

**2004 No. 142**

**NATIONAL HEALTH SERVICE**

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

*Made* - - - - - *25th March 2004*

*Laid before the Scottish Parliament* *25th March 2004*

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

The Scottish Ministers in exercise of the powers conferred on them by section 7(1) and (2) 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 (Transitional and Other Ancillary Provisions) (Scotland) Order 2004 and shall come into force on 1st April 2004.

(2) In this Order—

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

“the 1983 Act” means the Medical Act 1983(c);

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

“adjudicator” has the same meaning as in the 2004 Regulations;

“area medical committee” 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;

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(a) 2004 asp 1.  
(b) 1978 c.29.  
(c) 1983 c. 54.  
(d) S.I. 1995/416, repealed by S.S.I. 2004/114.  
(e) S.S.I. 2004/115.  
(f) S.I. 1998/659.

“contractor’s list of patients” means the list prepared and maintained by a Health Board under the term of a GMS contract which gives effect to paragraph 14 of Schedule 5 to the 2004 Regulations or under the equivalent term of a default contract or of contractual arrangements made under article 15;

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

“default contract” means a contract entered into under article 13 and “default contractor” shall be construed accordingly;

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

“global sum” has the same meaning as in the 2004 Regulations;

“GMS contract” means a contract under section 17J (Health Boards’ power to enter into general medical services contracts) of the 1978 Act(a) and “GMS contractor” shall be construed accordingly;

“Health Board” means a Health Board constituted under section 2 of the 1978 Act(b) 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(c);

“immediate family member” has the same meaning as in the 2004 Regulations;

“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) (arrangements and regulations for general medical services) of the 1978 Act(d);

“Medical Practices Committee” means the Scottish Medical Practices Committee constituted in accordance with section 3(1) of the 1978 Act(e);

“Medical Register” means the registers kept under section 2 of the 1983 Act(f);

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

“NHS dispute resolution procedure” has the same meaning as in the 2004 Regulations;

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

“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); or

(ii) in a GMS contract as additional services funded under the global sum;

“practice premises” means an address specified in the contract as one at which services are to be provided under the contract;

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

“registered patient” means–

(a) a person who is recorded by the Health Board as being on the contractor’s list of patients;  
or

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(a) Section 17J was inserted into the 1978 Act by section 4 of the Primary Medical Services (Scotland) Act 2004 (asp 1).

(b) 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.

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

(d) Section 19(2)(a) is repealed from 1st April 2004 by the Primary Medical Services (Scotland) Act (asp 1), schedule, paragraph 1(7).

(e) Section 3 is repealed from 1st April 2004 by the Public Appointments and Public Bodies (Scotland) Act 2003 (asp 4), Schedule 4, paragraph 5(2).

(f) Section 2 was amended by S.I. 1996/1591 and 2002/3135.

(g) 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.

- (b) a person whom the 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;

“relevant service in the armed forces” means whole-time service in the armed forces of the Crown in a national emergency as a volunteer or otherwise, or compulsory whole-time service in those forces, including service resulting from any reserve liability, or any equivalent service by a person liable for compulsory whole-time service in those forces;

“suspended by the Tribunal” means suspended by a direction of the Tribunal made pursuant to section 32A(2) (applications for interim suspension) or 32B(1) (suspension pending appeal), or suspended by virtue of the provisions of section 32D(1) (suspension provisions in England and Wales or in Northern Ireland) of the 1978 Act(a);

“temporary resident” means a person accepted by the contractor as a temporary resident under the term of a GMS contract which gives effect to paragraph 16 of Schedule 5 to the 2004 Regulations, or the equivalent term of a default contract, and for whom the contractor’s responsibility has not been terminated in accordance with that term;

“vacancy” means a vacancy declared by a Health Board under regulation 11 of the 1995 Regulations(b);

(3) In this Order, the use of the term “it” in relation to a contractor shall be deemed to include a reference to a contractor who is an individual medical practitioner, and related expressions shall be construed accordingly.

(4) Any reference in this Order to a numbered article or Schedule or to a numbered paragraph of such an article or Schedule is, unless otherwise expressly provided, a reference to an article or Schedule bearing that number in this Order or, as the case may be, to a paragraph bearing that number in such an article or Schedule.

## PART 2

### ENTITLEMENT TO ENTER INTO GMS CONTRACTS

#### Entitlement to a GMS contract

2. A Health Board must enter into a GMS contract with a person who, on 31st March 2004, is providing general medical services under section 19 of the 1978 Act (arrangements and regulations for general medical services)(c) in the circumstances specified in articles 3 to 12.

#### Entitlement to a GMS contract as an individual medical practitioner

3.—(1) This article applies to a person who, on 31st March 2004,

- (a) is included in the medical list of that Health Board by virtue of regulation 4(1)(a) of the 1995 Regulations(d);
- (b) is practising as a medical practitioner.

(2) Subject to paragraphs (4) and (7) and articles 6 and 12, a person to whom paragraph (1) applies shall, on and after 1st April 2004, be entitled to enter into a GMS contract with that Health

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(a) 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 2002 (asp 5), Schedule 2, paragraph 2(11).

(b) Regulation 11 was amended by S.S.I. 1999/54.

(c) 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 Primary Medical Services (Scotland) Act 2004 (asp 1), schedule, paragraph 1(7).

(d) Regulation 4 was amended by S.I. 1996/842 and S.S.I. 1999/54.

Board as an individual medical practitioner and that Health Board must, on or after that date and if that person so wishes, enter into such a contract with that person.

(3) A person shall be regarded as practising on 31st March 2004 for the purposes of paragraph (1)(b) if that person would have been so practising on that date except for the fact that, on that date—

- (a) that person is suspended from the Medical Register in the circumstances specified in paragraph (5) or suspended by the Tribunal from the Health Board's medical list; or
- (b) the Health Board has in place for that person's temporary arrangements under regulation 24(7) of the 1995 Regulations(a).

(4) Where a person is suspended from the Medical Register in the circumstances specified in paragraph (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 under paragraph (2) to enter into a GMS contract with that person during the period of that suspension if it is satisfied that—

- (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.

(5) The circumstances referred to in paragraphs (3)(a) and (4) are suspension—

- (a) by the Committee on Professional Performance of the General Medical Council under section 36A (professional performance) or 38(1) (power to order immediate suspension after a finding of professional misconduct or unfitness to practise) of the 1983 Act or under rules made under paragraph 5A(3) of Schedule 4 (proceedings before professional conduct, health and preliminary proceedings committees) to that Act(b);
- (b) by the Health Committee of the General Medical Council under section 37 (unfitness to practise through illness etc.)(c) or 38(1) of the 1983 Act; or
- (c) under section 41A (interim orders) of the 1983 Act(d).

(6) In relation to any suspension which occurs after the coming into force of articles 13 and 14 of the Medical Act 1983 (Amendment) Order 2002(e), sub-paragraphs (a) and (b) of paragraph (5) shall be read as if they referred to suspension by a Fitness to Practise Panel constituted under Part 3 of Schedule 1 to the 1983 Act in a case relating to deficient professional performance or adverse physical or mental health under—

- (a) section 35D (functions of a fitness to practise panel) of the 1983 Act;
- (b) section 38(1) (power to order immediate suspension etc after a finding of impairment of fitness to practise) of that Act; or
- (c) rules made under paragraph 5A(3) of Schedule 4 (proceedings before the investigation committee, interim orders panels, and fitness to practise panels) to that Act.

(7) A Health Board shall not be required under paragraph (2) to enter into a GMS contract with a person for whom it has in place—

- (a) on 31st March 2004, temporary arrangements under regulation 24(7) of the 1995 Regulations; or

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(a) Regulation 24 was amended by S.I. 1995/3199, S.I. 1998/660 and S.S.I. 1999/54.

(b) Section 36A was inserted by the Medical (Professional Performance) Act 1995 (c.51), section 1 and amended by S.I. 2000/1803; section 38(1) was amended by paragraph 7 of the Schedule to that Act; paragraph 5A was inserted by paragraph 20 of the Schedule to that Act. All three provisions are prospectively substituted by S.I. 2002/3135.

(c) Section 37 was amended by the Medical (Professional Performance) Act 1995 (c.51), Schedule, paragraph 6(2) to (4). It is prospectively substituted by S.I. 2002/3135.

(d) Section 41A was inserted by S.I. 2000/1803. It is prospectively substituted by S.I. 2002/3135.

