
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 395

NATIONAL HEALTH SERVICE

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

<i>Made</i>	- - - -	<i>9th November 2010</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>11th November 2010</i>
		<i>22nd December</i>
<i>Coming into force</i>	- -	<i>2010</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 9(6), 17CA(1), (5), (6) and (7), 17E, 28(1), 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978(1) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2010 and come into force on 22nd December 2010.

(2) In these Regulations “the 2004 Regulations” means the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004(2).

Amendment of the 2004 Regulations

2. The 2004 Regulations are amended as follows.

3. In regulation 2 (interpretation)—

(a) after the definition of “closed”, insert—

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- (1) 1978 c.29, section 17E was inserted by the National Health Service (Primary Care) Act 1997 (c.46), section 22 and was amended by the Health Act 1999 (c.8), section 65, Schedule 4, paragraph 47 and Schedule 5; section 17CA was inserted by the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3), section 38; section 105(7) was amended by the Health Services Act 1980 (c.53), Schedule 6, paragraph 5 and Schedule 7, by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 29 and Schedule 9, paragraph 24 and by the Health Act 1999 (c.8), Schedule 4, paragraph 60. Section 108(1) defines “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).
- (2) S.S.I. 2004/116.

““conditional disqualification” has the same meaning as in section 29C(1) of the Act⁽³⁾ and includes a decision under provisions in force in England, Wales or Northern Ireland corresponding (whether or not exactly) to a conditional disqualification;”;

(b) for the definition of “disqualified”, substitute—

““disqualified” means, unless the context otherwise requires, disqualified by the Tribunal (or a decision under provisions in force in England, Wales or Northern Ireland corresponding, whether or not exactly, to disqualified), but does not include conditional disqualification, and “disqualification” shall be construed accordingly;”;

(c) omit the definitions of “local or national disqualification” and “national disqualification”.

4. For regulation 3 (general conditions relating to providers), substitute—

“General conditions relating to providers

3.—(1) A Health Board may only enter into an agreement if the conditions set out in this regulation and regulation 3A are met.

(2) It is a condition in the case of an agreement to be entered into—

- (a) with a medical practitioner, that the medical practitioner;
- (b) with a health care professional (other than a medical practitioner), that the health care professional;
- (c) with a partnership, that any member of the partnership or the partnership;
- (d) with a limited liability partnership, that any member of the limited liability partnership or the limited liability partnership; and
- (e) with a company, that—
 - (i) the company,
 - (ii) any member of the company,
 - (iii) any director or secretary of the company,

must not fall within paragraph (3).

(3) A person falls within this paragraph if—

- (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;
- (b) subject to paragraph (4), 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;
- (c) within the period of 5 years prior to the signing of the agreement or commencement of the agreement, whichever is the earlier, the person has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless—
 - (i) the person has subsequently been employed by that health service body or another health service body and, where the person has been employed as a member of a health care profession, any subsequent employment has also been as a member of that profession; or

(3) Section 29C(1) was inserted by the Health Act 1999 (c.8), section 58.

- (ii) that dismissal was the subject of a finding of unfair dismissal by any competently established tribunal or court;
- (d) within the period of 5 years prior to signing the agreement or commencement of the agreement, whichever is the earlier, the person has been disqualified from a list unless the person's name has subsequently been included in such a list;
- (e) the person has been convicted in the United Kingdom of murder;
- (f) the person has been convicted in the United Kingdom of a criminal offence, other than murder, and been sentenced to a term of imprisonment of over 6 months;
- (g) subject to paragraph (5), the person has been convicted elsewhere of an offence which would if committed in Scotland, constitute—
 - (i) murder; or
 - (ii) a criminal offence other than murder, and been sentenced to a term of imprisonment of over 6 months;
- (h) the person has been convicted of an offence referred to in Schedule 1 to the Criminal Procedure (Scotland) Act 1995⁽⁴⁾ (offences against children under the age of 17 years to which special provisions apply) or Schedule 1 to the Children and Young Persons Act 1933⁽⁵⁾ (offences against children and young persons with respect to which special provisions apply);
- (i) 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⁽⁶⁾ or sections 56A to 56K of the Bankruptcy (Scotland) Act 1985⁽⁷⁾ unless that order has ceased to have effect or has been annulled; or
 - (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;
- (j) the person has an administrator, administrative receiver or receiver appointed in respect of the person;
- (k) the person has been—
 - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session)⁽⁸⁾, 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 that person's conduct contributed to or facilitated;

⁽⁴⁾ 1995 c.46.

