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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 337**

**NATIONAL HEALTH SERVICE**

**The National Health Service (General Medical Services Contracts) (Scotland) Amendment Regulations 2005**

<i>Made</i>	- - - -	<i>8th June 2005</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>9th June 2005</i>
<i>Coming into force</i>	- -	<i>1st July 2005</i>

The Scottish Ministers, in exercise of the powers conferred by sections 17L(1), 17N, 105(7), 106(a) and 108(1) of the National Health Service (Scotland) Act 1978(1) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (General Medical Services Contracts) (Scotland) Amendment Regulations 2005 and shall come into force on 1st July 2005.

(2) In these Regulations, “the principal Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(2).

**Amendment of regulation 2 of the principal Regulations**

2.—(1) Regulation 2(1) (interpretation)(3) of the principal Regulations is amended as follows.

(2) In the definition of “general medical practitioner”–

(a) after “means” insert “, unless the context otherwise requires”;

(b) in sub-paragraph (a), omit “otherwise than by virtue of paragraph 1(d) of Schedule 6 to that Order”;

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(1) 1978 c. 29; section 17L(1) and 17N were inserted by section 4 of the [Primary Medical Services \(Scotland\) Act 2004](#) (asp 1); section 105(7), which contains provisions relevant to the making of regulations, was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7, the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24 and the Health Act 1999 (c. 8), Schedule 4, paragraph 60; section 108(1) contains definitions of “prescribed” and “regulations” relevant to the exercise of the statutory powers under which these Regulations are made. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(2) S.S.I. 2004/115; the relevant amending instrument is S.S.I. 2004/215.

(3) Regulation 2 was amended by S.S.I. 2004/215.

- (c) in sub-paragraph (b)(i) before “; or” insert “or a person who has an acquired right to practise as a general medical practitioner pursuant to regulation 5(1)(d) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994(4)”; and
  - (d) in sub-paragraph (b)(ii) omit “other than by virtue of having an acquired right under paragraph 1(d) of Schedule 6 to the 2003 Order”.
- (3) For the definition of “GP Registrar”, substitute—
- ““GP Registrar” means a medical practitioner who is being trained in general practice by—
- (a) until the coming into force for all purposes of article 4(5)(d) of the 2003 Order, a general medical practitioner who—
    - (i) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998(5); and
    - (ii) performs primary medical services; and
  - (b) from the coming into force for all purposes of that article, a general medical practitioner who is approved under that article for the purpose of providing training under article 5(1)(c)(i) of the 2003 Order, whether as part of training leading to the award of a CCT or otherwise;”.
- (4) Omit the definition of “GP Trainer”.
- (5) In the definition of “out of hours services”, in sub-paragraph (a) after “provided” insert “by a contractor to its registered patients”
- (6) In the definition of “supplementary prescriber”—
- (a) in sub-paragraph (b)(ii) omit “or”; and
  - (b) at the end of sub-paragraph (b)(iii) for “and” in the second place where it occurs, substitute—
    - “or
    - (iv) the part of the register maintained by the Health Professions Council in pursuance of article 5 of the Health Professions Order 2001(6) relating to—
      - (aa) chiropodists and podiatrists;
      - (bb) physiotherapists; or
      - (cc) radiographers: diagnostic or therapeutic, and”.

### **Amendment of regulation 4 of the principal Regulations**

3. At the end of regulation 4 (conditions relating solely to medical practitioners) of the principal Regulations insert—

- “(4) In paragraph (1), (2)(a) and (3)(a), “general medical practitioner” does not include—
  - (a) from the coming into force of article 10 of the 2003 Order(7), a medical practitioner whose name is included in the General Practitioner Register by virtue of—

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(4) S.I.1994/3130; regulation 5 was amended by S.I. 1998/669 and modified by S.S.I. 2004/163. The whole regulations are prospectively revoked by S.I. 2003/1250.

(5) S.I. 1998/5; the relevant amending instrument is S.I. 1998/669. The whole regulations are prospectively revoked by S.I. 2003/1250.

