

SCOTTISH GOVERNMENT CONSULTATION ON CHANGES TO ELIGIBILITY CRITERIA FOR PROVIDERS OF PRIMARY MEDICAL SERVICES

The attached consultation paper seeks comments on proposals for legislation to change the eligibility criteria for providers of primary medical services (GP services).

Responding to this consultation paper

We are inviting written responses to this consultation paper by **17 December 2008**. Please send your response with the completed Respondent Information Form to:

PMSConsultation@scotland.gsi.gov.uk

or by post to:

Consultation on Eligibility Criteria for Providers of Primary Medical Services
Scottish Government
GMS Branch
Primary Care Division
1ER, St Andrew's House
Regent Road
EDINBURGH
EH1 3DG

If you have any queries contact John Davidson on 0131 244 2331.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at <http://www.scotland.gov.uk/consultations>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government now has an email alert system for consultations ([SEconsult](http://www.scotland.gov.uk/consultations/seconsult.aspx): <http://www.scotland.gov.uk/consultations/seconsult.aspx>). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). SEconsult complements, but in no way replaces SG distribution lists, and is designed to allow stakeholders to keep up to date with all SG consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the **Respondent Information Form** attached to this letter as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no potentially defamatory material, responses will be made available to the public in the Scottish Government Library (see the attached Respondent Information Form) and on the Scottish Government consultation web pages as soon as possible. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

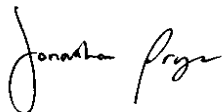
What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the proposals outlined in the attached consultation paper with a view to introducing any necessary statutory provisions in the Health Bill which will be introduced early in 2009. We aim to issue a report on this consultation process as soon as possible.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to PMSConsultation@scotland.gsi.gov.uk or to me at the address set out above.

Yours faithfully



JONATHAN PRYCE

Consultees

Chief Executives, NHS Boards
Primary Care Leads, NHS Boards
GP Contract Holders
Scottish General Practitioners Committee
Royal College of General Practitioners Scotland
Royal College of Nursing Scotland
National Association of Professional Practice Managers
Community Practitioners' and Health Visitors' Association
Queens Nursing Institute for Scotland
Scottish Practice Nurse Association
British Dental Association
Dental Practitioners Association
Optometry Scotland
Community Pharmacy Scotland
General Medical Council
General Dental Council
General Optical Council
General Osteopathic Council
General Chiropractic Council
Health Professions Council
Scottish Health Council
Consumer Focus
Citizens Advice Scotland
Scottish Patients Association
CBI Scotland
Federation of Small Businesses Scotland
Council for Healthcare Regulatory Excellence
UNISON
Equality and Human Rights Commission
CoSLA
Scottish Council for Voluntary Organisations (SCVO)
Voluntary Health Scotland

THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).

All Scottish Government consultation papers and related publications (e.g., analysis of response reports) can be accessed at: [Scottish Government consultations](http://www.scotland.gov.uk/consultations) (<http://www.scotland.gov.uk/consultations>)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

SCOTTISH GOVERNMENT CONSULTATION PAPER
**CHANGES TO ELIGIBILITY CRITERIA FOR PROVIDERS OF PRIMARY
MEDICAL SERVICES**

Foreword

“This document sets out a new vision for the NHS...that sees the Scottish people and the staff of the NHS as partners, or co-owners, in the NHS. I want us to move to a more mutual NHS where partners have real involvement, representation and a voice that is heard.

A mutual NHS is more than an idea. This Action Plan contains a number of proposals that shift ownership and accountability to the people of Scotland and offer them the opportunity to take more control of their health.

A mutual NHS is consistent with the founding values of the NHS. I believe strongly in the principles of equal access on the basis of need, available free at the point of care. Neither will we change the funding model of the NHS. It will remain firmly in the public sector. In stressing public ownership through a more mutual approach, we distance NHS Scotland still further from market orientated models.”

Better Health Better Care Action Plan, December 2007

It was with these words that I set out, in December 2007, our Action Plan to deliver Better Health and Better Care for the people of Scotland, and highlighted our commitment to a mutual NHS rooted firmly in the public sector. This consultation document takes our commitment to a mutual NHS a stage further.

