



# Primary Medical Services (Scotland) Act 2004 2004 asp 1

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 18th December 2003 and received Royal Assent on 27th January 2004**

An Act of the Scottish Parliament to make provision in relation to the provision of primary medical services; and for connected purposes.

VALID FROM 13/02/2004

## PART 1

### PROVISION OF PRIMARY MEDICAL SERVICES

#### *Health Boards' functions*

#### **1 Health Boards' functions: provision of primary medical services**

- (1) The National Health Service (Scotland) Act 1978 (c. 29) (referred to in this Act as “the 1978 Act”) is amended as follows.
- (2) After section 2 (constitution of Health Boards) insert—

#### **“2C Functions of Health Boards: primary medical services**

- (1) Every Health Board—
  - (a) must, to the extent that they consider necessary to meet all reasonable requirements, provide or secure the provision of primary medical services as respects their area; and
  - (b) may, to such extent, provide or secure the provision of primary medical services as respects the area of another Health Board,and primary medical services provided, or the provision of which is secured, by a Health Board under or by virtue of this subsection may be performed outside their area.

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- (2) For the purpose of securing the provision of primary medical services under subsection (1), a Health Board may make such arrangements for the provision of the services as they think fit (and may in particular make contractual arrangements with any person).
  - (3) A Health Board must publish information about such matters as may be prescribed in relation to the primary medical services provided under this Part.
  - (4) Without prejudice to section 13, Health Boards must co-operate with one another in discharging their respective functions relating to the provision of primary medical services under this Part.
  - (5) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary medical services for the purposes of this Act.
  - (6) Such regulations may in particular describe services by reference to the manner or the circumstances in which they are provided.
  - (7) Arrangements made under this Part by a Health Board for the provision of primary medical services may provide for such services to be performed outside Scotland.
  - (8) Anything done by a Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on the Health Board by an order under section 2(1)(a)."
- (3) In section 18, the words “general medical,” are repealed.

#### *Section 17C arrangements*

## **2 Provision of primary medical services: section 17C arrangements**

- (1) The 1978 Act is amended as follows.
- (2) In section 17C (agreements by Health Boards for provision by others of personal medical services etc.)—
  - (a) in subsections (1)(a) and (2)(a) and (b)(i), for the words “personal medical services”, in each place where they occur, substitute “ primary medical services ”,
  - (b) in subsection (2), for “; but (b)” substitute—
 

“(2A) An agreement made under this section—

    - (a) for the provision of primary medical services may include arrangements for the provision of services which are not primary medical services and may provide for such other services to be performed in any place where, by virtue of section 2C, primary medical services may be performed;
    - (b) for the provision of personal dental services”,
  - (c) subsection (3)(a) is repealed,
  - (d) in subsection (4), the words “personal medical services or” are repealed,
  - (e) in subsection (6), the definition of “personal medical services” is repealed.
- (3) In section 17D (persons with whom agreement under section 17C may be made)—

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- (a) for paragraph (b) of subsection (1) substitute—
- “(b) in the case of an agreement under which primary medical services are provided—
- (i) a medical practitioner who satisfies the prescribed conditions;
  - (ii) a health care professional who satisfies the prescribed conditions;
  - (iii) a person who is providing primary medical services in accordance with a general medical services contract;
  - (iv) a person who is providing primary medical services in accordance with a section 28Q contract or an individual who is providing general medical services in accordance with Article 56 of the 1972 Order;
  - (v) a person who is providing primary medical services in accordance with section 17C arrangements or section 28C arrangements or personal medical services in accordance with Article 15B arrangements;
  - (vi) an individual who is providing general dental services;
  - (vii) a person who is providing primary dental services in accordance with a section 28K contract or an individual who is providing general dental services in accordance with Article 61 of the 1972 Order;
  - (viii) a person who is providing personal dental services in accordance with section 17C arrangements;
  - (ix) a person who is providing primary dental services in accordance with section 28C arrangements or personal dental services in accordance with Article 15B arrangements;”
- (b) in paragraph (d) of that subsection leave out “or a section 28C employee” and insert “, a section 28C employee or (in the case of an agreement under which primary medical services are provided) an Article 15B employee ”,
- (c) after that subsection insert—
- “(1A) The power under subsection (1) to make an agreement with a person or, as the case may be, an individual falling within paragraph (b)(iii) to (ix), or (in the case of an agreement under which primary medical services are provided) paragraph (d) or (e), of that subsection is subject to such conditions as may be prescribed.
- (1B) In relation to an agreement under section 17C under which primary medical services are provided which is entered into with a partnership, regulations may make provision as to the effect on the agreement of a change in the membership of the partnership.”
- (d) in subsection (2)—
- (i) after “section” in the first place where it occurs insert—

