

SCOTTISH STATUTORY INSTRUMENTS

**2018 No. 66**

**The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018**

**PART 1**

**GENERAL**

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018.

(2) <sup>F1</sup>...These Regulations come into force on 1st April 2018.

<sup>F2</sup>(3) .....

**Textual Amendments**

**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. 423\(2\)](#) (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. 423\(3\)](#) (with ss. 117, 209, 210); S.I. 2018/625, [reg. 2\(1\)\(g\)](#)

**Application**

**2.** These Regulations apply to a contract—

(a) to which the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(1) applied immediately before 1st April 2018; or

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

**Interpretation**

**3.**—(1) In these Regulations—

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

<sup>F3</sup> ...

“the 2004 Act” means the Primary Medical Services (Scotland) Act 2004(2);

(1) [S.S.I. 2004/115](#), as amended by paragraph 18 of schedule 4 of the [Charities and Trustee Investment \(Scotland\) Act 2005 \(asp 10\)](#), and by [S.S.I. 2004/142](#), [S.S.I. 2004/162](#), [S.S.I. 2004/163](#), [S.S.I. 2004/215](#), [S.S.I. 2005/337](#), [S.S.I. 2006/247](#), [S.S.I. 2007/206](#), [S.S.I. 2007/392](#), [S.S.I. 2007/501](#), [S.S.I. 2009/183](#), [S.I. 2010/231](#), [S.I. 2010/234](#), [S.S.I. 2010/93](#), [S.S.I. 2010/394](#), [S.S.I. 2011/32](#), [S.S.I. 2011/55](#), [S.S.I. 2011/211](#), [S.S.I. 2012/9](#), [S.S.I. 2012/36](#), [S.I. 2012/1479](#), [S.I. 2012/1916](#), [S.I. 2013/235](#), [S.S.I. 2014/73](#), [S.S.I. 2014/148](#), [S.I. 2014/1887](#), [S.S.I. 2016/393](#) and [S.I. 2016/696](#).

(2) 2004 asp 1.

“the 2004 Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004;

“the 2010 Order” means the Postgraduate Medical Education and Training Order of Council 2010(3);

“additional services” means one or more of—

- (a) cervical screening services;
- (b) contraceptive services;
- (c) <sup>F4</sup> ...
- (d) <sup>F4</sup> ...
- (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 91 of schedule 6;

“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 23rd July 2014 on electronic identification and trust services for electronic transactions in the internal market(4) and repealing [Directive 1993/93/EC](#);

“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(5);

“area medical committee” means the committee of that name recognised under section 9 of the Act(6) (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 subcommittee of a Health Board (“the first Health Board”) (other than the Health Board (“the second Health Board”) which is a party or prospective party to the contract in question) appointed by the first Health Board at the request of the second Health Board to exercise functions under paragraph 2 or 3 of schedule 2 or paragraph 28, 32, or 37 of schedule 6 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;

“care home service” has the same meaning as in paragraph 2 of schedule 12 of the Public Services Reform (Scotland) Act 2010(7);

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(3) [S.I. 2010/473](#).

(4) 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.

(5) Section 27(1) was amended by section 20 of the Health Services Act 1980, paragraph 19 of the National Health Service and Community Care Act 1990 (“the 1990 Act”), section 3 of the Medicinal Products: Prescription by Nurses etc. Act 1992 (c.28), paragraph 44 of schedule 2 of the National Health Service (Primary Care) Act 1997 and section 44 of the Health and Social Care Act 2001 (c.15).

(6) Section 9 was amended by section 29(5) of the 1990 Act and paragraph 43 of the Health Act 1999.

(7) [2010 asp 8](#).

“CCT” means a Certificate of Completion of Training awarded under section 34L(1) of the Medical Act 1983<sup>(8)</sup>, including any such certificate awarded in pursuance of the competent authority functions of the General Medical Council specified in section 49B and schedule 4A of that Act<sup>(9)</sup>;

“cervical screening services” means the services described in paragraph 2(2) of schedule 1;

“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 1;

F5  
...

F6  
...

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

[<sup>F7</sup>“community treatment and care” includes phlebotomy, chronic disease monitoring, the collection of biometric information, attending to minor injuries, changing dressings, suture removal and ear syringing;

“community treatment and care services” means the provision of community treatment and care to the contractor’s patients;]

“conditional disqualification” has the same meaning as in section 29C(1) of the Act<sup>(10)</sup> 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 1;

“contract” means, except where the context otherwise requires, a general medical services contract under section 17J of the Act<sup>(11)</sup> (Health Boards’ power to enter into general medical services contracts);

“contractor” means a person with whom a Health Board enters into a contract;

“contractor’s list of patients” means the list prepared and maintained by a Health Board under paragraph 11 of schedule 6;

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

[<sup>F8</sup>“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;

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(8) 1983 c.54. Section 34 was inserted by S.I. 2010/234.

(9) Section 49B was inserted by S.I. 2007/3101 and was amended by S.I. 2008/1774 and S.I. 2010/234. Schedule 4A was inserted by S.I. 2007/3101 and was amended by S.I. 2010/234 and S.I. 2016/1030.

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

(11) Section 17J was inserted by section 4 of the Primary Medical Services (Scotland) Act 2004.

“Drug Tariff” means the statement published under regulation 12 (payments to pharmacy contractors 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<sup>(12)</sup>;

“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)<sup>(13)</sup> of the Electronic Communications Act 2000;

“enhanced services” are—

- (a) services other than essential services<sup>[F9]</sup>,] additional services [<sup>F10</sup>or vaccination services]; or
- (b) [<sup>F11</sup>in respect of] essential services<sup>[F12]</sup>,] additional services or an element of such a service that a contractor agrees under the contract to provide in accordance with specifications set out in a plan, which requires of the contractor an enhanced level of service provision compared to that which it 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 required to be provided in accordance with regulation 18;

<sup>F13</sup>  
...

“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;

“global sum” has the meaning given to it in the GMS Statement of Financial Entitlements;

“GMS Statement of Financial Entitlements” means the directions given by the Scottish Ministers under section 17M of the Act<sup>(14)</sup> (payments by Health Boards under general medical services contracts);

“GP Registrar” means a medical practitioner who is being trained in general practice by a general medical practitioner who is approved under section 34I<sup>(15)</sup> of the Medical Act 1983 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<sup>(16)</sup> and renamed by section 1(3) of the Health and Social Care (Reform) Act (Northern Ireland) 2009<sup>(17)</sup>;

“Health Board” means, unless the context otherwise requires, the Health Board which is a party, or prospective party, to a contract [<sup>F14</sup>and a reference to “the Board” is to be construed accordingly];

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(12) 2000 c.7. Section 15 was amended by paragraph 158 of schedule 17 of the Communications Act 2003 (c.21).

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

(14) Section 17M was inserted by section 4 of the Primary Medical Services (Scotland) Act 2004. Directions are normally given before the beginning of the financial year to which they are to apply and will be available on <http://www.show.scot.nhs.uk>.

(15) Section 34I was inserted by S.I. 2010/234.

(16) 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).

(17) 2009 c.1.

