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STATUTORY INSTRUMENTS

1998 No. 659 (S.29)

NATIONAL HEALTH SERVICE, SCOTLAND

The National Health Service (Choice of Medical Practitioner)

(Scotland) Regulations 1998

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| <i>Made</i> | <i>9th March 1998</i> |
| <i>Laid before Parliament</i> | <i>11th March 1998</i> |
| <i>Coming into force</i> | <i>1st April 1998</i> |

The Secretary of State, in exercise of powers conferred on him by sections 17F(1), (2) and (5), 19 and 105(7) of the National Health Service (Scotland) Act 1978(a) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Citation, commencement and interpretation

1.-(1) These Regulations may be cited as the National Health Service (Choice of Medical Practitioner) (Scotland) Regulations 1998 and shall come into force on 1 April 1998.

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

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

"the 1997 Act" means the National Health Service (Primary Care) Act 1997(b);

"doctor" means a registered medical practitioner;

"doctor's list" means a list of doctor's patients kept by a Health Board or primary care NHS trust -

(i) in respect of a doctor providing general medical services, in accordance with regulation 27 of the GMS Regulations(c), and

- (ii) in respect of a doctor performing personal medical services under a pilot scheme agreement, in accordance with paragraph 3 of the Directions to Health Boards Concerning Patient Lists (Personal Medical Services) made under section 6(1) of the 1997 Act, and
- (iii) in respect of a doctor performing personal medical services under a PMS agreement, in accordance with regulation 10 of the PMS Regulations;

"the GMS Regulations" means the National Health Service (General Medical Services) (Scotland) Regulations 1995(e);

"medical card" means a card issued to a person for the purpose of enabling him to obtain, or establishing his title to receive primary medical services(f), other than contraceptive services, maternity medical services, child health surveillance services and minor surgery services;

"pilot scheme provider" means a person, other than a Health Board, who is a party to a pilot scheme agreement;

FOOTNOTES

(a) 1978 c.29. Section 17F was inserted by section 23(2) of the National Health Service (Primary Care) Act 1997 (c.46); section 19 was amended by the Health Services Act 1980 (c.53) ("the 1980 Act"), section 7, by the Health and Social Services and Social Security Adjudication Act 1983 (c.41) ("the 1983 Act"), Schedule 7, paragraph 2, by the Medical Act 1983 (c.54), Schedule 5, paragraph 17(a) and by the National Health Service and Community Care Act 1990 (c.19), section 37 and is to be read with the Health and Medicines Act 1988 (c.49), Section 17; section 105(7) was amended by the 1980 Act, Schedule 6, paragraph 5 and Schedule 7 and by the 1983 Act, Schedule 9, paragraph 24.

(b) 1997 c.46.

(c) Regulation 27 was amended by S.I. 1998/660.

(d) "Personal medical services" is defined in section 1(8) of the 1997 Act.

(e) S.I. 1995/416, amended by S.I. 1995/3199, 1996/842 and S.I. 1997/943 and 1473 and 1998/4.

(f) "Primary medical services" is defined in section 17F(6) of the 1978 Act, inserted by section 23(2) of the 1997 Act.

"pilot scheme agreement" means an agreement which constitutes, or is one of the agreements which together constitute, a pilot scheme under section 1(1)(a) of the 1997 Act;

"PMS agreement" means an agreement made pursuant to section 17C of the 1978 Act under which personal medical services are provided;

"PMS provider" means any person or body with whom a Health Board enters into a PMS agreement;

"the PMS Regulations" means the National Health Service (Personal Medical Services) (Scotland) Regulations 2001(a);

"pooled list" means a list of persons who have been accepted by a pilot scheme provider for the provision of personal medical services, and whose names are not included in a doctor's list;

"primary care NHS trust" means an NHS trust to which certain functions referred to in section 12AA of the 1978 Act are delegated by the Health Board:"(c).

"temporary resident" shall be construed in accordance with regulation 7; and

(b) "child health surveillance services", "contraceptive services", "maternity medical services" and "minor surgery services" have the meanings respectively assigned to them in the GMS Regulations(a).

