

SCHEDULE 8

Article 31(4)

TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS

PART 1

THE ESMQO 1995 AND THE VOCATIONAL TRAINING REGULATIONS

Interpretation

1. In this Part—

- (a) “old specialist register” means the register of specialists maintained by the GMC under article 8 of the ESMQO 1995 (the specialist register); and
- (b) “relevant date” means the date on which this Part comes into force.

General practitioners

2. Where the JCPTGP has approved training under regulation 6 or 8 of either the Vocational Training Regulations, the Vocational Training Regulations (Scotland) or the Vocational Training Regulations (Northern Ireland) (which relate to prescribed medical experience and approval of training posts), the Board shall be deemed to have approved that training under article 4, and if that training is continuing immediately before the relevant date, the Board shall be deemed to have approved such training, until such time as the Board—

- (a) gives approval under article 4(5);
- (b) gives approval under article 4(5) subject to conditions under article 4(7); or
- (c) withdraws approval under article 4(8) or 9(4).

3. Where the JCPTGP has approved a GP Trainer under regulation 7 of either the Vocational Training Regulations, the Vocational Training Regulations (Scotland) or the Vocational Training Regulations (Northern Ireland) (which relate to approval of trainers), and that approval continues immediately before the relevant date, the Board shall be deemed to have approved that general practitioner under article 4, until such time as the Board—

- (a) gives approval under article 4(5);
- (b) gives approval under article 4(5) subject to conditions under article 4(7); or
- (c) withdraws approval under article 4(8) or 9(4).

4. Where an appeal is made against a decision of the JCPTGP which was made under regulation 7 of either the Vocational Training Regulations or the Vocational Training Regulations (Northern Ireland) (appeal against a decision to refuse to approve a GP Trainer)—

- (a) before the relevant date but where the appeal has not been determined by that date; or
- (b) on or after the relevant date within the time limit specified in regulation 7(5) or (6) of the Regulations specified above,

the appeal shall be dealt with in accordance with the relevant provisions of the Vocational Training Regulations or the Vocational Training Regulations (Northern Ireland) (as appropriate).

5. Where a person has applied to the JCPTGP for a certificate of equivalent experience or a certificate of prescribed experience before the relevant date, but the application has not been determined before that date—

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- (a) the Board shall determine that application in accordance with the relevant provisions of the Vocational Training Regulations, the Vocational Training Regulations (Scotland) or the Vocational Training Regulations (Northern Ireland) (as appropriate);
- (b) the time limit specified in regulation 12A of each of those Regulations (decisions relating to certificates of equivalent experience in respect of persons exercising a Community right) shall apply (where applicable), and the period of three months specified in regulation 12A(4) shall begin with the date on which the JCPTGP or, as the case may be, the Board received the application together with full supporting documentation; and
- (c) any appeal against a refusal of a certificate shall be made and determined in accordance with the relevant provisions of the Regulations specified in sub-paragraph (a) (including an appeal against a failure to notify the applicant of a decision within the time limit specified in regulation 12A),

save that nothing in this paragraph shall prevent such a person from withdrawing any such application and making a new application to the Board for a CCT pursuant to the provisions of this Order, or for a statement of eligibility for registration pursuant to article 11(3) (as the case may be).

6. Where an appeal is made against a decision of the JCPTGP pursuant to regulation 12A(3) or 13 of either the Vocational Training Regulations, the Vocational Training Regulations (Scotland) or the Vocational Training Regulations (Northern Ireland) (as appropriate) (which relate to decisions relating to certificates of equivalent experience in respect of persons exercising a Community right, and appeals against refusal of certificates)—

- (a) before the relevant date but where the appeal has not been determined by that date; or
- (b) on or after the relevant date within the time limit specified in regulation 13(1) of the Regulations specified above,

the appeal shall be dealt with in accordance with the relevant provisions of the Vocational Training Regulations, the Vocational Training Regulations (Scotland) or the Vocational Training Regulations (Northern Ireland) (as appropriate).

7. In determining any application to the Board made by a person to whom the JCPTGP has, before the relevant date, given written advice in relation to his training, the Board shall take that advice into account in determining that person's application.

8. In paragraph 4, 5 and 6, if the relevant provisions have been repealed, they shall be treated for the purposes of those paragraphs as if they remained in force with such modifications as necessary, including as if references to the "Joint Committee" were to the Board.

Specialists

9.—(1) The Registrar of the GMC shall ensure that all specialists whose names are included in the old specialist register immediately before the relevant date are, on the relevant date, transferred to the Specialist Register.

