NATIONAL HEALTH SERVICE (SCOTLAND) ACT 1978

HEALTH BOARD DIRECT PROVISION OF PRIMARY MEDICAL SERVICES (SCOTLAND) DIRECTIONS 2019

The Scottish Ministers give the following directions in exercise of the powers conferred by sections 2(5) and 105(7) of the National Health Service (Scotland) Act 1978(**a**) and all other powers enabling them to do so.

PART 1
GENERAL

Citation and commencement

1. These Directions may be cited as the Health Board Direct Provision of Primary Medical Services (Scotland) Directions 2019 and come into force on 22 February 2019.

Application

2. Subject to direction 3, these Directions apply where a Health Board wishes to establish one or more practices for the purposes of providing primary medical services pursuant to section 2C of the Act.

3. These Directions do not apply where a Health Board wishes to establish one or more practices for the purposes of providing primary medical services to prisoners in prisons pursuant to section 2C of the Act.

4. These Directions apply to a practice established by a Health Board—
(a) to which the Health Board Direct Provision of Primary Medical Services (Scotland) (No. 2) Directions 2011 applied immediately before 22 February 2019; or
(b) which is established on or after 22 February 2019.

Interpretation

5. —(1) In these Directions—

"the Act" means the National Health Service (Scotland) Act 1978;

"additional services" has the same meaning as in the GMS Contracts Regulations;

"advanced electronic signature" has the same meaning as in the Section 17C Agreements Regulations;

"alternative provider" means another health care professional who falls within the description of alternative providers specified in column 3 of schedule 4 of the GMS Contracts Regulations in relation to the relevant medical certificate prescribed in column 1 of that schedule;

"core hours" has the same meaning as in the Section 17C Agreements Regulations;

(**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).

"electronic communication" has the same meaning as in section 15 of the Electronic Communications Act 2000(**a**);

"enhanced services" are—

(a) services other than essential services, or additional services; or
(b) essential services or additional services or an element of such a service that a practice provides in accordance with specifications set out in the practice statement, which requires of the practice an enhanced level of service provision compared to that which the practice needs generally to provide in relation to that service or element of service;

"essential services" means the services described in direction 8(2), (4), (5) and (7).

"the GMS Contracts Regulations" means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018 (**b**);

"general medical practitioner" has the same meaning as in the Section 17C Agreements Regulations;

"GP Registrar" has the same meaning as in the Section 17C Agreements Regulations;

"Health Board", unless the context otherwise requires, means the Health Board that has established the practice;

"health care professional" has the same meaning as in section 17L(8)(**c**) of the Act and "health care profession" shall be construed accordingly;

"independent nurse prescriber" means a person—

(a) who is either engaged or employed by the Health Board for the purposes of the practice; and

(b) who is registered in the Nursing and Midwifery Register; and

(c) against whose name is recorded in that register an annotation signifying that they are qualified to order drugs, medicines and appliances as a community practitioner nurse prescriber, a nurse independent prescriber or a nurse independent/supplementary prescriber;

"medical officer" means a medical practitioner who is—

(a) employed or engaged by the Department for Work and Pensions; or

(b) provided by an organisation under a contract entered into with the Secretary of State for Work and Pensions;

"normal hours" means those days and hours on which and the times at which services are normally made available by the practice and may be different for different services;

"patient" means—

(a) Where the practice has a practice's list of patients—

(i) a registered patient;

(ii) a temporary resident; and

(iii) persons to whom the practice is required to provide immediately necessary treatment under direction 8(5) or (7); and

(b) any other person to whom the practice is to provide services in accordance with the practice statement;

"pharmacist independent prescriber" means a pharmacist against whose name in the relevant register is recorded an annotation signifying that the pharmacist is qualified to order drugs, medicines and appliances as a pharmacist independent prescriber;

(**a**) 2000 (c.7). Section 15 was amended by the Communications Act 2003 (c. 21), schedule 17, paragraph 158.
(**b**) S.S.I. 2018/66.
(**c**) Section 17L was inserted by the Tobacco and Primary Medical Services (Scotland) Act 2010, asp 3, section 39(1).

"practice" means a practice established by a Health Board for the purposes of its provision of primary medical services under section 2C(1) of the Act(**a**);

"practice's area" means the area referred to in direction 6(1)(c);

"practice's list of patients" means the list maintained in respect of a practice by the Health Board under direction 16;

"practice premises" means the premises specified in the practice statement;

"practice statement" means the statement prepared pursuant to direction 6;

"prescriber" means—

(a) a medical practitioner;

(b) an independent nurse prescriber;

(c) a supplementary prescriber;

(d) a pharmacist independent prescriber;

(e) a physiotherapist independent prescriber;

(f) a podiatrist or chiropodist independent prescriber;

(g) a therapeutic radiographer independent prescriber; and

(h) a paramedic independent prescriber

who is either engaged or employed by the Health Board for the purposes of the practice;

"prescription form" means—

(a) a form provided by the Health Board and issued by a prescriber; or

(b) data that are created in an electronic form and which are signed with a prescriber's advanced electronic signature and transmitted as an electronic communication through the ePharmacy service,

to enable a person to obtain pharmaceutical services;

