



GPC

General Practitioners
Committee

The New Procedures For Appointing GP Principals

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Guidance for GPs

BMA 

The New Procedures For Appointing Gp Principals

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Introduction

New procedures for the appointment of GP principals came into force on 10 December 1998. In outline, the new procedures mean that the Medical Practices Committee (the MPC) determines whether in general terms there is a vacancy for a GP principal in a locality **and if so what hours of availability are required** but the health authority determines the nature of that vacancy and approves (or rejects) nominations to fill it. ***If the vacancy is for a single-handed practitioner the health authority selects the GP, otherwise the practice nominates a GP for approval by the health authority.***

Referrals to the MPC

The first stage of the process is for the health authority to refer to the MPC the question of whether there is, or will be, a vacancy for a GP in a locality. The health authority **must** make such a reference where:

- the health authority considers that it is appropriate to do so
- the health authority has been asked to make a reference by a GP **in the locality**
- except as noted below, a GP has died or has withdrawn or has been removed from the health authority's medical list.

Where the GP who has died or has withdrawn or been removed from the health authority's list was a **full time** doctor (**not** a part-time doctor) practising as a member of a partnership and the remaining members of that partnership make a written application to the health authority to be permitted to nominate a replacement partner, the health authority can if it wishes decide not to make a referral to the MPC, but to proceed to consider the practice's nominations for a replacement. (By corollary, in such circumstances the health authority **can** decide to make a reference to the MPC anyway to determine whether there is indeed a "vacancy").

Note: there is also provision for the health authority to make a report to the MPC every three years to enable the MPC to judge the adequacy of the provision of general medical services in the various localities. The MPC can declare a vacancy following such a review.

Decision of the MPC

Following a referral by the health authority or a review, the MPC decides whether the number of doctors undertaking to provide general medical services in the locality is adequate.

In making its decision the MPC must take account in particular of any likely changes in the number of doctors in the locality and any persons *providing* personal medical services in the locality pursuant to a pilot scheme. The MPC must also take into account the health authority's report and recommendation - but it is not bound by that recommendation. In addition, the regulations stipulate that the health authority is required to give reasons for its recommendation.

The MPC has published fairly detailed guidance as to how it will determine whether or not there is a vacancy in the locality. The guidance does not have statutory force. Rather, it is an explanation of how, in practice, the MPC reaches its decision.

In brief, the MPC explains that in respect of a particular practice it uses data provided to it to build up a picture of practice and the locality which it then compares with the position in England and Wales. The data is converted into a "notional average" after adjustments have been made upwards for lists with numbers of elderly patients above the national average and for such matters as rural location, deprivation and temporary visitors. The MPC then takes other factors into account such as the number of branch surgeries, outside commitments of partners, list trend etc. Since 1981, the committee has classified specific geographic areas according to how they are served by general practitioners. These specific areas, known simply as MPC areas, were classified as open, intermediate, artificially intermediate, and restricted, according to whether or not the committee considered it appropriate for additional doctors to be engaged in those areas. The committee has recognised that the existing MPC area classifications will soon be entirely out of date and invalid:

- the numeric parameters used are no longer valid
- the national average list size has altered and, although the figures could be realigned, the committee now bases its judgements around newer and more sophisticated adequacy criteria
- under the new regulations, when an application for a workforce change is submitted to the committee, it is the health authority that determines the boundaries of the area to be assessed. The old MPC areas are still used by some health authorities, but by no means by all. Increasingly, the committee is receiving applications from health authorities for the complete re-delineation of their areas to conform to the boundaries of the PCG/Ts.

The final decision on the future of the out of date area classifications remains to be made after appropriate consultations have been undertaken. If the MPC decides that the present provision is adequate it will not declare a vacancy and accordingly no doctor can be appointed. There is no right of appeal against this decision for the health authority (or for that matter any GP). The only options available are for the health authority to repeat the referral or for a GP with an interest in the decision to apply to the court to judicially review it. If the MPC decides that the number of GPs in the locality undertaking to provide general medical services is not adequate it must declare one or more vacancies. The health authority can subsequently apply to the MPC for the MPC to revoke a decision to declare a vacancy, provided that a GP has not already been nominated or approved to fill it. The MPC can grant or reject such an application.

Imposition of Conditions

When declaring a vacancy the MPC must also specify the working commitment which the doctor will be required to provide the general medical services (ie equivalent to full time, three quarter time, half time, job sharing or restricted list or restricted services principal) or specify alternatives from which the health authority can select. It may also impose a condition that the doctor can only practice in a specified part of the locality.

