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STATUTORY INSTRUMENTS

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**2015 No. 94**

**The National Health Service Pension Scheme Regulations 2015**

**PART 9**

General

**OOH provider**

- 164.**—(1) A reference to an OOH provider is a reference to a body within paragraph (2) or (3).
- (2) A body is within this paragraph if it is a company limited by guarantee (which is not otherwise an employing authority)—
- (a) in which all the members of the company are medical practitioners, APMS contractors, GMS practices or PMS practices, and the majority of those members are—
    - (i) APMS contractors, GMS practices or PMS practices whose APMS contracts, GMS contracts or PMS agreements require them to provide OOH services; or
    - (ii) medical practitioners who are partners or shareholders in an APMS contractor, a GMS practice or a PMS practice which is a partnership or a company limited by shares and which is required to provide OOH services under its GMS contract, PMS agreement or APMS contract;
  - (b) which has a contract with [<sup>F1</sup>an integrated care board], [<sup>F2</sup>NHS England], a Local Health Board, an APMS contractor, a GMS practice or a PMS practice for the provision of OOH services; and
  - (c) in respect of which [<sup>F3</sup>an integrated care board], [<sup>F4</sup>NHS England] or Local Health Board appointed by the Secretary of State or the National Assembly of Wales to act on his or its behalf—
    - (i) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity;
    - (ii) is satisfied that the company has met all the conditions for being an OOH provider in this regulation; and
    - (iii) has, pursuant to a written application made by the company to it for that purpose, approved the company as an employing authority.
- (3) A body is within this paragraph if it is a body corporate, other than a company limited by guarantee (which is not otherwise an employing authority) which—
- (a) operates in the interests of those who are the recipients of the primary medical services it provides or of the general public;
  - (b) operates on a not-for-profit basis;
  - (c) is not an associated company in relation to another person;
  - (d) has memorandum or articles or rules that—
    - (i) prohibit the payment of dividends to its members; and

- (ii) require its profits (if any) or other income to be applied to promoting its objects, and
  - (iii) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either to another body which operates on a not-for-profit basis and whose purpose is to provide health or social care for the benefit of the community or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto;
- (e) has at least one member who is—
- (i) an APMS contractor, a GMS practice or a PMS practice; or
  - (ii) a partner in a partnership that is an APMS contractor, a GMS practice or a PMS practice; or
  - (iii) a shareholder in a company limited by shares that is an APMS contractor, a GMS practice or a PMS practice;
- (f) has a contract with [<sup>F5</sup>an integrated care board], [<sup>F6</sup>NHS England] or Local Health Board, an APMS contractor, a GMS practice or a PMS practice, for the provision of OOH services, and
- (g) is approved as an employing authority by Clinical Commissioning [<sup>F7</sup>integrated care board], [<sup>F8</sup>NHS England] or Local Health Board appointed by the Secretary of State to act on the Secretary of State's behalf—
- (i) pursuant to a written application made by the body to it for that purpose; and
  - (ii) that [<sup>F7</sup>integrated care board] or Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.
- (4) For the purposes of paragraph (3)(c)—
- (a) a body corporate is another person's associated company if the person—
    - (i) has control of it; and
    - (ii) is not an employing authority;
  - (b) a person is taken to have control of a body corporate if the person—
    - (i) exercises, or is able to exercise direct or indirect control over its affairs; or
    - (ii) is entitled to acquire such control.
- (5) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority must make a written application to [<sup>F9</sup>an integrated care board], [<sup>F10</sup>NHS England] or Local Health Board appointed by the Secretary of State to act on the Secretary of State's behalf [<sup>F11</sup>(“the appointed NHS body”)].
- (6) An application referred to in paragraph (5) may specify the date from which approval by [<sup>F12</sup>the appointed NHS body] (if given) is to have effect (“the nominated date”).
- (7) If a company limited by guarantee or other body corporate makes an application and—
- (a) [<sup>F13</sup>the appointed NHS body] is satisfied that the company or other body corporate is within paragraph (2) or (3), as the case may be or will be at a nominated date which is later than the approval date; and
  - (b) it approves that application, the approval takes effect on the later of the nominated date and the approval date.
- (8) If paragraph (7) applies, NHS employment is treated as commencing on the later of the nominated date (if any) and the approval date.
- (9) [<sup>F14</sup>The appointed NHS body] may give an OOH provider a notice in writing terminating its participation in this scheme if the provider—

