
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 163

**The General Medical Services and Section
17C Agreements (Transitional and other
Ancillary Provisions) (Scotland) Order 2004**

PART 3

**TRANSITIONAL PROVISIONS FOR GENERAL MEDICAL
SERVICES CONTRACTS WHICH FOLLOW DEFAULT CONTRACTS**

Application and interpretation of this Part

34.—(1) This Part applies where a person who holds a default contract with a Health Board enters into a general medical services contract with that Health Board which takes effect immediately after its default contract ceases to have effect.

(2) In a case to which this Part applies, the general medical services contract shall, unless it is entered into with a person to whom the particular article does not apply, include, or be deemed to include, terms which have the effect specified in articles 35 to 46.

(3) In this Part—

“default contractor” means a person who holds a default contract with a Health Board and who has entered into a general medical services contract with that Health Board which takes effect immediately after the default contract ceases to have effect and “default contract” shall be interpreted accordingly;

“general medical services contractor” means the person who holds the general medical services contract entered into by the default contractor and “general medical services contract” shall be construed accordingly.

Carry over of approvals, applications, notices etc.

35.—(1) Subject to paragraph (3), in a case to which this Part applies—

(a) any approval, authorisation or consent given by the Health Board for the purposes of the default contract and still in force on the date on which that default contract ceases to have effect, shall be deemed to be an approval, authorisation or consent for the purposes of the general medical services contract on the date on which that general medical services contract takes effect and any such approval, authorisation or consent shall be on the same terms and subject to the same conditions (if any) as applied to the approval, authorisation or consent given under the default contract;

(b) any application made to the Health Board by the default contractor under its default contract, and which has not been dealt with or determined on or before the date on which the default contract ceases to have effect, shall be deemed to be an application made by the general medical services contractor under its general medical services contract and any time specified in the general medical services contract for dealing with any such

application shall be deemed to run from the date on which the application was made under the default contract;

- (c) any application or request made by a patient to the default contractor under its default contract and which has not been dealt with or determined on or before the date on which the default contract ceases to have effect, shall be deemed to be an application or request made by the patient to the general medical services contractor under its general medical services contract and any time specified in the general medical services contract in relation to that application or request shall be deemed to run from the date on which the application or request was made under the default contract;
- (d) any notice given to or served on the default contractor under its default contract by the Health Board which—
 - (i) requires it to provide or cease providing services; or
 - (ii) withdraws, suspends or varies an approval previously given to it by the Health Board, from a date which is after the date on which the default contract ceases to have effect, shall be deemed to be a notice served on the general medical services contractor under its general medical services contract which takes effect on the date on which it would have taken effect had the default contract continued in force and any time specified in the general medical services contract for referring the matter to the NHS dispute resolution procedure shall be deemed to run from the date on which the notice was given to or served on the default contractor;
- (e) subject to paragraph (2), any notification or information given to the Health Board or a patient by the default contractor under its default contract shall be deemed to be a notification or information given by the general medical services contractor under the equivalent term of its general medical services contract on the date on which the general medical services contract takes effect and any reference in the relevant term of the general medical services contract to the date on which the event referred to in the notification shall take effect shall be read as a reference to the date on which that event would have taken effect had the default contract remained in force;
- (f) any report, notification or information (other than a notification required to be given under the term of the default contract equivalent to paragraph 78 of Schedule 5 to the 2004 Regulations) which, on the date on which the default contract ceased to have effect, was required to be given to any person by the default contractor under its default contract but had not been so given, shall be given by the general medical services contractor as if it was required to be given under the general medical services contract, subject to the modification that the timescale for giving any such report, notification or information shall be that which would have applied to the default contractor had the default contract remained in force;
- (g) any notifications or acknowledgements required to be given by the Health Board to a default contractor under its default contract on the date on which it ceases to have effect but which had not been so given shall be given by the Health Board to the general medical services contractor as if it was required under the terms of the general medical services contract;
- (h) any notifications required to be given by the Health Board under a default contract to a patient on the default contractor's list of patients on the date on which the default contract ceases to have effect but which had not been so given, shall be given to that patient by the Health Board—
 - (i) if the patient is included in the list of patients of the general medical services contractor, as if the notification were required to be given under the general medical services contract; or

