

# **TOBACCO AND PRIMARY MEDICAL SERVICES (SCOTLAND) ACT 2010**

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## **EXPLANATORY NOTES**

### **THE ACT – OVERVIEW**

#### **Part 2 – Primary Medical Services**

51. **Part 2** of the Act amends the 1978 Act as regards eligibility criteria for persons contracting or entering into arrangements with Health Boards to provide primary medical services by clarifying and amending the list of persons who are eligible and including a requirement that all the contracting parties must regularly perform, or be engaged in the day to day provision of, primary medical services. This requirement will apply whether the provision of primary medical services is under a section 17C arrangement, a general medical services contract or another contractual arrangement. The details of the new involvement criteria will be set out in regulations.

#### ***Section 37 – Contractual arrangements for the provision of primary medical services***

52. Section 2C of the 1978 Act places an obligation on Health Boards to provide, or secure the provision of, primary medical services in respect of their area. Prior to this Act, section 2C(2) provided that Health Boards may make such arrangements to secure the provision of primary medical services as they think fit, including making contractual arrangements with any person. Two specific forms of arrangement are provided for in the 1978 Act, namely an arrangement under section 17C of the 1978 Act and a general medical service contract under section 17J of the 1978 Act, but Health Boards are free to make other arrangements if they wish.
53. **Section 37** replaces the wide power of Health Boards under section 2C(2) of the 1978 Act to “make contractual arrangements with any person” with a more limited power to enter into agreements which are one of the following: a section 17C arrangement, a general medical services contract, or an agreement with parties who would be eligible to enter into a section 17C arrangement.

#### ***Section 38 – Section 17C arrangements: persons with whom agreements can be made***

54. The categories of person with whom a Health Board can contract are limited in relation to section 17C arrangements and general medical services contracts to those listed in section 17D and 17L of the 1978 Act respectively. Both sections include in the lists persons involved with the health service in Scotland, England and Wales or Northern Ireland, but the respective lists for section 17C arrangements and general medical services contracts are different.
55. **Section 38** amends the criteria for eligibility to provide primary medical services under a section 17C agreement by inserting section 17CA into the 1978 Act. Section 17CA(1) sets out that Health Boards may only make section 17C arrangements with medical

practitioners, health care professionals and qualifying partnerships, limited liability partnerships or companies. Section 17CA(2) provides that a qualifying partnership or limited liability partnership is one where all partners are individuals and at least one partner is a medical practitioner or health care professional. A qualifying company is one where at least one member is a medical practitioner or health care professional, and all other members are individuals. Section 17CA(3) provides that Health Boards may only enter into a section 17C arrangement if they are satisfied that the parties have a sufficient involvement in patient care.

56. The involvement criteria in section 17CA(4) requires that all the parties to the agreement regularly perform, or are engaged in the day to day provision of, primary medical services. The details of what will be sufficient to meet this requirement will be set out in regulations (see section 17CA(5)), which will include details to cover periods of absence such as maternity leave (see section 17CA(6)).
57. Section 17CA(7) provides that regulations may be made to determine the effect on the 17C arrangement of a change in membership of the qualifying partnership.
58. Section 17CA(8) defines who is a health care professional. This includes nurses.

### ***Section 39 – Eligibility to be contractor under general medical services contract***

59. Section 39(1) amends the criteria for eligibility to provide primary medical services under a general medical services contract by substituting section 17L of the 1978 Act. Subsection (1) sets out that Health Boards may only enter into a general medical services contract with medical practitioners, or such other health care professional as may be prescribed, and qualifying partnerships, limited liability partnerships or companies. The definitions of a qualifying company, partnership and limited liability partnership in subsection (2) are similar to those for section 17C arrangements. That is, a qualifying partnership or limited liability partnership is one where all partners are individuals and at least one partner or member is a medical practitioner or prescribed health care professional, and a qualifying company is one where at least one member is a medical practitioner or prescribed health care professional, and all other members are individuals. The involvement requirement is that all parties regularly perform, or are engaged in the day to day provision of, primary medical services with the details to be set out in regulations (see subsections (3) to (6)).
60. Subsection (7) provides that regulations may be made to determine the effect on the contract of a change in membership of the qualifying partnership while subsection (8) provides a definition of the health care professionals who may be prescribed as contractors for the purposes of subsections (1), (2) and (4).
61. Section 39(2) amends section 105(3) of the 1978 Act (“Orders, regulations and directions”) by the addition of a reference to the regulation making powers to be inserted by section 39(1) - (section 17L(1)(b)). This means regulations under section 17L(1)(b) will attract affirmative procedure.