



Dear Colleague

**HEALTH BOARD PRIMARY MEDICAL SERVICES
CONTRACTS (SCOTLAND) DIRECTIONS 2010
(The HBPMS Directions)**

Summary

1. This Circular introduces updated Directions which will replace the Health Board Primary Medical Services Contracts (Scotland) Directions 2004 (HBPMS Directions 2004) and which come into effect on 22 December 2010.

Background

2. These Directions support NHS Boards in the discharge of their statutory requirement to provide or secure the provision of primary medical services under section 2C of the NHS (Scotland) Act 1978. These Directions provide the basis for NHS Boards to enter into contracts with a range of providers for primary medical services.

We have consulted with the Scottish General Practitioner Committee and they are content.

The HBPMS Directions

3. The changes to the HBPMS Directions 2004 are primarily to reflect the involvement in patient care and other eligibility criteria introduced by the Tobacco and Primary Medical Services (Scotland) Act 2010. The HBPMS Directions cover contractual arrangements which Health Boards may enter into for the purpose of securing the provision of primary medical services by virtue of section 2C(2) of the National Health Service (Scotland) Act 1978 ("the 1978 Act").

22 December 2010

Addresses

For action
Chief Executives of NHS Boards
General Medical Practitioners

For information
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**NHS Circular:
PCA(M)(2010)21**

4. The changes will not affect HBPMS contracts which have already been entered into prior to 22 December 2010. Directions 4, 5 and 6 set out the conditions which apply to contracts which are yet *to be entered into*. Direction 8 provides that a Health Board which wishes to enter into an HBPMS contract shall ensure that the contract terms contain terms which have the effect specified in 'specified provisions' in Schedule 1 to the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004 ("the Section 17C Agreement regulations"). The 'specified provisions' include the sub-contracting provision and the various termination provisions in the Section 17C Agreement Regulations (as amended). The references to those provisions have been amended, where appropriate, to reflect their different application depending on whether the contract has been entered into before or after the 22nd December 2010. That is, it is not the intention that contracts entered into before 22nd December 2010 will require to be terminated if they do not meet the involvement criteria and the HBPMS Directions reflect this.

Action

5. A copy of the Directions is enclosed. NHS Boards are asked to make them available to any practitioner who may require to see them and to bring this Circular to the attention of their Area Medical Committee and the secretary of the GP sub-committee. An electronic copy of the Directions can be found on the SHOW website.

<http://www.show.scot.nhs.uk/publications/publication.asp>

Yours sincerely



Frank Strang
Primary and Community Care Directorate

NATIONAL HEALTH SERVICE (SCOTLAND) ACT 1978
HEALTH BOARD PRIMARY MEDICAL SERVICES CONTRACTS
(SCOTLAND) DIRECTIONS 2010

The Scottish Ministers, in exercise of the powers conferred by sections 2(5) and 105(7) of the National Health Service (Scotland) Act 1978(a) and of all other powers enabling them in that behalf, hereby give the following Directions:

PART 1
GENERAL

Citation and commencement

1. These Directions may be cited as the Health Board Primary Medical Services Contracts (Scotland) Directions 2010 and come into force on 22nd December 2010.

Interpretation

2.—(1) In these Directions—

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

“charity trustee” has the same meaning as in the Section 17C Agreements Regulations;

“core hours” has the same meaning as in the Section 17C Agreements Regulations

“disqualified” has the same meaning as in the section 17C Agreements Regulations;

“essential services” means the services described in paragraph 1(2), (4), (5) and (7) of Schedule 2 to the Section 17C Agreements Regulations or services that are equivalent to those services and which are provided during core hours;

“the GMS Contract Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(b);

“GMS contractor” means a person who is providing primary medical services in accordance with a general medical services contract;

“general medical services contract” means a general medical services contract under section 17J of the 1978 Act(c) (Health Boards power to enter into general medical services contracts);

“Healthcare Improvement Scotland” means the body established under section 10A of the 1978 Act;