(e) S.I. 2002/3135. This Order substitutes the sections referred to in article 3(5).

(b) contractual arrangements under article 15 which replace such temporary arrangements, for so long as those arrangements continue, unless it is satisfied that, at the time the contract is to be signed, that person is able to provide (but not perform) services under the contract.

(8) Whenever a Health Board is considering refusing to enter into a GMS contract under paragraph (4) or (7), it shall consult the area medical committee (if any) before making its decision and, in a case where it is considering refusal under paragraph (7), it shall have regard to any written report made to it by the area medical committee (if any) under regulation 24(11) of the 1995 Regulations(a).

(9) Where a Health Board refuses to enter into a GMS contract pursuant to paragraph (4) or (7) it shall notify the prospective contractor in writing of its decision, its reasons for that decision and of the prospective contractor's right of appeal under article 5.

#### **Entitlement to a GMS contract as a partnership**

**4.—**(1) This paragraph applies to a partnership where, on 31st March 2004, all the partners in that partnership are—

- (a) included in the medical list of the Health Board by virtue of regulation 4(1)(a) of the 1995 Regulations, and
- (b) practising as partners in that partnership.

(2) Subject to paragraphs (4) and (7) and articles 6 and 12, a partnership to which paragraph (1) applies shall, on and after 1st April 2004, be entitled to enter into a GMS contract with that Health Board and that Health Board must, on or after that date and if that partnership so wishes, enter into such a contract with that partnership.

(3) A person shall be regarded as practising on 31st March 2004 for the purposes of paragraph (1)(b) if that person would have been so practising on that date except for the fact that on that date—

- (a) that person is suspended from the Medical Register in the circumstances specified in paragraph (5) or suspended by the Tribunal from the Health Board's medical list; or
- (b) the Health Board has in place for that person's temporary arrangements under regulation 24(7) of the 1995 Regulations.

(4) Where a person is suspended from the Medical Register in the circumstances specified in paragraph (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 under paragraph (2) to enter into a GMS contract with the partnership during the period of that suspension if it is satisfied that—

- (a) in the case of a suspension on grounds relating to the practitioner's physical or mental health, that person 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.

(5) The circumstances referred to in paragraphs (3)(a) and (4) are suspension—

- (a) by the Committee on Professional Performance of the General Medical Council under section 36A (professional performance) or 38(1) (power to order immediate suspension after a finding of professional misconduct or unfitness to practise) of the 1983 Act or under rules made under paragraph 5A(3) of Schedule 4 (proceedings before professional conduct, health and preliminary proceedings committees) to that Act;
- (b) by the Health Committee of the General Medical Council under section 37 (unfitness to practise through illness etc.) or 38(1) of the 1983 Act; or

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(a) Regulation 24(11) was amended by S.I. 1995/3199, 1998, 660 and S.S.I. 1999/54.

(c) under section 41A (interim orders) of the 1983 Act.

(6) In relation to any suspension which occurs after the coming into force of articles 13 and 14 of the Medical Act 1983 (Amendment) Order 2002, sub-paragraphs (a) and (b) of paragraph (5) shall be read as if they referred to suspension by a Fitness to Practise Panel constituted under Part 3 of Schedule 1 to the 1983 Act in a case relating to deficient professional performance or adverse physical or mental health under—

- (a) section 35D (functions of a fitness to practise panel) of the 1983 Act;
- (b) section 38(1) (power to order immediate suspension etc after a finding of impairment of fitness to practise) of that Act; or
- (c) rules made under paragraph 5A(3) of Schedule 4 (proceedings before the investigation committee, interim orders panels, and fitness to practise panels) to that Act.

(7) A Health Board shall not be required under paragraph (2) to enter into a GMS contract with a partnership where a Health Board has in place for a partner in that partnership—

- (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 so long as those arrangements continue, unless it is satisfied that, at the time the contract is to be signed, that person is able to provide (but not perform) services under the contract.

(8) Whenever a Health Board is considering refusing to enter into a GMS contract under paragraph (4) or (7), it shall consult the area medical committee (if any) before making its decision and in a case where it is considering refusal under paragraph (7), it shall have regard to any written report made to it by the area medical committee (if any) under regulation 24(11) of the 1995 Regulations.

(9) Where a Health Board refuses to enter into a GMS contract pursuant to paragraph (4) or (7), it shall notify the partnership in writing of its decision, its reasons for that decision and of its right of appeal under article 5.

#### **Appeal against refusal of a contract under article 3 or 4**

**5.—**(1) A person who has been notified by a Health Board under article 3(9) or 4(9) of its refusal to enter into a GMS 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.

(2) Any appeal referred to the Scottish Ministers in accordance with paragraph (1) shall be determined in accordance with—

- (a) the NHS dispute resolution procedure, as if in Schedule 5 to 2004 Regulations—
  - (i) paragraph 91(1) and (2) were omitted;
  - (ii) in paragraph 91(3) “ a dispute as mentioned in sub-paragraph (1)” read “an appeal in accordance with article 5(1) 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 3(9) or 4(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 (3) of this article.

(3) The adjudicator may, when determining the appeal require the Health Board to enter into a GMS 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 entitlement to a GMS contract**

**6.—**(1) Subject to paragraphs (2) to (5), a person, who is entitled to enter into a GMS contract on 1st April 2004 under article 3(2) or 4(2) but has not done so on that date, shall only continue to be so entitled after that date if—

- (a) that person has entered into a default contract with the Health Board and article 7 does not apply; and
- (b) that person has signed the GMS contract—
  - (i) on or before 30th September 2004; or
  - (ii) in a case where the default contract has been extended pursuant to article 14(2), within the period of 28 days from the date on which the parties were notified of determination of the dispute relating to the default contract or, as the case may be, relating to the terms of the GMS contract or that dispute was withdrawn,

unless article 11 applies.

(2) Where a person has been refused a GMS contract because the Health Board is not satisfied as to the matters specified in article 3(4) or 4(4) that person shall, subject to articles 7 and 12, only continue to be entitled to enter into such a contract (whether following a default contract or not) until—

- (a) the end of the period of six weeks after the suspension which gave rise to that refusal has ended other than in removal from the Medical Register or primary medical services performers list; or
- (b) in a case where either party has, before the end of the period of 6 weeks referred to in sub-paragraph (a), referred the terms of the 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 end of the period of 28 days from the date on which the parties were notified of the determination of that dispute or the dispute was withdrawn,

unless article 11 applies.

(3) Where a person has been refused a GMS contract because the Health Board is not satisfied as to the matter specified in article 3(7) or 4(7) and, before 31st March 2005, the Health Board is satisfied, after consultation with the area medical committee (if any), that that person (or, in the case of a partnership, the partner concerned) is able to provide services under a GMS contract, that person shall, subject to articles 7 and 12, only continue to be entitled to enter into such a contract (whether following a default contract or not) until—

- (a) the end of the period of 6 weeks after the date on which the Health Board was so satisfied; or
- (b) in a case where either party has, before the end of the period of 6 weeks referred to in sub-paragraph (a), referred the terms of the 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 end of the period of 28 days from the date on which the parties were notified of the determination of that dispute or the dispute was withdrawn,

unless article 11 applies.

(4) Where a person has been refused a GMS contract because the Health Board is not satisfied as to the matter specified in article 3(7) or 4(7), and paragraph (3) does not apply, that person shall, subject to article 12, only continue to be entitled to enter into such a contract until 31st March 2005, unless article 11 applies.

(5) Where a person, who is entitled to enter into a GMS contract under article 3(2) or 4(2), has been unable to do so before 30th September 2004 (whether following a default contract or not) because that person (or, in the case of a partnership, the partner concerned) is performing relevant service in the armed forces, that person's entitlement shall, subject to articles 7 and 12, continue until—

- (a) the end of the period of 6 weeks after the date on which the person ceased to perform relevant service in the armed forces; or
- (b) in a case where either party has, before the end of the period of six weeks referred to in sub-paragraph (a), referred the terms of the 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 end of the period of 28 days from the date on which the parties were notified of the determination of that dispute or the dispute was withdrawn,

unless article 11 applies.

(6) Nothing in articles 3 and 4 or this article shall require a Health Board to enter into a GMS contract with—

- (a) any person on more than one occasion;
- (b) an individual and with a partnership of which the individual is a partner; or
- (c) a partnership and with another partnership of which some or all of the partners are the same.