"registered patient" means—

(a) a person who is recorded by the Health Board as being on the practice's list of patients; or

(b) a person whom the practice has accepted for inclusion on the practice's list of patients;

"relevant register" means—

(a) in relation to a nurse, the Nursing and Midwifery Register;

(b) in relation to a pharmacist—

(i) Part 1 of the register maintained under article 19 of the Pharmacy Order 2010; or

(ii) the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976; and

(c) in relation to a chiropodist and podiatrist, a physiotherapist, a paramedic and a therapeutic radiographer, the relevant part of the register maintained by the Health and Care Professions Council in pursuance of article 5 of the Health and Social Work Professions Order 2001(**b**);

"Section 17C Agreements Regulations" means the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018(**c**);

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

(**b**) S.I. 2002/254. Article 5 was amended by S.I. 2009/1182, schedule 2, paragraph 2. The title of this Order is the Health and Social Work Professions Order 2002 but is cited as the Health and Social Work Professions Order 2001 in accordance with section 213(4) of the Health and Social Care Act 2012.

(**c**) S.S.I. 2018/67.

"supplementary prescriber" means a person - who is either engaged or employed by the Health Board for the purposes of the practice and whose name is registered in—

(a) the Nursing and Midwifery Register;

(b) Part 1 of the register maintained under article 19 of the Pharmacy Order 2010;

(c) the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976;

(d) the part of the register maintained by the Health Professions Council in pursuance of article 5 of the Health and Social Work Professions Order 2001(**a**) relating to—

(i) chiropodists and podiatrists;

(ii) physiotherapists;

(iii) diagnostic or therapeutic radiographers;

(iv) dietitians;

(v) paramedics; or

(e) the register of optometrists maintained by the General Optical Council in pursuance of section 7 of the Opticians Act 1989(**b**),

and against whose name is recorded in the relevant register an annotation signifying that that they are qualified to order drugs, medicines and appliances as a supplementary prescriber or, in the case of the Nursing and Midwifery Register, a nurse independent/supplementary prescriber; and

"temporary resident" means a person accepted by a practice as a temporary resident pursuant to the requirements of the practice statement and for whom the practice's responsibility has not been terminated in accordance with the procedure specified in that statement.

(2) Unless otherwise defined in these Directions, terms have the meaning given to them in the Section 17C Agreements Regulations.

Practice statements

6. —(1) Where a Health Board wishes to establish one or more practices for the purposes of providing primary medical services pursuant to section 2C(1) of the Act, it must in respect of each practice prepare a practice statement which sets out—

(a) the services to be provided;
(b) the address of each of the practice premises to be used for the provision of such services;
(c) to whom the practice is to provide services, including, where the practice provides essential services or where it is otherwise appropriate, by reference to an area within which a person resident would be entitled to receive services from the practice;
(d) if the practice is to provide essential services—
(i) the procedure (if any) by which a person—
(aa) applies for inclusion in;
(bb) is accepted for inclusion in;
(cc) is refused inclusion in; or
(dd) is removed from,

the practice's list of patients prepared by the Health Board in accordance with direction 16, and

(ii) the circumstances in which and the procedure (if any) by which—

(aa) a patient can be accepted as a temporary resident by the practice; and

(**a**) S.I. 2002/254. Article 5 was amended by S.I. 2009/1182, schedule 2, paragraph 2.
(**b**) 1989 (c.44). Section 7 was amended by S.I. 2005/848, article 7.

(bb) responsibility for a patient accepted as a temporary resident can be terminated;

(e) the alternative procedure (if any) by which a person can receive primary medical services from the practice, other than as a registered patient or a temporary resident;
(f) the circumstances in which, and the procedure by which (if any), the Health Board may assign patients to the practice;
(g) where applicable, the status of the practice's list of patients, namely whether that list is open or closed to applications from patients for inclusion in its list, and in what circumstances the status of the list may change; and
(h) such further details and requirements in relation to the administration and running of the practice as the Health Board considers appropriate.

(2) The Health Board must ensure that—

(a) the practice operates in accordance with the requirements and procedures specified in the practice statement; and
(b) the practice statement is amended, as necessary, to reflect any changes to the matters specified in paragraph (1)(a) to (h).

(3) A practice may, in particular, consist of—

(a) one or more employees of the Health Board;
(b) one or more health care professionals providing services to the Health Board under a contract for services; or
(c) a combination of sub-paragraphs (a) and (b).

Amendments to the practice statement

7. Where the practice statement is amended pursuant to direction 6(2)(b) and, as a result of that amendment, there is to be a change in the range of services provided to the practice's patients, the Health Board must ensure that the practice's patients are notified of the amendment in such manner as the Health Board or the practice sees fit, either by the Health Board or the practice.

PART 2
PROVISION OF SERVICES

Essential services

8. — (1) Subject to direction 9, where a practice provides the services in paragraphs (2), (4), (5) and (7) ("essential services"), it must do so throughout core hours.

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

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

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

(3) For the purpose of paragraph (2)—
(a) "*disease*" means a disease included in the list of three-character categories contained in the tenth revision of the International Statistical Classification of Diseases and Related Health Problems; and
(b) "*management*" includes—

(i) offering consultation and, where appropriate, physical examination for the purpose of identifying the need, if any, for treatment or further investigation; and
(ii) the making available of such treatment or further investigation as is necessary and appropriate, including the referral of the patient for other services under the Act and liaison with other health care professionals involved in the patient's treatment and care.

