
SCOTTISH STATUTORY INSTRUMENTS

2018 No. 66

The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018

PART 5

CONTRACTS: MANDATORY TERMS

Parties to the contract

- 14.** A contract must specify—
- (a) the names of the parties;
 - (b) in the case of a partnership—
 - (i) whether or not it is a limited partnership; and
 - (ii) the names of the partners and, in the case of a limited partnership, their status as a general or limited partner; and
 - (c) in the case of each party, the address to which official correspondence and notices should be sent.

NHS contracts

15. If the contractor is to be regarded as a health service body pursuant to regulation 13, the contract must state that it is an NHS contract.

Contracts with a partnership

16.—(1) Where the contract is with a partnership, the contract is to be treated as made with the partnership as it is from time to time constituted, and the contract must make specific provision to this effect.

(2) Where the contract is with a partnership, the contractor must be required by the terms of the contract to ensure that any person who becomes a member of the partnership after the contract has come into force is bound automatically by the contract whether by virtue of a partnership deed or otherwise.

(3) For the avoidance of doubt, in this regulation, a reference to a “partnership” does not include a reference to a limited liability partnership.

Duration

17.—(1) Except in the circumstances specified in paragraph (2), a contract must provide for it to subsist until it is terminated in accordance with the terms of the contract or the general law.

(2) The circumstances referred to in paragraph (1) are that the Health Board wishes to enter into a temporary contract for a period not exceeding twelve months for the provision of services to the former patients of a contractor, following the termination of that contractor’s contract.

(3) Either party to a prospective contract to which paragraph (2) applies may, if they wish to do so, invite the area medical committee for the area of the Health Board to participate in the negotiations intended to lead to such a contract.

Essential services

18.—(1) For the purposes of section 17K(1) of the Act (mandatory contract terms: provision of prescribed primary medical services)(1), the services which must be provided under a general medical services contract (“essential services”) are the services described in paragraphs (3), (5), (6) and (8).

(2) Subject to regulation 23, a contractor must provide the services described in paragraphs (3) and (5) throughout core hours.

(3) The services described in this paragraph are services required for the management of its registered patients and temporary residents who are, or believe themselves to be—

- (a) ill, with conditions from which recovery is generally expected;
- (b) terminally ill; or
- (c) suffering from chronic disease,

delivered in the manner determined by the practice in discussion with the patient.

(4) For the purposes of paragraph (3)—

- (a) “disease” means a disease included in the list of three-character categories contained in the tenth revision of the International Statistical Classification of Diseases and Related Health Problems(2); and
- (b) “management” includes—
 - (i) offering consultation and, where appropriate, physical examination for the purpose of identifying the need, if any, for treatment or further investigation; and
 - (ii) the making available of such treatment or further investigation as is necessary and appropriate, including the referral of the patient for other services under the Act and liaison with other health care professionals involved in the patient’s treatment and care.

(5) The services described in this paragraph are the provision of appropriate ongoing treatment and care to all registered patients and temporary residents taking account of their specific needs including—

- (a) the provision of advice in connection with the patient’s health, including relevant health promotion advice; and
- (b) the referral of the patient for other services under the Act.

(6) A contractor must provide primary medical services required in core hours, taking into account the contractor’s safety and the availability of other options for care, for the immediately necessary treatment of any person to whom the contractor has been requested to provide treatment owing to an accident or emergency at any place in its practice area.

(7) In paragraph (6), “emergency” includes any medical emergency whether or not related to services provided under the contract.

(8) A contractor must provide primary medical services required in core hours for the immediately necessary treatment of any person falling within paragraph (9) who requests such treatment, for the period specified in paragraph (10).

(1) Section 17K was inserted by section 4 of the Primary Medical Services (Scotland) Act 2004 (asp 1).

(2) World Health Organisation, 2010 ISBN 9789241548342.

