Primary Medical Services (Scotland) Bill
[AS INTRODUCED]

CONTENTS

Section

PART 1
PROVISION OF PRIMARY MEDICAL SERVICES

Health Boards’ duties
1 Health Boards’ duties: provision of primary medical services

Section 17C arrangements
2 Provision of primary medical services: section 17C arrangements

Pilot schemes
3 Revocation of power to make pilot schemes

General medical services contracts
4 Provision of primary medical services: general medical services contracts

Persons performing primary medical services
5 Persons performing primary medical services

Assistance and support
6 Assistance and support

PART 2
GENERAL

7 Ancillary provision
8 Modification of enactments
9 Commencement and short title

Schedule—Modification of enactments
Primary Medical Services (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision in relation to the provision of primary medical services; and for connected purposes.

Part 1

PROVISION OF PRIMARY MEDICAL SERVICES

Health Boards’ duties

1 Health Boards’ duties: provision of primary medical services

(1) The National Health Service (Scotland) Act 1978 (c.29) (referred to in this Act as “the 1978 Act”) is amended as follows.

(2) After section 2 (constitution of Health Boards) insert—

“2C Duty of Health Boards: primary medical services

(1) Every Health Board must, to the extent that they consider necessary to meet all reasonable requirements, provide or secure the provision of primary medical services for persons in their area.

(2) For the purpose of securing the provision of primary medical services under subsection (1), a Health Board may make such arrangements for the provision of the services as they think fit (and may in particular make contractual arrangements with any person).

(3) A Health Board must publish information about such matters as may be prescribed in relation to the primary medical services which they provide or the provision of which they secure under subsection (1).

(4) Without prejudice to section 13, Health Boards must co-operate with one another in discharging their respective duties under this section.

(5) Regulations may provide that services of a prescribed description are, or are not, to be regarded as primary medical services for the purposes of this Act.

(6) Such regulations may in particular describe services by reference to the manner or the circumstances in which they are provided.
(7) Anything done by a Health Board in pursuance of subsection (1) or (2) is to be regarded as done in exercise of functions of the Scottish Ministers conferred on the Health Board by the order under section 2(1)(a) which constituted the Board.”

(3) In section 18, the words “general medical,” are repealed.

Section 17C arrangements

Provision of primary medical services: section 17C arrangements

(1) The 1978 Act is amended as follows.

(2) In section 17C (agreements by Health Boards for provision by others of personal medical services etc.)—

(a) in subsections (1)(a) and (2)(a) and (b)(i), for the words “personal medical services”, in each place where they occur, substitute “primary medical services”,

(b) subsection (3)(a) is repealed,

(c) in subsection (4), the words “personal medical services or” are repealed,

(d) in subsection (6), the definition of “personal medical services” is repealed.

(3) In section 17D (persons with whom agreement under section 17C may be made)—

(a) for paragraph (b) of subsection (1) substitute—

“(b) in the case of an agreement under which primary medical services are provided—

(i) a medical practitioner who satisfies the prescribed conditions;

(ii) a health care professional who satisfies the prescribed conditions;

(iii) an individual who is providing primary medical services in accordance with a general medical services contract, section 17C arrangements or section 28C arrangements;”,

(b) after that subsection insert—

“(1A) The power under subsection (1) to make an agreement with a person falling within paragraph (b)(iii), or (in the case of an agreement under which primary medical services are provided) paragraph (d), of that subsection is subject to such conditions as may be prescribed.”,

(c) in subsection (2)—

(i) after the definition of “the 1977 Act” insert—

““health care professional” means a member of a profession which is regulated by a body mentioned (at the time the agreement is made) in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002 (c.17);”;

(ii) in the definition of “NHS employee”, for paragraph (b) substitute—

“(b) a Health Board;

(ba) a Primary Care Trust or a Local Health Board;
(bb) any individual who is providing services under a general medical services contract;

(bc) a medical practitioner whose name is included in—

(i) a list maintained by a Health Board under section 17P(1);

(ii) a list maintained by a Primary Care Trust or a Local Health Board under section 29(2)(a), 43D(1) or 28DA(1)(a) of the 1977 Act;

(iii) a list maintained under article 56 of the Health and Personal Social Services (Northern Ireland) Order 1972 (1972 No.1256 (N.I.14));

(iii) after that definition insert—

“‘Primary Care Trust’ has the same meaning as in the 1977 Act;”;

(iv) the definition of “qualifying medical practitioner” is repealed,

(v) in each of the definitions of “section 17C employee” and “section 28C employee”, after “providing” insert “or performing”,

(d) after that subsection insert—

“(3) The reference in subsection (1)(b)(iii) to a person who is providing services includes a person who has provided them within such period as may be prescribed.”

