
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>	- -	

The Secretary of State, in exercise of the powers conferred by sections 89(1), 94(1), 259(4) and (5)(b) and 272(7) and (8) of, and paragraph 1(4) of Schedule 21 to, the National Health Service Act 2006(a) makes the following Regulations.

Citation, commencement and application

- 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 [TBC].
- (3) They apply in relation to England only(b).

Interpretation

2. In these Regulations—

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

“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)(c); and

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

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- (a) 2006 c.41. The National Health Service Act 2006 (“the Act”) was amended by the Health and Social Care Act 2012 (c.7). Sections 89 and 94 of the Act are cited because of the power to revoke provision contained in regulations made under those sections. Relevant amendments to section 89 were made by section 202(2) of, and paragraph 34 of Schedule 4 to, the Health and Social Care Act 2012 and to section 94 by paragraph 38 of Schedule 4 to that Act. Relevant amendments to section 259(4) and (5) were made by paragraph 132(2) and (4)(a) and (b) of Schedule 4 to the Health and Social Care Act 2012. See section 275(1) of the Act for the meaning given to “prescribed” and “regulations”.
- (b) See section 271(3)(h) of the Act which confers functions on the Secretary of State under section 259 of, and Schedule 21 to, the Act in relation to Wales. The Secretary of State’s functions in relation to Wales under section 259 of, and Schedule 21 to, the Act were transferred to the Welsh Ministers by article 2(b) of the Welsh Ministers (Transfer of Functions) Order 2008 (S.I. 2008/1786).
- (c) 2003 c.43.
- (d) Part 4 of the Act imposes a duty on the National Health Service Commissioning Board (known as “NHS England”) to enter into contractual arrangements for the provision of primary medical services (i.e. GP services) with providers of such services as part of the NHS in England. The National Health Service Commissioning Board 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 2012.

Relevant area

3. For the purposes of section 259(1) of the Act (sale of medical practices), “the relevant area” means—

- (a) the area for which an area team of the National Health Service Commissioning Board^(a) is responsible; and
- (b) in which the performers or providers specified in regulation 4(2) have performed or, as the case may be, provided primary medical services, in accordance with a contract or arrangements under Part 4 of the Act (medical services), at a time when such a contract or arrangements subsist.

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

4.—(1) For the purposes of 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 of 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 that has a list of registered patients;
- (c) an APMS contractor that has a list of registered patients;
- (d) an integrated services provider; and
- (e) in a case where the responsibility for providing primary medical services is sub-contracted to another provider of primary medical services by an integrated services provider, any person responsible for the performance or provision of those services under the sub-contract.

(3) A performer or provider of primary medical services specified in paragraph (2) who is a member of, or shareholder in, a company to which paragraph (4) applies, 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 which is owned by that performer or provider or at which that performer or provider performs or, as the case may be, provides primary medical services.

(4) This paragraph applies to a company where all or part of the medical practice of a performer or provider specified in paragraph (2) is comprised of that company.

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

- (a) an integrated services provider; or
- (b) a relevant sub-contractor,

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

(6) In this regulation—

“APMS contractor” means a person with whom the Board has made arrangements under section 83(2) of the Act (primary medical services)^(b) for the provision of primary medical services or who, as a consequence of a scheme made under section 300 of the Health and

(a) 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 2012 (c.7).

(b) Section 83(2) was substituted by paragraph 30(2) of Schedule 4 to the Health and Social Care Act 2012.

Social Care Act 2012 (transfer schemes)(**a**), is a party to such arrangements but does not, in either case, include an integrated services provider;

“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 a party to such a contract;

“integrated services provider” means a person, other than a person specified in paragraph 3(3) of Schedule 3A to the National Health Service (General Medical Services) Contracts Regulations 2015(**c**), who is party to an integrated services provider contract;

“integrated services provider contract” has the meaning given in Schedule 3A to the National Health Service (General Medical Services Contracts) Regulations 2015;

“PMS contractor” means a person with whom the Board has entered into an agreement under section 92 of the Act (section 92 arrangements)(**d**) 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;

“registered patient” has the meaning given in regulation 3 of the National Health Service (General Medical Services Contracts) Regulations 2015 (interpretation)(**e**); and

“relevant sub-contractor” means a person who has entered into contractual arrangements with an integrated services provider for the provision of 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 (prohibition on sale of medical practices) 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(**f**) 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 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(**g**) and the National Health Service (Personal Medical Services Agreements) Regulations 2004(**h**) by regulations 4 or 5 of those Regulations, must be included in it; and
- (b) for all purposes, default contracts(**i**) 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.

(a) 2012 c.7.

(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, 696, 875 and 1077, 2017/908 and 2018/****. Schedule 3A was inserted by Part 9 of S.I. 2018/****.

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

(e) S.I. 2015/1863. Regulation 3 was amended by S.I. 2016/696 and 1077.

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

(g) S.I. 2004/291 which was revoked and replaced by S.I. 2015/1862.

(h) S.I. 2004/627 which was revoked and replaced by S.I. 2015/1879.

(i) See regulation 2 for the meaning given to “default contract”.

Signed by authority of the Secretary of State for Health and Social Care.

Address	<i>Name</i>
Date	Parliamentary Under Secretary of State Department of Health and Social Care

SCHEDULE

Regulation 5

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 the Act when read together with regulation 4 of 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 and Social Care

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 provision in respect of the prohibition on the sale of goodwill of a medical practice further to that which is contained in section 259 of the National Health Service Act 2006. 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 include in those Regulations provision which imposed a restriction on the sub-contracting of any rights and duties to provide services under primary medical services contracts. 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 of a medical practice in section 259 of the National Health Service Act 2006 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 of 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.

An assessment of the impact of this instrument has been made. A copy of this impact assessment is annexed to the Explanatory Memorandum which is available alongside this instrument on the legislation.gov.uk website. Copies may also be obtained from the Department of Health and Social Care, 39 Victoria Street, London SW1H 0EU.