Procedure for choosing a doctor

2.-(1) Any person who wishes to receive primary medical services may choose the doctor from whom he is to receive those services (being a doctor who provides general medical services or who is primarily responsible for the performance of personal medical services under a pilot scheme agreement(b) or PMS agreement), subject to-

- (a) the consent of that doctor; and
- (b) any limit on the maximum number of persons whose names may be included in that doctor's list, imposed by regulation 21 of the GMS Regulations(c) or, as the case may be, directions given under section 17F(3) of the 1978 Act(d).

(2) An application for inclusion of a person's name in a doctor's list shall be made by delivering to the doctor a medical card or an application signed (in either case) by the applicant or a person authorised by the applicant to sign on his behalf.

Change of doctor

3-(1) A person whose name is already included in a doctor's list, but who wishes to change doctor, may, in accordance with regulation 2, apply to another doctor who provides general medical services or performs personal medical services for inclusion of his name in that other doctor's list.

(2) The Health Board or primary care NHS trust shall give notice in writing to all the persons whose names are included in a doctor's list of any of the following events:—

- (a) the death of the doctor;

- (b) the fact that the doctor has ceased to provide general medical services under an arrangement with the Health Board or primary care NHS trust, otherwise than to enable him to perform personal medical services in the Health Board's area;
- (c) the fact that the doctor has ceased to perform personal medical services in the Health Board's area, otherwise than to enable him to provide general medical services under an arrangement with the Health Board or primary care NHS trust.

(3) Where in any case in which the Health Board or primary care NHS trust is obliged to give notice under paragraph (2), a successor is appointed to the doctor's practice under Part III of the GMS Regulations or, as the case may be, a pilot scheme agreement or PMS agreement is varied to allow a named doctor to perform personal medical services as a successor to the first-named doctor (and the named doctor will be primarily responsible for the performance of personal medical services under a pilot scheme agreement or PMS agreement), a Health Board or primary care NHS trust shall in writing inform each person whose name is included in the list of the doctor who last carried on that practice—

- (a) of the name of the successor (and, if more than one, of each of them) and of the address of the practice premises; and
- (b) that his name will be deemed to be included in the list of a named successor from a specified date and will be transferred to that list at the end of the period of 14 days beginning on that date unless, before the date on which the transfer is to occur, he gives notice in writing to the Health Board or primary care NHS trust at he does not wish his name to be included in that list.

(4) Where no successor is to be appointed to a practice, the Health Board or primary care NHS trust shall notify the persons whose names are included in the list of the doctor who last carried on that practice of their right to apply to another doctor for acceptance.

Assignment of persons to doctors

4.-(1) Where—

- (a) a person whose name is not included in the list of any doctor has been refused acceptance by a doctor for inclusion in his list;
- (b) a person whose name is included in the list of a doctor, but wishes to change doctor, has been refused acceptance by a doctor for inclusion in his list; or
- (c) a person has applied to a doctor under regulation 7(1) to be accepted by him as a temporary resident and that application has been refused,

he may apply in writing to the Health Board or primary care NHS trust for assignment to a doctor.

(2) On receipt of an application for assignment to a doctor, the Health Board or primary care NHS trust shall—

- (a) subject to paragraph (4), assign the applicant to any doctor with whom the Health Board or primary care NHS trust has made arrangements for the provision of general medical services, and notify the doctor and the applicant accordingly; or
- (b) require a pilot scheme provider to assign the applicant in accordance with regulation 5 to a doctor who performs personal medical services in connection with a pilot scheme agreement to which the pilot scheme provider is a party; or
- (c) require a PMS provider to assign the applicant in accordance with regulation 5 to a doctor who performs personal medical services in connection with a PMS agreement to which the PMS provider is a party.

