
STATUTORY INSTRUMENTS

1996 No. 842 (S.97)

NATIONAL HEALTH SERVICE, SCOTLAND

**The National Health Service (General Medical
Services) (Scotland) Amendment Regulations 1996**

<i>Made</i>	- - - -	<i>18th March 1996</i>
<i>Laid before Parliament</i>		<i>19th March 1996</i>
<i>Coming into force</i>	- -	<i>1st April 1996</i>

The Secretary of State, in exercise of the powers conferred on him by sections 2(5), 19, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the National Health Service (General Medical Services) (Scotland) Amendment Regulations 1996 and shall come into force on 1st April 1996.

(2) In these Regulations, “the principal Regulations” means the National Health Service (General Medical Services) (Scotland) Regulations 1995(2).

Amendment of regulation 4 of the principal Regulations

2. In regulation 4 of the principal Regulations (medical list), at the end of paragraph (5)(f) insert

—
“and

(g) whether they have made arrangements under paragraph 17A(2) of the terms of service transferring responsibility for their patients at certain times to other doctors, and, if so, the names of the doctors to whom and the times during which they have so transferred responsibility”.

(1) 1978 c. 29; section 2(5) was amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), Schedule 9, paragraph 19(1); section 19 was amended by the Health Services Act 1980 (c. 53) (“the 1980 Act”), section 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (“the 1983 Act”), Schedule 7, paragraph 2, by the Medical Act 1983 (c. 54), Schedule 5, paragraph 17(a) and by the 1990 Act, section 37 and is to be read with the Health and Medicines Act 1988 (c. 49), section 17; section 105(7) was amended by the 1980 Act, Schedule 6, paragraph 5 and Schedule 7 and by the 1983 Act, Schedule 9, paragraph 24; see section 108(1) for the definitions of “prescribed” and “regulations”.

(2) S.I.1995/416 amended by S.I. 1995/3199.

Amendment of regulation 21 of the principal Regulations

3. In regulation 21 of the principal Regulations (limitation of number of persons on doctors' lists), in paragraph (1), for “paragraph 18” substitute “paragraphs 17 or 17A”.

Amendment of Schedule 1 to the principal Regulations

4.—(1) Schedule 1 to the principal Regulations (terms of service for doctors) is amended as follows.

(2) In paragraph 4(1) (persons for whose treatment the doctor is responsible) at the end of head (k) insert—

“(l) any person for whom he has accepted responsibility under an arrangement made under paragraph 17A(2).”.

(3) After paragraph 12, insert the following new paragraphs:—

“Complaints

12A.—(1) Subject to sub-paragraph (2), a doctor shall establish, and operate in accordance with this paragraph, a procedure (in this paragraph and in paragraph 12B referred to as a “practice based complaints procedure”) to deal with any complaints made by or on behalf of his patients and former patients.

(2) The practice based complaints procedure to be established by a doctor may be such that it also deals with complaints made in relation to one or more other doctors.

(3) A practice based complaints procedure shall apply to complaints made in relation to any matter reasonably connected with the doctor’s provision of general medical services and, where appropriate the supply by him of drugs and appliances under regulation 34, and within the responsibility or control of—

- (a) the doctor;
- (b) any other doctor either employed by him or engaged as his deputy;
- (c) a former partner of the doctor;
- (d) an employee of the doctor other than one falling within head (b),

and in this paragraph and paragraph 12B, references to complaints are to complaints falling within this sub-paragraph.

(4) A complaint may be made on behalf of a patient or former patient with his consent, or—

- (a) where the patient is a child—
 - (i) by either parent, or in the absence of both parents, the guardian or other adult person who has care of the child, or
 - (ii) in the care of an authority for the purposes of the Social Work (Scotland) Act 1968(3) or in the care of a voluntary organisation, by that authority or voluntary organisation; or

- (b) where the patient is incapable of making a complaint, by a relative or other adult person who has an interest in his welfare.

(5) Where a patient has died a complaint may be made by a relative or other adult person who had an interest in his welfare or, where the patient was as described in head (a)(ii) of sub-paragraph (4), by the authority or voluntary organisation.

