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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 163**

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

**PART 6**

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

**Interpretation of this Part**

**62.** In this Part—

“out of hours arrangement” means—

- (a) in relation to the period before 1st April 2004, an arrangement under paragraph 17A(2) of Schedule 1 to the 1995 Regulations<sup>(1)</sup>; or
- (b) in relation to the period from 1st April 2004, means an arrangement under the term of a general medical services contract which gives effect to paragraph 1(2) of Schedule 6 to the 2004 Regulations (or the equivalent term of a default contract);

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

- (a) would be essential services if provided in core hours; or
- (b) are included—
  - (i) in a default contract as additional services funded under article 36(2) of the Transitional Order; or
  - (ii) in a general medical services contract as additional services funded under the global sum.

**Terms of general medical services contracts and default contracts**

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

- (a) a general medical services contract shall include or be deemed to include terms which have the effect specified in articles 64 to 74; and
- (b) a default contract shall include or be deemed to include terms which have the effect specified in articles 64 to 67 and 69, 70 and 74.

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(1) Paragraph 17A of Schedule 1 was added by [S.I. 1996/842](#) and amended by [S.I. 1998/660](#), [S.I. 2002/3135](#)

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

64.—(1) Where, on or before 31st March 2004, a medical practitioner had applied to the Health Board for approval of an out of hours arrangement under paragraph 17A(7) of Schedule 1 to the 1995 Regulations but that application had not yet been determined, it shall, if the medical practitioner meets the requirements in paragraph (2), be treated, on 1st April 2004, as if it were an application made by the general medical services contractor under the term of its contract which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations (or by the default contractor under the equivalent term of its default contract) subject to the modification that the period of 28 days referred to in the term giving effect to paragraph 2(2) of Schedule 6 (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Health Board received the application under paragraph 17A(7) of Schedule 1 to the 1995 Regulations.

- (2) The requirements referred to in paragraph (1) are that the medical practitioner—
  - (a) has entered as an individual medical practitioner into a general medical services contract, or a default contract;
  - (b) is a partner in a partnership which has entered into such a contract; or
  - (c) is a legal and beneficial shareholder in a company which has entered into a general medical services contract.
- (3) In any application which falls within paragraph (1)—
  - (a) any references to the patients of the medical practitioner shall be deemed to be references to the patients of the general medical services contractor or the default contractor;
  - (b) any references to the whole of the out of hours period shall be deemed to be references to—
    - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day;
    - (ii) the period between 6.30pm on Friday and 8am the following Monday; and
    - (iii) Good Friday, Christmas Day, New Year's day and any other public or local holiday;
  - (c) in any reference to part of the out of hours period—
    - (i) any reference to 7pm on Monday to Friday shall be deemed to be a reference to 6.30pm; and
    - (ii) any reference to 1pm on Saturday shall be deemed to be a reference to 6.30pm on Friday; and
  - (d) any references to a particular transferee doctor shall be deemed to be references to—
    - (i) that person as a general medical services contractor, a default contractor or a party to contractual arrangements made under article 15 of the Transitional Order;
    - (ii) the partnership in which that person is a partner and which has entered into a general medical services contract or a default contract or which is party to contractual arrangements made under article 15 of the Transitional Order; or
    - (iii) the company in which that person is a legal and beneficial shareholder and which has entered into a general medical services contract.

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

- 65.—(1) Where, on 31st March 2004—
- (a) a medical practitioner had approval from a Health Board of an out of hours arrangement; and

- (b) that approval had not been withdrawn under paragraph 17B(2) or 17C of Schedule 1 to the 1995 Regulations and the withdrawal taken effect,

that approval shall, if the medical practitioner meets the requirements in article 67(2), be treated from 1st April 2004 as if it were an approval granted to the general medical services contractor by the Health Board pursuant to the term of its contract which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations (or to the default contractor under the equivalent term of its default contract) except in the circumstances specified in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that the approval under paragraph 17A of Schedule 1 to the 1995 Regulations related to an arrangement with a transferee doctor as defined in paragraph 17A(1)(c) of Schedule 1 to the 1995 Regulations and that doctor—

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

(3) The terms of an approval granted pursuant to sub-paragraph (1) shall be the same as those of an approval granted under paragraph 17A of Schedule 1 to the 1995 Regulations except that—

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

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

**66.—(1)** Where—

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(2) Paragraph 17B of Schedule 1 was added by [S.I. 1996/842](#).

