

2005 No. 336

NATIONAL HEALTH SERVICE

**The National Health Service (Primary Medical Services Section
17C Agreements) (Scotland) Amendment Regulations 2005**

<i>Made</i> - - - -	<i>8th June 2005</i>
<i>Laid before the Scottish Parliament</i>	<i>9th June 2005</i>
<i>Coming into force</i> - -	<i>1st July 2005</i>

The Scottish Ministers, in exercise of the powers conferred by sections 17E, 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2005 and shall come into force on 1st July 2005.

(2) In these Regulations—

“the principal Regulations” means the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004(b); and

“the Act” means the National Health Service (Scotland) Act 1978.

Amendment of regulation 2 of the principal Regulations

2.—(1) Regulation 2 (interpretation)(c) of the principal Regulations is amended as follows.

(2) In the definition of “general medical practitioner”—

(a) in sub-paragraph (a), omit “otherwise than by virtue of paragraph 1(d) of Schedule 6 to that Order”;

(b) in sub-paragraph (b)(i) before “; or” insert “or a person who has an acquired right to practise as a general medical practitioner pursuant to regulation 5(1)(d) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994(d)”; and

(a) 1978 c.29; section 17E was inserted by the National Health Service (Primary Care) Act 1997 (c.46), section 22(2) and amended by the Health Act 1999 (c.8) (“the 1999 Act”), Schedule 4, paragraph 47 and the Primary Medical Services (Scotland) Act 2004 (asp 1), section 2(4); section 105(7), which contains provisions relevant to the making of regulations, was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7 and by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, paragraph 24 and the 1999 Act, Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(b) S.S.I. 2004/116; the relevant amending instrument is S.S.I. 2004/217.

(c) Regulation 2 was amended by S.S.I. 2004/217.

(d) S.I. 1994/3130; regulation 5 was amended by S.I. 1998/669 and modified by S.S.I. 2004/163. The whole Regulations are prospectively revoked by S.I. 2003/1250.

- (c) in sub-paragraph (b)(ii) omit “other than by virtue of having an acquired right under paragraph 1(d) of Schedule 6 to the 2003 Order”.
- (3) For the definition of “GP Registrar”, substitute–
 - ““GP Registrar” means a medical practitioner who is being trained in general practice by–
 - (a) until the coming into force for all purposes of article 4(5)(d) of the 2003 Order, a general medical practitioner who–
 - (i) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998(a); and
 - (ii) performs primary medical services; and
 - (b) from the coming into force for all purposes of that article, a general medical practitioner who is approved under that article for the purpose of providing training under article 5(1)(c)(i) of the 2003 Order, whether as part of training leading to the award of a CCT or otherwise;”.
- (4) Omit the definition of “GP Trainer”.
- (5) In the definition of “supplementary prescriber”–
 - (i) in sub-paragraph (b)(ii) omit “or”; and
 - (ii) at the end of sub-paragraph (b)(iii) for “and” in the second place where it occurs substitute–
 - “or
 - (iv) the part of the register maintained by the Health Professions Council in pursuance of article 5 of the Health Professions Order 2001(b) relating to–
 - (aa) chiropodists and podiatrists;
 - (bb) physiotherapists; or
 - (cc) radiographers: diagnostic or therapeutic, and”.

Amendment of Schedule 1 to the principal Regulations

- 3.—(1) Schedule 1 (content of agreements) to the principal Regulations is amended as follows.
- (2) After paragraph 1 (premises), insert–

“Telephone services

1A.—(1) The provider shall not be a party to any contract or other arrangement under which the number for telephone services to be used–

- (a) by patients to contact the practice for any purpose related to the agreement; or
- (b) by any other person to contact the practice in relation to services provided as part of the health service,

starts with the digits 087, 090 or 091 or consists of a personal number, unless the service is provided free to the caller.

(2) In this paragraph, “personal number” means a telephone number which starts with the number 070 followed by a further 8 digits.”.

- (3) In paragraph 13 (restrictions on prescribing by supplementary prescribers) omit sub-paragraphs (2)(b), (4)(c) and (f) and (6).
- (4) In paragraph 17(2) (qualifications of performers)–

(a) S.I. 1998/5; the relevant amending instrument is S.I. 1998/669. The whole Regulations are prospectively revoked by S.I. 2003/1250.
 (b) S.I. 2002/254.

