

**2004 No. 163**

**NATIONAL HEALTH SERVICE**

**The General Medical Services and Section 17C Agreements  
(Transitional and other Ancillary Provisions) (Scotland) Order  
2004**

*Made* - - - - - *30th March 2004*

*Laid before the Scottish Parliament* *30th March 2004*

*Coming into force* - - - *1st April 2004*

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The Scottish Ministers, in exercise of the powers conferred by section 7 of the Primary Medical Services (Scotland) Act 2004(a) and of all other powers enabling them in that behalf, hereby make the following Order:

## PART 1

### GENERAL

#### **Citation, commencement and interpretation**

**1.**—(1) This Order may be cited as the General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004 and shall come into force on 1st April 2004.

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(a) 2004 asp 1.

(2) In this Order–

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

“the 1995 Regulations” means the National Health Service (General Medical Services) Regulations 1995(b);

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(c);

“the 2004 Act” means the Primary Medical Services (Scotland) Act 2004(d);

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

“additional services” has the same meaning as in the 2004 Regulations;

“area medical committee” has the same meaning as in the 2004 Regulations;

“core hours” has the same meaning as in the 2004 Regulations;

“the Choice Regulations” means the National Health Service (Choice of Medical Practitioner) (Scotland) Regulations 1998(f);

“contractor” means a person with whom a Health Board enters into a contract;

“default contract” means a contract entered into under article 13 of the Transitional Order and “default contractor” shall, except in Part 3, where it has the meaning given in article 34(3), be construed accordingly;

“essential services” has the same meaning as in the 2004 Regulations;

“general medical services contract” means a contract under section 17J of the 1978 Act and general medical services contractor shall, except in Part 3, where it has the meaning given in article 34(3), be construed accordingly;

“Health Board” means a Health Board constituted under section 2 of the 1978 Act(g) and, in relation to any time before 1st April 2004, includes a National Health Service trust to which functions of the Health Board were delegated under section 12AA of the 1978 Act(h);

“list of patients” means–

- (a) in relation to a person providing general medical services under section 19 of the 1978 Act(i), the list of patients of a medical practitioner prepared by the Health Board under regulation 27(j) of the 1995 Regulations;
- (b) in relation to a general medical services contractor or a default contractor, the list prepared and maintained by the Health Board under the term of a general medical services contract which gives effect to paragraph 14 of Schedule 5 to the 2004 Regulations or under the equivalent term of a default contract; and
- (c) in relation to a person providing services under an agreement for primary medical services made (or, pursuant to article 49, deemed to be made) under section 17C of the 1978 Act–

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(a) 1978 c.29.

(b) S.I. 1995/416.

(c) S.I. 2003/1250.

(d) 2004 asp. 1.

(e) S.S.I. 2004/115.

(f) S.I. 1998/659.

(g) Section 2 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c.41), section 14(2) and Schedule 7, paragraph 1, the Hospital Complaints Procedure Act 1985 (c.42), section 1(1) and the National Health Service and Community Care Act 1990 (c.19), section 28 and Schedule 9, paragraph 19 and Schedule 10.

(h) Section 12AA was inserted by the Health Act 1999 (c.8), section 47.

(i) Section 19 was amended by the Health and Medicines Act 1980 (c.53), section 7, the Health and Social Security Adjudications Act 1983 (c.41), Schedule 7, paragraph 2, the Medical Act 1983 (c.54), Schedule 5, paragraph 17, the National Health Service and Community Care Act 1990 (c.19), section 37, the Medical (Professional Performance) Act 1995 (c.51), Schedule, paragraph 29, the National Health Service (Primary Care) Act 1997 (c.46) Schedule 2, paragraph 39 and S.I. 2002/3135. It was extended by the Health and Medicines Act 1988 (c.49), section 17(1). It is to be repealed from 1st April 2004 by the 2004 Act, Schedule, paragraph 1(7).

(j) Regulation 27 was amended by S.I. 1998/660, S.S.I. 1999/54 and S.S.I. 2003/443.

- (i) the list prepared and maintained by the Health Board under the term of that agreement which gives effect to paragraph 8 of Schedule 2 to the Section 17C Agreements Regulations;
- (ii) the performers or pooled list required to be kept under the terms of any directions made by the Scottish Ministers in relation to patient lists for transitional agreements; or
- (iii) the performers or pooled list required to be kept under regulation 9 of the National Health Service (Personal Medical Services) (Scotland) Regulations 2001(a);

“medical list” means the list of medical practitioners undertaking to provide general medical services for persons in its area kept by a Health Board under regulations made under section 19(2)(a) of the 1978 Act;

“NHS dispute resolution procedure”, except in Part 4 where it has the meaning given in article 48, has the same meaning as in the 2004 Regulations;

“National Health Service Trust” has the meaning indicated by section 12A of the 1978 Act(b);

“out of hours period” has the same meaning as in the 2004 Regulations;

“Performers Lists Regulations” means the National Health Service (Primary Medical Services Performers’ Lists (Scotland) Regulations 2004(c);

“pilot scheme” means an agreement made under Part 1 of the National Health Service (Primary Care) Act 1997(d);

“pilot scheme provider” means a person who is providing services under a pilot scheme;

“practice premises” in relation to a person providing services under section 19 of the 1978 Act, has the same meaning as in regulation 2(1) of the 1995 Regulations(e) and, in relation to a general medical services contractor or a default contractor, has the same meaning as in regulation 2(1) of the 2004 Regulations;

“primary medical services performers list” has the same meaning as in the 2004 Regulations;

“public or local holiday” has the same meaning as in the 2004 Regulations;

“section 17C agreement” means an agreement made under section 17C of the 1978 Act(f);

“the Section 17C Agreements Regulations” means the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004(g);

“section 17C provider” means–

- (a) a provider as defined in regulation 2 of the Section 17C Agreements Regulations; or
- (b) in relation to a transitional agreement, a provider as defined in article 48;

“registered patient” means–

- (a) a person who is recorded by the Health Board as being on the list of patients of a default contractor or a general medical services contractor; or
- (b) a person whom a default contractor or a general medical services contractor has accepted for inclusion on its list of patients, whether or not notification of that acceptance has been received by the Health Board and who has not been notified by the Health Board as having ceased to be on that list;

“temporary resident” means a person accepted by a general medical services contractor or a default contractor as a temporary resident under the term of its general medical services

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(a) S.S.I. 2001/72.

(b) Section 12A was inserted by the National Health Service and Community Care Act 1990 (c.19), section 31 and amended by the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2, paragraph 34 and the Health Act 1999 (c.8), sections 46 and 48 and Schedule 4, paragraph 45.

(c) S.S.I. 2004/114.

(d) 1997 c.46 is to be amended from 1st April 2004 by the 2004 Act, Schedule, paragraph 2(2).

(e) Regulation 2 was amended by S.I. 1995/3199, S.I. 1996/1504, S.I. 1997/943, S.I. 1998/4, S.I. 1998/660, S.I. 1999/54, S.S.I. 1999/54, S.S.I. 2002/111 and S.S.I. 2003/443.

(f) Section 17C was inserted by the National Health Service (Primary Care) Act 1997 (c.46), section 21(2) and was amended by the 2004 Act asp 1, section 2(2).

(g) S.S.I. 2004/116.

contract which gives effect to paragraph 16 of Schedule 5 to the 2004 Regulations (or under the equivalent terms of its default contract) and for whom the contractor's responsibility has not been terminated in accordance with the terms of the general medical services contract or default contract;

“transitional agreement” means an agreement which is deemed under article 49 to have been made under section 17C of the 1978 Act and which has not been varied in accordance with article 50;

“the Transitional Order” means the General Medical Services (Transitional and other Ancillary Provisions) (Scotland) Order 2004(a).

## PART 2

### TRANSITIONAL PROVISIONS RELATING TO GENERAL MEDICAL SERVICES

#### Application and interpretation of this Part

##### 2.—(1) In this Part—

- (a) articles 3 to 26 apply to a default contract, or a general medical services contract entered into on 1st April 2004, with—
  - (i) an individual medical practitioner who has entered into the general medical services contract pursuant to an entitlement under article 3 of the Transitional Order or the default contract pursuant to article 13 of that Order;
  - (ii) a partnership which has entered into the general medical services contract pursuant to an entitlement under article 4 of that Order or the default contract pursuant to an entitlement under article 13 of that Order; or
  - (iii) a company in which one or more of the legal and beneficial shareholders is, on 31st March 2004, providing services under section 19 of the 1978 Act;
- (b) articles 27 and 28 apply to the contracts specified in sub-paragraph (a) and to a general medical services contract which takes effect immediately after a default contract with the same parties ceases to have effect; and
- (c) article 29 applies to all general medical services contracts and default contracts entered into before 1st April 2005.

(2) Unless it is entered into with a person to whom the particular article does not apply, a general medical services contract or a default contract which falls within paragraph (1) shall include, or be deemed to include, terms which have the effect specified in articles 3 to 29.

##### (3) In this Part—

“relevant medical practitioner” means a medical practitioner who, on 31st March 2004, is providing services under section 19 of the 1978 Act and—

- (a) as an individual medical practitioner has entered into—
  - (i) a default contract; or
  - (ii) a general medical services contract under which services are to be provided from 1st April 2004;
- (b) is a partner in a partnership that has entered into—
  - (i) a default contract; or
  - (ii) a general medical services contract under which services are to be provided from 1st April; or

- (c) is a legal and beneficial shareholder in a company which has entered into a general medical services contract under which services are to be provided from 1st April 2004; “succeeding contractor” means the default contractor which is a party to the default contract or the general medical services contractor which is a party to the general medical services contract which—
  - (a) a relevant medical practitioner has entered into as an individual medical practitioner;
  - (b) has been entered into by a partnership in which the relevant medical practitioner is a partner; or
  - (c) has been entered into by a company in which a relevant medical practitioner is a legal and beneficial shareholder.

### **Applications for inclusion in lists of patients**

**3.** Where, on or before 31st March 2004, a person had applied to a relevant medical practitioner for inclusion in that medical practitioner’s list of patients pursuant to regulation 2 or 3(1) of the Choice Regulations<sup>(a)</sup> but on 31st March 2004 that application had not yet been determined, the application shall, on 1st April 2004, be regarded as if it had been made to the succeeding contractor under—

- (a) the term of its general medical services contract which gives effect to paragraph 15 of Schedule 5 to the 2004 Regulations; or
- (b) the equivalent term of its default contract.

### **Acceptance of applications for inclusion in lists of patients**

**4.—(1)** Where, on or before 31st March 2004, a relevant medical practitioner had agreed to accept a person on that medical practitioner’s list of patients pursuant to paragraph 6 of Schedule 1 to the 1995 Regulations but on 31st March 2004 the relevant medical practitioner had not yet sent the signed medical card or the application to the Health Board in accordance with sub-paragraph (3) of that paragraph, that acceptance shall be regarded on 1st April 2004 as an acceptance by the succeeding contractor and notification of that acceptance shall be sent by the succeeding contractor to the Health Board in accordance with—

- (a) the term of its general medical services contract which gives effect to paragraph 15(5) of Schedule 5 to the 2004 Regulations; or
- (b) the equivalent term of its default contract.

(2) In paragraph (1), “medical card” has the same meaning as in the 2004 Regulations.

### **Removal from the list of patients at the request of the patient**

**5.** Where, on or before 31st March 2004, a Health Board had received notice from a patient under regulation 25(1) of the 1995 Regulations<sup>(b)</sup> that the patient wished to be removed from a relevant medical practitioner’s list of patients but on 31st March 2004 that removal had not yet taken effect in accordance with that regulation, the removal shall take effect as a removal from the list of patients of the succeeding contractor as if it were a removal pursuant to a request received by the Health Board in accordance with—

- (a) the term of the succeeding contractor’s general medical services contract which gives effect to paragraph 19 of Schedule 5 to the 2004 Regulations, subject to the modification that the reference to the period of 14 days in the term which gives effect to paragraph 19(3)(b) shall be read as a reference to the period of 14 days after the date on which the request made under regulation 25(1) of the 1995 Regulations was received by the Health Board; or
- (b) the equivalent term of its default contract, subject to a modification to the same effect.

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<sup>(a)</sup> Regulation 2 was amended by S.S.I. 2001/85 and Regulation 3 was amended by S.S.I. 2000/191 and S.S.I. 2001/85.  
<sup>(b)</sup> Regulation 25 was amended by S.S.I. 1999/54.



### **Removal from the list of patients at the request of the relevant medical practitioner**

6.—(1) Where, on or before 31st March 2004, a relevant medical practitioner had notified the Health Board that the relevant medical practitioner wished to have a patient removed from that medical practitioner's list of patients in accordance with paragraph 9 of Schedule 1 to the 1995 Regulations but that removal had, on 31st March 2004, not yet taken effect, paragraph (2) shall apply.

(2) Except where paragraph (3) applies, the removal shall take effect as a removal from the list of patients of the succeeding contractor under—

- (a) the term of its general medical services contract which gives effect to paragraph 20(8) of Schedule 5 to the 2004 Regulations, subject to the modification that the reference in that term to the eighth day after the Health Board receives the notice shall be read as a reference to the eighth day after the Health Board received the notice sent under paragraph 9 of Schedule 1 to the 1995 Regulations; or
- (b) the equivalent term of its default contract, subject to a modification to the same effect.

(3) Where, on or before 31st March 2004, the Health Board had been—

- (a) informed by the relevant medical practitioner under paragraph 9(3) of Schedule 1 to the 1995 Regulations that that medical practitioner was treating the patient at intervals of less than seven days but had not yet been notified by that medical practitioner that the patient no longer needed such treatment; or
- (b) notified by the relevant medical practitioner under that paragraph that the person no longer needed treatment at intervals of less than seven days,

paragraph (4) shall apply.

(4) In a case which falls within paragraph (3), the removal shall take effect as a removal from the list of patients of the succeeding contractor on—

- (a) the date on which the Health Board receives notification of the registration of the person with another provider of essential services (or their equivalent);
- (b) the eighth day after the Health Board received notice from the relevant medical practitioner that the person no longer needed treatment at intervals of less than seven days; or
- (c) the eighth day after the Health Board receives notice from the succeeding contractor that the patient no longer needs treatment at intervals of less than seven days,

whichever is the sooner.

### **Removals from the list of patients who are violent**

7.—(1) This article applies where, on or before 31st March 2004, a person had been removed from a relevant medical practitioner's list of patients with immediate effect pursuant to paragraph 9(2) of Schedule 1 to the 1995 Regulations but—

- (a) confirmation in writing had not yet been given to the Health Board under paragraph 9(3);
- (b) reasonable steps had not yet been taken by the relevant medical practitioner under paragraph 9(5) to inform the person whose name had been removed; or
- (c) written notice of the removal had not yet been given to the person by the Health Board under regulation 27(6) of the 1995 Regulations<sup>(a)</sup>.

(2) In a case to which paragraph (1)(a) applies written confirmation of the request for removal shall be given to the Health Board by the succeeding contractor within 7 days from the date on which notification was given under paragraph 9(2).

(3) In a case to which paragraph (1)(b) applies, reasonable steps shall be taken by the succeeding contractor to inform the patient of the request for removal.

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<sup>(a)</sup> Regulation 27 was amended by S.I. 1998/660, S.S.I. 1999/54 and S.S.I. 2003/443.

(4) In a case to which paragraph (1)(c) applies, the Health Board shall send written notice of the removal to the patient.

#### **Removals from the list of patients who have moved**

**8.** Where, on or before 31st March 2004, a Health Board had given a relevant medical practitioner notice in writing, in accordance with regulation 25(3) of the 1995 Regulations<sup>(a)</sup>, that it intended to remove a person from the practitioner's list of patients but the six months referred to in that regulation had not yet expired, that notice shall be regarded as if it had been given to the succeeding contractor under—

- (a) the term of its general medical services contract which gives effect to paragraph 24 of Schedule 5 to the 2004 Regulations, subject to the modification that the reference to the period of six months in the term which gives effect to paragraph 24(a) shall be read as a reference to six months from the date of the notice given by the Health Board under regulation 25(3) of the 1995 Regulations; or
- (b) the equivalent term of its default contract, subject to a modification to the same effect.

#### **Removals not reflected in the list of patients on 31st March 2004**

**9.**—(1) This article applies where—

- (a) on or before 31st March 2004 the removal of a patient from a relevant medical practitioner's list of patients had taken effect under the 1995 Regulations; and
- (b) the Health Board had not, on 31st March 2004, reflected that removal in the list of patients of that medical practitioner which it maintained under regulation 27 of the 1995 Regulations.

(2) In a case to which this article applies, the Health Board shall—

- (a) remove the patient from the succeeding contractor's list of patients as soon as reasonably practicable after 1st April 2004; and
- (b) if notification of the removal was required to be given to the medical practitioner or the patient under the provision of the 1995 Regulations relevant to the removal and had not been given on or before 31st March 2004, notify the succeeding contractor and the patient of the removal.