(2) Any application made to the GMC for inclusion in the old specialist register that is made before, but is not finally dealt with by the relevant date shall be determined—

- (a) in accordance with the relevant provisions of the ESMQO 1995, but if the application is successful, the applicant's name shall be included in the Specialist Register instead of the old specialist register; and
- (b) within the time limit specified in article 8(3A) or 8(A) of the ESMQO 1995 (which relate to decisions in respect of persons exercising a Community right and the specialist register), where applicable, the time period beginning with the date on which the GMC received the application for inclusion in the old specialist register together with full supporting documentation,

and any appeal against the GMC's decision to refuse such an application pursuant to article 8(3D) of the ESMQO 1995, shall be dealt with in accordance with that article, or, where applicable, article 8(3B) together with article 8(3D) (which relate to the specialist register), and if that appeal is successful, the applicant's name shall be included in the Specialist Register.

(3) If, pursuant to paragraph 12, the Board or an appeal panel arranged in accordance with article 13 of the ESMQO 1995 (appeals) has determined that a person is an eligible specialist pursuant to article 9(2) or (3) of the ESMQO 1995 (eligible specialists), that person shall be treated as an eligible specialist pursuant to article 14(2) of this Order for the purposes of any subsequent application or request to be included in the Specialist Register.

10. Where the STA has approved specialist training under article 7 of the ESMQO 1995 (minimum requirements of specialist medical training), including any conditions under article 7(3) of the ESMQO 1995, the Board shall be deemed to have approved that training, or those conditions, under article 4 of this Order, and if such training is continuing immediately before the relevant date, the Board shall be deemed to approve that training until such time as the Board—

- (a) gives approval under article 4(5);
- (b) gives approval under article 4(5) subject to conditions under article 4(7); or
- (c) withdraws approval under article 4(8) or 9(4).

11. Where a person has applied to the STA for a CCST before the relevant date, but the application has not been determined by that date—

- (a) the Board shall determine that application in accordance with article 6 of the ESMQO 1995 (certificates of completion of specialist training), and, where applicable, within the time limit specified in article 3(4)(b)(iia) of that Order (the competent authorities); and
- (b) any appeal against a refusal to award a CCST shall be made and determined in accordance with article 13(1) of the ESMQO 1995 (appeals),

save that nothing in this paragraph shall prevent such a person from withdrawing such an application and making a new application to the Board for a CCT under the provisions in this Order.

12. Where a person has applied to the STA under article 9(2) or (3) of the ESMQO 1995 (eligibility for entry to the specialist register) before the relevant date but the application has not been determined by that date—

- (a) the Board shall determine that application in accordance with those provisions, and in accordance with the requirements of article 8A of the ESMQO 1995 (decisions in respect of persons exercising a community right) where applicable; and
- (b) any appeal against a decision of the Board shall be made and determined in accordance with article 13(1) of the ESMQO 1995 (appeals),

save that nothing in this paragraph shall prevent such a person from withdrawing any application he has made to the STA and making a new application to the Board under articles 14(4) or (5) of this Order (as appropriate).

13. Where the STA has received a request in relation to its competent authority functions under article 3(4)(b)(i), (ii), (iii), (iv) or (v), or (c)(i) or (ii) of the ESMQO 1995 (the competent authorities) that was received before, but not finally dealt with by, the relevant date, the Board shall deal with the request in accordance with the relevant provisions of the ESMQO 1995.

14. Where an appeal is made pursuant to article 13(1) of the ESMQO 1995 (appeals) against a decision of the STA before the relevant date but it has not been determined by that date, the appeal shall be determined in accordance with that article.

15. Where—

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- (a) a person's name has, before the relevant date, been removed from the old specialist register pursuant to article 14(1) of the ESMQO 1995 (removal and suspension from specialist register); and
- (b) on or after the relevant date, it comes to the notice of the Registrar of the GMC that a person removed from the old specialist register pursuant to article 14(1) of the ESMQO 1995, is a registered medical practitioner, or in the case of an oral and maxillo-facial surgeon, a registered medical practitioner and a registered dentist,

the Registrar shall, if requested to do so by that person, include that person's name in the Specialist Register and shall send him notice of having done so.

16. Where—

- (a) a person's name has been removed from the old specialist register pursuant to article 14(3) of the ESMQO 1995 (removal and suspension from specialist register) before the relevant date and notice has been served on that person pursuant to paragraph 2 of Schedule 6 to the ESMQO 1995; and
- (b) that person, on or after the relevant date, appeals against that removal within any relevant time limits,

that appeal shall be determined in accordance with article 18(6) and (7) of this Order as if the decision to remove that person's name had been taken under article 18(5), and if that appeal is successful, that person's name shall be included in the Specialist Register.