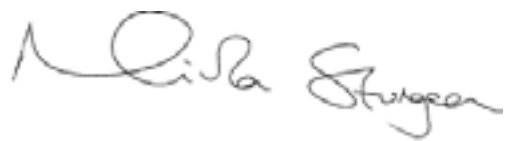
General Practice lies at the heart of the NHS. It accounts for 90% of all patient contacts, and a patient's relationship with his or her GP (or member of the practice team) rests on a very private and personal basis and often deals with the most important of life events. Most patients' experience and confidence in the NHS will be determined by their treatment and care in general practice.

At its best, general practice provides high quality care to patients in the community, enabling them to live long and healthy lives in their own homes, while instilling in people a sense of responsibility for their own health, and supporting self care.

In cases where care at home and in the community is no longer appropriate, it is general practice that acts as the gateway to specialist services and hospital care. General Practice commits the resources of the whole NHS and is therefore an essential plank in our vision of a mutual NHS.

For all of these reasons, the Scottish Government considers it important to embed general practice firmly within the mutual approach. Some practices are directly managed by Health Boards, with their staff NHS employees. The majority of practices, however, are private businesses. For them, our vision of a mutual model means practices that are owned by people with a direct interest in the patients that they treat, and who are directly involved in the provision of primary medical services in the practice. And our vision does not include the market oriented, competitive model seen elsewhere in the UK, where commercial companies with shareholders who are involved for purely financial reasons are allowed to hold primary medical services contracts.

This consultation paper sets out our proposals to deliver this vision and I encourage you to give it full consideration and to respond.

A handwritten signature in black ink, reading "Nicola Sturgeon". The signature is written in a cursive, flowing style.

Nicola Sturgeon, MSP
Deputy First Minister and Cabinet Secretary
for Health and Wellbeing

Background

1. Most General Practices in Scotland are owned and run by independent contractors. They are private businesses which, in the traditional model, are owned and run by GPs, nurses and other healthcare professionals, and others with a vested interest in the NHS and the delivery of quality services to patients. While the individuals are not NHS employees in the way that hospital and community staff are, they are essentially part of the NHS, see themselves as part of the NHS, and are themselves working in a form of co-operative.

2. Under the arrangements introduced in 2004, legislation provided for a Health Board to contract with a commercial company to provide GP services. It was envisaged that a commercial company could, by employing doctors, bid and provide GP services to the National Health Service.

3. The Scottish Government does not, however, consider the delivery of General Practice by commercial organisations, driven by the financial interests of shareholders, to be compatible with its public policy of a mutual NHS. This consultation paper therefore sets out our proposals to remove the provisions introduced in 2004 and amend other provisions that define the eligibility criteria for contract holders in primary medical services in a way that will underpin our vision of a mutual NHS.

4. This consultation paper does not deal with the other more specific family health services – dentistry, optometry and pharmacy - which have a tradition of also being delivered by a mixture of small independent contractors and larger, sometimes commercial, companies. These services are more specialist than General Practice and do not direct NHS resources on the scale that GP practices do, although there are obvious referral routes into hospital eye and dental services. The Scottish Government does not see commercial involvement in the delivery of these services as a significant issue, and this is reflected in the fact that bodies corporate are, and have been for many years, actively engaged in providing services to the public on behalf of the NHS.

The Current Contracting Framework

5. The current contracting framework, for the provision of GP services, allows Health Boards to contract with an independent contractor (either through a General Medical Services or locally negotiated contract); to employ doctors and run the practice directly; and to use the commercial sector. (By using the term ‘commercial sector’ we draw a distinction between GPs and other eligible categories of persons owning and running a GP practice with the singular purpose of providing a dedicated service to the NHS, and a company constituted with individuals, shareholders or otherwise, who operate in a commercial competitive environment subject to the risks and rewards inherent in commercial and financial markets, that may or may not be related to the provision of health care.)