#### **Applications for acceptance as a temporary resident**

**10.** Where, on or before 31st March 2004, a person had applied to a relevant medical practitioner for acceptance as a temporary resident under regulation 7 of the Choice Regulations<sup>(b)</sup> but on 31st March 2004 that application had not yet been determined, the application shall be regarded as if it had been made to the succeeding contractor and shall be dealt with in accordance with—

- (a) the term of its general medical services contract which gives effect to paragraphs 16 and 17 of Schedule 5 to the 2004 Regulations; or
- (b) the equivalent terms of its default contract.

#### **Acceptance of temporary residents**

**11.**—(1) This article applies where—

- (a) on or before 31st March 2004, a relevant medical practitioner had accepted a person as a temporary resident under paragraph 7(b) of Schedule 1 to the 1995 Regulations; and

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<sup>(a)</sup> Regulation 25 was amended by S.S.I. 1999/54.

<sup>(b)</sup> Regulation 7 was amended by S.S.I. 2001/85.

- (b) on 31st March 2004, his responsibility for that patient had not yet been terminated under paragraph 9A of that Schedule or the period for which the person was accepted as a temporary resident had not yet come to an end.

(2) In a case to which this article applies, the person shall, on 1st April 2004, be treated as if he had been accepted as a temporary resident by the succeeding contractor under—

- (a) the term of its general medical services contract which gives effect to paragraph 16 of Schedule 5 to the 2004 Regulations, subject to the modification that reference to a period of three months in that term shall be read as a reference to a period of three months starting with the date on which the person was accepted as a temporary resident by the relevant medical practitioner under paragraph 7 of Schedule 1 to the 1995 Regulations; or
- (b) the equivalent term of its default contract subject to a modification to the same effect.

### **Termination of responsibility for temporary residents**

12. Where, on or before 31st March 2004, a relevant medical practitioner had informed the Health Board in writing in accordance with paragraph 9A of Schedule 1 to the 1995 Regulations that he wished to terminate his responsibility for a temporary resident but, on 31st March 2004, that responsibility had not yet terminated under that paragraph, the responsibility of the succeeding contractor for that temporary resident shall terminate seven days after the date on which the information under that paragraph was given to the Health Board by the relevant medical practitioner.

### **Provision of immediately necessary treatment**

13. Where, on 31st March 2004, a relevant medical practitioner was responsible for providing immediately necessary treatment to any person under paragraph 4(2) of Schedule 1 to the 1995 Regulations(a), the succeeding contractor shall continue to be responsible for providing such treatment to that person for the period for which the relevant medical practitioner would have been responsible if that paragraph had not been revoked.

### **Newly registered patients**

14.—(1) This article applies where, on 31st March 2004, a patient specified in paragraph (2)—

- (a) was entitled to be invited to participate in a consultation under paragraph 14(1) of Schedule 1 to the 1995 Regulations(b); and
- (b) had not been given such an invitation.

(2) The patient referred to in paragraph (1) is a patient—

- (a) who, on or before 31st March 2004—
  - (i) had applied for inclusion in a relevant medical practitioner’s list of patients under regulation 2 or 3 of the Choice Regulations(c) and whose application had been accepted; or
  - (ii) had been assigned to a relevant medical practitioner’s list under regulation 4 of the Choice Regulations(d); and
- (b) in respect of whom a Health Board had not granted deferment of the obligation to invite him to participate in a consultation under paragraph 14 of Schedule 1 to the 1995 Regulations.

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(a) Paragraph 4 of Schedule 1 was amended by S.I. 1996/842 and S.I. 1998/660.

(b) Paragraph 14 of Schedule 1 was amended by S.I. 1998/660.

(c) Regulation 2 was amended by S.S.I. 2001/85 and Regulation 3 was amended by S.S.I. 2000/191 and S.S.I. 2001/85.

(d) Regulation 4 was amended by S.S.I. 2000/191 and S.S.I. 2001/85.

(3) A patient to whom this article applies shall, on 1st April 2004 be regarded as a patient who falls within—

- (a) the term of the succeeding contractor's general medical services contract which gives effect to paragraph 4 of Schedule 5 to the 2004 Regulations; or
- (b) the equivalent term of its default contract.

### **Appointments system**

15. Where, on or before 31st March 2004, a relevant medical practitioner had sought the approval of a Health Board under paragraph 23(4) of Schedule 1 to the 1995 Regulations for the operation of an appointments system, any notice shall be regarded as a notice given by the succeeding contractor to the Health Board for the purposes of the term of the general medical services contract which gives effect to paragraph 74(c) of Schedule 5 to the 2004 Regulations or the equivalent term of the default contract.

### **Qualifications of performers**

16.—(1) Where, on 1st April 2004, a succeeding contractor continues to employ or engage a person who on 31st March 2004 was employed or engaged in accordance with the requirements of Schedule 1 to the 1995 Regulations by the relevant medical practitioner in relation to whom it is a succeeding contractor, paragraphs (2) and (3) shall apply.

(2) The requirements to make checks contained in the terms of the general medical services contract which give effect to paragraphs 50(1)(b) and 51(1)(a) of Schedule 5 to the 2004 Regulations, or in the equivalent terms of the default contract—

- (a) in a case where equivalent checks have previously been carried out in respect of that person by the relevant medical practitioner, shall not apply; or
- (b) in any other case, shall apply subject to the modification that the checks may be carried out at any time up to 30th June 2004.

(3) The requirement to obtain references in the term of the general medical services contract which gives effect to paragraph 52 of Schedule 5 to the 2004 Regulations, or in the equivalent term of the default contract, shall not apply if such references have been obtained, checked and found to be satisfactory by the relevant medical practitioner by whom the health care professional was employed or engaged on 31st March 2004.

### **Independent nurse prescribers and supplementary prescribers**

17.—(1) Where, on or before 31st March 2004, a relevant medical practitioner had notified the Health Board of any matters relating to an independent nurse prescriber or a supplementary prescriber under paragraph 29(c) of Schedule 1 to the 1995 Regulations<sup>(a)</sup>, the succeeding contractor shall not be required to notify the Health Board of those same matters under—

- (a) the term of its general medical services contract which gives effect to paragraph 58 of Schedule 5 to the 2004 Regulations; or
- (b) the equivalent term of its default contract.

(2) In paragraph (1) “independent nurse prescriber” and “supplementary prescriber” have the same meaning as in paragraph 1 of Schedule 1 to the 1995 Regulations.

### **Patient records**

18.—(1) Where, on 31st March 2004, a relevant medical practitioner had the written consent of the Health Board to the keeping of computerised records under paragraph 32 of Schedule 1 to the 1995 Regulations<sup>(b)</sup> and that consent had not been withdrawn, that consent shall be regarded as written consent to the succeeding contractor for the purposes of—

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(a) Paragraph 29(c) of Schedule 1 was added by S.S.I. 2003/443.

(b) Paragraph 32 of Schedule 1 was substituted by S.S.I. 1999/1057.

- (a) the term of its general medical services contract which gives effect to paragraph 66 of Schedule 5 to the 2004 Regulations; or
- (b) the equivalent term of the default contract.

(2) Where—

- (a) on or before 31st March 2004, a Primary Care Trust had requested a relevant medical practitioner to send it the records relating to a patient under paragraph 32(8) of Schedule 1 to the 1995 Regulations; and
- (b) on 31st March 2004 that request had not yet been complied with,

the records requested shall be sent by the succeeding contractor to the Health Board as soon as possible.

(3) Where, on or before 31st March 2004, a relevant medical practitioner had been informed of the death of a patient on its list by the Health Board or had otherwise learned of the death of such a patient but on 31st March 2004 had not yet sent that patient's records to the Health Board in accordance with paragraph 32(8)(b) of Schedule 1 to the 1995 Regulations, those records shall be sent to the Health Board by the succeeding contractor—

- (a) in a case in which the relevant medical practitioner was informed of the death by the Health Board, within 14 days of the date on which he was so informed; or
- (b) in any other case, within one month of the date on which the relevant medical practitioner learned of the death.

#### **Rights of entry**

**19.**—(1) Where, on or before 31st March 2004, a relevant medical practitioner had received a written request for inspection of his practice premises under paragraph 23(1)(b) of Schedule 1 to the 1995 Regulations but, on 31st March 2004, no inspection had yet taken place pursuant to that request, the request shall, on 1st April 2004, be regarded as notice of an intended entry to the succeeding contractor under—

- (a) the term of its general medical services contract which gives effect to paragraph 81 of Schedule 5 to the 2004 Regulations; or
- (b) the equivalent term of its default contract.

(2) In determining whether reasonable notice was given of any entry to the practice premises following a notice referred to in paragraph (1), regard shall be had to the date on which the request under paragraph 23(1)(b) of Schedule 1 to the 1995 Regulations was made.

#### **Refusal of approval of premises under paragraph 24 of Schedule 1 to the 1995 Regulations**

**20.**—(1) Where, on or before 31st March 2004 a Health Board had notified a relevant medical practitioner under paragraph 24(12) of Schedule 1 to the 1995 Regulations of its refusal of an application made under paragraph 24(1) of Schedule 1 to the 1995 Regulations in relation to any place at which he was to be available paragraphs (2) and (3) shall apply.

(2) Where, on 31st March 2004, the time for appealing against the refusal specified in paragraph 24(13) of Schedule 1 to the 1995 Regulations had not expired and no appeal had yet been made, the time for appealing shall continue as if paragraphs 24 of that Schedule had not been revoked.

(3) Where—

- (a) on 31st March 2004, the relevant medical practitioner had appealed in writing against that refusal under paragraph 24(13) of that Schedule but the appeal had not been determined or withdrawn; or
- (b) after 31st March 2004, an appeal is made pursuant to paragraph (2),

that appeal shall be dealt with or continue to be dealt with as if paragraph 24 of Schedule 1 to the 1995 Regulations had not been revoked.

(4) Where an appeal dealt with under paragraph (3) is successful, the Health Board shall agree to a variation of the contract which it holds with the succeeding contractor which has the effect of adding to the list of practice premises under that contract the premises approved as a result of the appeal.

(5) A variation agreed by the Health Board pursuant to paragraph (4) shall have effect—

- (a) from a date no later than 28 days after the date on which the outcome of the appeal was notified to the relevant medical practitioner; and
- (b) only if it is in writing and signed by or on behalf of the Health Board and the succeeding contractor.

### **Investigation of outstanding complaints**

**21.**—(1) Where, on 31st March 2004—

- (a) a complaint had been made under paragraph 12A of Schedule 1 to the 1995 Regulations<sup>(a)</sup> by or on behalf of a patient or former patient of a relevant medical practitioner; and
- (b) the investigation of that complaint under the practice based complaints procedure required to be established under paragraph 12A, had not concluded,

that complaint must, from 1st April 2004, be investigated, or in an appropriate case continue to be investigated, by the succeeding contractor as if paragraph 12A had not been revoked.

(2) Where, on 31st March 2004—

- (a) a complaint had been made under paragraph 12A of Schedule 1 to the 1995 Regulations by or on behalf of a patient or former patient of a medical practitioner to whom there is no succeeding contractor; and
- (b) the investigation of that complaint under the practice based complaints procedure required to be established under paragraph 12A, had not concluded,

that complaint must be investigated by a person specified in paragraph (3) as if paragraph 12A had not been revoked.

(3) The person referred to in paragraph (2) is—

- (a) any person who was the former partner of the medical practitioner on whose list of patients the complainant was included, if that person meets the requirements in paragraph (4);
- (b) if the person specified in paragraph (a) satisfies the Health Board on whose medical list the former partner was included for the purposes of providing general medical services to the complainant that, having regard to the nature of the complaint, it would not be appropriate for the complaint to be investigated by that person, that Health Board; or
- (c) in any other case, the Health Board on whose medical list the medical practitioner was included for the purposes of providing general medical services to the complainant.

(4) The requirements referred to in paragraph (3) are that the former partner—

- (a) has entered into a default contract or a general medical services contract as an individual medical practitioner with the Health Board on whose medical list the former partner was included for the purposes of providing general medical services to the complainant;
- (b) is a partner in a partnership which has entered into a default contract or a general medical services contract with that Health Board; or
- (c) is a legal and beneficial shareholder in a company which has entered into a general medical services contract with that Health Board.

(5) Where, under paragraph (3), a complaint made by or on behalf of a patient or former patient would fall to be investigated, or continue to be investigated, by more than one general medical services contractor or default contractor, the contractors concerned shall—

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<sup>(a)</sup> Paragraph 12A of Schedule 1 was added by S.I. 1996/842 and amended by S.I. 1999/749.

- (a) enter into discussions as to which of them would be the most appropriate person to deal with the complaint; and
- (b) if they are unable to reach agreement, refer the matter to the Health Board on whose medical list their former partner was included for the purposes of providing general medical services to the complainant and that Health Board shall investigate the complaint itself.

(6) Where, under this article, a complaint falls to be investigated by a Health Board the investigation shall be carried out in accordance with the directions on dealing with complaints about family health services practitioners given by the Secretary of State under section 2(5) of the 1978 Act on 26th March 1996(a).

#### **Complaints relating to general medical services made after 31st March 2004**

**22.** The complaints procedure established and operated by a succeeding contractor under—

- (a) the term of its general medical services contract which gives effect to paragraph 82 of Schedule 5 to the 2004 Regulations; or
- (b) the equivalent term of the default contract,

shall apply to any complaint which a patient or former patient of the relevant medical practitioner to whom it is a succeeding contractor could have made (but did not make) on or before 31st March 2004 under paragraph 12A of Schedule 1 to the 1995 Regulations as it applies to complaints made by a patient or former patient of the succeeding contractor in relation to any matter reasonably connected with the provision of services under the contract.

#### **Reports to a medical officer**

**23.—**(1) Where, on or before 31st March 2004, a relevant medical practitioner had received a request for information or an inquiry from a medical officer (or an officer of the Department for Work and Pensions on his behalf or at his direction) under paragraph 34 of Schedule 1 to the 1995 Regulations(b) but, on 31st March 2004, he had not yet responded to that request or inquiry, the succeeding contractor shall respond as if the request or inquiry had been made under—

- (a) the term of its general medical services contract which gives effect to paragraph 72 of Schedule 5 to the 2004 Regulations; or
- (b) the equivalent term of its default contract.

(2) In this article, “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 in pursuance of a contract entered into with the Secretary of State for Work and Pensions.

#### **Arrangements with organisations providing deputy doctors**

**24.—**(1) Where—

- (a) on 31st March 2004—
  - (i) a Health Board had, on or before that date, issued a remedial notice to a relevant medical practitioner under paragraph 19(7) of Schedule 1 to the 1995 Regulations(c); and
  - (ii) the date specified in the notice as the one before which remedial action should be taken had not yet been reached; and

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(a) A copy of these directions can be obtained from the Scottish Executive Health Department.

(b) Paragraph 34 of Schedule 1 was substituted by S.I. 1998/660.

(c) Paragraph 19 of Schedule 1 was amended by S.I. 1995/3199, S.I. 1998/660, and S.S.I. 2003/64 and was substituted by S.I. 1997/943.

- (b) on 1st April 2004, the arrangements covered by the remedial notice are continuing in the form of a sub-contract with the succeeding contractor,

the remedial notice issued under paragraph 19(7) of Schedule 1 to the 1997 Regulations shall be regarded as a remedial notice served in the same terms on the succeeding contractor on 1st April 2004 under the term of its general medical services contract which gives effect to paragraph 103(1) of Schedule 5 to the 2004 Regulations (or under the equivalent term of its default contract).

(2) A remedial notice deemed to have been served on the succeeding contractor pursuant to paragraph (1) shall not count as a remedial notice for the purposes of the term of the general medical services contract which gives effect to paragraph 103(6) of Schedule 5 to the 2004 Regulations (or for the purposes of the equivalent term of the default contract).

(3) In this article, “remedial notice” means, in relation to a notice issued before 1st April 2004, a notice issued under paragraph 19(7) of Schedule 1 to the 1995 Regulations and, in relation to a notice issued after that date, a notice served under the term of the general medical services contract which gives effect to paragraph 103(1) of Schedule 5 to the 2004 Regulations (or under the equivalent term of the default contract).

### **Practice leaflet**

**25.—**(1) This article applies where a relevant medical practitioner had compiled a practice leaflet which met the requirements of paragraph 12 of Schedule 1 to the 1995 Regulations and that leaflet was, on 31st March 2004, available to patients on his list.

(2) In the circumstances to which this article applies, the practice leaflet made available to patients by—

- (a) the succeeding contractor; or
- (b) a general medical services contractor who enters into a general medical services contract before 31st July 2004 which takes effect immediately after its default contract with the same Health Board ceases to have effect,

need not, until 1st August 2004, include all the information specified in the term of the general medical services contract which gives effect to Schedule 8 to the 2004 Regulations (or in the equivalent term of the default contract) provided that, from the date of commencement of the contract until the practice leaflet does so comply, the general medical services contractor or the default contractor makes available to patients in written form the information specified in paragraph (3).

