
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 395

**The National Health Service (Primary
Medical Services Section 17C Agreements)
(Scotland) Amendment Regulations 2010**

Amendment of the 2004 Regulations

10.—(1) Schedule 1 (content of agreements) is amended as follows.

(2) For paragraph 9(2)(c)(iii) (termination of responsibility for patients not registered with the provider), substitute—

“(iii) a member of a limited liability partnership that is a party to the agreement;

(iiia) a member of a company that is a party to the agreement;”.

(3) In paragraph 28 (independent nurse prescribers and supplementary prescribers)—

(a) in sub-paragraph (1)(c)—

(i) for “a partner in a partnership”, substitute, “a partner or member as the case may be of a partnership or limited liability partnership”; and

(ii) omit ‘or’ in the last place that word occurs;

(b) after sub-paragraph (1)(c), insert—

“(ca) the member of a company that is a party to the agreement is an independent nurse prescriber, a supplementary prescriber or a pharmacist independent prescriber whose functions will include prescribing; or”;

(c) in the tailpiece, from “or a partner is a partnership” to “as the case may be”, substitute—

“the person became a partner or member as the case may be of the partnership, limited liability partnership or company that is a party to the agreement (unless, immediately before becoming such a party, or partner or member of that partnership, limited liability partnership or company that is such a party, the person fell under paragraph (1)(a)) or the person’s functions were extended as the case may be.”;

(d) in sub-paragraph (2)—

(i) for paragraph (c), substitute—

“(c) the partner or member, as the case may be in a partnership or limited liability partnership who is an independent nurse prescriber, a supplementary prescriber or a pharmacist independent prescriber, whose functions include prescribing, ceases to be a partner or member of the partnership or limited liability partnership;”;

(ii) after paragraph (c), insert—

“(ca) the member of a company that is a party to the agreement, who is an independent nurse prescriber, a supplementary prescriber or a pharmacist independent prescriber whose

functions include prescribing, ceases to be a member of the company;”;

- (e) in sub-paragraph (3)(e)(iii)—
 - (i) for “a partner in a partnership” substitute “a partner or member, as the case may be in the partnership or limited liability partnership”;
 - (ii) omit “or”;
- (f) after paragraph (e)(iii), insert—

“(iia) the person became a member of a company that is a party to the agreement, if applicable; or”;
- (g) in sub-paragraph (4)(d)(iii)—
 - (i) for “partner in a partnership” substitute “a partner or member, as the case may be in a partnership or limited liability partnership”; and
 - (ii) after paragraph (d)(iii), insert—

“(iia) the person ceased to be a member of a company that is a party to the agreement.”.
- (4) In paragraph 32 (sub-contracting of clinical matters)—
 - (a) in sub-paragraph (3)—
 - (i) in paragraph (c) omit “and”;
 - (ii) after paragraph (d) insert—

“; and

 - (e) in the case of an agreement entered into on or after 22nd December 2010, whether the sub-contractor, if that sub-contractor were a provider, would have sufficient involvement in patient care in terms of section 17CA(3) and (4) of the Act.”;
 - (b) in sub-paragraph (5)—
 - (i) in paragraph (a)(ii) omit “or”;
 - (ii) after paragraph (b) insert—

“; or

 - (c) in the case of an agreement entered into on or after 22nd December, if the sub-contractor were a provider, that sub-contractor would not have sufficient involvement in patient care in terms of section 17CA(3) and (4) of the Act.”;
 - (c) in sub-paragraph (10)—
 - (i) for “company or firm” in both places where that term occurs, substitute “company, partnership or limited liability partnership”; and
 - (ii) in paragraphs (a) and (c), for “shareholder in”, substitute “member of”.
- (5) In paragraph 39 (annual return and review), after sub-paragraph (1B), insert—

“(1C) Without prejudice to the generality of sub-paragraph (1), in the case of agreements entered into on or after 22nd December 2010, the provider shall include in the annual return a statement confirming that the provider meets the conditions of section 17CA(3) and (4) of the Act, and, in connection with that statement, shall include such details as the Health Board considers appropriate.”.
- (6) In paragraph 40(b) (notifications to the Health Board), for “65 or 66”, substitute “65, 66 or 66A”.

