

SCOTTISH STATUTORY INSTRUMENTS

2018 No. 67

**The National Health Service (Primary Medical Services
Section 17C Agreements) (Scotland) Regulations 2018**

PART 1

GENERAL

Citation and commencement

1.—(1) These Regulations may be cited as the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018.

(2) ^{F1}... these Regulations come into force on 1st April 2018.

^{F2}(3)

F1 Words in reg. 1(2) omitted (25.5.2018) by virtue of [Data Protection Act 2018 \(c. 12\), s. 212\(1\), Sch. 19 para. 427\(2\)](#) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

F2 Reg. 1(3) omitted (25.5.2018) by virtue of [Data Protection Act 2018 \(c. 12\), s. 212\(1\), Sch. 19 para. 427\(3\)](#) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

Application

2. These Regulations apply to an agreement—

(a) to which the [^{F3}National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004] applied immediately before 1st April 2018; or

(b) which is entered into between a provider and the Health Board on or after 1st April 2018.

F3 Words in reg. 2(a) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\), regs. 1, 12](#)

Interpretation

3.—(1) In these Regulations—

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

^{F4} ...

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

“the 2004 Regulations” means the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004;

“additional services” means one or more of—

Status: Point in time view as at 25/05/2018.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018. (See end of Document for details)

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

“adjudicator” means the Scottish Ministers or a panel of 3 persons appointed by the Scottish Ministers (as the case may be) under paragraph 58 of schedule 1;

“advanced electronic signature” means an advanced electronic signature within the meaning given in Article 3(11) of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market⁽¹⁾ and repealing [Directive 1999/93/EC](#);

“agreement” means, unless the context otherwise requires, an agreement under section 17C of the Act⁽²⁾ (personal medical or dental services) under which primary medical services are provided;

“appliance” means an appliance which is included in a list for the time being approved by the Scottish Ministers for the purposes of section 27(1) of the Act⁽³⁾;

“area medical committee” means the committee of that name recognised under section 9(4) of the Act (local consultative committees) in the area of the Health Board;

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

“assessment panel” means a committee or sub-committee of a Health Board (“the first Health Board”) (other than the Health Board (“the second Health Board”) which is a party or a prospective party to the agreement in question) appointed by the first Health Board at the request of the second Health Board to exercise functions under paragraphs 21, 25 or 29 of schedule 2 and which must consist of—

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

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“CCT” means a Certificate of Completion of Training awarded under section 34L(1) of the Medical Act 1983⁽⁵⁾ including any such certificate awarded in pursuance of the competent

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- (1) OJ L 257, 28.8.2014, p.73. Article 3(11) provides that an “advanced electronic signature” means an electronic signature which meets the requirements set out in Article 26 of that instrument. The requirements in Article 26 are that the electronic signature is (a) uniquely linked to the signatory; (b) capable of identifying the signatory; (c) created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control; and (d) linked to the data signed therewith in such a way that any subsequent change in the data is detectable.
 - (2) Section 17C was inserted by section 21(2) of the National Health Service (Primary Care) Act 1997 (c.46), and amended by section 2(2) of the Primary Medical Services (Scotland) Act 2004 (asp 1), and paragraph 3 of schedule 21 of the Health and Social Care Act 2012 (c.7).
 - (3) Section 27(1) was amended by section 20 of the Health Services Act 1980 (c.53), paragraph 19 of schedule 9 of the National Health Service and Community Care Act 1990 (“the 1990 Act”), section 3 of the Medicine Products: Prescription by Nurses etc. Act 1992 (c.28), paragraph 44 of schedule 2 of the National Health Service (Primary Medical Services Act 1997, and section 44 of the Health and Social Care Act 2001 (c.15).
 - (4) Section 9 was amended by section 29(5) of the 1990 Act, and paragraph 43 of schedule 4 of the Health Act 1999.
 - (5) 1983 c.54. Section 34L was inserted by S.I. 2010/234.

authority functions of the General Medical Council specified in section 49B and schedule 4A of that Act;

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

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

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

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

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

“clinical commissioning group” means a body established under section 14D of the National Health Service Act 2006⁽⁶⁾;

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

“conditional disqualification” has the same meaning as in section 29C(1) of the Act⁽⁷⁾ and includes a decision under provisions in force in England, Wales or Northern Ireland corresponding (whether or not exactly) to a conditional disqualification;

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

“core hours” means the period beginning at 0800 hours and ending at 1830 hours on any working day;

[^{F6}“the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);]

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

“disqualified” means, unless the context otherwise requires, disqualified by the Tribunal (or a corresponding 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” is to be construed accordingly;

“Drug Tariff” means the statement published under regulation 12 (payments to pharmacists and standards of drugs and appliances) of the Pharmaceutical Regulations;

“electronic communication” has the same meaning as in section 15 of the Electronic Communications Act 2000⁽⁸⁾;

“electronic prescription form” means a prescription form as defined in paragraph (b) of the definition of “prescription form”;

“electronic signature” has the meaning attributed to it in section 7(2) of the Electronic Communications Act 2000⁽⁹⁾;

“enhanced services” are—

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

⁽⁶⁾ 2006 c.41. Section 14D was inserted by section 25(1) of the Health and Social Care Act 2012 (c.7).

⁽⁷⁾ Section 29C(1) was inserted by section 58 of the Health Act 1999. There are amendments to section 29C not relevant to these Regulations.

⁽⁸⁾ 2000 c.7. Section 15 was amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c.21).

⁽⁹⁾ Section 7(2) was amended by S.I. 2016/696.

Status: Point in time view as at 25/05/2018.