(6) A practice based complaints procedure shall comply with the following requirements:—

- (a) the doctor shall specify a person (who need not be connected with the practice and who, in the case of an individual, may be specified by his job title) to be responsible for receiving and investigating all complaints;
 - (b) all complaints shall be—
 - (i) recorded in writing,
 - (ii) acknowledged, either orally or in writing, within the period of three days (excluding Saturdays, Sundays, Christmas Day, New Year’s Day and other public or local holidays agreed with the Board) beginning with the day on which the complaint was received by the person specified in head (a) or, where that is not possible, as soon as reasonably practicable, and
 - (iii) properly investigated;
 - (c) within the period of 10 days (excluding Saturdays, Sundays, Christmas Day, New Year’s Day and other public or local holidays agreed with the Board) beginning with the day on which the complaint was received by the person specified in head (a) or, where that is not possible as soon as reasonably practicable, the complainant shall be given a written summary of the investigation and its conclusions;
 - (d) where the investigation of the complaint requires consideration of the patient’s medical records, the person specified in head (a) shall inform the patient or person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the doctor or a partner, deputy or employee of the doctor; and
 - (e) the doctor shall keep a record of all complaints and copies of all correspondence relating to complaints, but such records shall be kept separate from patients' medical records.
- (7) A doctor shall inform his patients about the practice based complaints procedure which he operates and the name (or title) of the person specified in sub-paragraph (6)(a).

12B.—(1) A doctor shall cooperate with any investigation of a complaint by the Board in accordance with the procedures which it operates in accordance with directions given under section 2(5) of the Act(4), whether the investigation follows one under the practice based complaints procedure or not.

- (2) The cooperation required by sub-paragraph (1) includes—
 - (a) answering questions reasonably put to the doctor by the Board;
 - (b) providing any information relating to the complaint reasonably required by the Board; and
 - (c) attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice in writing has been given) if the doctor’s presence at the meeting is reasonably required by the Board.”.

(4) In paragraph 17 (absences, deputies, assistants and partners), in sub-paragraph (1), after “sub-paragraph (2)” insert “and paragraph 17A”.

(5) After paragraph 17 insert the following new paragraphs:—

“Out of hours arrangements

- 17A.**—(1) In this paragraph and in paragraph 17B—
 - (a) “out of hours period” means—

(4) Section 2(5) was amended by the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 19(1).

- (i) the period beginning at 7pm on Mondays to Fridays and ending at 8am the following day,
- (ii) the period between 1pm on Saturday until 8am on the following Monday, and
- (iii) Christmas Day, New Year's Day and other public or local holidays agreed with the Board,

and "part" of an out of hours period means any part of any one or more of the periods described in heads (i) to (iii);

- (b) "out of hours arrangement" means an arrangement under sub-paragraph (2); and
- (c) "transferee doctor" means a doctor who has undertaken to carry out the obligations of another doctor under the terms of service during part or all of the out of hours period in accordance with an out of hours arrangement.

(2) Subject to sub-paragraphs (3) to (15), a doctor may, with the approval of the Board, make an arrangement with a doctor who is on a medical list to transfer his obligations under the terms of service during part or all of the out of hours period to that other doctor.

(3) A doctor may make more than one out of hours arrangement; and may do so (for example) with different transferee doctors and in respect of different patients, different times and different parts of his practice area.

(4) A doctor may retain responsibility for, or make separate out of hours arrangements in respect of, the provision of maternity medical services to patients with whom he has made an arrangement under regulation 31.

(5) Nothing in this paragraph prevents a doctor from retaining or resuming his obligations in relation to named patients.

(6) Where a doctor has agreed to provide maternity medical services he shall not make an out of hours arrangement in respect of the provision of maternity medical services to patients with whom he has made an arrangement under regulation 31, unless the transferee doctor is also a doctor who has so agreed.