(3) In deciding on the doctor to whom a person should be assigned or, as the case may be, the pilot scheme provider or PMS provider who should be required to make such an assignment, the Health Board or primary care NHS trust shall have regard to—

- (a) the respective distances between the person's residence and the practice premises of the doctors in the part of the Health Board's area in question;
- (b) whether during the period of six months ending on the date on which the application for assignment is received by the Health Board or primary care NHS trust the person's name has been removed from the list of any doctor in that part of the area at the request of that doctor or, as the case may be, a pilot scheme provider or PMS provider;
- (bb) whether the person's name has been removed from the doctor's list of any doctor at the request of that doctor or, as the case may be, a pilot scheme provider or PMS provider because—
 - (i) he has committed an act of violence against the doctor or has behaved in such a way that the doctor has feared for his safety; and
 - (ii) the doctor has reported the incident to the police or the Procurator Fiscal;

and, if so, which doctor or as the case may be, which pilot scheme provider or PMS provider, has the most appropriate facilities to deal with such a patient; and

- (c) such other matters as the Health Board or primary care NHS trust considers to be relevant.

(4) No person may be assigned to a doctor under this regulation without the consent of the Secretary of State if the number of persons whose names are already included in that doctor's list is equal to or greater than the maximum prescribed in relation to that doctor by regulation 21 of the GMS Regulations.

(5) Where—

- (a) the Secretary of State refuses his consent for the purposes of paragraph (4); or
- (b) a pilot scheme provider or PMS provider is unable to comply, in accordance with regulation 5, with a requirement to assign an applicant to a doctor,

and the Health Board or primary care NHS trust is satisfied, after due enquiry, that the person concerned still wishes to be assigned to a doctor it shall as soon as practicable assign, or require the assignment of, that person to another doctor in accordance with the provisions of this regulation.

(6) A doctor to whom a person is assigned under this regulation or regulation 5 shall not be required to provide child health surveillance services, contraceptive services, maternity medical services or minor surgery services for that person, unless—

- (a) he has accepted him for the provision of such services under the GMS Regulations(a); or
- (b) he is obliged to provide those services to him in connection with a pilot scheme agreement or a PMS agreement.

(7) Where—

- (a) a doctor has requested a Health Board or primary care NHS trust to remove a person's name from his list under paragraph 9(2) of Schedule 1 to the GMS Regulations; or
- (b) a pilot scheme provider or PMS provider has requested the Health Board or primary care NHS trust to remove a person's name from a doctor's list or a pooled list under corresponding provisions of a pilot scheme agreement; or
- (c) a PMS provider has requested the Health Board or primary care NHS trust to remove a person's name from a doctor's list or a pooled list under corresponding provisions of a PMS agreement;

the Health Board or primary care NHS trust shall take all reasonable steps to assign, or to require the assignment of, the person to another doctor before the end of the working day after the date on which the Health Board or primary care NHS trust receives notification from the doctor or the pilot scheme provider or PMS provider under paragraph 9(2) of Schedule 1 to the GMS Regulations or corresponding provisions of a pilot scheme agreement or PMS agreement, or as soon as possible thereafter; and the provisions of this regulation shall apply to such an assignment as if the person had applied for an assignment.

(8) The Health Board or primary care NHS trust may exempt from the requirement to have persons assigned to him under this regulation any doctor who provides general medical services and who applies to the Health Board or primary care NHS trust or that purpose.

(9) In considering an application under paragraph (8) the Health Board or primary care NHS trust shall have regard to—

- (a) the doctor's age and state of health;
- (b) the number of persons whose names are included in his list; and
- (c) where the application relates only to a specified person whose name has previously been removed from the list of the doctor, the circumstances of that removal,

and the Health Board or primary care NHS trust shall notify any such doctor in writing of an decision under this paragraph.

Assignment by a pilot scheme provider or PMS provider

5.-(1) A pilot scheme provider or PMS provider who is required under regulation 4(2)(b) or (c) to assign an applicant to a doctor shall (subject to paragraphs (3), (4) and (5) of this regulation) assign the applicant to a doctor within the period of two days beginning on the day on which he receives notice of the requirement to assign and shall, upon making that assignment, notify—

- (a) the Health Board or primary care NHS trust of the name of the doctor to whom the applicant has been assigned;

and

- (b) the doctor of the assignment,

and the Health Board or primary care NHS trust shall, on receipt of notification under sub-paragraph (a), notify the applicant of the doctor to whom he has been assigned.