(4) In section 17E (regulations concerning section 17C arrangements)—

(a) in subsection (2)(b), the words “medical practitioners performing personal medical services, and” are repealed;

(b) in subsection (3)—

(i) after paragraph (c) insert—

“(ca) impose conditions (including conditions as to qualifications and experience) to be satisfied by persons performing primary medical services in accordance with section 17C arrangements,

(cb) provide for the circumstances in which a person providing primary medical services under section 17C arrangements—

(i) must, or may, accept a person as a patient to whom such services are provided under section 17C arrangements;

(ii) may decline to accept a person as such a patient;

(iii) may terminate responsibility for a patient;

(cc) make provision as to the right of patients to choose the persons from whom they are to receive primary medical services under section 17C arrangements;”;

(ii) paragraphs (f) and (g) are repealed,

(c) after that subsection insert—

“(3A) The regulations may also require payments to be made under section 17C arrangements in accordance with directions given for the purpose by the Scottish Ministers.
(3B) A direction under subsection (3A) may 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.

(3C) The regulations may also include provision requiring a Health Board, in prescribed circumstances and subject to prescribed conditions, to enter into a general medical services contract on prescribed terms with any person providing services under section 17C arrangements who so requests.”,

(d) subsections (5) and (7) are repealed,

(e) in subsection (6), for “personal medical services” substitute “primary medical services”.

(5) Section 17H (immunisation under section 17C arrangements) is repealed.

Pilot schemes

3 Revocation of power to make pilot schemes

The power of a Health Board under Part I of the National Health Service (Primary Care) Act 1997 (c.46) to make pilot schemes for the provision of personal medical services ceases to have effect.

General medical services contracts

4 Provision of primary medical services: general medical services contracts

After section 17I of the 1978 Act insert—

“General medical services contracts

17J Health Boards’ power to enter into general medical services contracts

(1) A Health Board may enter into a contract under which primary medical 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 “general medical services contract”.

(3) Subject to any provision made by or under this Part, a general medical 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 general medical services contract may include—

(a) services which are not primary medical services;

(b) services to be provided to any of the contractor’s patients who are outwith the Health Board’s area.

(5) In this Part, “contractor”, in relation to a general medical services contract with a Health Board, means the other party to the contract.
17K Mandatory contract term: provision of prescribed primary medical services

(1) A general medical services contract must require the contractor to provide for the contractor’s patients primary medical services of such descriptions as may be prescribed.

(2) Regulations under subsection (1) may in particular describe the primary medical services by reference to the manner or circumstances in which they are provided.

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) a partnership, where the conditions mentioned in subsection (2) are satisfied; or

(c) a company limited by shares, where the conditions in subsection (3) are satisfied.

(2) The conditions referred to in subsection (1)(b) are that—

(a) all of the partners are individuals;

(b) at least one partner is a medical practitioner; and

(c) any partner who is not a medical practitioner is—

(i) an NHS employee;

(ii) a section 17C employee;

(iii) a section 28C employee;

(iv) a health care professional, not falling within any of sub-paragraphs (i) to (iii), who is engaged in the provision of services under this Act; or

(v) an individual, not falling within any of sub-paragraphs (i) to (iv), who is providing primary medical services in accordance with a general medical services contract, general dental services in accordance with arrangements under section 25, primary medical services or personal dental services in accordance with section 17C arrangements, general medical services in accordance with arrangements under section 29 of the 1977 Act, general dental services in accordance with arrangements under section 35 of that Act or personal medical services or personal dental services in accordance with section 28C arrangements.

(3) The conditions referred to in subsection (1)(c) are that—

(a) at least one share in the company is legally and beneficially owned by a medical practitioner; and

(b) any share which is not so owned is legally and beneficially owned by a person referred to in subsection (2)(c)(i) to (v).
(4) Regulations may make provision as to the effect on a general medical services contract entered into with a partnership of a change in the membership of the partnership.

(5) In this section, “the 1977 Act”, “health care professional”, “NHS employee”, “qualifying body”, “section 17C arrangements”, “section 17C employee”, section 28C arrangements” and “section 28C employee” each has the same meaning as in section 17D.

(6) The references in subsection (2)(c)(iv) and (v) to a person who is providing services include a person who has provided them within such period as may be prescribed.

17M Payments by Health Boards under general medical services contracts

(1) The Scottish Ministers may give directions as to payments to be made under general medical services contracts.

(2) A general medical 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 for the making of payments in respect of individual practitioners;

(d) 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);

(e) 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) References in this section to payments include fees, allowances, reimbursements, loans and repayments.