- (a) for paragraph (c) substitute–
- “(c) a GP Registrar who has applied to the Health Board to have the GP Registrar’s name included in the primary medical services performers list of the Health Board, until the first of the following events arises:–
- (i) the Health Board notifies the GP Registrar of the Board’s decision on that application;
- (ii) the end of a period of 2 months, starting with the date on which the GP Registrar’s vocational training scheme begins.”; and
- (b) at the end insert–
- “(3) In this paragraph, “vocational training scheme” has the meaning given in regulation 2 (interpretation) of the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004(a).”.
- (5) In paragraph 27 (arrangements for GP registrars) in sub-paragraph (1) omit “for the purpose of being trained by a GP Trainer with the agreement of the Scottish Ministers and”.
- (6) In paragraph 36 (provision of information), at the end insert–
- “(3) The provider shall produce the information requested, or as the case may be, allow access to it–
- (a) by such date as has been agreed as reasonable between the provider and the Health Board; or
- (b) in the absence of such agreement, within 28 days of the request being made.”.
- (7) In paragraph 39 (annual return and review)–
- (a) after sub-paragraph (1), insert–
- “(1A) One such return may be requested by the Health Board at any time during each financial year in relation to such period (not including any period covered by a previous annual return) as may be specified in the request.
- (1B) The provider shall submit the completed return to the Health Board–
- (a) by such date as has been agreed as reasonable between the provider and the Health Board; or
- (b) in the absence of such agreement, within 28 days of the request being made.”; and
- (b) at the end insert–
- “(6) In this paragraph, “financial year” means the twelve months ending with 31st March.”.
- (8) In paragraph 42 (notice provisions specific to agreements with one or more companies limited by shares)(b)–
- (a) after sub-paragraph (1)(a) insert–
- “(aa) a new director or secretary is appointed;”; and
- (b) after sub-paragraph (2) insert–
- “(3) A notice under sub-paragraph (1)(aa) shall confirm that the new director or, as the case may be, secretary meets the conditions imposed on directors and secretaries by virtue of regulation 3.”.
- (9) In paragraph 56(6) (NHS dispute resolution procedure)(c) at the end insert “under dispute”.
- (10) In paragraph 65 (termination by the Health Board for the provision of untrue etc. information) for “before the agreement” to the end substitute–
- “–
- (a) before the agreement was entered into; or

(a) S.S.I. 2004/114.

(b) Paragraph 42 of Schedule 1 was amended by S.S.I. 2004/217.

(c) Paragraph 56 of Schedule 1 was amended by S.S.I. 2004/217.

(b) pursuant to paragraphs 42(2) or (3) or 43(2),

in relation to the conditions set out in regulation 3 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.”.

(11) In paragraph 73 (termination of the NHS dispute resolution procedure)–

(a) in sub-paragraph (1) for “or 68(4) or (6)” substitute “, 68(4) or (6), 69 or 70” ; and

(b) in sub-paragraph (5) for “impose the agreement sanction” substitute “terminate the agreement”.

(12) In paragraph 76(3)(b) (insurance) for “an employee of that provider in connection with clinical services which that employee” substitute “a person employed or engaged by that provider in connection with clinical services which that person”.

Amendment of Schedule 2 to the principal Regulations

4. In paragraph 23 (rejection of closure notice by the Health Board)(a) of Schedule 2 (agreements to provide essential services) to the principal Regulations, after sub-paragraph (7) insert–

“(7A) Subject to sub-paragraph (7B), the provider’s list of patients shall remain closed for the period specified by the assessment panel in accordance with sub-paragraph (7)(b).

(7B) The provider’s list of patients shall re-open before the expiry of the period mentioned in sub-paragraph (7A) if–

(a) the number of the provider’s registered patients falls to the number specified by the assessment panel in accordance with sub-paragraph (7)(b) as the number of registered patients which, if that number were reached, would trigger the re-opening of the provider’s list of patients; or

(b) the Health Board and the provider agree that the list of patients should re-open.

(7C) If the provider’s list of patients has re-opened pursuant to sub-paragraph (7B)(a), it shall nevertheless close again if, during the period specified by the assessment panel as the period for which the list should remain closed, the number of the provider’s registered patients rise to the number specified by the assessment panel in accordance with sub-paragraph (7)(b) as the number of registered patients which, if that number were reached, would trigger the re-closure of the provider’s list of patients.

(7D) Except in cases where the provider’s list of patients is already open pursuant to paragraph (7B), the Health Board shall notify the provider in writing between seven and fourteen days before the expiry of the closure period specified in paragraph (7A), confirming the date on which the provider’s list of patients will re-open.”.

Amendment of Schedule 3 to the principal Regulations

5. In paragraph 4(2)(a) (vaccinations and immunisations) of Schedule 3 (agreements to provide additional services) to the principal Regulations, for “influenza vaccination” substitute “influenza and pneumococcal vaccinations”.

Amendment of Schedule 4 to the principal Regulations

6. For paragraph 6(2) (withdrawal and variation of approval under paragraph 4) of Schedule 4 (agreements to provide out of hours services) to the principal Regulations substitute–

“(2) A notice served under sub-paragraph (1) shall take effect on the date on which it is received by the provider.”.

(a) Paragraph 23 of Schedule 2 was amended by S.S.I. 2004/217.