(7) In paragraph 42 (notice provisions specific to agreements with one or more companies limited by shares)—

(a) before sub-paragraph (1), insert—

“(A1) This paragraph applies to agreements entered into prior to 22nd December 2010”;

(b) in sub-paragraph (2)(a), after the words “of the Act”, insert “as in force at 21st December 2010”.

(8) After paragraph 42, insert—

“Notice provisions specific to an agreement with one or more companies

42A.—(1) This paragraph applies to agreements entered into on or after 22nd December 2010.

(2) Where a company is a party to the agreement, the provider shall give notice in writing to the Health Board forthwith when—

(a) a member, director or secretary of the company ceases to be a member, director or secretary of the company or informs the other members of the company that that person intends to cease to be a member, director or secretary of the company, and the date upon which he or she ceased, or will cease, to be a member, director or secretary of the company;

(b) a new member, director or secretary becomes a member, director or secretary of the company;

(c) the company passes a resolution or a court of competent jurisdiction makes an order that the company be wound up;

(d) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the company;

(e) circumstances arise which would enable the court to make a winding up order in respect of the company; or

(f) the company is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

(3) A notice under sub-paragraph (2)(b) shall—

(a) state the date the new member, director or secretary became a member, director or secretary of the company;

(b) confirm that the new member is an individual who satisfies the conditions imposed on members by virtue of section 17CA(3) and (4) of the Act and the conditions imposed by regulations 3 and 3A; and

(c) confirm that the new director or, as the case may be, secretary satisfies the conditions imposed on directors and secretaries by virtue of regulation 3.”.

(9) In paragraph 43 (notice provisions specific to an agreement with one or more partnerships), for sub-paragraph (2), substitute—

“(2) A notice under sub-paragraph (1)(b) shall—

(a) state the date that the new partner joined the partnership;

(b) in the case of an agreement entered into prior to 22nd December 2010—

(i) confirm that the new partner satisfies the conditions imposed by regulation 3 (general conditions relating to providers) as in force at 21st December 2010; and

- (ii) state whether the new partner is a general or a limited partner;
 - (c) in the case of an agreement entered into on or after 22nd December 2010—
 - (i) confirm that the new partner is an individual who satisfies the conditions imposed on members by virtue of section 17CA(3) and (4) of the Act, and
 - (ii) satisfies the conditions imposed by regulations 3 and 3A; and
 - (d) state whether the new partner is a general or a limited partner.”.
- (10) After paragraph 43, insert—

“Notice provisions specific to an agreement with persons practising with one or more limited liability partnership

43A.—(1) Where a limited liability partnership is party to the agreement, the provider shall give notice to the Health Board forthwith—

- (a) when a member ceases to be a member, or informs the other members of the limited liability partnership that the member intends to cease to be a member, of the limited liability partnership, and the date upon which the member ceased, or will cease, to be a member of the limited liability partnership;
- (b) when a new member joins the limited liability partnership.

(2) A notice under sub-paragraph (1)(b) shall—

- (a) state the date that the new member joined the limited liability partnership; and
- (b) confirm that the new member is an individual who satisfies the conditions imposed on members by virtue of section 17CA(3) and (4) of the Act and the conditions imposed by regulations 3 and 3A.”.

(11) For paragraph 65 (termination by the Health Board for the provision of untrue etc information), substitute—

“65. The Health Board may serve notice in writing on a party to the agreement terminating the agreement with that party to the agreement forthwith, or from such dates as may be specified in the notice if—

- (a) in the case of an agreement entered into prior to 22nd December 2010, after the agreement has been made, it comes to the attention of the Health Board that written information provided to the Health Board by that party to the agreement—
 - (i) before the agreement was entered into; or
 - (ii) pursuant to paragraphs 42(2) or (3) or 43(2) as in force at 21st December 2010,

in relation to the conditions set out in regulation 3 as in force at 21st December 2010 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect; or

- (b) in the case of an agreement entered into on or after 22nd December 2010, after the agreement has been made, it comes to the attention of the Health Board that written information provided to the Health Board by that party to the agreement—
 - (i) before the agreement was entered into; or
 - (ii) pursuant to paragraphs 42A(2) or (3), 43(2) or 43A(2),