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which the provider needs generally to provide in relation to that service or element of service;

“ePharmacy service” means the electronic system provided by the Agency by which electronic prescription forms are transmitted;

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

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“general medical practitioner” means, unless the context otherwise requires, a medical practitioner whose name is included in the General Practitioner Register kept by the General Medical Council;

“general medical services contract” means a general medical services contract under section 17J of the Act (Health Boards’ power to enter into general medical services contracts)(10);

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

“GMS Contracts Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018(11);

“GP Registrar” means a medical practitioner who is being trained in general practice by a general medical practitioner who is approved under section 34I of the Medical Act 1983(12) for the purpose of providing training under that section, whether as part of training leading to a CCT or otherwise;

“Health and Social Care trust” means a Health and Social Care trust established under article 10(1) of the Health and Personal Social Services (Northern Ireland) Order 1991(13) and renamed by section 1(3) of the Health and Social Care (Reform) Act (Northern Ireland) 2009(14);

“Health Board” means, unless the context otherwise requires, the Health Board which is a party, or prospective party, to an agreement [F8 and a reference to “the Board” is to be construed accordingly];

“health care professional” has the same meaning as in section 17D(2) of the Act(15) and “health care profession” is to be construed accordingly;

“health service body” means any person or body referred to in section 17A(2) of the Act(16) and includes, except where otherwise expressly provided, any person who is to be treated as a health service body in accordance with regulation 10;

“immediate family member” means—

- (a) a spouse or civil partner;

(10) Section 17J was inserted into the Act by section 4 of the 2004 Act.

(11) S.S.I. 2018/66.

(12) 1983 c.54. Section 34I was inserted into the Act by S.I. 2010/234.

(13) S.I. 1991/194 (N.I. 1). Article 10 was amended by S.I. 1994/429 (N.I. 2), sections 43 and 44 of the Health and Personal Services Act (Northern Ireland) 2001 (c.3) and paragraph 1 of schedule 6 of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c.1).

(14) 2009 c.1.

(15) Section 17D(2) was inserted into the Act by section 21(2) of the National Health Service (Primary Care) Act 1997, and was amended by section 2(3) of the 2004 Act.

(16) Section 17A(2) was inserted by section 30 of the National Health Service and Community Care Act 1990, and was amended by paragraph 36 of schedule 2 of the National Health Service (Primary Care) Act 1997, and paragraph 46 of schedule 4 and paragraph 1 of schedule 5 of the Health Act 1999, paragraph 1 of schedule 14 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43), paragraph 8 of schedule 17 of the Public Services Reform (Scotland) Act 2003 (c.43) and paragraph 2 of schedule 21 of the Health and Social Care Act 2012.

- (b) a person whose relationship with the registered patient has the characteristics of the relationship between spouses or civil partners;
- (c) a parent or step-parent;
- (d) a son;
- (e) a daughter;
- (f) a child of whom the registered patient is—
 - (i) the guardian; or
 - (ii) the carer duly authorised by the local authority to whose care the child has been committed under the Children (Scotland) Act 1995(17); or
- (g) a grandparent;

“independent nurse prescriber” means a person—

- (a) who is either engaged or employed by the provider, is a party to the agreement or is a partner in a partnership that is a party to the agreement; and
- (b) who is registered in the Nursing and Midwifery Register; and
- (c) against whose name is recorded in that register an annotation signifying that they are qualified to order drugs, medicines and appliances as a community practitioner nurse prescriber, a nurse independent prescriber or a nurse independent/supplementary prescriber;

“independent prescriber” means—

- (a) an independent nurse prescriber;
- (b) a pharmacist independent prescriber;
- (c) a physiotherapist independent prescriber;
- (d) a podiatrist or chiropodist independent prescriber;
- (e) a therapeutic radiographer independent prescriber; or
- (f) a paramedic independent prescriber;

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

“limited liability partnership” means a limited liability partnership incorporated in accordance with section 2 of the [F10]Limited Liability Partnerships Act 2000];

“limited partnership” means a partnership registered in accordance with section 5 of the Limited Partnerships Act 1907(18);

“list” has, unless the context otherwise requires, the meaning assigned to it in section 29(8) of the Act(19) and includes a list corresponding to such a list in England, Wales or Northern Ireland;

“local dispute resolution process” means the process for encouraging local resolution of disputes specified in paragraph 56 of schedule 1;

(17) 1995 c.36.

(18) 1907 c.24. Section 5 was amended by S.I. 2009/1940.

(19) Section 29 was substituted by section 58(1) of the Health Act 1999. Section 29 was further amended by paragraph 2(4) of schedule 2 of the Community Care and Health (Scotland) Act 2002 (asp 5), section 5(3) of the Primary Medical Services (Scotland) Act 2004 and section 26(2) and paragraph 2 of schedule 2 of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13).

Status: Point in time view as at 25/05/2018.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018. (See end of Document for details)

“Local Health Board” means a body established under section 11 of the National Health Service (Wales) Act 2006**(20)**;

“maternity medical services” means the services described in paragraph 7(1) of schedule 3;

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

“NHS contract” means an agreement which is an NHS contract within the meaning of section 17A(3) of the Act**(22)** as a result of which the provider is being treated as a health service body pursuant to regulation 10(1) or (5);

“NHS dispute resolution procedure” means the procedure for the resolution of disputes specified in paragraphs 58 and 59 of schedule 1;

“NHS foundation trust” has the same meaning as in section 30 of the National Health Service Act 2006**(23)**;

“NHS trust” means a National Health Service trust established under section 25 of the National Health Service Act 2006;

“non-electronic prescription form” means a prescription form as defined in paragraph (a) of the definition of “prescription form”;

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

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

“open”, in relation to a provider’s list of patients, means open to applications from patients in accordance with paragraph 7 of schedule 2;

“paramedic independent prescriber” means a person registered in Part 8 of the register maintained under article 5 of the Health and Social Work Professions Order 2001**(25)** and against whose name in that register is recorded an annotation signifying that the person is qualified to order drugs, medicines and appliances as a paramedic independent prescriber;

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

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

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

“patient” means—

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

(20) 2006 c.42.

(21) Section 2 was amended by S.I. 2002/3135, S.I. 2006/1914, S.I. 2007/3103, S.I. 2008/1774 and S.I. 2014/1101.

(22) Section 17A(3) was inserted by section 30 of the National Health Service Community Care Act 1990, and amended by paragraph 46 of schedule 4 and paragraph 1 of schedule 5 of the Health Act 1999.

(23) Section 30 was amended by section 159 of the Health and Social Care Act 2012 (c.7).

(24) S.I. 2002/253.

(25) S.I. 2002/254, as retitled by the Health and Social Care Act 2012 (c.7), section 213(6). Article 5 was amended by S.I. 2009/1182.

