
STATUTORY INSTRUMENTS

2004 No. 865

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

PART 6

**TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS
RELATING TO OUT OF HOURS ARRANGEMENTS AND SERVICES**

Interpretation of this Part

72. In this Part—

“agreement” means, unless the context otherwise requires, an agreement for primary medical services made under section 28C of the 1977 Act;

“out of hours arrangement” means—

- (a) in relation to the period before 1st April 2004, an arrangement under—
 - (i) paragraph 18A(2) of Schedule 2 to the 1992 Regulations⁽¹⁾, or
 - (ii) regulation 3 of the PMS Out of Hours Regulations; and
- (b) in relation to the period from 1st April 2004, means an arrangement under—
 - (i) the term of a general medical services contract which gives effect to paragraph 1(2) of Schedule 7 to the 2004 Regulations (or the equivalent term of a default contract), or
 - (ii) the term of an agreement which gives effect to paragraph 1(2) or (3) of Schedule 6 to the Personal Medical Services Agreements 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) of the Transitional Order, or
 - (ii) in a general medical services contract as additional services funded under the global sum;

“PMS Out of Hours Regulations” means the National Health Service (Out of Hours Provision of Personal Medical Services and Miscellaneous Amendments) (England) Regulations 2003⁽²⁾;

“relevant body”—

(1) Paragraph 18A was inserted by S.I.1996/702 and paragraph (2) was substituted, in relation to England, by S.I. 2002/2548 and amended by S.I. 2003/26.
(2) S.I. 2003/26.

- (a) in relation to the period before 1st April 2004, has the same meaning as in regulation 2(1) of the PMS Out of Hours Regulations; and
- (b) in relation to the period from 1st April 2004, has the same meaning as in regulation 2 of the Personal Medical Services Agreements Regulations.

Terms of general medical services contracts, default contracts and personal medical services agreements

73. Unless the contract or agreement is of a type or nature to which a particular article does not apply—

- (a) a general medical services contract shall include or be deemed to include terms which have the effect specified in articles 74, 76, 78, 79, 81, 82, 84, 86, 87, 88, 91 and 92;
- (b) a default contract shall include or be deemed to include terms which have the effect specified in articles 74, 76, 78, 79, 81, 84, 86 and 92;
- (c) an agreement shall include or be deemed to include terms which have the effect specified in articles 75, 77, 78, 80, 83, 85 and 89.

Applications for approval of out of hours arrangements under general medical services contracts and default contracts

74.—(1) Where, on or before 31st March 2004, a medical practitioner had applied to the Primary Care Trust for approval of an out of hours arrangement under paragraph 18A(7) of Schedule 2 to the 1992 Regulations⁽³⁾ but that application had not yet been determined, it shall, if the medical practitioner meets the requirements in paragraph (2), be treated, on 1st April 2004, as if it were an application made by the general medical services contractor under the term of its contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations (or by the default contractor under the equivalent term of its default contract) subject to the modification that the period of 28 days referred to in the term giving effect to paragraph 2(2) of Schedule 7 (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Primary Care Trust received the application under paragraph 18A(7) of Schedule 2 to the 1992 Regulations.

- (2) The requirements referred to in paragraph (1) are that the medical practitioner—
 - (a) has entered as an individual medical practitioner into a general medical services contract or a default contract;
 - (b) is one of two or more individuals practising in partnership who have entered into such a contract; or
 - (c) is a legal and beneficial shareholder in a company which has entered into a general medical services contract.
- (3) In any application which falls within paragraph (1)—
 - (a) any references to the patients of the medical practitioner shall be deemed to be references to the patients of the general medical services contractor or the default contractor;
 - (b) any references to the whole of the out of hours period shall be deemed to be references to—
 - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day,
 - (ii) the period between 6.30pm on Friday and 8am the following Monday, and
 - (iii) Good Friday, Christmas Day and bank holidays;
 - (c) in any reference to part of the out of hours period—

(3) Paragraph 18A(7) (as inserted by S.I. 1996/702) was amended by S.I. 2001/3742 and 2002/2469, 2548 and 3135.

- (i) any reference to 7pm on Monday to Friday shall be deemed to be a reference to 6.30pm, and
- (ii) any reference to 1pm on Saturday shall be deemed to be a reference to 6.30pm on Friday; and
- (d) any references to a particular transferee doctor shall be deemed to be references to—
 - (i) that person as a general medical services contractor, a default contractor or a party to contractual arrangements made under article 15 of the Transitional Order,
 - (ii) that person and any other medical practitioner with whom he is practising in partnership who have entered into a general medical services contract or a default contract or are a party to contractual arrangements made under article 15 of the Transitional Order, or
 - (iii) the company in which he is a legal and beneficial shareholder and which has entered into a general medical services contract.

Applications for approval of out of hours arrangements under personal medical services agreements

75.—(1) Where, on or before 31st March 2004, a pilot scheme provider had applied to a relevant body for approval of an out of hours arrangement under regulation 4 of the PMS Out of Hours Regulations but that application had not yet been determined, it shall, if the pilot scheme provider has become a PMS contractor, be treated, on 1st April 2004, as if it were an application made by the PMS contractor under—

- (a) the term of its agreement which gives effect to paragraph 2 of Schedule 6 to the Personal Medical Services Agreements Regulations; or
- (b) the equivalent term deemed to be included in its transitional agreement pursuant to article 60(7),

subject to the modification that the period of 28 days referred to in the term (or deemed term) giving effect to paragraph 2(2) of Schedule 6 to the Personal Medical Services Agreements Regulations shall be treated as beginning with the day on which the relevant body received the application under regulation 4 of the PMS Out of Hours Regulations.