- (a) does not have in force a guarantee, indemnity or bond as required by the scheme manager in accordance with regulation 165;
- (b) has ceased to be within paragraph (2) or (3);
- (c) has notified [<sup>F15</sup>the appointed NHS body] that any one of the following events has occurred in respect of it—
  - (i) a proposal for a voluntary arrangement has been made or approved under Part I of the Insolvency Act 1986 <sup>M1</sup> (“the 1986 Act”);
  - (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Schedule B1 to the 1986 Act <sup>M2</sup>;
  - (iii) a receiver, manager, or administrative receiver has been appointed under Part III of the 1986 Act;
  - (iv) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed under Part IV or Part V of the 1986 Act or pursuant to section 123 of the Co-operative and Community Benefit Societies Act 2014 <sup>M3</sup> or an instrument of dissolution has been drawn up in accordance with section 119 of the Co-operative and Community Benefit Societies Act 2014;
  - (v) notice has been received by it that it may be struck off the register of companies, or an application to strike it off has been made, under Part 31 of the Companies Act 2006 <sup>M4</sup>.
- (10) An OOH provider—
  - (a) must give [<sup>F16</sup>the appointed NHS body] notice in writing upon the occurrence of any of the events referred to in paragraph (9)(c) and must give the notice on the same day as the event;
  - (b) that wishes to cease to participate in this scheme must give both the appointed Group or Board and its employees not less than 3 months' notice in writing (to commence with the date of the notice) of that fact.
- (11) An OOH provider must cease to participate in this scheme on—
  - (a) the date specified by [<sup>F17</sup>the appointed NHS body] in a notice under paragraph (9);
  - (b) the day upon which the period referred to in paragraph (10)(b) expires if a notice under that provision has been given.

#### Textual Amendments

- F1** Words in reg. 164(2)(b) substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), Sch. para. 1(1), **Sch. para. 1(3)**
- F2** Words in reg. 164(2)(b) substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), regs. 1(1), **77(2)(a)(i)**
- F3** Words in reg. 164(2)(c) substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), Sch. para. 1(1), **Sch. para. 1(3)**
- F4** Words in reg. 164(2)(c) substituted (6.11.2023) by [The Health and Care Act 2022 \(Further Consequential Amendments\) \(No. 2\) Regulations 2023 \(S.I. 2023/1071\)](#), regs. 1(1), **77(2)(a)(ii)**
- F5** Words in reg. 164(3)(f) substituted (1.7.2022) by [The Health and Care Act 2022 \(Consequential and Related Amendments and Transitional Provisions\) Regulations 2022 \(S.I. 2022/634\)](#), regs. 1(2), Sch. para. 1(1), **Sch. para. 1(3)**

- F6** Words in reg. 164(3)(f) substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), regs. 1(1), **77(2)(b)(i)**
- F7** Words in reg. 164(3)(g)(ii) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(a)**
- F8** Words in reg. 164(3)(g) substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), regs. 1(1), **77(2)(b)(ii)**
- F9** Words in reg. 164(5) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), Sch. para. 1(1), **Sch. para. 1(3)**
- F10** Words in reg. 164(5) substituted (6.11.2023) by The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), regs. 1(1), **77(2)(c)**
- F11** Words in reg. 164(5) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(b)**
- F12** Words in reg. 164(6) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(c)**
- F13** Words in reg. 164(7)(a) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(d)**
- F14** Words in reg. 164(9) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(e)(i)**
- F15** Words in reg. 164(9)(c) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(e)(ii)**
- F16** Words in reg. 164(10) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(f)**
- F17** Words in reg. 164(11)(a) substituted (1.7.2022) by The Health and Care Act 2022 (Consequential and Related Amendments and Transitional Provisions) Regulations 2022 (S.I. 2022/634), regs. 1(2), **77(2)(g)**

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**Marginal Citations**

- M1** 1986 c.46.
- M2** Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40).
- M3** 2014 c.14.
- M4** 2006 c.46.

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service Pension Scheme Regulations 2015, Section 164.