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

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

(5) The Health Board must ensure that the practice provides primary medical services required in core hours, taking into account the availability of other options for care, for the immediately necessary treatment of any person to whom the practice has been requested to provide treatment owing to an accident or emergency at any place in the practice's area.

(6) In paragraph (5), "emergency" includes any medical emergency whether or not related to services provided by the practice in accordance with the practice statement.

(7) The Health Board must ensure that the practice provides primary medical services required in core hours for the immediately necessary treatment of any person falling within paragraph (8) who requests such treatment, for the period specified in paragraph (9).

(8) A person falls within this paragraph if they are a person—

(a) whose application for inclusion in the practice's list of patients has been refused and who is not registered with another provider of essential services (or their equivalent) in the area of the Health Board;
(b) whose application for acceptance as a temporary resident has been refused; or
(c) who is present in the practice's area for less than 24 hours.

(9) The period referred to in paragraph (8) is—

(a) in the case of paragraph (8)(a) 14 days beginning with the date on which that person's application was refused or until that person has been subsequently registered elsewhere for the provision of essential services (or their equivalent), whichever occurs first;
(b) in the case of paragraph (8)(b), 14 days beginning with the date on which that person's application was rejected or until that person has been subsequently accepted elsewhere as a temporary resident, whichever occurs first; and
(c) in the case of paragraph (8)(c), 24 hours or such shorter period as the person is present in the practice's area.

9. Where a practice provides essential services, the Health Board must ensure that the practice—

(a) provides those services, and such other services that the practice statement specifies, at such times, within core hours, as are appropriate to meet the reasonable needs of the practice's patients; and
(b) has in place arrangements for the practice's patients to access such services throughout the core hours in case of emergency.

Premises

10.— (1)The Health Board must ensure that the practice premises used for the provision of primary medical services are—

(a) suitable for the delivery of those services; and
(b) are sufficient to meet the reasonable needs of the practice's patients.

(2) The Health Board must ensure that the practice premises meet the minimum standards for practice premises set out in paragraphs (1) to (16) of schedule 4 of the Section 17C Agreements Regulations but as if—

(a) in paragraph 1 of that schedule, references to "provider" were to "Health Board";
(b) in paragraph 4 of that schedule the reference to "provider" was to "practice";
(c) in paragraphs 5 and 13 of that schedule, the references to "paragraph 83 of schedule 1" were to "direction 34"; and
(d) in paragraph 7 of that schedule—
  (i) the reference to "provider" was to "Health Board";
  (ii) the words ", and these outlying consultation facilities meet with the approval of the Health Board" were omitted; and
  (iii) "the" before "outlying consultation facilities" was "those".

Attendance at practice premises

11.—(1) Where a practice provides essential services, the Health Board must ensure that any patient who—

(a) has not previously made an appointment; and
(b) attends at the practice premises during the normal hours for essential services,

is provided with such services by an appropriate health care professional during that surgery period except in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that—

(a) it is more appropriate for the patient to be referred elsewhere for services under the Act; or
(b) the patient is then offered an appointment to attend again within a time which is appropriate and reasonable having regard to all the circumstances and the patient's health would not thereby be jeopardised.

(3) In the case of a patient whose medical condition is such that in the reasonable opinion of the practice—

(a) attendance of the patient is required; and
(b) it would be inappropriate for the patient to attend at the practice premises,

the Health Board must ensure that the practice provides services to that patient at whichever, in the practice's judgement, is the most appropriate of the places set out in paragraph (4).

(4) The places referred to in paragraph (3) are—

(a) the place recorded in the patient's medical records as being the patient's last home address or (where the patient's medical record is not immediately available) the place confirmed by the patient as being the patient's home address;
(b) such other place as the practice has informed the patient is the place where it has agreed to visit and treat the patient; or
(c) some other place in the practice's area .

(5) Nothing in paragraphs (3) and (4) shall prevent the practice from—

(a) arranging for the referral of a patient without first seeing the patient, in a case where the medical condition of that patient makes that course of action appropriate; or
(b) visiting the patient in circumstances where paragraphs (3) and (4) do not place it under an obligation to do so.

Newly registered patients

12.—(1) Where a patient has been—
(a) accepted on a practice's list of patients pursuant to the practice statement; or
(b) assigned to that list by the Health Board pursuant to the practice statement,
the Health Board must ensure that the practice, in addition to and without prejudice to its other obligations in respect of that patient, invites the patient to participate in a consultation either at the practice premises or, if a medical condition of the patient so warrants, at one of the places referred to in direction 11.

(2) An invitation under paragraph (1) must be issued within 6 months of the date of acceptance of the patient on, or their assignment to, the practice's list and may offer the patient a consultation with—
(a) the practice;
(b) a medical practitioner employed or engaged by the Health Board for the purposes of the practice; or
(c) a healthcare professional employed or engaged by the Health Board for the purposes of the practice.