(3) The information referred to in paragraph (2) is—

- (a) the services available under the general medical services contract or the default contract;
- (b) the opening hours of the practice premises and the method of obtaining access to services throughout the core hours;
- (c) the arrangements for services in the out of hours period (whether or not provided by the general medical services contractor or the default contractor) and how the patient may contact such services; and
- (d) if the services in sub-paragraph (c) are not provided by the general medical services contractor or the default contractor the fact that the Health Board which is a party to the general medical services contract or the default contract is responsible for commissioning the services and the name address and telephone number of the Health Board.

(4) In this article, “practice leaflet”—

- (a) in relation to the period before 1st April 2004, has the meaning given in paragraph 12 of Schedule 1 to the 1995 Regulations; and
- (b) in relation to the period from 1st April 2004 has the meaning given in regulation 2(1) of the 2004 Regulations (interpretation).



### **Medical examination of medical practitioners**

**26.** Where, on or before 31st March 2004—

- (a) a Health Board had required a relevant medical practitioner to be medically examined under regulation 24(6) of the 1995 Regulations **(a)**; and
- (b) that medical examination had not yet taken place,

the requirement shall, on 1st April 2004, unless the Health Board notifies him otherwise in writing, be regarded as a request made to that medical practitioner for him to be medically examined on the grounds that he is incapable of adequately providing services under the succeeding contract and arrangements for the medical examination shall, with the consent of the medical practitioner, continue to be made by the Area Medical Committee for the area of the Health Board which is a party to the succeeding contract, pursuant to the function conferred on that Committee by regulation 27 of the 2004 Regulations.

### **Patients not seen within three years**

**27.** The term of a general medical services contract which gives effect to paragraph 5 of Schedule 5 to the 2004 Regulations (or the equivalent term of a default contract) shall be read as if the reference to a consultation or clinic provided by the general medical services contractor (or the default contractor) included a reference to a consultation or clinic provided by—

- (a) the relevant medical practitioner in relation to whom it is a succeeding contractor; or
- (b) in the case of a general medical services contract which takes effect immediately after a default contract between the same parties ceases to have effect, the contractor who held that default contract.

### **Patients aged 75 years and over**

**28.** The term of a general medical services contract which gives effect to paragraph 6 of Schedule 5 to the 2004 Regulations (or the equivalent term of a default contract) shall be read as if the reference to participating in a consultation under that term included a reference to participating in a consultation under—

- (a) paragraph 16 of Schedule 1 to the 1995 Regulations **(b)**; or
- (b) in the case of a general medical services contract which takes effect immediately after a default contract between the same parties ceases to have effect, under the term of the default contract which was equivalent to paragraph 6 of Schedule 5 to the 2004 Regulations.

### **Arrangements for GP Registrars**

**29.—(1)** Where, before 1st April 2005, a general medical services contractor or a default contractor employs a GP Registrar for the purpose of being trained by a GP Trainer, the requirement for the general medical services contractor or the default contractor to have the agreement of the Scottish Ministers to that employment in—

- (a) the term of the general medical services contract which gives effect to paragraph 57 of Schedule 5 to the 2004 Regulations; or
- (b) the equivalent term of the default contract,

shall not apply.

(2) In this article, “GP Registrar” and “GP Trainer” have the same meaning as in regulation 2(1) of the 2004 Regulations.

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**(a)** Regulation 24 was amended by S.I. 1995/3199, S.I. 1998/660 and S.S.I. 2003/443.

**(b)** Paragraph 16 of Schedule 1 was amended by S.I. 1998/660.

### **Refund of fees paid under paragraph 10(2) of Schedule 1 to the 1995 Regulations**

**30.** Where, on 31st March 2004 a patient had paid a fee to a medical practitioner under paragraph 10(2) of Schedule 1 to the 1995 Regulations but—

- (a) the period for applying for a refund of that fee under paragraph 10(3) of that Schedule had not yet expired; or
- (b) an application for refund of the fee had been made but not yet determined,

the period for applying for a refund and the powers of the Health Board in dealing with any application for a refund shall continue as if paragraph 10(3) of that Schedule had not been revoked.

### **Annual reports**

**31.** Notwithstanding the revocation of the 1995 Regulations, any medical practitioner to whom paragraph 35 of Schedule 1 to those Regulations (annual reports)(a) applied shall, by 30th June 2004, provide, either individually or as a member of a partnership, to the Health Board on whose medical list he appeared on 31st March 2004, an annual report in respect of the period of 12 months ending on 31st March 2004 which includes the number of complaints received in accordance with paragraph 12A of Schedule 1 to the 1995 Regulations(b).

### **Permission for use of facilities in private practice under section 64 of the 1978 Act**

**32.** Where, on 31st March 2004, a relevant medical practitioner had the permission under section 64 of the 1978 Act (c) (permission for use of facilities in private practice), that permission shall be regarded, from 1st April 2004, as permission granted under that section to the succeeding contractor.

### **Recovery of overpayments**

**33.—(1)** Where, on or before 31st March 2004, a medical practitioner had admitted an overpayment drawn to its attention by a Health Board under regulation 36(2) of the 1995 Regulations(d) (claims and overpayments) but the overpayment had not been recovered, the amount overpaid shall, notwithstanding the repeal of the 1995 Regulations, continue to be recoverable as set out in regulation 36(2) of the 1995 Regulations and shall be treated as a debt owed by that medical practitioner to the Health Board.

(2) Notwithstanding the repeal of the 1995 Regulations, where the Agency considers that a payment has been made to a medical practitioner under the Statement of Fees and Allowances when it was not due and the Health Board has not drawn that alleged overpayment to the attention of the medical practitioner on or before 31st March 2004, the Health Board may draw that overpayment to the attention of the medical practitioner and—

- (a) where the overpayment is admitted by the medical practitioner it may be recovered from the medical practitioner as set out in regulation 36(2) of the 1995 Regulations and shall be treated as a debt owed by that medical practitioner to the Health Board; and
- (b) where the overpayment is not admitted by the medical practitioner, the matter may be referred under regulation 3(7) of the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992(e), but subject to the provisions of Part 7 of this Order, for investigation.

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(a) Paragraph 35 was amended by S.I. 1997/943.

(b) Paragraph 12A of Schedule 1 was added by S.I. 1996/842 and amended by S.I. 1999/749.

(c) Section 64 was amended by the Health and Social Security Act 1984 c.48, Schedule 8, Part 1.

(d) Regulation 36 was amended by S.I. 1998/1600, S.I. 1999/749, S.S.I. 1999/54.

(e) S.I. 1992/434.

(3) In this article–

“the Agency” means the body constituted under section 10 of the 1978 Act; and

“Statement of Fees and Allowances” means the statement determined and published by the Scottish Ministers under regulation 35 of the 1995 Regulations<sup>(a)</sup>, as that statement had effect on 31st March 2004.

## PART 3

### TRANSITIONAL PROVISIONS FOR GENERAL MEDICAL SERVICES CONTRACTS WHICH FOLLOW DEFAULT CONTRACTS

#### **Application and interpretation of this Part**

**34.**—(1) This Part applies where a person who holds a default contract with a Health Board enters into a general medical services contract with that Health Board which takes effect immediately after its default contract ceases to have effect.

(2) In a case to which this Part applies, the general medical services contract shall, unless it is entered into with a person to whom the particular article does not apply, include, or be deemed to include, terms which have the effect specified in articles 35 to 46.

(3) In this Part–

“default contractor” means a person who holds a default contract with a Health Board and who has entered into a general medical services contract with that Health Board which takes effect immediately after the default contract ceases to have effect and “default contract” shall be interpreted accordingly;

“general medical services contractor” means the person who holds the general medical services contract entered into by the default contractor and “general medical services contract” shall be construed accordingly.

#### **Carry over of approvals, applications, notices etc.**

**35.**—(1) Subject to paragraph (3), in a case to which this Part applies–

(a) any approval, authorisation or consent given by the Health Board for the purposes of the default contract and still in force on the date on which that default contract ceases to have effect, shall be deemed to be an approval, authorisation or consent for the purposes of the general medical services contract on the date on which that general medical services contract takes effect and any such approval, authorisation or consent shall be on the same terms and subject to the same conditions (if any) as applied to the approval, authorisation or consent given under the default contract;

(b) any application made to the Health Board by the default contractor under its default contract, and which has not been dealt with or determined on or before the date on which the default contract ceases to have effect, shall be deemed to be an application made by the general medical services contractor under its general medical services contract and any time specified in the general medical services contract for dealing with any such application shall be deemed to run from the date on which the application was made under the default contract;

(c) any application or request made by a patient to the default contractor under its default contract and which has not been dealt with or determined on or before the date on which the default contract ceases to have effect, shall be deemed to be an application or request made by the patient to the general medical services contractor under its general medical services contract and any time specified in the general medical services contract in

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<sup>(a)</sup> Regulation 35 was amended by S.I. 1998/1600, S.I. 1999/749 and S.S.I. 1999/54.

relation to that application or request shall be deemed to run from the date on which the application or request was made under the default contract;

- (d) any notice given to or served on the default contractor under its default contract by the Health Board which–
  - (i) requires it to provide or cease providing services; or
  - (ii) withdraws, suspends or varies an approval previously given to it by the Health Board,

from a date which is after the date on which the default contract ceases to have effect, shall be deemed to be a notice served on the general medical services contractor under its general medical services contract which takes effect on the date on which it would have taken effect had the default contract continued in force and any time specified in the general medical services contract for referring the matter to the NHS dispute resolution procedure shall be deemed to run from the date on which the notice was given to or served on the default contractor;

- (e) subject to paragraph (2), any notification or information given to the Health Board or a patient by the default contractor under its default contract shall be deemed to be a notification or information given by the general medical services contractor under the equivalent term of its general medical services contract on the date on which the general medical services contract takes effect and any reference in the relevant term of the general medical services contract to the date on which the event referred to in the notification shall take effect shall be read as a reference to the date on which that event would have taken effect had the default contract remained in force;
- (f) any report, notification or information (other than a notification required to be given under the term of the default contract equivalent to paragraph 78 of Schedule 5 to the 2004 Regulations) which, on the date on which the default contract ceased to have effect, was required to be given to any person by the default contractor under its default contract but had not been so given, shall be given by the general medical services contractor as if it was required to be given under the general medical services contract, subject to the modification that the timescale for giving any such report, notification or information shall be that which would have applied to the default contractor had the default contract remained in force;
- (g) any notifications or acknowledgements required to be given by the Health Board to a default contractor under its default contract on the date on which it ceases to have effect but which had not been so given shall be given by the Health Board to the general medical services contractor as if it was required under the terms of the general medical services contract;
- (h) any notifications required to be given by the Health Board under a default contract to a patient on the default contractor's list of patients on the date on which the default contract ceases to have effect but which had not been so given, shall be given to that patient by the Health Board–
  - (i) if the patient is included in the list of patients of the general medical services contractor, as if the notification were required to be given under the general medical services contract; or
  - (ii) in any other case, as soon as possible after the default contract ceases to have effect;
- (i) any request or inquiry made to the default contractor under the default contract but which has not been complied with on or before the date on which the default contract ceases to have effect, shall be complied with by the general medical services contractor as if it was a request or inquiry made under the equivalent term of the general medical services contract and any time specified in the general medical services contract for responding to any such request shall be deemed to run from the date on which the request was made to the default contractor;
- (j) any preference expressed by a patient under the default contract to receive services from a particular performer or class of performer under that default contract and which he has

not withdrawn on or before the date on which the default contract ceases to have effect shall, with effect from the date on which the general medical services contract takes effect, be regarded, for the purposes of that general medical services contract, as a preference expressed under the term of that contract which gives effect to paragraph 18 of Schedule 5 to the 2004 Regulations;

- (k) any checks which the default contractor has made under the terms of its default contract which are equivalent to paragraphs 50 to 52 of Schedule 5 to the 2004 Regulations or steps which it has taken to satisfy itself under the terms of that contract equivalent to paragraphs 51(1)(b), 53 or 62(1) of that Schedule shall be regarded as checks made or steps taken by the general medical services contractor under the terms of its general medical services contract which give effect to those paragraphs;
- (l) any records relating to a patient or reports which are required to be sent to a Health Board by the default contractor under the term of its default contract which is equivalent to paragraphs 66(6) or 79(1) or (3) of Schedule 5 to the 2004 Regulations but which have not been sent on or before the date on which the default contract ceases to have effect, shall be sent to the Health Board by the general medical services contractor by the date on which the default contractor would have been required to send them had its default contract not ceased to have effect; and
- (m) the reference to a warning given by the general medical services contractor in the term of the general medical services contract which gives effect to paragraph 20(3) of Schedule 5 to the 2004 Regulations shall be deemed to include a reference to a warning given by the default contractor.

(2) Where—

- (a) pursuant to paragraph (1)(e), a notification is deemed to have been given by a general medical services contractor under the term of its contract which gives effect to paragraph 62(1) of Schedule 5 to the 2004 Regulations on the date on which the general medical services contract takes effect; and
- (b) the notification under the equivalent provision of the default contract was given more than 28 days before the date on which the default contract ceased to have effect,

the right of the Health Board under the term of the general medical services contract which gives effect to paragraph 62 of Schedule 5 to the 2004 Regulations to object to the sub-contract covered by that notification shall not apply.

(3) Paragraph (1) does not apply to any action taken or required to be taken by either party to a default contract under—

- (a) the dispute resolution procedure;
- (b) the provisions relating to variation of the contract; or
- (c) the provisions relating to termination of the contract,

contained in the default contract.

### **Newly registered patients**

**36.—**(1) Where a patient of a default contractor—

- (a) was, immediately before the default contract ceased to have effect, entitled to be invited to participate in a consultation under the term of the default contract equivalent to paragraph 4 of Schedule 5 to the 2004 Regulations; and
- (b) had not been given such an invitation,

that patient shall be regarded as a patient of the general medical services contractor who, on the date on which the general medical services contract takes effect, falls within the term of the general medical services contract which gives effect to paragraph 4 of Schedule 5 to the 2004 Regulations.

(2) In the case of a patient to whom paragraph (1) applies, the reference to a period of six months in the term of the general medical services contract which gives effect to paragraph 4(2) of Schedule 5 to the 2004 Regulations shall be read as if it was a reference to six months from the date of the patient's acceptance on or assignment to the default contractor's list.

### **Temporary residents**

**37.** Where, on the date on which the default contract ceases to have effect—

- (a) a default contractor has accepted a person as a temporary resident under the term of its default contract equivalent to paragraph 16 of Schedule 5 to the 2004 Regulations; and
- (b) its responsibility for that patient has not yet been terminated under that term,

the person shall be treated as if he had been accepted as a temporary resident by the general medical services contractor under the term of its general medical services contract which gives effect to paragraph 16 of Schedule 5 to the 2004 Regulations, subject to the modification that the reference to a period of three months in that term shall be read as a reference to a period of three months starting with the date on which the person was accepted as a temporary resident by the default contractor.

### **Provision of immediately necessary treatment**

**38.** Where, on the date on which the default contract ceases to have effect, a default contractor is responsible for providing immediately necessary treatment to any person under the term of the default contract equivalent to regulation 15 of the 2004 Regulations, the general medical services contractor shall continue to be responsible for providing such treatment to that person for the period for which the default contractor would have been responsible if the default contract had remained in force.

### **Removals from the list of patients**

**39.—(1)** Where, on the date on which the default contract ceases to have effect, a Health Board has received a request from a patient to be removed from a default contractor's list of patients but that removal has not yet taken effect under the term of the default contract equivalent to paragraph 19(3) of Schedule 5 to the 2004 Regulations, that removal shall take effect as a removal from the list of patients of the general medical services contractor on the date on which it would have taken effect had the default contract remained in force.

(2) Where, on the date on which the default contract ceases to have effect, a Health Board has informed a default contractor and one of its registered patients of the matters required under the term of the default contract equivalent to paragraph 23 of Schedule 5 to the 2004 Regulations but the 30 days referred to in that term has not expired, the information shall be regarded as if it had been given under the term of the general medical services contract which gives effect to paragraph 23 of Schedule 5 to the 2004 Regulations subject to the modification that the reference in that term to 30 days shall be read as a reference to 30 days from the date of the advice given to the patient by the default contractor.

(3) Where, on the date on which the default contract ceases to have effect, a Health Board has given notice in writing to a default contractor in accordance with the term of its contract which is equivalent to paragraph 24 of Schedule 5 to the 2004 Regulations but the six months referred to in that term has not expired, the notice shall be regarded as if it had been given under the term of the general medical services contract which gives effect to paragraph 24 of Schedule 5 to the 2004 Regulations subject to the modification that the reference in that term to six months shall be read as a reference to six months commencing with the date of the notice to the default contractor.

### **Requirement to provide dispensing services**

**40.—(1)** Where the Health Board has given notice to the default contractor under its default contract that it requires or authorises it to provide dispensing services to a patient from a date

before the date on which the default contract ceases to have effect, that notice shall be regarded as a notice served on the general medical services contractor under the term of its general medical services contract which gives effect to paragraph 44 of Schedule 5 to the 2004 Regulations requiring or authorising it to provide dispensing services to the patient from the date on which the general medical services contract takes effect.

(2) In this article “dispensing services” has the same meaning as in regulation 2(1) of the 2004 Regulations.