- (9) A person falls within this paragraph if they are a person—
- (a) whose application for inclusion in the contractor’s list of patients has been refused in accordance with paragraph 14 of schedule 6 and who is not registered with another provider of essential services (or their equivalent) in the area of the Health Board;
 - (b) whose application for acceptance as a temporary resident has been refused in accordance with paragraph 14 of schedule 6; or
 - (c) who is present in the contractor’s practice area for less than 24 hours.
- (10) The period referred to in paragraph (8) is—
- (a) in the case of paragraph (9)(a) 14 days beginning with the date on which that person’s application was refused or until that person has been subsequently registered elsewhere for the provision of essential services (or their equivalent), whichever occurs first;
 - (b) in the case of paragraph (9)(b), 14 days beginning with the date on which that person’s application was rejected or until that person has been subsequently accepted elsewhere as a temporary resident, whichever occurs first; and
 - (c) in the case of paragraph (9)(c), 24 hours or such shorter period as the person is present in the contractor’s practice area.

[^{F1}Health Board support for contractors

18A.—(1) A contract must include terms which require the Health Board to provide the contractor with support by providing community treatment and care services and pharmacotherapy services.

(2) A contract must include terms to the effect that the extent and manner of the community treatment and care services and the pharmacotherapy services which the Health Board must provide in terms of paragraph (1) are to be determined in accordance with such directions as the Scottish Ministers may give.

(3) Any support which the contractor receives from a pharmacist independent prescriber supplied by the Health Board in connection with dispensing services which the contractor provides (under paragraph 44 of schedule 6) is not to be treated as support for the provision of pharmacotherapy services.]

Textual Amendments

- F1** [Reg. 18A](#) inserted (28.5.2022) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2022](#) (S.S.I. 2022/130), regs. 1(2), 5

Additional services

- 19.** A contract which includes the provision of any additional services must—
- (a) in relation to all such services, contain a term which has the same effect as that specified in paragraph 1 of schedule 1; and
 - (b) in relation to each such service, contain terms which have the same effect as those specified in schedule 1, which are relevant to that service.

Opt outs of additional services

20. Where a contract provides for the contractor to provide an additional service that is to be funded under the global sum, the contract must contain terms relating to the procedure for opting out

of additional services which have the same effect as those specified in schedule 2, except paragraph 3(14) to (16) of that schedule.

[^{F2}Requirement to provide vaccination services

20A.—(1) A contract must include terms which have the same effect as paragraph 1 of schedule 2A.

- (2) A contract which includes the provision of any vaccination services must—
- (a) in relation to all such services, contain a term which has the same effect as that specified in paragraph 2 of schedule 2A; and
 - (b) in relation to each such service which the contractor is required to provide, contain terms which have the same effect as those specified in schedule 2A which are relevant to that service.]

Textual Amendments

- F2** [Reg. 20A](#) inserted (18.10.2021) by [The National Health Service \(General Medical Services and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2021 \(S.S.I. 2021/302\)](#), regs. 1, 4

Services generally

- 21.**—(1) A contract must specify—
- (a) the services to be provided;
 - (b) subject to paragraph (2), the address of each of the premises to be used by the contractor or any sub-contractor for the provision of such services;
 - (c) to whom such services are to be provided;
 - (d) the area as respects which persons resident in it will, subject to any other terms of the contract relating to patient registration, be entitled to—
 - (i) register with the contractor; or
 - (ii) seek acceptance by the contractor as a temporary resident; and
 - (e) whether, at the date on which the contract comes into force, the contractor’s list of patients is open or closed.
- (2) The premises referred to in paragraph (1)(b) do not include—
- (a) the homes of patients; or
 - (b) any other premises where services are provided on an emergency basis.
- (3) Where, on the date on which the contract is signed, the Health Board is not satisfied that all or any of the premises specified in accordance with paragraph (1)(b) meet the requirements set out in paragraph 1 of schedule 6, the contract must include a plan, drawn up jointly by the Health Board and the contractor, which specifies—
- (a) the steps to be taken by the contractor to bring the premises up to the relevant standard;
 - (b) any financial support that may be available from the Health Board; and
 - (c) the timescale on which the steps referred to in sub-paragraph (a) will be taken.
- (4) Where, in accordance with paragraph (1)(e), the contract specifies that the contractor’s list of patients is closed, it must also specify in relation to that closure each of the items listed in paragraph 26(9)(a) to (d) of schedule 6.