(2) In any application which falls within paragraph (1) any references to the patients of the pilot scheme provider shall be deemed to be references to the patients of the PMS contractor.

Approvals of out of hours arrangements under general medical services contracts and default contracts

76.—(1) Where, on 31st March 2004—

- (a) a medical practitioner had approval from a Primary Care Trust of an out of hours arrangement; and
- (b) that approval—
 - (i) does not relate to an accredited service provider whose approval has been withdrawn under regulation 8 of the Out of Hours Regulations, or
 - (ii) had not been withdrawn under paragraph 18B or 18C of Schedule 2 to the 1992 Regulations and the withdrawal taken effect,

that approval shall, if the medical practitioner meets the requirements in article 74(2), be treated from 1st April 2004 as if it were an approval granted to the general medical services contractor by the Primary Care Trust pursuant to the term of its contract which gives effect to paragraph 2 of

Schedule 7 to the 2004 Regulations (or to the default contractor under the equivalent term of its default contract), except in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that the approval under paragraph 18A of Schedule 2 to the 1992 Regulations related to an arrangement with a transferee doctor as defined in paragraph 18A(1)(c) of Schedule 2 to the 1992 Regulations and that doctor—

- (a) has not entered as an individual medical practitioner into a general medical services contract, or a default contract, which includes the provision of out of hours services;
- (b) is not one of two or more individuals practising in partnership who have entered into such a contract;
- (c) is not a legal and beneficial shareholder in a company which has entered into such a general medical services contract; or
- (d) is not a party to contractual arrangements under article 15 of the Transitional Order which include the provision of out of hours services.

(3) The terms of an approval granted pursuant to paragraph (1) shall be the same as those of the approval granted under paragraph 18A of Schedule 2 to the 1992 Regulations except that—

- (a) any references to the patients of the medical practitioner shall be deemed to be references to the patients of the general medical services contractor or the default contractor;
- (b) any references to the whole of the out of hours period shall be deemed to be references to—
 - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day,
 - (ii) the period between 6.30pm on Friday and 8am the following Monday, and
 - (iii) Good Friday, Christmas Day and bank holidays;
- (c) in any reference to part of the out of hours period—
 - (i) any reference to 7pm on Monday to Friday shall be deemed to be a reference to 6.30pm, and
 - (ii) any reference to 1pm on Saturday shall be deemed to be a reference to 6.30pm on Friday; and
- (d) any references to a particular transferee doctor shall be deemed to be references to—
 - (i) that person as a general medical services contractor, a default contractor or a party to contractual arrangements made under article 15 of the Transitional Order,
 - (ii) that person and any other medical practitioner with whom he is practising in partnership who have entered into a general medical services contract or a default contract or are a party to contractual arrangements made under article 15 of the Transitional Order, or
 - (iii) the company in which he is a legal and beneficial shareholder and which has entered into a general medical services contract.

Approvals of out of hours arrangements under personal medical services agreements

77.—(1) Where, on 31st March 2004—

- (a) a pilot scheme provider had approval from a relevant body of an out of hours arrangement under regulation 4 of the PMS Out of Hours Regulations; and
- (b) that approval—
 - (i) does not relate to an accredited service provider whose approval had been withdrawn under regulation 8 of the Out of Hours Regulations, or

- (ii) had not been withdrawn under regulation 5 or 6 of the PMS Out of Hours Regulations and the withdrawal taken effect,

that approval shall, if the pilot scheme provider has become a PMS contractor, be treated from 1st April 2004 as if it were an approval granted to the PMS contractor by the relevant body pursuant to the term of its agreement which gives effect to paragraph 2 of Schedule 6 to the Personal Medical Services Agreements Regulations or the equivalent term deemed to be included in its transitional agreement pursuant to article 60(7).

(2) The terms of an approval granted pursuant to paragraph (1) shall be the same as those of the approval granted under regulation 4 of the PMS Out of Hours Regulations except that any references to the patients of the pilot scheme provider shall be deemed to be references to the patients of the PMS contractor.

Suspension of approvals and of out of hours arrangements under general medical services contracts, default contracts and personal medical services agreements

78.—(1) Where an approval which falls within article 76 or 77 relates to an accredited service provider whose approval has been suspended under regulation 9 of the Out of Hours Regulations, that approval, and any out of hours arrangement made pursuant to that approval, shall be treated, from 1st April 2004, as being suspended under—

- (a) the terms of the relevant general medical services contract which give effect to paragraphs 5 and 7 of Schedule 7 to the 2004 Regulations (or the equivalent term of the default contract); or
- (b) the terms of the relevant agreement which give effect to paragraphs 4 and 6(1) of Schedule 6 to Personal Medical Services Agreements Regulations or the equivalent terms deemed to be included in the relevant transitional agreement under article 60(7).