⁽⁵⁾ 1933 c.12 as amended by the Domestic Violence, Crime and Victims Act 2004 (c.28), section 58, Schedule 10; the Sexual Offences Act 2003 (c.42), section 139, Schedule 6, paragraph 7; the Sexual Offences Act 1956 (c.69), section 48 and Schedule 3 and the Criminal Justice Act 1988 (c.33) ("the 1988 Act"), section 170, Schedule 15, paragraph 8 and Schedule 16; and as modified by the 1988 Act, section 170(1) Schedule 15, paragraph 9.

⁽⁶⁾ 1986 c.45. Schedule 4A was inserted by section 257 of and Schedule 20 to the Enterprise Act 2002 (c.40).

⁽⁷⁾ 1985 c.66. Sections 56A to 56K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

⁽⁸⁾ 2005 asp 10.

- (l) the person is subject to a disqualification order under the Company Directors Disqualification Act 1986 (9), the Companies (Northern Ireland) Order 1986(10) or to an order made under section 429(2)(b) of the Insolvency Act 1986(11) (failure to pay under county court administration order); or
 - (m) the person falls within regulation 5(2)(m) of the GMS Contracts Regulations.
- (4) A person shall not fall within paragraph (3)(b) where the Health Board is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and it 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 proposed 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 proposed party to the agreement, a member of that limited liability partnership;
 - (d) in the case where the person is—
 - (i) a member of a company that is a proposed party to the agreement, or
 - (ii) a director or secretary of a company that is a proposed party to the agreement,
 a member of that company, or a director or secretary of that company (as the case may be).
- (5) A person shall not fall within paragraph (3)(g) 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 proposed 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 proposed party to the agreement, a member of that limited liability partnership;
 - (d) in the case where the person is—
 - (i) a member of a company that is a proposed party to the agreement; or
 - (ii) a director or secretary of a company that is a proposed party to the agreement,
 a member of that company, or a director or secretary of that company (as the case may be).
- (6) In this regulation, “health service body” does not include any person who is to be treated as health service body in accordance with regulation 8 (Health Service Body Status).”.

5. After regulation 3, insert—

“Further conditions relating to all agreements

3A.—(1) For the purposes of section 17CA(4) of the Act (primary medical services: persons with whom agreements can be made), a person regularly performs or is engaged in the day to day provision of primary medical services where, subject to paragraphs (2) and

(9) 1986 c.46 as amended by the Insolvency Act 2000 (c.39).

(10) S.I. 1986/1032 (N.I. 6).

(11) 1986 c.45 as amended by the Enterprise Act 2002 (c.40), section 269, Schedule 23, paragraph 15.

(3), that person so performs or is so engaged, or will so perform or so engage, for no less than a total of 10 hours in each week for the duration of the agreement.

(2) For the purposes of section 17CA(5)(b) of the Act, references in section 17CA(4) to a person who is performing or is engaged in the provision of services, include a person who has performed or been engaged in providing the services within 6 months prior to the agreement being made.