“Pharmaceutical Regulations” means the National Health Service (Pharmaceutical Services (Scotland) Regulations 2009⁽²⁶⁾);

“pharmacist” means a person who is registered as a pharmacist in—

- (a) Part 1 or Part 4 of the register maintained under article 19 of the Pharmacy Order 2010⁽²⁷⁾; or
- (b) the register maintained in pursuance of articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976⁽²⁸⁾;

“pharmacist independent prescriber” means a pharmacist against whose name in the relevant register is recorded an annotation signifying that the pharmacist is qualified to order drugs, medicines and appliances as a pharmacist independent prescriber;

“physiotherapist independent prescriber” means a physiotherapist who is registered in Part 9 of the register maintained under article 5 of the Health and Social Work Professions Order 2001, and against whose name in that register is recorded an annotation signifying that the physiotherapist is qualified to order drugs, medicines and appliances as a physiotherapist independent prescriber;

“podiatrist or chiropodist independent prescriber” means a podiatrist or chiropodist who is registered in Part 2 of the register maintained under article 5 of the Health and Social Work Professions Order 2001, and against whose name in that register is recorded an annotation signifying that the podiatrist or chiropodist is qualified to order drugs, medicines and appliances as a podiatrist or chiropodist independent prescriber;

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

“practice area” means the area referred to in regulation 13(1)(a);

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

“prescriber” means—

- (a) a medical practitioner;
- (b) an independent nurse prescriber;
- (c) a supplementary prescriber;
- (d) a pharmacist independent prescriber;
- (e) a physiotherapist independent prescriber;
- (f) a podiatrist or chiropodist independent prescriber;
- (g) a therapeutic radiographer independent prescriber; and
- (h) a paramedic independent prescriber,

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

“prescription form” means—

- (a) a form provided by the Health Board and issued by a prescriber; or
- (b) data that are created in an electronic form and which are signed with a prescriber’s advanced electronic signature and transmitted as an electronic communication through the ePharmacy service,

to enable a person to obtain pharmaceutical services;

⁽²⁶⁾ S.S.I. 2009/183.

⁽²⁷⁾ S.I. 2010/231.

⁽²⁸⁾ S.I. 1976/1213 (N.I. 22), as relevantly amended by S.R.(NI) 2008 No 192).

Status: Point in time view as at 25/05/2018.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018. (See end of Document for details)

“prescription only medicine” means a medicine referred to in regulation 5(3) (classification of medicinal products) of the Human Medicines Regulations 2012⁽²⁹⁾;

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

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

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

“provider’s list of patients” means the list prepared and maintained by the Health Board under paragraph 6 of schedule 2;

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

[^{F11}“Regional Health and Social Care Board” means the Regional Health and Social Care Board established under section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009⁽¹⁾;

^{F12} ...

“registered patient” means—

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

“relevant register” means—

- (a) in relation to a nurse, the Nursing and Midwifery Register; and
- (b) in relation to a pharmacist—
 - (i) Part 1 of the register maintained under article 19 of the Pharmacy Order 2010⁽³¹⁾; or
 - (ii) the register maintained in pursuance of articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976⁽³²⁾; and
- (c) in relation to a chiropodist and podiatrist, a physiotherapist, a paramedic and a therapeutic radiographer, the relevant part of the register maintained by the [^{F13}Health and Care Professions Council] in pursuance of article 5 of the Health and Social Work Professions Order 2001;

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

⁽²⁹⁾ S.I. 2012/1916.

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

⁽¹⁾ OJ L 257, 28.8.2014, p.73. Article 3(11) provides that an “advanced electronic signature” means an electronic signature which meets the requirements set out in Article 26 of that instrument. The requirements in Article 26 are that the electronic signature is (a) uniquely linked to the signatory; (b) capable of identifying the signatory; (c) created using electronic signature creation data that the signatory can, with a high level of confidence, use under his sole control; and (d) linked to the data signed therewith in such a way that any subsequent change in the data is detectable.

⁽³¹⁾ S.I. 2010/231.

⁽³²⁾ S.I. 1976/1213 (N.I. 22) as relevantly amended by S.R. 2008/192, regulations 5 and 9.

“Scheduled drug” means—

- (a) a drug, medicine or other substance specified in any directions given by the Scottish Ministers under section 17N(6) of the Act⁽³³⁾ as being a drug, medicine or other substance which may not be ordered for patients in the provision of primary medical services under a general medical services contract; or
- (b) except where the conditions in paragraph 13 and 14 of schedule 1 are satisfied a drug, medicine or other substance which is specified in any directions given by the Scottish Ministers under section 17N(6) of the Act, as being a drug, medicine or other substance which can only be ordered for specified patients and specified purposes;

“supplementary prescriber” means a person who is either engaged or employed by the provider or is a party to the agreement, or a partner in a partnership that is a party to the agreement, and whose name is registered in—

- (a) the Nursing and Midwifery Register;
- (b) Part 1 of the register maintained under article 19 of the Pharmacy Order 2010;
- (c) the register maintained in pursuance of articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976;
- (d) the part of the register maintained by the [^{F14}Health and Care Professions Council] in pursuance of article 5 of the Health and Social Work Professions Order 2001 relating to—
 - (i) chiropodists and podiatrists;
 - (ii) physiotherapists;
 - (iii) diagnostic or therapeutic radiographers;
 - (iv) dieticians;
 - (v) paramedics; or
- (e) the register of optometrists maintained by the General Optical Council in pursuance of section 7 of the Opticians Act 1989⁽³⁴⁾,
and against whose name is recorded in the relevant register an annotation signifying that they are qualified to order drugs, medicines and appliances as a supplementary prescriber or, in the case of the Nursing and Midwifery Register, a nurse independent/supplementary prescriber;

“temporary resident” means a person accepted by a provider as a temporary resident under paragraph 8 of schedule 2 and for whom the provider’s responsibility has not been terminated in accordance with that paragraph;

“therapeutic radiographer independent prescriber” means a person—

- (a) registered in Part 11 of the register maintained under article 5 of the Health and Social Work Professions Order 2001; and
- (b) against whose name in that register is recorded—
 - (i) an entitlement to use the title “therapeutic radiographer”; and
 - (ii) an annotation signifying that the person is qualified to order drugs, medicines and appliances as a therapeutic radiographer independent prescriber;

“the Tribunal” has the meaning indicated in section 29 of the Act (the NHS Tribunal)⁽³⁵⁾;

⁽³³⁾ Section 17N was inserted by section 4 of the 2004 Act.