(2) Where, on 31st March 2004, an arrangement made by a Primary Care Trust with an accredited service provider under regulation 3(1) of the PMS Out of Hours Regulations is suspended following suspension of the approval of the accredited service provider under regulation 9 of the Out of Hours Regulations, that arrangement shall be treated, from 1st April 2004, as being suspended under—

- (a) the term of the Primary Care Trust's agreement which gives effect to paragraph 6(3) of Schedule 6 to the Personal Medical Services Agreements Regulations; or
- (b) the equivalent term deemed to be included in its transitional agreement pursuant to article 60(7).

Refusal of approval of out of hours arrangements under general medical services contracts and default contracts

79.—(1) Where—

- (a) on or before 31st March 2004, a Primary Care Trust had notified a medical practitioner under paragraph 18A(10) of Schedule 2 to the 1992 Regulations that it had refused approval of an out of hours arrangement; and
- (b) on or before 1st April 2004, that medical practitioner—
 - (i) has entered as an individual medical practitioner into a general medical services contract, or a default contract, which requires the provision of out of hours services,
 - (ii) is one of two or more individuals practising in partnership who have entered into such a contract, or
 - (iii) is a legal and beneficial shareholder in a company which has entered into such a general medical services contract,

paragraphs (2) and (3) shall apply.

(2) In a case where the time for appealing under paragraph 18A(11) of Schedule 2 to the 1992 Regulations had not expired on or before 31st March 2004, that refusal shall be treated as if it were a refusal under the term of the general medical services contract referred to in paragraph (1)(b) which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the default contract), subject to the modification that the 30 days referred to in the term of the general medical services contract giving effect to paragraph 2(5) of that Schedule (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Primary Care Trust's notification under paragraph 18A(10) was sent.

(3) In a case where, on 31st March 2004, an appeal had been made under paragraph 18A(11) of Schedule 2 to the 1992 Regulations but not yet been determined or withdrawn, that appeal shall, except in the circumstances specified in paragraph (4), continue to be dealt with as if paragraph 18A had not been revoked and, if the appeal is successful, the approval of the arrangement shall be treated as an approval given under the term of the general medical services contract referred to in paragraph (1)(b) which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the relevant default contract).

(4) The circumstances referred to in paragraph (3) are that the appeal related to an arrangement with a transferee doctor as defined in paragraph 18A(1)(c) of Schedule 2 to the 1992 Regulations and that doctor—

- (a) has not entered as an individual medical practitioner into a general medical services contract, or a default contract, which includes the provision of out of hours services;
- (b) is not one of two or more individuals practising in partnership who have entered into such a contract;
- (c) is not a legal and beneficial shareholder in a company which has entered into such a general medical services contract; or
- (d) is not a party to contractual arrangements under article 15 of the Transitional Order which include the provision of out of hours services.

(5) For the purposes of a dispute pursuant to paragraph (2) or an appeal dealt with pursuant to paragraph (3), the application which is the subject of the dispute or appeal shall be read as if—

- (a) any references to the patients of the medical practitioner were references to the patients of the general medical services contractor or the default contractor;
- (b) any references to the whole of the out of hours period were references to—
 - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day,
 - (ii) the period between 6.30pm on Friday and 8am the following Monday, and
 - (iii) Good Friday, Christmas Day and bank holidays;
- (c) in any reference to part of the out of hours period—
 - (i) any reference to 7pm on Monday to Friday were a reference to 6.30pm, and
 - (ii) any reference to 1pm on Saturday were a reference to 6.30pm on Friday; and
- (d) any references to a particular transferee doctor were references to—
 - (i) that person as a general medical services contractor, a default contractor or a party to contractual arrangements made under article 15 of the Transitional Order,
 - (ii) that person and any other medical practitioner with whom he is practising in partnership who have entered in to a general medical services contract or a default contract or are a party to contractual arrangements made under article 15 of the Transitional Order, or

- (iii) the company in which he is a legal and beneficial shareholder and which has entered into a general medical services contract.

Refusal of approval of out of hours arrangements under personal medical services agreements

80.—(1) Where—

- (a) on or before 31st March 2004, a relevant body had notified a pilot scheme provider under regulation 4(4) of the PMS Out of Hours Regulations that it had refused approval of an out of hours arrangement; and
- (b) on 1st April 2004, that pilot scheme provider has become a PMS contractor,

paragraphs (2) and (3) shall apply.

(2) In a case where the time for appealing under regulation 4(5) of the PMS Out of Hours Regulations had not expired on or before 31st March 2004, that refusal shall be treated as if it were a refusal under—

- (a) the term of the agreement to which the former pilot scheme provider is a party which gives effect to paragraph 2 of Schedule 6 to the Personal Medical Services Agreements Regulations; or
- (b) the equivalent term deemed to be included in that person's transitional agreement pursuant to article 60(7),

subject to the modification that the 30 days referred to in the term (or deemed term) of the agreement giving effect to paragraph 2(5) of that Schedule shall be treated as beginning with the day on which the relevant body's notification under regulation 4(4) was sent.

(3) In a case where, on 31st March 2004, an appeal had been made under regulation 4(5) of the PMS Out of Hours Regulations but not yet been determined or withdrawn, that appeal shall continue to be dealt with as if regulation 4 had not been revoked and, if the appeal is successful, the approval of the arrangement shall be treated as an approval given under the term of the agreement to which the pilot scheme provider is a party which gives effect to paragraph 2 of Schedule 6 to the Personal Medical Services Agreements Regulations.

