
STATUTORY INSTRUMENTS

2018 No. 000

NATIONAL HEALTH SERVICE, ENGLAND

**The Primary Medical Services (Prohibition on the Sale of
Goodwill) Regulations 2018**

<i>Made</i>	- - - -	2018
<i>Laid before Parliament</i>		2018
<i>Coming into force</i>	- -	2018

The Secretary of State, in exercise of the powers conferred by sections 259(4) and (5)(b) and 272(7) and (8), and paragraph 1(4) of Schedule 21 to, the National Health Service Act 2006(a), makes the following Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Primary Medical Services (Prohibition on the Sale of Goodwill) Regulations 2018.

(2) They come into force on XXXX 2018.

Interpretation

2.—(1) In these Regulations—

“the Act” means the National Health Service Act 2006;

“APMS contractor” means a person with whom the Board has made arrangements under section 83(2) of the Act (primary medical services) for the provision of primary medical services or who, as a consequence of a scheme made under section 300 of the Health and Social Care Act 2012 (transfer schemes)(b), is a party to such arrangements but does not, in either case, include an Integrated Services Provider;

“bank holiday” means any day that is specified or proclaimed as a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(c);

“Board” means the National Health Service Commissioning Board(d);

“core hours” means the period beginning at 8.00a.m. and ending at 6.30p.m. on any day from Monday to Friday except Good Friday, Christmas Day or bank holidays;

(a) 2006 c.41. The National Health Service Act 2006 (“the Act”) was amended by the Health and Social Care Act 2012 (c.7) and relevant amendments to section 89 were made by section 202(2) and paragraph 34 of Schedule 4, and to section 94 by paragraph 38 of Schedule 4. *See* section 275(1) of the Act for the meaning given to “prescribed” and “regulations”. The powers exercised in making these Regulations are exercisable by the Secretary of State in relation to England only, by virtue of section 271(1) of the Act.

(b) 2012 c.7.

(c) 1971 c.80.

(d) The National Health Service Commissioning Board (known as “NHS England”) was established by section 1H of the Act. Section 1H was inserted into the Act by section 9(1) of the Health and Social Care Act 2017.

“default contract” means a contract entered into by virtue of an Order made under section 176(3) of the Health and Social Care (Community Health and Standards) Act 2003 (general medical services: transitional)(a);

“enhanced services”, in relation to—

- (a) a GMS contractor, has the meaning given in regulation 3 of the GMS Contracts Regulations (interpretation); or
- (b) any other performer or provider of primary medical services, means services which, if performed by a GMS contractor, would be enhanced services within the meaning given in regulation 3 of the GMS Contracts Regulations;

“essential services” means the services required to be provided in accordance with regulation 17 of the GMS Contracts Regulations;

“GMS contractor” means a person with whom the Board has entered into a general medical services contract under section 84 of the Act (general medical services contracts: introductory)(b) or a default contract or who, as a consequence of a transfer scheme under section 300 of the Health and Social Care Act 2012 (transfer schemes), is party to such a contract;

“GMS Contracts Regulations” means the National Health Service (General Medical Services Contracts) Regulations 2015(c);

“goodwill” has the meaning given in section 259(5) of the Act (sale of goodwill);

“Integrated Services Provider” means the performer or provider of primary medical services under an Integrated Services Provider Contract;

“Integrated Services Provider Contract” is to be construed in accordance with direction 2 of the Primary Medical Services (Integrated Services Provider Contracts) Directions 2017(d);

“PMS Agreements Regulations” means the National Health Service (Personal Medical Services Agreements) Regulations 2015(e);

“PMS contractor” means a person with whom the Board has entered into an agreement under section 92 of the Act (section 92 arrangements)(f) or who, as a consequence of a scheme under section 300 of the Health and Social Care Act 2012 (transfer schemes), is a party to such an agreement; and

“primary medical services” means medical services which are provided under or by virtue of a contract or agreement to which Part 4 of the Act applies.

(2) For the purposes of these Regulations, a performer or provider of primary medical services has a registered patient list if, in relation to that performer or provider, there are patients—

- (a) recorded by the Board as being on the list of patients of that performer or provider which the Board maintains; and
- (b) to whom the performer or provider is required to provide essential services during core hours other than under an arrangement to provide enhanced services.

Relevant area

3. For the purposes of section 259(1) of the Act (sale of medical practices), “the relevant area” means the area which forms part of the area team of the Board in which the performers or providers specified in regulation 4(2) have, at any time, performed or provided primary medical

(a) 2003 c.43.

(b) Section 84 was amended by paragraph 31 of Schedule 4 to the Health and Social Care Act 2012 (c.7).

(c) S.I. 2015/1862; as amended by S.I. 2016/211 and 696.

(d) The Integrated Services Provider Contracts Directions 2017 were signed on XXXX 2017. They are made under section 83(2) of the National Health Services Act 2006 (c.41) and make provision in respect of the mandatory contract terms for the provision of primary medical services under an a contract for the integrated provision of primary medical services with other health and social care services. The Directions are available at: **[DN: Insert weblink]** or may be obtained by post from **[DN: insert address for obtaining postal copies]**

(e) S.I. 2015/1876; as amended by S.I. 2016/211 and 696.

(f) Section 92 was amended by paragraph 36 of Schedule 4 to the Health and Social Care Act 2012.

services in accordance with a contract or arrangements under Part 4 of the Act which subsists at that time.

Prohibition on the sale of goodwill in certain primary medical services practices

4.—(1) For the purposes of the prohibition on the sale of goodwill of a medical practice in section 259(1) of the Act (sale of medical practices), the performers or providers of primary medical services specified in paragraph (2), or any other person on their behalf, may not in any circumstances sell the goodwill in a medical practice owned by those performers or providers or at which they perform or provide primary medical services.