“health care professional” has the same meaning as in section 17L(8) of the Act 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 (NHS contracts)(**18**) and includes, except where otherwise expressly provided, any person who is to be regarded as a health service body in accordance with regulation 13;

“immediate family member” means—

- (a) a spouse or civil partner;
- (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(**19**); or
- (g) a grandparent;

“independent nurse prescriber” means a person—

- (a) who is either engaged or employed by the contractor, or where the contractor is a partnership, is a partner in that partnership; 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 [<sup>F15</sup>independent] prescriber;
- (e) a therapeutic radiographer independent prescriber; or
- (f) a paramedic independent prescriber;

“licensing authority” is to be construed in accordance with regulation 6(2) of the Human Medicines Regulations 2012(**20**);

“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 Limited Liability Partnerships Act 2000(**21**);

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(18) 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, 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 2010 and paragraph 2 of schedule 21 of the Health and Social Care Act 2012.

(19) 1995 c.36.

(20) S.I. 2012/1916.

(21) 2000 c.12. Section 2 was amended by S.I. 2009/1804 and S.I. 2016/340.

“limited partnership” means a partnership registered in accordance with section 5 of the Limited Partnerships Act 1907(22);

“list” has, unless the context otherwise requires, the meaning assigned to it in section 29(8) of the Act(23) 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 89 of schedule 6;

“Local Health Board” means a body established under section 11 of the National Health Service (Wales) Act 2006(24);

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

“Medical Register” means the registers kept under section 2 of the Medical Act 1983(25);

“NHS contract” means a contract—

- (a) which is a general medical services contract under section 17J of the Act; and
- (b) which is a NHS contract within the meaning of section 17A(3) of the Act(26) as a consequence of which the contractor is being regarded as a health service body pursuant to regulation 13(1) or (4);

“NHS dispute resolution procedure” means the procedure for the resolution of disputes specified in paragraphs 91 and 92 of schedule 6;

“NHS foundation trust” has the same meaning as in section 30 of the National Health Service Act 2006(27);

“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 contract 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(28);

“open”, in relation to the contractor’s list of patients, means open to applications from patients in accordance with paragraph 12 of schedule 6;

“paramedic independent prescriber” means a person registered in Part 8 of the register maintained under article 5 of the <sup>[F16]</sup>Health Professions Order 2001] 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 contractor, is for the time being discharging in respect of that child the obligations normally attaching to a parent in respect of a child;

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(22) 1907 c.24. Section 5 was amended by S.I. 2009/1940.

(23) 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).

(24) 2006 c.42.

(25) 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.

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

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

(28) S.I. 2002/253.

“patient” means—

- (a) a registered patient;
- (b) a temporary resident;
- (c) persons to whom the contractor is required to provide immediately necessary treatment under regulation 18(6) or (8) respectively; and
- (d) any other person to whom the contractor has agreed to provide services under the contract;

“the Pharmaceutical Regulations” means the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009<sup>(29)</sup>;

“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<sup>(30)</sup>; or
- (b) the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976<sup>(31)</sup>;

“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;

[<sup>F17</sup>“pharmacotherapy” includes the management of acute and repeat prescriptions, medicines reconciliation, performing polypharmacy review and serial prescribing;

“pharmacotherapy services” means the provision of pharmacotherapy to the contractor’s patients;]

“physiotherapist independent prescriber” means a physiotherapist who is registered in Part 9 of the register maintained under article 5 of the [<sup>F18</sup>Health 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 [<sup>F19</sup>Health 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 contractor for the purpose of delivering services under the contract;

“practice area” means the area referred to in regulation 21(1)(d);

“practice leaflet” means a leaflet drawn up in accordance with paragraph 74 of schedule 6;

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

[<sup>F20</sup>“practice website” means a website published and maintained by the contractor in accordance with paragraph 74A of schedule 6;]

“prescriber” means—

- (a) a medical practitioner;
- (b) an independent nurse prescriber;

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<sup>(29)</sup> S.S.I. 2009/183.

<sup>(30)</sup> S.I. 2010/231.

<sup>(31)</sup> S.I. 1976/1213 (N.I. 22), as relevantly amended by S.R. (NI) 2008 No 192.



- (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 contractor or, where the contractor is a partnership, is a partner in that partnership;

“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 [F<sup>21</sup>services;]

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

“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(32) (persons performing primary medical services);

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

“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;

“registered patient” means—

- (a) a person who is recorded by the Health Board as being on the contractor’s list of patients; or
- (b) a person whom the contractor has accepted for inclusion on its 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;
- (b) in relation to a pharmacist—
  - (i) Part 1 of the register maintained under article 19 of the Pharmacy Order 2010; or
  - (ii) the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976; and
- (c) in relation to a chiropodist and podiatrist, a physiotherapist, paramedic and a therapeutic radiographer, the relevant part of the register maintained by the [F<sup>22</sup>Health and Care Professions Council] in pursuance of article 5 of the [F<sup>23</sup>Health Professions Order 2001];

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

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



“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<sup>(33)</sup> as being a drug, medicine or other substance which may not be ordered for patients in the provision of medical services under the contract; or
- (b) except where the conditions in paragraphs 40(2) and 41(2) of schedule 6 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;

[<sup>F24</sup>“Scottish SSP” has the meaning given in regulation 2(1) of the National Health Service (Pharmaceutical Services) (Scotland) Regulations 2009;]

“section 17C provider” means a person or body who is providing primary medical services in accordance with an agreement pursuant to section 17C of the Act<sup>(34)</sup>;

“supplementary prescriber” means a person who is either engaged or employed by the contractor, or where the contractor is a partnership, is a partner in that partnership, 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 [<sup>F25</sup>Health and Care Professions Council] in pursuance of article 5 of the [<sup>F26</sup>Health Professions Order 2001] relating to—
  - (i) chiropodists and podiatrists;
  - (ii) physiotherapists;
  - (iii) diagnostic or therapeutic radiographers;
  - (iv) dietitians;
  - (v) paramedics; or
- (e) the register of optometrists maintained by the General Optical Council in pursuance of section 7 of the Opticians Act 1989<sup>(35)</sup>,

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 the contractor as a temporary resident under paragraph 13 of schedule 6 and for whom the contractor’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 [<sup>F27</sup>Health Professions Order 2001]; and
- (b) against whose name in that register is recorded—
  - (i) an entitlement to use the title “therapeutic radiographer”; and

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

(34) Section 17C was inserted by section 21(2) of the National Health Service (Primary Care) Act 1997 (c.46) and was amended by section 2(2) of the 2004 Act and paragraph 3 of schedule 21 of the Health and Social Care Act 2012 (c.7).

(35) 1989 c.44. Section 7 was amended by S.I. 2005/848.

- (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);
- [<sup>F28c</sup>“vaccination services” means one or more of the services described in schedule 2A;]
- <sup>F29</sup>  
...
- “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) the adjudicator is deemed to refer either to the Scottish Ministers or to the panel of 3 persons appointed by them, as the case may be; and
- (b) a contractor is deemed to include a reference to a contractor who is an individual medical practitioner,

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.