(7) An application to the Board for approval shall be made in writing and shall state—

- (a) the name and address of the proposed transferee doctor and where his name is included in the list of another Board, the number of patients on his list;
- (b) the periods during which the doctor's obligations under these terms of service are to be transferred;
- (c) how the proposed transferee doctor intends to meet the doctor's obligations during the periods specified under paragraph (b);
- (d) the arrangements for the transfer of the doctor's obligations under these terms of service to and from the transferee doctor at the beginning and end of the periods specified under paragraph (b);
- (e) whether the proposed arrangement includes the doctor's obligations in respect of maternity medical services;
- (f) how long the proposed arrangements are intended to last and the circumstances in which the doctor's obligations under these terms of service during the periods specified under paragraph (b) would revert to him;
- (g) what arrangements are proposed to enable the doctor's patients to contact the proposed transferee doctor; and
- (h) where the proposed transferee doctor's name is included in the list of another Board, whether—

- (i) he has been notified under regulation 27(1) of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations⁽⁵⁾ that the Tribunal intends to hold an inquiry under section 29 of the Act as to representations made in relation to him; or
 - (ii) he has been notified under section 42(5) of the Medical Act 1983⁽⁶⁾ that the Preliminary Proceedings Committee of the General Medical Council has decided that he should be referred to the Professional Conduct Committee or to the Health Committee.
- (8) The Board shall determine the application before the end of the period of 30 days beginning with the day on which the Board received it.
- (9) The Board shall grant approval to a proposed out of hours arrangement if it is satisfied—
- (a) having regard, in particular, to the interests of the doctor’s patients, that the arrangement is reasonable;
 - (b) having regard, in particular, to all reasonably foreseeable circumstances, that the arrangement is practicable and will work satisfactorily;
 - (c) that it will be clear to the doctor’s patients how to seek personal medical services during the out of hours period; and
 - (d) that if the arrangement comes to an end, the doctor has in place proper arrangements for the immediate resumption of his responsibilities,
- and shall not refuse to grant approval without first consulting the Area Medical Committee.
- (10) The Board shall notify the doctor in writing of its determination and, where it refuses an application, it shall send the doctor a statement in writing of the reasons for its determination and of the doctor’s right of appeal under sub-paragraph (11).
- (11) A doctor may, before the end of the period of 30 days beginning with the day on which the Board’s notification under sub-paragraph (10) was sent, appeal in writing to the Secretary of State against any refusal of an application under sub-paragraph (7).
- (12) The Secretary of State, may when determining an appeal, either confirm the determination of the Board or substitute his own determination for that of the Board.
- (13) The Secretary of State shall notify the doctor in writing of his determination and shall in every case include with the notification a written statement of the reasons for the determination.
- (14) Where the Board (or, on appeal, the Secretary of State) has approved an out of hours arrangement and the name of the transferee doctor is not included in the Board’s medical list, the Board shall give notice in writing of the approval and of the details of the arrangement to the Board in whose list the name of the transferee doctor is included.
- (15) Where the Board (or, on appeal, the Secretary of State) has approved an out of hours arrangement—
- (a) the transferee doctor may himself employ or engage an assistant or deputy in respect of part or all of the period covered by the out of hours arrangement; and if he does so, paragraphs 18 to 20 shall apply as if he were the doctor for the purposes of those paragraphs; and
 - (b) a transferee doctor shall not enter into any other out of hours arrangement in respect of the patients for whom he has accepted responsibility under this paragraph.

⁽⁵⁾ S.I. 1992/434 amended by S.I. 1994/3038 and 1995/3201.

⁽⁶⁾ 1983 c. 54.

17B.—(1) Subject to paragraph 17C, where it appears to the Board that it may no longer be satisfied of any of the matters referred to in sub-paragraphs (a) to (d) of paragraph 17A(9), it may give notice in writing to the doctor that it proposes to review the approval.

(2) On any review under sub-paragraph (1), the Board shall allow the doctor a period of 30 days, beginning with the day on which it sent the notice, within which to make representations in writing to the Board.

(3) After considering any representations made in accordance with sub-paragraph (2), the Board may determine either to continue or to withdraw its approval but shall not withdraw its approval without first consulting the Area Medical Committee.