Transitional arrangements in relation to telephone services

7.—(1) Where—

- (a) pursuant to paragraph 59 of Schedule 1 to the principal Regulations, an agreement under section 17C of the Act (“a section 17C agreement”) has been varied to include a term which gives effect to paragraph 1A of Schedule 1 to the principal Regulations (as inserted by regulation 3(2) of these Regulations); and
- (b) as a result of that variation, a provider is, by virtue of a contract or other arrangements for the provision of telephone services which it entered into before the date on which that variation took effect, in breach of the provider’s section 17C agreement,

no action shall be taken against the provider by the Health Board in respect of that breach, provided the provider complies with the conditions specified in paragraph (2).

(2) The conditions referred to in paragraph (1) are that the provider—

- (a) provides such details of the contract or other arrangement for telephone services as the Health Board may request, within the time specified by the Health Board in that request; and
- (b) varies or terminates that contract or other arrangement when required to do so by the Health Board, where the Health Board is acting in accordance with directions from the Scottish Ministers under section 2(5) of the Act(a).

ANDREW P KERR

A member of the Scottish Executive

St Andrew’s House,
Edinburgh
8th June 2005

(a) section 2(5) was amended by the National Health Service and Community Care Act 1990 (c.19), Schedule 10.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004 (“the principal Regulations”), which set out the framework for section 17C arrangements for the provision of primary medical services under the National Health Service (Scotland) Act 1978 (“the 1978 Act”).

These Regulations make provision with respect to the provision of services in accordance with these arrangements.

Regulation 3 amends the terms which all such agreements must contain. These amendments include—

- (a) provision requiring a provider not to enter into arrangements for certain telephone services where they are to be used by patients contacting the practice (regulation 3(2));
- (b) amendment to the provisions placing restrictions on prescribing by supplementary prescribers, to permit the prescribing and administration by them of controlled drugs and the prescribing by them of unlicensed medicines under section 17C arrangements (regulation 3(3));
- (c) amendment to the provisions which do not require GP Registrars to be included in the primary medical services performers list of a Health Board in order to perform services under section 17C arrangements, to bring them into line with the exemptions to the requirement for GP Registrars to be on such a list contained in the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 (regulation 3(4));
- (d) amendment to the provisions relating to the employment of GP Registrars, providing that the consent of the Scottish Ministers is no longer required for employing a GP Registrar (regulation 3(5));
- (e) amendment to requirements as to the provision of information by the provider of services to provide for time limits by which that must be done (regulation 3(6));
- (f) amendment to the provisions as to the submission of annual returns by the provider of services to provide for when annual returns may be requested and time limits by which that must be done (regulation 3(7));
- (g) amendment of the provisions as to notice that must be given by a provider of services which is a company limited by shares to a Health Board, to make provision for notice to be given when a new director or secretary is appointed (regulation 3(8));
- (h) amendment to the provisions on disputes arising out of, or in connection with, the agreement that have been referred to the Scottish Ministers, to clarify the matter about which representations may be made to them before they reach a decision as to who should determine a dispute (regulation 3(9));
- (i) amendment to the provisions as to termination of an agreement where a provider of services has provided untrue or inaccurate information before an agreement was made, to provide that an agreement may also be terminated when untrue or inaccurate information is given in certain notices after an agreement has been made (regulation 3(10));
- (j) amendment to the provisions as to the relationship between the termination of the agreement and the dispute resolution procedure to correct errors in the principal Regulations (regulation 3(11)); and
- (k) amendment to the provisions on insurance to provide that a provider of services is to be regarded as holding insurance if a person engaged by the provider holds insurance in connection with clinical services which that person provides (regulation 3(12)).

Regulation 4 amends the terms to be included in agreements which include the provision of essential services. It amends the provisions dealing with the closure of lists of patients, to make

provision for the circumstances where, after an assessment panel has determined that a provider's list of patients should close, that list may re-open or close again.

Regulation 5 amends the term dealing with the vaccinations that are to be offered by providers under agreements which include the provision of vaccinations and immunisations.

Regulation 6 amends the terms to be included in agreements which include the provision of out of hours services, in order to clarify provisions relating to the withdrawal or variation of approval by a Health Board of the sub-contracting of out of hours services.

These Regulations also–

- (a) amend definitions in the principal Regulations related to the above amendments (regulation 2(3) and (4));
- (b) amend the definition of “general medical practitioner” in the principal Regulations so that references to one include all medical practitioners included on the General Practitioner Register or, until that Register comes into effect, who are suitably experienced or have an acquired right to practise as a general medical practitioner (regulation 2(2));
- (c) amend the definition of “supplementary prescriber” to provide for additional categories of health care professional, who may also prescribe as a supplementary prescriber, to do so under section 17C arrangements (regulation 2(5)).

Regulation 7 makes transitional arrangements in relation to the amendment made by regulation 3(2) to provide that no action is taken against providers of services who have already entered into arrangements for such telephone services provided they comply with certain conditions as regards providing the Health Board with details as to those arrangements, and varying or terminating those arrangements.

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