“health service body” means any person or body referred to in section 17A(2) of the Act(d);

“HBPMS contractor” means a person with whom a Health Board has made arrangements under section 2C(2) of the 1978 Act(e) (functions of Health Boards: primary medical services) for the provision of primary medical services, but does not include a GMS contractor or a section 17C provider and “HBPMS contract” shall be construed accordingly;

(a) 1978 c.29. Section 2(5) was amended by the National Health Service and Community Care Act 1990 (c.19), section 66(1) Schedule 9, paragraph 19(1); section 105(7) 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), section 29(1) Schedule 9, paragraph 24 and the Health Act 1999 (c.8), Schedule 4, paragraph 60. 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).

(b) S.S.I. 2004/115 as amended by S.S.I. 2010/394.

(c) Section 17J was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 4.

(d) Section 17A(2) was inserted by the National Health Service and Community Care Act 1990 (c.19), section 30 and amended by the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 102(2), the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2, paragraph 36, the Health Act 1999 (c.8), Schedule 4, paragraph 46 and S.I. 1991/195.

(e) Section 2C(2) was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 1(2).

“licensing body” has the same meaning as in the Section 17C Agreements Regulations;
“list” has the same meaning as in the Section 17C Agreements Regulations;
“list of patients” means in relation to an HBPMS contractor, the list maintained in respect of that HBPMS contractor by the Health Board under direction 15;
“out of hours services” has the same meaning as in the Section 17C Agreements Regulations;
“patient” means a person to whom the HBPMS contractor is required to provide primary medical services under its HBPMS contract;
“Section 17C Agreements Regulations” means the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004(a);
“section 17C provider” means a person or body who is providing primary medical services in accordance with section 17C arrangements.

(2) In relation to a requirement to include terms having the effect specified in provisions of the Section 17C Agreements Regulations, those terms are to be read as if references in the Section 17C Agreements Regulations to—

- (a) “an agreement” or “the agreement” were to “an HBPMS contract” or “the HBPMS contract”;
- (b) “provider” or “party to the agreement” were to “HBPMS contractor”;
- (c) provisions of those Regulations were references to corresponding provisions of these Directions where these Directions require an equivalent term to be included in an HBPMS contract;
- (d) terms defined in those Regulations have the meaning given to them in those Regulations (subject to the provisions of sub-paragraphs (a) to (c) above) except where such a term is defined in this direction, in which case it shall have the meaning given to it in this direction.

Minimum standards

3. Nothing in these Directions prevents a Health Board agreeing contractual terms of an HBPMS contract which require a higher level of performance by the HBPMS contractor than would otherwise be required pursuant to these Directions.

PART 2

PROVIDER CONDITIONS

Provider Conditions

4. A Health Board may only enter into a HBPMS contract if the conditions set out in directions 5 and 6 are met.

5.—(1) A Health Board may not enter into an HBPMS contract with a person where, if the person—

- (a) is a medical practitioner, that the medical practitioner;
- (b) is a health care professional (other than a medical practitioner), that the health care professional;
- (c) is a company, the company, any member of the company or any director or secretary of the company;
- (d) is a partnership, any member of the partnership or the partnership; and

(a) S.S.I. 2004/116 as amended by S.S.I 2004/162 and 217 and by S.S.I. 2010/395.

(e) is a limited liability partnership, any member of the limited liability partnership or the limited liability partnership,
falls within paragraph (2).