⁽³⁴⁾ 1989 c.44. Section 7 was amended by S.I. 2005/848.

⁽³⁵⁾ Section 29 was substituted by the Health Act 1999 (c.8) section 58(1) and amended by the Community Care and Health (Scotland) Act 2002 (asp 5), schedule 1, paragraph 2(4), the 2004 Act, section 5, and the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) section 26(2) and schedule 2, paragraph 2.

Status: Point in time view as at 25/05/2018.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018. (See end of Document for details)

“vaccinations and immunisations” means the services described in paragraph 4(2) of schedule 3;

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

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

(2) In these Regulations, the use of the term “it” in relation to—

(a) a provider, is deemed to include a reference to a provider who is

- (i) comprised of more than one party to the agreement; or
- (ii) an individual; and

(b) the adjudicator, is deemed to refer either to the Scottish Ministers or the panel of 3 persons appointed by them, as the case may be,

and related expressions are to be construed accordingly.

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

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| F4 | Words in reg. 3(1) omitted (25.5.2018) by virtue of Data Protection Act 2018 (c. 12) , s. 212(1), Sch. 19 para. 428(a) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g) |
| F5 | Words in reg. 3(1) omitted (1.4.2018) by virtue of The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94) , regs. 1, 13(a) |
| F6 | Words in reg. 3(1) inserted (25.5.2018) by Data Protection Act 2018 (c. 12) , s. 212(1), Sch. 19 para. 428(b) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g) |
| F7 | Words in reg. 3(1) omitted (25.5.2018) by virtue of Data Protection Act 2018 (c. 12) , s. 212(1), Sch. 19 para. 428(c) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g) |
| F8 | Words in reg. 3(1) inserted (1.4.2018) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94) , regs. 1, 13(b) |
| F9 | Words in reg. 3(1) omitted (1.4.2018) by virtue of The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94) , regs. 1, 13(c) |
| F10 | Words in reg. 3(1) substituted (1.4.2018) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94) , regs. 1, 13(d) |
| F11 | Words in reg. 3(1) inserted (1.4.2018) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94) , regs. 1, 13(f) |
| F12 | Words in reg. 3(1) omitted (1.4.2018) by virtue of The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94) , regs. 1, 13(e) |
| F13 | Words in reg. 3(1) substituted (1.4.2018) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94) , regs. 1, 13(g) |
| F14 | Words in reg. 3(1) substituted (1.4.2018) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (S.S.I. 2018/94) , regs. 1, 13(h) |

PART 2

PROVIDERS

General conditions relating to providers

4.—(1) A Health Board may only enter into an agreement if the conditions set out in this regulation and regulation 5 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)(**36**) or 32B(1) (suspension pending appeal)(**37**) 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
 - (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;

(36) Section 32A was inserted into the Act by section 8 of the National Health Service (Amendment) Act 1995 (c.31) (“the 1995 Act”), and amended by paragraph 51 of schedule 4 of the Health Act 1999 (c.8) (“the 1999 Act”), and section 26(7) of the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) (“the 2005 Act”).

(37) Section 32B was inserted into the Act by section 8 of the 1995 Act, and substituted by paragraph 52 of schedule 4 of the 1999 Act, and amended by paragraph 1 of schedule 3 of the 2005 Act.

- (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) the person has been convicted elsewhere of an offence which would if committed in Scotland, constitute—
 - (i) murder; or
 - (ii) subject to paragraph (5), 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 of the Criminal Procedure (Scotland) Act 1995(38) or schedule 1 of the Children and Young Persons Act 1933(39);
- (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—
 - (aa) schedule 4A of the Insolvency Act 1986(40);
 - (bb) schedule 2A of the Insolvency (Northern Ireland) Order 1989(41); or
 - (cc) sections 56A to 56K of the Bankruptcy (Scotland) Act 1985(42),
 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) 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 of the Insolvency Act 1986(43);
- (k) that person is a partnership or limited liability partnership and—
 - (i) a dissolution of the partnership or limited liability partnership has been ordered by any competent court, tribunal or arbitrator; or
 - (ii) an event has happened 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;
- (l) the person has been—
 - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of Court of Session)(44), from being concerned in the management or control of any body; or

(38) 1995 c.46.

(39) 1933 c.12. Schedule 1 was amended by paragraph 52 of schedule 4 of the Sexual Offences Act 1956 (c.69), paragraph 170(2) of schedule 16 of the Criminal Justice Act 1988 (c.33), paragraph 7 of schedule 6 of the Sexual Offences Act 2003 (c.42) and paragraph 1 of schedule 5 of the Modern Slavery Act 2015 (c.3).

(40) 1986 c.45. Schedule 4A was inserted by section 257 and paragraph 1 of schedule 20 of the Enterprise Act 2002 (c.40) (“the 2002 Act”) and was amended by paragraph 63 of the Enterprise and Regulatory Reform Act 2013 (c.24).

(41) S.I. 1989/2405 (N.I. 19). Schedule 2A was inserted by S.I. 2005/1455.

(42) 1985 c.66. Sections 56A to 56 K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3), amended by the Bankruptcy and Debt Advice (Scotland) Act 2014 (asp 11) and repealed by Part 1 of schedule 9 of the Bankruptcy (Scotland) Act 2016 (asp 21).

(43) Schedule B1 was inserted by paragraph 1 of schedule 16 of the 2002 Act.

(44) 2005 asp 10. Section 34 was amended by section 122 of the Public Services Reform (Scotland) Act 2010 (asp 8).

- (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;
 - (m) the person is subject to a –
 - (i) disqualification order under section 1 of the Company Directors Disqualification Act 1986⁽⁴⁵⁾;
 - (ii) a disqualification undertaking under section 1A of that Act;
 - (iii) a disqualification order under article 3 of the Company Directors Disqualification (Northern Ireland) Order 2002⁽⁴⁶⁾;
 - (iv) a disqualification undertaking under article 4 of that Order; or
 - (v) a disqualification order under section 429(2)(b) of the Insolvency Act 1986⁽⁴⁷⁾; or
 - (n) the person falls within regulation 6(2)(d) (general conditions relating to all contracts) of the National Health Service (General Medical Services Contracts) Regulations 2015⁽⁴⁸⁾.
- (4) A person will 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 will 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).