#### Textual Amendments

- F3** Words in reg. 3(1) omitted (25.5.2018) by virtue of Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 424(a)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F4** Words in reg. 3(1) omitted (18.10.2021) by virtue of The National Health Service (General Medical Services and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2021 (S.S.I. 2021/302), regs. 1, **3(a)**
- F5** Words in reg. 3(1) omitted (18.10.2021) by virtue of The National Health Service (General Medical Services and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2021 (S.S.I. 2021/302), regs. 1, **3(b)**
- F6** Words in reg. 3(1) omitted (6.11.2023) by virtue of The Health and Care Act 2022 (Further Consequential Amendments) (No. 2) Regulations 2023 (S.I. 2023/1071), regs. 1(1), **109(2)**
- F7** Words in reg. 3(1) inserted (28.5.2022) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2022 (S.S.I. 2022/130), regs. 1(2), **4(a)**
- F8** Words in reg. 3(1) inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 424(b)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F9** Comma in reg. 3(1) substituted for word (18.10.2021) by The National Health Service (General Medical Services and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2021 (S.S.I. 2021/302), regs. 1, **3(c)(i)(aa)**
- F10** Words in reg. 3(1) inserted (18.10.2021) by The National Health Service (General Medical Services and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2021 (S.S.I. 2021/302), regs. 1, **3(c)(i)(bb)**
- F11** Words in reg. 3(1) inserted (18.10.2021) by The National Health Service (General Medical Services and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2021 (S.S.I. 2021/302), regs. 1, **3(c)(ii)(aa)**
- F12** Comma in reg. 3(1) substituted for word (18.10.2021) by The National Health Service (General Medical Services and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2021 (S.S.I. 2021/302), regs. 1, **3(c)(ii)(bb)**

- F13** Words in reg. 3(1) omitted (25.5.2018) by virtue of Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 424(c)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F14** 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, **3(a)**
- F15** Word 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, **3(b)**
- F16** Words in reg. 3(1) substituted (coming into force in accordance with reg. 1 of the amending S.I.) by The Children and Social Work Act 2017 (Consequential Amendments) (Social Workers) Regulations 2019 (S.I. 2019/1094), **Sch. 2 para. 39(a)(i)**
- F17** Words in reg. 3(1) inserted (28.5.2022) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2022 (S.S.I. 2022/130), regs. 1(2), **4(b)**
- F18** Words in reg. 3(1) substituted (coming into force in accordance with reg. 1 of the amending S.I.) by The Children and Social Work Act 2017 (Consequential Amendments) (Social Workers) Regulations 2019 (S.I. 2019/1094), **Sch. 2 para. 39(a)(ii)**
- F19** Words in reg. 3(1) substituted (coming into force in accordance with reg. 1 of the amending S.I.) by The Children and Social Work Act 2017 (Consequential Amendments) (Social Workers) Regulations 2019 (S.I. 2019/1094), **Sch. 2 para. 39(a)(iii)**
- F20** Words in reg. 3(1) inserted (1.10.2022) by The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2022 (S.S.I. 2022/130), regs. 1(3), **4(c)**
- F21** Word 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, **3(c)**
- F22** 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, **3(d)**
- F23** Words in reg. 3(1) substituted (coming into force in accordance with reg. 1 of the amending S.I.) by The Children and Social Work Act 2017 (Consequential Amendments) (Social Workers) Regulations 2019 (S.I. 2019/1094), **Sch. 2 para. 39(a)(iv)**
- F24** Words in reg. 3(1) inserted (31.10.2019) by The National Health Service (Serious Shortage Protocols) (Miscellaneous Amendments) (Scotland) Regulations 2019 (S.S.I. 2019/284), regs. 1, **6**
- F25** 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, **3(e)**
- F26** Words in reg. 3(1) substituted (coming into force in accordance with reg. 1 of the amending S.I.) by The Children and Social Work Act 2017 (Consequential Amendments) (Social Workers) Regulations 2019 (S.I. 2019/1094), **Sch. 2 para. 39(a)(v)**
- F27** Words in reg. 3(1) substituted (coming into force in accordance with reg. 1 of the amending S.I.) by The Children and Social Work Act 2017 (Consequential Amendments) (Social Workers) Regulations 2019 (S.I. 2019/1094), **Sch. 2 para. 39(a)(vi)**
- F28** Words in reg. 3(1) inserted (18.10.2021) by The National Health Service (General Medical Services and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2021 (S.S.I. 2021/302), regs. 1, **3(d)**
- F29** Words in reg. 3(1) omitted (18.10.2021) by virtue of The National Health Service (General Medical Services and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2021 (S.S.I. 2021/302), regs. 1, **3(e)**

## PART 2

### CONTRACTORS

#### Conditions: general

4. A Health Board may only enter into a contract if the conditions set out in regulations 5, 6 and 7 are met.

#### Conditions relating solely to medical practitioners

5.—(1) In the case of a contract to be entered into with a medical practitioner, that practitioner must be a general medical practitioner who satisfies the conditions in regulations 6 and 7.

(2) In the case of a contract to be entered into with a partnership—

- (a) at least one partner (who must not be a limited partner) must be a general medical practitioner;
- (b) all the other partners must be individuals; and
- (c) all the partners must satisfy the conditions in regulations 6 and 7.

(3) In the case of a contract to be entered into with a limited liability partnership—

- (a) at least one member must be a general medical practitioner;
- (b) all the other members must be individuals; and
- (c) all the members must satisfy the conditions in regulations 6 and 7.

(4) In the case of a contract to be entered into with a company—

- (a) at least one member of the company must be a general medical practitioner;
- (b) all other members must be individuals;
- (c) all the members must satisfy the conditions in regulations 6 and 7; and
- (d) any director or secretary of the company must satisfy the conditions in regulation 6.

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

- (a) article 4(3) of the 2010 Order (general practitioners eligible for entry in the General Practitioner Register) because of an exemption under regulation 5(1)(d) of one of the sets of Regulations specified in paragraph (6);
- (b) article 6(2) of the 2010 Order (persons with acquired rights) by virtue of being a restricted service principal (within the meaning of one or more of the sets of Regulations specified in paragraph (7)) included in a list specified in that article; or
- (c) article 6(6) of the 2010 Order.

(6) The regulations referred to in paragraph (5)(a) are the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998<sup>(36)</sup>, the National Health Service (Vocational Training for General Medical Practice) Regulations 1997<sup>(37)</sup> and the Medical Practitioners (Vocational Training) Regulations (Northern Ireland) 1998<sup>(38)</sup>.

(7) The regulations referred to in paragraph (5)(b) are the National Health Service (General Medical Services) Regulations 1992<sup>(39)</sup>, the National Health Service (General Medical Services)

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<sup>(36)</sup> S.I. 1998/5. Those Regulations were revoked by S.I. 2003/1250.

<sup>(37)</sup> S.I. 1997/2817. Those Regulations were revoked by S.I. 2003/1250.

<sup>(38)</sup> S.R. (N.I.) 1998/No. 13. Those Regulations were revoked by S.I. 2003/1250.

<sup>(39)</sup> S.I. 1992/635. Those Regulations were revoked in respect of Wales by S.I. 2004/1016 (W. 113) and in respect of England by S.I. 2004/865.

(Scotland) Regulations 1995<sup>(40)</sup> and the General Medical Services Regulations (Northern Ireland) 1997<sup>(41)</sup>.

### General conditions relating to all contracts

6.—(1) It is a condition in the case of a contract to be entered into—

- (a) with a medical practitioner, that the medical practitioner;
- (b) with a partnership, that any member of the partnership or the partnership;
- (c) with a limited liability partnership, that any member of the limited liability partnership or the limited liability partnership; and
- (d) 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 (2).

