

PRIMARY MEDICAL SERVICES (NORTHERN IRELAND) ORDER 2004

S.I. 2004 No. 311 (N.I. 2)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The Primary Medical Services (Northern Ireland) Order (“the Order”) was made on 11 February 2004.
2. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety (“the Department”) in order to assist the reader in understanding the Order. It does not form part of the Order.

BACKGROUND AND POLICY OBJECTIVES

3. Following negotiations at national level, agreement has been reached with the medical profession on a new contract for the provision of general medical services by GPs. The new contract will apply UK-wide. The overarching policy objective of the Order is to make the necessary legislative changes to allow implementation of the new contract in Northern Ireland. It amends the provisions of the Health and Personal Social Services (Northern Ireland) Order 1972 (“the 1972 Order”) relating to the arrangements currently made by Health and Social Services Boards with medical practitioners for the provision of general medical services and personal medical services.

MAIN ELEMENTS OF THE ORDER

4. Current legislation places Health and Social Services Boards under a duty to make arrangements with medical practitioners for the provision by them of personal medical services for all persons in the area who wish to take advantage of such arrangements, which are known as “general medical services”. A Board has no power under existing legislation to provide general medical services itself, but this Order introduces provisions that will enable it to discharge its new duty by providing such services itself or by securing their provision by others, according to which is the most appropriate to local circumstances
5. The Order will also insert provisions into the 1972 Order which will govern the terms and content of the new GMS contract and those who may provide or perform primary medical services under such a contract. These provisions also contain broad regulation-making powers which will be used to set out the detail of the rights and obligations of the new contract.
6. The new contract is for providers of general medical services. However, the changes in the legislation required to effect these changes have implications for the legislative and contractual arrangements applying to what are currently known as “personal medical services” (PMS), and the Order makes provision for these. PMS is the system for delivery of personal medical services introduced by the Health and Social Services (Primary Care) (NI) Order 1997. PMS was conceived to operate in parallel with general

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medical services and allowed for more flexible arrangements whereby, rather than be remunerated via the usual system of fees and allowances, a participating practice could agree a contract directly with the Board, specifying the services it would provide and pricing those services

7. The Order will also create a power to prescribe those who can enter into a contract, the policy intention being that those being given a contract are fit and competent people to carry out this sensitive and important work.

COMMENTARY ON ARTICLES

8. **Article 3 – provision of primary medical services.** This Article substitutes a new Article 56 in the 1972 Order. This new Article places a duty on Health and Social Services Boards to provide or secure the provision of primary medical services for persons in their area.
9. Paragraph (1) of the new Article requires a Health and Social Services Board to provide primary medical services or to secure the provision of those services by others. This gives Boards a new ability to provide services themselves, in contrast to the current Article, which only permits them to secure the provision by others. This paragraph also introduces the concept of “primary medical services”
10. Paragraph (2) of the new Article permits a Health and Social Services Board to provide primary medical services itself (for example, through the direct employment of a GP) or to secure provision by others through such arrangements as it thinks fit. The main options available to the Boards will be GMS arrangements under a new Article 57 in the 1972 Order, or by means of personal medical services arrangements under Article 15B of that Order. An alternative option provided by this Article would allow a health and Social Services Board to contract with a private provider.
11. Paragraph (3) places a duty on Health and Social Services Boards to publish information about the primary medical services which they provide themselves or which they commission from others. A new regulation-making power is contained in this paragraph to enable provisions to be made setting out the detail of the information which should be published. The publication of such information will assist patients in identifying the providers of primary medical services in a Board area and to be aware of the range of services offered.
12. Paragraph (4) creates an obligation on Health and Social Services Boards to co-operate with each other in discharging their duties under new Article 56. This has particular relevance when considering patients who may live in one Board area but seek services from a practice based in a neighbouring Board area. This specific duty of co-operation is in addition to any existing duty of co-operation provided elsewhere in the 1972 Order.
13. Paragraph (5) creates an obligation on Health and Social Services Boards to co-operate with each other in discharging their duties under new Article 56. This has particular relevance when considering patients who may live in one Board area but seek services from a practice based in a neighbouring Board area. This specific duty of co-operation is in addition to any existing duty of co-operation provided elsewhere in the 1972 Order.
14. Paragraph (6) provides further regulation-making powers to describe primary medical services by reference to the manner or circumstances in which they will be delivered. This is intended to include categorising the services by the times of day during which they are to be provided. It is the intention to use this power to bring to an end GPs’ 24-hour responsibility for their patients and to allow them to opt out of providing care to patients between the hours of 6.30 pm to 8.00 am on weekdays and the whole of weekends, Bank Holidays and Public Holidays. The intention is that responsibility for providing services during these hours will transfer to Boards, as part of their new statutory duties.