(6) S.I. 2002/254.

(7) Article 10 was amended by S.I. 2004/865, 1016, 2261 and 3038.

- (i) paragraph 1(a) of Schedule 6 to that Order by virtue of his having been a restricted services principal included in a list specified in that paragraph;
  - (ii) paragraph 1(d) of that Schedule; or
  - (iii) article 11(2) of that Order<sup>(8)</sup> because of an exemption under regulation 5(1)(d) of the regulations specified in paragraph (5);
- (b) until the coming into force of article 10 of the 2003 Order, a medical practitioner who either—
- (i) until the coming force of paragraph 22 of Schedule 8 to that Order<sup>(9)</sup>—
    - (aa) has an acquired right to practise as a general medical practitioner pursuant to regulation 5(1)(a) of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994 only by virtue of having been a restricted services principal included in a list specified in that paragraph, or regulation 5(1)(d) of those Regulations; or
    - (bb) is exempt from the need to be suitably experienced by virtue of regulation 5(1)(d) of the regulations specified in paragraph (5); or
  - (ii) upon the coming into force of that paragraph of that Schedule to that Order, is an eligible general practitioner pursuant to that paragraph by virtue of an acquired right under the provisions listed in sub-paragraph (a)(i) to (iii).
- (5) The regulations referred to in paragraph (4)(a)(iii) and (b)(i)(bb) are the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998<sup>(10)</sup>, the National Health Service (Vocational Training for General Medical Practice) Regulations 1997<sup>(11)</sup> and the Medical Practitioners (Vocational Training) Regulations (Northern Ireland) 1998<sup>(12)</sup>.
- (6) In paragraph (4) “restricted services principal” has the same meaning as in the 2003 Order.”.

#### **Amendment of Schedule 1 to the principal Regulations**

4. In paragraph 4(2)(a) (vaccinations and immunisations) of Schedule 1 (additional services) to the principal Regulations, for “influenza vaccination” substitute “influenza and pneumococcal vaccinations”.

#### **Amendment of Schedule 5 to the principal Regulations**

5.—(1) Schedule 5 (other contractual terms) to the principal Regulations is amended as follows.

(2) After paragraph 1 (premises), insert—

##### **“Telephone services**

1A.—(1) The contractor shall not be a party to any contract or other arrangement under which the number for telephone services to be used—

(a) by patients to contact the practice for any purpose related to the contract; or

<sup>(8)</sup> Article 11 was amended by S.I. 2004/865, 1016 and 1947.

<sup>(9)</sup> Paragraph 22 of Schedule 8 is amended by S.I. 2004/865, 1016, 2261 and 3038.

<sup>(10)</sup> Regulation 5 is amended by S.I. 2003/3148 and was modified by S.S.I. 2004/163 and 372.

<sup>(11)</sup> S.I. 1997/2817; regulation 5 is amended by S.I. 2003/3148 and modified by S.I. 2004/865. The whole regulations are prospectively revoked by S.I. 2003/1250.

<sup>(12)</sup> S.R. 1998/13; regulation 5 is amended by S.I. 2003/3148 and modified by S.R. 2004/156. The whole regulations are prospectively revoked by S.I. 2003/1250.