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

(12) In paragraph 66 (other grounds for termination by the Health Board)—

- (a) in sub-paragraph (1) for “The Health Board”, substitute “In the case of agreements entered into prior to 22nd December 2010, the Health Board”;
 - (b) for sub-paragraph (3)(a), substitute—
 - “(a) the person has been disqualified, or suspended by direction of the Tribunal made pursuant to section 32A(2) (applications for interim suspension) or 32B(1) (suspension pending appeal) of the Act, or under any provisions in force in England, Wales or Northern Ireland corresponding thereto;”;
 - (c) in sub-paragraph (3)(b), omit “or a suspension on the grounds of ill-health”;
 - (d) in sub-paragraph (3)(i)(ii), following “Insolvency Act 1986”, insert “or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985”;
 - (e) in sub-paragraph (1)(ii), for “Charity Commissioners”, substitute “Charity Commission for England and Wales”;
 - (f) in sub-paragraph (n), for “that” in the first place it occurs, substitute “the”.
- (13) After paragraph 66, insert—

“Other grounds for termination by the Health Board for agreements entered into on or after 22nd December 2010

66A.—(1) In the case of agreements entered into on or after 22nd December 2010, the Health Board may serve notice in writing on a party to the agreement terminating the agreement with the party forthwith, or from such date as may be specified in the notice if—

- (a) in the case of an agreement with an individual, that individual;
 - (b) in the case of an agreement with a partnership, any partner or the partnership;
 - (c) in the case of an agreement with a limited liability partnership, any member or the limited liability partnership; and
 - (d) in the case of an agreement with a company—
 - (i) the company,
 - (ii) any member of the company, or
 - (iii) any director or secretary of the company,falls within sub-paragraph (2) during the existence of the agreement.
- (2) A person falls within this sub-paragraph if—
- (a) subject to sub-paragraph (3), the person does not satisfy the requirements of section 17CA(1), (2) or (3) of the Act;
 - (b) the person has been disqualified or suspended by direction of the Tribunal made pursuant to section 32A(2) (applications for interim suspension) or 32B(1) (suspension pending appeal) of the Act, or under any provisions in force in England, Wales or Northern Ireland corresponding thereto;
 - (c) subject to sub-paragraph (5), the person is disqualified or suspended (otherwise than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;
 - (d) subject to sub-paragraph (6), the person has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless before the Health Board has served a notice terminating the agreement pursuant to this paragraph, the person is employed by the health service body that dismissed the person or by another health service body;

- (e) the person is disqualified from a list unless the person's name has subsequently been included in such a list;
- (f) the person has been convicted in the United Kingdom of murder;
- (g) the person has been convicted in the United Kingdom of a criminal offence, other than of murder, and has been sentenced to a term of imprisonment of over six months;
- (h) subject to sub-paragraph (7), the person has been convicted elsewhere of an offence—
 - (i) which would, if committed in Scotland, constitute murder; or
 - (ii) constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (i) the person has been convicted of an offence referred to in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children under the age of 17 to which special provisions apply) or Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons with respect to which special provisions apply);
- (j) the person has—
 - (i) had sequestration of the person's estate awarded or been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order has been annulled,
 - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986 or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985, unless that order has ceased to have effect or has been annulled,
 - (iii) made a composition or arrangement with, or granted a trust deed for, the person's creditors unless the person has been discharged in respect of it, or
 - (iv) been wound up under Part IV of the Insolvency Act 1986;
- (k) there is—
 - (i) an administrator, administrative receiver or receiver appointed in respect of it, or
 - (ii) an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986;
- (l) that person is a partnership or limited liability partnership and—
 - (i) a dissolution of the partnership or limited liability partnership is ordered by any competent court, tribunal or arbitrator, or
 - (ii) an event happens that makes it unlawful for the business of the partnership or limited liability partnership to continue, or for members of the partnership or limited liability partnership to carry on in partnership or limited liability partnership;
- (m) the person has been—
 - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session), from being concerned in the management or control of any body; or
 - (ii) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission for England and Wales or the High Court on the grounds of any misconduct or mismanagement in the administration of the

charity for which the person was responsible or to which the person was privy, or which the person by the person's conduct contributed to or facilitated;

- (n) the person is subject to a disqualification order under the company Directors Disqualification Act 1986, the Companies (Northern Ireland) Order 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order); or
- (o) the person has refused to comply with a request by the Health Board for that person to be medically examined on the grounds that the Health Board is concerned that the person is incapable of adequately providing services under the agreement and, in a case where the agreement is with a partnership, limited liability partnership or a company, the Health Board is not satisfied that the partnership, limited liability partnership or company is taking adequate steps to deal with the matter; or
- (p) the person would otherwise fall within paragraph 101(2)(p) of Schedule 5 to the GMS Contracts Regulations.