(3) Where a patient (or, where appropriate, in the case of a patient who is a child, the child's parent) agrees to participate in a consultation mentioned in paragraph (1), with a person mentioned in paragraph (2), that person must, in the course of that consultation make such inquiries and undertake such examinations as appear to them to be appropriate in all the circumstances.

Clinical reports

13.—(1) Where a practice provides any clinical services to a patient (other than services provided under a private arrangement by persons performing services for the practice) and either—
(a) the practice has no list of patients; or
(b) the patient is not on the practice's list of patients,

the Health Board must ensure that either it or the practice prepares a clinical report, as soon as reasonably practicable, relating to the consultation and any treatment provided.

(2) The Health Board must send any report prepared under paragraph (1)—

(a) to the person with whom the patient is registered for the provision of essential services (or their equivalent); or
(b) if the person referred to in sub-paragraph (a) is not known to it, to the Health Board established under the Act in whose area the patient is resident.

Duty of co-operation

14.—(1) Where a practice does not provide to its patients—
(a) essential services;
(b) a particular additional service; or
(c) a particular enhanced service;

the Health Board must ensure that the practice complies with the requirements specified in paragraph (2).

(2) The requirements referred to in paragraph (1) are that the practice must—

(a) co-operate in so far as is reasonable with any person responsible for the provision of that service or those services; and
(b) comply in core hours with any reasonable request for information from such a person relating to the provision of that service or those services.

(3) Where a practice is to cease to be required to provide to its patients—
(a) essential services;
(b) a particular additional service; or
(c) a particular enhanced service;

the Health Board must ensure that either it or the practice (as appropriate) complies with any reasonable request for information relating to the provision of that service or those services made by any person with whom the Health Board intends to make arrangements for the provision of such services.

Duty of Candour

15. The Health Board must ensure that the practice has arrangements in place which operate in accordance with Part 2 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016(**a**), and any regulations or directions made under that part of that Act.

PART 3
PATIENTS

Patient lists

16. Where a practice is to provide essential services, the Health Board must prepare and keep up-to-date a list of patients—

(a) who have been accepted by the practice for inclusion in the practice's list of patients in accordance with requirements that are set out in the practice statement, and who have not subsequently been removed from that list in accordance with the procedure set out in that statement; and
(b) where applicable, who have been assigned to the practice in accordance with requirements that are specified in the practice statement and whose assignment has not subsequently been rescinded in accordance with any procedure specified in that statement.

Patient preference of practitioner

17.—(1) Where a practice provides essential services, the Health Board must ensure that the practice—

(a) subject to paragraph (3), notifies the patient of the patient's right to express a preference to receive services from a particular performer or class of performer either generally or in relation to any particular condition; and
(b) records in writing any such preference expressed by or on behalf of the patient.

(2) The Health Board must ensure that the practice endeavours to comply with any preference expressed under paragraph (1) but the practice need not do so if the preferred performer—

(**a**) 2016 asp 14.

(a) has reasonable grounds for refusing to provide services to the patient; or
(b) does not routinely perform the service in question on behalf of the practice.

(3) Where the patient is—
(a) a child, the practice may notify—
(i) a parent, guardian, or other adult person who has care of the child;
(ii) a person duly authorised by a local authority, where the child is in the care of the local authority under the Children (Scotland) Act 1995; or
(iii) a person duly authorised by a voluntary organisation, by which the child is being accommodated under the provisions of that Act;
(b) an adult person who is incapable of expressing such a preference or authorising such a preference to be made on their behalf, the practice may notify the primary carer of that person or a person authorised under the Adults with Incapacity (Scotland) Act 2000 to act on the patient's behalf
of the right to express a preference for the patient to receive services from a particular performer or class of performer either generally or in relation to any particular condition.

PART 4
PRESCRIBING AND DISPENSING

Prescribing

18.—(1) The Health Board must ensure that a practice complies with the requirements in paragraphs 11,12, 13, 14, 15(1), and 17 of schedule 1 of the Section 17C Agreements Regulations but as if—

(a) references to "provider" were to "practice"; and
(b) references to regulation 24(1)(b) in paragraph 13 were to direction 32(1)(b).

(2) For the purposes of this direction, in its application to a practice whose practice statement includes the provision of contraceptive services, drugs includes contraceptive substances and appliances includes contraceptive appliances.

PART 5
PERSONS WHO PERFORM SERVICES

Qualifications of performers

19.—(1) The Health Board must ensure that the requirements in paragraphs 18, 19, 20 and 21 of schedule 1 of the Section 17C Agreements Regulations are complied with but as if—

(a) in paragraph 18 of that schedule "(1) Subject to sub-paragraph (2), no medical practitioner may perform medical services under the agreement unless the practitioner is—" was "(1) Subject to paragraph (2), the Health Board must ensure that no medical practitioner performs primary medical services in relation to a practice unless the medical practitioner is—";
(b) in paragraph 18 of that schedule sub-paragraph (2)(a) was omitted;
(c) in paragraph 18 of that schedule a new sub-paragraph "(2)(d)" was inserted as follows—
"(d) a medical practitioner who is not a GP Registrar, who is undertaking a post-registration programme and has—
(i) notified the Health Board that he or she will be undertaking part or all of a post registration programme in its area at least 24 hours before commencing any part of that programme; and
(ii) provided with that notification evidence sufficient for the Health Board to satisfy itself that the medical practitioner is undergoing such a programme.";

(d) in paragraph 19 of that schedule "under the agreement" was "in relation to the practice"; and
(e) in paragraph 20 of that schedule "provider" was "Health Board".