- (b) by any other person to contact the practice in relation to services provided as part of the health service,  
starts with the digits 087, 090 or 091 or consists of a personal number, unless the service is provided free to the caller.
- (2) In this paragraph, “personal number” means a telephone number which starts with the number 070 followed by a further 8 digits.”.
- (3) In paragraph 31 (rejection of closure notice by the Health Board), after sub-paragraph (7) insert–
- “(7A) Subject to sub-paragraph (7B), the contractor’s list of patients shall remain closed for the period specified by the assessment panel in accordance with sub-paragraph (7)(b).
- (7B) The contractor’s list of patients shall re-open before the expiry of the period mentioned in sub-paragraph (7A) if–
- (a) the number of the contractor’s registered patients falls to the number specified by the assessment panel in accordance with sub-paragraph (7)(b) as the number of registered patients which, if that number were reached, would trigger the re-opening of the contractor’s list of patients; or
- (b) the Health Board and the contractor agree that the list of patients should re-open.
- (7C) If the contractor’s list of patients has re-opened pursuant to sub-paragraph (7B)(a), it shall nevertheless close again if, during the period specified by the assessment panel as the period for which the list should remain closed, the number of the contractor’s registered patients rise to the number specified by the assessment panel in accordance with sub-paragraph (7)(b) as the number of registered patients which, if that number were reached, would trigger the re-closure of the contractor’s list of patients.
- (7D) Except in cases where the contractor’s list of patients is already open pursuant to paragraph (7B), the Health Board shall notify the contractor in writing between seven and fourteen days before the expiry of the closure period specified in paragraph (7A), confirming the date on which the contractor’s list of patients will re-open.”.
- (4) In paragraph 41 (restrictions on prescribing by supplementary prescribers)(13) omit sub-paragraphs (2)(b), (4)(c) and (f) and (6).
- (5) In paragraph 46(2) (qualifications of performers)–
- (a) for paragraph (c) substitute–
- “(c) a GP Registrar who has applied to the Health Board to have the GP Registrar’s name included in the primary medical services performers list of the Health Board, until the first of the following events arises:–
- (i) the Health Board notifies the GP Registrar of the Board’s decision on that application;
- (ii) the end of a period of 2 months, starting with the date on which the GP Registrar’s vocational training scheme begins.”; and
- (b) at the end insert–
- “(3) In this paragraph, “vocational training scheme” has the meaning given in regulation 2 (interpretation) of the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004(14).”.
- (6) In paragraph 57 (arrangements for GP Registrars) in sub-paragraph (1) omit “for the purpose of being trained by a GP Trainer with the agreement of the Scottish Ministers and”.

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(13) paragraph 41 of Schedule 5 was amended by [S.S.I. 2004/215](#).

(14) [S.S.I. 2004/114](#).

- (7) For paragraph 65(2) (withdrawal and variation of approval under paragraph 63) substitute—  
“(2) A notice served under sub-paragraph (1) shall take effect on the date on which it is received by the contractor.”.
- (8) In paragraph 70 (provision of information), at the end insert—  
“(3) The contractor shall produce the information requested, or as the case may be, allow access to it—  
(a) by such date as has been agreed as reasonable between the contractor and the Health Board; or  
(b) in the absence of such agreement, within 28 days of the request being made.”.
- (9) In paragraph 73 (annual return and review)—  
(a) after sub-paragraph (1), insert—  
“(1A) One such return may be requested by the Health Board at any time during each financial year in relation to such period (not including any period covered by a previous annual return) as may be specified in the request.  
(1B) The contractor shall submit the completed return to the Health Board—  
(a) by such date as has been agreed as reasonable between the contractor and the Health Board; or  
(b) in the absence of such agreement, within 28 days of the request being made.”;  
and  
(b) at the end insert—  
“(6) In this paragraph, “financial year” means the twelve months ending with 31st March.”.
- (10) In paragraph 77 (notice provisions specific to a contract with a company limited by shares)—  
(a) after sub-paragraph (1)(a) insert—  
“(aa) a new director or secretary is appointed;” and  
(b) after sub-paragraph (2) insert—  
“(3) A notice under sub-paragraph (1)(aa) shall confirm that the new director or, as the case may be, secretary meets the conditions imposed on directors and secretaries by virtue of regulation 5.”.
- (11) In paragraph 91(6) (NHS dispute resolution procedure) at the end insert “under dispute”.
- (12) After paragraph 95 (termination by agreement), insert—

**“Termination on the death of an individual medical practitioner**

- 95A.—**(1) Where the contract is with an individual medical practitioner and that practitioner dies, the contract shall terminate at the end of the period of seven days after the date of the practitioner’s death unless, before the end of that period—  
(a) the Health Board has agreed in writing with the contractor’s personal representatives that the contract should continue for a further period, not exceeding 28 days after the end of the period of seven days; and  
(b) the contractor’s personal representatives have consented in writing to the Health Board employing or supplying one or more general medical practitioners to assist in the provision of clinical services under the contract throughout the period for which it continues.

