



Smoking, Health and Social Care (Scotland) Act 2005

2005 asp 13

PART 3

PHARMACEUTICAL CARE SERVICES ETC.

21 Pharmaceutical care services contracts

For section 17Q of the 1978 Act (assistance and support), substitute—

“Pharmaceutical care services contracts

17Q Health Boards' power to enter into pharmaceutical care services contracts

- (1) A Health Board may enter into a contract under which pharmaceutical care 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 “pharmaceutical care services contract”.
- (3) Subject to any provision made by or under this Part, a pharmaceutical care 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 pharmaceutical care services contract may include services which are not pharmaceutical care services; and the contract may provide for such other services to be performed in any place where, by virtue of section 2CA(1), pharmaceutical care services may be performed.

Status: This is the original version (as it was originally enacted).

- (5) In this Part, “contractor”, in relation to a pharmaceutical care services contract with a Health Board, means the other party to the contract.

17R Mandatory contract term: provision of prescribed pharmaceutical care services

- (1) A pharmaceutical care services contract must require the contractor to provide as respects the area of the Health Board pharmaceutical care services of such descriptions as may be prescribed.
- (2) Regulations under subsection (1) may in particular describe the pharmaceutical care services by reference to the manner or circumstances in which they are provided.

17S Eligibility to be contractor under pharmaceutical care services contract

- (1) A Health Board may, subject to such conditions as may be prescribed, enter into a pharmaceutical care services contract with—
- (a) a registered pharmacist; or
 - (b) a person other than a registered pharmacist who, by virtue of section 69 of the Medicines Act 1968 (c. 67), is taken to be a person lawfully conducting a retail pharmacy business in accordance with that section, who undertakes that all pharmaceutical care services provided under the contract will be provided by, or under the supervision of, a registered pharmacist.
- (2) Regulations may make provision as to the effect on a pharmaceutical care services contract entered into with a partnership of a change in the membership of the partnership.

17T Payments by Health Boards under pharmaceutical care services contracts

- (1) The Scottish Ministers may give directions as to payments to be made under pharmaceutical care services contracts.
- (2) A pharmaceutical care 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;
 - (c) 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);

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- (d) 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) The Scottish Ministers must publish directions given by them under subsection (1) in the Drug Tariff or in such other manner as they consider appropriate.
- (6) References in this section to payments include fees, allowances and reimbursements.

17U Other mandatory contract terms: pharmaceutical care services contracts

- (1) A pharmaceutical care 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—
 - (a) make provision as to the manner in which, and the standards to which, services must be provided;
 - (b) provide that the Scottish Ministers may give directions as to the manner in which, and the standards to which, services must be provided;
 - (c) make provision as to—
 - (i) the persons who are to perform services;
 - (ii) the area in which services are to be provided;
 - (iii) the persons to whom services are to be provided;
 - (iv) requirements to be complied with where a contractor provides any pharmaceutical care services indirectly (including requirements as to the pharmaceutical care services which may or may not be so provided);
 - (v) the variation of terms of the contract (except terms required by or under this Part);
 - (vi) rights of entry and inspection (including inspection of clinical records and other documents);
 - (vii) the circumstances in which, and the manner in which, the contract may be terminated;
 - (viii) enforcement;
 - (ix) the adjudication of disputes.
- (3) Regulations making provision in pursuance of subsection (2)(c)(iii) may make provision as to the circumstances in which a contractor—
 - (a) must, or may, accept a person as a person to whom services are provided under the contract;
 - (b) may decline to accept a person as such a person; or

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- (c) may terminate the contractor’s responsibility for a person.
- (4) Regulations making provision in pursuance of subsection (2)(c)(v) 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.
- (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 pharmaceutical care services contract must contain provision requiring the contractor to comply with directions for the time being in force given by the Scottish Ministers under regulations under subsection (1).

**17V Resolution of disputes and entry into NHS contracts:
pharmaceutical care services contracts**

- (1) Regulations may make provision for the resolution of disputes as to the terms of a proposed pharmaceutical care 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 pharmaceutical care 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.”.