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STATUTORY RULES OF NORTHERN IRELAND

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**2004 No. 140**

**The Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004**

**PART 1**  
**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004 and shall come into operation on 29th March 2004.

**Interpretation**

2. In these Regulations –

“additional services” means one or more of –

- (a) cervical screening services,
- (b) contraceptive services,
- (c) vaccinations and immunisations,
- (d) childhood vaccinations and immunisations,
- (e) child health surveillance services,
- (f) maternity medical services, and
- (g) minor surgery;

“adjudicator” means the Department or a person or persons appointed by the Department under Article 8(6) of the 1991 Order or paragraph 93(5) of Schedule 5;

“appliance” means an appliance which is included in a list for the time being approved by the Department for the purposes of Article 63 of the Order;

“approved medical practice” shall be construed in accordance with section 11(4) of the Medical Act 1983(1);

“Article 15B provider” means a person who is providing primary medical services in accordance with Article 15B arrangements(2);

“assessment panel” means a committee or sub-committee of a Board (other than the Board which is a party to the contract in question) appointed to exercise functions under paragraphs 31 and 35 of Schedule 5;

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(1) 1983 c. 54; section 11(4) was amended by the National Health Service (Primary Care) Act 1997 (c. 46), section 35(4) and Schedule 2, paragraph 61(2)  
(2) Definition inserted by Schedule 2 to S.I. 1997/1177(N.I. 7)

“Board” means, unless the context otherwise requires, the Health and Social Services Board which is a party, or prospective party, to the contract;

“CCT” means Certificate of Completion of Training awarded under Article 8 of the 2003 Order, including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in Article 20(3)(a) of that Order;

“cervical screening services” means the services described in paragraph 2(2) of Schedule 1;

“charity trustee” means one of the persons having the general control and management of the administration of a charity;

“chemist” means –

- (a) a registered pharmacist,
- (b) a person lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968<sup>(3)</sup>, or
- (c) a supplier of appliances,

who is included in the pharmaceutical list under Article 63 of the Order.

“child health surveillance services” means the services described in paragraph 6(2) of Schedule 1;

“childhood vaccinations and immunisations” means the services described in paragraph 5(2) of Schedule 1;

“closed”, in relation to the contractor’s list of patients, means closed to applications for inclusion in the list of patients other than from immediate family members of registered patients;

“contraceptive services” means the services described in paragraph 3(2) of Schedule 1;

“contract” means a general medical services contract under Article 57 of the Order;

“contractor’s list of patients” means the list prepared and maintained by the Board under paragraph 14 of Schedule 5;

“core hours” means the period beginning at 8am and ending at 6.30pm on any day from, and including, Monday to Friday except a public holiday and a local holiday agreed with the Board;

“dispensing services” means the provision of drugs, medicines or appliances that may be provided by a medical practitioner in accordance with arrangements made under regulation 11 of the Pharmaceutical Regulations;

“disqualified” means local or general disqualification by the Tribunal under paragraph 3(2) of Schedule 11 to the Order<sup>(4)</sup> (or a decision under provisions in operation in England, Wales or Scotland corresponding to local or general disqualification), but does not include conditional disqualification under paragraph 4 of Schedule 1 to the Order;

“Drug Tariff” means the statement published under regulation 9 of the Pharmaceutical Regulations;

“enhanced services” are –

- (a) services other than essential services, additional services or out of hours services; or
- (b) essential services, additional services or out of hours services or an element of such a service that a contractor agrees under the contract to provide in accordance with specifications set out in a plan, which requires of the contractor an enhanced level of

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(3) 1968 c. 67; section 69 was amended by the Statute Law (Repeals) Act 1993 (c. 50) and the Pharmacists (Fitness to Practise) Act 1997 (c. 19), Schedule 5, paragraph 5

(4) Schedule 11 is substituted by Schedule 2 to the Health and Personal Social Services Act (Northern Ireland) 2001 c. 3 (N.I.)

service provision compared to that which it needs generally to provide in relation to that service or element of service;

“essential services” means the services required to be provided in accordance with regulation 15;

“general medical practitioner” means –

- (a) from the coming into operation of Article 10 of the 2003 Order, a medical practitioner whose name is included in the General Practitioner Register otherwise than by virtue of paragraph 1(d) of Schedule 6 to that Order, and
- (b) until the coming into operation of that Article, a medical practitioner who is either –
  - (i) until the coming into operation of paragraph 22 of Schedule 8 to the 2003 Order, suitably experienced within the meaning of Article 8(2) of the Health and Personal Social Services (Northern Ireland) Order 1978<sup>(5)</sup>, section 31(2) of the National Health Service Act 1977<sup>(6)</sup> or section 21 of the National Health Service (Scotland) Act 1978<sup>(7)</sup>; or
  - (ii) upon the coming into operation of paragraph 22 of Schedule 8 to the 2003 Order, an eligible general practitioner pursuant to that paragraph other than by virtue of having an acquired right under paragraph 1(d) of Schedule 6 to the 2003 Order;

“General Practitioner Register” means the register kept by the General Medical Council under Article 10 of the 2003 Order;

“global sum” has the same meaning as in the Statement of Financial Entitlements;

“GP Registrar” –

- (a) until the coming into operation of Article 5 of the 2003 Order, means a medical practitioner who is being trained in general practice by a medical practitioner who –
  - (i) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the Medical Practitioners (Vocational Training ) Regulations (Northern Ireland) 1998<sup>(8)</sup>, and
  - (ii) performs primary medical services, and
- (b) from the coming into operation of that Article, means a medical practitioner who is being trained in general practice by a GP Trainer whether as part of training leading to the award of a CCT or otherwise;

