

2004 No. 1772

NATIONAL HEALTH SERVICE, ENGLAND

**The General Medical Services (Transitional Measure Relating to
Non-Clinical Partners) Order 2004**

| | |
|-------------------------------|------------------------|
| <i>Made</i> - - - - | <i>8th July 2004</i> |
| <i>Laid before Parliament</i> | <i>13th July 2004</i> |
| <i>Coming into force</i> - - | <i>3rd August 2004</i> |

The Secretary of State for Health, in exercise of the powers conferred upon him by section 200 of the Health and Social Care (Community Health and Standards) Act 2003(a), and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation, commencement, application and interpretation

1.—(1) This Order may be cited as the General Medical Services (Transitional Measure Relating to Non-Clinical Partners) Order 2004 and shall come into force on 3rd August 2004.

(2) This Order applies in relation to England only.

(3) In this Order—

“the 1977 Act” means the National Health Service Act 1977(b);

“default contract” means a contract under article 13 of the General Medical Services Transitional and Consequential Provisions Order 2004(c) (entitlement to a contract under section 176(3) of the Act);

“health care professional” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002(d);

“non-clinical partner” means a partner in a partnership who is neither a registered medical practitioner nor a health care professional;

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

“relevant non-clinical partner” shall be construed in accordance with article 2; and

“sole practitioner” means a registered medical practitioner who, prior to 1st April 2004, provided services under section 29 of the 1977 Act(f) (arrangements and regulations for

(a) 2003 c.43.

(b) 1977 c.49.

(c) S.I.2004/433.

(d) 2002 c.17.

(e) 1997 c.46.

(f) Section 29 was repealed on 1st April 2004 but before that repeal it had been amended by: the Health Services Act 1980 (c.53), section 7; the Health and Social Services and Social Security Adjudications Act 1983 (c.41), Schedule 6, paragraph 2; the Medical Act 1983 (c.54), Schedule 5, paragraph 16(a); S.I. 1985/39, article 7; the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 18; the Medical (Professional Performance) Act 1995 (c.51), the Schedule, paragraph 28; the National

general medical services) but not as part of an association of registered medical practitioners who, as a group practice, co-ordinated their respective obligations to provide services under the said section 29.

Relevant non-clinical partners

2. Where—

- (a) a Primary Care Trust enters or has entered into a general medical services contract with a registered medical practitioner as one of two or more individuals practising in partnership;
- (b) on 31st March 2004, that registered medical practitioner was carrying on a business, in the course of which he provided services under section 29 of the 1977 Act (arrangements and regulations for general medical services) or under a pilot scheme—
 - (i) in partnership with an individual who was, or with two or more individuals one of whom was, a non-clinical partner,
 - (ii) in partnership with one or more other registered medical practitioners or other individuals, and that partnership employed a person who is or will become a non-clinical partner in the partnership that enters or has entered into that general medical services contract, or
 - (iii) as a sole practitioner, and he employed a person who is or will become a non-clinical partner in the partnership that enters or has entered into that general medical services contract; and
- (c) on the date on which the Primary Care Trust enters or entered into that general medical services contract—
 - (i) the non-clinical partner mentioned in paragraph (b)(i), or
 - (ii) the person mentioned in paragraph (b)(ii) or (b)(iii),is or was a partner in the partnership that enters or has entered into that general medical services contract,

that partner in the partnership, as mentioned in paragraph (c), is, for the purposes of articles 3 and 4, a “relevant non-clinical partner”.

Relevant non-clinical partners in partnerships entering into GMS contracts following default contracts after this Order comes into force

3. A relevant non-clinical partner who is a partner in a partnership that enters into a general medical services contract—

- (a) after this Order comes into force; but
- (b) which takes effect for payment purposes on 1st April 2004 (which will be the case for general medical services contracts which follow default contracts),

is hereby deemed to be an NHS employee for the purposes of section 28S(2)(b)(i) of the 1977 Act^(a) (persons eligible to enter into GMS contracts) at the time at which the partnership enters into that general medical services contract and up until and including the time (if different) at which the general medical services contract takes effect otherwise than for payment purposes.

Health Service (Primary Care) Act 1997 (c.46), Schedule 2, paragraphs 8 and 71, and Schedule 3, Part I; the Health and Social Care Act 2001 (c.15), section 23, and Schedule 6, Part 1; and the National Health Service Reform and Health Care Professions Act 2002 (c.17), Schedule 2, paragraph 3, and Schedule 8, paragraph 2.
^(a) Section 28S was inserted by section 175 of the Health and Social Care (Community Health and Standards) Act 2003.

Relevant non-clinical partners who, before this Order came into force, were partners in partnerships that entered into GMS contracts which took effect for payment purposes on 1st April 2004

4.—(1) Where—

- (a) before this Order came into force, a relevant non-clinical partner was a partner in a partnership that entered into a general medical services contract that took effect for payment purposes on 1st April 2004; and
- (b) apart from the relevant non-clinical partner, every partner in that partnership was an individual falling within section 28S(2)(a) or (b) of the 1977 Act (persons eligible to enter into GMS contracts) at the time at which the partnership entered into the general medical services contract,

paragraph (2) applies.

(2) In the circumstances set out in paragraph (1), from the date this Order comes into force—

- (a) the general medical services contract referred to in that paragraph shall be treated as if it were a contract entered into by a partnership comprising only individuals falling within section 28S(2)(a) or (b) of the 1977 Act; and
- (b) the relevant non-clinical partner referred to in that paragraph shall, if on the date this Order comes into force he is still a partner in a partnership that has entered into a general medical services contract, be treated from that date as if he were an individual falling within section 28S(2)(b)(iv) of the 1977 Act, but he shall cease to be so treated if he does not provide services of a kind mentioned in section 28D(1)(bc) of that Act for a continuous period of six months after that date.

Signed by authority of the Secretary of State for Health

8th July 2004

John Hutton
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Order)

Primary Care Trusts have powers to enter into general medical services contracts with partnerships, provided the composition of the partnership satisfies the requirements of section 28S of the National Health Service Act 1977. This Order makes provision for the circumstances in which certain non-clinical individuals who were working for general practitioner practices before 1st April 2004 (the earliest date on which general services contracts may take effect) but who do not otherwise satisfy the requirements of section 28S may nevertheless be part of partnerships that enter or have entered into general medical services contracts.

£3.00

© Crown copyright 2004

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0952 7/2004 140952T 19585

ISBN 0-11-049502-0



9 780110 495026