Conditions for employment and engagement

20.—(1) Before employing or engaging any person to assist it in the provision of primary medical services, the Health Board must take reasonable care to satisfy itself that the person in question is both suitably qualified and competent to discharge the duties for which the person is to be employed or engaged.

(2) When considering the competence and suitability of any person for the purpose of paragraph (1), the Health Board must have regard, in particular, to—

(a) that person's academic and vocational qualifications;
(b) that person's education and training; and
(c) that person's previous employment or work experience.

Training

21. The Health Board must ensure that for any health care professional who is—

(a) performing clinical services in a practice; or
(b) employed or engaged to assist in the performance of such services,

there are in place arrangements for the purpose of maintaining and updating the health care professional's skills and knowledge in relation to the services which the health care professional is performing or assisting in performing.

22. The Health Board must afford to each employee in the practice reasonable opportunities to undertake appropriate training with a view to maintaining that employee's competence.

Arrangements for GP Registrars

23. —(1) The Health Board may only employ a GP Registrar subject to the conditions in paragraph (2).

(2) The conditions referred to in paragraph (1) are that the Health Board must not, by reason only of having employed or engaged a GP Registrar, reduce the total number of hours for which other medical practitioners perform primary medical services in the practice or for which other staff assist them in the performance of those services.

(3) A Health Board which employs a GP Registrar in a practice must—
(a) offer the GP Registrar terms of employment in accordance with the rates and subject to the conditions contained in any directions given by the Scottish Ministers to NHS Education for Scotland(**a**) concerning the grants, fees travelling and other allowances payable to GP Registrars; and
(b) take into account, and ensure the practice takes into account, any guidance issued by the Scottish Ministers in relation to the GP Registrar Scheme.

Signing of documents

24.—(1) In addition to any other requirements relating to such documents whether in these directions or otherwise, the Health Board must ensure that the practice secures that the documents specified in paragraph (2) include—

(**a**) NHS Education for Scotland was constituted by S.S.I. 2002/103, as relevantly amended by S.S.I. 2006/79, which applies section 2(5) of the National Health Service (Scotland) Act 1978 to NHS Education for Scotland as it applies to Health Boards.

(a) the clinical profession of the health care professional who signed the document; and
(b) the name of the Health Board on whose behalf it is signed.

(2) The documents referred to in paragraph (1) are—

(a) certificates issued in accordance with direction 33, unless regulations relating to particular certificates provide otherwise;
(b) prescription forms; and
(c) any other clinical documents.

Terms of service for salaried general medical practitioners employed to provide services from a practice

25. Where a Health Board offers employment to a general medical practitioner to provide primary medical services in relation to a practice, it must offer that employment on terms which are no less favourable than those contained in the "Model terms and conditions of service for a salaried general practitioner employed by a GMS practice" published by the British Medical Association and the NHS Confederation as item 1.2 of the supplementary documents to the GMS Contract 2003(**a**).

PART 6
RECORDS, PROCESSING AND ACCESS OF DATA, CONFIDENTIALITY OF PERSONAL DATA, PATIENT ONLINE APPOINTMENT SERVICES, PRACTICE LEAFLET, REPORTS TO A MEDICAL OFFICER AND GIFTS

Records and processing and access of data

26.—(1) The Health Board must ensure that the requirements in paragraphs 34, 35, 36 and 37 of schedule 1 of the Section 17C Agreements Regulations are complied with but as if—

(a) in paragraph 34(1)(a) of that schedule the definition of "electronic patient records" was substituted as follows—

""electronic patient records" means records of the practice's attendance on its patients created by way of data entries on a computer and electronically held and controlled by the practice;";

(b) in paragraph 34(1)(b) of that schedule the definition of "patient records" was substituted as follows—

""patient records" means records of the practice's attendance on and treatment of its patients by way of electronic patient records or on forms supplied by the Health Board;";

(c) in paragraph 34(1)(c) of that schedule the definition of "practice data" was substituted as follows—

""practice data" means data about a practice and which may include any information or data about employees, sub-contractors, remuneration, finances, workloads and contracts other than personal data within patient records;";

(**a**) This document is published jointly by the General Practitioners committee of the British Medical Association and the NHS Confederation. This document is available at: http://bma.org.uk/sessionalgps. Hard copies may be requested from The British Medical Association, BMA House, Tavistock Square, London WC1H 9JP.

