
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 163

**The General Medical Services and Section
17C Agreements (Transitional and other
Ancillary Provisions) (Scotland) Order 2004**

PART 8

**TRANSITIONAL PROVISIONS RELATING TO
THE LISTING OF MEDICAL PRACTITIONERS**

Interpretation

85. In this Part—

“the 1997 Act” means the National Health Service (Primary Care) Act 1997(1);

“conditional disqualification” has the meaning indicated in section 29C(1) of the 1978 Act(2), and includes conditions imposed by the Scottish Ministers under section 31(2) of the 1978 Act(3), and “conditionally disqualified” shall be construed accordingly;

“disqualification” means local or national disqualification but does not include conditional disqualification and “disqualified” shall be construed accordingly;

“local disqualification” has the meaning indicated in section 29B(2)(a) of the 1978 Act(4);

“national disqualification” has the meaning indicated in section 29B(2)(b) of the 1978 Act;

“review” means a review under section 30 of the 1978 Act(5);

“section 17C arrangements” means arrangements for the provision of services made under section 17C of the 1978 Act(6);

“supplementary list” means a list of medical practitioners approved by a Health Board to assist in the provision of general medical services prepared and published by the Health Board under regulations made under section 24B of the 1978 Act(7);

(1) 1997 c. 46.

(2) 1978 c. 29. Section 29C(1) was inserted by the Health Act 1999 (c. 8), section 58(1).

(3) Section 31(2) was inserted by the Health Act 1999 (c. 8), Schedule 4, paragraph 49 and amended by the [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), schedule 2, paragraph 2(8).

(4) Section 29B(2) was inserted by the Health Act 1999 (c. 8), section 58(1) and amended by the [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), schedule 2, paragraph 2(6) and the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), schedule, paragraph 1(13).

(5) Section 30 was substituted by the Health Act 1999 (c. 8), section 58(2) and amended by the [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), schedule 2, paragraph 2(7).

(6) Section 17C was inserted by the National Health Service (Primary Care) Act 1997 (c. 46), section 21(2) and amended by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#).

(7) Section 24B was inserted by the [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), section 18.

“suspended” means suspended by a direction of the Tribunal made pursuant to section 32A(2) or 32B(1) or suspended by virtue of the provisions of section 32D(1) of the 1978 Act(8), and “suspension” shall be construed accordingly;

“the Tribunal” has the meaning indicated in section 29 of the 1978 Act(9).

Allocation of medical practitioners on previous lists

86. In the case of a medical practitioner, whose name, immediately before 1st April 2004, was included in a Health Board's—

- (a) medical list; or
- (b) supplementary list,

the medical practitioner’s name shall, on that day, be included in that Health Board’s primary medical services performers list.

Applications not decided on 1st April 2004

87. In any case where there was any application by a medical practitioner to a Health Board for the medical practitioner’s name to be included in its medical list or supplementary list and that application has not been decided before 1st April 2004, it shall be deemed to be an application to have the medical practitioner’s name included in the primary medical services performers list of that Health Board.

Transitional provision for performers of personal medical services

88. Despite the provisions of regulation 3 of the Performers Lists Regulations, where a medical practitioner who, immediately before 1st April 2004 was performing personal medical services—

- (a) in accordance with section 17C arrangements; or
- (b) in connection with the provision of such services under a pilot scheme,

that medical practitioner may continue to perform, under a section 17C arrangement or transitional agreement, any primary medical service which a Health Board is, under section 2C(1) of the 1978 Act(10), under a duty to provide or secure the provision of, despite not being included in the primary medical services performers list of that Health Board, until 1st June 2004.

Matters relating to the NHS Tribunal and medical and supplementary lists

89. Any representations made to the Tribunal under section 29 of the 1978 Act relating to any medical practitioner to which article 86 applies that had not been finally determined before 1st April 2004, shall be treated as though they had arisen in relation to the primary medical services performers list in which that medical practitioner has been included or, but for those representations, would have been included and shall continue to be dealt with by the Tribunal.

(8) Section 32A(2) was inserted by the National Health Service (Amendment) Act 1995 (c. 31) (“the 1995 Act”), section 8 and amended by the Health Act 1999 (c. 8) (“the 1999 Act”), Schedule 4, paragraph 51; Section 32B(1) was inserted by the 1995 Act, section 8 and substituted by the 1999 Act, Schedule 4, paragraph 52; Section 32D(1) was inserted by the 1995 Act, section 8 and amended by the 1999 Act, Schedule 4, paragraph 53 and the [Community Care and Health \(Scotland\) Act \(asp 5\)](#), schedule 2, paragraph 2(11).

