



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART I

#### ORGANISATION

#### *f<sup>1</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.
- (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

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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.

### **[<sup>F2</sup>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) such other health care professional as may be prescribed,
  - (c) a qualifying partnership,
  - (d) a qualifying limited liability partnership, or
  - (e) a qualifying company.
- (2) For the purposes of subsection (1)—
- (a) a qualifying partnership is a partnership that satisfies both of the following conditions—
    - (i) at least one partner is a medical practitioner or other health care professional prescribed under subsection (1)(b),
    - (ii) all other partners are individuals,
  - (b) a qualifying limited liability partnership is a limited liability partnership that satisfies both of the following conditions—
    - (i) at least one member is a medical practitioner or other health care professional prescribed under subsection (1)(b),
    - (ii) all other members are individuals,
  - (c) a qualifying company is a company which satisfies both of the following conditions—
    - (i) at least one member of the company is a medical practitioner or other health care professional prescribed under subsection (1)(b),
    - (ii) all other members are individuals.
- (3) A Health Board may only enter into a general medical services contract if the Board is satisfied that the contractor has sufficient involvement in patient care.
- (4) The contractor has sufficient involvement in patient care if—
- (a) where the contractor is a medical practitioner or other health care professional prescribed under subsection (1)(b), the contractor, or
  - (b) where the contractor is a partnership, limited liability partnership or a company, each partner or, as the case may be, member of the contractor,

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regularly performs, or is 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) (or will so perform or be so engaged by virtue of the contract in question).

- (5) Regulations may—
- (a) make provision as to what constitutes the regular performance of, or being engaged in the day to day provision of, primary medical services for the purposes of subsection (4),
  - (b) provide that references in subsection (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 such period as may be prescribed.
- (6) Regulations under subsection (5)(a) may, in particular, provide that a period of time in which a person is not performing or is not engaged in the provision of primary medical services is, in prescribed circumstances, 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.
- (7) In relation to a general medical services contract under which primary medical services are provided which is entered into with a partnership, regulations may make provision as to the effect on the contract of a change in membership of the partnership.
- (8) In this section, “ health care professional ” means a member of a profession which is regulated by a body mentioned (at the time the contract in question is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002. ]

#### Textual Amendments

- F2** S. 17L substituted (8.11.2010 for certain purposes otherwise 22.12.2010) by [Tobacco and Primary Medical Services \(Scotland\) Act 2010 \(asp 3\)](#), **ss. 39(1)**, 43(3), S.S.I. 2010/372, **art. 2**, Schs. 1, 2

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

- C1** S. 17L(4) modified (1.4.2018) by [The National Health Service \(General Medical Services Contracts\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/66\)](#), regs. 1, **7(1)** (with reg. 2)
- C2** S. 17L(5)(b) modified (1.4.2018) by [The National Health Service \(General Medical Services Contracts\) \(Scotland\) Regulations 2018 \(S.S.I. 2018/66\)](#), regs. 1, **7(2)** (with reg. 2)

### 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;

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

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

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