(2) A person falls within this paragraph if—

- (a) the person has been disqualified or suspended by direction of the Tribunal made pursuant to section 32A(2) (applications for interim suspension) or 32B(1) (suspension pending appeal) of the Act<sup>(42)</sup>, or under any provisions in force in England, Wales or Northern Ireland corresponding thereto;
- (b) subject to paragraph (3), 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 contract or commencement of the contract, 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 contract or commencement of the contract, whichever is the earlier, the person has been disqualified from a list anywhere in the United Kingdom unless the person's name has subsequently been included in such a list;
- (e) the person has been convicted in the United Kingdom of—
  - (i) murder; or
  - (ii) a criminal offence, other than murder, and has been sentenced to a term of imprisonment of over six months;
- (f) the person has been convicted elsewhere of an offence which would, if committed in Scotland, constitute—

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<sup>(40)</sup> S.I. 1995/416. Those Regulations were revoked by S.S.I. 2004/114.

<sup>(41)</sup> S.R. (N.I.) 1997/No. 380. Those Regulations were revoked by S.R. (N.I.) 2004/No. 156.

<sup>(42)</sup> Sections 32A and 32B were inserted by section 8 of the National Health Service (Amendment) Act 1995 (c.31). Section 32A(2) was amended by paragraph 51 of schedule 4 of the Health Act 1999 ("the 1999 Act"), and section 26(7) of the Smoking, Health and Social Care (Scotland) Act 2005 ("the 2005 Act"). Section 32B(1) was amended by the paragraph 52 of schedule 4 of 1999 Act and paragraph 1 of schedule 3 of the 2005 Act.

- (i) murder; or
- (ii) subject to paragraph (4), a criminal offence, other than murder, and been sentenced to a term of imprisonment of over six months;
- (g) the person has been convicted of an offence referred to in schedule 1 of the Criminal Procedure (Scotland) Act 1995<sup>(43)</sup> or schedule 1 of the Children and Young Persons Act 1933<sup>(44)</sup>;
- (h) 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<sup>(45)</sup>;
    - (bb) schedule 2A of the Insolvency (Northern Ireland) Order 1989<sup>(46)</sup>;
    - (cc) sections 56A to 56K of the Bankruptcy (Scotland) Act 1985<sup>(47)</sup>; or
    - (dd) sections 155 to 160 of the Bankruptcy (Scotland) Act 2016<sup>(48)</sup>,
 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;
- (i) there is—
  - (i) an administrator, administrative receiver or receiver is appointed in respect of it; or
  - (ii) an administration order made in respect of it under schedule B1 of the Insolvency Act 1986<sup>(49)</sup>;
- (j) 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;
- (k) the person has been—
  - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session)<sup>(50)</sup>, from being concerned in the management or control of any body; or

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<sup>(43)</sup> 1995 c.46. Schedule 1 was amended by section 7(1) of the Prohibition of Female Genital Mutilation (Scotland) Act 2005 (asp 8), paragraph 2 of schedule 1 of the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 (asp 9), paragraph 2 of schedule 5 of the Sexual Offences (Scotland) Act 2009 (asp 9) and section 41 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13).

<sup>(44)</sup> 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).

<sup>(45)</sup> 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).

<sup>(46)</sup> S.I. 1989/2405 (N.I. 19). schedule 2A was inserted by S.I. 2005/1455 (N.I. 10).

<sup>(47)</sup> 1985 c.66. Sections 56A to 56K 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).

<sup>(48)</sup> 2016 asp 21.

<sup>(49)</sup> Schedule B1 was inserted by paragraph 1 of schedule 16 of the 2002 Act.

<sup>(50)</sup> 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;
  - (l) the person is subject to—
    - (i) a disqualification order under section 1 of the Company Directors Disqualification Act 1986(51);
    - (ii) a disqualification undertaking under section 1A of that Act(52);
    - (iii) a disqualification order under article 3 of the Company Directors Disqualification (Northern Ireland) Order 2002(53);
    - (iv) a disqualification undertaking under article 4 of that Order(54); or
    - (v) an order under section 429(2)(b) of the Insolvency Act 1986(55) (failure to pay under county court administration order); or
  - (m) 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(56).
- (3) A person will not fall within paragraph (2)(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 contractor;
  - (b) a partner, in the case of a contract with a partnership;
  - (c) a member, in the case of a contract with a limited liability partnership;
  - (d) in the case of a contract with a company—
    - (i) a member of the company; or
    - (ii) a director or secretary of the company,
- as the case may be.
- (4) A person will not fall within paragraph (2)(f)(ii) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—
- (a) a contractor;
  - (b) a partner, in the case of a contract with a partnership;
  - (c) a member in the case of a contract with a limited liability partnership;
  - (d) in the case of a contract with a company—
    - (i) a member of the company; or
    - (ii) a director or secretary of the company,
- as the case may be.

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(51) 1986 c.46. Section 1 was amended by section 5 and paragraph 2 of schedule 4 of the Insolvency Act 2000 (c.39) (“the 2000 Act”), section 204 of the 2002 Act and paragraph 2 of schedule 7 of the Small Business, Enterprise and Employment Act 2015 (c.26) (“the 2015 Act”).

(52) Section 1A was inserted by S.I. 2005/1454 (N.I. 9) and section 6(2) of the 2000 Act and amended by paragraph 3 of schedule 7 of the 2015 Act.

(53) S.I. 2002/3150 (N.I. 4). Article 3 was amended by paragraph 9 of schedule 8 of the 2015 Act.

(54) Article 4 was amended by paragraph 9 of schedule 8 of the 2015 Act.

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

(56) S.I. 2015/1862.



(5) In this regulation, “health service body” does not include any person who is to be regarded as a health service body in accordance with regulation 13.

### **Further conditions relating to all contracts**

7.—(1) For the purposes of section 17L(4) of the Act<sup>(57)</sup> (eligibility to be contractor under general medical services contract), 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 contract.

(2) For the purposes of section 17L(5)(b) of the Act, references in section 17L(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 contract being entered into.

(3) For the purposes of section 17L(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 of 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<sup>(58)</sup>;
- (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 contract 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 contractor carrying out the obligations under the contract

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<sup>(57)</sup> Section 17L was substituted by section 39 of the Tobacco and Primary Medical Services (Scotland) Act 2010 asp 3.

<sup>(58)</sup> 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

**8.—(1)** Where a Health Board is of the view that the conditions in regulations 5, 6 or 7 for entering into a contract are not met, it must notify in writing the person intending to enter into the contract of the Health Board's view and its reasons for that view and of that person's right of appeal under regulation 9.

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

- (a) any partner in the partnership that is notified under paragraph (1);
- (b) any member of a limited liability partnership that is notified under paragraph (1);
- (c) any member, or a 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

**9.** A person who has been served with a notice under regulation 8(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.

