
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 142

**The General Medical Services (Transitional and
Other Ancillary Provisions) (Scotland) Order 2004**

PART 3

DEFAULT CONTRACTS

Entitlement to a default contract

13.—(1) A Health Board must enter into a contract for the provision of medical services (in this Order referred to as a “default contract”) in the circumstances set out in this article.

(2) Subject to paragraphs (5) and (6), a Health Board must, if a person so wishes, enter into a default contract with that person as an individual medical practitioner if that person—

(a) is a person to whom article 3(1) applies; and

(b) on 1st April 2004—

(i) has not entered into a GMS contract with that Health Board as an individual medical practitioner or is not a partner in a partnership which has entered into such a contract, or

(ii) is not a legal and beneficial shareholder in a company which has entered into such a contract with that Health Board.

(3) A Health Board must, if a partnership so wishes, enter into a default contract with the partnership if—

(a) the partnership is one to which article 4(1) applies; and

(b) on 1st April 2004, neither the partnership nor any of the partners in that partnership—

(i) has entered into a GMS contract with that Health Board; or

(ii) is a legal and beneficial shareholder in a company which has entered into such a contract with that Health Board.

(4) A default contract entered into pursuant to paragraph (2) or (3) must—

(a) commence on 1st April 2004 or within 14 days of determination of an appeal under paragraph (9); and

(b) be on the terms set out, or agreed in accordance with any options set out, in the Default Contract 2004 dated 23rd March 2004(1).

(5) A Health Board shall not be required to enter into a default contract under paragraph (2) with a person for whom (or, in the case of a contract with a partnership, for a partner in that partnership) it has in place—

(1) The Default Contract 2004 is published by the Scottish Executive Health Department. It is available on Scottish Health on the Web (SHOW) at [http://www.show.scot.nhs.uk/sehd/pca/PCA2004\(M\)10.pdf](http://www.show.scot.nhs.uk/sehd/pca/PCA2004(M)10.pdf).

- (a) on 31st March 2004, temporary arrangements under regulation 24(7) of the 1995 Regulations; or
 - (b) contractual arrangements under article 15 which replace such temporary arrangements,
- for as long as those arrangements continue, unless it is satisfied that, on the date that the contract is to be signed, that person (or, as the case may be, that partner) is able to provide (but not perform) services under the contract.

(6) Where a person is suspended from the Medical Register in the circumstances specified in article 3(5) or 4(5) or suspended by the Tribunal from the Health Board's medical list or primary medical services performers list, a Health Board shall only be required to enter into a default contract under paragraph (2) with that person (or, where the person suspended is a partner in a partnership, with that partnership) if it is satisfied that, on the date that the contract is to be signed—

- (a) in the case of a suspension on grounds relating to the practitioner's physical or mental health, that practitioner is able to provide (but not perform) services under the contract;
- (b) having regard to the grounds of suspension, entering into the contract would not—
 - (i) put at risk the safety of the contractor's patients, or
 - (ii) be prejudicial to the efficiency of the provision of primary medical services; and
- (c) the practitioner has in place adequate arrangements for the provision of services under the contract during the period of the practitioner's suspension.

(7) Whenever a Health Board is considering refusing to enter into a default contract under paragraph (5) or (6) it shall consult the area medical committee (if any) before making its decision.

(8) Where a Health Board refuses to enter into a default contract pursuant to paragraph (5) or (6) it shall notify the prospective contractor in writing of its decision, its reasons for that decision and of the practitioner's right of appeal.

(9) A person who has been notified by a Health Board under paragraph (8) of its refusal to enter into a default contract may appeal to the Scottish Ministers by giving notice in writing to the Scottish Ministers within a period of 28 days beginning on the day that the Health Board notified that person of the refusal.

(10) Any appeal referred to the Scottish Ministers in accordance with paragraph (9) shall be determined in accordance with—

- (a) the NHS dispute resolution procedure, as if in Schedule 5 to the 2004 Regulations—
 - (i) paragraph 91(1) and (2) were omitted;
 - (ii) in paragraph 91(3) “a dispute in accordance with paragraph (1)” read “ an appeal in accordance with article 13(9) of the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004”;
 - (iii) paragraph 91(3)(b) and (c) read—
 - “(b) a copy of the notification received from the Health Board under article 13(9) of the General Medical Services Transitional and Other Ancillary Provisions (Scotland) Order 2004;
 - (c) a brief statement of the grounds for appeal.”;
 - (iv) paragraphs 91(4) and 92(2) were omitted; and
- (b) paragraph (11) of this article.

(11) The adjudicator may, when determining the appeal require the Health Board to enter into a default contract with the prospective contractor on terms to be agreed between the parties or, where necessary, determined under the pre-contract dispute resolution procedure under regulation 9 of the 2004 Regulations but may not require the prospective contractor to proceed with the contract.

Duration of a default contract

14.—(1) A default contract entered into pursuant to article 13 shall not subsist beyond 30th September 2004, except in the circumstances specified in paragraphs (2) to (5).

(2) Where, on 30th September 2004—

- (a) any dispute arising out of or in connection with the default contract has been referred to the Scottish Ministers in accordance with the NHS dispute resolution procedure contained in the contract but that dispute has not been determined or withdrawn; or
- (b) either party to the default contract has referred the terms of their proposed GMS contract to the Scottish Ministers to consider and determine under regulation 9 of the 2004 Regulations but that dispute has not been determined or withdrawn,

the default contract shall, unless it is terminated before that date in accordance with the terms of the default contract, continue until whichever is the later of the dates specified in paragraph (3).

(3) The dates referred to in paragraph (2) are—

- (a) the end of the period of 28 days from the date on which the parties were notified of the determination of the dispute relating to the default contract or that dispute was withdrawn; or
- (b) the end of the period of 28 days from the date on which the parties were notified of the determination of the dispute relating to the terms of the GMS contract or that dispute was withdrawn.

(4) Where the default contract is with an individual medical practitioner or partnership—

- (a) with whom the Health Board has refused to enter into a GMS contract because it is not satisfied as to the matters specified in article 3(4) or (7), or article 4(4) or (7); or
- (b) who has been unable to enter into a GMS contract on or before 30th September 2004 because the practitioner (or, in the case of a partnership, a partner) was performing relevant service in the armed forces,

the default contract shall, unless it is terminated before that date in accordance with the terms of the contract, continue for as long as the practitioner or partnership remains entitled to enter into a GMS contract under article 6.

(5) Where the default contract is with a medical practitioner or partnership who has made an application under article 11, the default contract shall, unless it is terminated before that date in accordance with the terms of the contract, continue until—

- (a) the end of the period of 14 days after that application has been determined; or
- (b) if the application was successful and it intends to enter into a GMS contract, the end of the day immediately before the day on which it is required to start providing services under the GMS contract which it has entered into with the Health Board.