17. Where—

- (a) a person's name has, before the relevant date, been removed from the old specialist register pursuant to article 14(4) of the ESMQO 1995 (removal and suspension from specialist register); and
- (b) on or after the relevant date, it comes to the notice of the Registrar of the GMC that a person removed from the old specialist register pursuant to article 14(4) of the ESMQO 1995, is no longer subject to suspension,

the Registrar shall, if he is satisfied that that person is a registered medical practitioner, or in the case of an oral and maxillo-facial surgeon, a registered medical practitioner and a registered dentist include that person's name in the Specialist Register and shall send him notice of having done so.

18. In any case falling within paragraphs 15 to 17, paragraph 8 of Schedule 4 to the Medical Act (service of notifications of decisions) shall apply to notices required by those paragraphs to be sent to any person by the Registrar of the GMC as it applies to the notifications referred to in that paragraph.

19. In determining any application made to the Board by a person to whom the STA has, before the relevant date, given written advice in relation to his training, the Board shall take that advice into account in determining that person's application.

20. In paragraphs 9, 11, 12, 13 or 14, if the relevant provisions of the ESMQO 1995 have been repealed, they shall be treated for the purposes of those paragraphs as if they remained in force with such modifications as necessary, including as if references to the STA were to the Board.

PART 2

THE GENERAL PRACTITIONER REGISTER

General practitioners permitted to work within the National Health Service during the transitional period

21. This Part shall apply until article 10(4) is brought fully into force.

22.—(1) Subject to sub-paragraph (2) and (3), a person shall not be eligible to be appointed to any post, or work as, a general practitioner in the National Health Service unless—

- (a) he is a registered medical practitioner; and
- (b) he—
 - (i) holds a CCT in general practice awarded by the Board,
 - (ii) has one of the certificates referred to in article 11(1),
 - (iii) was exempt from the need to have acquired the prescribed experience by regulation 5(1)(a), (b), (c), (d) or (f) of the Regulations referred to in article 11(2),
 - (iv) has a statement of eligibility issued to him under article 11(7), or
 - (v) has an acquired right in accordance with article 12(1) and Schedule 6.

(2) The prohibition in sub-paragraph (1) includes—

- (a) in England and Wales—
 - (i) nomination or approval to fill a vacancy for a medical practitioner pursuant to any regulations made under section 29B of the 1977 Act⁽¹⁾ (vacancies for medical practitioners),
 - (ii) inclusion in a list of persons undertaking to provide general medical services pursuant to any regulations made under section 29 of the 1977 Act⁽²⁾ (arrangements and regulations for general medical services) or in a list of persons approved for the purpose of assisting in the provision of any such services prepared pursuant to section 43D of that Act⁽³⁾ (supplementary lists),
 - (iii) performing personal medical services as part of a pilot scheme within the meaning of section 1(1) of the 1997 Act (pilot schemes), or in accordance with any arrangements made pursuant to section 28C of the 1977 Act⁽⁴⁾ (personal medical or dental services), or
 - (iv) inclusion in a list of persons who may perform personal medical services pursuant to any regulations made under section 8ZA of the 1997 Act⁽⁵⁾ (lists of persons who may perform personal medical services or personal dental services) or section 28DA

(1) Section 29B was inserted by the National Health Service (Primary Care) Act 1997 (c. 46), section 32(1); and amended by: the Health and Social Care Act 2001 (c. 15), section 15(1) and (2), and section 20(1) and (3); and the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 2(5) and Schedule 2, paragraphs 1 and 5.

(2) Section 29 was extended by the Health and Medicines Act 1988 (c. 49), section 17; and amended by: the Health Services Act 1980 (c. 53), sections 1 and 7 and Schedule 1, paragraph 42(b); the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), Schedule 6, paragraph 2; the Medical Act 1983 (c. 54), section 56(1) and Schedule 5, paragraph 16(a); S.I. 1985/39, article 7(3); the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 18; the National Health Service (Primary Care) Act 1997 (c. 46), Schedule 2, paragraph 8; and the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 2(5) and Schedule 2, paragraphs 1 and 3.

(3) Section 43D was inserted by the Health and Social Care Act 2001 (c. 15), section 24, and amended by the National Health Service Reform and Health Care Professions Act 2002 (c. 17), section 2(5) and Schedule 2, paragraphs 1 and 20.

(4) Section 28C is to be inserted by the National Health Service (Primary Care) Act 1997 (c. 46), section 21(1).

