and its reasons for that view—

- (a) any partner in the partnership that is notified under paragraph (1);
- (b) any member of a limited liability partnership that is notified under paragraph (1);
- (c) any member, or a director or secretary, of a company that is notified under paragraph (1) where its reasons for that view relates to that person or persons.

Appeal

9. A person who has been served with a notice under regulation 8(1) may appeal to the Scottish Ministers against the decision of the Health Board by giving notice in writing to the Scottish Ministers within the period of 28 days beginning on the day that the Health Board served its notice.

Continuing conditions relating to contracts

10.—(1) The following conditions apply for the duration of the contract—

- (a) in the case of a contract entered into with a medical practitioner, that practitioner must be a general medical practitioner;
- (b) in the case of a contract entered into prior to 22nd December 2010 with a partnership—
 - (i) at least one partner (who must not be a limited partner) must be a general medical practitioner; and
 - (ii) any other partner who is a medical practitioner must—
 - (aa) be a general medical practitioner; or
 - (bb) be employed, in Scotland, by a Health Board, in England and Wales, by a Local Health Board, NHS trust, NHS foundation trust or, in Northern Ireland, by a Health and Social Care trust; and

(23) 1983 c.54. Section 34C was inserted by S.I. 2010/234.

- (iii) all the other partners must be individuals;
 - (c) in the case of a contract entered into on or after 22nd December 2010 with a partnership—
 - (i) at least one partner (who must not be a limited partner) must be a general medical practitioner; and
 - (ii) all the other members must be individuals;
 - (d) in the case of a contract entered into with a limited liability partnership—
 - (i) at least one partner must be a general medical practitioner; and
 - (ii) all the other members must be individuals;
 - (e) in the case of a contract entered into prior to 22nd December 2010 with a company limited by shares—
 - (i) at least one share in the company must be legally and beneficially owned by a general medical practitioner; and
 - (ii) any other share or shares in the company that are legally and beneficially owned by a medical practitioner must be so owned by—
 - (aa) a general medical practitioner; or
 - (bb) a medical practitioner who is employed, in Scotland, by a Health Board, in England and Wales, by a Local Health Board, NHS trust, NHS foundation trust or in Northern Ireland, by a Health and Social Care trust;
 - (f) in the case of a contract entered into on or after 22nd December 2010 with a company—
 - (i) at least one member of the company must be a general medical practitioner; and
 - (ii) all the other members must be individuals.
- (2) Regulation 5(5) applies to the meaning of “general medical practitioner” in paragraph (1) (a), (b), (c), (d), (e) and (f) as it applies to the meaning of “general medical practitioner” in regulation 5(1), (2)(a), (3)(a) and (4)(a).

Continuing conditions relating to contracts – sufficient involvement in patient care

- 11.**—(1) The contractor must ensure that—
- (a) for the duration of the contract while a person falls within paragraph (2)(a), that person has sufficient involvement in patient care; and
 - (b) where a person falls within paragraph (2)(b), that person has sufficient involvement in patient care from the date they fall within that paragraph for the rest of the duration of the contract or until they cease to fall within paragraph (2)(b)(i) to (iii), whichever is the earlier.
- (2) A person falls within—
- (a) this sub-paragraph if, in the case of a contract entered into on or after 22nd December 2010 with—
 - (i) a medical practitioner, they are that medical practitioner;
 - (ii) a partnership or limited liability partnership, they are a member of that partnership or limited liability partnership; or
 - (iii) a company, they are a member of that company; or
 - (b) this sub-paragraph if, in the case of a contract entered into prior to 22nd December 2010 with—
 - (i) a medical practitioner, they are that medical practitioner;

- (ii) a partnership, they are a member of that partnership; or
 - (iii) a company, they are a person who legally and beneficially owns a share in that company; and
 - (iv) they fall within paragraph (3) or (4);
 - (v) they fall within paragraph (3) or (4).
- (3) A person falls within this paragraph where on or after 1st April 2018—
- (a) they become a partner of a partnership mentioned in sub-paragraph (2)(b)(ii); or
 - (b) they become a person who legally and beneficially owns a share in a company mentioned in sub-paragraph (2)(b)(iii).
- (4) A person falls within this paragraph if they—
- (a) do not fall within paragraph (3); and
 - (b) have had sufficient involvement in patient care for a period of 3 months starting on or after 1st April 2018 unless the Health Board has confirmed that the person only falls within this paragraph due to exceptional or temporary circumstances.
- (5) Subject to paragraph (6), in this regulation, “sufficient involvement in patient care” means regularly performing, or being engaged in the day to day provision of, primary medical services in accordance with a general medical services contract, section 17C arrangements, or any other arrangement made in pursuance of section 2C(2) of the Act for no less than a total of 10 hours in each week.
- (6) The periods of time described in regulation 7(3)(a) to (h) are to be disregarded for the purposes of determining whether a person has sufficient involvement in patient care for the purposes of this regulation.
- (7) Where a person falls within paragraph (2) and then retires, the period of time following the date of retirement, which is the shorter of—
- (a) the equivalent of the length of time that the person has had sufficient involvement in patient care for the purposes of the contractor’s contract; and
 - (b) 2 years following the date of retirement,
- is to be disregarded for the purposes of determining whether the person has sufficient involvement in patient care for the purposes of this regulation.
- (8) The ^{F1}contractor] must ensure that in the case of a contract entered into prior to 22nd December 2010—
- (a) with a partnership, every member of that partnership who is not a medical practitioner and does not fall within paragraph (2)(b) complies with the conditions prescribed in section 17L(2)(a) and (c) of the Act as in force at 21st December 2010; and
 - (b) with a company, every person who legally and beneficially owns a share in that company who is not a medical practitioner and does not fall within paragraph (2)(b) complies with the conditions prescribed in section 17L(3)(b) of the Act as in force at 21st December 2010.

Textual Amendments

- F1** Word in [reg. 11\(8\)](#) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, 4

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018, PART 2. (See end of Document for details)

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