SCOTTISH STATUTORY INSTRUMENTS

2004 No. 162

NATIONAL HEALTH SERVICE

The Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) (Scotland) Regulations 2004

Made - - - -	*30th March 2004*
Laid before the Scottish Parliament - - - -	*30th March 2004*
Coming into force - -	*1st April 2004*

The Scottish Ministers, in exercise of the powers conferred by sections 17E, 17N, 35(1)(c), 105(7) and 108(1) of, and paragraph 1(3) of Schedule 9 to, the National Health Service (Scotland) Act 1978(**1**), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Primary Medical Services (Sale of Goodwill and Restrictions on Sub contracting) (Scotland) Regulations 2004 and shall come into force on 1st April 2004.

Interpretation

2.—(1) In these Regulations–

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

"core hours" means the period beginning at 8 a.m. and ending at 6:30 p.m. on any day apart from Saturday, Sunday, Christmas Day, New Year's Day and any other public or local holiday which is agreed in writing between the Health Board and the provider or performer;

(**1**) 1978 c. 29. Section 17E was inserted by the National Health Service (Primary Care) Act 1997 (c. 46) ("the 1997 Act"), section 22(2) and amended by the Health Act 1999 (c. 8) ("the 1999 Act"), Schedule 4, paragraph 47 and the Primary Medical Services (Scotland) Act 2004 (asp 1) ("the 2004 Act"), section 2(4); section 17N was inserted by the 2004 Act, section 4; section 35 was substituted by the 1997 Act, section 34(2) and amended by the schedule to the 2004 Act, paragraph 1(14); section 105(7) was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 5 and Schedule 7, the Health Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 9, paragraph 24 and the 1999 Act, Schedule 4, paragraph 60; section 108(1) defines "prescribed" and "regulations"; Schedule 9, paragraph 1(3) was amended by the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4), schedule 4, paragraph 5(18)(b). 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)

"default contract" means a contract entered into pursuant to an order made under section 7 of the Primary Medical Services (Scotland) Act 2004(**2**) (ancillary provision);

"enhanced services", with regard to–

(a) a GMS contractor, has the meaning given in regulation 2(1) of the GMS Contracts Regulations (interpretation);

(b) any other performer or provider of primary medical services, means services which, if performed or provided by a GMS contractor, would be enhanced services within the meaning given in regulation 2(1) of the GMS Contracts Regulations;

"essential services" means the services described in regulation 15(3), (5), (6) and (8) of the GMS Contracts Regulations (essential services) or services that are equivalent to those services;

"GMS contractor" means a person with whom a Health Board has entered into a general medical services contract or a default contract;

"GMS Contracts Regulations" means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(**3**);

"goodwill factor" means the difference between the value of the share when the goodwill of the performer's or provider's medical practice is taken into account and the value of the share when the goodwill of the performer's or provider's medical practice is not taken into account;

"HBMS contractor" means a person with whom a Health Board has made arrangements under section 2C(2) of the 1978 Act(**4**) (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;

"Section 17C Agreements Regulations" means the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004(**5**); and

"section 17C provider" means a person with whom a Health Board has entered into section 17C arrangements.

(2) For the purposes of these Regulations, a performer or provider has a registered patient list if there are patients–

(a) recorded by a Health Board as being on the performer's or provider's list of patients or the Health Board's list of patients in respect of the performer or provider; and

(b) to whom the performer or provider must provide essential services during core hours other than under an arrangement to provide enhanced services.

Prohibition on the sale of goodwill in certain primary medical services practices

3.—(1) The following performers or providers of primary medical services:–

(a) a GMS contractor;

(b) a section 17C provider that has a registered patient list;

(c) an HBMS contractor that has a registered patient list; and

(d) a medical practitioner with a registered patient list who is a performer of essential services during core hours, other than–

(i) solely under arrangements to provide enhanced services;

(**2**) 2004 asp 1.
(**3**) S.S.I. 2004/115.
(**4**) Section 2C was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 1(2).
(**5**) S.S.I. 2004/116.