(4) For the purposes of a dispute pursuant to paragraph (2) or an appeal dealt with pursuant to paragraph (3), the application which is the subject of the dispute or appeal shall be read as if any references to the patients of the pilot scheme provider were references to the patients of the PMS contractor.

Review of approval of out of hours arrangements under general medical services contracts and default contracts

81.—(1) Where—

- (a) an approval of an out of hours arrangement granted under paragraph 18A of Schedule 2 to the 1992 Regulations is to be treated, pursuant to article 76, as an approval granted under the term of a general medical services contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations (or under the equivalent term of a default contract); and
- (b) on or before 31st March 2004, the Primary Care Trust had commenced a review of its approval of that arrangement under paragraph 18B of Schedule 2 to the 1992 Regulations but had not yet made its determination,

that review shall continue as if it were a review under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the default contract), subject to the modification that the 30 days referred to in the term giving effect to paragraph 4(2) of that Schedule (or in the equivalent term of the default

contract) shall be treated as beginning with the day on which the Primary Care Trust sent its notice under paragraph 18B(1) of Schedule 2 to the 1992 Regulations.

Review of approval of out of hours arrangements under general medical services contracts which follow default contracts

82.—(1) Where—

- (a) an approval of an out of hours arrangement granted under a default contract is to be treated, pursuant to article 44, as an approval granted under the term of a general medical services contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations; and
- (b) on or before the date on which the default contract ceases to have effect, the Primary Care Trust has commenced a review of its approval of that arrangement under the term of the default contract which is equivalent to paragraph 4 of Schedule 7 to the 2004 Regulations but has not yet made its determination,

that review shall continue as if it were a review under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 7 to the 2004 Regulations, subject to the modification that the 30 days referred to in the term giving effect to paragraph 4(2) of that Schedule shall be treated as beginning with the day on which the Primary Care Trust sent its notice under the equivalent term of the default contract.

Review of out of hours arrangements under personal medical services agreements

83.—(1) Where—

- (a) an approval of an out of hours arrangement granted under regulation 4 of the PMS Out of Hours Regulations is to be treated, pursuant to article 77, as an approval granted to the PMS contractor by the relevant body pursuant to the term (or deemed term) of its agreement which gives effect to paragraph 2 of Schedule 6 to the Personal Medical Services Agreements Regulations; and
- (b) on or before 31st March 2004, the relevant body had commenced a review of its approval of that arrangement under regulation 5 of the PMS Out of Hours Regulations but had not yet made its determination,

that review shall continue as if it were a review under the term of the agreement which gives effect to paragraph 3 of Schedule 6 to the Personal Medical Services Agreements Regulations or the equivalent term deemed to be included in the transitional agreement pursuant to article 60(7), subject to the modification that the 30 days referred to in the term (or deemed term) giving effect to paragraph 3(2) of that Schedule shall be treated as beginning with the day on which the relevant body sent its notice under regulation 5 of the PMS Out of Hours Regulations.

Withdrawal of approval of out of hours arrangements under general medical services contracts and default contracts

84.—(1) Where—

- (a) an approval of an out of hours arrangement granted under paragraph 18A of Schedule 2 to the 1992 Regulations is to be treated, pursuant to article 76, as an approval granted under the term of a general medical services contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations (or under the equivalent term of a default contract); and
- (b) on or before 31st March 2004, a Primary Care Trust had notified a medical practitioner of its withdrawal of approval of that arrangement under paragraph 18B of Schedule 2 to the 1992 Regulations but that withdrawal had not yet taken effect,

paragraphs (2) to (4) shall apply.

(2) In a case where, on 31st March 2004—

- (a) the time for appealing under paragraph 18B(6) of Schedule 2 to the 1992 Regulations had expired without any appeal being made; or
- (b) an appeal had been made under that paragraph but had been determined or withdrawn before the end of the period of two months beginning with the date on which the notice of withdrawal was sent by the Primary Care Trust under paragraph 18B(4) of that Schedule,

the withdrawal shall take effect as a withdrawal of approval under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the default contract) on the date on which it would have taken effect had paragraph 18B(7) of Schedule 2 to the 1992 Regulations not been revoked.

(3) In a case where the time for appealing under paragraph 18B(6) of Schedule 2 to the 1992 Regulations had not expired on or before 31st March 2004, the notice of determination of withdrawal shall be deemed to be a notice of determination of withdrawal of approval on notice under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the default contract), subject to the modifications that—

- (a) the 30 days referred to in the term of the general medical services contract giving effect to paragraph 4(8) (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Primary Care Trust sent the notice under paragraph 18B; and
- (b) the date referred to in the term of the general medical services contract giving effect to paragraph 4(9)(a) (or in the equivalent term of the default contract) shall be treated as being the date on which the Primary Care Trust sent the notice under paragraph 18B.

(4) In a case where, on 31st March 2004, an appeal had already been made under paragraph 18B(6) of Schedule 2 to the 1992 Regulations but not yet been determined or withdrawn, the appeal shall continue to be dealt with as if paragraphs 18A and 18B of that Schedule had not been revoked and, if the appeal is dismissed, the withdrawal of approval shall take effect as a withdrawal of approval under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the default contract) on the date on which the general medical services contractor or the default contractor received notice of the dismissal of the appeal.

