
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 163

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

PART 7

**TRANSITIONAL ARRANGEMENTS: THE NATIONAL
HEALTH SERVICE (SERVICE COMMITTEES AND
TRIBUNAL) (SCOTLAND) REGULATIONS 1992**

Interpretation

76.—(1) In this Part—

“appropriate Health Board” has the same meaning as in the Service Committees Regulations;
“contracting Health Board” means a Health Board that has entered into a default contract or a general medical services contract (as the case may be) with—

- (a) a doctor who is the subject of the allegation;
- (b) a partnership, where a doctor who is the subject of the allegation is a partner;
- (c) a limited company, where a doctor who is the subject of the allegation is the legal and beneficial shareholder of shares in that company;

“doctor” has the same meaning as in the Service Committees Regulations;

“Performers List Health Board” means a Health Board in whose primary medical services performers list the doctor’s name appears on 1st April 2004 pursuant to article 86;

“relevant contractor” means a party to a general medical services contract or default contract with a contracting Health Board, where that contractor is—

- (a) a doctor who is the subject of the allegation;
- (b) a partnership, where a doctor who is or was the subject of the allegation is a partner in that partnership;
- (c) a limited company, where a doctor who is or was the subject of the allegation is the legal and beneficial shareholder of shares in that company; and

“relevant date” means 1st April 2004.

“the Service Committees Regulations” means the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992(1);

(2) Unless the context otherwise requires, any reference in this Part to—

- (a) a numbered regulation is to the regulation bearing that number in the Service Committees Regulations; and

- (b) a numbered Schedule is to the Schedule to the Service Committees Regulations bearing that number.

Cases where no decision has been made before the relevant date as to whether disciplinary action should be taken (regulation 3 of the Service Committees Regulations)

77.—(1) Where, before the relevant date, or on or after the relevant date in respect of a matter that occurred before the relevant date, a Health Board—

- (a) receives, or has received information that could amount to an allegation that a doctor had failed to comply with his terms of service and—
- (i) that Health Board has not taken a decision pursuant to regulation 3(1)(2) before the relevant date as to whether it will take no action or take one or both of the courses of action set out in regulation 3(2); and
 - (ii) any time limit specified in regulation 5(3) has not expired; or
- (b) considers that a payment has been made to a doctor which was not due and the doctor does not admit that overpayment,

paragraph (2) shall apply.

(2) Where this paragraph applies, the Health Board shall—

- (a) if it is the appropriate Health Board, continue to be the appropriate Health Board for the purposes of the Service Committees Regulations, and consider and take such action as it sees fit pursuant to the Service Committees Regulations, subject to article 84, as if section 19 of the 1978 Act(4) had not been repealed; or
- (b) if it is not the appropriate Health Board, forward the information to that Health Board as soon as is reasonably practicable, and that Health Board shall consider the information received and take such action as it sees fit pursuant to the Service Committees Regulations, subject to the time limits specified in the Service Committees Regulations, and article 84, as if section 19 of the 1978 Act had not been repealed.

(3) If a Health Board (A) decides, pursuant to paragraph (2)(a) or (b), to refer the matter to another Health Board (B) for investigation in accordance with regulation 3(2)(a) or (7)—

- (a) Health Board (B) shall investigate the matter and report to Health Board (A) as if section 19 of the 1978 Act had not been repealed; and
- (b) Health Board (A) shall be entitled, subject to article 80, to take any action it could have taken pursuant to the Service Committees Regulations as if section 19 of the 1978 Act had not been repealed.

Referrals to investigating discipline committees before the relevant date (regulation 4 of the Service Committees Regulations)

78. Where a Health Board(A) has, before the relevant date, referred a matter in respect of a doctor to another Health Board(B) in accordance with regulation 4(2)(a) or (7)(5) and—

(2) Regulation 3 was amended by S.I. 1994/3038, 1996/938 and S.S.I. 1999/53.
(3) Regulation 5 was amended by S.I. 1996/938 and S.S.I. 1999/53.
(4) 1978 c. 29. Section 19 was amended by the Health and Medicines act 1980 (c. 53), section 7, the Health and Social Security Adjudications Act 1983 (c. 41), Schedule 7, paragraph 2, the Medical Act 1983 (c. 54), Schedule 5, paragraph 17, the National Health service and Community Care Act 1990 (c. 19), section 37, the Medical (Professional Performance) Act 1995 (c. 51), Schedule, paragraph 29, the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 39 and S.I. 2002/3135. It was extended by the Health and Medicines Act 1988 (c. 49), section 17(1). It is repealed from 1st April 2004 by the Primary Medical Services (Scotland) Act 2004 (asp 1), schedule, paragraph 1(7).
(5) Regulation 4 was amended by S.I. 1996/938 and S.S.I. 1999/53.