**Effect of termination of a default contract on entitlement to enter into a GMS contract under articles 3 or 4**

7.—(1) Any entitlement which a person may have under articles 3 or 4 to enter into a GMS contract with a Health Board on and after 1st April 2004 shall be extinguished if any default contract with that Health Board to which that person was a party has been terminated other than in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that the default contract has been terminated by agreement between the parties in order to enable those parties to enter into a GMS contract.

(3) Where—

- (a) a person has lost their entitlement to enter into a GMS contract under paragraph (1);
- (b) the default contractor has, within 28 days of the date of the notice of termination served on it by the Health Board, referred the termination of the default contract to the Scottish Ministers to consider and determine under the NHS dispute resolution procedure contained in the default contract; and
- (c) the adjudicator has determined that the Health Board should not have terminated the default contract,

that person's entitlement to enter into a GMS contract shall be restored as if the default contract had not been terminated.

(4) A person to whom paragraph (3) applies shall be entitled to exercise that person's entitlement to enter into a GMS contract until—

- (a) the end of the period of 6 weeks after the date on which that person was notified of the adjudicator's determination that the Health Board should not have terminated the default contract; or
- (b) in a case where either party has, before the end of the period of six weeks referred to in sub-paragraph (a), referred the terms of the 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 end of the period of 28 days from the date on which the parties were notified of the determination of that dispute or the dispute was withdrawn,

unless article 11 applies.

## **Entitlement to a GMS contract of persons selected under regulation 11 of the 1995 Regulations**

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

- (a) before 1st April 2004, a Health Board has selected an applicant (“the selected applicant”) for a vacancy (whether in the case where the applicant is the only one for the vacancy or as mentioned in regulation 11(4) of the 1995 Regulations or upon reconsideration following an appeal); but
- (b) the application has not been determined by the Medical Practices Committee before that date under regulation 14(2) of those Regulations.

(2) The selected applicant shall (unless another person, who was not selected for that vacancy, was selected upon reconsideration by the Health Board following a successful appeal under article 9)—

- (a) be added to the primary medical services performers list of that Health Board; and
- (b) subject to paragraph (3), be entitled to enter into a GMS contract as an individual medical practitioner or as a partner in a partnership from—
  - (i) 1st April 2004;
  - (ii) the expiry of the period for bringing an appeal pursuant to article 9;
  - (iii) the final determination or withdrawal of any appeal dealt with under article 9; or
  - (iv) if an appeal referred to in paragraph (iii) is successful, the notification of the determination of the Health Board following its reconsideration of the application pursuant to article 9,

whichever is the later.

(3) A person who is entitled to enter into a GMS contract under paragraph (2) shall, subject to article 12, only continue to be so entitled—

- (a) until 30th June 2004; or
- (b) in a case where an appeal falls to be dealt with under article 9, until the end of the period of six weeks after the final determination or withdrawal of that appeal or, if the appeal is successful, the notification of the determination of the Health Board following its reconsideration of the application pursuant to article 9; or
- (c) in a case where either party has, before the end of the period referred to in sub-paragraph (a) or (b), referred the terms of the 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 end of the period of 28 days from the date on which the parties were notified of the determination of that dispute or the dispute was withdrawn,

unless article 11 applies.

## **Appeals under section 23(2A)(c) of the 1978 Act**

**9.**—(1) Where—

- (a) before 1st April 2004, a Health Board has decided not to select an applicant (“the unsuccessful applicant”) for a vacancy—
  - (i) under regulation 11(4) of the 1995 Regulations<sup>(a)</sup>; or
  - (ii) following the reconsideration of the application by the Health Board after an appeal under section 23(2A)(c) (distribution of general medical services) of the 1978 Act<sup>(b)</sup> has been allowed; but

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<sup>(a)</sup> Regulation 11 was amended by S.S.I. 1999/54.

<sup>(b)</sup> Section 23(2A) was inserted by the National Health Service and Community Care Act 1990 (c.19), section 30 and is repealed from 1st April 2004 by the Primary Medical Services (Scotland) Act 2004, schedule, paragraph 1(7).

- (b) it has not, by that date, notified that applicant in writing of its decision in accordance with regulation 11(6) of those Regulations,

it shall so notify that applicant within seven days from that date and any right of appeal which the applicant would have had under section 23(2A)(c) of the 1978 Act and, if that appeal is successful, any right to have the application reconsidered by the Health Board in terms of that section and under regulation 17(10) of the 1995 Regulations<sup>(a)</sup> shall continue as if that section had not been repealed and as if regulations 11 and 17 of the 1995 Regulations had not been revoked.

(2) Where—

- (a) before 1st April 2004, a Health Board has decided not to select an applicant (“the unsuccessful applicant”) for a vacancy—
  - (i) under regulation 11(4) of the 1995 Regulations; or
  - (ii) following the reconsideration of the application by the Health Board after an appeal under section 23(2A)(c) of the 1978 Act has been allowed;
- (b) the unsuccessful applicant is notified of that fact—
  - (i) before that date under regulation 11(6) of those Regulations; or
  - (ii) on or after that date under paragraph (1); and
- (c) the unsuccessful applicant has (or, under paragraph (1), is deemed to have) a right of appeal under section 23(2A)(c) of the 1978 Act and the time for appealing under regulation 17 of the 1995 Regulations has not yet expired,

the time for appealing shall continue as if that section had not been repealed and as if regulation 17 of the 1995 Regulations had not been revoked.

(3) Where an unsuccessful applicant—

- (a) has, before 1st April 2004, given notice to the Scottish Ministers under regulation 17 of the 1995 Regulations of an appeal under section 23(2A)(c) of the 1978 Act but that appeal has not been determined by that date; or
- (b) has given notice of such an appeal after 31st March 2004 pursuant to paragraph (2),

then, that appeal, and, if successful, any right to have the application reconsidered by the Health Board in terms of that section and under regulation 17(10) of those Regulations shall continue as if that section had not been repealed and as if regulations 11 and 17 of those Regulations had not been revoked.

### **Entitlement to a GMS contract following appeal under article 9**

**10.**—(1) Where, following an appeal dealt with under article 9, the Health Board reconsider the application and determine that a medical practitioner should have been selected for that vacancy, that medical practitioner shall—

- (a) be added to the primary medical services performers list of the Health Board; and
- (b) subject to paragraph (2), be entitled to enter into a GMS contract with the Health Board as an individual medical practitioner or as a partner in a partnership.

(2) A person who is entitled to enter into a GMS contract under paragraph (1) shall, subject to article 12, only continue to be so entitled until—

- (a) the end of the period of 6 weeks after receiving notice of the determination of the Health Board following its reconsideration of the application; or
- (b) in a case where either party has, before the end of the period of 6 weeks referred to in sub-paragraph (a), referred the terms of the 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 end of the period of 28 days from the date on which the parties were notified of the determination of that dispute or the dispute was withdrawn,

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<sup>(a)</sup> Regulation 17 was amended by S.S.I 1999/54.

unless article 11 applies.

### **Appeal against failure of a Health Board to enter into a GMS contract**

**11.**—(1) This article applies where a medical practitioner or a partnership has—

- (a) offered to enter into a GMS contract under article 3, 4, 7, 8 or 10; and
- (b) as a result of a failure to act by the Health Board, been unable to sign such a contract before its entitlement to enter into such a contract expires pursuant to article 6, 7(4), 8(3) or 10(2).

(2) In a case to which this article applies, the prospective contractor must, if it wishes to enter into a GMS contract, apply in writing to the Scottish Ministers within the period of 14 days of the expiry of its entitlement.

(3) Any application referred to the Scottish Ministers in accordance with paragraph (2) 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 as mentioned in sub-paragraph (1)” read “ a dispute arising in connection with an application under article 11(2) of the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004”;
  - (iii) paragraph 91(3)(b) and (c) read—
    - “(b) the grounds on which the applicant claims to be entitled to enter into a general medical services contract;
    - (c) the grounds for alleging default by the Health Board.”;
  - (iv) paragraphs 91(4) and 92(2) were omitted; and
- (b) paragraph (4) of this article.

(4) The adjudicator may, when determining the application require the Health Board to enter into a GMS 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.

### **Effect of events taking place on or after 1st April 2004 on entitlement to enter into a GMS contract**

**12.** Where a person, who is entitled to enter into a GMS contract on and after 1st April 2004 under article 3, 4, 8 or 10, has not entered into a default contract with a Health Board, that person’s entitlement to enter into a GMS contract with that Health Board shall be extinguished if, on or after 1st April 2004, that person (or, in the case of a partnership, any partner in that partnership) falls within paragraph 101(2) of Schedule 5 to the 2004 Regulations unless—

- (a) the Health Board is satisfied of the matters in sub-paragraphs (3) or (5) of that paragraph; or
- (b) that person falls within sub-paragraph (2)(d) of that paragraph and the period specified in sub-paragraph (4) of that paragraph has not expired.