“GP Trainer” means a general medical practitioner who is –

- (a) until the coming into operation of Article 4(5)(d) of the 2003 Order, approved as a GP Trainer by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the Medical Practitioners (Vocational Training) Regulations (Northern Ireland) 1998; or
- (b) from the coming into operation of that Article, approved by the Postgraduate Medical Education and Training Board under Article 4(5)(d) of the 2003 Order for the purposes of providing training to a GP Registrar under Article 5(1)(c)(i);

“Health Board” means a Health Board established under section 2 of the National Health Service (Scotland) Act 1978<sup>(9)</sup>;

“health services body” means –

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(5) S.I. 1978/1907 (N.I. 26)  
(6) 1977 c. 49  
(7) 1978 c. 29  
(8) S.R. 1998 No. 13  
(9) 1978 c. 29

- (a) any person or body referred to in Article 8(2) of the 1991 Order;
- (b) persons entering into a contract who are to be regarded as a health services body in accordance with regulation 10 (health services body status);

“HSS contract” has the meaning assigned to it by Article 8 of the 1991 Order;

“immediate family member” means –

- (a) a spouse,
- (b) a person (whether or not of the opposite sex) whose relationship with the registered patient has the characteristics of the relationship between husband and wife,
- (c) a parent or step-parent,
- (d) a son,
- (e) a daughter,
- (f) a child of whom the registered patient is –
  - (i) the guardian, or
  - (ii) the person with whom the child has been placed by an authority under Article 27(2) of the Children (Northern Ireland) Order 1995<sup>(10)</sup>, or
- (g) a grandparent;

“independent nurse prescriber” means a person –

- (a) who is either engaged or employed by the contractor or is a party to the contract,
- (b) who is registered in the Nursing and Midwifery Register, and –
- (c) in respect of whom an annotation signifying that he is qualified to order drugs, medicines and appliances from –
  - (i) the Nurse Prescribers' Formulary for District Nurses and Health Visitors in Part XVIIB(i) of the Drug Tariff, or
  - (ii) the Nurse Prescribers' Extended Formulary in Part XVIIB(ii) of the Drug Tariff, is also recorded in that register;

“licensing authority” shall be construed in accordance with section 6(3) of the Medicines Act 1968<sup>(11)</sup>;

“licensing body” means any body that licenses or regulates any profession;

“limited partnership” means a partnership registered in accordance with section 5 of the Limited Partnerships Act 1907<sup>(12)</sup>;

“Local Health Board” means a body established under section 16BA of the National Health Services Act 1977<sup>(13)</sup>;

“Local Medical Committee” means the committee of that name recognised by a Board under Article 55B of the Order<sup>(14)</sup>(Local medical committees) ;

“maternity medical services” means the services described in paragraph 7 of Schedule 1;

“medical card” means a card issued by the Agency, a Primary Care Trust, Local Health Board, Health Authority or Health Board to a person for the purpose of enabling him to obtain, or establishing his title to receive, primary medical services;

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<sup>(10)</sup> S.I. 1995/755 (N.I. 2)

<sup>(11)</sup> 1968 c. 67.

<sup>(12)</sup> 1907 c. 24

<sup>(13)</sup> Section 16BA is inserted by section 6 of the National Health Service Reform and Health Care Professions Act 2002 c. 17

<sup>(14)</sup> Article 55B was inserted into the Order by paragraph 9 of Schedule 1 to the 2004 Order

“medical officer” means a medical practitioner who is –

- (a) employed or engaged by the Department for Social Development, or
- (b) provided by an organisation in pursuance of a contract entered into with the Department for Social Development;

“Medical Register” means the registers kept under section 2 of the Medical Act 1983(15);

“minor surgery” means the services described in paragraph 8(2) of Schedule 1;

“national disqualification” means a general disqualification by the Tribunal under paragraph 3(2)(b) of Schedule 11 to the Order or a decision under corresponding provisions in operation in England, Wales or Scotland;

“the dispute resolution procedure” means the procedure for resolution of disputes specified –

- (a) in paragraphs 92 and 93 of Schedule 5; or
- (b) in a case to which paragraph 36 of Schedule 5 applies, in that paragraph.

“normal hours” means those days and hours on which and the times at which services under the contract are normally made available and may be different for different services;

“the Northern Ireland Commissioner for Complaints” means the person appointed under section 36(1) of the Northern Ireland Constitution Act 1973(16);

“NHS Foundation Trust” shall be construed in accordance with Part 1 of the Health and Social Care (Community Health and Standards) Act 2003(17);

“NHS Trust” means a trust established under Part 1 of the National Health Service and Community Care Act 1990(18);

“Nursing and Midwifery Register” means the register maintained by the Nursing and Midwifery Council under to the Nursing and Midwifery Order 2001(19);

“open”, in relation to a contractor’s list of patients, means open to applications from patients in accordance with paragraph 15 of Schedule 5;

“the Order” means the Health and Personal Social Services (Northern Ireland) Order 1972;

“the 1991 Order” means the Health and Personal Social Services (Northern Ireland) Order 1991;

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003(20);

“out of hours period” means –

- (a) the period beginning at 6.30pm on any day from, and including, Monday to Thursday and ending at 8am on the following day;
- (b) the period between 6.30pm on, and including, Friday and 8am on the following Monday; and
- (c) any public holiday or local holiday agreed with the Board,

and “part” of an out of hours period means any part of any one or more of the periods described in paragraphs (a) to (c);

“out of hours services” means services required to be provided in all or part of the out of hours period which –

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(15) 1983 c. 54; section 2 was amended by S.I. 1996/1591 and 2002/3135