Withdrawal of approval of out of hours arrangements under personal medical services agreements

85.—(1) Where—

- (a) an approval of an out of hours arrangement granted under regulation 4 of the PMS Out of Hours Regulations is to be treated, pursuant to article 77, as an approval granted to the PMS contractor by the relevant body under—
 - (i) the term of its agreement which gives effect to paragraph 2 of Schedule 6 to the Personal Medical Services Agreements Regulations, or
 - (ii) the equivalent term deemed to be included in its transitional agreement pursuant to article 60(7); and
- (b) on or before 31st March 2004, a relevant body had notified a pilot scheme provider of its withdrawal of approval of that arrangement under regulation 5 of the PMS Out of Hours Regulations but that withdrawal had not yet taken effect,

paragraphs (2) to (4) shall apply.

(2) In a case where, on 31st March 2004—

- (a) the time for appealing under regulation 5(4) of the PMS Out of Hours Regulations had expired without any appeal being made; or
- (b) an appeal had been made under that regulation but had been determined or withdrawn before the end of the period of two months after the date on which the notice of withdrawal was sent by the Primary Care Trust under regulation 5(3) of those Regulations,

the withdrawal shall take effect as a withdrawal of approval under the term of the agreement which gives effect to paragraph 3 of Schedule 6 to the Personal Medical Services Agreements Regulations, or under the equivalent term deemed to be included in the transitional agreement pursuant to article 60(7), on the date on which it would have taken effect had regulation 5(5) of the PMS Out of Hours Regulations not been revoked.

(3) In a case where the time for appealing under regulation 5(4) of the PMS Out of Hours Regulations had not expired on or before 31st March 2004, the notice of determination of withdrawal shall be deemed to be a notice of determination of withdrawal of approval on notice under the term of the agreement which gives effect to paragraph 3 of Schedule 6 to the Personal Medical Services Agreements Regulations, or under the equivalent term deemed to be included in the transitional agreement pursuant to article 60(7), subject to the modifications that—

- (a) the 30 days referred to in the term (or deemed term) of the agreement giving effect to paragraph 3(6) shall be treated as beginning with the day on which the relevant body sent the notice under regulation 5(4); and
- (b) the date referred to in the term (or deemed term) of the agreement giving effect to paragraph 3(7)(a) shall be treated as being the date on which the relevant body sent the notice under regulation 5(4).

(4) In a case where, on 31st March 2004, an appeal had already been made under regulation 5(4) of the PMS Out of Hours Regulations but not yet been determined or withdrawn, the appeal shall continue to be dealt with as if regulation 5 of those Regulations had not been revoked and, if the appeal is dismissed, the withdrawal of approval shall take effect as a withdrawal of approval under—

- (a) the term of the agreement which gives effect to paragraph 2 of Schedule 6 to the Personal Medical Services Agreements Regulations; or
- (b) the equivalent term deemed to be included in the transitional agreement pursuant to article 60(7),

on the date on which the PMS contractor received notice of the dismissal of the appeal.

Appeal against immediate withdrawal of approval of out of hours arrangements under general medical services contracts and default contracts

86.—(1) Where—

- (a) on or before 31st March 2004, a Primary Care Trust had notified a medical practitioner of its immediate withdrawal of approval of an out of hours arrangement under paragraph 18C of Schedule 2 to the 1992 Regulations; and
- (b) on or before 1st April 2004, that medical practitioner—
 - (i) has entered as an individual medical practitioner into a general medical services contract, or a default contract, which requires the provision of out of hours services,
 - (ii) is one of two or more individuals practising in partnership who have entered into such a contract, or
 - (iii) is a legal and beneficial shareholder in a company which has entered into such a general medical services contract,

paragraphs (2) and (3) shall apply.

(2) In a case where the time for appealing under paragraph 18C(4) had not expired on or before 31st March 2004, that withdrawal shall be treated as if it were a withdrawal of approval under the term of the general medical services contract which gives effect to paragraph 6(1)(c) of Schedule 7 to the 2004 Regulations (or under the equivalent term of a default contract) subject to the modification that the 30 days referred to in the term giving effect to paragraph 6(5) of that Schedule (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Primary Care Trust's notification under paragraph 18C(2) of Schedule 2 to the 1992 Regulations was sent.

(3) In a case where, on 31st March 2004, an appeal had already been made under paragraph 18C(4) but not yet been determined or withdrawn, that appeal shall, except in the circumstances specified in paragraph (4), continue to be dealt with as if paragraphs 18A and 18C of Schedule 2 to the 1992 Regulations had not been revoked and, if the appeal is successful, the approval of the arrangement shall be treated as an approval given under the term of the general medical services contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations (or under the equivalent term of the default contract).

(4) The circumstances referred to in paragraph (3) are that the appeal related to an arrangement with a transferee doctor as defined in paragraph 18A(1)(c) of Schedule 2 to the 1992 Regulations and that doctor—

- (a) has not entered as an individual medical practitioner into a general medical services contract, or a default contract, which includes the provision of out of hours services;
- (b) is not one of two or more individuals practising in partnership who have entered into such a contract;
- (c) is not a legal and beneficial shareholder in a company which has entered into such a general medical services contract; or
- (d) is not a party to contractual arrangements under article 15 of the Transitional Order which include the provision of out of hours services.