### Continuing conditions relating to contracts

**10.—(1)** The following conditions apply for the duration of the contract—

- (a) in the case of a contract entered into with a medical practitioner, that practitioner must be a general medical practitioner;
- (b) in the case of a contract entered into prior to 22nd December 2010 with a partnership—
  - (i) at least one partner (who must not be a limited partner) must be a general medical practitioner; and
  - (ii) any other partner who is a medical practitioner must—
    - (aa) be a general medical practitioner; or
    - (bb) be employed, in Scotland, by a Health Board, in England and Wales, by a Local Health Board, NHS trust, NHS foundation trust or, in Northern Ireland, by a Health and Social Care trust; and
  - (iii) all the other partners must be individuals;
- (c) in the case of a contract entered into on or after 22nd December 2010 with a partnership—
  - (i) at least one partner (who must not be a limited partner) must be a general medical practitioner; and
  - (ii) all the other members must be individuals;
- (d) in the case of a contract entered into with a limited liability partnership—
  - (i) at least one partner must be a general medical practitioner; and
  - (ii) all the other members must be individuals;
- (e) in the case of a contract entered into prior to 22nd December 2010 with a company limited by shares—
  - (i) at least one share in the company must be legally and beneficially owned by a general medical practitioner; and

- (ii) any other share or shares in the company that are legally and beneficially owned by a medical practitioner must be so owned by—
    - (aa) a general medical practitioner; or
    - (bb) a medical practitioner who is employed, in Scotland, by a Health Board, in England and Wales, by a Local Health Board, NHS trust, NHS foundation trust or in Northern Ireland, by a Health and Social Care trust;
  - (f) in the case of a contract entered into on or after 22nd December 2010 with a company—
    - (i) at least one member of the company must be a general medical practitioner; and
    - (ii) all the other members must be individuals.
- (2) Regulation 5(5) applies to the meaning of “general medical practitioner” in paragraph (1) (a), (b), (c), (d), (e) and (f) as it applies to the meaning of “general medical practitioner” in regulation 5(1), (2)(a), (3)(a) and (4)(a).

### **Continuing conditions relating to contracts – sufficient involvement in patient care**

- 11.**—(1) The contractor must ensure that—
- (a) for the duration of the contract while a person falls within paragraph (2)(a), that person has sufficient involvement in patient care; and
  - (b) where a person falls within paragraph (2)(b), that person has sufficient involvement in patient care from the date they fall within that paragraph for the rest of the duration of the contract or until they cease to fall within paragraph (2)(b)(i) to (iii), whichever is the earlier.
- (2) A person falls within—
- (a) this sub-paragraph if, in the case of a contract entered into on or after 22nd December 2010 with—
    - (i) a medical practitioner, they are that medical practitioner;
    - (ii) a partnership or limited liability partnership, they are a member of that partnership or limited liability partnership; or
    - (iii) a company, they are a member of that company; or
  - (b) this sub-paragraph if, in the case of a contract entered into prior to 22nd December 2010 with—
    - (i) a medical practitioner, they are that medical practitioner;
    - (ii) a partnership, they are a member of that partnership; or
    - (iii) a company, they are a person who legally and beneficially owns a share in that company; and
    - (iv) they fall within paragraph (3) or (4);
    - (v) they fall within paragraph (3) or (4).
- (3) A person falls within this paragraph where on or after 1st April 2018—
- (a) they become a partner of a partnership mentioned in sub-paragraph (2)(b)(ii); or
  - (b) they become a person who legally and beneficially owns a share in a company mentioned in sub-paragraph (2)(b)(iii).
- (4) A person falls within this paragraph if they—
- (a) do not fall within paragraph (3); and

- (b) have had sufficient involvement in patient care for a period of 3 months starting on or after 1st April 2018 unless the Health Board has confirmed that the person only falls within this paragraph due to exceptional or temporary circumstances.

(5) Subject to paragraph (6), in this regulation, “sufficient involvement in patient care” means regularly performing, or being engaged in the day to day provision of, primary medical services in accordance with a general medical services contract, section 17C arrangements, or any other arrangement made in pursuance of section 2C(2) of the Act for no less than a total of 10 hours in each week.

(6) The periods of time described in regulation 7(3)(a) to (h) are to be disregarded for the purposes of determining whether a person has sufficient involvement in patient care for the purposes of this regulation.

(7) Where a person falls within paragraph (2) and then retires, the period of time following the date of retirement, which is the shorter of—

- (a) the equivalent of the length of time that the person has had sufficient involvement in patient care for the purposes of the contractor’s contract; and  
(b) 2 years following the date of retirement,

is to be disregarded for the purposes of determining whether the person has sufficient involvement in patient care for the purposes of this regulation.

(8) The [<sup>F30</sup>contractor] must ensure that in the case of a contract entered into prior to 22nd December 2010—

- (a) with a partnership, every member of that partnership who is not a medical practitioner and does not fall within paragraph (2)(b) complies with the conditions prescribed in section 17L(2)(a) and (c) of the Act as in force at 21st December 2010; and  
(b) with a company, every person who legally and beneficially owns a share in that company who is not a medical practitioner and does not fall within paragraph (2)(b) complies with the conditions prescribed in section 17L(3)(b) of the Act as in force at 21st December 2010.

#### Textual Amendments

**F30** Word in reg. 11(8) 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, 4

## PART 3

### PRE-CONTRACT DISPUTE RESOLUTION

#### Pre-contract disputes

**12.—**(1) If, in the course of negotiations intended to lead to a contract, the prospective parties to that contract are unable to agree on a particular term of the contract, either party may refer the terms of the proposed contract to the Scottish Ministers to consider and determine the matter.

(2) Disputes referred to the Scottish Ministers in accordance with paragraph (1) must be considered and determined in accordance with—

- (a) the NHS dispute resolution procedure, as if—  
(i) in paragraph 91(3)(b) of schedule 6, “contract” read “terms of the proposed contract”;

- (ii) paragraph 92(2) of schedule 6 were omitted; and
  - (b) paragraph (3) of this regulation.
- (3) In the case of 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 contract;
  - (b) may require the Health Board to proceed with the proposed contract but may not require the proposed contractor to proceed with the proposed contract; and
  - (c) is binding upon the prospective parties to the contract.

**Modifications etc. (not altering text)**

- C1** Reg. 12(2)(3) applied (1.4.2018) by [The National Health Service \(Primary Medical Services Section 17C Agreements\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/67\)](#), art. 1(2), **reg. 27(10)** (with reg. 2)

## PART 4

### HEALTH SERVICE BODY STATUS

#### Health service body status

**13.**—(1) Where a proposed contractor elects, in a written notice served on the Health Board at any time prior to the contract being entered into, to be regarded as a health service body for any purposes of section 17A of the Act<sup>(59)</sup> (NHS Contracts), it will be so regarded from the date on which the contract is entered into but only for the purposes of that contract.

(2) Where a contract is made with a partnership, and that partnership is to be regarded as a health service body in accordance with paragraph (1) or (4), the contractor will, subject to paragraph (3), continue to be regarded as a health service body for any purposes of section 17A of the Act for as long as that contract continues irrespective of any change in the membership of the partnership.

(3) A contractor may at any time request in writing a variation of the contract to include or remove provision from the contract that the contract is an NHS contract and, if the contractor does so—

- (a) the Health Board must agree to the variation; and
- (b) the procedure in paragraph 94(1) of schedule 6 applies.

(4) If, pursuant to paragraph (3), the Health Board agrees to the variation to the contract, the contractor will—

- (a) be regarded; or
- (b) subject to paragraph (6), cease to be regarded,

as a health service body for any purposes of section 17A of the Act from the date that variation is to take effect pursuant to paragraph 94(1) of schedule 6.

(5) Subject to paragraph (6), a contractor ceases to be a health service body for the purposes of section 17A of the Act if the contract terminates.

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<sup>(59)</sup> Section 17A was inserted by section 30 of the National Health Service and Community Care Act 1990 (c.19) (“the 1990 Act”). 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) (“the 1997 Act”). Section 17 was amended by paragraph 102 of schedule 1 of the Health Authorities Act 1995 (c.17), paragraph 36 of schedule 2 of the 1997 Act, 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).