(d) in paragraph 34(5) of that schedule the references to "provider" were to "practice";
(e) paragraph 34(6) of that schedule was omitted;
(f) paragraph 35 of that schedule was substituted as follows—

"**35. Health Board Obligations**

The Health Board must—

(a) ensure that the practice takes all reasonable steps to ensure the accuracy of patient records;

(b) take all reasonable steps to confirm the accuracy of patient records;

(c) ensure that the practice uses templates and privacy notices provided by the Health Board, relating to the practice's processing of personal data and the practice's maintenance of a record in accordance with sub-paragraph (d);

(d) ensure that the practice maintains a record of all of its processing activities carried out in connection with the provision of primary medical services;

(e) maintain a record of its processing activities carried out in relation to a practice's patient records;

(f) appoint a designated data protection officer;

(g) ensure that any—
(i) employee of the Health Board;
(ii) health care professional providing services to the Health Board under a contract for services in relation to the practice; or
(iii) person under the Health Board's direction,
who has access to patient records and practice data has undergone adequate data protection training; and

(h) make available appropriate data protection training to its employees.";

(g) paragraph 36 of that schedule was substituted as follows—

"36.— Records

(1) The Health Board must ensure that the practice keeps adequate patient records of its attendance on and treatment of its patients and must do so—
(a) on forms supplied by the Health Board for that purpose ; or
(b) by way of electronic patient records; or
(c) in a combination of those two ways.

(2) The Health Board must ensure that the practice includes in patient records referred to in sub-paragraph (1), clinical reports sent in accordance with direction 13 or from any other health care professional who has provided clinical services to a person on its list of patients.

(3) The Health Board must ensure that—
(a) the computer system upon which the practice proposes to keep the electronic patient records is accredited by the Scottish Ministers or another person on their behalf as suitable for that purpose in accordance with a relevant standard issued by the Scottish Ministers; and
(b) the security measures, audit and system management functions incorporated into the computer system as accredited in accordance with sub-paragraph (a) have been enabled.

(4) A practice with electronic patient records must not disable, or attempt to disable, either the security measures or audit and system management functions referred in sub-paragraph (3)(b).”; and

(h) in paragraph 37 of that schedule—

(i) sub-paragraphs (1) and (4) were omitted;
(ii) in sub-paragraph (2) “A request under sub-paragraph (1) must be made” was substituted as follows—

“Where the Health Board authorises in writing that practice data and data within patient records is to be produced or disclosed to any person, that practice data and data within patient records must only be disclosed or produced”; and

(iii) in sub-paragraph (3) “agreement” was “ provision of primary medical services by the practice”.

Confidentiality of personal data

27. The Health Board must nominate a person with responsibility for practices and procedures relating to the confidentiality of personal data held by the practice and also data protection generally.

Patient online appointment services

28. —(1)The Health Board must provide the practice’s registered patients with—
(a) an optional online appointment service;
(b) an optional online repeat prescription service; and
(c) an optional online repeat prescription information service,
in a manner which is capable of being electronically integrated with the computer systems of the practice and using appropriate systems.

(2) The requirements in paragraph (1) do not apply where the practice does not have access to computer systems and software which would enable it to provide the services listed in that sub-paragraph.

(3) If the Health Board provides an optional online appointment service, it must regularly consider whether it is desirable, in order to meet the reasonable needs of the practice’s registered patients, to increase the proportion of appointments which are made available to registered patients through that service and if it is so desirable, to increase the proportion of appointments accordingly.

(4) If a Health Board provides any of the services referred to in paragraph (1), the Health Board must ensure that the practice promotes that service to its registered patients—
(a) in practice leaflets in accordance with direction 29; and
(b) if the practice has a website, on that website.

Practice leaflet

29. The Health Board must ensure that—

(a) there is, in relation to the practice, a document (in this direction called a practice leaflet) which shall include the information specified in schedule 1;
(b) the practice leaflet is reviewed at least once in every period of 12 months and amended as necessary to maintain its accuracy; and
(c) a copy of the practice leaflet is made available (including any subsequent updates), to the practice’s patients and prospective patients.

Provision of information to a medical officer etc.

30.—(1) The Health Board must ensure that a practice, if the practice is satisfied that the patient has given explicit consents—

(a) supplies in writing to any person specified in paragraph (3) within such reasonable period as that person may specify, such clinical information as any of the persons mentioned in sub-paragraph (3)(a) to (d) considers relevant about a patient to whom the practice has issued or has refused to issue a medical certificate; and
(b) answer any inquiries by any person mentioned in paragraph (3) about a prescription form or medical certificate issued or created by the practice or about any statement which the practice has made in a report.

(2) For the purpose of being satisfied that a patient has given explicit consent, a practice may rely on an assurance in writing from any person mentioned in paragraph (3) that the explicit consent of the patient has been obtained, unless the practice has reason to believe that the patient does not consent.

(3) For the purposes of paragraphs (1) and (2), the persons are—

(a) a medical officer;
(b) a nursing officer;
(c) an occupational therapist;
(d) a physiotherapist; or
(e) an officer of the Department for Work and Pensions who is acting on behalf of, and at the direction of, any person specified in sub-paragraphs (a) to (d).

Gifts

31.—(1) The Health Board must ensure that the practice keeps a register of gifts which—

(a) are given to any of the persons specified in paragraph (2) by or on behalf of—

(i) a patient,
(ii) a relative of a patient, or
(iii) any person who provides or wishes to provide services to the practice or its patients; and

(b) have, in its reasonable opinion, an individual value of more than £100.00.