6. These three options are discussed in more detail in the following paragraphs.

Role of NHS Boards in Contracting for GP Services

6.1 The National Health Service (Scotland) Act 1978 Act was amended by the Primary Medical Services (Scotland) Act 2004 to allow the new GMS contract to proceed. Section 2C places the responsibility for providing, or securing the provision of GP services (termed “primary medical services” in the Act) on Health Boards. To fulfil this duty the Boards “may make such arrangements for the provisions of the services as they think fit (and may in particular make contractual arrangements with any person).”

Arrangements for Contracting with Independent Contractors and Salaried GPs

6.2 It is an option for a Health Board to employ doctors directly to act as GPs. The vast majority of practices in Scotland, however, operate under primary medical services contracts between Health Boards and GPs. The options are a general medical services (GMS) contract with an individual doctor; a partnership where at least one partner is a doctor; or a company limited by shares where at least one shareholder is a doctor. In the second and third options the other partners or shareholders must be from a statutory list of individuals who are within the NHS or a healthcare professional. An alternative to the GMS contract is to have a locally negotiated agreement with a medical practitioner or other specific categories of persons, to permit the flexible delivery of services (a section 17C contract). In the 17C contract, there is no requirement for at least one of the individuals to be a medical practitioner. In both GMS and 17C the practice may employ other doctors to assist in the provision of services.

Arrangements for Contracting with Commercial Companies

6.3 A Health Board can also award a contract to a commercial company which would then employ doctors and other staff to treat patients. There would be no requirement that those holding the contract be doctors or other health care professionals. The basic requirement is that the person is of ‘good standing’ but there is no requirement for a clinical qualification.

Future Arrangements for Contracting for GP Services

Proposal A - Debarring Commercial Providers

7. The Scottish Government propose that the 1978 Act is amended so that only these options at paragraph 6.2 above would be available to Health Boards. Health Boards must decide how to proceed when a practice vacancy occurs (i.e. the existing contract comes to an end.) The proposed list of contractual routes would be:

- General Medical Services (GMS) contracts under section 17J of the Act (with individuals, partnerships or companies of medical practitioners, nurses and others);
- A local contract under 17C of the Act (with individuals, partnerships or companies of medical practitioners, nurses and others);
- The direct employment of GPs, nurses and others by a Health Board.

The Scottish Government believes that this list of contractual routes would be sufficient to provide Health Boards with the flexibility required to fill any particular practice vacancy.

Proposal B – Simplification of Eligibility Criteria for Persons Providing GP Services (Under Contract to the NHS)

8. The Scottish Government propose to introduce legislation to simplify and clarify the lists of persons who can be parties to contracts or agreements to provide GP services in line with its vision for a mutual NHS.

9. The 1978 Act contains specific provisions for agreements and contracts. Sections 17D and 17L (reproduced in Annexes A and B) in particular specify the persons with whom a Health Board may enter into a section 17C agreement and a general medical services contract respectively. We propose that sections 17D and 17L are amended as regards the categories of persons who are eligible to enter into a section 17C Agreement or a general medical services contract such that the lists of eligible persons in sections 17D and 17L will become the same.

10. The most significant difference between the eligibility criteria for a GMS contract and a 17c contract is that a GMS contract requires at least one of the individuals to be a medical practitioner. In aligning the two sets of eligibility criteria, we have reflected the continuing increase in extended nursing roles, including independent nurse prescribing and advanced nurse practitioners, and their growing involvement in the delivery of primary medical services. Therefore, while we propose to place greater constraints on the 17C definition, we also propose to allow the possibility of nurse practitioners holding a contract without necessarily the involvement of a medical practitioner.

11. The persons eligible to be a party to a contract or agreement to provide primary medical services would then be as follows:

- (1) A medical practitioner or nurse;

(2) A partnership where all the partners are individuals, at least one partner is a medical practitioner or nurse, and any partner who is not a medical practitioner or nurse is-

(a) a health care professional (such as a physiotherapist or other allied health professional); or

(b) an individual who is (or will be as a result of entering into the contract) engaged in the provision of primary medical services under this or another contract under section 17C or section 17J of the Act.

(3) A company limited by shares where at least one share is legally and beneficially owned by a medical practitioner or nurse, and any share which is not so owned is legally and beneficially owned by an individual referred to in paragraphs (a) and (b) above.