Services generally

22.—(1) Except in the case of the services referred to in paragraph (2), the contract must state the period (if any) for which the services are to be provided.

- (2) The services referred to in paragraph (1) are—
- (a) essential services; and
 - (b) additional services funded under the global sum.

Services generally

23. A contract must contain a term which requires the contractor in core hours—

- (a) to provide—
 - (i) essential services; and
 - (ii) additional services funded under the global sum,at such times, within core hours, as are appropriate to meet the reasonable needs of the contractor’s patients; and
- (b) to have in place arrangements for the contractor’s patients to access such services throughout the core hours in case of emergency.

Additional obligations in relation to practice premises

24.—(1) A contractor who receives financial assistance must comply with the obligations set out in schedule 3 throughout the period that the contractor receives that assistance and a term to this effect must be included in the contract.

(2) In this regulation, “financial assistance” means financial assistance from a Health Board or the Scottish Ministers in the form of—

- (a) a recurring payment to the contractor of—
 - (i) the contractor’s owner-occupier borrowing costs;
 - (ii) notional rent payments to the contractor as an owner-occupier; or
 - (iii) reimbursement of the contractor’s rent payments,in accordance with directions under sections 2(5) and 17M(3) of the Act⁽³⁾; or
- (b) a loan secured over the practice premises.

Certificates

25.—(1) A contract must contain a term which has the effect of requiring the contractor to issue free of charge to a patient or a patient’s personal representatives any medical certificate of a description prescribed in column 1 of schedule 4, which is reasonably required under or for the purposes of the enactments specified in relation to the certificate in column 2 of that schedule, except where, for the condition to which the certificate relates, the patient—

- (a) is being attended by a medical practitioner or an alternative provider for the relevant certificate who is not—
 - (i) employed or engaged by the contractor;
 - (ii) in the case of a contract with a partnership, one of the partners;
 - (iii) in the case of a contract with a limited liability partnership, one of the members; or

(3) Section 17M was inserted by section 4 of the Primary Medical Services (Scotland) Act 2004.

(iv) in the case of a contract with a company, one of the members; or

(b) is not being treated by or under the supervision of a health care professional.

(2) The exception in paragraph (1)(a) will not apply where the certificate is a doctor's statement issued in accordance with regulation 2(1) of the Social Security (Medical Evidence) Regulations 1976⁽⁴⁾ (evidence of incapacity for work, limited capability for work and confinement) or regulation 2(1) of the Statutory Sick Pay (Medical Evidence) Regulations 1985⁽⁵⁾ (medical information).

(3) The contract must contain a term which has the effect of providing that the contractor's obligation to issue any medical certificate prescribed in column 1 of schedule 4 can be discharged on behalf of the contractor by an alternative provider for the relevant medical certificate.

(4) In this regulation "alternative provider" means another health care professional⁽⁶⁾ who falls within the description of alternative providers specified in column 3 of schedule 4 in relation to the relevant medical certificate prescribed in column 1 of that schedule.

Finance

26.—(1) Subject to paragraph (2), the contract must contain a term which has the effect of requiring the Health Board to make payments to the contractor under the contract promptly and in accordance with both the terms of the contract and any other conditions relating to the payment contained in directions given by the Scottish Ministers under section 17M of the Act.