- (a) on or before 31st March 2004, a Health Board had notified a medical practitioner under paragraph 17A(10) of Schedule 1 to the 1995 Regulations that it had refused approval of an out of hours arrangement; and
- (b) on or before 1st April 2004, that medical practitioner—
  - (i) has entered as an individual medical practitioner into a general medical services contract, or a default contract, which requires the provision of out of hours services;
  - (ii) is a partner in a partnership which has entered into such a contract; or
  - (iii) is a legal and beneficial shareholder in a company which has entered into such a general medical services contract,
 paragraphs (2) and (3) shall apply.

(2) In a case where the time for appealing under paragraph 17A(11) of Schedule 1 to the 1995 Regulations had not expired on or before 31st March 2004, that refusal shall be treated as if it were a refusal under the term of the general medical services contract referred to in paragraph (1)(b) which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations (or under the equivalent term of the default contract), subject to the modification that the 30 days referred to in the term of the general medical services contract giving effect to paragraph 2(5) of that Schedule (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Health Board's notification under paragraph 17A(10) was sent.

(3) In a case where, on 31st March 2004, an appeal had been made under paragraph 17A(11) of Schedule 1 to the 1995 Regulations but not yet been determined or withdrawn, that appeal shall, except in the circumstances specified in paragraph (4), continue to be dealt with as if paragraph 17A had not been revoked and, if the appeal is successful, the approval of the arrangement shall be treated as an approval given under the term of the general medical services contract referred to in paragraph (1)(b) which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations (or under the equivalent term of the relevant default contract).

(4) The circumstances referred to in paragraph (3) are that the appeal related to an arrangement with a transferee doctor as defined in paragraph 17A(1)(c) of Schedule 1 to the 1995 Regulations and that doctor—

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

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

- (a) any references to the patients of the medical practitioner were references to the patients of the general medical services contractor or the default contractor;
- (b) any references to the whole of the out of hours period were references to—
  - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day;
  - (ii) the period between 6.30pm on Friday and 8am the following Monday; and
  - (iii) Christmas Day, New Year's Day and any other public or local holiday;
- (c) in any reference to part of the out of hours period—

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

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

**67. Where—**

- (a) an approval of an out of hours arrangement granted under paragraph 17A of Schedule 1 to the 1995 Regulations is to be treated, pursuant to article 65, as an approval granted under the term of a general medical services contract which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations (or under the equivalent term of a default contract); and
- (b) on or before 31st March 2004, the Health Board had commenced a review of its approval of that arrangement under paragraph 17B of Schedule 1 to the 1995 Regulations but had not yet made its determination,

that review shall continue as if it were a review under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 6 to the 2004 Regulations (or under the equivalent term of the default contract), subject to the modification that the 30 days referred to in the term giving effect to paragraph 4(2) of that Schedule (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Health Board sent its notice under paragraph 17B(1) of Schedule 1 to the 1995 Regulations.

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

**68. Where—**

- (a) an approval of an out of hours arrangement granted under a default contract is to be treated, pursuant to article 35, as an approval granted under the term of a general medical services contract which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations; and
- (b) on or before the date on which the default contract ceases to have effect, the Health Board has commenced a review of its approval of that arrangement under the term of the default contract which is equivalent to paragraph 4 of Schedule 6 to the 2004 Regulations but has not yet made its determination,

that review shall continue as if it were a review under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 6 to the 2004 Regulations, subject to the modification that the 30 days referred to in the term giving effect to paragraph 4(2) of that Schedule shall be treated as beginning with the day on which the Health Board sent its notice under the equivalent term of the default contract.

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

#### **69.—(1) Where—**

- (a) an approval of an out of hours arrangement granted under paragraph 17A of Schedule 1 to the 1995 Regulations is to be treated, pursuant to article 65, as an approval granted under the term of a general medical services contract which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations (or under the equivalent term of a default contract); and
- (b) on or before 31st March 2004, a Health Board had notified a medical practitioner of its withdrawal of approval of an out of hours arrangement under paragraph 17B of Schedule 1 to the 1995 Regulations but that withdrawal had not yet taken effect,

paragraphs (2) to (4) shall apply.

