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STATUTORY RULES OF NORTHERN IRELAND

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**2004 No. 140**

**The Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004**

**PART 2**

**CONTRACTORS**

**Conditions: General**

**3.** Subject to the provisions of any order made by the Department under Article 5 of the Primary Medical Services (Northern Ireland) Order 2004 (general medical services: transitional)(**1**), a Board may only enter into a contract if the conditions set out in regulations 4 and 5 are met.

**Conditions relating solely to medical practitioners**

**4.—(1)** In the case of a contract to be entered into with a medical practitioner, that practitioner must be a general medical practitioner.

**(2)** In the case of a contract to be entered into with two or more individuals practising in partnership –

- (a)** at least one partner (who must not be a limited partner) must be a general medical practitioner; and
- (b)** any other partner who is a medical practitioner must –
  - (i)** be a general medical practitioner, or
  - (ii)** be employed by a Board, a Health and Social Services Trust, a Primary Care Trust, a Local Health Board, (in England and Wales and Scotland) NHS Trust, an NHS Foundation Trustor, (in Scotland) a Health Board;

**(3)** In the case of a contract to be entered into with a company limited by shares –

- (a)** at least one share in the company must be legally and beneficially owned by a general medical practitioner; and
- (b)** any other share or shares in the company that are legally and beneficially owned by a medical practitioner must be so owned by –
  - (i)** a general medical practitioner, or
  - (ii)** a medical practitioner who is employed by a Board, a Primary Care Trust, Local Health Board, in England and Wales and Scotland an NHS Trust, or in (Scotland) a Health Board.

**General condition relating to all contracts**

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

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**(1)** [S.I. 2004/311 \(N.I. 2\)](#)

- (a) with a medical practitioner, that the medical practitioner;
- (b) with two or more individuals practising in partnership, that any individual or the partnership; and
- (c) with a company limited by shares that –
  - (i) the company,
  - (ii) any person legally and beneficially owning a share in the company, and
  - (iii) any director or secretary of the company,
 must not fall within paragraph (2).
- (2) A person falls within this paragraph if –
  - (a) he is the subject of a 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 body anywhere in the world;
  - (c) within the period of five years prior to the signing of the contract or commencement of the contract, whichever is the earlier, he has been dismissed (otherwise than by reason of redundancy) from any employment by a health services body unless he has subsequently been employed by that health services body or another health services body and paragraph (4) applies to him, or that dismissal was the subject of a finding of unfair dismissal by any competent tribunal or court;
  - (d) within the period of five years prior to signing the contract or commencement of the contract, whichever is the earlier, he has been disqualified from a primary medical service performers list unless his name has subsequently been included in such a list;
  - (e) he has been convicted in the United Kingdom of murder;
  - (f) he has been convicted in the United Kingdom of a criminal offence other than murder, committed on or after 1st April 2004, and has been sentenced to a term of imprisonment of over six months;
  - (g) subject to paragraph (5) he has been convicted elsewhere of an offence –
    - (i) which would if committed in Northern Ireland constitute murder; or
    - (ii) committed on or after 1st April 2004, which would if committed in Northern Ireland constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
  - (h) he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968<sup>(2)</sup>, Schedule 1 to the Children and Young Persons Act 1933<sup>(3)</sup> (offences against children and young persons with respect to which special provisions of this Act apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1955 (offences against children under the age of 17 years to which special provisions apply)<sup>(4)</sup>, committed on or after 29th March 2004;
  - (i) he has –
    - (i) been adjudged bankrupt or had sequestration of his estate awarded unless (in either case) he has been discharged or the bankruptcy order has been annulled;

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(2) [c. 34 \(N.I\)](#)

(3) [1933 c. 12](#) as amended by the Criminal Justice Act 1988 ([1988 c. 33](#)), section 170, Schedule 15, paragraph 8 and Schedule 16, paragraph 16; Sexual Offences Act 1956 ([1956 c. 69](#)), sections 48 and 51 and Schedule 3 and as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9

(4) [1995 c. 46](#)

- (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> 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, his creditors unless he has been discharged in respect of it;
  - (j) an administrator, administrative receiver or receiver is appointed in respect of him;
  - (k) he has been –
    - (i) removed from the office of charity trustee or trustee for a 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 to or facilitated; or
    - (ii) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(6)</sup> (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body; or
  - (l) he is subject to a disqualification order under the Companies Directors Disqualification (Northern Ireland) Order 2002<sup>(7)</sup>, the Company Directors Disqualification Act 1986<sup>(8)</sup>, or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).
- (3) A person shall not fall within paragraph (2)(b) where the 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 two or more individuals practising in partnership;
  - (c) in the case of a contract with a company limited by shares –
    - (i) a person legally and beneficially holding a share in the company, or
    - (ii) a director or secretary of the company,as the case may be.
- (4) 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.
- (5) A person shall not fall within paragraph (2)(g) where the 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 two or more individuals practising in partnership;
  - (c) in the case of a contract with a company limited by shares –
    - (i) a person legally and beneficially holding a share in the company; or
    - (ii) a director or secretary of the company,as the case may be.

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<sup>(5)</sup> 1986 c. 45. Schedule 4A was inserted by section 257 of and Schedule 20 to the Enterprise Act 2002 (c. 40)

<sup>(6)</sup> 1990 c. 40

<sup>(7)</sup> S.I. 2002/3150 (N.I. 4)

<sup>(8)</sup> S.I. 1986/1032 (N.I. 6)

## **Reasons**

6.—(1) Where a Board is of the view that the conditions in regulation 4 or 5 for entering into a contract are not met it shall notify in writing the person intending to enter into the contract of its view and of its reasons for that view and of his right of appeal under regulation 7.

(2) The Board shall also notify in writing of its view and its reasons for that view any person legally and beneficially owning a share in, or a director or secretary of, a company that is notified under paragraph (1) where its reason for the decision relates to that person or persons.

## **Appeal**

7. A person who has been served with a notice under regulation 6(1) may appeal to the Department against the decision of the Board by giving notice in writing to the Department within the period of 28 days beginning on the day that the Board served its notice.

## **Prescribed period under Article 15C(b)(iii) of the Order**

8. The period prescribed for the purposes of Article 15C(1)(b)(iii) of the Order (persons with whom agreements may be made)<sup>(9)</sup> is six months.

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(9) Article 15C(b)(iii) was inserted into the Order by Article 6 of the 2004 Act