⁽⁴⁵⁾ 1986 c.46, as relevantly amended by section 5 and paragraph 2 of schedule 4 of the Insolvency Act 2000 (c.39), section 204 of the Enterprise Act 2002 (“the 2002 Act”) and paragraph 2 of schedule 7 of the Small Business, Enterprise and Employment Act 2015 (c.26) (“the 2015 Act”).

⁽⁴⁶⁾ S.I. 2002/3150 (N.I. 4), as relevantly amended by paragraph 9 of schedule 8 of the 2015 Act.

⁽⁴⁷⁾ Section 429(2) was amended by paragraph 15 of schedule 23 of the 2002 Act.

⁽⁴⁸⁾ S.I. 2015/1862.

(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 10.

Further conditions relating to all agreements

5.—(1) For the purposes of section 17CA(4) of the Act (primary medical services: persons with whom agreements can be made)(49), a person regularly performs or is engaged in the day to day provision of primary medical services where, subject to paragraphs (2) and (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;
 - (iv) parental leave; or
 - (v) shared parental leave,
 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 General Practitioner Register kept by virtue of section 34C of the Medical Act 1983(50);
- (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; or
- (h) any period during which the person has been suspended by a professional regulatory body, a Health Board or the 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

(49) Section 17CA was inserted into the Act by section 38 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3).

(50) 1983 c.54. Section 34C was inserted by S.I. 2010/234.

effectively, and which has been approved by the appropriate partner, member or person responsible for training and development.

Reasons

6.—(1) Where a Health Board is of the view that the conditions in regulations 4 or 5 for making an agreement are not met, it must 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 7.

(2) The Health Board must 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.

Appeal

7. A person who has been served with a notice under regulation 6(1) may appeal to the Scottish Ministers against the decision of the Health Board by giving notice in writing to the Scottish Ministers within the period of 28 days beginning on the day that the Health Board served its notice.

Prescribed period under section 17D(3) of the Act

8. The period prescribed for the purposes of section 17D(3) of the Act (persons with whom agreements may be made)⁽⁵¹⁾ is 6 months.

Pre-agreement dispute resolution

9.—(1) Except where the proposed provider is a health service body (in which case section 17A(5) of the Act⁽⁵²⁾ applies), if, in the course of negotiations intending to lead to any agreement, the proposed parties to that agreement are unable to agree on a particular term of the agreement, either the Health Board or the proposed provider may refer the terms of the proposed agreement to the Scottish Ministers to consider and determine the matter.

(2) Disputes as to the terms of any proposed agreement referred to the Scottish Ministers in accordance with paragraph (1) must be determined in accordance with—

- (a) the NHS dispute resolution procedure, as if—
 - (i) in paragraph 58(3)(b) of schedule 1, “agreement” read “terms of the proposed agreement”; and
 - (ii) paragraphs 59(2) and (3) of schedule 1 were omitted; and
- (b) paragraph (3) of this regulation.

(3) In a dispute referred to the Scottish Ministers under paragraph (1), the determination of the adjudicator—

- (a) may specify terms to be included in the proposed agreement;

⁽⁵¹⁾ Section 17D was inserted by section 21(2) of the National Health Service (Primary Care) Act 1997 (c.46) and amended by section 2(3) of the Primary Medical Services (Scotland) Act 2004 (asp 1).

⁽⁵²⁾ Section 17A was inserted into the Act by section 30 of the National Health Service and Community Care Act 1990 (c.19). Section 17A was moved under a new heading entitled “NHS Contracts” by section 31 of the National Health Service (Primary Care) Act 1997 (c.46).

Status: Point in time view as at 25/05/2018.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018. (See end of Document for details)

- (b) may require the Health Board to proceed with the proposed agreement, but may not require the proposed provider to proceed with the proposed agreement; and
- (c) is binding on the proposed parties to the agreement.

(4) In this regulation “health service body” does not include any provider who is to be treated as a health service body in accordance with regulation 10.

PART 3

HEALTH SERVICE BODY STATUS

Health service body status

10.—(1) Where a proposed provider elects, in a written notice served on the Health Board at any time prior to the agreement being entered into, to be treated as a health service body for the purposes of section 17A of the Act (NHS contracts)(53), the proposed provider will be so treated from the date on which the agreement is made.

(2) If, pursuant to paragraph (1) or (5), a provider is to be treated as a health service body, it will not be treated as a health service body to the extent that—

- (a) the nature of, or any rights or liabilities arising under, any other arrangement or proposed arrangement with a health service body entered into or to be entered into by a provider is affected; and
- (b) a matter referred to the Scottish Ministers for the purposes of section 17A(4) of the Act must be determined under the provisions of section 17A.

(3) Where an agreement is made with a provider, and that provider is to be treated as a health service body in accordance with paragraph (1) or (5), the provider will, subject to paragraph (4) continue to be treated as a health service body for the purposes of section 17A of the Act, for as long as that agreement continues irrespective of any change in—

- (a) where a partnership is a party to the agreement, the membership of the partnership; and
- (b) the parties to the agreement comprising the provider.

(4) A provider may at any time request in writing to be treated or cease to be treated as a health service body for the purposes of section 17A of the Act, and if the provider does so—

- (a) the procedure in paragraph 61(1) of schedule 1 applies; and
- (b) the Health Board must agree to the variation.

(5) If the provider makes a request under paragraph (4), the provider must—

- (a) be treated; or
- (b) subject to paragraph (7) cease to be treated,

as a health service body for the purposes of section 17A of the Act from the date that variation is to take effect pursuant to paragraph 61(1) of schedule 1.

(6) Subject to paragraph (7), a provider ceases to be treated as a health service body for the purposes of section 17A of the Act if the agreement terminates.

(7) Where a provider ceases to be treated as a health service body pursuant to—

(53) Section 17A was inserted into the Act by section 30 of the National Health Service and Community Care Act 1990 and amended by paragraph 102 of schedule 1 of the Health Authorities Act 1995 (c.17), paragraph 36 of schedule 2 of the National Health Service (Primary Care) Act 1997 (c.46), paragraph 46 of schedule 4 and paragraph 1 of schedule 5 of the Health Act 1999 (c.8), paragraph 1 of schedule 14 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43), paragraph 8 of schedule 17 of the Public Services Reform (Scotland) Act 2010 (asp 8), and paragraph 2 of schedule 21 of the Health and Social Care Act 2012 (c.7).