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““the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972 (1972 No. 1256 (N.I. 14));”

(ii) after the definition of “the 1977 Act” insert—

““Article 15B arrangements” means arrangements for the provision of services made under Article 15B of the 1972 Order;

“Article 15B employee” means an individual who, in connection with the provision of services in accordance with Article 15B arrangements, is employed by a person providing those services;

“health care professional” means a member of a profession which is regulated by a body mentioned (at the time the agreement in question is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17);

“Local Health Board” has the same meaning as in the 1977 Act;”

(iii) in the definition of “NHS employee”, after “Wales” insert “ or, in relation to paragraph (b) below, Northern Ireland ”,

(iv) in that definition, for paragraph (b) substitute—

“(b) in the case of an agreement under which primary medical services are provided—

(i) a Health Board;

(ii) a Primary Care Trust or a Local Health Board;

(iii) an NHS trust, an NHS foundation trust or (in Northern Ireland) a Health and Social Services Trust;

(iv) a person who is providing primary medical services in accordance with a general medical services contract or a section 28Q contract or an individual who is providing general medical services in accordance with Article 56 of the 1972 Order;

(v) an individual who is providing general dental services;

(vi) a person who is providing primary dental services in accordance with a section 28K contract or an individual who is providing general dental services in accordance with Article 61 of the 1972 Order;

and in this paragraph NHS foundation trust, NHS trust and Primary Care Trust have the same meanings as in the 1977 Act;”

(v) the definition of “qualifying medical practitioner” is repealed,

(vi) in each of the definitions of “section 17C employee” and “section 28C employee”, for “an individual providing those services” substitute—

“(a) where the arrangements are for the provision of primary medical services, a person providing services in accordance with the arrangements;

(b) where the arrangements are for the provision of personal dental services, an individual providing services in accordance with the arrangements”;

(vii) after the definition of “section 28C employee” insert—

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““section 28K contract” means a general dental services contract under section 28K of the 1977 Act; and

“section 28Q contract” means a general medical services contract under section 28Q of the 1977 Act.”,

(e) after that subsection insert—

“(3) The references in subsection (1)(b)(iii) to (ix) to a person or individual who is providing services include a person or, as the case may be, an individual who has provided them within such period as may be prescribed.”

(4) In section 17E (regulations concerning section 17C arrangements)—

(a) in subsection (2)(b), the words “medical practitioners performing personal medical services, and” are repealed,

(b) in subsection (3)—

(i) after paragraph (c) insert—

“(ca) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons performing primary medical services in accordance with section 17C arrangements;

(cb) provide for the circumstances in which a person providing primary medical services under section 17C arrangements—

(i) must, or may, accept a person as a patient to whom such services are provided under section 17C arrangements;

(ii) may decline to accept a person as such a patient;

(iii) may terminate responsibility for a patient;

(cc) make provision as to the right of patients to choose the persons from whom they are to receive primary medical services under section 17C arrangements;”,

(ii) paragraphs (f) and (g) are repealed,

(c) after that subsection insert—

“(3A) The regulations may also require payments to be made as respects the provision or performance of primary medical services under section 17C arrangements in accordance with directions given for the purpose by the Scottish Ministers.

(3B) A direction under subsection (3A) may make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.

(3C) The regulations may also include provision requiring a Health Board, in prescribed circumstances and subject to prescribed conditions, to enter into a general medical services contract on prescribed terms with any person providing services under section 17C arrangements who so requests.

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(3D) The regulations may make provision for the resolution of disputes as to the terms of any proposed section 17C arrangements for the provision of primary medical services, including, without prejudice to that generality, provision for—

- (a) the referral of the terms of the proposed arrangements to the Scottish Ministers; and
- (b) the Scottish Ministers, or a person or panel of persons appointed by them, to determine the terms on which the arrangements may be made.”,
- (d) subsections (5) and (7) are repealed,
- (e) in subsection (6), for “personal medical services” substitute “ primary medical services ”.