### **Sub-contracting**

**41.**—(1) Where—

- (a) on the date on which the default contract ceases to have effect, the default contractor has in place a sub-contract, other than a contract for services with a health care professional for the provision by that health care professional personally of clinical services, which is in accordance with the terms of the default contract; and
- (b) the general medical services contractor wishes to continue that sub-contract for the period for which it would have continued had the default contract remained in force,

the term of the general medical services contract which gives effect to paragraph 62(1)(b) of Schedule 5 to the 2004 Regulations shall not apply to that sub-contract unless it is extended beyond the date referred to in sub-paragraph (b) or there is a material variation in its terms.

(2) In this article “health care professional” has the same meaning as in section 17P(2) of the 1978 Act<sup>(a)</sup>.

### **Complaints**

**42.**—(1) Where—

- (a) a complaint—
  - (i) has been made to a default contractor under the complaints procedure established in accordance with the term of the default contract equivalent to paragraph 82 of Schedule 5 to the 2004 Regulations; or
  - (ii) falls to be investigated by a default contractor pursuant to articles 21 or 22; and
- (b) on the date on which the default contract ceases to have effect the investigation of that complaint has not been concluded,

the complaint shall be investigated or, in an appropriate case, continue to be investigated, by the general medical services contractor under the complaints procedure established in accordance with the term of its general medical services contract which gives effect to paragraph 82 of Schedule 5 to the 2004 Regulations.

(2) In a case to which this Part applies, any references in the terms of the general medical services contract which give effect to paragraphs 82 to 86 and 88 of Schedule 5 to the 2004 Regulations to—

- (a) services provided by or received from the general medical services contractor;
- (b) a patient or former patient of the general medical services contractor; or
- (c) complaints made to the general medical services contractor,

shall be read as if they included a reference to services provided by or received from the default contractor, to the patient or former patient of the default contractor or to complaints made to the default contractor.

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<sup>(a)</sup> Section 17P was inserted in to the 1977 Act the 2004 Act, section 5.

### **Refund of fees**

**43.**—(1) Where, on the date on which a default contract ceases to have effect, a patient has paid a fee to the default contractor under the term of its default contract equivalent to regulation 24(3) of the 2004 Regulations but—

- (a) the period in that term for applying for refund of the fee has not yet expired; or
- (b) an application for refund of the fee has been made but not yet determined,

the fee shall be regarded as if it had been paid to the general medical services contractor under its general medical services contract and the term of the general medical services contract which gives effect to regulation 24(4) of the 2004 Regulations shall apply subject to the modifications specified in paragraph (2).

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

- (a) references to the date on which the fee was paid shall be read as references to the date on which the fee was paid to the default contractor; and
- (b) the reference to the general medical services contractor’s list of patients shall be read as a reference to the list of patients of the default contractor.

### **Annual returns and reviews**

**44.**—(1) Where, in a case to which this Part applies, the periods or part of the periods covered by the default contract and the general medical services contract fall in the same financial year—

- (a) notwithstanding the term of the general medical services contract which gives effect to paragraph 73 of Schedule 5 to the 2004 Regulations, the Health Board shall not require an annual return from the general medical services contractor if a return covering all or part of the same financial year has been requested from the default contractor; and
- (b) any annual return submitted by the general medical services contractor for a financial year in which it also held a default contract shall provide the required information in relation to the default contract as well as in relation to the general medical services contract.

(2) In this article “financial year” means the twelve months ending with 31st March.

### **Carry-over of disputes between default and general medical services contracts**

**45.**—(1) Where—

- (a) on or before the date on which a default contract ceases to have effect, a default contractor has referred a dispute arising out of or in connection with the default contract, other than one to which article 72 applies, to be determined in accordance with the NHS dispute resolution procedure; and
- (b) on the date on which the default contract ceases to have effect, that dispute has not been determined or withdrawn,

the adjudicator shall in determining the dispute consider the relevance of his determination to the general medical services contract which took effect immediately after the default contract ceased to have effect and, if he considers that his determination is relevant to that general medical services contract, he shall determine the dispute as if it were a dispute referred to him by the general medical services contractor under the NHS dispute resolution procedure contained in the general medical services contract.

(2) In this article “adjudicator” means the Scottish Ministers or a panel of 3 persons appointed by the Scottish Ministers under paragraph 91 of Schedule 5 to the 2004 Regulations.



### **Grounds for termination of the general medical services contract**

**46.** Where, on or before the date on which the default contract ceases to have effect–

- (a) circumstances arise which would entitle the Health Board on or before that date to terminate the default contract under the term of the default contract equivalent to paragraph 101 of Schedule 5 to the 2004 Regulations; and
- (b) the Health Board has not terminated the default contract on those grounds,

those circumstances shall, for the purposes of the term of the general medical services contract which gives effect to paragraph 101 of Schedule 5 to the 2004 Regulations, be regarded as if they had arisen during the existence of the general medical services contract.

### **Notifications to patients affected by differences between the terms of a default and a general medical services contract**

**47.** Where, in a case to which this Part applies–

- (a) the range of services provided to the registered patients of the general medical services contractor is to be different from that provided by the default contractor; or
- (b) patients who were on the default contractor’s list of patients are not to be included on the list of patients of the general medical services contractor as a result of a change in the practice area,

the Health Board shall notify those patients in writing of the change and inform them of the steps they can take to obtain elsewhere the services in question or, as the case may be, register elsewhere for the provision of essential services (or their equivalent).

## **PART 4**

### **TRANSITIONAL PROVISIONS RELATING TO PILOT SCHEME AGREEMENTS**

#### **Definitions**

**48.** In this Part–

“the 1997 Act” means the National Health Service (Primary Care) Act 1997(a);

“the Implementation Directions” means the Directions to Health Boards concerning the Implementation of Pilot Schemes (Personal Medical Services);

“the NHS dispute resolution procedure” means the procedure for resolution of disputes specified in Part 7 of Schedule 1 to the Section 17C Agreements Regulations;

“personal medical services” means medical services of a kind that could have been provided by a general medical practitioner in accordance with arrangements made under Part 2 of the 1978 Act prior to 1st April 2004;

“pilot scheme agreement” means an agreement which constitutes or agreements which together constitute a pilot scheme under Part 1 of the 1997 Act under which personal medical services are provided;

“provider” means the person other than the Health Board who is a party to a transitional agreement;

“relevant body” means the Health Board who is the other party to the transitional agreement.

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(a) 1997 c.46.

### Existing pilot schemes

**49.** Any pilot scheme under which personal medical services were being provided on 31st March 2004 shall, on the coming into force of paragraph 2 of the Schedule to the 2004 Act, be deemed to have been made under section 17C of the 1978 Act<sup>(a)</sup> and accordingly shall not cease to have effect merely because of the repeals in paragraph 2 of the Schedule to the 2004 Act.

### Variation of transitional agreements

**50.—**(1) The parties to a transitional agreement shall as soon as is reasonably practicable after 1st April 2004 enter into discussions with each other with a view to agreeing variations to the transitional agreement that will ensure that the terms of the transitional agreement comply with the Section 17C Agreements Regulations.

(2) Subject to paragraph (3), no variation shall have effect unless it is in writing and signed by or on behalf of the provider and the relevant body.

(3) If the parties to the transitional agreement have not agreed variations to the transitional agreement by 30th September 2004, the relevant body shall vary the transitional agreement without the consent of the provider so that the terms of the transitional agreement comply with the Section 17C Agreements Regulations.

(4) Where paragraph (3) applies, the relevant body shall notify the provider in writing of the wording of the proposed variations and the date upon which the variations are to take effect.

(5) The date that the proposed variation is to take effect shall not be less than 14 days after the date on which the notice under paragraph (4) is served on the provider.

(6) The parties to a transitional agreement may not agree (whether under this article or otherwise) any variation to the transitional agreement that would be contrary to the Section 17C Agreements Regulations.

### Interpretation of transitional agreements

**51.—**(1) Until—

- (a) the parties to a transitional agreement vary the transitional agreement in accordance with article 50(1) and the variations have effect; or
- (b) the relevant body varies a transitional agreement in accordance with article 50(3) and the variations have effect,

a transitional agreement shall interpreted in accordance with this article.

(2) Any reference in a transitional agreement to—

- (a) the Implementation Directions shall be a reference to those Directions as they had effect on 31st March 2004 but subject to the modifications mentioned in article 52;
- (b) the 1995 Regulations shall be a reference to those Regulations as they had effect on 31st March 2004 but subject to the modifications mentioned in article 53;
- (c) the Statement of Fees and Allowances made under regulation 35 of the 1995 Regulations shall be a reference to that Statement as it had effect on 31st March 2004;
- (d) the Choice Regulations shall be a reference to those Regulations as they had effect on 31st March 2004 but subject to the modifications mentioned in article 54 except as specified in paragraph (3);
- (e) the National Health Service (Pilot Schemes: Miscellaneous Provisions and Consequential Amendments) Regulations 1998<sup>(b)</sup> shall be a reference to those regulations as they had effect on 31st March 2004;

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<sup>(a)</sup> Section 17C was inserted by the 1997 Act sections 21(2) and 41(3) and is amended by section 2 of the 2004 Act.

<sup>(b)</sup> S.I. 1998/646.

- (f) in relation to the 1997 Act–
  - (i) section 2(2), (b), (c), (d), or (e), shall be a reference to section 17D(1)(b), (c), (d), or (e) of the 1978 Act(a); and
  - (ii) section 8, shall be a reference to Article 57(1) and (2);
- (g) personal medical services shall be a reference to medical services of a kind that could have been provided by a general medical practitioner in accordance with arrangements made under Part 2 of the 1978 Act prior to 1st April 2004;
- (h) pilot schemes or pilot scheme agreements shall be a reference to transitional agreements;
- (i) a medical list or supplementary list shall be a reference to a primary medical services performers list;
- (j) out of hours arrangements shall be a reference to out of hours arrangements within the meaning given to that expression by article 62.

(3) In relation to the assignment of a patient to a medical practitioner in accordance with regulation 5 of the Choice Regulations(b), any reference in a transitional agreement to regulation 4(2)(b) of those regulations shall be deemed to be a reference to article 55(1).

(4) The transitional agreement shall be interpreted as if it had been varied to include a term or terms having the effect specified in paragraph 66 of Schedule 1 to the Section 17C Agreements Regulations, subject to the modifications that the reference in that term to a person falling within the cases specified in paragraph 66(3) during the existence of the agreement shall be read as if it referred to a person so falling on or after 1st April 2004.

#### **Modification of the Implementation Directions for the purposes of transitional agreements**

**52.** For the purposes of transitional agreements the Implementation Directions shall be read as if–

- (a) any reference to–
  - (i) the 1995 Regulations were a reference to those regulations as they had effect on 31st March 2004 as modified by article 53; and
  - (ii) the Choice Regulations were a reference to those Regulations as they had effect on 31st March 2004 as modified by article 54;
- (b) any reference to personal medical services were a reference to medical services of a kind that could have been provided by a general medical practitioner in accordance with arrangements made under Part 2 of the 1978 Act prior to 1st April 2004;
- (c) any reference to pilot schemes or pilot scheme agreements were a reference to transitional agreements;
- (d) any reference to a medical list or supplementary list were to a primary medical services performers list;
- (e) in direction 9 the words “under regulation 4(2)(b) of those Regulations” were omitted; and
- (f) any reference to out of hours arrangements were to out of hours arrangements within the meaning given to that expression by article 65.

#### **Modification of the 1995 Regulations for the purposes of transitional agreements**

**53.** For the purposes of transitional agreements the 1995 Regulations shall be read as if any reference to Schedule 10 or, as the case may be Schedule 11 to the 1995 Regulations were a reference to any directions given by the Scottish Ministers under section 17N(6) of the 2004 Act(c).

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(a) Section 17D was inserted by the 1997 Act, sections 21(2) and 40(3) and is amended by the 2004 Act section 2.

(b) Regulation 5 was amended by S.S.I. 2000/191 and S.S.I. 2001/85

(c) Section 17N was inserted by the 2004 Act, section 4.

## **Modification of the Choice Regulations for the purposes of transitional agreements**

**54.** For the purposes of transitional agreements the Choice Regulations shall be read as if—

- (a) in regulation 1(a) a new paragraph (4) were added at the end as follows—
  - “(4) In these Regulations—
    - “provider” shall have the meaning given to it in Part 4 of the General Medical Services and 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004; and
    - “transitional agreement” shall have the meaning given to it in article 1 of the General Medical Services and 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004.”;
- (b) in regulation 2(1)(b) there were substituted—
  - “(1) Any person who wishes to receive primary medical services under a transitional agreement may choose the doctor from whom he is to receive those services being a doctor who is primarily responsible for the performance of personal medical services under the transitional agreement, subject to the consent of that doctor.”;
- (c) in regulation 5—
  - (i) paragraph (1) were substituted as follows—
    - “(1) Where a provider is required to assign a patient to a doctor who performs personal medical services in connection with a transitional agreement to which the provider is a party, the provider shall assign the applicant to a doctor within the period of two days beginning on the day on which it received notice of the requirement to assign and shall, upon making that assignment, notify—
      - (a) the Health Board of the name of the doctor to whom the patient has been assigned; and
      - (b) the doctor of the assignment,
  - and the Health Board shall, on receipt of the notification under sub-paragraph (a) notify the patient of the doctor to whom he has been assigned.”;
  - (ii) references to the pilot scheme provider were to the provider;
  - (iii) references to the applicant were to the patient;
  - (iv) references to pilot scheme were to the transitional agreement; and
  - (v) paragraphs (3), (5) and (6) were omitted; and
- (d) in regulation 7 the reference to a pilot scheme were to a transitional agreement.

## **Assignment of patients: transitional agreements**

**55.—**(1) A Health Board may require a provider to assign a patient to a medical practitioner who performs personal medical services in connection with a transitional agreement to which the provider is a party.

(2) Where a Health Board is considering requiring a provider to assign a patient to a medical practitioner under paragraph (1), it shall have regard to—

- (a) the wishes and circumstance of the patient to be assigned;
- (b) the distance between the patient’s place of residence and the provider’s practice premises;
- (c) whether, during the six months ending on the date on which the application for assignment is received by the Health Board, the patient’s name has been removed from the list of patients of any provider of essential services (or their equivalent) in the area of the Health Board under paragraph 13 of Schedule 2 to the Section 17C Agreements Regulations (or other equivalent provision);

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(a) Regulation 1 was amended by S.S.I. 2000/191, S.S.I. 2001/85 and S.I. 2002/3135.

(b) Regulation 2 was amended by S.S.I. 2001/85.

- (d) whether the patient's name has been removed from the list of patients of any provider of essential services (or their equivalent) under paragraph 14 of Schedule 2 to the Section 17C Agreement Regulations (or other equivalent provision);
- (e) such other matters as the Health Board considers relevant.

(3) Where a provider is unable to comply, in accordance with this article or regulation 5 of the Choice Regulations (as modified by article 54) with a requirement to assign a patient to a medical practitioner, and the Health Board is satisfied, after due enquiry, that the person concerned still wishes to be assigned to a provider of essential services (or their equivalent), the Health Board shall as soon as practicable assign or require the assignment of, that person to another provider of essential services (or their equivalent) or medical practitioner in accordance with any relevant agreement, contract or enactment.

(4) A medical practitioner to whom a patient is assigned under this article or regulation 5 of the Choice Regulations (as modified by article 54) shall not be required to provide child health surveillance services, contraceptive services, maternity medical services or minor surgery services for that patient unless he is obliged to provide those services to that patient in connection with a transitional agreement.

(5) Where a provider has requested the Health Board to remove a patient from a medical practitioner's list or a pooled list under a provision equivalent to paragraph 14 of Schedule 2 to the Section 17C Agreements Regulations, the Health Board shall take all reasonable steps to assign, or require the assignment of, the patient to another provider of essential services (or their equivalent) or medical practitioner before the end of the working day after the day on which the Health Board receives notification from the contractor.

(6) In paragraph (5)–

- “a medical practitioner's list” means a list of a medical practitioner's patients kept by a Health Board in respect of a medical practitioner performing personal medical services under a transitional agreement, in accordance with directions made under section 2(5) of the 1978 Act; and
- “a pooled list” means a list of persons who have been accepted by a provider for the provision of personal medical services under a transitional agreement, and whose names are not included in a medical practitioner's list.

### **Representations against a requirement to assign: transitional agreements**

**56.**—(1) A provider who has been required under article 55(1) to assign a person to a medical practitioner may, within the period of seven days beginning with the day on which that assignment is made, make representations in writing to the Health Board 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.

(2) Where representations are made to it against a requirement to assign, a Health Board shall, subject to paragraph (4), promptly review the decision to require assignment and shall either confirm or revise it, but no person who participated in making the decision to require assignment shall participate in a review of that decision.

(3) Where representations are made against a decision to require assignment, the Health Board shall, before confirming or revising that decision, give the provider the opportunity of an oral hearing in support of those representations.

(4) The Health Board shall, within the period of seven days beginning with the day on which it confirms or revises a decision under paragraph (3), notify the contractor accordingly and the provisions of this article and article 55 shall apply to any requirement to assign under a revised decision.