- (6) Where a contractor ceases to be a health service body pursuant to—
- (a) paragraph (4), the contractor will, if the contractor or the Health Board has referred any matter to the Scottish Ministers for determination under section 17A(4) of the Act before the contractor ceases to be a health service body, be bound by the determination of the adjudicator;
  - (b) paragraph (5), it will continue to be regarded 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 contract; or
    - (ii) after the termination of the contract, whether in connection with or arising out of the termination of the contract or otherwise,

for which purposes it ceases to be such a body on the conclusion of that procedure.

(7) If, pursuant to paragraph (1) or (4), a contractor is to be regarded as a health service body, section 17A has effect in relation to such a person subject to the following modifications:—

- (a) for subsection (4), substitute—

“(4) Whether or not an arrangement which constitutes an NHS contract would, apart from this subsection, be a contract in law, it shall not be regarded for any purpose as giving rise to contractual rights or liabilities but, if any dispute arises out of or in connection with the NHS contract, either party may refer the matter to the Scottish Ministers for determination in accordance with the NHS dispute resolution procedure specified in paragraphs 91 and 92 of schedule 6 of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018.”;
- (b) after subsection (4), insert—

“(4A) In subsection (4), the reference to “any dispute arises out of or in connection with the NHS contract” includes any dispute arising out of or in connection with the termination of the contract.”;
- (c) subsections (5), (6) and (7) do not apply; and
- (d) in subsections (8) and (9), for any reference to “the person appointed under subsection (6)”, substitute a reference to “the panel appointed by the Scottish Ministers under paragraph 91 of schedule 6 of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018”.

## PART 5

### CONTRACTS: MANDATORY TERMS

#### Parties to the contract

- 14.** A contract must specify—
- (a) the names of the parties;
  - (b) in the case of a partnership—
    - (i) whether or not it is a limited partnership; and
    - (ii) the names of the partners and, in the case of a limited partnership, their status as a general or limited partner; and
  - (c) in the case of each party, the address to which official correspondence and notices should be sent.

## NHS contracts

15. If the contractor is to be regarded as a health service body pursuant to regulation 13, the contract must state that it is an NHS contract.

## Contracts with a partnership

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

(2) Where the contract is with a partnership, the contractor must be required by the terms of the contract to ensure that any person who becomes a member of the partnership after the contract has come into force is bound automatically by the contract whether by virtue of a 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.

## Duration

17.—(1) Except in the circumstances specified in paragraph (2), a contract must provide for it to subsist until it is terminated in accordance with the terms of the contract or the general law.

(2) The circumstances referred to in paragraph (1) are that the Health Board wishes to enter into a temporary contract for a period not exceeding twelve months for the provision of services to the former patients of a contractor, following the termination of that contractor’s contract.

(3) Either party to a prospective contract to which paragraph (2) applies may, if they wish to do so, invite the area medical committee for the area of the Health Board to participate in the negotiations intended to lead to such a contract.

## Essential services

18.—(1) For the purposes of section 17K(1) of the Act (mandatory contract terms: provision of prescribed primary medical services)<sup>(60)</sup>, the services which must be provided under a general medical services contract (“essential services”) are the services described in paragraphs (3), (5), (6) and (8).

(2) Subject to regulation 23, a contractor must provide the services described in paragraphs (3) and (5) throughout core hours.

(3) The services described in this paragraph are services required for the management of its registered patients and temporary residents who are, or believe themselves to be—

- (a) ill, with conditions from which recovery is generally expected;
- (b) terminally ill; or
- (c) suffering from chronic disease,

delivered in the manner determined by the practice in discussion with the patient.

(4) For the purposes of paragraph (3)—

- (a) “disease” means a disease included in the list of three-character categories contained in the tenth revision of the International Statistical Classification of Diseases and Related Health Problems<sup>(61)</sup>; and
- (b) “management” includes—

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<sup>(60)</sup> Section 17K was inserted by section 4 of the Primary Medical Services (Scotland) Act 2004 (asp 1).

<sup>(61)</sup> World Health Organisation, 2010 ISBN 9789241548342.



- (i) offering consultation and, where appropriate, physical examination for the purpose of identifying the need, if any, for treatment or further investigation; and
- (ii) the making available of such treatment or further investigation as is necessary and appropriate, including the referral of the patient for other services under the Act and liaison with other health care professionals involved in the patient's treatment and care.

(5) The services described in this paragraph are the provision of appropriate ongoing treatment and care to all registered patients and temporary residents taking account of their specific needs including—

- (a) the provision of advice in connection with the patient's health, including relevant health promotion advice; and
- (b) the referral of the patient for other services under the Act.

(6) A contractor must provide primary medical services required in core hours, taking into account the contractor's safety and the availability of other options for care, for the immediately necessary treatment of any person to whom the contractor has been requested to provide treatment owing to an accident or emergency at any place in its practice area.

(7) In paragraph (6), "emergency" includes any medical emergency whether or not related to services provided under the contract.

(8) A contractor must provide primary medical services required in core hours for the immediately necessary treatment of any person falling within paragraph (9) who requests such treatment, for the period specified in paragraph (10).

(9) A person falls within this paragraph if they are a person—

- (a) whose application for inclusion in the contractor's list of patients has been refused in accordance with paragraph 14 of schedule 6 and who is not registered with another provider of essential services (or their equivalent) in the area of the Health Board;
- (b) whose application for acceptance as a temporary resident has been refused in accordance with paragraph 14 of schedule 6; or
- (c) who is present in the contractor's practice area for less than 24 hours.

(10) The period referred to in paragraph (8) is—

- (a) in the case of paragraph (9)(a) 14 days beginning with the date on which that person's application was refused or until that person has been subsequently registered elsewhere for the provision of essential services (or their equivalent), whichever occurs first;
- (b) in the case of paragraph (9)(b), 14 days beginning with the date on which that person's application was rejected or until that person has been subsequently accepted elsewhere as a temporary resident, whichever occurs first; and
- (c) in the case of paragraph (9)(c), 24 hours or such shorter period as the person is present in the contractor's practice area.

### **[<sup>F31</sup>Health Board support for contractors**

**18A.**—(1) A contract must include terms which require the Health Board to provide the contractor with support by providing community treatment and care services and pharmacotherapy services.

(2) A contract must include terms to the effect that the extent and manner of the community treatment and care services and the pharmacotherapy services which the Health Board must provide in terms of paragraph (1) are to be determined in accordance with such directions as the Scottish Ministers may give.

(3) Any support which the contractor receives from a pharmacist independent prescriber supplied by the Health Board in connection with dispensing services which the contractor provides (under paragraph 44 of schedule 6) is not to be treated as support for the provision of pharmacotherapy services.]

#### Textual Amendments

**F31** Reg. 18A inserted (28.5.2022) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/130\)](#), regs. 1(2), 5

#### Additional services

- 19.** A contract which includes the provision of any additional services must—
- (a) in relation to all such services, contain a term which has the same effect as that specified in paragraph 1 of schedule 1; and
  - (b) in relation to each such service, contain terms which have the same effect as those specified in schedule 1, which are relevant to that service.

#### Opt outs of additional services

**20.** Where a contract provides for the contractor to provide an additional service that is to be funded under the global sum, the contract must contain terms relating to the procedure for opting out of additional services which have the same effect as those specified in schedule 2, except paragraph 3(14) to (16) of that schedule.