(5) Section 17H (immunisation under section 17C arrangements) is repealed.

VALID FROM 01/04/2004

*Pilot schemes*

**3 Revocation of power to make pilot schemes**

The power of a Health Board under Part I of the National Health Service (Primary Care) Act 1997 (c. 46) to make pilot schemes for the provision of personal medical services ceases to have effect.

*General medical services contracts*

**4 Provision of primary medical services: general medical services contracts**

After section 17I of the 1978 Act insert—

*“General medical services contracts*

**17J Health Boards' power to enter into general medical services contracts**

- (1) A Health Board may enter into a contract under which primary medical services are provided (whether directly or indirectly) by a contractor in accordance with the provisions of this Part.
- (2) A contract under this section is referred to in this Act as a “general medical services contract”.
- (3) Subject to any provision made by or under this Part, a general medical services contract may make such provision as may be agreed between the Health Board and the contractor as respects—
  - (a) the services to be provided under the contract;
  - (b) the remuneration to be paid under the contract; and

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(c) any other matters.

- (4) The services to be provided under a general medical services contract may include services which are not primary medical services; and the contract may provide for such other services to be performed in any place where, by virtue of section 2C, primary medical services may be performed.
- (5) In this Part, “contractor”, in relation to a general medical services contract with a Health Board, means the other party to the contract.

### **17K Mandatory contract term: provision of prescribed primary medical services**

- (1) A general medical services contract must require the contractor to provide for the contractor’s patients primary medical services of such descriptions as may be prescribed.
- (2) Regulations under subsection (1) may in particular describe the primary medical services by reference to the manner or circumstances in which they are provided.

### **17L Eligibility to be contractor under general medical services contract**

- (1) A Health Board may, subject to such conditions as may be prescribed, enter into a general medical services contract with—
- (a) a medical practitioner;
  - (b) a partnership, where the conditions mentioned in subsection (2) are satisfied; or
  - (c) a company limited by shares, where the conditions in subsection (3) are satisfied.
- (2) The conditions referred to in subsection (1)(b) are that—
- (a) all of the partners are individuals;
  - (b) at least one partner is a medical practitioner; and
  - (c) any partner who is not a medical practitioner is—
    - (i) an NHS employee;
    - (ii) a section 17C employee;
    - (iii) a section 28C employee or an Article 15B employee;
    - (iv) a health care professional who is engaged in the provision of services under this Act, the 1977 Act or the 1972 Order;
    - (v) an individual who is providing primary medical services in accordance with a general medical services contract;
    - (vi) an individual who is providing primary medical services in accordance with a section 28Q contract or general medical services in accordance with Article 56 of the 1972 Order;
    - (vii) an individual who is providing primary medical services in accordance with section 17C arrangements or section 28C arrangements or personal medical services in accordance with Article 15B arrangements;
    - (viii) an individual who is providing general dental services;

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- (ix) an individual who is providing primary dental services in accordance with a section 28K contract or general dental services in accordance with Article 61 of the 1972 Order;
  - (x) an individual who is providing personal dental services in accordance with section 17C arrangements; or
  - (xi) an individual who is providing primary dental services in accordance with section 28C arrangements or personal dental services in accordance with Article 15B arrangements.
- (3) The conditions referred to in subsection (1)(c) are that—
- (a) at least one share in the company is legally and beneficially owned by a medical practitioner; and
  - (b) any share which is not so owned is legally and beneficially owned by an individual referred to in subsection (2)(c)(i) to (xi).
- (4) Regulations may make provision as to the effect on a general medical services contract entered into with a partnership of a change in the membership of the partnership.
- (5) In this section—
- “health care professional” means a member of a profession regulated by a body mentioned (at the time the contract in question is entered into) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17);
- “NHS employee” has the same meaning as it has in section 17D in relation to an agreement under which primary medical services are provided;
- “the 1972 Order”, “the 1977 Act”, “Article 15B arrangements”, “Article 15B employee”, “section 17C arrangements”, “section 17C employee”, “section 28C arrangements”, “section 28C employee”, “section 28K contract” and “section 28Q contract” each has the same meaning as in section 17D.
- (6) The references in—
- (a) subsection (2)(c)(iv) to a health care professional who is engaged in the provision of services include a health care professional who has been so engaged;
  - (b) subsection (2)(c)(v) to (xi) to a person or individual who is providing services include a person or individual who has provided the services,
- within such period as may be prescribed.