(2) A person falls within this paragraph if the person—

- (a) has been disqualified or suspended by direction of the Tribunal made pursuant to section 32A(2)(a) (applications for interim suspension) or 32B(1)(b) (suspension pending appeal) of the Act, or under any provisions in force in England, Wales or Northern Ireland corresponding thereto;
- (b) subject to paragraph (3), is disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;
- (c) within the period of five years prior to the signing of the HBPMS contract or commencement of the HBPMS contract, whichever is the earlier, has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless—
 - (i) the person has subsequently been employed by that health service body or another health service body and, where the person has been employed as a member of a health care profession, any subsequent employment has also been as a member of that profession; or
 - (ii) that dismissal was the subject of a finding of unfair dismissal by any competently established tribunal or court;
- (d) within the period of five years prior to signing the HBPMS contract or commencement of the HBPMS contract, whichever is the earlier, has been disqualified from a list unless the person's name has subsequently been included in such a list;
- (e) has been convicted in the United Kingdom of murder;
- (f) has been convicted in the United Kingdom of a criminal offence, other than murder, and has been sentenced to a term of imprisonment of over six months;
- (g) subject to paragraph (4) has been convicted elsewhere of an offence which would, if committed in Scotland, constitute—
 - (i) murder, or
 - (ii) a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (h) has been convicted of an offence referred to in Schedule 1 to the Criminal Procedure (Scotland) Act 1995(c) (offences against children under the age of 17 years to which special provisions apply) or Schedule 1 to the Children and Young Persons Act 1933(d) (offences against children and young persons with respect to which special provisions apply);
- (i) has—
 - (i) had sequestration of the person's estate awarded or been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order has been annulled;
 - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986(e) or sections 56A

(a) Section 32A was inserted by National Health Service (Amendment) Act 1995, ("the 1995 Act") c. 31, section 8.

(b) Section 32B was inserted by the 1995 Act, c. 31, section 8.

(c) 1995 c.46

(d) 1933 c.12 as amended by the Domestic Violence, Crime and Victims Act 2004 (c.28), section 58, Schedule 10; the Sexual Offences Act 2003 (c.42), section 139, Schedule 6, paragraph 7; the Criminal Justice Act 1988 (c.33), section 170, Schedule 15, paragraph 8 and Schedule 16, and the Sexual Offences Act 1956 (c.69), section 48 and Schedule 3 and as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9.

(e) 1986 c.45. Schedule 4A was inserted by section 257 of and Schedule 20 to the Enterprise Act 2002 (c.40).

to 56K of the Bankruptcy (Scotland) Act 1985(a) unless that order has ceased to have effect or has been annulled,

- (iii) made a composition or arrangement with, or granted a trust deed for, the person's creditors unless the person has been discharged in respect of it, or
- (iv) an administrator, administrative receiver or receiver appointed in respect of the person;
- (j) has been—
 - (i) removed under section 34 of the Charities and Trustee Investment (Scotland) Act 2005(b) (powers of the Court of Session) from being concerned in the management or control of any body; or
 - (ii) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commission for England and Wales or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which the person was responsible or to which the person was privy, or which the person by that person's conduct contributed to or facilitated;
- (k) is subject to a disqualification order under the Company Directors Disqualification Act 1986(c), the Companies (Northern Ireland) Order 1986(d) or to an order made under section 429(2)(b) of the Insolvency Act 1986(e) (failure to pay under county court administration order); or
- (l) falls within regulation 5(2)(d) of the National Health Service (General Medical Services Contracts) Regulations 2004(f).

(3) A person shall not fall within paragraph (2)(b) where the Health Board is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and it does not make the person unsuitable to be—

- (a) a party to an HBPMS contract;
- (b) in the case of an HBPMS contract with a company, a member of a company, or a director or company secretary of a company entering into an HBPMS contract;
- (c) in the case of a HBPMS contract with a partnership, a partner in a partnership entering into a HBPMS contract; or
- (d) in the case of a HBPMS contract with a limited liability partnership, a member of a limited liability partnership entering into a HBPMS contract.

(4) A person shall not fall within paragraph (2)(g) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a party to an HBPMS contract;
- (b) in the case of a HBPMS contract with a company, a member of a company or a director or company secretary of a company entering into an HBPMS contract;
- (c) in the case of a HBPMS contract with a partnership, a partner in a partnership entering into a HBPMS contract; or
- (d) in the case of a HBPMS contract with a limited liability partnership, a member of a limited liability partnership entering into a HBPMS contract.