(9) Section 29 was substituted by the Health Act 1999 (c. 8), section 58(1) and amended by the [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), schedule 2, paragraph 2(4) and the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 5(3).

(10) Section 2C(1) was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 1(2).

Matters relating to the NHS Tribunal and medical and supplementary lists

90. In a case where a medical practitioner included in the medical list or the supplementary list of a Health Board immediately before 1st April 2004, was conditionally disqualified or suspended, that conditional disqualification or suspension (as the case may be) shall continue to apply to the primary medical services performers list in which the medical practitioner is included on and after 1st April 2004 as it did, in relation to any other list, before that date.

Matters relating to the NHS Tribunal and medical and supplementary lists

- 91.** In a case where a medical practitioner is, on 31st March 2004 disqualified for inclusion in—
- (a) a Health Board's lists within section 29(8)(a) of the 1978 Act; or
 - (b) all lists within section 29(8)(a) of the 1978 Act,

that disqualification shall continue to apply on and after 1st April 2004 to a Health Board's list or all lists, as the case may be, within section 29(8)(a) of the 1978 Act.

Matters relating to the NHS Tribunal and medical and supplementary lists

- 92.** In a case where—
- (a) a review has been requested by a disqualified or conditionally disqualified person;
 - (b) a review has been requested by a Health Board; or
 - (c) the Tribunal is to carry out a review in any other circumstances in which they consider appropriate,

relating to a medical practitioner to which article 86 applies or, but for the disqualification under review, would have applied, and that review has not been finally determined before 1st April 2004, that request for review or review shall be treated as though the request or review had arisen in relation to the primary medical services performers list in which that medical practitioner has been included, or would have been included, as the case may be, and shall continue to be dealt with by the Tribunal.

Transitional provisions in cases where preferential treatment on transferring to medical lists was given

93.—(1) This article applies to any case to which, on or before 31st March 2004, paragraph 1 of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act⁽¹¹⁾ applies.

- (2) If—
- (a) a medical practitioner had made an application to a Health Board, pursuant to paragraph 1 of Schedule 1 to the 1997 Act, for the practitioner's name to be included in the Health Board's medical list; and
 - (b) the matter had not been determined on or before 31st March 2004,

article 87 shall apply.

- (3) In a case where—
- (a) paragraph (2) applies; and
 - (b) the Health Board adds that practitioner's name to its primary medical services performers list,

⁽¹¹⁾ Schedule 1 was amended by the [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), section 19, and is repealed from 1st April 2004 by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), schedule, paragraph 2(9).

that medical practitioner shall be treated as though that medical practitioner's name had been included in the medical list of that Health Board on 31st March 2004.

(4) In any case where representations have been made to the Tribunal under paragraph 3 of Schedule 1 to the 1997 Act and have not been finally determined on or before 31st March 2004, the matter shall continue to be dealt with by the NHS Tribunal on and after 1st April 2004 as if they were representations under section 29 of the 1978 Act in relation to the primary medical services performers list in which that medical practitioner, but for those representations, would have been included.

(5) If the Tribunal determines not to make a disqualification on representations to which paragraph (4) applies, then—

- (a) the medical practitioner's name shall be included in the list of the Health Board to which the medical practitioner has applied; and
- (b) the medical practitioner shall be treated as though the medical practitioner's name had been included in the medical list of that Health Board on 31st March 2004.

(6) In a case where a medical practitioner is, on 31st March 2004, subject to a direction of the Tribunal under paragraph 4(1) of Schedule 1 to the 1997 Act, that direction shall continue to apply on and after 1st April 2004 as if—

- (a) in relation to a direction under paragraph 4(1)(a) or (b)(ii) it were a local disqualification for inclusion in the Health Board's lists within section 29(8)(a) of the 1978 Act; and
- (b) in relation to a direction under paragraph 4(1)(b)(i) it were a national disqualification for inclusion in all lists within section 29(8)(a) of the 1978 Act.

(7) In a case where a medical practitioner has requested the Tribunal to hold an inquiry into whether or not to give a direction under paragraph 5 of Schedule 1 to the 1997 Act, and that inquiry has not been finally determined on or before 31st March 2004 that request for an inquiry, or inquiry shall be treated as though the request or inquiry was a request for a review or a review under section 30 of the 1978 Act of a disqualification.