12. The implications of these proposals are as follows:

- Those involved in contracts for dental services, and who are currently included in sections 17D and 17L, would be excluded unless they satisfy the above categories. Note that dentists and other dental care professionals would qualify under the revised provision as it relates to healthcare professionals.
- Employees of existing contract holders would continue to be eligible under paragraph 2, sub-paragraph b.
- NHS employees would not automatically be eligible unless they satisfy the above categories, but would be eligible were they to become engaged in the provision of primary medical services under a GMS or 17C contract.
- Anyone who is not a medical practitioner, nurse or other health care professional must be engaged in the provision of primary medical services under a contract in order to be a party to a contract, therefore demonstrating that they have a personal stake in the delivery of patient care.
- Automatic eligibility for those involved in comparable contracts in other countries of the UK is removed, but in practical terms medical practitioners, nurses and healthcare professionals will be eligible, as will anyone else who will be engaged in the provision of primary medical services under the contract.
- There is no restriction for a medical practitioner or healthcare professional to be living or working in Scotland, other than in respect of demonstrating that they have a personal stake in the delivery of patient care (see previous paragraph.)

13. These changes would not apply retrospectively. The Scottish Government intend to include transitional provisions so that no person who is at present a party to a contract or agreement would be required to step down.

Proposal C – Commitment to Patient Care of GPs in the Traditional Model

14. There is a further question as to whether medical practitioners, nurses and/or other healthcare professionals must also demonstrate their commitment to patients and the NHS by also being actively involved in the provision of the services under the contract in question, or another contract.

15. Under the arrangements introduced in 2004 a medical practitioner (and other eligible contract holders) could hold a contract to provide GP services but engage other doctors, health care and administrative persons as employed staff while at the same time providing no day to day clinical care or day to day involvement in the practice. We wish to consult on whether there should be a requirement on medical practitioners, nurses and other healthcare professionals who are a party to a contract or agreement to spend a minimum amount of time (for example, on average at least one day a week) in the clinical care management of patients and day to day running of the practice. The Scottish Government believe that the individual or partners who hold a contract should be actively involved in the care and treatment provided to patients and should not be ‘sleeping’ partners or shareholders with no direct input to patient services. The obvious exception to this could be a partner or shareholder who was previously involved in the direct provision of services in one of the practices under contract, but who has subsequently retired. Similar exceptions could apply to partners or shareholders on maternity leave or a career break, where it would not be desirable to require the partner or shareholder to stand down completely and remove their equity from the practice. The time limit for each of these exceptions could, for example, be a maximum of five or seven years away from the practice.

Proposal D – Voluntary Organisations and Related Bodies

16. Under the same provisions for a Health Board contracting with a commercial company, a Health Board may also contract with a voluntary organisation and related non-profit bodies (e.g. an industrial and provident society, a friendly society or any other body). The impact of the proposed changes would mean that these contractual arrangements would also not be available in the future. The Scottish Government does not currently know of reasons why the voluntary sector need to have a role as envisaged in the current legislation, nor are we aware of any examples of a GP practice in Scotland being run by a voluntary organisation. In the future the Scottish Government wants to ensure contract holders meet the eligibility criteria at paragraph 9 and have direct clinical experience and involvement in treating patients.

Consultation Arrangements

Remit

17. The focus of this consultation is the contractual arrangements for general practice only and we would prefer and advise respondents to confine their responses

to the specific questions (see below) and any closely related points that they may wish to add.

Timing

18. The closing date for this consultation is 17 December. This means that the consultation period is shorter than normal. We consider that a shorter period in this case is reasonable given the relatively narrow and largely technical scope of the issues for consultation.

Responding to the Consultation Document

19. Recipients are invited to respond to any one or more of the proposals A to D in the consultation document. The specific questions that a recipient may wish to address are:

Proposal A

Do you agree that Scottish Ministers should remove the existing provisions that currently allow commercial companies (as defined in this document) to provide GP services?

Proposal B

Do you agree that the lists of persons who would be eligible to provide GP services under a contract or agreement should be simplified to those listed under proposal B?

Do you consider that other persons (or categories of persons) should be included or that there should be additional restrictions?