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

- (a) the time for appealing under paragraph 17B(6) of Schedule 1 to the 1995 Regulations had expired without any appeal being made; or
- (b) an appeal had been made under that paragraph but had been determined or withdrawn before the end of the period of two months beginning with the date on which the notice of withdrawal was sent by the Health Board under paragraph 17B(4) of that Schedule,

the withdrawal shall take effect as a withdrawal of approval under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 6 to the 2004 Regulations (or under the equivalent term of the default contract) on the date on which it would have taken effect had paragraph 17B(7) of Schedule 1 to the 1995 Regulations not been revoked.

(3) In a case where the time for appealing under paragraph 17B(6) of Schedule 1 to the 1995 Regulations had not expired on or before 31st March 2004, the notice of determination of withdrawal shall be deemed to be a notice of determination of withdrawal of approval on notice under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 6 to the 2004 Regulations (or under the equivalent term of the default contract), subject to the modifications that—

- (a) the 30 days referred to in the term of the general medical services contract giving effect to paragraph 17B(8) (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Health Board sent the notice under paragraph 17B; and
- (b) the date referred to in the term of the general medical services contract giving effect to paragraph 17B(9)(a) (or in the equivalent term of the default contract) shall be treated as being the date on which the Health Board sent the notice under paragraph 17B.

(4) In a case where, on 31st March 2004, an appeal had already been made under paragraph 17B(6) of Schedule 1 to the 1995 Regulations but not yet been determined or withdrawn, the appeal shall continue to be dealt with as if paragraphs 17A and 17B of that Schedule had not been revoked and, if the appeal is dismissed, the withdrawal of approval shall take effect as a withdrawal of approval under the term of the general medical services contract which gives effect to paragraph 4 of Schedule 6 to the 2004 Regulations (or under the equivalent term of the default contract) on the date on which the general medical services contractor or the default contractor received notice of the dismissal of the appeal.

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

#### **70. Where—**

- (a) on or before 31st March 2004, a Health Board had notified a medical practitioner of its immediate withdrawal of approval of an out of hours arrangement under paragraph 17C of Schedule 1 to the 1995 Regulations; and
- (b) on or before 1st April 2004, that medical practitioner—
  - (i) has entered as an individual medical practitioner into a general medical services contract, or a default contract, which requires the provision of out of hours services;
  - (ii) is a partner in a partnership which has entered into such a contract; or
  - (iii) is a legal and beneficial shareholder in a company which has entered into such a general medical services contract,paragraphs (2) and (3) shall apply.

(2) In a case where the time for appealing under paragraph 17C(4) had not expired on or before 31st March 2004, that withdrawal shall be treated as if it were a withdrawal of approval under the term of the general medical services contract which gives effect to paragraph 5(1)(c) of Schedule 6 to the 2004 Regulations (or under the equivalent term of a default contract) subject to the modification that the 30 days referred to in the term giving effect to paragraph 5(5) of that Schedule (or in the equivalent term of the default contract) shall be treated as beginning with the day on which the Health Board's notification under paragraph 17C(2) of Schedule 1 to the 1995 Regulations was sent.

(3) In a case where, on 31st March 2004, an appeal had already been made under paragraph 17C(4) but not yet been determined or withdrawn, that appeal shall, except in the circumstances specified in paragraph (4), continue to be dealt with as if paragraphs 17A and 17C of Schedule 1 to the 1995 Regulations had not been revoked and, if the appeal is successful, the approval of the arrangement shall be treated as an approval given under the term of the general medical services contract which gives effect to paragraph 2 of Schedule 1 to the 2004 Regulations (or under the equivalent term of the default contract).