## 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(a).

(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—

- (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

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(a) 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).

- (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.

## PART 4

### ARRANGEMENTS UNDER REGULATION 24

#### Temporary arrangements under regulation 24 of the 1995 Regulations

15.—(1) Where—

- (a) on 31st March 2004 a Health Board is making arrangements under—
  - (i) regulation 24(2) of the 1995 Regulations<sup>(a)</sup> in the case of a medical practitioner who is suspended from the Medical Register or suspended by the Tribunal; or
  - (ii) regulation 24(7) of those Regulations;
- (b) no notice of termination of those arrangements has been given under regulation 24(4) or (13) of those Regulations which takes effect on 1st April 2004; and
- (c) the Health Board has not, on 1st April 2004, entered into—
  - (i) a GMS contract; or
  - (ii) a default contract,

with the medical practitioner on whose behalf it is making those arrangements, paragraph (2) shall apply.

(2) In the circumstances specified in paragraph (1), the Health Board shall, if the medical practitioner (or medical practitioners) with whom the temporary arrangements were made so wishes (or so wish), make contractual arrangements with that practitioner (or those practitioners), with effect from 1st April 2004, for the provision of such primary medical services as that practitioner was (or those practitioners were) providing under those arrangements to the patients to whom that practitioner was (or those practitioners were) providing those services.

(3) A contract entered into by a Health Board pursuant to paragraph (2) shall be for such period as the Health Board may agree with the contractor but may not continue beyond the date on which the medical practitioner for whom the contractual arrangements are in place ceases to be entitled to enter into a GMS contract with that Health Board.

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<sup>(a)</sup> Regulation 24 was amended by S.I. 1995/3199, S.I. 1998/660 and S.S.I. 1999/54.

(4) The contractor's list, or lists, of patients for the purpose of the contractual arrangements made pursuant to paragraph (2) shall, at the start of those arrangements, consist of the persons who, on 31st March 2004, were—

- (a) temporarily assigned to other medical practitioners under regulation 24(17A) of the 1995 Regulations; or
- (b) included on the list of the medical practitioner for whom the temporary arrangements were in place.

(5) Where the contractual arrangements are made with a person who has its own list of patients, the contractual arrangements shall require the lists to be kept separate.

## PART 5 CONTRACT TERMS

### **Additional services in default contracts**

**16.**—(1) A default contract must require the contractor to provide in core hours to its registered patients and persons accepted by it as temporary residents all of the additional services, except those which fall within paragraph (2).

(2) An additional service falls within this paragraph if—

- (a) on 31st March 2004 the equivalent of that service was not being provided to the default contractor's patients by—
  - (i) the medical practitioner who has entered into the default contract; or
  - (ii) in the case of a default contract with a partnership, any of the medical practitioners who are partners in that partnership; and
- (b) the default contractor does not wish to provide that service to its patients under a GMS contract which it intends to enter into on or after 1st April 2004 pursuant to article 3 or 4.

### **Additional services in GMS contracts under article 8 or 10**

**17.**—(1) A GMS contract which is entered into with a person who is entitled to enter into such a contract under article 8 or 10 must, subject to any right to opt out of such services included in the contract pursuant to regulation 17 of the 2004 Regulations, provide for the GMS contractor to provide in core hours to—

- (a) the GMS contractor's registered patients; and
- (b) persons accepted by it as temporary residents,

such of the additional services as are equivalent to the services specified in paragraph (2), unless, prior to the signing of the contract, the Health Board which is a prospective party to the contract has accepted in writing a written request from the GMS contractor that the GMS contract should not require it to provide all or any of those additional services.

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

- (a) the services which were specified in the notice of the vacancy published under regulation 11(2) of the 1995 Regulations(a); or
- (b) in a case in which the services required were not so specified, the services which the medical practitioner whose death or withdrawal or removal from the Health Boards medical list led to the declaration of the vacancy was providing to that practitioner's patients immediately prior to the practitioner's death or withdrawal or removal from the list.

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(a) Regulation 11 was amended by S.S.I. 1999/54.

### **Additional services in GMS contracts entered into following a default contract**

18. Where, on or after 1st April 2004, a Health Board enters into a GMS contract pursuant to article 3 or 4 with a person who, immediately before the coming into force of that GMS contract, is a party to a default contract with that Health Board, that GMS contract must require the contractor to provide in core hours to its registered patients and persons accepted by it as temporary residents such of the additional services as were required to be provided under the default contract, except to the extent that, prior to the signing of the GMS contract, the Health Board which is a prospective party to that contract has accepted in writing a written request from the contractor that the GMS contract should not require the GMS contractor to provide all or any of those additional services.

### **Out of hours services in default contracts**

19.—(1) Subject to paragraph (6), a default contract must require the contractor to provide the services specified in paragraph (2) throughout the out of hours period unless the contract is, at the date on which it is signed, with—

- (a) a medical practitioner who was, on 31st March 2004, relieved of responsibility for providing services to the practitioner's patients under paragraph 17(2) of Schedule 1 to the 1995 Regulations; or
- (b) a partnership in which all of the partners who are general medical practitioners were on 31st March 2004, relieved of responsibility for providing services to their patients under that paragraph.

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

- (a) services which would be essential services if provided in core hours; and
- (b) such additional services as are included in the contract pursuant to article 16.

(3) Where a default contract is with—

- (a) an individual medical practitioner who was on 31st March 2004, responsible for providing services during all or part of the out of hours period to the patients of a medical practitioner who meets the requirements in paragraph (4); or
- (b) a partnership in which at least one of the partners was on 31st March 2004, a medical practitioner responsible for providing such services to such patients,

that default contract must require the contractor to continue to provide such services to the patients of the exempt contractor for as long as the default contract subsists.

(4) The requirements referred to in paragraph (3)(a) are that—

- (a) the medical practitioner was relieved of responsibility for providing services to the practitioner's patients under paragraph 17(2) of Schedule 1 to the 1995 Regulations; and
- (b) the medical practitioner—
  - (i) has entered or intends to enter into a default or GMS contract which does not include out of hours services pursuant to paragraph (1)(a) or regulation 30(1)(b)(i) of the 2004 Regulations;
  - (ii) is a partner in a partnership which has entered or intends to enter into a default or GMS contract which does not include out of hours services pursuant to paragraph (1)(b) or regulation 30(1)(b)(ii) of the 2004 Regulations; or
  - (iii) is a legal and beneficial shareholder in a company which has entered or intends to enter into a GMS contract which does not include out of hours services pursuant to regulation 30(1)(b)(iii) of the 2004 Regulations.

(5) In this article “exempt contractor” means a contractor who is exempt from providing out of hours services pursuant to paragraph (1)(a) or (b) or regulation 30(1)(b) of the 2004 Regulations.

(6) Nothing in this article shall require a default contractor to provide out of hours services if, in the reasonable opinion of the 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 the patient could obtain such services during core hours.

**Out of hours services in GMS contracts to patients of exempt contractors who have entered into a default contract**

**20.**—(1) Where a GMS contract is with—

- (a) an individual medical practitioner who was on 31st March 2004 responsible for providing services during all or part of the out of hours period to the patients of a medical practitioner who meets the requirements in paragraph (2);
- (b) a partnership in which at least one of the partners was on 31st March 2004, a medical practitioner responsible for providing such services to such patients; or
- (c) a company in which one or more of the shareholders was on 31st March 2004, a medical practitioner responsible for providing such services to such patients,

the GMS contract with that GMS contractor must require it to continue to provide such services to the patients of the exempt contractor until the happening of one of the events in paragraph (3).

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

- (a) the medical practitioner was relieved of responsibility for providing services to the practitioner's patients under paragraph 17(2) of Schedule 1 to the 1992 Regulations; and
- (b) the medical practitioner—
  - (i) has entered or intends to enter into a default contract which does not include out of hours services pursuant to article 19(1)(a); or
  - (ii) is a partner in a partnership which has entered or intends to enter into a default contract which does not include out of hours services pursuant to article 19(1)(b).