#### [<sup>F32</sup>Requirement to provide vaccination services

- 20A.**—(1) A contract must include terms which have the same effect as paragraph 1 of schedule 2A.
- (2) A contract which includes the provision of any vaccination services must—
- (a) in relation to all such services, contain a term which has the same effect as that specified in paragraph 2 of schedule 2A; and
  - (b) in relation to each such service which the contractor is required to provide, contain terms which have the same effect as those specified in schedule 2A which are relevant to that service.]

#### Textual Amendments

**F32** Reg. 20A inserted (18.10.2021) by [The National Health Service \(General Medical Services and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/302\)](#), regs. 1, 4

#### Services generally

- 21.**—(1) A contract 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 contractor or any sub-contractor for the provision of such services;

- (c) to whom such services are to be provided;
  - (d) the area as respects which persons resident in it will, subject to any other terms of the contract relating to patient registration, be entitled to—
    - (i) register with the contractor; or
    - (ii) seek acceptance by the contractor as a temporary resident; and
  - (e) whether, at the date on which the contract comes into force, the contractor's list of patients is open or closed.
- (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 contract is signed, the Health Board is not satisfied that all or any of the premises specified in accordance with paragraph (1)(b) meet the requirements set out in paragraph 1 of schedule 6, the contract must include a plan, drawn up jointly by the Health Board and the contractor, which specifies—
- (a) the steps to be taken by the contractor to bring the premises up to the relevant standard;
  - (b) any financial support that may be available from the Health Board; and
  - (c) the timescale on which the steps referred to in sub-paragraph (a) will be taken.
- (4) Where, in accordance with paragraph (1)(e), the contract specifies that the contractor's list of patients is closed, it must also specify in relation to that closure each of the items listed in paragraph 26(9)(a) to (d) of schedule 6.

### **Services generally**

**22.**—(1) Except in the case of the services referred to in paragraph (2), the contract must state the period (if any) for which the services are to be provided.

- (2) The services referred to in paragraph (1) are—
  - (a) essential services; and
  - (b) additional services funded under the global sum.

### **Services generally**

**23.** A contract must contain a term which requires the contractor in core hours—

- (a) to provide—
  - (i) essential services; and
  - (ii) additional services funded under the global sum,at such times, within core hours, as are appropriate to meet the reasonable needs of the contractor's patients; and
- (b) to have in place arrangements for the contractor's patients to access such services throughout the core hours in case of emergency.

### **Additional obligations in relation to practice premises**

**24.**—(1) A contractor who receives financial assistance must comply with the obligations set out in schedule 3 throughout the period that the contractor receives that assistance and a term to this effect must be included in the contract.

(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 contractor of—
  - (i) the contractor’s owner-occupier borrowing costs;
  - (ii) notional rent payments to the contractor as an owner-occupier; or
  - (iii) reimbursement of the contractor’s rent payments, in accordance with directions under sections 2(5) and 17M(3) of the Act<sup>(62)</sup>; or
- (b) a loan secured over the practice premises.

### Certificates

**25.**—(1) A contract must contain a term which has the effect of requiring the contractor 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, 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 an alternative provider for the relevant certificate who is not—
  - (i) employed or engaged by the contractor;
  - (ii) in the case of a contract with a partnership, one of the partners;
  - (iii) in the case of a contract with a limited liability partnership, one of the members; or
  - (iv) in the case of a contract with a company, one of the members; or
- (b) is not being treated by or under the supervision of a health care professional.

(2) The exception in paragraph (1)(a) will not apply where the certificate is a doctor’s statement issued in accordance with regulation 2(1) of the Social Security (Medical Evidence) Regulations 1976<sup>(63)</sup> (evidence of incapacity for work, limited capability for work and confinement) or regulation 2(1) of the Statutory Sick Pay (Medical Evidence) Regulations 1985<sup>(64)</sup> (medical information).

(3) The contract must contain a term which has the effect of providing that the contractor’s obligation to issue any medical certificate prescribed in column 1 of schedule 4 can be discharged on behalf of the contractor by an alternative provider for the relevant medical certificate.

(4) In this regulation “alternative provider” means another health care professional<sup>(65)</sup> who falls within the description of alternative providers specified in column 3 of schedule 4 in relation to the relevant medical certificate prescribed in column 1 of that schedule.

### Finance

**26.**—(1) Subject to paragraph (2), the contract must contain a term which has the effect of requiring the Health Board to make payments to the contractor under the contract promptly and in accordance with both the terms of the contract and any other conditions relating to the payment contained in directions given by the Scottish Ministers under section 17M 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 contractor under the contract, any amount—

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<sup>(62)</sup> Section 17M was inserted by section 4 of the Primary Medical Services (Scotland) Act 2004.

<sup>(63)</sup> [S.I. 1976/615](#). Regulation 2(1) was substituted by [S.I. 2010/137](#).

<sup>(64)</sup> [S.I. 1985/1604](#). Regulation 2(1) was substituted by [S.I. 2010/137](#).

<sup>(65)</sup> “Health care professional” includes nurses and midwives registered with the Nursing and Midwifery Council.

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

### Finance

**27.** The contract must contain a term to the effect that where, pursuant to any directions of the Scottish Ministers under sections 2(5) and 17M(3) of the Act, a Health Board is required to make a payment to a contractor under a contract but subject to conditions, those conditions are to be a term of the contract.

### Fees and charges

**28.—(1)** The contract must contain terms relating to fees and charges which have the same effect as those set out in paragraphs (2) to (4).

(2) The contractor must not, either itself or through any other person, demand or accept from any of its patients a fee or other remuneration, for the benefit of the contractor or another person, for—

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

except in the circumstances set out in schedule 5.

(3) Where a person applies to a contractor for the provision of essential services and claims to be on that contractor's list of patients, but the contractor has reasonable doubts about that person's claim, the contractor must give any necessary treatment and will be entitled to demand and accept a reasonable fee in accordance with paragraph (1)(e) of schedule 5, subject to the provision for repayment contained in paragraph (4).

(4) Where a person from whom a contractor received a fee under [<sup>F33</sup>paragraph (1)(e)] of schedule 5 applies to the Health Board for a refund within 14 days of payment of the fee (or such longer period not exceeding one month as the Health Board may allow, if it is satisfied that the failure to apply within 14 days was reasonable) and the Health Board is satisfied that the person was on the contractor's list of patients when the treatment was given, the Health Board may recover the amount of the fee from the contractor, by deduction from the contractor's remuneration or otherwise, and must pay that amount to the person who paid the fee.

#### Textual Amendments

**F33** Words in [reg. 28\(4\)](#) 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, 5](#)

### Arrangements on termination

**29.** A contract must make suitable provision for arrangements on termination of the contract, including the consequences (whether financial or otherwise) of the contract ending.

### Other contractual terms

**30.—(1)** A contract must, unless it is of a type or nature to which a particular provision does not apply, contain other terms which have the same effect as those specified in schedule 6, except paragraphs 28(5) to (7), 32(5) to (9), 33(3), 91(5) to (15) and 92.

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

### **Implied contract terms**

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

(2) A contract must contain a term which has the effect that—

- (a) where, or to the extent that a term is a required term and such a required term is omitted, either in whole or in part, from the express terms of the contract; and
- (b) as a result, the contract 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 contract, is to be an implied term of the contract.