### **17M Payments by Health Boards under general medical services contracts**

- (1) The Scottish Ministers may give directions as to payments to be made under general medical services contracts.
- (2) A general medical services contract must require payments to be made under it in accordance with directions for the time being in force under this section.
- (3) A direction under subsection (1) may in particular—



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- (a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;
  - (b) provide for payments to be made by reference to—
    - (i) any scheme or scale specified in the direction;
    - (ii) a determination made by any person in accordance with factors specified in the direction;
  - (c) provide for the making of payments in respect of individual practitioners;
  - (d) provide that the whole or any part of a payment is subject to conditions (including a condition that the whole or any part of a payment is liable to be paid by a Health Board only if they are satisfied as to such conditions as may be specified in the direction);
  - (e) make provision having effect from a date before the date of the direction, provided that, having regard to the direction as a whole, the provision is not detrimental to the persons to whose remuneration it relates.
- (4) Before giving a direction under subsection (1), the Scottish Ministers—
- (a) must consult any body appearing to them to be representative of persons to whose remuneration the direction would relate; and
  - (b) may consult such other persons as they think appropriate.
- (5) References in this section to payments include fees, allowances, reimbursements, loans and repayments.

#### **17N Other mandatory contract terms**

- (1) A general medical services contract must include (in addition to provisions required by or under other provisions of this Part) such provision as may be prescribed.
- (2) Regulations under subsection (1) may in particular make provision as to—
- (a) the manner in which, and the standards to which, services must be provided;
  - (b) the persons who are to perform services;
  - (c) the persons to whom services are to be provided;
  - (d) the right of patients to choose the persons from whom they are to receive services;
  - (e) the variation of terms of the contract (except terms required by or under this Part);
  - (f) rights of entry and inspection (including inspection of clinical records and other documents);
  - (g) the circumstances in which, and the manner in which, the contract may be terminated;
  - (h) enforcement;
  - (i) the adjudication of disputes.
- (3) Regulations making provision in pursuance of subsection (2)(c) may make provision as to the circumstances in which a contractor—
- (a) must, or may, accept a person as a patient to whom services are provided under the contract;

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- (b) may decline to accept a person as such a patient; or
  - (c) may terminate the contractor's responsibility for a patient.
- (4) Regulations making provision in pursuance of subsection (2)(e) may—
- (a) make provision as to the circumstances in which a Health Board may unilaterally vary the terms of a contract;
  - (b) make provision suspending or terminating any duty under the contract to provide services of a prescribed description.
- (5) Regulations making provision of the kind described in subsection (4)(b) may prescribe services by reference to the manner or circumstances in which they are provided.
- (6) A general medical services contract must contain provision requiring the contractor to comply with any directions given by the Scottish Ministers for the purposes of this section as to the drugs, medicines or other substances which may, or may not, be ordered for patients in the provision of primary medical services under the contract.

#### **170 Resolution of disputes and entry into NHS contracts**

- (1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general medical services contract, including, without prejudice to that generality, provision for—
- (a) the referral of the terms of the proposed contract to the Scottish Ministers; and
  - (b) the Scottish Ministers, or a person or panel of persons appointed by them, to determine the terms on which the contract may be entered into.
- (2) Regulations may make provision for any person entering, or who has entered, into a general medical services contract to be regarded as a health service body for any purposes of section 17A, in circumstances where the person so elects.
- (3) Where a person is to be regarded as a health service body for any purposes of section 17A by reason only of an election by virtue of subsection (2) of this section, that section has effect in relation to that person with the omission of the words “under any enactment” in subsection (1) and with such other modifications (if any) as may be prescribed.
- (4) Regulations under subsection (2) may include provision as to the application of section 17A in cases where—
- (a) a partnership is to be regarded as a health service body; and
  - (b) there is a change in the membership of the partnership.”