Proposal C

Do you agree that there should be measures to require a medical practitioner, or other individual eligible to hold a contract to GP services, to perform at least some specified minimum level of clinical care or day to day involvement in running the general practice (eg on average at least one day per week) with exceptions for retired partners and those on maternity leave or career breaks (eg for up to five or seven years)?

Proposal D

Do you agree with the proposal that voluntary organisations and related bodies (e.g. an industrial and provident society, a friendly society or any other body) should no longer qualify as able to bid for a contract to provide primary medical services?

ANNEX A

Extract from the existing provisions of section 17D (eligibility criteria for holding a 17C contract)

A Health Board may make an agreement under section 17C only with one or more of the following-

- (a) an NHS Trust (now abolished)
- (b) in the case of an agreement under which primary medical services are provided-
 - (i) a medical practitioner who satisfies the prescribed conditions (such conditions can be prescribed in regulations];
 - (ii) a health care professional who satisfies the prescribed conditions (such conditions can be prescribed in regulations];;
 - (iii) a person who is providing primary medical services in accordance with a general medical services contract;
 - (iv) a person who is providing primary medical services in accordance with a section 28Q contract or an Article 57 contract;
 - (v) a person who is providing primary medical services in accordance with section 17C arrangements, section 28C arrangements or Article 15B arrangements;
 - (vi) an individual who is providing general dental services;
 - (vii) a person who is providing primary dental services in accordance with a section 28K contract or an individual who is providing general dental services in accordance with Article 61 of the 1972 Order;
 - (viii) a person who is providing personal dental services in accordance with section 17C arrangements;
 - (ix) a person who is providing primary dental services in accordance with section 28C arrangements or personal dental services in accordance with Article 15B arrangements;
- (c) an NHS employee, a section 17C employee, a section 28C employee, an Article 15B employee;
- (d) a qualifying body.(ie a company limited by shares all of which are legally and beneficially owned by persons falling within the above categories)

Note. The various section 28 references are to provisions in England and Wales while 1972 Order references deal with Northern Ireland.

ANNEX B

Extract from the existing provisions of section 17L (eligibility criteria for holding a GMS contract)

- (a) a medical practitioner;
- (b) a partnership where all of the partners are individuals, at least one partner is a medical practitioner, and any partner who is not a medical practitioner is-
 - (i) an NHS employee;
 - (ii) a section 17C employee;
 - (iii) a section 28C or an Article 15B employee;
 - (iv) a health care professional who is engaged in the provision of services under the 1978 Act, the 1977 Act or the 1972 Order;
 - (v) an individual who is providing primary medical services in accordance with a general medical services contract;
 - (vi) an individual who is providing primary medical services in accordance with a section 28Q contract or an Article 57 contract;
 - (vii) an individual who is providing primary medical services in accordance with section 17C arrangements, section 28C arrangements or Article 15B arrangements;
 - (viii) an individual who is providing general dental services;
 - (ix) an individual who is providing primary dental services in accordance with a section 28K contract or general dental services in accordance with Article 61 of the 1972 Order;
 - (x) an individual who is providing personal dental services in accordance with section 17C arrangements; or
 - (xi) an individual who is providing primary dental services in accordance with section 28C arrangements or personal dental services in accordance with Article 15B arrangements.
- (c) A company limited by shares where at least one share in the company is legally and beneficially owned by a medical practitioner, and any share which is not so owned is legally and beneficially owned by an individual referred to in paras (i)-(xi) above.

Note. The various section 28 references are to provisions in England and Wales while 1972 Order references deal with Northern Ireland.

RESPONDENT INFORMATION FORM

CHANGES TO ELIGIBILITY CRITERIA FOR PROVIDERS OF PRIMARY MEDICAL SERVICES

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding: (please tick one box)

(a) as an individual go to Q2a/b and then Q4

(b) **on behalf of** a group/organisation go to Q3 and then Q4

INDIVIDUALS

2a. Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government website)?

Yes (go to 2b below)

No, not at all We will treat your response as confidential

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

3 The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your **response** to be made available?

Yes

No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

4 We will share your response internally with other Scottish Executive policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes

No