(5) The terms of an approval granted pursuant to paragraph (2) or (3) shall be the same as those of the approval previously granted under paragraph 18A of Schedule 2 to the 1992 Regulations except that—

- (a) any references to the patients of the medical practitioner shall be amended to be references to the patients of the general medical services contractor or the default contractor;
- (b) any references to the whole of the out of hours period shall be amended to be references to—
 - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day,
 - (ii) the period between 6.30pm on Friday and 8am the following Monday, and
 - (iii) Good Friday, Christmas Day and bank holidays;
- (c) in any reference to part of the out of hours period—
 - (i) any reference to 7pm on Monday to Friday shall be amended to be a reference to 6.30pm, and
 - (ii) any reference to 1pm on Saturday shall be amended to be a reference to 6.30pm on Friday; and
- (d) any references to a particular transferee doctor shall be amended to be references to—
 - (i) that person as a general medical services contractor, a default contractor or a party to contractual arrangements made under article 15 of the Transitional Order,
 - (ii) that person and any other medical practitioner with whom he is practising in partnership who have entered into a general medical services contract or a default

contract or are a party to contractual arrangements made under article 15 of the Transitional Order, or

- (iii) the company in which he is a legal and beneficial shareholder and which has entered into a general medical services contract.

References to the NHS dispute resolution procedure in general medical services contracts which follow default contracts

87. Where—

- (a) on or before the date on which a default contract ceases to have effect, a default contractor has received notice of—
 - (i) the refusal of an application for approval of an out of hours arrangement under the term of its contract equivalent to paragraph 2(4) of Schedule 7 to the 2004 Regulations,
 - (ii) a determination of a Primary Care Trust under the term of its contract equivalent to paragraph 4(6) of Schedule 7 to the 2004 Regulations which gives notice of immediate withdrawal of approval, or
 - (iii) immediate withdrawal of approval under the term of its contract equivalent to paragraph 6(1)(c) of that Schedule;
- (b) on the date on which the default contract ceases to have effect—
 - (i) the 30 days for referring that matter in accordance with the NHS dispute resolution procedure has not expired, and
 - (ii) no referral under that procedure has yet been made; and
- (c) the default contractor has entered into a general medical services contract which takes effect immediately after the default contract ceases to have effect,

the refusal or notice shall be treated, for the purposes of referring the matter in accordance with the NHS dispute resolution procedure contained in the general medical services contract, as if it were a refusal or notice of withdrawal given under the equivalent terms of the general medical services contract and the general medical services contractor may refer the matter in accordance with that dispute resolution procedure before the end of the period of 30 days beginning with the day on which the Primary Care Trust sent the notice of refusal, determination, or, as the case may be, withdrawal, to the default contractor.

Carry over of disputes relating to out of hours arrangements between default contracts and general medical services contracts

88.—(1) Where—

- (a) on or before the date on which a default contract ceases to have effect, a default contractor has referred a dispute to be determined in accordance with the NHS dispute resolution procedure under the terms of its default contract equivalent to paragraph 2(5), 4(8) or 6(5) of Schedule 7 to the 2004 Regulations;
- (b) on the date on which the default contract ceases to have effect, that dispute has not been determined or withdrawn; and
- (c) the default contractor has entered into a general medical services contract which takes effect immediately after the default contract ceases to have effect,

paragraph (2) shall apply.

(2) The dispute shall continue to be dealt with as if it were a dispute referred under the NHS dispute resolution procedure contained in the general medical services contract relating to—

- (a) a refusal of an application under the term of the general medical services contract giving effect to paragraph 2 of Schedule 7 to the 2004 Regulations;
- (b) a determination of the Primary Care Trust under the term of the general medical services contract giving effect to paragraph 4 of that Schedule; or
- (c) an immediate withdrawal of approval under the term of the general medical services contract giving effect to paragraph 6 of that Schedule.

Appeal against immediate withdrawal of approval of out of hours arrangements under personal medical services agreements

89.—(1) Where—

- (a) on 31st March 2004, a relevant body had notified a pilot scheme provider of its immediate withdrawal of approval of an out of hours arrangement under regulation 6 of the PMS Out of Hours Regulations; and
- (b) on 1st April 2004, that pilot scheme provider has become a PMS contractor,

paragraphs (2) and (3) shall apply.

(2) In a case where the time for appealing under regulation 6(2) of the PMS Out of Hours Regulations had not expired on or before 31st March 2004, that withdrawal shall be treated as if it were a withdrawal of approval under—

- (a) the term of the agreement which gives effect to paragraph 5(2) of Schedule 6 to the Personal Medical Services Agreements Regulations; or
- (b) the equivalent term deemed to be included in its transitional agreement under article 60(7),

subject to the modification that the 30 days referred to in the term (or deemed term) giving effect to paragraph 5(5) of that Schedule shall be treated as beginning with the day on which the relevant body's notification under regulation 6(1) was sent.