(2) The persons referred to in paragraph (1) are—

(a) the practice;
(b) any person employed by the Health Board for the purposes of the practice;
(c) any general medical practitioner engaged by the Health Board for the purposes of the practice;
(d) any spouse or civil partner of a person specified in sub-paragraphs (b) or (c); or
(e) any person whose relationship with a person specified in sub-paragraphs (b) or (c) has the characteristics of the relationship between spouses or civil partners.

(3) Paragraph (1) does not apply where—

(a) there are reasonable grounds for believing that the gift is unconnected with services provided or to be provided by the practice;
(b) the practice is not aware of the gift; or
(c) the practice is not aware that the donor wishes to provide services to the practice.

(4) The Health Board must ensure that the practice takes reasonable steps to ensure that it is informed of gifts which fall within paragraph (1) and which are given to the persons specified in paragraph (2)(b) to (e).

(5) The register referred to in paragraph (1) must include the following information—

(a) the name of the donor;
(b) in a case where the donor is a patient, the patient's National Health Service number or, if the number is not known, the patient's address;
(c) in any other case, the address of the donor;
(d) the nature of the gift;
(e) the estimated value of the gift; and
(f) the name of the person or persons who received the gift.

PART 7
FEES AND CHARGES

Fees and charges

32.—(1) The Health Board must ensure that the practice, and any person performing primary medical services for the practice, subject to paragraphs (3) and (4), does not, directly or indirectly, demand or accept a fee or other remuneration, from any patient of the practice for—

(a) the provision of any treatment, whether under section 2C(1) of the Act or otherwise, or
(b) any prescription for any drug, medicine or appliance,

except in the circumstances set out in paragraph (1)(a) to (d) and paragraph (1)(f) to (j) of schedule 5 (Fees and Charges) of the GMS Contracts Regulations, subject to the modifications in paragraph (2) of this direction.

(2) The modifications to paragraph (1)(a) to (d) and paragraph (1)(f) to (j) of schedule 5 (Fees and Charges) of the GMS Contracts Regulations, are—

(a) for "contractor" read "practice" in each place where it occurs; and
(b) for "under the contract" read "by the practice" in each place where it occurs.

(3) Where a person applies to a practice for the provision of essential services and claims to be on the practice's list of patients, and the practice has reasonable doubts about that person's claim, the Health Board must ensure that the practice provides any necessary treatment and the practice will be entitled to demand and accept a reasonable fee in accordance with paragraph (4) subject to the provision for repayment contained in paragraph (5).

(4) The practice may demand and accept a reasonable fee when the practice treats a patient under paragraph (3) for any treatment given, if the practice gives the patient a receipt.

(5) Where a person from whom a practice received a fee under paragraph (3) applies to the Health Board for a refund within 14 days of payment of the fee (or such longer period not exceeding one month as the Health Board may allow, if it is satisfied that the failure to apply within 14 days was reasonable) and the Health Board is satisfied that the person was on the practice's list of patients when the treatment was given, the Health Board must pay that amount to the person who paid the fee.

PART 8
CERTIFICATES

Certificates

33.—(1) The Health Board must ensure that, in the course of providing primary medical services, the practice issues free of charge to a patient or a patient's personal representatives any medical certificate of a description prescribed in column 1 of schedule 2 of these Directions which is relevant to any service that the practice provides pursuant to the practice statement, which is reasonably required under or for the purposes of the enactments specified in relation to the certificate in column 2 of that schedule, except where, for the condition to which the certificate relates, the patient—

(a) is being attended by a medical practitioner who is not employed or engaged by the Health Board in relation to the practice; or
(b) is not being treated by or under the supervision of a health care professional.

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

(3) The practice's obligation to issue any medical certificate prescribed in column 1 of schedule 2 of these Directions may be discharged on behalf of the practice by an alternative provider for the relevant medical certificate.

PART 9
COMPLIANCE WITH LEGISLATION AND GUIDANCE

34. The Health Board must—
(a) comply with all relevant legislation; and
(b) have regard to all relevant guidance issued by the Scottish Ministers.

PART 10
REVOCATION

Revocation

35. The Health Board Direct Provision of Primary Medical Services (Scotland) (No. 2) Directions 2011 dated 1 November 2011 are revoked.

Richard Foggo
A Member of the Staff of the Scottish Ministers
Population Health Directorate
Edinburgh
22 February 2019

(**a**) S.I. 1976/615 which was relevantly amended by S.I. 2010/137.

SCHEDULE 1

Direction 29

INFORMATION TO BE INCLUDED IN A PRACTICE LEAFLET

A practice leaflet must include—

1. The name of the Health Board;

2. The full name of each person performing services in relation to the practice;

3. In the case of each health care professional performing services in relation to the practice, the health care professional's professional qualifications;

4. Whether the practice undertakes the teaching or training of health care professionals or persons intending to become health care professionals;

5. Where services are, pursuant to the practice statement, only to be provided to persons resident in a particular area, the area (by reference to a map, plan or postcode) within which a person resident would be entitled to receive services from the practice;

6. The address of each of the practice's premises;

7. The practice's telephone and fax number and the address of its website (if any);

8. Whether the practice offers its registered patients an online service in accordance with direction 28, the website address where such patients can access and use the service and guidance on how such patients can access and use that service;

9. Whether the practice's premises have suitable access for all disabled patients and, if not, the alternative arrangements for providing services to such patients;

