
STATUTORY INSTRUMENTS

2004 No. 865

**The General Medical Services and Personal Medical Services
Transitional and Consequential Provisions Order 2004**

PART 4

**TRANSITIONAL PROVISIONS RELATING
TO PERSONAL MEDICAL SERVICES**

Definitions

57. In this Part—

“the 1997 Act” means the National Health Service (Primary Care) Act 1997⁽¹⁾;

“contractor” means—

- (a) where a Primary Care Trust is not providing services under a transitional agreement, a person, other than the Primary Care Trust, who is a party to a transitional agreement, or
- (b) where a Primary Care Trust is providing services under a transitional agreement, that Primary Care Trust;

“the Implementation Directions” means the Primary Care Trusts and Strategic Health Authorities Implementation of Pilot Schemes (Personal Medical Services) Directions 2003 dated 10th November 2003⁽²⁾;

“the NHS dispute resolution procedure” means the procedure for resolution of disputes specified in paragraphs 95 and 96 of Schedule 5 to the Personal Medical Services Agreements Regulations;

“personal medical services” means medical services of a kind that could have been provided by a general medical practitioner in accordance with arrangements made under Part 2 of the 1977 Act prior to 1st April 2004;

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

“relevant body” means—

- (a) where a contractor is a party to a transitional agreement with a Primary Care Trust, that Primary Care Trust, and
- (b) where a contractor is a party to a transitional agreement with a Strategic Health Authority, that Strategic Health Authority;

⁽¹⁾ 1997 c. 46.

⁽²⁾ These directions are available on the Department of Health’s website at www.dh.gov.uk or a copy can be obtained by writing to the Department of Health, P.O. Box 777, London SE1 6XH.

“Services List Regulations” mean the National Health Service (Personal Medical Services) (Services List) and the (General Medical Services Supplementary List) and (General Medical Services) Amendment Regulations 2003(3).

Existing pilot schemes

58. Any pilot scheme under which personal medical services were being provided on 31st March 2004 shall, on the coming into force of section 178(1) of the 2003 Act (abolition of pilot schemes) in relation to personal medical services, be deemed to have been made under section 28C of the 1977 Act(4) and accordingly shall not cease to have effect merely because of the repeal of Part 1 of the 1997 Act in relation to personal medical services.

Variation of transitional agreements

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

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

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

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

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

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

Interpretation of transitional agreements

60.—(1) Until

- (a) the parties to a transitional agreement vary the transitional agreement in accordance with article 59(1) and the variations have effect; or
- (b) the relevant body varies a transitional agreement in accordance with article 59(3) and the variations have effect,

a transitional agreement shall be interpreted in accordance with this article.

(2) Any reference in a transitional agreement to—

- (a) the Implementation Directions shall be a reference to those Directions as they had effect on 31st March 2004 as modified by article 61;
- (b) the 1992 Regulations shall be a reference to those Regulations as they had effect on 31st March 2004 as modified by article 62;

(3) S.I.2003/2644.

(4) Section 28C was inserted into the Act by the National Health Service (Primary Care) Act 1997 (c. 46), section 21(1) and amended by the Health Act 1999 (c. 8), Schedule 4, paragraph 15, the Health and Social Care Act 2001 (c. 15), Schedule 5, paragraph 11(4), the National Health Service Reform and Health Care Professions Act 2002 (c. 17), Schedule 3, paragraph 7(2) and the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), Schedule 11, paragraph 14.

- (c) the Statement of Fees and Allowances made under regulation 34 of the 2002 Regulations shall be a reference to that Statement as it had effect on 31st March 2004;
- (d) the Choice Regulations shall be a reference to those Regulations as they had effect on 31st March 2004 as modified by article 63, except as specified in paragraph (3);
- (e) the National Health Service (Pilot Schemes: Miscellaneous Provisions and Consequential Amendments) Regulations 1998(5) shall be a reference to those Regulations as they had effect on 31st March 2004;
- (f) section 2(2)(a), (b), (c), (e) or (f) of the 1997 Act shall be a reference to section 28D(1)(a), (b), (ba), (bb), (bc), (d) or (f) of the 1977 Act;
- (g) section 8 of the 1997 Act shall be a reference to article 66;
- (h) personal medical services shall be a reference to medical services of a kind that could have been provided by a general medical practitioner in accordance with arrangements made under Part 2 of the 1977 Act prior to 1st April 2004;
- (i) pilot schemes or pilot scheme agreements shall be a reference to transitional agreements;
- (j) a services list, medical list or supplementary list shall be a reference to a medical performers list;
- (k) regulation 6(3)(d) of the Services List Regulations or regulation 18E(1)(e) of, and Part 3 of Schedule 3 to, the 1992 Regulations shall be a reference to regulation 6(3)(d) of the Performers Lists Regulations;
- (l) a Local Medical Committee shall be a reference to a committee recognised under section 45A of the 1977 Act; and
- (m) out of hours arrangements shall be a reference to out of hours arrangements within the meaning given to that expression by article 72.