- (a) that matter has not been finally determined by the discipline committee of that Health Board (B) before the relevant date—
 - (i) the discipline committee of Health Board (B) shall investigate the matter and report to Health Board (A), as if section 19 of the 1978 Act had not been repealed; and
 - (ii) Health Board (A) shall be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if section 19 of the 1978 Act had not been repealed, subject to article 80; or
- (b) Health Board (A) has received the report of the discipline committee of the Health Board (B) but has not yet determined what (if any) action to take as a result of the report, Health Board (A) shall be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if section 19 of the 1978 Act had not been repealed, subject to article 80.

Determination of a Health Board or the Scottish Ministers made before the relevant date (regulation 7, 8, 9 and 10 of the Service Committees Regulations)

79.—(1) Where, before the relevant date, a Health Board has (or where relevant, the Scottish Ministers have) determined pursuant to regulation 7(5)(a) and 8(3) or regulation 10(6) (as the case may be) that an amount should be recovered from the doctor, insofar as any of that amount has not been recovered before the relevant date, it shall continue to be recoverable by the Health Board that was the appropriate Health Board for the purposes of the Service Committees Regulations in respect of that matter, and it shall be treated as a debt owed by that doctor to that Health Board.

(2) Where a contracting Health Board has a record of, or receives notification of, an adverse determination made before the relevant date pursuant to regulation 7, 8, 9 or 10(7) in respect of a doctor (where, in the case of a determination under regulation 7, such a determination was not overturned on appeal), paragraph (3) shall apply without prejudice to any other rights the contracting Health Board may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(3) Where this paragraph applies, the contracting Health Board may take into account that adverse determination in relation to a relevant contractor if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 103(7) of Schedule 5 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract.

(4) Where a Performers List Health Board has a record of, or receives notification of, an adverse determination pursuant to regulation 7, 8, 9 or 10 made before the relevant date in respect of a doctor (where, in the case of a determination under regulation 7, such a determination was not overturned on appeal) it may take that determination into account in determining what (if any) action it should take in respect of that doctor pursuant to sections 29, 30 or 32A of the 1978 Act(8).

(6) Regulation 7 was amended by S.I. 1996/938 and S.S.I. 1999/53; regulation 8 was amended by S.I. 1994/3038 and 1996/938 and S.S.I. 1999/53; regulation 10 was amended by S.I. 1996/938 and S.S.I. 1999/53.

(7) Regulation 9 was amended by S.I. 1996/938 and S.S.I. 1999/53.

(8) Section 29 was substituted by the Health Act 1999 (c. 8) (“the 1999 Act”), section 58(1) and amended by the [Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#) (“the 2002 Act”), schedule 2, paragraph 2(4) and the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 5(3); section 30 was substituted by the 1999 Act, section 58(2) and amended by the 2002 Act, schedule 2, paragraph 2(7); section 32A was inserted by the National Health Service (Amendment) Act 1995 (c. 31), section 8 and amended by the 1999 Act, Schedule 4, paragraph 51 and the 2002 Act, schedule 2, paragraph 2(9).

Determination of a Health Board made on or after the relevant date (regulation 7 of the Service Committees Regulations)

80.—(1) Where, on or after the relevant date, an appropriate Health Board is determining what action to take pursuant to regulation 7 in accordance with provision made in this Part, it shall make such a determination in accordance with such limitations and modifications to that regulation as are specified in this article.

(2) The appropriate Health Board may—

- (a) pursuant to regulation 7(1)(c)(i), determine that no further action should be taken;
- (b) pursuant to regulation 7(3), determine after consultation with the area medical committee that it would have considered it appropriate to impose a special limit on the number of persons for whom a doctor may undertake to provide treatment;
- (c) pursuant to regulation 7(5)(a), determine that an amount shall be recovered from the doctor;
- (d) pursuant to regulation 7(5)(c), determine that it would have warned the doctor to comply more closely with the doctor's terms of service in future, if those terms of service were still applicable,

and if it makes any one or more of the decisions specified in paragraphs (b) to (d), it shall, after the period specified in regulation 7(10)(a) has expired or it has received notice pursuant to regulation 7(10)(b) (as applicable), notify in writing the contracting Health Board and any Performers List Health Board of its decision and the reasons for it, where they are different Health Boards to the appropriate Health Board.

(3) Where, pursuant to paragraph (2)(c), the appropriate Health Board determines that an amount should be recovered from the doctor, regulation 7(8) shall not apply and that amount shall be recoverable by the appropriate Health Board and it shall be treated as a debt owed by that doctor to that appropriate Health Board.