(2) The obligation referred to in paragraph (1) is subject to any right the Health Board may have to set off, against any amount payable to the contractor under the contract, any amount—

(a) that is owed by the contractor to the Health Board under the contract; or

(b) that the Health Board may withhold from the contractor in accordance with the terms of the contract or any other applicable provisions contained in directions given by the Scottish Ministers under section 17M of the Act.

Finance

27. The contract must contain a term to the effect that where, pursuant to any directions of the Scottish Ministers under sections 2(5) and 17M(3) of the Act, a Health Board is required to make a payment to a contractor under a contract but subject to conditions, those conditions are to be a term of the contract.

Fees and charges

28.—(1) The contract must contain terms relating to fees and charges which have the same effect as those set out in paragraphs (2) to (4).

(2) The contractor must not, either itself or through any other person, demand or accept from any of its patients a fee or other remuneration, for the benefit of the contractor or another person, for—

(a) the provision of any treatment whether under the contract or otherwise; or

(b) any prescription for any drug, medicine or appliance,

except in the circumstances set out in schedule 5.

(3) Where a person applies to a contractor for the provision of essential services and claims to be on that contractor's list of patients, but the contractor has reasonable doubts about that person's claim, the contractor must give any necessary treatment and will be entitled to demand and accept

(4) [S.I. 1976/615](#). Regulation 2(1) was substituted by [S.I. 2010/137](#).

(5) [S.I. 1985/1604](#). Regulation 2(1) was substituted by [S.I. 2010/137](#).

(6) "Health care professional" includes nurses and midwives registered with the Nursing and Midwifery Council.

a reasonable fee in accordance with paragraph (1)(e) of schedule 5, subject to the provision for repayment contained in paragraph (4).

(4) Where a person from whom a contractor received a fee under [^{F3}paragraph (1)(e)] of schedule 5 applies to the Health Board for a refund within 14 days of payment of the fee (or such longer period not exceeding one month as the Health Board may allow, if it is satisfied that the failure to apply within 14 days was reasonable) and the Health Board is satisfied that the person was on the contractor's list of patients when the treatment was given, the Health Board may recover the amount of the fee from the contractor, by deduction from the contractor's remuneration or otherwise, and must pay that amount to the person who paid the fee.

Textual Amendments

- F3** Words in [reg. 28\(4\)](#) substituted (1.4.2018) by [The National Health Service \(General Medical Services Contracts and Primary Medical Services Section 17C Agreements\) \(Scotland\) Amendment Regulations 2018 \(S.S.I. 2018/94\)](#), regs. 1, 5

Arrangements on termination

29. A contract must make suitable provision for arrangements on termination of the contract, including the consequences (whether financial or otherwise) of the contract ending.

Other contractual terms

30.—(1) A contract must, unless it is of a type or nature to which a particular provision does not apply, contain other terms which have the same effect as those specified in schedule 6, except paragraphs 28(5) to (7), 32(5) to (9), 33(3), 91(5) to (15) and 92.

(2) The paragraphs specified in paragraph (1) have effect in relation to the matters set out in those paragraphs.

Implied contract terms

31.—(1) Where a contract fails to include any required term, such a term is to be an implied term of the contract.

(2) A contract must contain a term which has the effect that—

- (a) where, or to the extent that a term is a required term and such a required term is omitted, either in whole or in part, from the express terms of the contract; and
- (b) as a result, the contract does not expressly include that required term in full,

that required term, to the extent that it was omitted from the express terms of the contract, is to be an implied term of the contract.

(3) In the event of, and only to the extent of, any conflict between any term that must be implied in accordance with this regulation, the clauses of the contract and the schedules of the contract, the following order of precedence applies—

- (a) any required term that is implied in accordance with this regulation;
- (b) the clauses of the contract; and
- (c) the schedules of the contract.

(4) A “required term” is any term which is required to be included in the contract by virtue of these Regulations, including any term which is required by an amendment, extension, re-enactment, or consolidation of these Regulations, whether before or after the commencement of the contract.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018, PART 5. (See end of Document for details)

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