
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 116

**The National Health Service (Primary Medical Services
Section 17C Agreements) (Scotland) Regulations 2004**

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004 and shall come into force on 1st April 2004.

Interpretation

2. In these Regulations—

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

“the 2004 Act” means the Primary Medical Services (Scotland) Act 2004⁽¹⁾;

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003⁽²⁾;

“additional services” means one or more of—

- (a) cervical screening services;
- (b) contraceptive services;
- (c) vaccinations and immunisations;
- (d) childhood vaccinations and immunisations;
- (e) child health surveillance services;
- (f) maternity medical services; and
- (g) minor surgery;

“adjudicator” means the Scottish Ministers or a panel of 3 persons appointed by the Scottish Ministers under paragraph 56 of Schedule 1;

“agreement” means, unless the context otherwise requires, an agreement pursuant to section 17C of the Act⁽³⁾ (personal medical or dental services) under which primary medical services are provided;

(1) 2004 asp 1.

(2) S.I.2003/1250.

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

“appliance” means an appliance which is included in a list for the time being approved by the Scottish Ministers for the purposes of section 27(1)(4) of the Act;

“approved medical practice” shall be construed in accordance with section 11(4) of the Medical Act 1983(5);

“area medical committee” means the committee of that name recognised under section 9 of the Act (local consultative committees) in the area of the Health Board;

“area pharmaceutical committee” means the committee of that name recognised under section 9 of the Act (local consultative committees) in the area of the Health Board;

“assessment panel” means a committee or sub-committee of a Health Board (“the first Health Board”) (other than the Health Board (“the second Health Board”) which is a party to the agreement in question) appointed by the first Health Board at the request of the second Health Board to exercise functions under paragraph 23 or paragraph 27 of Schedule 2 and which shall consist of—

- (a) the Chief Executive of the first Health Board or an Executive Director of that Health Board nominated by that Chief Executive;
- (b) a person representative of patients in an area other than that of the second Health Board; and
- (c) a person representative of the area medical committee which does not represent practitioners in the area of the second Health Board;

“CCT” means a Certificate of Completion of Training awarded under article 8 of the 2003 Order, including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in article 20(3) (a) of that Order;

“cervical screening services” means the services described in paragraph 2(2) of Schedule 3;

“charity trustee” means one of the persons having the general control and management of the administration of a charity;

“child” means a person who has not attained the age of 16 years;

“child health surveillance services” means the services described in paragraph 6(2) of Schedule 3;

“childhood vaccinations and immunisations” means the services described in paragraph 5(2) of Schedule 3;

“closed”, in relation to a provider’s list of patients, means closed to applications for inclusion in the list of patients other than from immediate family members of registered patients;

“contraceptive services” means the services described in paragraph 3(2) of Schedule 3;

“core hours” means the period beginning at 8 a.m. and ending at 6.30 p.m. on any working day;

“dispensing services” means the provision of drugs, medicines and appliances;

“disqualified” means, unless the context otherwise requires, local or national disqualification by the Tribunal (or a decision under provisions in force in England, Wales or Northern Ireland corresponding to local or national disqualification), but does not include conditional disqualification;

“Drug Tariff” means the statement published under regulation 9 (payments to pharmacists and standards of drugs and appliances) of the Pharmaceutical Regulations;

(4) Section 27 was amended by the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, the Medicine Products: Prescription by Nurses etc. Act 1992 (c. 28), section 3, the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 44, the Health and Social Care Act 2001 (c. 15), section 44 and S.I. 2003/1590.

(5) 1983 c. 54; section 11(4) was amended by the National Health Service (Primary Care) Act 1997 (c. 46), section 35(4) and Schedule 2, paragraph 61(2).

“enhanced services” are—

- (a) services other than essential services, additional services or out of hours services; or
- (b) essential services or additional services or out of hours services or an element of such a service that a provider agrees in the agreement to provide in accordance with specifications set out in a plan, which requires of the provider an enhanced level of service provision compared to that which the provider needs generally to provide in relation to that service or element of service;

“essential services” means the services described in paragraph 1(2),(4), (5) and (7) of Schedule 2;

“general medical practitioner” means—

- (a) from the coming into force of article 10 of the 2003 Order, a medical practitioner whose name is included in the General Practitioner Register otherwise than by virtue of paragraph 1(d) of Schedule 6 to that Order; and
- (b) until the coming into force of that article, a medical practitioner who is either—
 - (i) until the coming into force of paragraph 22 of Schedule 8 to the 2003 Order, suitably experienced within the meaning of section 21(2) of the Act, section 31(2) of the National Health Service Act 1977⁽⁶⁾ or Article 8(2) of the Health and Personal Social Services (Northern Ireland) Order 1978⁽⁷⁾; or
 - (ii) upon the coming into force of paragraph 22 of Schedule 8 to the 2003 Order, an eligible general practitioner pursuant to that paragraph other than by virtue of having an acquired right under paragraph 1(d) of Schedule 6 to the 2003 Order;

