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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 163**

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

**PART 4**

**TRANSITIONAL PROVISIONS RELATING TO PILOT SCHEME AGREEMENTS**

**Definitions**

**48.** In this Part—

“the 1997 Act” means the National Health Service (Primary Care) Act 1997<sup>(1)</sup>;

“the Implementation Directions” means the Directions to Health Boards concerning the Implementation of Pilot Schemes (Personal Medical Services);

“the NHS dispute resolution procedure” means the procedure for resolution of disputes specified in Part 7 of Schedule 1 to the Section 17C Agreements Regulations;

“personal medical services” means medical services of a kind that could have been provided by a general medical practitioner in accordance with arrangements made under Part 2 of the 1978 Act prior to 1st April 2004;

“pilot scheme agreement” means an agreement which constitutes or agreements which together constitute a pilot scheme under Part 1 of the 1997 Act under which personal medical services are provided;

“provider” means the person other than the Health Board who is a party to a transitional agreement;

“relevant body” means the Health Board who is the other party to the transitional agreement.

**Existing pilot schemes**

**49.** Any pilot scheme under which personal medical services were being provided on 31st March 2004 shall, on the coming into force of paragraph 2 of the Schedule to the 2004 Act, be deemed to have been made under section 17C of the 1978 Act<sup>(2)</sup> and accordingly shall not cease to have effect merely because of the repeals in paragraph 2 of the Schedule to the 2004 Act.

**Variation of transitional agreements**

**50.**—(1) The parties to a transitional agreement shall as soon as is reasonably practicable after 1st April 2004 enter into discussions with each other with a view to agreeing variations to the transitional agreement that will ensure that the terms of the transitional agreement comply with the Section 17C Agreements Regulations.

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(1) 1997 c. 46.

(2) Section 17C was inserted by the 1997 Act sections 21(2) and 41(3) and is amended by section 2 of the 2004 Act.

(2) Subject to paragraph (3), no variation shall have effect unless it is in writing and signed by or on behalf of the provider and the relevant body.

(3) If the parties to the transitional agreement have not agreed variations to the transitional agreement by 30th September 2004, the relevant body shall vary the transitional agreement without the consent of the provider so that the terms of the transitional agreement comply with the Section 17C Agreements Regulations.

(4) Where paragraph (3) applies, the relevant body shall notify the provider in writing of the wording of the proposed variations and the date upon which the variations are to take effect.

(5) The date that the proposed variation is to take effect shall not be less than 14 days after the date on which the notice under paragraph (4) is served on the provider.

(6) The parties to a transitional agreement may not agree (whether under this article or otherwise) any variation to the transitional agreement that would be contrary to the Section 17C Agreements Regulations.

### **Interpretation of transitional agreements**

**51.—**(1) Until—

- (a) the parties to a transitional agreement vary the transitional agreement in accordance with article 50(1) and the variations have effect; or
- (b) the relevant body varies a transitional agreement in accordance with article 50(3) and the variations have effect,

a transitional agreement shall interpreted in accordance with this article.

(2) Any reference in a transitional agreement to—

- (a) the Implementation Directions shall be a reference to those Directions as they had effect on 31st March 2004 but subject to the modifications mentioned in article 52;
- (b) the 1995 Regulations shall be a reference to those Regulations as they had effect on 31st March 2004 but subject to the modifications mentioned in article 53;
- (c) the Statement of Fees and Allowances made under regulation 35 of the 1995 Regulations shall be a reference to that Statement as it had effect on 31st March 2004;
- (d) the Choice Regulations shall be a reference to those Regulations as they had effect on 31st March 2004 but subject to the modifications mentioned in article 54 except as specified in paragraph (3);
- (e) the National Health Service (Pilot Schemes: Miscellaneous Provisions and Consequential Amendments) Regulations 1998(3) shall be a reference to those regulations as they had effect on 31st March 2004;
- (f) in relation to the 1997 Act—
  - (i) section 2(2), (b), (c), (d), or (e), shall be a reference to section 17D(1)(b), (c), (d), or (e) of the 1978 Act(4); and
  - (ii) section 8, shall be a reference to Article 57(1) and (2);
- (g) personal medical services shall be a reference to medical services of a kind that could have been provided by a general medical practitioner in accordance with arrangements made under Part 2 of the 1978 Act prior to 1st April 2004;
- (h) pilot schemes or pilot scheme agreements shall be a reference to transitional agreements;

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(3) [S.I. 1998/646](#).

(4) Section 17D was inserted by the 1997 Act, sections 21(2) and 40(3) and is amended by the 2004 Act section 2.