- (a) paragraph (5), the provider will, if the provider or the Health Board has referred any matter to the Scottish Ministers for the purposes of section 17A(4) of the Act before the provider ceases to be a health service body, be bound by the determination of the adjudicator;
- (b) paragraph (6), the provider will continue to be treated as a health service body for the purposes of the NHS dispute resolution procedure where that procedure has been commenced—
 - (i) before the termination of the agreement; or
 - (ii) after the termination of the agreement, whether in connection with or arising out of the termination of the agreement or otherwise,

for which purpose the provider will cease to be treated as such a body on the conclusion of that procedure.

PART 4

PROVISION OF PRIMARY MEDICAL SERVICES

Provision of primary medical services

11. Whether or not the agreement includes arrangements for the provision of services which are not primary medical services, an agreement must include arrangements for the provision of one or more of the following primary medical services:—

- (a) essential services;
- (b) additional services; and
- (c) enhanced services.

Primary medical services and content of agreements

12.—(1) An agreement must contain terms which have the same effect as those specified in schedule 1 (content of agreements), unless it is of a type or nature to which a particular provision does not apply, except paragraphs 58(5) to (15), and 59.

(2) The paragraphs specified in paragraph (1) must have effect in relation to matters set out in those paragraphs.

Essential services and content of agreements

13.—(1) An agreement which includes the provision of essential services must specify—

- (a) the area as respects which persons resident in it will, subject to any other terms of the agreement relating to patient registration, be entitled to—
 - (i) register with the provider; or
 - (ii) seek acceptance by the provider as a temporary resident; and
- (b) whether, at the date on which the agreement comes into force, the provider's list of patients is open or closed.

(2) Where, in accordance with paragraph (1), the agreement specifies that the provider's list of patients is closed it must also specify in relation to that closure each of the items listed in paragraph 19(9)(a) to 19(9)(d) of schedule 2 (agreements to provide essential services).

(3) An agreement which includes the provision of essential services must, in addition to any other terms required by these Regulations, unless it is of a type or nature to which a particular provision

does not apply contain terms with the same effect as those specified in schedule 2, except paragraphs 21(5) to 21(7), 25(5) to (9) and 26(3) of that schedule.

(4) The paragraphs specified in paragraph (3) will have effect in relation to matters set out in those paragraphs.

(5) An agreement which does not include the provision of essential services must not specify the matters referred to in paragraph (1) nor contain terms with the same effect as those specified in schedule 2.

Additional services and content of agreements

14. An agreement which includes the provision of additional services must, in addition to any other terms required by these Regulations—

- (a) in relation to all such services included in the agreement, contain a provision which has the same effect as that specified in paragraph 1 of schedule 3;
- (b) in relation to each such service included in the agreement, contain provisions which have the same effect as those specified in schedule 3, which are relevant to that service.

PART 5

CONTENT OF AGREEMENTS

Parties to the agreement

15. An agreement must specify—

- (a) the names of the parties;
- (b) where a party to the agreement is a partnership—
 - (i) whether or not that partnership is a limited partnership; and
 - (ii) the names of the partners and, in the case of a limited partnership, their status as general or limited partner; and
- (c) in the case of the Health Board and the provider and each party to the agreement comprising the provider, the address to which official correspondence and notices should be sent.

NHS contracts

16. If the provider is to be treated as a health service body the agreement must state that it is an NHS contract.

Agreements with one or more partnerships

17.—(1) Where a partnership is a party to the agreement, the agreement is to be treated as made with that partnership as it is from time to time constituted, and the agreement must make specific provision to this effect.

(2) Where a partnership is a party to the agreement, the provider must be required by the terms of the agreement to ensure that any person who becomes a member of the partnership after the agreement has been made is bound automatically by the agreement, whether by virtue of the partnership deed or otherwise.

(3) For the avoidance of doubt, in this regulation, a reference to a “partnership” does not include a reference to a limited liability partnership or any member of a limited liability partnership.

Arrangements on termination

18. An agreement must make suitable provision for arrangements on termination of an agreement, including the consequences (whether financial or otherwise) of the agreement ending.

Services generally

19.—(1) An agreement must specify—

- (a) the services to be provided;
- (b) subject to paragraph (2), the address of each of the premises to be used by the provider or any sub-contractor for the provision of such services;
- (c) to whom such services are to be provided;
- (d) the period (if any) for which the services are to be provided; and
- (e) where the agreement does not include the provision of essential services, the area (if any) in which the provider agrees to attend on patients outside the practice premises.

(2) The premises referred to in paragraph (1)(b) do not include—

- (a) the homes of patients; or
- (b) any other premises where services are provided on an emergency basis.

(3) Where on the date on which the agreement is to be made, the Health Board is not satisfied that all or any of the premises specified in accordance with sub-paragraph (1)(b) meet the requirements set out in paragraph 1 of schedule 1, the agreement may not be made unless it includes a plan, drawn up jointly by the Health Board and the provider, which specifies—

- (a) the steps to be taken by the provider to bring the premises up to the relevant standard;
- (b) any financial support that may be made available from the Health Board; and
- (c) the timescale on which the steps referred to in sub-paragraph (a) will be taken.

Certificates

20.—(1) An agreement must contain a term which has the effect of requiring the provider to issue free of charge to a patient or a patient's personal representatives any medical certificate of a description prescribed in column 1 of schedule 4 (list of prescribed medical certificates) of the GMS Contracts Regulations, which is reasonably required under or for the purposes of the enactments specified in relation to the certificate in column 2 of that schedule, except where, for the condition to which the certificate relates, the patient—

- (a) is being attended by a medical practitioner or alternative provider for the relevant certificate who is not—
 - (i) employed or engaged by the provider;
 - (ii) a party to the agreement;
 - (iii) in the case where a partnership is a party to the agreement, a partner in such a partnership;
 - (iv) in the case where a limited liability partnership is a party to the agreement, a member of the limited liability partnership; or
 - (v) in the case where a company is a party to the agreement, a member of the company; or
- (b) is not being treated by or under the supervision of a health care professional.