- (ii) in any other case, as soon as possible after the default contract ceases to have effect;
- (i) any request or inquiry made to the default contractor under the default contract but which has not been complied with on or before the date on which the default contract ceases to have effect, shall be complied with by the general medical services contractor as if it was a request or inquiry made under the equivalent term of the general medical services contract and any time specified in the general medical services contract for responding to any such request shall be deemed to run from the date on which the request was made to the default contractor;
- (j) any preference expressed by a patient under the default contract to receive services from a particular performer or class of performer under that default contract and which he has not withdrawn on or before the date on which the default contract ceases to have effect shall, with effect from the date on which the general medical services contract takes effect, be regarded, for the purposes of that general medical services contract, as a preference expressed under the term of that contract which gives effect to paragraph 18 of Schedule 5 to the 2004 Regulations;
- (k) any checks which the default contractor has made under the terms of its default contract which are equivalent to paragraphs 50 to 52 of Schedule 5 to the 2004 Regulations or steps which it has taken to satisfy itself under the terms of that contract equivalent to paragraphs 51(1)(b), 53 or 62(1) of that Schedule shall be regarded as checks made or steps taken by the general medical services contractor under the terms of its general medical services contract which give effect to those paragraphs;
- (l) any records relating to a patient or reports which are required to be sent to a Health Board by the default contractor under the term of its default contract which is equivalent to paragraphs 66(6) or 79(1) or (3) of Schedule 5 to the 2004 Regulations but which have not been sent on or before the date on which the default contract ceases to have effect, shall be sent to the Health Board by the general medical services contractor by the date on which the default contractor would have been required to send them had its default contract not ceased to have effect; and
- (m) the reference to a warning given by the general medical services contractor in the term of the general medical services contract which gives effect to paragraph 20(3) of Schedule 5 to the 2004 Regulations shall be deemed to include a reference to a warning given by the default contractor.

(2) Where—

- (a) pursuant to paragraph (1)(e), a notification is deemed to have been given by a general medical services contractor under the term of its contract which gives effect to paragraph 62(1) of Schedule 5 to the 2004 Regulations on the date on which the general medical services contract takes effect; and
- (b) the notification under the equivalent provision of the default contract was given more than 28 days before the date on which the default contract ceased to have effect,

the right of the Health Board under the term of the general medical services contract which gives effect to paragraph 62 of Schedule 5 to the 2004 Regulations to object to the sub-contract covered by that notification shall not apply.

(3) Paragraph (1) does not apply to any action taken or required to be taken by either party to a default contract under—

- (a) the dispute resolution procedure;
- (b) the provisions relating to variation of the contract; or
- (c) the provisions relating to termination of the contract,

contained in the default contract.

Newly registered patients

36.—(1) Where a patient of a default contractor—

- (a) was, immediately before the default contract ceased to have effect, entitled to be invited to participate in a consultation under the term of the default contract equivalent to paragraph 4 of Schedule 5 to the 2004 Regulations; and
- (b) had not been given such an invitation,

that patient shall be regarded as a patient of the general medical services contractor who, on the date on which the general medical services contract takes effect, falls within the term of the general medical services contract which gives effect to paragraph 4 of Schedule 5 to the 2004 Regulations.

(2) In the case of a patient to whom paragraph (1) applies, the reference to a period of six months in the term of the general medical services contract which gives effect to paragraph 4(2) of Schedule 5 to the 2004 Regulations shall be read as if it was a reference to six months from the date of the patient's acceptance on or assignment to the default contractor's list.

Temporary residents

37. Where, on the date on which the default contract ceases to have effect—

- (a) a default contractor has accepted a person as a temporary resident under the term of its default contract equivalent to paragraph 16 of Schedule 5 to the 2004 Regulations; and
- (b) its responsibility for that patient has not yet been terminated under that term,

the person shall be treated as if he had been accepted as a temporary resident by the general medical services contractor under the term of its general medical services contract which gives effect to paragraph 16 of Schedule 5 to the 2004 Regulations, subject to the modification that the reference to a period of three months in that term shall be read as a reference to a period of three months starting with the date on which the person was accepted as a temporary resident by the default contractor.