(4) The Board shall notify the doctor in writing of a determination under sub-paragraph (3).

(5) Where the Board withdraws its approval, it shall include with the notice a statement in writing of the reasons for its determination and of the doctor's right of appeal under sub-paragraph (6).

(6) A doctor may, within the period of 30 days beginning with the day on which the notice referred to in sub-paragraph (4) was sent, appeal in writing to the Secretary of State against the withdrawal of approval and sub-paragraphs (12) and (13) of paragraph 17A shall apply to any such appeal.

(7) Subject to paragraph 17C(1), where the Board withdraws approval, the withdrawal shall not take effect until the end of the period of 60 days beginning with the date on which the notice referred to in sub-paragraph (4) was sent, or where there is an appeal under sub-paragraph (6) and the appeal is dismissed, the date on which the doctor receives notice of the dismissal of the appeal, whichever is the later.

17C.—(1) Where it appears to the Board, whether after a review under paragraph 17B or not, that it is necessary in the interests of the doctor's patients to withdraw its approval immediately, it may withdraw its approval.

(2) The Board shall notify the doctor in writing of a determination under sub-paragraph (1) and shall include with the notice a statement of the reasons for its determination and of the doctor's right of appeal under sub-paragraph (4).

(3) An immediate withdrawal of approval under paragraph (1) shall take effect on the day on which the notice referred to in sub-paragraph (2) is received by the doctor.

(4) A doctor may, within the period of 30 days beginning with the day on which the notice referred to in sub-paragraph (2) was sent, appeal in writing to the Secretary of State against the withdrawal of approval and sub-paragraphs (12) and (13) of paragraph 17A shall apply to any such appeal."

(6) In paragraph 18 (doctors to give treatment personally), in sub-paragraph (1), after "Subject to the provisions of sub-paragraphs (2), (3) and (4)" insert "and to any out of hours arrangement made under paragraph 17A(2)".

Amendment of Schedule 5 to the principal Regulations

5. In Schedule 5 to the principal Regulations (information to be included in practice leaflets), after paragraph 9 insert the following new paragraph:—

"9A. Where the doctor has made an out of hours arrangement under paragraph 17A(2) of Schedule 1, the name and address of the doctor with whom the arrangement has been made, the times during which it applies and details of the arrangements whereby the doctor's patients may contact the doctor concerned."

Amendment of Schedule 7 to the principal Regulations

6. In Schedule 7 to the principal Regulations (information to be provided in annual reports), at the end insert the following new paragraph:—

“5. The number of complaints received in accordance with paragraph 12A of Schedule 1.”.

St Andrew’s House, Edinburgh
18th March 1996

James Douglas-Hamilton
Minister of State, Scottish Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service (General Medical Services) (Scotland) Regulations 1995 which regulate the terms on which general medical services are provided under the National Health Service (Scotland) Act 1978.

Regulations 2 and 3 contain minor and drafting amendments which are consequential on the substantive amendments contained in regulation 4.

Regulation 4 amends the terms of service in two ways. Firstly, to require a doctor to establish and operate a system to deal with complaints. There is provision about who may complain, what they may complain about, how such complaints are to be dealt with and the publicity which a doctor must give to his complaints procedure. The terms of service changes also require a doctor to cooperate with complaints procedures which are operated by Health Boards.

Secondly, the terms of service are amended to enable a doctor to transfer part or all of his obligations under the terms of service to another doctor at night, at weekends and on public holidays. Such an arrangement can only be made with the approval of the Health Board. These Regulations require a doctor to provide the Health Board with details of the proposed arrangement and they require the Health Board to have regard to the interests of the doctor's patients as well as the practicability of the proposed arrangement in deciding whether to approve it. There is also provision for a doctor to appeal against the Health Board's refusal to approve a proposed arrangement, for the Health Board to review any approval and, where necessary in the interests of the doctor's patients, to withdraw its approval immediately.

Regulation 5 requires doctors to include details of any new out of hours arrangements in their practice leaflets.

Regulation 6 requires doctors to include the number of complaints received under the new procedures in the annual reports which they must submit to their Health Board.