(16) 1973 c. 36

(17) 2003 c. 43

(18) 1990 c. 19

(19) S.I. 2003/253

(20) S.I. 2003/1250

- (a) would be essential services if provided in core hours, or
  - (b) are included in the contract as additional services funded under the global sum;
- “patient” means –
- (a) registered patient,
  - (b) a temporary resident,
  - (c) persons to whom the contractor is required to provide immediately necessary or necessary treatment under regulation 15(6) or (8) respectively,
  - (d) any other person to whom the contractor has agreed to provide services under the contract, and
  - (e) any person for whom the contractor is responsible under regulation 31;
- “Pharmaceutical Regulations” means the Pharmaceutical Services Regulations (Northern Ireland) 1997(21);
- “the POM Order” means the Prescription Only Medicines (Human Use) Order 1997(22);
- “practice” means the business operated by the contractor for the purpose of delivering services under the contract;
- “practice area” means the area referred to in regulation 18(1)(d);
- “practice leaflet” means a leaflet drawn up in accordance with paragraph 71 of Schedule 5;
- “practice premises” means an address specified in the contract as one at which services are to be provided under the contract;
- “prescriber” means –
- (a) a medical practitioner,
  - (b) an independent nurse prescriber, and
  - (c) a supplementary prescriber,
- who is either engaged or employed by the contractor or is a party to the contract;
- “prescription form” means a form provided by the Agency and issued by a prescriber to enable a person to obtain pharmaceutical services;
- “prescription only medicine” means a medicine referred to in Article 3 of the POM Order (medicinal products on prescription only);
- “primary medical services performers list” means the list of persons performing primary medical services prepared in accordance with regulations made under Article 57G of the Order(23) (persons performing primary medical services);
- “primary carer” means, in relation to an adult the person primarily caring for him;
- “Primary Care Trust” means a Primary Care Trust established under section 16A of the National Health Service Act 1977(23);
- “registered nursing home” means a nursing home in respect of which a person is registered under Part III of the Registered Homes (Northern Ireland) 1992(24);
- “registered patient” means –
- (a) a person who is recorded by the Board as being on the contractor’s list of patients, or

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(21) S.R. 1997 No. 381

(22) S.I. 1997/1830 as amended by S.I. 1997/2044, 1998/108, 1178 and 2081, 1999/1044 and 3463, 2000/1917, 2889 and 3231, 2001/2777, 2889 and 3942, 2002/549 and 2469 and 2003/696.(24) Article 57G was inserted by Article 8 of the 2004 Order

(23) 1977 c. 49; section 16A was inserted by the Health Act 1999 (c. 8), section 2(1)

(23) 1977 c. 49; section 16A was inserted by the Health Act 1999 (c. 8), section 2(1)

(24) S.I. 1992/3204 (N.I. 20)

- (b) a person whom the contractor has accepted for inclusion on his list of patients, whether or not notification of that acceptance has been received by the Board and who has not been notified by the Board as having ceased to be on that list;

“relevant register” means –

- (a) in relation to a nurse, the Nursing and Midwifery Register; and
- (b) in relation to a pharmacist, the register maintained in pursuance of section 2(1) of the Pharmacy Act 1954<sup>(25)</sup> or the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976<sup>(26)</sup>;

“restricted availability appliance” means an appliance which is approved for particular categories of persons or particular purposes only;

“Statement of Financial Entitlements” means the directions given by the Department under Article 57C of the Order<sup>(27)</sup>;

“Strategic Health Authority” means an authority established under section 8 of the National Health Services Act 1977<sup>(28)</sup>;

“Scheduled drug” means –

- (a) a drug, medicine or other substance specified in any directions given by the Department under Article 57D of the Order<sup>(29)</sup> as being a drug, medicine or other substance which may not be ordered for patients in the provision of medical services under the contract, or
- (b) except where the conditions in paragraph 40(2) of Schedule 5 are satisfied, a drug, medicine or other substance which is specified in any directions given by the Department under Article 57D of the Order as being a drug, medicine or other substance which can only be ordered for specified patients and specified purposes;

“supplementary prescriber” means a person –

- (a) who is either engaged or employed by the contractor or is a party to the contract,
- (b) whose name is registered in –
- (i) Parts 1, 3, 5, 8, 10, 11, 12, 13, 14 or 15 of the Nursing and Midwifery Register,
- (ii) the Register of Pharmaceutical Chemists maintained in pursuance of section 2(1) of the Pharmacy Act 1954, or
- (iii) the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976, and
- (c) against whose name is recorded in the relevant register an annotation signifying that he is qualified to order drugs, medicines and appliances as a supplementary prescriber;

“temporary resident” means a person accepted by the contractor as a temporary resident under paragraph 16 of Schedule 5 and for whom the contractor’s responsibility has not been terminated in accordance with that paragraph;

“the Tribunal” means the body constituted under Schedule 11 to the Order<sup>(30)</sup>;

“working day” means any day apart from Saturday, Sunday, a public holiday or a local holiday agreed with the Board;

“writing”, except in paragraph 96(1) of Schedule 5, includes electronic mail and “written” shall be construed accordingly.

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(25) 1954 c. 61.

(26) S.I. 1976/1213 (N.I. 22)

(27) Article 57C was inserted into the Order by Article 4 of the 2004 Order

(28) Section 8 was substituted by section 1 of the National Health Service Reform and Health Care Professions Act 2002 c. 17

(29) Article 57D was inserted into the Order by Article 4 of the 2004 Order

(30) Schedule 11 was substituted by Schedule 2 to the Health and Personal Social Services (Northern Ireland) Order 2001 (c. 3)

## PART 2

### CONTRACTORS

#### Conditions: General

3. Subject to the provisions of any order made by the Department under Article 5 of the Primary Medical Services (Northern Ireland) Order 2004 (general medical services: transitional)(**31**), a Board may only enter into a contract if the conditions set out in regulations 4 and 5 are met.

#### Conditions relating solely to medical practitioners

4.—(1) In the case of a contract to be entered into with a medical practitioner, that practitioner must be a general medical practitioner.