10. How to register as a patient or, where appropriate, otherwise receive services as a patient from the practice;

11. The right of patients to express a preference of practitioner in accordance with direction 17 and the means of expressing such a preference;

12. The services available to registered patients;

13. The opening hours of the practice's premises and the method of obtaining access to services throughout the core hours. Information on access to services should include any usual periods of consultation time provided during the opening hours;

14. The criteria for home visits and the method of obtaining such a visit;

15. Where the practice provides essential services, the consultations available to patients under directions 8 and 9;

16. Where the practice provides essential services, the details of—

(a) the out of hours period;

(b) arrangements for services in the out of hours period (whether or not provided by the practice); and

(c) how the patient may contact such services;

17. The out of hours period is—

(a) the period beginning at 1830 hours on any day from Monday to Thursday and ending at 0800 hours on the following day;

(b) the period beginning 1830 hours on Friday and ending at 0800 hours on the following Monday; and

(c) Christmas Day, New Year's Day and any other public or local holiday;

18. If the practice does not provide out of hours services, the fact that the Health Board is responsible for commissioning the services;

19. The telephone number of NHS 24 and details of the NHS 24 website;

20. The method by which patients are to obtain repeat prescriptions;

21. If the practice is a dispensing practice the arrangements for dispensing prescriptions;

22. How patients may make a complaint or comment on the provision of service;

23. The rights and responsibilities of the patient, including keeping appointments;

24. The action that may be taken where a patient is violent or abusive to any member of staff of the Health Board or other persons present on the practice's premises or in the place where treatment is provided by the practice;

25. Details of who has access to patient information (including information from which the identity of the individual can be ascertained) and the patient's rights in relation to disclosure of such information; and

26. The name, address and telephone number of the Health Board and contact name from whom details of primary medical services provision in the area may be obtained.

SCHEDULE 2

Direction 33

LIST OF PRESCRIBED MEDICAL CERTIFICATES

Description of medical certificate	*Enactment under or for the purpose of which certificate required*
1. To support a claim or to obtain payment either personally or by proxy; to prove incapacity to work or for self-support for the purposes of an award by the Secretary of State; or to enable proxy to draw pensions etc.	Naval and Marine Pay and Pensions Act 1865(**a**) Air Force (Constitution) Act 1917(**b**) Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(**c**) Personal Injuries (Emergency Provisions) Act 1939(**d**) Pensions (Mercantile Marine) Act 1942(**e**) Polish Resettlement Act 1947(**f**) Social Security Administration Act 1992(**g**) Social Security Contributions and Benefits Act 1992(**h**) Social Security Act 1998(**i**)
2. To establish pregnancy for the purpose of obtaining welfare foods.	Section 13 of the Social Security Act 1988 (schemes for distribution etc. of welfare foods)(**j**)
3. To secure registration of still-birth.	Section 21 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (special provision as to registration of still-birth)(**k**)
4. To establish unfitness for jury service.	Criminal Procedure (Scotland) Act 1995 (**l**) Court of Session Act 1988(**m**)
5. To support late application for reinstatement in civil employment or notification of non-availability to take up employment owing to sickness.	Reserve Forces (Safeguarding of Employment) Act 1985(**n**)

(**a**) 1865 c.73
(**b**) 1917 c.51.
(**c**) 1939 c.83.
(**d**) 1939 c.82.
(**e**) 1942 c.26.
(**f**) 1947 c.19.
(**g**) 1992 c.5.
(**h**) 1992 c.4.
(**i**) 1998 c.14.
(**j**) 1988 c.7. Section 13 was amended by the Social Security Act 1990 (c.27), schedule 5, paragraph 8(11)(a) and schedule 7, and the Social Security (Consequential Provisions) Act 1992 (c.6), schedule 2, paragraph 94.
(**k**) 1965 c.49. Section 21 was amended by the Nurses, Midwives and Health Visitors Act 1979 (c.36), schedule 6, paragraphs 12 and 13; Local Electoral Administration and Registration Services (Scotland) Act 2006, sections 40 and 44 and Certification of Death (Scotland) Act 2011, sections 26, 27 and schedule 2
(**l**) 1995 c.46.
(**m**) 1988 c.36.
(**n**) 1985 c.17.

Description of medical certificate	*Enactment under or for the purpose of which certificate required*
6. To enable a person to be registered as an absent voter on grounds of physical incapacity.	Paragraph 3(3)(b) of schedule 4 of Representation of the People Act 2000 (**a**)
7. To support applications for certificates conferring exemption from charges in respect of drugs, medicines and appliances.	National Health Service (Scotland) Act 1978(**b**) National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Regulations 2011(**c**)
8. To support a claim by or on behalf of a severely mentally impaired person for exemption from liability to pay the Council Tax or eligibility for a discount in respect of the amount of Council Tax payable.	Local Government Finance Act 1992(**d**), schedule 1, paragraph 2(1)(b)
9. To secure certification of cause of death	Section 24 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (certificate of cause of death (**e**)

(**a**) 2000 c.2.
(**b**) 1978 c.29.
(**c**) S.I. 2011/55
(**d**) 1992 c.14.
(**e**) 1965 c.49.