“general medical services contract” means a general medical services contract under section 17J of the Act⁽⁸⁾ (Health Boards power to enter into general medical services contracts);

“general medical services contractor” means a person who is providing primary medical services in accordance with a general medical services contract;

“General Practitioner Register” means the register kept by the General Medical Council under article 10 of the 2003 Order;

“GMS Contracts Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004⁽⁹⁾;

“GP Registrar”—

- (a) until the coming into force of article 5 of the 2003 Order, means a medical practitioner who is being trained in general practice by a 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⁽¹⁰⁾; and
 - (ii) performs primary medical services; and
- (b) from the coming into force of that article, means a medical practitioner who is being trained in general practice by a GP Trainer whether as part of training leading to the award of a CCT or otherwise;

“GP Trainer” means a general medical practitioner who is—

⁽⁶⁾ 1977 c. 49.

⁽⁷⁾ S.I. 1978/1907 (N.I. 26).

⁽⁸⁾ Section 17J was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 4.

⁽⁹⁾ S.S.I. 2004/115.

⁽¹⁰⁾ S.I. 1998/5 as amended by S.I. 1998/669 and S.S.I. 2000/23.

- (a) until the coming into force of article 4(5)(d) of the 2003 Order, approved as a GP Trainer 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; or
- (b) from the coming into force of that article, approved by the Postgraduate Medical Education and Training Board under article 4(5)(d) of the 2003 Order for the purposes of providing training to a GP Registrar under article 5(1)(c)(i) of that Order;

“Health and Social Services Board” means a Health and Social Services Board established under the Health and Personal Social Services (Northern Ireland) Order 1972⁽¹¹⁾;

“Health and Social Services trust” means a Health and Social Services trust established under Article 10(1) of the Health and Personal Social Services (Northern Ireland) Order 1991⁽¹²⁾;

“Health Authority” means a Health Authority established under section 8 of the National Health Service Act 1977;

“Health Board” means, unless the context otherwise requires, the Health Board which is a party, or prospective party, to an agreement;

“health care professional” has the same meaning as in section 17D(2) of the Act⁽¹³⁾ and “health care profession” shall be construed accordingly;

“health service body” means any person or body referred to in section 17A(2)⁽¹⁴⁾ of the Act (NHS contracts) and includes, except where otherwise expressly provided, any provider who is to be treated as a health service body in accordance with regulation 8;

“immediate family member” means—

- (a) a spouse;
- (b) a person (whether or not of the opposite sex) whose relationship with the registered patient has the characteristics of the relationship between husband and wife;
- (c) a parent or step-parent;
- (d) a son;
- (e) a daughter;
- (f) a child of whom the registered patient is—
 - (i) the guardian; or
 - (ii) the carer duly authorised by the local authority to whose care the child has been committed under the Children (Scotland) Act 1995⁽¹⁵⁾; or
- (g) a grandparent;

“independent nurse prescriber” means a person—

- (a) who is either engaged or employed by the provider, is a party to the agreement or is a partner in a partnership that is a party to the agreement;
- (b) who is registered in the Nursing and Midwifery Register; and
- (c) in respect of whom an annotation is also recorded in that register signifying that the person is qualified to order drugs, medicines and appliances from—

(11) S.I. 1972/1265 (N.I. 14).

(12) S.I. 1991/194 (N.I. 1).

(13) Section 17D(2) was inserted by the National Health Service (Primary Care) Act 1997 (c. 46), section 21(2) and was amended by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 23(d) and schedule, paragraph 1(3).

(14) Section 17A(2) was inserted by the National Health Service and Community Care Act 1990 (c. 19), section 30 and amended by the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 102(2), the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 36, the Health Act 1999 (c. 8), Schedule 4, paragraph 46 and S.I. 1991/195.

(15) 1995 c. 36.

(i) the Nurse Prescribers' Formulary for District Nurses and Health Visitors in Part 8B of the Drug Tariff; or

(ii) the Nurse Prescribers' Extended Formulary in Part 8C of the Drug Tariff;

“licensing authority” shall be construed in accordance with section 6(3) of the Medicines Act 1968⁽¹⁶⁾;

“licensing body” means any body that licenses or regulates any profession;

“limited partnership” means a partnership registered in accordance with section 5 of the Limited Partnerships Act 1907⁽¹⁷⁾;

“list” has, unless the context otherwise requires, the meaning assigned to it in section 29(8) of the Act⁽¹⁸⁾ and includes a list corresponding to such a list in England, Wales or Northern Ireland;

“Local Health Board” means a Local Health Board established under section 16BA of the National Health Service Act 1977⁽¹⁹⁾ (local health boards);