(3) For the purposes of section 17CA(6) of the Act, the prescribed circumstances in which a period of time in which a person is not performing or is not engaged in the provision of primary medical services is to be disregarded for the purposes of determining whether the person regularly performs or is engaged in the day to day provision of those services are where the period of time is—

- (a) a period of annual leave, as determined by the period of annual leave entitlement of the said person;
- (b) a local or public holiday in Scotland;
- (c) a period of—
 - (i) maternity leave,
 - (ii) paternity leave,
 - (iii) adoption leave as the parent who is the main care provider, or
 - (iv) adoption leave as the parent who is not the main care provider,as determined by the period of entitlement of the said person;
- (d) a period of time when a person has been incapable of work due to sickness, injury or pregnancy;
- (e) a period of time up to a maximum of 12 months, when a person is undertaking approved study or training;
- (f) a period of service as a medical practitioner employed under a contract of service by the Ministry of Defence, whether or not as a member of the armed forces of the Crown, provided that the medical practitioner is entered on the GP Register kept by virtue of section 34C of the Medical Act 1983⁽¹²⁾;
- (g) a period of whole time service in the armed forces of the Crown in a national emergency, as a volunteer or otherwise, or a compulsory whole time service in those forces, including any service resulting from any reserve liability, or any equivalent service by a person liable for compulsory whole-time service in those forces;
- (h) any period during which the person has been suspended by a professional regulatory body, a Health Board or the NHS Tribunal where that person was suspended after the agreement with the Health Board was entered into.

(4) For the purposes of this regulation, “approved study or training” means study or training which is relevant for the purposes of the provider carrying out the obligations under the agreement effectively, and which has been approved by the appropriate partner, member or person responsible for training and development.”

6. For regulation 4 (reasons), substitute—

⁽¹²⁾ 1983 c.54; section 34C was inserted by the [General and Specialist Medical Practice \(Education, Training and Qualifications\) Order 2010/234](#), Schedule 1, paragraph 10.

“Reasons

4.—(1) Where a Health Board is of the view that the conditions in regulations 3 or 3A for making an agreement are not met, it shall notify in writing the person intending to make an agreement of the Health Board’s view and its reasons for that view and of that person’s right of appeal under regulation 5.

(2) The Health Board shall also notify in writing of its view and its reasons for that view—

- (a) any other persons intending to make the agreement;
- (b) any partner in a partnership that is notified under paragraph (1);
- (c) any member of a limited liability partnership that is notified under paragraph (1); and
- (d) any member, or director or secretary of, a company that is notified under paragraph (1) where its reasons for that view relates to that person or persons.”.

7. In regulation 19(1)(a) (certificates)—

- (a) omit “or” in the second place it occurs;
- (b) for sub-paragraph (iv), substitute—
 - “(iv) in the case where a limited liability partnership is a party to the agreement, a member of such a limited liability partnership; or”;
- (c) after sub-paragraph (iv), insert—
 - “(v) in the case where a company is a party to the agreement, a member of such a company; or”.

8. In regulation 23(2) (functions of area medical committee), for sub-paragraph (c), substitute—

- “(c) a member of a limited liability partnership that is a party to the agreement;
- (d) a member of a company that is a party to the agreement.”.

9. In regulation 24 (right to a general medical services contract)—

- (a) in paragraph (2)(c),
 - (i) for “and” in the second place it occurs, substitute— “,”;
 - (ii) before “of the GMS Contracts Regulations”, insert “and 5A (further conditions relating to all contracts)”;
- (b) in paragraph (5), for “and 5”, substitute “,5 and 5A”;
- (c) in paragraph (8), for “or 5”, substitute “, 5 or 5A”.

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—
 - “(iiia) 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—
 - “(iiia) 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”.
- 11.**—(1) Schedule 2 (agreements to provide essential services) is amended as follows.
- (2) In paragraph 13(5) (removal from the list at the request of the provider)—
- (a) for paragraph (c), substitute—
 - “(c) a member of a limited liability partnership that is a party to the agreement;”;
 - (b) after paragraph (c), insert—
 - “(ca) a member of a company that is a party to the agreement;”.
- (3) In paragraph 14(2) (removal from the list of patients who are violent)—
- (a) for paragraph (c) substitute—
 - “(c) a member of a limited liability partnership that is a party to the agreement;”;
 - (b) after paragraph (c), insert—
 - “(ca) a member of a company that is a party to the agreement;”.
- 12.** Schedule 6 (information to be included in practice leaflets) is amended as follows—

- (a) in paragraph 3, for “shareholders” substitute “members”;
- (b) after paragraph 3, insert—
 - “(3A) In the case where a limited liability partnership is a party to the agreement—
 - (a) the names of all the members of that limited liability partnership; and
 - (b) the address of the registered office of the limited liability partnership.”.