(2) In sub-paragraph (1), “general medical practitioner” has the same meaning as in regulation 4(1).

(3) Sub-paragraph (1) does not affect any other rights to terminate the contract which the Health Board may have under paragraphs 100 to 103.”.

(13) In paragraph 100 (termination by the Health Board for the provision of untrue etc. information) for “before the contract” to the end substitute— “–

- (a) before the contract was entered into; or
- (b) pursuant to paragraphs 77(2) or (3) or 78(2),

in relation to the conditions set out in regulations 4 and 5 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.”.

(14) In paragraph 107 (termination of the NHS dispute resolution procedure)(15)–

- (a) in sub-paragraph (1) for “or 103(4) or (6)” substitute “103(4) or (6), or 104” ; and
- (b) in sub-paragraph (5) for “impose the contract sanction” substitute “terminate the contract”.

(15) In paragraph 112(3)(b) (insurance) for “an employee of the contractor in connection with clinical services which that employee” substitute “a person employed or engaged by the contractor in connection with clinical services which that person”.

#### **Transitional arrangements in relation to conditions in regulation 4 of the principal Regulations**

6.—(1) This regulation applies where, in relation to a general medical services contract entered into before 1st July 2005, the only person who was a general medical practitioner for the purposes of regulation 4(1), (2)(a) or (3)(a) of the principal Regulations before that date, falls from that date within regulation 4(4) of the principal Regulations (as inserted by regulation 3 of these Regulations).

(2) A Health Board may not terminate a general medical services contract pursuant to paragraph 99 of Schedule 5 to the principal Regulations on the grounds that the person referred to in paragraph (1) is no longer a general medical practitioner for the purposes of regulation 4(1), (2)(a) or (3)(a) of the principal Regulations.

#### **Transitional arrangements in relation to telephone services**

7.—(1) Where–

- (a) pursuant to paragraph 94 of Schedule 5 to the principal Regulations, a general medical services contract has been varied to include a term which gives effect to paragraph 1A of Schedule 5 to the principal Regulations (as inserted by regulation 5(2) of these Regulations); and
- (b) as a result of that variation, a contractor is, by virtue of a contract or other arrangements for the provision of telephone services which it entered into before the date on which that variation took effect, in breach of its general medical services contract,

no action shall be taken against the contractor by the Health Board in respect of that breach, provided the contractor complies with the conditions specified in paragraph (2).

(2) The conditions referred to in paragraph (1) are that the contractor–

- (a) provides such details of the contract or other arrangement for telephone services as the Health Board may request, within the time specified by the Health Board in that request; and

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(15) Paragraph 107 of Schedule 5 was amended by S.S.I. 2004/215.

- (b) varies or terminates that contract or other arrangement when required to do so by the Health Board, where the Health Board is acting in accordance with directions from the Scottish Ministers under section 2(5) of the National Health Service (Scotland) Act 1978(16).

St Andrew's House, Edinburgh  
8th June 2005

*ANDREW P KERR*  
A member of the Scottish Executive

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 (“the principal Regulations”), which set out the framework for general medical services contracts under section 17J of the National Health Service (Scotland) Act 1978.

These Regulations in particular make amendments to the conditions that must be met before a Health Board may enter into a general medical services contract with a medical practitioner, partnership or company limited by shares, and to the provision which a general medical services contract must include.

Regulation 3 amends the condition in the principal Regulations that a general medical services contract must be entered into with a general medical practitioner (or a partnership which contains at least one general medical practitioner, or a company where at least one general medical practitioner is a legal and beneficial shareholder). The amendment provides that certain persons are not to be considered a general medical practitioner for the purpose of meeting that condition.