(a) 1985 c.66. Sections 56A to 56K were inserted by section 2(1) of the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

(b) 2005, asp 10.

(c) 1986 c. 46 as amended by the Insolvency Act 2000 (c.39).

(d) S.I. 1986/1032 (N.I. 6)

(e) 1986 c.45 as amended by the Enterprise Act 2002 (c.40), section 269, Schedule 23, paragraph 15.

(f) S.I. 2004/291.

Further provider conditions

6.—(1) A Health Board may only enter into an HBPMS contract if the Board is satisfied that the HBPMS contractor has sufficient involvement in patient care.

(2) An HBPMS contractor has sufficient involvement in patient care if—

- (a) where the contractor is a medical practitioner or 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 the HBPMS contract (or will so perform or be so engaged by virtue of the HBPMS contract in question).

(3) For the purposes of paragraph (2), a person regularly performs or is engaged in the day to day provision of primary medical services where, subject to paragraphs (4) and (5), that person so performs or is so engaged, or will so perform or so engage, for no less than a total of 10 hours in each week for the duration of the HBPMS contract.

(4) References in paragraph (3) 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 6 months prior to the HBPMS contract being entered into.

(5) Notwithstanding paragraph (3), the following periods of time in which a person is not performing or is not engaged in the provision of primary medical services are 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—

- (a) a period of annual leave, as determined by the period of annual leave entitlement of the said person;
- (b) a local or public holiday in Scotland;
- (c) a period of—
 - (i) maternity leave,
 - (ii) paternity leave,
 - (iii) adoption leave as the parent who is the main care provider, or
 - (iv) adoption leave as the parent who is not the main care provider,as determined by the period of entitlement of the said person;
- (d) a period of time when a person has been incapable of work due to sickness, injury or pregnancy;
- (e) a period of time of up to a maximum of 12 months, when a person is undertaking approved study or training;
- (f) a period of service as a medical practitioner employed under a contract of service by the Ministry of Defence, whether or not as a member of the armed forces of the Crown, provided that the medical practitioner is entered on the GP Register kept by virtue of section 34C of the Medical Act 1983(a);
- (g) a period of whole time service in the armed forces of the Crown in a national emergency, as a volunteer or otherwise, or a compulsory whole time service in those forces, including any service resulting from any reserve liability, or any equivalent service by a person liable for compulsory whole-time service in those forces;

(a) 1983 c.54; section 34C was inserted by the General and Specialist Medical practice (Education, Training and Qualifications) Order 2010/234, Schedule 1, paragraph 10.

- (h) any period during which the person has been suspended by a professional regulatory body, a Health Board or the NHS Tribunal where that person was suspended after the HBPMS contract with the Health Board was entered into.

(6) For the purposes of paragraph (5)(e), “approved study or training” means study or training which is relevant for the purposes of the HBPMS contractor carrying out the obligations under the HBPMS contract effectively, and which has been approved by the appropriate partner, member or person responsible for training and development.

PART 3

MANDATORY TERMS FOR ALL HBPMS CONTRACTS

General terms

7. A Health Board which wishes to enter into an HBPMS contract shall ensure that the HBPMS contract—

- (a) specifies to whom the HBPMS contractor is to provide services under the HBPMS contract, including where appropriate by reference to an area within which a person resident would be entitled to receive services under the HBPMS contract;
- (b) specifies that the HBPMS contractor shall not sell, assign or otherwise dispose of the benefit of any of its rights under the HBPMS contract without the prior consent of the Health Board;
- (c) subject to direction 8(1)(l), specifies the circumstances (if any) in which any obligations under the HBPMS contract may be sub-contracted;
- (d) specifies the grounds (in addition to those required by direction 8(1)(x), (y), (z) and (za) in which the HBPMS contract may or must be terminated) and any contract sanctions; and
- (e) specifies the procedures that are to apply in the event of a contractual dispute.