(3) Subject to sub-paragraph (4), a Health Board shall not terminate the agreement pursuant to sub-paragraph (2)(a) where—

- (a) a party to the agreement who is an individual;
- (b) in the case of a party to an agreement which is a partnership, a partner;
- (c) in the case of a party to an agreement which is a limited liability partnership, a member; or
- (d) in the case of a party to an agreement which is a company, a member of the company,

after having entered into an agreement (“the relevant agreement”), retires and is therefore not performing or is not engaged in the provision of primary medical services, in accordance with regulation 3A.

(4) Sub-paragraph (3) only applies for the period of time following the date of retirement, which is the equivalent to the length of time that the relevant person referred to in sub-paragraph (3)(a), (b), (c) or (d) has performed or been engaged in the provision of primary medical services for the purposes of the relevant agreement, up to a maximum period of 2 years following the date of retirement.

(5) A Health Board shall not terminate the agreement pursuant to sub-paragraph (2)(c) where the Health Board is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be—

- (a) a party to the agreement;
- (b) in the case where the person is a partner in a partnership that is a party to the agreement, a partner in that partnership;
- (c) in the case where the person is a member of a limited liability partnership that is a party to the agreement, a member of that partnership; or
- (d) in the case where the person is a member, director or secretary of a company that is a party to the agreement—
 - (i) a member of the company, or
 - (ii) a director or secretary of the company,as the case may be.

(6) A Health Board shall not terminate the agreement pursuant to sub-paragraph (2)(d)—

- (a) until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or

- (b) if, during the period of time specified in paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of the person's dismissal, until proceedings before that tribunal or court are concluded,

and the Health Board may only terminate the agreement at the end of the period specified in paragraph (b) if there is no finding of unfair dismissal at the end of those proceedings.

(7) A Health Board shall not terminate the agreement pursuant to sub-paragraph (2)(h) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a party to the agreement;
- (b) in the case where the person is a partner in a partnership that is a party to the agreement, a partner in that partnership;
- (c) in the case where the person is a member of a limited liability partnership that is a party to the agreement, a member of that limited liability partnership; or
- (d) in the case where the person is a member, director or secretary of a company that is a party to the agreement—
 - (i) a member of the company; or
 - (ii) a director or secretary of the company,

as the case may be.

(8) In this paragraph, “health service body” does not include any person who is to be regarded as a health service body in accordance with regulation 8.”.

(14) In paragraph 69(1) (termination by the Health Board: additional provisions specific to agreements with one or more companies limited by shares)—

- (a) omit “limited by shares”;
- (b) after “a company” in the first place that term occurs, insert “, partnership or limited liability partnership”;
- (c) for “a company” in the second place that term occurs, substitute “the company, partnership or limited liability partnership”;
- (d) after “the company” in each place that term occurs, and after “that company”, insert “, partnership or limited liability partnership”.

(15) In paragraph 70 (termination by the Health Board: changes in the provider)—

- (a) in sub-paragraph (1)—
 - (i) in paragraph (a), omit “or” in the third place it occurs;
 - (ii) after paragraph (b), insert—
 - “(c) where one or more limited liability partnerships are parties to the agreement, one or more members have left that limited liability partnership or those limited liability partnerships; or
 - (d) where one or more companies are parties to the agreement, one or more members have left that company or those companies,”;
 - (iii) after “membership of the partnership”, insert “, limited liability partnership or company”;
- (b) in sub-paragraph (2)(b), after “membership of the partnership”, insert “, limited liability partnership or company”.

(16) In paragraph 71 (agreement sanctions) in sub-paragraph (2), after “66,” insert “66A,”.

(17) In paragraph 73 (termination and the NHS dispute resolution procedure), in sub-paragraphs (1) and (5), after “66” insert “66A,”.

(18) In paragraph 74 (consultation with the area medical committee), in sub-paragraph (1)(a), after “66” insert “66A,”.

(19) In paragraph 78 (gifts)—

(a) after sub-paragraph (2)(b), insert—

“(ba) where a limited liability partnership is a party to the agreement, any member of the limited liability partnership;”;

(b) in sub-paragraph (2)(c)(i) for “person legally and beneficially holding a share in”, substitute “member of”.