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SCOTTISH STATUTORY INSTRUMENTS

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**2001 No. 72**

**NATIONAL HEALTH SERVICE**

**The National Health Service (Personal Medical Services) (Scotland) Regulations 2001**

<i>Made</i>	- - - -	<i>8th March 2001</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>9th March 2001</i>
<i>Coming into force</i>	- -	<i>1st April 2001</i>

The Scottish Ministers, in exercise of the powers conferred by sections 17E, 24A, 105(7) and 108(1) of the National Health Service (Scotland) Act 1978<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations:

**PART I**  
**GENERAL**

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service (Personal Medical Services) (Scotland) Regulations 2001 and shall come into force on 1st April 2001.

(2) In these Regulations, unless the context otherwise requires—

“the 1978 Act” means the National Health Service (Scotland) Act 1978;

“an agreement” means an agreement made between a Health Board and a provider pursuant to section 17C of the 1978 Act under which personal medical services are provided;

“approved medical practice” means a medical practice approved for the purpose of section 10(2) of the Medical Act 1983<sup>(2)</sup>;

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- (1) 1978 c. 29. Section 17E was inserted by the National Health Service (Primary Care) Act 1997 (c. 46) (“the 1997 Act”), section 22(2); section 17F was inserted by the 1997 Act, section 23(2); section 24A was inserted by the 1997 Act, section 25(2); 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; by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24; and by 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) 1983 c. 54. Section 10 was amended by the National Health Service (Primary Care) Act 1997 (c. 46), section 35(2).

“child health surveillance services” means personal medical services which comprise—

- (a) the monitoring—
  - (i) by the consideration of information concerning the child received by or on behalf of the performer; and
  - (ii) on any occasion when the child is examined or observed by or on behalf of the performer,
 

of the health, well-being and physical, mental and social development of the child while under the age of 5 years with a view to detecting any deviations from normal development;
- (b) the examination of the child by or on behalf of the performer on so many occasions and at such intervals as shall be determined by the Health Board in whose area the child resides for the purposes of the provision of child health surveillance services generally;

“the Choice of Medical Practitioner Regulations” means the National Health Service (Choice of Medical Practitioner) (Scotland) Regulations 1998(3);

“contraceptive services” means—

- (a) the giving of advice to women on contraception;
- (b) the medical examination of women seeking such advice;
- (c) the contraceptive treatment of such women; and
- (d) the supply to such women of contraceptive substances and appliances;

“General Practice (GP) Registrar” has the meaning assigned to it in regulation 2(1) of the GMS Regulations 1995(4);

“the GMS Regulations” means the National Health Service (General Medical Services) (Scotland) Regulations 1995(5);

“maternity medical services” means the provision of personal medical services which comprise—

- (a) the provision of personal medical services to a woman during the ante natal period;
- (b) the provision of personal medical services to a woman during labour;
- (c) the provisions of personal medical services to a woman and to her baby, where the pregnancy has resulted in the birth of a live baby, including the provision of all necessary personal medical services to that baby during the period of 14 days following its birth, unless, during that period, another medical practitioner has accepted the baby for inclusion in that practitioner’s list pursuant to an application made on the baby’s behalf under regulation 2 of the Choice of Medical Practitioner Regulations, during the post-natal period; and
- (d) the provision of a full post-natal examination;

“minor surgery services” means the personal medical services described in Schedule 5;

“Part II Practitioner” means a medical practitioner who provides general medical services;

“performer” means any registered medical practitioner (including the provider) who performs personal medical services provided under an agreement;

“performer’s list” means a list of persons who have been accepted by or assigned to a performer under the Choice of Medical Practitioner Regulations;

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(3) S.I. 1998/659, amended by S.I. 2000/191 and 2001/ .

(4) S.I. 1995/416. The definition of “General Practice (GP) Registrar” was substituted for that of a “trainee general practitioner” by S.I. 1998/4.

(5) S.I. 1995/416, amended by S.I. 1995/3199, 1996/842, 1504, 1997/943, 1473, 1998/4, 660, 1600, 1667, 1999/749, 1057 and 1620 and by S.I. 1999/54, 2000/28 and 190.

“pooled list” means a list of persons who have been accepted by a provider for the provision of personal medical services, and who are not included in a performer’s list;

“provider” means any person or body with whom a Health Board enters into an agreement;

“Scheduled drug” has the meaning given in regulation 2(1) of the GMS Regulations;

“the Tribunal” means the Tribunal constituted under section 29 of the 1978 Act.

(3) In these Regulations unless the context otherwise requires, a reference to a regulation or Schedule is to a regulation of, or a Schedule to, these Regulations and a reference to a paragraph is to a paragraph of the regulation in which the reference is made.

## PART II

### AGREEMENTS

#### **Entering into an agreement**

2. An agreement may be entered into only where it complies with the terms of Schedules 1 and 4.

#### **No undue compromise**

3. No agreement shall be entered into where that would unduly compromise—

- (a) the right of any person in the Health Board’s area to choose the medical practitioner from whom that person is to receive medical services; or
- (b) the scope of the Health Board to require a person to be assigned to a performer’s list,

having regard to the need of the Health Board to ensure that the number of performers who are primarily responsible for the performance of personal medical services is such that neither the right nor the scope is unduly compromised.