Other contractual terms

8.—(1) A Health Board which wishes to enter into an HBPMS contract shall ensure that the HBPMS contract contains terms which have the effect specified in the following provisions of Schedule 1 (content of agreements) to the Section 17C Agreements Regulations—

- (a) paragraph 1 (premises), but as if “Subject to any plan which is included in the agreement pursuant to regulation 18(3),” were omitted;
- (b) paragraph 3 (clinical reports);
- (c) paragraphs 4 (storage of vaccines) and 5 (infection control);
- (d) paragraphs 6 and 7 (duty of co-operation in relation to primary medical services);
- (e) paragraph 8 (patient preference of practitioner)(a);
- (f) paragraphs 10 and 11 (prescribing), 12 (restrictions on prescribing by medical practitioners), 13 (restrictions on prescribing by supplementary prescribers), 14(1) (excessive prescribing), and 16 (provision of drugs, medicines and appliances for immediate treatment or personal administration), but as if references in paragraph 12 to “regulation 22” were references to “direction 10(a)”;
- (g) paragraphs 17 to 20 (qualifications of performers), but as if paragraph 17(2)(a) were omitted;
- (h) paragraphs 24(1) and (3) (conditions for employment and engagement), 25 (training)(a), 26 and 27(1),(2) and (3)(b) (arrangements for GP Registrars);

(a) Paragraph 8 was amended by S.S.I. 2004/217.

- (i) paragraph 28 (independent nurse prescribers and supplementary prescribers)(b);
- (j) paragraph 29 (signing of documents);
- (k) paragraph 30 (level of skill);
- (l) paragraph 32(10)(c) (sub-contracting of clinical matters);
- (m) paragraphs 33 (patient records) and 34 (confidentiality of personal data);
- (n) paragraph 35 (practice leaflet) and Schedule 6 to the Section 17C Agreements Regulations(d), but as if the words “and to the Health Board” were added at the end of sub-paragraph (c) of paragraph 35 and Schedule 6 was amended as follows—
 - (i) in paragraph 3(a), the words “and the members” were omitted;
 - (ii) in paragraph 16 for “paragraphs 5 and 6” were substituted “paragraph 5”;
 - (iii) paragraph 21 were omitted; and
 - (iv) in paragraph 24, “specified in paragraph 9(2)(c) of Schedule 1 or paragraph 14(2) of Schedule 2” were omitted.
- (o) paragraph 36 (provision of information);
- (p) paragraphs 37 (inquiries about prescriptions and referrals) and 38 (provision of information to a medical officer etc.);
- (q) paragraph 39 (annual return and review)(e);
- (r) paragraphs 40 and 41 (notifications to the Health Board(f));
- (s) paragraph 44 (notification of deaths);
- (t) paragraph 45 (notifications to patients following variation of the agreement), but as if the words “in accordance with Part 8 of this Schedule” were omitted;
- (u) paragraph 46 (entry and inspection by the Health Board);
- (v) paragraph 52 (co-operation with investigations);
- (w) paragraph 59 (variation of an agreement: general)(g), but as if—
 - (i) in sub-paragraph (1), the words “Subject to paragraphs 32(8), 62 and 71 of this Schedule and paragraphs 4(8) and 9 of Schedule 4” were omitted, and
 - (ii) in sub-paragraph (2), the words “In addition to the specific provision made in paragraph 71,” were omitted;
- (x) paragraph 65(1) (termination by the Health Board for the provision of untrue etc information), but as if—
 - (i) in sub-paragraph (a) the reference to regulation 3 were to direction 5, and
 - (ii) in sub-paragraph (b) the reference to regulations 3 and 3A were to directions 5 and 6;
- (y) paragraph 66(1) and (3) to (6) (other grounds for termination by the Health Board)(h) but as if—
 - (i) sub-paragraph (1) were substituted as follows—

“66.—(1) In the case of HBPMS contracts entered into prior to 22nd December 2010, the Health Board may serve notice in writing on a HBPMS contractor terminating the HBPMS contract forthwith, or from such date as may be specified in the notice, if—