## Variation and termination of transitional agreements

**57.**—(1) The Scottish Ministers may by directions require a transitional agreement to be varied by the relevant body in accordance with the directions.

(2) If the Scottish Ministers are satisfied that a transitional agreement is (for any reason) unsatisfactory, they may give directions to the relevant body requiring it to bring the transitional agreement to an end in accordance with the terms of the directions.

(3) Where a transitional agreement has been varied under article 50 to include a term which gives effect to paragraph 66 of Schedule 1 to the section 17C Agreements Regulations, the reference in that term to a person falling within the cases specified in paragraph 66(3) during the existence of the agreement shall be read as if it referred to a person so falling on or after 1st April 2004.

## Health body status

**58.**—(1) A contractor (other than one falling within paragraph (2)) which was on 31st March 2004 a health service body pursuant to the National Health Service (Pilot Schemes – Health Service Bodies) Regulations 1997(a) (“the 1997 Regulations”) shall be regarded as such a body after that date and regulation 8 of the Section 17C Services Agreements Regulations shall apply as if health service body status had been conferred on that contractor under that regulation.

(2) A provider falls within this paragraph if it was a health service body only for the purpose of regulation 3(4) of the 1997 Regulations (being a party to an existing NHS contract).

(3) A provider falling within paragraph (2) shall continue to be a health service body for the purpose of being a party to an NHS contract entered into on a date before that on which it ceased to be a pilot scheme health service body until the determination of that NHS contract.

(4) Paragraph (3) shall also apply to a provider of personal medical services under a pilot scheme whose agreement terminated before 1st April 2004.

## Dispute resolution

**59.** Any dispute relating to a pilot scheme that has been referred to the Scottish Ministers under section 17A of the National Health Service (Scotland) Act 1978(b) (NHS contracts) and which has not been determined on or before 31st March 2004 shall continue to be dealt with in accordance with the provisions of section 17A.

# PART 5

## TRANSITIONAL PROVISIONS RELATING TO THE CHOICE REGULATIONS

### Assignment of patients

**60.** Where, on 31st March 2004, a person had applied to a Health Board for assignment to a medical practitioner under regulation 4 of the Choice Regulations(c) but that application had not yet been determined, the Health Board shall—

- (a) require a provider to assign the person to a medical practitioner who performs personal medical services under a transitional agreement in accordance with article 55(1) or a person who is a party to a section 17C agreement;
- (b) assign the patient in accordance with the terms of the contract, to—
  - (i) a default contractor; or

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(a) S.I. 1997/2929.

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

(c) Regulation 4 was amended by S.S.I. 2000/191 and S.S.I. 2001/85.

- (ii) a general medical services contractor;
- (c) otherwise make arrangements for the applicant to be provided with essential services (or their equivalent) in the area of the Health Board.

### **Representations against assignments**

**61.**—(1) Where, on 31st March 2004, a Health Board had assigned a patient to a relevant medical practitioner under regulation 4 of the Choice Regulations but the seven days for the medical practitioner to make representations against that assignment in regulation 6(1) of those Regulations had not yet expired, the succeeding contractor shall be entitled to make representations to the Health Board in writing against that assignment within the period of seven days beginning on the day on which the relevant medical practitioner received notice of the assignment under regulation 4 of the Choice Regulations, as if regulation 6 of the Choice Regulations were still in force.

(2) Where, on 31st March 2004, a Health Board had required a pilot scheme provider or a section 17C provider to assign a patient under regulation 4(2)(b) or (c) of the Choice Regulations but the seven days for the medical practitioner to make representations against that requirement to assign in regulation 6(2) of those Regulations had not yet expired, that section 17C provider or the section 17C provider who is a party to the section 17C agreement which has succeeded the pilot scheme, shall be entitled to make representations to the Health Board in writing against that requirement to assign within the period of seven days beginning on the day on which the pilot scheme provider received notice of the requirement under regulation 4 of the Choice Regulations, as if regulation 6 of the Choice Regulations were still in force.

(3) Where representations are made to a Health Board under paragraphs (1) or (2), the Health Board shall deal with those representations in accordance with regulation 6 of the Choice Regulations as if those Regulations were still in force and shall, on or before 30th April 2004, either confirm or revise its decision to assign the patient.

(4) In this article “relevant medical practitioner” and “succeeding contractor” have the meaning given in article 2(3).

## **PART 6**

### **TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS RELATING TO OUT OF HOURS ARRANGEMENTS AND SERVICES**

#### **Interpretation of this Part**

**62.** In this Part—

“out of hours arrangement” means—

- (a) in relation to the period before 1st April 2004, an arrangement under paragraph 17A(2) of Schedule 1 to the 1995 Regulations<sup>(a)</sup>; or
- (b) in relation to the period from 1st April 2004, means an arrangement under the term of a general medical services contract which gives effect to paragraph 1(2) of Schedule 6 to the 2004 Regulations (or the equivalent term of a default contract);

“out of hours services” means services required to be provided in all or part of the out of hours period which—

- (a) would be essential services if provided in core hours; or
- (b) are included—
  - (i) in a default contract as additional services funded under article 36(2) of the Transitional Order; or

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<sup>(a)</sup> Paragraph 17A of Schedule 1 was added by S.I. 1996/842 and amended by S.I. 1998/660, S.I. 2002/3135

- (ii) in a general medical services contract as additional services funded under the global sum.

### **Terms of general medical services contracts and default contracts**

- 63.** Unless the contract is of a type or nature to which a particular article does not apply—
- (a) a general medical services contract shall include or be deemed to include terms which have the effect specified in articles 64 to 74; and
  - (b) a default contract shall include or be deemed to include terms which have the effect specified in articles 64 to 67 and 69, 70 and 74.

### **Applications for approval of out of hours arrangements under general medical services contracts and default contracts**

**64.**—(1) Where, on or before 31st March 2004, a medical practitioner had applied to the Health Board for approval of an out of hours arrangement under paragraph 17A(7) of Schedule 1 to the 1995 Regulations but that application had not yet been determined, it shall, if the medical practitioner meets the requirements in paragraph (2), be treated, on 1st April 2004, as if it were an application made by the general medical services contractor under the term of its contract which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations (or by the default contractor under the equivalent term of its default contract) subject to the modification that the period of 28 days referred to in the term giving effect to paragraph 2(2) of Schedule 6 (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Health Board received the application under paragraph 17A(7) of Schedule 1 to the 1995 Regulations.

- (2) The requirements referred to in paragraph (1) are that the medical practitioner—
- (a) has entered as an individual medical practitioner into a general medical services contract, or a default contract;
  - (b) is a partner in a partnership which has entered into such a contract; or
  - (c) is a legal and beneficial shareholder in a company which has entered into a general medical services contract.
- (3) In any application which falls within paragraph (1)—
- (a) any references to the patients of the medical practitioner shall be deemed to be references to the patients of the general medical services contractor or the default contractor;
  - (b) any references to the whole of the out of hours period shall be deemed to be references to—
    - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day;
    - (ii) the period between 6.30pm on Friday and 8am the following Monday; and
    - (iii) Good Friday, Christmas Day, New Year's day and any other public or local holiday;
  - (c) in any reference to part of the out of hours period—
    - (i) any reference to 7pm on Monday to Friday shall be deemed to be a reference to 6.30pm; and
    - (ii) any reference to 1pm on Saturday shall be deemed to be a reference to 6.30pm on Friday; and
  - (d) any references to a particular transferee doctor shall be deemed to be references to—
    - (i) that person as a general medical services contractor, a default contractor or a party to contractual arrangements made under article 15 of the Transitional Order;
    - (ii) the partnership in which that person is a partner and which has entered into a general medical services contract or a default contract or which is party to contractual arrangements made under article 15 of the Transitional Order; or



- (iii) the company in which that person is a legal and beneficial shareholder and which has entered into a general medical services contract.

### **Approvals of out of hours arrangements under general medical services contracts and default contracts**

**65.**—(1) Where, on 31st March 2004—

- (a) a medical practitioner had approval from a Health Board of an out of hours arrangement; and
- (b) that approval had not been withdrawn under paragraph 17B(a) or 17C of Schedule 1 to the 1995 Regulations and the withdrawal taken effect,

that approval shall, if the medical practitioner meets the requirements in article 67(2), be treated from 1st April 2004 as if it were an approval granted to the general medical services contractor by the Health Board pursuant to the term of its contract which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations (or to the default contractor under the equivalent term of its default contract) except in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that the approval under paragraph 17A of Schedule 1 to the 1995 Regulations related to an arrangement with a transferee doctor as defined in paragraph 17A(1)(c) of Schedule 1 to the 1995 Regulations and that doctor—

- (a) has not entered as an individual medical practitioner into a general medical services contract, or a default contract, which includes the provision of out of hours services;
- (b) is not a partner in a partnership which has entered into such a contract;
- (c) is not a legal and beneficial shareholder in a company which has entered into such a general medical services contract; or
- (d) is not a party or a partner in a partnership which is a party, to contractual arrangements under article 15 of the Transitional Order which include the provision of out of hours services.

(3) The terms of an approval granted pursuant to sub-paragraph (1) shall be the same as those of an approval granted under paragraph 17A of Schedule 1 to the 1995 Regulations except that—

- (a) any references to the patients of the medical practitioner shall be deemed to be references to the patients of the general medical services contractor or the default contractor;
- (b) any references to the whole of the out of hours period shall be deemed to be references to—
  - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day;
  - (ii) the period between 6.30pm on Friday and 8am the following Monday; and
  - (iii) Christmas Day, New Year's Day and any other public or local holiday;
- (c) in any reference to part of the out of hours period—
  - (i) any reference to 7pm on Monday to Friday shall be deemed to be a reference to 6.30pm; and
  - (ii) any reference to 1pm on Saturday shall be deemed to be a reference to 6.30pm on Friday; and
- (d) any references to a particular transferee doctor shall be deemed to be references to—
  - (i) that person as a general medical services contractor, a default contractor or a party to contractual arrangements made under article 15 of the Transitional Order;
  - (ii) the partnership in which that person is a partner and which has entered in to a general medical services contract or a default contract or which is party to contractual arrangements made under article 15 of the Transitional Order; or

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(a) Paragraph 17B of Schedule 1 was added by S.I. 1996/842.

- (iii) the company in which that person is a legal and beneficial shareholder and which has entered into a general medical services contract.

**Refusal of approval of out of hours arrangements under general medical services contracts and default contracts**

**66.—(1) Where—**

- (a) on or before 31st March 2004, a Health Board had notified a medical practitioner under paragraph 17A(10) of Schedule 1 to the 1995 Regulations that it had refused approval of an out of hours arrangement; and
- (b) on or before 1st April 2004, that medical practitioner—
  - (i) has entered as an individual medical practitioner into a general medical services contract, or a default contract, which requires the provision of out of hours services;
  - (ii) is a partner in a partnership which has entered into such a contract; or
  - (iii) is a legal and beneficial shareholder in a company which has entered into such a general medical services contract,

paragraphs (2) and (3) shall apply.

(2) In a case where the time for appealing under paragraph 17A(11) of Schedule 1 to the 1995 Regulations had not expired on or before 31st March 2004, that refusal shall be treated as if it were a refusal under the term of the general medical services contract referred to in paragraph (1)(b) which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations (or under the equivalent term of the default contract), subject to the modification that the 30 days referred to in the term of the general medical services contract giving effect to paragraph 2(5) of that Schedule (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Health Board's notification under paragraph 17A(10) was sent.

(3) In a case where, on 31st March 2004, an appeal had been made under paragraph 17A(11) of Schedule 1 to the 1995 Regulations but not yet been determined or withdrawn, that appeal shall, except in the circumstances specified in paragraph (4), continue to be dealt with as if paragraph 17A had not been revoked and, if the appeal is successful, the approval of the arrangement shall be treated as an approval given under the term of the general medical services contract referred to in paragraph (1)(b) which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations (or under the equivalent term of the relevant default contract).

(4) The circumstances referred to in paragraph (3) are that the appeal related to an arrangement with a transferee doctor as defined in paragraph 17A(1)(c) of Schedule 1 to the 1995 Regulations and that doctor—

- (a) has not entered as an individual medical practitioner, into a general medical services contract, or a default contract, which includes the provision of out of hours services;
- (b) is not a partner in a partnership which has have entered into such a contract;
- (c) is not a legal and beneficial shareholder in a company which has entered into such a general medical services contract; or
- (d) is not a party or a partner in a partnership which is a party, to contractual arrangements under article 15 of the Transitional Order which include the provision of out of hours services.

(5) For the purposes of a dispute pursuant to paragraph (2) or an appeal dealt with pursuant to paragraph (3), the application which is the subject of the appeal shall be read as if—

- (a) any references to the patients of the medical practitioner were references to the patients of the general medical services contractor or the default contractor;
- (b) any references to the whole of the out of hours period were references to—
  - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day;
  - (ii) the period between 6.30pm on Friday and 8am the following Monday; and

- (iii) Christmas Day, New Year's Day and any other public or local holiday;
- (c) in any reference to part of the out of hours period–
  - (i) any reference to 7pm on Monday to Friday were a reference to 6.30pm; and
  - (ii) any reference to 1pm on Saturday were a reference to 6.30pm on Friday; and
- (d) any references to a particular transferee doctor were references to–
  - (i) that person as a general medical services contractor, a default contractor or a party to contractual arrangements made under article 15 of the Transitional Order;
  - (ii) the partnership in which that person is a partner and which has entered in to a general medical services contract or a default contract or which is party to contractual arrangements made under article 15 of the Transitional Order; or
  - (iii) the company in which that person is a legal and beneficial shareholder and which has entered into a general medical services contract.

**Review of approval of out of hours arrangements under general medical services contracts and default contracts**

**67. Where–**

- (a) an approval of an out of hours arrangement granted under paragraph 17A of Schedule 1 to the 1995 Regulations is to be treated, pursuant to article 65, as an approval granted under the term of a general medical services contract which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations (or under the equivalent term of a default contract); and
- (b) on or before 31st March 2004, the Health Board had commenced a review of its approval of that arrangement under paragraph 17B of Schedule 1 to the 1995 Regulations but had not yet made its determination,

that review shall continue as if it were a review under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 6 to the 2004 Regulations (or under the equivalent term of the default contract), subject to the modification that the 30 days referred to in the term giving effect to paragraph 4(2) of that Schedule (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Health Board sent its notice under paragraph 17B(1) of Schedule 1 to the 1995 Regulations.

**Review of approval of out of hours arrangements under general medical services contracts which follow default contracts**

**68. Where–**

- (a) an approval of an out of hours arrangement granted under a default contract is to be treated, pursuant to article 35, as an approval granted under the term of a general medical services contract which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations; and
- (b) on or before the date on which the default contract ceases to have effect, the Health Board has commenced a review of its approval of that arrangement under the term of the default contract which is equivalent to paragraph 4 of Schedule 6 to the 2004 Regulations but has not yet made its determination,

that review shall continue as if it were a review under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 6 to the 2004 Regulations, subject to the modification that the 30 days referred to in the term giving effect to paragraph 4(2) of that Schedule shall be treated as beginning with the day on which the Health Board sent its notice under the equivalent term of the default contract.

## **Withdrawal of approval of out of hours arrangements under general medical services contracts and default contracts**

### **69.—(1) Where—**

- (a) an approval of an out of hours arrangement granted under paragraph 17A of Schedule 1 to the 1995 Regulations is to be treated, pursuant to article 65, as an approval granted under the term of a general medical services contract which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations (or under the equivalent term of a default contract); and
- (b) on or before 31st March 2004, a Health Board had notified a medical practitioner of its withdrawal of approval of an out of hours arrangement under paragraph 17B of Schedule 1 to the 1995 Regulations but that withdrawal had not yet taken effect,

paragraphs (2) to (4) shall apply.

### **(2) In a case where, on 31st March 2004—**

- (a) the time for appealing under paragraph 17B(6) of Schedule 1 to the 1995 Regulations had expired without any appeal being made; or
- (b) an appeal had been made under that paragraph but had been determined or withdrawn before the end of the period of two months beginning with the date on which the notice of withdrawal was sent by the Health Board under paragraph 17B(4) of that Schedule,

the withdrawal shall take effect as a withdrawal of approval under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 6 to the 2004 Regulations (or under the equivalent term of the default contract) on the date on which it would have taken effect had paragraph 17B(7) of Schedule 1 to the 1995 Regulations not been revoked.

(3) In a case where the time for appealing under paragraph 17B(6) of Schedule 1 to the 1995 Regulations had not expired on or before 31st March 2004, the notice of determination of withdrawal shall be deemed to be a notice of determination of withdrawal of approval on notice under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 6 to the 2004 Regulations (or under the equivalent term of the default contract), subject to the modifications that—

- (a) the 30 days referred to in the term of the general medical services contract giving effect to paragraph 17B(8) (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Health Board sent the notice under paragraph 17B; and
- (b) the date referred to in the term of the general medical services contract giving effect to paragraph 17B(9)(a) (or in the equivalent term of the default contract) shall be treated as being the date on which the Health Board sent the notice under paragraph 17B.