(4) Where the appropriate Health Board has notified the contracting Health Board that it has taken any of the actions specified in paragraphs 2(b) to (d), or where the appropriate Health Board is the contracting Health Board, paragraph (5) shall apply without prejudice to any other rights the contracting Health Board may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(5) Where this paragraph applies, the contracting Health Board may, in relation to a relevant contractor, take into account the determination of the appropriate Health Board if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 103(7) of Schedule 5 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract.

(6) Where—

- (a) a Performers List Health Board has received notification from an appropriate Health Board pursuant to paragraph (2); or
- (b) where an appropriate Health Board that has taken a decision pursuant to paragraph (2) is also a Performers List Health Board,

it shall consider what (if any) action it should take in respect of that doctor pursuant to sections 29, 30 or 32A of the 1978 Act.

Appeals to the Scottish Ministers against determinations of Health Boards (regulations 8, 9 and 10 of the Service Committees Regulations)

81.—(1) Where—

(a) a doctor has appealed against a determination of a Health Board in accordance with regulation 8 of the Service Committees Regulations before the relevant date, but that appeal has not been finally determined before that date; or

(b) in respect of a determination made by a Health Board in accordance with regulation 7 before the relevant date, the time limit specified in regulation 9(2) for appealing that determination has not expired before the relevant date, and the doctor serves a notice of appeal on or after the relevant date but within the time limit specified in regulation 9(2), that appeal shall be determined pursuant to regulations 8, 9 and 10, as if section 19 of the 1978 Act had not been repealed.

(2) Where an appropriate Health Board has made a determination in respect of a doctor on or after the relevant date pursuant to this Part—

(a) the doctor shall be entitled to appeal against that determination in accordance with regulation 8; and

(b) that appeal shall be determined pursuant to regulations 8, 9 and 10,

as if section 19 of the 1978 Act had not been repealed.

(3) Where, on or after the relevant date, the Scottish Ministers are determining pursuant to regulation 8, 9 or 10 (as the case may be) what (if any) action to take in respect of a doctor, they shall make a determination pursuant to those regulations as if section 19 of the 1978 Act had not been repealed and that determination shall have effect in accordance with this article.

(4) If, pursuant to paragraph (1), the Scottish Ministers determine pursuant to—

(a) regulation 7(3), that they would have considered it appropriate to impose a special limit on the number of persons for whom a doctor may undertake to provide treatment;

(b) pursuant to regulation 8(3)(d), that there has been an overpayment and, if so, what amount;

(c) pursuant to regulation 7(5)(a) and 8(3) or 10, that an amount shall be recovered from the doctor; or

(d) pursuant to regulation 7(5)(c), that they would have warned the doctor to comply more closely with the doctor's terms of service in future, if those terms of service were still applicable,

the Scottish Ministers shall, in addition to the persons specified in regulation 9(14), notify the Health Boards specified in paragraph (5).

(5) The Scottish Ministers shall, pursuant to paragraph (4)(a) to (d), notify the contracting Health Board and any Performers List Health Board of their determination if those Health Boards are different to the Health Board referred to in regulation 9(14).

(6) Where, pursuant to regulation 7(5)(a) and 8(3) or 10, the Scottish Ministers have determined that an amount shall be recovered from a doctor they shall direct the appropriate Health Board to recover that amount from the doctor and that amount shall be a debt owed to that appropriate Health Board.

(7) Where, pursuant to paragraph (5), the Scottish Ministers have notified the contracting Health Board that they have taken any of the actions specified in paragraph (4)(a) to (d), whether or not the contracting Health Board is also the appropriate Health Board, paragraph (8) shall apply without prejudice to any other right the contracting Health Board may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(8) Where this paragraph applies, the contracting Health Board may, in relation to a relevant contractor, take into account the determination of the Scottish Ministers if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 103(7) of Schedule 5 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect

of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract.

(9) Where a Performers List Health Board has received notification from the Scottish Ministers pursuant to paragraph (4) or (5), whether or not the Performers List Health Board is also the appropriate Health Board, it shall consider what (if any) action it should take in respect of that doctor pursuant to sections 29, 30 or 32A of the 1978 Act.

Excessive prescribing (regulations 16 and 17 of the Service Committees Regulations)

82.—(1) Where, on 31st March 2004, a Health Board had—

- (a) referred a question of excessive prescribing for investigation and determination by a medical discipline committee under regulation 16(7)(9); and
- (b) that committee had not yet made its determination,

the investigation by the committee shall continue and its determination be made as if section 19 of the 1978 Act had not been repealed.

(2) Where, on 31st March 2004, a Health Board had given notice of its determination to a doctor and area medical committee under paragraph (9) of regulation 16 but—

- (a) the doctor or area medical committee had not given notice of appeal in accordance with regulation 17(10); and
- (b) the time for appealing in regulation 17(1) had not yet expired,

the time for appealing shall continue as if section 19 of the 1978 Act had not been repealed.