15. **Article 4 – General medical services contracts.** This Article inserts new Articles 57 to 57E into the 1972 Order (in place of the existing Articles 57 and 57A which deal with current GMS arrangements). The new Articles govern the terms and content of the new GMS contract and who may provide or perform primary medical services under such a contract. The new Articles provide broad regulation-making powers which will be used to set out the detail of the rights and obligations under the new contract.
16. *New Article 57* deals with the general content of contracts. Paragraph (1) allows a Health and Social Services Board to enter into a GMS contract with a contractor to provide primary medical services in accordance with the provisions contained in Part VI of the 1972 Order.
17. Paragraph (3) sets out the broad parameters for services to be provided under a contract, the remuneration for their provision and any other matters. Health and Social Services Boards will be free to agree the terms of any contract, subject to any restrictions provided by new Articles 57A to 57E and in regulations made under those Articles.
18. Paragraph (4) allows a contract to cover a wide range of services, for example, those which may previously have been provided in a secondary care setting, such as specialised services for drug and alcohol misuse, sexual health or depression. These provisions also permit the contract to include services to patients who may not live in the Health and Social Services Board area in which the contractor is based.
19. *New Article 57A* provides, in paragraph (1), a regulation-making power to enable the Department to prescribe the services that must be provided under a GMS contract. These regulations describe those services which are referred to in the contract agreement as “essential services”. Paragraph (2) of this new Article allows the services in paragraph (1) to be prescribed by reference to the manner or circumstances in which they are to be provided. So, for example, the regulations could provide that certain services provided outside certain times (say, before 8.00 am and after 6.30 pm on weekdays) would not count as services to be provided under the contract. This would mean that GPs would not have to provide services for 24 hours a day.
20. *Article 57B*, also inserted by the amendment, defines the persons with whom a Health and Social Services Board may enter into a GMS contract. Paragraph (1) allows a Board to enter into a GMS contract with a medical practitioner, a group of individuals practising in partnership or a company although, in the latter two cases, only where certain conditions (set out in paragraphs (2) and (3) of the Article) are satisfied. Paragraph (1) also provides that regulations may place conditions on persons who may enter into a GMS contract. It is envisaged that these regulations will disqualify certain individuals, such as those convicted of a serious offence, from holding a contract.
21. Paragraph (2) sets out the conditions which must be satisfied where a contract is to be entered into with two or more individuals practising in partnership. Sub-paragraph (b) provides that at least one partner must be a medical practitioner and that any partner who is not must be a health and social services employee, a health care professional (as defined in paragraph (5) of the Article) who is engaged in the provision of services under the 1972 Order, a person employed by a provider of personal medical services in any part of the UK, or an individual who is (or within a prescribed period was) providing services under a general medical services contract in accordance with personal medical services arrangements. This provision will enable persons who are not medical practitioners to be a party to a GMS contract.
22. Paragraph (3) sets out similar conditions which must apply where a contract is to be entered into with a limited company. Such companies will only be permitted to hold a contract where a least one share is beneficially owned by a medical practitioner, and any share not so owned is legally owned by an individual who could otherwise enter into a GMS contract, for example, a health care professional.