17N Other mandatory contract terms

(1) A general medical 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 make provision as to—

(a) the manner in which, and the standards to which, services must be provided;

(b) the persons who are to perform services;

(c) the persons to whom services are to be provided;

(d) the right of patients to choose the persons from whom they are to receive services;

(e) the variation of terms of the contract (except terms required by or under this Part);

(f) rights of entry and inspection (including inspection of clinical records and other documents);

(g) the circumstances in which, and the manner in which, the contract may be terminated;

(h) enforcement;

(i) the adjudication of disputes.

(3) Regulations making provision in pursuance of subsection (2)(c) may make provision as to the circumstances in which a contractor—

(a) must, or may, accept a person as a patient to whom services are to be provided under the contract;

(b) may decline to accept a person as such a patient; or

(c) may terminate the contractor’s responsibility under the contract for a patient.

(4) Regulations making provision in pursuance of subsection (2)(e) 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 general medical services contract must contain provision requiring the contractor to comply with any directions given by the Scottish Ministers for the purposes of this section as to the drugs, medicines or other substances which may, or may not, be ordered for patients in the provision of primary medical services under the contract.

17O Resolution of disputes and entry into NHS contracts

(1) Regulations may make provision for the resolution of disputes as to the terms of a proposed general medical services contract, including, without prejudice to that generality, provision for—

(a) the referral of the terms of the proposed contract to the Scottish Ministers;
(b) the Scottish Ministers, or a person appointed by them, to determine the
terms on which the contract may be entered into.

(2) Regulations may make provision for persons entering into a general medical
services contract to be regarded as health service bodies for any purposes of
section 17A in circumstances where the persons so elect.

(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, subsection (1) of that section has effect in relation to that person with
the omission of the words “under any enactment”.

(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.”

Persons performing primary medical services

(1) The 1978 Act is amended as follows.

(2) After section 17O (as inserted by section 4 above) insert—

“Persons performing primary medical services

(1) Regulations may provide that a health care professional of a prescribed
description may not perform any primary medical service for which a Health
Board is responsible unless that professional is included in a list maintained
under the regulations by the Health Board.

(2) For the purposes of this section—
(a) “health care professional” has the same meaning as in section 17D;

(b) a Health Board is responsible for a primary medical service if it provides
the service, or secures provision of the service, under or by virtue of
section 2C(1).

(3) Regulations under subsection (1) may make provision in relation to such lists
and in particular as to—
(a) the preparation, maintenance and publication of a list;

(b) eligibility for inclusion in a list;

(c) applications for inclusion (including provision as to the Health Board to
which an application must be made, and for the procedure for
applications and the documents to be supplied on application);

(d) the grounds on which an application for inclusion may or must be
granted or refused;

(e) requirements with which a person included in a list must comply
(including the declaration of financial interests and gifts and other
benefits);
(f) suspension or removal from a list or references to the Tribunal (including the grounds for and consequences of suspension or removal, or reference);

(g) circumstances in which a person included in a list may not withdraw from it;

(h) payments to be made by a Health Board in respect of a person suspended from the list (including provision for the amount of, or the method of calculating, the payment to be determined by the Scottish Ministers, or a person appointed by them);

(i) the criteria to be applied in making decisions under the regulations;

(j) appeals against decisions made by a Health Board under the regulations;

(k) disclosure of information about applicants for inclusion, refusals of applications, or suspensions, removals or references.

(4) Regulations making provision as to the matters referred to in subsection (3)(k) may in particular authorise the disclosure of information—

(a) by a Health Board to the Scottish Ministers; and

(b) by the Scottish Ministers to a Health Board.”

(3) In section 29 (disqualification of persons providing services)—

(a) for paragraphs (a) and (aa) of subsection (8) substitute—

“(a) a list of health care professionals of a prescribed description performing primary medical services;”,

(b) after that subsection insert—

“(8A) In subsection (8)(a), “health care professional” has the same meaning as in section 17D.”

6 Assistance and support

After section 17P (as inserted by section 5 above) insert—

“17Q Assistance and support

(1) A Health Board may provide assistance and support to—

(a) any person providing, or proposing to provide, primary medical services under a general medical services contract;

(b) any person providing, or proposing to provide, such services in accordance with section 17C arrangements.

(2) Assistance and support provided by a Health Board under subsection (1) is to be provided on such terms, including terms as to payment, as the Board think fit.

(3) In this section, “assistance” includes financial assistance.”
PART 2
GENERAL

7 Ancillary provision

(1) The Scottish Ministers may by order made by statutory instrument make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes, or in consequence, of this Act.

(2) An order under this section may—

(a) make different provision for different purposes,
(b) modify any enactment, instrument or document.