- (a) in the case of an HBPMS contract with an individual, the individual;

(a) Paragraph 25 was amended by S.S.I. 2004/217.
 (b) Paragraph 28 was amended by S.S.I. 2010/395.
 (c) Paragraph 32(10) was inserted by S.I. 2004/162 and by S.S.I. 2010/395.
 (d) Schedule 6 was amended by S.S.I. 2004/217
 (e) Paragraph 39 was amended by S.S.I. 2010/395.
 (f) Paragraph 40 was amended by S.S.I. 2010/395.
 (g) Paragraph 59 was amended by S.S.I. 2004/217
 (h) Paragraph 66 was amended by S.S.I. 2004/217

- (b) in the case of an HBPMS contract with a company, the company or any director or secretary of the company;
- (c) in the case of an HBPMS contract with a partnership, any partner or the partnership;
- (d) in the case of an HBPMS contract with an industrial and provident society, a friendly society, a voluntary organisation or any other body, the society, organisation or body or any officer, trustee or any other person concerned with the management of the society, organisation or body,

falls within sub-paragraph (3) during the existence of the HBPMS contract.”.

(ii) sub-paragraph (4) were substituted as follows—

“(4) A Health Board shall not terminate the HBPMS contract pursuant to sub-paragraph (3)(b) where the Health Board is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be—

- (a) a party to an HBPMS contract;
- (b) in the case where a person is a director or company secretary of a company that is a HBPMS contractor, a director or secretary of that company;
- (c) in the case where a person is a partner in a partnership that is a HBPMS contractor, a partner in that partnership; or
- (d) in the case of an officer, trustee or other person concerned with the management of an industrial and provident society, a friendly society, a voluntary organisation or other body that is an HBPMS contractor, an officer, trustee or other person concerned with the management of that society, organisation or body.”.

(iii) sub-paragraph (6) were substituted as follows—

“(6) A Health Board shall not terminate the HBPMS contract pursuant to sub-paragraph (3)(g) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a party to an HBPMS contract;
- (b) in the case where a person is a director or company secretary of a company that is a HBPMS contractor, a director or secretary of that company;
- (c) in the case where a person is a partner in a partnership that is a HBPMS contractor, a partner in that partnership; or
- (d) in the case of an officer, trustee or other person concerned with the management of an industrial and provident society, a friendly society, a voluntary organisation or other body that is an HBPMS contractor, an officer, trustee or other person concerned with the management of that society, organisation or body.”.

(z) paragraph 66A(1) to (7) (other grounds for termination by the Health Board for agreements entered into on or after 22nd December 2010)(a) but as if—

(i) sub-paragraph (1) were substituted as follows—

“**66A.**—(1) In the case of HBPMS contracts entered into on or after 22nd December 2010, the Health Board may serve notice in writing on a HBPMS contractor terminating the HBPMS contract forthwith, or from such date as may be specified in the notice, if—

- (a) in the case of an HBPMS contract with an individual, the individual;
- (b) in the case of an HBPMS contract with a company, the company, or any member, director or secretary of the company;
- (c) in the case of an HBPMS contract with a partnership, any partner or the partnership;

(a) Paragraph 66A was inserted by S.S.I. 2010/395.

- (d) in the case of an HBPMS contract with a limited liability partnership, any member or the limited liability partnership,

falls within sub-paragraph (2) during the existence of the HBPMS contract.”.

- (ii) sub-paragraph (3) were substituted as follows—

“(3) Subject to sub-paragraph (4), a Health Board shall not terminate the HBPMS contract pursuant to sub-paragraph (2)(a) where—

- (a) a party to an HBPMS contract who is an individual;
- (b) in the case of a party to a HBPMS contract which is a company, a member of that company;
- (c) in the case of a party to a HBPMS contract which is a partnership, a partner in that partnership; or
- (d) in the case of a party to an HBPMS contract which is a limited liability partnership, a member of that limited liability partnership,

after having entered into a HBPMS contract (“the relevant HBPMS contract”) retires and is

therefore not performing or is not engaged in the provision of primary medical services, in accordance with direction 6.”.