(3) The events referred to in paragraph (1) are—

- (a) the exempt contractor's default contract has come to an end and not been succeeded by a GMS contract which does not include out of hours services pursuant to regulation 30(1)(b) of the 2004 Regulations;
- (b) the GMS contractor has opted out of the provision of out of hours services in accordance with paragraph 4 or 5 of Schedule 2 to the 2004 Regulations; or
- (c) the Health Board (and, if it is different, the Health Board with which the exempt contractor holds its contract) has or have agreed in writing that the GMS contractor need no longer provide some or all of those services to some or all of those patients.

(4) In this article "exempt contractor" means a contractor who is exempt from providing out of hours services pursuant to article 19(1)(a) or (b).

**Modification of certain out of hours provisions in the 2004 Regulations during the existence of default contracts**

**21.** For as long as default contracts exist—

- (a) paragraph 63(2)(a) of Schedule 5 to the 2004 Regulations (sub-contracting of out of hours services) shall be read as if the reference to a GMS contract included a reference to a default contract; and
- (b) Schedule 6 to those Regulations (out of hours services) shall be read as if—
  - (i) the reference to a GMS contract in paragraph 1(5) included a reference to a default contract, and
  - (ii) in paragraph 5(1)(a), after "contract" there were included "or, as the case may be, default contract".

## **Modification of certain out of hours provisions in the 2004 Regulations during the existence of contractual arrangements made under article 15**

**22.** For as long as contractual arrangements made under article 15 exist–

(a) paragraph 63(2) of Schedule 5 to the 2004 Regulations (sub-contracting of out of hours services) shall be read as if, after paragraph (b), there were inserted–

“(bb) a person who is a party to contractual arrangements made under article 15 of the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004;”;

(b) Schedule 6 to those Regulations (out of hours services) shall be read as if–

(i) in paragraph 1(5), after “agreement” there were included “, or who is a party to contractual arrangements made under article 15 of the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004;”;

(ii) in paragraph 5(1)(a), after “agreement” there were included “or to be a party to contractual arrangements made under article 15 of the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004.”.

## **Effect on a GMS contract of approval of an out of hours arrangement made by a default contractor**

**23.**—(1) Where, under the terms of the default contract which are equivalent to Schedule 6 to the 2004 Regulations, a Health Board has approved an out of hours arrangement made by a default contractor with a person who holds a GMS contract, the Health Board with whom that person holds the GMS contract and that GMS contractor shall be deemed to have agreed a variation of their contract which has the effect of including in it, from the date on which the out of hours arrangement commences, and for so long as that arrangement is not suspended or terminated, the services covered by that arrangement.

(2) The term of the GMS contract which gives effect to paragraph 94(1) of Schedule 5 to the 2004 Regulations shall not apply to a variation made under paragraph (1).

(3) In this article, “out of hours arrangement” means an arrangement made under the term of the default contract which is equivalent to paragraph 1(2) of Schedule 6 to the 2004 Regulations.

## **Services to patients not registered with the contractor in default contracts and GMS contracts**

**24.**—(1) Where a medical practitioner who meets the requirements in paragraph (2)–

(a) enters into–

(i) a default contract; or

(ii) a GMS contract pursuant to article 3;

(b) is a partner in a partnership which enters into–

(i) a default contract; or

(ii) a GMS contract pursuant to article 4; or

(c) is a legal and beneficial shareholder in a company which enters into a GMS contract under which services are to be provided from 1st April 2004,

that contract must require the contractor to provide such of the additional services as are equivalent to those of the services listed in paragraph (2)(a) to (c), to the patients to whom the medical practitioner was providing those services on 31st March 2004 except, in the case of a GMS contract, to the extent that the contractor is not required to provide the additional service concerned to its registered patients under regulation 29 of the 2004 Regulations.

(2) The requirements referred to in paragraph (1) are that, on 31st March 2004 the medical practitioner is providing, as part of general medical services under section 19 of the 1978 Act to a patient who is not recorded as being on the practitioner’s list of patients–

- (a) child health surveillance services under regulation 29 of the 1995 Regulations(a);
- (b) contraceptive services under regulation 30 of those Regulations(b); or
- (c) maternity medical services under regulation 31 of those Regulations(c).

(3) The services required to be provided under this article are in addition to any additional services which are required to be provided to the contractor's registered patients–

- (a) in a default contract under article 16; or
- (b) in a GMS contract under regulation 29 of the 2004 Regulations.

(4) Nothing in this article shall prevent a contractor from subsequently terminating its responsibility for a patient not registered with the contractor under the term of its contract which gives effect to paragraph 28 of Schedule 5 to the 2004 Regulations (or the equivalent term of a default contract).

(5) A requirement in a GMS contract to provide any additional services under this paragraph to patients not registered with the contractor shall cease on the date on which any opt out of that additional service in respect of the GMS contractor's own registered patients commences pursuant to the terms of the GMS contract which give effect to Schedule 2 to the 2004 Regulations.

(6) Where paragraph (5) applies, the requirement to inform patients of opt outs in the term of the GMS 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 paragraph as it applies to the GMS contractor's own registered patients.

#### **Services to patients not registered with the contractor in GMS contracts entered into following a default contract**

**25.**—(1) Where, on or after 1st April 2004, a Health Board enters into a GMS contract pursuant to articles 3 or 4 with a person who, immediately before the coming into force of that contract, is a party to a default contract, that GMS contract shall require the contractor to provide to patients who are not included on the contractor's list of patients such of the additional services as were provided to those patients under that default contract, except to the extent that the contractor is not required to provide the additional service concerned to its registered patients under article 18.

(2) The services required to be provided under this article are in addition to any additional services which are required to be provided to the contractor's registered patients under article 18.

(3) Paragraphs (4) to (6) of article 24 shall apply to additional services included in a GMS contract pursuant to this paragraph.

#### **Premises for the purposes of default contracts and GMS contracts**

**26.**—(1) Where a medical practitioner who, on 31st March 2004, is providing general medical services under section 19 of the 1978 Act(d)–

- (a) enters into–
  - (i) a default contract; or
  - (ii) a GMS contract pursuant to article 3;
- (b) is a partner in a partnership which enters into–
  - (i) a default contract; or
  - (ii) a GMS contract pursuant to article 4; or

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(a) Regulation 29 was amended by S.S.I. 1999/54.

(b) Regulation 30 was amended by S.S.I. 1999/54.

(c) Regulation 31 was substituted by S.I. 1997/943 and amended by S.I. 1998/660 and S.S.I. 1999/54.

(d) 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, para 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 Primary Medical Services (Scotland) Act 2004 (asp 1), schedule, paragraph 1(7).

- (c) is a legal and beneficial shareholder in a company which enters into a GMS contract under which services are to be provided from 1st April 2004,

the practice premises specified in that contract at its commencement must, unless the Health Board agrees otherwise in writing, be those specified in paragraph (2).

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

- (a) in the case of a contract with an individual medical practitioner, all the premises which, on 31st March 2004, were approved (whether with or without conditions) by the Health Board or the Scottish Ministers under paragraph 24 or 27 of Schedule 1 to the 1995 Regulations in respect of that practitioner and whose approval had not been withdrawn;
- (b) in the case of a contract with a partnership, all the premises which, on 31st March 2004 were approved (whether with or without conditions) by the Health Board or the Scottish Ministers under paragraph 24 or 27 of Schedule 1 to the 1995 Regulations in respect of any of those practitioners and whose approval had not been withdrawn; or
- (c) in the case of a contract with a company, all the premises which, on 31st March 2004 were approved (whether with or without conditions) by the Health Board or the Scottish Ministers under paragraph 24 or 27 of Schedule 1 to the 1995 Regulations in respect of any of the medical practitioners who are legal and beneficial shareholders in that company and whose approval had not been withdrawn.

(3) The inclusion of any particular practice premises in a default or GMS contract pursuant to paragraph (1) is without prejudice to the contract also including a plan in respect of those premises pursuant to regulation 18(3) of the 2004 Regulations.

#### **Practice area for the purposes of default contracts**

**27.** The area specified at its commencement in a default contract as the area as respects which persons resident in it will, subject to any other terms of the contract relating to patient registration, be entitled to register with the contractor or seek acceptance by it as a temporary resident must be—

- (a) in the case of a default contract with an individual medical practitioner, the area which was that practitioner's practice area on 31st March 2004 for the purposes of the practitioner's arrangements under section 19 of the 1978 Act; or
- (b) in the case of a default contract with a partnership, the area which covers all of the areas which were the partnership's practice areas on 31st March 2004 for the purposes of their arrangements under section 19 of the 1978 Act.