(2) In the case of a contract to be entered into with two or more individuals practising in partnership –

- (a) at least one partner (who must not be a limited partner) must be a general medical practitioner; and
- (b) any other partner who is a medical practitioner must –
  - (i) be a general medical practitioner, or
  - (ii) be employed by a Board, a Health and Social Services Trust, a Primary Care Trust, a Local Health Board, (in England and Wales and Scotland) NHS Trust, an NHS Foundation Trustor, (in Scotland) a Health Board;

(3) In the case of a contract to be entered into with a company limited by shares –

- (a) at least one share in the company must be legally and beneficially owned by a general medical practitioner; and
- (b) any other share or shares in the company that are legally and beneficially owned by a medical practitioner must be so owned by –
  - (i) a general medical practitioner, or
  - (ii) a medical practitioner who is employed by a Board, a Primary Care Trust, Local Health Board, in England and Wales and Scotland an NHS Trust, or in (Scotland) a Health Board.

#### General condition relating to all contracts

5.—(1) It is a condition in the case of a contract to be entered into –

- (a) with a medical practitioner, that the medical practitioner;
- (b) with two or more individuals practising in partnership, that any individual or the partnership; and
- (c) with a company limited by shares that –
  - (i) the company,
  - (ii) any person legally and beneficially owning a share in the company, and
  - (iii) any director or secretary of the company,must not fall within paragraph (2).

(2) A person falls within this paragraph if –

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(31) S.I. 2004/311 (N.I. 2)



- (a) he is the subject of a national disqualification;
- (b) subject to paragraph (3), he is disqualified or suspended (other than by an interim suspension order or direction pending an investigation) from practising by any licensing body anywhere in the world;
- (c) within the period of five years prior to the signing of the contract or commencement of the contract, whichever is the earlier, he has been dismissed (otherwise than by reason of redundancy) from any employment by a health services body unless he has subsequently been employed by that health services body or another health services body and paragraph (4) applies to him, or that dismissal was the subject of a finding of unfair dismissal by any competent tribunal or court;
- (d) within the period of five years prior to signing the contract or commencement of the contract, whichever is the earlier, he has been disqualified from a primary medical service performers list unless his name has subsequently been included in such a list;
- (e) he has been convicted in the United Kingdom of murder;
- (f) he has been convicted in the United Kingdom of a criminal offence other than murder, committed on or after 1st April 2004, and has been sentenced to a term of imprisonment of over six months;
- (g) subject to paragraph (5) he has been convicted elsewhere of an offence –
  - (i) which would if committed in Northern Ireland constitute murder; or
  - (ii) committed on or after 1st April 2004, which would if committed in Northern Ireland constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (h) he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968<sup>(32)</sup>, Schedule 1 to the Children and Young Persons Act 1933<sup>(33)</sup> (offences against children and young persons with respect to which special provisions of this Act apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1955 (offences against children under the age of 17 years to which special provisions apply)<sup>(34)</sup>, committed on or after 29th March 2004;
- (i) he has –
  - (i) been adjudged bankrupt or had sequestration of his estate awarded unless (in either case) he has been discharged or the bankruptcy order has been annulled;
  - (ii) been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986<sup>(35)</sup> unless that order has ceased to have effect or has been annulled, or
  - (iii) made a composition or arrangement with, or granted a trust deed for, his creditors unless he has been discharged in respect of it;
- (j) an administrator, administrative receiver or receiver is appointed in respect of him;
- (k) he has been –
  - (i) removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or

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<sup>(32)</sup> c. 34 (N.I)

<sup>(33)</sup> 1933 c. 12 as amended by the Criminal Justice Act 1988 (1988 c. 33), section 170, Schedule 15, paragraph 8 and Schedule 16, paragraph 16; Sexual Offences Act 1956 (1956 c. 69), sections 48 and 51 and Schedule 3 and as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9

<sup>(34)</sup> 1995 c. 46

<sup>(35)</sup> 1986 c. 45. Schedule 4A was inserted by section 257 of and Schedule 20 to the Enterprise Act 2002 (c. 40)

- (ii) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(36)</sup> (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body; or
  - (l) he is subject to a disqualification order under the Companies Directors Disqualification (Northern Ireland) Order 2002<sup>(37)</sup>, the Company Directors Disqualification Act 1986<sup>(38)</sup>, or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under county court administration order).
- (3) A person shall not fall within paragraph (2)(b) where the Board is satisfied that the disqualification or suspension from practising is imposed by a licensing body outside the United Kingdom and it does not make the person unsuitable to be –
- (a) a contractor;
  - (b) a partner, in the case of a contract with two or more individuals practising in partnership;
  - (c) in the case of a contract with a company limited by shares –
    - (i) a person legally and beneficially holding a share in the company, or
    - (ii) a director or secretary of the company,
 as the case may be.
- (4) Where a person has been employed as a member of a health care profession any subsequent employment must also be as a member of that profession.
- (5) A person shall not fall within paragraph (2)(g) where the Board is satisfied that the conviction does not make the person unsuitable to be –
- (a) a contractor;
  - (b) a partner, in the case of a contract with two or more individuals practising in partnership;
  - (c) in the case of a contract with a company limited by shares –
    - (i) a person legally and beneficially holding a share in the company; or
    - (ii) a director or secretary of the company,
 as the case may be.

## Reasons

6.—(1) Where a Board is of the view that the conditions in regulation 4 or 5 for entering into a contract are not met it shall notify in writing the person intending to enter into the contract of its view and of its reasons for that view and of his right of appeal under regulation 7.

(2) The Board shall also notify in writing of its view and its reasons for that view any person legally and beneficially owning a share in, or a director or secretary of, a company that is notified under paragraph (1) where its reason for the decision relates to that person or persons.