- (iii) sub-paragraph (5) were substituted as follows—

“(5) A Health Board shall not terminate the HBPMS contract pursuant to sub-paragraph (2)(c) where the Health Board is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be—

- (a) a party to an HBPMS contract;
- (b) in the case where a person is a member, director or company secretary of a company that is a HBPMS contractor, a member, director or secretary of that company;
- (c) in the case where a person is a partner in a partnership that is a HBPMS contractor, a partner in that partnership; or
- (d) in the case where a person is a member of a limited liability partnership that is a HBPMS contractor, a member of that limited liability partnership.”.

- (iv) sub-paragraph (7) were substituted as follows—

“(7) A Health Board shall not terminate the HBPMS contract pursuant to sub-paragraph (2)(h) where the Health Board is satisfied that the conviction does not make the person unsuitable to be—

- (a) a party to an HBPMS contract;
- (b) in the case where a person is a member, director or company secretary of a company that is a HBPMS contractor, a member, director or secretary of that company;
- (c) in the case where a person is a partner in a partnership that is a HBPMS contractor, a partner in that partnership; or
- (d) in the case where a person is a member in a limited liability partnership that is a HBPMS contractor, a member of that limited liability partnership.”.

(za) paragraph 67 (other grounds for termination by the Health Board);

(zb) paragraph 67A (termination by the Health Board for unlawful sub-contracting)(a);

(zc) paragraph 75 (clinical governance);

(a) Paragraph 67A was inserted by S.S.I. 2004/162.

(zd) paragraphs 76 and 77 (insurance), but as if the definition of “insurance” in paragraph 76(3)(a) applied to paragraph 77;

(ze) paragraph 78 (gifts)(a), but as if—

(i) in sub-paragraph (2)—

(aa) paragraphs (a), (b), (ba) and (c) were omitted;

(bb) references to “paragraphs (b) to (e)” were to “paragraphs (d) and (e)”; and

(ii) in sub-paragraph (4), the reference to “sub-paragraph (2)(b) to (g)” were to “sub-paragraph (d) to (g)”.

(zf) paragraph 79 (compliance with legislation and guidance);

(zg) paragraph 80 (third party rights).

(2) A Health Board which wishes to enter into an HBPMS contract shall consider whether the HBPMS contract should require the HBPMS contractor to keep a register of gifts given to the following persons (in addition to the persons who the HBPMS contractor is required to record gifts given pursuant to paragraph (1)(ze))—

(a) the HBPMS contractor;

(b) where the HBPMS contractor is a company, to any member, director or company secretary of the company;

(c) where the HBPMS contractor is a partnership, to a partner of the partnership; or

(d) where the HBPMS contractor is a limited liability partnership, to a member of the limited liability partnership.

Certificates

9. A Health Board which wishes to enter into an HBPMS contract shall ensure that the HBPMS contract contains terms having the effect specified in regulation 19 (certificates) of the Section 17C Agreements Regulations.

Charges

10. A Health Board which wishes to enter into an HBPMS contract shall ensure that the HBPMS contract—

(a) prohibits the HBPMS contractor, either itself or through any other person, from demanding or accepting from any patient a fee or other remuneration, for its own or another’s benefit for—

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

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

except in the circumstances set out in sub-paragraphs (a) to (d) and (f) to (l) of Schedule 4 to the GMS Contract Regulations;

(b) where the HBPMS contractor has a list of patients, contains terms having the same effect as paragraph 7 of Schedule 2 to the Section 17C Agreements Regulations;

(c) requires the HBPMS contractor in the provision of services to patients under the HBPMS contract—

(i) to provide information regarding other services it provides, otherwise than under the HBPMS contract, only where appropriate;

(ii) where it does provide such information, to ensure that the information provided is fair and accurate; and

(a) Paragraph 78 was amended by S.S.I. 2004/217 and by S.S.I. 2010/395.