(5) Section 8ZA was inserted by the Health and Social Care Act 2001 (c. 15), section 26(2).

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of the 1977 Act⁽⁶⁾ (lists of persons who may perform personal medical services or personal dental services);

(b) in Scotland—

- (i) nomination or approval to fill a vacancy for a medical practitioner to provide general medical services pursuant to any regulations made under section 19B (vacancies for medical practitioners) or section 24 (regulations for medical practices committees) of the 1978 Act⁽⁷⁾,
- (ii) inclusion in a list of persons undertaking to provide general medical services pursuant to any regulations made under section 19 of the 1978 Act (arrangements and regulations for general medical services) or in a list of persons approved to assist in the provision of such services pursuant to section 24B of that Act⁽⁸⁾ (supplementary lists),
- (iii) performing personal medical services as part of a pilot scheme within the meaning of section 1(1) of the 1997 Act (pilot schemes) or in accordance with any arrangements made pursuant to section 17C of the 1978 Act⁽⁹⁾ (personal medical or dental services), or
- (iv) inclusion in a list of persons who may perform personal medical services pursuant to any regulations made under section 17EA of the 1978 Act⁽¹⁰⁾ (services lists);

(c) in Northern Ireland—

- (i) inclusion in a list of persons undertaking to provide general medical services pursuant to any regulations made under Article 56 of the Health and Personal Social Services (Northern Ireland) Order 1972⁽¹¹⁾ (arrangements for general medical services),
- (ii) performing personal medical services as part of a pilot scheme within the meaning of Article 3(1) of the Health Services (Primary Care) (Northern Ireland) Order 1997⁽¹²⁾, or in accordance with any arrangements made pursuant to Article 15B⁽¹³⁾ of the Health and Personal Social Services (Northern Ireland) Order 1972, or perform personal medical services within the meaning of Article 3(7) of the Health Services (Primary Care) (Northern Ireland) Order 1997, or
- (iii) being engaged as a deputy by, or employed as an assistant by a person undertaking to provide general medical services pursuant to any regulations made under Article 56 of the Health and Personal Social Services (Northern Ireland) Order 1972 (arrangements for general medical services).

(3) The prohibition in sub-paragraph (1) does not include any person undertaking a period of employment as a GP Registrar, or a person who is provisionally registered under section 15, 15A or 21 of the Medical Act acting in the course of his employment in a resident medical capacity in an approved medical practice (within the meaning of section 11(4) of that Act).

(4) A person who has an acquired right under paragraph 1(d) of Schedule 6 shall not be—

- (a) nominated or approved by a Health Authority or Primary Care Trust pursuant to any regulations made under section 29B of the 1977 Act (vacancies for medical practitioners), or included in a list of persons undertaking to provide general medical services pursuant

⁽⁶⁾ Section 28DA is to be inserted by the Health and Social Care Act 2001 (c. 15), section 26(1).

⁽⁷⁾ Section 19B is to be inserted by the National Health Service (Primary Care) Act 1997 (c. 46), section 33(1).

⁽⁸⁾ Section 24B is to be inserted by the Community Care and Health (Scotland) Act 2002 (asp 5), section 18(2).

⁽⁹⁾ Section 17C was inserted by the National Health Service (Primary Care) Act 1997 (c. 46), section 21(2).

⁽¹⁰⁾ Section 17EA was inserted by the Community Care and Health (Scotland) Act 2002 (asp 5), section 18(1).

⁽¹¹⁾ S.I. 1972/1265 (N.I. 14).

⁽¹²⁾ S.I. 1997/1177 (N.I. 7).

⁽¹³⁾ Article 15B is to be inserted by article 21 of the Health Services (Primary Care) (Northern Ireland) Order 1997 (S.I. 1997/1177 (N.I. 7)).

to any regulations made under section 29 of the 1977 Act (arrangements and regulations for general medical services);

- (b) nominated or approved under section 19B of the 1978 Act (vacancies for medical practitioners), selected in accordance with section 23 of that Act (distribution of general medical services) or included in a list of persons undertaking to provide general medical services pursuant to any regulations made under section 19 of that Act (arrangements and regulations for general medical services); or
- (c) included in a list of persons undertaking to provide general medical services pursuant to any regulations made under Article 56 of the Health and Personal Social Services (Northern Ireland) Order 1972 (arrangements for general medical services),

merely because of that acquired right.