#### **Withdrawal from an agreement**

4. Any provider may withdraw from an agreement by giving the Health Board not less than 3 months notice in writing of their intention to withdraw.

#### **Variation of an agreement**

5. A Health Board and provider who have entered into an agreement may, after following such procedure as may be set out in the agreement, vary it by a further agreement in writing.

#### **Publication of Details of an Agreement**

6. A provider shall display at every premises from which personal medical services are provided by the provider a notice containing the information set out in Schedule 2.

## PART III

### PERFORMANCE OF PERSONAL MEDICAL SERVICES

#### Performance of personal medical services by medical practitioners

7.—(1) A Health Board shall not make an agreement under which a registered medical practitioner will perform personal medical services unless the Health Board would, if the registered medical practitioner had intended to provide general medical services instead, be able to enter into arrangements with that practitioner under section 19(1) of the 1978 Act.

(2) No medical practitioner shall perform personal medical services where that medical practitioner—

- (a) is disqualified by direction of the Tribunal;
- (b) is suspended by direction of the Tribunal;
- (c) is disqualified or suspended under provisions, corresponding to sections 29(3), 32A(2) or 32B(1) of the 1978 Act, in force in England and Wales or Northern Ireland;
- (d) is no longer a registered medical practitioner;
- (e) is the subject of a direction given by the Professional Conduct Committee under section 36 of the Medical Act 1983 (erasure of name from the register or suspension of registration)(6) or of an order made by that Committee under section 38(1) of that Act (immediate suspension);
- (f) has been convicted in the United Kingdom of murder; or
- (g) has been convicted in the United Kingdom of a criminal offence and sentenced to a term of imprisonment of at least six months.

(3) Where, a medical practitioner who falls within paragraph (2) performs personal medical services, the agreement under which those services are provided shall terminate forthwith.

(4) Schedule 3 applies to the performance of personal medical services by a medical practitioner under an agreement.

#### Child health surveillance services and minor surgery services

8.—(1) Where the personal medical services which are to be provided under an agreement include child health surveillance services those services may only be provided by a performer who has satisfied the Health Board that that performer has such medical experience and training as are necessary to perform such services.

(2) In satisfying itself for the purposes of a performer in paragraph (1), a Health Board shall, in particular, have regard to—

- (a) any post-graduate qualification held by the performer; and
- (b) any training undertaken and any medical experience gained by the performer during the period of five years immediately preceding the date on which the performer will start to perform child health surveillance services under the agreement,

which is relevant to the provision of child health surveillance services, and shall seek and take into account any medical advice it considers necessary to enable it to so satisfy itself.

(3) Subject to paragraph (5), where the personal medical services which are to be provided under an agreement include minor surgery services those services may only be provided by a performer

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(6) 1983 c. 54.

who has satisfied the Health Board that that performer has such medical experience and training as are necessary to perform such services.

(4) In satisfying itself for the purposes of a performer in paragraph (3), a Health Board shall, in particular, have regard to—

- (a) any post-graduate qualification held by the performer; and
- (b) any training undertaken and any medical experience gained by the performer during the period of five years immediately preceding the date on which the performer will start to perform minor surgery services under the agreement,

which is relevant to the provision of minor surgery services, and shall seek to take into account any medical advice it considers necessary to enable it to so satisfy itself.

(5) Where a performer has satisfied the Health Board for the purposes of paragraph (3), the performer shall not perform minor surgery services unless the performer has also satisfied the Health Board that the premises and equipment to be used by the performer are suitable for the performance of minor surgery services.

(6) A Health Board shall be deemed not to be satisfied for the purposes of paragraphs (1), (3) and (5) unless a letter of satisfaction signed by an authorised officer of the Health Board is sent to the performer.

## PART IV

### PATIENT LISTS

#### **Lists of patients**

**9.—**(1) A Health Board which enters into an agreement shall prepare and keep up to date a list of patients who receive personal medical services and that list shall be made up of—

- (a) a performer's list in respect of each performer who is, under an agreement, to have such a list; and
- (b) if, in accordance with an agreement, there is to be a pooled list, that list.

(2) Where a person is accepted by a performer for inclusion in the performer's list or, as the case may be, by a provider for inclusion in a pooled list, the Health Board shall include that person in the list of patients who receive personal medical services from the date on which it receives notification of acceptance from the performer or, as the case may be, the provider.

#### **Removal from a list of patients who receive personal medical services**

**10.—**(1) A person whose name is included in a performer's list or in a pooled list and who no longer wishes to receive personal medical services may at any time give notice to the Health Board that that person wishes to have their name removed from that list, and at the expiration of 14 days from the date of receipt of the notice, the Health Board shall remove the name and inform the person and the performer or, as the case may be, the provider.

(2) Where, in regard to a person whose name is included in a performer's list or a pooled list, the Health Board after due enquiry including consultation in writing with the performer or, as the case may be, the provider is satisfied, either—

- (a) that the person no longer resides in that part of the area of the Health Board where personal medical services are provided by the provider; or
- (b) that the whereabouts of the person are no longer known to the Health Board,