- (iii) where the other services are available to the patient as part of the health service established pursuant to section 1 of the 1978 Act, to inform the patient—
 - (aa) that the services are so available;
 - (bb) of any charge that applies to that health service and, if no such charge applies, that the service is free; and
 - (cc) how to access those health services.

Financial interests

11.—(1) A Health Board which wishes to enter into an HBPMS contract shall ensure that the HBPMS contract requires the HBPMS contractor in making a decision—

- (a) to refer a patient for other services under the 1978 Act; or
- (b) to prescribe any drug, medicine or other appliance to a patient,

to do so without regard to its own financial interests.

(2) The Health Board shall further ensure that an HBPMS contract contains a term having the effect of prohibiting the HBPMS contractor from informing patients that any prescription for any drug, medicine or other appliance must be dispensed only by the HBPMS contractor or a person with whom the HBPMS contractor is associated.

Consequences of termination of an HBPMS contract

12. A Health Board which wishes to enter into an HBPMS contract shall ensure that the HBPMS contract makes suitable provision for the arrangements on termination of an HBPMS contract, including the consequences (whether financial or otherwise) of the HBPMS contract ending.

PART 4

MANDATORY TERMS OF AN HBPMS CONTRACT UNDER WHICH ESSENTIAL SERVICES ARE TO BE PROVIDED

Mandatory terms of an HBPMS contract under which essential services are to be provided

13.—(1) A Health Board which wishes to enter into an HBPMS contract under which essential services are to be provided to the HBPMS contractor's patients shall ensure (in addition to the requirements specified in directions 7 to 12) that the HBPMS contract contains terms which have the effect specified in the following provisions of Schedule 2 to the Section 17C Agreements Regulations—

- (a) paragraph 2 (essential services);
- (b) paragraph 3 (attendance at practice premises);
- (c) paragraph 4 (newly registered patients);
- (d) paragraph 5 (patients not seen within 3 years);
- (e) paragraph 6 (patients aged 75 years and over);
- (f) paragraph 30 (patients records: supplemental).

(2) The Health Board shall further ensure that such an HBPMS contract makes provision as to the circumstances (if any) in which the Health Board may assign patients to the HBPMS contractor and where appropriate, as to whether the HBPMS contractor's list of patients is to be regarded as open or closed and in what circumstances the status of the list may change.

(3) The Health Board shall further ensure that such an HBPMS contract makes provision as to the circumstances (if any) in which the HBPMS contractor is required to attend to a patient otherwise than at the HBPMS contractor's premises.

PART 5

MANDATORY TERM FOR AN HBPMS CONTRACT UNDER WHICH OUT OF HOURS SERVICES ARE TO BE PROVIDED

Mandatory term for an HBPMS contract under which out of hours services are to be provided

14. Where a Health Board wishes to enter into an HBPMS contract under which out of hours services are to be provided it shall ensure (in addition to the requirements specified in directions 7 to 12) that the HBPMS contract shall require the HBPMS contractor to meet the quality standards set out from time to time in guidance which has been issued to Health Boards by NHS Quality Improvement Scotland or by Healthcare Improvement Scotland.

PART 6

PATIENT LISTS

Patient Lists

15. Where an HBPMS contract requires an HBPMS contractor to provide essential services, the Health Board shall prepare and keep up to date a list of the patients—

- (a) who have been accepted by the HBPMS contractor for inclusion in the HBPMS contractor's list of patients in accordance with the terms of the HBPMS contract and who have not subsequently been removed from that list in accordance with the terms of the HBPMS contract; and
- (b) where applicable, who have been assigned to the HBPMS contractor in accordance with the terms of the HBPMS contract and whose assignment has not been rescinded.

PART 7

REVOCATION

Revocation

16.-The Health Board Primary Medical Services Contracts (Scotland) Directions 2004 dated 25 November 2004 are revoked.



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22 December 2010