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# National Health Service (Scotland) Act 1978

1978 CHAPTER 29

## PART I

### ORGANISATION

VALID FROM 13/02/2004

*<sup>F1</sup>General medical services contracts*

#### Textual Amendments

**F1** Ss. 17J-17O and cross-heading inserted (13.2.2004 for certain purposes otherwise 1.4.2004) by Primary Medical Services (Scotland) Act 2004 (asp 1), ss. 4, 9(1); S.S.I. 2004/58, art. 2(1)(3), Sch.

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

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

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

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

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

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

- (1) A Health Board may, subject to such conditions as may be prescribed, enter into a general medical services contract with—
  - (a) a medical practitioner;
  - (b) a partnership, where the conditions mentioned in subsection (2) are satisfied; or
  - (c) a company limited by shares, where the conditions in subsection (3) are satisfied.
- (2) The conditions referred to in subsection (1)(b) are that—
  - (a) all of the partners are individuals;
  - (b) at least one partner is a medical practitioner; and
  - (c) any partner who is not a medical practitioner is—
    - (i) an NHS employee;
    - (ii) a section 17C employee;
    - (iii) a section 28C employee or an Article 15B employee;
    - (iv) a health care professional who is engaged in the provision of services under this Act, the 1977 Act or the 1972 Order;
    - (v) an individual who is providing primary medical services in accordance with a general medical services contract;
    - (vi) an individual who is providing primary medical services in accordance with a section 28Q contract or general medical services in accordance with Article 56 of the 1972 Order;
    - (vii) an individual who is providing primary medical services in accordance with section 17C arrangements or section 28C arrangements or personal medical services in accordance with Article 15B arrangements;
    - (viii) an individual who is providing general dental services;
    - (ix) an individual who is providing primary dental services in accordance with a section 28K contract or general dental services in accordance with Article 61 of the 1972 Order;

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

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

- (1) The Scottish Ministers may give directions as to payments to be made under general medical services contracts.
- (2) A general medical services contract must require payments to be made under it in accordance with directions for the time being in force under this section.
- (3) A direction under subsection (1) may in particular—
- (a) provide for payments to be made by reference to compliance with standards or the achievement of levels of performance;
  - (b) provide for payments to be made by reference to—
    - (i) any scheme or scale specified in the direction;
    - (ii) a determination made by any person in accordance with factors specified in the direction;

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

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

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

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- (5) Regulations making provision of the kind described in subsection (4)(b) may prescribe services by reference to the manner or circumstances in which they are provided.
- (6) A general medical services contract must contain provision requiring the contractor to comply with any directions given by the Scottish Ministers for the purposes of this section as to the drugs, medicines or other substances which may, or may not, be ordered for patients in the provision of primary medical services under the contract.

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

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

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