(2) The performers and providers specified in this paragraph are—

- (a) a GMS contractor;
- (b) a PMS contractor;
- (c) an APMS contractor that has a registered patient list;
- (d) a contractor which is an Integrated Services Provider; and
- (e) in a case where the responsibility for providing primary medical services is sub-contracted by any of the persons referred to in sub-paragraphs (a) to (d) to another performer or provider of primary medical services, the sub-contractor responsible for the performance or provision of those services under the sub-contract.

(3) Where paragraph (4) applies, a performer or provider of primary medical services specified in paragraph (2)(a) to (e) who is a member of, or shareholder in, a company, or any person on behalf of that performer or provider, may not in any circumstances sell a share in that company the value of which includes an element in respect of the goodwill relating to a medical practice owned by that person or at which that person performs or provides primary medical services.

(4) This paragraph applies where the company referred to in paragraph (3), or any part of that company, is all or part of the medical practice of the performer or provider.

(5) For the purposes of section 259(1) of the Act (sale of medical practices) and these Regulations, “medical practice” is—

- (a) in the case of an Integrated Services Provider; or
- (b) in the case of any person responsible for the provision of primary medical services under a sub-contract with a GMS contractor, a PMS contractor, an APMS contractor or an Integrated Services Provider,

to be construed so as to apply in respect of the whole, or any part of, the contractual arrangements for the performance or provision of primary medical services in the area for which the contractor or sub-contractor is, under those arrangements, required to perform or provide primary medical services.

Certificate that a transaction does not involve a sale of goodwill

5. The prescribed form of a certificate issued for the purposes of paragraph 1(4) of Schedule 21 to the Act is as set out in the Schedule.

Revocations and saving

6.—(1) The Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004^(a) are revoked.

(2) Notwithstanding the revocation made by paragraph (1)—

- (a) regulation 6 of the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004, which relates to transitional arrangements for general medical services contracts and personal medical services agreements, is to continue to

(a) S.I. 2004/906; as amended by S.I. 2013/363 and S.I. 2015/1862 and 1879.

have effect pending the variation of any such contract or agreement so as to include the terms which, by virtue of the amendments made on 1st April 2004 to the National Health Service (General Medical Services Contracts) Regulations 2004(a) and the National Health Service (Personal Medical Services Agreements) Regulations 2004(b) by regulations 4 or 5 of those Regulations, must be included in it; and

- (b) for all purposes, default contracts are to continue to have effect as if they included the terms which were, by virtue of the amendments set out in regulation 4 of the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004, included in relation to general medical services contracts.

Signed by authority of the Secretary of State for Health.

Address
Date

Name
Parliamentary Under Secretary of State
Department of Health

SCHEDULE

Regulation 6

WHEREAS has applied to the Secretary of State under paragraph 1(2) of Schedule 21 to the National Health Service Act 2006 for the Secretary of State's opinion as to whether the proposed transaction or series of transactions described in the Schedule to this certificate, which sets out all the material facts and circumstances disclosed to the Secretary of State, involves giving valuable consideration in respect of the goodwill of a medical practice (in contravention of section 259(1) of that Act read with the Primary Medical Services (Prohibition on the Sale of Goodwill) Regulations 2018);

AND WHEREAS the Secretary of State has considered the application.

This is to certify that the Secretary of State is satisfied that the transaction or series of transactions described in the Schedule to this certificate does not involve giving valuable consideration in respect of the goodwill of a medical practice contrary to the prohibition on the sale of the goodwill of a medical practice contained in section 259(1) of the National Health Service Act 2006.

Dated this day of 20 .

Signed by authority of the Secretary of State

Department of Health

(a) S.I. 2004/291 which has been revoked and replaced by S.I. 2015/1862.
(b) S.I. 2004/627 which has been revoked and replaced by S.I. 2015/1879.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) Regulations 2004 (S.I. 2004/906) (“the 2004 Regulations”).

The 2004 Regulations made further provision in respect of the prohibition on the sale of goodwill in a medical practice which is contained in section 259 of the National Health Service Act 2006 (sale of goodwill). They also amended the National Health Service (General Medical Services Contracts) Regulations 2004 (S.I. 2004/291) and the National Health Service (Personal Medical Services Agreements) Regulations 2004 (S.I. 2004/697) so as to impose a restriction on the sub-contracting of any rights and duties under primary medical services contracts to provide essential services. S.I. 2004/291 was revoked and replaced by the National Health Service (General Medical Services Contracts) Regulations 2015 (S.I. 2015/1862) and S.I. 2004/697 was revoked and replaced by the National Health Service (Personal Medical Services Agreements) Regulations 2015 (S.I. 2015/1879).

Regulation 3 defines the meaning of “the relevant area” for the purposes of section 259 of the National Health Service Act 2006 in the context of the area teams of the National Health Service Commissioning Board.

Regulation 4 sets out the types of performers or providers of primary medical services in respect of which the prohibition on the sale of goodwill in a medical practice in section 259 of the National Health Service Act applies. This provision takes account of new contractual arrangements for the provision of primary medical services under Part 4 of the National Health Service Act 2006 together with other health and social care services.

Regulation 5 and the Schedule make provision in respect of the prescribed form of a certificate which the Secretary of State must issue under paragraph 3(b) of Schedule 21 to the National Health Service Act 2006 if the Secretary of State is satisfied that a transaction, or a series of transactions, does not involve giving valuable consideration in respect of the sale of goodwill in a medical practice.

Regulation 6 revokes the 2004 Regulations in their entirety but saves the effect of transitional provisions which were contained in regulation 6 of those Regulations.