



Tobacco and Primary Medical Services (Scotland) Act 2010

2010 asp 3

PART 2

PRIMARY MEDICAL SERVICES

37 Contractual arrangements for the provision of primary medical services

In section 2C of the National Health Service (Scotland) Act 1978 (c.29) (referred to in this Part as “the 1978 Act”)—

- (a) in subsection (2), omit the words from “(and” to “person”;
- (b) after subsection (2), insert—

“(2A) But any contractual arrangement which a Health Board makes in pursuance of subsection (2) (other than an NHS contract) must be an agreement under section 17C, a general medical services contract or a contract which meets the requirement in subsection (2B).

(2B) The requirement is that, were the contract an agreement under section 17C, the parties to the contract (other than the Board) would be persons with whom the Board could enter into such an agreement by virtue of section 17CA.”.

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

After section 17C of the 1978 Act, insert—

“17CA Primary medical services: persons with whom agreements can be made

- (1) A Health Board may, subject to such conditions as may be prescribed, make an agreement under section 17C under which primary medical services are provided with—
 - (a) a medical practitioner,
 - (b) a health care professional (other than a medical practitioner),

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- (c) a qualifying partnership,
 - (d) a qualifying limited liability partnership,
 - (e) a qualifying company, or
 - (f) two or more of the persons mentioned in paragraphs (a) to (e).
- (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,
 - (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,
 - (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,
 - (ii) all other members are individuals.
- (3) A Health Board may only make such an agreement if the Board is satisfied that all the other parties to the agreement (“the contractors”) have sufficient involvement in patient care.
- (4) A contractor has sufficient involvement in patient care if—
- (a) where the contractor is a medical practitioner or a health care professional, 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, regularly performs, or is engaged in the day to day provision of, primary medical services in accordance with section 17C arrangements, a general medical services contract or any other arrangement made in pursuance of section 2C(2) (or will so perform or be so engaged by virtue of the agreement 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 an agreement under section 17C under which primary medical services are provided which is entered into with a partnership, regulations may make provision as to the effect on the agreement 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 agreement in question is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c.17).”.

39 Eligibility to be contractor under general medical services contract

- (1) For section 17L of the 1978 Act substitute—

“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

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- (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,
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.”.
- (2) In section 105(3) of the 1978 Act, after “under” where first occurring insert “section 17L(1)(b)”.