## Appeal

7. A person who has been served with a notice under regulation 6(1) may appeal to the Department against the decision of the Board by giving notice in writing to the Department within the period of 28 days beginning on the day that the Board served its notice.

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<sup>(36)</sup> 1990 c. 40

<sup>(37)</sup> S.I. 2002/3150 (N.I. 4)

<sup>(38)</sup> S.I. 1986/1032 (N.I. 6)

### **Prescribed period under Article 15C(b)(iii) of the Order**

8. The period prescribed for the purposes of Article 15C(1)(b)(iii) of the Order (persons with whom agreements may be made)<sup>(39)</sup> is six months.

## **PART 3**

### **PRE-CONTRACT DISPUTE RESOLUTION**

#### **Pre-contract disputes**

9.—(1) Except where both parties to the prospective contract are health services bodies (in which case Article 8(5) of the 1991 Order (HSS Contracts) applies), if, in the course of negotiations intending to lead to a contract, the prospective parties to that contract are unable to agree on a particular term of the contract, either party may refer the dispute to the Department to consider and determine the matter.

(2) Disputes referred to the Department in accordance with paragraph (1) or Article 8(5) of the 1991 Order shall be considered and determined in accordance with the provisions of paragraphs 93(3) to (13) and 94(1) of Schedule 5, and paragraph (3) (where it applies).

- (3) In the case of a dispute referred to the Department under paragraph (1), the determination –
- (a) may specify terms to be included in the proposed contract;
  - (b) may require the Board to proceed with the proposed contract, but may not require the proposed contractor to proceed with the proposed contract; and
  - (c) shall be binding upon the prospective parties to the contract.

## **PART 4**

### **HEALTH SERVICES BODY STATUS**

#### **Health services body status**

10.—(1) Where a proposed contractor elects in a written notice served on the Board at any time prior to the contract being entered into to be regarded as a health services body for the purposes of Article 8 of the 1991 Order, he shall be so regarded from the date on which the contract is entered into.

(2) If, pursuant to paragraph (1) or (5) a contractor is to be regarded as a health services body, it shall not affect the nature of, or any rights or liabilities arising under, any other contract with a health services body entered into by a contractor before the date on which the contractor is to be so regarded.

(3) Where a contract is made with an individual medical practitioner or two or more persons practising in partnership, and that individual, or that partnership is to be regarded as a health services body in accordance with paragraph (1) or (5), the contractor shall, subject to paragraph (4), continue to be regarded as a health services body for the purposes of Article 8 of the 1991 Order for as long as that contract continues irrespective of any change in –

- (a) the partners comprising the partnership;
- (b) the status of the contractor from that of an individual medical practitioner to that of a partnership; or

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(39) Article 15C(b)(iii) was inserted into the Order by Article 6 of the 2004 Act

- (c) the status of the contractor from that of a partnership to that of an individual medical practitioner.
- (4) A contractor may at any time request in writing a variation of the contract to include provision in or remove provision from the contract that the contract is an HSS contract, and if he does so –
  - (a) the Board shall agree to the variation; and
  - (b) the procedure in paragraph 96(1) of Schedule 5 shall apply.
- (5) If, pursuant to paragraph (4), the Board agrees to the variation to the contract, the contractor shall –
  - (a) be regarded; or
  - (b) subject to paragraph (7), cease to be regarded
 as a health services body for the purposes of Article 8 of the 1991 Order from the date that variation is to take effect pursuant to paragraph 96(1) of Schedule 5.
- (6) Subject to paragraph (7), a contractor shall cease to be a health services body for the purposes of Article 8 of the 1991 Order if the contract terminates.
- (7) Where a contractor ceases to be a health services body pursuant to –
  - (a) paragraph (5) or (6), he shall continue to be regarded as a health services body for the purposes of being a party to any other HSS contract entered into after he became a health services body but before the date on which the contractor ceased to be a health services body (for which purpose he ceases to be such a body on the termination of that HSS contract);
  - (b) paragraph (5), he shall, if he or the Board has referred any matter to the dispute resolution procedure before he ceases to be a health services body, be bound by the determination of the adjudicator as if the dispute had been referred pursuant to paragraph 92 of Schedule 5;
  - (c) paragraph (6), he shall continue to be regarded as a health services body for the purposes of the dispute resolution procedure where that procedure has been commenced –
    - (i) before the termination of the contract, or
    - (ii) after the termination of the contract, whether in connection with or arising out of the termination of the contract or otherwise,
 for which purposes he ceases to be such a body on the conclusion of that procedure.

## PART 5

### CONTRACTS: REQUIRED TERMS

#### **Parties to the contract**

- 11.** A contract must specify –
  - (a) the names of the parties;
  - (b) in the case of a partnership –
    - (i) whether or not it is a limited partnership, and
    - (ii) the names of the partners and, in the case of a limited partnership, their status as a general or limited partner; and
  - (c) in the case of each party, the address to which official correspondence and notices should be sent.

## **Health and social services contract**

12. If the contractor is to be regarded as a health services body pursuant to regulation 10, the contract must state that it is an HSS contract.

## **Contracts with individuals practising in partnership**

13.—(1) Where the contract is with two or more individuals practising in partnership, the contract shall be treated as made with the partnership as it is from time to time constituted, and the contract shall make specific provision to this effect.

(2) Where the contract is with two or more individuals practising in partnership, the contractor must be required by the terms of the contract to ensure that any person who becomes a member of the partnership after the contract has come into operation is bound automatically by the contract whether by virtue of a partnership deed or otherwise.

## **Duration**

14.—(1) Except in the circumstances specified in paragraph (2), a contract must provide for it to subsist until it is terminated in accordance with the terms of the contract or the general law.

(2) The circumstances referred to in paragraph (1) are that the Board wishes to enter into a temporary contract for a period not exceeding twelve months for the provision of services to the former patients of a contractor, following the termination of that contractor's contract.