#### **Lists of patients for default contracts and GMS contracts**

**28.—**(1) Subject to article 30(1), where a medical practitioner who, on 31st March 2004 is providing general medical services under section 19 of the 1978 Act—

- (a) enters into—
  - (i) a default contract; or
  - (ii) a GMS contract pursuant to article 3;
- (b) is a partner in a partnership which enters into—
  - (i) a default contract; or
  - (ii) a GMS contract pursuant to article 4; or
- (c) is a legal and beneficial shareholder in a company which enters into a GMS contract under which services are to be provided from 1st April 2004,

the Health Board must include on the contractor's list of patients for the purposes of that contract the persons specified in paragraph (2).

(2) The persons referred to in paragraph (1) are the patients who, on 31st March 2004—

- (a) were recorded by the Health Board pursuant to regulation 27 of the 1995 Regulations as being on the list of—

- (i) the contractor where the contractor is an individual medical practitioner;
- (ii) any of the two or more medical practitioners who are partners in a partnership which has entered into the contract; or
- (iii) any of the medical practitioners who are legal and beneficial shareholders in the company which has entered into the contract,

unless, in the case of a GMS contract, they live outside the practice area as specified in that contract and were not included on the medical practitioner's list of patients by virtue of an assignment under regulation 4 of the Choice Regulations<sup>(a)</sup>;

- (b) had been assigned to the contractor or to any of the persons listed in paragraph (2)(a)(ii) or (iii) under regulation 4 of the Choice Regulations but not yet included in the list referred to in sub-paragraph (a).

#### **Lists of patients for GMS contracts entered into following a default contract**

**29.** Where, after 1st April 2004, a Health Board enters into a GMS contract pursuant to article 3 or 4 with a person who, immediately before the coming into force of that GMS contract, is a party to a default contract, it must include on the contractor's list of patients, for the purposes of that GMS contract—

- (a) all the patients who, on the date immediately before the coming into force of the GMS contract, were on the contractor's list of patients for the purposes of the default contract, unless they live outside the practice area as specified in the GMS contract and were not included on the list of patients by virtue of an assignment under regulation 4 of the Choice Regulations or under the default contract; and
- (b) any patient who had been assigned to the default contractor in accordance with the terms of the default contract but not yet included in the list referred to in sub-paragraph (a).

#### **Lists of patients for default contracts and GMS contracts entered into following arrangements under regulation 24 of the 1995 Regulations or article 15**

**30.—(1)** Where, on or after 1st April 2004, a Health Board enters into a default contract or a GMS contract pursuant to article 3 with an individual medical practitioner for whom, or pursuant to article 4 with a partnership, one of the partners for whom, immediately prior to the commencement of that contract, it had in place temporary arrangements under regulation 24(2) or (7) of the 1995 Regulations, it must include on the contractor's list of patients at the start of that default, or, as the case may be, GMS contract, all of the patients who, on the date on which the temporary arrangements came to an end were—

- (a) temporarily assigned to other medical practitioners under regulation 24(17A) of the 1995 Regulations<sup>(b)</sup>; or
- (b) included on the list of the medical practitioner for whom the temporary arrangements were in place,

apart from, in the case of a GMS contract, any such patient who lives outside the practice area as specified in that contract and who became registered with either the medical practitioner for whom the temporary arrangements are in place, or the medical practitioner or practitioners providing the temporary arrangements, otherwise than as the result of an assignment under regulation 4 of the Choice Regulations.

(2) Where, on or after 1st April 2004, a Health Board enters into a GMS contract pursuant to article 3 with an individual medical practitioner for whom, or pursuant to article 4 a partnership, one of the partners for whom, immediately prior to the commencement of that contract, it had in place contractual arrangements under article 15, it must include on the contractor's list of patients at the start of that GMS contract all of the patients who were, on the date on which those contractual arrangements came to an end, on the list or lists of patients prepared and maintained by

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<sup>(a)</sup> Regulation 4 was amended by S.S.I. 2001/ 85 and 191.

<sup>(b)</sup> Regulation 24 was amended by S.I. 1995/3199, 1998/660 and S.S.I. 1999/54.

the Health Board for the purpose of those contractual arrangements, apart from any such patient who lives outside the practice area as specified in the GMS contract and whose inclusion in the list of patients did not result from an assignment under regulation 4 of the Choice Regulations or under the contractual arrangements under article 15.

#### **Status of contractor's list of patients for default contracts**

**31.**—(1) The contractor's list of patients for the purposes of a default contract shall, for as long as that contract subsists, be open to applications from patients in accordance with the terms of the default contract, except in the circumstances specified in paragraph (2).

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

(a) on 31st March 2004—

- (i) in the case of a contract with an individual medical practitioner, that practitioner is exempt from the liability to have persons (other than a specified person) assigned to the practitioner under regulation 4(8) of the Choice Regulations; or
- (ii) in the case of a contract with a partnership, all the partners in that partnership are exempt from such liability; and

(b) the Health Board has determined, in the light of the circumstances in which it granted the exemption or exemptions referred to in paragraph (a), that the contractor's list of patients should, from the commencement of the default contract, be closed to applications for inclusion in the list other than from the immediate family members of registered patients.

(3) Where a contractor's list of patient is to be closed pursuant to paragraph (2), the default contract with that contractor shall contain terms which have the same effect as paragraphs (4) and (5).

(4) The contractor's list of patients shall remain closed for as long as the contract subsists unless the contractor notifies the Health Board in writing of its intention to re-open the list before the end of that period and of the date on which it will re-open.

(5) A contractor which has re-opened its list under paragraph (4) shall not be entitled to close it again during the subsistence of the default contract.

#### **Status of contractor's list of patients for GMS contracts**

**32.**—(1) Where a medical practitioner who, on 31st March 2004 is providing general medical services under section 19 of the 1978 Act—

- (a) enters into a GMS contract pursuant to article 3;
- (b) is a partner in a partnership which enters into a GMS contract pursuant to article 4; or
- (c) is a legal and beneficial shareholder in a company which enters into a GMS contract under which services are to be provided from 1st April 2004 ,

the contractor's list of patients for the purposes of that contract shall, on the date on which the contract comes into force, be open to applications from patients in accordance with the term of the contract which gives effect to paragraph 15 of Schedule 5 to the 2004 Regulations except in the circumstances specified in paragraph (2).

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

(a) on 31st March 2004—

- (i) in the case of a contract with an individual medical practitioner, that practitioner is exempt from the liability to have persons (other than a specified person) assigned to the practitioner under regulation 4(8) of the Choice Regulations;
- (ii) in the case of a contract with a partnership, all of the partners in that partnership who are medical practitioners are exempt from such liability;
- (iii) in the case of a contract with a company, all of the medical practitioners who are legal and beneficial shareholders in that company are exempt from such liability; and

- (b) the Health Board has determined, in the light of the circumstances in which it granted the exemption or exemptions referred to in paragraph (a), that the contractor's list of patients should, from the commencement of the contract, be closed to applications for inclusion in the list other than from the immediate family members of registered patients.

(3) Where a contractor's list of patients is to be closed pursuant to paragraph (2), the GMS contract with that contractor shall contain terms which have the same effect as paragraphs (4) and (5).

(4) The contractor's list of patients shall remain closed for the period of twelve months from the date on which the contract comes into force unless the contractor notifies the Health Board in writing of its intention to re-open the list before the end of that period and of the date on which it will re-open.

(5) A contractor which has re-opened its list under paragraph (4) shall not be entitled to close it again during the period of twelve months referred to in paragraph (4) except under the term of its GMS contract which gives effect to paragraph 29 of Schedule 5 to the 2004 Regulations.

### **Dispute resolution procedures for default contracts**

**33.**—(1) Any dispute arising out of or in connection with the default contract, except matters dealt with under the complaints procedure contained in that contract, may be referred for consideration and determination to the Scottish Ministers if—

- (a) the Health Board so wishes and the contractor has agreed in writing; or
- (b) the contractor so wishes (even if the Health Board does not agree).

(2) Any dispute referred to the Scottish Ministers under paragraph (1) shall be determined in accordance with the NHS dispute resolution procedure as if in Schedule 5 to the 2004 Regulations—

- (a) paragraph 91(1) and (2) were omitted; and
- (b) in paragraph 91(3) “sub-paragraph (1)” and in paragraph 92(2) “paragraph 90(1)”,

read “paragraph (1) of article 33 of the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004”.