(5) A restricted services principal whose name is included in the General Practitioner Register by virtue of—

- (a) an acquired right by virtue of paragraph 1(a) of Schedule 6; or
- (b) an exemption from the need to have the prescribed experience under regulation 5(1)(d) of the Vocational Training Regulations, regulation 5(1)(d) of the Vocational Training Regulations (Scotland) or regulation 5(1)(d) of the Vocational Training Regulations (Northern Ireland) (which relate to exemptions),

shall not be entitled to practise otherwise than in accordance with the restriction which applies in his case.

PART 3

THE MEDICAL ACT 1983 (AMENDMENT) ORDER 2002

23.—(1) This Part shall apply in place of article 18(1) and (2), until paragraph 10 of Schedule 1 to the Medical Act 1983 (Amendment) Order 2002⁽¹⁴⁾ is brought into force.

(2) Where it comes to the notice of the Registrar of the GMC that a person whose name is included in the General Practitioner Register or the Specialist Register is—

- (a) no longer a registered medical practitioner; or
- (b) suspended from the register of medical practitioners kept under section 2 of the Medical Act, under any provision of that Act,

the Registrar shall remove that person's name from the General Practitioner Register or the Specialist Register (as the case may be) and shall send him notice of having done so.

(3) Where it comes to the notice of the Registrar of the GMC that a person removed from the General Practitioner Register or the Specialist Register pursuant to paragraph (2)—

- (a) is once again a registered medical practitioner, in respect of a person whose name has been removed pursuant to sub-paragraph (2)(a); or
- (b) is no longer suspended from the register of medical practitioners kept under section 2 of the Medical Act (unless his name has been erased from that register), in respect of a person whose name has been removed from the General Practitioner Register or the Specialist Register pursuant to sub-paragraph (2)(b),

the Registrar shall, if that person so requests, include that person's name in the Specialist Register or the General Practitioner Register (as the case may be) and shall send him notice of having done so.

⁽¹⁴⁾ S.I. 2002/3135.

(4) Where—

- (a) a person's name has been removed from the General Practitioner Register or the Specialist Register pursuant to this Part; and
- (b) following the coming into force of paragraph 10 of Schedule 1 to the Medical Act 1983 (Amendment) Order 2002, that person becomes a registered medical practitioner,

the Registrar of the GMC shall treat that person as if he was removed from the appropriate Register pursuant to article 18(1) of this Order, and the procedure in article 18(2) shall accordingly apply to that person.

PART 4

TRANSFER OF STAFF, RIGHTS AND LIABILITIES

24.—(1) The Secretary of State may, if he sees fit, provide by directions for the transfer from the old employers to the new employer of any—

- (a) eligible employee; and
- (b) rights or liabilities.

(2) In this paragraph—

- (a) “the new employer” means the Board;
- (b) “the old employers” means the Royal College of General Practitioners or the STA; and
- (c) “eligible employees” means persons who are employed under a contract of employment with the old employers.

25.—(1) A direction made under paragraph 24(1) may be made by the Secretary of State only if any requirements about consultation have been complied with in relation to eligible employees to be transferred under the scheme.

(2) A direction made under paragraph 24(1) may apply to all, or any description of, eligible employees.

26.—(1) The contract of employment of an eligible employee transferred by virtue of a direction made under paragraph 24(1)—

- (a) is not terminated by the transfer; and
- (b) has effect from the date of the transfer as if originally made between the employee and the transferee.

(2) Without prejudice to the generality of sub-paragraph (1), where an employee is transferred pursuant to a direction mentioned in that sub-paragraph—

- (a) all the rights, powers, duties and liabilities of the old employers under or in connection with the contract of employment are, by virtue of this paragraph, transferred to the transferee on the date of transfer; and
- (b) anything done in respect of that contract or employee in relation to the old employer is to be treated from that date as having been done by or in relation to the new employer.

(3) Sub-paragraphs (2)(a) and (b) do not transfer an employee's contract of employment, or the rights, powers, duties and liabilities under or in connection with it, if he informs his old employer that he objects to the transfer.

(4) Where an employee objects as mentioned in sub-paragraph (3), his contract of employment with the old employer is terminated immediately before the date of transfer, but he is not to be treated for any purpose as having been dismissed by that employer.

(5) This paragraph does not prejudice any right of an employee to terminate his contract of employment if a substantial change is made to his detriment in his working conditions but no such right arises by reason only that, by virtue of this paragraph, the identity of his employer changes unless the employee shows that, in all the circumstances, the change is a significant change and is to his detriment.

(6) In this paragraph, “the date of transfer” means, in relation to an eligible employee, the date of the transfer determined under a direction made under paragraph 24(1).

27. A direction made under paragraph 24(1) may provide for the new employer to carry out any other functions necessary or expedient consequent on the dissolution of the old employers.