(3) In a case where, on 31st March 2004, an appeal had already been made under regulation 6(2) of the PMS Out of Hours Regulations but not yet been determined or withdrawn, that appeal shall continue to be dealt with as if that regulation had not been revoked and, if the appeal is successful, the approval of the arrangement shall be treated as an approval given under the term of the agreement which gives effect to paragraph 2 of Schedule 6 to the Personal Medical Services Agreements Regulations or under the equivalent term deemed to be included in the transitional agreement under article 60(7).

(4) The terms of an approval granted pursuant to paragraph (2) or (3) shall be the same as those of the approval previously granted under regulation 4 of the PMS Out of Hours Regulations except that any references to the patients of the pilot scheme provider shall be deemed to be references to the patients of the PMS contractor.

Saving and transitory provision in relation to regulations 1 to 11 of the Out of Hours Regulations

90.—(1) In this article, expressions used both in this article and in the Out of Hours Regulations have the same meaning as in the Out of Hours Regulations as modified by paragraph (3).

(2) Notwithstanding the revocation of the Out of Hours Regulations, regulations 1 to 11 of those Regulations shall, until 31st December 2004, continue in force as they had effect on 31st March 2004, subject to the modifications specified in paragraph (3), for the purposes of—

- (a) continuing, suspending and withdrawing approvals of relevant service providers granted under regulation 5 of those Regulations;

- (b) determining applications for approval made to a Primary Care Trust by a relevant service provider under regulation 4 of those Regulations;
 - (c) imposing requirements on accredited service providers under regulation 7 of those Regulations; and
 - (d) the making and determining of appeals under regulation 10 of those Regulations.
- (3) The modifications referred to in paragraph (2) are as if—
- (a) in regulation 2—
 - (i) the definitions of “the 1997 Act”, “General Medical Services Regulations”, “National Health Service Counter Fraud Service”, “normal hours” and “pilot scheme agreement” were omitted,
 - (ii) for the definition of “existing service provider” there were substituted—
 - ““existing service provider” means a relevant service provider with which—
 - (a) a general medical services contractor or a default contractor has an out of hours arrangement which has been approved in accordance with the term of its general medical services contract which gives effect to paragraph 2 of Schedule 7 to the GMS Contract Regulations (or in accordance with the equivalent term of its default contract) or which is deemed to have been so approved pursuant to article 44(1)(a), 76, 79 or 86 of the Transitional Order, or
 - (b) a PMS contractor has an out of hours arrangement which has been approved in accordance with the term of its agreement which gives effect to paragraph 2 of Schedule 6 to the Personal Medical Services Agreements Regulations or which is deemed to have been so approved pursuant to article 77, 80 or 89 of the Transitional Order;”,
 - (iii) for the definition of “out of hours arrangement” there were substituted—
 - ““out of hours arrangement” means an arrangement under—
 - (a) the term of a general medical services contract which gives effect to paragraph 1(2) of Schedule 7 to the GMS Contract Regulations,
 - (b) the equivalent term of a default contract, or
 - (c) the term of an agreement which gives effect to paragraph 1(2) or (3) of Schedule 6 to the Personal Medical Services Agreements Regulations;”,
 - (iv) in the definition of “relevant service provider” there were added—
 - “and
 - (c) a general medical services contractor, a default contractor, a PMS contractor or a party to contractual arrangements made under article 15 of the General Medical Services Transitional and Consequential Provisions Order 2004(4) whose contract, agreement or contractual arrangements include out of hours services;”, and
 - (v) there were inserted in the appropriate alphabetical position—
 - ““agreement” means an agreement for primary medical services made under section 28C of the 1977 Act;

“the CFSMS” means the Counter Fraud and Security Management Service established by the Counter Fraud and Security Management Service (Establishment and Constitution) Order 2002⁽⁵⁾;

“PMS contractor” has the same meaning as in article 1(4) of the Transitional Order;

“default contractor” means a person who has entered into a contract under article 13 of the General Medical Services Transitional and Consequential Provisions Order 2004;

“GMS Contract Regulations” means the National Health Service (General Medical Services Contracts) Regulations 2004⁽⁶⁾;

“general medical services contractor” means a person who holds a contract under section 28Q of the 1977 Act⁽⁷⁾;

“out of hours services”—

- (a) in relation to services under a general medical services contract, has the same meaning as in regulation 2(1) of the GMS Contract Regulations,
- (b) in relation to services under a default contract, has the same meaning as in the Default Contract 2004 dated 18th February 2004⁽⁸⁾, and
- (c) in relation to services under an agreement means—
 - (i) out of hours services as defined in regulation 2 of the Personal Medical Services Agreements Regulations, and
 - (ii) other services provided under the agreement outside normal hours as defined in paragraph 1(1) of Schedule 6 to the Personal Medical Services Agreements Regulations;

“Personal Medical Services Agreements Regulations” means the National Health Service (Personal Medical Services Agreements) Regulations 2004⁽⁹⁾;

“service provider” means the person or persons providing or proposing to provide out of hours services on behalf of a general medical services contractor, a default contractor or a PMS contractor;

“the Transitional Order” means the General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004[;];

(b) regulation 3 were omitted;

(c) in regulation 4—

(i) in paragraph (5), after “shall” there were inserted—

“, unless, in its opinion, it is appropriate and safe not to do so,”, and

(ii) in paragraphs (6) to (8) after “assessing authority” there were inserted “(if any)”;

(d) in regulation 7—

(i) in paragraph (1), after “assessing authority” there were inserted “(if any)”,

(5) S.I. 2002/3039.