#### *Persons performing primary medical services*

### **5 Persons performing primary medical services**

- (1) The 1978 Act is amended as follows.
- (2) After section 17O (as inserted by section 4 above) insert—

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### *“Persons performing primary medical services*

#### **17P Persons performing primary medical services**

- (1) Regulations may provide that a health care professional of a prescribed description may not perform any primary medical service which a Health Board is, under section 2C(1), under a duty to provide or secure the provision of unless that professional is included in a list maintained under the regulations by the Health Board.
  - (2) For the purposes of this section, “health care professional” means a member of a profession regulated by a body for the time being mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c. 17).
  - (3) Regulations under subsection (1) may make provision in relation to such lists and in particular as to—
    - (a) the preparation, maintenance and publication of a list;
    - (b) eligibility for inclusion in a list;
    - (c) applications for inclusion (including provision for the procedure for applications to be made and dealt with and the documents to be supplied on application);
    - (d) the grounds on which an application for inclusion may or must be granted or refused;
    - (e) requirements with which a person included in a list must comply (including requirements as to standards of performance and patient care and as to declarations, consents or undertakings);
    - (f) suspension or removal from a list (including the grounds for and consequences of suspension or removal);
    - (g) circumstances in which a person included in a list may not withdraw from it;
    - (h) payments to be made by a Health Board in respect of a person suspended from the list (including provision for the amount of, or the method of calculating, the payment to be determined by the Scottish Ministers);
    - (i) the criteria to be applied in making decisions under the regulations;
    - (j) appeals against decisions made by a Health Board under the regulations;
    - (k) disclosure of information about applicants for inclusion, refusals of applications, or suspensions, removals or references to the Tribunal.
  - (4) Regulations making provision as to the matters referred to in subsection (3)
    - (k) may in particular authorise the disclosure of information—
      - (a) by a Health Board to the Scottish Ministers; and
      - (b) by the Scottish Ministers to a Health Board.”
- (3) In section 29 (the NHS Tribunal)—
- (a) in subsection (6), after “list” in the second place where it occurs insert—
    - “(a) in relation to a list referred to in subsection (8)(a), perform or undertake to provide;

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- (b) in relation to any other list referred to in subsection (8),”,
- (b) for paragraphs (a) and (aa) of subsection (8) substitute—
  - “(a) a list of health care professionals of a prescribed description performing primary medical services;”,
- (c) after that subsection insert—
  - “(8A) In subsection (8)(a), “health care professional” has the same meaning as in section 17D.”

VALID FROM 01/04/2004

### *Assistance and support*

## **6 Assistance and support**

After section 17P (as inserted by section 5 above) insert—

### **“17Q Assistance and support**

- (1) A Health Board may provide assistance and support to—
  - (a) any person providing, or proposing to provide, primary medical services under a general medical services contract;
  - (b) any person providing, or proposing to provide, such services in accordance with section 17C arrangements.
- (2) Assistance and support provided by a Health Board under subsection (1) is to be provided on such terms, including terms as to payment, as the Board think fit.
- (3) In this section, “assistance” includes financial assistance.”

## **PART 2**

### **GENERAL**

## **7 Ancillary provision**

- (1) The Scottish Ministers may by order made by statutory instrument make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act, including provision in consequence of changes to the law applicable to Northern Ireland corresponding to the changes made to the 1978 Act by this Act.
- (2) An order under this section may—
  - (a) make different provision for different purposes,
  - (b) modify any enactment, instrument or document.
- (3) An order under this section making provision in respect of persons who, immediately before the coming into force of section 4 are providing services under section 19 of

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the 1978 Act (general medical services), may make provision in respect of a period beginning before the coming into force of the provision (or of section 4), provided that the provision is not as a whole detrimental to the remuneration of the persons to whom it relates.

(4) An order under this section (except where subsection (5) applies) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) No order under this section—

- (a) containing provisions which add to, replace or omit any part of the text of an Act,
- (b) making provision referred to in subsection (3),

is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

VALID FROM 13/02/2004

## **8 Modification of enactments**

The schedule makes modifications of enactments in consequence of this Act.

## **9 Commencement and short title**

- (1) The provisions of this Act, except section 7 and this section, come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.
- (2) Different days may be appointed under this section for different purposes.
- (3) This Act may be cited as the Primary Medical Services (Scotland) Act 2004.

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VALID FROM 13/02/2004

SCHEDULE

*(introduced by section 8)*

MODIFICATION OF ENACTMENTS

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