Provision of immediately necessary treatment

38. Where, on the date on which the default contract ceases to have effect, a default contractor is responsible for providing immediately necessary treatment to any person under the term of the default contract equivalent to regulation 15 of the 2004 Regulations, the general medical services contractor shall continue to be responsible for providing such treatment to that person for the period for which the default contractor would have been responsible if the default contract had remained in force.

Removals from the list of patients

39.—(1) Where, on the date on which the default contract ceases to have effect, a Health Board has received a request from a patient to be removed from a default contractor's list of patients but that removal has not yet taken effect under the term of the default contract equivalent to paragraph 19(3) of Schedule 5 to the 2004 Regulations, that removal shall take effect as a removal from the list of patients of the general medical services contractor on the date on which it would have taken effect had the default contract remained in force.

(2) Where, on the date on which the default contract ceases to have effect, a Health Board has informed a default contractor and one of its registered patients of the matters required under the term of the default contract equivalent to paragraph 23 of Schedule 5 to the 2004 Regulations but the 30 days referred to in that term has not expired, the information shall be regarded as if it had been given under the term of the general medical services contract which gives effect to paragraph 23 of Schedule 5 to the 2004 Regulations subject to the modification that the reference in that term

to 30 days shall be read as a reference to 30 days from the date of the advice given to the patient by the default contractor.

(3) Where, on the date on which the default contract ceases to have effect, a Health Board has given notice in writing to a default contractor in accordance with the term of its contract which is equivalent to paragraph 24 of Schedule 5 to the 2004 Regulations but the six months referred to in that term has not expired, the notice shall be regarded as if it had been given under the term of the general medical services contract which gives effect to paragraph 24 of Schedule 5 to the 2004 Regulations subject to the modification that the reference in that term to six months shall be read as a reference to six months commencing with the date of the notice to the default contractor.

Requirement to provide dispensing services

40.—(1) Where the Health Board has given notice to the default contractor under its default contract that it requires or authorises it to provide dispensing services to a patient from a date before the date on which the default contract ceases to have effect, that notice shall be regarded as a notice served on the general medical services contractor under the term of its general medical services contract which gives effect to paragraph 44 of Schedule 5 to the 2004 Regulations requiring or authorising it to provide dispensing services to the patient from the date on which the general medical services contract takes effect.

(2) In this article “dispensing services” has the same meaning as in regulation 2(1) of the 2004 Regulations.

Sub-contracting

41.—(1) Where—

- (a) on the date on which the default contract ceases to have effect, the default contractor has in place a sub-contract, other than a contract for services with a health care professional for the provision by that health care professional personally of clinical services, which is in accordance with the terms of the default contract; and
- (b) the general medical services contractor wishes to continue that sub-contract for the period for which it would have continued had the default contract remained in force,

the term of the general medical services contract which gives effect to paragraph 62(1)(b) of Schedule 5 to the 2004 Regulations shall not apply to that sub-contract unless it is extended beyond the date referred to in sub-paragraph (b) or there is a material variation in its terms.

(2) In this article “health care professional” has the same meaning as in section 17P(2) of the 1978 Act(1).

Complaints

42.—(1) Where—

- (a) a complaint—
 - (i) has been made to a default contractor under the complaints procedure established in accordance with the term of the default contract equivalent to paragraph 82 of Schedule 5 to the 2004 Regulations; or
 - (ii) falls to be investigated by a default contractor pursuant to articles 21 or 22; and
- (b) on the date on which the default contract ceases to have effect the investigation of that complaint has not been concluded,

(1) Section 17P was inserted in to the 1977 Act the 2004 Act, section 5.

the complaint shall be investigated or, in an appropriate case, continue to be investigated, by the general medical services contractor under the complaints procedure established in accordance with the term of its general medical services contract which gives effect to paragraph 82 of Schedule 5 to the 2004 Regulations.

