
WELSH STATUTORY INSTRUMENTS

2004 No. 477

**The General Medical Services Transitional and
Consequential Provisions (Wales) Order 2004**

PART 5

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 Local Health Board;
- (b) “Premises Costs Directions” means the National Health Service (General Medical Services — Premises Costs) (Wales) Directions 2004, given by the Assembly under section 16BB(4)(1) of the National Health Service Act 1977(2), 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;
- (c) “Statement of Fees and Allowances” means the statement determined and published by the Assembly under regulation 34 of the 1992 Regulations(3), as that statement had effect on 31st March 2004; and
- (d) “Statement of Financial Entitlements” means any directions given by the Assembly under section 28T of the National Health Service Act 1977(4), and expressions used both in article 36(2) to (6) and in the Statement of Financial Entitlements, unless they are defined elsewhere in this Order, have the same meaning as in the Statement of Financial Entitlements.

Payments under default contracts

36.—(1) Subject to the following provisions of this Part, where a Local Health Board enters into a default contract, the only payments that are to be made by the Local 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 Local 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 Local 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—

(1) Section 16BB(4) was inserted into the Act by section 6 of the National Health Service Reform and Health Care Professions Act 2003 (c. 17).
(2) 1977 c. 49.
(3) Regulation 34 was amended by S.I.1993/540, 1997/2468, 2000/601 and 2002/2469.
(4) Section 28T was inserted into the Act by section 175 of the Health and Social Care (Community Health and Standards) Act 2003.

- (a) it had entered into a general medical services contract with the Local Health Board on or before 31st March 2004; and
- (b) a calculation had, as a consequence, been made of its final global sum equivalent by the Local Health Board in accordance with Part 1 of the 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 general medical services contract with the Local Health Board on or before 31st March 2004, the Local 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 Statement of Financial Entitlements (payments for specific purposes),

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

(4) In respect of each complete quarter of the financial year for which a default contract has effect, the Local 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 general medical services contract with the Local Health Board on or before 31st March 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 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 Local Health Board a payment in respect of—

- (a) a standard, additional or further payment under the golden hello scheme;
- (b) a returners' scheme doctor payment;
- (c) a flexible career scheme contractor payment, a flexible career scheme doctor payment or a payment in respect of educational sessions under the flexible career scheme;
- (d) sessions undertaken by a member of the doctors' retainer scheme;
- (e) an educational allowance payment; or
- (f) dispensing services,

to which the contractor would have been entitled under Part 4 of the Statement of Financial Entitlements (payments for specific purposes), had the contractor entered into a general medical services contract with the Local Health Board on or before 31st March 2004, and which would, in those circumstances, have fallen due by virtue of that Part, the Local Health Board must pay to the contractor under the default contract the amount that the Local Health Board would have been required to pay to it by virtue of Part 4 of the Statement of Financial Entitlements, had the contractor entered into a general medical services contract with the Local Health Board on or before 31st March 2004.

(6) If, in the period during which a default contract has effect, the contractor claims from a Local 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 Statement of Financial Entitlements (certain premises and I.T. costs), had the contractor entered into a general medical services contract with the Local Health Board on or before 31st March 2004, and which would, in those circumstances, have fallen due by virtue of that Part, the Local Health Board must pay to the contractor under the default contract the amount that the Local Health Board would have been required to pay to it by virtue of Part 5 of the Statement of Financial Entitlements, had the contractor entered into a general medical services contract with the Local Health Board on or before 31st March 2004.

(7) If, in the period during which a default contract has effect, the contractor claims from a Local 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 Local 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 Local 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 Local 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 Local 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 Local 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) fourteen days after the end of the month in respect of which the locum costs were incurred, or
 - (ii) fourteen days after 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 Statement of Financial Entitlements (payments for specific purposes), had the contractor entered into a general medical services contract with the Local Health Board on or before 31st March 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 Local 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 Local 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 general medical services contract

38. If a contractor does not enter into a general medical services 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 Local 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 Local 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 Local Health Board any information which the Local Health Board does not have but needs, and which the contractor either has or could reasonably be expected to provide, in order for the Local Health Board to be able to calculate the payment.

(2) The obligations to make payments under article 36 and 38 are subject to any right that the Local 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 Local Health Board under the default contract; or
- (b) that the Local Health Board may withhold or deduct as a contract sanction, in accordance with the terms of the default contract.

(3) A Local 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 general medical services contract

40. If a contractor who has entered into a default contract thereafter enters into a general medical services contract which takes effect immediately after its default contract ceases to have effect, the Local Health Board that is a party to the general medical services contract must ensure that the general medical services 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 general medical services contract on or before 31st March 2004—

- (i) as a payment on account under the general medical services contract, shall be treated as a payment on account under the general medical services 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 general medical services contract, shall be treated as a payment under the general medical services contract,

and accordingly any condition that attaches, or is to be attached, to such a payment, when made under a general medical services contract, by virtue of the 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 general medical services 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 Local 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 he

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

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

but he or she remains entitled to enter into a general medical services contract.

(2) Where a person to whom payments have been made by a Local Health Board by virtue of paragraph (1) enters into a default contract or a general medical services contract, the Local 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 general medical services 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 general medical services contract, shall be treated as a payment on account under the general medical services 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 general medical services contract, shall be treated as a payment under the general medical services contract,

and accordingly any condition that attaches, or is to be attached, to such a payment, when made under a general medical services contract, by virtue of the 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 or before 31st March 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 1992 Regulations, 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 Local 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 Local 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.