(2) The exception in paragraph (1)(a) must 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(evidence of incapacity for work, limited capability for work and confinement)(**54**) or regulation 2(1) of the Statutory Sick Pay (Medical Evidence) Regulations 1985 (medical information)(**55**).

(3) The agreement must contain a term which has the effect of permitting the provider's obligation to issue any medical certificate prescribed in column 1 of schedule 4 of the GMS Contracts Regulations to be discharged on behalf of the provider by an alternative provider for the relevant medical certificate.

(4) In this regulation, "alternative provider" means another health care professional(**56**) who falls within the description of alternative providers specified in column 3 of schedule 4 of the GMS Contracts Regulations in relation to the relevant medical certificate prescribed in column 1 of that schedule.

Additional obligations in relation to practice premises

21.—(1) A provider who receives financial assistance must comply with the obligations set out in schedule 4 throughout the period that the provider receives that assistance and a term to this effect must be included in the agreement.

(2) In this regulation, "financial assistance" means financial assistance from a Health Board or the Scottish Ministers in the form of—

- (a) a recurring payment to the provider of—
 - (i) the provider's owner-occupier borrowing costs;
 - (ii) notional rent payments as an owner-occupier; or
 - (iii) reimbursement of the provider's rent payments;
 in accordance with directions under sections 2(5) and 17E(3A) of the Act(**57**); or
- (b) a loan secured over the practice premises.

Finance

22.—(1) Subject to paragraph (2), the agreement must contain a term which has the effect of requiring the Health Board to make payments to the provider under the agreement promptly and in accordance with both the terms of the agreement and, as respects the provision or performance of primary medical services, any other conditions relating to the payment contained in directions by the Scottish Ministers under section 17E(3A) of the Act.

(2) The obligation referred to in paragraph (1) is subject to any right the Health Board may have to set off, against any amount payable to the provider under the agreement, any amount—

- (a) that is owed by the provider to the Health Board under the agreement; or
- (b) that the Health Board may withhold from the provider in accordance with the terms of the agreement or any other applicable provisions contained in directions given by the Scottish Ministers under section 17E(3A) of the Act.

Finance

23. An agreement must contain a term to the effect that where, pursuant to directions of the Scottish Ministers under section 2(5) or section 17E(3A) of the Act, a Health Board is required to

(54) S.I. 1976/615. Regulation 2(1) was substituted by S.I. 2010/137.

(55) S.I. 1985/1604. Regulation 2(1) was substituted by S.I. 2010/137.

(56) "Health care professional" includes nurses and midwives registered with the Nursing and Midwifery Council.

(57) Section 2(5) was amended by paragraph 19 of schedule 9 of the National Health Service and Community Care Act 1990 (c.19). Section 17E(3A) was inserted by section 2(4) of the Primary Medical Services (Scotland) Act 2004.

make a payment to a provider under an agreement but subject to conditions, those conditions are to be a term of the agreement.

Fees and charges

24.—(1) An agreement must contain terms relating to fees and charges to the effect that, subject to the provisions of paragraph 5 of schedule 2, the provider must not, directly or indirectly, demand or accept a fee or other remuneration from any patient of the provider for—

- (a) the provision of any treatment whether under the agreement or otherwise; or
- (b) any prescription for any drug, medicine or appliance,

except in the circumstances set out in paragraph (1)(a) to (d) and paragraph (1)(f) to (j) of schedule 5 (Fees and Charges) of the GMS Contracts Regulations, subject to paragraph (2) of this regulation.

(2) The modifications, referred to in paragraph (1), of paragraph (1)(a) to (d) and paragraph (1)(f) to (j) of schedule 5 (Fees and Charges) of the GMS Contracts Regulations, are—

- (a) for “contractor” read “provider” in each place where it occurs; and
- (b) for “contract” read “agreement” in each place where it occurs.

Implied agreement terms

25.—(1) Where an agreement fails to include any required term, such a term is to be an implied term of the agreement.

(2) An agreement must contain terms which have the effect that—

- (a) where, or to the extent that, a term is a required term and such a term is omitted, either in whole or in part, from the express terms of the agreement; and
- (b) as a result, the agreement does not expressly include that required term in full,

that required term, to the extent that it was omitted from the express terms of the agreement, is to be an implied term of the agreement.

(3) In the event of, and only to the extent of, any conflict between any term that must be implied in accordance with this regulation, the clauses of the agreement and the schedules of the agreement, the following order of precedence applies:

- (a) any required term that is implied in accordance with this regulation;
- (b) the clauses of the agreement; and
- (c) the schedules of the agreement.

(4) A “required term” is any term which is required to be included in the agreement by virtue of these Regulations, including any term which is required by an amendment, extension, re-enactment, or consolidation of these Regulations, whether before or after the commencement of the agreement.

PART 6

FUNCTIONS OF AREA MEDICAL COMMITTEE

Functions of area medical committee

26.—(1) The functions of an area medical committee which are prescribed for the purposes of section 9(6) of the Act (local consultative committees) are—

- (a) the functions which are conferred upon it by these Regulations or by any order made under section 7 of the 2004 Act;

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- (b) the making of arrangements for the medical examination of a medical practitioner specified in paragraph (2), where the provider or the Health Board is concerned that the medical practitioner is incapable of adequately providing services under the agreement and the provider or the Health Board so requests with the agreement of the medical practitioner concerned;
 - (c) the consideration of the report of any medical examination arranged in accordance with sub-paragraph (b) and the making of a written report as to the capability of the medical practitioner of adequately providing services under the agreement to the medical practitioner concerned, the provider and the Health Board with whom the provider has the agreement;
 - (d) the making of all necessary arrangements and performance of all functions reasonably required to set up, support and facilitate any improvement or quality arrangement of a cluster or any other person as required by any directions given by Scottish Ministers under section 2(5) of the Act~~(58)~~; and
 - (e) the making of all necessary arrangements and performance of all necessary functions reasonably required to support and facilitate local dispute resolution processes in its area, including any local dispute resolution process relating to remuneration and conditions of service.
- (2) The medical practitioner referred to in paragraph (1)(b) is a medical practitioner who is—
- (a) a party to the agreement;
 - (b) a partner in a partnership that is a party to the agreement;
 - (c) a member of a limited liability partnership that is a party to the agreement; or
 - (d) a member of a company that is a party to the agreement.