St Andrew’s House,
Edinburgh
9th November 2010

NICOLA STURGEON
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004 (“the principal Regulations”), which set out the framework for arrangements under section 17C of the National Health Service (Scotland) Act 1978 (“the Act”). The amendments are necessary following the commencement of Part 2 of the Tobacco and Primary Medical Services (Scotland) Act 2010 which makes provision for the new eligibility criteria for persons contracting with Health Boards to provide primary medical services.

Regulation 3 amends regulation 2 of the principal Regulations by amending the definition of “disqualified”, inserting a definition of “conditional disqualification” and omitting the definitions of “local or national disqualification” and “national disqualification”.

Regulation 4 amends regulation 3 of the principal Regulations to take into account the new eligibility criteria.

Regulation 5 inserts regulation 3A to the principal Regulations, to make provision as to what constitutes the regular performance of, or being engaged in the day to day provision of primary medical services (“the involvement criteria”). Regulation 3A provides that the involvement criteria require that a person performs or is engaged, or will perform or be engaged, in the provision of primary medical services for no less than a total of 10 hours in each week for the duration of the agreement. Regulation 3A also sets out the periods of time which are to be disregarded for the purposes of determining whether a person fulfils the involvement criteria.

Regulation 6 amends regulation 4 of the principal Regulations to take account of the new eligibility criteria.

Regulations 7, 8, 9, 10(2) and (3) make technical amendments to regulations 19, 23 and 24 and paragraphs 9 and 28 of Schedule 1 of the principal Regulations in order to take account of the new eligibility criteria.

Regulation 10(4) amends paragraph 32 of Schedule 1 regarding the sub-contracting of clinical matters in order to provide that where a provider sub-contracts any of its rights or duties under the agreement, the required notification to the Health Board must include a statement as to whether the sub-contractor, if it were a provider, would have sufficient involvement in patient care in terms of section 17CA(3) and (4) of the Act. The amendment also provides that a Health Board may serve a notice of objection to a sub-contract on the grounds that the sub-contractor, if it were a provider, would not have sufficient involvement in patient care in terms of section 17CA(3) and (4) of the Act.

Regulation 10(5) amends paragraph 39 of Schedule 1 to provide that the provider shall include in the annual return a statement that the provider meets the conditions of section 17CA(3) and (4) of the Act.

Regulation 10(6) amends the cross-references in paragraph 40 of Schedule 1.

Regulation 10(7) amends paragraph 42 of Schedule 1 so that it only applies to agreements entered into prior to 22nd December 2010.

Regulation 10(8) inserts a new paragraph 42A of Schedule 1 to provide for new notice provisions specific to an agreement with a company which was entered into after 22nd December 2010 and which take into account the new eligibility criteria.

Regulation 10(9) amends paragraph 43 of Schedule 1 to make a distinction between the notice provision requirements which apply to agreements with partnerships entered into prior to 22nd December 2010 and those entered into on or after that date.

Regulation 10(10) inserts a new paragraph 43A of Schedule 1 to make provision for notice provision requirements specific to agreements with persons practising in a limited liability partnership.

Regulation 10(11), (12), (13), (14), (15) and (16) amend the termination provisions of Schedule 1 of the principal Regulations in order to make a distinction between the application of those provisions to those agreements entered into prior to and those entered into on or after the coming into force of the regulations.

Regulations 10(17), (18) and (19), 11(1), (2) and (3) and 12 make further amendments to Schedules 1, 2 and 6 to take into account the new eligibility criteria and to amend cross-references.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Scottish Government Health Directorate, St Andrew's House, Regent Road, Edinburgh, EH1 3DG, and online at www.legislation.gov.uk.