- (i) a medical list or supplementary list shall be a reference to a primary medical services performers list;
  - (j) out of hours arrangements shall be a reference to out of hours arrangements within the meaning given to that expression by article 62.
- (3) In relation to the assignment of a patient to a medical practitioner in accordance with regulation 5 of the Choice Regulations<sup>(5)</sup>, any reference in a transitional agreement to regulation 4(2)(b) of those regulations shall be deemed to be a reference to article 55(1).
- (4) The transitional agreement shall be interpreted as if it had been varied to include a term or terms having the effect specified in paragraph 66 of Schedule 1 to the Section 17C Agreements Regulations, subject to the modifications that the reference in that term to a person falling within the cases specified in paragraph 66(3) during the existence of the agreement shall be read as if it referred to a person so falling on or after 1st April 2004.

#### **Modification of the Implementation Directions for the purposes of transitional agreements**

**52.** For the purposes of transitional agreements the Implementation Directions shall be read as if—

- (a) any reference to—
  - (i) the 1995 Regulations were a reference to those regulations as they had effect on 31st March 2004 as modified by article 53; and
  - (ii) the Choice Regulations were a reference to those Regulations as they had effect on 31st March 2004 as modified by article 54;
- (b) any reference to personal medical services were a reference to medical services of a kind that could have been provided by a general medical practitioner in accordance with arrangements made under Part 2 of the 1978 Act prior to 1st April 2004;
- (c) any reference to pilot schemes or pilot scheme agreements were a reference to transitional agreements;
- (d) any reference to a medical list or supplementary list were to a primary medical services performers list;
- (e) in direction 9 the words “under regulation 4(2)(b) of those Regulations” were omitted; and
- (f) any reference to out of hours arrangements were to out of hours arrangements within the meaning given to that expression by article 65.

#### **Modification of the 1995 Regulations for the purposes of transitional agreements**

**53.** For the purposes of transitional agreements the 1995 Regulations shall be read as if any reference to Schedule 10 or, as the case may be Schedule 11 to the 1995 Regulations were a reference to any directions given by the Scottish Ministers under section 17N(6) of the 2004 Act<sup>(6)</sup>.

#### **Modification of the Choice Regulations for the purposes of transitional agreements**

**54.** For the purposes of transitional agreements the Choice Regulations shall be read as if—

- (a) in regulation 1(7) a new paragraph (4) were added at the end as follows—

“(4) In these Regulations—

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(5) Regulation 5 was amended by [S.S.I. 2000/191](#) and [S.S.I. 2001/85](#)

(6) Section 17N was inserted by the 2004 Act, section 4.

(7) Regulation 1 was amended by [S.S.I. 2000/191](#), [S.S.I. 2001/85](#) and [S.I. 2002/3135](#).

“provider” shall have the meaning given to it in Part 4 of the General Medical Services and 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004; and

“transitional agreement” shall have the meaning given to it in article 1 of the General Medical Services and 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004.”;

(b) in regulation 2(1)(8) there were substituted—

“(1) Any person who wishes to receive primary medical services under a transitional agreement may choose the doctor from whom he is to receive those services being a doctor who is primarily responsible for the performance of personal medical services under the transitional agreement, subject to the consent of that doctor.”;

(c) in regulation 5—

(i) paragraph (1) were substituted as follows—

“(1) Where a provider is required to assign a patient to a doctor who performs personal medical services in connection with a transitional agreement to which the provider is a party, the provider shall assign the applicant to a doctor within the period of two days beginning on the day on which it received notice of the requirement to assign and shall, upon making that assignment, notify—

(a) the Health Board of the name of the doctor to whom the patient has been assigned; and

(b) the doctor of the assignment,

and the Health Board shall, on receipt of the notification under sub-paragraph (a) notify the patient of the doctor to whom he has been assigned.”;

(ii) references to the pilot scheme provider were to the provider;

(iii) references to the applicant were to the patient;

(iv) references to pilot scheme were to the transitional agreement; and

(v) paragraphs (3), (5) and (6) were omitted; and

(d) in regulation 7 the reference to a pilot scheme were to a transitional agreement.

### **Assignment of patients: transitional agreements**

**55.**—(1) A Health Board may require a provider to assign a patient to a medical practitioner who performs personal medical services in connection with a transitional agreement to which the provider is a party.

(2) Where a Health Board is considering requiring a provider to assign a patient to a medical practitioner under paragraph (1), it shall have regard to—

(a) the wishes and circumstance of the patient to be assigned;

(b) the distance between the patient’s place of residence and the provider’s practice premises;

(c) whether, during the six months ending on the date on which the application for assignment is received by the Health Board, the patient’s name has been removed from the list of patients of any provider of essential services (or their equivalent) in the area of the Health Board under paragraph 13 of Schedule 2 to the Section 17C Agreements Regulations (or other equivalent provision);

- (d) whether the patient’s name has been removed from the list of patients of any provider of essential services (or their equivalent) under paragraph 14 of Schedule 2 to the Section 17C Agreement Regulations (or other equivalent provision);
- (e) such other matters as the Health Board considers relevant.