### **Additional ground for termination of a GMS contract**

**34.** Where a Health Board has entered into a GMS contract—

- (a) following a default contract; or
- (b) pursuant to an entitlement under Part 2 of this Order, on or after 1st April 2004 other than following a default contract,

paragraph 101 of Schedule 5 to the 2004 Regulations shall apply to that contract as if it enabled the Health Board to serve notice of termination on the contractor on the grounds of a person falling within sub-paragraph (2)(d) at any time after 31st March 2004.

## **PART 6**

### **FINANCIAL ARRANGEMENTS**

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

**35.** In this Part—

- (a) “contractor” means a person entering into, or who has entered into, a default contract with a Health Board;

- (b) “GMS Statement of Financial Entitlements” means any directions given by the Secretary of State under section 17M of the 1978 Act<sup>(a)</sup>, and expressions used both in article 36(2) to (6) and in the GMS Statement of Financial Entitlements, unless they are defined elsewhere in this Order, have the same meaning as in the GMS Statement of Financial Entitlements;
- (c) “Premises Costs Directions” means Primary Medical Services (Premises Development Grants, Improvement Grants and Costs) Directions 2004 given by the Scottish Ministers under section 17M of the 1978 Act, and expressions used both in article 36(7) and in the Premises Costs Directions, unless they are defined elsewhere in this Order, have the same meaning as in the Premises Costs Directions; and
- (d) “Statement of Fees and Allowances” means the statement determined and published by the Scottish Ministers under regulation 35 of the 1995 Regulations<sup>(b)</sup>, as that statement had effect on 31st March 2004.

### Payments under default contracts

**36.**—(1) Subject to the following provisions of this Part, where a Health Board enters into a default contract, the only payments that are to be made by the Health Board to the contractor under that default contract are the payments mentioned in this article (although this is without prejudice to any powers that the Health Board has to make payments to the contractor under other arrangements).

(2) In respect of each complete month for which a default contract has effect, the Health Board must pay to a contractor under its default contract a reasonable approximation of one twelfth of what would have been the contractor’s final global sum equivalent if—

- (a) it had entered into a GMS contract with the Health Board on 1st April 2004; and
- (b) a calculation had, as a consequence, been made of its final global sum equivalent by the Health Board in accordance with Part 1 of the GMS Statement of Financial Entitlements (global sum and minimum practice income guarantee),

minus, if appropriate, a monthly deduction in respect of superannuation.

(3) If, while it has a default contract—

- (a) a contractor engages a locum to cover for the absence of a GP performer; and
- (b) had the contractor entered into a GMS contract with the Health Board on 1st April 2004, the Health Board would have been required to pay for, or to contribute towards the cost of, that locum by virtue of Part 4 of the GMS Statement of Financial Entitlements (payments for specific purposes),

the Health Board must pay to the contractor under its default contract a reasonable approximation of the amount that the Health Board would have been required to pay towards the cost of that locum by virtue of Part 4 of the GMS Statement of Financial Entitlements.

(4) In respect of each complete quarter of the financial year for which a default contract has effect, the Health Board must pay to a contractor under its default contract a reasonable approximation of any quarterly seniority payment that would have been payable, at the end of that quarter, in respect of any GP provider who is a partner in the contractor if—

- (a) the contractor had entered into a GMS contract with the Health Board on 1st April 2004; and
- (b) a calculation had, as a consequence, been made of a reasonable approximation of the quarterly seniority payment in accordance with Parts 4 and 6 of the GMS Statement of Financial Entitlements (payments for specific purposes, and supplementary provisions).

(5) If, in the period during which a default contract has effect, the contractor claims from a Health Board a payment in respect of—

- (a) a standard, additional or further payment under the golden hello scheme;

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<sup>(a)</sup> Section 17M was inserted into the 1978 Act by section 4 of the Primary Medical Services (Scotland) Act 2004.

<sup>(b)</sup> Regulation 35 was amended by S.I. 1998/1600, 1999/749 and S.S.I. 1999/54 and 2002/111.

- (b) sessions undertaken by a member of the doctors' retainer scheme;
- (c) an educational allowance payment; or
- (d) dispensing services,

to which the contractor would have been entitled under Part 4 of the GMS Statement of Financial Entitlements (payments for specific purposes), had the contractor entered into a GMS contract with the Health Board on 1st April 2004, and which would, in those circumstances, have fallen due by virtue of that Part, the Health Board must pay to the contractor under the default contract the amount that the Health Board would have been required to pay to it by virtue of Part 4 of the GMS Statement of Financial Entitlements, had the contractor entered into a GMS contract with the Health Board on 1st April 2004.

(6) If, in the period during which a default contract has effect, the contractor claims from a Health Board a payment—

- (a) towards the cost of building new premises to be used for providing medical services;
- (b) towards the cost of purchasing premises to be used for providing medical services;
- (c) towards the cost of the development of premises which are used, or are to be used, for providing medical services;
- (d) in the form of, or in the form of part of, a premises improvement grant; or
- (e) representing the reasonable costs of information technology maintenance or minor upgrades,

to which the contractor would have been entitled under Part 5 of the GMS Statement of Financial Entitlements (certain premises and costs), had the contractor entered into a GMS contract with the Health Board on 1st April 2004, and which would, in those circumstances, have fallen due by virtue of that Part, the Health Board must pay to the contractor under the default contract the amount that the Health Board would have been required to pay to it by virtue of Part 5 of the GMS Statement of Financial Entitlements, had the contractor entered into a GMS contract with the Health Board on 1st April 2004.

(7) If, in the period during which a default contract has effect, the contractor claims from a Health Board, in respect of its recurring premises costs—

- (a) payments in respect of the current market rent or actual lease rent of practice premises;
- (b) payments in respect of the lease costs of equipment, furniture or furnishings;
- (c) payments in respect of borrowing costs relating to practice premises;
- (d) notional rent payments or notional rent supplements in respect of practice premises; or
- (e) payments in respect of business rates, water and sewage charges, charges in respect of the collection and disposal of clinical waste or utilities and services charges,

in circumstances where the Health Board must, by virtue of Part 6 of the Premises Costs Directions (supplementary provisions), continue to provide financial assistance to the contractor by way of meeting or contributing towards the recurring premises costs relating to which the claim for payment is made, the Health Board must pay to the contractor under its default contract any payment it is required to pay pursuant to the Premises Costs Directions, to meet or contribute towards those recurring premises costs.

(8) If, in the period during which a default contract has effect, the contractor claims from a Health Board a payment in respect of patients who are not registered patients but in relation to whom the contractor—

- (a) was (or a partner in the contractor was), on 31st March 2004, providing the following services—
  - (i) child health surveillance services;
  - (ii) contraceptive services;
  - (iii) maternity medical services; or
  - (iv) out of hours services;

- (b) was, (or a partner in the contractor was), on 31st March 2004, entitled to receive payments for providing those services from the Health Board under the Statement of Fees and Allowances; and
- (c) is required, by virtue of this Order, to continue to provide those services under its default contract,

the Health Board must pay to the contractor under its default contract a reasonable amount in respect of those services.

### **Due dates for payments under a default contract**

#### **37. Payments under–**

- (a) article 36(2) are to fall due on the last day of the month to which they relate;
- (b) article 36 (3) are to fall due–
  - (i) one month after the end of the month in respect of which the locum costs were incurred; or
  - (ii) one month after the end of the month in which the claim in respect of the locum costs is submitted,
 whichever is the later;
- (c) article 36(4) are to fall due on the last day of the quarter to which they relate;
- (d) article 36(5) or (6) are to fall due on the date on which they would have fallen due by virtue of Part 4 of the GMS Statement of Financial Entitlements (payments for specific purposes), had the contractor entered into a GMS contract with the Health Board on 1st April 2004;
- (e) article 36(7) are to fall due on the date on which they fall due under the arrangements made, pursuant to the Premises Costs Directions, to make the payments;
- (f) article 36(8) are to fall due on the date that the Health Board sets (having regard to the frequency with which equivalent payments were made under the Statement of Fees and Allowances) for making the payments,

but the Health Board may make payments on account in respect of any of those payments before they fall due.