(2) In deciding on the doctor to whom a person should be assigned, the pilot scheme provider or PMS provider shall have regard to—

- (a) the respective distances between the person's residence and the practice premises of the doctors to whom he might assign that person (in this paragraph called "the relevant doctors");
- (b) whether within the period of six months ending on the date on which notice of the requirement to assign is received by the pilot scheme provider or PMS provider the person's name has been removed from the list of any of the relevant doctors at the request of the pilot scheme provider or PMS provider.
- (bb) whether the person's name has been removed from the doctor's list of any doctor at the request of that doctor or, as the case may be, a pilot scheme provider or PMS provider because
 - (i) he has committed an act of violence against the doctor or has behaved in such a way that the doctor has feared for his safety; and
 - (ii) the doctor has reported the incident to the police or the Procurator Fiscal;

and, if so, which doctor has the most appropriate facilities to deal with such a patient; and

- (c) such other matters as the pilot scheme provider or PMS provider considers to be relevant.

(3) No person may be assigned to a doctor under this regulation without the consent of the Secretary of State if the number of persons whose names are already included in that doctor's list is equal to or greater than any maximum imposed by directions given under section 17F(3) of the 1978 Act.

(4) A pilot scheme provider or PMS provider may not assign the applicant to a doctor if that assignment would contravene the terms of a pilot scheme agreement or PMS agreement in particular as to-

- (a) whether the doctor is to be primarily responsible for the performance of personal medical services; and
- (b) if so, the maximum number of persons who may be included in his doctor's list.

(5) A pilot scheme provider or PMS provider may only seek to assign the applicant to a doctor in a case where the consent of the Secretary of State is required under paragraph (3) if there is no other doctor to whom he could make an assignment in accordance with this regulation which would not require the consent of the Secretary of State.

(6) A pilot scheme provider or PMS provider shall inform the Health Board or primary care NHS trust forthwith if-

- (a) he has sought the consent of the Secretary of State for the purposes of paragraph (3) and that consent has been refused; or
- (b) he is unable to assign the applicant to any doctor without contravening the terms of a pilot scheme agreement or PMS agreement

and shall, in each of those cases, provide personal medical services to the applicant (which provision need not include the services mentioned in regulation 4(6), unless the pilot scheme provider or PMS provider is obliged to provide those services to the applicant in connection with a pilot scheme) for the period of 14 days commencing on the day on which the pilot scheme provider or PMS provider so informs the Health Board or primary care NHS trust, or if the applicant is accepted by a doctor or another pilot scheme provider or PMS provider, or assigned to a doctor within that period, until he is so accepted or assigned.

Representations against assignment or a requirement to assign

6.-(1) A doctor to whom a person has been assigned by the Health Board or primary care NHS trust may, within the period of seven days beginning on the day on which he receives notice of the assignment, make representations in writing to the Health Board or primary care NHS trust against that assignment, but shall remain responsible for the treatment of the

person assigned to him pending notification of the confirmation or revision of the assignment by the Health Board or primary care NHS trust.

(2) A pilot scheme provider or PMS provider, who has been required under regulation 4(2)(b) or (c) to assign a patient to a doctor may, within the period of seven days beginning with the day which that assignment is made, make representations in writing to the Health Board or primary care NHS trust against the requirement to assign, but shall remain responsible for providing personal medical services for the person to whom the requirement relates, pending notification of the confirmation or revision of the assignment by the Health Board or primary care NHS trust.

(3) Where representations are made to it against an assignment or, as the case may be, a requirement to assign, the Health Board or primary care NHS trust shall, subject to paragraph (4), review the decision to assign or to require assignment at its next meeting and shall either confirm or revise it, but no person who participated in making a decision to assign or to require assignment shall participate in a review of that decision.

(4) Where presentations are made against a decision to assign or require assignment, the Health Board or primary care NHS trust shall, before meeting to confirm or revise that decision, give the doctor or, as the case may be, the pilot scheme provider or PMS provider the opportunity to address it in the course of an oral hearing in support of those representations.