(3) Where a provider is unable to comply, in accordance with this article or regulation 5 of the Choice Regulations (as modified by article 54) with a requirement to assign a patient to a medical practitioner, and the Health Board is satisfied, after due enquiry, that the person concerned still wishes to be assigned to a provider of essential services (or their equivalent), the Health Board shall as soon as practicable assign or require the assignment of, that person to another provider of essential services (or their equivalent) or medical practitioner in accordance with any relevant agreement, contract or enactment.

(4) A medical practitioner to whom a patient is assigned under this article or regulation 5 of the Choice Regulations (as modified by article 54) shall not be required to provide child health surveillance services, contraceptive services, maternity medical services or minor surgery services for that patient unless he is obliged to provide those services to that patient in connection with a transitional agreement.

(5) Where a provider has requested the Health Board to remove a patient from a medical practitioner’s list or a pooled list under a provision equivalent to paragraph 14 of Schedule 2 to the Section 17C Agreements Regulations, the Health Board shall take all reasonable steps to assign, or require the assignment of, the patient to another provider of essential services (or their equivalent) or medical practitioner before the end of the working day after the day on which the Health Board receives notification from the contractor.

(6) In paragraph (5)–

“a medical practitioner’s list” means a list of a medical practitioner’s patients kept by a Health Board in respect of a medical practitioner performing personal medical services under a transitional agreement, in accordance with directions made under section 2(5) of the 1978 Act; and

“a pooled list” means a list of persons who have been accepted by a provider for the provision of personal medical services under a transitional agreement, and whose names are not included in a medical practitioner’s list.

### **Representations against a requirement to assign: transitional agreements**

**56.**—(1) A provider who has been required under article 55(1) to assign a person to a medical practitioner may, within the period of seven days beginning with the day on which that assignment is made, make representations in writing to the Health Board against the requirement to assign, but shall remain responsible for providing personal medical services for the person to whom the requirement relates, pending notification of the confirmation or revision of the assignment by the Health Board.

(2) Where representations are made to it against a requirement to assign, a Health Board shall, subject to paragraph (4), promptly review the decision to require assignment and shall either confirm or revise it, but no person who participated in making the decision to require assignment shall participate in a review of that decision.

(3) Where representations are made against a decision to require assignment, the Health Board shall, before confirming or revising that decision, give the provider the opportunity of an oral hearing in support of those representations.

(4) The Health Board shall, within the period of seven days beginning with the day on which it confirms or revises a decision under paragraph (3), notify the contractor accordingly and the provisions of this article and article 55 shall apply to any requirement to assign under a revised decision.

### **Variation and termination of transitional agreements**

**57.**—(1) The Scottish Ministers may by directions require a transitional agreement to be varied by the relevant body in accordance with the directions.

(2) If the Scottish Ministers are satisfied that a transitional agreement is (for any reason) unsatisfactory, they may give directions to the relevant body requiring it to bring the transitional agreement to an end in accordance with the terms of the directions.

(3) Where a transitional agreement has been varied under article 50 to include a term which gives effect to paragraph 66 of Schedule 1 to the section 17C Agreements Regulations, the reference in that term to a person falling within the cases specified in paragraph 66(3) during the existence of the agreement shall be read as if it referred to a person so falling on or after 1st April 2004.

### **Health body status**

**58.**—(1) A contractor (other than one falling within paragraph (2)) which was on 31st March 2004 a health service body pursuant to the National Health Service (Pilot Schemes – Health Service Bodies) Regulations 1997<sup>(9)</sup> (“the 1997 Regulations”) shall be regarded as such a body after that date and regulation 8 of the Section 17C Services Agreements Regulations shall apply as if health service body status had been conferred on that contractor under that regulation.

(2) A provider falls within this paragraph if it was a health service body only for the purpose of regulation 3(4) of the 1997 Regulations (being a party to an existing NHS contract).

(3) A provider falling within paragraph (2) shall continue to be a health service body for the purpose of being a party to an NHS contract entered into on a date before that on which it ceased to be a pilot scheme health service body until the determination of that NHS contract.

(4) Paragraph (3) shall also apply to a provider of personal medical services under a pilot scheme whose agreement terminated before 1st April 2004.

### **Dispute resolution**

**59.** Any dispute relating to a pilot scheme that has been referred to the Scottish Ministers under section 17A of the National Health Service (Scotland) Act 1978<sup>(10)</sup> (NHS contracts) and which has not been determined on or before 31st March 2004 shall continue to be dealt with in accordance with the provisions of section 17A.

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<sup>(9)</sup> [S.I. 1997/2929](#).

<sup>(10)</sup> Section 17A 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](#).