

**2010 No. 93**

**NATIONAL HEALTH SERVICE**

**The National Health Service (General Medical Services  
Contracts, Primary Medical Services Section 17C Agreements  
and Primary Medical Services Performers Lists) (Scotland)  
Amendment Regulations 2010**

*Made* - - - - *4th March 2010*

*Laid before the Scottish Parliament* *5th March 2010*

*Coming into force in accordance with regulation 1(2) and (3)*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 17E, 17K, 17L(1), 17N, 17P, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978(a) and all other powers enabling them to do so.

**Citation and commencement**

1.—(1) These Regulations may be cited as the National Health Service (General Medical Services Contracts, Primary Medical Services Section 17C Agreements and Primary Medical Services Performers Lists) (Scotland) Amendment Regulations 2010.

(2) Except as specified in paragraph (3), these Regulations come into force on 1st April 2010.

(3) Regulations 2(c) and (d) and 3 come into force on 6th April 2010.

**Amendment of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004**

2. The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(b) are amended as follows—

(a) in regulation 2(1) (interpretation)(c)—

(i) for the definition of “the 2003 Order” substitute—

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(a) 1978 c.29; section 17E was inserted by section 22 of the National Health Service (Primary Care) Act 1997 (c.46) and was amended by Schedule 4, paragraph 47 and Schedule 5 of the Health Act 1999 (c.8), section 2 of the Primary Medical Services (Scotland) Act 2004 (asp 1) (“the 2004 Act”) and S.I. 2003/1250; sections 17K, 17L and 17N were inserted by section 4 of the 2004 Act; section 17P was inserted by section 5(2) of the 2004 Act and extended by section 17 (as amended by S.S.I. 2004/167) of the Health and Medicines Act 1988 (c.49); section 105(7) was amended by the Health Services Act 1980 (c.52), Schedule 6, paragraph 5(1) and Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 9, Part I, paragraph 24 and the Health Act 1999 (c.8), Schedule 4, paragraph 60; section 108(1) contains definitions of “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).

(b) S.S.I. 2004/115 relevant amendments to which are noted where reference is made to individual provisions of those Regulations.

(c) Regulation 2(1) has been amended but those amendments are not relevant to these Regulations.

“the 2010 Order” means the Postgraduate Medical Education and Training Order of Council 2010(a);” and

- (ii) omit the definition of “medical officer”.
- (b) in regulation 4 (conditions relating solely to medical practitioners)(b)—
  - (i) for paragraph (4), substitute—

“(4) In paragraphs (1), (2)(a) and (3)(a), “general medical practitioner” does not include a medical practitioner whose name is included in the General Practitioner Register by virtue of—

    - (a) article 4(3) of the 2010 Order (general practitioners eligible for entry in the General Practitioner Register) because of an exemption under regulation 5(1)(d) of one of the sets of Regulations specified in paragraph (5);
    - (b) article 6(2) of the 2010 Order (persons with acquired rights) by virtue of being a restricted services principal (within the meaning of one or more of the sets of Regulations specified in paragraph (6)) included in a list specified in that article; or
    - (c) article 6(6) of the 2010 Order.”.
  - (ii) in paragraph (5), for “paragraph (4)(a)(iii) and (b)(i)(bb)” substitute “paragraph (4)(a)”.
  - (iii) for paragraph (6) substitute—

“(6) The Regulations referred to in paragraph 4(b) are the National Health Service (General Medical Services) Regulations 1992, the National Health Service (General Medical Services) (Scotland) Regulations 1995, and the General Medical Services Regulations (Northern Ireland) 1997.”.
- (c) in regulation 21 (certificates) for paragraph (2), substitute—

“(2) The exception in paragraph (1)(a) shall not apply where the certificate is a doctor’s statement issued in accordance with regulation 2(1) of the Social Security (Medical Evidence) Regulations 1976(c) (evidence of incapacity for work, limited capability for work and confinement) or regulation 2(1) of the Statutory Sick Pay (Medical Evidence) Regulations 1985(d) (medical information).”.
- (d) for paragraph 72 of Schedule 5 (reports to a medical officer), substitute—

#### **“Provision of information to a medical officer etc**

- 72.—**(1) The contractor must, if satisfied that the patient consents—
- (a) supply in writing to any person specified in sub-paragraph (3), within such reasonable period as that person may specify, such clinical information as any of the persons mentioned in sub-paragraph (3)(a) to (d) considers relevant about a patient to whom the contractor or a person acting on behalf of the contractor has issued or has refused to issue a medical certificate; and
  - (b) answer any inquiries by any person mentioned in sub-paragraph (3) about—
    - (i) a prescription form or medical certificate issued or created by, or on behalf of, the contractor, or
    - (ii) any statement which the contractor or a person acting on behalf of that contractor has made in a report.
- (2) For the purposes of being satisfied that a patient consents, a contractor may rely on an assurance in writing from any person mentioned in sub-paragraph (3) that the consent of the

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(a) S.I. 2010/473.  
(b) Regulation 4 was amended by S.S.I. 2005/337.  
(c) S.I. 1976/615 which was relevantly amended by S.I. 2010/137.  
(d) S.I. 1985/1604 which was relevantly amended by S.I. 2010/137.

patient has been obtained, unless the contractor has reason to believe that the patient does not consent.