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23. Paragraph (4) allows the Department to make regulations making provision about the effect on a GMS contract of a change in the membership of the partnership. For example, such provision may allow a partnership to continue where, over time, partners come and go due to routine events such as career change or retirement.
24. *New Article 57C* replaces the existing system of remuneration for medical practitioners providing general medical services. Currently the rules setting out the remuneration for medical practitioners are contained in the “Statement of Fees and Allowances” (SFA). The SFA is determined by the Department under regulation 37 of the General Medical Services Regulations (Northern Ireland) 1997. In new Article 57C, paragraph (1) allows the Department to give directions as to the payments to be made under the contract and paragraph (2) goes on to provide that, where directions are made, the GMS contract must require that payments are made in accordance with those directions. In this way, the Department can ensure that payments in respect of any particular matter under the contract are consistent with those set elsewhere in the UK. Directions may relate to payments made by a Health and Social Services Board to a GMS provider or by a GMS provider to a Board.
25. Paragraph (3) sets out how the power to make directions may be exercised and gives particular examples of the factors that may be taken into account in giving directions. This power will enable directions to provide for payments to be determined, for example, by reference to the meeting of standards. Directions may also be made in respect of individual practitioners and so would enable, for example, payments to be made that relate to the seniority of the medical practitioner.
26. Paragraph (4) recreates the existing requirement for the Department to consult representative bodies on remuneration matters before giving any directions under this Article.
27. *New Article 57D* enables the Department to continue to make provision for certain drugs, medicines and other substances not to be prescribed by general practitioners as part of their contract for the provision of medical services. Paragraph (2) makes it clear that the direction from the Department will normally be provided by way regulations and paragraph (3) provides an exception to this where a request in respect of a drug, medicine or other substance is made via a Community marketing authorisation or a UK marketing authorisation. In such circumstances the Department may make provision by way of a direction.
28. *New Article 57E* provides broad regulation-making powers to specify further matters that should be covered by GMS contracts. Paragraph (2) gives examples of what regulations under paragraph (1) may cover, such as, the persons who perform services, the circumstances in which, and the manner in which, the contract may be terminated and the dispute resolution procedure.
29. Paragraph (3) provides for regulations made under paragraph (2)(c) to set out the circumstances under which a contractor must accept a person as a patient to whom services are to be provided under the contract, the circumstances in which a contractor can decline to accept such a person and how the contractor can terminate their responsibility for a patient.
30. Paragraphs (4) and (5) provide for the regulations made under paragraph (2)(e) to include provision as to the circumstances in which a Health and Social Services Board may vary the terms of a GMS contract and for suspension or termination of any duty under the contract to provide services of a prescribed description. This will, for example, allow GMS contractors to seek to opt out of providing certain services such as minor surgery, child health surveillance and contraceptive services (those services described in the contract agreement as “additional services”) without having to terminate their contract.

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31. *New Article 57F* contains provisions for the establishment of procedures for dealing with the resolution of disputes and the enforcement of GMS contracts. Paragraph (1) provides a regulation-making power concerning the resolution of pre-contract disputes. In particular, as set out in paragraph (2), the regulations may provide for the Department, or a person appointed by it, to determine the terms on which a GMS contract may be entered into.
32. Paragraph (3) allows contractors to elect to be treated as health and social services bodies for the purposes of the contract. The effect will be that any contract is treated as a health and social services contract under Article 8 of the Health and Personal Social Services (Northern Ireland) Order 1991, and any dispute arising under the GMS contract, once it has been entered into, will be determined by the Department or its appointee.
33. Paragraph (4) allows regulations under paragraph (3) to make provision about the effect of a change in the partnership of a GMS contractor. The purpose is to ensure, for example, that a routine change in the partnership should not affect the health and social services status of the contractor.
34. Paragraph (5) makes provision with respect to the enforcement of a direction as to payments under a health and social services contract. No GMS contractor will be forced to have health and social services body status (and, therefore, a health and social services contract). If a contractor does not have the status of a health and social services body, then the contract is enforceable as an ordinary legal contract in a county court.
35. **Article 5 – General medical services: transitional.** Paragraph (1) requires the department to make an order in respect of medical practitioners who are providing general medical services under the existing Article 56 of the 1972 Order immediately before the coming into operation of new Article 57.
36. Paragraph (2) specifies that an order made under paragraph (1) may require a Health and Social Services Board to enter into a new GMS contract with a medical practitioner described in paragraph (1) and the order may also provide for the terms of such a contract.
37. Paragraph (3) states that an order made under paragraph (1) may also require a Health and Social Services Board to enter into a contract with a medical practitioner described in paragraph (1) for the provision of medical services. A contract under this paragraph may be appropriate to ensure continuity of service where it has not been possible to enter into a GMS contract before the coming into operation of the new contract provisions.
38. Paragraph (4) provides that an order made under this Article may provide for the resolution of any disputes in connection with the contract entered into and paragraph (5) permits such an order to make provisions in respect of a period beginning before the coming into operation of the new GMS provisions.
39. **Article 6 – Article 15B arrangements.** Article 6 amends Article 15B of the 1972 Order (provision of personal medical or dental services) and the following Articles to reflect the fact that the changes in the legislation in regard to providers of GMS have implications for legislative and contractual arrangements for what are known as “personal medical services” (PMS). (See paragraph 7 of the main document.)
40. Paragraph (2) amends Article 15B so that it refers to “primary medical services”.
41. Paragraphs (3) and (4) amend Article 15C of the 1972 Order and set out the categories of persons who will be eligible to enter into arrangements under Article 15B. The amendments reflect the need to be consistent with the terminology in other parts of the Order, including the creation in new Article 56 of the “primary medical services” duty on Health and Social Services Boards, and the descriptions of the new GMS contract in new Articles 57 to 57F. Paragraph (3) also contains new regulation-making powers to enable the Department to set conditions that providers of personal medical