(3) Either party to a prospective contract to which paragraph (2) applies may, if it wishes to do so, invite the Local Medical Committee for the area of the Board to participate in the negotiations intending to lead to such a contract.

## **Essential services**

15.—(1) For the purposes of Article 57A of the Order (requirement to provide certain primary medical services), the services which must be provided under a general medical services contract ("essential services") are the services described in paragraphs (3), (5), (6) and (8).

(2) Subject to regulation 20, a contractor must provide the services described in paragraphs (3) and (5) throughout the core hours.

(3) The services described in this paragraph are services required for the management of his registered patients and temporary residents who are, or believe themselves to be –

- (a) ill, with conditions from which recovery is generally expected;
- (b) terminally ill; or
- (c) suffering from chronic disease,

delivered in the manner determined by the practice in discussion with the patient.

(4) For the purposes of paragraph (3) –

"disease" means a disease included in the list of three-character categories contained in the tenth revision of the International Statistical Classification of Diseases and Related Health Problems<sup>(40)</sup>; and

"management" includes –

- (a) offering consultation and, where appropriate, physical examination for the purpose of identifying the need, if any, for treatment or further investigation; and

- (b) the making available of such treatment or further investigation as is necessary and appropriate, including the referral of the patient for other services under the Order and liaison with other health care professionals involved in the patient's treatment and care.
- (5) The services described in this paragraph are the provision of appropriate ongoing treatment and care to all registered patients and temporary residents taking account of their specific needs including –
- (a) the provision of advice in connection with the patient's health, including relevant health promotion advice; and
  - (b) the referral of the patient for other services under the Order.
- (6) A contractor must provide primary medical services required in core hours for the immediately necessary treatment of any person to whom the contractor has been requested to provide treatment owing to an accident or emergency at any place in his practice area.
- (7) In paragraph (6), "emergency" includes any medical emergency whether or not related to services provided under the contract.
- (8) A contractor must provide primary medical services required in core hours for the immediately necessary treatment of any person falling within paragraph (9) who requests such treatment, for the period specified in paragraph (10).
- (9) A person falls within paragraph (8) if he is a person –
- (a) whose application for inclusion in the contractor's list of patients has been refused in accordance with paragraph 17 of Schedule 5 and who is not registered with another provider of essential services (or their equivalent) in the area of the Board;
  - (b) whose application for acceptance as a temporary resident has been rejected under paragraph 17 of Schedule 5; or
  - (c) who is present in the contractor's practice area for less than 24 hours.
- (10) The period referred to in paragraph (8) is –
- (a) in the case of paragraph (9)(a), 14 days beginning with and including the date on which that person's application was rejected (or, as the case may be, with and including the date on which the contractor requested the removal of that person from his list of patients) or until that person has been subsequently registered elsewhere for the provision of essential services (or their equivalent), whichever occurs first;
  - (b) in the case of paragraph (9)(b), 14 days beginning with and including the date on which that person's application was rejected or until that person has been subsequently accepted elsewhere as a temporary resident, whichever occurs first; and
  - (c) in the case of paragraph (9)(c), 24 hours or such shorter period as the person is present in the contractor's practice area.

### **Additional services**

- 16.** A contract which includes the provision of any additional services must –
- (a) in relation to all such services as are included in the contract, contain a term which has the same effect as that specified in paragraph 1 of Schedule 1; and
  - (b) in relation to each such service as is included in the contract, contain terms which have the same effect as those specified in Schedule 1 which are relevant to that service.

### **Opt outs of additional and out of hours services**

17.—(1) Where a contract provides for the contractor to provide an additional service that is to be funded through the global sum the contract must contain terms relating to the procedure for opting out of additional services which have the same effect as those specified in paragraphs 1, 2, 3 and 6 of Schedule 3 except paragraph 3(12) to (14).

(2) Where a contract which is entered into before 1st October 2004 provides for the contractor to provide out of hours services pursuant to regulation 30 or 31, the contract must contain terms relating to the procedure for opting out of those services which have the same effect as those specified in paragraphs 4, 5 and 6 of Schedule 3 except paragraphs 4(9) and 5(17) in so far as those paragraphs relate to paragraph 3(12) to (14).

(3) Where a contract which is entered into on or after 1st October 2004 provides for the contractor to provide out of hours services pursuant to regulation 29, the contract must contain terms relating to the procedure for opting out of those services which have the same effect as those specified in paragraphs 4 and 6 of Schedule 2 except paragraph 4(9) in so far as those paragraphs relate to paragraph 3(12) to (14).

(4) Paragraph 3(12) to (14) and paragraphs 4(9) and 5(17) in so far as those paragraphs relate to paragraph 3(12) to (14) of Schedule 2 shall have effect in relation to the matters set out in those paragraphs.

### **Services generally**

18.—(1) A contract must specify –

- (a) the services to be provided;
- (b) subject to paragraph (2), the address of each of the premises to be used by the contractor or any sub-contractor for the provision of such services;
- (c) to whom such services are to be provided;
- (d) the area as respects which persons resident in it will, subject to any other terms of the contract relating to patient registration, be entitled to –
  - (i) register with the contractor, or
  - (ii) seek acceptance by the contractor as a temporary resident; and
- (e) whether, at the date on which the contract comes into operation, the contractor's list of patients is open or closed.

(2) The premises referred to in paragraph (1)(b) do not include –

- (a) the homes of patients; or
- (b) any other premises where services are provided on an emergency basis.

(3) Where, on the date on which the contract is signed, the Board is not satisfied that all or any of the premises specified in accordance with paragraph (1)(b) meet the requirements set out in paragraph 1 of Schedule 5, the contract must include a plan, drawn up jointly by the Board and the contractor, which specifies –

- (a) the steps to be taken by the contractor to bring the premises up to the relevant standard;
- (b) any financial support that may be available from the Board; and
- (c) the timescale on which the steps referred to in sub-paragraph (a) will be taken.