- (3) For the purposes of sub-paragraphs (1) and (2), the persons are—
- (a) a medical officer;
  - (b) a nursing officer;
  - (c) an occupational therapist;
  - (d) a physiotherapist; or
  - (e) an officer of the Department for Work and Pensions who is acting on behalf of, and at the direction of, any person specified in paragraphs (a) to (d).
- (4) In this paragraph—
- (a) “medical officer” means a medical practitioner who is—
    - (i) employed or engaged by the Department for Work and Pensions, or
    - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
  - (b) “nursing officer” means a health care professional who is registered on the Nursing and Midwifery Register and—
    - (i) employed or engaged by the Department for Work and Pensions, or
    - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
  - (c) “occupational therapist” means a health care professional who is registered in the part of the register maintained by the Health Professions Council under article 5 of the Health Professions Order 2001<sup>(a)</sup> relating to occupational therapists and—
    - (i) employed or engaged by the Department for Work and Pensions, or
    - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions; and
  - (d) “physiotherapist” means a health care professional who is registered in the part of the register maintained by the Health Professions Council under article 5 of the Health Professions Order 2001 relating to physiotherapists and—
    - (i) employed or engaged by the Department for Work and Pensions, or
    - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions.”.

### **Amendments to the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004**

**3.** The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004<sup>(b)</sup> are amended as follows—

- (a) in regulation 2 (interpretation), omit the definition of “medical officer”.
- (b) in regulation 19 (certificates) for paragraph (2), substitute—

“(2) The exception in paragraph (1)(a) shall not apply where the certificate is a doctor’s statement issued in accordance with regulation 2(1) of the Social Security (Medical Evidence) Regulations 1976<sup>(c)</sup> (evidence of incapacity for work, limited capability for work and confinement) or regulation 2(1) of the Statutory Sick Pay (Medical Evidence) Regulations 1985<sup>(d)</sup> (medical information).”.

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<sup>(a)</sup> S.I. 2002/254 which was relevantly amended by S.I. 2009/1182.

<sup>(b)</sup> S.S.I. 2004/116 to which there are amendments not relevant to these Regulations.

<sup>(c)</sup> S.I. 1976/615 which was relevantly amended by S.I. 2010/137.

<sup>(d)</sup> S.I. 1985/1604 which was relevantly amended by S.I. 2010/137.

(c) for paragraph 38 of Schedule 1 (reports to a medical officer) substitute—

**“Provision of information to a medical officer etc**

**38.**—(1) The provider must, if satisfied that the patient consents—

- (a) supply in writing to any person specified in sub-paragraph (3), within such reasonable period as that person may specify, such clinical information as any of the persons mentioned in sub-paragraph (3)(a) to (d) considers relevant about a patient to whom the provider or a person acting on behalf of the provider has issued or has refused to issue a medical certificate; and
- (b) answer any inquiries by any person mentioned in sub-paragraph (3) about—
  - (i) a prescription form or medical certificate issued or created by, or on behalf of, the provider, or
  - (ii) any statement which the provider or a person acting on behalf of that provider has made in a report.

(2) For the purposes of being satisfied that a patient consents, a provider may rely on an assurance in writing from any person mentioned in sub-paragraph (3) that the consent of the patient has been obtained, unless the provider has reason to believe that the patient does not consent.

(3) For the purposes of sub-paragraph (1) and (2), the persons are—

- (a) a medical officer;
- (b) a nursing officer;
- (c) an occupational therapist;
- (d) a physiotherapist; or
- (e) an officer of the Department for Work and Pensions who is acting on behalf of, and at the direction of, any person specified in paragraphs (a) to (d).

(4) In this paragraph—

- (a) “medical officer” means a medical practitioner who is—
  - (i) employed or engaged by the Department for Work and Pensions, or
  - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
- (b) “nursing officer” means a health care professional who is registered on the Nursing and Midwifery Register and—
  - (i) employed or engaged by the Department for Work and Pensions, or
  - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;
- (c) “occupational therapist” means a health care professional who is registered in the part of the register maintained by the Health Professions Council under article 5 of the Health Professions Order 2001 relating to occupational therapists and—
  - (i) employed or engaged by the Department for Work and Pensions, or
  - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions; and
- (d) “physiotherapist” means a health care professional who is registered in the part of the register maintained by the Health Professions Council under article 5 of the Health Professions Order 2001 relating to physiotherapists and—
  - (i) employed or engaged by the Department for Work and Pensions, or
  - (ii) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions.”.

**Amendment of paragraph 3 of Schedule 1 to the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004**

4. In paragraph 3(i) of Schedule 1 to the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004<sup>(a)</sup> (undertakings to be included in applications), for “regulation 5(1)(d) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994” substitute “article 6(6) of the Postgraduate Medical Education and Training Order of Council 2010”.

St Andrew’s House,  
Edinburgh  
4th March 2010

*NICOLA STURGEON*  
A member of the Scottish Executive

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(a) S.S.I. 2004/114 which was relevantly amended by S.I. 2010/234.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 (“the GMS Regulations”), the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004 (“the Section 17C Regulations”) and the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 (“the Performers Lists Regulations”).

Regulation 2 makes amendments to the GMS Regulations in relation to those eligible to hold contracts in light of changes to the registration of general practitioners. It also makes changes to the obligations on contractors to issue medical certificates free of charge and inserts a new provision regarding provision of information to various representatives of the Department for Work and Pensions.

Regulations 3 makes changes to the obligations on providers to issue medical certificates free of charge and inserts a new provision regarding provision of information to various representatives of the Department for Work and Pensions.

Regulation 4 updates a reference to in the Performers Lists Regulations in relation to the undertakings which are required in an application for inclusion on a performers list.

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