“local or national disqualification” has the meaning indicated in section 29B(2) of the Act⁽²⁰⁾

“maternity medical services” means the services described in paragraph 7 of Schedule 3;

“medical card” means a card issued by a Health Board, Primary Care trust, Local Health Board, Health Authority or Health and Social Services Board to a person for the purpose of enabling that person to obtain, or establishing that person’s title to receive, primary medical services;

“medical officer” means a medical practitioner who is–

(a) employed or engaged by the Department for Work and Pensions; or

(b) provided by an organisation in pursuance of a contract entered into with the Secretary of State for Work and Pensions;

“Medical Register” means the registers kept under section 2 of the Medical Act 1983⁽²¹⁾;

“minor surgery” means the services described in paragraph 8(2) of Schedule 3;

“national disqualification” means–

(a) a national disqualification by the Tribunal; or

(b) a decision under provisions in force in England, Wales or Northern Ireland corresponding to a national disqualification by the Tribunal;

“NHS contract” means an agreement which is an NHS contract within the meaning of section 17A(3) of the Act as a result of the provider being treated as a health service body pursuant to regulation 8(1) or (5);

“NHS dispute resolution procedure” means the procedure for resolution of disputes specified in paragraphs 56 and 57 of Schedule 1;

“NHS foundation trust” has the same meaning as in section 1 of the Health and Social Care (Community Health and Standards) Act 2003⁽²²⁾;

⁽¹⁶⁾ 1968 c. 67.

⁽¹⁷⁾ 1907 c. 24.

⁽¹⁸⁾ Section 29(8) 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)(b) and the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 5(3).

⁽¹⁹⁾ 1977 c. 49. Section 16BA was inserted by the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 6.

⁽²⁰⁾ Section 29B(2) was inserted by the Health Act 1999 (c. 8), section 58 and amended by the [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#), schedule 2, paragraph 2 and the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), schedule, paragraph 1(13).

⁽²¹⁾ 1983 c. 54; section 2 was amended by S.I. 1996/1591 and 2002/3135.

⁽²²⁾ 2003 c. 43.

“NHS trust” means a National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990**(23)**;

“normal hours” means those days and hours on which and the times at which services under the agreement are normally made available and may be different for different services;

“Nursing and Midwifery Register” means the register maintained by the Nursing and Midwifery Council under the Nursing and Midwifery Order 2001**(24)**;

“open” in relation to a provider’s list of patients, means open to applications from patients in accordance with paragraph 9 of Schedule 2;

“out of hours period” means–

- (a) the period beginning at 6.30 p.m. on any day from Monday to Thursday and ending 8 a.m. on the following day;
- (b) the period between 6.30 p.m. on Friday and 8 a.m. on the following Monday; and
- (c) Christmas Day, New Year’s Day and other public or local holiday,

and “part” of an out of hours period means any part of any one or more of the periods described in sub-paragraphs (a) to (c);

“out of hours services” means services agreed to be provided in all or part of the out of hours period which would be essential services or additional services if provided in core hours, and in the case of a provider who does not provide essential services or additional services in core hours, would be such services if the provider provided them;

“parent” includes, in relation to any child, any adult who, in the opinion of the provider, is for the time being discharging in respect of that child the obligations normally attaching to a parent in respect of a child;

“party to the agreement” means where a Health Board makes an agreement with–

- (a) one person, the provider; and
- (b) more than one person, one of those persons;

“patient” means–

- (a) where the provider has a provider’s list of patients–
 - (i) a registered patient;
 - (ii) a temporary resident; and
 - (iii) person to whom the provider is required to provide immediately necessary treatment under paragraph 1(5) or (7) of Schedule 2 respectively; and
- (b) in all cases any person (or, where the provider has a provider’s list of patients, any other person) to whom the provider has agreed to provide services under the agreement;

“Pharmaceutical Regulations” means the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995**(25)**;

“pharmacist” means–

- (a) a registered pharmacist within the meaning of the Medicines Act 1968**(26)** who provides pharmaceutical services; or

(23) 1990 c. 19.

(24) S.I. 2002/253.

(25) S.I. 1995/414 as amended by S.I. 1996/840 and 1504, 1997/696, 1998/2224 and 3031 and S.S.I. 1999/57, 2001/70, 2002/111 and 153, 2003/296.

(26) 1968 c. 67.