(3) In relation to the assignment of a patient to a medical practitioner in accordance with regulation 5 of the Choice Regulations, any reference in a transitional agreement to regulation 4(2)(b) of those Regulations shall be deemed to be a reference to article 64(1).

(4) In the case of a transitional agreement falling within paragraph (5), the transitional agreement shall be interpreted as if it had been varied to include terms having the effect specified in Schedule 4 to the Personal Medical Services Agreements Regulations (opt outs of out of hours services).

(5) A transitional agreement falls within this paragraph where the contractor has contracted to provide out of hours services only to patients to which it is required to provide the equivalent of general medical services (within the meaning of section 29(1A) of the 1977 Act(6) prior to its repeal) under the agreement.

(6) The transitional agreement shall be interpreted as if it had been varied to include a term or terms having the effect specified in paragraph 105 of Schedule 5 to the Personal Medical Services Agreements Regulations (termination by the relevant body on fitness grounds), subject to the modification that the reference in that term to a person falling within the cases specified in paragraph 105(3) during the existence of the agreement shall be read as if referred to a person so falling on or after 1st April 2004.

(7) Where a transitional agreement includes the provision of services in the out of hours period within the meaning of paragraph 1(1) of Schedule 6 to the Personal Medical Services Agreements Regulations, the transitional agreement shall be interpreted as if it had been varied to include terms having the effect specified in Schedule 6 to those Regulations (out of hours transitional provisions), subject to the modification that the references to the NHS dispute resolution procedure in paragraphs 2(5), 3(6) and (7) and 5(5) of that Schedule shall, in the case of transitional agreements to which the

(5) S.I. 1998/646, as amended by S.I. 2002/543 and 2469.

(6) Subsection (1A) was substituted by S.I. 1985/39.

NHS dispute resolution procedure does not apply, be deemed to include a reference to the dispute resolution procedure under the transitional agreement.

(8) For the purposes of paragraph (7), it shall be assumed that the out of hours services provided by the contractor under the transitional agreement to patients to which it is required to provide the equivalent of general medical services (within the meaning of section 29(1A) of the 1977 Act prior to its repeal) are provided by the contractor pursuant to regulation 20 of the Personal Medical Services Agreements Regulations (out of hours services).

Modification of the Implementation Directions for the purposes of transitional agreements

61.—(1) The modifications referred to in article 60(2)(a) are as follows.

(2) As if any reference to—

(a) the 1992 Regulations were a reference to those Regulations as they had effect on 31st March 2004 as modified by article 62; and

(b) the Choice Regulations were a reference to those Regulations as they had effect on 31st March 2004 as modified by article 63.

(3) As if for Schedule 5 to the Implementation Directions there were substituted Schedule 9 to the Personal Medical Services Agreements Regulations (PCTs specified for the purposes of repeatable prescribing), and accordingly as if any reference in those directions to Schedule 5 to those Directions were a reference to Schedule 9 to those Regulations.

(4) As if any reference to personal medical services were a reference to medical services of a kind that could have been provided by a general medical practitioner in accordance with arrangements made under Part 2 of the 1977 Act prior to 1st April 2004.

(5) As if any reference to pilot schemes or pilot scheme agreements were a reference to transitional agreements.

(6) As if any reference to a services list, medical list or supplementary list were to a medical performers list.

(7) As if any reference to regulation 6(3)(d) of the Services List Regulations or regulation 18E(1) (e) of, and Part 3 of Schedule 3 to, the 1992 Regulations were a reference to regulation 6(3)(d) of the Performers Lists Regulations.

(8) As if in direction 9, the words “under regulation 4(2)(b) of those Regulations” were omitted.

(9) As if any reference to out of hours arrangements were to out of hours arrangements within the meaning given to that expression by article 72.

Modification of the 1992 Regulations for the purposes of transitional agreements

62.—(1) The modification referred to in article 60(2)(b) is as follows.

(2) Any reference to Schedule 10 or, as the case may be Schedule 11, to the 1992 Regulations shall be a reference to Schedule 1 (in the case of Schedule 10) or 2 (in the case of Schedule 11) to the National Health Service (General Medical Services Contracts) (Prescription of Drugs etc.) Regulations 2004(7).

Modification of the Choice Regulations for the purposes of transitional agreements

63.—(1) The modifications referred to in article 60(2)(d) are as follows.

(2) As if in regulation 1 a new paragraph (4) were added at the end as follows—

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

Assignment of patients: transitional agreements

64.—(1) A Primary Care Trust may require a contractor to assign a patient to a medical practitioner who performs personal medical services in connection with a transitional agreement to which the contractor is a party.