(4) In a case where, on 31st March 2004, an appeal had already been made under paragraph 17B(6) of Schedule 1 to the 1995 Regulations but not yet been determined or withdrawn, the appeal shall continue to be dealt with as if paragraphs 17A and 17B of that Schedule had not been revoked and, if the appeal is dismissed, the withdrawal of approval shall take effect as a withdrawal of approval under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 6 to the 2004 Regulations (or under the equivalent term of the default contract) on the date on which the general medical services contractor or the default contractor received notice of the dismissal of the appeal.

## **Appeal against immediate withdrawal of approval of out of hours arrangements under general medical services contracts and default contracts**

### **70. Where—**

- (a) on or before 31st March 2004, a Health Board had notified a medical practitioner of its immediate withdrawal of approval of an out of hours arrangement under paragraph 17C of Schedule 1 to the 1995 Regulations; and

- (b) on or before 1st April 2004, that medical practitioner—
- (i) has entered as an individual medical practitioner into a general medical services contract, or a default contract, which requires the provision of out of hours services;
  - (ii) is a partner in a partnership which has entered into such a contract; or
  - (iii) is a legal and beneficial shareholder in a company which has entered into such a general medical services contract,

paragraphs (2) and (3) shall apply.

(2) In a case where the time for appealing under paragraph 17C(4) had not expired on or before 31st March 2004, that withdrawal shall be treated as if it were a withdrawal of approval under the term of the general medical services contract which gives effect to paragraph 5(1)(c) of Schedule 6 to the 2004 Regulations (or under the equivalent term of a default contract) subject to the modification that the 30 days referred to in the term giving effect to paragraph 5(5) of that Schedule (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Health Board's notification under paragraph 17C(2) of Schedule 1 to the 1995 Regulations was sent.

(3) In a case where, on 31st March 2004, an appeal had already been made under paragraph 17C(4) but not yet been determined or withdrawn, that appeal shall, except in the circumstances specified in paragraph (4), continue to be dealt with as if paragraphs 17A and 17C of Schedule 1 to the 1995 Regulations had not been revoked and, if the appeal is successful, the approval of the arrangement shall be treated as an approval given under the term of the general medical services contract which gives effect to paragraph 2 of Schedule 1 to the 2004 Regulations (or under the equivalent term of the default contract).

(4) The circumstances referred to in paragraph (3) are that the appeal related to an arrangement with a transferee doctor as defined in paragraph 17A(1)(c) of Schedule 1 to the 1995 Regulations and that doctor—

- (a) has not entered as an individual medical practitioner into a general medical services contract, or a default contract, which includes the provision of out of hours services;
- (b) is not a partner in partnership which has entered into such a contract;
- (c) is not a legal and beneficial shareholder in a company which has entered into such a general medical services contract; or
- (d) is not a party or a partner in a partnership which is a party, to contractual arrangements under article 15 of the Transitional Order which include the provision of out of hours services.

(5) The terms of an approval granted pursuant to paragraphs (2) or (3) shall be the same as those of the approval previously granted approval under paragraph 17A of Schedule 1 to the 1995 Regulations except that—

- (a) any references to the patients of the medical practitioner shall be amended to be references to the patients of the general medical services contractor or the default contractor;
- (b) any references to the whole of the out of hours period shall be amended to be references to—
  - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day;
  - (ii) the period between 6.30pm on Friday and 8am the following Monday; and
  - (iii) Christmas Day, New Year's Day and any other public or local holiday;
- (c) in any reference to part of the out of hours period—
  - (i) any reference to 7pm on Monday to Friday shall be amended to be a reference to 6.30pm; and
  - (ii) any reference to 1pm on Saturday shall be amended to be a reference to 6.30pm on Friday; and

- (d) any references to a particular transferee doctor shall be amended to be references to—
  - (i) that person as a general medical services contractor, a default contractor or a party to contractual arrangements made under article 15 of the Transitional Order;
  - (ii) the partnership in which that person is a partner and which has entered in to a general medical services contract or a default contract or which is party to contractual arrangements made under article 15 of the Transitional Order; or
  - (iii) the company in which that person is a legal and beneficial shareholder and which has entered into a general medical services contract.

**References to the NHS dispute resolution procedure in general medical services contracts which follow default contracts**

**71. Where—**

- (a) on or before the date on which a default contract ceases to have effect, a default contractor has received notice of—
  - (i) the refusal of an application for approval of an out of hours arrangement under the term of its contract equivalent to paragraph 2(4) of Schedule 6 to the 2004 Regulations;
  - (ii) a determination of a Health Board under the term of its contract equivalent to paragraph 4(6) of Schedule 6 to the 2004 Regulations which gives notice of immediate withdrawal of approval; or
  - (iii) immediate withdrawal of approval under the term of its contract equivalent to paragraph 5(1)(b) of that Schedule;
- (b) on the date on which the default contract ceases to have effect—
  - (i) the 30 days for referring that matter in accordance with the NHS dispute resolution procedure has not expired; and
  - (ii) no referral under that procedure has yet been made; and
- (c) the default contractor has entered into a general medical services contract which takes effect immediately after the default contract ceases to have effect,

the refusal or notice shall be treated, for the purposes of referring the matter in accordance with the NHS dispute resolution procedure contained in the general medical services contract, as if it were a refusal or notice of withdrawal given under the equivalent terms of the general medical services contract and the general medical services contractor may refer the matter in accordance with that dispute resolution procedure before the end of the period of 30 days beginning with the day on which the Health Board sent the notice of refusal, determination, or, as the case may be, withdrawal, to the default contractor.

**Carry over of disputes relating to out of hours arrangements between default contracts and general medical services contracts**

**72.—(1) Where—**

- (a) on or before the date on which a default contract ceases to have effect, a default contractor has referred a dispute to be determined in accordance with the NHS dispute resolution procedure under the terms of its default contract equivalent to paragraph 4(8) or 5(5) of Schedule 6 to the 2004 Regulations;
- (b) on the date on which the default contract ceases to have effect, that dispute has not been determined or withdrawn; and
- (c) the default contractor has entered into a general medical services contract which takes effect immediately after the default contract ceases to have effect,

paragraph (2) shall apply.

(2) The dispute shall continue to be dealt with as if it were a dispute referred under the NHS dispute resolution procedure contained in the general medical services contract relating to–

- (a) a refusal of an application under the term of the general medical services contract giving effect to paragraph 2 of Schedule 6 to the 2004 Regulations;
- (b) a determination of the Health Board under the term of the general medical services contract giving effect to paragraph 4 of that Schedule; or
- (c) an immediate withdrawal of approval under the term of the general medical services contract giving effect to paragraph 5 of that Schedule.

### **Sub-contracting of out of hours services under general medical services contracts**

**73.**—(1) Where, prior to 1st January 2005, a general medical services contractor wishes to sub-contract all or part of its out of hours services in circumstances which would require the written approval of the Health Board in accordance with the term of the general medical services contract which gives effect to paragraph 63 of Schedule 5 to the 2004 Regulations, it shall be deemed to have such written approval if, at the date on which it enters into the sub-contract–

- (a) it has, or, pursuant to article 65, 66 or 70, is deemed to have, approval of an out of hours arrangement under the term of the general medical services contract which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations whose terms are, in all material respects, identical to those of the proposed sub-contract; and
- (b) that approval has not been withdrawn; and
- (c) it has not previously entered into a sub-contract for its out of hours services in reliance on the approval referred to in sub-paragraph (a).

(2) The general medical services contractor shall notify the Health Board in writing as soon as reasonably practicable of any sub-contract which it proposes to enter into or has entered into pursuant to paragraph (1).

(3) An approval deemed to have been granted pursuant to paragraph (1) shall be regarded, for all purposes, as an approval granted under the term of the general medical services contract which gives effect to paragraph 63 of Schedule 5 to the 2004 Regulations.

### **Out of hours services to patients not registered with general medical services contractors and default contractors**

**74.**—(1) Where a general medical services contractor or a default contractor is required under article 24 or 25 of the Transitional Order to provide any of the additional services to patients who are not included on its list of patients, it shall, for so long as that requirement continues, and subject to paragraphs (2) and (4), also be required to provide that service to those patients throughout the out of hours period.

(2) In the case of a general medical services contract, the requirement referred to in paragraph (1) shall cease on the date on which any opt out of out of hours services commences pursuant to the terms of the general medical services contract which gives effect to paragraph 4 or 5 of Schedule 2 to the 2004 Regulations.

(3) Where paragraph (2) applies, the requirement to inform patients of opt outs in the term of the general medical services contract which gives effect to paragraph 6 of Schedule 2 to the 2004 Regulations shall apply to the patients to whom services are provided pursuant to this article as it applies to the general medical services contractor's own registered patients.

(4) Nothing in this article shall require a general medical services contractor or a default contractor to provide services under this article if, in the reasonable opinion of the default contractor or the general medical services contractor in the light of the patient's medical condition it would be reasonable in all the circumstances for the patient to wait for the services required until the next time at which he could obtain such services during core hours.

(5) Services included in a general medical services contract or a default contract pursuant to this article shall be deemed to fall within the definition of out of hours services for the purposes of–

- (a) the terms of the general medical services contract which give effect to paragraphs 11 and 63 to 65 of Schedule 5 to the 2004 Regulations and Schedule 6 to those Regulations; or
- (b) any equivalent terms of the default contract.

(6) In this article “out of hours period” has the same meaning as in regulation 2(1) of the 2004 Regulations.

**Application of regulation 30 of the 2004 Regulations to general medical services contracts entered into under Part 2 of the Transitional Regulations**

75. Where a person enters into a general medical services contract pursuant to an entitlement under Part 2 of the Transitional Order under which services are not to be provided until on or after 1st January 2005, regulation 30 of the 2004 Regulations (out of hours services) shall apply to that general medical services contract as it applies to general medical services contracts under which services are to be provided before that date.

## PART 7

### TRANSITIONAL ARRANGEMENTS: THE NATIONAL HEALTH SERVICE (SERVICE COMMITTEES AND TRIBUNAL) (SCOTLAND) REGULATIONS 1992

#### Interpretation

76.—(1) In this Part—

“appropriate Health Board” has the same meaning as in the Service Committees Regulations;

“contracting Health Board” means a Health Board that has entered into a default contract or a general medical services contract (as the case may be) with—

- (a) a doctor who is the subject of the allegation;
- (b) a partnership, where a doctor who is the subject of the allegation is a partner;
- (c) a limited company, where a doctor who is the subject of the allegation is the legal and beneficial shareholder of shares in that company;

“doctor” has the same meaning as in the Service Committees Regulations;

“Performers List Health Board” means a Health Board in whose primary medical services performers list the doctor’s name appears on 1st April 2004 pursuant to article 86;

“relevant contractor” means a party to a general medical services contract or default contract with a contracting Health Board, where that contractor is—

- (a) a doctor who is the subject of the allegation;
- (b) a partnership, where a doctor who is or was the subject of the allegation is a partner in that partnership;
- (c) a limited company, where a doctor who is or was the subject of the allegation is the legal and beneficial shareholder of shares in that company; and

“relevant date” means 1st April 2004.

“the Service Committees Regulations” means the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992(a);

(2) Unless the context otherwise requires, any reference in this Part to—

- (a) a numbered regulation is to the regulation bearing that number in the Service Committees Regulations; and

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(a) S.I. 1992/434. Relevant amending instruments are S.I. 1994/3138, 1996/938, 1998/1424 and S.S.I. 1999/53.



- (b) a numbered Schedule is to the Schedule to the Service Committees Regulations bearing that number.

**Cases where no decision has been made before the relevant date as to whether disciplinary action should be taken (regulation 3 of the Service Committees Regulations)**

77.—(1) Where, before the relevant date, or on or after the relevant date in respect of a matter that occurred before the relevant date, a Health Board—

- (a) receives, or has received information that could amount to an allegation that a doctor had failed to comply with his terms of service and—
  - (i) that Health Board has not taken a decision pursuant to regulation 3(1)(a) before the relevant date as to whether it will take no action or take one or both of the courses of action set out in regulation 3(2); and
  - (ii) any time limit specified in regulation 5(b) has not expired; or
- (b) considers that a payment has been made to a doctor which was not due and the doctor does not admit that overpayment,

paragraph (2) shall apply.

(2) Where this paragraph applies, the Health Board shall—

- (a) if it is the appropriate Health Board, continue to be the appropriate Health Board for the purposes of the Service Committees Regulations, and consider and take such action as it sees fit pursuant to the Service Committees Regulations, subject to article 84, as if section 19 of the 1978 Act(c) had not been repealed; or
- (b) if it is not the appropriate Health Board, forward the information to that Health Board as soon as is reasonably practicable, and that Health Board shall consider the information received and take such action as it sees fit pursuant to the Service Committees Regulations, subject to the time limits specified in the Service Committees Regulations, and article 84, as if section 19 of the 1978 Act had not been repealed.

(3) If a Health Board (A) decides, pursuant to paragraph (2)(a) or (b), to refer the matter to another Health Board (B) for investigation in accordance with regulation 3(2)(a) or (7)—

- (a) Health Board (B) shall investigate the matter and report to Health Board (A) as if section 19 of the 1978 Act had not been repealed; and
- (b) Health Board (A) shall be entitled, subject to article 80, to take any action it could have taken pursuant to the Service Committees Regulations as if section 19 of the 1978 Act had not been repealed.

**Referrals to investigating discipline committees before the relevant date (regulation 4 of the Service Committees Regulations)**

78. Where a Health Board(A) has, before the relevant date, referred a matter in respect of a doctor to another Health Board(B) in accordance with regulation 4(2)(a) or (7)(d) and—

- (a) that matter has not been finally determined by the discipline committee of that Health Board (B) before the relevant date—
  - (i) the discipline committee of Health Board (B) shall investigate the matter and report to Health Board (A), as if section 19 of the 1978 Act had not been repealed; and

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(a) Regulation 3 was amended by S.I. 1994/3038, 1996/938 and S.S.I. 1999/53.

(b) Regulation 5 was amended by S.I. 1996/938 and S.S.I. 1999/53.

(c) 1978 c.29. Section 19 was amended by the Health and Medicines act 1980 (c.53), section 7, the Health and Social Security Adjudications Act 1983 (c.41), Schedule 7, paragraph 2, the Medical Act 1983 (c.54), Schedule 5, paragraph 17, the National Health service and Community Care Act 1990 (c.19), section 37, the Medical (Professional Performance) Act 1995 (c. 51), Schedule, paragraph 29, the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2, paragraph 39 and S.I. 2002/3135. It was extended by the Health and Medicines Act 1988 (c.49), section 17(1). It is repealed from 1st April 2004 by the Primary Medical Services (Scotland) Act 2004 (asp 1), schedule, paragraph 1(7).

(d) Regulation 4 was amended by S.I. 1996/938 and S.S.I. 1999/53.

- (ii) Health Board (A) shall be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if section 19 of the 1978 Act had not been repealed, subject to article 80; or
- (b) Health Board (A) has received the report of the discipline committee of the Health Board (B) but has not yet determined what (if any) action to take as a result of the report, Health Board (A) shall be entitled to take any action it could have taken pursuant to the Service Committees Regulations as if section 19 of the 1978 Act had not been repealed, subject to article 80.

**Determination of a Health Board or the Scottish Ministers made before the relevant date (regulation 7, 8, 9 and 10 of the Service Committees Regulations)**

**79.**—(1) Where, before the relevant date, a Health Board has (or where relevant, the Scottish Ministers have) determined pursuant to regulation 7(5)(a) and 8(3) or regulation 10(a) (as the case may be) that an amount should be recovered from the doctor, insofar as any of that amount has not been recovered before the relevant date, it shall continue to be recoverable by the Health Board that was the appropriate Health Board for the purposes of the Service Committees Regulations in respect of that matter, and it shall be treated as a debt owed by that doctor to that Health Board.

(2) Where a contracting Health Board has a record of, or receives notification of, an adverse determination made before the relevant date pursuant to regulation 7, 8, 9 or 10(b) in respect of a doctor (where, in the case of a determination under regulation 7, such a determination was not overturned on appeal), paragraph (3) shall apply without prejudice to any other rights the contracting Health Board may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(3) Where this paragraph applies, the contracting Health Board may take into account that adverse determination in relation to a relevant contractor if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 103(7) of Schedule 5 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract.

(4) Where a Performers List Health Board has a record of, or receives notification of, an adverse determination pursuant to regulation 7, 8, 9 or 10 made before the relevant date in respect of a doctor (where, in the case of a determination under regulation 7, such a determination was not overturned on appeal) it may take that determination into account in determining what (if any) action it should take in respect of that doctor pursuant to sections 29, 30 or 32A of the 1978 Act(c).

**Determination of a Health Board made on or after the relevant date (regulation 7 of the Service Committees Regulations)**

**80.**—(1) Where, on or after the relevant date, an appropriate Health Board is determining what action to take pursuant to regulation 7 in accordance with provision made in this Part, it shall make such a determination in accordance with such limitations and modifications to that regulation as are specified in this article.