The health authority can subsequently apply of its own accord, or at the request of a GP to the MPC, for the MPC to vary a condition as to availability or to vary or revoke a condition as to the part of the locality in which the doctor can practice. When making an application the health authority must give its

reasons, state what conditions it wishes the MPC to impose **and summarise the LMC's view on the proposal.**

The MPC can grant or refuse the application. Where the health authority is applying of its own accord it *cannot* do so without the written consent of any doctor to whom the existing conditions apply. This means that the conditions under which a doctor is practising cannot be varied *or* revoked unilaterally. However, a doctor who wishes to have conditions varied or revoked cannot force the health authority to apply to the MPC and *cannot* apply directly himself or herself to the MPC.

Decision as to the Type of Vacancy

Once the MPC has determined that there is a vacancy in a locality it is then for the health authority to decide how that vacancy should be filled. The MPC has no role in determining the type of vacancy. The various options available to the health authority are as follows:

- where a particular partnership requested the health authority to make a reference to the MPC for a declaration that a vacancy existed and the MPC has made such a declaration, the health authority must agree that the additional doctor should join that partnership as a partner provided that the authority is satisfied that:
 - ✎ the additional doctor is required by the partnership because of a reduction in the number of members of the partnership or
 - ✎ the health authority considers that it is otherwise appropriate for the additional doctor to be a member of the partnership

(Note: this means that if a partner has left a practice the health authority must allow the practice to replace him or her, provided that the MPC has agreed that a vacancy exists. However, if the practice simply wishes to increase the number of its partners the health authority will consider whether this is appropriate. It could allocate the vacancy elsewhere).

- Where a sole practitioner requested the health authority to make a reference to the MPC for a declaration that a vacancy existed and the MPC has made such a declaration, the health authority must agree that the additional doctor should join that sole practitioner in partnership if it is satisfied that this is appropriate.
- Otherwise the health authority must decide whether the additional doctor should be
 - ✎ a member of a partnership (but not a particular partnership) or
 - ✎ a sole practitioner.

Different procedures apply for the appointment of a doctor according to the type of vacancy. The MPC will have specified a time (not exceeding 12 months) within which the vacancies must have been filled or in the case of a vacancy for a single-handed practice within which the vacancy must be advertised. If the time limits are not met, the vacancy will lapse.

Filling the Vacancy

Particular partnership vacancy

This is where the health authority has agreed that the additional doctor should be a member of a particular partnership or should join a particular sole practitioner in partnership.

The health authority and the existing partners or sole practitioner must first agree criteria relating to the skill, knowledge and experience of the additional doctor and the needs of the patients at the practice. The health authority cannot approve nominations until the criteria have been agreed.

Once the criteria are agreed, the existing partners or sole practitioner nominate the individual whom they wish to be appointed as the additional doctor.

If the health authority and the practice cannot agree criteria and the deadlock lasts longer than the period specified by the MPC for the duration of the vacancy, the vacancy will lapse. If the practice is unable to find a doctor who fulfils the criteria once agreed, it can ask the health authority nevertheless in its discretion to approve the nomination.

General partnership vacancies

This applies if the health authority has decided that an additional doctor should be a member of a partnership but has not specified a particular partnership.

The health authority must bring the vacancy to the attention of doctors in the locality and must set out the criteria that it will apply when deciding to which practice it will allocate the vacancy. The criteria must relate to the accessibility of general medical services on the basis of patient need, any relevant financial considerations and the suitability of available premises.

Partnerships and sole practitioners who wish to take on a partner then apply to the health authority to be allocated the vacancy. The health authority may give the applicants the opportunity of making representations to it in writing or (if the health authority sees fit) representations to it in person.

Once the health authority has selected a practice, the health authority and that practice must agree criteria for the additional doctor relating to the skills, knowledge and experience of the additional doctor and to the needs of the patients of the practice. If the health authority and practice cannot agree criteria the health authority can rescind its selection of that practice and select another practice.

The practice then nominates an individual whom they wish to be appointed to fill the vacancy.

Vacancies for sole practitioners

The MPC will have specified a time within which the health authority must advertise the vacancy specifying certain details. The vacancy must be published in such a manner as is likely to bring the vacancy to the attention of doctors within and outside the health authority's area. The health authority must inform candidates of the criteria it will apply when making a selection.

The health authority may give the applicants an opportunity of making representations to it in writing or (if the health authority sees fit) in person.

The health authority can reject all applications, in which case unless the MPC agrees to revoke the declaration of a vacancy it must advertise again. (Note: if the time limit given by the MPC for advertising has expired the health authority must make a further reference to the MPC).

The applicant whom the health authority selects must be the one who best satisfies the health authority's criteria.

So long as a vacancy is designated a vacancy for a sole practitioner, the health authority must appoint a sole practitioner rather than allowing the vacancy to be incorporated into a neighbouring partnership.