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services (PMS) must meet before they can enter into a PMS arrangement. They are intended to ensure that the conditions prescribed in respect of GMS contractors under new Article 57B may be applied, where appropriate, to providers of PMS under Article 15B arrangements.

42. Paragraph (8) expands the regulation-making powers contained in Article 15E of the 1972 Order. It is intended that regulations made under this provision will require performers of primary medical services under Article 15B arrangements to demonstrate that they have a prescribed level of qualification and experience as part of their eligibility to provide such services. The new regulation-making powers bring the Article 15B arrangements into line with those governing the new GMS contract.
43. Paragraph (9) inserts a new provision stating that regulations may require payments under PMS arrangements to be made in accordance with any direction given by the Department. PMS contracts are locally negotiated and Health and Social Services Boards are free to agree the level of financial reward. This amendment allows the Department to require certain payments to be provided for within the contractual terms, for example, to ensure that seniority payments are made to PMS general practitioners in the same way as to a GMS practitioner. Any such direction may make provisions which may have effect for a period before the coming into operation of the new provisions. The paragraph also enables regulations to be made to set out the circumstances under which a person who is a party to Article 15B arrangements will be able to request a Health and Social Services Board to replace those arrangements with a new GMS contract. The regulations may also include provisions for the resolution of disputes as to the terms of any arrangements under Article 15B. It is also intended that the regulations will set out the circumstances in which a provider of primary medical services under Article 15B arrangements can, or must, accept a patient and how they can terminate their responsibility for such a person. In addition, the regulations may also make provisions concerning the right of a patient of a PMS provider to exercise choice as to the person from whom they receive such services.
44. Paragraph (11) repeals Article 15E of the 1972 Order. This Article relates to the choice of medical practitioner under Article 15B arrangements and these matters are now covered in the new GMS contract and amended PMS arrangements.
45. **Article 7 – Revocation of power to make pilot schemes.** Under existing powers, Article 15B arrangements can be set up either as pilot schemes or as permanent schemes. For pilot schemes, a business case must be approved by the Health and Social Services Board, then approved by the Department. This Article prevents the creation of new pilot schemes after the date on which these provisions come into operation.
46. **Article 8 – Persons performing primary medical services.** This Article inserts a new Article 57G into the 1972 Order providing regulation-making powers to prescribe the ways in which persons performing primary medical services are to be listed. The regulations will prevent health care professionals from performing primary medical services unless their name appears on a list held by the Health and Social Services Board for the area in which they will work. These provisions, taken with the repeal of Article 15E in the 1972 Order, replace the existing system of listing.
47. Paragraph (3) provides for particular matters that may be included in the regulations. These include, for example, how the list will be drawn up and maintained, what criteria an individual will have to meet to qualify to be on the list, the process by which decisions on applications will be made, mandatory grounds on which a Health and Social Services Board would have to reject an application, discretionary grounds under which it may reject an application, and the grounds for suspension or removal from a list or references to a Tribunal.
48. **Article 9 – Assistance and support.** Article 9 inserts a new Article 57H into the 1972 Order. This new Article gives Health and Social Services Boards a power to assist and support providers and prospective providers of primary medical services who do so

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through GMS or PMS arrangements. Support and assistance includes financial support and the terms on which such assistance and support are given, including the terms of payment, are matters for individual Boards.

49. **Article 10 – Minor and consequential amendments.** This Article introduces the minor and consequential amendments set out in Schedule 1.
50. **Article 11 – Supplementary provision.** This Article enables the Department by order to make such transitional, transitory and saving provision as it considers appropriate in connection with the commencement of the Order and to make supplementary, incidental or consequential provision for giving effect to the Order.
51. **Article 12 – Repeals.** This Article introduces the repeals set out in Schedule 2.