(2) The appropriate Health Board may—

- (a) pursuant to regulation 7(1)(c)(i), determine that no further action should be taken;

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(a) Regulation 7 was amended by S.I. 1996/938 and S.S.I. 1999/53; regulation 8 was amended by S.I. 1994/3038 and 1996/938 and S.S.I. 1999/53; regulation 10 was amended by S.I. 1996/938 and S.S.I. 1999/53.

(b) Regulation 9 was amended by S.I. 1996/938 and S.S.I. 1999/53.

(c) Section 29 was substituted by the Health Act 1999 (c.8) (“the 1999 Act”), section 58(1) and amended by the Community Care and Health (Scotland) Act 2002 (asp 5) (“the 2002 Act”), schedule 2, paragraph 2(4) and the Primary Medical Services (Scotland) Act 2004 (asp 1), section 5(3); section 30 was substituted by the 1999 Act, section 58(2) and amended by the 2002 Act, schedule 2, paragraph 2(7); section 32A was inserted by the National Health Service (Amendment) Act 1995 (c.31), section 8 and amended by the 1999 Act, Schedule 4, paragraph 51 and the 2002 Act, schedule 2, paragraph 2(9).

- (b) pursuant to regulation 7(3), determine after consultation with the area medical committee that it would have considered it appropriate to impose a special limit on the number of persons for whom a doctor may undertake to provide treatment;
- (c) pursuant to regulation 7(5)(a), determine that an amount shall be recovered from the doctor;
- (d) pursuant to regulation 7(5)(c), determine that it would have warned the doctor to comply more closely with the doctor's terms of service in future, if those terms of service were still applicable,

and if it makes any one or more of the decisions specified in paragraphs (b) to (d), it shall, after the period specified in regulation 7(10)(a) has expired or it has received notice pursuant to regulation 7(10)(b) (as applicable), notify in writing the contracting Health Board and any Performers List Health Board of its decision and the reasons for it, where they are different Health Boards to the appropriate Health Board.

(3) Where, pursuant to paragraph (2)(c), the appropriate Health Board determines that an amount should be recovered from the doctor, regulation 7(8) shall not apply and that amount shall be recoverable by the appropriate Health Board and it shall be treated as a debt owed by that doctor to that appropriate Health Board.

(4) Where the appropriate Health Board has notified the contracting Health Board that it has taken any of the actions specified in paragraphs 2(b) to (d), or where the appropriate Health Board is the contracting Health Board, paragraph (5) shall apply without prejudice to any other rights the contracting Health Board may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(5) Where this paragraph applies, the contracting Health Board may, in relation to a relevant contractor, take into account the determination of the appropriate Health Board if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 103(7) of Schedule 5 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract.

(6) Where—

- (a) a Performers List Health Board has received notification from an appropriate Health Board pursuant to paragraph (2); or
- (b) where an appropriate Health Board that has taken a decision pursuant to paragraph (2) is also a Performers List Health Board,

it shall consider what (if any) action it should take in respect of that doctor pursuant to sections 29, 30 or 32A of the 1978 Act.

### **Appeals to the Scottish Ministers against determinations of Health Boards (regulations 8, 9 and 10 of the Service Committees Regulations)**

**81.—**(1) Where—

- (a) a doctor has appealed against a determination of a Health Board in accordance with regulation 8 of the Service Committees Regulations before the relevant date, but that appeal has not been finally determined before that date; or
- (b) in respect of a determination made by a Health Board in accordance with regulation 7 before the relevant date, the time limit specified in regulation 9(2) for appealing that determination has not expired before the relevant date, and the doctor serves a notice of appeal on or after the relevant date but within the time limit specified in regulation 9(2),

that appeal shall be determined pursuant to regulations 8, 9 and 10, as if section 19 of the 1978 Act had not been repealed.

(2) Where an appropriate Health Board has made a determination in respect of a doctor on or after the relevant date pursuant to this Part—

- (a) the doctor shall be entitled to appeal against that determination in accordance with regulation 8; and
- (b) that appeal shall be determined pursuant to regulations 8, 9 and 10,

as if section 19 of the 1978 Act had not been repealed.

(3) Where, on or after the relevant date, the Scottish Ministers are determining pursuant to regulation 8, 9 or 10 (as the case may be) what (if any) action to take in respect of a doctor, they shall make a determination pursuant to those regulations as if section 19 of the 1978 Act had not been repealed and that determination shall have effect in accordance with this article.

(4) If, pursuant to paragraph (1), the Scottish Ministers determine pursuant to—

- (a) regulation 7(3), that they would have considered it appropriate to impose a special limit on the number of persons for whom a doctor may undertake to provide treatment;
- (b) pursuant to regulation 8(3)(d), that there has been an overpayment and, if so, what amount;
- (c) pursuant to regulation 7(5)(a) and 8(3) or 10, that an amount shall be recovered from the doctor; or
- (d) pursuant to regulation 7(5)(c), that they would have warned the doctor to comply more closely with the doctor's terms of service in future, if those terms of service were still applicable,

the Scottish Ministers shall, in addition to the persons specified in regulation 9(14), notify the Health Boards specified in paragraph (5).

(5) The Scottish Ministers shall, pursuant to paragraph (4)(a) to (d), notify the contracting Health Board and any Performers List Health Board of their determination if those Health Boards are different to the Health Board referred to in regulation 9(14).

(6) Where, pursuant to regulation 7(5)(a) and 8(3) or 10, the Scottish Ministers have determined that an amount shall be recovered from a doctor they shall direct the appropriate Health Board to recover that amount from the doctor and that amount shall be a debt owed to that appropriate Health Board.

(7) Where, pursuant to paragraph (5), the Scottish Ministers have notified the contracting Health Board that they have taken any of the actions specified in paragraph (4)(a) to (d), whether or not the contracting Health Board is also the appropriate Health Board, paragraph (8) shall apply without prejudice to any other right the contracting Health Board may have to take action against the relevant contractor pursuant to any term of the general medical services contract or default contract.

(8) Where this paragraph applies, the contracting Health Board may, in relation to a relevant contractor, take into account the determination of the Scottish Ministers if it is considering, pursuant to a term of the general medical services contract that gives effect to paragraph 103(7) of Schedule 5 to the 2004 Regulations, or an equivalent term in the default contract, whether the cumulative effect of breaches under that contract is such that to allow the contract to continue would be prejudicial to the efficiency of the services provided under that contract.

(9) Where a Performers List Health Board has received notification from the Scottish Ministers pursuant to paragraph (4) or (5), whether or not the Performers List Health Board is also the appropriate Health Board, it shall consider what (if any) action it should take in respect of that doctor pursuant to sections 29, 30 or 32A of the 1978 Act.

### **Excessive prescribing (regulations 16 and 17 of the Service Committees Regulations)**

**82.**—(1) Where, on 31st March 2004, a Health Board had—

- (a) referred a question of excessive prescribing for investigation and determination by a medical discipline committee under regulation 16(7)(a); and
- (b) that committee had not yet made its determination,

the investigation by the committee shall continue and its determination be made as if section 19 of the 1978 Act had not been repealed.

(2) Where, on 31st March 2004, a Health Board had given notice of its determination to a doctor and area medical committee under paragraph (9) of regulation 16 but—

- (a) the doctor or area medical committee had not given notice of appeal in accordance with regulation 17(b); and
- (b) the time for appealing in regulation 17(1) had not yet expired,

the time for appealing shall continue as if section 19 of the 1978 Act had not been repealed.

(3) Where—

- (a) on 31st March 2004, a medical practitioner had given notice of appeal against the determination of a Health Board in accordance with regulation 17 but that appeal had not been determined or withdrawn; or
- (b) a medical practitioner has given notice of such an appeal after 31st March 2004, pursuant to paragraph (2),

that appeal shall continue to be dealt with as if section 19 of the 1978 Act had not been repealed.

### **Decision as to treatment for which fees may be charged by doctors (regulation 18 of the Service Committees Regulations)**

**83.**—(1) Where a question has arisen as to whether any treatment given by a doctor to a patient is treatment for which the doctor may demand or accept a fee from a patient within the meaning of regulation 18(1)(c), and that question has arisen before the relevant date, or on or after the relevant date in respect of any fee charged by a doctor before the relevant date, and that question—

- (a) has not been referred for consideration by the area medical committee; or
- (b) has been referred to the area medical committee and the area medical committee has not yet finally determined the matter pursuant to regulation 18,

the question may, in a case falling within sub-paragraph (a), be referred as if section 19 of the 1978 Act had not been repealed and, in relation to both sub-paragraphs, the area medical committee shall consider or continue to consider and determine the matter in accordance with regulation 18, subject to the provisions in this article.

(2) Where an area medical committee makes a determination pursuant to paragraph (1), regulation 18(8) shall apply.

(3) Where a Health Board has notified the Scottish Ministers pursuant to regulation 18(8) that the Health Board disagrees with a finding of an area medical committee—

- (a) made before the relevant date, and the referral has not been determined before the relevant date; or
- (b) on or after the relevant date,

that referral shall be determined in accordance with regulation 18 and Schedule 3 as if section 19 of the 1978 Act had not been repealed.

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(a) Regulation 16 was amended by S.S.I. 1999/53.

(b) Regulation 17 was amended by S.S.I. 1999/53.

(c) Regulation 18 was amended by S.S.I. 1999/53.

(4) Where the Scottish Ministers—

- (a) have referred a finding of an area medical committee made before the relevant date pursuant to regulation 18(8), and that referral has not been determined before the relevant date; or
- (b) refer a finding of an area medical committee on or after the relevant date,

that referral shall be determined in accordance with regulation 18 and Schedule 3(a) as if section 19 of the 1978 Act had not been repealed.

**Determination whether a substance is a drug and recovery of cost (regulation 19 of the Service Committees Regulations)**

**84.**—(1) Where a question has arisen as to whether a substance supplied by a doctor, or by a pharmacist on the prescription of a doctor, was a drug for the purposes of pharmaceutical services within the meaning of regulation 19(1)(b), and that question has arisen before the relevant date, or on or after the relevant date in respect of any substance supplied by a doctor, or by a pharmacist on the prescription of a doctor before the relevant date, and—

- (a) that question has not been referred for consideration by the area medical committee; or
- (b) that question has been referred to the area medical committee and the area medical committee has not yet finally determined the matter pursuant to regulation 19,

the question may, in a case falling within sub-paragraph (a) be referred, or notified to the doctor and referred (as the case may be), and, in relation to both sub-paragraphs, the area medical committee shall consider or continue to consider (as the case may be) and determine the matter in accordance with regulation 19, subject to the provisions in this article, as if section 19 of the 1978 Act had not been repealed.

(2) Where an area medical committee makes a determination pursuant to paragraph (1), regulation 19(8) shall apply.

(3) Where a doctor has notified the Scottish Ministers pursuant to regulation 19(8) that the doctor is dissatisfied with a determination—

- (a) made before the relevant date, and the referral has not been determined before the relevant date; or
- (b) on or after the relevant date,

that referral shall be determined in accordance with regulation 19 as if section 19 of the 1978 Act had not been repealed.

(4) Where a Health Board has notified the Scottish Ministers pursuant to regulation 19(8) that the Health Board is dissatisfied with a determination—

- (a) made before the relevant date, and the referral has not been determined before the relevant date; or
- (b) on or after the relevant date,

that referral shall be determined in accordance with regulation 19 as if section 19 of the 1978 Act had not been repealed.

(5) Where the Scottish Ministers are dissatisfied with a determination pursuant to regulation 19(8) and—

- (a) have referred the question for determination before the relevant date pursuant to regulation 19(8), and that referral has not been determined before the relevant date; or
- (b) refer the question for determination on or after the relevant date,

that referral shall be determined in accordance with regulation 19 as if section 19 of the 1978 Act had not been repealed.

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(a) Schedule 3 was amended by S.S.I. 1999/53.

(b) Regulation 19 was amended by S.S.I. 1999/53.

## PART 8

### TRANSITIONAL PROVISIONS RELATING TO THE LISTING OF MEDICAL PRACTITIONERS

#### Interpretation

##### 85. In this Part—

“the 1997 Act” means the National Health Service (Primary Care) Act 1997(a);

“conditional disqualification” has the meaning indicated in section 29C(1) of the 1978 Act(b), and includes conditions imposed by the Scottish Ministers under section 31(2) of the 1978 Act(c), and “conditionally disqualified” shall be construed accordingly;

“disqualification” means local or national disqualification but does not include conditional disqualification and “disqualified” shall be construed accordingly;

“local disqualification” has the meaning indicated in section 29B(2)(a) of the 1978 Act(d);

“national disqualification” has the meaning indicated in section 29B(2)(b) of the 1978 Act;

“review” means a review under section 30 of the 1978 Act(e);

“section 17C arrangements” means arrangements for the provision of services made under section 17C of the 1978 Act(f);

“supplementary list” means a list of medical practitioners approved by a Health Board to assist in the provision of general medical services prepared and published by the Health Board under regulations made under section 24B of the 1978 Act(g);

“suspended” means suspended by a direction of the Tribunal made pursuant to section 32A(2) or 32B(1) or suspended by virtue of the provisions of section 32D(1) of the 1978 Act(h), and “suspension” shall be construed accordingly;

“the Tribunal” has the meaning indicated in section 29 of the 1978 Act(i).

#### Allocation of medical practitioners on previous lists

86. In the case of a medical practitioner, whose name, immediately before 1st April 2004, was included in a Health Board’s—

- (a) medical list; or
- (b) supplementary list,

the medical practitioner’s name shall, on that day, be included in that Health Board’s primary medical services performers list.

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(a) 1997 c.46.

(b) 1978 c.29. Section 29C(1) was inserted by the Health Act 1999 (c.8), section 58(1).

(c) Section 31(2) was inserted by the Health Act 1999 (c.8), Schedule 4, paragraph 49 and amended by the Community Care and Health (Scotland) Act 2002 (asp 5), schedule 2, paragraph 2(8).

(d) Section 29B(2) was inserted by the Health Act 1999 (c.8), section 58(1) and amended by the Community Care and Health (Scotland) Act 2002 (asp 5), schedule 2, paragraph 2(6) and the Primary Medical Services (Scotland) Act 2004 (asp 1), schedule, paragraph 1(13).

(e) Section 30 was substituted by the Health Act 1999 (c.8), section 58(2) and amended by the Community Care and Health (Scotland) Act 2002 (asp 5), schedule 2, paragraph 2(7).

(f) Section 17C was inserted by the National Health Service (Primary Care) Act 1997 (c.46), section 21(2) and amended by the Primary Medical Services (Scotland) Act 2004 (asp 1).

(g) Section 24B was inserted by the Community Care and Health (Scotland) Act 2002 (asp 5), section 18.

(h) Section 32A(2) was inserted by the National Health Service (Amendment) Act 1995 (c.31) (“the 1995 Act”), section 8 and amended by the Health Act 1999 (c.8) (“the 1999 Act”), Schedule 4, paragraph 51; Section 32B(1) was inserted by the 1995 Act, section 8 and substituted by the 1999 Act, Schedule 4, paragraph 52; Section 32D(1) was inserted by the 1995 Act, section 8 and amended by the 1999 Act, Schedule 4, paragraph 53 and the Community Care and Health (Scotland) Act (asp 5), schedule 2, paragraph 2(11).

(i) Section 29 was substituted by the Health Act 1999 (c.8), section 58(1) and amended by the Community Care and Health (Scotland) Act 2002 (asp 5), schedule 2, paragraph 2(4) and the Primary Medical Services (Scotland) Act 2004 (asp 1), section 5(3).

### **Applications not decided on 1st April 2004**

**87.** In any case where there was any application by a medical practitioner to a Health Board for the medical practitioner's name to be included in its medical list or supplementary list and that application has not been decided before 1st April 2004, it shall be deemed to be an application to have the medical practitioner's name included in the primary medical services performers list of that Health Board.

### **Transitional provision for performers of personal medical services**

**88.** Despite the provisions of regulation 3 of the Performers Lists Regulations, where a medical practitioner who, immediately before 1st April 2004 was performing personal medical services—

- (a) in accordance with section 17C arrangements; or
- (b) in connection with the provision of such services under a pilot scheme,

that medical practitioner may continue to perform, under a section 17C arrangement or transitional agreement, any primary medical service which a Health Board is, under section 2C(1) of the 1978 Act<sup>(a)</sup>, under a duty to provide or secure the provision of, despite not being included in the primary medical services performers list of that Health Board, until 1st June 2004.

### **Matters relating to the NHS Tribunal and medical and supplementary lists**

**89.** Any representations made to the Tribunal under section 29 of the 1978 Act relating to any medical practitioner to which article 86 applies that had not been finally determined before 1st April 2004, shall be treated as though they had arisen in relation to the primary medical services performers list in which that medical practitioner has been included or, but for those representations, would have been included and shall continue to be dealt with by the Tribunal.

### **Matters relating to the NHS Tribunal and medical and supplementary lists**

**90.** In a case where a medical practitioner included in the medical list or the supplementary list of a Health Board immediately before 1st April 2004, was conditionally disqualified or suspended, that conditional disqualification or suspension (as the case may be) shall continue to apply to the primary medical services performers list in which the medical practitioner is included on and after 1st April 2004 as it did, in relation to any other list, before that date.