(3) An order under this section making provision in respect of persons who, immediately before the coming into force of section 4 are providing services under section 19 of the 1978 Act (general medical services), may make provision in respect of a period beginning before the coming into force of the provision (or of section 4), provided that the provision is not as a whole detrimental to the remuneration of the persons to whom it relates.

(4) An order under this section (except where subsection (5) applies) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

(5) No order under this section—

(a) containing provisions which add to, replace or omit any part of the text of an Act,
(b) making provision referred to in subsection (3),

is to be made unless a draft of the statutory instrument containing the order has been laid before, and approved by resolution of, the Scottish Parliament.

8 Modification of enactments

The schedule makes modifications of enactments in consequence of this Act.

9 Commencement and short title

(1) The provisions of this Act, except section 7 and this section, come into force on such day as the Scottish Ministers may by order made by statutory instrument appoint.

(2) Different days may be appointed under this section for different purposes.

(3) This Act may be cited as the Primary Medical Services (Scotland) Act 2003.
SCHEDULE
(introduced by section 8)
MODIFICATION OF ENACTMENTS

National Health Service (Scotland) Act 1978 (c.29)

1. The 1978 Act is amended as follows.

   2. In section 15(1)(a) (supply of goods and services to local authorities etc.)—
      (a) in sub-paragraph (i), for “general medical,” substitute “primary medical services
      under a general medical services contract or”,
      (b) in sub-paragraph (ii), for “personal medical services” substitute “primary medical
      services”.

   3. Sections 17EA (services lists in relation to section 17C arrangements etc. for personal
      medical services) and 17EB (application for inclusion in list) are repealed.

   4. Section 17F (right to choose medical practitioner in relation to primary medical
      services) is repealed.

   5. In section 17I (making available by Scottish Ministers of accommodation for use in
      connection with section 17C arrangements), for “personal medical services” substitute
      “primary medical services”.

   6. Sections 19 (arrangements etc. in relation to general medical services) to 20
      (applications to provide general medical services), 23 (refusal of application: provision
      of services adequate) and 24B (supplementary lists) are repealed.

   7. In section 108 (interpretation)—
      (a) after the definition of “functions”, insert—
      ““general medical services contract” has the meaning given in section
      17J(2);”,
      (b) the definitions of “medical list” and “personal medical services” are repealed,
      (c) after the definition of “prescribed” insert—
      ““primary medical services” is to be construed in accordance with section
      2C(5);”,
      (d) the definitions of “services list” and “supplementary list” are repealed.

National Health Service (Primary Care) Act 1997 (c.46)

2. The National Health Service (Primary Care) Act 1997 is amended as follows.

   2. In section 1 (pilot schemes)—
      (a) subsection (1)(a) and the succeeding “or” are repealed,
      (b) in subsection (2), the words from “personal medical services”, where they first
      occur, to “services or” are repealed,
      (c) in subsection (3)—
      (i) in paragraph (a), the words “personal medical services or” are repealed,
(ii) in paragraph (b), after “which” insert “(not being primary medical services)”;

(d) in subsection (5), paragraph (a) is repealed,

(e) in subsection (8), for the definition of “personal medical services” substitute—

“primary medical services” has the same meaning as for the purposes of Part I of the 1978 Act;”.

(3) Section 2 (pilot schemes for provision of personal medical services) is repealed.

(4) In section 5 (approval of pilot schemes for provision of personal medical services etc.), subsections (4) and (7) are repealed.

(5) Sections 11 to 13 (medical practitioners to be suitably experienced and lists) and 15 (liabilities and obligations in relation to deputies) are repealed.

(6) Section 23(2) (right to choose medical practitioner in relation to primary medical services) is repealed.

(7) In section 40(2) (interpretation), the definitions of “medical list” and “personal medical services” are repealed.

(8) Schedule 1 (preferential treatment on transferring to medical lists) is repealed.

(9) In Schedule 2 (amendments of enactments)—

(a) paragraphs 37, 39 and 41 are repealed,

(b) paragraph 57, in so far as providing for a definition of “personal medical services”, is repealed.

---

**Community Care and Health (Scotland) Act 2002 (asp 5)**

3 (1) The Community Care and Health (Scotland) Act 2002 is amended as follows.

(2) Section 18 (services lists and supplementary lists) is repealed.

(3) In schedule 2 (amendment of enactments), in paragraph 2—

(a) sub-paragraph (3) is repealed,

(b) sub-paragraph (12), in so far as providing for a definition of “medical list”, is repealed.
Primary Medical Services (Scotland) Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to make provision in relation to the provision of primary medical services; and for connected purposes.

Introduced by: Malcolm Chisholm
On: 23 June 2003
Supported by: Mr Tom McCabe
Bill type: Executive Bill