PART 7

RIGHT TO A GENERAL MEDICAL SERVICES CONTRACT

Right to a general medical services contract

27.—(1) A provider which is providing essential services under an agreement and which wishes a general medical services contract to be entered into pursuant to this regulation must notify the Health Board in writing at least three months before the date on which it wishes the general medical services contract to be entered into.

- (2) A notice under paragraph (1) must—
- (a) state that the provider wishes to terminate the agreement and the date on which the provider wishes the agreement to terminate, which must be at least three months after the date of service of the notice;
 - (b) subject to paragraph (3), give the name of the person with whom the provider wishes the Health Board to enter into a general medical services contract; and
 - (c) confirm that the person so named meets the conditions set out in—
 - (i) section 17L of the Act (eligibility to be contractor under general medical services contract)~~(59)~~; and

~~(58)~~ Section 2(5) was amended by paragraph 19 of schedule 9 of the National Health Service and Community Care Act 1990.

~~(59)~~ Section 17L was inserted by section 4 of the Primary Medical Services (Scotland) Act 2004 ([asp 1](#)) and substituted by section 39 of the Tobacco and Primary Medical Services (Scotland) Act 2010 ([asp 3](#)).

(ii) regulations 5 (conditions relating solely to medical practitioners) and 6 (general conditions relating to all contracts) and 7 (further conditions relating to all contracts) of the GMS Contracts Regulations,

where the provider is not able to confirm, the reason why it is not able to do so and confirmation that the person immediately prior to entering into the general medical services contract will meet those conditions.

(3) A person's name may only be given in a notice referred to in paragraph (1) if that person is a party to the agreement.

(4) The Health Board must acknowledge receipt of the notice served under paragraph (1) within the period of 7 days beginning on the day that it received the notice.

(5) Provided that the conditions set out in section 17L of the Act and regulations 4, 5 and 6 of the GMS Contracts Regulations are met, the Health Board must enter into a general medical services contract with the person named in the notice served under paragraph (1).

(6) In addition to the terms required by the Act and the GMS Contracts Regulations, a general medical services contract entered into pursuant to this regulation must provide for—

- (a) the general medical services contract to commence immediately after the termination of the agreement;
- (b) the names of the patients included in the provider's list of patients immediately before the termination of the agreement to be included in the first list of patients to be prepared and maintained by the Health Board pursuant to paragraph 11 of schedule 6 of the GMS Contracts Regulations; and
- (c) the same services to be provided under the general medical services contract as were provided under the agreement immediately before it was terminated unless the parties otherwise agree.

(7) An agreement will terminate on the date stated in the notice given by the provider under paragraph (1) unless a different date is agreed by the provider and the Health Board or no general medical services contract is entered into by the Health Board pursuant to this regulation.

(8) Where the Health Board is of the view that the conditions in section 17L of the Act or regulations 4, 5 or 6 of the GMS Contracts Regulations are not met it must notify in writing the provider of its view, and its reasons for that view, and of the provider's right of appeal under subparagraph (9).

(9) The provider may appeal to the Scottish Ministers against the decision of the Health Board by giving notice in writing to the Scottish Ministers within the period of 28 days beginning on the day that the Health Board served its notice.

(10) Any other dispute relating to this regulation may be referred by the prospective party to the general medical services contract or the Health Board to the Scottish Ministers to consider and determine the matter in accordance with regulations 12(2) and (3) of the GMS Contracts Regulations.

PART 8

TRANSITIONAL PROVISIONS

Out of Hours

28.—(1) Where on 31st March 2018 an agreement included a requirement to provide out of hours services pursuant to regulation 13 of the 2004 Regulations—

- (a) the agreement must continue to require the provider to provide out of hours services; and

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(b) despite the revocation of the 2004 Regulations, the provisions of the 2004 Regulations referred to in paragraph (2) will continue to have effect in relation to that agreement on and after 1st April 2018 as they had effect immediately before that date, until one of the end dates in paragraph (3) occurs.

(2) The provisions of the 2004 Regulations are—

- (a) regulation 2, only in so far as that regulation relates to the definitions for “out of hours period” and “out of hours services”;
- (b) regulations 9(d) and 13;
- (c) paragraphs 6 and 7 of schedule 1;
- (d) schedule 4; and
- (e) paragraph 17 of schedule 6.

(3) The end dates referred to in paragraph (1) are—

- (a) where on or after 1st April 2018, a provider serves on the Health Board a written notice stating that the provider wishes to terminate its obligation to provide out of hours services under its agreement, the end date is the date 9 months after the date of service of the notice or such earlier date as the Health Board and the provider agree; and
- (b) where on or after 1st April 2018, the provider enters into an alternative arrangement with the Health Board to provide out of hours services, the end date is the date the provider commences providing out of hours services under the alternative arrangement, or such other date as the Health Board and the provider agree.

(4) The provider’s duty to provide out of hours services under the agreement will terminate with effect from 0800 hours on the end date specified in paragraph (3) unless the Health Board and the provider agree a different date or time.

(5) Nothing in ^{F15}...paragraphs (1) to (4) prevents the provider and the Health Board from agreeing a different date for the termination of the provider’s duty under the agreement to provide out of hours services and accordingly varying the agreement in accordance with paragraph 61(1) of schedule 1.

(6) Prior to the provider’s duty to provide out of hours services under the agreement ceasing, the Health Board and the provider must discuss how to inform patients of any change to the out of hours services which the provider provides.

(7) The provider must, if requested by the Health Board, inform the provider’s registered patients of the change in service by the provider and the arrangements made for them to receive out of hours services by—

- (a) placing a notice in the practice’s waiting room; and
- (b) including the information in the practice leaflet.

F15 Word in reg. 28(5) omitted (1.4.2018) by virtue of [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, 14

Revocations

29. The enactments specified in column 1 of schedule 7 are hereby revoked to the extent specified in column 3 of that schedule.

Consequential amendments

30. Schedule 8 (consequential amendments) has effect.

St Andrew's House,
Edinburgh

AILEEN CAMPBELL
Authorised to sign by the Scottish Ministers

Status:

Point in time view as at 25/05/2018.

Changes to legislation:

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