

PRIMARY MEDICAL SERVICES (SCOTLAND) ACT 2004

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 1: Provision of Primary Medical Services

Section 1 – Health Boards’ functions: provision of primary medical services

5. This section inserts a new section 2C into the 1978 Act. .
6. Subsection (1) of the new section requires Health Boards to provide primary medical services or to secure the provision of those services by others. This gives Boards a new ability to provide services themselves, in contrast to current legislation which only permits them to secure provision by others.
7. The subsection also creates a power for Health Boards to provide or secure the provision of primary medical services for persons for whom they would not be under a duty to provide. This makes it possible for Health Boards to deliver primary medical services in a location which is outwith the geographical area of the Health Board which is responsible for providing or securing the provision of these services. For instance, where patients living near the boundary between two Health Boards request to register at a practice in the neighbouring Health Board area because it is more convenient for them, the neighbouring Health Board has power to provide or secure primary medical services for them.
8. Subsection (2) of the new section enables a Health Board securing the provision of primary medical services by others to do so by means of such arrangements as they think fit. The main arrangements available will be arrangements under section 17C, or GMS contracts under new section 17J which replaces the current section 19 GMS arrangements. An alternative option would be for a Health Board to contract with a private provider. Such a contract would not be a contract under section 17C or new section 17J. The Scottish Ministers have powers of direction which could be used to ensure that money allocated to Health Boards for GMS contracts and section 17C arrangements is not used to fund contracts with private providers.
9. Subsection (3) of the new section places a duty on Health Boards to publish prescribed information about the primary medical services which they secure the provision of by others or provide themselves. The information that can be prescribed is in relation to the provision of primary medical services under Part I of the 1978 Act and not just section 2C(1).
10. Subsection (4) of the new section creates an obligation on Health Boards to co-operate with each other in discharging their functions connected with every aspect of the provision of primary medical services. This has particular relevance when considering patients who may live in one Health Board’s area but seek services from a practice based in a neighbouring Health Board’s area. This specific duty of co-operation is in addition to the existing general duty on Health Boards and others under section 13 of

*These notes relate to the Primary Medical Services (Scotland) Act
2004 (asp 1) which received Royal Assent on 27 January 2004*

the 1978 Act to co-operate with one another in exercising their functions in order to secure and advance the health of the people of Scotland.

11. Subsection (5) of the new section allows regulations to be made that will define “primary medical services” for the purposes of the 1978 Act. The regulations will set out types of services which are and which are not primary medical services for this purpose.
12. Subsection (6) of the new section allows the regulations made under subsection (5) to describe services by reference to the manner or circumstances in which they are delivered. This would include, for example, categorising services by the times of day during which they are to be provided.
13. Subsection (7) makes it clear that arrangements which a Health Board may make for the provision of primary medical services may provide for delivery of those services at a location outside Scotland. For instance, this would allow a Health Board to send a patient outside Scotland to receive a primary medical service should this be deemed to be in the best interests of the patient.
14. Subsection (8) of the new section provides that while Health Boards are exercising their own statutory functions to provide or secure the provision of primary medical services, they are to be regarded in law as exercising functions of the Scottish Ministers conferred on the Health Boards. This (along with subsection (3) of section 1 of the Act) restates the existing link to the Scottish Ministers previously in section 18 of the 1978 Act.