(4) Where, in accordance with paragraph (1)(e), the contract specifies that the contractor's list of patients is closed it must also specify in relation to that closure each of the items listed in paragraph 29(8)(a) to (d) of Schedule 5.

**19.**—(1) Except in the case of the services referred to in paragraph (2), the contract must state the period (if any) for which the services are to be provided.

(2) The services referred to in paragraph (1) are –

- (a) essential services;
- (b) additional services funded under the global sum; and
- (c) out of hours services provided pursuant to regulations 30 and 31.

**20.** A contract must contain a term which requires the contractor in core hours-

(a) to provide –

- (i) essential services, and
- (ii) additional services funded under the global sum,

at such times, within core hours, as are appropriate to meet the reasonable needs of his patients; and

(b) to have in place arrangements for his patients to access such services throughout the core hours in case of emergency.

### **Certificates**

**21.**—(1) A contract must contain a term which has the effect of requiring the contractor to issue free of charge to a patient or his personal representatives any medical certificate of a description prescribed in column 1 of Schedule 3, which is reasonably required under or for the purposes of the statutory provisions specified in relation to the certificate in column 2 of that Schedule, except where, for the condition to which the certificate relates, the patient –

(a) is being attended by a medical practitioner who is not –

- (i) employed or engaged by the contractor;
- (ii) in the case of a contract with two or more individuals practising in partnership, one of those individuals; or
- (iii) in the case of a contract with a company limited by shares, one of the persons legally or beneficially owning shares in that company; or

(b) is not being treated by or under the supervision of a health care professional.

(2) The exception in paragraph (1)(a) shall not apply where the certificate is issued pursuant to regulation 2(1)(b) of the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976<sup>(41)</sup> (which provides for the issue of a certificate in the form of a special statement by a doctor on the basis of a written report made by another doctor).

### **Finance**

**22.**—(1) Subject to paragraph (2), the contract must contain a term which has the effect of requiring the Board to make payments to the contractor under the contract promptly and in accordance with both the terms of the contract and any other conditions relating to the payment contained in directions given by the Department under Article 57C of the Order<sup>(42)</sup>.

(2) The obligation referred to in paragraph (1) is subject to any right the Board may have to set off against any amount payable to the contractor under the contract any amount –

(a) that is owed by the contractor to the Board under the contract; or

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<sup>(41)</sup> S.R. 1976 No. 175. Regulation 2 is amended by S.R. 1982 No. 153, S.R. 1987 No. 117, S.R. 1992 No. 83, S.R. 1994. No 468 and S.R. 1995 No. 149

<sup>(42)</sup> Article 57C was inserted into the Order by Article 4 of the 2004 Order



- (b) that the Board may withhold from the contractor in accordance with the terms of the contract or any other applicable provisions contained in directions given by the Department under Article 57C of the Order.

**23.** The contract must contain a term to the effect that where, pursuant to directions under Article 57C of the Order, a Board is required to make a payment to a contractor under a contract but subject to conditions, those conditions are to be a term of the contract.

### **Fees and charges**

**24.—(1)** The contract must contain terms relating to fees and charges which have the same effect as those set out in paragraphs (2) to (4).

(2) The contractor shall not, either himself or through any other person, demand or accept from any patient of his a fee or other remuneration, for his own or another's benefit, for –

- (a) provision of any treatment whether under the contract or otherwise; or
- (b) any prescription for any drug, medicine or appliance,

except in the circumstances set out in Schedule 4.

(3) Where a person applies to a contractor for the provision of essential services and claims to be on that contractor's list of patients, but fails to produce his medical card on request and the contractor has reasonable doubts about that person's claim, the contractor shall give any necessary treatment and shall be entitled to demand and accept a reasonable fee in accordance with paragraph (e) of Schedule 4, subject to the provision for repayment contained in paragraph (4).

(4) Where a person from whom a contractor received a fee under paragraph (e) of Schedule 4 applies to the Board for a refund within 14 days of payment of the fee (or such longer period not exceeding a month as the Board may allow if it is satisfied that the failure to apply within 14 days was reasonable) and the Board is satisfied that the person was on the contractor's list of patients when the treatment was given, the Board may recover the amount of the fee from the contractor, by deduction from his remuneration or otherwise, and shall pay that amount to the person who paid the fee.

### **Arrangements on termination**

**25.** A contract shall make suitable provision for arrangements on termination of a contract, including the consequences (whether financial or otherwise) of the contract ending.

### **Other contractual terms**

**26.—(1)** A contract must, unless it is of a type or nature to which a particular provision does not apply, contain other terms which have the same effect as those specified in Schedule 5 except paragraphs 31(6) to (8), 35(5) to (9), 36(5) to (17), 93(5) to (14) and 94.

(2) The paragraphs specified in paragraph (1) shall have effect in relation to the matters set out in those paragraphs.

## **PART 6**

### **FUNCTIONS OF LOCAL MEDICAL COMMITTEES**

**27.—(1)** The functions of a Local Medical Committee which are prescribed for the purposes of Article 55B(7) (Local Medical Committees) of the Order<sup>(43)</sup> are –

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<sup>(43)</sup> Article 55B was inserted into the Order by paragraph 9 of Schedule 1 to the 2004 Order

- (a) the consideration of any complaint made to it by any medical practitioner against a medical practitioner specified in paragraph (2) providing services under a contract in the relevant area involving any question of the efficiency of those services;
  - (b) the reporting of the outcome of the consideration of such complaint to the Board with whom the contract is held in cases where that consideration gives rise to any concerns relating to the efficiency of services provided under a contract;
  - (c) the making of arrangements for the medical examination of a medical practitioner specified in paragraph (2), where the contractor or the Board is concerned that the medical practitioner is incapable of adequately providing services under the contract and it so requests with the agreement of the medical practitioner concerned; and
  - (d) the consideration of the report of any medical examination arranged in accordance with sub-paragraph (c) and the making of a written report as to the capability of the medical practitioner of adequately providing services under the contract to the medical practitioner concerned, the contractor and the Board with whom the contractor holds a contract.
- (2) The medical practitioner referred to in paragraph (1)(a) and (c) is a medical practitioner who is –
- (a) a contractor;
  - (b) one of two or more individuals practising in partnership who hold a contract; or
  - (c) a legal and beneficial shareholder in a company which holds a contract.
- (3) In this regulation, “the relevant area” means the area for which the Local Medical Committee is formed.