Replacement doctor

This applies where a practice has applied for a **full-time** replacement doctor and the health authority has decided that it is not necessary to make a referral to the Medical Practices Committee (see above). **Note:** if the health authority is not minded to agree to the practice having a replacement it should make a referral to the MPC for a determination as to whether there is a vacancy.

The health authority and the practice must agree criteria for the replacement doctor relating to his skills, knowledge and experience and the needs of the patients of the practice. The health authority cannot approve of nominations until the criteria have been agreed.

Once the criteria have been agreed, the practice nominates an individual as the replacement doctor. If the practice is unable to find a doctor who fulfils the criteria once agreed, it can ask the health authority nevertheless in its discretion to approve the nomination.

The replacement doctor will be subject to the same conditions as to availability and locality as the outgoing doctor but the health authority can apply **to the MPC** to vary them.

Approval of the Individual

Once a person has been nominated to fill the vacancy the health authority must approve or reject that nomination. The MPC has no role in the approval or rejection of nominations. The health authority must reject a nomination where the doctor

- is not suitably experienced (*with in the meaning of the 1977 NHS Act, that is, he has not acquired or is not exempt from the need to acquire medical experience prescribed by regulations which would entitle him to practice as a GP principal in the NHS*)
- is not able to satisfy the health authority as to his knowledge of English
- is 70 years old or more
- is disqualified or treated as disqualified for inclusion in the health authority's list by virtue of a direction of the NHS tribunal (or equivalent in relation to Scotland or Northern Ireland)
- The health authority may also refuse to approve a nomination where the doctor does not adequately fulfil the criteria or
- his entry in the medical register is subject to certain conditions

Entry onto the Medical List

The final stage of the process is that following approval of an additional doctor whose name is not already included in the health authority's list the health authority must enter his name on the list and notify the MPC that it has done so.

Appeals

A doctor only has the right of appeal against a decision by the health authority where the health authority has

- refused to approve his appointment to fill a vacancy at an existing practice where that refusal is based on the health authority's view that he does not adequately fulfil the specified criteria. The partnership or sole practitioner who nominated the doctor must confirm to the Secretary of State in writing within a period of 14 days of a request to do so, that he, she or they support the doctor's appeal. Without this confirmation the appeal will not proceed
- refused to nominate him to fill a vacancy as a sole practitioner.

(Note: it appears that the doctor can also appeal if the health authority has rejected him on the grounds that he does not have the necessary knowledge of English).

The procedure for any appeal is set out in detail in regulation 18G of the National Health Service (General Medical Services) Regulations 1992 as amended.

The rights of appeal are very limited indeed. There is no right of appeal against a decision made by the MPC **not to declare a practice vacancy or to impose conditions of practice** and there is no right of appeal by a practice whose application to be allocated a vacancy has not succeeded. In such cases a doctor wishing to challenge a decision can only do so by way of an application for judicial review.

Consultations with the LMC

At various stages of the process the health authority is obliged to consult the local medical committee: The health authority must consult the LMC before it:

- (i) refers to the MPC the question of whether there is or will be a vacancy for a doctor in a locality
- (ii) selects a condition where the MPC has given it a choice of conditions
- (iii) applies for a variation or revocation of a condition imposed by the MPC
- (iv) decides whether the additional doctor should be a member of a partnership or a sole practitioner
- (v) sets or agrees criteria for choosing a practice to whom a vacancy is to be allocated or for choosing a doctor to fill a vacancy
- (vi) nominates or approves a doctor.

Delegation

The health authority should have forwarded to all LMC secretaries a copy of HSC 1999(052) and appendix A, the latter of which sets out in paragraph 6 exactly which of the health authority's functions relating to the appointment of GPs, a health authority may delegate to a third party. A copy of appendix A is attached to this guidance for ease of reference. In broad terms, the Health Authority may only delegate to a third party those functions which are of a purely administrative nature. All decisions (including decisions as to whether to make a reference to the MPC) must be taken by the health authority itself not a third party although they may be made by a committee, subcommittee or officer of that health authority.

PMS Pilots

The regulations stipulate that the recruitment process for a GP who is to provide general medical services must be suspended as soon as the health authority receives a request with which it is under a duty to comply to prepare proposals for a pilot scheme where those proposals relate to more than half of the patients which the health authority expects to be on the list of any GMS GP appointed to fill the vacancy. The recruitment process can be suspended at any stage before a doctor has been nominated or approved to fill the vacancy. The recruitment process remains suspended until the proposals for the pilot scheme are rejected by the Secretary of State, withdrawn before the Secretary of State has made his decision or the pilot scheme has been implemented but has come to an end.

General points

The regulations also makes provision

- as to whom notice of the decision must be sent by the MPC or a health authority
- for the giving of reasons for a decision
- for dealing with applications made before 10 December 1998
- for dealing with applications when the patients are situated in the area of more than one health authority or Scottish health board.