### **Matters relating to the NHS Tribunal and medical and supplementary lists**

**91.** In a case where a medical practitioner is, on 31st March 2004 disqualified for inclusion in—

- (a) a Health Board's lists within section 29(8)(a) of the 1978 Act; or
- (b) all lists within section 29(8)(a) of the 1978 Act,

that disqualification shall continue to apply on and after 1st April 2004 to a Health Board's list or all lists, as the case may be, within section 29(8)(a) of the 1978 Act.

### **Matters relating to the NHS Tribunal and medical and supplementary lists**

**92.** In a case where—

- (a) a review has been requested by a disqualified or conditionally disqualified person;
- (b) a review has been requested by a Health Board; or
- (c) the Tribunal is to carry out a review in any other circumstances in which they consider appropriate,

relating to a medical practitioner to which article 86 applies or, but for the disqualification under review, would have applied, and that review has not been finally determined before 1st April

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<sup>(a)</sup> Section 2C(1) was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 1(2).



2004, that request for review or review shall be treated as though the request or review had arisen in relation to the primary medical services performers list in which that medical practitioner has been included, or would have been included, as the case may be, and shall continue to be dealt with by the Tribunal.

**Transitional provisions in cases where preferential treatment on transferring to medical lists was given**

**93.**—(1) This article applies to any case to which, on or before 31st March 2004, paragraph 1 of Schedule 1 (preferential treatment on transferring to medical lists) to the 1997 Act<sup>(a)</sup> applies.

(2) If—

- (a) a medical practitioner had made an application to a Health Board, pursuant to paragraph 1 of Schedule 1 to the 1997 Act, for the practitioner's name to be included in the Health Board's medical list; and
- (b) the matter had not been determined on or before 31st March 2004,

article 87 shall apply.

(3) In a case where—

- (a) paragraph (2) applies; and
- (b) the Health Board adds that practitioner's name to its primary medical services performers list,

that medical practitioner shall be treated as though that medical practitioner's name had been included in the medical list of that Health Board on 31st March 2004.

(4) In any case where representations have been made to the Tribunal under paragraph 3 of Schedule 1 to the 1997 Act and have not been finally determined on or before 31st March 2004, the matter shall continue to be dealt with by the NHS Tribunal on and after 1st April 2004 as if they were representations under section 29 of the 1978 Act in relation to the primary medical services performers list in which that medical practitioner, but for those representations, would have been included.

(5) If the Tribunal determines not to make a disqualification on representations to which paragraph (4) applies, then—

- (a) the medical practitioner's name shall be included in the list of the Health Board to which the medical practitioner has applied; and
- (b) the medical practitioner shall be treated as though the medical practitioner's name had been included in the medical list of that Health Board on 31st March 2004.

(6) In a case where a medical practitioner is, on 31st March 2004, subject to a direction of the Tribunal under paragraph 4(1) of Schedule 1 to the 1997 Act, that direction shall continue to apply on and after 1st April 2004 as if—

- (a) in relation to a direction under paragraph 4(1)(a) or (b)(ii) it were a local disqualification for inclusion in the Health Board's lists within section 29(8)(a) of the 1978 Act; and
- (b) in relation to a direction under paragraph 4(1)(b)(i) it were a national disqualification for inclusion in all lists within section 29(8)(a) of the 1978 Act.

(7) In a case where a medical practitioner has requested the Tribunal to hold an inquiry into whether or not to give a direction under paragraph 5 of Schedule 1 to the 1997 Act, and that inquiry has not been finally determined on or before 31st March 2004 that request for an inquiry, or inquiry shall be treated as though the request or inquiry was a request for a review or a review under section 30 of the 1978 Act of a disqualification.

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<sup>(a)</sup> Schedule 1 was amended by the Community Care and Health (Scotland) Act 2002 (asp 5), section 19, and is repealed from 1st April 2004 by the Primary Medical Services (Scotland) Act 2004 (asp 1), schedule, paragraph 2(9).

## PART 9

### MISCELLANEOUS

#### **Continuing validity of forms**

**94.** Notwithstanding the amendment made by paragraphs 1(3) and 5 of Schedule 1 of the General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004(a) to the form of certificate set out in Part 2 of Schedule 2 to the Social Security (Medical Evidence) Regulations 1976(b) and in Part 2 of the Schedule to the Statutory Maternity Pay (Medical Evidence) Regulations 1987(c), a form which complies with those regulations as in force on 31st March 2004 shall continue to be valid.

#### **Transitory interpretation of references in enactments to primary medical services**

**95.** For so long as default contracts entered into pursuant to article 13 of the Transitional Order continue to exist, a reference in any enactment to primary medical services under the 1978 Act shall be deemed to include a reference to services provided under such contracts.

#### **Transitory interpretation of references to general medical services contracts**

**96.—(1)** For as long as default contracts entered into pursuant to article 13 of the Transitional Order continue to exist, any reference to a general medical services contract or to a contract under section 17J of the 1978 Act(d) in the enactments listed in paragraph (2) shall be deemed to include a reference to a default contract.

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

- (a) the 1978 Act, sections 15(1)(a)(e) and 35(1)(c)(f);
- (b) the Access to Health Records Act 1990(g), section 1(2)(a);
- (c) the Trade Union and Labour Relations (Consolidation) Act 1992(h), section 279(3)(b); and
- (d) the Employment Rights Act 1996(i), section 43K(1)(bb).

## PART 10

### SAVINGS, MODIFICATIONS, AMENDMENTS AND REVOCATIONS

#### **Meaning of suitable experience**

**97.—(1)** Until the coming into force of article 5 of the 2003 Order, where, in any enactment, there is a reference to a medical practitioner being “suitably experienced” within the meaning of section 21(2) of the 1978 Act, that reference shall be construed in accordance with paragraph (2).

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(a) S.I. 2004/865.

(b) S.I. 1976/615; Part 2 of Schedule 2 was amended by S.I. 1991/2284, S.I. 2001/2931 and S.I. 2002/2469.

(c) S.I. 1987/235; Relevant amending instruments are S.I. 2001/2931 and S.I. 2002/2469.

(d) Section 17J was inserted by the 2004 Act, section 4.

(e) Relevant amendments to section 15(1)(a) were made by the National Health Service (Primary Care) Act 1997 c.46 (“the 1997 Act”), Schedule 2, paragraph 35 and by the 2004 Act, Schedule, paragraph 1(2).

(f) Section 35 was substituted by the 1997 Act, section 34(2) and amended by the 2004 Act, Schedule, paragraph 1(14).

(g) 1990 c. 23. Section 1(2)(a) was substituted by the Health and Social Care (Community Health and Standards) Act 2003 (“the 2003 Act”), Schedule 11, paragraph 57(2) and the Primary Medical Services (Scotland) Act 2004 (Modification of Enactments) Order 2004 S.S.I. 2004/167.

(h) 1992 c.52. Relevant amendments were made by the 2003 Act, Schedule 11, paragraph 59(4) and the Primary Medical Services (Scotland) Act 2004 (Consequential Modifications) Order 2004 S.I. 2004/957.

(i) 1996 c.18. Section 43K was inserted by the Public Interest Disclosure Act 1998 (c.23), section 1 and subsection (1)(ba) was inserted by the 2003 Act, Schedule 11, paragraph 65(2) and paragraph (bb) was inserted by the Primary Medical Services (Scotland) Act 2004 (Consequential Modifications) Order 2004 S.I. 2004/957.

(2) A medical practitioner shall, pursuant to paragraph (1), be regarded as being “suitably experienced” if he—

- (a) holds a certificate of prescribed experience;
- (b) holds a certificate of equivalent experience;
- (c) is exempt from the need to have acquired the prescribed experience pursuant to regulation 5 of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998(a) (exemptions); or
- (d) has an acquired right to practise pursuant to regulation 5 of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994(b), other than by virtue of regulation 5(1)(d) of those Regulations (acquired rights).

(3) In this article, “certificate of prescribed experience” and “certificate of equivalent experience” have the meanings assigned to them in regulation 2(1) of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998.

(4) Notwithstanding the repeal of sections 19,21 and 22 of the 1978 Act by paragraph 1(7) of the Schedule to the 2004 Act, the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998 and the Vocational Training for General Medical Practice (European Requirements) Regulations 1994 shall remain in force (subject to the transitory modifications made in this Part) until their revocation by virtue of article 31(5) of, and Part 2 of Schedule 10 to, the 2003 Order.

### **Savings of certain provisions of the Medical Act 1983**

**98.** Notwithstanding the coming into force of the amendments to sections 11 and 12 of the Medical Act 1983(c) made by paragraph 4 of the Schedule to the Primary Medical Services (Scotland) Act 2004 (Consequential Modifications) Order 2004 (d), in relation to any employment before 1st April 2004 in—

- (a) an approved medical practice; or
- (b) a health centre,

sections 11(4) and 12(2)(a) of the Medical Act 1983 shall have effect as if those amendments had not been brought into force.

### **Saving of section 279 of the Trade Union and Labour Relations (Consolidation) Act 1992**

**99.** Notwithstanding the coming into force of the amendments to the definition of worker in section 279 of the Trade Union and Labour Relations (Consolidation) Act 1992(e) (health service practitioners) made by paragraph 7 of the Schedule to the Primary Medical Services (Scotland) Act 2004 (Consequential Modifications) Order 2004, in relation to any complaint arising in respect of a matter which occurred before 1st April 2004, section 279 shall have effect as if those amendments had not been brought into force.

### **Transitory modification of the Vocational Training for General Medical Practice (European Requirements) Regulations 1994**

**100.**—(1) Until their revocation by virtue of article 31(5) of, and Part 2 of Schedule 10 to the 2003 Order, the Vocational Training for General Medical Practice (European Requirements) Regulations 1994 are to have effect as if they were amended in accordance with this article.

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(a) S.I. 1998/7 as amended by S.I. 1998/669 and 2000/23. The whole Regulations are prospectively revoked by S.I. 2003/1250, article 31(5) and Part 2 of Schedule 10.

(b) S.I. 1994/3130 as amended by S.I. 1997/2817 and 2003/3148. The whole Regulations are prospectively revoked by S.I. 2003/1250, article 31(5) and Part 2 of Schedule 10.

(c) 1983 c.54.

(d) S.I. 2004/957.

(e) 1992 c. 52. Section 279 as amended by the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 122, the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2, paragraph 67, the Health and Social Care Act 2001 (c.15), Schedule 5, paragraph 9, the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 2, paragraph 60 and Schedule 3, paragraph 13 and the 2003 Act, Schedule 11, paragraph 59.

(2) In regulation 5 (acquired rights)(a), for paragraph (4)(a), substitute–

“(a) a person who has the acquired right specified in paragraph (1)(a), but only by virtue of the fact that he was a restricted services principal included in a list specified in that paragraph, is not entitled to be considered as suitably experienced within the meaning of section 21(2) of the National Health Service (Scotland) Act 1978 for the purposes of regulation 4(1), (2)(a) or (3)(a) of the National Health Service (General Medical Services Contracts)(Scotland)Regulations 2004.”

### **Transitory modification of the National Health Service (Vocational Training for General Medical Practice (Scotland) Regulations 1998**

**101.**—(1) Until their revocation by virtue of article 31(5) of, and Part 2 of Schedule 10 to the 2003 Order, the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998(b) are to have effect as if they were amended in accordance with this article.

(2) In regulation 2 (interpretation)(c)–

(a) in the definition of “General Practice (GP) Registrar”–

(i) for “has the meaning assigned to it in regulations made under section 19 of the Act” substitute–

“means a medical practitioner who is being trained in general practice by a medical practitioner who has been approved for that purpose by the Joint Committee under regulation 7”; and

(ii) for the words from “personal medical services” to the end, substitute–

“primary medical services in connection with an agreement for primary medical services made under section 17C of the Act;”;

(b) in the definition of “medical list”, in both sub-paragraphs (a) and (b), insert after “list” “that was”;

(c) in paragraph (2)–

(i) in sub-paragraph (a) for “is (or if the context so requires was)” substitute “was”; and

(ii) omit the full out text at the end.

(3) Regulation 4 shall be omitted(d).

(4) In regulation 5 (exemptions), in paragraph (1) for sub-paragraph (d) substitute–

“(d) if his name was, on 31st December 1994, included in a medical list for the provision of general medical services limited to–

(i) child health surveillance services only;

(ii) contraceptive services only;

(iii) maternity medical services only.”

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(a) Regulation 5 was previously amended by S.I. 1997/2817; the whole Regulations are prospectively revoked by S.I. 2003/1250, article 31(5) and Part 2 of Schedule 10.

(b) 1998/5 as amended by S.I. 1998/669 and S.S.I. 2000/23. The Regulations are prospectively revoked by S.I. 2003/1250.

(c) Regulation 2 was amended by S.I. 1998/669.

(d) Regulation 4 was amended by S.S.I. 2000/23.

## **Revocation of the Choice Regulations**

**102.** The National Health Service (Choice of Medical Practitioner) (Scotland) Regulations 1998**(a)**, the National Health Service (Choice of Medical Practitioner) (Scotland) Amendment Regulations 2000**(b)** and the National Health Service (Choice of Medical Practitioner) (Scotland) Amendment Regulations 2001**(c)** are hereby revoked.

St Andrew's House,  
Edinburgh  
30th March 2004

*MALCOLM CHISHOLM*  
A member of the Scottish Executive

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**(a)** S.I. 1998/659.  
**(b)** S.S.I. 2000/191.  
**(c)** S.S.I. 2001/85.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under section 7 (ancillary provisions) of the Primary Medical Services (Scotland) Act 2004 (asp 1) (“the 2004 Act”).

The Order generally makes transitional and ancillary provision principally arising from—

- (a) the replacement on 1st April 2004 of arrangements for the provision of general medical services under section 19 of the National Health Service (Scotland) Act 1978 (c. 29) (“the 1978 Act”) with general medical services contracts under section 17J of that Act (as inserted by section 4 of the 2004 Act); and
- (b) the abolition on 1st April 2004 of the power to make pilot schemes for personal medical services by section 3 of the 2004 Act.

In the case of general medical services, this Order supplements the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004 (S.S.I. 2004/142) (“the first transitional order”).

Part 2 of this Order sets out transitional provisions in relation to general medical services. It deals with matters which may still be outstanding on 31st March 2003 under the National Health Service (General Medical Services) (Scotland) Regulations 1995 (S.I. 1995/416) (“the 1995 Regulations”), which are revoked by the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 (S.S.I. 2004/114). In most cases, it provides for those matters to be dealt with as part of the new contractual arrangements.

Part 3 of this Order deals with transitional provision between default contracts (which under article 13 of the first transitional order, are short-term contracts which can be entered into by those who had been providing general medical services under section 19 of the 1978 Act pending agreement on a permanent general medical services contract) and general medical services contracts succeeding those default contracts. It provides for certain matters arising under the default contract to carry forward to the general medical services contract.

Part 4 of the Order provides for transitional provision for personal medical services pilot schemes. Article 49 provides for such schemes to be regarded from 1st April 2004 as agreements made under section 17C of the 1978 Act and to be known as “transitional agreements”. Article 50 provides for transitional agreements to be varied by 30th September to meet the requirements for personal medical services agreements set out in the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004 (S.S.I. 2004/116). Provision is also made in this part for various aspects of the working of transitional agreements.

Part 5 of the Order sets out the transitional arrangements for general medical services, pilot schemes and services provided under section 17C of 1978 Act in relation to the assignment of patients under the National Health Service (Choice of Medical Practitioner) (Scotland) Regulations 1998 (S.I. 1998/659) which are revoked by this Order.

Part 6 of the Order makes provision in relation to out of hours arrangements for general medical services. It provides for matters outstanding on the 31st of March under the provisions of the 1995 Regulations dealing with out of hours arrangements. It also provides for matters outstanding in relation to out of hours arrangements on the date on which a default contract is replaced by a general medical services contract. Finally, articles 73 to 75 deal with other miscellaneous transitional matters in relation to out of hours services.

Part 7 of the Order sets out the transitional provision in relation to referrals, investigations, determinations and appeals under the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992 (S.I. 1992/434).

Part 8 of the Order deals with the transitional provision necessary in relation to the listing of medical practitioners. It provides for the transition from the previous arrangements whereby certain practitioners were listed on the medical lists provided for in section 19 of the 1978 Act or

the supplementary lists provided for in terms of section 24B of the 1978 Act, to the new arrangements for primary medical services performers lists made under section 17P of the 1978 Act (added to that Act by section 5 of the 2004 Act). It makes transitional provision for those performing personal medical services in accordance with arrangements under section 17C of the 1978 Act or under pilot schemes, who have not previously required to be listed. It also makes provision for matters before the NHS Tribunal relating to those on medical or supplementary lists and for persons to whom the preferential treatment on transferring to medical lists under paragraph 1 of Schedule 1 to the National Health Service (Primary Care) Act 1997 ( c.46) applied.

Part 9 of the Order makes provision for a number of miscellaneous transitional and transitory provisions.

Part 10 of the Order sets out certain savings, modifications, and revocations.