(b) a person lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968⁽²⁷⁾ who provides such services; or

(c) a supplier of appliances,

who is included in the list of a Health Board under section 27 of the Act (arrangements for provision of pharmaceutical services);

“the POM Order” means the Prescription Only Medicines (Human Use) Order 1997⁽²⁸⁾;

“practice” means the business operated by the provider for the purpose of delivering services under the agreement;

“practice area” means the area referred to in regulation 11(1)(a);

“practice premises” means an address specified in the agreement as one at which services are to be provided under the agreement;

“prescriber” means—

(a) a medical practitioner;

(b) an independent nurse prescriber; and

(c) a supplementary prescriber,

who is either engaged or employed by the provider or is a party to the agreement or is a partner in a partnership that is a party to the agreement;

“prescription form” means a form provided by a Health Board and issued by a prescriber to enable a person to obtain pharmaceutical services;

“prescription only medicine” means a medicine referred to in article 3 of the POM Order (medicinal products on prescription only);

“Primary Care trust” means a Primary Care trust established under section 16A of the National Health Service Act 1977⁽²⁹⁾ (primary care trusts);

“primary medical services performers list” means the list of primary medical services performers prepared in accordance with regulations made under section 17P of the Act⁽³⁰⁾ (persons performing primary medical services);

“provider”, means, unless the context otherwise requires, where the Health Board makes an agreement with—

(a) one person, that person; and

(b) more than one person, all those persons, but references to employment, engagement or sub-contracting by those persons shall be deemed to include employment, or engagement or sub-contracting by any one of them;

“provider’s list of patients” means the list prepared and maintained by the Health Board under paragraph 8 of Schedule 2;

“public or local holiday” means any public or local holiday which is agreed in writing between the Health Board and the provider and which shall, in aggregate, be no less than those available to NHS staff employed by the Health Board;

“registered patient” means—

(a) a person who is recorded by the Health Board as being on a provider’s list of patients; or

⁽²⁷⁾ Section 69 was amended by the Statute Law (Repeals) Act 1993 (c. 50) and the Pharmacists (Fitness to Practise) Act 1997 (c. 19), Schedule 4, paragraph 5.

⁽²⁸⁾ S.I. 1997/1830 as amended by S.I. 1997/2044, 1998/108, 1178 and 2081, 1999/1044 and 3463, 2000/1917, 2889 and 3231, 2001/2777, 2889 and 3942, 2002/549 and 2469 and 2003/696.

⁽²⁹⁾ 1977 c. 49. Section 16A was inserted by the Health Act 1999 (c. 8), section 2(1).

⁽³⁰⁾ Section 17P was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 5(2).

- (b) a person whom a provider has accepted for inclusion on the provider’s list of patients, whether or not notification of that acceptance has been received by the Health Board and who has not been notified by the Health Board as having ceased to be on that list;

“relevant register” means–

- (a) in relation to a nurse, the Nursing and Midwifery Register; and
 (b) in relation to a pharmacist, the register maintained in pursuance of section 2(1) of the Pharmacy Act 1954(31) or the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976(32);

“restricted availability appliance” means an appliance which is approved for particular categories of persons or particular purposes only;

“Scheduled drug” means–

- (a) a drug, medicine or other substance specified in any directions given by the Scottish Ministers under section 17N(6) of the Act(33) as being a drug, medicine or other substance which may not be ordered for patients in the provision of primary medical services under a general medical services contract; or
 (b) a drug, medicine or other substance which is specified in any directions given by the Scottish Ministers under section 17N(6) of the Act as being a drug, medicine or other substance which can only be ordered for specified patients and specified purposes in the provision of primary medical services under a general medical services contract;

“supplementary prescriber” means a person–

- (a) who is either engaged or employed by the provider or is a party to the agreement or a partner in a partnership that is a party to the agreement; and
 (b) whose name is registered in–
 (i) the Nursing and Midwifery Register;
 (ii) the Register of Pharmaceutical Chemists maintained in pursuance of section 2(1) of the Pharmacy Act 1954; or
 (iii) the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976, and

against whose name is recorded in the relevant register an annotation signifying that that person is qualified to order drugs medicines and appliances as a supplementary prescriber;

“temporary resident” means a person accepted by a provider as a temporary resident under paragraph 10 of Schedule 2 and for whom the provider’s responsibility has not been terminated in accordance with that paragraph;

“working day” means any day apart from Saturday, Sunday, Christmas Day, New Year’s Day and any other public or local holiday;

“writing” includes, unless otherwise expressly provided, transmission by electronic means and “written” should be construed accordingly.

- (2) In these Regulations , the use of the term “it” in relation to–
 (a) a provider, shall be deemed to include a reference to a provider who is
 (i) comprised of more than one party to the agreement; or
 (ii) an individual; and

(31) 1954, c. 61.

(32) S.I. 1976/1213.

(33) Section 17N was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 4.

(b) the adjudicator, shall be deemed to refer either to the Scottish Ministers or the panel of 3 persons appointed by them as the case may be,
and related expressions shall be construed accordingly.

(3) Any reference in these Regulations to a numbered regulation or Schedule or to a numbered paragraph of such a Schedule is, unless otherwise expressly provided, a reference to a regulation or Schedule bearing that number in these Regulations or, as the case may be, to a paragraph bearing that number in such a regulation or Schedule.