### **Part payment of periodic payments where a contractor does not enter into a GMS contract**

**38.** If a contractor does not enter into a GMS contract which takes effect immediately after its default contract ceases to have effect, and–

- (a) its default contract terminates on a day other than the last day of a month, the Health Board must pay to the contractor a proportion of any payment that would have been payable to the contractor under–
  - (i) article 36(2); or
  - (ii) article 36(5) to (7), in the case of periodic payments under article 36(5) to (7) that fall due monthly,
 had the contract terminated on the last day of a month, and that proportion is to be calculated by multiplying that payment by the fraction produced by dividing the number of days in the month during which the contractor was providing services under the default contract by the total number of days in the month;
- (b) its default contract terminates on any day other than the last day of a quarter of the financial year, the Health Board must pay to the contractor a proportion of any payment that would have been payable to the contractor under–
  - (i) article 36(4); or
  - (ii) article 36(5) to (7), in the case of periodic payments under article 36(5) to (7) that fall due quarterly,

had the contract terminated on the last day of a quarter of the financial year, and that proportion is to be calculated by multiplying that payment by the fraction produced by dividing the number of days in the quarter during which the contractor was providing services under the default contract by the total number of days in the quarter.

#### **Conditions, set offs etc. relating to payments under a default contract**

**39.**—(1) Payments are only payable under article 36 or 38 in circumstances where the contractor has made available to the Health Board any information which the Health Board does not have but needs, and which the contractor either has or could reasonably be expected to provide, in order for the Health Board to be able to calculate the payment.

(2) The obligations to make payments under articles 36 and 38 are subject to any right that the Health Board may have to set off against any amount payable to the contractor under the default contract any amount—

- (a) that is owed by the contractor to the Health Board under the default contract; or
- (b) that the Health Board may withhold or deduct as a contract sanction, in accordance with the terms of the default contract.

(3) A Health Board may—

- (a) require repayment of any amount that has been paid to a contractor under its default contract but to which the contractor was not entitled; and
- (b) set off against any amount payable under a default contract an amount that has been paid to a contractor under its default contract but to which the contractor was not entitled.

#### **Effect of contractors entering into a GMS contract**

**40.** If a contractor who has entered into a default contract thereafter enters into a GMS contract which takes effect immediately after its default contract ceases to have effect, the Health Board that is a party to the GMS contract must ensure that the GMS contract—

- (a) contains a condition to the effect that all rights to further payments under the default contract are surrendered (they are hereby extinguished);
- (b) takes effect, for payment purposes, on 1st April 2004;
- (c) contains a condition to the effect that any payment that has been made under the default contract that could have been made, had the contractor entered into a GMS contract on 1st April 2004—
  - (i) as a payment on account under the GMS contract, shall be treated as a payment on account under the GMS contract (and for these purposes any payment of one twelfth of a final global sum equivalent under the default contract shall be treated as a payment on account in respect of a payable global sum monthly payment);
  - (ii) as a payment under the GMS contract, shall be treated as a payment under the GMS contract,

and accordingly any condition that attaches, or is to be attached, to such a payment, when made under a GMS contract, by virtue of the GMS Statement of Financial Entitlements or the Premises Costs Directions, is attached to that payment; and

- (d) where appropriate, contains a condition to the effect that any payment that has been made under the default contract pursuant to article 36(8) is set off, equitably, against any payment for equivalent services provided under the GMS contract.

#### **Persons not able to enter into a default contract**

**41.**—(1) Where a person to whom article 13(2) or (3) applies is unable to enter into a default contract because the Health Board with whom that person would have entered into a default contract is not satisfied of the matters specified in paragraphs (5) or (6) of that article or because that person is performing relevant service in the armed forces, that Health Board may pay to that

person any payment that that person would have been entitled to receive under the default contract, had that person been able to enter into a default contract, or may pay that person a proportion thereof (having regard, amongst other matters, to the cost of any temporary arrangements made by the Health Board for the provision of primary medical services to that person's patients) for as long as that person is not able to enter into—

- (a) a GMS contract; or
- (b) a default contract following an appeal under article 13(9),

but that person remains entitled to enter into a GMS contract.

(2) Where a person to whom payments have been made by a Health Board by virtue of paragraph (1) enters into a default contract or a GMS contract, the Health Board that is a party to the contract must ensure that the contract—

- (a) contains a condition to the effect that all rights to further payments under paragraph (1) are surrendered (they are hereby extinguished);
- (b) takes effect, for payment purposes, on 1st April 2004;
- (c) in the case of a GMS contract, contains a condition to the effect that any payment that has been made under paragraph (1) that could have been made—
  - (i) as a payment on account under the GMS contract, shall be treated as a payment on account under the GMS contract (and for these purposes any payment of one twelfth of a final global sum equivalent made under paragraph (1) shall be treated as a payment on account in respect of a payable global sum monthly payment);
  - (ii) as a payment under the GMS contract, shall be treated as a payment under the GMS contract,

and accordingly any condition that attaches, or is to be attached, to such a payment, when made under a GMS contract, by virtue of the GMS Statement of Financial Entitlements or the Premises Costs Directions, is attached to that payment; and

- (d) in the case of a default contract, contains a condition to the effect that any payment that has been made under paragraph (1) that could have been made as a payment under the default contract, had the contractor entered into the default contract on 1st April 2004, shall be treated as a payment under the default contract, and accordingly any condition attached to such a payment by virtue of this Order is attached to that payment.

### **Claims under the Statement of Fees and Allowances**

**42.**—(1) Notwithstanding the repeal of the 1995 Regulations<sup>(a)</sup>, claims may still be made for payments under the Statement of Fees and Allowances by any person who may be entitled to such a payment, provided that the claim is made within any period stipulated in the Statement of Fees and Allowances as being the period during which a claim for the payment is to be made.

(2) If a claim is made outside that stipulated period, the Health Board may extend that period for up to six years from the date on which the circumstances which gave rise to the claim first arose.

(3) If the Health Board refuses the claim, or considers that the amount to be paid out in respect of the claim is significantly lower than the amount claimed, the arrangements for appeals set out in paragraph 80 of the Statement of Fees and Allowances are to apply.

*MALCOLM CHISHOLM*  
A member of the Scottish Executive

St Andrew's House,  
Edinburgh  
25th March 2004

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<sup>(a)</sup> S.I. 1995/416, repealed by S.S.I. 2004/114.

## **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 sets out transitional arrangements to cover the replacement of arrangements for general medical services under section 19 of the National Health Service (Scotland) Act 1978 (c.29) (“the 1978 Act”) with general medical services contracts (“GMS contracts”) under section 17J of that Act (as inserted by section 4 of the 2004 Act). It also contains other ancillary provisions relating to this.

Part 2 of the Order sets out the circumstances in which those providing general medical services under section 19 of the 1978 Act on 31st March 2004 will be entitled, on and after 1st April 2004, to enter into a GMS contract with a Health Board (articles 3 and 4). If they do not enter into such a contract on 1st April 2004, they will, in general, only continue to be so entitled if they enter into a default contract with the Board and if the GMS contract is signed on or before 30th September 2004 (article 6).

Part 3 of the Order makes provision as to the circumstances in which a Health Board must enter into a default contract with a practitioner or a partnership and the duration of such a contract (articles 13 and 14).

Both Parts 2 and 3 set out the arrangements for medical practitioners who are suspended, unable to provide services under a contract on grounds of physical or mental ill-health or performing relevant service in the armed forces. They also provide a right of appeal to the Scottish Ministers where a Health Board refuses to enter into a GMS or a default contract because it is not satisfied that the criteria relating to suspended or unfit medical practitioners are met or where the Health Board has failed to enter into a GMS contract by the time a person’s entitlement to such a contract expires (articles 5, 11 and 13).

Part 4 provides for the continuation of arrangements by the Health Board to provide primary medical services to the patients of medical practitioners who are suspended or unable to perform services on the grounds of physical or mental ill-health (article 15).

Part 5 specifies certain terms for default contracts and certain types of GMS contracts. Articles 16 to 25 specify the services which must be provided in default contracts and certain types of GMS contracts. Articles 26 and 27 prescribe the premises which must be specified in default and GMS contracts and the practice area which must be specified in default contracts. Articles 28 to 32 specify who must be included in the list of patients for default contracts and certain types of GMS contracts and whether that list must be open or closed to applications from patients. Article 33 deals with the procedure for dispute resolution in default contracts. Article 34 provides for certain types of GMS contracts to be capable of termination on the basis of a dismissal from employment which occurred between 1st April 2004 and the commencement of the GMS contract.

Part 6 sets out the financial arrangements for default contracts, for GMS contracts which follow default contracts and for persons unable to enter into default contracts.