(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 contract and the schedules of the contract, the following order of precedence applies—

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

(4) A “required term” is any term which is required to be included in the contract 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 contract.

## **PART 6**

### **FUNCTIONS OF AREA MEDICAL COMMITTEE**

#### **Functions of area medical committee**

**32.**—(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;
- (b) the making of arrangements for the medical examination of a medical practitioner specified in paragraph (2), where the contractor or the Health Board is concerned that the medical practitioner is incapable of adequately providing services under the contract and the contractor 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 contract to the medical practitioner concerned, the contractor and the Health Board with whom the contractor holds a contract;
- (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 in any directions given by Scottish Ministers under section 2(5) of the Act<sup>(66)</sup>; 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 contractor;
- (b) where the contractor is a partnership, any partner in the partnership; or
- (c) where the contractor is a limited liability partnership, any member of the limited liability partnership; or
- (d) where the contractor is a company, any member of that company.

## PART 7

### TRANSITIONAL PROVISIONS

#### Out of hours

**33.**—(1) Where on 31st March 2018 a contract included a requirement to provide out of hours services pursuant to regulation 32 of the 2004 Regulations—

- (a) the contract must continue to require the contractor to provide out of hours services; and
- (b) despite the revocation of the 2004 Regulations<sup>(67)</sup>, the provisions of the 2004 Regulations referred to in paragraph (2) will continue to have effect in relation to that contract 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 30, 31 and 32;
- (c) paragraphs 10, 11<sup>(68)</sup>, 12(c), 13(c), 63, 64 and 65 of schedule 5;
- (d) schedule 6; and
- (e) paragraph 18 of schedule 8.
- (3) The end dates referred to in paragraph (1) are—
- (a) where a contractor—
- (i) has served an out of hours opt out notice under paragraph 4(2) of schedule 2 of the 2004 Regulations in the period from 12th November 2017 to 31st March 2018; or
- (ii) serves on the Health Board a written notice stating that the contractor wishes to terminate its obligation to provide out of hours services under its contract,
- 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 [F<sup>34</sup>contractor] agree; and

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<sup>(66)</sup> Section 2(5) was amended by paragraph 19(1) of schedule 9 of the National Health Service and Community Care Act 1990 (c.19).

<sup>(67)</sup> S.S.I. 2004/115 is revoked by regulation 34 and schedule 9 of these Regulations.

<sup>(68)</sup> Paragraph 11 of schedule 5 of S.S.I. 2004/115 was amended by S.S.I. 2011/211.



(b) where on or after 1st April 2018, the contractor enters into an arrangement with the Health Board to provide out of hours services, the end date is the date the contractor commences providing out of hours services under the arrangement, or such other date as the Health Board and the contractor agree.

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

(5) Nothing in paragraphs (1) to (4) prevents the contractor and the Health Board from agreeing a different date for the termination of the contractor's duty under the contract to provide out of hours services and accordingly varying the contract in accordance with paragraph 94(1) of schedule 6.

(6) Prior to the [<sup>F35</sup>contractor's] duty to provide out of hours services under the contract ceasing, the Health Board and the [<sup>F36</sup>contractor] must discuss how to inform patients of any change to the out of hours services which the contractor provides.

(7) The contractor must, if requested by the Health Board, inform the contractor's registered patients of the change in service by the contractor 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.

#### Textual Amendments

- F34** Word in reg. 33(3)(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, **6(a)**
- F35** Word in reg. 33(6) 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, **6(b)(i)**
- F36** Word in reg. 33(6) 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, **6(b)(ii)**

#### Modifications etc. (not altering text)

- C2** Reg. 33 applied (with modifications) by S.S.I. 2004/163, art. 62A (as inserted (1.4.2018) by [The National Health Service \(General Medical Services Contracts\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/66\)](#), reg. 1, **sch. 10 para. 4(30)** (with reg. 2))

#### [<sup>F37</sup>Transitional arrangements for vaccination and immunisation services

**33A.—**(1) Where on 17 October 2021 a contract included a requirement to provide the vaccinations and immunisations additional service, the childhood vaccinations and immunisations additional service, or both services in accordance with schedule 1—

- (a) the Health Board may serve notice to the contractor requiring the contractor to continue to provide the vaccinations and immunisations additional service, the childhood vaccinations and immunisations additional service, or both services, for a period specified in the notice;
- (b) despite the revocation of paragraphs 4 and 5 of schedule 1, where the Health Board has given notice under sub-paragraph (a), paragraphs 4 and 5 of schedule 1 continue to have effect in relation to that contract on and after 18 October 2021 as they had effect immediately before that date, until the end of the period specified in the notice; and

- (c) where the Health Board has given notice under sub-paragraph (a), in relation to that contract, the definition of “additional services” in regulation 3(1) is to be read as including “vaccinations and immunisations” and “childhood vaccinations and immunisations”.
- (2) A notice served by the Health Board under paragraph (1)(a) must—
- (a) be served not later than 1 December 2021; and
  - (b) specify a period which ends no later than 1 April 2022.
- [<sup>F38</sup>(3) A notice served by the Health Board under sub-paragraph (1)(a) must list all of the vaccinations and immunisations which the contractor is required to provide as a consequence of the notice, as of the date of the notice.
- (4) A letter stating that the contractor is to continue to provide the vaccinations and immunisations additional service, the childhood vaccinations and immunisations additional service, or both services, for a period specified in the letter, which is sent by the Health Board to the contractor’s official correspondence address (specified in accordance with regulation 14) before the coming into force of this regulation is deemed to have the same effect as a notice under sub-paragraph (1)(a), if it complies with the requirements of this regulation.]
- (5) The Health Board may reduce the duration of the period specified in a notice served under paragraph (1)(a) by serving the contractor with a further notice.
- (6) Where the contractor is required to provide vaccination services in accordance with schedule 2A, the contractor’s obligation to provide services in accordance with a notice served under paragraph (1)(a) will end on the date on which the contractor’s obligation to provide vaccination services begins.
- (7) Subject to paragraph (9), prior to the contractor’s duty to provide vaccination and immunisation services under this regulation ceasing the Health Board and the contractor must discuss how to inform patients of the change to how vaccinations and immunisations will be delivered to them.
- (8) Subject to paragraph (9), if the Health Board requests it, the contractor must inform the contractor’s patients of the change to how vaccinations and immunisations will be delivered to them by—
- (a) placing a notice in the practice’s waiting room; and
  - (b) including the information in the practice leaflet.
- (9) Paragraphs (7) and (8) do not apply where the contractor is ceasing to provide the vaccinations and immunisations services under this regulation but will immediately begin providing vaccination services in accordance with schedule 2A.]

#### Textual Amendments

- F37** Reg. 33A inserted (18.10.2021) by [The National Health Service \(General Medical Services and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/302\)](#), regs. 1, 5
- F38** Reg. 33A(3)(4) substituted (28.5.2022) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/130\)](#), regs. 1(2), 6

## PART 8

### SUPPLEMENTARY

#### **Revocations**

**34.** The enactments specified in column 1 of schedule 9 are hereby revoked to the extent specified in column 3 of that schedule.

#### **Consequential amendments**

**35.** Schedule 10 (consequential amendments) has effect.

St Andrew's House,  
Edinburgh

*AILEEN CAMPBELL*  
Authorised to sign by the Scottish Ministers

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018.