
STATUTORY INSTRUMENTS

2008 No. 1185

The General Ophthalmic Services Contracts Regulations 2008

PART 2

Contractors

Conditions: introductory

3. Subject to the provisions of any regulations made under section 43 of the Health Act 2006 (general ophthalmic services: transitional), a PCT may only enter into a contract if—

- (a) the conditions set out in regulation 4 are met, and
- (b) an application to enter into a contract, which complies with Schedule 3, has been made to that PCT.

Persons eligible to enter into GOS contracts

4.—(1) For the purposes of section 118 (persons eligible to enter into GOS contracts) it is a prescribed condition that a person must not fall within paragraph (3).

(2) The reference to a person in paragraph (1) includes any director, chief executive or secretary of a corporate body.

(3) A person falls within this paragraph if—

- (a) it is the subject of a national disqualification or a contract disqualification order;
- (b) subject to paragraph (4), it 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 5 years prior to the date the contract is to be commenced or, if earlier, the date on which the contract is to be signed, he has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body, unless he has subsequently been employed by that health service body or another health service body and paragraph (5) 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 5 years prior to the date the contract is to be commenced or, if earlier, the date on which the contract is to be signed, it has 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)) (disqualification of practitioners) respectively, unless its name has subsequently been included in such a list;
- (e) he has been convicted in the United Kingdom of—
 - (i) murder; or
 - (ii) a criminal offence other than murder, committed on or after 14th December 2001, and has been sentenced to a term of imprisonment of over 6 months;

- (f) it has been convicted of a criminal offence, not falling within subparagraphs (d), (e) or (g), and, in the opinion of the PCT, is not a person with whom it ought to contract;
- (g) subject to paragraph (6), he has been convicted outside the United Kingdom of an offence which would, if committed in England and Wales constitute—
 - (i) murder; or
 - (ii) a criminal offence other than murder, and been sentenced to a term of imprisonment of over 6 months;
- (h) he has been convicted of an offence committed on or after 1st April 2006, referred to in Schedule 1 to the Children and Young Persons Act 1933⁽¹⁾ (offences against children and young persons with respect to which special provisions apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995⁽²⁾ (offences against children under the age of 17 years to which special provisions apply);
- (i) it 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;
 - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986⁽³⁾ 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, its creditors unless he or it has been discharged in respect of it;
- (j) an administrator, administrative receiver or receiver is appointed in respect of it;
- (k) the PCT is not satisfied that the person—
 - (i) has the premises, equipment and record keeping arrangements, or
 - (ii) will employ or engage, by the date the contract is to commence, appropriate staff, to provide the services under the contract;
- (l) the PCT is not satisfied that it is a person suitable to provide general ophthalmic services;
- (m) he has within the period of 5 years prior to the date the contract is to commence or, if earlier, the date on which the contract is to be signed—
 - (i) been 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) been removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽⁴⁾ (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body; or
- (n) he is subject to a disqualification order under the Company Directors Disqualification Act 1986⁽⁵⁾, the Companies (Northern Ireland) Order 1986⁽⁶⁾ or to an order made

(1) 1933 c. 12; as amended by the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 58(1), Schedule 10, para. 2; the Sexual Offences Act 2003 (c. 42), section 139 and Schedule 6, para. 7; the Criminal Justice Act 1988 (c. 33), section 170 and Schedule 15, Para. 8, and Schedule 16, para. 16; and the Sexual Offences Act 1956 (c. 69), sections 48 and 51 and Schedules 3 and 4 and modified by the Criminal Justice Act 1988, section 170(1) and Schedule 15, para. 9.

(2) 1995 c. 46.

(3) 1986 c. 45; Schedule 4A was inserted by s. 257 of and Schedule 20 to the Enterprise Act 2002 (c.40).

(4) 1990 c. 40.

(5) 1986 c. 46; as amended by the Insolvency Act 2000 (c. 39).

(6) S.I. 1986/1032 (N.I. 6).

under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order)(7).

(4) A person does not fall within paragraph (3)(b) where the PCT is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and that disqualification or suspension does not make the person unsuitable to be, as the case may be—

(a) a contractor; or

(b) a director, chief executive or secretary of a corporation entering into a contract.

(5) The condition referred to in paragraph (3)(c) is that, 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.

(6) A person does not fall within paragraph (3)(g) where the PCT is satisfied that the conviction does not make the person unsuitable to be, as the case may be—

(a) a contractor; or

(b) a director, chief executive or secretary of a corporate body entering into a contract.

Reasons

5.—(1) Where a PCT is of the view that the conditions in regulation 4 for entering into a contract are not met, it shall notify the person intending to enter into the contract of—

(a) that view and its reasons for that view; and

(b) the person's right of appeal under regulation 6.

(2) The PCT shall also notify of that view and its reasons for that view, a director, chief executive or secretary of a corporate body that is notified under paragraph (1), where its reason for the decision relates to that person or those persons.

Appeals and contract disqualifications

6.—(1) A person who has been served with a notice under regulation 5(1) may appeal to the FHSAA against the decision of the PCT that the conditions in regulation 4 are not met, by giving notice to the FHSAA within the period of 28 days, beginning on the day that the PCT served its notice.

(2) A PCT, which has given notice under regulation 5(1) may, if it considers that that person should be disqualified from entering into a contract, apply to the FHSAA for a contract disqualification order in relation to that person.

(3) The FHSAA, in a case where a person has appealed under paragraph (1) may, of its own motion, make application to itself for a contract disqualification order in relation to that appellant.

(4) In a case to which paragraph (2) or (3) applies, the FHSAA may make a contract disqualification if it considers it right to do so in all the circumstances of the case.

(5) Subject to paragraph (7), where the FHSAA has made a contract disqualification order, the person in respect of whom it has been made may, not less than 3 years after the making of the order, apply to the FHSAA for a review of that order and, on such an application, the FHSAA shall either confirm that order or specify a date on which that order shall cease to have effect.

(6) Subject to paragraph (7), in any case where the FHSAA has confirmed an order under paragraph (5) or this paragraph, the person in respect of whom a contract disqualification order was confirmed may, not less than 3 years after the making of the order, apply to the FHSAA for a review

(7) 1986 c. 45.

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of that order and, on such an application, the FHSAA shall either confirm that order or specify a date on which that order shall cease to have effect.

(7) The FHSAA may, when making or confirming an order under paragraph (5) or (6), determine that instead of the period of 3 years specified in those paragraphs, the period for a review shall be such period, of not less than 1 year or more than 5, as the FHSAA may decide.