The amendments that are made to the provision which a general medical services contract must include are—

- (a) amendment to the vaccinations that shall be offered by those contractors providing vaccinations and immunisations (regulation 4);
- (b) provision requiring a contractor not to enter into arrangements for certain telephone services where they are to be used by patients contacting the practice (regulation 5(2));
- (c) amendment to the provisions dealing with the closure of lists of patients, to make provision for the circumstances where, after an assessment panel has determined that a contractor’s list of patients should close, that list may re-open or close again (regulation 5(3));
- (d) amendment to the provisions placing restrictions on prescribing by supplementary prescribers, to permit the prescribing and administration by them of controlled drugs and the prescribing by them of unlicensed medicines under general medical services contracts (regulation 5(4));
- (e) amendment to the provisions which do not require GP Registrars to be included in the primary medical services performers list for the Health Board in order to perform services under the contract to bring them into line with the exemptions to the requirement for GP Registrars to be on such a list contained in the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 (regulation 5(5));
- (f) amendment to the provisions relating to the employment of GP Registrars providing that the consent of the Scottish Ministers is no longer required for employing a GP Registrar (regulation 5(6));
- (g) amendment to clarify provisions relating to the withdrawal or variation of approval by a Health Board of the sub-contracting of out of hours services (regulation 5(7));
- (h) amendment to requirements as to the provision of information by the contractor to provide for time limits by which that must be done (regulation 5(8));
- (i) amendment to the provisions as to the submission of annual returns by the contractor to provide for when they may be requested and time limits by which that must be done (regulation 5(9));



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- (j) amendment of the provisions as to notice that must be given by a contractor which is a company limited by shares to a Health Board to make provision for notice to be given when a new director or secretary is appointed (regulation 5(10));
- (k) amendment to the provisions on disputes arising out of, or in connection with, the contract that have been referred to the Scottish Ministers to clarify the matter about which representations may be made to them before they reach a decision as to who should determine a dispute (regulation 5(11));
- (l) provision as to the termination of a general medical services contract with a general medical practitioner where that practitioner dies (regulation 5(12));
- (m) amendment to the provisions as to termination of a contract where a contractor has provided untrue or inaccurate information before a contract was entered to provide that a contract may be terminated when untrue or inaccurate information is given in certain notices after a contract has been entered (regulation 5(13));
- (n) amendment to the provisions as to the relationship between the termination of the contract and the dispute resolution procedure to correct errors in the principal Regulations (regulation 5(14));
- (o) amendment to the provisions on insurance to provide that a contractor is to be regarded as holding insurance if a person engaged by the contractor holds insurance in connection with clinical services which that person provides (regulation 5(15)).

These Regulations also—

- (a) amend definitions in the principal Regulations related to the above amendments (regulation 2(3) and (4));
- (b) amend the definition of “general medical practitioner” in the principal Regulations so that references to one, unless the context otherwise requires, include all medical practitioners included on the General Practitioner Register or, until that Register comes into effect, who are suitably experienced or have an acquired right to practise as a general medical practitioner (regulation 2(2));
- (c) amend the definition of “out of hours services” in the principal Regulations to clarify its meaning (regulation 2(5)); and
- (d) amend the definition of “supplementary prescriber” to provide for additional categories of health care professional who may also prescribe as a supplementary prescriber to do so under general medical services contracts (regulation 2(6));

Regulation 6 makes transitional arrangements in relation to the amendment made by regulation 3 to provide that general medical services contracts that have been entered into with medical practitioners that are not now general medical practitioners for that purpose are not to be terminated for that reason.

Regulation 7 makes transitional arrangements in relation to the amendment made by regulation 5(2) to provide that no action is taken against contractors who have already entered into arrangements for such telephone services provided they comply with certain conditions as regards providing the Health Board with details as to those arrangements, and varying or terminating those arrangements.