(2) In a case to which this Part applies, any references in the terms of the general medical services contract which give effect to paragraphs 82 to 86 and 88 of Schedule 5 to the 2004 Regulations to—

- (a) services provided by or received from the general medical services contractor;
- (b) a patient or former patient of the general medical services contractor; or
- (c) complaints made to the general medical services contractor,

shall be read as if they included a reference to services provided by or received from the default contractor, to the patient or former patient of the default contractor or to complaints made to the default contractor.

Refund of fees

43.—(1) Where, on the date on which a default contract ceases to have effect, a patient has paid a fee to the default contractor under the term of its default contract equivalent to regulation 24(3) of the 2004 Regulations but—

- (a) the period in that term for applying for refund of the fee has not yet expired; or
- (b) an application for refund of the fee has been made but not yet determined,

the fee shall be regarded as if it had been paid to the general medical services contractor under its general medical services contract and the term of the general medical services contract which gives effect to regulation 24(4) of the 2004 Regulations shall apply subject to the modifications specified in paragraph (2).

(2) The modifications referred to in paragraph (1) are that—

- (a) references to the date on which the fee was paid shall be read as references to the date on which the fee was paid to the default contractor; and
- (b) the reference to the general medical services contractor’s list of patients shall be read as a reference to the list of patients of the default contractor.

Annual returns and reviews

44.—(1) Where, in a case to which this Part applies, the periods or part of the periods covered by the default contract and the general medical services contract fall in the same financial year—

- (a) notwithstanding the term of the general medical services contract which gives effect to paragraph 73 of Schedule 5 to the 2004 Regulations, the Health Board shall not require an annual return from the general medical services contractor if a return covering all or part of the same financial year has been requested from the default contractor; and
- (b) any annual return submitted by the general medical services contractor for a financial year in which it also held a default contract shall provide the required information in relation to the default contract as well as in relation to the general medical services contract.

(2) In this article “financial year” means the twelve months ending with 31st March.

Carry-over of disputes between default and general medical services contracts

45.—(1) Where—

- (a) on or before the date on which a default contract ceases to have effect, a default contractor has referred a dispute arising out of or in connection with the default contract, other than

one to which article 72 applies, to be determined in accordance with the NHS dispute resolution procedure; and

- (b) on the date on which the default contract ceases to have effect, that dispute has not been determined or withdrawn,

the adjudicator shall in determining the dispute consider the relevance of his determination to the general medical services contract which took effect immediately after the default contract ceased to have effect and, if he considers that his determination is relevant to that general medical services contract, he shall determine the dispute as if it were a dispute referred to him by the general medical services contractor under the NHS dispute resolution procedure contained in the general medical services contract.

(2) In this article “adjudicator” means the Scottish Ministers or a panel of 3 persons appointed by the Scottish Ministers under paragraph 91 of Schedule 5 to the 2004 Regulations.

Grounds for termination of the general medical services contract

46. Where, on or before the date on which the default contract ceases to have effect—

- (a) circumstances arise which would entitle the Health Board on or before that date to terminate the default contract under the term of the default contract equivalent to paragraph 101 of Schedule 5 to the 2004 Regulations; and
- (b) the Health Board has not terminated the default contract on those grounds,

those circumstances shall, for the purposes of the term of the general medical services contract which gives effect to paragraph 101 of Schedule 5 to the 2004 Regulations, be regarded as if they had arisen during the existence of the general medical services contract.

Notifications to patients affected by differences between the terms of a default and a general medical services contract

47. Where, in a case to which this Part applies—

- (a) the range of services provided to the registered patients of the general medical services contractor is to be different from that provided by the default contractor; or
- (b) patients who were on the default contractor’s list of patients are not to be included on the list of patients of the general medical services contractor as a result of a change in the practice area,

the Health Board shall notify those patients in writing of the change and inform them of the steps they can take to obtain elsewhere the services in question or, as the case may be, register elsewhere for the provision of essential services (or their equivalent).