(5) The Health Board or primary care NHS trust shall, within the period of seven days beginning with the day on which it confirms or revises a decision under paragraph (3), notify the doctor or, as the case may be, the pilot scheme provider or PMS provider, accordingly and the provisions of these Regulations shall apply to any assignment or requirement to assign under a revised decision.

Temporary residents

7.-(1) A person requiring treatment who is-

- (a) temporarily residing away from his normal place of residence and is not included in the list of a doctor who practices in the vicinity of the place where he is temporarily residing, or a pooled list of doctors who practise in that vicinity; or
- (b) moving from place to place and not for the time being resident in any place,

may apply to any doctor who provides general medical services or is primarily responsible for the performance of personal medical services under a pilot scheme agreement or PMS agreement in the area in which he is temporarily resident, to be accepted by him as a temporary resident.

(2) For the purposes of paragraph (1), a person shall be regarded as temporarily resident in a place if, when he arrives in that place, he intends to stay there for more than 24 hours, but no more than ninety days.

Transfer of doctors between provision of general medical services and performance of personal medical services

8.—(1) Where a person has chosen a doctor from whom he is to receive general medical services and-

- (a) his name is included in the list of that doctor; or
- (b) he has been accepted for inclusion of his name in such a list,

he shall, subject to regulation 3(1) and his right to withdraw from the list of a doctor under regulation 25(1) of the GMS Regulations, continue to be included in the list of his chosen doctor notwithstanding that the doctor ceases to provide general medical services, if the doctor—

- (i) immediately starts to perform personal medical services in connection with a pilot scheme agreement and one of the parties to that agreement is a Health Board or primary care NHS trust which previously made arrangements with the doctor for the provision of general medical services; and
- (ii) is primarily responsible for the performance of personal medical services under that agreement.

(2) Where a person has chosen a doctor from whom he is to receive personal medical services under a pilot scheme agreement and—

- (a) his name is included in the list of that doctor; or
- (b) he has been accepted for inclusion of his name in that list,

he shall, subject to regulation 3(1) and his right to withdraw from the list of a doctor under paragraph 7 of the Directions to Health Boards Concerning Patient Lists (Personal Medical Services) made under section 6(1) of the 1997 Act, continue to be included in the list of his chosen doctor notwithstanding that the doctor ceases to perform personal medical services, if the doctor immediately starts to provide general medical services by virtue of an arrangement made with him by the Health Board or primary care NHS trust which was a party to the pilot scheme agreement in connection with which he previously performed personal medical services.

(3) Where a person has chosen a doctor from whom he is to receive personal medical services under a PMS agreement and—

- (a) his name is included in the list of that doctor; or
- (b) he has been accepted for inclusion of his name in that list, he shall, subject to regulation 3(1) and his right to withdraw from the list of a doctor under regulation 10(1) of the PMS Regulations, continue to be included in the list of his chosen doctor notwithstanding that the doctor ceases to perform personal medical services if the doctor immediately starts to provide general medical

services by virtue of an arrangement made with him by the Health Board or primary care NHS trust which was a party to the pilot scheme agreement in connection with which he previously performed personal medical services.

Transfer of doctors from a pilot scheme agreement to a PMS agreement

9.-(1) Where a person has chosen a doctor from whom he is to receive personal medical services under a pilot scheme agreement and-

- (a) his name is included in the list of that doctor; or
- (b) he has been accepted for inclusion of his name in that list, he shall, subject to regulation 3(1) and his right to withdraw from the list of a doctor under paragraph 7 of the Directions to Health Boards Concerning Patient Lists (Personal Medical Services) made under section 6(1) of the 1997 Act, continue to be included in the list of his chosen doctor notwithstanding that the doctor ceases to perform personal medical services under a pilot scheme; agreement, if the doctor-
 - (i) immediately starts to perform personal medical services in connection with a PMS agreement and one of the parties to that agreement is a Health Board or primary care NHS trust which was previously one of the parties to the pilot scheme agreement; and
 - (ii) is primarily responsible for the performance of personal medical services under that agreement.

St Andrew's House,
EDINBURGH
9th March 1998

Sam Galbraith
Minister for Health