## PART 7

### TRANSITIONAL PROVISIONS

#### **Commencement**

**28.** The contract shall provide for services to be provided under it from any date after 31st March 2004.

#### **Additional services**

**29.**—(1) Where the contract is with one of the persons specified in paragraph (2), the contract must, subject to regulation 17, provide for the contractor to provide in core hours to the contractor’s registered patients and persons accepted by him as temporary residents, such of the additional services as are equivalent to services which that medical practitioner was providing to his patients on the date that the contract is entered into –

- (a) unless the provision of those services by that medical practitioner was due to come to an end on or before the date on which services are required to start being provided under the contract; and
  - (b) except to the extent that, prior to the signing of the contract, the Board has accepted in writing a written request from the contractor that the contract should not require him to provide all or any of those additional services.
- (2) The persons referred to in paragraph (1) are –
- (a) an individual medical practitioner who, on 31st March 2004, was providing services under Article 56 of the Order (arrangements for general medical services);

- (b) two or more individuals practising in partnership at least one of whom was, on 31st March 2004, a medical practitioner providing services under that section; or
- (c) company in which one or more of the shareholders was, on 31st March 2004, a medical practitioner providing services under that Article.

(3) This regulation applies only to contracts under which services are to be provided from 1st April 2004.

### **Out of hours services**

**30.**—(1) Subject to paragraph 10 of Schedule 5, a contract under which services are to be provided before 1st January 2005 (whether or not such services will be provided after that date) must provide for the services specified in paragraph (2) to be provided throughout the out of hours period unless –

- (a) the Board has accepted in writing, prior to the signing of the contract, a written request from the contractor that the contract should not require the contractor to make such provision;
- (b) the contract is, at the date on which it is signed, with –
  - (i) a medical practitioner who, on or before 31st March 2004, made an arrangement to transfer his obligations under the terms of service to another medical practitioner under paragraph 20(2) of Schedule 2 to the General Medical Services Regulations (Northern Ireland) 1997<sup>(44)</sup>,
  - (ii) a partnership in which all of the partners who are general medical practitioners have made arrangements on or before 31st March 2004 to transfer their obligations under the terms of service to other medical practitioners under that paragraph, or
  - (iii) a company in which all of the general medical practitioners who own shares in that company have on or before 31st March 2004 made arrangements to transfer their obligations under the terms of service to other medical practitioners under that paragraph ;
- (c) the contractor has opted out in accordance with paragraph 4 or 5 of Schedule 2; or
- (d) the contract has been otherwise varied to exclude a requirement to make such provision.

(2) The services referred to in paragraph (1) are –

- (a) the services which must be provided in core hours under regulation 15; and
- (b) such additional services as are included in the contract pursuant to regulation 29.

**31.**—(1) Where the contract is with –

- (a) an individual medical practitioner who is, or was on 31st March 2004, responsible for providing services during all or part of the out of hours period to the patients of a medical practitioner who meets the requirements in paragraph (2);
- (b) two or more individuals practising in partnership at least one of whom is, or was on 31st March 2004, a medical practitioner responsible for providing such services; or
- (c) a company in which one or more of the shareholders is, or was on 31st March 2004, a medical practitioner responsible for providing such services,

the contract with that contractor must require the contractor to continue to provide such services to the patients of the exempt contractor until the happening of one of the events in paragraph (3).

(2) The requirements referred to in paragraph (1)(a) are that –

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(44) S.R. 1997 No. 380

- (a) the medical practitioner had made an arrangement to transfer his obligations under the terms of service to another medical practitioner under paragraph 20(2) of Schedule 2 to the General Medical Services Regulations (Northern Ireland) 1997; and
  - (b) he –
    - (i) has entered or intends to enter into a contract which does not include out of hours services pursuant to regulation 30(1)(b)(i),
    - (ii) is one of two or more individuals practising in partnership who have entered or intends to enter into a contract which does not include out of hours services pursuant to regulation 30(1)(b) (ii), or
    - (iii) is the owner of shares in a company which has entered or intends to enter into a contract which does not include out of hours services pursuant to regulation 30(1)(b) (iii).
  - (3) The events referred to in paragraph (1) are –
    - (a) the contractor has opted out of the provision of out of hours services in accordance with paragraph 4 or 5 of Schedule 2; or
    - (b) the Board (and, if it is different, the Board with whom the exempt contractor holds his contract) has or have agreed in writing that the contractor need no longer provide some or all of those services to some or all of those patients.
  - (4) In this regulation “exempt contractor” means a contractor who is exempt from providing out of hours services pursuant to regulation 30(1)(b).
- 32.** A contract which includes the provision of out of hours services pursuant to regulation 30 or 31 must contain terms which have the same effect as those set out in Schedule 6.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 29th March 2004.

L.S.

*Dr. J. F. Livingstone*  
Senior Officer of the  
Department of Health, Social Services and  
Public Safety

Sealed with the Official Seal of the Department of Finance and Personnel on 29th March 2004.

L.S.

*C. Doran*  
Senior Officer of the  
Department of Finance and Personnel