(2) Where a Primary Care Trust is considering requiring a contractor to assign a patient to a medical practitioner under paragraph (1), it shall have regard to—

- (a) the wishes and circumstances of the patient to be assigned;
- (b) the distance between the patient’s place of residence and the contractor’s practice premises;
- (c) whether, during the six months ending on the date on which the application for assignment is received by the Primary Care Trust, the patient’s name has been removed from the list of patients of any provider of essential services (or their equivalent) in the area of the Primary Care Trust under paragraph 19 of Schedule 5 to the Personal Medical Services Agreements Regulations (or other equivalent provision);
- (d) whether the patient’s name has been removed from the list of patients of any provider of essential services (or their equivalent) under paragraph 20 of Schedule 5 to the Personal Medical Services Agreements Regulations (or other equivalent provision);
- (e) such other matters as the Primary Care Trust considers relevant.

(3) Where a contractor is unable to comply, in accordance with this article or regulation 5 of the Choice Regulations (as modified by article 63) with a requirement to assign a patient to a medical practitioner, and the Primary Care Trust is satisfied, after due enquiry, that the person concerned still wishes to be assigned to a provider of essential services (or their equivalent), the Primary Care Trust shall as soon as practicable assign, or require the assignment of, that person to another provider of essential services (or their equivalent) or medical practitioner in accordance with any relevant agreement, contract or enactment.

(4) A medical practitioner to whom a patient is assigned under this article or regulation 5 of the Choice Regulations (as modified by article 63) shall not be required to provide child health surveillance services, contraceptive services, maternity medical services or minor surgery services for that patient unless he is obliged to provide those services to him in connection with a transitional agreement.

(5) Where a contractor has requested the Primary Care Trust to remove a patient from a medical practitioner's list or a pooled list under a provision equivalent to paragraph 20 of Schedule 5 to the Personal Medical Services Agreements Regulations, the Primary Care Trust shall take all reasonable steps to assign, or require the assignment of, the patient to another provider of essential services (or their equivalent) or medical practitioner before the end of the working day after the day on which the Primary Care Trust receives notification from the contractor.

(6) In paragraph (5)—

“a medical practitioner's list” means a list of a medical practitioner's patients kept by a Primary Care Trust in respect of a medical practitioner performing personal medical services under a transitional agreement, in accordance with directions made under section 17 of the 1977 Act; and

“a pooled list” means a list of persons who have been accepted by a contractor for the provision of personal medical services under a transitional agreement, and whose names are not included in a medical practitioner's list.

Representations against a requirement to assign: transitional agreements

65.—(1) A contractor who has been required under article 64(1) to assign a person to a medical practitioner may, within the period of seven days beginning with the day on which that assignment is made, make representations in writing to the Primary Care Trust against the requirement to assign, but shall remain responsible for providing personal medical services for the person to whom the requirement relates, pending notification of the confirmation or revision of the assignment by the Primary Care Trust.

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

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

(4) The Primary Care Trust shall, within the period of seven days beginning with the day on which it confirms or revises a decision under paragraph (3), notify the contractor accordingly and the provisions of this article and article 64 shall apply to any requirement to assign under a revised decision.

Variation and termination of transitional agreements

66.—(1) The Secretary of State may by directions require a transitional agreement to be varied by the relevant body in accordance with the directions.

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

Termination of transitional agreements varied under article 59

67. Where a transitional agreement has been varied under article 59 to include a term which gives effect to paragraph 105 of Schedule 5 to the Personal Medical Services Agreements Regulations (termination by the relevant body on fitness grounds), the reference in that term to a person falling within the cases specified in paragraph 105(3) during the existence of the agreement shall be read as if it referred to a person so falling on or after 1st April 2004.

Health service body status

68.—(1) A contractor (other than one falling within paragraph (2)) which was, on 31st March 2004 a health service body pursuant to the National Health Service (Pilot Schemes – Health Service Bodies) Regulations 1997⁽⁸⁾ (“the 1997 Regulations”) shall be regarded as such a body after that date and regulation 9 of the Personal Medical Services Agreements Regulations shall apply as if health service body status had been conferred on that contractor under that regulation.

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

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

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

Dispute resolution

69.—(1) Any dispute relating to a pilot scheme that has been referred to the Secretary of State under section 4 of the 1990 Act⁽⁹⁾ (NHS contracts) and which has not been determined on or before 31st March 2004 shall continue to be dealt with in accordance with the National Health Service Contracts (Dispute Resolution) Regulations 1996⁽¹⁰⁾.

(2) Where a direction as to payment is made (whether before or after 31st March 2004) under section 4(7) of the 1990 Act against, or in favour of, a provider of services under a transitional agreement or a pilot scheme, the direction is enforceable in a county court (if the court so orders) as if it were a judgement or order of that court.

⁽⁸⁾ S.I. 1997/2929.

⁽⁹⁾ Section 4 of the National Health Service and Community Care Act 1990 was amended by the Health Authorities Act 1995 (c. 17), Schedule 1, paragraph 68, the Health Act 1999 (c. 8), Schedule 4, paragraph 76 and Schedule 5, the National Health Service Reform and Health Care Professions Act 2002 (c. 17), Schedule 1, paragraph 40 and Schedule 5, paragraph 31, the Health (Wales) Act 2003 (c. 4), Schedule 3, paragraph 6 and S.I. 1991/195.

⁽¹⁰⁾ S.I. 1996/623.