(4) The circumstances referred to in paragraph (3) are that the appeal related to an arrangement with a transferee doctor as defined in paragraph 17A(1)(c) of Schedule 1 to the 1995 Regulations and that doctor—

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

(5) The terms of an approval granted pursuant to paragraphs (2) or (3) shall be the same as those of the approval previously granted approval under paragraph 17A of Schedule 1 to the 1995 Regulations except that—

- (a) any references to the patients of the medical practitioner shall be amended to be references to the patients of the general medical services contractor or the default contractor;
- (b) any references to the whole of the out of hours period shall be amended to be references to—
  - (i) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day;
  - (ii) the period between 6.30pm on Friday and 8am the following Monday; and
  - (iii) Christmas Day, New Year's Day and any other public or local holiday;
- (c) in any reference to part of the out of hours period—

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

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

**71. Where—**

- (a) on or before the date on which a default contract ceases to have effect, a default contractor has received notice of—
  - (i) the refusal of an application for approval of an out of hours arrangement under the term of its contract equivalent to paragraph 2(4) of Schedule 6 to the 2004 Regulations;
  - (ii) a determination of a Health Board under the term of its contract equivalent to paragraph 4(6) of Schedule 6 to the 2004 Regulations which gives notice of immediate withdrawal of approval; or
  - (iii) immediate withdrawal of approval under the term of its contract equivalent to paragraph 5(1)(b) of that Schedule;
- (b) on the date on which the default contract ceases to have effect—
  - (i) the 30 days for referring that matter in accordance with the NHS dispute resolution procedure has not expired; and
  - (ii) no referral under that procedure has yet been made; and
- (c) the default contractor has entered into a general medical services contract which takes effect immediately after the default contract ceases to have effect,

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

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

**72.—(1) Where—**

- (a) on or before the date on which a default contract ceases to have effect, a default contractor has referred a dispute to be determined in accordance with the NHS dispute resolution



procedure under the terms of its default contract equivalent to paragraph 4(8) or 5(5) of Schedule 6 to the 2004 Regulations;

- (b) on the date on which the default contract ceases to have effect, that dispute has not been determined or withdrawn; and
- (c) the default contractor has entered into a general medical services contract which takes effect immediately after the default contract ceases to have effect,

paragraph (2) shall apply.

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

- (a) a refusal of an application under the term of the general medical services contract giving effect to paragraph 2 of Schedule 6 to the 2004 Regulations;
- (b) a determination of the Health Board under the term of the general medical services contract giving effect to paragraph 4 of that Schedule; or
- (c) an immediate withdrawal of approval under the term of the general medical services contract giving effect to paragraph 5 of that Schedule.

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

**73.**—(1) Where, prior to 1st January 2005, a general medical services contractor wishes to sub-contract all or part of its out of hours services in circumstances which would require the written approval of the Health Board in accordance with the term of the general medical services contract which gives effect to paragraph 63 of Schedule 5 to the 2004 Regulations, it shall be deemed to have such written approval if, at the date on which it enters into the sub-contract—

- (a) it has, or, pursuant to article 65, 66 or 70, is deemed to have, approval of an out of hours arrangement under the term of the general medical services contract which gives effect to paragraph 2 of Schedule 6 to the 2004 Regulations whose terms are, in all material respects, identical to those of the proposed sub-contract; and
- (b) that approval has not been withdrawn; and
- (c) it has not previously entered into a sub-contract for its out of hours services in reliance on the approval referred to in sub-paragraph (a).

(2) The general medical services contractor shall notify the Health Board in writing as soon as reasonably practicable of any sub-contract which it proposes to enter into or has entered into pursuant to paragraph (1).

(3) An approval deemed to have been granted pursuant to paragraph (1) shall be regarded, for all purposes, as an approval granted under the term of the general medical services contract which gives effect to paragraph 63 of Schedule 5 to the 2004 Regulations.

#### **Out of hours services to patients not registered with general medical services contractors and default contractors**

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

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

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

(4) Nothing in this article shall require a general medical services contractor or a default contractor to provide services under this article if, in the reasonable opinion of the default contractor or the general medical services contractor in the light of the patient's medical condition it would be reasonable in all the circumstances for the patient to wait for the services required until the next time at which he could obtain such services during core hours.

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

- (a) the terms of the general medical services contract which give effect to paragraphs 11 and 63 to 65 of Schedule 5 to the 2004 Regulations and Schedule 6 to those Regulations; or
- (b) any equivalent terms of the default contract.

(6) In this article "out of hours period" has the same meaning as in regulation 2(1) of the 2004 Regulations.

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

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