(6) S.I. 2004/291.

(7) Section 28Q was inserted into the 1977 Act by section 175(1) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

(8) The Default Contract 2004 is published by the Department of Health. It is available on their web site at www.dh.gov.uk/PolicyAndGuidance/HumanResourcesAndTraining/ModernisingPay/GPContracts or a copy can be obtained by writing to the Department of Health, Room 3E46, Quarry House, Quarry Hill, Leeds LS2 7UE.

(9) S.I. 2004/627.

- (ii) in paragraph (2), before “assessing authority” in both places it occurs, there were inserted “accrediting authority or the”, and
- (iii) in paragraph (5)—
 - (aa) in sub-paragraph (a), for “approved for a period of three years” there were substituted “granted approval under regulation 5(1)(a)(i) or (5)”; and
 - (bb) in sub-paragraph (b), for “approved for a period of up to twelve months” there were substituted “granted approval under regulation 5(1)(a)(ii) or (1)(b)”;
- (e) in regulation 11(2)—
 - (i) in sub-paragraph (c), for “any medical practitioner or party to a pilot scheme agreement” there were substituted “any general medical services contractor, default contractor or PMS contractor”,
 - (ii) in sub-paragraph (d), for “section 44” there were substituted “section 45A”, and
 - (iii) in sub-paragraph (e), for “National Health Service Counter Fraud Service” there were substituted “CFSMS”; and
- (f) in the Schedule, in paragraph (7), for “medical list” there were substituted “medical performers list” and the remainder of the paragraph were omitted.
- (4) Any approval of a relevant service provider which has been granted by a Primary Care Trust—
 - (a) before 31st March 2004 under regulation 5 of the Out of Hours Regulations and continued under paragraph (2)(a); or
 - (b) after 31st March 2004 under regulation 5 of those Regulations as saved and modified by this article,
 and which has not come to an end before that date, shall cease to have effect on 1st January 2005.

Sub-contracting of out of hours services under general medical services contracts

91.—(1) Where, prior to 1st January 2005, a general medical services contractor wishes to sub-contract all or part of its out of hours services in circumstances which would require the written approval of the Primary Care Trust in accordance with the term of the general medical services contract which gives effect to paragraph 70 of Schedule 6 to the 2004 Regulations, it shall be deemed to have such written approval if, at the date on which it enters into the sub-contract—

- (a) it has, or, pursuant to article 76, 79 or 86 is deemed to have, approval of an out of hours arrangement under the term of the general medical services contract which gives effect to paragraph 2 of Schedule 7 to the 2004 Regulations whose terms are, in all material respects, identical to those of the proposed sub-contract;
 - (b) that approval has not been suspended or withdrawn; and
 - (c) it has not previously entered into a sub-contract for its out of hours services in reliance on the approval referred to in sub-paragraph (a).
- (2) The general medical services contractor shall notify the Primary Care Trust in writing as soon as reasonably practicable of any sub-contract which it proposes to enter into or has entered into pursuant to paragraph (1).
- (3) An approval deemed to have been granted pursuant to paragraph (1) shall be regarded, for all purposes, as an approval granted under the term of the general medical services contract which gives effect to paragraph 70 of the 2004 Regulations.

Out of hours services to patients not registered with general medical services contractors or default contractors

92.—(1) Where a general medical services contractor or a default contractor is required under article 24 or 25 of the Transitional Order to provide any of the additional services to patients who are not included on its list of patients, it shall, for so long as that requirement continues, and subject to paragraphs (2) and (4), also be required to provide that service to those patients throughout the out of hours period.

(2) In the case of a general medical services contract, the requirement referred to in paragraph (1) shall cease on the date on which any opt out of out of hours services commences pursuant to the terms of the general medical services contract which give effect to paragraph 4 or 5 of Schedule 3 to the 2004 Regulations.

(3) Where paragraph (2) applies, the requirement to inform patients of opt outs in the term of the general medical services contract which gives effect to paragraph 6 of Schedule 3 to the 2004 Regulations shall apply to the patients to whom services are provided pursuant to this article as it applies to the general medical services contractor's own registered patients.

(4) Nothing in this article shall require a general medical services contractor or a default contractor to provide services under this article if, in the reasonable opinion of the default contractor or the general medical services 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 he could obtain such services during core hours.

(5) Services included in a general medical services contract or a default contract pursuant to this article shall be deemed to fall within the definition of out of hours services for the purposes of—

- (a) the terms of the general medical services contract which give effect to paragraphs 11, 13 and 70 to 72 of Schedule 6 to the 2004 Regulations and Schedule 7 to those Regulations; or
- (b) any equivalent terms of the default contract.

Application of regulation 30 of the 2004 Regulations to general medical services contracts entered into under Part 2 of the Transitional Order

93. Where a person enters into a general medical services contract pursuant to an entitlement under Part 2 of the Transitional Order under which services are not to be provided until on or after 1st January 2005, regulation 30 of the 2004 Regulations (out of hours services) shall apply to that general medical services contract as it applies to general medical services contracts under which services are to be provided before that date.