

PRIMARY MEDICAL SERVICES (SCOTLAND) ACT 2004

EXPLANATORY NOTES

THE ACT – AN OVERVIEW

Part 1: Provision of Primary Medical Services

Section 4 – Provision of primary medical services: general medical services contracts

25. This section inserts new sections 17J to 17O into the 1978 Act (in place of the existing sections on GMS arrangements). The new sections govern the terms and content of the new GMS contracts and who may provide or perform primary medical services under the contracts. They contain broad regulation-making powers which will be used to set out the detail of the rights and obligations under the new contracts.
26. New section 17J refers to the general content of the contract.
27. Subsection (1) allows a Health Board to enter into a GMS contract with a contractor to provide primary medical services in accordance with the provisions of Part I of the 1978 Act.
28. Subsection (3) sets out broad parameters for services to be provided under the contract, the remuneration for their provision and other matters. Health Boards and contractors are free to agree the terms of the contract – subject to any restrictions on this freedom contained in Part I of the 1978 Act (restrictions set out in new sections 17K to 17O and in regulations under new section 17J and those sections).
29. Subsection (4) allows the contract to cover a wide range of services, such as those which have previously been provided in an acute care setting and for the services to be delivered at a location outside the Health Board's geographical area.
30. New section 17K makes it compulsory for a GMS contract to require the contractor to provide primary medical services of such descriptions as may be set out in regulations under the section. The regulations may describe services by reference to the manner or circumstances in which they are provided. The intention is to set out in the regulations those services referred to in the new GMS contract as essential services.
31. New section 17L sets out the persons with whom a Health Board may enter into a GMS contract. Subsection (1) allows a Health Board to enter into a GMS contract with a medical practitioner or, where statutory conditions are satisfied, a partnership or a company limited by shares. Those conditions are set out in subsections (2) and (3). There may be a change in the membership of a partnership, and subsection (4) enables regulations to set out what effect such a change is to have on the GMS contract. The intention is to allow the membership of the partnership to change without requiring a new contract to be entered into merely because such a change in membership has taken place.

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32. Subsection (5) defines health care professional and other expressions used in section 17L.
33. Subsection (6) allows the Scottish Ministers to specify a period within which someone who has previously provided services will be treated as someone who is referred to in subsection 2(c)(iv) to (xi).
34. New section 17M deals with payments to be made under GMS contracts.
35. Subsection (1) enables the Scottish Ministers to give directions as to payments to be made under the contracts. This follows current practice of using direction-making powers to ensure that Health Boards make payments which adhere to Scotland-wide rates and levels.
36. Subsection (2) makes it compulsory for a GMS contract to require payments to be made under it in accordance with the directions then in force.
37. Subsection (3) gives examples of the matters for which directions may provide.
38. Subsection (4) requires the Scottish Ministers to consult before giving any direction under subsection (1).
39. New section 17N provides a broad regulation-making power to impose further requirements that must be included in all GMS contracts. The regulations can cover such issues as: the manner in which and the standards to which services are to be provided; the persons who may perform services; contract variation and enforcement; and the adjudication of disputes.
40. Subsection (3) provides for regulations made under subsection (2)(c) to set out prescribed circumstances in which a contractor must accept a person as a patient to whom services are to be provided and in which a contractor may decline to accept a person as a patient or may terminate responsibility under the GMS contract for the patient.
41. Subsection (4) provides for regulations made under subsection (2)(e) to include provision as to the circumstances in which a Health Board may vary the terms of a GMS contract and for suspension or termination of any duty under the contract to provide services of a prescribed description.
42. Subsection (5) provides for regulations made under subsection (4)(b) to prescribe services by reference to the manner or circumstances in which they are provided.
43. Subsection (6) provides for all GMS contracts to require the contractors under them to comply with any directions given by the Scottish Ministers for the purposes of section 17N 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 contracts.
44. New section 17O essentially does two things.
45. Subsection (1) creates a regulation-making power to set national procedures for internal dispute resolution for the terms of proposed GMS contracts. The regulations may provide for the proposed terms to be referred to the Scottish Ministers and for the Scottish Ministers, or a person or panel of persons appointed by them, to determine what the terms of the contract should be.
46. Subsection (2) creates a regulation-making power to enable the parties to a GMS contract and parties who are already providing primary medical services under a GMS contract to opt to be treated as a health service body for any of the purposes in the existing section 17A of the 1978 Act. Section 17A allows health service bodies to enter into contracts with other health service bodies for the supply of goods and services. Such contracts are NHS contracts, and are not regarded for any purpose as giving rise to contractual rights and liabilities, and they are not enforceable in the courts. Section

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17A instead provides for either party to an NHS contract to refer any matter in dispute to the Scottish Ministers for determination. It also provides for any determination made by the Scottish Ministers to contain directions (including directions about payments) and places a duty on the parties to the NHS contract to comply with any such directions

47. Subsection (3) provides that if a GMS provider or potential provider elects to become a health service body under subsection (2), section 17A of the 1978 Act applies with appropriate modifications.
48. Where a practice opts for its GMS contract to be an ordinary contract at law, it will have the option of asking the courts to resolve any resultant contractual disputes.