(3) Where—

- (a) on 31st March 2004, a medical practitioner had given notice of appeal against the determination of a Health Board in accordance with regulation 17 but that appeal had not been determined or withdrawn; or
- (b) a medical practitioner has given notice of such an appeal after 31st March 2004, pursuant to paragraph (2),

that appeal shall continue to be dealt with as if section 19 of the 1978 Act had not been repealed.

Decision as to treatment for which fees may be charged by doctors (regulation 18 of the Service Committees Regulations)

83.—(1) Where a question has arisen as to whether any treatment given by a doctor to a patient is treatment for which the doctor may demand or accept a fee from a patient within the meaning of regulation 18(1)(11), and that question has arisen before the relevant date, or on or after the relevant date in respect of any fee charged by a doctor before the relevant date, and that question—

- (a) has not been referred for consideration by the area medical committee; or
- (b) has been referred to the area medical committee and the area medical committee has not yet finally determined the matter pursuant to regulation 18,

the question may, in a case falling within sub-paragraph (a), be referred as if section 19 of the 1978 Act had not been repealed and, in relation to both sub-paragraphs, the area medical committee shall consider or continue to consider and determine the matter in accordance with regulation 18, subject to the provisions in this article.

(9) Regulation 16 was amended by [S.S.I. 1999/53](#).

(10) Regulation 17 was amended by [S.S.I. 1999/53](#).

(11) Regulation 18 was amended by [S.S.I. 1999/53](#).

(2) Where an area medical committee makes a determination pursuant to paragraph (1), regulation 18(8) shall apply.

(3) Where a Health Board has notified the Scottish Ministers pursuant to regulation 18(8) that the Health Board disagrees with a finding of an area medical committee—

- (a) made before the relevant date, and the referral has not been determined before the relevant date; or
- (b) on or after the relevant date,

that referral shall be determined in accordance with regulation 18 and Schedule 3 as if section 19 of the 1978 Act had not been repealed.

(4) Where the Scottish Ministers—

- (a) have referred a finding of an area medical committee made before the relevant date pursuant to regulation 18(8), and that referral has not been determined before the relevant date; or
- (b) refer a finding of an area medical committee on or after the relevant date,

that referral shall be determined in accordance with regulation 18 and Schedule 3(12) as if section 19 of the 1978 Act had not been repealed.

Determination whether a substance is a drug and recovery of cost (regulation 19 of the Service Committees Regulations)

84.—(1) Where a question has arisen as to whether a substance supplied by a doctor, or by a pharmacist on the prescription of a doctor, was a drug for the purposes of pharmaceutical services within the meaning of regulation 19(1)(13), and that question has arisen before the relevant date, or on or after the relevant date in respect of any substance supplied by a doctor, or by a pharmacist on the prescription of a doctor before the relevant date, and—

- (a) that question has not been referred for consideration by the area medical committee; or
- (b) that question has been referred to the area medical committee and the area medical committee has not yet finally determined the matter pursuant to regulation 19,

the question may, in a case falling within sub-paragraph (a) be referred, or notified to the doctor and referred (as the case may be), and, in relation to both sub-paragraphs, the area medical committee shall consider or continue to consider (as the case may be) and determine the matter in accordance with regulation 19, subject to the provisions in this article, as if section 19 of the 1978 Act had not been repealed.

(2) Where an area medical committee makes a determination pursuant to paragraph (1), regulation 19(8) shall apply.

(3) Where a doctor has notified the Scottish Ministers pursuant to regulation 19(8) that the doctor is dissatisfied with a determination—

- (a) made before the relevant date, and the referral has not been determined before the relevant date; or
- (b) on or after the relevant date,

that referral shall be determined in accordance with regulation 19 as if section 19 of the 1978 Act had not been repealed.

(4) Where a Health Board has notified the Scottish Ministers pursuant to regulation 19(8) that the Health Board is dissatisfied with a determination—

(12) Schedule 3 was amended by [S.S.I. 1999/53](#).

(13) Regulation 19 was amended by [S.S.I. 1999/53](#).

- (a) made before the relevant date, and the referral has not been determined before the relevant date; or
- (b) on or after the relevant date,

that referral shall be determined in accordance with regulation 19 as if section 19 of the 1978 Act had not been repealed.

(5) Where the Scottish Ministers are dissatisfied with a determination pursuant to regulation 19(8) and—

- (a) have referred the question for determination before the relevant date pursuant to regulation 19(8), and that referral has not been determined before the relevant date; or
- (b) refer the question for determination on or after the relevant date,

that referral shall be determined in accordance with regulation 19 as if section 19 of the 1978 Act had not been repealed.